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Monthly meeting - 7-27-2018

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Friday, July 27, 2018
12:30 p.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS:

JOHN B. RHODES, Chair
GREGG C. SAYRE
JAMES S. ALESİ

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2 (The hearing commenced at 12:30 p.m.)

3 CHAIR RHODES: I would like to call
4 this session of the Public Service Commission to
5 order.

6 Assistant Secretary Agresta, are there
7 any changes to the final agenda?

8 ASSISTANT SECRETARY AGRESTA: Good
9 afternoon, Chair and Commissioners. There are no
10 changes to the agenda.

11 CHAIR RHODES: We have one item for
12 discussion, which is jointly two items, Item 501A and
13 501B of case 15-M-0388, which is the Charter
14 Communications and Time Warner Cable joint petition
15 for approval of a transfer of control,
16 reorganization, and financing arrangements presented
17 by John Sipos, Acting General Counsel. Graham
18 Jesmer, Assistant Counsel, and Joseph Yakel, Utility
19 Supervisor, Office of Telecommunications, are
20 available for questions.

21 John, please begin.

22 MR. SIPOS: Good afternoon, Chair
23 Rhodes and Commissioners. There are two items before
24 the commissioners today in case 15-M-0388. The first
25 item, number 501A, concerns a proposed order for the

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2 Commission's consideration that, among other things,
3 directs the Commission's counsel to initiate an
4 affirmative civil enforcement case against Charter
5 Communications for various violations of the
6 Commission's January 2016 order that approved the
7 merger of Time Warner Cable and Charter
8 Communications subject to specific conditions and
9 obligations.

10 A central and critical condition in
11 the Commission's January 2016 approval order required
12 Charter to expand its network so that the network
13 would, quote, pass, close quote, an additional one
14 hundred forty-five thousand unserved or underserved
15 residential or business units in less densely
16 populated areas of the state within four years of the
17 closing of the proposed transaction. That is by
18 2020. This obligation is known as the network
19 expansion condition.

20 The approval order required that
21 Charter complete no less than 25% of this total in
22 each of the four years. And as a first step, Charter
23 was required to pass 36,250 residential and/or
24 business units by May 18, 2017. However, Charter
25 failed to achieve that requirement. And as a result

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2 of that failure, the Commission and Charter entered
3 into a settlement agreement establishing revised
4 binding network buildout obligations.

5 Pursuant to the settlement agreement,
6 Charter was, among other things, required to meet new
7 milestones by passing 36,771 residential or business
8 units by December 16, 2017, and 58,417 residential or
9 business units by June 18, 2018. Again, the passings
10 were to -- were to occur in less densely populated
11 areas of the state. However, Charter also failed to
12 achieve these requirements.

13 On June 14, 2018, following a process
14 that included additional administrative enforcement
15 actions here, including an order to show cause and
16 Charter's various responses thereto, the Commission,
17 among other things, disqualified 18,363 proposed
18 passings from the Company's December 16, 2017,
19 buildout report that was filed on January 8, 2018,
20 because, among other things, many of those addresses
21 were in the densely populated urban cities within the
22 state, including New York City.

23 That determination caused Charter to
24 fail to satisfy the required approximately 36,000 new
25 passings target. There can be no dispute whatsoever

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2 that New York City is not a less densely populated
3 area relative to other areas in New York State. In
4 fact, it is the most densely populated area.

5 On July 9, 2018, Charter submitted its
6 update and bulk address report, which provided the
7 Commission with the Company's purported number of
8 additional passings as of June 18, 2018, and an
9 update of its compliance status concerning the
10 buildout plan. Following Charter's most recent
11 filing, the Department staff initiated further review
12 of the passing addresses contained therein.

13 And based on Charter's submissions, it
14 is staff's position that Charter has not provided the
15 required public interest benefit for upstate New York
16 counties and communities and that Charter thus has
17 not complied with its regulatory obligations and
18 requirements.

