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December 7, 2015

*Via Electronic and Hand Delivery*  
Irene Kim Asbury, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. BOX 350  
Trenton, New Jersey 08625-0350

Re: I/M/O the Petition of Time Warner, Inc., Charter Communications, Inc. and Time Warner Cable New York City, LLC, for Approval of the Transfer of Control of Time Warner Cable New York, LLC and Approval of Transaction Financing.  
**BPU Docket No.: CM15070770; and**

I/M/O the Verified Petition of Charter Communications, Inc., and Time Warner, Inc., for Approval of the Transfer of Control of Time Warner Cable Information Services (New Jersey), LLC and the Petition of Time Warner Cable Information Services (New Jersey), LLC for Approval of Transaction Financing.  
**BPU Docket No.: TM15070772**

Dear Secretary Asbury:

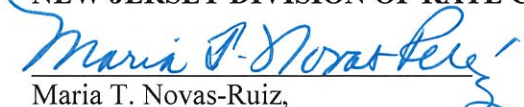
The Division of Rate Counsel (“Rate Counsel”) hereby files an original and ten copies of comments in the above referenced matter with the New Jersey Board of Public Utilities (“Board”) for the Board’s consideration. Kindly return a date-stamped “Received/Filed” copy for Rate Counsel’s records.

Thank you for your attention to this matter.

Respectfully Submitted,

**STEFANIE A. BRAND,  
DIRECTOR,**

**NEW JERSEY DIVISION OF RATE COUNSEL**

  
Maria T. Novas-Ruiz,  
Assistant Deputy Rate Counsel

w/encl.  
c. Service List

## SERVICE LIST

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**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

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**BPU Docket No.: TM15070772**

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**COMMENTS OF THE STATE OF NEW JERSEY  
DIVISION OF RATE COUNSEL**

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On the Comments:  
Susan M. Baldwin  
Sarah M. Bosley

**Dated: December 7, 2015.**

**REDACTED PUBLIC DOCUMENT**

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Attachment A	Excerpts from “Charter to Merge with Time Warner Cable and Acquire Bright House Networks; Combinations Benefit Shareholders, Consumers and Cable Industry,” Charter Communications, Time Warner Cable and Bright House Networks Investor Presentation, May 26, 2015.
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## **I. INTRODUCTION**

### **A. Overview**

The Division of Rate Counsel (“Rate Counsel”) submits these comments to the Board of Public Utilities (“Board”) regarding the proposed acquisition of Time Warner Cable Inc. (“TWC”), Time Warner Information Services (New Jersey), LLC, and Time Warner Cable New York City LLC (“TWCNY”) (together, “Time Warner” or “TWC”) by Charter Communications, Inc. (“Charter”) (collectively, “Petitioners”).<sup>1</sup>

In these comments, Rate Counsel summarizes its preliminary analysis of the transaction, specifically as the transaction might affect New Jersey’s consumers and communities. Rate Counsel also describes specific recommendations, which, if adopted, would increase the chance of benefits flowing to consumers and decrease the chance of consumer harm. As a threshold matter, consumers should not be worse off as a result of the proposed transaction occurring.

Although the number of New Jersey households directly affected by the merger is relatively small, *all* New Jersey consumers are indirectly affected by the increasing concentration in broadband Internet access, video, and voice markets. Fewer suppliers present the opportunity and incentive for price and conduct collusion among the remaining suppliers, especially for the now-essential broadband connection to the Internet. Fewer suppliers also diminish the prospect for programming diversity.

### **B. Summary of Recommendations**

Based on its review and analysis of information submitted in these two Board proceedings, the Petitioners’ responses to information and data requests issued by the Federal

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<sup>1</sup> Susan M. Baldwin and Sarah M. Bosley assisted with the preparation of these comments.

Communications Commission (“FCC”),<sup>2</sup> and public information about broadband, video, and voice markets, Rate Counsel urges and recommends that if the Board is inclined to approve the acquisition, that Board approval be conditioned, among other things, on the following:

1. The Board should seek the following commitments from Charter:
  - a. ***Affordable broadband Internet access:*** Five-year rate cap for standalone broadband Internet access at a monthly price of no more than \$15 per month with no requirement for a term-contract. (Charter has not yet made any commitment).
  - b. ***Affordable broadband Internet access:*** Charter should commit to continue TWC’s lower speed offerings (and associated prices) at least unless or until it rolls out a subsidized broadband program. Regardless of whether Charter has begun offering subsidized broadband Internet access, Charter should continue to offer broadband at the \$15 price that TWC now charges.
  - c. ***No data caps:*** The Board should seek a five-year commitment by Charter not to impose data caps on broadband Internet access (as opposed to the shorter, three-year commitment Charter made to the FCC).
  - d. ***Commitment, without an expiration date, to not block or throttle Internet traffic and to abide by the FCC’s net neutrality rules:*** Charter has committed to the FCC for only three years not to block or throttle Internet traffic or engage in paid prioritization.
  - e. ***Commitment to upgrade:*** All existing Time Warner Cable and Bright House service areas to meet or exceed the levels of service offered by Time Warner Cable’s Maxx program within three years after approval.
  - f. ***Unlimited flat rate broadband option:*** Regardless of any usage-cap or usage-based pricing plans Charter may introduce after Rate Counsel’s recommended five-year “no caps” commitment expires, or in the alternative after Charter’s three-year “no-caps” commitment expires, Charter will permanently continue to offer unlimited, flat rate Internet service at a reasonable price as an alternative to usage-priced plans.

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<sup>2</sup> Rate Counsel reviewed information designated as confidential in the Board’s proceeding and includes some of this information in these comments, with such information flagged accordingly as confidential. Rate Counsel also reviewed information designated as highly confidential in the FCC’s investigation, but does not include any highly confidential information in these comments. In places, Rate Counsel cites to specific highly confidential materials submitted to the FCC by the Petitioners, but does not replicate the actual information that has been designated as highly confidential.

- g. **Opt-out option for Wi-Fi hotspots:** Customers will be given the option of opting out of any leased/provided modem Wi-Fi hotspot plan that offers a wireless connection to outside users without the customer's consent.
- h. **Subsidized broadband service for income-eligible customers:** at a speed of at least 10 Mbps (or at 60 Mbps since Charter is promising that speed anyway). This service should be offered to all income-eligible consumers, and not just to families. It should be rolled out at a pace much faster than the prolonged three-year roll-out in Charter's proposed commitment and at a monthly price of no more than \$10 per month for all income-eligible households. Outreach should be coordinated with low-income organizations and consumer education materials should be provided in multiple languages.
- i. **Network reliability and public safety:** Charter should provide:
  - i. Back-up batteries for all existing and new customers of its Voice over Internet Protocol ("VoIP") service at cost, i.e., without a mark-up.
  - ii. Customer education in multiple languages, subject to Board and Rate Counsel review, regarding the importance of battery back-up for network connections during prolonged power outage.
  - iii. Quarterly public reports to the Board and to Rate Counsel regarding, at a minimum, the following metrics:
    - 1. Answer time for repair and technical assistance;
    - 2. Average installation period;
    - 3. Outages;
    - 4. The Network Outage Reporting System ("NORS") data that Charter submits to the FCC should be submitted simultaneously to the Board and Rate Counsel.
  - iv. A commitment to coordinate with local, state, and federal emergency and public safety officials to facilitate preparations for and responses to man-made and natural emergencies to protect the public safety and welfare of New Jersey's consumers and communities. The companies should commit to transfer information about TWC's experiences and procedures (including lessons learned) in these matters to Charter.
- j. **Billing and termination procedures:** Charter should commit to billing and termination procedures that are comparable to those of TWC, inclusive of warm dial tone capability (that is the ability to dial 9-1-1 even when voice service has been otherwise disconnected);
- k. **Programming diversity:** The Board should require Charter to continue to carry the existing PEG channel<sup>3</sup> and require Charter to establish an additional PEG channel within the first three years to benefit community and school programs.

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<sup>3</sup> TWC carries one PEG channel on its system in New Jersey, which is carried in all of the communities served by the TWC system, and which began operating in 1978. TWC response to RC-36.



1. ***Open customer premises equipment:*** The Board should require Charter to allow customers to use their own set-top equipment (e.g., Roku, Apple TV, etc.) to receive cable television service without compulsory equipment and rental fees. The Board should also require Charter to commit to offering discount alternatives such as DTAs for secondary televisions and to provide an option for income-challenged customers compelled to accept new equipment to continue receiving cable television service. and
2. Rate Counsel respectfully encourages the Board to submit an *ex parte* filing to the FCC based on the Board's review of the proposed transaction.<sup>4</sup> The *ex parte* submission should include specific recommendations to ensure that New Jersey consumers benefit from the transaction and that they are not harmed by the increasing market concentration in relevant markets, caused by the transaction.

## II. PETITIONERS' PRESENCE IN NEW JERSEY AND NATIONAL MARKETS

### A. Petitioners' Presence in New Jersey

Charter has no residential customers in New Jersey.<sup>5</sup> TWC serves various municipalities in Bergen County, including Cliffside Park, Edgewater; Englewood, Englewood Cliffs, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield, Ridgefield Park and Teterboro. TWC also serves the town of Guttenberg in Hudson County.<sup>6</sup> TWC passes <<<BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL>>> households and offers its full suite of services to all of the households that it passes.<sup>7</sup>

TWC serves <<<BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL>>>

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<sup>4</sup> As of December 4, 2015, the FCC was on Day 84 of its proposed review, which suggests that the Board need not rush through its parallel deliberations on the merits of acquisition. The FCC typically seeks to complete its investigations of proposed transactions within 180 days. As recently as November 24, 2015, the Petitioners submitted additional information to the FCC in response to the FCC's request for information and documents. <http://apps.fcc.gov/ecfs/document/view?id=60001344068>

<sup>5</sup> Charter response to RC-2.

