

**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).)
_____)

Reply Brief of

the California Emerging Technology Fund

Sunne Wright McPeak
President and CEO
California Emerging Technology Fund
The Hearst Building, 5 Third Street, Suite 320
San Francisco, California 94103
Telephone: (415) 744-2383
sunne.mcpeak@cetfund.org

Rachelle Chong
Outside Counsel to CETF
Law Offices of Rachelle Chong
220 Sansome Street, 14th Floor
San Francisco, California 94104
Telephone: (415) 288-4005
rachellechong@gmail.com

March 18, 2016

TABLE OF CONTENTS

Summary	
I. This Commission Has Clear Authority Under PU Code Sections 854, 882, 281 And Section 706(a) to Consider the Broadband Impacts of the Transaction.	4
II. Access Delayed is Access Denied: Charter’s Commitments Are Inadequate to Meet the Public Interest Requirement for the Transaction.	8
A. Charter’s Broadband Infrastructure Commitments Need Specificity as to California Projects and Should Be Allied with Commission Priority Areas.	8
B. Charter’s Affordable Broadband Offer Is Inadequate.	10
Conclusion	17

**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).)
_____)

Reply Brief

of the California Emerging Technology Fund

Summary

Representing the interests of Californians without broadband infrastructure and low-income consumers without broadband access in the New Charter service areas, the California Emerging Technology Fund (CETF) urges this Commission to reject arguments by Charter that broadband deployment and broadband affordability issues are outside this Commission’s jurisdiction to consider in the context of this merger. Federal and state laws clearly hold otherwise.

CETF further recommends that this Commission evaluate whether Charter’s voluntary commitments for infrastructure upgrades are adequate. While Charter’s broadband infrastructure

upgrade commitments sound promising, CETF highlights that New Charter's infrastructure promises are for *national* commitments. According to the United Nations, the Internet is a Human Right. In the United States, many speak of it as a "21st Century civil right." In either case, the country and particularly California is now in a Digital Economy, with some upheaval occurring as we make the transition. Now is the time for state policy makers to stand for an inclusive California that will meet the state's broadband deployment and adoptions goal by 2020.

CETF urges this Commission to obtain from Charter as a condition of the merger firm commitments and timelines for specific California broadband projects, and to order Charter to collaborate with the CPUC Communications Division, Rural Regional Broadband Consortia, FirstNet, the California Telehealth Network, and other major broadband projects in the State.

Pursuant to Sections 854(a) and (c) of the California Public Utilities Code (PU Code), CETF recommends that this Commission to adopt as required public benefit and public interest conditions the eight recommendations from CETF (supported by other consumer groups and dozens of community partners) to ensure broadband benefits to low-income households in the New Charter service areas. CETF urges this Commission to reject arguments by Charter in its Opening Brief that its current affordable broadband offer (Broadband Offer) is adequate, and that the independent fund proposed by CETF for broadband adoption is unlawful or otherwise inappropriate. Charter's affordable broadband offer leaves out all low-income households that do not have K-12 school age children enrolled in the National School Lunch Program or a senior enrolled in SSI, a safety net program for the very poor or disabled who are very poor. As currently configured, the Charter affordable broadband program is simply inadequate to achieve the state's goals of closing the Digital Divide for the Southern California area, consisting of 2.3 *million low-income households* in the New Charter service area.

Should this Commission see fit to grant this application, CETF respectfully requests that the Commission mandate the following eight conditions as critical public interest requirements to benefit the people of California by ensuring benefits to the low-income communities by providing an affordable broadband rate in the combined service areas under Section 854(c)(6) and requiring and monitoring the improvement of broadband infrastructure under Section 854(c)(2).

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.
2. Set a Performance Goal of 45% of the Eligible Low-Income Population.
3. Direct Collaboration with the Commission and CETF to Develop a Strategic Plan.
4. Require Capitalization of an Independent Fund for Adoption.
5. Establish an Advisory Oversight Committee.

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

1. Require High-Speed Broadband Deployment in Priority Areas.
2. Require Network Upgrades.
3. Encourage Collaboration with Other California Broadband Deployment Initiatives.

Finally, CETF recommends that the transaction should be approved without further delay in order to deliver the benefits of the broadband affordable offer and broadband upgrades to Californians as soon as possible.

