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BOARD OF PUBLIC UTILITIES  
MAIL ROOM

January 4, 2016

**Via Electronic and FedEx Overnight Mail**

Irene Kim Asbury, Esq., Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
Trenton, NJ 08625

Re: In the Matter of the Petition of Time Warner Cable Inc., Charter Communications, Inc. and Time Warner Cable New York City, LLC, for Approval of the Transfer of Control of Time Warner Cable New York, LLC and Approval of Transaction Financing Docket No. CM15070770; and

In the Matter of the Petition of Charter Communications, Inc., and Time Warner Cable Inc., for Approval of the Transfer of Control of Time Warner Cable Information Services (New Jersey), LLC and the Petition of Time Warner Cable Information Services (New Jersey), LLC for Approval of Transaction Financing, Docket No.: TM15070772.

Dear Secretary Asbury:

Time Warner Cable Inc. ("TWC") and Charter Communications, Inc. ("Charter"), together with the TWC operating subsidiaries that are parties to the above-referenced proceedings, are in receipt of a letter from The State of New Jersey Division of Rate Counsel (Rate Counsel), dated December 22, 2015. In that letter, Rate Counsel requests a meeting with Board of Public Utilities ("Board") Staff and the companies to discuss Rate Counsel's thoughts about a proposed Stipulation of Settlement. TWC and Charter welcome this request and intend to meet with Rate Counsel and Board Staff in good faith as requested.

The purpose of this letter is to help inform future discussions with Rate Counsel and, more specifically, to respond to the Rate Counsel Comments filed with the Board on December 7, 2015.

TWC and Charter appreciate Rate Counsel's input and are pleased that Rate Counsel does not oppose the Transaction and instead focuses on certain additional conditions it believes the Board should impose in its decision to approve the merger. For the reasons set forth in the

*Case Mgmt*  
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application and subsequent, extensive filings made with the Board and Rate Counsel, the parties have demonstrated that the transaction is in the public interest and should be expeditiously approved. As you know, TWC currently operates in a very small regional footprint in very limited portions of Bergen and Hudson counties (serving less than 1% of the video market in the state). Charter looks forward to entering these areas and bringing its products and services to customers in this market.

TWC and Charter do not believe it necessary to impose additional conditions on the approval of the Transaction.<sup>1</sup> First, the parties have already agreed to conditions that affect the Transaction contained in a draft stipulation of settlement presented to the Board, which addresses many of the Rate Counsel's concerns. Second, many of the conditions recommended by Rate Counsel are exclusively within the purview of the Federal Communications Commission ("FCC"), and any condition imposed by the FCC in connection with the Transaction will apply to New Jersey. And third, many of the conditions recommended by Rate Counsel pertain to matters outside the Board's regulatory purview and they are preempted by federal law. Nevertheless, despite the Board being legally precluded from imposing much of Rate Counsel's recommended conditions, TWC and Charter will address the substance of each issue presented by Rate Counsel.

**1. The Board lacks authority to impose the "rate stability" conditions Rate Counsel seeks for New Charter, nor are such conditions necessary.**

As you know, the Board regulates cable television, not broadband. Today, the Board has no authority in these communities to regulate rates of cable television service as a result of a federal determination that effective competition exists. But Rate Counsel suggests the Board go a step further, regulating the prices for standalone broadband service.<sup>2</sup> The FCC recently made clear that States cannot regulate broadband rates, and thus any condition that mandates a particular price for a broadband offering would be impermissible.<sup>3</sup> In any event, New Charter has stated its intention to allow existing TWC customers that subscribe to the \$14.99 Everyday Low Price service offering to retain that offering, as Rate Counsel acknowledges.<sup>4</sup> And, to the extent Charter agrees to any condition with regard to this service in New York (TWC's largest single state in terms of the number of customers served), New Jersey would also receive the benefit of those commitments under the proposed stipulation.

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<sup>1</sup> The term "Transaction" is used herein in the same manner as the term is used in the Joint Petitions.

<sup>2</sup> Rate Counsel Comments at 20-21.

<sup>3</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, at ¶ 433 (rel. Mar. 12, 2015) ("should a state elect to . . . regulate the rates of broadband Internet access service through tariffs or otherwise, we expect that we would preempt such state regulation as in conflict with our regulations").

