



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
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July 20, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St Paul Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce**
Docket No. P5615, 6716/PA-15-653

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of the Notification by Charter Communications, Inc., Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC, Charter Advanced Services (MN), LLC, and Charter Advanced Services VIII (MN), LLC of Corporate Reorganization

The petition was filed on July 2, 2015 by:

Anthony S. Mendoza
Mendoza Law Office, LLC
1000 University Ave., Suite 222
St. Paul, MN 55104

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

/s/ DIANE DIETZ
Rate Analyst

BLL/DD/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P5615, 6716/PA-15-653

I. BACKGROUND

On July 2, 2015, the Minnesota Department of Commerce (Department) received a copy of a notice (Notice) filed by Charter Communications, Inc. (Charter), Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC, Charter Advanced Services (MN), LLC, and Charter Advanced Services VIII (MN), LLC (the Charter Subsidiaries) with the Minnesota Public Utilities Commission (Commission), notifying the Commission that Charter intends to effectuate a *pro forma* corporate reorganization (the Reorganization) that will result in the Charter Subsidiaries having a new ultimate corporate parent (New Charter). The Reorganization will allow New Charter to engage in transactions with two entities that do not operate in Minnesota, Time Warner Cable Inc. (TWC) and Advance/Newhouse Partnership (Advance/Newhouse), the parent of Bright House Networks, LLC (BHN), by which TWC and BHN will become subsidiaries of New Charter (jointly, the Transactions). Charter believes that the Transaction and Reorganization will be consummated on or before December 31, 2015.

A. PARTIES

Charter is a communications company that provides broadband Internet, video, voice, and business services. Charter states that it is the seventh-largest multichannel video programming distributor (MVPD) in the United States, serving 4.2 million residential Charter TV video customers and over 2.4 million residential customers via Voice over Internet Protocol (VoIP) technology. The Charter Fiberlink Subsidiaries (Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC) provide interstate and intrastate telecommunications services to business customers, including private line and data/wide area network services, as well as switched exchange access services in interconnecting carriers who terminate calls on Charter's network. They do not currently have subscribers for residential end-user voice services, but they enable the Charter Advanced Services Subsidiaries (Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC) to offer interconnected VoIP services to residential and business end-users by providing network

interconnection, telephone numbers and other services.¹ Charter has more than 1,500 Minnesota employees serving 158 Minnesota communities, including Rochester, Apple Valley, Saint Cloud, Lakeville, Duluth and Mankato.

Advance/Newhouse and TWC have a partnership (Time Warner Entertainment A/N Partnership) to operate BHN prior to the Transaction with Advance/Newhouse having 100% economic or legal ownership of BHN (see attached pre- and post-transaction organization charts).² Charter and Advance/Newhouse have agreed to Charter's acquisition of BHN and the provision of a new partnership of which New Charter will own approximately 87% and Advance Newhouse will own approximately 13%.³ The new partnership will indirectly own Legacy TWC, BHN and the Charter Subsidiaries through Legacy Charter (see attached Exhibits 1 and 2, pre- and post-transaction organization charts).⁴

BHN is currently the sixth largest owner and operator of cable systems in the U.S. operating in Florida, Alabama, Indiana, Michigan and California.⁵

Liberty Broad Corporation (Liberty) is currently the largest shareholder of Charter (25%) and will be the largest shareholder of New Charter (19%) following the Reorganization and Transactions.⁶

New Charter will be the product of a tax-free reorganization that will result in a current subsidiary of Charter, CCH I, LLC, becoming the new holding company owning 100% of Charter.⁷ New Charter will assume the Charter name and its existing NASDAQ Stock Market ticker symbol (CHTR). New Charter will be led by Charter's current President and CEO as the Chairman of the Board of Directors. New Charter's Board of Directors will consist of 13 directors including the Chair. The remaining 12 directors will include seven independent directors nominated by the independent directors serving on Charter's Board of Directors, two directors designated by Advance/Newhouse, and three directors designated by Liberty.⁸

¹ Parties are awaiting a written order in Commission Docket No. P6716, 5615/C-14-383 (14-383) concerning the Commission's jurisdiction over Charter's services. The Commission voted to assert jurisdiction on May 8, 2015, but a written order has not yet been issued. The Charter Advanced Services Subsidiaries join this Notification but reserve all rights and objections relating to jurisdiction, filing disclosure, relevancy, due process, review, and appeal. They argue that any references pertaining to non-jurisdictional products and services should not be construed as a waiver of any rights or objections available to Charter in Docket 14-383 or any other proceeding, and may not be deemed an admission of jurisdiction.

