

Docket: A.15-07-009
Exhibit Number: ORA-
Commissioner: President Picker
Admin. Law Judge: K. Bemesderfer
ORA Project Mgr.: Ana Maria Johnson
ORA Expert Witness: Adam Clark



Office of Ratepayer Advocates
California Public Utilities Commission

**Office of Ratepayer Advocates Testimony and
Recommendations Regarding Broadband Service
Quality**

- PUBLIC -

San Francisco, California
January 15, 2016

MEMORANDUM

This report was prepared by Adam Clark of the Communications & Water Policy Branch of the Office of Ratepayer Advocated (ORA) under the general supervision of Program & Project Supervisor, Ana Maria Johnson. A statement of qualifications from Adam Clark is presented in Attachment A to this Testimony. ORA is represented in this proceeding by legal counsel, Lindsay Brown.

This Testimony is comprised of the following chapters:

| Chapter | Description |
|---------|---|
| I | Introduction: A brief introduction to the important role that broadband plays in this proceeding, the scope of the proceeding, and the data used to prepare this report. |
| II | Broadband Subscriptions and Services: A synopsis of the Joint Applicants' current broadband services and subscriptions in California, and a brief discussion of the anticipated effects of the proposed Transaction. |
| III | Evaluating Broadband Service Quality: A detailed discussion of the Joint Applicants' broadband service quality, including an analysis of: consumer satisfaction ratings and rankings, the Joint Applicants' approach to service quality, network availability data, service outages, customer complaints and service installation metrics. |
| IV | Evaluating the Purported Broadband Service Quality Benefits: A discussion of claims by the Joint Applicants as to the possible benefits (specifically relating to broadband service quality) of the proposed Transaction. |
| V | Conclusion: A synopsis of the analysis presented in previous chapters, and concluding remarks. |

TABLE OF CONTENTS

| | |
|---|--------|
| Executive Summary | 1 |
| Key Findings | 2 |
| Organization of Report..... | 4 |
| I. Introduction..... | I-1 |
| II. Broadband Subscriptions and Services..... | II-1 |
| A. Charter | II-1 |
| B. Time Warner Cable | II-2 |
| C. Bright House..... | II-3 |
| D. New Charter | II-4 |
| III. Evaluating Broadband Service Quality..... | III-1 |
| A. Customer Satisfaction..... | III-3 |
| 1. J.D. Power | III-3 |
| 2. American Customer Satisfaction Index..... | III-7 |
| 3. Leichtman Research Group..... | III-10 |
| B. The Joint Applicants’ Approach to Broadband Service Quality..... | III-11 |
| 1. Charter | III-11 |
| 2. Time Warner Cable | III-12 |
| 3. Bright House..... | III-13 |
| C. Network Availability and Performance..... | III-13 |
| 1. Charter | III-15 |
| 2. Time Warner Cable | III-16 |
| D. Broadband Service Outages | III-16 |
| 1. Charter | III-17 |
| 2. Time Warner Cable | III-19 |

| | |
|--|--------|
| 3. Bright House..... | III-21 |
| E. Customer Complaints | III-23 |
| 1. Charter | III-24 |
| 2. Time Warner Cable | III-25 |
| 3. Bright House..... | III-28 |
| F. Broadband Service Installations | III-30 |
| G. Customer Service | III-32 |
| IV. Evaluating the Purported Broadband Service Quality Benefits..... | IV-1 |
| A. Broadband Services Enhancements..... | IV-1 |
| B. Commitment to an Open Internet..... | IV-4 |
| V. Conclusion | V-1 |

ATTACHMENTS

| | |
|--|---|
| Attachment A: Statement of Qualifications and Experience | 1 |
| Attachment B: Customer Satisfaction Benchmarks by Industry | 2 |
| Attachment C: Time Warner Cable – HSD Critical Success Factors Definition & Calculations ... | 3 |
| Attachment D: Time Warner Cable – High Speed Data Service Scorecard..... | 4 |

1 **EXECUTIVE SUMMARY**

2 On July 2, 2015, Charter Communications, Inc. (“Charter”); Charter Fiberlink CA-CCO,
3 LLC; Time Warner Cable Inc. (“Time Warner Cable”); Time Warner Cable Information
4 Services (California), LLC (“TWCIS”); Advance/Newhouse Partnership; Bright House
5 Networks, LLC (“Bright House”); and Bright House Networks Information Services (California)
6 (“BHNIS”) (collectively, “Joint Applicants”) filed the Application 15-07-009 (“Application”)
7 seeking approval from California Public Utilities Commission (“Commission” or “CPUC”) for
8 the transfer of control of Time Warner Cable, TWCIS, Bright House and BHNIS to Charter
9 (“Transaction”).

10 If the Transaction is approved, Charter, Time Warner Cable, TWCIS, Bright House and
11 BHNIS will merge into New Charter. The proposed merger would make New Charter one of the
12 largest providers of high-speed last mile broadband service in California, passing over 50% of
13 households in the State.¹ New Charter would also be the only provider satisfying the current FCC
14 definition of “broadband” at 25 Mbps download and 3 Mbps upload² for the vast majority of
15 households in southern California, as discussed in the Reply Testimony of Dr. Lee L. Selwyn.

16 In accordance with the November 13, 2015 Assigned Commissioner’s Scoping Ruling
17 (“Scoping Ruling”), the California Public Utility Code, and other applicable statute and
18 standards, the Commission must consider the proposed Transaction’s effect on broadband
19 service quality in California, among other things. This Testimony examines how the proposed
20 Transaction will impact the quality and reliability of broadband services in California.

21 The Joint Applicants state that the Transaction will result in several benefits and further
22 the public interest due to an increase in operational efficiencies³ and investment incentives.⁴ The
23 Joint Applicants claim the benefits to Californians will include enhanced and new broadband

¹ California Broadband Availability Database, Round 11 data (as of December 31, 2014) as submitted by ISPs.

² FCC, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, Rel. Feb 4, 2015, at 4.

³ Falk Testimony at 30. December 4, 2015.

⁴ Dr. Morton Testimony. November 2, 2015. See Exhibit B at 68.

1 service offerings, improved customer service, and consumer friendly practices.⁵ However, the
2 Joint Applicant's failed to provide concrete, measurable, performance-based commitments of
3 sufficient scope and detail. Therefore, many of the Joint Applicant's purported benefits are
4 currently unfounded or unlikely to occur. The Joint Applicants also incorrectly attribute certain
5 benefits to the Transaction, when those benefits will occur apart from and irrespective of the
6 proposed Transaction.

7 Currently, the Joint Applicants' broadband services display poor levels of service quality
8 according to various key criteria, such as reliability and customer satisfaction. The Joint
9 Applicants failed to make sufficient, detailed commitments to remedy these issues and improve
10 the quality of their broadband services post-Transaction. Based on the Joint Applicants' showing
11 in this proceeding and other relevant information, the proposed Transaction may not maintain or
12 improve the quality and reliability of broadband services in California.

13 **Key Findings**

14 The following are key findings of this report:

- 15 • The Joint Applicants provided minimal evidence and insufficient commitments to
16 support their claim that the proposed merger will raise the quality of broadband
17 services in California. The Joint Applicants failed to provide concrete, measurable,
18 performance-based commitments that will ensure the Transaction maintains or raises
19 the quality of broadband services.

- 20 • Charter and Time Warner Cable receive extremely poor customer satisfaction ratings
21 and rankings. Bright House receives average to above-average customer satisfaction
22 rankings. This is especially concerning for three reasons. First, Charter has not shown
23 the ability to provide customers with high-quality (or even average-quality)
24 broadband services. Next, Time Warner Cable currently services, by far, the most
25 broadband customers (in California) of the Joint Applicants, and Charter did not
26 make any commitments to raise the satisfaction levels of these customers. Finally, the
27 proposed Transaction threatens the satisfaction levels of Bright House's current

⁵ Falk Testimony at 31. December 4, 2015.

1 customers. The Joint Applicants did not provide specific, performance-based
2 commitments to improve customer satisfaction for broadband customers in
3 California.

- 4 • Time Warner Cable found that, for its PacWest market, several of its broadband
5 service metrics *missed* the associated target performance value for every month from
6 January 2015 through October 2015. Those consistently underperforming metrics
7 include: [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 [REDACTED] The Joint Applicants did not provide specific, performance-based commitments
12 to improve upon Time Warner Cable’s substandard performances.

- 13 • Charter and Time Warner Cable [REDACTED] a network availability score of
14 99.999%, which is the traditional “Five Nine” standard of telephone service
15 providers. The Joint Applicants did not provide specific, performance-based
16 commitments to improve network availability.

- 17 • Each of the Joint Applicant’s experience frequent and/or severe broadband outages
18 that negatively impact service reliability. Charter experienced approximately [REDACTED]
19 broadband outages per year, since 2010. The frequency of Charter’s broadband
20 outages is [REDACTED] over the past six years. Time Warner Cable experienced an
21 average of [REDACTED] broadband outages in California per year since 2010. [REDACTED]
22 issues are the primary cause of broadband outages for Time Warner Cable and
23 Charter. Bright House experiences [REDACTED] outages per year that affect over [REDACTED]
24 customers each. The Joint Applicants did not provide specific, performance-based
25 commitments to lessen the frequency and severity of broadband outages.

- 26 • The Joint Applicants receive many complaints from customers that indicate serious
27 deficiencies in the quality of their broadband services. The Joint Applicants did not
28 provide specific, performance-based commitments to lower the number of complaints

1 customers filed, or to improve the company's ability to handle and resolve
2 complaints.

- 3 • Charter and Time Warner Cable fail to fulfill a satisfactory percentage of requests for
4 new broadband services. Both companies [REDACTED] of the 95%
5 benchmark applicable to telephone service providers. The Joint Applicants do not
6 provide any detailed, performance-based commitment to improve their performance
7 with regard to installing new broadband service connections.

- 8 • Charter and Time Warner Cable have not [REDACTED]
9 [REDACTED] number of broadband customers
10 they serve.

- 11 • The Commission should not view New Charter's promise to convert acquired
12 networks to an all-digital platform and increase broadband speeds as evidence that the
13 proposed Transaction will benefit California, because both Time Warner Cable and
14 Bright House are currently performing similar enhancements irrespective of and apart
15 from the proposed Transaction.

- 16 • The Commission should not view New Charter's promises to not block Internet
17 traffic, throttle Internet traffic, or engage in paid prioritization as evidence that the
18 proposed Transaction will benefit California, because Internet service providers are
19 already required, by law, to follow those practices.

20 **Organization of Report**

21 Chapter I of this report contains a brief introduction to the important role that broadband
22 plays in this proceeding, the scope of the proceeding, and the data used to prepare this report.

23 Chapter II contains a synopsis of the Joint Applicants' current broadband services and
24 subscriptions in California, and a brief discussion of the anticipated effects of the proposed
25 Transaction.

26 Chapter III contains a detailed discussion of the Joint Applicants' broadband service
27 quality, including an analysis of: consumer satisfaction ratings and rankings, the Joint

1 Applicants' approach to service quality, network availability data, service outages data, customer
2 complaints information and service installation metrics.

3 Chapter IV contains a discussion of claims by the Joint Applicants as to the possible
4 benefits (specifically relating to broadband service quality) of the proposed Transaction.

5 Finally, Chapter V contains a synopsis of the analysis presented in previous chapters, and
6 concluding remarks.

1 **I. INTRODUCTION**

2 The proposed Transaction must be evaluated in a manner consistent with the evolving
3 landscape of the communications industry. The Joint Applicants recognize this fact and,
4 consequently, claim the Transaction’s primary benefits to the public will involve the
5 enhancement and expansion of broadband services.⁶ Furthermore, the Joint Applicants seek to
6 create a company (New Charter) which will immediately serve three million broadband
7 customers in California.⁷ Clearly, broadband is a key component of the proposed Transaction.⁸

8 The November 13, 2015 Assigned Commissioner’s Scoping Ruling (Scoping Ruling)
9 explains the Commissions intentions to evaluate the proposed Transaction’s potential effect on
10 broadband services in California. The Scoping Ruling states that the Commission must consider
11 and weigh the criteria enumerated in Public Utility Code § 854(c) and find that the Transaction is
12 in the public interest.⁹ One of the factors that the Commission will consider and weigh in making
13 a public interest determination under Section 854(c) is whether the transaction will maintain or
14 improve the quality of service to public utility ratepayers in the state. Moreover, the Scoping
15 Ruling lists additional topics included in the scope of this proceeding, such as:

- 16 • How will the Transaction affect broadband deployment and/or affordability?
- 17 • Are there any implications for public safety from the Transaction?
- 18 • Is the proposed change of control in the public interest?

19 Accordingly, in order to review and assess the facts, ORA issued Data Requests to the
20 Joint Applicants related to the aforementioned topics of scope. The information and findings

⁶ Application at 24.

⁷ See Charter’s response ORA Data Request 1-2. November 6, 2015. See also, Bright House’s response to ORA Data Request 1-2. November 6, 2015. See also, Time Warner Cable’s response to ORA Data Request 1-2. November 6, 2015.

⁸ I am also informed by counsel that the CPUC has jurisdiction, and in fact, must review the impact of this Transaction on the reasonable timely deployment of broadband and take regulatory action where necessary pursuant to Section 706(a) of the 1996 Telecommunications Act and Section 710(a) of the Public Utilities Code. The Commission must also review and make findings of facts on the anti-competitive impacts of all aspects of the proposed Transaction (whether the Commission has jurisdiction or not) pursuant to NCPA v. CPUC.

⁹ Assigned Commissioner’s Scoping Ruling (Scoping Ruling), A.15-07-009 (filed November 13, 2015), at 4.

1 presented herein are based on the Joint Applicants’ responses to ORA’s Data Requests, the
2 Application, the Joint Applicants’ Testimony, and other sources of information.

3 Pursuant to the Scoping Ruling, ORA submits the following Testimony in order to
4 present data and analysis for the Commission to consider in its review of the Application and the
5 proposed Transaction. The data and analysis presented herein focus on the quality and reliability
6 of broadband services available to consumers in California.

7 The following Testimony begins with a summary of the Joint Applicants’ broadband
8 subscriptions, and continues with an analysis of the quality of the Joint Applicants’ broadband
9 services in California. This Testimony identifies potential harms that could result from the
10 proposed Transaction due to the lack of concrete, detailed, measurable and performance-based
11 commitments by the Joint Applicants. Finally, this Testimony concludes with an analysis of the
12 Joint Applicant’s purported benefits (specifically related to broadband service quality) of the
13 proposed Transaction.

14

1 **II. BROADBAND SUBSCRIPTIONS AND SERVICES**

2 **A. CHARTER**

3 Charter offers broadband service to communities scattered throughout the northern,
4 central and southern regions of California. Charter’s broadband service is currently available to
5 approximately [REDACTED] households throughout the state.¹⁰ Charter offers maximum
6 broadband speeds of 100 Mbps download and 5 Mbps upload to [REDACTED] of the households it passes
7 in California.¹¹

8 As of October 2015, Charter served approximately [REDACTED] residential broadband
9 customers and [REDACTED] commercial broadband customers in California.¹² Charter’s customer base
10 has [REDACTED] over the past five years, as depicted in Figure 1 below. Charter [REDACTED]
11 [REDACTED] residential broadband customers since January 2010, which equals an [REDACTED]
12 [REDACTED] During that same timeframe, Charter [REDACTED] commercial broadband
13 customers, which equals a [REDACTED].