<sup>6</sup> BPU Docket No. TM15070772, Petition, at 7. This list is comprehensive. TWC response to RC-20(a). To the best of TWC's knowledge, TWC serves each of the municipalities in their entirety. TWC response to RC-20(c).

<sup>7</sup> TWC response to RC-21.

residential customers<sup>8</sup> and <<<BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL>>>  
small business customers, including <<<BEGIN CONFIDENTIAL [REDACTED]  
[REDACTED] END CONFIDENTIAL>>> small  
business video subscribers.<sup>9</sup> Table 1 below, provides more detail regarding the residential  
customers and the services to which they subscribe.

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<sup>8</sup> TWC response to RC-2.

<sup>9</sup> TWC response to RC-3.



**Table 2**  
**Standalone Voice, Internet and Video Subscriptions**  
**Time Warner Cable New Jersey<sup>11</sup>**

<<<BEGIN CONFIDENTIAL

<b>Residential</b>	
Standalone Voice	█
Standalone Internet	██
Standalone Video	██
<b>Small Business</b>	
Standalone Voice	█
Standalone Internet	██
Standalone Video	██

END CONFIDENTIAL>>>

Rate Counsel notes that although both Charter and TWC offer voice, broadband, and video services on a standalone basis,<sup>12</sup> Charter has not made any commitment to continue to offer these services on a standalone basis, nor has it committed to offer these three services at affordable prices. As Rate Counsel discusses more below, the new and substantial debt load that Charter will assume in order to purchase Time Warner will create pressure on Charter to raise rates and to upsell its products to consumers. Therefore, Rate Counsel recommends that the Board require Charter to commit to offer affordable standalone broadband Internet access for at least five years.

#### **B. Petitioners' National Presence**

Rate Counsel provides, as Attachment A to these comments, an excerpt from the Petitioners' Investor Presentation demonstrating that post-transaction, the new merged company would become the nation's second largest provider of broadband Internet access service in the

<sup>11</sup> TWC response to RC-7.

<sup>12</sup> See TWC and Charter responses to RC-4 (Voice); RC-5 (Broadband); and RC-6 (Video).

wireline Internet access market.<sup>13</sup> The national rankings would be as follows: Comcast – 22 million customers; New Charter – 19.4 million customers; AT&T – 16.0 million customers; and Verizon – 9.2 million customers, which, in aggregate sum to approximately 67 million customers. The FCC reports that as of December 31, 2013 there were 78 million fixed wireline broadband connections at or above 3 mbps download speed and 96 million fixed connections in total (of all speeds) in the United States for the same time period,<sup>14</sup> which further illustrates the substantial market dominance in the nation’s broadband Internet access markets. Moreover, Comcast and the new Charter do not compete but instead serve non-overlapping territories. Similarly, AT&T and Verizon do not compete within the same geographic wireline broadband Internet access market, but like the cable companies, serve distinct geographic markets.

An exhibit created by FCC Staff, which was filed in the FCC’s proceeding regarding this transaction and which Rate Counsel obtained from FCC Staff (as a result of having signed the FCC’s highly confidential protective order), is based on Form 477 broadband data that providers submit to the FCC. The Staff Exhibit summarizes highly confidential information that shows Charter’s share of the broadband Internet access market at different speeds “before and after” acquisition of Time Warner Cable.<sup>15</sup> Because post-acquisition, new Charter will do not compete but instead serve non-overlapping territories with other market service providers, it will continue

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<sup>13</sup> Charter to Merge with Time Warner Cable and Acquire Bright House Networks; Combinations Benefit Shareholders, Consumers and Cable Industry,” Charter Communications, Time Warner Cable and Bright House Networks Investor Presentation, May 26, 2015.

<sup>14</sup> Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2013*, rel. October 2014, at 1 and 5. The data in the Investor Presentation is dated 2014. In addition, the FCC’s data is reported in terms of connections, not customers.

<sup>15</sup> DA 15-1310, released November 13, 2015, MEDIA BUREAU MAKES AVAILABLE BROADBAND SUBSCRIBER DATA RELEVANT TO REVIEW OF PROPOSED CHARTER-TIME WARNER CABLE-ADVANCE/NEWHOUSE TRANSACTIONS, MB Docket No. 15-149. See: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1113/DA-15-1310A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1113/DA-15-1310A1.pdf)

to exercise market dominance for the provision of broadband services in the New Jersey service territory. Rate Counsel notes that high-speed Internet access today is a utility that's essential for education, job searching and conducting business. New Charter will have scant competition for supplying Internet service and as a dominant provider of that private utility can charge whatever it wants to whoever it wants indiscriminately.

Therefore, in connection with Internet access and services, Rate Counsel recommends that in applying the public interest test the Board look beyond an absence of harm as a sufficient basis upon which to grant approval of this transaction and require that Charter commit to a minimum of a five-year rate cap and data cap for standalone broadband Internet access at a monthly price of no more than \$15 per month with no requirement for a term-contract and affordable subsidized broadband service for income-eligible customers at a speed of at least 10 Mbps (or at 60 Mbps since Charter is promising that speed anyway). This service should be offered to all income-eligible consumers, and not just to families. It should be rolled out at a pace much faster than the prolonged three-year roll-out in Charter's proposed commitment and at a monthly price of no more than \$10 per month for all income-eligible households. Outreach should be coordinated with low-income organizations and consumer education materials should be provided in multiple languages. The recommended commitments by Charter will ensure that tangible benefits accrue to New Jersey ratepayers following Board approval of the acquisition.

### **III. OVERVIEW OF TRANSACTION**

#### **A. Timing of Proposed Transaction**

The Petitioners submitted their application to the Board on July 2, 2015 and to the FCC on June 25, 2015. The FCC has received opposition to the merger, the Petitioners' response to

the opposition, and replies to the response to the opposition. The FCC is not yet even half-way through its predicted 180-day period for review (the merger clock was on Day 84, as of December 4, 2015), which suggests that the Board need not rush its deliberations.<sup>16</sup> Moreover, the fact that the Petitioners negotiated a termination fee for the transaction should not affect either state or federal deliberations regarding the merits of the transaction.<sup>17</sup>

## **B. Major Aspects of Transaction**

In May 2015 Time Warner Cable and Charter Communications announced that they have entered into an agreement for Time Warner Cable to merge with Charter. Time Warner Cable shareholders will receive \$195.71 per share, which represents a 14% premium to the stock's May 22nd closing price.<sup>18</sup> As Rate Counsel discusses below, the transaction will lead to substantial new debt for Charter (more than \$20 billion), which, in turn, will create pressure for Charter to raise prices, especially for the likely price-inelastic broadband Internet access services that it offers.<sup>19</sup>

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<sup>16</sup> The Petitioners filed Premerger Notification and Report Forms, as required by the HSR Act, on June 24, 2015. On July 24, 2015, TWC and the Company each received a request for additional information and documentary material under the HSR Act. Charter public response to FCC Request No. 100(a).

<sup>17</sup> Charter states: "Finally, the public would suffer significant harm if the transactions are not consummated for certain reasons. Under the terms of Merger Agreement entered into with TWC on May 23, 2015, Charter must pay a \$2 billion termination fee to TWC if the Merger Agreement is terminated as a result of the failure to satisfy or waive certain conditions related to, among other things, regulatory approval. This payment, if required, would reduce the resources available to Charter that would otherwise be devoted to driving even more competitive and innovative broadband, video, and voice services." Charter public response to FCC Request No. 100(a).

<sup>18</sup> <http://www.forbes.com/sites/greatspeculations/2015/05/27/our-thoughts-on-the-time-warner-cable-charter-merger/>

<sup>19</sup> The broadband market is evolving such that cable companies are dominating many markets. At lower speeds, consumers can choose between the ILEC-provided DSL service and the cable-company provided services (and still, a duopoly does not provide effective competition). Except where Verizon has deployed FiOS and AT&T has deployed U-verse, within any given area, consumers typically have only one supplier of broadband Internet access at higher speeds. As society migrates to higher speeds, cable companies clearly dominate the market and will be able to increasingly exercise their market power in the broadband market. The proposed transaction contributes to that increasing market concentration.

On July 2, 2015, Time Warner and Charter (Petitioners) filed two Petitions with the Board seeking approval of their proposed merger, one for Time Warner Cable in New Jersey (File No. 41141.1000) (TW New Jersey Petition)<sup>20</sup> and the second for Time Warner Cable in New York (File No. 41141.2000) (TW New York Petition). The Petitioners assert that the proposed transaction will benefit customers and will not pose any “countervailing harms.”<sup>21</sup> Charter does not currently have any operations in New Jersey<sup>22</sup> and Time Warner currently serves customers in New Jersey.<sup>23</sup> The Petitioners contend that expanding the scale of the company “will foster investment, innovation and new choices for customers.”<sup>24</sup>

At the federal level, Charter Communications, Time Warner Cable, and Advance/Newhouse Partnership, the parent of Bright House Networks, filed applications with the FCC seeking approval to transfer control of their licenses and authorizations in connection with their merger. As described by the FCC, the proposed transaction would bring together the fourth (Time Warner Cable), seventh (Charter), and tenth (Bright House Networks) largest multichannel video programming distributors (MVPDs) in the country to create the third largest

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<sup>20</sup> Rate Counsel notes that despite numerous requests to Board Staff seeking the release of a Procedural Schedule and/or a Public Notice, a schedule or notice was never released notifying Rate Counsel or the public of a discovery period or date for submission of comments in this matter. Due to delays in finalizing an Agreement of Non-Disclosure among the parties, and Rate Counsel’s consent to Petitioner’s request for a brief extension of time to provide responses to Rate Counsel’s discovery requests, Rate Counsel received responses [voluminous in nature] to its discovery requests on November 6, 2015. On November 19<sup>th</sup>, scarcely two weeks later, Rate Counsel was advised by Petitioners’ counsel that the matter was to be heard at the December 16, 2015 Board Agenda meeting. Rate Counsel submits that the process or lack thereof followed in this case hinders the ability of Rate to perform its statutory duty to represent the interests of New Jersey ratepayers, and inhibits the creation of an adequate record on which the Board may decide the issues raised by this merger.