<sup>4</sup> Rate Counsel Comments at 20.

Further, New Charter also intends to make available its 60 Mbps and 100 Mbps services on a standalone basis, without any additional modem rental fee. Its pricing for these services, taking into account the fact New Charter will not impose modem fees, is competitive with TWC's current offerings.

Finally, with regard to low-income customers, Charter recently announced that after the Transaction closes, it plans to offer the most robust low-cost broadband offering available anywhere in the country. At 30/4 Mbps, Charter will become the first cable company in the country to offer a low-cost product that meets the FCC's current definition of high-speed service.<sup>5</sup> This is a tremendous new benefit that will only be made available to TWC customers in New Jersey after completion of the Transaction.

## **2. Additional customer service conditions are unnecessary.**

Rate Counsel also expresses concern that lack of competition in the marketplace will cause New Charter's service quality performance to decline.<sup>6</sup> As a preliminary matter, the Transaction will not have any effect on the state of competition in New Jersey, because TWC and Charter do not compete currently in the same areas (indeed Charter has no presence in New Jersey at all). While the ownership of one of the competitive providers in New Jersey will change as result of the Transaction, the number of competitive providers will not.

Moreover, New Charter will have ample incentive to provide high-quality customer service because it will face robust competition across all three lines of services it intends to offer in New Jersey. Verizon is authorized to provide competitive voice, video, and broadband offerings to all 14 TWC communities in New Jersey.<sup>7</sup> Verizon has already certified to the Board that it passes at least 60% of the homes in nine of these communities (Ridgefield, Cliffside Park, Fairview, Palisades Park, Ridgefield Park, Little Ferry, Guttenberg, Moonachie, and Leonia), and the remaining areas are significantly penetrated by Verizon. The most recent National Broadband data, from June 2014, reflects that Verizon offers FiOS service to most residents of Edgewater, Fort Lee and Teterboro as well, and to some areas of Englewood and Englewood Cliffs. In addition, other providers will also offer services in competition with New Charter. Given its proximity to New York City, all four wireless carriers provide competitive voice and broadband service to residents of TWC's service areas. The two national satellite providers, DirecTV and DISH, also offer competitive video service to area residents. And, because of

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<sup>5</sup> *Charter Announces Details of Industry Leading Low-Cost Broadband Service*, Press Release (Dec. 17, 2015), available at <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=2123725>. See also *supra* at Section 7 of this letter below.

<sup>6</sup> Rate Counsel Comments at 23-24.

<sup>7</sup> *In the Matter of the Application of Verizon New Jersey Inc. for Renewal of a System-wide Cable Television Franchise*, System-wide Cable Television Franchise Renewal, at 2 and Exhibit I (released January 30, 2014) (listing all municipalities in which Verizon is authorized to provide FiOS service in the State).

Charter's customer-friendly broadband practices and net neutrality commitments, the burgeoning over-the-top (OTT) video platform will continue to offer strong competition for Charter's cable television offering and grow in the marketplace.<sup>8</sup> If there were any doubt as to the existence of strong competition, it is immediately dispelled by taking note of the heavy concentration of marketing and advertising prevalent in the local media.

These market conditions will compel New Charter to offer nothing less than competitive market rates for its services and top-quality customer service, or else risk driving its customers to the many alternative providers competing for their business. Further, the Board's current rules offer the most comprehensive and robust cable television customer service regulation of any state in the nation. The Board's rules already address a wide range customer service matters, including without limitation the manner in which cable operators prepare and render bills<sup>9</sup> and the circumstances under which they may charge late fees.<sup>10</sup>

Further, New Charter has already committed to leverage the Transaction to *improve* customer service across the merged entity's footprint. Charter has invested heavily in call center and field operations infrastructure, and has developed increasingly in-sourced customer care and field operations workforces. Charter has brought back jobs from overseas call centers and hired thousands of people to improve service, both when on the phone with customers and when working inside customer homes. As a result of these significant investments, Charter's more in-sourced workforce is now better trained, more properly incentivized, and better equipped to serve customers with standardized tools, test equipment and software. These efforts have led to faster problem resolution times, and fewer calls per customer, both of which have been driving fewer customer transactions, including service calls, downgrades and customer churn. In addition, Charter's customer satisfaction has improved with Charter's increased focus on delivering superior customer service.