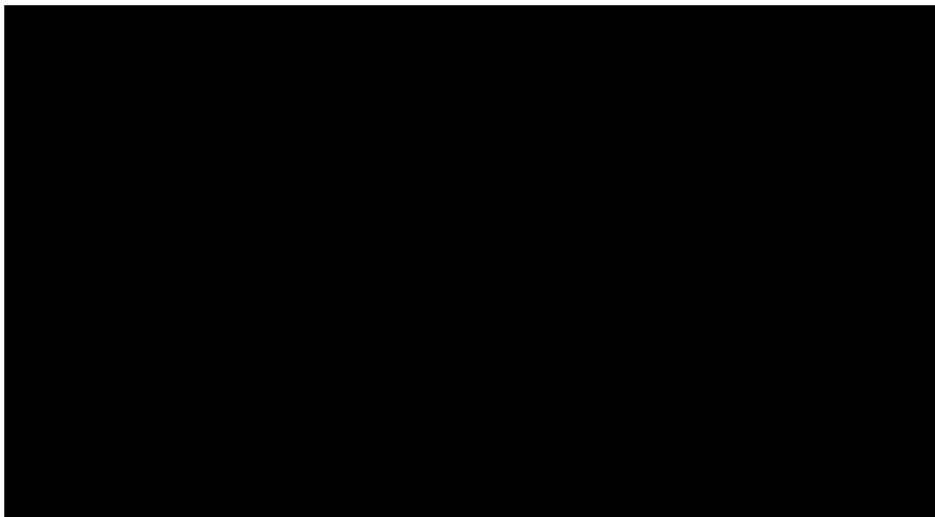
¹⁰ Charter’s response to ORA Data Request 1-3. November 6, 2015. *See* Charter - CONFIDENTIAL- Exhibit ORA Charter Broadband Services.

¹¹ Charter’s response to ORA Data Request 1-3, 1-5 and 1-6. November 6, 2015. *See* Charter - CONFIDENTIAL- Exhibit ORA Charter Broadband Services.

¹² Charter’s response to ORA Data Request 4-9. November 6, 2015. *See* Charter - Exhibit ORA 4-9.

1 **Figure 1 (CONFIDENTIAL)**

2 **Charter – Broadband Customers in California¹³**



3

4 **B. TIME WARNER CABLE**

5 Time Warner Cable offers broadband service to communities in southern California,
6 primarily in and around the greater Los Angeles and San Diego areas.¹⁴ Time Warner Cable’s
7 broadband service is currently available to approximately [REDACTED] households in
8 California.¹⁵ Time Warner Cable offers maximum broadband speeds of 300 Mbps download and
9 20 Mbps upload to [REDACTED] of the households it passes in California.¹⁶

10 Time Warner Cable currently serves approximately [REDACTED] broadband customers in
11 California.¹⁷ Much like Charter, Time Warner Cable has experienced [REDACTED] over the
12 past 5 years, as depicted in Figure 2 below. Time Warner Cable [REDACTED] broadband
13 customers since January 2010, which equals a [REDACTED].

¹³ *Id.*

¹⁴ Time Warner Cable’s response to ORA Data Request 1-1. November 9, 2015.

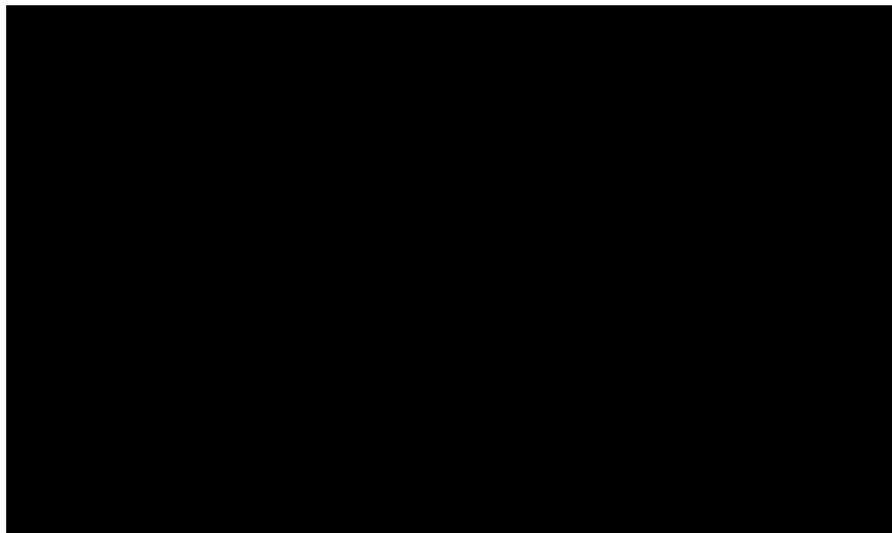
¹⁵ *Id.*

¹⁶ Time Warner Cable’s response to ORA Data Request 1-3, 1-5 and 1-6. November 9, 2015. *See* Time Warner Cable - Ex 1-3-a -CONFIDENTIAL 003559.

¹⁷ Time Warner Cable’s response to ORA Data Request 4-9. November 6, 2015. *See* Time Warner Cable – Ex 4-9 CONFIDENTIAL 003558.

1 **Figure 2 (CONFIDENTIAL)**

2 **Time Warner Cable – Broadband Customers in California¹⁸**



3

4 **C. BRIGHT HOUSE**

5 Bright House offers broadband services to communities in southern California within
6 Bakersfield and Kern Counties.¹⁹ Bright House’s broadband services are currently available to
7 approximately [REDACTED] households in California.²⁰

8 Bright House has about [REDACTED] residential broadband customers and [REDACTED] commercial
9 broadband customers in California.²¹ Bright House’s residential broadband customers purchase
10 varying levels of broadband speeds; [REDACTED] purchase 15 Mbps download and 1 Mbps upload, while
11 [REDACTED] purchase 35 Mbps download and 2 Mbps upload.²² [REDACTED] of Bright House’s
12 residential broadband customers purchase speeds of 150 Mbps download and 10 Mbps upload,
13 which are the fastest speeds Bright House offers to residential customers.²³

¹⁸ Time Warner Cable’s response to ORA Data Request 4-9. November 6, 2015. *See* Time Warner Cable – Ex 4-9 CONFIDENTIAL 003558.

¹⁹ Application at 12.

²⁰ Bright House’s response to ORA Data Request 1-3. November 6, 2015.

²¹ Bright House’s response to ORA Data Request 4-9. November 6, 2015. *See* Bright House - Confidential Exhibit DR 4-9 BHN_0000295.

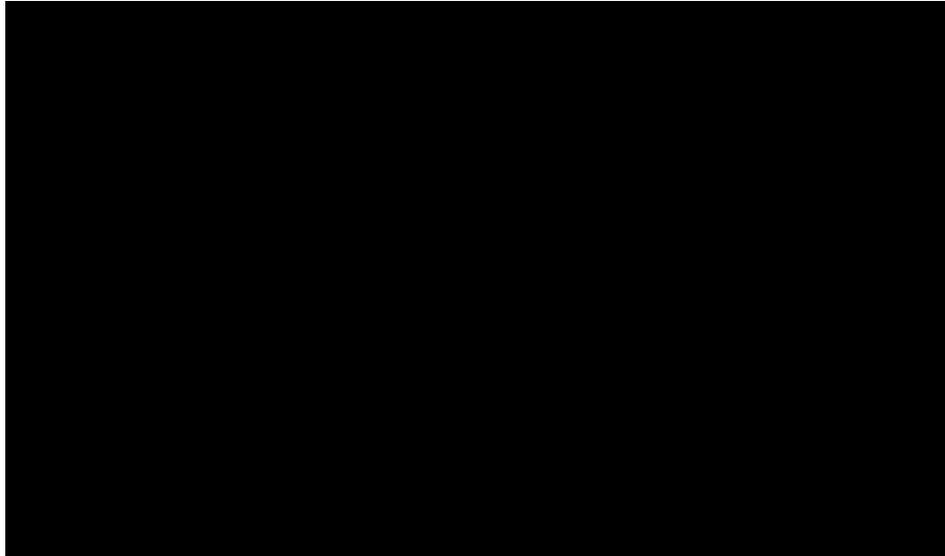
²² Bright House’s response to ORA Data Request 1-88. November 6, 2015. *See* Bright House - Confidential Exhibit DR 1-88 Ex B BHN_0000231.

²³ *Id.*

1 Bright House’s customer base has [REDACTED] over the past five years, as depicted in Figure 3
2 below. Bright House [REDACTED] residential broadband customers since January 2010,
3 which equals a [REDACTED]. During that same timeframe, Bright House [REDACTED]
4 commercial broadband customers, which equals an [REDACTED].

5 **Figure 3 (CONFIDENTIAL)²⁴**

6 **Bright House – Broadband Customers in California**



7

8 **D. NEW CHARTER**

9 The Joint Applicants seek the Commission’s approval to create a company, New Charter,
10 which would instantly become one of the largest providers of high-speed last mile broadband
11 services in California. The Joint Applicants currently serve, altogether, over three million
12 broadband customers in California. The vast majority of those customers are located in southern
13 California. If the Joint Applicants merge, New Charter will become the broadband service
14 provider for three million customers in California.

15 The proposed Transaction will increase Charter’s California footprint and customer base
16 tremendously. Charter, by way of New Charter, stands to grow from a mid-sized provider into
17 one of the state’s largest broadband providers. Figure 4 below depicts the number of broadband

²⁴ Bright House’s response to ORA Data Request 4-9. November 6, 2015. *See* Bright House - Confidential Exhibit DR 4-9 BHN_0000295.

1 subscriptions in California per company, the aggregated count for New Charter, and the
2 associated scale of increase from Charter to New Charter.

3 **Figure 4 (CONFIDENTIAL)**

4 **Broadband Subscriptions in California²⁵**



5

6 The proposed transaction would radically change the geographical composition of
7 Charter's operations. Charter currently serves broadband customers across the country. Today,
8 its California operations are a small portion of the total business.²⁶ The rapid and considerable
9 expansion of Charter's operations in California has significant potential to affect the levels of
10 customer service, service quality and customer satisfaction for broadband services in California,
11 as further discussed below.

12 As discussed in the Reply Testimony of Dr. Lee L. Selwyn, New Charter would pass over
13 50% of households in California and approximately 82% of households in the ten-county region
14 of southern California.²⁷ As one of the largest providers of high-speed last mile broadband
15 services in California, New Charter must make the investments necessary to improve the quality
16 of broadband services in California. However, the Joint Applicant's failed to make sufficient
17 commitments. The Testimony below evaluates the current state of the Joint Applicant's
18 broadband service quality, and highlights important aspects of broadband service quality that
19 require concrete, measurable and performance-based commitments from the Joint Applicants.

²⁵ Subscription counts are rounded to the nearest thousand. See Joint Applicant's responses to ORA Data Request 1-3 and 1-88. November 6, 2105.

²⁶ Application at 4.

²⁷ California Broadband Availability Database, Round 11 data (as of December 31, 2014) as submitted by ISPs.

1 **III. EVALUATING BROADBAND SERVICE QUALITY**

2 It is critical that the Commission, in its review of the Application, carefully examine the
3 quality and reliability of the broadband services offered by the Joint Applicants. The Joint
4 Applicants provide broadband services that are essential to everyday life. The quality and
5 reliability of those services is vital to customers in California, and also to the State at large.
6 Broadband is an indispensable means of communication, and poor service quality or insufficient
7 reliability is detrimental to the public’s health and safety, childrens’ education, local economic
8 development and the State’s economy.

9 In general, the Commission should be concerned with certain aspects of the Joint
10 Applicants’ current broadband service quality and the potential harmful effects of the proposed
11 Transaction. The Joint Applicants provided minimal evidence and insufficient commitments to
12 support their claim²⁸ that the proposed merger will raise the quality of broadband services in
13 California. The Joint Applicants failed to provide concrete, measurable, performance-based
14 commitments that will ensure the Transaction maintains or raises the quality of broadband
15 services. Furthermore, the Commission should be concerned that the proposed Transaction might
16 hinder New Charter’s ability to invest in and improve the quality of broadband services it offers
17 in California, as discussed in the Reply Testimony of Dr. Lee L. Selwyn.

18 Today, there is a lack of explicit standards with regard to an acceptable “quality of
19 service” for broadband services. As such, this analysis uses various sources to form benchmarks
20 and metrics to analyze the quality of the Joint Applicants’ broadband services and the effects of
21 the proposed merger. One such source is the Commission’s General Order 133-C, which
22 established uniform minimum standards of service for certain telephone corporations.²⁹

²⁸ Application at 24 and 28.

²⁹ D.09-07-019, Ordering Paragraph 1 at 92.

1 General Order 133-C includes five measures of service quality and their respective
2 standards,³⁰ which certain carriers are expected to meet:

- 3 (1) telephone service installation intervals (five business days);
- 4 (2) installation commitments (95%);
- 5 (3) customer trouble reports (six reports per 100 lines for
6 reporting units with 3,000 or more working lines; eight reports
7 per 100 working lines for reporting units with 1,001-2,999
8 working lines; and ten reports per 100 working lines for
9 reporting units with 1,000 or fewer working lines);
- 10 (4) out of service repair intervals (90% within 24 hours excluding
11 Sundays and federal holidays, catastrophic events and
12 widespread outages); and,
- 13 (5) answer time (80% within 60 seconds related to trouble reports
14 and billing and non-billing issues) with the option to speak to
15 a live agent, preferably in the first set of options (reporting
16 units are limited to traffic offices with 10,000 or more lines).³¹

17 General Order 133-C's five measures and standards became effective January 1, 2010.

18 Sections III-A through III-G below provide data related to the quality and reliability of
19 the Joint Applicants' broadband services. First, Section III-A examines the customer satisfaction
20 ratings that several third party rating agencies recently gave the Joint Applicants. Section III-B
21 includes a summary of the Joint Applicants' broadband service quality metrics, standards and
22 practices used to track the quality of broadband services. Then, Sections III-C through III-G
23 present more specific broadband services quality data related to: network availability, service
24 outages, customer complaints, installation metrics, and customer service.

25 The data presented below pertains specifically to California services, customers and
26 networks, unless otherwise stated.

³⁰ According to D.09-07-019, "[m]easures are the aspects or features of service subject to evaluation and reporting. Standards are the minimum acceptable values that measures must meet to be in compliance with the Commission's requirements. Existing measures include held primary service orders, installation-line energizing commitments, trouble reports, dial tone speed, dial service, toll operator answering time, directory assistance operator answering time, trouble report service answering time, and business office answering time." D.09-07 019, mimeo, at p.2, n.1.

³¹ D.09-07-019, Conclusion of Law 5 at 89.

1 **A. CUSTOMER SATISFACTION**

2 Customer satisfaction levels can provide valuable insight as to the quality of services
3 rendered. In various data requests, ORA solicited information from each Joint Applicant
4 regarding the company’s approach to assessing customer satisfaction. Charter conducts ongoing
5 company-specific customer satisfaction research.³² Time Warner Cable referred to J.D. Power
6 and Associates (J.D. Power) as their source of customer satisfaction data. Bright House claims it
7 does not track or maintain customer satisfaction data.³³

8 Unfortunately, Charter and Time Warner Cable usually receive below average customer
9 satisfaction ratings, as discussed below. This is especially concerning because Charter is the
10 acquiring company, while Time Warner Cable serves, by far, the most customers of all the Joint
11 Applicants. Bright House, on the other hand, receives average to above-average consumer
12 satisfaction rankings. With the proposed Transaction, Bright House’s current customers run the
13 risk of experiencing a decline in satisfaction levels.

14 The Application does not provide specific, performance-based commitments to improve
15 customer satisfaction for broadband customers in California. For example, the Joint Applicants
16 do not provide a commitment to improve their rankings in any of the leading consumer
17 satisfaction studies (i.e., J.D. Power) within two years of the close of the merger, along with a
18 commitment to provide the CPUC with an annual progress report that includes copies of these
19 studies for a period of no less than three years.

20 **1. J.D. POWER**

21 J.D. Power is a marketing information services firm, and produces one of the most highly
22 regarded and commonly referenced consumer satisfaction studies. To assess residential Internet
23 access services, J.D. Power conducts customer surveys in order to develop Satisfaction Index
24 Scores³⁴ for various aspects of each company’s service. J.D. Power then compares the scores of

³² Charter’s response to ORA Data Request 4-18. November 6, 2015.

