

Public Service Commission - Special Session - 1-8-2016

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

SPECIAL SESSION

Friday, January 8, 2016
10:30 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS

AUDREY ZIBELMAN, Chair
GREGG C. SAYRE
DIANE X. BURMAN

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2 (The meeting commenced at 9:32 a.m.)

3 CHAIR ZIBELMAN: I'd like to call the session
4 of the Public Service Commission to order.

5 I have to note yesterday someone called our
6 office and asked why are we calling this a special -- why are
7 we meeting at nine thirty for this special session. And
8 since my family always accuses me of never leaving a bad joke
9 unturned, that's why we call it special.

10 The item before us today is Item 501. And
11 it's always -- and as Garry Brown noted, it's always nice to
12 be in this position because everyone has to laugh at even
13 your bad jokes.

14 Item 501 is case number 15-M-0388, which is
15 the Charter Communications and Time Warner Cable joint
16 petition for approval of the transfer of control,
17 reorganization, and financing arrangements. That is the only
18 matter in front of us today. And Peter McGowan, who is my
19 chief policy advisor, will be presenting this today. And we
20 also have Staff at the table for additional questions.

21 Peter, please begin.

22 MR. MCGOWAN: Good morning.

23 You have before you a draft order concerning
24 the joint petition filed by Charter Communications and Time
25 Warner. The petition was filed in July of 2015 for the

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2 authorization of a holding company level transaction that
3 would result in the transfer of control of certain Time
4 Warner subsidiaries to Charter.

5 Under applicable and recently amended Public
6 Service Law, the Commission must determine whether the merger
7 would produce a net public benefit for New Yorkers.

8 So the transaction involves both Time
9 Warner's and Charter's cable, television, telephone, and
10 broadband operations. Charter currently operates networks
11 that are available to roughly 40,000 customers in the Chatham
12 area and north in the Plattsburgh areas. Time Warner
13 operates networks available to roughly 5 million, or over 60
14 percent of New York State's 8.2 million New York residential
15 customers and business customers, making this transaction
16 hugely important for the State of New York.

17 In terms of the process that the Commission
18 has used for this transaction, there has been significant
19 public interest in the transaction. There have -- we have
20 held 5 separate public general forums across 3 major cities
21 in New York, Buffalo, Albany, and New York City. And we have
22 also received numerous comments -- written comments, as well
23 as a number of other letters that have all been considered
24 for this decision today.

25 So let me just review the highlights of the

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2 order. First, in terms of the standard of review, the order
3 finds that the legislative intent of the recently amended
4 Public Service Law review provision applicable to cable
5 mergers is best interpreted and applied to the particular
6 facts of this case by requiring a demonstration of net
7 positive benefits.

8 The public interest review that was conducted
9 is guided by broad -- the broad Public Service Law
10 obligations and related policies concerning cable and
11 telecommunications services.

12 The review also recognizes that the same
13 technology that enables voice and video offerings also
14 provides broadband Internet access. And broadband services
15 are increasingly being used by consumers as a substitute for
16 traditional voice and video offerings. Thus, expanding the
17 availability and affordability of broadband promotes consumer
18 choice and competition in both voice and video markets.

19 In addition, state commissions are obligated
20 under federal law to encourage the deployment of advanced
21 telecommunications infrastructure capable of delivering
22 broadband services to all New Yorkers. For these reasons,
23 the Commission's consideration of the impact of the
24 transaction includes its impact on broadband availability and
25 affordability.

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2 Next, let me turn to the commitments that the
3 Petitioners put forth during this case. Petitioners have
4 indicated that the transaction will enable many public
5 interest benefits, such as infrastructure investment, service
6 quality improvements, and greater access to affordable
7 Internet service. However, the Petitioners have not made
8 concrete commitments to share the projected synergy savings
9 with New York consumers.

