

**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 |) | Application 15-07-009 |
| Transfer of Control of both Time Warner Cable |) | |
| Information Services (California), LLC (U6874C) |) | (Filed July 2, 2015) |
| 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). |) | |
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Opening Brief of

the California Emerging Technology Fund

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Attachment A: California Emerging Technology Fund Service Area Population Base Data for Broadband Providers in California to Determine Appropriate, and Comparable Public Benefit Contributions, dated August 2015

Attachment B: Letter dated July 22, 2014 from 21 California organizations supporting CETF's requests to the FCC, relating to the Comcast-Time Warner Cable merger, Docket 14-57.

Attachment C: Charter offer to new customers to buy out an existing long term contract early termination fee for up to \$500.

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Opening Brief

of the California Emerging Technology Fund

Summary

The California Emerging Technology Fund (CETF), a non-profit organization dedicated to closing the Digital Divide, hereby files its Opening Brief requesting mandatory conditions be ordered by the California Public Utilities Commission (CPUC or Commission) to realize tangible public benefits to increase broadband adoption among low-income populations and upgrade subpar broadband infrastructure in the New Charter service areas. CETF represents the unique interests of Californians that (1) lack adequate broadband infrastructure and bandwidth speeds below Federal Communications Commission (FCC) and the CPUC minimums, or (2) do not have home broadband access because of barriers

including the high cost of broadband service, lack of computing devices, and lack of computer and Internet navigation training (the latter referred to herein as “digital literacy”). CETF does not support or oppose the merger, but should the merger be approved, CETF respectfully requests that tangible public benefits be ordered in this transaction that are *appropriate, fair* and *comparable* to public benefit commitments of communications providers in seeking to merge operations in previous corporate consolidations. To put in perspective the importance of the public benefit of an affordable broadband offer in this merger, CETF sets forth data in Attachment A showing 2,302,454 low-income households (those earning under \$40,000/year) reside in the New Charter service areas. CETF compares service market size and market capitalization of other communications providers with Charter. Given 2.3 million low-income households are impacted, CETF requests that an affordable broadband offer be extended by Applicants to all low-income consumers for five years, and that a goal to enroll 45% of eligible households be established coupled with an independent fund capitalized to support outreach, digital literacy training, and assistance with broadband adoption. What has been offered so far by Applicants as a public benefit is wholly inadequate to bring modern broadband infrastructure and affordable broadband service to Californians in the New Charter service areas. Absent a significantly improved broadband offer as a mandated Commission condition, CETF cannot recommend approval of this merger.

Under Section 854 (c) of the California Public Utilities (PU) Code, this Commission must find the transfer of control will serve the public interest and meet the eight-factor public interest test enumerated therein. Under Section 854(c), the quality of service to the public should be maintained *or improved* (Section 854(c)(2)). Under Section 854(c) (6), the transfer should be “beneficial on an overall basis to state and local economies, and to the communities

in the area served by the resulting public utility.” In addition, PU Code Section 709 provides in relevant part: “The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (c) To encourage the development and deployment of new technologies... (d) To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner city, low-income and disabled Californians.”¹ Finally, the applicant bears the burden of proof to show that the transaction is in the public interest, and CETF urges that this burden has not been met given the current Application pending before this Commission relating to broadband for low-income and rural communities in the New Charter territory.

The CETF broadband-related requests are justified under these two prongs of Sections 854(c) and 709. CETF requests that, should this Commission grant this application, the Commission mandate the following eight conditions as critical public interest requirements to benefit the people of California by requiring and monitoring the improvement of broadband infrastructure under Section 854(c)(2), ensuring benefits to the low-income communities by providing an affordable broadband rate in the combined service areas under Section 854(c)(6).

CETF strongly recommends five public benefit requirements for *broadband adoption*:

1. Require New Charter to Offer a Stand-Alone Affordable Broadband Offer for All Low-Income Households. This would require New Charter to offer a stand-alone broadband offer at \$10-\$15 per month to all low-income households for at least 5 years or until 80% of the eligible households in the service areas are connected. The

¹ The California Advanced Services Fund program at the Commission underscores this Commission’s commitment to broadband infrastructure in unserved and underserved areas of California, while its program to bring broadband infrastructure to affordable housing units shows its commitment to some Digital Divide programs for low-income and inner city Californians.

affordable broadband offer currently proposed by New Charter (Broadband Offer) is limited to households with at least one child enrolled in the National School Lunch Program and senior citizens who are receiving Supplemental Security Income (SSI), which is only about half of all low-income households. CETF strongly recommends that the Broadband Offer be extended to *all low-income households* in the New Charter service area, with particular emphasis on outreach to low-income people with disabilities and veterans.

2. Set a Performance Goal of 45% of the Eligible Low-Income Population. The Commission should order a goal to reach and enroll 45% of eligible households in the service area within three years, and to continue the Broadband Offer until 80% of all low-income households are online. Once set, the performance goal becomes the basis for the amount of funding that New Charter should invest in broadband adoption by capitalizing an independent fund for outreach, digital literacy, and assistance with sign ups. The CPUC should monitor New Charter's progress towards the goal and publish public reports quarterly to ensure accountability and transparency.
3. Direct Collaboration with Commission to Develop a Strategic Plan. The Commission should require New Charter to collaborate with the Commission, CETF, Rural Broadband Regional Consortia, anchor institutions, and emergency responder groups to prepare a written strategic plan to address broadband adoption in each region.
4. Require Capitalization of an Independent Fund for Adoption. Based on data presented herein, the Commission should require New Charter to capitalize an independent fund of \$285 million, an amount equal to 45% of the eligible low-income households in the

service areas at \$275 per household.² The purpose of the fund will be to increase broadband adoption through performance-based grants to experienced community-based organizations (CBOs), schools and libraries as “trusted messengers” to effectively reach the target populations (outreach in-language and in-culture, digital literacy training, and assistance with actual sign-ups). In Attachment A, CETF has prepared a summary of service area population base data for broadband providers in California to determine appropriate, fair and comparable public benefit contributions for corporate consolidations before the California Public Utilities Commission.³

5. Establish an Advisory Oversight Committee: An independent advisory committee overseeing this broadband program would provide feedback and input to the Commission in monitoring actual performance each year, establishing annual milestones, and monitor progress to reach the goals. All stakeholders, including New Charter, local governments, employers, labor, consumer advocates, Rural Broadband Regional Consortia, and research experts, should be represented.

CETF strongly recommends three public benefit requirements for *broadband infrastructure deployment*:

1. Require High-Speed Broadband Deployment in Priority Areas: Require deployment of wireline broadband by New Charter to a minimum number of priority unserved and underserved areas that meet acceptable threshold speeds (example, 25 Mbps) of the

² See Attachment A, fifth page, 4th column (45% goal), adding the 45% numbers of eligible households for Bright House Network, Charter Communications and Time Warner Cable service areas. $41,252 + 238,480 + 756,373 = 1,036,104$. $1,036,104$ is then multiplied by \$275 per household to arrive at \$284,928,600, which is rounded up to \$285 million.

³ The logic used in the Attachment A is the same as that applied in the Proposed Decision of the Administrative Law Judge in the now defunct Comcast -- Time Warner CPUC merger CPUC application, discussed *infra*.

FCC. In California, deployment should be required into at least 10 unserved or underserved areas as designated by the CPUC relating to the California Advanced Services Fund (CASF) in Resolution No. T-17443.⁴

2. Require Network Upgrades: Require upgrades to the broadband network now and periodically to meet service and performance requirements set by regulatory agencies to support prevalent consumer applications. Consumers include residential last-mile customers; schools, libraries and other anchor institutions; small and larger employers; higher education and research institutions; and facilities to control and manage other critical statewide infrastructure such as power grids and water systems.
3. Encourage Collaboration with Other Deployment Initiatives: Encourage collaboration with FirstNet to assist the nation with emergency response capabilities and to explore opportunities to coordinate deployment projects with statewide networks, such as Corporation for Education Network Initiatives in California (CENIC), K-12 High-Speed Network, California Research and Education Network (CalREN), and the California Telehealth Network (CTN).

Absent these eight tangible broadband commitments, CETF posits that this merger fails meeting the public benefit requirements of the PU Code discussed above.