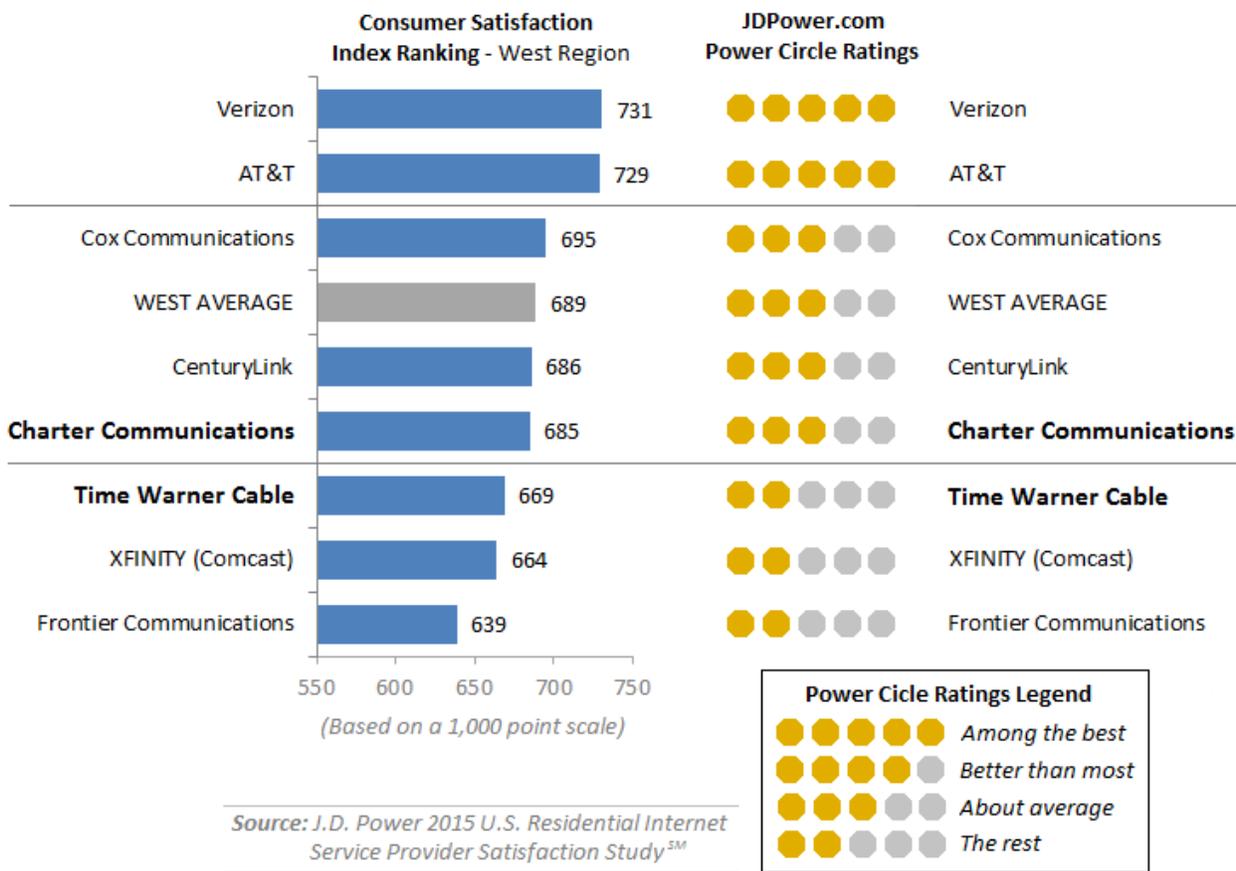
³³ Bright House’s response to ORA Data Request 4-18. November 6, 2015.

³⁴ In order to develop the Satisfaction Index Scores, J.D. Power conducts surveys in which participants rate various aspects of their service or product experience. J.D. Power then assigns a weight to each experience category (i.e. billing, customer service, ease of use, etc.) according to the extent that each category contributes to overall satisfaction. More information is available at <http://www.jdpower.com/about-us/faq-general-questions>.

1 companies that operate within a similar geographical location. Finally, to rank the companies,
 2 J.D. Power assigns Power Circle Ratings³⁵ based on the Satisfaction Index Scores.

3 The Figure 5 below depicts the results of the 2015 J.D. Power Residential Internet
 4 Service Provider Satisfaction Study, including both the Consumer Satisfaction Scores and the
 5 Power Circle Ratings for the eight largest providers (and the industry wide averages) in the
 6 western region.

7 **Figure 5**
 8 **J.D. Power - 2015 Residential Internet Service Provider Satisfaction Study³⁶**



9

³⁵ J.D. Power uses their Satisfaction Index Scores in order to assign Power Circle Ratings. In doing so, J.D. Power measures the range between the highest and lowest scores of an industry or segment, and also the variation between scores. The worst Power Circle rating is two, and the best is five. More information is available at <http://www.jdpower.com/about-us/jdpower-ratings>.

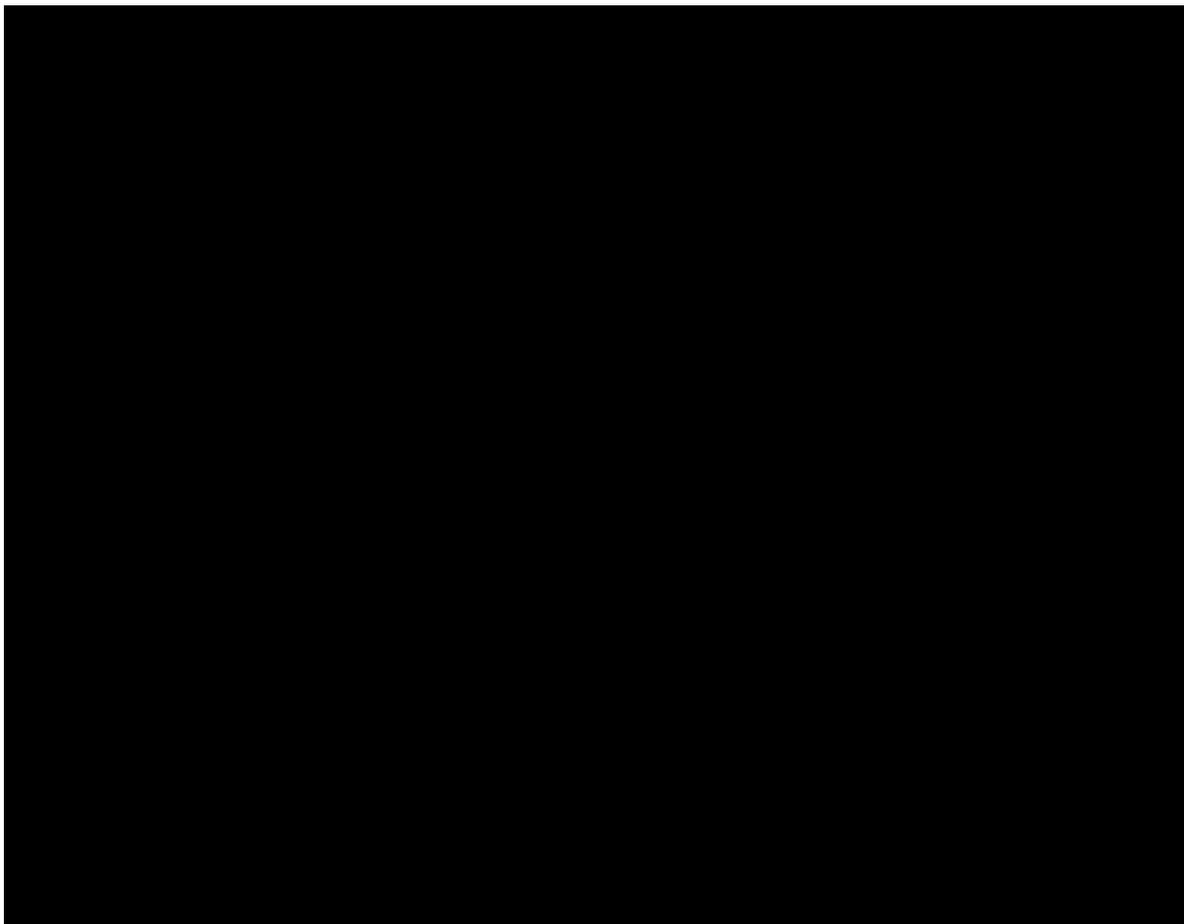
³⁶ JD Power Press Release: *Improved Network Performance and Reliability Drive Satisfaction with Residential TV and ISP Providers, as more Households Connect Digitally*. J.D. Power McGraw Hill Financial. September 24, 2015. Available at <http://www.jdpower.com/resource/us-residential-internet-service-provider-customer-satisfaction-study>

1 According to J.D. Power’s 2015 Residential Internet Service Provider Satisfaction Study,
2 both Charter and Time Warner Cable produce subpar levels of customer satisfaction. J.D. Power
3 gave both of these cable companies an overall Satisfaction Index Score that fell short of the
4 average received by the major Internet access providers in the western region. Charter’s score
5 earned a Power Circle Rating of three out of five, which indicates that the company’s consumer
6 satisfaction is “about average,” according to J.D. Power. Time Warner Cable, on the other hand,
7 received only two out of five Power Circles, which is the lowest rating possible. J.D. Power’s
8 overview of the western region did not include Bright House, but J.D. Power’s more detailed
9 analysis (which I will summarize below) does include Bright House.

10 Figure 6 below presents J.D. Power’s more detailed rankings of the leading thirteen
11 Internet service providers in the western region of the United States. The rankings include five
12 categories: Performance and Reliability, Cost of Service, Communication, Billing, and Customer
13 Service. Each of these categories is essential to understanding consumer satisfaction and the
14 quality of broadband services.

1 **Figure 6 (CONFIDENTIAL)**

2 **J.D. Power - 2015 Residential Internet Service Customer Satisfaction Rankings (West)³⁷**



3
4 As depicted in Figure 6 above, J.D. Power found that Bright House produces [REDACTED]
5 levels of consumer satisfaction as compared to Time Warner Cable and Charter. In fact, J.D.
6 Power ranked Bright House in the [REDACTED] of the leading thirteen Internet service providers (in
7 the western region) for all categories of inquiry, except [REDACTED]. If the proposed
8 Transaction causes the acquired customers to experience a shift towards the satisfaction levels of
9 Charter's customers, then Bright House's current customers are especially at risk of experiencing
10 a decline in the quality of services rendered.

11 On the other hand, J.D. Power ranked Time Warner Cable [REDACTED] Charter in all five
12 categories of customer satisfaction. In fact, J.D. Power awarded very [REDACTED] consumer satisfaction

³⁷ Time Warner Cable's response to ORA Data Request 4-18. November 6, 2015. See Time Warner Cable - Ex 4-18 CONFIDENTIAL 002587-002593.

1 ratings to Time Warner Cable across the board. Time Warner Cable finished [REDACTED]
2 [REDACTED]
3 [REDACTED]. These rankings suggest that Time Warner
4 Cable provides a [REDACTED] as compared to other providers in the
5 western region of the country.

6 Time Warner Cable's rankings are especially worrisome given the size of the company,
7 in terms of total customers served. Time Warner Cable serves far more broadband customers (in
8 California) than Charter and Bright House. Therefore, it is particularly necessary for the
9 Commission to ensure that the proposed Transaction does not negatively affect the levels of
10 service quality experienced by current Time Warner Cable customers, who already display very
11 low levels of customer satisfaction. Charter has not made sufficient commitments as to how it
12 will improve service quality for the potentially acquired customers.

13 Although J.D. Power ranks Charter [REDACTED] Time Warner Cable in all five categories,
14 Charter's rankings do not exactly inspire confidence. J.D. Power ranks Charter in the [REDACTED]
15 of providers in four of the five categories. Charter received [REDACTED],
16 [REDACTED]. J.D. Power ranked Charter in the [REDACTED]

18 2. AMERICAN CUSTOMER SATISFACTION INDEX

19 The American Customer Satisfaction Index (ACSI), another highly regarded national
20 study, issues an annual report examining the levels of consumer satisfaction produced by major
21 industries and individual service providers. The ACSI found several shortcomings of the
22 broadband industry at large and the Joint Applicants in particular. In their 2014 study, ACSI
23 ranked the Internet service sector, as a whole, the worst performing of all 43 sectors tracked by
24 the index.³⁸ In that 2014 study, Time Warner Cable and Charter received two of the three lowest
25 scores of all Internet service providers included in the study.³⁹ In fact, in 2014, Time Warner

³⁸ American Customer Satisfaction Index. *ACSI Telecommunications and Information Report 2014*. ACSI, LLC. May 20, 2014. See, <http://www.theacsi.org/news-andresources/customer-satisfaction-reports/reports-2014/acsi-telecommunications-and-information-report-2014>

³⁹ *Id.*, at 4.

1 Cable and Charter received two of the three lowest scores among *all companies across all*
2 *industries* studied by ACSI.

3 In 2015, ACSI released an updated report.⁴⁰ The 2015 results were very similar to the
4 previous year's findings. The ACSI found consumer satisfaction with the Internet service sector,
5 as a whole, remained unchanged from the previous year. However, in 2015, the Internet service
6 sector was now *tied* with subscription TV service for the lowest-scoring household consumer
7 industry. The ACSI is quick to point out that those industries – subscription TV and Internet
8 service – are served by many of the same companies.⁴¹ Refer to Attachment B for the customer
9 satisfaction scores of all industries measured by the ACSI in 2015.

10 In 2015, the ACSI once again gave Time Warner Cable and Charter two of the three
11 lowest consumer satisfaction scores in the study. Charter's score decline for the second straight
12 year, and remained below both Bright House and Time Warner Cable. If the proposed
13 Transaction causes the acquired customers to experience a shift towards the satisfaction levels of
14 Charter's current customers, the ACSI's rankings suggest that the quality of broadband service in
15 California will decline.

16 On the other hand, the ACSI did find some instances of improvement in 2015. First, Time
17 Warner Cable's score increased from the previous year, in part due to the investments Time
18 Warner Cable made to increase the broadband speeds in Los Angeles.⁴² Also, to its credit, Bright
19 House received an average consumer satisfaction score in 2015, which was the first year ACSI
20 included Bright House in the study. Figure 7 below depicts the consumer satisfaction scores
21 given by ACSI to the Internet service sector and individual service providers.

⁴⁰ American Customer Satisfaction Index. *ACSI Telecommunications and Information Report 2015*. ACSI, LLC. June 2, 2015. Available at <https://www.theacsi.org/news-and-resources/customer-satisfaction-reports/reports-2015/acsi-telecommunications-and-information-report-2015/acsi-telecommunications-and-information-report-2015-download>

⁴¹ *Id.*, at 4.

⁴² *Id.*, at 5.

1 **Figure 7**

2 **ACSI - Internet Service Sector Consumer Satisfaction Scores⁴³**

| Company | 2013 | 2014 | 2015 |
|-------------------------------|------------|------------|-----------|
| AT&T (U-Verse) | 65 | 65 | 69 |
| Verizon (FiOS) | 71 | 71 | 68 |
| All Others | 71 | 65 | 65 |
| Internet Service Providers | 65 | 63 | 63 |
| Bright House Networks | N/A | N/A | 63 |
| Century Link | 64 | 65 | 60 |
| Cox Communications | 68 | 64 | 58 |
| Time Warner Cable | 63 | 54 | 58 |
| Charter Communications | 65 | 61 | 57 |
| Comcast | 62 | 57 | 56 |

3
4 The extremely low scores ACSI awarded to Time Warner Cable and Charter suggests
5 that New Charter will struggle to maintain or increase the level of broadband service quality in
6 California. Charter's current failure to produce respectable levels of customer satisfaction casts
7 doubt on New Charter's ability to maintain or increase levels of service quality after acquiring
8 2.35 million broadband customers. As a matter of fact, the ACSI found that:

9 Mergers and acquisitions have a generally negative effect on
10 customer satisfaction, particularly among service industries. ACSI-
11 measured service companies that have engaged in frequent, large
12 acquisitions typically experience significantly lower ACSI scores
13 in the period following a merger when the 'customer as asset'
14 often takes a backseat to reorganization and consolidation via cost
15 cutting.⁴⁴

16 A transaction of this magnitude has the potential to negatively affect service quality and
17 customer satisfaction. Combining companies that currently produce low levels of customer
18 satisfaction might decrease levels of broadband service quality post-Transaction.

