



FILED
5-11-16
04:59 PM

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

Proposed Modifications to Decision Text

Proposed Decision Pg. 30:

After reviewing the detailed testimony of the competing experts, we conclude that New Charter, though somewhat more highly leveraged than any of its constituents, will be adequately capitalized. The financial condition of the regulated utilities that will be owned by New Charter is essentially identical to the financial condition of New Charter itself, as its witness Fisher testified, so we conclude that they will also be adequately capitalized after the merger. Dr. Selwyn's argument that the enhanced market power of New Charter will permit it to raise rates without competitive constraint proves too much, at least in the context of a § 854(c)(1) analysis. Enhanced market power translates directly into greater financial strength and thereby satisfies, rather than contradicts, the requirements of § 854(c)(1). However, because New Charter's presumed greater financial strength is born from its enhanced market power, New Charter is likely to raise its prices in order to realize that greater financial strength. Therefore, although this dynamic may satisfy the requirements of § 854(c)(1), it also presents substantial and likely harms (specifically, price increases or variations thereof) to consumers and the public interest.

Proposed Decision Pg. 48:

Regarding voice and broadband service, ORA witnesses Enrique Gallardo and Adam Clark testify as noted in Section 3.1.3.1. ORA's witness O'Dell argues that there is a lack of information on how Joint Applicants will deliver their claimed benefits or utilize efficiencies from the merger to increase access and advance telecommunications services for low-income consumers. Specifically on LifeLine, Charter is out of compliance with current Commission rules regarding the provision of LifeLine services as Charter Fiberlink discontinued LifeLine and basic services without receiving Commission authorization to do so. She recommends that New Charter should be required to provide the Lifeline discount to all eligible customers across its entire footprint. She cites a California Emerging Technology Fund study showing that home broadband adoption rates have stagnated over the past few years, "leaving the hardest-to-reach Californians without an essential tool to access the educational, employment and civic engagement opportunities that lead to self-sufficiency." She asserts that Charter's proposal for its low-income broadband program is deficient, because it is available only to households with children eligible for free or reduced lunch that attend schools that partner with an existing program and seniors age 65 and older who receive SSI insurance benefits. This eligibility requirement excludes ~~the elderly~~, people with disabilities, and low-income childless adults from an affordable option for broadband service.

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

Proposed Findings of Facts:

14. New Charter's market power will be enhanced by the elimination of separate TWC and BHN entities from the market

15. New Charter will be more leveraged than the pre-merger entities, and is likely to exercise its substantial market power and raise prices in order to improve its financial condition.

16. In order for the transactions to be in the public interest and satisfy the applicable criteria of Section 584, the merging companies must increase service quality and availability, and offer fairer pricing, less onerous contracts, and equal access to OVD competitors.

17. New Charter will have the same incentives and opportunities to engage in the types of discriminatory practices that the Commission previously attributed to the merged Comcast/TWC entity.

18. Charter Fiberlink discontinued LifeLine and basic services before filing Advice Letter 142. Charter Fiberlink was not authorized to withdraw LifeLine and basic service in its service territory. Charter Fiberlink withdrew LifeLine and basic service from its territory without Commission approval.

19. In order to serve the public interest, New Charter must participate in the LifeLine Program, comply with the LifeLine Program rules, and actively promote LifeLine in its service territory.

19. The practice of including mandatory arbitration/class action waiver provisions in consumer contracts or agreements is not in the public interest.

20. The practice of bundling cable set-top boxes and cable modems into monthly service rates and not offering a reduction in monthly rates for customers who provide their own devices is not in the public interest.

21. New Charter made multiple voluntary commitments, as noted in Appendix B.

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

Proposed Conclusions of Law:

5. Charter is currently out of compliance with Commission rules regarding withdrawal of LifeLine and basic services.

Proposed Ordering Paragraphs¹

IT IS ORDERED that:

2. The approval granted herein is subject to the following conditions:

[...]

- e. Within one year of the closing of the Transaction, New Charter shall increase broadband download speeds for those households in its California service territory that are currently on an all-digital platform to not less than 60 Mbps. New Charter² shall offer broadband Internet Service with speeds of at least 300 Mbps download to all households with current broadband availability from New Charter in its California network by December 31, 2019.

Reporting Requirement: On December 31, 2016, and every year thereafter until December 31, 2019, New Charter shall submit a progress report to the Commission and ORA identifying progress made for the increased broadband speeds as set forth above to existing households with broadband availability from New Charter in its California network.

