

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).

Application 15-07-009  
(Filed July 2, 2015)

**JOINT APPLICATION FOR REHEARING  
OF DECISION 16-05-007**

**MELISSA W. KASNITZ**

Legal Counsel

Center for Accessible Technology  
3075 Adeline Street, Suite 220  
Berkeley, CA 94703  
Telephone: (510) 841-3224  
Email: [service@cforat.org](mailto:service@cforat.org)

**TRAVIS FOSS**

Attorney for  
The Office of Ratepayer Advocates

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-1998  
Email: [travis.foss@cpuc.ca.gov](mailto:travis.foss@cpuc.ca.gov)

May 26, 2016

## TABLE OF CONTENTS

<u>Title</u>	<u>Pages</u>
I. INTRODUCTION .....	1
II. CHARTER ACCEPTED COMMITMENTS .....	4
A. SERVICE QUALITY CONDITIONS .....	4
B. CENTER FOR ACCESSIBLE TECHNOLOGY CONDITIONS.....	6
III. DATA CAP AND USAGE BASED BILLING.....	8
IV. CONCLUSION.....	9

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).

Application 15-07-009  
(Filed July 2, 2015)

**JOINT APPLICATION FOR REHEARING  
OF DECISION 16-05-007**

**I. INTRODUCTION**

Pursuant to Rule 16.1 of the Commission’s Rules of Practices and Procedure, the Office of Ratepayer Advocates (“ORA”) and Center for Accessible Technology (CforAT) hereby file this joint application for rehearing of Decision (“D.”) 16-05-007. D.16-05-007 was mailed on May 16, 2016 so this application for rehearing is timely filed.

D.16-05-007 granted, subject to conditions, the Joint Application of Charter Communications, Inc. (“Charter”); Charter Fiberlink CA-CCO, LLC (“Charter Fiberlink”); Time Warner Cable Inc. (“TWC”); Time Warner Cable Information Services (California), LLC (“TWCIS”); Advance/Newhouse Partnership (“Advance/Newhouse”); Bright House Networks, LLC (“BHN”); and Bright House Networks Information Services (California), LLC (“Bright House California”) (“Joint Applicants”), pursuant to Section 854 of the California

Public Utilities Code (Pub. Util. Code)<sup>1</sup> for the transfer of control of both Time Warner Cable Information Services (California), LLC and Bright House Networks Information Services (California), LLC to Charter Communications, Inc., and for approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC. D.16-05-007 found, subject to conditions, that the requested transfers satisfied the applicable provisions of Section 854 and was in the public interest.

ORA and CforAT are not filing this application for rehearing to contest the requested transfer of control. Its purpose is to correct what ORA and CforAT believe to be inadvertent, but significant, errors in the omission of specified conditions associated with the approval of the transfer of control.

Specifically, this application for rehearing identifies changes necessary to resolve and eliminate legal error in D.16-05-007. Most of these errors consist of what ORA and CforAT believe to be an inadvertent failure to include within the ordering paragraphs of D.16-05-007 a confirmation of specific voluntary commitments made by the Joint Applicants where the Commission has made clear in the body of the decision its intent to do so. The other error to be addressed consists of conforming one condition with its counterpart adopted by the Federal Communications Commission (FCC) in rendering its decision on this transaction.

In considering D.16-05-007, ORA and CforAT identify the following legal errors that we respectfully request the Commission correct on rehearing. First, the Decision fails to adopt conditions in its Ordering Paragraphs that address Charter's service quality commitments stated in Charter's Reply Brief.<sup>2</sup> While D.16-05-007 refers to these conditions in the body of the Decision, failure to include the conditions in the Ordering Paragraphs results in unenforceable conditions that would result in harm to California ratepayers if they are not implemented. These significant and voluntary conditions, agreed to by Charter in its Reply Brief, would enhance safety and service quality to prevent harm to ratepayers and ensure the

---

<sup>1</sup> Unless otherwise indicated, all code citations herein are to the California Public Utilities Code.

<sup>2</sup> Reply Brief of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC (U6878C), Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC (U6874C), Advance/Newhouse Partnership, Bright House Networks, LLC, and Bright House Networks Information Services (California), LLC (U6955C), Public Version, filed on March 11, 2016 ("Charter Reply Brief") at 191-211; *see also*, Appendix A.

merger benefits for ratepayers are realized. Specifically, the Decision fails to state in its Ordering Paragraphs that Charter shall provide the Commission and ORA semiannual reports containing monthly service reliability data and outage information for both broadband and Voice Over Internet Protocol (“VoIP”). Further, the Decision fails to state that Charter shall conduct a multi-lingual customer satisfaction survey in the New Charter service area in collaboration with Commission staff, ORA, and other consumer groups.