⁴³ *Id.*, at 4.

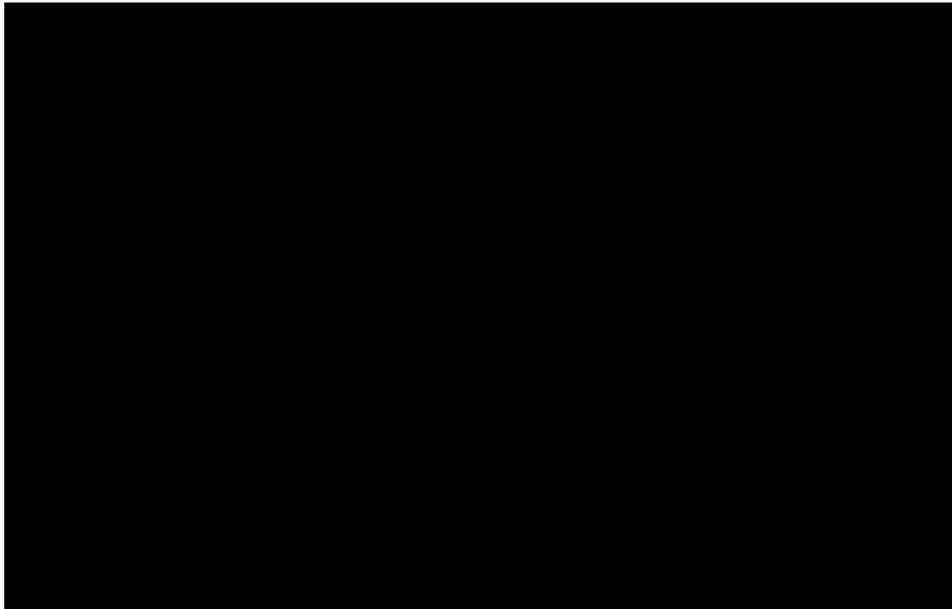
⁴⁴ American Customer Satisfaction Index. ACSI Telecommunications and Information Report 2014. ACSI, LLC. May 20, 2014. See, *Key ACSI Findings* available at <http://www.theacsi.org/about-acsi/key-acsi-findings>

1 **3. LEICHTMAN RESEARCH GROUP**

2 [REDACTED] customer satisfaction data from a third-party vendor, the Leichtman
3 Research Group (LRG).⁴⁵ The data that LRG produces includes the overall or aggregated
4 customer satisfaction results of certain sectors of the broadband industry. Figure 8 below
5 contains the results of LRG’s surveys from 2009 to date.

6 **Figure 8 (CONFIDENTIAL)**

7 **Customer Satisfaction Ratings per LRG (California)⁴⁶**



8
9 According to LRG’s surveys, customers are generally [REDACTED]
10 compared to the aggregated rating of the communications industries main sectors:
11 telecommunication, cable, and direct-broadcast satellite (DBS). From 2009 through 2012,
12 [REDACTED] than the cumulative score for each of the three sectors. Then,
13 starting in 2013, [REDACTED] the overall rating for cable companies by a small margin.
14 Still, LRG’s most recent rankings (as of June 2015) place [REDACTED] the overall ratings
15 for telecommunications companies and DBS companies.

⁴⁵ [REDACTED]

⁴⁶ *Id.*

1 **B. THE JOINT APPLICANTS’ APPROACH TO BROADBAND**
2 **SERVICE QUALITY**

3 ORA asked the Joint Applicants to provide information pertaining to their approach to
4 broadband service quality. More specifically, ORA asked for data relating to service quality
5 metrics, processes and procedures, customer satisfaction research, service outages, customer
6 complaints and installation statistics. In addition, ORA also reviewed the Joint Applicant’s
7 Application, Testimony, filings made to the FCC, and other relevant information.

8 The Joint Applicants each employ a unique approach to assessing the quality of their
9 broadband services. Each company uses different processes and procedures of varying scales and
10 capacities. The different levels of engagement suggest the companies give different valuations to
11 service quality.

12 **1. CHARTER**

13 Charter provided ORA with a summary of its current (pre-Transaction) efforts to address
14 the quality of its broadband services in California.⁴⁷ Charter’s efforts include conventional
15 practices, such as routine maintenance on company switches, routers, and cable modem
16 termination systems. Charter also [REDACTED]
17 [REDACTED] on a continual basis to provide increased bandwidth to end users.

18 Charter also has in place a system assurance process to identify issues that might
19 potentially degrade broadband service. The system assurance process uses [REDACTED]
20 [REDACTED]
21 [REDACTED].⁴⁸

22 Lastly, Charter tracks the quality of its broadband services with [REDACTED]
23 [REDACTED].⁴⁹ The nine metrics include:
24 [REDACTED]
25 [REDACTED]. Chapter III, below, will
26 address Charter’s performance relative to some of these metrics.

⁴⁷ Charter’s responses to ORA Data Requests 1-44 and 4-17. November 6, 2015.

⁴⁸ *Id.*

⁴⁹ Charter’s response to ORA Data Request 4-1, 4-3 and 4-4. November 6, 2015.

2. TIME WARNER CABLE

Time Warner Cable assesses the quality of its services by monitoring and evaluating “Critical Success Factors.”⁵⁰ For broadband services, those Critical Success Factors include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Time Warner Cable tracks and measures various metrics to assess each of the Critical Success Factors related to broadband service quality. For example, Time Warner Cable’s evaluations include [REDACTED]. Time Warner Cable measures these and other service quality metrics against targeted values in order to gauge performance. Time Warner Cable evaluates the Critical Success Factors via the associated service quality metrics on a monthly basis.

See Attachment C for additional details on Time Warner Cable’s internal metrics, including associated measurements, target values, calculations, and definitions. Then, refer to Attachment D for an example “HSD Scorecard,” which summarizes the performance of Time Warner Cable’s broadband network over a three month period, June 2014 through August 2014.

Time Warner Cable shared with ORA the results of its broadband service quality evaluations for the months of January 2015 through October 2015.⁵¹ Those evaluations include the results of various service quality metrics per regional market and on a national basis. Time Warner Cable includes all of its California territory within its “PacWest” market.⁵² Time Warner Cable found that, for the PacWest market, several of its broadband service metrics [REDACTED] [REDACTED] for every month from January 2015 through October 2015. Those [REDACTED] metrics include:

⁵⁰ Time Warner Cable’s response to ORA Data Request 4-3. November 6, 2015.

⁵¹ Time Warner Cable’s response to ORA Data Request 4-5. November 6, 2015. *See* Time Warner Cable – Ex 3-2 CONFIDENTIAL 001632-001653.

⁵² Time Warner Cable’s response to ORA Data Request 3-1. November 6, 2015.

- 1 • [REDACTED]
- 2 [REDACTED]
- 3 • [REDACTED]
- 4 • [REDACTED]
- 5 [REDACTED]
- 6 • [REDACTED]

7 **3. BRIGHT HOUSE**

8 Bright House does not have a working definition of “quality of service” as it pertains to
9 broadband services.⁵³ Rather, Bright House claims to deliver all Internet service traffic [REDACTED]

10 [REDACTED]⁵⁴ Bright House does, however, track the following broadband related metrics:
11 [REDACTED]

12 [REDACTED]⁵⁵ Chapter III, below, will address Bright House’s performance relative to some of these
13 metrics.

14 **C. NETWORK AVAILABILITY AND PERFORMANCE**

15 Network availability is an important metric used to evaluate the quality and reliability of
16 broadband networks. This metric measures the percentage of time a network is operable and not
17 in a state of failure or experiencing service outages. Network availability *excludes* scheduled
18 downtime for the purpose of performing maintenance or upgrading network systems. Unplanned
19 service outages and network failures will decrease a broadband provider’s network availability
20 score.

21 This section analyzes the Joint Applicants network availability on a per calendar year
22 basis. An annual network availability score of 99% indicates broadband service was not
23 functional during 1% of the year, which translates to 3 days 15 hours and 36 minutes of
24 cumulative downtime. To further illustrate, Figure 9 below depicts various network availability
25 scores and the associated cumulative duration of network failures (or service outages) per year.

⁵³ Bright House’s response to ORA Data Request 4-1. November 6, 2015.

⁵⁴ *Id.*

⁵⁵ Bright House’s response to ORA Data Request 4-3 and 3-2. November 19, 2015. *See* Bright House - Confidential Exhibit 3-2 BHN_0000296 – 297.

1 **Figure 9**

2 **Network Availability Examples**

| Network Availability | Downtime per Year |
|----------------------|-------------------------------|
| 99.999% | 5 minutes 15 seconds |
| 99.990% | 52 minutes 33 seconds |
| 99.900% | 8 hours 45 minutes 36 seconds |
| 99.000% | 3 days 15 hours 36 minutes |
| 98.000% | 7 days 7 hours 12 minutes |
| 97.000% | 10 days 22 hours 48 minutes |
| 96.000% | 14 days 14 hours 24 minutes |
| 95.000% | 18 days 6 hours |

3
4 The Commission does not impose benchmarks specific to broadband network
5 availability. Still, broadband service providers should strive to maintain the highest network
6 availability score as possible. Telephone carriers, for example, traditionally aim to meet the
7 “Five Nine” standard, which is to achieve a telephony-network availability score of 99.999%.⁵⁶
8 Today, broadband is an essential service much akin to telephone service, thus maintaining
9 network availability is a core component of delivering safe and reliable service to customers.
10 Therefore, in light of the lack of broadband-specific benchmarks, the analysis below will assess
11 the Joint Applicant’s network availability data based on the telephony Five Nine standard.

12 The Joint Applicants do not provide any detailed, performance-based commitment to
13 improve network availability and service reliability. For example, the joint applicants do not
14 provide a commitment to meet the Five-Nine standard within two years of the close of the
15 transaction, along with a commitment to provide the CPUC with quarterly reports containing
16 monthly network availability and service reliability data for a period of no less than three years.
17 Below I discuss the network availability of Charter and Time Warner Cable; both companies

18 [REDACTED]

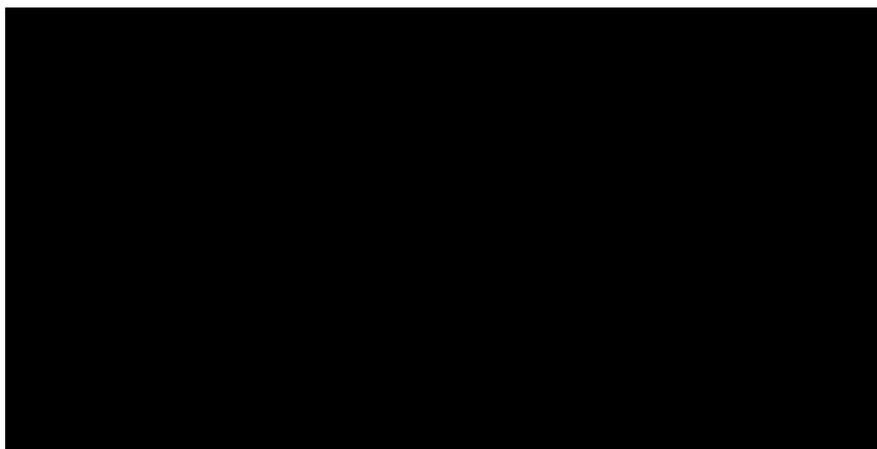
⁵⁶ Bauer, Clark, Heikkinen and Lehr. Assessing Broadband Reliability: Measurement and Policy Challenges. Massachusetts Institute of Technology. Cambridge, MA. 2011. Available at http://groups.csail.mit.edu/ana/Publications/Assessing%20Broadband_Reliability-Measurement_and_Policy_Challenges_tprc-2011-bm-3.pdf

1 **1. CHARTER**

2 ORA asked Charter to provide its network availability on a geographically disaggregated
3 basis (i.e. by zip code, census block group or city) for 2010 through 2015.⁵⁷ Charter provided the
4 data on a statewide basis.⁵⁸ Charter objected to ORA’s request for more geographically
5 disaggregated data, stating (in part) that such data will not yield material or relevant
6 information.⁵⁹

7 Figure 10 below depicts Charter’s annual network availability score for 2010 through
8 2015.

9 **Figure 10 (CONFIDENTIAL)**
10 **Charter – California Network Availability⁶⁰**



11
12 Charter [REDACTED] the 99.999% standard every year from 2010 through October
13 2015. Although Charter appears to have [REDACTED] their performance in recent years, their
14 network availability data still indicates [REDACTED]. In 2015,
15 Charter’s broadband network is on track to experience approximately [REDACTED] of cumulative
16 non-operability, failures or service outages.

⁵⁷ Charter’s response to ORA Data Request 4-2. November 6, 2015.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

1 **2. TIME WARNER CABLE**

2 Time Warner Cable provided ORA with the results of a company-specific metric called
3 “HSD Service Availability.”⁶¹ That metric is essentially a measurement of network availability,
4 and assesses the percentage of time that Time Warner Cable’s HSD service was available to
5 customers. Time Warner Cable’s provided ORA with the results of the “HSD Service
6 Availability” for the company’s PacWest market, which includes California and all or portions of
7 neighboring states.

8 Time Warner Cable measured “HSD Service Availability” scores of ██████ in August
9 2015, ██████ in September 2015, and ██████ in October 2015. Time Warner Cable targets an
10 “HSD Service Availability” score of greater than or equal to ██████ each month, which is
11 ██████ than the aforementioned Five Nine telephone standard.⁶² Time Warner Cable
12 ██████ their internal target (of ██████) in August and September of 2015, and ██████ their
13 target in October 2015. However, Time Warner Cable ██████ the Five Nine standard in
14 all three months.

15 From August to October in 2015, Time Warner Cable’s HSD service was unavailable for
16 approximately ██████ per month. Extrapolated to account for a full year, Time Warner
17 Cable’s scores translate to an annual cumulative downtime of nearly ██████. If
18 this three month sample is indeed indicative of Time Warner Cable’s standard performance, the
19 quality of the company’s broadband services is negatively impacted by poor network
20 availability.

21 **D. BROADBAND SERVICE OUTAGES**

22 The Joint Applicants’ network availability data suggest that deficiencies exist in overall
23 network reliability. To further examine the instances of poor network availability, this section
24 contains data on broadband outages that occurred on the Joint Applicants’ networks in recent
25 years.

⁶¹ Time Warner Cable’s response to ORA Data Request 4-2. November 6, 2015. *See* Time Warner Cable – Ex 3-2 CONFIDENTIAL 001632-001653.

⁶² *Id.* at 10.

1 The Joint Applicants do not provide any detailed, performance-based commitments to
2 improve broadband service reliability. For example, the joint applicants do not provide a
3 commitment to decrease the quantity and severity (as measured by duration and number of
4 customers affected) of broadband service outages within two years of the close of the
5 transaction, along with a commitment to provide the CPUC with quarterly reports containing
6 monthly service reliability data and outage information for a period of no less than three years.

7 **1. CHARTER**

8 In response to ORA’s Data Request regarding broadband service outages, Charter
9 provided information on the outages that occurred within California in years 2010 to 2015.⁶³
10 That data identified [REDACTED] outages that affected Charter’s broadband services from 2010 through
11 2015, with an average of [REDACTED] instances per year. The number of broadband outages per year is
12 [REDACTED] over the past six years. Charter experienced [REDACTED] the number of broadband
13 outages in 2015 as compared to 2010. Figure 11 below displays the number of broadband
14 outages Charter experienced, as well as the cumulative duration of those outages, each year from
15 2010 through 2015.