I. Background of the California Emerging Technology Fund

CETF is a non-profit organization dedicated to closing the Digital Divide in California. CETF has a unique voice on the narrow topic of public interest benefits proposed by Applicants relating to this application. CETF is the only non-profit organization

⁴ Commission Resolution T-17443, Implementation of New Timelines for California Advanced Services Fund Applicants (approved June 26, 2014) (Resolution T-17443).

established by the CPUC to focus exclusively on broadband deployment and broadband adoption issues.⁵ CETF comments on this transfer based on its deep knowledge and expertise as to the California broadband environment. Further, CETF has commented on similar corporate consolidation applications that have come before this Commission and the FCC: Comcast-Time Warner Cable; AT&T – DirecTV; Frontier-Verizon; and Cequel Corp. d/b/a Suddenlink Communications – Altice. In fairness and due to its technology-neutral approach, CETF hereby offers comments relating to this transfer, which has significant impacts on California service areas, particularly in Southern California.

The mission of CETF is to close the Digital Divide in California by overcoming barriers to high-speed Internet access at home. The California and CETF goal is to reach 98% of all residences with broadband infrastructure and to achieve 80% home adoption by 2017. Since inception, CETF has provided more than \$31 million in grants to CBOs and public agencies for programs promoting broadband deployment and adoption to serve unconnected Californians, with a focus on rural communities, low-income neighborhoods, and people with disabilities.⁶

⁵ CETF was founded in 2007 as a non-profit organization at the direction of the CPUC after the mergers of SBC-AT&T and Verizon-MCI in 2005. As a condition of approval for the mergers to provide a public benefit, AT&T and Verizon were required to contribute a total of \$60 million to CETF over 5 years “for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010.”⁵ An independent governing board sets the priorities and approves CETF programs. CETF has offices in San Francisco and Southern California.

⁶ An example is the early work by CETF in the multi-lingual “*Get Connected!*” campaign targeting underserved communities in Southern California and the Central Valley. http://www.cetfund.org/investments/overview/Get_Connected CETF is also a founder and major funder of the California Telehealth Network,⁶ a \$22.1 million grantee of the FCC Rural Health Care Pilot Program and one of the largest statewide telehealth networks in the nation. <http://www.caltelehealth.org/about>

Additionally, CETF assumed a leadership role related to the American Recovery and Reinvestment Act (ARRA) broadband projects, assisting the Governor's Office, the CPUC, the State Legislature, and the California Congressional delegation to develop and secure ARRA broadband grants for the state.⁷ CETF received and managed two ARRA broadband grants with 19 CBO partners totaling \$14.3 million from the Department of Commerce National Telecommunications and Information Agency (NTIA). One grant focused on building broadband awareness and adoption, while the second grant concentrated on workforce preparation improving training and access to careers in technology. CETF managed 19 sub-grantees resulting in more than 200,000 new broadband adoptions and over 2,700 jobs for low-income residents. Further, CETF and its partners trained over 24,000 low-income persons and over 12,000 small business owners and employers with digital literacy skills.⁸

Beginning in 2008, CETF commissioned an Annual Statewide Survey to measure broadband adoption and hold itself accountable to a set of metrics for reaching its goals. While CETF-focused efforts over the last seven years have resulted in significant progress in connecting the poorest Californians to the Internet, the latest statewide survey by Field Research Corporation (Field) shows that California is still falling short of the 80% adoption goal.⁹ According to the 2015 Annual Statewide Survey, 21% of California households do not

⁷ California Emerging Technology Fund Working Statement ARRA Match Funding and Submission of Unsolicited 2009 Concept Proposals April 24, 2009

http://www.cetfund.org/files/Website%20Statement%2042409%20_2__0.pdf

⁸ CETF Annual Report, 2012-2013, Partners Contribute to Progress, at pp. 20-22 (showing grantees, projects and amount funded from ARRA grants). <http://www.cetfund.org/files/CETF2012-2013ARwebRGB.pdf>

⁹ The Field Poll, Release #2509, "Wide Differences in Broadband Connectivity Across California Households; Disparities Exist Among Demographic Subgroups" (June 16, 2015)

<http://www.field.com/fieldpollonline/subscribers/RIs2509.pdf>

have high-speed Internet at home; and of the 79% who are connected, 8% are by smart phone only, which is effective for Internet navigation but insufficient for a student to do homework or an adult to acquire workforce skills. Of the 21% of California households that do not have high-speed Internet these households cited cost as the major factor for being unconnected. The following is the percentage of Californians with broadband at home by key categories:

- 65% of households earning under \$20,000 a year (16% by smart phone only);
- 63% of households with Spanish-speakers (21% by smart phone only);
- 59% of people with disabilities (8% by smart phone only);
- 57% of adults age 65 or older [seniors], (1% by smart phone only); and
- 52% of non-high school graduates (18% by smart phone only).

Thus, the Field Poll data shows there continues to be substantial broadband adoption work to do in California for these underserved groups. CETF has set an ambitious home broadband adoption goal of 80% by 2017, with no single demographic group (for example, low-income residents, Spanish-speaking households, seniors, and people with disabilities) or geographic region below 70%. Given its deep experience in broadband adoption, it is clear to CETF that this goal cannot be met without focused, funded programs targeted to these underserved communities.

II. If This Commission Approves the Proposed Transaction, It Should Impose Conditions to Further the Public Interest

Charter Communications, Inc. (Charter), Time Warner Cable, Inc. (TWC), and Bright House Networks, LLC (BHN) (together, Applicants), filed an application seeking approval to transfer indirect ultimate control of TWC, BHN and their subsidiaries to Charter, under Sections 854(a) and (c). After the combination of these three companies, the subsequent provider will be referred to as “New Charter.”

A. Applicants' Voluntary Broadband Offer is an Inadequate Public Benefit for the New Charter Service Areas and In Comparison to Public Benefit of Commitments of Companies in Previous Corporate Consolidations

In its July 2nd Application, Applicants claim that there will be substantial public interest benefits if the transaction is granted. In its initial testimony as to broadband deployment, Applicants assert New Charter will transition Time Warner Cable (TWC) and Bright House Networks (BHN) systems to all Digital Systems within a year of the closing of the transaction. They claim that “the vast majority of its 5.1 million residential broadband” consumers will get at least 60 megabytes per second (Mbps) download of speeds as a result.¹⁰ Applicant states: “We will take virtually all of the remaining systems, including Bright House Network’s non-digital systems in the Bakersfield area, all-digital within 30 months of closing the Transaction.”¹¹ CETF commends the Applicant on this significant infrastructure commitment, and urges it to work with the Commission’s Communications Division staff and Rural Regional Broadband Consortia on detailed upgrade plans with timelines.

As to broadband adoption commitments, Applicants’ initial testimony by Adam Falk (Falk Testimony) merely promises to expand the small BHN Connect2Complete discount offer to “enhance the speed and expand the eligibility of BHN’s Connect2Compete program and make New Charter’s program available within three years of closing across New Charter’s entire footprint.”¹² Applicants promise that within six months after the closing of the transaction, New Charter will introduce a low-income broadband offer for certain eligible

¹⁰ Testimony of Adam Falk, at 18 (public version filed Dec. 4, 2015) (Falk Testimony).

¹¹ Falk Testimony, at 18 (public version).

¹² Falk Testimony, at 21 (public version).

households within its national service area (hereinafter “Broadband Offer”) and will make it available within three years of closing across the New Charter footprint.¹³

On January 7, 2016, Applicants added the Supplemental Testimony of Adam Falk (Falk Supplemental Testimony), which provides more detail and new commitments for the Broadband Offer. Citing a December 17, 2015 press release by Charter Communications,¹⁴ Falk states that the year round offer will deliver 30 Mbps download / 3 Mbps upload speeds to qualifying customers at a price of \$14.99 per month with no additional charge for modem rental.¹⁵ However, *eligibility for the Broadband Offer is limited to two groups of households: (1) households with at least one child enrolled in the National School Lunch Program (free or reduced lunch); and (2) seniors who are aged 65 or older receiving Supplemental Security Income (SSI).* No credit checks will be performed. Further, eligibility “will be subject to an individual settling any outstanding debt to New Charter.” Current video and/or phone customers of New Charter would be eligible, but individuals who have subscribed to New Charter’s broadband services in the previous 60 days would *not* be eligible.¹⁶

This limited Broadband Offer is inadequate on a number of fronts: constrained eligibility (leaving out for example low-income adults below age 65 and people with disabilities without school age children); confining terms and conditions; the lack of a free Wi-Fi router for home access by multiple family members; lack of a low-cost computing device; and the absence of funding for outreach and digital literacy training by trusted

¹³ CETF believes this Broadband Offer should be made available in a much shorter time frame which matches each system’s ability to offer the 30 Mbps download speed.