<sup>21</sup> TW New York Petition, at 2.

<sup>22</sup> *Id.*, at 3.

<sup>23</sup> *Id.*, at 6.

<sup>24</sup> *Id.*, at 20. Charter also states that “[a]s a result of the Transaction, New Charter will create thousands of U.S.-based jobs by in-sourcing TWC call center jobs to the United States.” Charter public response to FCC Request No. 83.



provider in the country, serving roughly 17.3 million customers. Additionally, the new company would bring together 19.4 million broadband subscribers, creating the second largest broadband Internet provider in the country. The merged entity would provide services to customers across portions of nearly 40 states.<sup>25</sup> Charter describes the potential benefits of the merger as including:

. . . for instance, Charter has committed to taking TWC and BHN all-digital and offering 60 Mbps base speeds within 30 months of the Transaction. Because Charter has already itself brought Internet speeds to a minimum of 60 Mbps, New Charter can focus the combined company's resources on completing the same project for current TWC and BHN assets. Similarly, the cost savings associated with the Transaction will allow the parties to more efficiently develop new mobile apps, establish new out-of-home WiFi networks, and stay on the cutting edge of innovation.<sup>26</sup>

### **C. Discovery**

Rate Counsel issued 65 questions to the Petitioners.<sup>27</sup> The FCC issued numerous detailed information and data requests to the Petitioners: Rate Counsel requested copies of the Petitioners' responses to the FCC and has begun to review selected portions of the voluminous responses. Rate Counsel cites to selected responses in these comments, but does not include the actual information that has been designated as highly confidential information.

### **D. Transaction-related commitments made by Charter**

Rate Counsel is unaware of any commitments that Charter may or may not have made to the Board or if any meetings were conducted among Board Staff and Petitioners to address the

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<sup>25</sup> <https://www.fcc.gov/transaction/charter-twc-bhn>. The FCC is investigating the proposed merger in MB Docket No. 15-149.

<sup>26</sup> Charter public response to FCC Request No. 90. *See also*, FCC Public Notice DA 15-856, "Commission Accepts for Filing Applications of Charter Communications, Inc. Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, released July 27, 2015, MB Docket No. 15-149, at 5-6. Access and review the FCC filing and Petitioners stated public interest benefits and all submissions at: <https://www.fcc.gov/transaction/charter-twc-bhn>.

<sup>27</sup> Board Staff also propounded discovery on the Petitioners.

Board's concerns regarding this matter. However, Charter has made various commitments to the FCC, some of which Rate Counsel discusses in these comments.

#### **IV. ANALYSIS OF THE PROPOSED TRANSACTION**

##### **A. Issues raised by proposed transaction**

The proposed transaction raises various issues: the impact of increasing market concentration on broadband Internet access affordability and deployment as well as on video programming diversity; the public interest generally; public safety and network reliability as customers migrate to new telecommunications platforms; and the state's achievement of universal broadband service. With increasing consumer reliance on voice over Internet protocol ("VoIP") technology as a way to connect to the public switched network, it has become increasingly important to ensure that there is adequate consumer education about the vulnerability of VoIP services to prolonged power outages; adequate consumer preparation; and provision of battery back-up.

Increasing concentration in the broadband Internet access market increases the opportunity for collusion and coordination among the dwindling number of suppliers. Broadband Internet access has emerged as an essential service, and yet broadband markets are not competitive. Although consumers may cut their video cord, their demand for broadband service is far less price-elastic and they are captive customers. Also, with each loss of a broadband supplier, there is a corresponding loss of regulatory benchmarks. For example, as a result of the merger, regulators would lose the ability to compare "best practices" of the two companies, the prices of the two companies, and the performance of the two companies. Knowledge of a different provider's potentially better version of a product, even if it is offered

outside the consumer's geographic market, can assist those consumers in advocating on their own behalf if they are dissatisfied with a providers' product. Elimination of such a benchmark would harm regulators and consumers. Also, the merger would result in the loss of the opportunity for suppliers to each pursue different ways of exploring innovative services, products, and customer premises equipment. Merging rather than innovating harms consumers. Moreover, it is not clear that the Petitioners, in the absence of the merger, would not pursue the innovation and new services Charter promises to deliver if the merger occurs.

Consumers are demanding faster broadband speeds, which contributes to cable companies' growing dominance of the broadband Internet access market.<sup>28</sup> In New Jersey, as of December 31, 2013, 52% of all Internet access connections were at least 10 mbps downstream<sup>29</sup> compared to just 40% at the end of 2010<sup>30</sup> and 35% at the end of 2008.<sup>31</sup> Although the FCC

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<sup>28</sup> On September 4, 2014, FCC Chairman Wheeler gave a speech at the "1776" Headquarters in Washington DC regarding broadband. Mr. Wheeler stated: "Today, cable companies provide the overwhelming percentage of high-speed broadband connections in America. Industry observers believe cable's advantage over DSL technologies will continue for the foreseeable future." Chairman Wheeler used the term "duopoly" to describe the current market and went further by stating:

But even two 'competitors' overstates the case. Counting the number of choices the consumer has on the day before their Internet service is installed does not measure their competitive alternatives the day after. Once consumers choose a broadband provider, they face high switching costs that include early-termination fees, and equipment rental fees. And, if those disincentives to competition weren't enough, the media is full of stories of consumers' struggles to get ISPs to allow them to drop service.

Text of the speech is available at: <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>. "1776" is a startup incubator.

<sup>29</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Internet Access Services: Status as of December 31, 2013*, rel. October 2014 ("FCC Internet Access Services Report"), at Table 18.

<sup>30</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Internet Access Services: Status as of December 31, 2010*, rel. October 2011, at Table 20.

<sup>31</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *High-Speed Services for Internet Access: Status as of December 31, 2008*, rel. February 2010, at Table 15.

does not report state-specific data regarding speed-specific market shares, based on national data, it is highly probable that as the threshold speed for the market being examined increases, New Jersey's cable companies' market share would increase. Nationally, as the speed of broadband Internet access increases, the share served by ILECs' digital subscriber lines ("DSL") declines and the share served by cable companies increases (fiber's share – typically provided by ILECs - - increases also, but it is significantly smaller than cable companies' share).<sup>32</sup> At the 3 mbps speed, cable's share of the residential fixed connections is 62%, but rises to 73% of residential fixed connections at the 10 mbps speed.<sup>33</sup>

## **B. Transaction-related Consumer Harms**

### **1. The Highly leveraged Charter has an incentive to raise broadband prices.**

The "New Charter" would be highly leveraged. Rate Counsel includes pages 17 and 19 from the investor report in our excerpted pages in Attachment A to these comments, which show new debt of \$23 billion to acquire Time Warner and \$2 billion to acquire BrightHouse.<sup>34</sup> The combined new and old debt add up to \$65.7 billion. The transaction-caused need for new debt will create new pressure on Charter to extract monopoly profits. If the transaction did not occur, the debt would not be needed and New Jersey consumers would not be subject to rate increase resulting from the related pressure on Charter to generate revenues to meet the new debt load.

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<sup>32</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Internet Access Services: Status as of December 31, 2013*, rel. October 2014 ("FCC Internet Access Services Report"), at Table 11 and Chart 12.

<sup>33</sup> *Id.*, at Table 11 and Chart 12.

<sup>34</sup> "Charter to Merge with Time Warner Cable and Acquire Bright House Networks; Combinations Benefit Shareholders, Consumers and Cable Industry," Charter Communications, Time Warner Cable and Bright House Networks Investor Presentation, May 26, 2015.

The cost of meeting its new substantial debt load associated with the purchase will likely surpass Charter's anticipated merger synergies, creating pressure on Charter to extract monopoly profits where it can through higher prices and by upselling more expensive services. The Petitioners anticipate \$800 million in transaction-related synergies by the third year after the closing, relating primarily to programming costs and indirect overhead costs which may partly offset the cost of the new debt load.<sup>35</sup> At higher broadband speeds, cable companies typically exert monopoly power (where Verizon offers FiOS and where AT&T offers U-Verse, consumers have a duopoly, which, though of course better than a monopoly, still fails to yield the positive benefits of effective competition). In the absence of competition, Charter will confront pressure to raise rates for its services and to upsell products.<sup>36</sup> Also, Charter will lack the incentive to advertise its standalone options because standalone products do not generate as high revenues as do bundled offerings.

The FCC Chief of Staff, Ruth Milkman, recently observed:

So the Commission raised the benchmark to 25 megabits per second down, 3 up. At those speeds, how much choice do consumers have for broadband? For most Americans, the answer is not much. About 70 percent of Americans have either one or no choice for Internet service at 25 mbps.

With a lack of meaningful competition for broadband, the FCC can't afford to just sit back and trust the markets to take care of everything.<sup>37</sup>

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<sup>35</sup> Charter public response to FCC Request No. 80.

