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March 25, 2016

The Honorable Thomas Wheeler
Chairman, Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Re: Charter–Time Warner Cable–Bright House Merger, MB 15-149

Dear Chairman Wheeler:

The California Emerging Technology Fund (CETF) respectfully submits brief comments on new developments in the above-referenced Charter - Time Warner Cable – Bright House merger docket which have occurred since the time CETF filed its Reply Comments in November 12, 2015 with this Commission.

In its July 2, 2015 Application and then expanded in its Initial Testimony filed by Adam Falk, Applicants had promised to expand the small Bright House Network Connect2Compete broadband discount offer to make it available to New Charter's entire footprint within 3 years of the closing of the merger.[1] On January 7, 2016, Applicants added Supplemental Testimony of Adam Falk providing more details about its affordable broadband offer (Broadband Offer). Citing a December 17, 2015 press release by Charter Communications, Falk stated that the year-round offer will deliver 30 Mbps download/3 Mbps upload speeds to qualifying customers at $14.99 per month with no additional charge for modem rental. However eligibility will be limited to two groups of households: (1) households with at least one child *enrolled* in the National School Lunch Program (NSLP) (free or reduced lunch) and (2) seniors who are aged 65 or older receiving Supplemental Security Income (SSI). No credit checks will be performed, but eligibility will be subject to the new customer settling any outstanding debt to Charter. Any potential customer who had been a prior broadband subscriber to Applicants in the previous 60 days would not be eligible for the Broadband Offer. In that CETF was not able to comment on this development in its Reply Comments, it respectfully submits this letter to put its position on the record as to this amended Broadband Offer by Applicants.

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[1] Testimony of Adam Falk, at 18 (public version filed December 4, 2015)(Falk Testimony).

CETF is deeply troubled by the limited eligibility provisions of Charter's revised Broadband Offer. While neutral, should the FCC approve the merger, CETF urges the FCC to require as a condition of approval an expansion of the Broadband Offer to include *all low-income households* in the New Charter service area, similar to the voluntary commitment made by AT&T as to its affordable broadband offer in the recent AT&T–DirecTV order. CETF makes this request in light of data it has submitted that shows that 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 located in that region. Thus CETF considers Los Angeles County "ground zero" for the Digital Divide in California–and thus the nation. CETF estimates that about half of the low-income households in the New Charter area of California–over one million households–will not be eligible for the Broadband Offer given that limited eligibility criteria of the revised Broadband Offer.

Applicants' eligibility criteria for the Broadband Offer are very narrow compared to other broadband providers. The Charter NSLP criteria is considerably more narrow that the current Comcast Internet Essentials offer, because unlike Comcast, Charter's program does not allow households with an eligible, but not enrolled child in the NSLP (this captures a wider net of low income families, whose children are at charter, private or parochial schools or home schooled).

Further, requiring receipt of SSI benefits for seniors to be eligible makes this proposed Broadband Offer only available to the very poorest of seniors. SSI is a safety net, national poverty program designed for the poorest persons plus disabled persons. SSI is distinguished from the Old-Age, Survivors and Disability Insurance (OASDI) program commonly known as "Social Security." As of December 2013, only 2.1 million very poor elderly persons over age 65 received SSI. The maximum benefit for 2016 is $733. Thus, the Charter Broadband Offer program is only available for the very poorest or disabled seniors in the New Charter footprint, which makes eligibility under this prong very narrow.

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 ineligible for or decline out of pride to accept SSI.
- Low-income people with disabilities who lack a K-12 child in their household enrolled in NSLP or who don't qualify for SSI.

CETF is also troubled by the Broadband Offer terms and conditions that serve to disqualify the very population it seems to serve. The outstanding debt requirement is problematic, and Applicants have failed to include a free wireless router with the program's modem, so that all school children and adults in the household can use the Internet at once. CETF is also opposed to the requirement that the low-income person not be a broadband subscriber in the last sixty days to Applicants; this penalizes low-income families who had previously sacrificed to connect the household to the Internet so their children could complete their Internet enabled homework.

