

Docket: : A-15-07-009
Exhibit Number : _____
Commissioner : M. Picker
Admin. Law Judge : K. Bemederfer
ORA Project Mgr. : Ana Maria Johnson
ORA Witness : Eileen Odell



ORA
OFFICE OF RATEPAYER ADVOCATES



**Office of Ratepayer Advocates
California Public Utilities Commission**

**Office of Ratepayer Advocates Testimony and Recommendations Regarding Low
Income Services Programs**

---PUBLIC VERSION--

**San Francisco, California
January 15, 2016**

MEMORANDUM

This report was prepared by Eileen Odell of the Communications & Water Policy Branch of the Office of Ratepayer Advocated (ORA) under the general supervision of Program & Project Supervisor, Ana Maria Johnson. ORA is represented in this proceeding by legal counsel, Lindsay Brown.

A statement of qualifications of Eileen Odell is presented in Attachment A to this testimony.

This Testimony is comprised of the following chapters:

Chapter	Description
I	Section Title: Introduction
II	Section Title: Lifeline Services
III	Section Title: Low Income Services for Broadband Adoption
IV	Section Title: Conclusion

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Attachment A – Statement of Qualifications of Eileen Odell

1 **EXECUTIVE SUMMARY**

2 The following report provides information regarding the low-income
3 services project plans for voice and broadband services of Charter Fiberlink CA-
4 CCO, LLC (Charter), Time Warner Cable Inc. (TWC), Bright House Networks
5 Information Services, LLC (Bright House), and Advance/Newhouse Partnership
6 (Advance/Newhouse) (collectively Joint Applicants) based on Application (A.)
7 15-07-009,¹ the Joint Applicants’ responses to the Office of Ratepayer Advocates
8 (ORA) data requests and publicly available information.

9 The CPUC has asked parties to evaluate whether the proposed merger is in the
10 public interest, whether the merger will meet some or all of the criteria enumerated
11 in Public Utilities (P.U.) Code 854(c), including benefits to the communities in the
12 area served by the resulting public utility², and how will the merger affect
13 broadband deployment and/or affordability.³ The information reviewed as part of
14 A.15-07-009, the Joint Applicants’ data request responses, the Opening Testimony
15 of Adam Falk, Supplemental Testimony of Adam Falk, and other publicly
16 available information highlights concerns with two low-income programs in the
17 communities New Charter⁴ will serve; in particular: the LifeLine program and
18 BHN’s low-income program called Connect2Compete. The Joint Applicants
19 provide limited data referencing concrete plans to augment these programs. In

¹ 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 (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of 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), A. 15-07-009, filed July 2, 2015 [hereinafter Joint Application].

² P.U. Code 854(c)(6).

³ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, A.15-07-004, filed Nov. 13, 2015 [hereinafter Scoping Memo] at 5.

⁴ The Joint Applicants refer to New Charter as the merger of Charter, TWC, and BHN, see Joint Application at 2.

1 addition, there is a lack of information on how the Joint Applicants will deliver
2 benefits or utilize efficiencies from the merger to increase access and advance
3 telecommunications services for low income consumers. Some key findings of the
4 review include the following:

- 5
6 • The LifeLine program provides discounts on phone services to qualifying
7 low income consumers. TWC is the only merging entity that currently
8 participates in Lifeline. Charter formerly provided Lifeline, but has since
9 transferred, without the requisite Commission authority, its <<BEGIN
10 CONFIDENTIAL>> ■ <<END CONFIDENTIAL>> LifeLine
11 customers to Charter Advanced Services, an affiliate not listed as a
12 participating entity in this merger and that is no longer offering LifeLine
13 discounts to new residential customers, in apparent violation of General
14 Order (G.O. 153). New Charter should offer LifeLine discounts to all its
15 service territory; not only to the existing TWC service area.
16
- 17 • In its original application, Charter proposes limited plans to expand BHN’s
18 Connect2Compete broadband program across the proposed footprint of
19 New Charter. The program in its current form has limitations similar to
20 Comcast’s Internet Essentials program, in that it has limited eligibility that
21 leaves out a significant, underserved group of California consumers.
22 Further, Connect2Compete speeds are slower than those identified by the
23 CPUC as “served”⁵ in California.
24
- 25 • On January 8, 2016, Charter provided supplemental testimony detailing its
26 proposed low income broadband program. Charter’s proposal to offer

⁵ Served speeds in California are currently 6 Mbps download and 1.5 Mbps upload. CPUC
Decision Implementing Broadband Grant and Revolving Loan Program at 17, D.12-02-015,
(continued on next page)

1 speeds of 30 Mbps download at \$14.99 per month, with eligibility
2 expanded to low-income seniors, is a step in the right direction. However,
3 the proposal continues to exclude many low income adults from eligibility
4 and fails to set benchmarks for adoption. Given the short period of time to
5 allowed to review Charter's January 8, 2016 Motion to Supplement
6 Opening Testimony of Adam Falk, ORA reserves the right to provide
7 supplemental testimony at a later time.
8

(continued from previous page)
decided Feb. 1, 2012.