⁶³ Charter’s response to ORA Data Request 4-14. November 6, 2015. *See* Charter - CONFIDENTIAL Exhibit ORA 3-13.

1 **Figure 11 (CONFIDENTIAL)**

2 **Charter – Broadband Outages⁶⁴**



4

5 Charter’s broadband outages affected a total of [REDACTED] customers in 2015.⁶⁵ The vast

6 majority of Charter’s broadband outages primarily affected [REDACTED] customers. Still,

7 [REDACTED] customers experienced outages, as well.

8 Charter documented many different causes of broadband outages, ranging from

9 [REDACTED]. Issues with [REDACTED] were the primary cause of Charter’s broadband

10 outages. Nearly [REDACTED] of all broadband outages were affected by issues with [REDACTED]. Other

11 frequent causes included [REDACTED]

12 [REDACTED].

13 The [REDACTED] of Charter’s broadband outages is cause for concern. Frequent

14 outages severely impact the quality of service, and the broadband connection becomes less

15 reliable. It is extremely important that Charter take action to improve the reliability of its

16 broadband services. The Joint Applicants, however, did not present to the Commission sufficient

17 concrete, measureable, and performance-based commitments to decrease the frequency of

18 broadband outages.

⁶⁴ Charter’s response to ORA Data Request 4-14. November 6, 2015. *See* Charter - CONFIDENTIAL Exhibit ORA 3-13.

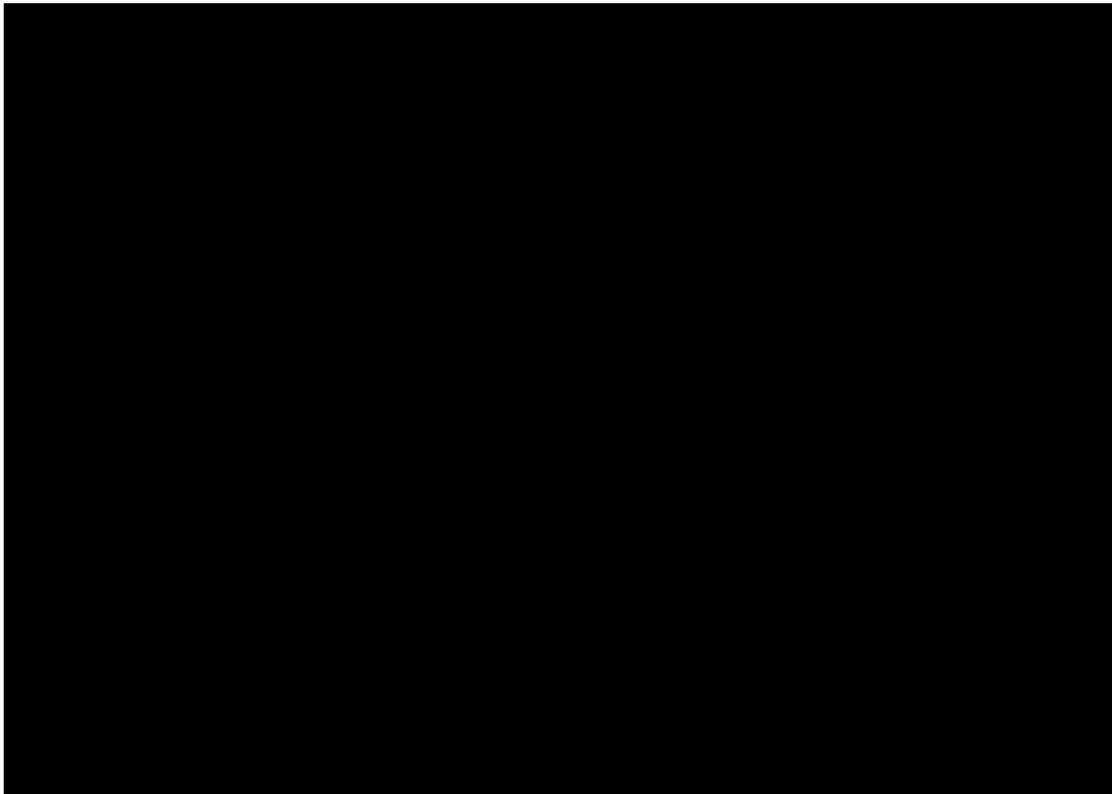
⁶⁵ 351,478 is the sum of the number of customers affected by each broadband outage that occurred in 2015. A customer is counted more than once if they were affected by more than one outage.

1 Warner Cable is projected to experience nearly [REDACTED] cumulative hours of service outages in
2 California during 2015. Clearly, the [REDACTED] of service outages
3 diminishes the reliability of Time Warner Cable's broadband services.

4 Time Warner Cable reported a wide variety of issues that caused broadband outages.
5 Since 2010, approximately [REDACTED] of Time Warner Cable's broadband outages were caused by
6 problems with [REDACTED]. In more recent years, issues with [REDACTED] have become more
7 prevalent. In 2013 and 2014, [REDACTED] accounted for [REDACTED] and [REDACTED] of all
8 broadband outages, respectively. Figure 13 below depicts the percentage of outages, per year,
9 according to the cause or reason for service failure.

10 **Figure 13 (CONFIDENTIAL)**

11 **Time Warner Cable – Cause of Broadband Outages⁶⁸**



12
13 The majority of Time Warner Cable's broadband outages are caused by issues with
14 [REDACTED] and the problem is becoming more prevalent. The hardware required to deliver

⁶⁸ Time Warner Cable's response to ORA Data Request 4-14. November 6, 2015. See Time Warner Cable - Ex 4-14 CONFIDENTIAL 003556.

1 broadband service is presumably maintained and operated by Time Warner Cable. Thus, Time
2 Warner Cable is in a unique position to correct and prevent these [REDACTED] related issues. The
3 fact that [REDACTED] issues have become more prevalent in recent years suggests that Time Warner
4 Cable is not adequately addressing the number one cause of its broadband service outages.

5 **3. BRIGHT HOUSE**

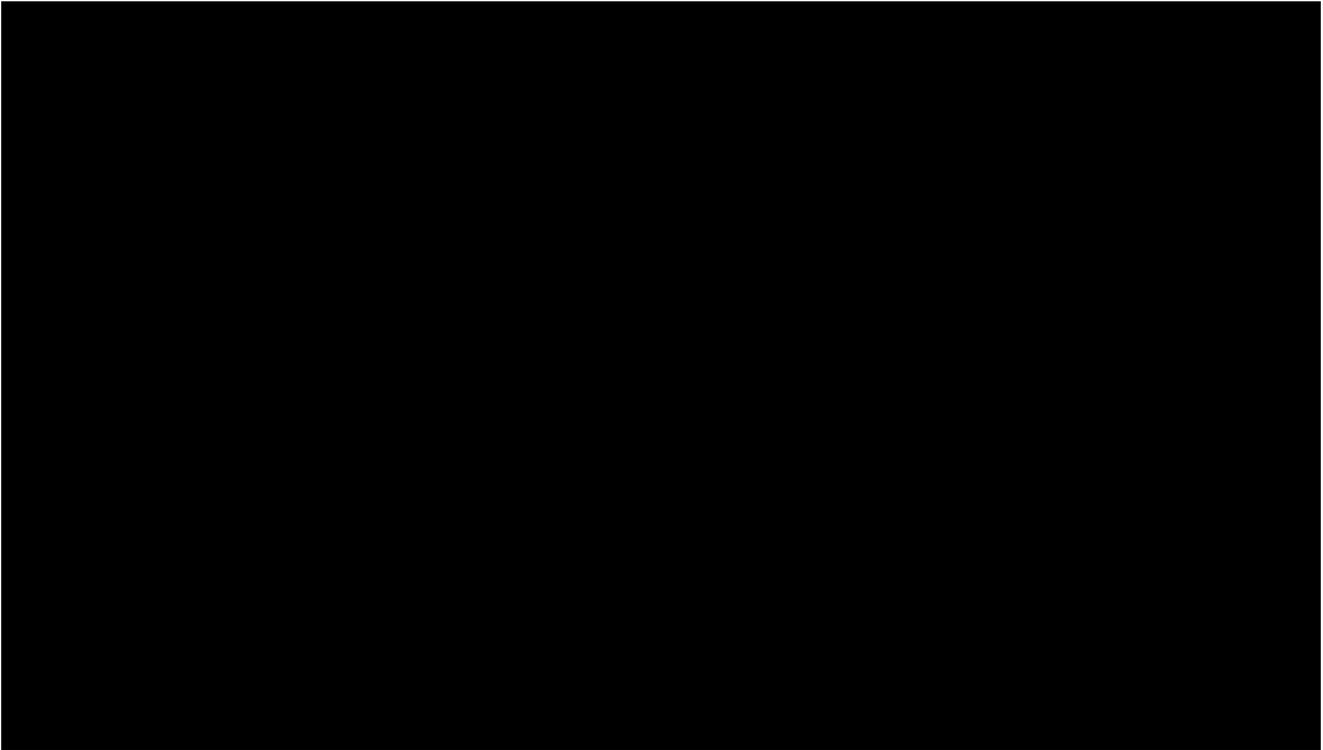
6 In response to ORA’s Data Request regarding broadband service outages, Bright House
7 submitted data on a limited set of major service outages.⁶⁹ Bright House only submitted data on
8 outages that occurred at the “edge level” of their California network (that is, at the hub level or
9 higher). Bright House did not disclose the exact number of customer affected per outage, as
10 requested by ORA. However, Bright House did estimate that approximately [REDACTED] or more
11 customers were affected per outage. The descriptions of Bright House’s broadband outages
12 suggest that events [REDACTED] are the most common cause.
13 Nonetheless, [REDACTED] accounts for significant outages lasting over [REDACTED].

14 Figure 14 below lists the date, location, duration, approximate number of customers
15 affected and an event description for each outage.

⁶⁹ Bright House’s response to ORA Data Request 4-14. November 19, 2015. *See* Bright House - Confidential Exhibit 4-14 BHN_0000303.

1 **Figure 14 (CONFIDENTIAL)**

2 **Bright House – Broadband Outages⁷⁰**



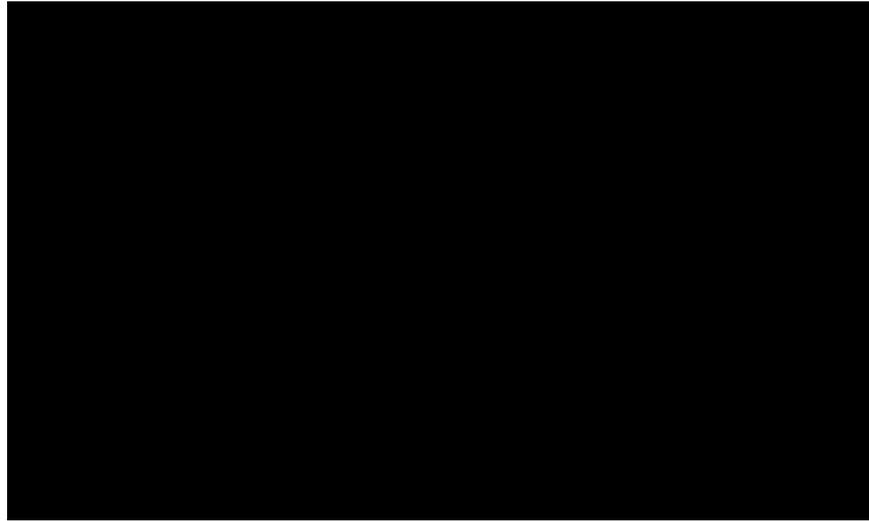
3

4 Bright House’s broadband service outages affect approximately ■ of total customers
5 per month. Figure 15 below lists the number of “Out of Service” calls placed to Bright House,
6 and the corresponding percentage of broadband customers, for each month of January through
7 September of 2015.

⁷⁰ Bright House’s response to ORA Data Request 4-14. November 19, 2015. *See* Bright House - Confidential Exhibit 4-14 BHN_0000303.

1 **Figure 15 (CONFIDENTIAL)**

2 **Bright House – Out of Service Calls⁷¹**



3

4 **E. CUSTOMER COMPLAINTS**

5 Customers contact the Joint Applicants in order to file complaints on many aspects of
6 their broadband service. Those complaints contain valuable insights as to the Joint Applicants’
7 existing problems, year-over-year trends and potential future shortcomings. Ultimately, the data
8 also speaks to the proposed Transaction’s possible effects on the overall quality of broadband
9 services.

10 The Joint Applicants do not provide any detailed, performance-based commitment to
11 improve upon their customers’ experience so as to lower the number of complaints filed or
12 improve the company’s response to complaints. For example, the Joint Applicants do not provide
13 a commitment to decrease the number of complaints filed by its broadband customers within two
14 years of the close of the transaction, along with a commitment to provide the CPUC with
15 quarterly reports containing monthly broadband customer complaint data for a period of no less
16 than three years. As further illustrated below, Charter’s lack of commitments on performance-
17 based outcomes raises significant concerns on the company’s ability to maintain or improve
18 service quality in California.

⁷¹ Bright House’s response to ORA Data Request 4-5. November 19, 2015. *See* Bright House – Confidential Exhibit 3-2 BHN_0000296 - 297.

1 **1. CHARTER**

2 Charter provided ORA with an overview of its processes and procedures for handling
3 customer complaints, inquiries, requests or other needs.⁷² Customers can contact Charter via
4 telephone, online or at a store location. Charter’s Customer Operations teams field a variety of
5 customer communications, including requests, inquiries and complaints. Charter has [REDACTED] call
6 centers that serve its broadband customers. Those call centers are all located [REDACTED],
7 [REDACTED].⁷³

8 In response to ORA’s Data Request regarding broadband customer complaints, Charter
9 provided ORA with data on a very limited set of customer complaints.⁷⁴ That data does not
10 include customer complaints made directly to the company’s customer care department (i.e.
11 instances where a customer calls the Charter customer service telephone line or submits a
12 complaint via the company’s website). In 2014, Charter received over [REDACTED] calls
13 (nationwide) from customers that required the assistance of a customer service representative.⁷⁵
14 Charter was unable to determine which of those [REDACTED] calls were customer complaints. Due
15 to Charter’s inability and/or unwillingness to provide a complete and accurate data, ORA is
16 unable to present a detailed analysis of Charter’s broadband customer complaints.

17 J.D. Power found that Charter provides [REDACTED] customer service. Conversely, J.D. Power
18 found that Bright House provides [REDACTED] customer service out of the 13 major broadband
19 providers in the western region. There are probably several reasons as to why customers rank
20 Bright House’s customer service [REDACTED] Charter’s. One possible reason is Charter’s repeated
21 [REDACTED].
22 Approximately [REDACTED] of customers that called Charter called back to the same support queue

⁷² Charter’s response to ORA Data Request 3-19. November 20, 2015.

⁷³ Charter’s response to ORA Data Request 4-10. November 20, 2015. *See* Charter - CONFIDENTIAL Exhibit ORA 4-11.

⁷⁴ Charter’s response to ORA Data Request 3-18, 3-19 and 4-13. November 20, 2015.

⁷⁵ Charter’s response to ORA Data Request 11-29. December 23, 2015.

1 within seven days.⁷⁶ Unfortunately, [REDACTED]
2 [REDACTED] ⁷⁷

3 2. TIME WARNER CABLE

4 In response to ORA’s Data Request regarding broadband customer complaints, Time
5 Warner Cable claims their complaint records do not [REDACTED].⁷⁸ As a
6 result, the following analysis may include customer complaints related to services other than
7 broadband. Time Warner Cable also stated that it considers customer-initiated complaints to be
8 matters requiring escalation.⁷⁹ The data that Time Warner Cable provided to ORA is limited to
9 this interpretation of complaints. Therefore, the following analysis only includes matters that
10 required escalation, and does not include complaints that did not require escalation.