10 Therefore, to ensure that the promised
11 benefits -- consumer benefits are delivered to New York, a
12 number of enforceable conditions are proposed in the draft
13 order. These conditions are designed to deliver the consumer
14 benefits promised by the Petitioners and also ensure that a
15 share of the projected synergy savings will enure to the
16 benefit of New York consumers and produce net positive public
17 interest benefits.

18 Let me turn, finally, to the highlights of
19 the proposed conditions in the draft order. First, to
20 improve consumer access to modern cable broadband network
21 services, the draft order would require New Charter to expand
22 its network to an additional 145,000 unserved and underserved
23 households and businesses within its franchise territory
24 within 4 years. This would mean that a modern cable network
25 will pass virtually all of the homes and businesses within

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2 Time Warner's franchise.

3 Second, the draft order requires New Charter
4 to upgrade its systems to all digital and deliver at least
5 100 megabits throughout its New York State territory by the
6 end of 2018. Currently, Time Warner generally offers speeds
7 of up to 50 megabits outside the New York Metro area.

8 And, further, it's required to upgrade its
9 networks to enable 3 -- up to 300 megabits by the end of
10 2019. I would note that while Time Warner offers up to 300
11 megabits in the New York City Metropolitan areas and has
12 announced plans to expand its 300 megabit offering in its
13 major markets nationwide, it has not made concrete plans to
14 do so in Upstate New York.

15 These conditions will also result in the
16 upgrade of the Charter network in -- in the Chatham, New York
17 area. The Chatham, New York area has video services, but
18 does not -- that network does not offer two-way
19 communications.

20 Thus, taken together, these conditions make
21 substantial progress towards the new New York broadband
22 program's goal of bringing high speed broadband to all New
23 Yorkers. So that's the first area concerning access to
24 modern networks.

25 Second, concerning the digital divide or

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2 affordability. To improve broadband affordability and
3 address the digital divide, the draft order commends New
4 Charter's proposed low-income program and requires New
5 Charter to provide its new low-income program offering, which
6 will be at least 30 megabits at no more than 14.99, with
7 eligibility available to families receiving free and reduced
8 lunch benefits, and senior citizens receiving federal
9 Supplemental Security Income benefits. I estimate that this
10 program will be available to roughly 700,000 low-income
11 consumers in New York State.

12 In addition, New Charter must also continue
13 to offer Time Warner's most affordable basic Internet
14 offering, the Everyday Low Price, which is available at
15 14.99, for 2 years from the close. This basic affordable
16 offering is available without limitations on eligibility.

17 New Charter will also be required to offer
18 free broadband service to 50 community centers or anchor
19 institutions in unserved or underserved communities.

20 Next, concerning service quality
21 improvements. To ensure that New Charter remains focused on
22 improving customer service, the order requires the Company to
23 maintain no net reduction in customer-facing employees in New
24 York State for 4 years from the date of the order and to
25 invest 50 million in customer service programs over 2 years,

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2 and to achieve a 35 percent improvement in its PSC complaint
3 rate for cable service over 5 years, with a milestone of 17 ½
4 percent improvement by the end of 2018. For each of these
5 milestones, there is a 2.5 million incentive associated with
6 the targets.

7 Another benefit that will result from the
8 merger is the introduction by New Charter of its 60-megabit
9 standalone broadband product that will be faster and lower
10 priced relative to many Time Warner comparable offerings.
11 Actually, many offerings that are -- by Time Warner that are
12 even not as fast as 60 megabits. So these new standalone
13 broadband and associated bundled offerings will enable
14 consumers to receive significant price benefits.

15 So those are the highlights of the
16 conditions. Based on the record, the draft order proposes
17 that the Commission conclude that within -- with the
18 enforceable conditions outlined in the draft order and
19 summarized here, together with commitments that New Charter
20 has made, the merger will produce substantial net benefits
21 for New York and is, therefore, in the public interest.

22 Staff estimates that these conditions will
23 advance the public interest in New York by producing
24 incremental consumer benefits of approximately 435 million
25 over the next 5 years and associated investments of 655

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2 million, for a combined economic benefit of over a billion
3 dollars.