1 **I. INTRODUCTION**

2 Pursuant to the November 13, 2015 Scoping Memo and Ruling of Assigned
3 Commissioner and Administrative Law Judge (Scoping Memo),⁶ the following report
4 provides information regarding the low-income services project plans for voice and
5 broadband services of Charter Fiberlink CA-CCO, LLC (Charter), Time Warner Cable
6 Inc. (TWC), Bright House Networks Information Services, LLC (Bright House), and
7 Advance/Newhouse Partnership (Advance/Newhouse) (collectively Joint Applicants)
8 based on the Joint Applicants’ responses to the Office of Ratepayer Advocates (ORA)
9 data requests and publicly available information.

10 On July 2, 2015, Charter, TWC, Bright House, and Advance/Newhouse filed with
11 the California Public Utilities Commission (Commission or CPUC) Joint Application
12 (A.)15-07-009 for the transfer of control of TWC and Bright House to Charter (the
13 Transaction). TWC and Bright House are competitive local exchange carriers (CLECs)
14 licensed by the Commission. TWC is the largest cable company in southern California.⁷

15 The Scoping Memo lays out the framework for the Commission’s review of the
16 proposed merger including questions regarding how the merger would benefit California
17 consumers pursuant to §854(c) of the Public Utilities (P.U.) Code. For example, how will
18 the Transaction affect broadband deployment and/or affordability and is the proposed
19 change of control in the public interest?⁸

20
21 **II. LIFELINE SERVICES**

22 The California and federal Lifeline programs provide discounts on phone service
23 to qualifying low-income consumers “to ensure that all Americans have the opportunities

⁶ Scoping Memo, *supra* note 3.

⁷ *Id.* at 2

⁸ *Id.* at 5.

1 and security that phone service brings, including being able to connect to jobs, family and
2 emergency services.”²

3

4 **A. Merging Entities’ Participation in LifeLine**

5 Of the Joint Applicants, only TWC currently offers LifeLine services in
6 California. In 2013, TWC sought Eligible Telecommunications Carrier (ETC)
7 designation in order to begin providing LifeLine service to qualifying low-income
8 customers in California. The Commission granted TWC’s ETC designation application
9 on March 27, 2014.¹⁰ TWC began offering LifeLine services in California <<BEGIN

10 **CONFIDENTIAL>>** [REDACTED]

11 [REDACTED] <<END CONFIDENTIAL>>.¹¹

12 Charter Fiberlink previously offered Basic service and LifeLine discounts to
13 residential customers. However, on November 14, 2014, Charter Fiberlink filed Advice
14 Letter (AL) 142, a Tier 1 Advice Letter, requesting authority to remove Basic and
15 LifeLine services and rates from its tariffs “as they were previously transferred to
16 Company affiliate, Charter Advanced Services (CA), LLC, an interconnected Voice over
17 Internet Protocol (VoIP) company.”¹² The Advice Letter is suspended and the records
18 indicate that Charter Fiberlink never received approval to remove Basic and LifeLine
19 services and rates from its tariff. While according to LifeLine records, Charter Fiberlink,
20 which is an authorized LifeLine provider, is identified as the carrier that is still providing
21 LifeLine service to existing LifeLine customers, it appears that Charter Advanced
22 Services, which is not an authorized LifeLine provider, is the entity that is actually
23 providing the LifeLine service to those customers formerly served by Charter Fiberlink.

² FCC Lifeline Program for Low-Income Consumers Webpage, <http://www.fcc.gov/lifeline>, updated Nov. 7, 2014.

¹⁰ CPUC Decision Granting Request for Eligible Telecommunications Carrier Status, D.14-03-038, decided Mar. 27, 2014.

¹¹ TWC Response to ORA Data Request Set 5, No. 3.

¹² Advice Letter 142, filed Nov. 14, 2014.

