



Agenda Date: 10/14/20
Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

NOTIFICATION OF PRO FORMA INTERNAL) ORDER OF APPROVAL
RESTRUCTURING BY CHARTER)
COMMUNICATIONS, INC. AND SPECTRUM)
NEW YORK METRO, LLC, f/k/a TIME WARNER)
CABLE NEW YORK CITY LLC, OR IN THE)
ALTERNATIVE, PETITION FOR APPROVAL OF A)
PRO FORMA INTERNAL REORGANIZATION) DOCKET NO. CO20090598

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Dennis C. Linken, Esq., Scarinci and Hollenbeck, LLC on behalf of Charter Communications, Inc.

BY THE BOARD:

On September 16, 2020, Charter Communications, Inc. (“Charter”) and Spectrum New York Metro, LLC, f/k/a Time Warner Cable New York City, LLC (“SNYM”) (collectively the “Petitioners”) jointly submitted a “Verified Submission” (or “Petition”) to the New Jersey Board of Public Utilities (“Board”) describing an internal reorganization to be undertaken by Charter and SNYM that will create a new Charter and SNYM subsidiary that will hold Charter’s New Jersey cable assets and franchises (the “Transaction”). Under the Transaction, the New Jersey cable assets and franchises will reside in a new subsidiary that SNYM will own directly and continue to control. SNYM in turn will remain ultimately controlled by Charter.

The Petitioners did not simultaneously file a FCC Form 394 - Application for Franchising Authority Consent to Assignment or Transfer of Control of Television Franchise (setting forth pertinent information about the Transaction). The Petitioners also did not initially file or reference an Asset Purchase Agreement (“APA”) or Reorganization Agreement, although in response to Staff’s inquiries, the Petitioners provided a draft RA dated October 5, 2020 (“Draft RA”), containing, among other clauses a reference to provide Form 394, as well as other appropriate forms with governmental entities to the extent that they are necessary to effectuate the transfer of the franchises and licenses in connection with the consummation of the transfer. The Board finds that the filing of FCC Form 394 is necessary and appropriate in this instance. Notwithstanding the Petitioners asserted that “the reorganization at issue here does not implicate Board Review

under New Jersey Statutes §§ 48:5A-19, 48:5A-38, or 48:5A-40¹, and by implication, N.J.S.A. 48:5A-19 and N.J.A.C. 14:17-6.8, this Transaction falls within the parameters of the above statutes and regulations and is governed by them, because the Transaction is a transfer of assets from one CATV company to another (N.J.S.A. 48:5A-40 and N.J.A.C. 14:17-6.10) and an assignment and/or transfer of franchises, prompting the transfer of Certificates of Approval (N.J.S.A. 48:5A-19 and N.J.A.C. 14:17-6.8). Accordingly, the Board asserts its authority to examine the Transaction in accordance with these statutes and regulations. However, because expedited treatment was requested, the Board will treat certain of those underlying regulatory requirements and document submissions as conditions precedent before which the Transaction may not close until such “pre-conditions” are met.

SNYM, with its principal offices at 200 Roosevelt Place, Palisades Park, New Jersey 07650, is a Delaware limited liability company that operates a cable television system in fourteen (14) municipalities in Bergen County and Hudson County, New Jersey (the “Bergen System”).² pursuant to Board-approved municipal consents and Certificates of Approval issued by the Board.

SNYM is currently owned 100.0% by Time Warner Cable Enterprises, LLC (“TWCE, LLC”) which is an indirect wholly-owned subsidiary of Charter Communications Operating, LLC (“CCO”) and Charter Communications Holdings LLC (“CCH”).

All of these entities are substantially (88.6%) owned by Charter, a publicly traded corporation and the “parent company” of all of the “Charter” cable television entities throughout the country. Charter is the nation’s second largest cable television company, providing cable, broadband, wireline and mobile voice service to more than 30 million customers. Charter is domiciled in Delaware and headquartered at 400 Atlantic Street, Stamford, Connecticut 06901.

Pursuant to the Petition, the Transaction is straightforward. SNYM holds cable assets and franchises in both the New York City metropolitan area and New Jersey. As discussed below, it is Charter’s intent to separate the New York and New Jersey assets, by creating a new subsidiary³ where Charter’s New Jersey cable assets will reside. Specifically, SNYM as the holder of Charter’s cable franchises in New Jersey, would establish Spectrum New Jersey, LLC (“SNJ”) as a new 100% owned direct subsidiary.

