

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 10, 2018

COMMISSIONER PRESENT:

John B. Rhodes, Chair

CASE 15-M-0388 - Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements.

ORDER GRANTING REQUESTS FOR EXTENSION

(Issued and Effective September 10, 2018)

INTRODUCTION AND BACKGROUND

On July 27, 2018, the Commission issued an Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (the Revocation Order) and an Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification (the Compliance Order).¹ The Revocation Order (1) revoked the Commission's January 8, 2016 approval of Charter Communications, Inc.'s (Charter or Company) acquisition of Time Warner Cable, Inc.'s New York assets and franchise and (2) directed Charter to file, within 60 days, a six-month exit plan

¹ Case 15-M-0388, Charter Communications and Time Warner Cable - Transfer of Control, Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018) (Revocation Order); Id., Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification, (issued July 27, 2018) (Compliance Order).

(the Six-Month Exit Plan) to effect an orderly transition to one or more successor providers in areas previously served by Time Warner Cable, Inc. in New York. In the accompanying Compliance Order, the Commission determined that Charter failed to satisfy the June 18, 2018 target for the build out of Charter's network in New York State² and that Charter had not made a sufficient Good Cause showing for the missed June 2018 compliance obligation.

On August 17, 2018, Charter filed a letter requesting an extension of this 60-day deadline to file a plan with the Secretary, and the 30-day period to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to Public Service Law (PSL) §22.³ On August 20, 2018, Charter's request to extend the deadline to file the Six-Month Exit Plan was granted to October 9, 2018.⁴ Also, on August 22, 2018, Charter's request for an extension of the 30-day deadline for the filing of rehearing petitions pursuant to PSL §22 was granted to September 10, 2018.⁵

² This June 2018 build out obligation was established in a Settlement Agreement approved by the Commission in a September 14, 2017 Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement.

³ Case 15-M-0388, Request for Extension of Time (filed August 17, 2018).

⁴ An extension of the 60-day deadline from September 25, 2018 to October 9, 2018 was granted by the Secretary to the Commission pursuant to Order Clause 6 of the Revocation Order. See, Case 15-M-0388, Ruling on Extension Request (issued August 20, 2018).

⁵ Case 15-M-0388, Order Granting Extension (issued August 22, 2018).

On September 7, 2018, Charter filed a letter requesting an additional 30-day extension of the deadline to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to PSL §22.⁶ The same day, Charter also submitted a request to extend the date for the submission of the Six-Month Exit Plan by 30 days.⁷

LEGAL AUTHORITY

Pursuant to PSL §22, “[a]fter an order has been made by the [C]ommission any corporation or person interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, but any such application must be made within thirty days after the service of such order, unless the [C]ommission for good cause shown shall otherwise direct...” By this Order, good cause is found to exist here contingent on the specific facts and continued obligations discussed in this order.

DISCUSSION AND CONCLUSION

Among other things, Charter states in its requests for extension of additional time that Department of Public Service (DPS) Staff and Company have held productive discussions regarding the Commission’s enforcement proceeding filed in State Supreme Court, Albany County⁸ and the July Orders. Moreover, on

⁶ Case 15-M-0388, Request for Extension of Time (filed September 7, 2018).

⁷ Case 15-M-0388, Request for Extension of Deadline in Ordering Clause No. 4 of July 27, 2018 Order (filed September 7, 2018).

⁸ State of New York Public Service Commission v. Charter

June 26, 2018 Counsel to the Commission directed Charter to cease airing advertisements containing false representations,⁹ and on August 1, 2018 Charter's CEO announced that Charter would halt those advertisements. On August 23, 2018 Counsel to Commission directed Charter to remove additional advertisements airing in the New York viewing area, which were considered to be misleading. On the same day, August 23, the Company agreed to remove those advertisements by the next business day. Staff advises that the Company has committed not to run any false or misleading advertisements that misrepresent facts or mislead consumers in New York. The Company further states in its requests for extension of time that it is assembling information related to the deployment of broadband in New York for the Department and Commission's review. Staff advises that this includes information necessary to address safety concerns related to the expansion of its network, and information needed to facilitate the ongoing work necessary for the Company to comply with the most recent network expansion obligation.

In its July 27, 2018 Revocation Order, the Commission directed Charter to comply with all New York State Public Service Law provisions and associated regulations and also directed Charter to continue to provide service to New Yorkers until the company's New York operations ceases via an orderly process.¹⁰ The Revocation Order stated, among other things:

Communications Inc., Index No. 4819-18 (Albany County Supreme Court).

⁹ Case 15-M-0388, Letter from General Counsel Agresta to Mr. Rutledge, Charter Communications, Inc.

¹⁰ Revocation Order at 27-28.

"Until the orderly cessation of Charter operations in these areas has been completed, the Company must continue to comply with all local franchises it holds in New York State and all obligations under the Public Service Law and the Commission regulations."¹¹ Extending the deadlines as requested by Charter does not change these obligations. As discussed in the Revocation Order, in the event that Charter does not comply with such obligations, the Commission will take further steps, including seeking injunctive relief in Supreme Court to protect New York consumers.¹²

Because here the development of a Six-Month Exit Plan is intended to provide for an orderly transition to one or more successor providers and an orderly transfer of the Company assets in New York as integral aspects of the revocation of the Commission's approval, these requested additional extensions may allow for a more thorough record and process before the Commission.

Furthermore, given the productive dialogue that is ongoing between the Company and Staff, the commitments made by Charter not to air false or misleading advertisements, the work underway by the Company to comply with the network expansion condition, and Charter's continued obligations to comply with the Public Service Law and regulations, extensions of an additional 30 days to file a petition for rehearing and file the Six-Month Exit Plan are warranted to allow for further discussions while both sides reserve their respective legal rights.

¹¹ Revocation Order at 28.

¹² Revocation Order at 28.

Therefore, it is determined that the legal standard for granting the requested extension to petition for rehearing has been met contingent upon the continuation of productive engagement and dialogue by Charter, the absence of misleading advertisements, and Charter's continuing obligation to comply with the New York State Public Service Law and related regulations and requirements, and that therefore Charter's requests to further extend the deadline for the filing of rehearing petitions pursuant to PSL §22 by 30 days and to further extend the deadline for filing the Six-Month Exit Plan by 30 days will be granted.¹³

It is ordered:

1. The deadline for the filing of rehearing petitions pursuant to Public Service Law §22 in connection with the Commission's July 27, 2018 Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval and Order Confirming Missed June 2018 Compliance Obligation and Denying by 30 days.

2. The deadline for the filing of the Six-Month Exit Plan is extended by 30 days.

3. Today's extension is contingent on, and is granted upon the express condition that, Charter continue to comply with the Public Service Law and regulations, and not air misleading advertisements.

¹³ Because Charter made identical arguments to support its requests to extend the deadlines to file a rehearing petition and to file the Six-Month Exit Plan, the Commission, in this instance, is addressing both those requests in this order and thereby promote the fair, orderly, and efficient conduct of this proceeding.

4. This proceeding is continued.

(SIGNED)

Commissioner