

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on October 10, 2018

COMMISSIONER PRESENT:

John B. Rhodes, Chair

CASE 15-M-0388 - Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements.

ORDER GRANTING REQUESTS FOR EXTENSION

(Issued and Effective October 10, 2018)

INTRODUCTION AND BACKGROUND

On July 27, 2018, the Commission issued an Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (the Revocation Order) and an Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification (the Compliance Order).¹ The Revocation Order (1) revoked the Commission's January 8, 2016 approval of Charter Communications, Inc.'s (Charter or Company) acquisition of Time Warner Cable, Inc.'s New York assets and franchise and (2)

¹ Case 15-M-0388, Charter Communications and Time Warner Cable - Transfer of Control, Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018) (Revocation Order); Id., Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification, (issued July 27, 2018) (Compliance Order). (The Revocation Order and the Compliance Order are referred to collectively herein as the "July Orders").

directed Charter to file, within 60 days, a six-month exit plan (the Six-Month Exit Plan) to effect an orderly transition to one or more successor providers in areas previously served by Time Warner Cable, Inc. in New York. In the accompanying Compliance Order, the Commission determined that Charter failed to satisfy the June 18, 2018 target for the build out of Charter's network in New York State² and that Charter had not made a sufficient Good Cause showing for the missed June 2018 compliance obligation.

On August 17, 2018, Charter filed a letter requesting an extension of this 60-day deadline to file a plan with the Secretary, and the 30-day period to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to Public Service Law (PSL) §22.³ On August 20, 2018, Charter's request to extend the deadline to file the Six-Month Exit Plan was granted to October 9, 2018.⁴ Also, on August 22, 2018, Charter's request for an extension of the 30-day deadline for the filing of rehearing petitions pursuant to PSL §22 was granted to September 10, 2018.⁵

² This June 2018 build out obligation was established in a Settlement Agreement approved by the Commission in a September 14, 2017 Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement.

³ Case 15-M-0388, Request for Extension of Time (filed August 17, 2018).

⁴ An extension of the 60-day deadline from September 25, 2018 to October 9, 2018 was granted by the Secretary to the Commission pursuant to Order Clause 6 of the Revocation Order. See, Case 15-M-0388, Ruling on Extension Request (issued August 20, 2018).

⁵ Case 15-M-0388, Order Granting Extension (issued August 22, 2018).

On September 7, 2018, Charter filed a letter requesting an additional 30-day extension of the deadline to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to PSL §22.⁶ The same day, Charter also submitted a request to extend the date for the submission of the Six-Month Exit Plan by 30 days.⁷ That request was granted on September 10, 2018.⁸

On October 9, 2018, Charter filed a further Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order,⁹ seeking sixty-day extensions of the deadline to file a Six-Month Exit Plan with the Secretary, and the period to file petitions for rehearing of both the Revocation Order and Compliance Order pursuant to PSL §22.

LEGAL AUTHORITY

Pursuant to PSL §22, “[a]fter an order has been made by the [C]ommission any corporation or person interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, but any such application must be made

⁶ Case 15-M-0388, Request for Extension of Time (filed September 7, 2018).

⁷ Case 15-M-0388, Request for Extension of Deadline in Ordering Clause No. 4 of July 27, 2018 Order (filed September 7, 2018).

⁸ Case 15-M-0388, Order Granting Requests for Extension (issued September 10, 2018). The August 22, 2018 and September 10, 2018 orders were confirmed in two Confirming Orders issued on September 12, 2018.

⁹ Case 15-M-0388, Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order (filed October 9, 2018).

within thirty days after the service of such order, unless the [C]ommission for good cause shown shall otherwise direct..." By this Order, good cause is found to exist here contingent on the specific facts and continued obligations discussed in this order.

DISCUSSION AND CONCLUSION

Charter states in its requests for extension of additional time that Department of Public Service Staff (DPS Staff) and the Company have held productive discussions regarding the Commission's enforcement proceeding filed in State Supreme Court, Albany County¹⁰ and the July Orders.