I. This Commission Has Clear Authority Under PU Code Sections 854, 882, 281 and Section 706(a) to Consider the Broadband Impacts of the Transaction.

The Joint Applicants insist that broadband services “should not factor into this Commission’s review” of this transaction, arguing that the cable and broadband subsidiaries owned by their holding companies are not “public utilities” subject to the Commission’s

jurisdiction.¹ Joint Applicants further rely on Section 710(a) of the PU Code as exempting retail broadband and VOIP services from the Commission’s jurisdiction in order to foster a competitive market for these services. Finally, Joint Applicants assert that broadband services is jurisdictionally interstate for regulatory purposes.² CETF urges this Commission to reject these arguments by Joint Applicants as contrary to both state and federal telecommunications law.

Under state law, this Commission has authority under Section 854(a) and Section 854(c) of the PU Code to consider the impacts of the merger on broadband services, specifically whether the transaction would “[b]e beneficial on an overall basis to state and local economies, and to the communities in the area served” by the resulting entity.³ Section 854(c) authority supports three factors relating to the impact of this transaction – consumer benefits, broadband infrastructure, and broadband competition. The State has clearly expressed its state interest in these issues. For example in PU Code Section 882, the Legislature directed this Commission to open a proceeding to “consider ways to ensure that advanced telecommunications services are made available as ubiquitously and economically as possible, in a timely fashion, to California’s citizens, institutions and businesses.” Specific goals were set forth by the State Legislature which include:

- “To provide all citizens and businesses with access to the widest possible array of advanced communications services.”
- “To provide the state’s educational and health care institutions with access to advanced communications services.”
- “To ensure cost effective deployment of technology so as to protect ratepayers’ interests and the affordability of telecommunications services.”⁴

¹ Opening Brief of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC (U6878C), Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC (U6874C), Advance/Newhouse Partnership, Bright House Networks, LLC and Bright House Networks Information Services (California), LLC (U6955C), Highly Confidential Version, in A.15-07-009, filed March 1, 2016, at 17-18 (Joint Applicants Opening Brief).

² Joint Applicants Opening Brief, at 18-19.

³ PU Code Section 854 (c).

⁴ PU Code Section 882 (a) and (b).

PU Code Section 281 further elaborated on these themes when the State Legislature enacted the California Advanced Services Fund, the first state broadband infrastructure fund. The Legislature directed the Commission to development, implement and administer the fund “to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054 and Decision 09-07-020 and this section.”⁵ Thus it is proper and within the scope of this Commission’s authority to consider impacts on broadband infrastructure and Digital Divide impacts as to this transfer of control.

Further, CETF urges this Commission to reject Joint Applicant’s argument that federal law preempts this Commission from looking at impacts of the merger on broadband services in California. Section 706(a)⁶ of the 1996 Telecommunications Act explicitly gives *state commissions with regulatory jurisdictions over telecommunications services* limited jurisdiction on these topics: (1) deployment on a reasonable and timely basis of advanced telecommunications capability and (2) removal of barriers to infrastructure investment.⁷ In light of this clear language, one must conclude that this Commission has regulatory jurisdiction to consider broadband impacts of this merger relating to the deployment of broadband infrastructure and removing barriers to broadband investment.

⁵ PU Code Section 281(a).

⁶ Section 706(a) provides: “The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage 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 telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” 47 USC Section 1302.

⁷ 47 USC Section 1302.

It is an inconvenient truth that *Joint Applicants* solely decide where to install their broadband infrastructure, what Internet speeds to supply, and what rates, plans and eligibility should be offered for their broadband services. These corporate policies thus far have contributed to areas of California where high speed broadband is absent to the serious economic and social detriment of California residents. Further Joint Applicants' pricing policies have led to a very serious Digital Divide in California where a full *25% of our residents* – primarily persons who are low-income, limited-English speaking, people with disabilities, and seniors – are not connected to the Internet. The barriers to getting connected to the Internet are well known: cost, relevance, and digital literacy. As to cost, California's higher-than-average cost of living results in a higher poverty rate,⁸ making an affordable broadband rate even more important. The impacts of not being connected to the Internet are well known. With applications relating to government social services, education, health, and job opportunities increasingly reliant on Internet connectivity, the inability of low-income households to access the Internet at an affordable rate puts them at a considerable disadvantage compared to wealthier households. Should the Commission decide to approve the transaction, it should ensure significant and verifiable public benefits in the area of advanced telecommunications capability