CETF also urges the FCC condition any grant of the merger on Charter donating $285 million in a broadband adoption fund.[2] CETF points out that with a Broadband Offer of $15/month, each new subscription will generate revenue back to New Charter of $180 per year, and $360 in two years. Thus the New Charter investment of $275 per household for the fund, would be paid back *in less than two years in revenues to New Charter*. New Charter has complained to the California PUC in its Brief that a $285 million broadband adoption fund will eat up some of the cost savings of the merger. CETF believes Applicants can afford it. Charter has a market capitalization of $21 billion as of February 27, 2016. 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.[3] In the CPUC docket, the Office of Ratepayer Advocates' 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 that may or may not occur. In light of these facts, donating $285 million to connected low-income consumers to the Internet is not unreasonable.

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[2] In our prior filing, CETF set forth its data on how the fund amount was calculated. While community-based organizations experienced in broadband adoption efforts report an average cost of $480 per sustainable broadband adoption, CETF suggested that this amount could be driven down to $275 per adoption assuming a sincere, good faith partnership with New Charter and experienced community-based organizations in a focused effort to sign up unconnected low-income households. CETF then multiplied $275 times 45% of the unconnected households in New Charter's service area, to arrive at the $285 million fund figure.

[3] CETF California PUC Opening Brief at 31, and note 46, in Application No. 12-12.011.

CETF urges the Commission to adopt its eight recommendations contained in its Comments and Reply Comments in this docket. We request immediate action be taken in relationship to this merger to ensure strong public benefits to close the Digital Divide for low-income consumers. We are attaching a few recent press articles of interest relating to California issues as to this merger.

Sincerely,

Sunne Wright McPeak

Sunne Wright McPeak
President and CEO

Attachments: Press Articles

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Mike O'Rielly
Owen Kendler
Jonathan Sallett
Bill Lake
Mindel De La Torre
Matthew Del Nero
Roger Sherman
William Rogerson

ENTERTAINMENT / ENVELOPE / COMPANY TOWN

Charter merger may hinge on whether it can make the Internet affordable to more people

Charter's proposed low-cost Internet plan "is only scratching the surface," said Larry Ortega, who runs One Million New Internet Users, which conducts Internet training programs for parents. (Francine Orr / Los Angeles Times)

By **Meg James · Contact Reporter**

MARCH 15, 2016, 3:30 AM

For Alfonso Escobar, the Internet was once out of reach.

The 55-year-old retired bread baker from Bell had limited computer skills and couldn't afford the monthly service charge.

"It's like you can't see if you don't have glasses," said Escobar, who recently began taking an Internet skills class offered by a community group. "The Internet gives you access to the world. You can pay bills, make doctor appointments ... or keep in touch with your family. You can learn what's going on in your city, in Los Angeles, in Sacramento — and in the whole country."

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Bridging the so-called digital divide — the gulf between people who have ready access to the Internet, and those like Escobar who do not — has long been a priority of President Obama. And addressing the issue has become a key component in the government's review of a mammoth cable merger that could transform the local pay-TV landscape.

Charter Communications' proposed $67-billion plan to acquire two other cable companies — Time Warner Cable and Bright House Networks — would make it the dominant pay-TV and Internet service provider in Southern California, with more than 2 million customer homes.

Large pockets of poverty exist in Charter's proposed new California service area. About one third of the homes in the region — nearly 2.3 million — are considered low-income. Nearly one-quarter of people in Los Angeles County have no Internet access at home.

"Charter is not just buying a big new service area — they are buying the digital divide," said Sunne Wright McPeak, president and chief executive of the nonprofit California Emerging Technology Fund, which is working to bring computers and affordable Internet connections to more California residents.

The main reason people lack access to the Internet is because they cannot afford it. Time Warner Cable's average Internet price is $48 a month (it also offers a program for qualifying low-income residents).

"When you live on a low budget, you just don't have the ability to pay for it," said Escobar, who lives off his pension. He said he could pay for a plan that would cost about $10 a month.

There are other contributors to the digital divide. In some rural regions, including areas in San Bernardino and Kern counties, cable companies have not completed the costly job of installing cable lines that reach all communities. In other regions, the cable lines are outdated and do not provide reliable high-speed service. Still other communities lack a sufficient number of Wi-Fi hot spots.

