

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application for the Transfer of Control of)	WC Docket No. 25-233
Cox Communications, Inc. To Charter)	
Communications, Inc.)	

**PETITION TO DENY OF PUBLIC KNOWLEDGE, COMMUNICATIONS WORKERS
OF AMERICA, BENTON INSTITUTE FOR BROADBAND & SOCIETY, AND
CENTER FOR ACCESSIBLE TECHNOLOGY**

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INTRODUCTION AND SUMMARY

Public Knowledge, Communications Workers of America, Benton Institute for Broadband & Society, and Center For Accessible Technology (Commenters) file this Petition to Deny in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice regarding the applications of Charter Communications, Inc. ("Charter") and Cox Communications, Inc. ("Cox") (collectively, "Applicants") to transfer control in connection with Charter's proposed \$34.5 billion acquisition of Cox. The applications should be denied because the Applicants have failed to demonstrate that this transaction serves the public interest, convenience, and necessity, and have not met their requisite burden of proof under Section 310(d) of the Communications Act.

Charter and Cox propose to combine in a transaction that would reshape the American broadband landscape, creating a communications giant that would become the nation's largest cable and broadband provider, controlling access to over 36 million broadband customers and 70 million homes and businesses across 46 states. This consolidation would result in substantial public interest harms including increased gatekeeper power over internet distribution, diminished competition, higher prices for consumers, and unequal treatment of underserved communities.

This consolidation comes at a time when broadband access has never been more essential to economic opportunity and democratic participation. Yet the Applicants offer no credible evidence that removing Cox as an independent competitor will benefit consumers. Instead, their filing relies on vague promises of "synergies" and scale economies while providing no concrete commitments to lower prices, improve service quality, or expand access to underserved communities. The Commission's public interest analysis embodies a "deeply rooted preference

for preserving and enhancing competition in relevant markets”¹ and ensuring diverse sources of information and services for the public, which this transaction fails to advance.

The public interest analysis reveals serious concerns:

Gatekeeper Power and Interconnection. The merger would create significant bottleneck control over internet distribution, with the combined entity controlling the exclusive last-mile connection to over 37 million subscribers. This termination monopoly creates powerful structural incentives to extract paid interconnection payments from content providers and edge services.

Consumer Harms and Pricing. The Applicants provide no concrete commitments to pass claimed efficiencies to consumers through lower prices or improved service. Empirical evidence across industries demonstrates that mergers in concentrated markets typically increase prices rather than benefiting consumers. The Applicants' claims of competitive pressure from wireless and satellite services are unfounded—mobile broadband serves fundamentally different use cases with dramatically lower consumption levels, while satellite and fixed wireless cannot match fiber's performance, reliability, and affordability.

Digital Equity and Affordability. The transaction threatens to deepen digital divides shortly after the termination of the Affordable Connectivity Program, which served over 23 million low-income households. The merged entity would eliminate competitive pressure that might encourage improved low-income offerings. Additionally, without binding commitments to enhanced affordability programs, expanded digital literacy initiatives, non-discrimination monitoring, and community investment requirements, this consolidation risks violating Section 60506's prohibition on digital discrimination and worsening persistent disparities in broadband access.

¹ Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, 16 FCC RCC Rcd 6547, 6549-50, ¶4 (2001).

Labor Market Harms. The transaction raises significant concerns about workforce impacts and labor practices. The parties plan to reduce benefits for long-term Cox employees, while Charter's track record includes unfulfilled employment commitments from previous mergers and recent customer service workforce reductions. Charter's history of resisting worker organizing efforts suggests the merger would further entrench market power over labor. Without meaningful protections, the consolidation threatens job quality and workers' rights across the combined entity's operations.

The Commission has previously recognized these risks and imposed prophylactic conditions to address them. The public interest requires either denial of this transaction or, at minimum, comprehensive conditions that go beyond those imposed in 2016 to reflect the changed competitive landscape and increased importance of broadband access.

II. THE MERGER WOULD CREATE UNCHECKED GATEKEEPER POWER OVER INTERNET DISTRIBUTION

The proposed Charter-Cox merger would create a broadband distribution bottleneck of enormous scale and scope, changing the competitive dynamics of internet access in the United States. The combined entity would control the last-mile connection for over 37 million broadband subscribers across 46 states and would pass approximately 70 million homes² and businesses (including 60% of California locations with download speeds of at least 1,000 Mbps),³ creating the nation's largest cable and broadband provider with enormous market power.