<sup>36</sup> In response to Rate Counsel's request in RC-12(e) to "provide copies of any studies, surveys, analyses prepared by or on behalf of you regarding competitors' offerings," Charter responded: "Following a reasonable and diligent search, Charter located no documents responsive to this request." In a competitive market, one would expect suppliers to analyze their competitors' offerings. The lack of such documents is consistent with the characteristics of non-competitive markets.

<sup>37</sup> Evercore Tech Change Conference, Remarks of Ruth Milkman, Chief of Staff, Federal Communications Commission, Washington, D.C., November 3, 2015.

Although consumers have some video alternatives, broadband alternatives are sorely lacking, enabling Charter to cross-subsidize its video services with high prices for broadband Internet access, an increasingly essential service.<sup>38</sup> Moreover, as a result of its increased scale, Charter would have yet greater negotiating power with content providers, thus leading to loss of diversity in content. Also, because of its increased scale it would have more control of set-boxes.<sup>39</sup> Although Time Warner's presence in New Jersey may be limited, the overall effect of increasing market concentration affects all consumers because it increases the opportunity for coordination and collusion among the remaining suppliers.

### **3. The Board should seek firm rate stability commitments from Charter.**

As a general matter, Charter's prices are, for the most part, consistent across its footprint.<sup>40</sup> Time Warner's prices vary by market, according to its response to RC-1, but the response provided no specific details. Charter makes the following promise in its filing with the FCC, *which appears to lack any time commitments, except regarding the data cap promise*:

New Charter will raise the minimum broadband speed offered to 60 Mbps throughout the merged company's footprint, with pricing based on Charter's current model, which is less expensive for consumers than Time Warner Cable's and Bright House Networks' comparable offerings. Consistent with Charter's current practices, we intend to offer these broadband services on a stand-alone as well as bundled basis, without data caps, usage-based pricing, modem fees, or early termination fees.<sup>41</sup>

### **Table 3**

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<sup>38</sup> See, for example, the public response to FCC Information Request No. 67, in which Charter states in pertinent part: "As shown in Table 4, broadband gross margins are significantly higher than video gross margins; video gross margins are approximately half those of broadband, on a percentage basis."

<sup>39</sup> Media Bureau Seeks Comment on DSTAC Report, Public Notice, MB Docket No. 15-64 (rel. Aug. 31, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-982A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-982A1.pdf).

<sup>40</sup> Charter response to RC-1. Charter instituted its New Price Packaging ("NPP") in July 2012, which introduced standardized pricing across its markets and apply except in the case of legacy services.

<sup>41</sup> FCC Public Interest Statement, at 2-3 (notes omitted).

**Selected Time Warner Cable Pricing  
New Jersey as of August 2015<sup>42</sup>**

<b>Service</b>	<b>Price</b>
Home Phone National	\$39.95
Home Phone Tri-State	\$29.95
Everyday Low Price Internet (up to 2 mbps)	\$14.99
Basic Internet (up to 6 mbps)	\$47.99
Extreme Internet (up to 30 mbps)	\$57.99
Ultimate 100, 200, 300 (additional charge added to Extreme Internet)	\$10, \$20, \$50
Internet Modem Lease	\$8.00

Time Warner Cable does not impose data caps or utilize usage-based pricing for its residential Internet plans.<sup>43</sup> However, it does offer “Essentials Internet” Discounts on its Everyday Low Price, Basic, and Extreme plans in the table above. Essentials Internet Plan 1 has a 5 GB data maximum and provides an \$8 per month discount. Essentials Internet Plan 2 has a 30 GB data maximum and provides a \$5 per month discount.<sup>44</sup>

In comparison, Charter provided a voice services price guide (Effective 12-15-14) in response to Rate Counsel’s request (RC-2). Charter offers an Unlimited Long Distance Package (which includes Charter Basic Service) for \$29.95 per month for the first 12 months and \$19.95 thereafter. As noted in the guide, not all of Charter’s customers can access standalone basic service. Instead, basic service is included in Charter’s unlimited long distance minute packages and an additional line access charge of \$7.50 may apply. Basic service is provided as a

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<sup>42</sup> Exhibit TWC RC-2 (pricing for New Jersey as of August 2015). The speeds associated with pricing were taken from Time Warner Cable’s website. See <http://www.timewarnercable.com/en/plans-packages/internet/internet-service-plans.html?iid=hpplans:1:1:internet> (accessed November 22, 2015).

<sup>43</sup> TWC response to RC-65.

<sup>44</sup> Id.

standalone service only in specific states.<sup>45</sup> Exhibit 2-A to Charter’s response to RC-2 purports to provide pricing but does not provide monthly recurring prices for broadband Internet access and video services. Charter’s website is currently advertising a “Spectrum TV” service from \$29.99 for 12 months when bundled and “TV Select” service from \$59.99 per month.<sup>46</sup>

**Table 4**  
**Selected Charter Pricing from Charter Website<sup>47</sup>**

<b>Service</b>	<b>Price</b>
Charter Internet (up to 30 Mbps) stand-alone	\$39.99
Charter Internet (up to 30 Mbps) triple play	\$29.99
Charter Spectrum Internet (up to 60 Mbps) stand-alone	\$39.99
Charter Spectrum Internet (up to 60 Mbps) triple play	\$29.99
Charter Internet Ultra (up to 100 Mbps) stand-alone	\$99.99
Charter Internet Ultra (up to 100 Mbps) triple play	\$89.99
Modem Lease	No additional charge

The information available to consumers on Charter’s website seems to be contradicted by Charter response to RC-65(d). In Charter Exhibit 65(d), Charter provides pricing for its New Price Packaging Internet plans. The pricing in the above table may be for its legacy plans that are no longer offered to new customers. The NPP pricing for standalone/month-to-month service is \$59.99 for Charter Internet and \$119.99 for Ultra Internet service.<sup>48</sup> Charter introduced NPP

<sup>45</sup> See page 1 of Exhibit 2-B to Charter’s response to RC-2. Those states appear to be Minnesota, Nebraska, and Tennessee and for grandfathered consumers in California. See page 4 of Exhibit 2-B.

<sup>46</sup> Like many telecommunications providers, the website does not provide specific prices and offerings without first providing a valid service address.

<sup>47</sup> Charter website (accessed November 22, 2015). See, [https://www.charter.com/mediacontent/pdfs/Internet\\_Features\\_Ultra\\_Chart\\_English.pdf](https://www.charter.com/mediacontent/pdfs/Internet_Features_Ultra_Chart_English.pdf) (Internet pricing). The 60 Mbps Spectrum Internet is available only in select markets.

<sup>48</sup> Charter response to RC-65(d), Exhibit 65(d)-A.



in July 2012 and indicates that <<<BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL>>>of customers' bills are governed by NPP.<sup>49</sup>

Charter does not currently have data caps, usage-based pricing or modem lease fees. In its Public Interest Statement filed with the FCC, Charter committed to refrain from imposing a data cap for three years after the close of the proposed transaction.<sup>50</sup> Charter has not pledged to maintain its rates under its NPP model (New Price Packaging) across its footprint but notes that it "has no current plans" to alter pricing policies or impose modem fees.<sup>51</sup> Similarly, although it has no plans to discontinue the offering, Charter notes that is has not committed to continue offering standalone Internet service for a specific number of years after the close of the transaction.<sup>52</sup> Rate Counsel recommends that Charter be required to continue its current prices and to provide standalone Internet service for a minimum of five years.

Despite Charter's assertion that it offers less expensive pricing for comparable services<sup>53</sup> Time Warner Cable's Internet offerings may provide more value for some consumers that cannot afford higher speeds. The Everyday Low Price Internet offering from Time Warner Cable may be very slow by today's standards but is priced at \$14.99. Charter indicates that it does not have any plans "at this time to discontinue any products or services that TWCIS currently offers to New Jersey customers."<sup>54</sup> Therefore, Rate Counsel urges that the Board require Charter to

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<sup>49</sup> Charter response to RC-1.

<sup>50</sup> Charter response to RC-65.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> FCC Public Interest Statement, at 2-3 (notes omitted).

<sup>54</sup> Charter response to RC-12(a).

continue TWC's lower speed offerings (and associated prices) at least unless or until it rolls out its subsidized broadband program, and preferably for at least five years.

Similarly, Charter states that it "has no current plans to . . . force customers on legacy plans to move to NPP pricing."<sup>55</sup> Charter's lack of any "current plans" to force migration from TWC's legacy products does not provide adequate protection for consumers from Charter's post-transaction economic incentive to raise rates and to upsell its products in order to generate revenues to cover the substantial new debt load it will incur to complete the proposed acquisition of TWC. The Board should require as a condition of approval that Charter allow customers to continue to purchase TWC's legacy products for at least three years.

#### **4. Customer education about and batteries for prolonged power outages.**

As of December 31, 2013 (the most recent FCC data available), approximately 73% percent of residential wireline telephone lines in New Jersey rely on VoIP for their voice connection to the public switched telephone networks (cable companies and telecommunications companies offer VoIP).<sup>56</sup> By comparison in 2008 and 2010, only 32% and 47% percent of New Jersey residential wireline telephone lines relied on VoIP for voice service, respectively.<sup>57</sup> The increasing popularity of VoIP (typically provided as part of a bundle) combined with the possibility of natural and man-made emergencies that cause prolonged power outages means that customer education and preparedness is essential to protect public safety and welfare. Rate

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<sup>55</sup> Charter response to RC-15.

<sup>56</sup> Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2013*, rel. October 2014, at Table 10.

<sup>57</sup> Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2010*, rel. October 2011; *Status as of December 21, 2008*, rel. June 2010, at Table 9.