Community activists and school district officials in L.A. and San Bernardino counties say many students are at a disadvantage because even if districts provide laptops, the students have no way to connect to the Internet at home.

"People who are not connected to the Internet are invisible to the people making decisions," said Gary Madden, director of San Bernardino County United Way's 211 help line system. "Most people take for granted the advantages of being connected. We have no clue just how disadvantaged people are who are not connected to the Internet."

Several government agencies are reviewing the cable acquisition that was announced last May. The

Federal Communications Commission must find that the merger serves the public interest, and it is expected to reach a decision this month. The U.S. Department of Justice separately must determine that the consolidation does not pose a threat to competition.

The California Public Utilities Commission also must approve the deal. A vote on the matter is scheduled for early May.

State regulators are expected to focus heavily on Charter's Internet program, prompting the Stamford, Conn., company last week to boost its commitments. Charter said it would bolster its pledge to extend high-speed Internet service plans, including increasing broadband speeds in communities throughout Southern California within four years of the deal's closing.

"Recognizing the central role broadband plays in our daily lives and the economic challenges faced by many today, we look forward to bringing broadband to more homes and businesses, and to providing a superior low-income broadband service," Charter said in a statement Monday.

To win approval, Charter said it would add at least 25,000 out-of-home wireless hot spots in California within four years, and extend broadband lines to rural regions — such as in San Bernardino and Kern counties — to provide service to an additional 150,000 homes or businesses within four years.

It also plans to try to sign up 200,000 low-income families within four years, offering high-speed Internet service for $14.99 a month. The program would be tailored to families with students who qualify for the federally subsidized free lunch program as well as seniors who receive supplemental Social Security checks.

Charter also has pledged to spend $10 million over four years to work with community groups to promote broadband adoption, including training classes such as the one that Escobar has been taking. Demand is high. More than 350 people are on a waiting list for the morning computer classes at the Bell Technology Center, and only 22 spaces available.

Critics, however, say the low-cost Internet plan doesn't go far enough.

"This program is only scratching the surface," said Larry Ortega, who runs One Million New Internet Users, which conducts Internet training programs for parents. "It seems like companies look at this as being a welfare program, and they don't see the economic impact of signing up more customers for their Internet service. There is a lack of leadership and a lack of delivery."

Charter, which until now has not offered a low-cost option, defended its proposed $14.99 plan, citing its high speed.

"Our program is the most inclusive low-cost Internet plan out there, and we are very proud of it," said Alex Dudley, Charter's spokesman.

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MEDIA

Cashing In on a Charter-Time Warner Cable Merger

By DAVID GELLES MAY 30, 2015

Whatever cable customers and regulators may think of Charter Communications' plans to acquire Time Warner Cable for $56 billion, one small group of men has reason to celebrate.

Through a mix of golden parachutes, advisory fees and investment returns, a handful of cable executives, traders and bankers stand to reap enormous profits when and if the transaction closes.

Time Warner Cable

Robert D. Marcus, the chief executive of Time Warner Cable, is in line for a corporate exit package that is likely to exceed $100 million. Because he could well be terminated without cause after the deal closes — another way to say he would be leaving the company after selling it to a competitor — Mr. Marcus would be entitled to the salary, bonus and stock that he would otherwise have received over the coming years.

In that event, according to a securities filing, Mr. Marcus would receive roughly $4.5 million in salary, $23 million in bonuses and stock worth $74 million, for a grand total of about $102 million.

The sum is particularly notable when Mr. Marcus's brief tenure is taken into account: He has been chief executive for less than a year and a half. Shortly after he became C.E.O., the company faced competing bids from Charter and Comcast. He ultimately struck a deal with Comcast last year that also would have given him a billowing golden parachute worth $80 million, but that agreement fell apart last month.

Charter came back quickly with an offer that valued Time Warner Cable at a more than 30 percent premium to its year-ago value, and the new deal was made. If the merger actually occurs, Mr. Marcus will cede the chief executive role to Charter's boss, Thomas M. Rutledge, and is expected to leave the company.