11 From 2010 through 2014, Time Warner Cable escalated an average of [REDACTED] complaints
12 per year.⁸⁰ In 2015, Time Warner Cable is on pace to [REDACTED] that figure. Based on the first nine
13 months, Time Warner Cable will escalate approximately [REDACTED] complaints during 2015. Figure
14 16 below depicts the total number of complaints escalated by Time Warner Cable, and the
15 average time to resolve those complaints, per year.

⁷⁶ Charter’s response to ORA Data Request 11-29. December 23, 2015.

⁷⁷ Charter’s response to ORA Data Request 3-20. November 20, 2015.

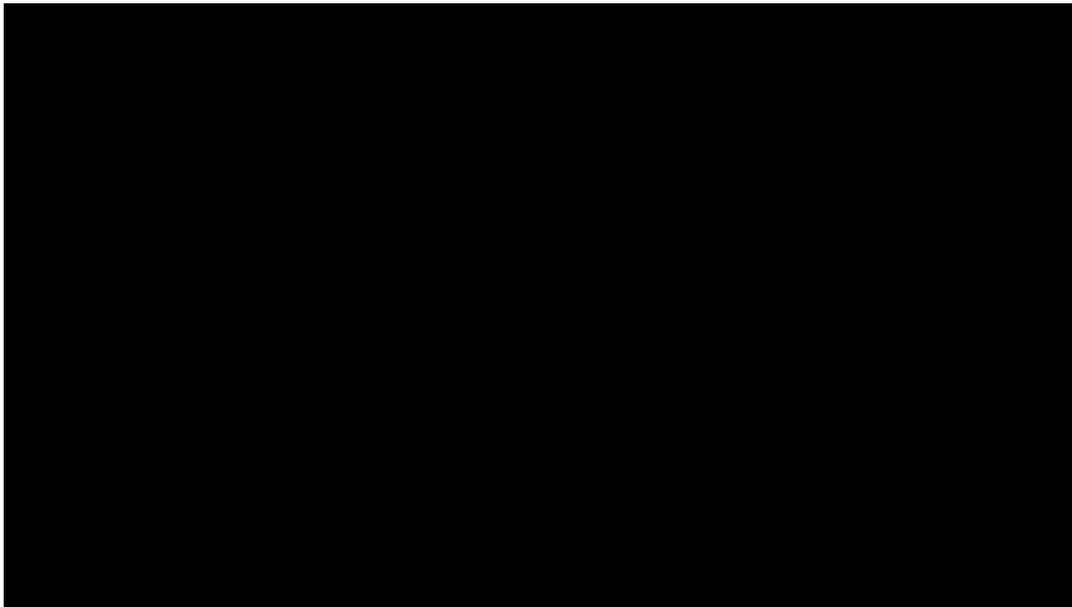
⁷⁸ Time Warner Cable’s response to ORA Data Request 3-18. November 12, 2015.

⁷⁹ *Id.*

⁸⁰ Time Warner Cable’s response to ORA Data Request 3-18. November 12, 2015. *See* Time Warner Cable - Ex 3-18 CONFIDENTIAL 003506.

1 **Figure 16 (CONFIDENTIAL)**

2 **Time Warner Cable – Customer Complaints (All Services)⁸¹**



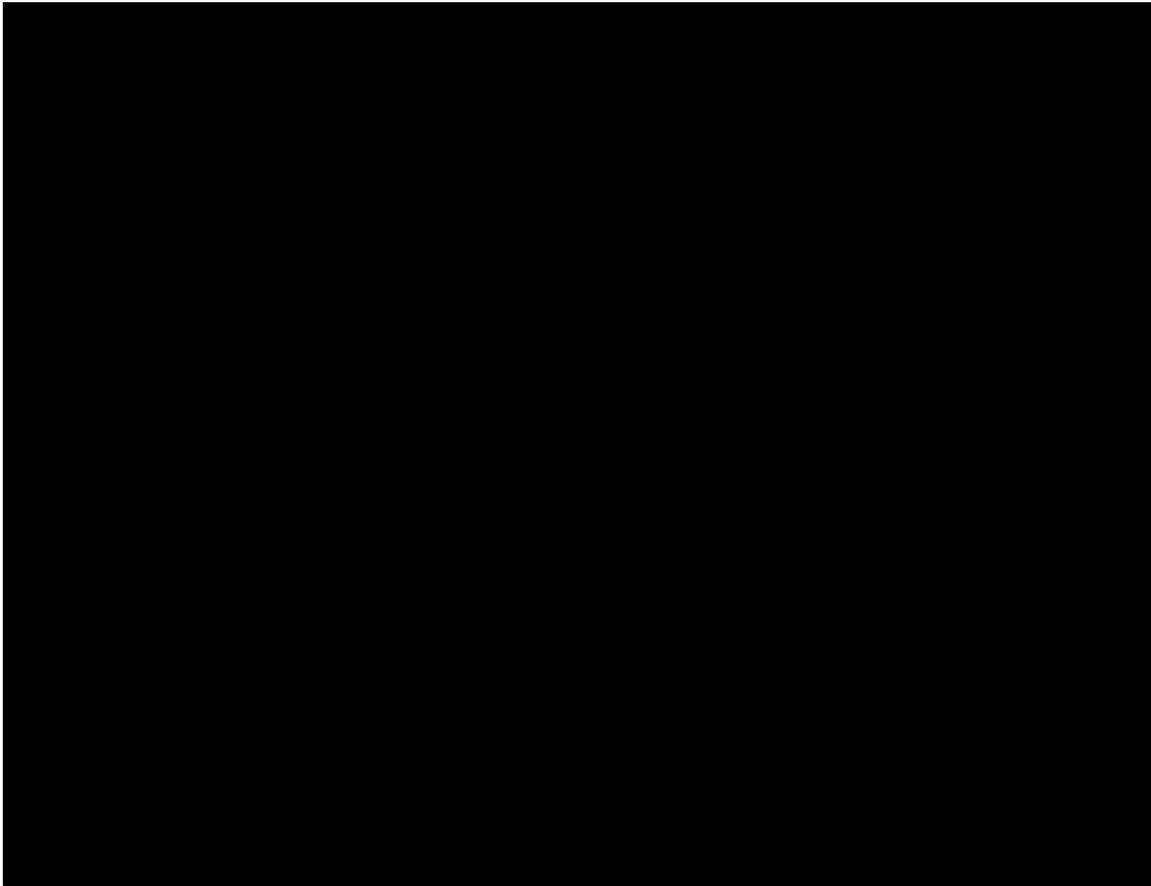
3
4 Time Warner Cable takes an average of [REDACTED] to resolve an escalated
5 complaint. However, in many instances Time Warner Cable did not resolve an escalated
6 complaint for [REDACTED]. Since 2010, Time Warner Cable recorded a minimum of [REDACTED]
7 escalated complaints that took at least [REDACTED] to resolve. Time Warner
8 Cable received many of those [REDACTED] complaints from third parties, such as the Better
9 Business Bureau and government agencies.

10 Time Warner Cable received complaints on a wide variety of issues, and many
11 complaints dealt with more than one issue. [REDACTED] related issues are the most common topics
12 raised within a complaint. At least [REDACTED] of all customer complaints deal with a [REDACTED] issue, such
13 as: [REDACTED]
14 [REDACTED]. The next most common categories of complaint were
15 [REDACTED]. The
16 remaining complaints dealt with a variety of issues, including [REDACTED]
17 [REDACTED]. Figure 17 below presents a more complete breakdown of the issues raised
18 within the escalated complaints, per year.

⁸¹ Time Warner Cable's response to ORA Data Request 3-18. November 12, 2015. See Time Warner Cable - Ex 3-18 CONFIDENTIAL 003506.

1 **Figure 17 (CONFIDENTIAL)**

2 **Time Warner Cable –Escalated Complaint Issues* (All Services)⁸²**



3
4 Time Warner Cable categorized around [REDACTED] of escalated customer complaints as [REDACTED]
5 [REDACTED]. These complaints are related to issues with broadband service, and
6 common topics were: [REDACTED].

7 Time Warner Cable took an average of [REDACTED] to resolve these broadband related
8 issues, with the fastest resolution occurring [REDACTED]. In one extreme
9 case, Time Warner Cable did not resolve an [REDACTED] complaint, related to [REDACTED]
10 [REDACTED].

11 The total number of complaints that include a broadband related issue is trending in an
12 [REDACTED] direction. In 2010, Time Warner Cable escalated [REDACTED] complaints that dealt with [REDACTED]
13 [REDACTED] issues. Then, in the first nine months of 2015, Time Warner Cable escalated [REDACTED]

⁸² Time Warner Cable's response to ORA Data Request 3-18. November 12, 2015. See Time Warner Cable - Ex 3-18 CONFIDENTIAL 003506.

1 that amount (██████). Time Warner Cable has also experienced an ██████ in the number of
2 broadband subscribers over the past six years, which partially explains the ██████ in
3 complaints. Still yet, the ██████ trend is present even within normalized data that accounts for
4 the ██████ in subscribers. In 2010, Time Warner Cable escalated ██████ complaints per 1,000
5 broadband customers that included ██████ issues, as compared to (a projected) ██████ in 2015.
6 Refer to Figure 18 below, which depicts the number of escalated complaints related to ██████
7 ██████ issues, per 1,000 residential broadband customers, per year.

8 **Figure 18 (CONFIDENTIAL)**

9 **Time Warner Cable – Broadband Repair Complaints per**
10 **1,000 Residential Broadband Customers (with Trendline)⁸³**



11
12 **3. BRIGHT HOUSE**

13 In response to ORA’s Data Request, Bright House disclosed their processes and
14 procedures for handling broadband customer complaints.⁸⁴ Bright House allows customers to
15 contact a customer service representative via telephone, e-mail, website chat, or by visiting a
16 customer care center. Bright House has ██████ customer care centers in California, located in
17 ██████. Bright House also allows customers to escalate their
18 complaint by contacting the “Office of the President”.

19 Bright House did not comply with ORA’s repeated requests for data pertaining to all
20 broadband customer complaints. Instead, Bright House responded to those requests by raising

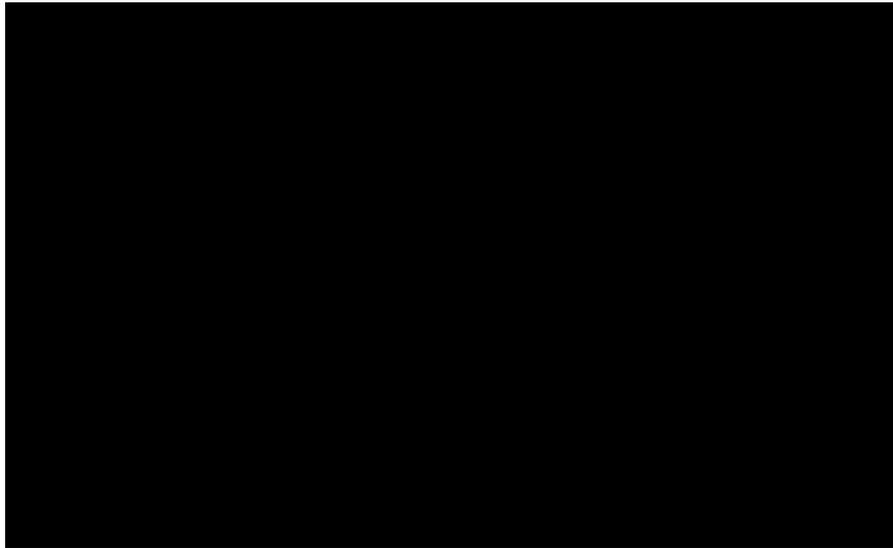
⁸³ Time Warner Cable’s response to ORA Data Request 3-18. November 12, 2015. *See* Time Warner Cable - Ex 3-18 CONFIDENTIAL 003506.

⁸⁴ Bright House’s response to ORA Data Request 4-6. November 6, 2015.

1 various objections and claimed they do not possess or are unable to provide the information.⁸⁵
2 However, Bright House did provide a subset of complaint received via government agencies,
3 consumer organizations and the company's corporate offices.⁸⁶ That subset contained ■
4 complaints (including broadband, video and phone services) filed from 2011 through 2015.
5 Figure 19 below depicts those complaints per year and according to the type of customer.

6 **Figure 19 (CONFIDENTIAL)**

7 **Bright House Networks – Complaints Received via Government Agencies,**
8 **Consumer Organizations and Corporate Offices⁸⁷**



9
10 The number of complaints Bright House received via government agencies, consumer
11 organizations and its corporate offices ■ every year from 2012 through 2015, as depicted
12 in Figure 19 above. This ■ trend is cause for concern, despite the ■
13 of complaints received each year. These complaints were filed by customers that deemed it
14 necessary to pursue avenues other than Bright House's conventional customer service
15 department.

16 Many of these complaints were filed in response to ■ provided by
17 Bright House, or a ■. For

⁸⁵ Bright House's response to ORA Data Request 4-13. November 6, 2015.

⁸⁶ Bright House's response to ORA Data Request 3-18 and 4-13. January 11, 2016. *See* Bright House's response to ORA's 12-17 Meet and Confer (January 11, 2016).

⁸⁷ *Id.*

1 example, one complaint was filed by a customer in response to [REDACTED]
2 [REDACTED]. Yet another complaint was filed because the customer [REDACTED]
3 [REDACTED]. The gravity of these complaints, and the [REDACTED] year-over-year trend,
4 demonstrates several areas in which Bright House can improve the quality of its services. The
5 Joint Applicants did not provide specific and detailed plans to decrease the frequency of these
6 complaints.

7 **F. BROADBAND SERVICE INSTALLATIONS**

8 The Commission's General Order 133-C establishes uniform minimum standards of
9 service for certain telephone corporations.⁸⁸ Those standards include maintaining an average
10 telephone service installation interval of five or fewer business days, and meeting 95% of
11 installation commitments. Established standards do not exist, however, for broadband service
12 installation intervals or commitments met. Nonetheless, broadband is today an essential service,
13 and is comparable in many ways to telephone service as a vital means of communication.
14 Therefore, in order to assess broadband service quality, the following analysis will evaluate the
15 Joint Applicants' broadband service installation metrics against the aforementioned telephony
16 standards.

17 In response to ORA's Data Request, Charter,⁸⁹ Time Warner Cable,⁹⁰ and Bright House⁹¹
18 disclosed data pertaining to their broadband installation intervals. Each of the Joint Applicants'
19 average broadband service installation interval (per calendar year) is [REDACTED] than five
20 business days. Each company [REDACTED] in each of the past six years. Figure 20 below
21 depicts the broadband service installation interval, per year, for each of the Joint Applicants from
22 2010 through 2015.

⁸⁸ D.09-07-019, Ordering Paragraph 1 at 92.

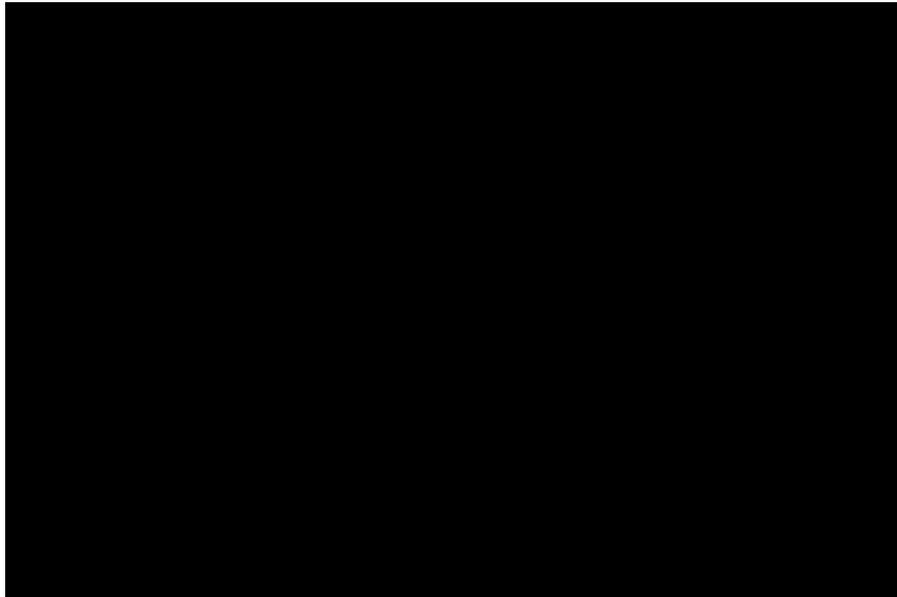
⁸⁹ Charter's response to ORA Data Request 4-8. November 6, 2015. *See* Charter - Exhibit ORA 4-5.4.