² Charter Communications and Cox Communications Agree to Transformative Combination 6 (May 16, 2025) (investor presentation), <https://ir.charter.com/static-files/17f74638-d569-448c-be88-76d00f9c6fff>; Transaction announcement call transcript, https://www.sec.gov/Archives/edgar/data/1091667/000114036125019507/ef20049215_defa14a.htm

³ Protest of the Public Advocates Office to the Joint Application for Approval of the Transfer of Control of Cox California Telcom, to Charter Communications, Application 25-07-016, 13

A. Applicants Misunderstand the Economics of Broadband Distribution

The Applicants dismiss concerns about gatekeeper power by arguing that the merger will not "result in any potential harm related to Internet interconnection or traffic-exchange" and point to purported "competitive pressures" in interconnection markets.⁴ This argument fundamentally misunderstands the nature of broadband distribution and ignores the realities of internet traffic delivery. There can be no "competitive market" for delivering traffic to Charter-Cox customers because the merged entity would control the exclusive last-mile connection to those subscribers. Retail broadband ISPs exercise terminating access power: every packet to a given subscriber must traverse that subscriber's ISP, conferring gatekeeper leverage over both users and upstream content providers. As the Commission recognized in 2016, "BIAS providers ... function as gatekeepers between their subscribers and the rest of the Internet; all traffic going to or from a subscriber must pass through the BIAS provider. Because of this gatekeeping role, BIAS providers with large numbers of subscribers have greater leverage to negotiate preferential terms and prices with edge providers seeking to reach those subscribers."⁵

Regardless of whether traffic reaches subscribers through direct peering, transit providers, content delivery networks, or other intermediaries, all internet content must ultimately traverse Charter-Cox's facilities to reach its customers. The basic facts of network topology mean that content providers have no alternative path to these 37 million subscribers. This termination monopoly gives the merged entity both the technical means and economic incentive to

(September 5, 2025),

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M579/K066/579066356.pdf>

⁴ PI Statement 71, 71 n.310.

⁵ Applications of Charter Communs. et al., Memorandum Opinion and Order, 31 FCC Rcd 6327, ¶ 95 (2016).

manipulate its interconnection practices to extract fees from internet content providers or shift costs onto them.

Studies have shown how large ISPs can exploit congestion at interconnection points to extract rents or degrade unaffiliated services unless paid for direct interconnection or preferential treatment. Nikkah and Jordan note that “large ISPs have often refused to increase capacity at interconnection points with large content providers and transit providers, resulting in sustained congestion which has degraded users’ quality of experience because of reduced throughput, increased packet loss, increased delay, and increased jitter.”⁶ Clark, et al. documented persistent congestion at Comcast-Netflix interconnection before their 2014 direct-peering deal; congestion disappeared once a paid arrangement was struck.⁷ A recent survey likewise catalogs current peering models and notes that larger ISPs tend to have more restrictive interconnection policies, finding that “ISPs like Mediacom Communications, Breezeline, TDS Telecom, who have regional reach (Tier 2 ISP) prefer open peering policies. On the other hand, ISPs with nationwide extensive operation like Comcast, Charter Communications, AT&T Fiber, Cox Communications, Verizon opt for selective or restrictive policies.”⁸

Such leverage can only be constrained by genuine competition: either from the consumer side, where users can credibly threaten to switch providers if their ISP degrades particular content, or from the delivery side, where content companies can walk away from unreasonable

⁶ Ali Nikkiah & Scott Jordan, A Two-Sided Model of Paid Peering, 46 *Telecomm. Pol’y*, no. 8, Sept. 2022, <https://par.nsf.gov/servlets/purl/10349001>

⁷ David D. Clark et al., *Measurement and Analysis of Internet Interconnection and Congestion* (MIT/CAIDA 2014) (working paper); see also Matthew Luckie, et al., Challenges in Inferring Internet Interdomain Congestion, IMC ’14: Proceedings of the 2014 ACM Conference on Internet Measurement Conference 381 (Nov. 2014), <https://doi.org/10.1145/2663716.2663741>

⁸ Anindo Mahmood & Murat Yuksel, Resource Sharing on the Internet: A Comprehensive Survey on ISP Peering, 57 *ACM Computing Surveys* art. 178, 15 (Feb. 2025), <https://doi.org/10.1145/3715906>

interconnection demands. The Charter-Cox merger would eliminate both competitive checks by creating a broadband giant so large that content providers cannot afford to bypass it, while most consumers in its service territories would continue to have few meaningful alternatives for high-speed fixed broadband access.⁹

B. Last-Mile Chokepoint Creates Structural Incentives for Rent Extraction

The merged entity would control access to tens of millions of households and the interconnection points that feed those homes with internet traffic. This creates powerful structural incentives to extract paid interconnection payments from content providers, edge services, and competing platforms--precisely the type of termination monopoly leverage that economic theory predicts and that the Commission has previously constrained through merger conditions.

