

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of )  
Application of Charter Communications, Inc., )  
Time Warner Cable Inc., and ) MB Docket No. 15-149  
Advance/Newhouse Partnership For Consent to the ) (filed June 25, 2015)  
Transfer of Control of Licenses and Authorizations )  
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**Reply of the California Emerging Technology Fund to Opposition to  
Petitions to Deny and Response to Comments of Applicants**

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### *Public Benefit Requirements for Broadband Adoption*

- 1. Require a stand-alone affordable \$10 broadband offer for all low-income households for three years or until 80% of all low-income households are connected
- 2. Establish a 45% performance goal to be reached within three years
- 3. Direct collaboration with states to develop a written strategic plan to close the Digital Divide
- 4. Require capitalization of an independent fund for adoption, to engage experienced CBOs, schools and libraries as “trusted messengers” to increase broadband adoption by signing up 45% of eligible low-income households
- 5. Establish a National Advisory Oversight Committee

### *Public Benefit Requirements for Broadband Infrastructure Deployment*

- 1. Require high-speed broadband deployment in priority areas
- 2. Require network upgrades to meet service and performance requirements set by regulatory agencies to support prevalent consumer applications
- 3. Encourage collaboration with other deployment initiatives, such as FirstNet, and coordinate deployment projects with statewide networks, such as CENIC, K-12 High-Speed Network, California Research and Education Network (CalREN), and the California Telehealth Network

Attachment A CETF Adopted Recommendations for Corporate Consolidations (August 2015)

Attachment B Declaration of Zach Leverenz, CEO, EveryoneOn about Bright House Networks Connect2Compete Offer

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The California Emerging Technology Fund (CETF) hereby submits its reply to Charter’s Opposition to Petitions to Deny and Response to Comments (Charter Opposition) in the above-referenced docket. As noted in its previous comments, CETF’s participation in this docket is to secure necessary policy and sufficient resources to meet the adopted goals for broadband deployment and adoption in California. CETF has been participating as a legal party in various corporate consolidation applications, both before the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC) to ensure that in evaluating these corporate consolidations, the decision makers include important public interest benefits as to broadband deployment, broadband adoption and digital literacy.<sup>1</sup> As to each consolidation, CETF has presented data from common sources to increase transparency in the regulatory review process and to establish a basis for quantifying a reasonable and fair contribution by each company to an independent fund to support outreach, digital literacy and sign-ups by low-income households. CETF respectfully requests corporate obligations that are “appropriate, fair and comparable” in achieving the broadband infrastructure, broadband adoption and Digital Divide goals outlined in the National Broadband Plan and other recent FCC broadband decisions. CETF

<sup>1</sup> Among the dockets CETF has participated in are Comcast – Time Warner Cable, AT&T - DirecTV, Frontier-Verizon and Altice – Suddenlink. In addition, CETF is participating in the FCC Lifeline Link Up proceeding to advocate for a broadband Lifeline program and filed extensive comments with the President’s Broadband Opportunity Council.

hereby attaches as Attachment A the CETF Board Adopted Recommendations for Corporate Consolidations, dated August 2015, which sets forth the five general recommendations on broadband adoption and three general recommendations on broadband deployment that it has advocated in all the corporate consolidation dockets, including this one.

### **I. Charter's Opposition Is Both Unresponsive and Unrealistic to CETF Concerns**

In Charter's Opposition, it is unresponsive to the recommendations by CETF and other partners to invest in a tangible public benefit to increase broadband adoption among disadvantaged populations and appears to be turning its back on low-income consumers. In sum, the single sentence promising to expand the fledgling Bright House discounted broadband program is at best a token gesture. Furthermore, Charter is ignoring the reality of precedents in previous recent corporate consolidation proceedings in which significant public benefits were volunteered by other major broadband providers, and incorporated as conditions by the FCC or CPUC for its regulatory approval. For example:

- The FCC required SBC Communications Inc. to provide discounted DSL Internet service as a condition of approval of the SBC-AT&T acquisition in 2005.<sup>2</sup> Further, the CPUC directed the capitalization of CETF<sup>3</sup> as a statewide non-profit organization with the mission to close the Digital Divide in California, resulting in increasing broadband adoption from 55% to 79% statewide and the founding of the California Telehealth Network, School2Home, and a Smart Housing Initiative as well as expansion of the California Advanced Services Fund to support deployment.

