



## Department of Public Service

### Public Service Commission

**John B. Rhodes**  
Chair and  
Chief Executive Officer

Three Empire State Plaza, Albany, NY 12223-1350  
(518) 486-2496 | rory.lancman@dps.ny.gov  
www.dps.ny.gov/SpecialCounsel

**Diane X. Burman**  
**James S. Alesi**  
**Tracey A. Edwards**  
**John B. Howard**  
Commissioners

**Rory I. Lancman**  
Special Counsel for  
Ratepayer Protection

November 18, 2020

### Via Electronic Mail

Maureen Helmer  
Barclay Damon, LLP  
Counsel for Charter Communications, Inc.  
80 State Street  
Albany, New York 12205  
[mhelmer@barclaydamon.com](mailto:mhelmer@barclaydamon.com)

Re: Case 15-M-0388 – Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of a Transfer of Control of Subsidiaries and Franchises; for Approval of a Pro Forma Reorganization; and for Approval of Certain Financing Arrangements.

Dear Ms. Helmer:

Despite the best efforts of Department of Public Service Staff (Staff) over several months to cooperatively resolve the issue of over 1,800 addresses determined to be ineligible toward satisfying Charter Communications' (Charter's) obligation to extend its network to an additional 145,000 unserved and underserved residential housing units and/or businesses, Charter has failed to remove these addresses from its Plan of Record (POR).

Unless Charter acknowledges these addresses as ineligible within 10 days, I will seek an Order to Show Cause from the Public Service Commission (the Commission) compelling Charter to demonstrate why these addresses should not be deemed ineligible.

Additionally, there are significant errors in Charter's POR having the effect of obstructing the Commission's ability to monitor Charter's compliance with its merger obligations. It is essential that Charter complete by the next planned Interim Milestone filing in February 2021 (the January 2021 Interim Report) a thorough top-to-bottom review of all 145,000 addresses in the POR, including a detailed, end-to-end review and true-up/reconciliation of all 145,000 lines of data to correct missing, incomplete or incorrect address information; addresses associated with the wrong Charter division, county or franchise; typographical errors in street names, municipalities, etc.; and all misspellings, data entry errors, and missing entries.

As you know, On January 8, 2016 an Order Granting Joint Petition Subject to Conditions was issued in Case 15-M-0388 approving the merger of Charter Communications and Time Warner Cable.<sup>1</sup> In that Order, the Public Service Commission found that there were areas of the State within the then current Time Warner/Charter franchise areas with no network access, leaving those areas without the ability to exercise the same level of choice as others absent the payment of high connection fees through contributions-in-aid-of-construction (CIAC). The Commission therefore required Charter, as a condition of its approval of the merger with Time Warner Cable, to extend its network to pass, *within its then statewide service territory*, an additional 145,000 unserved and underserved residential housing units and/or businesses within four years of the close of the transaction, and prohibited Charter from requiring the payment of a line extension fee, or CIAC, for the expansion to these addresses.

In subsequent Settlement Agreements reached between Staff and Charter and approved by the Commission, the deadline to complete the network expansion was modified, and interim milestones and reporting requirements were established. Specifically, the 2019 Settlement Agreement required Charter to complete its expansion to 145,000 unserved and underserved addresses by September 30, 2021 and established seven four-month progress milestones between September 30, 2019 and September 30, 2021.<sup>2</sup>

In addition, the 2019 Settlement Agreement required Charter to file a revised buildout plan (the Plan of Record or POR), confidentially with the Commission within 30 days of the Effective Date of the Agreement (April 19, 2019), and to file, by the 15<sup>th</sup> of every month, a progress report setting forth the number and addresses of passings completed and the number and addresses of passings remaining to be completed, if any, for the pertinent four-month interim milestone reporting period. The 2019 Settlement Agreement limited the number of addresses that overlapped with Broadband Program Office (BPO) award areas, delineated between BPO awards to wireline and wireless providers.

Based on its ongoing audit of Charter's POR, and more specifically Charter's September Interim Milestone Report filed on October 30, 2020, Staff has identified approximately 1,816 addresses it determines to be ineligible for inclusion in the 145,000 network expansion obligation and should therefore be immediately removed from Charter's POR. These addresses include approximately 1,557 addresses that fall outside of the established Charter/Time Warner Cable service footprint at the time of the 2016 Merger Order, and approximately 259 addresses that overlap with awards from the Broadband Program Office to wireline providers in excess of those allowed under the 2019 Settlement Agreement. A list of these addresses is attached as Exhibit A.

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<sup>1</sup> Case 15-M-0388, Charter Communications and Time Warner Cable -Transfer of Control, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016).

<sup>2</sup> Case 15-M-0388, Charter Communications and Time Warner Cable -Transfer of Control, Order Adopting 2019 Settlement Agreement and Reconsidering Other Related Actions (issued July 11, 2019).

Consistent with the 2019 Settlement Agreement, Staff has attempted to resolve this matter cooperatively with Charter, without success. Accordingly, unless Charter acknowledges these addresses as ineligible within 10 days, I will ask the Commission to order Charter to demonstrate why these addresses should not be deemed ineligible.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rory I. Lancman', with a long horizontal flourish extending to the right.

Rory I. Lancman  
Special Counsel for Ratepayer Protection

ATTACHMENT

Copy: John B. Rhodes, Chair Public Service Commission  
Joseph Suich, Director of the Office of Investigations and Enforcement  
Debra LaBelle, Director of the Office of Telecommunications  
Adam Falk, Senior Vice President Regulatory Affairs Charter