¹⁴ Charter Communications Press Release, “Charter Announces Details of Industry Leading Low Cost Broadband Service,” Dec. 17, 2015, <http://www.prnewswire.com/news-releases/charter-announces-details-of-industry-leading-low-cost-broadband-service-300194831.html>

¹⁵ Charter has communicated to CETF that it will offer eligible consumers a wireless router but it will be at an additional cost of \$5 per month rental fee.

¹⁶ Confidential Supplemental Testimony of Adam Falk, at 2, (Jan. 7, 2016) (Supplemental Falk Testimony).

community groups, schools and libraries. Given the increasing importance of broadband in daily life and public services, such as education with 7 out of 10 teachers assigning homework that requires Internet access¹⁷ and 80% of Fortune 500 companies requiring job applications to be submitted online,¹⁸ the importance of the Internet at home is critical for students, job seekers, and their families. Further, the public benefits for broadband adoption proposed to date by Charter are insufficient given the size of the financial transaction valued at \$78.7 billion and \$10.4 billion to acquire TWC and BHN respectively.¹⁹ Charter falls short when compared to past public benefits that have been offered by major communications providers who were similarly consolidating operations before this Commission and the FCC. A brief survey of the past public benefits follows:

- Pacific Telesis–SBC (CPUC): In the 1997 SBC acquisition of Pacific Telesis before this Commission, Applicants committed contributions to the Community Technology Fund (\$5 million/year for 10 years), increased corporate giving (\$1 million/year for 3 years), and funding for under-served community “think tank” (\$200,000/year for five years), and for a Universal Service Task Force (\$100,000/year for 7 years), with a net present value of \$34.45 million.²⁰ One specific activity agreed to by Applicants was “(t)he formation of the

¹⁷ Op-Ed by FCC Commissioner Jessica Rosenworcel, “How to close the ‘Homework Gap’ ”, at para. 3, dated December 5, 2014 <http://www.miamiherald.com/opinion/op-ed/article4300806.html>

¹⁸ Internet Innovation Alliance, Online Applications Required by 80% of Fortune 500 Companies <http://internetinnovation.org/factbook/entry/online-applications-required-by-80-percent-of-fortune-500-companies/>

¹⁹ TWC Press Release “Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks”, dated May 26, 2015 http://s1.q4cdn.com/730563363/files/chtr/CHTR-TWC-BHN_Release_FINAL_v001_h4g1jc.pdf

²⁰ Decision No. (D.) 97-03-067, In the Matter of the Joint Application of Pacific Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U 1001 C), Which Will Occur Indirectly as a Result of a Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc. (adopted Mar. 31, 1997, mailed Apr. 1, 1997), at 86-88, and Table 1, at p.1, note 4. (PacTel/SBC Decision). The Community Partnership Commitment was a condition of approval of the merger “to pass on to Pacific’s

Community Technology Fund to promote access to advanced telecommunications services in underserved communities and funding over ten years up to \$50 million”.²¹ This Commission stated, “The elements of the CPC [Community Partnership Commitment] demonstrate a plan of action that seeks long term solutions to increase access to telecommunications services for the underserved communities of California.”²² CETF draws attention to the size of fund and the ten year commitment.

- SBC-AT&T (FCC): In 2005, the FCC accepted voluntary commitments of Applicants SBC-AT&T to offer stand-alone DSL to consumers for two years, in addition to compliance with certain commitments related to special access, the FCC’s Internet Policy Statement, and Internet Backbone Services.²³

- SBC-AT&T (CPUC): In the 2005 SBC-AT&T merger decision, this Commission said that as part of applicants’ commitment to ensure that the transaction was “beneficial on an overall basis; to enhance the Broadband Connectivity section of the Greenlining Agreement, and to ensure this transaction is consistent with statutory objectives to make advanced telecommunications services available to underserved communities, we order that applicants commit \$9 million per year for 5 years in charitable contributions (\$45 million total), to a non-profit corporation, the California Emerging Technology Fund (CETF), to be established by the Commission for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use

customers the economic benefits associated with the merger . . . and by implementing the Community Partnership Commitment”. *Id.* at 103, Conclusion of Law 9.

²¹ PacTel/SBC Decision, at 86, third bullet.

²² PacTel/SBC Decision at 87.

²³ Memorandum Opinion and Order, In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket 05-65, FCC 05-183 (adopted Oct. 31, 2005, rel. Nov. 17, 2005), at para. 211 at 103 (referring to SBC Oct. 31 Ex Parte Letter and Appendix F at p. 122-125).

of emerging technologies by 2010.”²⁴ CETF draws attention to the size of the commitment, \$45 million, over five years.

- Verizon–MCI (CPUC): Similarly, in the Verizon-MCI transfer of control before this Commission, one of three conditions of the Commission’s approval was a voluntary donation of \$15 million (over five years) for the establishment of CETF, in addition to requirements for offering “naked DSL” service, increase of \$20 million in corporate philanthropy over 5 years, and an increase in supplier diversity goals including a spend of \$2 million relating to the program. The Commission specifically noted that these three conditions “ensure that the proposed merger will bring the benefits of advanced telecommunications services and telecommunications competition to all Californians.”²⁵

CETF draws attention to the \$37 million total commitment over five years.

- Comcast–NBC Universal (FCC): In January 2011 the FCC accepted a voluntary 3-year commitment by Comcast as a public interest benefit to establish an affordable broadband program now known as Internet Essentials, which offers discounted broadband service at \$9.95/month, a discounted computing device, and free digital literacy training, for families with at least one student who qualifies for the National School Lunch Program (NSLP), extension of its broadband networks to reach approximately 400,000 additional homes, provision of Internet access service in rural communities, and courtesy video and high speed

²⁴ Opinion Approving Application to Transfer Control, In the Matter of the Joint Application of SBC Communications, Inc. (“SBC”) and AT&T Corp. Inc. (“AT&T”) for Authorization to Transfer Control of AT&T’s Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a AT&T Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation, D.05-11-028 (Nov. 18, 2005, mailed Nov. 22, 2005), A. 05-02-027.

²⁵ Decision Authorizing Change in Control, In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI, D. 05-011-029, in A.05-04-020, at 3, 25, 96-102, and 129 (OP 3) (Nov. 18, 2005, mailed Nov. 23, 2005).

Internet service to 600 new locations (such as schools and libraries) in underserved low-income areas.²⁶ Comcast still offers Internet Essentials, extending this public interest commitment beyond its original three year term. Comcast has since expanded the eligibility of the program to households with an eligible (as opposed to enrolled) student for the NSLP and private/parochial schools. It has also increased the offered broadband speeds, included a free wireless router, and relaxed its original strict bad debt rules. It recently began offering Internet Essentials to senior citizens in two test markets, including California. Given Comcast's footprint as the nation's largest cable/broadband/voice company, this program is a significant corporate commitment which has lasted five years so far.

- AT&T–DirecTV (FCC): In the July 2015 AT&T – DirecTV merger, the FCC approved as a condition the voluntary commitment of AT&T to offer an affordable broadband offer of \$10 per month for 10 Mbps downstream (\$5/month if the broadband speeds are lower) for up to four years to all low-income consumers in its AT&T service area.²⁷ This AT&T commitment is significant because it was the first time that a broadband provider agreed to offer an affordable broadband rate to *all low-income households* in its national service area.

- Frontier–Verizon (CPUC): In its Frontier-Verizon decision, this Commission accepted the voluntary commitment of Frontier as a public benefit to provide an affordable broadband rate of \$13.99 to low-income Lifeline subscribers throughout the new service area,

²⁶ Memorandum Opinion and Order, In the Matter of Applications of Comcast Corp, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, FCC 11-4, MM Docket No. 10-56 (adopted Jan. 18, 2011, rel. Jan. 20, 2011), at para. 6, at 5, and paras. 232-234 at pp. 96-97.