In response to Charter's October 9 Petition, DPS Staff filed a letter that recommended that absent good cause shown by both parties, the Commission consider granting only one further extension of time for resolution of negotiations and that any additional time allowed must either result in a settlement agreement being presented to the Commission or the cessation of settlement talks and a resumption of the processes outlined in the July Orders.¹¹ DPS Staff states that this will ensure that progress is made or that in the event a settlement is not reached, that there is certainty as to the expectations on the parties going forward. DPS Staff also stated that any settlement will be guided by a series of principles that include ensuring that all addresses eligible for inclusion by Charter must further the Commission's and State's goals of advanced network

¹⁰ State of New York Public Service Commission v. Charter Communications Inc., Index No. 4819-18 (Albany County Supreme Court) (filed on July 27, 2018).

¹¹ Case 15-M-0388, DPS Staff Response to Charter Extension Request (filed October 9, 2018).

deployment in less densely populated areas (i.e., Upstate); that overlap between Charter's build and Broadband Program Office funding will be minimized; that Charter's past violations will be addressed; and that future compliance will be ensured through limiting allowable changes and providing for readily enforceable consequences should there be further violations.¹²

Given the productive dialogue that is ongoing between the Company and Staff, Charter's continued obligations to comply with the Public Service Law and regulations, and DPS Staff's statements regarding the principles that will guide further settlement discussions, limited extensions to file a petition for rehearing and file the Six-Month Exit Plan are warranted to allow for further discussions while both sides reserve their respective legal rights.

The legal standard for granting the requested extension to petition for rehearing has been met contingent upon the continuation of productive engagement and dialogue by Charter, the absence of misleading advertisements, and Charter's continuing obligation to comply with the New York State Public Service Law and related regulations and requirements, and that therefore Charter's requests to further extend the deadline for the filing of rehearing petitions pursuant to PSL §22 and to further extend the deadline for filing the Six-Month Exit Plan will be granted, but each will be limited to forty-five days as

¹² Id.

recommended by Staff.¹³ The development of a Six-Month Exit Plan is intended to prepare for an orderly transition to one or more successor providers and an orderly transfer of the Company assets in New York as integral aspects of the revocation of the Commission's approval; these requested additional extensions may allow for a more thorough record and process before the Commission.

Granting this extension, however, should not be viewed as an indefinite grant of time for discussions to continue between DPS Staff and the Company. Many Upstate New Yorkers living in Charter's franchise areas are understandably frustrated by the lack of modern communications infrastructure. The Compliance and Revocation Orders were designed to deal with very serious issues presented by Charter's conduct related to the company's network expansion. As such, the processes envisioned therein must continue in the absence of an agreement. DPS Staff and Charter are therefore directed to present to the Commission any settlement agreement reached before the end of the forty-five day extension period related to the filing of PSL §22 rehearing petitions, or, if such an agreement is not reached, a joint filing (1) providing good cause justification for why the deadlines should be further extended, or (2) stating that no settlement agreement was reached and that the processes

¹³ In its July 27, 2018 Revocation Order, the Commission directed Charter to comply with all New York State Public Service Law provisions and associated regulations and also directed Charter to continue to provide service to New Yorkers until the company's New York operations ceases via an orderly process. Extending the deadlines as requested by Charter does not change these obligations. In the event that Charter does not comply with such obligations, the Commission will take further steps, including seeking injunctive relief in Supreme Court to protect New York consumers.

set forth in the Compliance and Revocation Orders will resume without delay.

It is ordered:

1. The deadline for the filing of rehearing petitions pursuant to Public Service Law §22 in connection with the Commission's July 27, 2018 Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval and Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification is further extended by forty-five days.

2. The deadline for the filing of the Six-Month Exit Plan is further extended by forty-five days.

3. Today's extension is granted upon the express condition that Charter continue to comply with the Public Service Law and regulations, and not air misleading advertisements.

4. This proceeding is continued.

(SIGNED)

Commissioner