

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Joint Application of Charter
Communications, Inc., Charter
Communications Holdings, LLC, and Cox
Enterprises, Inc. for Approval Pursuant to
Public Utilities Code Section 854 of the
Indirect Transfer of Control of Cox
California Telcom, LLC (U-5684-C)

Application 25-07-016

**THE RESPONSE OF THE PUBLIC ADVOCATES OFFICE
TO JOINT APPLICANTS' MOTION TO STRIKE
TESTIMONY OF PROFESSOR TEJAS N. NARECHANIA**

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I. INTRODUCTION

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure and Administrative Law Judge (ALJ) Ormond’s ruling on March 2, 2026, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this response to the Joint Applicants¹ “motion to strike the full direct testimony of Tejas N. Narechania.”²

Joint Applicants seek to strike the entirety of Prof.³ Narechania’s testimony on the grounds that the “statement of assignment” on the testimony states that the testimony is drafted to provide legal arguments and conclusions.⁴ However, the Motion does not identify any legal arguments or conclusions in the testimony that are inadmissible. The Motion also argues that Prof. Narechania’s testimony addresses issues that are outside the scope of the proceeding but fails to state or identify those issues.⁵ Finally, the Motion argues that the testimony is “an impermissible end-run around the assigned Administrative Law Judge ... ruling setting page limits for briefs, thereby prejudicing Joint Applicants.”⁶ Thus, Joint Applicants seek an increase to the page limits for briefs, if the Commission chooses not to strike Dr. Narechania’s testimony.

The Joint Applicants’ motion is without merit on all grounds.

¹ “Joint Applicants” refers references Charter Communications, Inc. and Charter Communications Holdings, LLC (collectively, “Charter”); and Cox Enterprises, Inc. (“Cox” or “CEI”).

² *Motion of Joint Applicants to Strike the Direct Testimony of Tejas N. Narechania*, filed April 1, 2026, at 1. (Hereinafter all references to “motion” refer to this Motion of Joint Applicants to Strike the Direct Testimony of Tejas N. Narechania.).

³ Tejas N. Narechania is the esteemed Professor of Communications and Internet Law at the University of California, Berkeley, School of Law, and former clerk of the United States Supreme Court Justice, Stephen G. Breyer. Whenever mentioned in this response, he will be referred to as “Prof. Narechania”. Unless otherwise stated, all references to “testimony” in this response are to Prof. Narechania’s testimony.

⁴ Motion at 1.

⁵ Motion at 2.

⁶ Motion at 1.

II. ARGUMENT

There is no precedent or authority for striking the entirety of a witness's testimony on the "presumption" that "it is drafted entirely and exclusively to provide legal arguments and conclusions" without setting forth what legal arguments and conclusions are in fact in the testimony. Joint Applicants' motion does not identify any part of Prof. Narechania's testimony that constitutes legal argument or opinion. Under Rule 13.6, the Commission does not apply strict rules of evidence and instead admits evidence subject to later evaluation of its weight.⁷ As the moving party, Joint Applicants have the burden to prove exclusion is warranted. Therefore, it is incumbent on the Joint Applicants to identify the parts of the testimony that must be barred as legal arguments and conclusions, and they failed to do so.

Joint Applicants' alternative request that the Commission grant them relief by increasing the page limits for briefs is inapposite to a motion to strike or the denial thereof. Once the Commission denies a motion to strike, it has no other basis to provide further relief to the Joint Applicants.⁸

A. Joint Applicants' Motion is Misleading.

Joint Applicants' Motion mislabels and misconstrues the entirety of Prof. Narechania's testimony as legal argument and legal conclusion. For example, the Joint Applicants note that Prof. Narechania's testimony states that Cal Advocates asked him:

...to *address* the CPUC's authority to regulate the rates charged by the merged entity for broadband Internet access service at monopoly served locations in California." [Emphasis added.]

However, realizing that Prof. Narechania's testimony is not limited to the application of the CPUC's legal authority but encompasses factual, technical and

⁷ "As a general matter, the preference at the Commission is not to strike timely prefiled, written testimony. Instead, the preferred practice is to admit the testimony into the record, but then to afford it only so much weight as the presiding officer considers appropriate." *Administrative Law Judge's Ruling Denying Motion of Division of Ratepayer Advocates to Strike Rebuttal Testimony*, July 12, 2006 at 2; issued in A.06-02-023.