² Notice, Diagram of Organization Structure Prior to Transactions.

³ U.S. SEC Form 8-K, May 26, 2015, Charter Communications, Inc., Exhibit 99.1 Joint Press Release, dated May 26, 2015, announcing entry by Charter Communications, Inc. into a definitive merger agreement, dated May 23, 2015, with Time Warner Cable Inc. (Exhibit 99.1)

⁴ Notice, Diagram of Organization Structure Following Transactions.

⁵ Exhibit 99.1

⁶ Exhibit 99.1; and Exhibit 99.2 Investor Presentation, Structure and Pro Forma Ownership, p. 16. (Exhibit 99.2)

⁷ Exhibit 99.2, p.3.

⁸ Exhibit 99.1.

B. THE REORGANIZATION AND THE TRANSACTIONS

The Parties state that neither the Reorganization nor the Transactions will result in an actual change of ownership of, or control over, the Charter Subsidiaries, and the Transactions involve TWC and BHN properties located outside of Minnesota.

- As a result of the Reorganization, majority ownership of New Charter (approximately 68%) will be held by the public (44% by TWC shareholders and 24% by Charter shareholders). Charter's current single largest shareholder, Liberty Broadband Corporation, will remain the largest shareholder of New Charter (19%), and Advance/Newhouse will hold approximately 13% of New Charter.⁹
- In the Transactions, TWC and BHN will become indirect subsidiaries of New Charter. New Charter will acquire BHN from Advance/Newhouse resulting in New Charter's indirect ownership of TWC, Charter and BHN with the Charter Subsidiaries remaining under the indirect control of Charter (see attached Exhibits 1 and 2, pre- and post-transaction organization charts).

II. STATEMENT OF ISSUES

- A. Does the Commission have jurisdiction over any aspect of either the Reorganization or the Transactions?
- B. How should the Commission proceed in this matter?

III. LEGAL REFERENCES

Minn. Stat. § 237.23 states that it shall be unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the commission thereto.

Minn. Stat. § 237.74, subd. 12 provides that no telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

⁹ 2 *Id.*

IV. ANALYSIS

A. *THE COMMISSION DOES NOT HAVE JURISDICTION OVER EITHER THE REORGANIZATION OR THE TRANSACTIONS.*

1. *The Commission has established a consistent precedent for asserting its jurisdiction in merger or acquisition transactions based upon the specific circumstances in each application.*

The Commission bases its decision on whether to assert its jurisdiction and require approval for mergers and acquisitions involving a telephone company or telecommunications carrier authorized to operate in Minnesota on the specific circumstances in each transaction. The Commission has not asserted its jurisdiction nor required approval for corporate reorganizations in which ultimate ownership or control does not change and the operating company is not impacted by the reorganization.¹⁰ Commission approval is required for transactions where the ultimate ownership or control of either a telephone company or telecommunications carrier authorized to operate in Minnesota changes, or a telephone company's or a telecommunications carrier's Minnesota operations are affected by a merger or acquisition transaction. For example:

- As previously noted in Docket No. P5246/PA-00-925 (00-925), the Commission determined that its approval was not required for reorganizations with no change of ownership or control and operating companies were not affected.
- In Docket No. P556, 6101/PA-06-971, the Commission approved a change in ownership not because of a change in control, but because the operating company serving customers was impacted.
- In Docket No. P6507/PA-07-808, the Commission ruled that when a minority member acquired majority control of the general partner in an upstream partnership, which had ultimate ownership of a telecommunications carrier operating in Minnesota, approval of the transaction was required although the general partner owned only 1% of a partnership because the general partner exercised control of the Minnesota telecommunications carrier.
- In Docket No. P5215, PT6283/PA-07-1616, the Commission found that when the existing ultimate ownership of a telecommunications carrier fell below 50% as a result of stock options being exercised, approval of the change in ownership was not required because no change of control occurred.
- In Docket No. P6441 *et al.*/08-1392, the Commission approved CenturyTel's acquisition of Embarq because control of Embarq transferred to CenturyTel.
- In Docket No. P5535,5615/PA-09-560, the Commission ordered that although no change of control occurred, the change of ownership that resulted from a bankruptcy reorganization required Commission approval. The voting interest of Charter Communications, Inc.'s principal stockholder was reduced from 91% to

¹⁰ *In the Matter of an Application for Approval of a Corporate Reorganization by Winstar Wireless, Inc.*, Docket No P5246/PA-00-925, August 25, 2000.