⁹⁰ Time Warner Cable's response to ORA Data Request 4-8. November 6, 2015.

⁹¹ Bright House's response to ORA Data Request 4-8. November 6, 2015.

1 **Figure 20 (CONFIDENTIAL)**

2 **Joint Applicants – Service Installation Interval (California)⁹²**



3
4 The Joint Applicants [REDACTED] for broadband service installation, but [REDACTED]
5 [REDACTED] for the percentage of broadband installation commitments met. In response to
6 ORA's Data Request regarding broadband installation commitments met, Time Warner Cable⁹³
7 and Charter⁹⁴ provided annual averages. Bright House, once again, failed to provide the
8 requested information.⁹⁵

9 Since 2010, Charter only fulfilled an average of [REDACTED] of its broadband installation
10 commitments. During the same timeframe, Time Warner Cable only fulfilled an average of [REDACTED]
11 of its broadband installation commitments. Both Charter and Time Warner Cable [REDACTED]
12 the benchmark of fulfilling a minimum of 95% of installation commitments. Bright House claims

⁹² See Charter's response to ORA Data Request 4-8. November 6, 2015. See also, Time Warner Cable's response to ORA Data Request 4-8. November 6, 2015. See also, Bright House's response to ORA Data Request 4-8. November 6, 2015.

⁹³ Time Warner Cable's response to ORA Data Request 4-12. November 6, 2015.

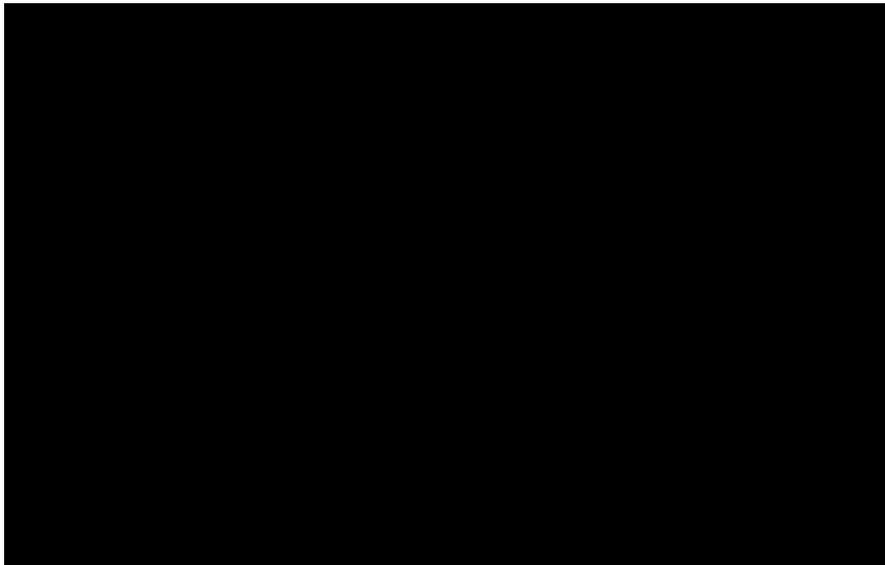
⁹⁴ Charter's response to ORA Data Request 4-12. November 6, 2015.

⁹⁵ Bright House's response to ORA Data Request 4-12. January 11, 2016. See Bright House's response to ORA's 12-17 Meet and Confer (January 11, 2016).

1 it [REDACTED]⁹⁶ Figure 21 below
2 depicts Charter's and Time Warner Cable's percentage of broadband service installation
3 commitments met, per year, for 2010 through 2015.

4 **Figure 21 (CONFIDENTIAL)**

5 **Joint Applicants – Service Commitments Met (California)⁹⁷**



6
7

8 The Joint Applicants do not provide any detailed, performance-based commitment to
9 improve their performance in regard to installing new broadband service connections. For
10 example, the Joint Applicants do not provide a commitment to increase the percentage of
11 broadband service installation commitments met within two years of the close of the transaction,
12 along with a commitment to provide the CPUC with quarterly reports containing monthly
13 broadband service installation metrics and data for a period of no less than three years.

14 **G. CUSTOMER SERVICE**

15 Customer service is an important component of provisioning high quality broadband
16 service. Customers interact and communicate directly with their broadband service provider in

⁹⁶ Bright House's response to ORA Data Request 4-12. January 11, 2016. See Bright House's response to ORA's 12-17 Meet and Confer (January 11, 2016).

⁹⁷ See Charter's response to ORA Data Request 4-12. November 6, 2015. See also, See Time Warner Cable's response to ORA Data Request 4-12. November 6, 2015.

1 order to accomplish a variety of tasks, such as placing service orders, filing complaints, or
2 seeking disconnection. J.D. Power’s 2015 Residential Internet Service Provider Satisfaction
3 Study includes “customer service” as one of the top five categories in its assessment of customer
4 satisfaction. J.D. Power’s survey finds that Charter and Time Warner Cable are two of the [REDACTED]
5 [REDACTED] companies in terms of customer service.⁹⁸

6 There are, undoubtedly, many factors that contribute to the customer experience and
7 overall customer service. Maintaining an adequate number of employees in order to address
8 customer needs is likely a key factor. In response to ORA’s requests, the Joint Applicant’s
9 provided information on the quantity and roles of their employees.⁹⁹ That data reveals a trend
10 common to each of the Joint Applicants. In short, the [REDACTED]
11 [REDACTED].

12 Figure 22 below depicts the change in the number of Charter employees per 1,000
13 broadband customers in California, per year, for 2010 through 2015.

⁹⁸ Refer to Chapter III, Section A, Subsection 1 for additional information pertaining to 2015 J.D. Power’s Residential Internet Service Provider Satisfaction Study

⁹⁹ See Charter’s response ORA Data Request 4-11. November 6, 2015. See also, Bright House’s response to ORA Data Request 4-11. November 6, 2015. See also, Time Warner Cable’s response to ORA Data Request 4-11. November 6, 2015.

1
2

Figure 22 (CONFIDENTIAL)

Charter – Employees per 1,000 CA Broadband Customers¹⁰⁰



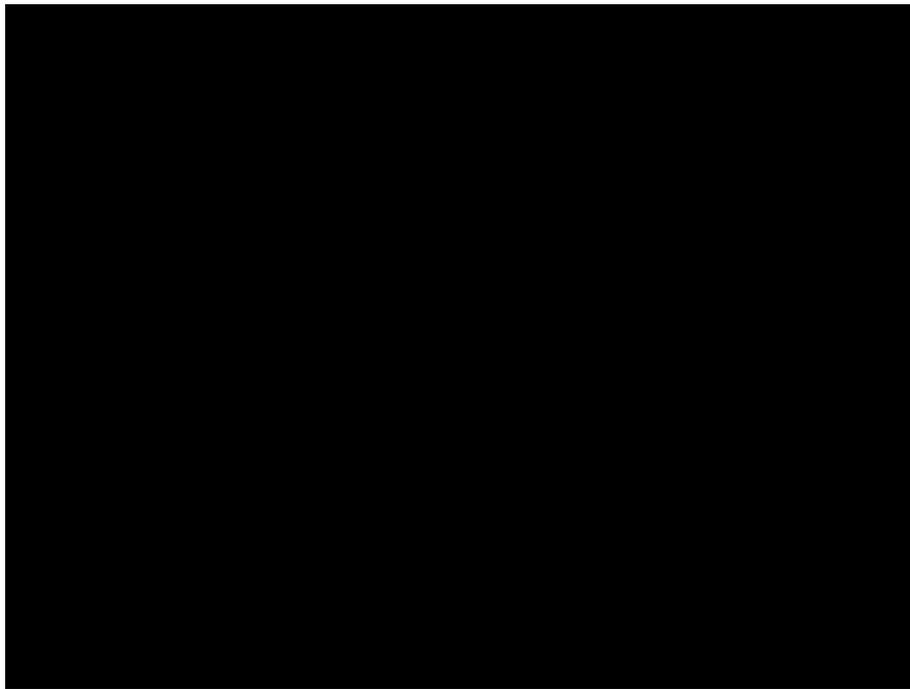
3
4
5
6

Next, Figure 23 below depicts the change in the number of Time Warner Cable employees per 1,000 broadband customers in California, per year, for 2010 through 2015.

¹⁰⁰ Charter's response to ORA Data Request 4-11. November 6, 2015. *See* Charter - CONFIDENTIAL Exhibit ORA 4-11.

1 **Figure 23 (CONFIDENTIAL)**

2 **Time Warner Cable – Employees per 1,000 CA Broadband Customers¹⁰¹**



3
4
5 There is no explicit standard for the optimal ratio of customer service personnel (for
6 example) per customer. Nonetheless, a quickly [REDACTED] is
7 cause for concern in a service industry, especially for those companies that already provide poor
8 customer service.

9 The Joint Applicants do not provide any detailed, performance-based commitments to
10 improve their customer service for broadband customers. For example, the Joint Applicants do
11 not provide a commitment to decrease customer service call answer times within two years of the
12 close of the transaction, along with a commitment to provide the CPUC with quarterly reports
13 containing quarterly customer service metrics and data for a period of no less than three years.

14

¹⁰¹ Total customers are as of July of each year. Refer to Time Warner Cable’s responses to ORA Data Requests 4-9 and 4-11. November 6, 2015. *See* Time Warner Cable – Ex 3-35 CONFIDENTIAL 003518. *See also*, Time Warner Cable – Ex 4-9 CONFIDENTIAL 003558.

1 **IV. EVALUATING THE PURPORTED BROADBAND SERVICE**
2 **QUALITY BENEFITS**

3 The Joint Applicant’s claim the Transaction will result in enhancements to broadband
4 service quality, which furthers the public interest. The Joint Applicants claim the Transaction
5 will generate operational efficiencies¹⁰² and investment incentives,¹⁰³ which in turn will produce
6 multiple benefits for consumers. Dr. Lee L. Selwyn, a consultant for ORA, provides Reply
7 Testimony that (in part) refutes the Joint Applicants’ claims pertaining to operational efficiencies
8 and investment incentives.¹⁰⁴ Dr. Selwyn provides evidence as to why the Transaction will not
9 generate substantial benefits, as the Joint Applicants claim.¹⁰⁵ Nevertheless, the following
10 Testimony evaluates the Joint Applicant’s claims that the Transaction will enhance broadband
11 service quality, despite the evidence that New Charter will not have an increased incentive to
12 invest.

13 **A. BROADBAND SERVICES ENHANCEMENTS**

14 The Joint Applicant’s claim New Charter will invest in new and upgraded technology and
15 services.¹⁰⁶ Charter states New Charter will increase broadband speeds to 60 Mbps download in
16 the acquired service territories within 30 months of the close of the proposed Transaction.¹⁰⁷ The
17 Commission should not consider all of New Charter’s purported broadband service
18 enhancements a benefit of the Transaction. Rather, the Commission should only consider the
19 *incremental* enhancements above and beyond what Time Warner Cable and Bright House would
20 have accomplished sans-Transaction. The Joint Applicants failed to demonstrate that the
21 *incremental* benefit is significant, as demonstrated below.

22 The Joint Applicants even admit that the broadband enhancement investments and
23 service upgrades are currently underway, prior to and irrespective of the proposed Transaction.
24 Dr. Fiona Scott Morton (Senior Consultant at Charles River Associates) explains, “Investment in

¹⁰² Falk Testimony at 30. December 4, 2015.

¹⁰³ Dr. Morton Testimony. November 2, 2015. *See* Exhibit B at 68.

¹⁰⁴ *See* Reply Testimony of Dr. Lee L. Selwyn at 20-32 and 47.

¹⁰⁵ *See* Reply Testimony of Dr. Lee L. Selwyn at 84-86.

¹⁰⁶ Dr. Morton Testimony. November 2, 2015. *See* Exhibit A at 2-4.

¹⁰⁷ Charter’s response to ORA Data Request 3-25. November 6, 2015.

1 broadband speed is widespread in the industry... [A]ll major ISPs are investing in improving
2 their networks and attracting more broadband subscribers.”¹⁰⁸ Indeed, both Bright House and
3 Time Warner Cable are currently investing in their California networks in order to offer
4 enhanced broadband services with increased speeds.

5 Time Warner Cable currently has underway a project dubbed “Time Warner Cable
6 Maxx.”¹⁰⁹ With Time Warner Cable Maxx, the company is upgrading their network in order to
7 enhance both their TV and broadband services. These upgrades allow for increased broadband
8 speeds, and more reliable Internet and video services. As for the impact on broadband services,
9 Time Warner Cable describes the project as follows:

10 The Internet transformation includes speed increases on Time
11 Warner Cable residential Internet plans at no additional cost, with
12 customers experiencing increases up to six times faster, depending
13 on their current level of Internet service... As Time Warner Cable
14 has committed to new network performance standards
15 companywide, this initiative includes a stringent review and
16 upgrade of every network connection site (referred to as hubs) to
17 ensure optimum service levels are delivered to every
18 neighborhood.¹¹⁰

19 As stated above, the Time Warner Cable Maxx upgrades result in increased broadband
20 speeds at no additional costs. The changes to broadband speeds and the associated plan names
21 are as presented in Figure 24 below.

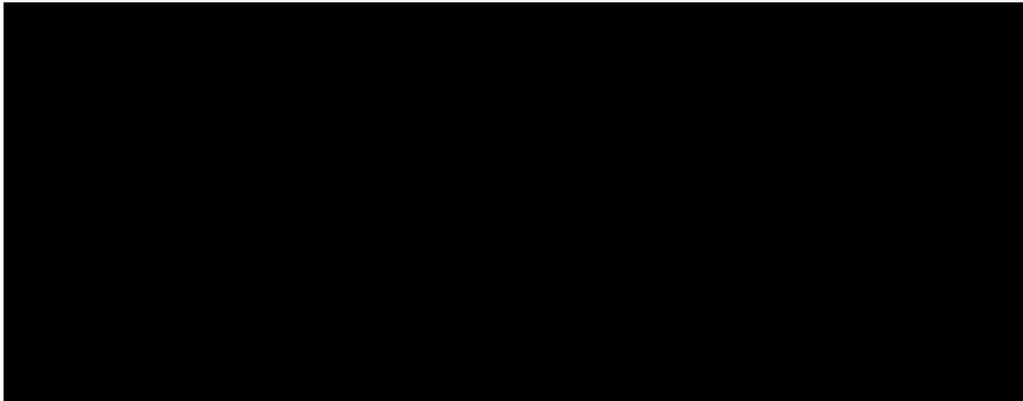
¹⁰⁸ Dr. Morton Testimony. November 2, 2015. See Exhibit B at 75.

¹⁰⁹ Time Warner Cable response to ORA Data Request 3-24. November 6, 2015.