19 And by way of example, it is staff's
20 position that Charter's actions and accounting
21 practices have negatively impacted citizens living in
22 various counties such as Yates, Steuben, Niagara,
23 Genesee, Franklin, and Clinton counties. And that is
24 because there is an inverse relationship for
25 addresses that are in New York City. If they are to

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2 be added, there are addresses in upstate areas that
3 are subtracted.

4 The draft order before the Commission
5 today provides a pathway for the Commission to
6 determine that Charter has failed to satisfy the
7 settlement agreement's June 18, 2018, target by more
8 than 22,000 passings, and furthermore, that Charter
9 has not made sufficient good cause showing for this
10 latest miss.

11 And as a result, the draft order
12 addresses also the forfeiture of \$1 million from the
13 letter of credit facility under the 2017 settlement
14 agreement. In addition, the draft order discusses
15 the termination of the settlement agreement's, quote
16 sole remedy, close quote, provision.

17 And lastly, in light of the repeated
18 ongoing and expanding violations of the regulatory
19 requirements, the draft order directs the counsel to
20 the Commission to commence an affirmative civil
21 litigation in New York State Supreme Court pursuant
22 to Public Service Law in the name of the Commission
23 and the People of the State of New York to seek the
24 imposition of financial -- civil financial penalties
25 for such violations and an injunction to compel

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2 Charter to comply with the June 18, 2018,
3 requirement.

4 Civil financial penalties are a means
5 to vindicate the Commission's regulatory authority,
6 penalize Charter for its violation of regulatory
7 obligations, and, importantly, deter other regulated
8 entities from engaging in similar conduct that
9 violates Commission orders.

10 This concludes the presentation on
11 Item 501A. We would be happy to answer any questions
12 that the Commission has.

13 CHAIR RHODES: I have no questions. I
14 find that this is a record of repeated and worsening
15 failures and violations of the order today -- and
16 their performance to date and that we absolutely must
17 seek remedies. I find this recommendation to be
18 appropriate and necessary and I intend to vote in
19 favor.

20 Commissioner Sayre?

21 COMMISSIONER SAYRE: My comments
22 relate to both items since they're pretty well
23 intertwined. I can say that I'm very sorry that we
24 have to take these steps, but I'm convinced that we
25 have to take these steps.

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2 From my viewpoint, it appears that
3 Charter decided, apparently for financial reasons, to
4 substitute low-cost connections in New York City and
5 some upstate cities in place of higher cost passings
6 in less densely populated areas. This does not meet
7 our requirements which Charter accepted for the
8 buildout.

9 It works a grave disservice to
10 thousands of upstate customers who Charter has
11 removed from its buildout plan. From its latest
12 filings, it is apparent that Charter is moving
13 farther and farther away from its commitment. Not
14 closer.

15 We've given Charter ample
16 opportunities to get back on track, but it refuses to
17 do so. Accordingly, I have concluded that these
18 extreme steps are necessary and I will vote in favor
19 of the orders.

20 CHAIR RHODES: Thank you.

21 Commissioner Alesi?

22 COMMISSIONER ALESI: Thank you.

23 It's actually sad for me to say that I
24 can endorse this and that I will be supporting it.

25 We -- we never like to see such strong action taken

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2 against a -- a business, but in the case of a
3 business that is not doing what it says it was going
4 to do, it's -- it's not just hollow promises, it is
5 also working to the detriment of those people that
6 were seriously and hopefully relying on the
7 opportunity to have reliable service. And for other
8 reasons as stated earlier, but I will be supporting
9 the initiative.

10 CHAIR RHODES: Thank you very much.
11 John, can you proceed to the next
12 item?

13 MR. SIPOS: Yes, Chair.

14 So the second item, Number 501B,
15 concerns a draft order for the Commission's
16 consideration that addresses Charter's petitions for
17 rehearing and reconsideration of the Commission's
18 June 14, 2018, orders and also discusses the
19 revocation of the January 8, 2016, order approving
20 the acquisition of Time Warner Cable.