- f. ~~Within 30 months of the closing of the Transaction, New Charter shall convert all households in its California service territory to an all-digital platform with download speeds of not less than 60 Mbps.~~

¹ In adopting conditions, the PD does not acknowledge voluntary commitments that Charter made in its reply brief. ORA proposes modified Ordering Paragraphs 2(e), 2(k), 2(l), 2(q), 2(r), 2(s), and 2(u) to reflect Charter's voluntary commitments as conditions. Ordering Paragraphs 2(k), 2(l), 2(q), 2(s), and 2(u) reflect Charter's voluntary commitments modified to conform to ORA's original recommendations. In addition, ORA continues to advocate for and includes herein Ordering Paragraphs 2(f), 2(g), 2(j), 2(o), 2(p), and 2(t).

² New Charter means the Joint Applicants' successor company or future parent that will result from the proposed transaction/merger, whatever that name may be; i.e. "Charter Communications, Inc.". In accordance with the Joint Applicant's CPUC Application A.15-07-009, the new reorganized parent company is referred to as "New Charter". However, the parent entity resulting from the Transaction and Reorganization will ultimately assume the name "Charter Communications, Inc.",

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

New Charter shall expand broadband availability³ to no less than 98% of households (or 182,000 new households) within the New Charter California franchise and operating service areas by end of year 2019 at speeds of no less than 25 Mbps download and 3 Mbps upload without imposing line extension charges to customers.

New Charter shall meet the following broadband deployment targets:

- 96% availability by December 31, 2017;
- 97% availability by December 31, 2018; and,
- 98% by December 31, 2019.

New Charter shall provide the CPUC and ORA, within 60 days of the close of the transaction, an updated spreadsheet listing all census blocks within New Charter's California franchise territory and operating service area with the number of households in each of those census blocks with current broadband availability from New Charter, and an updated number of households in each of those census blocks that currently lack broadband availability from New Charter.

Reporting Requirements: On July 1, 2016, and every year thereafter until July 1, 2019, New Charter shall submit a progress report to the Commission and ORA identifying the progress made for deployment of broadband availability and the work completed to meet the interim deployment milestones set forth above. At minimum, the report shall identify the number of households within New Charter's California franchise territory and operating area, by census block, with New Charter Broadband Availability; the number of new households in each of those census blocks with new deployment of broadband availability from New Charter at speeds of no less than 25 Mbps download and 3 Mbps upload.

On December 31, 2017, and every year thereafter until December 31, 2019, New Charter shall submit a progress report certifying that it is meeting the percentage of households identified in the deployment milestones set forth above.

³ Availability means if the provider can provision new requests for broadband service within 10 business days.

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

- g. ~~New Charter shall offer all customers the option of acquiring their own modems and cable set-top boxes without any associated increase in the price of services.~~ unbundle its Customer Premise Equipment (CPE) for all of its customers, including cable modems and cable set-top boxes, affording customers the choice of buying or renting their equipment and benefitting from competition in the manufacture and retailing of such devices. New Charter shall not pass through the price of CPE (i.e. by increasing prices of voice, broadband, and video services) to consumers who choose to buy or rent their equipment from a third-party vendor.
- h. New Charter shall fully comply with all the terms and conditions of the Federal Communications Commission's *Open Internet Order*, regardless of the outcome of any legal challenge to the *Open Internet Order*. ~~In addition, for a period of not less than three years from the closing of the Transaction, New Charter (a) will not adopt fees for users to use specific third party Internet applications; (b) will not engage in zero-rating; (c) will not engage in usage-based billing; (d) will not impose data caps; and (e) will submit any Internet interconnection disputes not resolvable by good faith negotiations on a case-by-case basis.~~
- i. ~~For a period of not less than three years from the closing of the Transaction,~~ New Charter shall continue its settlement-free interconnection policy for a period of not less than seven years from the closing of the Transaction, or until the Commission determines that effective competition of fixed-wireline broadband at speeds no less than 25 Mbps download and 3 Mbps upload is present for at least 80% of households in Southern California (10 counties⁴), whichever comes later.
- j. In accordance with all CPUC LifeLine rules and W~~W~~within six months of the closing of the Transaction, New Charter's certificated

⁴ Southern California (10 counties - San Luis Obispo, Kern, Santa Barbara, San Bernardino, Los Angeles, Ventura, Orange, Riverside, San Diego, Imperial).

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

carriers shall offer LifeLine phone service discounts to all eligible households (~~in accordance with CPUC Lifeline rules~~) within its service territory.

Reporting Requirement: Within 60 days from the close of the transaction, and semiannually thereafter, for a period of no less than three years, New Charter should be required to provide to the Commission and ORA detailed plans on how it informs new consumers about LifeLine service and its terms and conditions, including specific information pertaining to the form, quantity, distribution method and content of information. As part of this condition, New Charter should provide the CPUC and ORA counts of new customers signing up for the LifeLine program.