4 I'd like to just thank a bunch of the D.P.S.
5 -- actually, on behalf of Kim and -- and Tom Congdon, I'd
6 like to thank -- I -- I won't get them all, but I -- I do
7 want to thank Brian Ossias, Graham Jesmer, Joe Yakel, Rick
8 Schuler (phonetic spelling), Sean Isakower, Len Silverstein,
9 Pat Barry, Mike Augstell, Peggy Manupella, and many more for
10 their contributions to this fairly intense and significant
11 review that we have done.

12 I'd also like to thank our colleagues at the
13 broadband program office, who we have worked closely with and
14 who have been most helpful to our consideration of this case.
15 Thank you.

16 CHAIR ZIBELMAN: Thank you. Thank you,
17 Peter.

18 Any questions for Peter or any of the Staff?
19 Commissioner Burman?

20 COMMISSIONER BURMAN: Could you just flesh
21 out a little bit for me the legal public interest standard,
22 just to clarify it?

23 MR. MCGOWAN: I would love to allow Kim
24 Harriman to do that.

25 MS. HARRIMAN: Sure, Commissioner. As Peter

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2 mentioned, the Governor, through his leadership, accomplished
3 a -- an amendment to 222 of the PSL, which is the review
4 standard that's applicable to the cable portion of the
5 transaction.

6 And in amending that statute, especially in
7 light of the legislative intent and its comparability to
8 Section 70 of the PSL, it converted a -- the standard there
9 from a -- if there's no harm, you shall say yes to a -- there
10 must be a benefit in order for you to say yes.

11 And that has real meaningful impact to the
12 analysis that's outlined in the draft order before you.
13 Specifically, as Peter mentioned, it is a determination
14 whether or not the transaction, on its face, presents a net
15 benefit to the public interest. And in evaluating what
16 constitutes a net benefit to the public interest, we have to
17 look at the provisions of PSL that are applicable to the
18 transaction and the general policies of the Commission while
19 being guided by the policies of the state.

20 So it is in that vein that the transaction
21 was evaluated. And on the face of the petition -- solely on
22 the face of the petition, it was found to not have met the
23 statutory standard for the net benefits test. And that is
24 why the order before you is actually a approval with
25 conditions, whereby if the company does not accept the

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2 conditions, the order would be ineffective -- rejection of
3 the Petitioner or denial of the petition.

4 So the standard, again, is comparable to
5 Section 70 in looking for a net benefit from the transaction.
6 And where there's not one, on the face of the petition, like
7 the Commission has done before, it can come up with
8 conditions that would bring the transaction into meeting the
9 standard.

10 COMMISSIONER BURMAN: Thank you.

11 CHAIR ZIBELMAN: Commissioner Sayre, any
12 questions?

13 COMMISSIONER SAYRE: No questions.

14 CHAIR ZIBELMAN: I have none either.

15 So, first of all, I echo your comments,
16 Peter. I'm very much appreciative of the hard work that the
17 Staff has done on this, not only the Office of
18 Telecommunications staff, general counsel, but also you, as
19 my chief advisor, starting with you, as well as Kim, and as
20 well as Tom. I know there's been considerable back and forth
21 and analysis. And I believe this -- the recommended order in
22 front of us really reveals a lot of good, hard thinking about
23 what is necessary for New York and what's in the best
24 interest of New York, both Time Warner's customers, as well
25 as New York as a whole. So I thank you all for that.

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2 I also want to extend my appreciation to our
3 colleagues at the broadband office. They've been immensely
4 helpful for us in terms of their understanding of these
5 technologies and what we can do and should be doing in the
6 state. And I'm very appreciative of that.

7 I'm going to vote in favor of the recommended
8 decision. And I'm going to do so for a number of reasons.
9 First, I do agree that with not only statutorily are we
10 obligated under the expanded obligations put in place by
11 Governor Cuomo to make certain that there are true net,
12 enforceable benefits associated with this transaction, but it
13 would be, certainly, I think, even without that, of real
14 concern for the state if we didn't find those net benefits.