<sup>2</sup> Memorandum Opinion and Order, In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, FCC WC 05-65 (rel. Nov. 17, 2005), Appendix F, at 122.

<sup>3</sup> CPUC Press Release, dated Nov. 18, 2005, "PUC Approves Telecom Mergers, Approval Addresses "Digital Divide" (As a condition of the telecom mergers, the CPUC required Verizon and SBC to contribute \$60 million over five years to establish CETF, to fund deployment of broadband facilities in underserved communities.

[http://docs.cpuc.ca.gov/published/NEWS\\_RELEASE/51357.htm](http://docs.cpuc.ca.gov/published/NEWS_RELEASE/51357.htm)

- The FCC accepted the voluntary commitment by Comcast to establish an affordable broadband program called Internet Essentials (IE) with a rate of \$9.95 per month, including the ability to purchase a computer for \$150 and free online digital literacy training for families with students who qualify for the National School Lunch Program, as a public benefit contribution in conjunction with the acquisition of NBCUniversal. Comcast since then has continued, expanded, and improved the IE program beyond its initial three year commitment, including speed upgrades and eligibility expansion.
- A CPUC Administrative Law Judge (ALJ) issued a Proposed Decision (PD) on the Comcast-Time Warner Cable (TWC)-Charter corporate consolidation requiring Comcast to expand IE to all low-income customers and to achieve 45% sign-ups by eligible households by investing at least \$275 per household for outreach and digital literacy, including to engage community-based organizations (CBOs), schools and libraries as “trusted messengers” to reach disadvantaged communities in-language and in-culture. The CPUC ALJ PD would have resulted in 1.5 million low-income households being connected at home with high-speed Internet service and all of the funds invested by Comcast would have been returned to the company in less than 3 years from new customers subscribing to IE. The applicants withdrew their application before the PD was voted on by the full Commission.
- As a voluntary commitment, the FCC conditioned the AT&T purchase of DirecTV this year on a discounted broadband program at the rate of \$10 per month (for 10 Mbps downstream speed) to low-income households for up to four years. This groundbreaking offer will result in millions of low-income customers across the country having the opportunity to participate in the digital economy.
- This month, Frontier Communications Corporation voluntarily entered into a Memorandum of Understanding (MOU) with CETF to increase broadband adoption for 200,000 low-

income households in California and to offer affordable broadband at \$13.99 throughout the new service areas as a condition in its purchase of the Verizon wireline network. Frontier also will provide 50,000 Internet-enabled computing devices (compatible with the needs of students and school districts to close the “homework gap”) and will contribute \$3 million to support CBOs to assist with outreach and digital literacy. Frontier also made significant broadband deployment public benefit commitments to upgrade service to more than 327,000 underserved locations and to reach 107,000 unserved households that were valued as an offset to higher broadband adoption requirements. An ALJ’s Proposed Decision approving this MOU is pending before the CPUC in A.15-03-005.

In stark contrast, the instant application by Charter lacks a similar “appropriate, fair and comparable” voluntary public benefit commitment. Although the FCC is in the process of considering a Broadband Lifeline Program in WC Dockets No. 11-42, 09-197, 10-90, there is an immediate and urgent need for major broadband providers to offer an affordable broadband offer for low-income households who are stranded on the wrong side of the Digital Divide. Further, broadband providers should step up to the plate to assist with outreach and digital literacy until a FCC digital literacy program is operational. In CETF’s view, the FCC conditions applied to AT&T in the acquisition of DirecTV are a reasonable minimum as a starting point, and assure a 4-year interim period as a transition to a universal Broadband Lifeline program. Thus, CETF strongly encourages the FCC to require New Charter to offer an affordable broadband rate to all low-income consumers in the New Charter service territory, and 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 CBOs to assist with outreach, digital literacy and subscriptions to achieve that goal.