- 35% with four of the new stockholders holding more than 10% of the voting or equity interest, but none owning more than 35% of the voting interest.
- In Docket No. P405, 407, PT6439/C-09-885, the Commission dismissed the Communications Workers of America's complaint against Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier). The complaint sought a ruling that the Commission has jurisdiction over a proposed transfer of a majority of the common stock in Frontier to shareholders of Verizon Communications, Inc. (Verizon). The Commission agreed with the Department's comments that the shares of Frontier obtained by Verizon would be widely held among shareholders with no discernable ability to obtain control over Frontier, that Frontier's Minnesota operations were not affected by the transaction, and that Minnesota law does not address the acquisition of telecommunications assets located outside of Minnesota.
 - In Docket No. P6696/PA-09-1467, the Commission agreed with the Department's comments that its approval was not required when a newly created holding company, AM3 Pinnacle Corporation (Pinnacle), acquired all of the stock of AM3 Holding Corporation (AM3) because Pinnacle would be held by the same four major shareholders that owned AM3, and control and the operations of AM3 would not be affected.

As demonstrated in these examples, the Commission has either asserted its jurisdiction under Minn. Stat. §§ 237.23 and 237.74, subd. 12 based on the specific circumstances of an ultimate change of ownership or control for a Minnesota telephone company or telecommunications carrier or when a Minnesota telecommunications operating company is impacted by such a transaction; or the Commission has decided that its approval was not required, that no action was necessary, and closed the docket.

2. *The specific circumstances surrounding the Reorganization and Transactions do not support the position that these transactions require Commission approval.*

Ultimate ownership and control of the Charter Subsidiaries do not change because shares of New Charter obtained by TWC shareholders will be widely held among shareholders with no discernable common interest in or ability to obtain control over New Charter. The Charter Subsidiaries' Minnesota operations are not adversely impacted by the Reorganization and the Transactions, and the transaction represents New Charter's acquisition of TWC and BHN operations not located in Minnesota.

- a. *The shares acquired by TWC shareholders do not represent a change of ownership or control for which the Commission must assert its jurisdiction so as to protect the public interest.*

The 44% of New Charter stock acquired by TWC shareholders will be widely held with approximately 280 million TWC common stock shares issued and outstanding, as of March

31, 2015,¹¹ held by \$152.5 million shareholders.¹² TWC shareholders do not have any kind of a centralized management like that found in a corporation, such as TWC, that would manage and significantly influence, if not effectively control, the operations of New Charter if such a corporation were to acquire 44% of the outstanding common stock of New Charter. TWC shareholders represent individual investors who will presumably act in their own self-interests to buy and sell their investments in New Charter. The New Charter stock that TWC shareholders will receive merely represents a portion of the compensation for their investment in New Charter.

Charter maintains control of the Charter Subsidiaries. Legacy Charter, as one of the investors in New Charter, will have a total of eight of the thirteen seats on New Charter's Board of Directors following the closing of the Reorganization and Transactions and will continue to control the management of its operations, including those of the Charter Subsidiaries' Minnesota operations. Two directors will be designated by Advance/Newhouse, and three directors will be designated by Liberty Broadband¹³ Charter's current Chairman, who has been in office since 2009, will continue to serve on New Charter's Board.¹⁴

b. Charter Subsidiaries' MN's operations should not be threatened by the Reorganization and Transactions.

As subsidiaries of New Charter, Charter Subsidiaries' performances and resources will be reflected in the consolidated financial statements of New Charter. Projections indicate that New Charter will have free cash flow of approximately \$6.1 billion (EBITDA of approximately \$12.9 billion less capital expenditures of \$6.9 billion, see attached Exhibit 3).¹⁵ New Charter debt is projected to be \$61.5 billion and to achieve a target leverage level of an approximate 4.5x debt ratio when debt is divided by EBITDA adjusted for first year synergies of \$500 million (see attached Exhibit 4).¹⁶

Customer benefits are expected to result from the Reorganization and Transactions. New Charter will continue to make capital investments. Capital expenditures in its first year are projected to be \$6.9 billion.¹⁷ Charter, TWC and BHN told the FCC that Charter's proposed merger with TWC and proposed acquisition of BHN will offer consumers the benefits of "faster Internet for online video, affordable prices, transparent billing, and commitment to American jobs."¹⁸ Charter, TWC and BHN identified the following consumer benefits to the FCC:¹⁹

¹¹ U.S. Securities and Exchange Commission, Form 10-Q for the quarterly period ended March 31, 2015, Time Warner Cable Inc., Consolidated Balance Sheet, p. 20.