¹¹⁰ *Time Warner Cable Announces Expansion of "TWC MAXX" to Greensboro and Wilmington, N.C.* July 14, 2015. Available at <http://www.timewarnercable.com/en/about-us/press/twc-announces-expansion-of-maxx-in-nc.html>

1 **Figure 24 (CONFIDENTIAL)**

2 **Time Warner Cable Maxx Upgrades¹¹¹**



3
4 Time Warner Cable is deploying Time Warner Cable Maxx in California irrespective of
5 the proposed Transaction. Time Warner Cable recently completed the upgrades in portions of
6 their California service territory. Today, Time Warner Cable Maxx services are available in the
7 Los Angeles and San Diego areas.¹¹² Time Warner Cable completed several of those upgrades as
8 recently as the third quarter of 2015. Furthermore, Time Warner Cable is currently working to
9 upgrade additional areas of California, and has plans to commence the deployment of Time
10 Warner Cable Maxx in yet even more areas in the near future.¹¹³ Time Warner Cable is
11 upgrading their broadband services in California, regardless of the proposed Transaction.

12 Time Warner Cable conducted research that shows customer satisfaction levels increased
13 due to the Time Warner Cable Maxx upgrades.¹¹⁴ In fact, Time Warner Cable claims customer
14 satisfaction levels continue to trend upward, year-over-year, in upgraded areas.¹¹⁵ ACSI's
15 research also demonstrates that Time Warner Cable's recent investments made to increase

¹¹¹ Time Warner Cable's response to ORA Data Request 1-43. November 9, 2016.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Time Warner Cable Announces Expansion of "TWC MAXX" to Greensboro and Wilmington, N.C.* July 14, 2015. Available at <http://www.timewarnercable.com/en/about-us/press/twc-announces-expansion-of-maxx-in-nc.html>

¹¹⁵ *Id.*

1 broadband speeds in Los Angeles led to increased levels of customer satisfaction.¹¹⁶ These
2 advancements are currently underway, irrespective of the proposed Transaction.

3 In addition, Bright House is also increasing the data transfer speeds of its broadband
4 services.¹¹⁷ Effective December 15, 2015, Bright House increased the speeds of its “Lightning”
5 broadband services. Bright House’s customers located in the Bakersfield market can now receive
6 speeds of up to 300 Mbps upload and 20 Mbps download. Bright House’s existing customers that
7 already subscribed to one of the “Lightning” broadband services received the speed increases at
8 no additional charge. These advancements are currently underway, irrespective of the proposed
9 Transaction. Therefore, the Commission should not consider all of New Charter’s purported
10 broadband service enhancements a benefit of the Transaction.

11 **B. COMMITMENT TO AN OPEN INTERNET**

12 The Joint Applicants claim New Charter will not block Internet traffic, throttle Internet
13 traffic, or engage in paid prioritization.¹¹⁸ Maintaining an open Internet is in accordance with the
14 public interest. However, based on advice from counsel, Federal Law currently prohibits Internet
15 access service providers from engaging in these practices.

16 In March 2015, the FCC released its Open Internet Order,¹¹⁹ which states:

17 Because the record overwhelmingly supports adopting rules and
18 demonstrates that three specific practices invariably harm the open
19 Internet—Blocking, Throttling, and Paid Prioritization—this Order
20 bans each of them, applying the same rules to both fixed and
21 mobile broadband Internet access service....

22 A person engaged in the provision of broadband Internet access
23 service, insofar as such person is so engaged, shall not block
24 lawful content, applications, services, or nonharmful devices,
25 subject to reasonable network management...

¹¹⁶ See Chapter III, Section A, Subsection 2 on page III-8.

¹¹⁷ Bright House’s response to ORA Data Request 4-17. January 11, 2016. See Bright House’s response to ORA’s 12-17 Meet and Confer (January 11, 2016).

¹¹⁸ Falk Testimony at 20. December 4, 2015.

¹¹⁹ FCC, *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order (Open Internet Order), GN Docket No.14-28, Rel. March 12, 2015, at

1 A person engaged in the provision of broadband Internet access
2 service, insofar as such person is so engaged, shall not impair or
3 degrade lawful Internet traffic on the basis of Internet content,
4 application, or service, or use of a non-harmful device, subject to
5 reasonable network management...

6 A person engaged in the provision of broadband Internet access
7 service, insofar as such person is so engaged, shall not engage in
8 paid prioritization.¹²⁰

9 The FCC’s no-blocking, no-throttling and no-paid prioritization rules are codified in the
10 Code of Federal Regulations.¹²¹ The Joint Applicants, New Charter, and all other Internet access
11 service providers must adhere to these rules. Thus, the Commission should not view these
12 commitments as benefits of the proposed Transaction.

13 The Joint Applicants state that New Charter will honor their commitments regarding
14 blocking, throttling and paid prioritization for three years after the close of the proposed
15 Transaction, *even if the FCC’s rules are overturned in court.*¹²² However, the FCC’s rules might
16 not be overturned, and the Commission should not assume that they will be overturned. Thus, the
17 Commission should not accept the Joint Applicants’ “three year commitment” regarding
18 blocking, throttling and paid prioritization as a benefit of the proposed Transaction.

¹²⁰ Open Internet Order at 14-18.

¹²¹ See 47 C.F.R. § 8.5, 7 and 9

¹²² Falk Testimony at 19. December 4, 2015.

1 **V. CONCLUSION**

2 With the proposed Transaction, the Joint Applicants seek to create a company, New
3 Charter, which will serve three million broadband customers in California. The merger would
4 make New Charter one of the largest providers of high-speed last mile broadband service in
5 California, passing over 50% of households in the State and a much higher percentage in
6 southern California.¹²³ Accordingly, the Scoping Ruling states the Commission’s intentions to
7 evaluate the proposed Transaction’s potential effect on broadband services in California. The
8 Scoping Ruling also explains that the Commission must consider the Transaction’s effects on the
9 quality of services in California and find that the Transaction is in the public interest.

10 The data and analysis presented herein presents several deficiencies with regard to the
11 quality of the Joint Applicants’ broadband services. For example, Charter and Time Warner
12 Cable receive extremely poor customer satisfaction ratings and rankings from multiple highly
13 regarded studies. Each of the Joint Applicant’s also experience [REDACTED] broadband
14 outages that negatively impact service reliability. As a result, Charter and Time Warner Cable
15 [REDACTED] a network availability score of 99.999%, which is the traditional Five Nine
16 standard of telephone service providers. Then, Charter and Time Warner [REDACTED]
17 [REDACTED] of requests for new broadband services. Finally, the Joint Applicants
18 receive many complaints from customers that indicate serious deficiencies in the quality of their
19 broadband services. The Joint Applicants failed to make sufficient, detailed commitments to
20 remedy these (and other) issues and improve the quality of their broadband services.

21 The Joint Applicants claim that the Transaction will result in several benefits and further
22 the public interest. However, the Joint Applicants did not provide concrete, measurable, and
23 performance-based commitments of sufficient scope and detail. Therefore, many of the Joint
24 Applicant’s alleged benefits are unfounded and/or unlikely to occur. The Joint Applicants also
25 erroneously attribute certain benefits to the Transaction, when those service enhancements and
26 business practices will occur apart from and irrespective of the proposed Transaction. For
27 instance, both Time Warner Cable and Bright House are currently increasing the speeds available
28 to their broadband customers. The Joint Applicants did not demonstrate that New Charter will

¹²³ California Broadband Availability Database, Round 11 data (as of December 31, 2014) as submitted by ISPs.

1 complete broadband service enhancements above and beyond those of Time Warner Cable and
2 Bright House.

3 The Joint Applicants provided minimal evidence and insufficient commitments to support
4 their claim that the proposed merger will raise the quality of broadband services in California.
5 Based on the Joint Applicants' showing in this proceeding and other relevant information, the
6 proposed Transaction may not maintain or improve the quality and reliability of broadband
7 services in California.

ATTACHMENTS

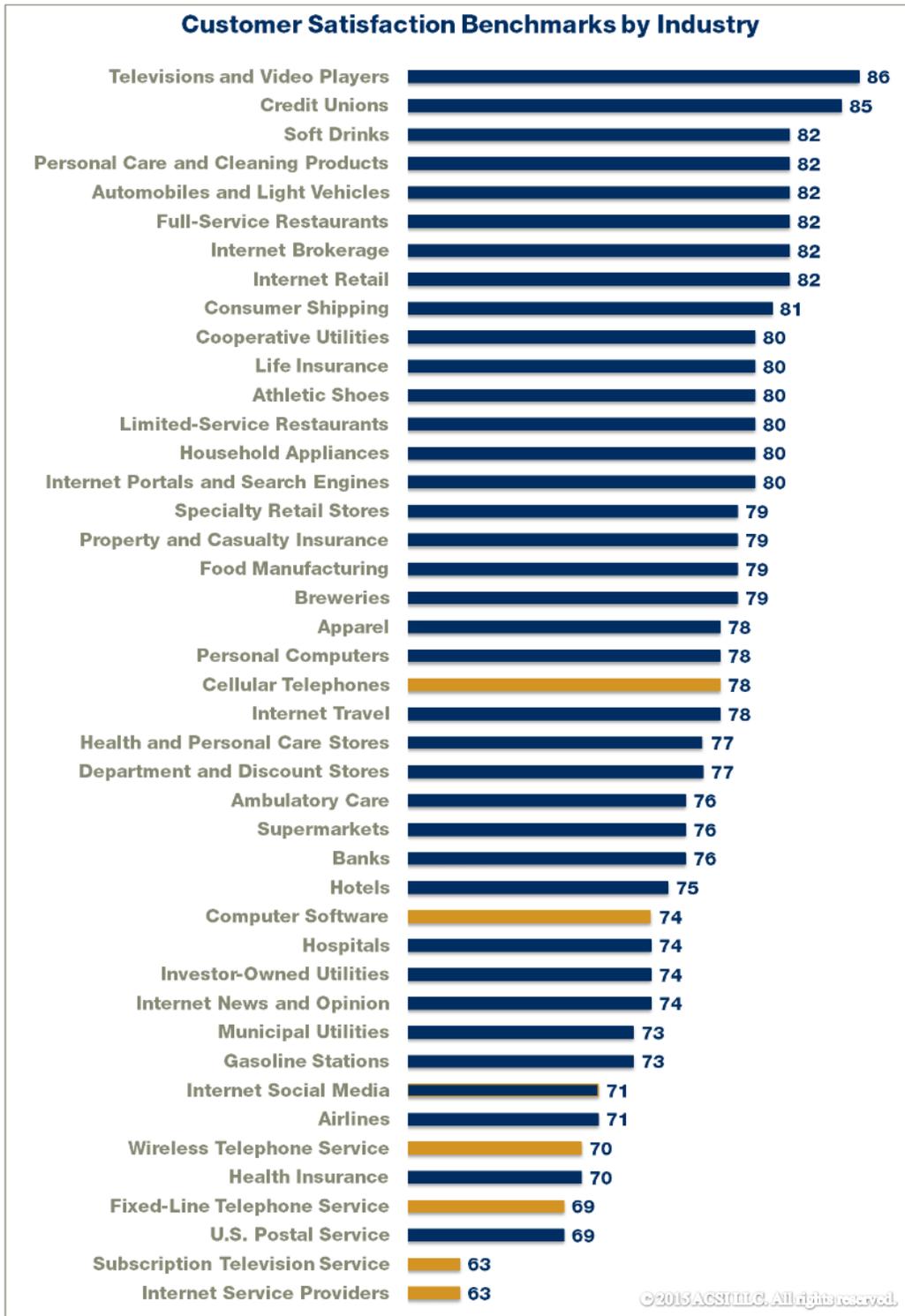
ATTACHMENT A

Statement of Qualifications and Experience

My name is Adam Clark. I am currently employed by the CPUC as a Public Utility Regulatory Analyst V assigned to the Communications and Water Policy Branch of the ORA. I received a Bachelor of Arts Degree in Business Economics and Sociology from the University of California at Santa Barbara in 2006.

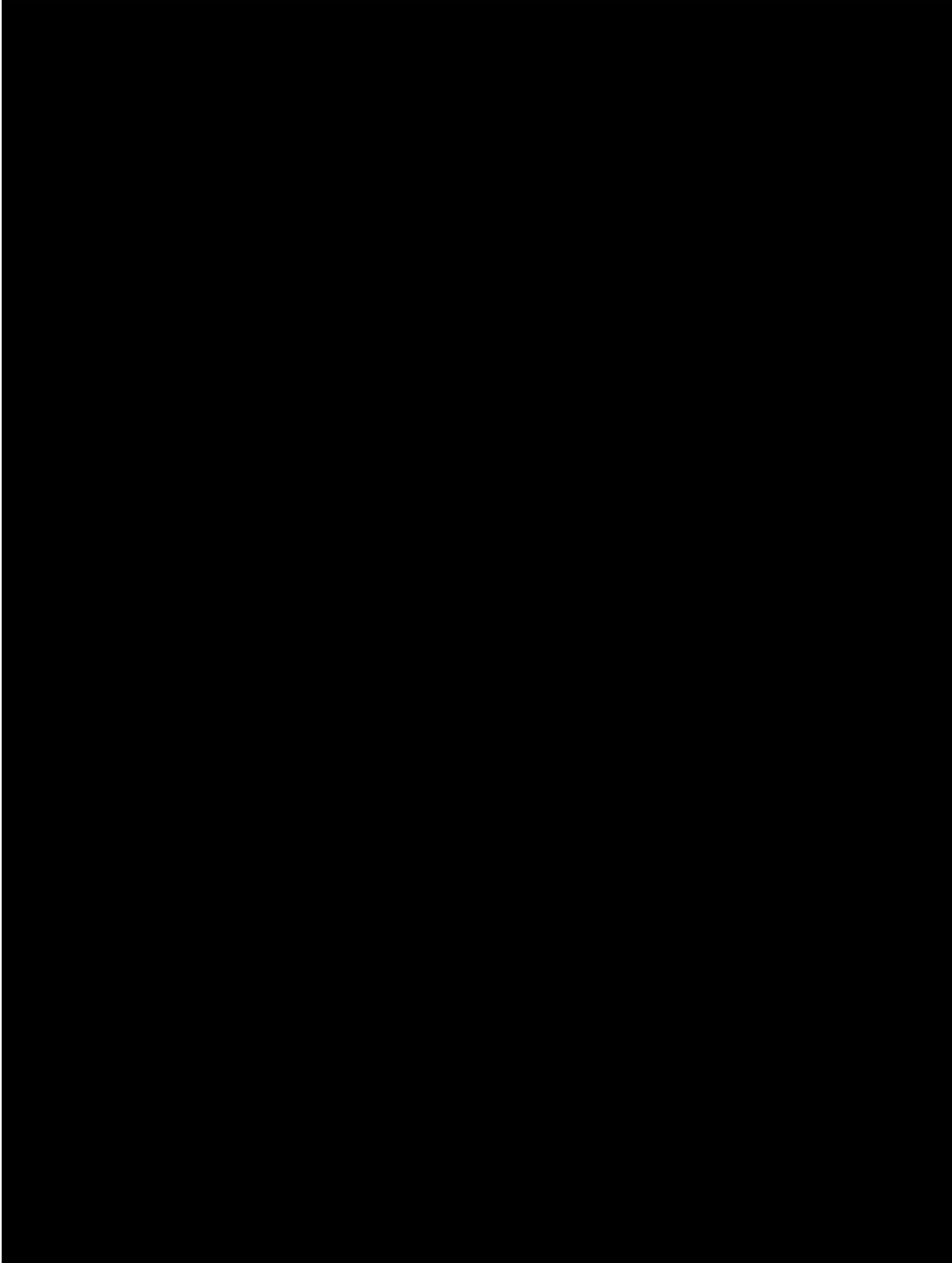
I joined the CPUC in June of 2007 as a Regulatory Analyst in the Communications Division, where I worked on various issues, including inter-carrier compensation, public purpose programs, and broadband deployment. I have performed extensive research on California's telecommunications and broadband markets. I have also aided the CPUC in review of previously proposed mergers and acquisitions. I joined ORA in October of 2014.

ATTACHMENT B



Source: American Customer Satisfaction Index. *ACSI Telecommunications and Information Report 2015*. ACSI, LLC. June 2, 2015. Available at <https://www.theacsi.org/>

ATTACHMENT C



ATTACHMENT D