21 And for the reasons stated therein,
22 this second draft order denies the Company's petition
23 for rehearing and reconsideration of the Commission's
24 previous orders and -- as discussed below -- and
25 finds that Charter's performance in attempting to

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2 comply with the approval order's network expansion
3 condition and related matters is deficient and its
4 behavior before the Commission has been contrary to
5 the public policy to such an extent that the
6 Commission should exercise its authority to revoke
7 and rescind the approval order.

8 And by way of background, in approving
9 the acquisition and merger, the Commission stated
10 that for the transaction to meet the enumerated
11 statutory public interest standard, it must yield
12 positive net benefits and, after balancing the
13 expected benefits properly attributable to the
14 transaction, offset any risks or detriments that
15 would remain after applying reasonable mitigation
16 measures.

17 As part of its review, the Commission
18 concluded that additional, quote, enforceable and
19 concrete conditions, close quote, were needed to
20 satisfy the net benefits test. Otherwise, the merger
21 between Charter and Time Warner should be and would
22 be denied.

23 Accordingly, the Commission explicitly
24 conditioned its approval on a host of conditions
25 designed to yield incremental net benefits to New

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2 York. The most critical of these conditions required
3 Charter to expand the company's network to, quote,
4 pass, close quote, an additional 145,000 unserved and
5 underserved residential or business units within less
6 populated areas in -- of New York.

7 As noted in the earlier presentation
8 for Item 501A, Charter did not comply with the
9 binding obligations concerning the network expansion
10 and buildout in unserved and underserved less
11 populated areas of the State of New York. In fact,
12 Charter repeatedly missed its buildout obligations.

13 Recent filings by Charter reveal that
14 the shortfall has increased. That is Charter has
15 fallen further behind in its obligations for the less
16 populated areas of the state and, as noted, over the
17 last several months the Department and the Commission
18 have taken various affirmative administrative
19 enforcement steps to bring Charter into compliance.
20 Those actions have included the 2017 settlement
21 agreement and the 2018 order to show cause.

22 Charter, however, has continued to
23 maintain positions that are contrary to the 2016
24 approval order. And on June 14, 2018, the Commission
25 issued two orders, one that rejected Charter's

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2 proposed accounting concerning numerous passings that
3 tried to argue somehow -- that it tried to argue
4 somehow would satisfy the approval order. And that
5 order also determined that Charter had not provided
6 good cause for its violation of the December 16,
7 2017, buildout obligation.

8 The Commission also concluded in that
9 order that Charter had failed to remedy its missed
10 December 2017 target by the settlement agreement's
11 March 16, 2018, cure deadline and failed to make a
12 sufficient good cause justification in that regard,
13 and that that resulted in the forfeiture of its right
14 to earn back an additional \$1 million in accordance
15 with the letter of credit in the settlement
16 agreement.

17 In addition, in a second order, also
18 issued on June 14, 2018, the Commission also released
19 a companion order on Charter's limited conditional
20 and qualified acceptance of the approval order's
21 condition.

22 On June -- excuse me -- on July 16,
23 2018, Charter filed two administrative petitions for
24 rehearing and reconsideration on the Commission's
25 June 14 orders. The draft order before the

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2 Commission today denies those petitions for rehearing
3 and reconsideration.

4 Today's draft order also discusses
5 Charter's actions and intentions in terms of the
6 buildout obligation. The order discusses the various
7 administrative enforcement steps that the Department
8 and the Commission have already taken to correct
9 Charter's behavior and secure its performance with
10 the approval order's network expansion condition.

11 These steps were all insufficient,
12 unfortunately, to secure Charter's compliance with
13 the network expansion condition. Charter, instead,
14 opted to include addresses in its network buildout
15 that were neither unserved, nor underserved,
16 including many addresses in densely populated areas.

17 Over the last two years Charter has,
18 among other things, obscured and obfuscated its
19 buildout performance, not complied with safety
20 standards, and sought to use its limited and
21 conditional acceptances of the approval order to
22 effectively change the terms of that order.