¹² Exhibit 99.2, p. 16.

¹³ Exhibit 99.1.

¹⁴ 2 *Id.*

¹⁵ Exhibit 99.2, p. 17.

¹⁶ 2 *Id.* p. 13, fn. 6.

¹⁷ 3 *Id.* p. 17.

¹⁸ Charter, TWC, BHN Offer Open Internet Concessions, Telecommunications Reports Daily, July 8, 2015.

¹⁹ 2 *Id.*

- The companies are committed to an investment “in an all-digital system in Time Warner Cable and Bright House Networks’ service areas, completing the digitization within 30 months of closing [the [T]ransactions].”
- New Charter will invest at least \$2.5 billion in network build-out into commercial areas within its footprint beyond where it currently operates within four years of the close of the transaction.
- Within the same period, the companies will add 1 million line extensions to homes in its franchise areas, bringing service to unserved areas or adding a competitive option for consumers.
- They will expand Charter’s slowest broadband service tier of 60 megabits per second (Mbps) to TWC and BHN customers, and expand TWC’s and BHN’s highly advanced 300 Mbps service.
- They are committed to “significantly expand Bright House Network’s’ broadband program for low-income customers by making a broadband offering available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount, and will make the offer available across the New Charter footprint.”
- The transactions pose no “horizontal” market antitrust concerns, as the merging companies do not compete in the same geographic markets.”

c. Minnesota law does not address the acquisition of telecommunications assets located outside of Minnesota.

Although New Charter will obtain indirect ownership and control of TWC and BHN, neither of these entities have operations in Minnesota. The Commission has not asserted jurisdiction over acquisitions of assets located in other jurisdictions by a telephone company or telecommunications carrier with authorization to operate in Minnesota. As described in Section IV.A.1 above, Commission approval is required for transactions where the ultimate ownership or control of either a telephone company or telecommunications carrier authorized to operate in Minnesota changes, or a telephone company’s or a telecommunications carrier’s Minnesota operations are affected by a merger or acquisition transaction.

Neither the Reorganization whereby the Charter Subsidiaries have a new ultimate corporate parent (New Charter), nor the Transactions whereby New Charter will acquire TWC and BHN require Commission action.

- 1) The ultimate ownership and control of the Charter Subsidiaries do not change. Legacy Charter, as one of the investors in New Charter, will hold eight of thirteen seats on New Charter’s Board of Directors following the closing of the Reorganization and Transactions and will continue to control the management of its operations, including those of the Charter Subsidiaries’ Minnesota operations.
- 2) The operations of the Charter Subsidiaries will not be adversely affected. New Charter is expected have adequate managerial, financial and technical resources to ensure that the Charter Subsidiaries continue to deliver reliable services to their customers.

- 3) Neither TWC nor BHN have Minnesota operations, and New Charter's acquisition of TWC and BHN does not support the Commission asserting jurisdiction.

B. COMMISSION APPROVAL OF THE REORGANIZATION AND TRANSACTIONS IS NOT REQUIRED, AND THIS DOCKET SHOULD BE CLOSED.

Upon a review of the specific circumstances, the Department believes that Commission approval is not required for Reorganization and Transactions, and this docket should be closed. The details of the Reorganization and Transactions indicate that the public interest will not be adversely affected, because: 1) TWC's ownership interest in New Charter will be widely held and control of New Charter does not change; 2) the operations of the Charter Subsidiaries are not likely to be harmed; and 3) TWC and BHN do not operate in Minnesota.

V. COMMISSION ALTERNATIVES

1. Commission approval of the Reorganization and Transactions is not required, and the docket is closed.
2. Assert jurisdiction and require an application for approval of the Reorganization and Transactions.

VI. RECOMMENDATION

The Department recommends Alternative 1.

Commission approval of the Reorganization and Transactions is not required, and the docket is closed.

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