According to the Pre-and Post-Reorganization chart depicting the relevant structure today and the proposed new structure, attached as Exhibit A to the Petition, the Transaction will flow as follows: Step (1): SNYM forms SNJ, Step (2): SNYM contributes all of its New Jersey cable and internet assets, subject to any New Jersey cable and internet related liabilities (collectively, the “New Jersey Transfer”) to SNJ (as more fully described in the Draft RA), and Step (3): SNJ will be designated as a non-guarantor of the CCO Debt, the Time Warner Cable New York City, LLC debt, and the TWCE, LLC debt (“CCO Debt” or “Charter Debt”).

¹ This instant Petitioners’ Notification of Pro Forma Internal Restructuring, or in the Alternative, Petition for Approval of a Pro Forma Internal Reorganization, Pg. 4, footnote 4.

² The Bergen System serves the following municipalities: Cliffside Park, Edgewater, Englewood, Englewood Cliffs, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield, Ridgefield Park, and Teterboro in Bergen County, and Guttenberg in Hudson County.

³ The Petition referenced NJ Asset NewCo as the new subsidiary (to be formed at a later date) that will be the recipient of the transferred assets from SNYM. On October 6, 2020, SNJ was formed as a Delaware LLC, replacing NJ Asset NewCo, and in accordance with the Draft RA, SNJ is now the designated recipient of the transferred assets from SNYM.

SNYM will retain the New York cable assets it holds today, and also direct ownership and control of SNJ. Accordingly, Charter will still retain ultimate ownership and control of SNYM as it does today, and in turn, SNJ. The assets that will reside in SNJ will be the same network assets that today are used to deliver the services and capabilities offered by Charter to its New Jersey customers.

Going forward, the Petitioners claim that the assets of SNJ, unlike SNYM presently, would no longer be pledged to creditors, and SNJ will not be subject to any liabilities associated with Charter's financing and debt structure, including guarantees of Charter's debt.

Under the Transaction, Charter asserts it will now be able to separately decide whether to provide a guarantee from either or both of its New York and New Jersey subsidiaries and whether to pledge the assets owned by either or both of its New York and New Jersey subsidiaries when CCO issues secured debt. To the extent Charter opts to pledge the assets of SNJ to secure SNJ's guarantee of any post-reorganization issuance of CCO or other Charter Debt, Charter recognizes that the Board expects such pledge and guarantee to be subject to Board review and approval under N.J.S.A. § 48:5A-42.

PUBLIC INTEREST CONSIDERATIONS:

Charter maintains the Transaction is in the Public Interest because: (1) it will provide a net benefit to New Jersey consumers by providing Charter accelerated and attractive opportunities and greater flexibility to obtain more favorable debt financing terms (e.g. lower interest rates and extended maturities, thereby boosting its ability to improve its balance sheet, reduce its interest rates and extend maturities, and finance investments in new services and capabilities); (2) while at the same time enabling the Board to have assurance that the New Jersey franchises and assets that will reside in SNJ will be protected and insulated from providing a guarantee of CCO and its subsidiaries' debt secured by the assets of a New Jersey regulated cable entity that are currently SNYM's (and New Jersey's) obligations; and (3) such relief from guarantees and asset securitizations will not result in any diminution of the services and capabilities of the Bergen System that today depend upon resources that are shared across all Charter operating subsidiaries.

OTHER CONSIDERATIONS:

The Petitioners submit that such relief from guarantees and asset securitizations will: (1) have no impact on Charter's legal, technical, and financial qualifications to operate a cable franchise and the Bergen System; (2) cause no change to the day-to-day management and operation of the New Jersey system and franchises; (3) not disrupt Charter's service to New Jersey customers, Charter employee pensions, or the offerings, rates, terms or conditions available to New Jersey customers; (4) not adversely impact Charter's current or proposed operations in New Jersey; (5) not effect satisfaction of the duties, responsibilities or obligations under the franchise agreements; (6) not change Charter's continuance to have the ultimate responsibility to ensure performance of all franchise obligations and customer commitments arising out of its New Jersey systems; and (7) not result in any diminution of the services and capabilities of the Bergen System that today depend upon resources that are shared across all Charter operating subsidiaries.