⁸ Studies have shown that when various factors related to the cost of living are taken into account, California has the highest poverty rate of any state. On October 29, 2014, the *Daily Newsletter* published an article by Alexander E.M Hess and Thomas C. Frohlich that stated: "In no state was the gap between the official poverty rate and the supplemental poverty rate wider than in California. Between 2011 and 2013, an average of 16% of residents earned incomes below the poverty line, one of the higher rates in the nation. Once taxes, cost of living, and non-cash income were taken into account, the poverty rate rose to 23.4%, the highest supplemental poverty rate nationwide. California's high cost of living is the largest force pushing state residents into poverty. The cost of rent relative to the rest of the nation was higher than in every state except for Hawaii in 2012. Every day items are also more expensive in California than in the vast majority of states. And despite a wide-ranging need for government assistance, just 9.4% of households received food stamps last year, one of the lowest rates." Hess and Frohlich concluded that while the California official poverty rate is 16.0%, the "supplemental poverty rate" in 2011-2013 was 23.4.

and Digital Divide programs. It should reject Joint Applicants' claims that federal and state law provide insurmountable barriers to such important state action.

II. Access Delayed is Access Denied: Charter's Commitments Are Inadequate to Meet the Public Interest Requirement for the Transaction.

A. Charter's Broadband Infrastructure Commitments Need Specificity as to California Projects and Should Be Allied with Commission Priority Areas.

CETF is pleased that as part of the application Charter has made a significant \$2.5 billion commitment in four years to build-out New Charter's network into "commercial areas within its footprint but beyond where any of the Joint Applicants currently operate."⁹ This commitment, however, must be viewed through a California lens. First, CETF points out that this is a *national* commitment and there is scant detail from Joint Applicants about how much of these system upgrades will fall within California's borders. This Commission and the State Legislature has expressed concern about rural, remote and tribal areas of California that lack broadband infrastructure that can handle speeds adequate for current applications. Yet, the Joint Applicants' Opening Brief only mentioned a small handful of California-specific projects in the Salinas Valley area to which Joint Applicants' have made firm commitments to build.¹⁰ If these infrastructure upgrades are all California gets, this infrastructure commitment is paltry at best. Second, this commitment is for "*commercial*" areas only and not residential areas. CETF understands that New Charter wishes to bring commercial broadband service to businesses that can afford broadband, but once again, the careful wording makes clear that California rural, remote and tribal *residents* in unserved and underserved areas may continue to wait for broadband service from New Charter.

⁹ Joint Applicants Opening Brief, at 7, 9.

¹⁰ Joint Applicants mention settlement agreements with the County of Monterey and City of Gonzales which will result in upgrades to "multiple" community systems in the Salinas Valley region, bringing 60 Mbps base broadband speeds to communities in Monterey County served by video-only systems. Joint Applicants Opening Brief, at 7, 9.

As part of the merger, Joint Applicants also committed to build at least one million new “broadband passings” to service residential and small business locations.¹¹ This again is a *national* commitment, and there’s no clue provided as to how many of these one million new broadband passings will be within California, besides the small Salinas Valley commitment discussed above. CETF urges this Commission to require Charter to specify how many broadband passings to residential and small business customers of the one million lines commitment will be placed within California’s borders, and to obtain firm commitments that a significant percentage will come to our state’s unserved/underserved rural, remote and tribal areas within the New Charter service territory. California consumers deserve to know exactly where the projects will be, what Internet speeds will be provided, and when the construction will take place, to understand what the actual public benefits will be of the proposed transfer to our state.

Finally, Joint Applicants have promised deployment of 300,000 out-of-home Wi-Fi access points. CETF notes again that this is a *national* commitment; it is unclear how many and where such Wi-Fi access points will be in California. CETF recommends that a firm commitment be required as a condition of the merger approval for at least one-third of these 300,000 Wi-Fi access points be placed in California low-income communities and underserved communities. Before making its decision where to place these access points, New Charter should be required to consult for input with the Commission’s Communications Division staff specializing in broadband mapping, Rural Regional Broadband Consortia, local elected officials and emergency responders, and non-profit organizations and consumer groups knowledgeable about broadband issues. Further, CETF opines that the best place for such Wi-Fi access points

¹¹ Joint Applicants Opening Brief, at 9, first bullet.

would be in anchor institutions such as public libraries, community and recreational centers, civic centers, public schools, public hospitals, and emergency responder stations where low-income persons those without home Internet access can access the Internet for free.