15 I mean this -- you know, when we think about
16 what's happened since the nascence of the Internet, we've
17 clearly moved to a technology where, every day, each of us is
18 dependent on some form of communications. Whether it's voice
19 communications, whether it's video communications, whether
20 it's Internet or e-mail communications, or data
21 communications, we're entirely dependent on them -- on any
22 sort. And in -- as a matter of fact, the technology around
23 these communications have converged around the broadband.

24 And that for us to be able to have a modern
25 communications network in New York that's essential for the

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2 20 million or so New Yorkers who use it every day and every
3 hour in some form or another, plus the visitors, in every
4 aspect of their lives, whether it's work, whether it's home,
5 whether it's social networking, or other piece of their life,
6 and not think that we're going to have the type of first-
7 class Internet service and broadband service that Governor
8 Cuomo has announced is a requirement for the state in the
9 form of 100 megabits, to my mind would mean that this
10 Commission has not met its responsibility to the public.

11 And when we consider, on top of that, that
12 Time Warner serves 2.6 million subscribers or more than 5
13 million individuals, it makes it even more important that we
14 look at this -- that we look at this transaction and consider
15 its impact, not only on the individual subscribers, but on
16 the state as a whole. So I absolutely agree that, while the
17 Company filed a number of different commitments, commitments
18 without enforceable, concrete requirements and commitments
19 that are not clear, are hardly commitments that we can count
20 on.

21 They are not sufficient to have net benefits
22 and that only if the Company were to agree to the various
23 conditions that are set forth in the merger would I be able
24 to find it's in the public interest. But with those, I
25 believe that we are serving the public and there is a net

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2 public benefit, and I would endorse moving -- I endorse
3 moving forward.

4 In terms of that, the Commission has had,
5 over the last year, not only the benefit of hearing from the
6 public about this particular transaction, we've spent an
7 awful lot of time thinking about telecommunications in
8 general. And have had a lot of hearings. We've heard a lot
9 from consumers about what they want and desire out of their
10 communications network. And I think we could put them in the
11 many of the conditions that we see in the order are
12 absolutely essential, I think, for the -- for the public, for
13 the people that are buying these service to say this is what
14 they deserve.

15 One is in terms of modernization and speed.
16 Governor Cuomo has set up a -- a great standard of saying
17 that we should get at least 100 megabits throughout the
18 state. As we move forward into the 21st Century, we continue
19 to need speed because we're requiring these services for
20 everything we do.

21 So one of the things that I -- I think is
22 important in the merger conditions is that Time Warner is not
23 only required to put in 100 megabits in the next couple of
24 years, but is actually required to go to the 300-megabit
25 standard.

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2 Time Warner has indicated -- has -- already
3 has 300 megabits in the City. I think it's very clear that,
4 as we move through this, everybody in the state needs those
5 types of speeds. We can't have businesses throughout the
6 state who have different types of quality of service. So
7 getting us there is very important.

8 The other piece is -- is that -- is in terms
9 of network expansion. The very fact that we still have
10 people across New York who are not able to get access to high
11 speed Internet is really a problem. It is obviously a
12 problem that the broadband office, itself, is looking to
13 undertake.

14 But we -- but I think the fact that they're
15 so many people in Time Warner's franchise area who don't have
16 service, itself, it's very critical that we do that buildout.
17 And having that commitment to 145,000 will mean, as -- as
18 Peter said, that a substantial number of these -- of these
19 customers will now have access to the same level of broadband
20 service, and therefore, the same level of telecommunication
21 service as everybody else in the state.

22 I believe that from that, you know, we're
23 looking at an order of over 300 million dollars apiece for
24 each of those types of commitments and they are essential
25 commitments.

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2 The other element that I think is very
3 important is in terms of pricing. And that takes several
4 pieces. One is the issue is that Time Warner, today, offers
5 a standard standalone Internet service that they call their
6 basic or -- I can't remember the name right now.