1 Furthermore, Charter Advanced Services no longer offers LifeLine discounts to
2 residential customers not previously subscribed with the LifeLine discount.¹³ While
3 Charter Fiberlink ceased offering LifeLine discounts without Commission approval,
4 Charter Advanced Services offers this discount to <<BEGIN CONFIDENTIAL>> ■
5 <<END CONFIDENTIAL>> customers in California.¹⁴ This is significantly less than
6 the <<BEGIN CONFIDENTIAL>> ■ <<END CONFIDENTIAL>> customers to
7 which Charter Fiberlink provided this discount as of September 1, 2014.¹⁵ It is unclear
8 when exactly Charter Fiberlink stopped providing LifeLine services, though according to
9 its November 2014 Advice Letter, Charter Fiberlink ceased providing LifeLine services
10 before it filed its advice letter. Based on this evidence, Charter has not demonstrated a
11 commitment to support the LifeLine program in California. Charter Fiberlink has an
12 ongoing obligation to continue providing LifeLine to those customers it improperly
13 transferred to Charter Advanced Services and also to new customers.

14
15 In total, the merging entities offer LifeLine discounts to <<BEGIN
16 CONFIDENTIAL>> ■⁶ <<END CONFIDENTIAL>> customers throughout their
17 respective territories.¹⁷ There are real concerns with the way Charter has operated
18 LifeLine service in the past and no guarantees that the company will be a good steward of
19 offering such services post-merger. Regardless of the Commission's determination
20 regarding the proposed merger, the Commission should require Charter to satisfy its
21 current obligations to provide LifeLine discounts and to comply with G.O. 153. The
22 discount should be offered to all eligible households, including households which have

¹³ Charter Response to ORA Data Request Set 5, No. 1.

¹⁴ Charter Response to ORA Data Request Set 5, No. 1.

¹⁵ A. 14-04-013 and A. 14-04-012, Charter Response to ORA Data Request Set 1, No. 56.

¹⁶ This number does not include the LifeLine customers served by Charter Advanced Services, as Charter Advanced Services is not identified as an entity in the transaction seeking approval from the Commission in the proposed merger.

¹⁷ A. 13-10-019, Application of Time Warner Cable Information Services (California), LLC (U-6874-C) for Designation as an Eligible Telecommunications Carrier, filed Oct. 25, 2013, at Exhibit A.

1 not previously received LifeLine service, immediately. Due to Charter’s failure to
2 properly administer its LifeLine program, the Commission should require Charter to
3 submit detailed plans on how it informs new consumers about LifeLine service and its
4 terms and conditions, including specific information pertaining to the form, quantity,
5 distribution method and content of information. The Commission should further set in
6 place subscribership benchmarks and reporting requirements so it can verify that Charter
7 is actively subscribing new customers with the LifeLine discount. Charter’s obligation to
8 provide the LifeLine discount to all eligible customers across its entire footprint, to
9 actively inform new customers of the program, and to demonstrate achievement of
10 cognizable subscribership benchmarks should not change should the merger be approved.

11

12 **III. LOW-INCOME SERVICES FOR BROADBAND ADOPTION**

13 In the Scoping Memo for this proceeding, the Commission asked for information
14 regarding how the Transaction will affect broadband deployment and/or affordability, as
15 well as whether the Transaction is in the public interest. Additionally, Section 706(a) of
16 the Telecommunications Act of 1996 requires that “each State commission with
17 regulatory jurisdiction over telecommunications services shall encourage the deployment
18 on a reasonable and timely basis of advanced telecommunications capability to all
19 Americans (including, in particular, elementary and secondary schools and classrooms).”
20 This directive aligns with California’s universal service policies for telecommunications,
21 which include “assist[ing] in bridging the ‘digital divide’ by encouraging expanded
22 access to state-of-the-art technologies for rural, inner-city, low-income, and disabled
23 Californians.” Further, California has a stated goal of providing broadband access to no
24 less than 98% of households by no later than December 31, 2015. However, a recent
25 study by the California Emerging Technology Fund (CETF) in conjunction with The
26 Field Poll shows that “home broadband adoption rates have stagnated over the past few
27 years,” with certain demographics trailing more than others, “leaving the hardest-to-reach
28 Californians without an essential tool to access the educational, employment and civic
29 engagement opportunities that lead to self-sufficiency.” According to CETF, as of May,

1 2015, only 79 percent of households in California had broadband connectivity at home, 8
2 percent of which had home connectivity only through use of a smart phone.