B. Charter’s Affordable Broadband Offer Is Inadequate.

Charter has defended its affordable Broadband Offer in its Opening Brief.¹² Charter objects to CETF’s requests relating to the Broadband Offer on grounds that they “lack any nexus to any ‘harm’ created by the Transaction, they are in many instances commercially unreasonable, beyond the Commission’s statutory jurisdiction to impose, and in any event preempted by federal law”.¹³

First, Charter’s erroneous argument that broadband matters are beyond this Commission’s jurisdiction to impose and is preempted by federal law has already been discussed by CETF in Section I of this Reply Brief.

Second, CETF strongly disagrees with Charter’s argument that the changes to the Broadband Offer requested by CETF lack a nexus to any “harm” resulting from the transaction. CETF has provided data to this Commission that post-transaction, 2.3 million low-income households will be in the New Charter California service area, most of which are in the very populous Los Angeles County area. Los Angeles County represents 27% of the state’s population, and *33% of all California low-income households are located in that region.*¹⁴ Hence Charter Communications is buying the Digital Divide in California. CETF considers Los Angeles County “ground zero” for the Digital Divide in California and therefore the nation. Further, two other regions in the New Charter service area – Inland Empire and San Joaquin

¹² Joint Applicants Opening Brief, at 77-85.

¹³ Joint Applicants Opening Brief, at 78.

¹⁴ CETF Opening Brief, at 17-18, and Attachment A.

Valley – are the next poorest regions with the lowest broadband adoption rates in California.

The “harm” from this transaction is lack of an affordable broadband offer¹⁵ for all of these 2.3 million low-income households post-merger, *a situation with a direct link to the pricing policies exclusively within the control of the Joint Applicants.*

CETF remains deeply troubled by the eligibility provisions of the current Charter Broadband Offer. Charter’s Broadband Offer of \$14.99/month is limited to two eligibility prongs: (1) for households with an *enrolled* (not just eligible) K-12 child in the National School Lunch Program (NSLP), and (2) for households with one senior who is enrolled in the Supplemental Security Income (SSI) program. *CETF estimates that about half of the low-income households in the New Charter area – over one million households – will not be eligible for the Broadband Offer given that limited eligibility criteria.* So the harm from the proposed transfer will be that for those one million low-income households, this transaction will not result in an affordable offer for broadband service. This is why CETF’s requests are appropriate.

Despite the puffing by Charter in its Opening Brief, its Broadband Offer is considerably less generous than comparable offers by competitors. The Comcast Internet Essentials (IE) offer allows any household with an *eligible or enrolled* K-12 schoolchild for NSLP to qualify, and includes public schools, private schools, parochial schools and home-schooled children. All students in a school with 50 percent of NSLP students may be automatically enrolled in the Comcast IE program. Likewise, the FCC-approved AT&T affordable broadband offer of \$10 is for *all low-income households* in its service area, and the price point is the very affordable at \$10, on par with the Comcast IE offer. The Frontier Communications \$14 affordable offer, approved as a condition of Frontier’s purchase of Verizon’s landline telephone systems in the

¹⁵ As noted in CETF’s Opening Brief at 21, an affordable rate for low-income households in California is \$10-\$15/month.

state, has broad eligibility for all households qualifying for the telephone Lifeline program in the Frontier new service area. These comparisons show that the Charter Broadband Offer is the highest priced, with narrower eligibility compared to similar programs.