7 MR. MCGOWAN: Everyday Low Price.

8 CHAIR ZIBELMAN: Everyday Low Price, which a
9 lot of people like. The last thing we wanted is for this
10 merger to occur and people not to have that service available
11 to them. So I think it's very important that as part of the
12 merger condition, New Charter agrees to keep this service in
13 place for at least 3 years for existing customers and 2 years
14 for new customers, so that people don't see an immediate
15 uptick in their prices.

16 I also -- we heard from a number of people
17 throughout our hearings about the importance of standalone
18 service. We are moving into an era where people are going
19 off the grid and they want standalone Internet, they want it
20 at high speeds, and they want it at an affordable price. I
21 think it's going to be a great advantage and necessity for
22 this merger to get to 60 -- the 60 megabits of speed at less
23 than 60 dollars, I think 59.99 standalone across the state.

24 The other thing that I believe is really
25 important for that it's -- is at the standard pricing. The

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2 fact that you don't have people in Northern New York and
3 Western New York and Southern Tier of New York paying more
4 for the same service as other people, I think is really very
5 important. So getting that is -- is essential.

6 Digital divide is something that we've talked
7 about a lot. There are too many people in New York who don't
8 have access at all. These are people who are -- are sort of
9 at the bottom of the economic scale. But what's really
10 essential is, as Internet itself has become an essential
11 service, we can't expect people to be able to access the
12 services they need unless they have access to affordable
13 Internet.

14 One of the things I think is very important
15 to this merger is that we get a low-income program. We heard
16 a lot about this last year when we were talking about the
17 potential acquisition by Comcast that the Comcast program,
18 which was limited to school lunch, was insufficient. So I
19 think having a low-income program, which -- which is required
20 in this order, that -- that it looks at both the school lunch
21 eligible individuals, as well as Social Security Supplemental
22 Income individuals who are seniors, really expands that.

23 Now as Peter said, that's approximately
24 700,000 new New Yorkers who will now have access to
25 affordable Internet, not at a minimal speed, which is what we

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2 were going to get out of Comcast, but actually at 30
3 megabits, which is a good speed, and also not have credit
4 checks associated with being able to get the service. It's
5 going to be essential to get them on.

6 And I'm hopeful that the 700,000 number is a
7 low number and that we are able to work with the local
8 communities and get that done and get it done fast.

9 The other piece that I think is really
10 important is having 50 free -- 50 areas in the state which
11 will get free broadband access at community centers. We
12 heard a lot about that from folks in the city, in particular.
13 Getting those community area centers access gives people who
14 can't afford Internet at home an opportunity to go somewhere
15 and get good Internet access for free, but also really then,
16 again, stresses the importance of having that access.

17 Those pieces, to me, really then become the
18 elements of what a 21st Century broadband world and
19 communication world looks like in New York and really
20 complements what Governor Cuomo's vision of what he wants for
21 this state and what the broadband office is going to unleash.

22 I'm hopeful with all of these conditions we
23 really are going to be in a position that in the next several
24 years we're going to see all New Yorkers have access to well-
25 priced, high speed, modern Internet services that we really

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2 need for -- for every aspect of our lives.

3 The other pieces that I think are very
4 important to the merger approval and, you know, are certainly
5 something, again, we heard about a lot were customer service.
6 I don't want to take this lightly, but guess what, folks?
7 Nobody likes the cable guy. And we really need to think
8 about how do we improve customer service. This is a problem
9 throughout the industry, not just one that Time Warner had.
10 But we'd like -- but this was not going to happen unless we
11 saw real improvement.

12 So we have a condition in the merger that
13 they have to improve customer service. Michael Corso does
14 not want to hear from Charter customers, and so we're going
15 to require them to reduce their customer complaints to us by
16 35 percent with a tiered approach every year, and put 50
17 million dollars into improving customer service.

18 We also think -- believe that job retention
19 is going to be essential. You know, every merger is
20 associated with synergies. One way companies obtain
21 synergies is through job reductions. We get that. But at
22 the same time, we're not going to get where we need to go in
23 terms of customer service and customer awareness if we reduce
24 the customer-facing jobs in New York.