**3. There is no need for the Board to impose conditions on customer billing and payment practices in addition to the requirements already set forth in the Board's rules.**

Rate Counsel incorrectly suggests that Charter's bill payment "turnaround" times could be problematic for New Jersey customers.<sup>11</sup> There is no evidence to support this claim. Charter does not offer service in New Jersey currently, and makes clear that its responses to Rate

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<sup>8</sup> Netflix, which strongly opposed the Comcast/TWC merger last year, supports the Transaction because of Charter's "welcome and significant departure from the efforts of some ISPs to collect tolls on the Internet[.]" *Ex Parte* Letter from Christopher D. Libertelli to Marlene Dortch ("Netflix Ex Parte Letter") at 1, FCC MB Docket No. 15-149 (Jul. 15, 2015) (avail. at <http://apps.fcc.gov/ecfs/document/view?id=60001115480>).

<sup>9</sup> N.J.A.C. 14:18-3.7.

<sup>10</sup> N.J.A.C. 14:18-3.24.

<sup>11</sup> Rate Counsel Comments at 25-27.

Counsel's discovery requests reference practices in other jurisdictions. Throughout its footprint, Charter's bill payment practices are based upon applicable Federal, State and, in some cases, local law. New Charter will fully adhere to applicable New Jersey rules with respect to its New Jersey operations and be subject to Board oversight with respect to its compliance.

Existing rules address Rate Counsel's concerns completely, including its requests for commitments to time periods related to billing, late fee payment policies, and termination of service.<sup>12</sup> Any changes to these obligations therefore would compel a rulemaking proceeding, to ensure that regulatory burdens applicable to billing practices are imposed in an even-handed and competitively neutral manner. Indeed, it would be inappropriate to create regulatory disparity by imposing heightened regulatory obligations on a single operator in the context of a transaction. Similarly, with respect to Rate Counsel's request that the Board require New Charter to commit to VoIP obligations, such a requirement is not imposed on other VoIP providers in the state. Nor could it be, as VoIP providers are not subject to regulation in New Jersey.<sup>13</sup>

#### **4. New Charter will comply with the FCC's battery backup rules.**

Rate Counsel references the FCC's recent decision adopting certain rules applicable to providers such as Charter and TWC that offer a non-line powered voice service,<sup>14</sup> but then argues that the Board should adopt additional requirements that the FCC considered and rejected in its proceeding. Public safety is of paramount importance to New Charter and the company will comply with the rules adopted in the FCC's *Battery Backup Order* as they take effect, as well as any lawful requirements the FCC adopts in the future; but the Board should not adopt requirements that are inconsistent with the FCC rules. For example, Rate Counsel suggests the Board require Charter to supply batteries at cost, a proposal the FCC expressly rejected.<sup>15</sup> In addition, Rate Counsel asks the Board to require Charter to make proof of compliance filings, even though the FCC rules impose no similar requirement.<sup>16</sup> In any event, it would be

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<sup>12</sup> See, e.g., N.J.A.C. 14:18-3.7 (providing requirements for bill formatting); 14:18-3.8 (listing approved methods of billing); 14:18-3.9 (establishing minimum time periods for bills to become due); 14:18-3.24 (providing terms under which cable operators may charge late fees). This list is illustrative, not exhaustive, and New Charter intends to comply with all of the Board's rules concerning billing and payment, not just those listed in this footnote.

<sup>13</sup> N.J.S.A. 48:17-35.

<sup>14</sup> *Ensuring Continuity of 911 Communications*, Report and Order, PS Docket No. 14-174 (rel. Aug. 7, 2015) ("*Battery Backup Order*").

<sup>15</sup> *Battery Backup Order*, at ¶ 45 ("We emphasize that we do not specify the rates at which providers of covered services may offer backup power or related accessories, we expect market forces to ensure that backup power is offered at competitive prices."). Indeed, the FCC made clear that "[a] service provider can receive compensation for all aspects of implementing the rules we adopt today, including the backup power installation, and costs of equipment and labor, from the consumer that elects to have backup power installed.

<sup>16</sup> *Battery Backup Order*, Appendix B at ¶ 18 (stating that the "[t]here are no reporting or recordkeeping requirements" associated with the FCC's new battery backup rules).

inappropriate to impose stricter battery backup requirements on New Charter within the context of the Transaction.