Ultimately, Charter claims the Internal Reorganization will be entirely seamless and invisible to Charter's customers.

DISCUSSION:

While staff believes that the Internal Reorganization will not necessarily change Charter's ability to take advantage of opportunities for debt financing, or that the removal of the New Jersey portion of SNYM as a guarantor and pledger of CCO's debt will not have any material effect on its debt financing flexibility, staff does perceive a positive net benefit in insulating the New Jersey franchises and cable systems from providing a guarantee of CCO and its subsidiaries' debt secured by the assets of a New Jersey regulated cable entity ("Guarantees and Asset Pledges"). To further insure the achievement of this goal, Staff requested, and Charter provided more definitive and robust written assurances that Charter would protect and insulate SNJ from providing Guarantees and Asset Pledges.

As part of the review, Staff and the Petitioners engaged in two telephone conferences on September 17, 2020 and October 2, 2020, interspersed among a series of confidential question and answer type emails ("Q and A Emails"), attempting to resolve the salient issues that came to light in examining the Transaction.

CONCLUSION:

The proposed Transaction does not affect or change Charter's control of, or qualifications to operate, its New Jersey cable system and franchises. Nor will it have any adverse impact on SNYM, SNJ and ultimately Charter's ability to meet its franchise obligations and commitments or provide high-quality, advanced services and capabilities to its customers in New Jersey. However, the Transaction will result in a new CATV company in New Jersey, resulting in an effective transfer of franchises from SNYM to SNJ, requiring Board approval pursuant to the rules and regulations governing those changes brought by the Transaction.

On October 13, 2020, the New Jersey Division of Rate Counsel submitted comments indicating they had no objection to the petition.

Upon review of the petition, exhibits and all information submitted in this matter, the Board **FINDS** that Charter has historically demonstrated that it has the financial resources and technical qualifications to ensure the Board of its ability to provide safe, adequate and proper service, and that moreover, the Board has continuing authority to enforce SNYM's existing franchise obligations and to enforce certain customer service regulations. The Board **FURTHER FINDS** that the petition is in the public interest, and would not adversely impact the financial integrity of the affected cable companies. Notwithstanding, the Board **HEREBY ORDERS** as a condition of approval to close on the Transaction and transfer the assets of SNYM's Bergen System to SNJ that the following conditions must be satisfied and fulfilled no later than sixty (60) days from the date of this Order:

- 1) Petitioners shall file FCC Form 394 - Application for Franchising Authority Consent to Assignment or Transfer of Control of Television Franchise, setting forth pertinent information about the Transaction.

- 2) Petitioners shall withdraw the “pre-authorization” request to enable SNYM, as currently organized, to provide a guarantee and a pledge of assets of its New Jersey franchises and cable assets to secure debt issued by CCO, that was contemporaneously submitted with this instant filing.⁴
- 3) Petitioners shall file an affidavit certifying that it has undertaken all necessary steps and filed all necessary papers and documents with the Lenders, Administrative Agents, Issuing Lenders and Trustee and Collateral Agents pertaining to all existing secured Current and Long-Term Debt collateral packages of CCO and/or other CCO and Charter subsidiaries to effectively exclude SNJ as a Guarantor, and a pledger of its assets from all Charter Debt.

In addition to the above, this Order is also subject to the following conditions:

- 4) This Order shall not affect or in any way limit the exercise of the authority of the Board, the OCTV&T or the State of New Jersey in any future petition or in any proceeding regarding rates, cost of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioners.
- 5) This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of tangible or intangible assets now owned or hereinafter to be owned by Petitioners.
- 6) This Order shall not be construed as superseding pending rate proceedings involving the Petitioners.
- 7) The Petitioners shall notify the Board, in writing, within five (5) days of the date on which each of the Transactions is consummated.
- 8) Consummation of the above referenced Transaction must take place no later than ninety (90) days from the date of this Order, unless otherwise extended by the Board.
- 9) Petitioners shall file a Certification with the Board within thirty (30) days of the closing attesting to the lack of material deviation in the executed closing documents or final terms from those terms and conditions described herein and/or submitted to the Board with the Petition. Any such material deviation in the executed closing documents shall render this Order voidable by the Board.
- 10) Petitioners shall file journal entries with the Board to record the Transaction approved herein within forty-five (45) days of the closing including, but not limited to, journal entries reflecting all interim and final reorganization steps pursuant to the Petition.
- 11) Approval herein of the asset transfer Transaction and transfer of Certificates of Approval shall not constitute automatic approval of any business contract referenced in the Agreement or supporting documents, if Board approval, pursuant to N.J.S.A. 48:5A-1 et seq. would otherwise be required.
- 12) Charter shall be liable for the State assessment and CATV Universal Fund Fees, pursuant to N.J.S.A. 48:5A-32, and municipal franchise fees, pursuant to N.J.S.A. 48:5A-30, due and owing as of the statutory payment dates for the