3 Bright House Networks¹⁸ is the only applicant that currently has a broadband
4 program targeting low-income subscribers.¹⁹ TWC formerly participated in
5 Connect2Compete by creating Starter Internet, a pilot program with eligibility
6 requirements similar to those of Connect2Compete.²⁰ This program lasted for only two
7 months, however, from October 1 through November 30, 2012.²¹

8 While Charter has no current low income broadband program, Charter states in its
9 application that “New Charter [...] will significantly build upon and enrich BHN’s
10 broadband program for low-income customers by making a broadband offering available
11 with higher speeds and expanded eligibility while continuing to offer the service at a
12 significant discount[.]”²²” In its application Charter failed to provide eligibility
13 requirements or specific commitments regarding price and speed offerings.

14 On January 8, 2016 Charter submitted supplemental testimony providing further
15 details regarding its proposed expansion of BHN’s low-income broadband program.²³
16 These include a speed offering of 30 Mbps download and 4 Mbps download at \$14.99 per
17 month, exceeding the minimum definition of broadband set by the Federal

¹⁸ BHN is a partner in the Connect2Compete program, established by the non-profit organization EveryoneOn. *See* BHN Response to ORA Data Request Set 5, No. 2.

¹⁹ TWC Response to ORA Data Request Set 5, No. 1; Charter Response to ORA Data Request Set 5, No. 3; BHN Responses to ORA Data Request Set 5, No. 2.

²⁰ TWC StarterInternet Frequently Asked Questions, [http://www.timewarnercable.com/MediaLibrary/1/1/Content Management/campaigns/2012/starter_internet/StarterInternet_FAQs.pdf](http://www.timewarnercable.com/MediaLibrary/1/1/Content%20Management/campaigns/2012/starter_internet/StarterInternet_FAQs.pdf), last visited Dec. 1, 2014.

²¹ Comments of the California Emerging Technology Fund, FCC MB Docket No. 14-57, In the Matter of Applications of Comcast Corporation and Time Warner Cable Inc. et al., to Assign and Transfer Control of FCC Licenses and Other Authorizations at 9-10, filed Aug. 25, 2014 (hereinafter CETF FCC Comments).

²² Joint Application at 25-26.

²³ Charter Supplemental Testimony of Adam Falk at 2.

1 Communications Commission.²⁴ However, while the details provided are a step in the
2 right direction, a number of deficiencies remain as further discussed below.

3

4 **A. Connect2Compete Current Eligibility Requirements and Services**

5 Connect2Compete is a non-profit collaboration of other non-profit entities and
6 private companies, formed in 2011 “to execute the nonprofit and private sector offerings
7 made to help close the digital divide.”

8 BHN participates in Connect2Compete by offering low cost Internet to families
9 with students who qualify for the National School Lunch Program (NSLP) at certain
10 schools within BHN’s California footprint. Specifically, eligibility requirements state:

- 11 1. Households must have at least one child in the household who is eligible
12 for free or reduced-price school lunches under the National School
13 Lunch Program (NSLP) and who is attending a Connect2Compete
14 partner school or school district;
- 15 2. The household must have no outstanding bills or unreturned equipment
16 with BHN; and
- 17 3. The household must not have subscribed to BHN for cable Internet
18 service within 90 days prior to installation.²⁵

19 Connect2Compete customers receive BHN’s Road Runner Lite service, with
20 speeds of up to 2 Mbps download and 1 Mbps upload.²⁶ The discounted rate for this
21 service is \$9.95 per month.²⁷ BHN currently has only <<BEGIN

22 **CONFIDENTIAL>>** [REDACTED] **<<END CONFIDENTIAL>>** subscribers to its low income

²⁴ GN Docket No. 14-126, FCC 15-10, FCC Finds US Broadband Deployment Not Keeping Pace 3, (2015).

²⁵ BHN Response to ORA Data Request Set 5, No. 3.

²⁶ BHN Response to ORA Data Request Set 5, No. 6.

²⁷ BHN Response to ORA Data Request Set 5, No. 2.

1 broadband service, <<BEGIN CONFIDENTIAL>> [REDACTED]
2 [REDACTED]²⁸<<END CONFIDENTIAL>>

3
4 **B. Deficiencies in Charter’s Proposal for its Low-Income Broadband**
5 **Program**

6 Using BHN’s Connect2Compete as a baseline, in its application, Charter states
7 that should the Transaction be approved, it will create a new low-income program,
8 expanding Connect2Compete’s eligibility requirements and speed offerings. Charter has
9 committed to providing speeds of *at least* 10Mbps/1Mbps and states that it will not
10 charge more than \$1 per Mbps download per month, though it submitted no proposals for
11 expansion of Connect2Compete’s eligibility requirements.²⁹ As noted above, Charter
12 filed supplemental testimony on January 8, 2016, expanding upon its low-income
13 program proposal with firm commitments on increased speeds and price offerings;
14 however, while promising, improvements detailed in this supplemental testimony fail to
15 expand eligibility to all low-income adults and to set measureable adoption
16 benchmarks.³⁰

17
18 *1. Charter’s Proposal for Its Low-Income Broadband Program has Limited*
19 *Eligibility Requirements*

20 Connect2Compete is available only to households with children who are eligible
21 for a free or reduced lunch under the NSLP and who attend schools which partner with
22 Connect2Compete. However, BHN’s eligibility criterion leaves other individuals,
23 including the elderly, people with disabilities, and low-income childless adults, without
24 an affordable option for broadband service. The requirement that applicants not be in

²⁸ BHN Response to ORA Data Request Set 5, No. 10.

