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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 Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) 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).

Application 15-07-009
(Filed July 2, 2015)

COMMENTS OF STOP THE CAP! ON THE PROPOSED DECISION GRANTING WITH CONDITIONS APPLICATION TO TRANSFER CONTROL

I.
INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, Stop the Cap! submits these comments on the Proposed Decision Granting with Conditions Application to Transfer Control (PD).

The PD correctly acknowledges that Time Warner Cable has made a permanent commitment to never impose data caps or usage based pricing (DC/UBP).[1] The PD also notes that both the ORA and Stop the Cap! suggested a competition-based sunset trigger for the prohibition against DC/UBP.[2] However, the PD only prohibits New Charter from instituting DC/UBP for a short three year period. Replacing a permanent commitment with a three (or even seven) year commitment still allows a massive public harm to take place, affecting every TWC customer. Further, the PD fails to address the huge price increase TWC customers will receive from this merger. Other Conditions are likewise potentially ineffective. Because some mitigation conditions contained in the PD are insufficient and/or absent, the PD fails to fulfill the requirements of 854(c).

II.
DISCUSSION

Stop the Cap! respectfully submits that the following conditions are written as to be ineffective, or are missing from the PD.

Condition H - 3 year prohibition on data caps and usage based pricing.

While portions of this condition are laudable, even if it is updated to align with the FCC's seven year prohibition on DC/UBP, the condition is still inadequate and should be rewritten to be ideally indefinite, but at *least* require a test for the existence of competition in order to sunset, not simply sunset after an arbitrary number of years, when consumers may or may not have the option to switch to another fixed-line broadband provider.

By allowing New Charter to replace Time Warner's permanent commitment to refrain from instituting DC/UBP with a non-permanent one, the Commission would be failing to provide the mitigation measures that 854(c) requires. As discussed in Stop the Cap's comments, the loss

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[1] Proposed Decision, page 61.

[2] Proposed Decision, page 57.

of this commitment could result in the following harms: 1) New Charter's commitment to provide low cost broadband will become completely voluntary and unenforceable; 2) increased broadband pricing resulting in decreased demand for broadband; 3) New Charter will be able to circumvent Net Neutrality rules; 4) New Charter will be able to engage in a multitude of anti-competitive behaviours, increasing the cost and reducing the attractiveness of competing video content from edge providers, thus lessening the demand for high-speed broadband access to the Internet, and thus running counter to Section 706(a)'s mandate to promote competition in broadband services; 5) innovation and investment will potentially decrease significantly; 6) network security can be adversely affected; and, 7) Californians, especially low income Californians, may lose access to education opportunities.[3]

The CPUC has clear jurisdiction under both Section 706 (specifically) and the NCPA v. CPUC decision (more generally) to mitigate this situation and its harmful ramifications. Not to do so is legal error. Further, as Commissioner Florio stated in his Alternate PD for the Comcast proceeding:

> "We find that conditions that only temporarily or incompletely mitigate identified harms to the public interest are not sufficient to offset those harms. Such conditions also do not 'preserve the jurisdiction of the commission,' as required by § 854(c)(7)." [4]

Those words are equally applicable now.

Stop the Cap! (and ORA as well) has offered a reasonable option of requiring a competition test to sunset the prohibition on data caps and usage based pricing.[5] This suggestion is based on Charter's own expert testimony[6], and Condition H must be rewritten per these suggestions if it is to fulfill multiple statutory requirements.

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[3] Reply Brief of Stop the Cap! March 11, 2016. p 8-12.

[4]CPUC A.14 04 013, A14 06 012 Alternate Proposed Decision, page 77.

[5] Reply Brief of Stop the Cap! March 11, 2016. p 3-4.

[6] Ibid, pages 21-22

This suggested condition does have nexus, as Stop the Cap! discussed in its Reply Brief.[7]

Conditions A and C strip the Commission of its ability to enforce the MOU regarding low income broadband

When the limited prohibition against data caps and usage based billing expires, New Charter's low cost broadband offering for low income individuals will become a totally voluntary offering… one that can be completely cancelled by New Charter through the imposition of DC/UBP.[8] To protect low income Californians, and to prevent Conditions A and C from running afoul of §854(c)(7), Condition H must be rewritten to prohibit data caps and usage based pricing indefinitely, just as Time Warner Cable currently pledges; or at the very *least*, require the competition-based sunset trigger that both the ORA and Stop the Cap! have suggested.