Other Time Warner Cable executives are also in line for big paydays should they leave after a merger. Dinesh C. Jain, the chief operating officer, and Arthur T. Minson Jr., the chief financial officer, would receive golden parachutes worth about $32 million each. Marc Lawrence-Apfelbaum, the general counsel, would get $22 million. And Peter C. Stern, the chief product, people and strategy officer, could expect $18 million.

Time Warner Cable declined to comment.

In theory, golden parachutes are good for shareholders as well as executives, because they encourage C.E.O.s to strike deals instead of resisting to preserve their well-paid jobs.

"It does provide appropriate incentives for the executives," said David F. Larcker, a professor at the Stanford Graduate School of Business. "This helps them presumably do the right thing for shareholders."

And indeed, by overseeing the sale of Time Warner Cable for a blockbuster price, Mr. Marcus would be enriching not just himself and his fellow executives, but all shareholders.

Charter

A merger would benefit Mr. Rutledge of Charter, too. If he runs the combined company, he is likely to receive a raise.

Last year, Mr. Rutledge made $16 million in total compensation, a handsome sum, but less than many media executives have been earning recently. Brian L. Roberts, chief executive of Comcast, made $26.5 million last year, for example, and the compensation of James L. Dolan, Cablevision's chief executive, exceeded $23.5 million. Television and movie studio executives received even more.

Yet as the head of an enlarged Charter, a company backed by the billionaire media mogul John C. Malone, Mr. Rutledge could join the ranks of the best-compensated managers on the planet. Mr. Malone's chief executives occupied three of the top six spots on the Equilar 200 Highest-Paid C.E.O. Rankings, conducted for The New York Times. David M. Zaslav, the head of Discovery Communications, received $156 million in compensation last year. Michael T. Fries, chief executive of Liberty Global, earned $112 million. Gregory B. Maffei, chief executive of Liberty Media, got $74 million. All those sums include some long-term stock incentives.

Should Mr. Rutledge secure a long-term compensation package upon taking over an expanded Charter, his pay next year could rival that of Mr. Malone's other top lieutenants. And if Mr. Rutledge is ousted after a deal is made, his golden parachute entitles him to about $111 million.

Bankers

Then there are the investment banks that advised both companies. Together, the banks will share an estimated $100 million to $150 million, according to Thomson Reuters and Freeman Consulting Services.

Roughly 60 percent of that pool will go to the banks that advised Time Warner Cable. Morgan Stanley, the lead adviser, will receive a larger slice, with Citigroup and two independent investment banks — Centerview Partners and Allen & Company — splitting the rest.

More banks are advising Charter, but not all will profit from the deal. Goldman Sachs and LionTree Advisors will split $30 million to $50 million. LionTree, a boutique bank that specializes in media deals and is the preferred banker for Mr. Malone's companies, is run by Aryeh B. Bourkoff, the former head of Americas investment banking at UBS. Because LionTree has fewer than 100 employees, the deal — along with LionTree's work on Charter's related acquisition of Bright House Networks — will be a transformative payday for Mr. Bourkoff's firm. Mr. Bourkoff declined to comment.

The other banks listed as advisers to Charter — including Guggenheim Partners, Bank of America Merrill Lynch and Credit Suisse — may receive little more than credit for the deal and a role in the financing.

Investors

While all the investors in Time Warner Cable can profit from Charter's generous offer, one hedge fund stands apart. Paulson & Company, run by the billionaire John Paulson, owned 8.7 million shares of Time Warner Cable stock, according to a March 31 public filing.

While it is not known exactly what Mr. Paulson paid for that stake, a filing in September 2013 showed that he had already bought about half of it when the stock was trading below $140 a share. The implied price of Charter's offer is $195.71 a share. That would mean a profit of at least $250 million. Paulson & Company declined to comment.

All told, excluding Mr. Paulson, the cable executives and advisers for the transaction stand to earn more than $300 million from the deal. If it collapses, the cable executives and advisers will receive nothing for their troubles. If it goes through, though, it's a ton of money for a deal that came together in a matter of weeks.

"You have to wonder about the size of these packages," Mr. Larcker said. "It does add up."

A version of this article appears in print on May 31, 2015, on page BU3 of the New York edition with the headline: Cashing In on a Charter-Time Warner Cable Merger.

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