

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

Joint Petition of Charter Communications,
Inc. and Time Warner Cable Inc.
For Approval of a Transfer of Control of
Subsidiaries and Franchises, Pro Forma
and Certain Financing Arrangements

Case: 15-M-0388

**Charter Communications, Inc.
21 Day Report in Response to the Commission's Order
Denying Charter Communications, Inc.'s Response to
Order to Show Cause and Denying Good Cause
Justifications**

July 5, 2018

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Charter Communications, Inc. (“Charter” or the “Company”) respectfully submits this report in response to the Commission’s Order Denying Charter Communications, Inc.’s Response to Order to Show Cause and Denying Good Cause Justifications (the “June 14th Order”).¹ In that Order, the Commission required that Charter revise its 145,000 Buildout Plan (the “Buildout Plan”) within 21 days of the issuance of the Order. In addition,² the June 14th Order required that Charter: (a) remove 18,363 passings from its December 16, 2017 report; (b) remove 11,979 addresses from the Buildout Plan; and (c) file a report regarding the most up-to-date number of passings that the Company has completed and associated pole or conduit license applications; and (d) provide all relevant details regarding its plan to come into compliance with the discussion in the June 14th Order.³ Attempts to comply with the Commission’s June 14th

¹ Case 15-M-0388, *Joint Petition of Charter Communications Time Warner Cable for Approval of a Transfer Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Order Denying Charter Communications, Inc.’s Response to Order to Show Cause and Denying Good Cause Justifications, (Issued and Effective June 14, 2018).

² *See Id.*, Conditions 2 through 5.

³ Certain subjects discussed in this filing pertain to nonjurisdictional products and services. Discussion of nonjurisdictional products and services is not intended as a waiver or concession of the Commission’s jurisdiction

Order and the efforts discussed herein to provide the information requested by the Commission should not be construed in any way as a waiver by Charter of any of its legal rights, including (without limitation) Charter's right to seek review of the June 14th Order or otherwise seek review of the Commission's interpretation and application of its January 8, 2016 Merger Order.⁴ There is no legal basis for the conclusions reached in the June 14th Order, including the ordering of the Company to modify the Buildout Plan or associated record of completed passings.⁵

In addition, the June 14th Order provided that the deadlines in the Order may be extended by the Secretary and that requests for such extension must be in writing and be submitted at least one day prior to the affected deadline. On July 3, 2018, Charter filed a request for stay of the requirement to file a revised version of Charter's Buildout Plan and the other requirements contained in Ordering Clauses 2 through 5 of the June 14th Order until all of the Company's administrative and legal appeals have been exhausted.⁶ Within the same filing, in the alternative, the Company also requested a 60-day extension for the requested revision to the Buildout Plan until September 3, 2018.⁷ The Secretary did not respond to this Extension Request until 4:15 pm on July 5, 2018, the day that this report was due to be filed. Without addressing any of Charter's explanations for its need for an extension, the Secretary denied the Extension Request, simply

beyond the scope of Charter's regulated telecommunications and cable video services. Charter respectfully reserves all rights relating to the inclusion of or reference to such information, including without limitation Charter's legal and equitable rights relating to jurisdiction, compliance, filing, disclosure, relevancy, due process, review, and appeal. The inclusion of or reference to nonjurisdictional information or to the ordering clauses or other requirements of the Order as obligations or commitments to provide non jurisdictional services shall not be construed as a waiver of any rights or objections otherwise available to Charter in this or any other proceeding, and may not be deemed an admission of relevancy, materiality, or admissibility generally.

⁴ Case 15-M-0388, Order Granting Joint Petition Subject to Conditions (Issued and Effective January 8, 2016) (the "Merger Order").

⁵ With the exception to the passings that have been already voluntarily removed from Charter's Buildout Plan as included in the Company's Response to the Order to Show Cause Order, *see* Case 15-M-0388, Response of Charter Communications, Inc. to Order to Show Cause (filed on May 9, 2018).