As to the second prong of eligibility – seniors who receive SSI – CETF highlights that SSI is a safety net, national poverty program designed to assist the poorest persons plus disabled persons in the nation. SSI is distinguished from the Old-Age, Survivors and Disability Insurance (OASDI) program, commonly known as Social Security. To qualify for SSI, applicants must be aged or disabled and have little or no income and few assets (no more than \$2,000 in assets for an individual or \$3,000 in assets for a couple in most cases).¹⁶ For most seniors, the average additional benefit SSI provides is approximately \$400 per month. The maximum benefit for 2016 is \$733.¹⁷ Thus, only *the very poorest seniors* qualify for SSI. *In 2014 in California, only 360,514 seniors (age 65 or older) received SSI.*¹⁸ Thus, for all low-income seniors in the state, the Charter Broadband Offer is available for only 360,514 of them. For the same year 2014, there were 4,126,722 elderly Californians receiving OASDI Social Security benefits. Thus the number of elderly SSI California recipients constitute only 8.7% of the number of California seniors who receive OASDI Social Security benefits. So, while the seniors offer may sound good upon first reading, upon close review, Charter has defined its senior eligibility criteria in a narrow way to exclude all but the poorest of the poor seniors. Further Charter’s eligibility criteria does not include a large number of people with disabilities who receive SSI, but are not

¹⁶ Introduction to the Supplemental Security Program (SSI) Program, Center on Budget and Policy Priorities, at pages 1-2 (Feb. 27, 2014). <http://www.cbpp.org/research/introduction-to-the-supplemental-security-income-ssi-program>

¹⁷ Paying for Senior Care, Supplemental Security Income, reviewed March 16, 2016 https://www.payingforseniorcare.com/longtermcare/resources/supplemental_security_income.html

¹⁸ Congressional Statistics, California, December 2014, Social Security, Office of Retirement and Disability Policy https://www.ssa.gov/policy/docs/factsheets/cong_stats/2014/ca.html. For the same year 2014, there’s 4,126,722 elderly Californians receiving the Old Age, Survivor and Disability Insurance (OASDI), commonly known as “Social Security” benefits. Thus the number of elderly SSI California recipients constitute only 8.7% of the number of California seniors who receive OASDI Social Security benefits.

over age 65. This group – people with disabilities – historically has low broadband adoption rates (59%), according to the 2015 Field Study.¹⁹

CETF points out examples of households that *won't* qualify for the Charter Broadband Offer:

- All low-income households that do not have a K-12 school age child actually enrolled in the National School Lunch Program;
- Seniors who receive Social Security benefits but are eligible for or declined to accept SSI;
- Seniors who have under \$30,000 per year for expenses and are not eligible for SSI;
- Low-income people with disabilities, most of whom lack a K-12 child in their households, and people with disabilities who don't qualify for SSI.

Third, Charter claims that certain CETF requests are “commercially unreasonable,” citing particularly CETF’s request that the Commission order a Broadband Offer Program goal of 45% of eligible households in the service area within three years,²⁰ and the capitalization of an independent fund of \$285 million for broadband adoption²¹ through performance-based grants to experienced community-based organizations (CBOs), schools and libraries as trusted messengers to effectively reach the target population. CETF urges the Commission to reject the characterization of both requests by Joint Applicants as “commercially unreasonable.”

¹⁹ Internet Connectivity and the Digital Divide, 2015 Field Poll Survey, California
<http://www.cetfund.org/progress/annualsurvey>

²⁰ Joint Applicants Opening Brief, at 79-80.

²¹ Joint Applicants Opening Brief, at 83-84.

CETF provided evidence in the record in its Opening Brief that a 45% goal is reasonable,²² further supported by this Commission’s own planning for a 45% participation rate for the Telephone Lifeline wireless program.²³ CETF is not saying Charter should achieve the 45% aspirational goal alone; it is a cumulative goal for all the broadband providers in a particular service area. It will take the efforts of all broadband providers, and trusted messengers like experienced CBOs, school districts, libraries, and others to sign up the unconnected low-income households to close the Digital Divide. This is why CETF is intervening in all pending merger transactions of broadband providers to ensure that each provider makes a public interest commitment to do its part in offering an affordable broadband offer and in helping fund the critical outreach by trusted messengers to the unconnected households. Bear in mind that the Joint Applicants’ have an abysmal record for Digital Divide action thus far.