The question then becomes how to quantify a broadband adoption goal for enrolling unconnected low-income households and the amount of a public benefit contribution that is “appropriate, fair and comparable” in light of the voluntary public benefit contributions and regulatory requirements delineated above for other companies. In its initial filing, CETF relied upon the expertise of the independent CPUC ALJ and his PD for the Comcast-TWC-Charter deal as a reasonable approach and objective benchmark to determine an “appropriate, fair and comparable” public benefit by New Charter. CETF provided detailed census data and analysis to the CPUC to support the recommendation for an independent fund of \$285 million in California which remains a justifiable condition of approval for the pending corporate consolidation. However, instead of simply refusing to consider the CETF recommendation, it is incumbent upon the applicant Charter to propose an alternative methodology that it thinks will be “appropriate and fair” and that can be applied in a “comparable” manner to all pending corporate consolidations with transparency and accountability.

The following information provides additional data and alternative lenses based on market capitalization for the FCC and the applicant to determine an “appropriate, fair and comparable” public benefit contribution for broadband adoption by New Charter. In California, New Charter will have 2,302,454 low-income households (under \$40,000 annual income) in its service areas (529,956 Charter households + 1,680,827 TWC households + 91,671 Bright House households). That is 72% of all of the low-income households in AT&T service areas, 165% of all the low-income households in Comcast service areas, and 235% of the number in Frontier (post acquisition of the Verizon wireline network). And, the Charter-TWC-Bright House 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 combined territory. In addition, today Charter has market capitalization that is 348% of Frontier. These comparisons suggest that, as an

alternate approach, a reasonable goal for New Charter is to increase broadband adoption by 696,000<sup>4</sup> – 960,000<sup>5</sup> low-income households in its service areas in California, and to invest sufficient resources and capital to engage CBOs, schools and libraries to assist them in achieving this goal.

CETF set forth recommendations to increase broadband adoption among disadvantaged populations based on best practices derived from extensive on-the-ground experience, including the need to invest approximately \$275 per adoption to engage CBOs, schools and libraries as “trusted messengers” to reach disadvantaged low-income households. The rationale for this figure was well documented and the independent CPUC ALJ incorporated that figure into his Proposed Decision on Comcast, validating the veracity of CETF and the validity of the approach.

However, CETF and its partners also are open to considering other equally-effective approaches if the applicant is sincere about commitments and willing to work in good faith with CETF and its partners to achieve explicit goals. CETF actively supports the promulgation of public-private partnerships as a public policy foundation for closing the Digital Divide by harnessing the discipline and innovation of the private sector with the expertise and cultural competency of those working on behalf of the public sector. CETF respectfully continues to invite Charter to consider the goals and thrust of the CETF recommendations and propose a reasonable and significant public benefit for broadband adoption. CETF further requests the FCC take an active role in encouraging a substantial voluntary commitment as a public benefit of the transaction to serve the public interest.

<sup>4</sup> 686,000 is 348% of 200,000 (200,000 is the obligation that Frontier accepted from the CPUC, and the Charter market capitalization is 348% of Frontier).

<sup>5</sup> 960,000 is 64% of the 1.5 million households that Comcast would have been responsible for connecting under the CPUC ALJ Proposed Decision in the Comcast-TWC-Charter merger. P

## **II. New Charter's Affordable Broadband Rate Offer for Low-Income Consumers Lacks Critical Program Details**

CETF is frankly disappointed in the response of Charter as expressed in the Charter Opposition to issues raised by CETF on broadband deployment and adoption issues. Charter has given short shrift to CETF's sincere and detailed recommendations. On the affordable broadband rate offer, Charter fails to address CETF's detailed recommendations for a successful broadband affordable rate program, but merely repeats the vague promise that it has made an "enforceable commitment" to expand Bright House Network's low-income program by making a broadband offer available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount.<sup>6</sup> There is not a single detail about the rate, terms and conditions, speed, modem, outreach plans, or funding level. On broadband deployment, Charter reiterates its commitments from its Application but fail to address CETF's requests for high-speed broadband deployment in priority areas, network upgrades and collaboration with other deployment initiatives such as FirstNet, and statewide networks, in education and telehealth.