25 So one of the things that's we're doing in

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2 the -- in the -- as a condition is to require that there is
3 no net loss in customer-facing jobs in New York for the first
4 4 years following the merger.

5 There are a number of other conditions that I
6 think are important. These were the ones that were certainly
7 very important to me. As Peter said, I think that when you
8 think about it in total, 1.1 billion in merger benefits,
9 which I believe is a conservative number, is about what we
10 deserve and need in this state.

11 But, more importantly, we need to make sure
12 that these conditions are real, concrete, and enforceable. I
13 think that the recommended order does that. And for that, I
14 am prepared to vote in favor of it. So thank you.

15 Commissioner Sayre?

16 COMMISSIONER SAYRE: I also support the
17 proposed order. As Peter McGowan and -- and Kim Harriman
18 both said, we're required by state law to ensure that this
19 merger produces real, positive benefits to New York. And
20 federal law explicitly encourages state commissions, like
21 this one, to maximize broadband service, which, to me, means
22 both availability and affordability of broadband.

23 I think the broadband provisions, for the
24 reasons stated by Chair Zibelman, are really the most
25 important pieces of this order, although I don't mean to --

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2 to deprecate the others. But we're addressing both
3 availability and affordability in what we're requiring the
4 merger parties to accept as a condition of our concurrence
5 with this merger.

6 We're requiring substantial service
7 extensions, as has already been explained, the continuation
8 of an affordable price that has no income limitations, and a
9 new low-income program that really should help address the --
10 the digital divide and -- and what people call the homework
11 gap for students who need to do their homework on the
12 Internet, but they don't have the Internet to do it.

13 We also require, as has been stated,
14 substantial increases in speed and service Upstate. One
15 thing not discussed yet in detail is the relationship between
16 the Governor's Broadband for All Program and this merger.
17 The Broadband for All Program has allocated a half billion
18 dollars for broadband expansion to unserved areas in New York
19 State. And what we're doing in this order with respect to
20 that program is requiring Charter to bid for those funds.

21 They won't get credit -- they can't use those
22 funds to meet their commitments that we're imposing on this
23 order, but they're required, in addition to the commitments
24 that we're requiring, we're requiring them to bid on the
25 Broadband for All funds to make additional extensions on the

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2 assumption that the Broadband for All Program conditions are
3 comparable to the conditions of the previous New York plan,
4 the Connect New York Program. So I think we have the
5 possibility of a double benefit here.

6 With these conditions, which the parties have
7 to accept as a condition of our approval, I'm convinced that
8 the net impact of this transaction will be very positive for
9 New York.

10 CHAIR ZIBELMAN: Thank you.

11 Commissioner Burman?

12 COMMISSIONER BURMAN: Thank you.

13 There are three separate viable actions we
14 can choose to carry out today on this merger. We can, first,
15 accept the petition as is, we can allow the petition with
16 certain enforceable and real conditions, or we can deny the
17 petition outright.

18 Before I decided what the appropriate course
19 of action is on this merger petition, it was important to me
20 that I stepped back and reflected on what my responsibility
21 is under our telecom merger legal standard of review. That
22 is the public interest standard.

23 We need to determine this public interest
24 standard with an understanding of three landscapes,
25 historical, current, and future. These include, to me, a

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2 rich history of enhancing competition; existing public policy
3 objectives and realities of the telecom and cable T.V.
4 marketplace; customer protections and benefits, including
5 access, quality, and affordability; economic development
6 impact; and the fluid nature of this communication
7 marketplace, especially as it concerns the evolution of
8 technology and innovation.

9 The biggest piece that stands out to me is
10 the aspects as they concern broadband. And I'll come back to
11 that in a moment. So to review all of this, first, we have
12 to look at do we approve the petition as is. In principal,
13 the petition put forth was a step in the right direction.
14 But we needed to look at the petition as a whole and we
15 needed to see, based on the facts and the circumstances, did
16 this meet our legal standard.