⁸ See Commission's Rules of Practices and Procedure, Rule 11.1(a).

economic implication of that authority, the Joint Applicants reframed Prof. Narechania's testimony to fit their argument where they state:

This Testimony, by its own description, is drafted *entirely* and *exclusively* to *provide* legal arguments and conclusions – arguments that the Commission has consistently required to be set forth in briefs, not testimony. [Emphasis added.]

Nowhere in Prof. Narechania's testimony are the phrases "entirely", "exclusively" or "to provide" used to explain the scope of Prof. Narechania's work. Rather, Prof. Narechania's testimony states that it is offered to "address" the Commission's "authority to regulate the rates charged by the merged entity..." Joint Applicants recognize that the word "address" encompasses far more than the application of the law or analysis of the Commission's authority under the law.² To "address" the Commission's regulatory authority includes to understand the behavior expected of the merged entity under such a regulatory regime and whether such behavior is in the public interest. Prof. Narechania's testimony discusses "[l]ongstanding economic theory and empirical evidence" of "monopoly control over essential communication infrastructure" and its impact on the market and consumers.¹⁰ In fact the substantive portion of the testimony begins with a discussion of: "A History of Monopoly Price Regulation in Utility and Communication Markets."¹¹

Joint Applicants do not address any of these merged-entity behavioral aspects of Prof. Narechania's testimony. Instead, Joint Applicants argue that "the Narechania Testimony is, by its plain terms, an inadmissible legal opinion."¹² This characterization of Prof. Narechania's testimony is vague and overbroad. Aside from offering conclusions of their own, Joint Applicants make no specific showing that Prof. Narechania's testimony is legal opinion.

² Cambridge English Dictionary, defines the word "address", when used as a verb, as follows: "To give attention to a matter or problem." <https://dictionary.cambridge.org/dictionary/english/address>.

¹⁰ Narechania Testimony at 3.

¹¹ Narechania Testimony at 4.

¹² Motion at 1.

Even if the Joint Applicants had attempted to make such a showing, the Commission has stated that the mere presence of alleged legal conclusions in testimony does not warrant the drastic remedy of a motion to strike. In C.04-10-024, AT&T moved to strike portions of testimony submitted by Pac-West witnesses on the grounds that “the testimony was really legal argument.”¹³ Pac-West responded that the identified testimony was “well within the limits of permissible policy testimony accepted at the Commission.”¹⁴ The ALJ denied the motion to strike, but allowed AT&T to file rebuttal testimony as an alternative remedy.¹⁵ Here, the testimony submitted by Prof. Narechania regarding the historical, factual and technical regulatory framework of telecommunications policy is similarly within the bounds of policy related testimony that applicants should expect in Commission proceedings. In any event, the Joint Applicants’ remedy would have been to submit rebuttal testimony addressing Prof. Narechania’s testimony on March 4, 2026, consistent with the deadline in the Scoping Ruling. Joint Applicants submitted voluminous rebuttal testimony from multiple witnesses but chose not to submit any rebuttal testimony responding to Prof. Narechania’s testimony. Having waived their opportunity to rebut to the testimony with which they disagree, the Joint Applicants should not be permitted to strike Cal Advocates’ testimony from the record of this proceeding. Instead, the preferred Commission practice is to admit the testimony into the record for the Commission to evaluate and give the appropriate weight.¹⁶

¹³ See e.g., D.06-06-055, *Decision Granting Complaint*, June 29, 2006, at 11; issued in C.04-10-024. The Decision notes that AT&T had failed to file any testimony on the compensation issue but instead moved to strike testimony on the issue by Pac-West on the grounds that the testimony was “legal argument” and addressed issues not included in the scoping memo. The ALJ denied the motion to strike the testimony, but allowed AT&T to serve rebuttal testimony.

¹⁴ D.06-06-055 at 11.

¹⁵ D.06-06-055 at 11.

¹⁶ *Administrative Law Judge’s Ruling Denying Motion of Division of Ratepayer Advocates to Strike Rebuttal Testimony*, July 12, 2006 at 2; issued in A.06-02-023.

B. Professor Narechania’s Testimony Provides Factual, Historical and Technical Context for Understanding the Economic Landscape on which the Post-Merger Entity Would Operate.

Prof. Narechania’s testimony provides the economic context that Public Utilities Code § 854 states the Commission must consider “[b]efore authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized or doing business in the state.” Prof. Narechania testimony provides a factual, historical and technical analysis. While the analysis necessarily addresses frameworks, legal and otherwise, that give rise to these economic conditions or mitigate harsh aspects of the condition, Prof. Narechania’s testimony does not consist exclusively of legal arguments or conclusions. Thus, the Joint Applicants claim that the testimony is drafted “entirely and exclusively to provide legal arguments and conclusions” is without merit and misleading.