Counsel recommends that the Board require Charter to improve its practices in this area. In its customer education materials, Charter advises consumers:

If you have a medical alert system, security equipment or the desire for a battery back-up during a power outage, you are encouraged to upgrade to the battery back-up option. Our battery back-up is available for a one-time charge of \$40.00 for the purchase of the battery. If you have a need for battery back-up, please tell your sales advisor when you place your order.

Spectrum Voice phone service uses the electrical power in your home, so if there is an outage, 911 calling may be interrupted. Ask us about installing a back-up battery for up to eight hours of stand-by and five hours of talk time. Please contact us for additional information.<sup>58</sup>

In response to RC-46, the Petitioners states:

Charter informs all prospective and current voice customers that their service will be interrupted during power outages if they do not have a backup power supply in place, and recommends that customers maintain battery backup capability in the event of power outages. Charter customers have the option to purchase one or more batteries, and each backup battery costs \$39.99. Each battery is rechargeable and provides up to 8 hours of standby time and up to 4 hours of talk time (or up to 5 hours for voice-service only cable modems).

TWC does not provide backup batteries to its residential customers in New Jersey. However, virtually all TWC residential embedded multimedia terminal adapters (“eMTAs”) used to support TWC Phone services are battery compatible. Residential customers who are interested in backup batteries for their eMTAs may obtain information about how to select, purchase and install a compatible battery from a dedicated page on TWC’s website:

<http://www.timewarnercable.com/en/support/phone/topics/phone-power-backup.html>. TWC anticipates revising this policy in response to the FCC’s recent rulemaking in PS Docket No. 14-174, Ensuring Continuity of 911 Communications, FCC 15-98, which established new rules regarding the obligation to make backup power options available to residential subscribers. TWC’s Business Class Phone (“BCP”) services are provided with a battery backup, but Business Class Trunk services (PRI and SIP) are not.

In August 2015, the FCC issued new rules to “place limited backup power obligations on providers of facilities-based fixed, residential voice services that are not line-powered to ensure

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<sup>58</sup> Charter response to RC-45.

that such service providers meet their obligation to provide access to 911 service during a power outage, and to provide clarity for the role of consumers and their communities should they elect not to purchase backup power.”<sup>59</sup> Among other things, the FCC requires all providers of facilities-based, fixed, voice residential service that is not line powered to offer new subscribers the option to purchase a back-up solution that provides consumers with at least 8 hours of standby power during a commercial power outage and also requires providers to “offer, within three years of the effective date of the eight hour obligation, at least one option that provides a minimum of 24 hours of 911 service.”<sup>60</sup> Therefore, as a condition of Board approval Charter should commit to provide all new and existing customers with battery back-up at no more than Charter’s cost of supplying the battery. Moreover, Petitioners should explain whether the EMTAs will continue in place at customers’ premises. Finally, Charter should provide proof of its compliance with the FCC’s new battery back-up rules within 30 days of the Board’s Order or a reasonable time as may be determined and directed by the Board

**5. The lack of competition enables broadband providers to allow customer service quality to decline.**

Charter’s proposed acquisition of Time Warner creates new financial pressure for Charter to cut costs so that it can achieve merger-related synergies and meet new debt. Cost-cutting can lead to service quality deterioration. The lack of competitive alternatives for broadband Internet access, especially at higher speeds, means that Charter can allow service quality to decline without any consequence. An analysis of the timeliness of Charter’s and Time Warner’s installation of residential service between 2013 and 2015 shows that <<<BEGIN

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<sup>59</sup> PS Docket No. 14-174, the Matter of Ensuring Continuity of 911 Communications, FCC 15-98, Report and Order, released August 6, 2015, at para. 3.

<sup>60</sup> Id., at para. 4.

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[REDACTED]

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In response to RC-27, the Petitioners provided confidential data regarding the speed of answer to reach a customer service representative. An analysis of Charter's NorthEast regional results show that Average Speed of Answer (in seconds) <<<BEGIN CONFIDENTIAL

[REDACTED]

[REDACTED]

[REDACTED]

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CONFIDENTIAL>>> Time Warner provided data for its New Jersey systems that is provides to the Office of Cable Television Inspection and Enforcement in its Telephone Performance Reports. The data shows that <<<BEGIN CONFIDENTIAL [REDACTED]

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In order to ensure that service quality standards remain, Rate Counsel urges the Board to require Charter to submit data regarding the timeliness of its installation and answer times on a quarterly basis to the Board and to Rate Counsel. The information should be public to increase accountability to regulators and consumers.

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<sup>61</sup> Charter and TWC responses to RC-26.

<sup>62</sup> The Petitioners describe their procedures for handling customer complaints in response to RC-28.



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Therefore, Rate Counsel recommends that the Board require Charter to commit to a time period for bill processing that is at least as long as that now provided by TWC so that consumers are not worse off as a result of the merger.

Likewise, the transaction would also harm consumers because Charter's late payment charge policy is more expensive and onerous for consumers than that of TWC. Charter states that its "late payment fee is set at no more than \$7.95 at this time, and the fee is assessed upon bills that are 30 days or more overdue."<sup>68</sup> By comparison, TWC's late-payment charge is \$5.50.<sup>69</sup> TWC states that the charge is applied on an account that is 47 days past due, and again if the account remains unpaid at <<<BEGIN CONFIDENTIAL ■ END CONFIDENTIAL>>> days past due.<sup>70</sup> The number of late fees assessed is not insignificant, which underscores the importance of ensuring that the proposed transaction does not increase consumer fees, particularly because broadband Internet access has emerged as an essential service. <<<BEGIN CONFIDENTIAL

END CONFIDENTIAL>>><sup>71</sup> Rate Counsel urges the Board to

<sup>67</sup> TWC response to RC-52(a) and (b).

<sup>68</sup> Charter response to RC-54. Charter also states: "Since Charter does not currently operate in New Jersey, it has not assessed any late payment charges in the State in the past twelve months. Charter reviews its late fee policy periodically, but has no current plans to change its policy concerning late payment fees." Id.

<sup>69</sup> Charter response to RC-54. Charter also states: "Since Charter does not currently operate in New Jersey, it has not assessed any late payment charges in the State in the past twelve months. Charter reviews its late fee policy periodically, but has no current plans to change its policy concerning late payment fees." Id.

<sup>70</sup> Id.

<sup>71</sup> Id.

require Charter to establish a late payment policy that is comparable to that of TWC, as a condition of approval.

Moreover, while both Petitioners are able to disconnect broadband Internet access and video without terminating voice service,<sup>72</sup> TWC does not offer a warm dial tone capability (that is the ability to dial 9-1-1 even when voice service has been otherwise disconnected); while Charter is able to offer such a capability but indicates that it “does not make such offers in the normal course of business.”<sup>73</sup> TWC provides customers the ability to postpone disconnection of voice services due to medical needs.<sup>74</sup> Charter’s policy is unclear.<sup>75</sup> Rate Counsel believes this is an issue of grave importance for New Jersey customers particularly for customers who are disabled and or require uninterrupted service related to medical needs. Therefore, Rate Counsel urges the Board to condition approval of the transition on Charter’s commitment to provide the same protections to customers that TWC now offers inclusive of warm dial tone capability (that is the ability to dial 9-1-1 even when voice service has been otherwise disconnected).

As Rate Counsel discusses earlier in these comments, approximately 73% percent of residential wireline telephone lines in New Jersey rely on VoIP for their voice connection to the public switched telephone networks (and this percentage, which is based on data as of December 2013, has likely increased even more).<sup>76</sup> Moreover, in 93 percent of these instances, consumers

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<sup>72</sup> Petitioners’ response to RC-59.

<sup>73</sup> Petitioners’ response to RC-60.

<sup>74</sup> TWC response to RC-61.

<sup>75</sup> Charter response to RC-61.

<sup>76</sup> Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2013*, rel. October 2014, at Table 10.



purchase VoIP as part of a bundle.<sup>77</sup> Therefore, in order to protect public safety and welfare Rate Counsel urges the Board to ensure that Charter's disconnection policy does not harm vulnerable households and also furthers the state's public safety goals.

**7. The Petitioners should demonstrate their ability and willingness to ensure a smooth transition regarding emergency preparedness.**

The Petitioners address various aspects of emergency preparedness in their responses to RC-37 through RC-44. Among other information, Charter states the following (in response to RC-41) (it is not readily evident why its emergency measures should be considered confidential, particularly since it could be important to have a public understanding of Charter's emergency management measures):

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<sup>77</sup> Id.

Rate Counsel submits that at a minimum, the Petitioners should commit to transfer information about TWC's current practices for preparing for and responding to natural and man-made emergencies from TWC to Charter so that Charter can adopt best practices<sup>78</sup> and so that there is not a gap in processes during Charter's integration of TWC's operations.

Likewise, because Charter does not currently operate in New Jersey, it has no processes or procedures for communicating with New Jersey officials.<sup>79</sup> TWC states, for example, that

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Rate Counsel urges the Board to require Charter to submit the Network Outage Reporting System ("NORS") data that it submits to the FCC to the Board and to Rate Counsel.<sup>80</sup>

#### **8. Set-top boxes, customer premises equipment**

Rate Counsel notes that under its New Price Packaging, introduced in June 2012, Charter does not charge customers a fee for cable modem equipment.<sup>81</sup> The small percent of customers

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<sup>78</sup> See, for example, TWC's response to RC-43, in which, among other things, TWC describes its analysis of internally relevant performance and outcome information. These analyses should be transferred to Charter so that Charter can benefit from TWC's best practices. With the increasing prevalence of weather-related emergencies as well as manmade ones, it is critically important that Charter benefit fully from TWC's experience handling emergencies. TWC identifies the following disasters as the three most recent affecting TWC's footprint in New Jersey and in surrounding areas in New York City: <<<BEGIN CONFIDENTIAL

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<sup>79</sup> Charter response to RC-42.