CETF is pleased that Charter made a commitment to a low-income affordable broadband program to be deployed in the entire New Charter service territory, but is deeply troubled by the paucity of details about the proposed program. In the Charter public benefit offer in its Application, reference is only made to a Bright House Network (BHN) affordable broadband offer but not a single detail about this offer is given. CETF had to inquire with Bright House Networks counsel and EveryoneOn to determine details of the BHN offer. Attachment B is a statement from Zach Leverenz, the CEO of EveryoneOn, describing the Connect2Compete (C2C) Bright House offer in Florida which was committed to in 2012. There are a number of issues with the current BHN C2C offer. First, the speed of the C2C Internet service is very slow:

<sup>6</sup> Charter Opposition, at 84.

2 Mbps download and 1 Mbps upload. This is below both the FCC and the CPUC's broadband speed definition. Second, Mr. Leverenz points out that BHN only holds open enrollment for this C2C program for about three months at the beginning of each school year. This narrow window for sign-ups shows a lack of strong commitment to the program. Third, CETF finds unnecessarily onerous the terms and conditions that limit the offer to low-income families eligible that have not subscribed to BHN Internet service within the last 90 days and have no outstanding bills or unreturned equipment to BHC. Low-income households with under \$40,000 of annual income experience cash flow issues and may need to turn off and on Internet service when more pressing needs – rent, food, and car expenses – arise. Having overly restrictive conditions serves to disqualify the very target population the program is supposed to be helping.

In CETF's view, there are many key terms and conditions missing from the Charter voluntary low-income program from its FCC Application: (1) price of the broadband offer; (2) an adequate speed of the broadband service to handle modern applications; (3) eligibility criteria; (4) length of the offer, and (5) prohibition of the following terms: long-term service contracts, onerous deposit requirements, social security number requirement, credit check requirement, deposits for required equipment, requiring online sign up, requirement the subscriber is new, or requirement that subscriber had not past ad debt or unreturned equipment. Further CETF made an important request that any modems provided by New Charter have Wi-Fi capability in order for computing devices issued by schools to be compatible and to allow more than one household member to access the Internet at once. CETF also requested sufficient advertising in targeted low-income communities to make residents aware of the affordable offer and low rate, including advertising in minority media outlets and community gatherings, and using in-language and in-culture methods.

If a low-income broadband program is to be offered by Charter, CETF has advocated for a performance goal of 45% be set by the FCC for this program. Yet this important aspect is missing from the New Charter commitment. Finally a long-term goal of 80% of broadband subscription should be set for low-income neighborhoods in major service areas of New Charter. Equally important is monitoring the program to ensure a good faith, sincere effort by New Charter. Accountability should be achieved via annual reporting to the FCC that is available to the public and a National Advisory Oversight Committee that meets quarterly.

Also missing from Charter's proposal is a commitment to work with states on a strategic plan on broadband adoption. For example in California, Charter should commit to work closely with the California PUC, the Rural Regional Broadband Consortia, FirstNet, local government, anchor institutes (like schools, libraries, public safety, health care providers), and experienced community-based organizations (CBOs) to coordinate its broadband low-income program with current efforts going on in the state on broadband adoption. It is CETF's experience that in the last nine years, Charter and Time Warner Cable have been noticeably absent in participating in broadband adoption efforts in California. Given the diversity of California's population, its high cost of living, and its generous telephone Lifeline programs for low-income consumers, Charter should be ready to step up to the plate and lead on these important efforts with an affordable broadband rate and a serious broadband adoption program, along with other major broadband providers including Comcast, AT&T and Frontier who have made important commitments in these areas.

CETF is also concerned about the lack of commitment from Charter for establishing an independent fund for broadband adoption efforts, including engaging experienced CBOs and anchor institutions in broadband adoption as 'trusted messengers' to low-income target populations. In its prior Comments, CETF set forth its calculation for the size of fund necessary

for broadband adoption efforts in California by looking at the number of unconnected persons in the New Charter service areas. (See Attachment B to the CETF Comments to see service area base data for broadband providers in California to determine appropriate, fair and comparable public benefit contributions relating to various proposed corporate transfers impacting the state.) Using this methodology, CETF proposed a fund of \$285,000,000 would be adequate to reach 45% of all eligible low-income households at \$275 per household. This fund would provide for meaningful outreach to connect the hardest to connect low-income households. Finally, Charter has disregarded CETF's proposal to establish an independent National Advisory Oversight Committee to monitor progress on its broadband adoption program, and requirements that it coordinate with state agencies broadband adoption efforts. In light of all these serious shortcomings in the public benefit offer relating to broadband adoption, CETF cannot recommend to the FCC that it accept the New Charter commitment as in the public interest.