²⁷ Memorandum Opinion and Order, In re Applications of AT&T Inc. and DirecTV For Consent to Assign or Transfer Control of Licenses and Authorizations, FCC 15-94, in MB 14-90 (adopted Jul. 24, 2015; rel. Jul. 28, 2015).

once Frontier purchased the Verizon landline systems.²⁸ Frontier executed a Memorandum of Understanding with CETF to increase broadband adoption for 200,000 low-income households in California, to provide 50,000 Internet-enabled computing devices (compatible with the needs of students and school districts to close the “homework gap”²⁹), and provide a voluntary contribution of \$3 million for performance-based grants to community-based organizations (CBOs) to assist with broadband adoption outreach and digital literacy. CETF draws attention to the very low broadband rate of \$10/month and the offer to all low-income Lifeline households, plus the computing device commitment and \$3 million funding of broadband adoption outreach work.

These public benefit voluntary commitments have been integral to the approvals of this Commission and the FCC in corporate transactions and consolidations of major communications and broadband companies. CETF urges this Commission to ensure that New Charter makes similarly “appropriate, fair and comparable” public benefit commitments in this proceeding, so that the 2.3 million low-income households in New Charter’s service area. Public benefits are extraordinarily important in the very populous Los Angeles County region market area which is “ground zero” in the Digital Divide for California and the nation. While Los Angeles County is 27% of the states’ population, 33% of all California low-income

²⁸ Decision Granting Application Subject to Conditions and Approving Related Settlements, D. 15-12-005, In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications, A.15-03-005, (adopted Dec. 3, 2015; issued Dec. 9, 2015).

²⁹ In this February 22, 2016 New York Times article by C. Kang entitled “Bridging a Digital Divide That Leaves Schoolchildren Behind,” the plight of low-income schoolchildren who do not have home Internet access to complete their Internet enabled homework is brought to light. The article notes that students in Coachella, California rely on free WiFi in school busses to complete their homework; others scramble to find free access at Starbucks or fast food restaurants. FCC Commissioner Jessica Rosenworcel is quoted saying that the “homework gap” is the “cruellest part of the digital divide.” She notes statistics that 7 out of 10 teachers regularly assign homework that requires Internet access.

http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?ref=education&_r=0

households are located in the region—there is a concentration of poverty in the New Charter service areas. Two other regions in the New Charter services areas—Inland Empire and San Joaquin Valley—are the next poorest regions with the lowest adoption rates in California, Charter is essentially “buying” the Digital Divide in California and, therefore, has an extraordinary obligation to support broadband adoption. The New Charter service areas include 1.6 million students (more than 1 million households) eligible for NSLP. In Los Angeles County alone there are more than 90 school districts with 68% of the students eligible for NSLP, including Los Angeles Unified School District with an enrollment of about 640,000 students of whom more than 80% qualify for free or reduced lunch.³⁰ Further, as compelling as the data is regarding the need for low-income households with students to have affordable home access to the Internet, families with students who are eligible for NSLP constitute less than half of all low-income households in the New Charter service areas. To this end, CETF herein provides data on whether the Broadband Offer by Applicants will provide adequate public benefit to low-income consumers in California.

Applicants protest that they should not bear the burden of bridging the Digital Divide by themselves. CETF clearly is not proposing that, but is asking every broadband provider in fairness to do its part by investing in reaching just 45% of the low-income households in its service area. While the FCC is in the process of considering whether to adopt a broadband Lifeline program,³¹ no federal decision has been issued yet. Further it is unclear how long it will take to actually implement a national program, including the formation of a new national

³⁰ The Los Angeles Unified School District Food Services Division runs the second largest National School Lunch Program in the United States and serves 650,000 meals a day. Food Services Division Fact Sheet, LAUSD Food Service Division, for 2013-2014 school year. The LAUSD home page states it has 640,000 students enrolled in K-12 grades at over 900 schools. <http://achieve.lausd.net/about>

³¹ The docket in which the FCC is considering a broadband Lifeline program is WC 11-42, 09-197-and 10-90.

eligibility administrator. It appears that is why the FCC required AT&T in the acquisition of DirecTV to offer a \$10 per month affordable broadband rate for all low-income households for at least 4 years. In the meantime, the so-called “homework gap” exists, where students without home broadband access fall behind in Internet-enabled classwork as compared to wealthier classmates with home Internet access. Other underserved low-income residents--—seniors, people with disabilities, non-English speaking households, veterans—also cannot afford access. This is why this Commission should require broadband companies to offer an affordable rate for all low-income households and to assist in funding broadband adoption until an FCC Broadband Lifeline program is operational. Further, CETF encourages this Commission to require New Charter to invest in achieving increases in broadband adoptions by setting a 45% goal for new low-income households to be enrolled, and by capitalizing an independent fund to support CBO’s to assist with outreach, digital literacy and subscriptions to achieve that goal.

B. The Public Interest Will Be Served by the CETF 5 Recommendations for Broadband Adoption and 3 Recommendations for Broadband Deployment

Research shows—and CETF’s extensive experience confirms—that there are three (3) primary barriers to broadband adoption: (1) cost; (2) relevance; and (3) Digital Literacy. The following CETF recommendations address all three barriers to ensure that an increase in broadband adoption among disadvantaged populations and low-income households will be achieved as a tangible public benefit from this corporate consolidation.

1. Require New Charter to Offer a Stand-Alone Affordable Broadband Offer for All Low-Income Households

Given the 2015 Annual Survey on broadband adoption in California conducted by the Field Research Corporation described above, CETF respectfully recommends that the

Commission require the proposed stand-alone broadband rate of \$10-\$15 per month to be offered by New Charter for at least 5 years to all low-income households, or until 80% of residents have broadband at home. CETF is not satisfied with the eligibility restrictions of the New Charter Broadband Offer limiting the program to only low-income families with an enrolled child on the NSLP program or a senior on SSI. There are twice as many people in low-income households without children as those with children.³² AT&T and Frontier were willing to make their affordable broadband offers to *all low-income households*. CETF recommends that New Charter not be allowed to restrict its program. CETF suggests that New Charter can easily rely upon established safety net programs as a proxy for eligibility, such as enrollment in Medicaid food stamps, LIHEAP or CARE, similar to Frontier's use of the telephone Lifeline program.

CETF understands that currently Charter has no affordable broadband program for low-income customers and the TWC offer is very limited and not promoted. Their historical efforts in the affordable broadband arena can therefore be described as “weak” or “nearly nonexistent,” compared to their competitors who have stepped up to plate with Comcast's Internet Essentials, the upcoming AT&T Discounted Broadband Plan, and the Frontier commitment to a discounted broadband rate.

CETF has worked in the trenches with CBOs on various affordable broadband offers since 2007. A key learning of CETF from the initial Comcast Internet Essentials offer and other low cost Internet offers is that “the devil is in the details.” First, CETF commends the Charter on offering a speed of 30 Mbps down/4 Mbps up, which exceeds the FCC's 25 Mbps

³² 2010 Census Briefs, Households and Families: 2010, issued April 2012, at 17
<https://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>

benchmark speed. Second, the \$14.99 Broadband Offer is acceptable based on the 30 Mbps speed commitment. In California, studies conducted by independent third parties on behalf of CETF has found that a \$10-\$15 monthly broadband rate is within the range of “affordable” by the low-income population (except for those living in publicly-subsidized multi-unit housing complexes), although for those earning \$20,000 or below, a \$15/month rate may be unaffordable. Should Charter charge \$5 more for rental of a wireless router, the offer is marginally affordable. Third, CETF is pleased to see the commitment for no additional charges for a wireless router, but strongly suggests that any modem provided for the program automatically include a wireless router for no extra charge. It is vital that modems with Wi-Fi capable routers be provided as part of the Broadband Offer to be compatible with most computing devices being issued by schools and to enable more than one member of the household (especially schoolchildren) to be online at the same time.³³ Fourth, CETF commends the Applicants’ commitment to provide its affordable broadband plan to seniors, who indeed have lower penetration rate in this state. Equally beneficial would be digital literacy programs supported by New Charter through performance-based grants to CBOs as “trusted messengers” who speak the language and are familiar with cultural issues of the unconnected families.