Consolidation enlarges the subscriber base behind a single set of interconnection ports, raising the “cost of non-agreement” for edge providers and thereby strengthening the merged firm’s ability to demand access payments or tolerate congestion to obtain them. Economic

⁹ Recent evidence shows that in many markets the U.S. broadband market is not meaningfully competitive at the speeds most households need (100 Mbps+). The FCC’s most recent Communications Marketplace Report, for example, found that 28.9% had just one fixed broadband provider with speeds of at least 100 Mbps downstream, and 4.8% had no choice at all. FCC, 2024 Communications Marketplace Report, FCC 24-136, Fig. II.A.27 (Dec. 31, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-136A1.pdf>. In rural areas, 65.5% of households had zero or one provider at 100/20 Mbps in 2023, compared to about 25% in urban areas. Id., Fig. II.A.27 (Dec. 31, 2024). In a county-level analysis of plan options at 100 Mbps or greater, using the Herfindahl–Hirschman Index of market concentration, BroadbandNow found “over 96% of counties exhibit highly concentrated markets ... for broadband plans (≥ 100 Mbps), where few counties with HHI scores below 1,500 exist.” Tyler Cooper & Jason Shevik, *Broadband Market Concentration: A County-Level Analysis of U.S. ISP Competition* (Mar. 5, 2025), <https://broadbandnow.com/research/broadband-competitiveness>. Put simply, at the 100 Mbps tier and above, most Americans either have no choice or at best a single choice. In large swaths of rural America, that lack of choice is the norm. While the primary effect of this merger will not be to reduce broadband choice in local markets due to the applicant's non-overlapping service areas, many of the harms this merger would create, such as increased gatekeeper power and oligopolistic price benchmarking, are made even worse due to the concentrated state of the overall market.

assessments of the abandoned Comcast-TWC deal predicted precisely this: a larger footprint leads to greater ability to raise interconnection prices. Economists at the DOJ found that "An ISP's leverage, industry participants believe, is a function of the size of its customer base.

Content providers need access to customers," and explained:

Antitrust Division staff estimated the empirical relationship between interconnection fees and the sizes of ISPs. They did this by constructing a database of contracts between ISPs and content providers that included contract-specific control variables (e.g., the date of the contract). Under a wide range of specifications, the relationship between size and fees was found to be positive, statistically significant, and economically meaningful.¹⁰

This consolidation re-creates the very market concentration concerns that led the Commission to impose stringent conditions when it approved Charter's 2016 acquisition of Time Warner Cable and Bright House Networks. As the Commission noted then, "BIAS providers with large numbers of subscribers have greater leverage to negotiate preferential terms and prices with edge providers seeking to reach those subscribers."¹¹

C. The Commission Must Impose Comprehensive Interconnection Conditions Mirroring the Charter-TWC Precedent

Given the substantial gatekeeper power this merger would create, the Commission should either deny the transaction outright or impose comprehensive interconnection conditions that go beyond those applied in the 2016 Charter-TWC-Bright House merger. The 2016 conditions provide a proven template, but the changed competitive landscape and increased scale of this transaction require even stronger protections.

¹⁰ See Nicholas Hill, Nancy L. Rose & Tor Winston, Economics at the Antitrust Division 2014–2015, 47 Rev. Indus. Org. 425, 428 (2015), <https://economics.mit.edu/sites/default/files/publications/RIO-2015.pdf>

¹¹ Applications of Charter Communs. et al., Memorandum Opinion and Order, 31 FCC Rcd 6327, ¶ 95 (2016).

1. The 2016 Charter Conditions Recognized These Precise Risks

When the Commission approved Charter's acquisition of Time Warner Cable and Bright House in 2016, it explicitly recognized that the enlarged entity would have both the incentive and ability to leverage its gatekeeper position to extract payments from edge providers and disadvantage competing services. The Commission found that Charter's increased size would create incentives to engage in paid interconnection arrangements that could harm innovation and consumer choice.

To address these concerns, the Commission imposed a seven-year prohibition on data caps, usage-based pricing, and paid interconnection arrangements. These conditions were specifically designed to prevent Charter from using its termination monopoly leverage to extract rents from content providers or discriminate against services that compete with its traditional cable offerings, particularly online video distributors.

The Commission's analysis in 2016 remains highly relevant today. The economic incentives that led to those conditions have not disappeared. Indeed, they have intensified as broadband has become even more essential and streaming video has grown to dominate internet traffic. The current merger would recreate these same structural problems on an even larger scale.

2. Enhanced Conditions Are Necessary for the Current Transaction

Any conditions imposed on this merger must be more comprehensive than those applied in 2016, reflecting both the increased scale of the combined entity and the heightened importance of broadband access in American life. The Commission should require:

Permanent Paid Interconnection Prohibition: Unlike the seven-year term applied in 2016, the merged entity should be permanently prohibited from charging content providers, edge services, or transit providers for interconnection, whether direct or

indirect. This prohibition should cover any arrangement that effectively functions as paid interconnection, including differential treatment based on payment.

Settlement-Free Peering Requirements: The merged entity should be required to offer settlement-free peering to any qualified network on reasonable, transparent, and non-discriminatory terms. Peering policies must be published and applied consistently, with no arbitrary restrictions based on traffic ratios, geographic requirements, or other pretextual barriers.

Enhanced Data Cap Prohibition: The merged entity should be permanently prohibited from implementing any form of usage-based pricing, data caps, or traffic allowances for residential broadband service. This prohibition should extend to any practice that effectively limits subscriber usage or creates disincentives to consume lawful content.

Transparency and Monitoring Requirements: The company should be required to file annual reports detailing all interconnection arrangements, network capacity investments, and traffic management practices. These reports should be subject to third-party auditing, with results made public to enable ongoing oversight by the Commission and public interest advocates.