### **III. Charter Has Not Fully Committed to Important Broadband Deployment Collaboration with States and Anchor Institutions**

While Charter has committed to important broadband infrastructure upgrades which are clear benefits to the proposed transaction, CETF points out Charter has not made firm commitments as to particular projects. CETF has concerns about any area of the New Charter territory including particularly rural, remote and Tribal areas of the New Charter California territory which currently are not adequately served by broadband facilities at speeds defined by the FCC for the Connect America Fund (10 Mbps download and 1 Mbps upload). Charter should do its part in deploying facilities to the priority unserved and underserved areas of California identified by the California PUC in Resolution No. T-17443. Thus CETF has recommended in its Comments that the FCC condition any approval on Charter working with the state utility commissions and broadband organizations designated by those commissions working

on broadband deployment issues. In California, it is important for Charter to agree to work in good faith with FirstNet to assist the nation with emergency response capabilities, and to explore opportunities to coordinate deployment projects with other statewide broadband networks, such as CENIC, K-12 High-Speed Network, CalREN and the California Telehealth Network.

#### **IV. The Commission Should Condition Any Approval on the Eight Recommendations of CETF**

CETF respectfully requests this Commission grant its requests for public benefits as a condition if the Application is approved:

##### *Public Benefit Requirements for Broadband Adoption*

1. Require a Stand-Alone Affordable Broadband Offer for All Low-Income Households:

Require a stand-alone broadband wireline offer at about \$10 per month to all eligible low-income households in its service areas for at least three years or until 80% of all low-income households in its service areas are connected. Eligibility should be either by enrollment in existing state or federal programs designed to assist low-income persons or income level at 200% of the federal poverty level. There should be no installation fee or equipment fee, and a modem should be provided that includes a Wi-Fi router to address multiple users in a family unit. A broadband adoption plan should be prepared that includes outreach for actual sign-ups by community-based organizations of targeted low-income communities, digital literacy programs, technical assistance, acquisition of affordable computing equipment, independent program management and coordination, and in-language advertising that targets the low-income communities in media they use.

2. Establish a Performance Goal: Set a performance goal to reach and sign up 45% of eligible low-income households in its service areas within three years.

3. Direct Collaboration with States to Develop a Strategic Plan: Direct collaboration with this Commission and stakeholders to prepare a written Strategic Plan to close the Digital Divide in that state.
4. Require Capitalization of an Independent Fund for Adoption: Require a contribution of a sufficient amount to an independently-managed fund in each major market state to engage experienced CBOs, schools and libraries as “trusted messengers” to increase broadband adoption (outreach in language and culture, digital literacy training, and assistance with actual sign-ups) to sign up 45% of eligible low-income households. Grants should be made to CBOs, schools and libraries on a performance-basis (per subscription) and a management organization should be selected by an appropriate state agency through an open competitive process.
5. Establish a National Advisory Oversight Committee: A national advisory oversight committee should be established by the Commission to monitor performance and progress in achieving the 45% goal and provide feedback on effective broadband adoption.

*Public Benefit Requirements for Broadband Infrastructure Deployment*

6. Require High-Speed Broadband Deployment in Priority Areas: Require deployment of wireline broadband into a minimum number of priority unserved and underserved areas that meet acceptable threshold speeds to both the FCC and the CPUC. 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 T-17443.
7. 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.

8. 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 CENIC, K-12 High-Speed Network, California Research and Education Network (CalREN), and the California Telehealth Network.

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. CETF urges this Commission to continue to lead the nation on innovative federal broadband policies by ensuring that *all* people in our nation have state-of-the-art advanced broadband tools necessary for self-sufficiency and quality of life.

Respectfully submitted,

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