In establishing a broadband offer, CETF cautions that there should not be onerous terms of service that make the broadband subscription out of the reach of low-income households. These may include, but are not limited to, the following requirements: long-term service contracts, costly deposit requirements, a requirement of a social security number, a

³³ Comcast is now offering in-home Wi-Fi routers as part of its \$9.95 per month Internet Essentials program. See its application page where it states “No term contract, no credit check, no installation fee, In-home WiFi included”. <https://apply.internetessentials.com/>

credit check, one-time charges for installation, deposits for required equipment, and requiring online sign-up by persons without Internet access.

CETF is disappointed by Applicants' statement that current video and/or phone customers of New Charter will be eligible for the Broadband Offer, but those who have subscribed to broadband in the last 60 days would not qualify.³⁴ This penalizes otherwise eligible households who had sacrificed to subscribe to broadband so that their children could have the Internet to complete their homework. A similar restriction in the Comcast Internet Essentials program continues to serve as a barrier for low-income families to start-up service on an affordable plan. For households already on broadband, it is an impractical hardship to be forced to terminate off that provider's broadband plan for two months just to be able to qualify for the low-income plan at the attractive \$14.99 program rate. Typically low-income households have fluctuating levels of income; this 60-day restriction acts as an arbitrary barrier to enrollment to the very population it purports to serve. Further, Charter states it will require all prior bad debt be cleared. Comcast changed a similar bad debt requirement for its Internet Essentials program, and now clears debt that is 1-12 months old.³⁵

As to the Applicants' Broadband Offer, CETF still has the following questions and urges the Commission to investigate: Will widespread marketing and advertising of the Broadband Offer be undertaken by New Charter during times when most prospective customers are awake, and if so, what type of monetary commitment will be made for that effort? Will such marketing and advertising be in-language and culturally-appropriate (especially for non-English speaking communities) using ethnic media companies to the

³⁴ Supplemental Falk Testimony, at 2, footnote 4.

³⁵ The Comcast Internet Essentials Apply website under "Do You Qualify?" "Eligible Families" heading states: "Do not have outstanding debt to Comcast that is less than a year old. Families with outstanding debt more than one year old may still be eligible." <https://apply.internetessentials.com/>

targeted eligible communities? Will New Charter use a dedicated call center for this program or will it use its usual customer service representatives? Will the call center have representatives available who speak languages in addition to English? How will the service and a modem be provisioned to the new customer, via mailed equipment like Comcast's program, or via a truck roll with a New Charter technician? Charter has said there is no modem rental cost, but how much will a wireless router cost and will it have an installation cost? Will New Charter allow an eligible family to stay on the affordable broadband rate until the student graduates from high school, similar to the Comcast Internet Essentials Program? Will New Charter offer any low cost computing devices to low-income households similar to Comcast and Frontier? Will New Charter offer free digital literacy training to eligible households? How will New Charter define "senior" for the purposes of this program? Will the Commission regularly monitor this program for actual results, and will these results be released publicly so that interested parties may submit comments?

Should this application be granted by the Commission, CETF urges the Commission to require more detail about the eligibility and terms and conditions of the Broadband Offer, and to require this commitment as a public benefit condition of the merger for at least 5 years from program launch. And, CETF recommends the Commission continue the obligation until 80% of the eligible households in the service areas are online with high-speed Internet access.

2. Set a Performance Goal of 45% Eligible Low-Income Households

CETF recommends that a performance goal of 45% of the eligible low-income households be established for a 5-year program with a stand-alone, broadband offer.³⁶ The 45% goal is the same performance goal CETF requested for the Comcast Internet Essentials

program in the defunct Comcast-Time Warner Cable merger docket, the AT&T–DirecTV, Frontier Communications–Verizon, and Cequel Corp. d/b/a Suddenlink–Altice applications for transfer of control.

A 45% enrollment goal of eligible households is an achievable goal. In the Comcast–TWC docket at the FCC, 21 CBOs experienced in broadband adoption signed a letter confirming their commitment to achieve the 45% goal.³⁷ Moreover, a 45% goal has been found reasonable for the Wireless Lifeline program at the California Public Utilities Commission.³⁸ In a budget document prepared for the State Legislature relating to its 20-15-2016 Wireless Lifeline program, the Commission’s Communications Division staff stated there are about 3 million eligible low-income households in California. With wireline phone subscribers waning, wireless phone subscription has risen. The CPUC has forecast for 2015-2016, a 45% participation rate (1.376 million participants) in the wireless Lifeline telephone program for low-income persons. The 45% rate was found to be a reasonable assumption based on its review of different wireless service rates from other large states with Lifeline programs, like New York, Florida, and Illinois, ranging from 30-38%. Because California has a higher number of low-income households, offers higher level of support to service providers (both Federal and California Lifeline) with a larger discount than other states, the Commission found it more likely that California customers would subscriber and thus “45% is a reasonable assumption.” While a different program, Wireless Lifeline uses the same targeted low-income population, and as noted, a 45% goal was found reasonable. The Time Warner Cable territory includes the most populous areas of California, Los Angeles and the

³⁷ See Attachment B, at page 2, #2. “Set Performance Goals.”

³⁸ State of California Budget Change Proposal for Universal Lifeline phone Service Program, Sec. D “Justification” at para. 4, at page 2. http://www.cpuc.ca.gov/NR/rdonlyres/7FBA0C56-0D99-4C66-8A3E-A202D396CBA6/0/BCP_7_Lifelinefinal.pdf

Inland Empire. These areas have been starved for quality affordable service. If the nation is to close the Digital Divide, it must do so in these two regions.

Further, in the Proposed Decision on the Comcast–Time Warner Cable (TWC) docket at the CPUC, A. 14-04-013, an independent Administrative Law Judge (ALJ) ordered Comcast in the Proposed Decision (PD) to enroll at least 45% of the eligible households in its Internet Essentials program within 2 years of the effective date of the parent company merger, and to submit a plan to achieve its enrollment requirement no later than 90 days following the effective date of the merger, and each calendar year thereafter for a period of 5 years.³⁹ Thus, a 45% performance goal is reasonable for New Charter’s affordable broadband program.

In addition, the Commission should establish a long-term goal of 80% of broadband subscription (by all broadband providers) in low-income neighborhoods in the major service areas of New Charter. This 80% level of broadband adoption is a goal that CETF would find acceptable, and is the same position it took in all corporate consolidation proceedings.

The Commission should establish real accountability of New Charter to make progress quarterly towards meeting the performance goals. It is not enough that the Commission require annual reports on the commitment, but it should also set a numeric goal (45% of eligible households in the New Charter service area) and hold New Charter accountable for the results. The results should be public so that State agencies, consumer groups, and

³⁹ Proposed Decision of ALJ Bemesderfer (never approved by the full Commission due to withdrawal of the application by Joint Applicants), Decision Granting With Conditions Applications to Transfer Control, Joint Application of Comcast Corp., Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California) LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a), A. 14-04-013, A. 14-06-012 (mailed 2/13/2015), at 78-79 (hereinafter “Proposed Decision of ALJ Bemesderfer in Comcast – Time Warner”).

stakeholders can view the program results, proposed improvements, and have input to the Commission and New Charter on how to improve the program.

3. Direct Collaboration with Commission to Develop a Strategic Plan

The Commission should require New Charter to collaborate with the Commission, anchor institutes (such as libraries, school districts, community colleges, public hospitals, local governments, emergency responders), and other stakeholders to develop a written strategic plan by a date certain to achieve the 45% goal of broadband adoption. The strategic plan must be a public document open to input and comments for refinement.

4. Require Capitalization of a \$285 Million Independent Fund to Support Broadband Adoption

CETF recommends that accountability be required on the affordable broadband commitments. The best way to achieve this is for the Commission to require New Charter to capitalize an independently-managed fund of a sufficient amount to be “appropriate, fair and comparable” to the requirements in other corporate consolidations. *As explained below, a fund of \$285 million is justified to support the goal of 45% adoption using the methodology that the ALJ set forth in the Comcast-TWC PD.* The administrator of the fund should be selected by the Commission or other appropriate State agency through an open competitive process with the administrative and management costs not to exceed 10% of the funding for performance-based grants. *It must be underscored that while \$285 million is a significant amount of funding, that when such an independent fund is administered on a performance basis, the payback period to New Charter in new customer revenue is two years from the time that a dollar is invested in getting a low-income household online.* The CETF proposal is a “virtuous” economic circle that will measurably close the Digital Divide.