**5. New Charter will ensure adequate emergency preparedness procedures are in place after the Transaction closes.**

Charter recognizes the importance of coordinating with key government entities to ensure the resiliency of communications facilities during emergencies and natural disasters. The company has a history of working in partnership with government agencies and other communications and utility providers on resilience measures and network restoration efforts in response to emergencies and natural disasters.

New Charter looks forward to the opportunity to work with the Board (and other key New Jersey public safety agencies) on this critically important issue. In addition, Charter and TWC understand that WiFi networks can play an important role in helping with responses to natural disasters like Superstorm Sandy, and the expansion of WiFi networks throughout the New Charter footprint will help with communications during such events.

There is no reason to impose detailed requirements on New Charter relating to emergency preparedness issues. Moreover, to the extent Rate Counsel asks the Board to direct submission of NORS data to it (and Rate Counsel) post-transaction, the Board should, at a minimum, defer consideration of this issue pending the FCC's determination of the circumstances under which making NORS data available to state agencies is appropriate.<sup>17</sup>

**6. Rate Counsel's proposed conditions on set-top box and customer premises equipment are not necessary.**

Contrary to Rate Counsel's contention, there is no need to impose any conditions on Charter's set-top box or consumer premises equipment ("CPE") offerings.<sup>18</sup> The Worldbox CPE and Spectrum Guide are designed to reduce customer inconvenience and cost. For example, because the Spectrum Guide uses cloud-based technology, it is compatible with customers' existing two-way set-top boxes, thereby enabling customers to enjoy the benefits of the innovative guide without going through the time and expense of replacing their current equipment.

New Charter's Worldbox CPE will enhance the customer experience by providing new and improved set-top box capabilities. The Worldbox CPE utilizes a downloadable conditional

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<sup>17</sup> See e.g., *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, et. al.*, Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration, PS Docket No. 15-80, et. al., ¶ 51 (rel. March 30, 2015) (proposing to grant states access to NORS data on the condition that states keep the data confidential and have protections from disclosure in place that are at least equivalent to those found in the federal Freedom of Information Act).

<sup>18</sup> Rate Counsel Comments at 29-30.

access system and digital rights management platform, which will enable New Charter to source set-top boxes at a lower cost from virtually any manufacturer. Furthermore, Worldbox is designed to comply with the Environmental Protection Agency's ENERGY STAR 3.0 efficiency levels, which will help contribute to annual residential electricity savings. In addition, the downloadable security solutions available with the Worldbox can give customers a greater degree of flexibility to take their equipment with them when they move. Given these benefits, there is no basis for following Rate Counsel's suggestion to adopt compulsory conditions concerning CPE. Further, Rate Counsel's proposal to mandate "discount alternatives" for DTAs and other CPE would amount to unlawful rate regulation in violation of Section 623 of the Cable Act. Finally, again, any conditions imposed in New York with regard to these innovations and their rollout will also be applicable in New Jersey under the terms of the proposed stipulation.

**7. New Charter has committed to offering the best broadband program for low-income households in the industry.**

Rate Counsel states that "Charter certainly should be commended for its plan to expand participation in [Bright House's low-income] program to its operating territory."<sup>19</sup> Charter has gone much further in establishing the parameters for a new low-income broadband program. As noted above, New Charter has recently announced details about its planned offering, and it believes the program will offer a tremendous public interest benefit to New Jersey and will further Rate Counsel's goal of expanding broadband availability and affordability.

New Charter's offering will provide 30/4 Mbps service for \$14.99 per month, making it the only low-cost broadband offering in the industry that meets the FCC's definition of high-speed broadband service (25/3 Mbps). Moreover, the offering is more expansive than past offerings in terms of eligibility criteria, as it will be available to households with a student who participates in the National School Lunch Program, and to senior citizens, aged 65 and older, who receive Supplemental Social Security Income benefits. In addition, the offering will be available to customers who meet the eligibility criteria even if they already subscribe to video and/or voice service from New Charter, and with other benefits described in Charter's press release from December 17, 2015. New Charter's proposed offering presents a tangible public interest benefit and obviates the need for any conditions pertaining to a low-cost broadband service as a condition for approval of the Transaction.