III. THE MERGER FAILS TO DEMONSTRATE CONSUMER BENEFITS AND COULD INCREASE PRICES

The Applicants' public interest showing consists largely of vague assertions about operational efficiencies and network improvements, but contains no concrete commitments to deliver lower retail prices or improved service quality to consumers. This fundamental deficiency renders their claimed "public interest benefits" essentially meaningless, as benefits that accrue only to the merged company's shareholders cannot satisfy the Communications Act's public interest standard.

A. Claimed Synergies Lack Specificity and Consumer Pass-Through Commitments

Charter and Cox tout potential cost savings from combining operations, eliminating duplicative functions, and achieving economies of scale. However, their filing provides no detailed analysis of these purported efficiencies, no timeline for achieving them, and no binding commitments to pass any savings to consumers through lower prices or improved service.

In concentrated markets like broadband, merger-generated efficiencies typically benefit shareholders rather than consumers. The Applicants' refusal to make concrete pricing commitments strongly suggests that their claimed efficiencies, even if realized, would not translate into consumer benefits.

Companies will only “pass-through” cost savings resulting from economies of scale or spreading of costs, either in the form of reduced prices or improved service quality, when market pressure (or legal requirements) force them to.¹² (There is ample evidence however that companies pass through cost *increases* to customers¹³ and, in some instances, increase prices

¹² “Cost pass-through arises when a business changes the prices of the products or services it supplies following a change in its own costs.” RBB Economics, Cost pass-through: theory, measurement, and potential policy implications at p. 9 (Feb. 2014), *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf (last accessed Feb. 22, 2023).

¹³ Nathan H. Miller, Matthew Osborne, and Gloria Sheu (2017), “Pass-Through in a Concentrated Industry: Empirical Evidence and Regulatory Implications,” *RAND Journal of Economics*, 48(1): 69-93, (Estimating that consumers would bear 80 percent of the costs of market based-regulation of carbon dioxide); Sharat Ganapati, Joseph S. Shapiro, and Reed Walker (2020), “Energy Cost Pass-Through in US Manufacturing: Estimates and Implications for Carbon Taxes,” *American Economic Journal: Applied Economics*, 12(2): 303-42 (70 percent of energy price-driven changes in input costs are passed through to customers); Emi Nakamura and Dawit Zerom (2010), “Accounting for Incomplete Pass-Through,” *Review of Economic Studies*, 77(3): 1192-1230 (A one percent increase in coffee commodity costs leads to a 2% long-run increase in costs to retailers); Céline Bonnet and Vincent Réquillart (2013), “Impact of Cost Shocks on Consumer Prices in Vertically-Related Markets: Marc Ivaldi and Tuba Toru-Delibası (2018), “Competitive Impact of the Air Ticket Levy on the European Airline Market,” *Transport Policy*, 70: 46-52 (cost of new taxation is passed on to consumers in the form of higher ticket prices); Henry Saffer, Daniel Dench, Michael Grossman, and Dhaval Dave (2020), “E-Cigarettes and Adult Smoking: Evidence from Minnesota,” *Journal of Risk and Uncertainty*, 60(3) (cigarette taxes passed through to consumers); Robert K. Kaufmann (2019), “Pass-Through of Motor Gasoline Taxes: Efficiency and Efficacy of Environmental Taxes,” *Energy Policy*, 125 (amount of pass-through of gas taxes varies by state, with companies in some states over-shifting pass through costs); Natalia Fabra and Mar Reguant (2014), “Pass-Through of Emissions Costs in Electricity Markets,” *American Economic Review*, 104(9): 2872-99 (emissions costs are almost fully passed through to electricity prices).

higher than the amount needed to cover the companies' increased costs.¹⁴) The Commission should be skeptical of consolidating companies' claims that cost savings will be passed through to customers in the form of lower prices, innovative service offerings, or better service quality.

This is supported by research across several industries. One comprehensive empirical analysis of merger effects comes from Blonigen and Pierce's NBER study examining merger effects across U.S. manufacturing industries, which not only showed that it led to higher prices, but that efficiency gains themselves were often elusive. They found that "M&As significantly increase markups on average, but have no statistically significant average effect on productivity. The magnitude of the markup increase is economically significant as well: The increase in markups for acquired plants relative to non-acquired plants ranges from 15 percent to over 50 percent of the average markup in the sample."¹⁵ This study establishes that mergers often create market power and lead to price increases. The pattern holds specifically in telecommunications