1. Public Utilities Code §854

Prof. Narechania’s testimony provides the factual, historical and technical context the Commission must consider in order to determine whether the proposed merger and acquisition would provide “short-term and long-term benefits to ratepayers” or “adversely affect competition”. (Public Utils. Code §854(b)(1) and (2).

Public Utilities Code §854(b) provides:

- (b) Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state,... the commission shall find that the proposal does all of the following:
 - (1) Provide short-term and long-term economic benefits to ratepayers.
 - (2) Equitably allocate, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.

- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

For instance, the testimony explains that historically, effective local competition in the telecommunications industry is best achieved by regulation at the local level, because when Congress deregulated markets, “[c]ompetition came to local cable television markets only slowly” while “the incumbent monopolists raised their prices.” Thus, Congress enacted new law¹⁷ that featured regulation that is “contingent on the local market structure.” Prof. Narechania’s testimony states:

This targeted scheme of rate regulation effectively controlled the “runaway price escalation” that flowed from the deregulatory measures of the Cable Communications Policy Act of 1984,[... while continuing to allow the cable television market to continue its slow transition to greater competition.¹⁸

This testimony is not a legal argument or conclusion of law. California courts have described inadmissible legal testimony as that which seeks to explain the way the law should be applied to particular facts. *See Downer v. Branet*.¹⁹ In the foregoing example, Prof. Narechania does not explain how to apply either federal law or the California Public Utilities Code to the facts of this merger. Rather, Prof. Narechania explains the factual and historical impacts of prior regulatory schemes that support Cal Advocates’ argument that five million Californians will be at the mercy of the post-merger entity’s gigabit monopoly, if the Commission fails to adopt Cal Advocates recommendations.²⁰

¹⁷ Cable Television Consumer Protection and Competition Act, PUB. L. NO. 102-385, 106 Stat. 1460 (1992).

¹⁸ Narechania Testimony at 7.

¹⁹ *Downer v. Branet* (1984) 152 Cal.App.3d 887, 841.

²⁰ *Direct Testimony of Ernesto Falcon, Summary of the Public Advocates Office Merger Recommendations*, at 6.

One of the Joint Applicants' primary positions in this proceeding is that Public Utilities Code §854(b) and (c) are outside the scope of this proceeding.²¹ Prof. Narechania's testimony shows that Joint Applicants take this position because it insulates their post-merger monopoly from regulatory oversight. Prof. Narechania's testimony shows that the competitive behavior of local telecommunication markets has historically been achieved by regional rate regulation and in particular, that "the absence of federal authority over broadband markets preserves the states' traditional regulatory powers over broadband internet access service."²² In this regard, Prof. Narechania's testimony is more concerned with the economic harms that arise from the absence of contingent local structure regulation to constrain the post-merger entity's behavior, than how the laws apply to those factual situations. Here, Prof. Narechania's testimony describes how the significant increase in concentration in local broadband markets and the concomitant risk of monopoly prices well-described in the other filings in this proceeding threaten both to undermine any "economic benefits" of the transaction for ratepayers, and to allocate the net benefits of the transaction to shareholders in a manner that is far from equitable.²³ Prof. Narechania opines that "[b]y regulating the rates charged at monopoly-served locations, the proposed merger condition addresses economic harm and ensures that California consumers are treated equitably."²⁴ This policy related testimony does not constitute a legal conclusion, and is appropriate for submission in the Proceedings.

2. Public Utilities Code §854(c)

Prof. Narechania's testimony provides the regulatory framework that supports the conditions that Cal Advocates recommends in order to ensure that the merger is "beneficial on an overall basis to state and local economics and communities in

²¹ *Joint Application Of Charter Communications, Inc., Charter Communications Holdings, LLC, and Cox Enterprises, Inc. for Approval Pursuant to Public Utilities Code Section 854 of the Indirect Transfer of Control Of Cox California Telcom, LLC (U-5684-C)*, at 33;

²² Narechania Testimony at 8.

²³ Narechania Testimony at 9.

²⁴ Narechania Testimony at 7.

the area” and “provide the mitigation measures to prevent significant adverse consequences that may result”, among other factors listed under Public Utilities Code §854(c).

Public Utilities Code §854(c) in relevant part provides:

- (c) Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state, if any entity that is a party to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest.
 - (2) Maintain or improve the quality of service to public utility ratepayers in the state.
 - (6) Be beneficial on an overall basis to state and local economies and to the communities in the area served by the resulting public utility.
 - (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
 - (8) Provide mitigation measures to prevent significant adverse consequences that may result.