²⁹ Charter Response to ORA Data Request Set 5, Nos. 5 and 6.

³⁰ Charter Supplemental Testimony of Adam Falk.

1 arrears on Charter accounts may effectively exclude many of those individuals such a
2 program is designed to assist.

3 In its application, Charter failed to define the eligibility requirements of its
4 proposed low-income program or specify how it will expand upon programs already in
5 existence to benefit Californians “by encouraging expanded access to state-of-the-art
6 technologies for rural, inner-city, low-income, and disabled Californians.”

7 In its supplemental testimony, however, Charter specified one positive expansion
8 of Connect2Compete’s eligibility requirements: Charter proposed expanding eligibility to
9 seniors over 65 years of age who receive Social Security Insurance benefits, in addition
10 to families with a child eligible for free or reduced lunch in the NSLP. While an
11 improvement over Connect2Compete, the proposed expansion continues to exclude many
12 childless low-income adults who are unable to benefit from affordable home access to
13 broadband. Such an expansion should commit to include all customers who are eligible to
14 receive LifeLine discounts.

15

16 2. *Charter’s Proposal for its Low-Income Broadband Program Fails to Set*
17 *Performance Benchmarks Necessary to Ensure that All Californians Benefit from*
18 *the Proposed Transaction*

19 Charter’s proposal fails to set enforceable adoption benchmarks. After establishing
20 expanded eligibility requirements, Charter must identify the number of potentially
21 eligible customers within its expanded footprint. New Charter should be able to
22 demonstrate to the Commission an adoption rate of 45 percent of eligible customers
23 within three years after roll out. Establishing an adoption rate goal will ensure New
24 Charter actively works towards increasing the number of customers subscribing to its
25 low-income program and holds the company accountable for achieving such goal.

26

27 **IV. CONCLUSION**

28 Based on the information provided by the Joint Applicants, the proposed merger is
29 not in the public interest. Charter has demonstrated failure to comply with existing

1 LifeLine obligations and Joint Applicants provided no plans to expand LifeLine beyond
2 the <<BEGIN CONFIDENTIAL>> ██████████ <<END CONFIDENTIAL>> customers the
3 combined merging entities currently serve. Charter has previously transferred
4 responsibility for its LifeLine program without obtaining the requisite Commission
5 approval to an affiliate outside the purview of this application that does not have
6 authorization to provide LifeLine service. Currently, there is nothing preventing Charter
7 from doing the same to TWC's current LifeLine customers following any approval of this
8 transaction. While Charter's stated intention to expand BHN's Connect2Compete low-
9 income broadband program is a step in the right direction, concrete commitments to
10 expand eligibility and vigorously pursue adoption are needed.

1 **Attachment A - Statement of Qualifications of Eileen Odell**

2 I am currently employed by the CPUC as a Public Utilities Regulatory Analyst
3 assigned to the Communications and Water Policy branch of the Office of Ratepayer
4 Advocates (ORA). I graduated from the University of California at San Diego with a
5 Bachelor of Arts degree in International Studies – Political Science in 2007. I graduated
6 from the University of California, Hastings College of the Law in 2011 and was admitted
7 to the California Bar in November of that year. In 2010 and again in 2011, I clerked for
8 the Office of the City Attorney of San Francisco on the Land Use and Environment team
9 and the Public Utilities Commission team, working on public policy projects such as
10 drafting affordable housing legislation and researching conjunctive use agreements for
11 groundwater management. From 2012 through 2013, I completed an attorney fellowship
12 with the Sonoma County Counsel’s office, assisting in a broad range of projects including
13 the formation of a community choice aggregation program. I joined the CPUC in June of
14 2014. I participated in the review of A.14-04-013 and A.14-04-012, the Application for
15 Transfer of Ownership of Charter, Time Warner Cable, and Bright House Networks to
16 Comcast, and was responsible for the submission of ORA testimony regarding low-
17 income programs in that proceeding.

18