¹⁴ This practice is known as "over-shifting." As an example, when Wisconsin's increased its tobacco tax, customers ended up paying 100 percent of the costs of the tax as well as a premium of between eight and seventeen percent—in other words, customers saw price increases of between 108 percent and 117 percent of the tobacco tax. The Incidence of Tobacco Taxation: Evidence from Geographic Micro-Level Data," *National Tax Journal*, 62(4): 677-98). The Case of the French Soft Drink Market," *American Journal of Agricultural Economics*, 95(5): 1088-1108 (soft drink industry over-shifts cost changes or excise taxes to customers); Vinish Shrestha and Sara Markowitz (2016), "The Pass-Through of Beer Taxes to Prices: Evidence from State and Federal Tax Changes," *Economic Inquiry*, 54(4): 1946-62 (ten cent increase in beer taxes raises retail prices by about 17 cents); Mark Stehr (2007), "The Effect of Sunday Sales Bans and Excise Taxes on Drinking and Cross-Border Shopping for Alcoholic Beverages," *National Tax Journal*, 60(1): 85-105 (While excise taxes on wine, Cognac, and Liqueur Cointreau are over-shifted to prices, taxes on Gin are exact- or undershifted); Andrew Hanson and Ryan Sullivan (2009), "The Incidence of Tobacco Taxation: Evidence from Geographic Micro-Level Data," *National Tax Journal*, 62(4): 677-98 (Wisconsin's \$1.00 increase in tobacco tax was over-shifted to consumers, who pay the entire amount of the tax as well as a premium of \$0.08-\$0.17 per pack of cigarettes); Dean R. Lillard and Andrew Sfekas (2013), "Just Passing Through: The Effect of the Master Settlement Agreement on Estimated Cigarette Tax Price Pass-Through," *Applied Economics Letters*, 20(4): 353-57 (imposition of \$2.73 tax on e-cigarettes would result in an over-shifted consumer price of e-cigarettes by \$3.63).

¹⁵ Bruce A. Blonigen & Justin R. Pierce, Evidence for the Effects of Mergers on Market Power and Efficiency, *Fin. & Econ. Discussion Series*, Bd. of Governors of the Fed. Reserve Sys., No. 2016-082, 3 (2016), <https://www.federalreserve.gov/econresdata/feds/2016/files/2016082pap.pdf>

markets. Grajek et al.'s analysis of five European wireless mergers found that several mergers produced significant post-merger price increases rather than the efficiency-driven cost savings promised by merging parties.¹⁶ Similarly, Olsen et. al, in a comprehensive survey of merger retrospectives, found a “high confidence that the average price effect of consummated mergers in our sample is positive.”¹⁷

Thus, to the extent that a hypothesized benefit of this merger to consumers in terms of lower prices or increased quality, the Commission must ensure they are real and verifiable, with firm and verifiable merger commitments.

B. Market Concentration Would Enable Price Increases

The merger of Cox and Charter would reduce the number of sizable independent cable operators, making it easier for Comcast (and other remaining MSOs) to benchmark their pricing, promotions, bundling, and rate schedules to New Charter as an industry comparison. With fewer independent peers, Comcast could rely more on parallel conduct rather than competitive differentiation, especially in non-overlapping territories. The consolidation of pricing benchmarks makes parallel moves (rate increases, reduced promotional discounts) more feasible, simplifying rivals’ strategic comparisons and promoting conscious parallelism.

This mechanism has empirical analogs in the airline industry, even when merging carriers lack strong route overlap. For instance, Remer & Orchinik find that some U.S. airline mergers increased fares not only on overlap routes but also on non-overlap routes: “the increase in multi-market contact from each merger caused prices to increase on a large set of non-overlap

¹⁶ Michał Grajek, Klaus Peter Gugler, Tobias Kretschmer & Ion Miscisin, *Static or Dynamic Efficiency: Horizontal Merger Effects in the Wireless Telecommunications Industry*, ESMT Working Paper No. 17-04 (Dec. 19, 2017), <https://ssrn.com/abstract=3116744>.

¹⁷ Andrew Olsen, Reed Orchinik & Marc Remer, *Price Effects in U.S. Merger Retrospectives: A Meta-Analytic Approach*, MIT Sloan Research Paper No. 7161-24, 3 (Sept. 27, 2024), <https://ssrn.com/abstract=4872756>.

routes.”¹⁸ In their analysis, the merged firms in many cases did not previously compete directly in those routes, yet fare hikes followed as the merged carriers gained stronger influence. That evidence suggests that merger-driven consolidation of competitive influence can lead to coordinated or benchmark-based pricing even where direct competition was minimal. This multi-market contact theory has also been studied in the broadband sector, finding evidence that multimarket contact among large players can prevent entry into new markets and degrade quality.¹⁹ Similarly, although Cox and Charter currently operate in geographically distinct broadband and pay-TV territories, the merger could transform the competitive landscape such that New Charter becomes the benchmark for Comcast, increasing the concentration in the industry and thereby enabling parallel behavior.