⁴ See In the Matter of the Verified Petition of Spectrum New York Metro, LLC (f/k/a Time Warner Cable New York City LLC), for Approval to Participate in Certain Financing Arrangements Pursuant to N.J.S.A. §§ 48:5A-40 and 48:5A-42, filed Sept. 16, 2020, Docket No. CF20090597.

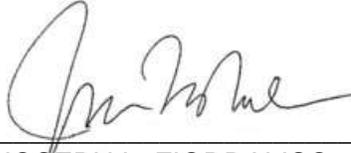
- preceding calendar year relating to the Bergen System. Charter and SNYM shall be responsible for any of the aforementioned actual and potential liabilities if for any reason SNJ is unable to fulfill this responsibility.
- 13) SNJ shall file within forty-five (45) days of the closing of the Transaction a revised statement of prices, rates, terms and conditions for cable television service reflecting all charges as required by the Board, the OCTV&T or the Federal Communications Commission highlighting any changes resulting from the Transaction.
 - 14) Charter shall file within thirty (30) days of the closing of the Transaction a fully signed and executed RA and attest to the lack of material deviation in the executed RA compared to the Draft RA submitted to the Board with the Petition. Any such material deviation in the executed RA shall render this Order voidable by the Board.
 - 15) Charter shall file within forty-five (45) days of the closing of the Transaction a pro forma balance sheet and income statement existing both before the closing and the post-closing continuing company (SNJ) reflecting the assets contributed by SNYM to SNJ. Charter shall further identify, by account and amount any and all Excluded Assets, as defined in the Draft RA.
 - 16) Within ninety (90) days from the date of closing of the proposed Transaction, Petitioners shall certify, for each system under their control, the following items:
 - a) That all New Jersey cable television systems under their respective ownership and/or control are in full compliance with Article 820 of the National Electrical Code as previously certified.
 - b) That all Board-ordered requirements or conditions arising out of any and all Offers of Settlement and Certificates of Approval have been or are being satisfied within the time frame set forth therein.
 - c) That sufficient funds will be available to fund all outstanding network extensions, rebuilds, upgrades, or other construction commitments arising from a system's primary Service Area ("PSA"), Certificate of Approval, Municipal Consent, Letters of Intent or other Orders or agreements, including but not limited to the Board Order in Docket No. CO20100636 and documentation provided subsequent thereto.
 - d) That billing records are available for all customers in New Jersey cable television systems under their respective ownership and/or control and the ability to provide the Board and OCTV&T with copies of such records for three (3) years in accordance with N.J.A.C. 14:18- 3.7.

Should Petitioners be unable to complete their review of their respective systems within ninety (90) days of closing, each Petitioner shall file a certified report with the OCTV&T prior to the expiration of the ninety (90)-day period setting forth its progress on the requirements set forth above in paragraphs (a) through (d). Petitioners will at that time have the option of requesting an extension of time of up to ninety (90) days to finalize the review of their systems and certify to same with regard to the provisions of paragraphs (a) through (d) set forth above.

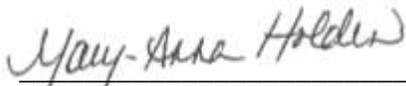
This Order shall be effective on October 14, 2020.

DATED: October 14, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

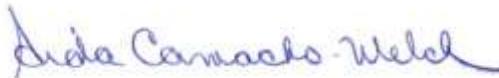


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

NOTIFICATION OF PRO FORMA INTERNAL RESTRUCTURING BY CHARTER COMMUNICATIONS, INC. AND SPECTRUM NEW YORK METRO, LLC, f/k/a TIME WARNER CABLE NEW YORK CITY LLC, OR IN THE ALTERNATIVE, PETITION FOR APPROVAL OF A PRO FORMA INTERNAL REORGANIZATION - DOCKET NO. CO20090598

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