⁶ *See* June 14th Order, p. 79. Also *see*, Case 15-M-0388, Request for Extension of Deadline to File a Revised Buildout Plan, (filed on July 3, 2018) (the "Extension Request").

⁷ *Id.*

stating that the Extension Request is “excessive.” While doing so, the Secretary inexplicably did not follow the common Commission practice of providing an extension that she would not consider “excessive.”

As discussed in its Extension Request, Charter fundamentally disagrees with the premises underlying the Commission’s June 14th Order and its characterizations of the agreement reached between the Commission and Charter prior to the Commission issuing its Merger Order and the requirements of the Merger Order itself.⁸ The Company intends to fully pursue its legal remedies in this matter. Notwithstanding this fact, Charter has made Herculean efforts to provide as much of the information required by the Commission in its June 14th Order as reasonably possible on July 5, 2018. Accordingly, attached please find Charter’s Confidential Revised Buildout Plan. It should be noted that notwithstanding the Company’s extraordinary efforts to revise this Plan within the 21 day period, Charter has not been able to identify additional homes and businesses to substitute for passings allegedly disqualified by the Commission. As the Commission knows from past experience and discussion between Charter and Department of Public Service Staff, identifying passings for the Buildout Plan will require additional validation, verification and walk out (among other efforts) to accurately develop and complete. This can take several months and was at least partially the basis for the request for a 60-day extension. As a result, the current Buildout Plan submitted herein cannot contain 145,000 addresses. The Company has to go through all of these necessary steps before it is able to finalize the Revised Buildout Plan and will supplement information at a later date.

As pointed out in its Extension Request, there are also several areas that the Company cannot address because, among other things, the Commission has failed to identify the addresses it alludes to in the June 14th Order. For example, the Commission obliquely refers to 3,044

⁸ See, *supra*, the Merger Order.

upstate addresses that it does not agree qualify to satisfy Charter's buildout commitment. However, a list of these addresses has not been forthcoming, notwithstanding a letter requesting such addresses that was filed by Charter on June 29, 2018.⁹

Similarly, the June 14th Order also required that Charter remove an additional 86 addresses located in Grafton, New York from its future 145,000 Buildout Plan years.¹⁰ According to the Commission, these 86 additional addresses were associated with the Plan Year 3 Buildout, and should be removed because they were "interspersed between and among many of the 725 already-completed addresses that Charter has voluntarily removed in association with its BPO Connect New York funded expansion project."¹¹ However, the June 14th Order failed to provide a list of these 86 addresses. Accordingly, the Company requested these addresses as part of its Extension Request. That list has also not been forthcoming.

In addition to the areas that the Company lacks adequate insight into the Commission's requirements, there are areas that the Company simply cannot fully address within the very short window provided by the Commission. For example, the Commission ordered the Company to compile pole attachment or permit applications for each and every qualifying passing. This requirement is found nowhere in the Merger Order nor is it required by the Settlement Order.¹² Moreover, no explanation is provided for this requirement in the June 14th Order. Notwithstanding this fact, the Company has worked extensively to collect as many of the applications that have been involved in this project as possible in the 21 day period. To the extent it is possible, Charter will continue to work to find the remaining applications that relate to qualifying premises.

⁹ Case 15-M-0388, Charter Letter to the Secretary Requesting 3,044 Upstate Addresses, (filed on June 29, 2018).

¹⁰ June 14th Order, pp. 60-61.

¹¹ *Id* at p. 61.

¹² Case 15-M-0388, Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement, (Issued and Effective September 14, 2017) (the "Settlement Order").

CONCLUSION

Without waiving its right to seek review of the Commission's interpretation and application of the Commission's Merger Order and the Settlement Order, Charter will continue to pursue reasonable efforts to comply with the Commission's June 14th Order, to the extent it is lawful, as expeditiously as possible. If you have any questions regarding this filing, please feel free to contact the undersigned directly.

Dated: July 5, 2018

/s/ Adam Falk

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/s/ Maureen O. Helmer

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