Further, though Charter and Cox claim that there would not be a loss of head-to-head competition at the local level as a result of this merger, the Public Advocates Office of the California Public Utilities Commission has disagreed. It writes,

The Joint Applicants claim that Charter and Cox have no, or very few, overlapping locations, so the Proposed Transaction will not harm competition. However, FCC broadband data show that Charter and Cox California have 25,503 overlapping locations. At 16,485 of these locations (65%), Charter and Cox California are the only two providers offering speeds of at least 1,000 Mbps download. If the Proposed Transaction is approved, customers in those areas will have access to only a single provider for high-speed service and will have no meaningful choice between providers.²⁰

¹⁸ Reed Orchinik & Marc Remer, What’s the Difference? Measuring the Effect of Mergers in the Airline Industry 1 (Sept. 14, 2023) (working paper), <https://www.haverford.edu/sites/default/files/Department/Economics/Remer-Orchinik-Airlines-01-31-2024-.pdf>

¹⁹ James Priege, “Multimarket Contact and Strategic Entry Decisions,” Sept 25, 2015, https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1308&context=faculty_pubs; Kyle Wilson, “Local Competition, Multimarket Contact, and Product Quality: Evidence From Internet Service Provision,” Nov 17, 2023, https://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1509&context=pomona_fac_pub

²⁰ Protest of the Public Advocates Office to the Joint Application for Approval of the Transfer of Control of Cox California Telcom, to Charter Communications, Application 25-07-016, 13 (September 5, 2025), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M579/K066/579066356.pdf>.

This loss of direct competition would inevitably lead to worse service and higher prices for affected customers.

C. Competitive Pressure from Wireless and Satellite is Minimal

The Applicants' vague invocation of "competitive pressures" from wireless and satellite services is inapt.

The Commission has consistently concluded that mobile broadband cannot replace fixed broadband services. In its most recent Section 706 report, for instance, it stated that “based on the separate use cases for fixed and mobile broadband as well as evidence that consumers tend to subscribe to both services when they can, we find that fixed and mobile broadband services are not full substitutes.”²¹ Industry usage data exposes dramatic disparities between fixed and mobile broadband consumption, with fixed networks supporting much higher usage than mobile networks cannot accommodate. OpenVault's 2024 Broadband Insights Report documents fixed broadband users consuming 698.2 GB per month on average, while mobile users consume only 22 GB monthly--an eleven-to-one ratio that demonstrates fundamentally different service utilities. Power users consume over 1 TB monthly (24.3% of fixed subscribers), with extreme users exceeding 5 TB monthly - levels that would be economically prohibitive and technically unfeasible on mobile networks, which charge significantly more per GB.²² Moreover, an FCC analysis of data caps shows 48.9% of Affordable Connectivity Program subscribers were on mobile plans with data limitations, while major fiber providers offer unlimited service as standard.²³ These different usage and pricing characteristics show that mobile broadband is not in

²¹ Deployment of Advanced Telcoms. Capability to All Americans in a Reasonable & Timely Fashion, 39 FCC Rcd 3247, ¶ 18 (2024).

²² OpenVault, OpenVault Broadband Insights (OVBI) Report: 4Q24 (Feb. 2025), https://openvault.com/wp-content/uploads/2025/02/OpenVault_4Q24_OVBI_Report_v2.pdf.

²³ Data Caps in Consumer Broadband Plans, Notice of Inquiry, 2024 FCC LEXIS 3817, ¶ 13 (2024).

the same product market as cable broadband, meaning it cannot be counted on as a competitive alternative that can help keep prices low.

Likewise, satellite broadband is not a true substitute for fiber because it suffers from capacity bottlenecks (limited bandwidth and waitlists in many regions), higher latency and packet loss that make it unsuitable for gaming, video-conferencing, or other high-bandwidth applications, and higher consumer costs than other forms of access. While it can fill gaps in rural areas, and can be useful in remote and wilderness areas, satellite cannot match fiber's performance, reliability, and affordability.²⁴

While fixed wireless has seen growth in subscribers – there are now 12 million subscribers to fixed wireless services in the US and operators project up to 20 million subscribers by 2028²⁵ – it is only a “good enough” substitute today, appealing to low-income households, and is not expected to meaningfully rival fiber-optic broadband in competitive conditions.²⁶ The best testimony to this fact may be from AT&T's Senior Executive Vice President and CFO Pascal Desroches who said in February 2023:

Look, fixed wireless, in certain cases, it's kind of nice. It's a nice catch product, where we have a copper customer that we're going to get to in the next 12 to 24 months. But long term, it's not a solution you want to -- we want to put a lot of resources behind. Why? It's because it's not a great product, and the customer ultimately is going to reject it. I mean, at

²⁴ Masha Abarinova, Satellite Isn't a Better Replacement for Fiber — Here's Why, Fierce Network (July 24, 2025), <https://www.fierce-network.com/broadband/satellite-isnt-better-replacement-fiber-heres-why>; CWA, Satellite Broadband Is Not a Reliable Broadband Service or an Appropriate Long-Term Solution for the Vast Majority of Unserved and Underserved Locations, https://buildbroadbandbetter.org/system/files/2025-04/satellite_broadband_fact_sheet_for_states.pdf

²⁵ Fitch Rating, “Fixed Wireless Access Growth Disrupts U.S. Telecom Market,” Mar 26, 2025, <https://www.fitchratings.com/research/corporate-finance/fixed-wireless-access-growth-disrupts-u-s-telecom-market-26-03-2025>

²⁶ New Street Research anticipates that FWA will top out at 19 million residential subscribers due to limited capacity and demand, see [3Q24 Broadband Trends](#).

its core, that is our belief. When you look at the amount of bandwidth that is consumed in the home, over time, the customer's experience is going to degrade. And we don't think it's a product that we want to spend a lot of resources on.