Further, there is a tremendous need for these efforts in the New Charter’s service area. The Southern California area has not had a sustained affordable broadband offer, because Comcast’s Internet Essentials program was limited to its Northern California service area. This is why the New Charter affordable broadband offer will be a “game changer” for the Southern California region.²⁴

²² As of March 10, 2015, Comcast reports 20% penetration in California for its Internet Essentials affordable broadband program, leaving 25% more to be signed up in its service areas. See <http://corporate.comcast.com/comcast-voices/internet-essentials-year-four-progress-report>. Experienced CBOs testified to the ability and willingness to achieve the 45% goal with requisite resources (CETF Reply Brief, Attachment D, filed December 20, 1014). Further, the 45% goal should apply to each low-income census block group, and not to the service territory as a whole. Successful broadband adoption outreach, sign-ups, and digital literacy training must be “placed-based” and pursued by experienced CBOs who are “trusted messengers” within the target low-income neighborhoods and communities. Accountability for the 45% goal needs to be aligned with the needs and attributes of each community.

²⁴ CETF has pointed out deficiencies of the proposed program in its Opening Brief, including overly narrow eligibility, barring current broadband low-income customers from qualifying, and disqualifying applicants for past

In its Opening Brief at pages 29-30, CETF explained that experienced CBOs report an average cost of \$480 per sustainable broadband adoption, but CETF suggested that this amount could be driven down to only \$275 per adoption assuming a sincere, good faith partnership with New Charter and experienced CBOs in a focused effort to sign up the unconnected low-income households. New Charter should implement an advertising program during waking hours to support the outreach work. To calculate the \$285 million fund figure, CETF multiplied \$275 per household by the 45% aspirational goal of the total low-income households in the New Charter service area.

With an affordable broadband offer of \$15 per month, each new subscription would generate revenue of \$180 per year from each new household, \$360 in two years, and \$540 in three years of subscribership. Thus the New Charter investment of \$275 per household would be paid back in less than two years *in revenues to New Charter*.²⁵ The dollars invested in this broadband adoption fund is a “virtuous” circle that will measurably close the Digital Divide by “investing” in getting a low-income household online, and giving it technology tools to end a cycle of poverty. This \$275 per acquisition is reasonable as evidenced by the fact that Charter itself will pay up to \$500 in early termination fees to obtain a new customer who has to break an existing service contract from a competitor.²⁶ CETF has taken a fact-based, data-driven approach to calculating what it will take to close the Digital Divide in the New Charter service area. And that figure -- \$285 million -- is the result of careful calculations.

bad debt owed to a Joint Applicant. These types of inappropriate terms and conditions act as barriers to program participation by the poor, the very group the program is designed to assist.

²⁵ The Internet enables online homework to be completed, parents to talk to their children’s school teachers and administrators, job searches and applications to be performed, and health information to be obtained.

²⁶ CETF Opening Brief at 31, and note 46.

Joint Applicants complain that this \$285 million fund will eat up a significant part of total annual cost saving synergies resulting from the transfer.²⁷ CETF's pithy response to this argument is that Charter can afford it. Charter's market cap was \$21.22 billion as of February 27, 2016. In a press release announcing this merger, the deal values Time Warner Cable at \$78.7 billion and Bright House at \$10.4 billion.²⁸ Charter's stock price has risen since the announcement from \$177 to \$201. To date Charter has failed in a meaningful way to match its competitors to date in providing a low-income broadband offer. It is time for Charter to step up to the plate as a responsible corporate citizen and match the efforts of other broadband providers on this important social justice issue of the Digital Divide.

In the 2005 SBC acquisition of AT&T and Verizon acquisition of MCI, the only state that had the foresight to secure a public benefit to close the Digital Divide was California through the actions of this Commission. That investment in the form of an independent fund has had tangible benefits for our residents and has contributed to the vitality of our economy. The evidence is clear that a public benefit can be obtained from corporate consolidations and are enforceable if the conditions of approval are explicit.

CETF finally takes issue with Joint Applicants' apparent view that CETF's requests relating to Digital Divide issue are inappropriate because they "lack any nexus to any 'harm' created by the Transaction."²⁹ Joint Applicants are offering broadband services at rates so high that 25% of the California population is unconnected as a result. This fact alone is dispositive as to the critical and urgent need for an affordable broadband rate that would be within the budget of a California low-income household. CETF is further disappointed that Charter and Time

²⁷ Joint Applicants Opening Brief, at 84.