<sup>80</sup> See Petitioners' response to RC-47.

<sup>81</sup> Charter public response to FCC No. 25.

who do not subscribe to NPP and continue to use a Charter modem continue to pay a modem fee.<sup>82</sup> Charter describes its CPE as follows:

New Charter will deploy Worldbox CPE throughout its footprint as quickly as possible (and completing deployment within 30 months), providing customers with advanced DVR and other time- and space-shifting capabilities, as well as greater compatibility with further set-top-box innovation. This deployment will involve equipment costs as well as costs for delivery, installation, repairs, and customer support. But the deployment of Worldbox is also expected to result in reduced marginal costs due to New Charter's larger volume purchases from vendors and avoided cableCARD fees and platform fees.<sup>83</sup>

Charter describes its "Spectrum Guide" as follows:<sup>84</sup>

New Charter also intends to make the Spectrum Guide available on Worldbox CPE, legacy Charter set-top boxes, and non-Charter mobile and immobile devices. Spectrum Guide will integrate OVDs' applications and content, seamlessly. There are fixed costs associated with deployment of the Spectrum Guide—including product development costs as New Charter seeks to make Spectrum Guide available on additional devices—as well as costs associated with the integration of third-party applications and content. But, as discussed by Dr. Scott Morton, the fixed capex costs per subscriber for Spectrum Guide will decline after the Transaction, due to the merged company's increased scale.<sup>85</sup>

Therefore, the Board should require Charter to allow customers to use their own set-top equipment (e.g. Roku, Apple TV, etc.) to receive cable television service without compulsory equipment/rental fees. Also the Board should require Charter to offer discount alternatives such

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<sup>82</sup> Id.

<sup>83</sup> Charter public response to FCC No. 91, cite omitted.

<sup>84</sup> Charter further describes its Spectrum Guide as follows: "Charter's new cloud-based interface, Spectrum Guide, provides the user experience on Worldbox as well as two-way legacy boxes, regardless of age. Because Spectrum Guide's functionality is cloud-based, consumers will benefit from its advanced features using their existing two-way set-top boxes without the wait, disruption, and expense of a new set-top box or a truck roll to the home to have a technician install a new set-top box. Spectrum Guide can be updated from the cloud at almost no cost whenever an improvement is available. This capability will offer significant consumer benefits over the legacy method of infrequent updates and even less frequent box set-up replacements." Charter public response to FCC Request No. 92(a).

<sup>85</sup> Charter public response to FCC Request No. 91, cite omitted.

as DTAs for secondary televisions and provide an option for income-challenged customers compelled to accept new equipment to continue receiving cable television service.

### **C. Potential Transaction-related Benefits**

#### **1. Subsidized broadband for low-income households**

Charter does not currently provide subsidized broadband services to its consumers except through the FCC's universal service programs (e-rate, rural healthcare, and healthcare connect fund) and California's Tele Connect Fund.<sup>86</sup> In response to Rate Counsel's discovery request, Charter stated:

New Charter intends to offer a robust broadband service for low-income customers to eligible households at a significantly reduced rate and will begin making the offer available within six months after the Transaction closes; it will be offered across the New Charter footprint within three years of closing. The exact terms of the program, including speeds, eligibility and market rollout have not yet been determined. Since TWC does not currently have such a program in their New Jersey service area, expansion of this program to New Charter will be a significant opportunity for prospective recipients.<sup>87</sup>

Charter has indicated to the FCC that its program will be based on Bright House's current subsidized program<sup>88</sup> but with "higher speeds and expanded eligibility."<sup>89</sup> Bright House "offers a low-income broadband option ("Connect2Compete") that partners with schools to provide a low cost Internet service, discounts on Internet-capable devices, and innovative digital literacy training."<sup>90</sup> According to the FCC, "Connect to Compete is a national private and nonprofit sector partnership created to increase broadband adoption and digital literacy training in

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<sup>86</sup> Charter response to RC-17.

<sup>87</sup> Id.

<sup>88</sup> FCC Public Interest Statement, at 5.

<sup>89</sup> Id., at 20.

<sup>90</sup> Id., at 13.

disadvantaged communities throughout the United States. The initiative is designed to help residents improve outcomes in education, health, and employment through broadband opportunities and technology solutions.”<sup>91</sup> Many other broadband service providers participate in the program.

Charter certainly should be commended for its plans to expand participation in this program to its operating territory. However, a three-year rollout seems unduly delayed. Furthermore, its current commitment is far too vague regarding speed and eligibility.<sup>92</sup> Will Charter’s offering still be through the Connect2Compete program as is Bright House’s offering?<sup>93</sup> If so, it is not evident how it will expand eligibility. Current eligibility is very limited in scope. Information available at Bright House’s website<sup>94</sup> (which Rate Counsel has reason to believe may be out of date) includes the following details:

- Service is priced at \$9.95 per month;
- Speeds are at least 1 mbps download 384 kbps upload;
- The program is open to children at participating schools;
- Families who participate must have a child eligible for free lunch through the national school lunch program in grades k-12 at those schools;
- Families must not have any outstanding bills or unreturned equipment and cannot have subscribed to the provider’s broadband service within the last 90 days; and
- The program also provides low-cost computers and digital literacy training.

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<sup>91</sup> See <https://www.fcc.gov/maps/connect-competite-home-broadband-coverage-map>.

<sup>92</sup> See response to RC-17, quoted above. Rate Counsel sought the speeds that Charter would offer as part of the program in RC-65(f)(ii). Charter referred Rate Counsel to its response in RC-17 that states: “The exact terms of the program, including speeds, eligibility and market rollout have not yet been determined.”

<sup>93</sup> See FCC Public Interest Statement, Exhibit C, Declaration of Christopher L. Winfrey (“Winfrey Decl.”) Christopher L. Winfrey is Chief Financial Officer and Executive Vice President of Charter. Mr. Winfrey states: “We also will build upon Bright House Networks’ broadband program for low income customers by making a broadband offering available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount, and will make the offer available across the New Charter footprint.” (Winfrey Decl., para. 34, p. 12)

<sup>94</sup>See:

[https://brighthouse.com/content/dam/residential/static/documents/Frequently Asked Questions for Connect 2 Compete.pdf](https://brighthouse.com/content/dam/residential/static/documents/Frequently%20Asked%20Questions%20for%20Connect%20Compete.pdf) (accessed November 22, 2015).

The Connect2Compete program is unduly narrow in scope. Many households, not just those with school-age children, are on the wrong side of the digital divide. There is no reason not to make affordability a priority for all consumers with economic need.

Rate Counsel notes that on June 18, 2015, the FCC adopted a Notice of Proposed Rulemaking proposing, among other items, to make broadband service eligible for a subsidy but to keep the current \$9.25 Lifeline subsidy.<sup>95</sup> The FCC stated, among other things:

- Today, broadband is essential to participate in society. Disconnected consumers, which are disproportionately low-income consumers, are at an increasing disadvantage as institutions and schools, and even government agencies, require Internet access for full participation in key facets of society. Notwithstanding overall gains in the adoption of basic levels of broadband service, a disproportionate number of individuals who remain offline have lower than average incomes. Computer ownership and Internet use strongly correlate with a household's income; the higher the household income, the more likely it is for the household to subscribe to broadband service. In 2013, there were approximately 116 million U.S. households. Ninety-five percent of U.S. households with incomes of \$150,000 or more reported connecting to the Internet, while only about 48 percent of the households making less than \$25,000 and 69 percent of households with incomes between \$25,000 and \$49,999 subscribe to home Internet access.<sup>96</sup>
- Broadband is necessary for even basic communications in the 21<sup>st</sup> Century, and offers improved access to and quality of education and health services, improved connectedness of government with society, and the ability to create jobs and prosperity.<sup>97</sup>
- As these facts show, the combined realities risk leaving substantial segments of the population, particularly low-income consumers, behind as it has become clear that broadband access is critical if low-income consumers are to fully participate in our society. Approximately 13 percent of Americans with an annual household income of less than \$30,000 per year are smartphone-dependent. These

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<sup>95</sup> In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197; Connect America Fund, WC Docket No. 10-90, Second Further Notice of Proposed Rulemaking, *Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, rel. June 22, 2015 ("FCC Lifeline Broadband Order"), at para. 52.

<sup>96</sup> *Id.*, at para. 4 (cites omitted).

<sup>97</sup> *Id.*, at para. 5 (cite omitted).

smartphone-dependent users rely on their smartphones as their access point to online services, but are less likely to own some other type of computing device or have home broadband access. As Commissioner Rosenworcel notes, “[w]hile low-income families are adopting smartphones with Internet access at high rates, a phone is not how you want to research and type a paper, apply for jobs, or further your education. Additionally, smartphone owners tend to experience numerous challenges, such as having to suspend or cancel service due to financial constraints, poor signal quality, and inadequate content display on the smartphone.”<sup>98</sup>

In addition, the Pew Internet & American Life Project, which has produced numerous studies on Internet use, shows in recent reports (based on national data) that there remains a significant gap in Internet adoption and use by older adults,<sup>99</sup> and also as that “[t]he demographic factors most correlated with home broadband adoption continue to be educational attainment, age, and household income.”<sup>100</sup> Therefore, if the Board approves the transaction, the Board should seek a commitment from Charter to expand the program to all low-income households, regardless of whether they qualify for free or reduced school lunch, as well as to households with members over age 65, and those households with disabled members. Moreover, Charter should commit to minimum speeds of 10Mbps downstream and 1 Mbps upstream.