Two, when you start to factor in, okay, what is the service being offered at in the marketplace? What is the customer acquisition cost? What is truly the expected lifetime of that customer? You start to pencil out some rough math, it's really hard to say that this is a product that's going to be -- that's going to grow like gangbusters and provide really attractive returns.

And we are -- candidly, we'd much rather take our resources, focus on deploying more fiber. And then also, look, I think our spectrum long term, we think, provides us with a great opportunity to continue to experiment and ultimately roll out a new class of service. Let's not get distracted by chasing empty calories in the near term.²⁷

Fiber's superiority comes down to physics. Fiber-optic broadband enables vastly higher speeds across longer distances compared to fixed wireless, satellite, and (to a lesser extent) coaxial cable. According to engineering consultancy CTC Tech & Telecom, for fiber:

...the transmission range on a single path without amplification is over hundreds of miles. The physical limit of 14,000 GHz in fiber far exceeds the physical limit of the entire broadband usable wireless spectrum, which is about 100 GHz. And with wireless, the range is limited—from about 40 miles in very low frequency bands to only a few hundred feet in some of the high frequency mmWave bands.²⁸

While fixed wireless technologies will continue to improve, they will not match the performance of fiber optic networks because:

- Fixed wireless network coverage is adversely affected by line-of-sight obstructions (including buildings and seasonal foliage) and weather.
- Unlike a fiber network, fixed wireless networks have scalability challenges due to limited availability of spectrum, the need for frequent technology upgrades, and the need to install additional antennas at both customer premises and base stations. An estimated 40

²⁷ AT&T, Inc., Deutsche Bank Media, Internet & Telecom Conference Call Transcript, February 27, 2023, <https://seekingalpha.com/article/4584506-at-and-t-inc-t-deutsche-bank-media-internet-and-telecom-conference-call-transcript>

²⁸ CTC Technology, "Fixed Wireless Technologies and Their Suitability for Broadband Delivery", 51, June 2022, <https://www.benton.org/sites/default/files/FixedWireless.pdf>.

to 80 percent of a fixed wireless network's capital investment needs to be replaced every five years.

- The fastest fixed wireless technologies (such as those that use millimeter-wave spectrum) are largely unsuitable for serving rural communities because of the typical geographic dispersion of addresses and the lack of mounting structures (such as towers or building rooftops).²⁹

Consumer behavior reflects fiber's technical superiority: adoption is very high where wired broadband is available. There were 122.2 million households with a wireline connection available in 2023, according to the FCC, of which 92% had adopted a wireline service.³⁰ This broad adoption of wireline broadband service reflects the inherent technological superiority of a wired connection.

Housing data also provides a compelling data point showing that fiber is the only meaningful competitor to cable. The Brattle Group's analysis from 2014-2021 found that fiber presence increases housing values by 14% in non-urban areas and 17% in urban areas--increases of \$27,061 and \$41,201 per home respectively.³¹ These dramatic value increases reflect consumer recognition that fiber represents a competitive alternative to cable broadband. The FCC has acknowledged this competitive dynamic, finding that "the Applicants alter their pricing and product offerings materially in response to FTTP and FTTN offerings from companies like Google (Google Fiber), Verizon (FiOS), and AT&T (U-Verse) but not in response to other technologies."³² Industry data confirms fiber's unique competitive impact: the Fiber Broadband Association's 2024 survey found that cable providers suffered "a net loss of 33% in areas where

²⁹ Ibid.

³⁰ 2024 FCC Report on the Communications Marketplace, page 10, <https://docs.fcc.gov/public/attachments/FCC-24-136A1.pdf>

³¹ Paroma Sanyal et al., *Economic Benefits of Fiber Deployment* 12, tbl. 2 (The Brattle Grp. Nov. 20, 2024), <https://www.brattle.com/wp-content/uploads/2024/11/Economic-Benefits-of-Fiber-Deployment.pdf>.

³² *Applications of Charter Commc'ns, Inc. et al.*, Memorandum Opinion and Order, 31 FCC Rcd. 6327, ¶ 57 (2016).

fiber was available," demonstrating that only fiber--not mobile, not satellite--creates genuine competitive pressure on cable operators.³³

IV. THE TRANSACTION WOULD HARM LOW-INCOME COMMUNITIES AND DIGITAL EQUITY GOALS

The Charter-Cox merger poses significant risks to broadband affordability and digital equity, particularly for low-income communities already struggling with persistent digital divides. The Applicants' cursory treatment of affordability issues in their public interest statement demonstrates insufficient understanding of these concerns and inadequate commitment to addressing them.

