

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the Village of  
Millerton on November 23, 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 FURTHER REQUEST FOR EXTENSIONS

(Issued and Effective November 23, 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).<sup>1</sup> 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)

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<sup>1</sup> 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 Revocation Order and the Compliance Order are referred to collectively herein as the "July Orders").

directed Charter to file, within 60 days, a six-month exit plan (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 State<sup>2</sup> 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 the Six-Month Exit 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.<sup>3</sup> On August 20, 2018, Charter's request to extend the deadline to file the Six-Month Exit Plan was granted to October 9, 2018.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> 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.

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

<sup>4</sup> 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).

<sup>5</sup> 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.<sup>6</sup> The same day, Charter also submitted a request to extend the date for the submission of the Six-Month Exit Plan by 30 days.<sup>7</sup> That request was granted on September 10, 2018.<sup>8</sup>

On October 9, 2018, Charter filed a further Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order,<sup>9</sup> seeking sixty-day extensions of the deadline to file the Six-Month Exit Plan with the Secretary, and the period to file petitions for rehearing of both the Revocation Order and Compliance Order pursuant to PSL §22. That request was granted in limited part on October 10, 2018.<sup>10</sup> The October 10 Order granted limited, 45-day extensions to the respective deadlines, but directed that in the event a settlement agreement was not reached by that date, any further consideration of extensions would require a joint filing

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

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

<sup>8</sup> Case 15-M-0388, Order Granting Requests for Extension (issued September 10, 2018). The August 22, 2018 and September 10, 2018 orders were confirmed in two Confirming Orders issued on September 12, 2018.

<sup>9</sup> Case 15-M-0388, Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order (filed October 9, 2018).

<sup>10</sup> Case 15-M-0388, Order Granting Requests for Extension (issued October 10, 2018)

providing good cause justification for why the deadlines should be further extended.

On November 21, 2018, Department of Public Service (DPS) Staff and Charter filed a joint letter stating that they had not yet been able to reach a fully executed settlement agreement, but that they had established a framework for how a settlement agreement might be structured and that discussions remain ongoing.<sup>11</sup> According to the joint letter, such a settlement agreement would necessarily address: issues relating to the inclusion of certain categories of addresses and whether they are valid "passings" under the Merger Approval Order; penalty actions and amounts under dispute in Supreme Court; and a schedule for compliance (including enforcement mechanisms) going forward.

#### 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

Charter and DPS Staff state in their request for a limited 18-day extension of time that discussions are ongoing, that Charter and DPS Staff have established a framework for how

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<sup>11</sup> Case 15-M-0388, Request for Extension of Time (filed November 21, 2018).

a settlement agreement might be structured, and that any final agreement would necessarily address: issues relating to the inclusion of certain categories of addresses and whether they are valid "passings" under the Merger Approval Order; penalty actions and amounts under dispute in Supreme Court; and a schedule for compliance (including enforcement mechanisms) going forward.<sup>12</sup>

Given the ongoing dialogue along with the identified framework for a settlement as well as Charter's continued obligations to comply with the Public Service Law and regulations, good cause exists consistent with PSL §22 to grant limited 18-day extensions to petition for rehearing and file the Six-Month Exit Plan to allow for further discussions while both sides reserve their respective legal rights.

As the Commission noted in prior extensions, however, this limited extension should not be viewed as an indefinite grant of time for discussions to continue between DPS Staff and the Company. Many Upstate New Yorkers living in Charter's franchise areas are understandably frustrated by the lack of modern communications infrastructure. The Compliance and Revocation Orders were designed to deal with very serious consumer issues presented by Charter's conduct related to the company's network expansion. As such, the processes envisioned therein must continue in the absence of an agreement.

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

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<sup>12</sup> Id.

therefore Charter's and DPS Staff's joint request to further extend the deadline for the filing of rehearing petitions pursuant to PSL §22 and to further extend the deadline for filing the Six-Month Exit Plan will be granted.<sup>13</sup>

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 the Commission's July 27, 2018 Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification is further extended by 18 days, i.e., until December 14, 2018.

2. The deadline for the filing of the Six-Month Exit Plan is further extended by 18 days, i.e., until January 11, 2019.

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.

4. This proceeding is continued.

(SIGNED)

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Commissioner

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<sup>13</sup> 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. Extending the deadlines as requested does not change these obligations. 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.