Undoubtedly, the discussion of the regulatory frameworks includes analysis of their enabling authorities. However, it does not follow that the discussion of these enabling authorities constitutes conclusions of law and inadmissible legal argument; rather they serve to establish that the Commission has the authority to impose these conditions. Prof. Narechania’s concern in these discussions is the behavior that arises when appropriate regulatory conditions are not imposed, not how or whether the conditions should be imposed in the first instance. For instance, Prof. Narechania notes that while there are laws in the books to “ensure that the merged entity will not block services competing with its own voice over internet protocol (VoIP) services, the merged

entity might nevertheless engage in anticompetitive market behavior that diminish this VoIP competition.”²⁵ Prof. Narechania’s testimony goes on to explain that behavior:

While California’s network neutrality regulations, Cal. Civ. Code §§3100-3104 can help ensure that the merged entity will not block services competing with its own VOIP product, the merged entity, if unregulated, might nevertheless deploy pricing strategies that diminish this competition. It might, for example, raise costs for standalone broadband Internet access service to monopoly levels, while “discounting” (from the inflated prices for standalone broadband service charged at monopoly-served locations) a bundled offering that includes the merged entity’s own VOIP service. Consumers would be steered toward the bundled offering and away from the competing services.²⁶

In a footnote to the preceding explanation, Prof. Narechania illustrates:

Imagine that, in the absence of regulation, the merged entity raises the price of standalone broadband Internet access from a competitive level of \$50 to \$80 per month. A consumer using a competing interconnected VoIP service priced at \$10 per month would face a total monthly cost of \$90. At the same time, the merged entity might offer a bundled package, including both broadband Internet access and VoIP, for \$85 per month. Faced with the choice between an \$85 bundle, or a \$90 alternative that relies on a third-party provider, consumers are likely to choose the bundle.²⁷

Joint Applicants fail to explain how any of Prof. Narechania’s testimony is a legal argument or legal conclusion, much less those portions quoted above. Prof. Narechania’s testimony focuses on “the harms of monopoly pricing”²⁸ and ensuring “that efficiencies of consolidation, if any at all, accrue to the benefit of California consumers.”²⁹ The fact that the testimony maintains that Commission oversight to prevent these harms and ensure these efficiencies is a “lawful, targeted and proportionate exercise of the CPUC’s

²⁵ Narechania Testimony at 17.

²⁶ Narechania Testimony at 17 -18.

²⁷ Narechania Testimony at 18.

²⁸ Narechania Testimony at 20.

²⁹ Narechania Testimony at 20.

authority”³⁰ is simply a statement of fact; this does not bring the testimony into the realm of legal argument. Testimony cannot be excluded simply because some aspects of it relate to legal subjects.

C. The Commission Should Deny Joint Applicants’ Request to Increase the Page Limit for Briefs

Joint Applicants argue that Prof. Narechania’s testimony belongs in Cal Advocates brief and should be struck as testimony, but should the Commission deny the motion to strike, the Commission should increase the page limit allowed Joint Applicants on their brief by 24 pages. This argument is without merit or any basis in law. In fact, the very motion which seeks this relief states:

The Commission has found that parties exceeding page limits are “completely unfair to” other parties, deeming such actions to constitute “misconduct.” The Commission requires a party that wishes to exceed page limits to file a motion to do so. When parties have failed to do so, the Commission has, on previous occasions, stricken excessive pages.³¹

Joint Applicants are clearly in violation of the very Commission directive they cite in their motion. They seek to exceed the page limit set for briefs without bringing a specific motion to do so. A motion to strike does not provide Joint Applicants the option of an alternative remedy to striking the testimony they claim is inadmissible. Either the testimony is admissible or it is not. The Commission cannot award Joint Applicants a “consolation” remedy when their motion is denied because the testimony they seek to strike is admissible.

III. CONCLUSION

Cal Advocates requests that the Commission deny Joint Applicants motion to strike the testimony of Tejas N. Narechania because the motion is overbroad, fails to identify aspects of the testimony it claims are conclusions of law and legal arguments, mischaracterizes the testimony, and improperly seeks to extend the page limit set for

³⁰ Narechania Testimony at 20.

³¹ Motion at 6.

briefs in this proceeding. Contrary to the Joint Applicants' motion, Prof. Narechania's testimony presents admissible factual, historical and technical evidence that informs the public interest criteria the Commission must consider to rule on the Joint Application.

Respectfully submitted,

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