The Board should also require Charter to retain Time Warner Cable’s Everyday Low Priced \$14.99 Internet plan regardless of any other low-income discount program it offers, such as the Lifeline Internet subsidy for eligible participants. If Charter chooses to adopt Bright

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<sup>98</sup> *Id.*, at para. 7 (cites omitted).

<sup>99</sup> Pew Research Center, “American’s Internet Access: 2000-2015,” June 26, 2015, at 2. Available at: <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/>.

<sup>100</sup> Pew Research Center, Home Broadband 2013, August 26, 2013, at 3. Pew reports that among households with income under \$30,000 per year, only 54 percent have a broadband connection in the home, compared with 88 percent of homes where the household income is over \$75,000. *Id.* Pew also reports that: “For seniors earning less than \$30,000 annually, 39% go online and 25% have broadband at home.” Pew Research Center, April 2014, “Older Adults and Technology Use.”

House's program, it should be required to broaden the program to accept applications year-round, simplify the application process and eliminate any waiting periods.

The FCC's recent approval of the AT&T/DirectTV transaction is instructive. As part of the approval (in July of this year), the FCC concluded:

While we find that the availability of better and lower priced bundles of video and broadband service is a potential benefit of the merger, we also conclude that the public interest requires us to ensure that a bundle of video and broadband services is not the only competitive choice for low-income subscribers who may not be able to afford bundled services. Accordingly, we will require as a condition of this transaction that the combined entity make available an affordable, low-price standalone broadband service to low-income consumers in the combined entity's wireline footprint.<sup>101</sup>

The FCC outlined additional detailed outreach and reporting requirements and required AT&T to establish a program to increase low-income broadband adoption within nine months of the transaction closing.<sup>102</sup> The program includes the following:

- Speeds of at least 10 mbps where technically feasible (otherwise 5 mbps);
- \$10 per month;
- If speeds offered by AT&T are under 5 mbps, AT&T must offer broadband for \$5 per month at 3 mbps;
- Households qualify for the program when at least one household member participates in the Supplemental Nutrition Assistance Program ("SNAP");
- The program will be offered for at least 4 years and households that sign up in the fourth year will have access to the program for at least 12 months;
- No modem or installation charges may be assessed;
- AT&T must "clearly and conspicuously" advertise the program, including a link on its website and training of customer service representatives;
- AT&T must engage in "targeted outreach efforts, in coordination with schools and community-based organizations serving low-income individuals and families, including, but not limited to veterans, the elderly, and those who are non-English speaking"

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<sup>101</sup> In the Matter of Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorization, MB Docket No. 14-90, *Memorandum Opinion and Order*, rel. July 28, 2015 ("FCC AT&T/DIRECTV Order"), at para. 397.

<sup>102</sup> FCC AT&T/DIRECTV Order, at Appendix B: Conditions, Section VI.



Based on consumer protection measures adopted by the FCC above, Rate Counsel recommends that the Board require Charter to offer subsidized broadband service for income-eligible customers at a speed of at least 10 Mbps (or at 60 Mbps since Charter is promising that speed anyway). This service should be offered to all income-eligible consumers, and not just to families. It should be rolled out at a pace much faster than the prolonged three-year roll-out in Charter's proposed commitment, at a monthly price of no more than \$10 per month for all income-eligible households. Outreach should be coordinated with low-income organizations and consumer education materials should be provided in multiple languages.

## **2. New broadband build-out**

The Petitioners, in their filing with the FCC state (footnotes omitted): "Within 4 years of close, New Charter will invest at least \$2.5 billion in the build-out of networks into commercial areas within our footprint beyond where we currently operate. This will create additional, much-needed competition in the commercial sector. Within 4 years of close, we will build out one million line extensions of our networks to homes in our franchise areas. These new facilities will either provide service to currently unserved areas or will increase competition with existing providers. Within 4 years of close, New Charter will increase competition in the mobile data market by deploying over 300,000 out-of-home WiFi access points."<sup>103</sup>

In response to Rate Counsel's question regarding Charter's plans in New Jersey, Charter stated:

Additional line extensions may be built and activated in the future, but Charter has no current plans with regard to any specific line extension projects in its

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<sup>103</sup> Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, FCC MB Docket No. 15-149. See Public Interest Statement, dated June 25, 2015, page 18. Charter has also committed for three years not to block or throttle Internet traffic or engage in paid prioritization. Charter public response to FCC Request No. 100(a).

service area. Most, if not all, of the municipalities served by TWCNY in New Jersey are fully built out.<sup>104</sup>

To ensure that New Jersey consumers benefit from the proposed transaction, Rate Counsel recommends that the Board seek the following commitments from Charter:

1. All existing Time Warner Cable and Bright House service areas will be upgraded to meet or exceed the levels of service offered by Time Warner Cable's Maxx program within three years after approval, as it is not acceptable to upgrade some customers while others are left with a much more modest upgrade program proposed by Charter;
2. Charter will commit to Net Neutrality principles without an expiration date;
3. Regardless of any usage-cap or usage-based pricing plans Charter may introduce after Rate Counsel's recommended five-year "no caps" commitment expires, or in the alternative after its three-years "no-caps" commitment expires, Charter will permanently continue to offer unlimited, flat rate Internet service at a reasonable price as an alternative to usage-priced plans; and
4. Customers will be given the option of opting out of any leased/provided-modem Wi-Fi hotspot plan that offers a wireless connection to outside users without the customer's consent.

## V. CONCLUSION

Rate Counsel welcomes innovative, advanced products and services in the voice, broadband Internet access, and video markets that are offered at affordable rates and reasonable terms and conditions. The proposed merger, however, raises concerns that, if left unaddressed, would pose harm to New Jersey consumers. The substantial new debt that Charter will incur to acquire TWC combined with the fact that Charter will operated in an even more highly concentrated broadband Internet access market will likely lead to high prices for broadband service – a service that has become essential in today's society. Moreover, although speeds of 60 Mbps are welcome, the merger threatens the continuing availability of affordable broadband

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<sup>104</sup> Charter response to RC-65(e).

Internet access, albeit it at lower speeds, that TWC now offers. Charter's proposed program for subsidized broadband for income-eligible households is too narrow in scope and would be implemented at a too-slow pace, unduly delaying the achievement of the critically important goal of closing the digital divide among New Jersey's citizens.

Consumers should not be worse off as a result of the merger relative to options for affordable services and billing and termination provisions than they now are. In sum, to ensure that consumers benefit from the merger and are protected from potentially harmful consequences of the proposed transaction, Rate Counsel recommends and urges the Board to condition approval of the transaction on the following:

- a. ***Affordable broadband Internet access:*** Five-year rate cap for standalone broadband Internet access at a monthly price of no more than \$15 per month with no requirement for a term-contract.
- b. ***Affordable broadband Internet access:*** Charter should commit to continue TWC's lower speed offerings (and associated prices) at least unless or until it rolls out a subsidized broadband program. Regardless of whether Charter has begun offering subsidized broadband Internet access, Charter should continue to offer broadband at the \$15 price that TWC now charges.
- c. ***No data caps:*** The Board should seek a five-year commitment by Charter not to impose data caps on broadband Internet access (as opposed to the shorter, three-year commitment Charter made to the FCC).
- d. ***Commitment, without an expiration date, to not block or throttle Internet traffic and to abide by the FCC's net neutrality rules:*** Charter has committed to the FCC for only three years not to block or throttle Internet traffic or engage in paid prioritization.
- e. ***Commitment to upgrade:*** All existing Time Warner Cable and Bright House service areas to meet or exceed the levels of service offered by Time Warner Cable's Maxx program within three years after approval.
- f. ***Unlimited flat rate broadband option:*** Regardless of any usage-cap or usage-based pricing plans Charter may introduce after Rate Counsel's recommended five-year "no caps" commitment expires, or in the alternative after Charter's three-year "no-caps" commitment expires, Charter will permanently continue to offer unlimited, flat rate Internet service at a reasonable price as an alternative to usage-priced plans.

- g. **Opt-out option for Wi-Fi hotspots:** Customers will be given the option of opting out of any leased/provided modem Wi-Fi hotspot plan that offers a wireless connection to outside users without the customer's consent.
- h. **Subsidized broadband service for income-eligible customers:** at a speed of at least 10 Mbps (or at 60 Mbps since Charter is promising that speed anyway). This service should be offered to all income-eligible consumers, and not just to families. It should be rolled out at a pace much faster than the prolonged three-year roll-out in Charter's proposed commitment and at a monthly price of no more than \$10 per month for all income-eligible households. Outreach should be coordinated with low-income organizations and consumer education materials should be provided in multiple languages.
- i. **Network reliability and public safety:** Charter should provide:
  - i. Back-up batteries for all existing and new customers of its Voice over Internet Protocol ("VoIP") service at cost, i.e., without a mark-up.
  - ii. Customer education in multiple languages, subject to Board and Rate Counsel review, regarding the importance of battery back-up for network connections during prolonged power outage.
  - iii. Quarterly public reports to the Board and to Rate Counsel regarding, at a minimum, the following metrics:
    - 1. Answer time for repair and technical assistance;
    - 2. Average installation period;
    - 3. Outages;
    - 4. The Network Outage Reporting System ("NORS") data that Charter submits to the FCC should be submitted simultaneously to the Board and Rate Counsel.
  - iv. A commitment to coordinate with local, state, and federal emergency and public safety officials to facilitate preparations for and responses to man-made and natural emergencies to protect the public safety and welfare of New Jersey's consumers and communities. The companies should commit to transfer information about TWC's experiences and procedures (including lessons learned) in these matters to Charter.
- j. **Billing and termination procedures:** Charter should commit to billing and termination procedures that are comparable to those of TWC, inclusive of warm dial tone capability (that is the ability to dial 9-1-1 even when voice service has been otherwise disconnected);
- k. **Programming diversity:** The Board should require Charter to continue to carry the existing PEG channel<sup>105</sup> and require Charter to establish an additional PEG channel within the first three years to benefit community and school programs.
- l. **Open customer premises equipment:** The Board should require Charter to allow customers to use their own set-top equipment (e.g., Roku, Apple TV, etc.) to receive cable television service without compulsory equipment and rental fees.