- k. Within one year of the closing of the Transaction, New Charter's voice services, including VoIP services, shall meet all service quality standards for voice communication established in General Order 133-C (or subsequent updated rules), including standards that exempt VoIP service. For a period of three years, commencing 60 days from the close of the transaction, New Charter shall report to the Commission and ORA, on a quarterly basis, on the following service quality metrics for all New Charter voice services in California, including VoIP services, consistent with the reports under G.O. 133 (C) (or subsequent updated rules):

1. Installation Intervals (5 business days)

2. Installation Commitment (95% of commitments met)

3. Customer Trouble Report (less than 6 per 100 working lines)

4. Out of Service Report (90% w/in 24 hours)

5. Answer Time (80% of calls in less than 60 seconds)

1. New Charter shall comply with the guidelines for consumer education programs regarding backup power systems adopted by the Commission in D.10-01-026. New Charter shall make this customer education available in multiple language (English and

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

the top 3 non-English languages of its service area), as well as in accessible formats for visually impaired customers. New Charter shall work with staff of the Commission's Communications Division to develop the form and language of such notices. The customer education will be communicated to all customers of New Charter no later than 180 days following the effective date of the transaction and annually thereafter.

[...]

- o. For a period of not less than seven years from the closing of the Transaction, or until the Commission determines that effective competition of fixed-wireline broadband at speeds no less than 25 Mbps download and 3 Mbps upload is present for at least 80% of households in Southern California (10 counties), whichever comes later, New Charter (a) will not adopt fees for users to use specific third-party Internet applications; (b) will not engage in zero-rating; (c) will not engage in usage-based billing; (d) will not impose data caps; and (e) will submit any Internet interconnection disputes not resolvable by good faith negotiations on a case-by-case basis.

- p. In addition to the conditions stated in the CETF MOU, New Charter shall expand its proposed low-income broadband program eligibility requirements to include all low-income households in its California service territory and shall enroll no less than 45% households eligible for its proposed low-income broadband program within the New Charter California and operating service area within three years from the close of the transaction.

Beginning on December 31, 2016 and every year thereafter until December 31, 2021, New Charter shall submit a progress report to the Commission and ORA identifying the progress made in reaching 45% adoption within the New Charter California franchise area and operating service area of New Charter's low-income broadband offering program.

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

- q. Within two years from the time of close of the transaction, New Charter shall decrease the quantity and severity (as measured by duration and number of customers affected) of voice and broadband service outages. Charter will provide the CPUC and ORA, beginning June 30, 2016, with semiannual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data elements:
1. Service Type (VoIP, Broadband, or Both VoIP and Broadband)
 2. Number of customers affected
 3. Number of residential customers affected
 4. Number of Small Business customers affected
 5. Number of Large Business customers affected
 6. Outage Start Date and Time
 7. Service Restoration Date and Time
 8. Duration of outage in total minutes
 9. Location of outage
 10. Description of the Cause
 11. Description of the Root Cause
 12. Description of the Incident
 13. Description of the equipment that failed (if any) and location within the network that was impacted
 14. Methods used to restore the outage (Resolution Method)
 15. Steps taken to prevent the outage from re-occurring
- r. New Charter will provide a copy of Federal Communications Commission (FCC) Network Outage Reporting System (NORS) reports for New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC.
- s. No later than 180 days from the closing of the Transaction, New Charter, in consultation with ORA shall select and retain an independent expert Survey Consultant ("Survey Consultant"), subject to standard confidentiality provisions. This Survey Consultant will not have previously provided any customer satisfaction services or contract work with Charter, Time

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

Warner Cable, or Bright House Networks in California and shall act independently to develop the survey design and survey questions for a multi-lingual customer satisfaction survey in the New Charter California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from the closing of the Transaction. In addition to English proficient customers, the survey design must also include Spanish speaking customers, identified as having limited English proficiency, and must include some customers who speak at least the top three languages spoken in New Charter service territory. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity for maintaining battery backup. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through virtual or in person meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing the transaction and will continue for two years. The Survey Consultant shall issue a survey Report to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted 24 months from the commencement of the surveys.

- t. New Charter shall discontinue the inclusion of mandatory arbitration/class action waiver provisions in its consumer agreements. Within 90 days from the time of close of the transaction, New Charter shall provide all of its customers a written notice in the form of a separate letter detailing out the

Appendix A

ORA Proposed Findings of Fact and Conclusion of Law and Errata to PC

discontinuance of arbitration/class action waiver provisions.
The written notice shall be available in multiple languages to
New Charter multilingual customers.

Reporting Requirement: New Charter shall provide the CPUC
and ORA a copy of the customer notice within 90 days from the
time of closing of the transaction. In addition, New Charter
shall include a letter from one of its officers certifying
compliance with this condition.

- u. General Enforcement Language: Commission staff and ORA
have the authority to audit and verify New Charter's compliance
with all conditions set forth herein. New Charter must provide
all data requested by the Commission and ORA to conduct the
audit and verification. If New Charter fails to perform and
comply with the set forth conditions, the Commission will
pursue appropriate enforcement remedies, including the
imposition of fines.