²⁸ Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks May 26, 2015 <http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Charter-Communications-to-Merge-with-Time-Warner-Cable-and-Acquire-Bright-House-Networks/default.aspx>

²⁹ Joint Applicants Opening Brief, at 78.

Warner's track records does not reflect a consistently offered, voluntary affordable broadband rate for low-income households. This failure to be sensitive to the needs of low-income communities is all too typical of many broadband providers in the nation, that just want to provide the dumb broadband pipe to well-to-do households and commercial businesses who can afford it, but feel no obligation to participate in broadband adoption program efforts (which in fact directly benefit the company's bottom line by providing new paying customers with no impact on existing subscribership). Charter's senior leadership has not demonstrated understanding or sensitivity to the three known challenges of broadband adoption: cost, relevance and digital literacy. As a result, CETF has felt it must intervene in this proceeding at its own expense to point out this unfortunate lapse in corporate responsibility.

CETF is asking this Commission to encourage every major broadband provider to put in place affordable rates for the poor, and for them to take responsibility for closing the Digital Divide by assisting in funding broadband adoption efforts for the unconnected population.³⁰ While the Federal Communications Commission is considering a national broadband Lifeline program, there is no guarantee one will be put in place, and it could be years before it is implemented.

Conclusion

CETF views this Charter - Time Warner - Bright House corporate consolidation as "the ballgame" for Digital Divide efforts in Southern California, a huge populated area lacking a sustained, affordable broadband offer up to now. The goal of enrolling 45% of all low-income households is reasonable and doable according to CETF experience and CBOs with a track

³⁰ CETF particularly requests attention be given to getting online people with disabilities who tend to be low-income due to their disabilities. In this matter, CETF strongly supports the requests of Center for Accessible Technology, and others.

record in the target communities. The \$275 per eligible household for a broadband adoption fund is reasonable and justifiable with a payback period of less than 2 years to New Charter, who pays up to \$500 itself to acquire new customers. This Commission has the authority to require public interest conditions of approval in order to secure a significant public benefit for low-income households.

This Commission historically has been a leader in public policy to close the Digital Divide. This Commission should continue that tradition of national leadership and seize the opportunity to secure significant public benefits by adopting CETF's recommendations. It is notable that many of the consumer groups including the Office of Ratepayer Advocates, the Center for Accessible Technology, TURN and others support CETF's call for an affordable broadband offer for all low-income households, and deployment of broadband infrastructure for all residents. Internet access is no longer a luxury, but a necessity. To borrow and adapt a phrase from civil rights leader Martin Luther King, Jr., "access delayed is access denied. With bold action, this Commission will ensure that all Californians have the opportunity to subscribe to affordable high-speed Internet access and to fully participate in the Digital Economy.

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,

/s/ Sunne Wright McPeak

/s/ Rachelle Chong

Sunne Wright McPeak
President and CEO
California Emerging Technology Fund
The Hearst Building, 5 Third Street, Suite 320
San Francisco, California 94103
Telephone: (415) 744-2383
sunne.mcpeak@cetfund.org

Rachelle Chong
Outside Counsel to CETF
Law Offices of Rachelle Chong
220 Sansome Street, 14th Floor
San Francisco, California 94104
Telephone: (415) 288-4005
rachellechong@gmail.com

March 18, 2016

Table of Authorities

Federal Statutes

Section 706, Telecommunications Act of 1996, 47 U.S.C. Section 1302 (enacted Pub. L. 114-38).

State Statutes

Section 854(a) and (c), California Public Utilities Code

Section 882, California Public Utilities Code

Section 281(a), California Public Utilities Code

Web Links

Introduction to the Supplemental Security Program (SSI) Program, Center on Budget and Policy Priorities, at pages 1-2 (Feb. 27, 2014).

<http://www.cbpp.org/research/introduction-to-the-supplemental-security-income-ssi-program>

Paying for Senior Care, Supplemental Security Income, reviewed March 16, 2016

https://www.payingforseniorcare.com/longtermcare/resources/supplemental_security_income.html

Congressional Statistics, California, December 2014, Social Security, Office of Retirement and Disability Policy https://www.ssa.gov/policy/docs/factsheets/cong_stats/2014/ca.html.

Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks May 26, 2015 <http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Charter-Communications-to-Merge-with-Time-Warner-Cable-and-Acquire-Bright-House-Networks/default.aspx>