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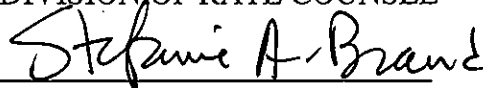
<sup>105</sup> TWC carries one PEG channel on its system in New Jersey, which is carried in all of the communities served by the TWC system, and which began operating in 1978. TWC response to RC-36.

The Board should also require Charter to commit to offering discount alternatives such as DTAs for secondary televisions and to provide an option for income-challenged customers compelled to accept new equipment to continue receiving cable television service. and

Lastly, Rate Counsel respectfully encourages the Board to submit an *ex parte* filing to the FCC based on the Board's review of the proposed transaction.<sup>106</sup> The *ex parte* submission should include specific recommendations to ensure that New Jersey consumers benefit from the transaction and that they are not harmed by the increasing market concentration in relevant markets, caused by the transaction.

Respectfully submitted,

STATE OF NEW JERSEY  
DIVISION OF RATE COUNSEL



Stefanie A. Brand, Director

Division of Rate Counsel

Maria T. Novas-Ruiz,

Assistant Deputy Rate Counsel

Date: December 7, 2015.

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<sup>106</sup> As of December 4, 2015, the FCC was on Day 84 of its proposed review, which suggests that the Board need not rush through its parallel deliberations on the merits of acquisition. The FCC typically seeks to complete its investigations of proposed transactions within 180 days. As recently as November 24, 2015, the Petitioners submitted additional information to the FCC in response to the FCC's request for information and documents. <http://apps.fcc.gov/ecfs/document/view?id=60001344068>.

# **ATTACHMENT A**



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**Charter to Merge with Time Warner Cable and  
Acquire Bright House Networks**  
*Combinations Benefit Shareholders, Consumers and Cable Industry*

May 26, 2015

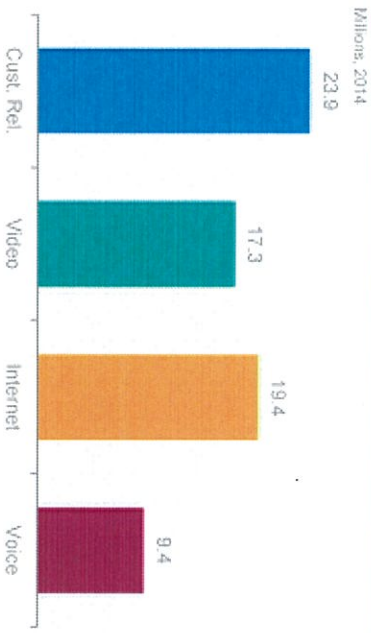
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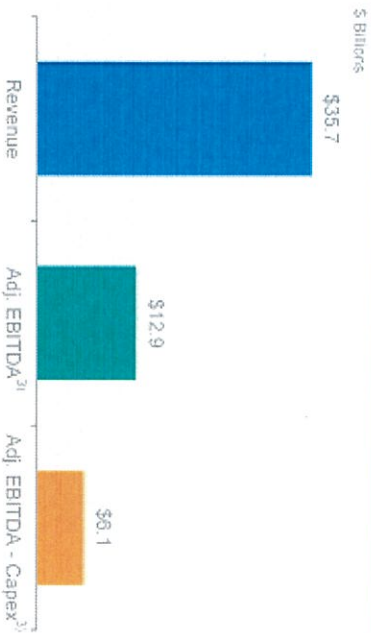


# New Charter at a Glance

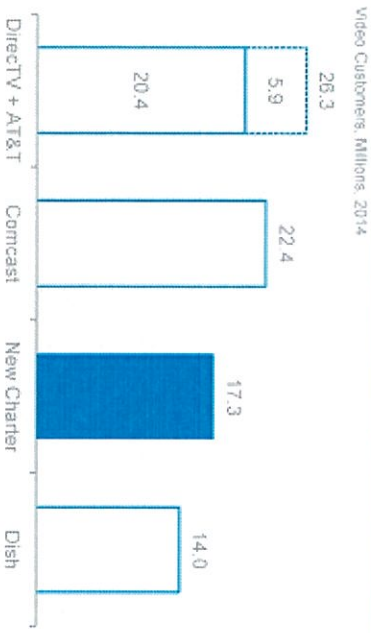
## Customers<sup>1)</sup>



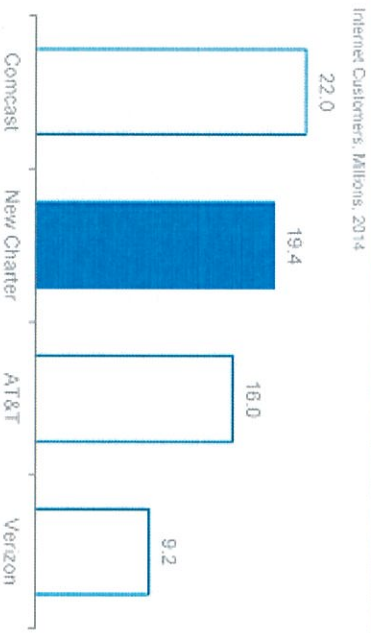
## 2014 Pro Forma Financials<sup>2)</sup>



## Video Marketplace<sup>1)</sup>



## Wireline Internet Marketplace<sup>1)</sup>







<sup>1)</sup> All figures are based on company reports and other sources, including commercial customers.  
<sup>2)</sup> Addition of historical financials for Charter and TWC and pro forma S-X financials for Bright House Networks.  
<sup>3)</sup> See notes on page 25 and 26.



# New Charter: At a Glance

Customers in Millions/ \$ in Billions

				
<b>2014 Customers<sup>1)</sup></b>				
Passings <sup>2)</sup>	12.9	30.5	4.7	48.0
Customer Relationships	6.2	15.2	2.5	23.9
Video	4.3	11.0	2.0	17.3
Internet	5.1	12.3	2.1	19.4
Voice	2.6	5.6	1.2	9.4
<b>2014 Penetration<sup>3)</sup></b>				
Customer Relationships	48%	50%	54%	50%
Video	33%	36%	44%	36%
Internet	40%	40%	44%	41%
Voice	22%	19%	25%	20%
<b>2014 Financials<sup>4)</sup></b>				
Revenue	\$9.1B	\$22.8B	\$3.8B	\$35.7B
Adj. EBITDA	\$3.2B	\$8.4B	\$1.4B	\$12.9B
Capital Expenditures	\$2.2B	\$4.1B	\$0.6B	\$6.9B
Adj. EBITDA – Capex	\$1.0B	\$4.3B	\$0.8B	\$6.1B

1) All company data based on respective company reporting methodologies, where there may be small statistical differences, including temporary customer. Total may not recalculate due to rounding.  
 2) Passings are not contractual sales, but are a measure of customer acquisition.  
 3) Penetration is based on the number of customers relative to the total number of households in the market.  
 4) Charter and Time Warner Cable financials based on historical financials. Bright House financials provided on a 3x1 pro forma basis. TVC Adjusted EBITDA is adjusted for equity based compensation. See pages 25 and 26.

## Sources of Transactions Consideration

### Sources and Uses – At \$100 per Share in Cash and 0.5409 Equivalent Charter Shares<sup>1)</sup>

	\$B	Uses	\$B
<b>Sources</b>			
New Debt – TWC Transaction	23.0	TWC Equity Value	56.7
Assumed TWC Debt	23.3	Existing TWC Debt	23.3
Liberty Investment in TWC Rolled	1.5	Fees and Expenses	1.0
Liberty Equity Investment at \$176.95	4.3		
New Charter Equity to TWC Shareholders	27.0		
Cash on Balance Sheet <sup>2)</sup>	1.9		
<b>Total Sources – TWC Transaction</b>	<b>80.9</b>	<b>Total Uses – TWC Transaction</b>	<b>80.9</b>
<b>Bright House Transaction</b>			
New Debt – Bright House Transaction	2.0	Bright House Enterprise Value	10.4
Preferred Units	2.5	Excess Cash	0.7
Charter Common	5.9		
Liberty Equity Investment at \$173.00	0.7		
<b>Total Sources – Bright House Transaction</b>	<b>11.1</b>	<b>Total Uses – BHN Transaction</b>	<b>11.1</b>
<b>Total Sources</b>	<b>92.1</b>	<b>Total Uses</b>	<b>92.1</b>

Commitment from two of cable industry's most successful long term investors – Liberty investing additional \$5.0 billion to own 19%<sup>1)</sup> of New Charter and Advance/Newhouse will own 13% of New Charter

<sup>1)</sup> Liberty and LLC holding TWC shares have agreed to acquire New Charter stock, as consideration, \$4.3 billion in cash and an amount of \$176.95 per share and represents Charter's offering price on May 20, 2015, \$100 million to be received at equivalent of \$173.00, as previously announced on March 31, 2015 as part of the Charter/ANI transaction.

<sup>2)</sup> Estimated cash on balance sheet from Charter and TWC.