This independently-managed fund will be charged with engaging experienced community-based organizations (CBOs), schools and libraries in broadband adoption to perform outreach, and obtain *actual broadband sign-ups in target low-income communities* to achieve the specific adoption subscribership goals described in the section above (3). Such a fund must require CBOs to not only perform outreach, but to also meet actual subscription targets in order to receive the funding. It is CETF's experience over the years (including its *Get Connected!* program and its successful ARRA projects) that CBOs with broadband outreach experience are the most effective groups to perform adoption work, as they are "trusted messengers" in the targeted communities and can perform the numerous personal interactions necessary to obtain a successful broadband subscription for this group.

CETF has shown that this Commission and the FCC require public benefit contributions from Applicants to find a transaction approvable. In this docket, CETF has stepped up to the plate to quantify for this Commission a broadband adoption goal for enrolling unconnected low-income households, and the amount of public benefit contribution that is "appropriate, fair and comparable" in light of past voluntary contributions deemed acceptable in various regulatory decisions. In the data analysis and recommendation for the amount of the independent fund reasonable for New Charter, CETF has relied on the expertise of the ALJ and his PD for the Comcast-TWC case as a reasonable approach and objective benchmark to determinate an "appropriate, fair and comparable" public benefit. Section 706 of the 1996 Telecom Act as interpreted by federal court gives rise to jurisdiction of this Commission over broadband in this context. In Attachment A, CETF has provided detailed census data and analysis to support its recommendation for an independent fund of \$285

million in California which is a justifiable condition of approval due to the state’s goal of broadband adoption and closing the Digital Divide for low-income households.⁴⁰

It is incumbent on the Applicants, if they disagree with the CETF, to propose an alternate methodology that they think will be “appropriate and fair” and that can be applied in a “comparable” manner to all corporate consolidations with transparency and accountability.

CETF herein provides solid data to help the Commission calculate the size of a fund necessary to bridge the Digital Divide by looking at the number of unconnected persons in the cumulative New Charter service areas. In Attachment A, CETF provides service area base data for broadband providers in California to determine “appropriate, fair and comparable” public benefit contributions relating to various proposed transfers impacting the state.

California broadband goals are 98% deployment (in all regions) and 80% adoption (with no demographic group or region less than 70%) by 2017.⁴¹ CETF urges this Commission to secure tangible public benefits from pending corporate consolidations to help meet those goals, including requiring broadband providers to contribute to an independent fund to provide performance-based grants to CBOs, schools, libraries to increase broadband adoption by low-income households.

The last page of Attachment A documents that in California the New Charter mega corporation will have 2,312,454 low-income households (under \$40,000 annual income) in its

⁴⁰ ORA’s consultant has pointed out that according to the Charter – TWC Proxy Statement at page 308, should the transaction be approved, the golden parachutes of five senior executives for the merged companies may cost the company as much as \$170 million, given certain assumptions which may or may not occur. In light of this, \$285 million to connect unconnected low-income consumers is not unreasonable. Further in the affordable broadband offer, New Charter realizes revenues from the new customers that pays it back for the \$275/fund payment in about two years. Finally, as noted above, communications companies often spend up to \$500 to acquire a new customer. Here, the CBO will help New Charter acquire a customer for only \$275.

⁴¹ A new bill before the California Legislature, California Assembly Bill 1758 (Mark Stone, Feb. 2, 2016) known as Internet For All Now Act of 2016, proposes a goal of 90% household adoption by 2023. See Section 281(b)(1)(B). http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1758

service areas (529,956 Charter + 1,680,827 TWC + 91,671 BHN) with a concentration in the regions with the lowest broadband adoption rates—Los Angeles County, Inland Empire, and San Joaquin Valley. To be sure, 2.3 million low-income households is a huge number. To compare, that is 72% of all the low-income households in AT&T service area, 165% of all the low-income households in Comcast service areas, and 235% of the number in Frontier-Verizon’s post acquisition service area. The Charter-TWC-BHN corporate consolidation will result in a service area with 64% of the low-income households that would have been in the proposed Comcast-TWC-Charter service area. Charter also has a market capitalization that is 334% of Frontier.⁴²

Using 45% as the 3-year goal based on the CPUC Telephone Lifeline program, the Commission can calculate the size of the fund necessary. Experienced CBOs report an average cost of \$480 per sustainable broadband adoption, but CETF suggests that this amount can be driven down to only \$275 per adoption assuming a sincere, good faith partnership of New Charter in this effort with experienced CBOs who have successfully worked on broadband adoption previously. The figure of \$275 was arrived at by CETF and partners based on: (a) estimated cost of each sign-up at \$250 per household (to cover the costs of outreach, digital literacy training and completion of a subscription) if there was a sincere partnership with Charter (for example, establish a user-friendly sign-up process and do effective in-language, in-culture advertising); and (b) an allowance of up to an additional 10% (\$25) for independent fund management (to be selected by an appropriate state agency

⁴² As of 2/27/2016, Charter Communication’s market cap was \$21.22 billion. <https://www.google.com/#q=charter+market+cap> On the same date, Frontier Communications’ market cap was \$6.355 billion. <https://www.google.com/#q=frontier+communications+market+cap>

through an open competitive process).⁴³ These same figures were incorporated into the ALJ Proposed Decision for the Comcast – TWC case. Further, with an affordable broadband offer of \$15 per month, each new subscription would generate revenue of \$180 per year from each signed-up household or \$360 in 2 years. Thus, the investment of \$275 per household by New Charter would be paid back in less just 2 years (each Broadband Offer subscriber would generate gross revenue of \$540 in three years). This approach constitutes what economists call a “virtuous circle” because the funds contributed by the company into an independent fund are returned to the company by the customers in a very short period of time, and the grantees receive grant payments based on performance (eligible households actually signed up for broadband service). The benefits from such an “investment” also accrue to the overall economy in the form of increased productivity and to society in general as more low-income households and disadvantaged residents can use technology to become self-sufficient.

This \$275 per sustainable broadband adoption per household figure with a 45% goal is the amount for broadband outreach by CBOs, schools and libraries that an independent CPUC ALJ included as a condition in a Proposed Decision in the previous Comcast-TWC-Charter proceeding.⁴⁴ He found that “Comcast shall submit, for Commission approval, a plan to achieve its Internet Essentials enrollment requirement no later than 90 days following the effective date of the parent company merger, and each calendar year thereafter for a period of five years. The plan shall include (1) specific cost details, including but not limited to the amount of funds allocated to outreach and marketing with a minimum amount of \$275

⁴³ CETF and partners recommended that an independent fund be constituted by New Charter with no pre-designated grantees or manager to ensure transparency and accountability.

⁴⁴ See Proposed Decision of ALJ Bemserfer in Comcast – Time Warner, App. A, Conditions at 13 (emphasis added).

allocated per eligible household . . .” CETF suggests the Commission use this finding as a basis to order the same 45% goal and \$275 public benefit contribution per household here.

As to the reasonableness of the \$275 per household figure, CETF notes that Sprint PCS spends an average of \$315 in customer acquisition costs for a telecom customer, and so obtaining a new customer for \$275 is reasonable.⁴⁵ Further, Charter itself currently is offering on its public website to pay a new customer’s early termination fee *of up to \$500* to switch from a competitor to its services,⁴⁶ thus an investment of \$275 per low-income household is reasonable. Finally, the \$170 million that will be paid to senior corporate executives if the Charter transaction is approved⁴⁷ would fund more than 618,000 low-income household adoptions.