Second, the Decision fails to adopt conditions in its Ordering Paragraphs that address Charter’s voluntary commitments to improve the company’s ability to communicate with customers with disabilities and also fails to adopt Ordering Paragraphs that address its voluntary commitments to ensure that its backup power offerings are accessible to customers with disabilities, as stated in Charter’s Reply Brief.<sup>3</sup> Absent these explicit conditions in the Decision’s Ordering Paragraphs, the ability to provide safe and reliable service to the disability community would be harmed and the full benefits of the merger would not be realized.

Third, the Decision fails to address the Federal Communications Commission’s (“FCC”) approval of the merger that was adopted eleven days prior to the Commission decision.<sup>4</sup> Specifically, the FCC prohibited Charter from imposing data caps or charging usage-based pricing for residential broadband service for a period of seven years, finding that a three-year prohibition would be insufficient to address the potential harms of the transaction.<sup>5</sup> In contrast to the FCC’s more stringent Order, D.16-05-007 only adopted a three-year provision that prohibits Charter from imposing data caps or usage based pricing.<sup>6</sup> The incongruence and interaction between these separate expiration dates is unclear and should be reconciled in the final decision through imposition of a seven-year term. Such a change would clarify which law, Federal or State, takes precedence and would result in good public policy by

---

<sup>3</sup> Charter Reply Brief at 125, 129; *see*, Appendix A. Charter also offered similar, though less comprehensive voluntary commitments addressing accessible communication and backup power in its Reply Comments on the PD, filed on May 9, 2016, at Appendix A, items 3-6.

<sup>4</sup> *FCC Order Approving with Conditions Charter/TWC/BHN Merger*, FCC 16-59, adopted on May 5, 2016 (“FCC Charter Order”).

<sup>5</sup> *Id.* ¶¶ 9, 74, 457.

<sup>6</sup> Decision (“D.”) 16-05-007, Ordering Paragraph (“OP”) 2(k).

clarifying that California ratepayers will be not be provided less protection than is afforded citizens of other States.

## **II. CHARTER ACCEPTED COMMITMENTS**

### **A. Service Quality Conditions**

In its Reply Brief, Charter made voluntary commitments to provide the Commission with Broadband and VoIP outage reports and, following approval of the merger, to conduct customer satisfaction surveys in Charter's California territory.<sup>7</sup> The Commission committed legal error when neither voluntary commitment was included in the Ordering Paragraphs of the final Decision, hindering any legal enforcement of these commitments should Charter fail to abide by its promises.

In the body of the final Decision, D.16-05-007 states that it will "reformulate" Charter's various voluntary commitments as "explicit conditions of approval," and "will also impose conditions that are reasonably inferred from those promises and assurances."<sup>8</sup> Specifically, the final Decision states as follows:

“Many of the conditions proposed by protesters are reflected in the promises made and assurances given by Joint Applicants. To the extent that those promises and assurances are responsive to the concerns of the protesters, we will reformulate them as explicit conditions of approval. In addition we will also impose conditions that are reasonably inferred from those promises and assurances.”<sup>2</sup>

However, this statement of intent in the Decision is not reflected in explicit conditions in the Ordering Paragraphs. Unless such explicit conditions are adopted, Charter's voluntary commitments on service quality would be unenforceable. Therefore, ORA and CforAT propose the Commission add the following Ordering Paragraphs to D.16-05-007:

- New Charter shall provide the CPUC and ORA, beginning June 30, 2016, semi-annual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data elements:
  - Service Type (VoIP, Broadband, or Both VoIP and Broadband).

---

<sup>7</sup> *see*, Charter Reply Brief at 119-121; *see also*, Appendix A.

<sup>8</sup> D.16-05-007 at 62.

<sup>2</sup> *Id.*

- Number of customers affected.
  - Number of residential customers affected.
  - Number of Small Business customers affected.
  - Number of Large Business customers affected.
  - Outage Start Date and Time.
  - Service Restoration Date and Time.
  - Duration of outage in total minutes.
  - Location of outage.
  - Description of the Cause.
  - Description of the Root Cause.
  - Description of the Incident.
  - Description of the equipment that failed (if any) and location within the network that was impacted.
  - Methods used to restore the outage (Resolution Method).
- New Charter shall provide a confidential copy of Federal Communications Commission (FCC) Network Outage Reporting System (NORS) reports for New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC.
- No later than 180 days from the closing of the Transaction, New Charter, in consultation with ORA, shall select and retain an independent expert Survey Consultant ("Survey Consultant"), subject to standard confidentiality provisions. This Survey Consultant will not have previously provided any customer satisfaction services or contract work with Charter, Time Warner Cable, or Bright House Networks in California and shall act independently to develop the survey design and survey questions for a multi lingual customer satisfaction survey in the New Charter California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from the closing of the Transaction. In addition to English proficient customers, the survey design must also include Spanish speaking customers identified as having limited English proficiency, and must include some customers who speak at least the top three languages spoken in New Charter service territory. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages

and the necessity for maintaining battery back-up. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through virtual or in person meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing of the transaction and will continue for two years subsequent to that date. The Survey Consultant shall issue a survey Report to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted no later than 24 months from the commencement of the surveys.