Condition G - Acquisition of customers' own modems.

Charter already bakes the price of the modem rental into the monthly cost of the plan, so this condition is currently meaningless as it applies to modems. In order to fulfill this condition's intent, it needs to be rewritten to require New Charter to offer a discount to customers who bring their own modems. Charter currently allows customers to bring their own modems… they just continue to charge those customers for a Charter modem that the customer never uses.

MISSING CONDITION - New Charter's Accepted ORA Condition Regarding Broadband Pricing.

Presumably in light of Charter's significantly fewer broadband options, New Charter agreed to allow TWC customers to retain their broadband plans for three years.[9] This agreement is missing from the PD's conditions.

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[7] Ibid, page 20.01

[8] Ibid, page 12.

[9] Applicants ex parte with Advisor to Commissioner Florio, filed March 29. Appendix item 4.

Further, the three year timeframe on this agreement is insufficient, as is the fact that it only applies to current TWC customers, and in addition removes their ability to switch to different TWC plans.

The PD states that "while we may deplore the situation in which the existing customers of the merging companies find themselves we cannot say that they are materially worse off as a result of the merger."[10] This statement is contradicted by fact.

As can be seen from the below chart, New Charter's broadband-only plans are much more expensive than TWC's comparable plans. In fact, Charter's 100Mbps plan is twice as expensive as TWC's 200Mbps plan in Los Angeles! Customers will pay *twice as much for half the speed!* Also, TWC offers a much greater variety of choices to allow users to tailor the plan to their particular needs:

	Charter	TWC
5Mbps	—-	$14.99/mo
50Mbps	—-	$39.99/mo
60Mbps	$59.99/mo	—-
100Mbps	$119.99/mo	$49.99/mo
200Mbps	—-	$59.99/mo
300Mbps	—-	$89.99/mo

Clearly these TWC customers are materially much worse off under New Charter than TWC. Equally clear from this table is that Charter's "Simplified Pricing" (perhaps more accurately described as "Fewer Options and Higher Prices") is far from a public benefit.

This massive price increase will affect literally every stand-alone-broadband TWC customer other than the few who qualify for the School Lunch/Senior Assistance plan. While the low cost School Lunch/Senior Assistance plan is great for the narrowly targeted group of consumers who manage to qualify, roughly doubling the cost of broadband for every other stand-alone customer more than offsets the combined value of every other "benefit" that the applicants allege will come from this transfer.

[10] Proposed Decision page 53.

Even if New Charter allows current TWC customers to keep their plans, those customers will lose access to TWC's longstanding policy of increasing internet speeds with no accompanying price increase. They will lose the ability to transfer from one speed tier to another. When they move to another location will they lose their plan? And residents who move into the area will clearly not have the increased choice and decreased costs that current TWC customers enjoy. This is not a net public benefit.

New Charter should be required to retain TWC's pricing and plan structure in perpetuity, for both new and existing TWC customers. TWC customers should retain the ability to switch back and forth between TWC's cheaper, larger variety of plans. New Charter should be required to continue TWC's practice of increasing customer speeds as technology advances with no accompanying price increase.

III.
CONCLUSION

TWC stands out in its field for its customer-friendly policies such as providing discounts for those who own their own modems, it's public commitment to refuse to impose data caps or usage based pricing even in the face of pressure from Wall Street to do so, and the creation of its TWC Roku App to allow customers to avoid set top box rental fees. This transfer, as currently conditioned, creates a net public benefit harm, not a benefit, or even a status quo. The PD should be amended to make true its assertion that customers will be at least no worse off after the transfer than they were before it.

Respectfully submitted 2 May 2016,

/s/ Matthew Friedman

Matthew Friedman

Stop the Cap!

Tel: 413-422-3327

E-mail: mfriedman@stopthecap.com