Thus, CETF proposes as an *appropriate, fair and comparable public benefit* for the Charter-Time Warner Cable-Bright House Network merger, using the amount of \$275 per household, a fund contributed by New Charter of *\$285,000,000 to reach 45% of all eligible low-income households at \$275 per household* (of which \$133,000,000 is a public benefit to reach 45% of households with students eligible for the NSLP at \$275/household).⁴⁸ For New Charter, CETF has calculated that a 45% goal would consist of 1,036,104 new broadband adoptions for low-income households in the state.⁴⁹

⁴⁵ “How Much Did That New Customer Cost You,” Entrepreneur magazine article (Jan. 14, 2013). <http://www.entrepreneur.com/article/225415>

⁴⁶ In a “Charter Spectrum Contract Buyout” offered on its public website, Charter will mail a check for up to \$500 in early termination fees to a new customer who switches from a competitor to its service and who had to break a long term contract. Attachment C; see also <https://www.charter.com/browse/content/org-na-nocontracts-sp-top#/switch>

⁴⁷ See footnote 39 *infra*.

⁴⁸ Attachment A contains further data supporting these figures.

⁴⁹ 1,036,104 times \$275 cost per HH equals \$284,928,600 (rounded up to \$285 million). See last page of Attachment A, setting forth CETF’s estimates of low-income households in the Charter, Time Warner Cable and

The Commission may ask why CETF proposes that outreach by community-based organizations are necessary for success. CETF has learned from its “*Get Connected!*” program and ARRA broadband adoption projects that ISPs are not effective in reaching low-income communities and are not trusted. ISPs have been reluctant to aggressively market and promote low-cost offers for these stand-alone broadband plans. CETF quotes from reports filed with it by two CBOs on the topic:

OTX-West: “Another challenge was in finding and maintaining low-cost Internet options for customers. It is particularly disappointing that the carriers (particularly AT&T and Comcast) only have market rate offerings. Credit checks make access even more difficult for low-income families. OTX-West did have success with the One Economy program with AT&T (AccessAll), but AT&T withdrew the low-cost offer with the switch to U-verse.”

CDTech: “Unfortunately, as we continued to enroll [low-income] families in the program, the vast majority of the applicants were informed by the service provider (AT&T) that high-speed DSL could not be made available to them. At this point, CDTech’s credibility in the community was being negatively affected by this denial of service and we discontinued the broadband outreach and orientation program until the problem could be resolved. . . CDTech recruited, trained and followed-up with clients to assist them install the modem in their homes. The staff heard from the majority of these clients, 216 of which 100 were allowed to subscribe. After talking to AT&T directly, the CDTech staff learned that applicants were being denied the service because even though 1,000 slots had been allotted to the South [Los Angeles] region, only 100 were available at any given time for the free internet service introductory offer. This is outrageous and caused CDTech to share misleading information [with the community].”

Finally, CETF notes that the San Joaquin Valley is a region in need of more attention on broadband adoption and deployment. It has extremely poor residents that respond well to trusted messengers like CBOs. The work to connect low-income households, especially first time Internet adopters, at this point in time requires multiple contacts with these persons by

Bright House areas based on various databases, and then calculating 45% of that figure to arrive at the 1,036,104 low-income household figure. This is then multiplied by \$275 cost per household to achieve broadband adoption arrive at a donation figure of \$285 million to connect these 45% of unconnected households. CETF is not asking the Applicants to do 100% of the broadband adoption work, but less than half. Given only one or two broadband providers provider broadband service at speeds meeting the FCC minimum benchmark standard of 25 Mbps, CETF suggests that asking each major provider to meet a goal of 45% is reasonable, to reach the goal of 90% household of adoption in a service area.

community members who are trusted and patient. Based on many years of experience CETF has had “in the trenches” of broadband adoption work in low-income neighborhoods in California, we can say with certainty that community-based organizations are critical “trusted messengers” that can affordably and successfully reach out to the targeted community and sincerely encourage them to subscribe to a low-cost broadband service and discuss benefits, without conflicting commercial interests. This is why an independent fund to support performance-based grants to CBOs is a pivotal to increasing broadband adoption.

5. Establish an Oversight Committee

An independent oversight committee should be established to monitor New Charter’s progress on this effort. The committee would meet periodically to review the company’s progress, make suggestions, provide feedback, and make recommendations to the agency on the program’s effectiveness and improvements. Further, the Commission should require New Charter to collaborate with its Communications Division staff to draft a specific strategic plan to close the Digital Divide as to broadband services for the state. The oversight committee should include senior executives from New Charter, Commission oversight staff, experienced non-profit organizations with a track record of accomplishment in closing the Digital Divide, and consumer representatives. Additional members may include experts knowledgeable about Digital Literacy, effective use of technology in education, integration of information and communications technology (ICT) skills in workforce preparation, and telehealth-telemedicine. The advisory oversight committee should receive quarterly reports on progress from the independently-capitalized and administered fund discussed immediately above in (4).

C. New Charter Should Make Commitments to High-Speed Broadband Deployment to Ten Unserved and Underserved Areas in California

On the equally important issue of broadband infrastructure deployment, CETF further recommends that New Charter be required to deploy high-speed broadband into priority unserved or underserved areas in, adjacent to, or near, its service areas, particularly in areas designated by the Commission relating to the California Advanced Services Fund broadband infrastructure program in its Resolution T-17443.⁵⁰ In Appendix 4 of Resolution T-17443, the Commission in partnership with 15 regional broadband consortia has designated unserved and underserved areas that are priority areas for new broadband builds. CETF requests that the Commission require New Charter to identify and select ten (10) unserved or underserved California areas with significant population and require these areas be built out with broadband of adequate speeds compatible with the rest of the New Charter network. This requirement would represent a true public benefit to those residing in rural, remote and tribal areas who desire broadband for economic development and societal benefits, but have been denied it by the incumbent broadband providers. This proposal would meet the objectives of Section 706 of the federal Telecommunications Act of 1996⁵¹ of encouraging “the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local

⁵⁰ Resolution T-17443, at Appendix 4, “Broadband Infrastructure Priority Areas”.

⁵¹ Section 706(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, §706, 110 Stat. 56, (1996), as amended by the Broadband Data Improvement Act, Pub. L. No. 110-122, Stat. 4096 (2008), is now codified in Title 47, Chapter 12 of the USC, at 47 U.S.C. §1302.

telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

Broadband mapping in California reveals that rural, remote and tribal areas of the state are not adequately served by broadband facilities at speeds defined by this Commission for the Connect America Fund. Currently, broadband providers solely decide where to deploy infrastructure. Given the high cost of broadband deployment to rural, remote and tribal areas, these are the “broadband wastelands,” which perpetuate isolation of its residents from the rest of modern society. The issue of rural, remote and tribal areas being unserved is a serious detriment to our nation’s economic development and global competitiveness. A 2012 study by the International Telecommunications Union, found that expanding access to affordable broadband services has “considerable positive spill-over effects on the economy,” both in terms of fostering GDP growth and creating jobs.⁵² As a result, CETF recommends three conditions be imposed as public benefit requirements for broadband infrastructure deployment in California.

1. Require High-Speed Broadband Deployment in Priority Areas

CETF proposes that the Commission require deployment of wireline broadband by New Charter of a minimum number of priority unserved and underserved areas that meet acceptable threshold speeds to both the FCC and respective states. In California, deployment should be required into at least ten (10) unserved or underserved areas as designated by the CPUC relating to the California Advanced Services Fund (CASF) in Resolution T-17443. The plans should be specific as to the proposed construction, speeds, and timetable. The

⁵² Impact of Broadband on the Economy, Telecom Development Sector, ITU study, dated April 2012, at 3. https://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports_Impact-of-Broadband-on-the-Economy.pdf

plans should be coordinated with the CPUC's Broadband Policy and Analysis Branch of the Communications Division, and subject to input by stakeholders including local governments, anchor institutions, public safety groups, and interested non-profit organizations. CETF recommends that New Charter focus deployments projects in the Inland Empire (including California City, Coachella Valley, and tribal lands), San Joaquin Valley, Salinas Valley, and Modoc County (around Alturas) for network upgrades and extensions.

2. Require Network Upgrades

CETF proposes that this Commission require upgrades to the broadband network now and periodically to meet service and performance requirements set by regulatory agencies to support prevalent consumer applications. Consumers include: residential last-mile customers; schools, libraries and other anchor institutions; small and larger employers; higher education and research institutions; and facilities to control and manage other critical statewide infrastructure such as power grids and water systems.