17 The petition was insufficient in scope and
18 scale and lacked crucial post-merger precision on fundamental
19 aspects. These failings seemed likely to affect the long-
20 term success of the merger goals and didn't give me comfort
21 that they would meet our statutory obligation if we approved
22 it just as is. Therefore, in my opinion, I do agree with
23 Staff's assessment that, on its face, and based on the facts
24 and circumstances as presented at this time, accepting the
25 petition as is does not meet the public interest standard.

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2 So then we need to look at the petition and
3 we need to say is this failing on its face that it -- it
4 should be denied outright without any attempt by this
5 Commission to extract necessary and appropriate conditions to
6 ensure that the public interest standard has been met? I
7 don't believe a denial outright is appropriate.

8 Based on the comments that we've received,
9 based on the public statement hearings that we've gone to,
10 for me, we needed to figure out a way to look at our
11 obligations that we had and see, based on the petition, which
12 was a very good-faith effort in trying to show what the
13 capabilities were and what the opportunities were in New
14 York, to provide the net benefits to all.

15 So as I see it, we have an obligation to
16 really look carefully at what the conditions should be, what
17 are necessary and appropriate. So thus, we're left with
18 analyzing these -- what the appropriate conditions are and,
19 if accepted in their entirety, will they be sufficient to
20 meet the public interest net benefit standard?

21 So again, for me, it comes back to looking at
22 all of the different synergies that are available. And the
23 biggest piece that stood out was the broadband aspect. Today
24 it's universally agreed that broadband deployment and
25 adoption are important policy goals. Normally, a state

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2 regulatory commission might find its ability to achieve these
3 policy goals stymied by its own jurisdictional constraints.
4 A state commission does need to be mindful that any
5 conditions imposed needs to be properly tailored to meet
6 those policy goals without wielding excessive and overarching
7 conditions outside its jurisdiction.

8 Staff clearly understood that concern and, to
9 ensure that there was an appropriate balance, conferred with
10 the New York State Broadband Program Office. Moreover, the
11 conditions imposed as it relates to broadband don't seek to
12 inappropriately grab jurisdiction, but rather, seems to align
13 proper benefits uniquely attributable to this merger and
14 place the achievement of the goals with the rightful parties,
15 the marketplace, the broadband office, the customers, and
16 other stakeholders which we were also a part of.

17 We did not operate in a vacuum in looking at
18 this merger, but rather, we looked at what would add value to
19 the public to help achieve the right results. We do have a
20 legitimate interest in considering potential benefits to the
21 consumers that can arise uniquely from this merger, and we do
22 so in a focused and comprehensive way.

23 There are some narrowly tailored conditions
24 that we, otherwise, in some instances, may not have actual
25 jurisdiction over. But to the extent that they help to meet

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2 the necessary public interest standard, it's appropriate to
3 allow such conditions to help provide the net public interest
4 benefits. I think this finds the right balance.

5 We do need to endeavor to make sure that we
6 don't weaken competition to the detriment of consumers and
7 businesses. And here we have been successful in this
8 endeavor. I am mindful that this is the first time we are
9 actually deciding a telecom merger under the new statutory
10 public interest standard. In fact, this is the first time
11 that I, myself, am actually looking at a telecom merger.

12 We need to, therefore, at this juncture, be
13 cognizant of the potential telecom merger positions later
14 that may come before us. Perhaps, inevitably, the approval
15 of this merger today will lead to a discussion as to what
16 lessons can be drawn from it for future telecom mergers in
17 New York. Quite a few discussions, I would think.

18 In reviewing such mergers, we need to follow
19 a strictly case-by-case approach, assessing each petition on
20 its own merits with the specific facts and circumstances
21 presented to us. We are not locked into only these
22 conditions as the sole factors to successfully meet the
23 public interest standard for merger approval. And in fact,
24 that we shouldn't be locked into them. We really need to
25 look at conditions that would be placed on the mergers and

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2 see are they the necessary and appropriate tools to shape a
3 telecom merger that is truly in the public interest.