**8. Rate Counsel's proposed conditions relating to new broadband build-out are unlawful.**

Acknowledging that TWC's service territory in New Jersey is mostly built, and thus buildout commitments for New Charter are not necessary, Rate Counsel argues that the Board should establish a requirement for New Charter to upgrade to TWC Maxx service levels to all TWC service areas—as well as Bright House service areas—regardless of whether they are

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<sup>19</sup> Rate Counsel Comments at 32.

located in New Jersey.<sup>20</sup> All 14 TWC communities in the State already receive the Maxx level of service, and plainly the Board's authority does not (nor does Rate Counsel's jurisdiction) extend to systems outside of the State.

**9. The debt issues raised by Rate Counsel are without cause for concern.**

Rate Counsel erroneously suggests that due to the new debt taken on to finance the Transaction, New Charter will raise broadband prices to "extract monopoly profits" once the Transaction closes.<sup>21</sup> First, for the reasons described above, New Charter will operate in one of the most competitive areas in New Jersey, where voice, video and broadband services are provided by wireless and wireline competitors that include Verizon FiOS (see section 2 above).

Second, immediately after the Transaction closes, New Charter's leverage ratio (debt to Adjusted EBITDA) is expected to be comparable to Charter's leverage ratio today—approximately 4.5x, as compared to approximately 4.2x now. The total debt amount, when considered in the context of New Charter's increased size, is therefore unremarkable. Indeed, New Charter's expected debt/EBITDA ratio of 4.5x is lower than comparable ratios from a number of MVPDs. For example, at the end of 2014, WOW! had a ratio of 7.1x, Suddenlink was 5.8x, Cablevision was 5.3x, Mediacom Broadband was 5.3x, and DISH was 5.1x. New Charter's anticipated leverage is lower than and certainly within normal range for MVPDs. There is no evidence that these other companies' even-higher ratios have resulted in rate increases or a decline in service quality, as Rate Counsel suggests, and Suddenlink's acquisition by Altice was recently approved by the FCC.<sup>22</sup> Thus, New Charter's debt level does not create the kinds of incentives that Rate Counsel claims will exist after the Transaction closes. In addition, the Board has no legal authority to impose the kind of rate-related conditions Rate Counsel suggests.

**10. The remaining conditions proposed by Rate Counsel are unnecessary**

Rate Counsel's remaining proposals are unnecessary, impermissible, and not supported by the record. For example, proposals to require New Charter to adhere to FCC Net Neutrality principles in perpetuity or to commit to long-term unlimited, flat rate broadband service for many years (even though New Charter has indicated its broadband offerings come without data caps, usage-based pricing, early termination fees, or separate, additional modem fees) are not necessary, nor are they within the Board's authority to enforce. The request that New Charter permit customers to opt out of providing outside users access to in-home wireless connections without the customers' consent ignores that neither Charter nor TWC currently allow for such access, while also fall within the exclusive jurisdiction of the FCC and neither the Board or Rate

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<sup>20</sup> Rate Counsel Comments at 36-37.

<sup>21</sup> Rate Counsel Comments at 15.

<sup>22</sup> *Applications Filed by Altice N.V. and Cequel Corporation d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V.*, Memorandum Opinion and Order, WC Docket No. 15-135 (rel. Dec. 18, 2015).



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Counsel has a legal basis to impose these conditions. Simply put, there is no basis to adopt the proposals Rate Counsel offers, even if the Board could adopt them under applicable law.

### Conclusion

Charter and TWC appreciate Rate Counsel's participation in this proceeding and they have cooperated in terms of providing detailed responses to Rate Counsel's extensive discovery requests. However, Charter and TWC disagree that Rate Counsel's recommended commitments, to the extent they go beyond the current conditions in the draft stipulation of settlement presented to the Board and Rate Counsel, are necessary, nor, in many instances, are they legally permissible.

Charter and TWC look forward to meeting with Rate Counsel and Board Staff, as requested, to discuss Rate Counsel's views. Following these further discussions and our efforts to answer any remaining questions, we are hopeful Rate Counsel will find that the benefits of the Transaction outweigh any perceived concern, and that the proposed stipulation of settlement provides a proper basis to conclude that the Transaction is in the public interest.

Thank you for your consideration of Charter's and TWC's concerns.

Very truly yours,



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For the Firm  
DCL/dp

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