3. Encourage Collaboration with Other Deployment Initiatives

Finally CETF encourages collaboration with FirstNet to assist the nation with emergency response capabilities and to explore opportunities to coordinate deployment projects with statewide networks, such as CENIC, K-12 High-Speed Network, CalREN, and the California Telehealth Network.

III. Conclusion

Broadband is essential 21st Century infrastructure for global competitiveness, and is a key factor in attracting capital investment to generate jobs. Communities without broadband access are being left behind in the Digital Age, including low-income students, people with

disabilities, and poor seniors. To borrow from a well-established civil rights principle, *“access delayed is access denied.”*

This is why this Commission should order an appropriate, fair and comparable public benefit as to this corporate consolidation, in line with recent consolidations where other major broadband providers offered significant, tangible commitments for affordable broadband offers for all low-income persons and significant broadband infrastructure upgrades, particularly in rural California. CETF has provided the Commission with the data and a framework for action based on the prior Comcast–Time Warner Cable–Charter Proposed Decision, the FCC AT&T – DirecTV order, and the Frontier–Verizon CPUC decision. This data shows that New Charter will have in its service area more than 2.3 million low-income households, the bulk of which are in the very populous Los Angeles area where the Digital Divide is acutely prevalent. Sections 854(c) and 709 of the PU Code coupled with authority from Section 706 of the Telecom Act of 1996 provide a solid foundation to order these recommendations as conditions of any approval. Clearly New Charter has the financial capacity to make the investments in broadband adoption and broadband deployment, but have not yet made the commitment to provide a tangible public benefit as a result of this corporate consolidation. This Commission should ensure that Applicants bore its burden to prove that the public interest will be served by this consolidation.

Closing the Digital Divide with public policies and strategies to achieve ubiquitous broadband deployment and to accelerate broadband adoption is an imperative for economic prosperity, quality of life, and family self-sufficiency. Fortunately, this is a goal that can be achieved with inspired vision, focused leadership, alignment of existing resources, and

enlightened investment of public and private funding in a sincere partnership. CETF asks this Commission to continue to be state leaders on Internet for all.

Wherefore, CETF respectfully requests that this Commission grant its request for public interest benefits, the five enumerated above for broadband adoption and three for broadband deployment as conditions should this transaction be approved.

Respectfully submitted,

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Table of Authorities

Federal Law

Section 706(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, §706, 110 Stat. 56, (1996), as amended by the Broadband Data Improvement Act, Pub. L. No. 110-122, Stat. 4096 (2008), is now codified in Title 47, Chapter 12 of the USC, at 47 U.S.C. §1302.

Decisions of the Federal Communications Commission:

Memorandum Opinion and Order, In the Matter of Applications of Comcast Corp, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, FCC 11-4, MM Docket No. 10-56 (adopted Jan. 18, 2011, rel. Jan. 20, 2011).

Memorandum Opinion and Order, In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket 05-65, FCC 05-183 (adopted Oct. 31, 2005, rel. Nov. 17, 2005).

Memorandum Opinion and Order, In re Applications of AT&T Inc. and DirecTV For Consent to Assign or Transfer Control of Licenses and Authorizations, FCC 15-94, in MB 14-90 (adopted Jul. 24, 2015; rel. Jul. 28, 2015).

Memorandum Opinion and Order, In the Matter of Applications of Comcast Corp, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, FCC 11-4, MM Docket No. 10-56 (adopted Jan. 18, 2011, rel. Jan. 20, 2011).

California Public Utilities Code:

California Public Utilities Code Section 854(c), 854(c)(2), 854(c)(6).
California Public Utilities Code Section 709.

Decisions of the California Public Utilities Commission:

Resolution No. T-17443, Implementation of New Timelines for California Advanced Services Fund Applicants, approved June, 26, 2014

Decision No. (D.) 97-03-067, In the Matter of the Joint Application of Pacific Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U 1001 C), Which Will Occur Indirectly as a Result of a Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc. (adopted Mar. 31, 1997, mailed Apr. 1, 1997).

Opinion Approving Application to Transfer Control, In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control of AT&T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462),

TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a AT&T Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation, D.05-11-028 (adopted Nov. 18, 2005, mailed Nov. 22, 2005), A. 05-02-027.

Decision Authorizing Change in Control, In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI, D. 05-011-029, in A.05-04-020 (adopted Nov. 18, 2005, mailed Nov. 23, 2005).

Decision Granting Application Subject to Conditions and Approving Related Settlements, D. 15-12-005, In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications, A.15-03-005 (adopted Dec. 3, 2015; issued Dec. 9, 2015).

Proposed Decision in a CPUC Proceeding:

Proposed Decision of ALJ Bemesderfer (never approved by the full Commission due to withdrawal of the application by Joint Applicants), Decision Granting With Conditions Applications to Transfer Control, Joint Application of Comcast Corp., Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California) LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a), A. 14-04-013, A. 14-06-012 (mailed 2/13/2015).

World Wide Web Links:

About the California Telehealth Network <http://www.caltelehealth.org/about>

California Emerging Technology Fund Working Statement ARRA Match Funding and Submission of Unsolicited 2009 Concept Proposals, April 24, 2009
http://www.cetfund.org/files/Website%20Statement%2042409%20_2_0.pdf

CETF Get Connected! Overview

http://www.cetfund.org/investments/overview/Get_Connected

CETF Annual Report, 2012-2013

<http://www.cetfund.org/files/CETF2012-2013ARwebRGB.pdf>

The Field Poll, Release #2509, "Wide Differences in Broadband Connectivity Across California Households; Disparities Exist Among Demographic Subgroups" June 16, 2015
<http://www.field.com/fieldpollonline/subscribers/RIs2509.pdf>

Charter Communications Press Release, "Charter Announces Details of Industry Leading Low Cost Broadband Service," dated December 17, 2015

<http://www.prnewswire.com/news-releases/charter-announces-details-of-industry-leading-low-cost-broadband-service-300194831.html>

Internet Innovation Alliance, Online Applications Required by 80% of Fortune 500 Companies (base study 2010 “Expanding Opportunities in the Hispanic Community”)
<http://internetinnovation.org/factbook/entry/online-applications-required-by-80-percent-of-fortune-500-companies/>

Op-Ed by FCC Commissioner Jessica Rosenworcel, “How to close the ‘Homework Gap’ ” dated December 5, 2014
<http://www.miamiherald.com/opinion/op-ed/article4300806.html>

C. Kang, “Bridging a Digital Divide That Leaves Schoolchildren Behind,” New York Times, dated Feb. 22, 2016
<http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?ref=education&r=0>

TWC Press Release “Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks,” dated May 26, 2015
http://s1.q4cdn.com/730563363/files/chtr/CHTR-TWC-BHN_Release_FINAL_v001_h4g1jc.pdf

Food Services Division Fact Sheet, Los Angeles Unified School District Food Service Division, for 2013-2014 school year. The LAUSD home page states it has 640,000 students enrolled in K-12 grades at over 900 schools. <http://achieve.lausd.net/about>

Comcast Internet Essentials Apply webpage
<https://apply.internetessentials.com/>

State of California Budget Change Proposal “Increase Appropriation to Ensure Adequate Funding for Lifeline Services in Light of Increased Wireless Subscribers, Sec. D “Justification” (January 2015)
http://www.cpuc.ca.gov/NR/rdonlyres/7FBA0C56-0D99-4C66-8A3E-A202D396CBA6/0/BCP_7_Lifelinefinal.pdf.

Charter Communications Inc. Google stock tracker
<https://www.google.com/#q=charter+market+cap>

Frontier Communications Corp. Google stock tracker
<https://www.google.com/#q=frontier+communications+market+cap>

Impact of Broadband on the Economy, Telecom Development Sector, ITU study, dated April 2012.

“How Much Did That New Customer Cost You,” Entrepreneur magazine article (Jan. 14, 2013).

<http://www.entrepreneur.com/article/225415>

“Charter Spectrum Contract Buyout” pays new customers up to \$500 in early termination fees to switch from a competitor to Charter’s service. Live link as of 2/29/2016:

<https://www.charter.com/browse/content/org-na-nocontracts-sp-top#/switch>

Impact of Broadband on the Economy, Telecom Development Sector, ITU study, dated April 2012. https://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports_Impact-of-Broadband-on-the-Economy.pdf