**B. Center For Accessible Technology Conditions**

For the same reasons set forth above, the Commission also committed legal error when Charter’s voluntary commitments to customers with disabilities were not incorporated into the Decision’s Ordering Paragraphs. Therefore, ORA and CforAT propose that the Commission add Charter’s voluntary commitments to customers with disabilities to the Ordering Paragraphs of D.16-05-007. In its Reply Brief, Charter made voluntary commitments to provide customers with disabilities the following improvements with regard to accessible customer communications:<sup>10</sup>

- Charter has engaged a consultant to audit, advise and recommend actions to bring Charter’s customer-facing charter.net web pages in compliance [sic] with the applicable WCAG 2.0 AA standards. Following the close of the Transaction, New Charter will develop a plan for improving compliance with WCAG 2.0 AA standards and will provide a plan to CforAT. In addition, New Charter will appoint a lead person for customer-oriented content included at [www.charter.net](http://www.charter.net) who will become familiar with and remain current on WCAG 2.0AA standards and advise New Charter’s Web Content team in meeting such standards. Beginning 180 days after closing, all new California residential customer-oriented pages created by New Charter for the [www.charter.net](http://www.charter.net) website will substantially meet such Web access standards, except where technical dependencies limit the ability of new web pages to meet these standards. If there are any such technical

---

<sup>10</sup> Charter Reply Brief at 129.



limitations, New Charter will document these dependencies and report this information upon request to CforAT, subject to standard confidentiality restrictions.

- New Charter will make available Braille billing, Large Print billing, Spanish Braille billing and Spanish Large Print billing, if requested, to residential customers who previously requested these alternative formats. Residential customers who request to receive bills in alternative formats shall receive other billing and existing customer communications from New Charter in the same format. New Charter's customer bills will contain information about the availability of alternative formats and information on how such material can be requested. Within 180 days after closing, New Charter will, upon request, consult with CforAT regarding existing service communications sent to California residential customers to assess whether and how to include Large Print and these other billing formats described herein, to enhance important service information communications.

Charter made an additional voluntary commitment in its Reply Brief to improve the accessibility of its Backup Power offerings for customers with disabilities. This voluntary commitment should also be included in the Ordering Paragraphs as follows:

- For residential customers with disabilities (e.g. sight or physical disabilities), New Charter will provide a backup battery at cost for any new installation. This requirement shall remain in effect for 3-years measured from the date of the closing of the Transaction. Additionally, battery backup power units shall include a visible indicator light(s) that allow for customer maintenance when the batteries require replacement. Information on the cost and availability of replacement batteries must be provided to customers and assistance should be provided at the time of installation for any residential customer who is unable to change the battery without assistance. For those customers ordering a backup battery, a question regarding whether such assistance is required should be part of any residential installation process, so that households that are not capable of maintaining their vital connection to emergency services are not left out.<sup>11</sup>

Finally, Charter made a further voluntary commitment that would result in important improvements for customers with disabilities via employee training, which implicates both

---

<sup>11</sup> *Id.* at 125.

accessible communications and access to backup power. This commitment was set out by Charter as follows:

By July 1, 2017, New Charter will prepare and distribute one or more training modules to educate California employees on important accessibility issues. New Charter will engage a consultant with expertise in consumer accessibility issues to assist in preparation of the training materials. This training will, among other things, address the placement and location of communications equipment at the customer premises (e.g., MTA and battery) to prevent mobility access issues. For three years from the date of the first distribution on or before July 1, 2017, New Charter will redistribute this training module annually to its California employees and will provide a copy of the training materials, upon request and in advance, subject to standard confidentiality restrictions, to CforAT for comments and recommendations in preparing the training materials before the training is communicated to California employees.<sup>12</sup>

These significant voluntary commitments should also be added to the Ordering Paragraphs of D.16-05-007 to ensure that they are enforceable.