4 The conditions proposed in this draft order
5 address our concerns in a comprehensive, measurable, real,
6 and effective manner. Today would have been Elvis Presley's
7 81st birthday. One of my favorite quotes of his was do
8 something worth remembering. I think we have achieved that
9 today.

10 I will be voting in favor of approval with
11 conditions. Thank you.

12 CHAIR ZIBELMAN: I cannot believe you did not
13 take the opportunity to sing that.

14 COMMISSIONER BURMAN: Let me tell you trying
15 to find a -- an appropriate quote was very difficult.

16 CHAIR ZIBELMAN: Thank you.

17 Commissioners, with your indulgence, as you
18 know, Commissioner Acampora was not able to be with us today.
19 She has had an opportunity to, obviously, participate
20 throughout this proceeding and has reviewed the recommended
21 decision. She's asked that I read a statement. If you'd
22 bear with me, thank you.

23 (Reading) It's with sincere regret that I
24 cannot be with you today to directly participate in this very
25 important proceeding. Though I will not be able to cast my

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2 vote at this time, I have closely studied the issues that are
3 before us and I request that my position in this matter be
4 read into the record.

5 As the Commission considers this case, we
6 must recognize that many residential and business customers
7 in rural areas in the state lack access to broadband at
8 speeds that provide real value from the competitive
9 communications market. We must also recognize that
10 affordability of broadband service remains a concern.
11 Therefore, a public interest inquiry needs to focus on how
12 this transaction will improve both affordability and access.

13 In order to gain our approval, the two
14 companies are required to demonstrate that the transaction
15 promotes New York's interest in a robust, competitive
16 broadband market through expanding and enhancing network
17 access and assuring affordable services.

18 As Staff and many commentators point out, the
19 promise of telecommunications and cable competition is
20 elusive if customers do not have access to the cable network
21 or are not able to access advanced networks because
22 standalone broadband services are not affordable.

23 In my opinion, the draft order before you
24 should be approved given the proposed conditions to increase
25 broadband speed, expand broadband infrastructure to unserved

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2 areas, and provide the state's first high-speed broadband
3 program for low-income households. The conditions that we
4 will impose on the companies will also require customer
5 service improvements and employee job retentions.

6 If I could have been with you today, my vote
7 would have been an affirmative one. With the conditions you
8 hopefully will adopt, the merger will bring substantial
9 incremental net benefits to the Companies' customers in New
10 York. With the acceptance by the Companies of these
11 enforceable and concrete incremental benefits, the proposed
12 transaction represents a positive benefit for New Yorkers.
13 (End of reading)

14 And, again, we're appreciative of the fact
15 that Commissioner Acampora could not be here today, but we do
16 know that she has spent a great deal of time with this.

17 But you know, for us the -- really the issue
18 is -- is the three of us. So with that, I'm going to take a
19 vote.

20 All those in favor of approving the proposed
21 merger by these Companies, conditioned upon their
22 unconditional acceptance of the commitments and conditions of
23 our approval, as described in the order and today, please
24 indicate by saying aye.

25 COMMISSIONER SAYRE: Aye.

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2 COMMISSIONER BURMAN: Aye.

3 CHAIR ZIBELMAN: Opposed?

4 Hearing no opposition, the recommendations
5 are adopted. Again, thank you to the Staff, to the broadband
6 office, and to the many, many commenters, as well as the
7 Company. We think this -- I agree with Commission Burman;
8 this is definitely a day for us all to be proud. Thank you.

9 We're at close. Is there any other thing to
10 be -- come in front of us?

11 SECRETARY BURGESS: There's nothing else
12 before you today. The next Commission session is January
13 21st.

14 CHAIR ZIBELMAN: Thank you.

15 (The meeting concluded at 10:14 a.m.)

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2 STATE OF NEW YORK

3 I, Hannah Allen, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 30, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 15th day of January, 2016.

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13 Hannah Allen, Reporter

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