23 A review of Charter's conduct over the
24 past two years reflects, unfortunately, an absence of
25 an unconditional commitment to compliance to the New

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2 York regulatory framework and the company's
3 obligation. The continued efforts, among other
4 things, to use the New York City locations and
5 thereby exclude unserved and underserved areas in
6 upstate New York also reflects a lack commitment to
7 compliance.

8 In short, Charter has repeated -- has
9 had repeated opportunities to demonstrate its
10 commitment to the Commission's approval order and
11 settlement order, to modify its actions to comply
12 with the network expansion condition, and also
13 advance the public's interest. But it has not. For
14 the reasons discussed in the draft order, Charter has
15 consistently violated the approval order and the
16 Commission's laws and regulations.

17 Those repeated violations support the
18 rescission and revocation of the January 8, 2016,
19 approval order and require that Charter cease
20 operations in New York subject to the conditions laid
21 out in the draft order and the Public Service Law.

22 This concludes the presentation on
23 Item 501B. We would be happy to answer any other
24 questions that the Commission has. Thank you.

25 CHAIR RHODES: Thank you John, again.

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2 I find that the Company's conduct and
3 deliberate and sustained failure to perform and
4 continued and sustained violation of its commitments
5 is simply not serving New Yorkers, nor is it serving
6 our public interest standard. We need to seek a
7 different provider.

8 And I also find that the grounds for
9 denying the petition for rehearing are on the mark.
10 I will be voting in favor of this recommendation.

11 Commissioner Sayre, you thought that
12 your comments might cover both of these orders. I
13 don't know if you want to add?

14 COMMISSIONER SAYRE: I concur with the
15 Chair's comments just made on the second order and
16 I'll stand on my prior comments.

17 CHAIR RHODES: Thank you.

18 Commissioner Alesi, do you have
19 anything to add or -- to your comments -- prior
20 comments?

21 COMMISSIONER ALESI: I concur and I
22 have nothing more to add. Thank you.

23 CHAIR RHODES: With that, I will
24 proceed to call for a vote.

25 For Item 501A, my vote is in favor of

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2 the recommendation to confirm Charter -- Charter
3 Communication's missed June 2018 compliance
4 obligations, to deny Charter Communication's good
5 cause justifications, and draw upon a letter of
6 credit in the amount of \$1 million, and to direct
7 Counsel to the Commission to commence a special
8 proceeding or action as discussed.

9 Commissioner Sayre, how do you vote?

10 COMMISSIONER SAYRE: Aye.

11 CHAIR RHODES: Commissioner Alesi, how
12 do you vote?

13 COMMISSIONER ALESI: Aye.

14 CHAIR RHODES: The item is approved
15 and the recommendations are adopted.

16 We'll move to Item 501B. My vote is
17 in favor of the recommendation to deny Charter
18 Communication's petition for rehearing and
19 reconsideration, and to revoke and rescind the
20 approval order, and to require Charter Communications
21 to file a plan with the secretary and not abandon any
22 regulated service during a period of orderly
23 transition as discussed.

24 Commissioner Sayre, how do you vote?

25 COMMISSIONER SAYRE: Aye.

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2 CHAIR RHODES: Commissioner Alesi, how
3 do you vote?

4 COMMISSIONER ALESI: Aye.

5 CHAIR RHODES: The item is approved
6 and the recommendations are adopted.

7 Assistant Secretary Agresta, are there
8 any further items to come before us today?

9 ASSISTANT SECRETARY AGRESTA: There is
10 nothing further for today.

11 CHAIR RHODES: Thank you.

12 With that, we are adjourned. Thank
13 you.

14 (The hearing concluded at 2:49 p.m.)

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2 STATE OF NEW YORK

3 I, KATHERINE WOLLEBEN, do hereby certify that the
4 foregoing was reported by me, in the cause, at the time
5 and place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 17, is a true record of all
8 proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 3rd day of August, 2018.

11

12

13 KATHERINE WOLLEBEN, Reporter

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