### **III. DATA CAP AND USAGE BASED BILLING**

The Decision commits legal error by failing to address the May 5, 2016 FCC Order that prohibited Charter from imposing data caps or usage based billing for a period of seven years.<sup>13</sup> D.16-05-007, in contrast, adopted a three year prohibition that prevented Charter from imposing data caps and usage based billing on residential customers.<sup>14</sup> The contradiction between the Federal and State decisions resulting in separate expiration dates for the above mentioned condition contributes to a lack of legal and policy clarity that should have been addressed in the final decision, especially considering the FCC had found a three year prohibition to be insufficient to address the potential harms of the transaction. While it could be expected that Charter will comply with the FCC order in any event, confirmation of consistency will resolve any potential ambiguity.

In its final Order, the FCC stated, “[W]e find the Applicants’ proposed commitment to refrain from the use of data caps or UBP for three years is insufficient to address these potential

---

<sup>12</sup> *Id.* at 130.

<sup>13</sup> FCC Charter Order ¶¶ 9, 74, 457.

<sup>14</sup> D.16-05-007, OP 2(k).

harms and that seven years is a more appropriate term.”<sup>15</sup> The FCC, therefore, imposed a seven-year moratorium, stating “[F]or seven years, we prohibit New Charter from imposing data caps or charging usage-based pricing for its residential broadband service. This condition ensures that New Charter will continue Charter’s past pricing practices and protects subscribers from paying fees designed to make online video consumption more expensive, leading subscribers to stick with a traditional pay-TV bundle.”<sup>16</sup> As previously stated, ORA recommends the Commission, at a minimum, adopt mitigation measures such as a requirement that Charter impose no data caps, no usage-based pricing, and no zero ratings until the presence of effective competition in the California broadband market or, if the Commission prefers to set a time-based limit, seven-years after the date the Commission Decision was adopted.<sup>17</sup>

Therefore, in order to clarify any legal uncertainty and to make sure that California ratepayers are protected at the same level as protections afforded citizens of other States, D.16-05-007 should be reconciled with the FCC Order by preventing Charter from imposing data caps, usage based billing, and zero ratings for at least seven years following the adoption of the Commission Decision.

#### **IV. CONCLUSION**

The errors to which this application for rehearing are directed are to correct what is believed to be an inadvertent failure to include in the ordering paragraphs of D.16-05-007 the confirmation of voluntary commitments made by the Joint Applicants, as the body of the decision indicated would be done, and to conform one condition to its counterpart as adopted by the FCC. The Commission should use this application for rehearing as the vehicle to correct these errors in D.16-05-007. Both the Commission and the FCC found that the proposed transaction is likely to cause public harms and conditions are necessary to mitigate these harms, such as the risk to public safety of service outages and poor response time to outages, particularly as these risks relate to people with disabilities. Correcting the legal errors is

---

<sup>15</sup> FCC Charter Order ¶ 74.

<sup>16</sup> *Id.* ¶ 9.

<sup>17</sup> *see, The Office of Ratepayer Advocates Comments on the Proposed Decision Granting Application Subject to Conditions*, A.15-07-009, filed on May 2, 2016 (“ORA Comments on PD”) at 6; *see also, The Office of Ratepayer Advocates Reply Comments on the Proposed Decision Granting Application Subject to Conditions*, A.15-07-009, filed on May 9, 2016 (“ORA Reply Comments on PD”) at 1-2.

necessary to ensure that the public interest benefits of the merger to California ratepayers are realized. Therefore, ORA and CforAT recommend that the Decision's Ordering Paragraphs be expeditiously modified to add conditions conforming to the voluntary commitments made by the Joint Applicants that require Charter to:

- Provide semiannual reports containing monthly service reliability data and outage information for both broadband and VoIP;
- Conduct a multi-lingual customer satisfaction survey in the New Charter service area in collaboration with Commission staff, ORA, and other consumer groups. The survey is to measure customer satisfaction for broadband and service voice services (including VoIP) and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity to maintain battery back-up;
- Abide by Charter's voluntary commitments to improving the company's ability to train its employees, communicate with customers with disabilities, and improve the accessibility of its battery backup power options, as stated in Charter's Reply Brief; and
- Impose no data caps or usage-based pricing for its residential broadband service for a minimum period of seven years, as required by the FCC.

Respectfully submitted,

/s/ MELISSA W. KASNITZ

---

Melissa W. Kasnitz  
Legal Counsel

Center for Accessible Technology  
3075 Adeline Street, Suite 220  
Berkeley, CA 94703  
Telephone: (510) 841-3224  
Email: [service@cforat.org](mailto:service@cforat.org)

/s/ TRAVIS FOSS

---

Travis Foss

Attorney for  
The Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-1998  
Email: [travis.foss@cpuc.ca.gov](mailto:travis.foss@cpuc.ca.gov)

May 26, 2016