A. The Post-ACP Affordability Crisis Requires Enhanced Protections

The end of the Affordable Connectivity Program (ACP) in June 2024 created a broadband affordability crisis affecting over 23 million low-income households nationwide. Research, including by the Federal Communications Commission, continuously underscores that cost is keeping households in America from accessing consistent broadband services. In December 2023, the FCC conducted a study of ACP recipients. It found that before the ACP benefit, 24.6% of respondents had no internet service and of that group:

- 53.2% (+/- 3.2%) reported they relied on accessing the internet at a public library, school, or business establishment
- 29.9% (+/- 2.9%) reported they relied on accessing the internet service belonging to a person they knew, outside of their household
- 11% (+/- 2.0%) reported they did not have a need to access the internet
- 5.8% (+/- 1.5%) selected "Other" (Open Response)³⁴

³³ Fiber Broadband Ass'n, *Fiber Broadband Association Reports Record Fiber-To-the-Home Deployment in 2024* (Jan. 23, 2025), <https://fiberbroadband.org/2025/01/23/fiber-broadband-association-reports-record-fiber-to-the-home-deployment-in-2024>.

³⁴ Federal Communications Commission, "Measuring the Impact of the ACP: Survey Results" (June 2024), <https://www.fcc.gov/sites/default/files/ACP-Survey-Results.pdf>.

Similar findings were illustrated in John Horrigan’s “Leaving Money on the Table: The ACP’s Expiration Means Billions in Lost Savings,” which stated that among households with ACP recipients:

- 41 percent said they would continue with their service while cutting other household expenses.
- 36 percent said they would downgrade to a cheaper or slower service
- 13 percent said they would cancel their home service altogether.³⁵

Additionally, Pew Research Center data shows that while 98% of high-income households have broadband access, only 57% of households earning under \$30,000 annually maintain consistent broadband service.³⁶ This aligns with multiple studies that have identified cost as the most significant barrier to internet adoption including a 2020 study that found that, “At least half of non-broadband subscribers cite cost (either monthly fee or access devices) as a reason they do not subscribe when offered multiple choices, with a plurality citing cost in follow-up questions about the most important reason for non-adoption.”³⁷ This gap reflects not technological barriers but the simple reality that millions of Americans cannot afford monthly broadband costs that often exceed \$50-100 per month.

Charter was among the largest ACP providers, serving millions of low-income customers through the program.³⁸ However, the company's response to ACP's termination has been inadequate. While Charter offers its Internet Assist program at \$25 per month, this program has

³⁵ John Horrigan, “Leaving Money on the Table: The ACP’s Expiration Means Billions in Lost Savings” (July 2024), <https://www.benton.org/sites/default/files/ACP-survey1.pdf>.

³⁶ Risa Gelles-Watnick, “Americans’ Use of Mobile Technology and Home Broadband” (Jan. 31, 2024), <https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/>.

³⁷ John Horrigan, “Measuring the Gap: What’s the right approach to exploring why some Americans do not subscribe to broadband?” February 2020, <https://www.digitalinclusion.org/blog/measuring-the-gap-by-john-horrigan/>.

³⁸ Ryan Tracy (January 25, 2024), “How One Company Hoovered Up \$3 Billion in Broadband Subsidies”, <https://www.wsj.com/business/telecom/charter-internet-low-income-funding-037a9531>.

restrictive eligibility requirements and provides speeds well below the company's standard offerings.

Cox's affordability programs, ConnectAssist and Connect2Compete, are a bit more expansive as far as *who* can enroll; however, their upload speeds are insufficient for modern households and fall short on families who need to simultaneously need to use video conferencing for work, remote learning for children, and telehealth consultations. Additionally, the price of ConnectAssist is \$30, which is also out of reach for many families.

The merger would eliminate competitive pressure that might otherwise encourage either company to improve their low-income offerings. It would also create opportunities for the merged entity to harmonize their programs in ways that reduce rather than expand affordable access. Without binding commitments to maintain and enhance affordability programs, this consolidation could worsen digital divides at a critical moment.

B. Digital Discrimination Concerns Require Comprehensive Guardrails

Section 60506 of the Infrastructure Investment and Jobs Act prohibits digital discrimination based on income, race, ethnicity, religion, or national origin. The Commission's implementing rules require providers to ensure equal access to telecommunications services across all communities they serve. The Charter-Cox merger could raise digital discrimination concerns, whether intentional or unintentional, that require careful Commission scrutiny.

In particular, concerns have been raised about Charter's offerings in low-income communities related to pricing structures and network investment or upgrade strategies.³⁹ The merged entity could even incentivize discriminatory practices due to the elimination of competitive pressure,

³⁹ California Community Foundation, (October 2022), "Slower and More Expensive: Sounding the Alarm-Disparities in Advertised Pricing for Fast, Reliable Broadband," https://cityclerk.lacity.org/onlinedocs/2022/22-1111-S9_misc_12-1-2022.pdf.

consolidated market power, and economic incentives that disfavor investment in underserved communities. Currently, the threat of a market entrant provides some discipline on pricing and service quality decisions, but consolidation removes this and actually frees a new entity to make deployment and investment decisions based on profit maximization and it is often low-income communities that bear the brunt of such a decision. In particular, if the company is faced with high rates of service disconnection due to an area being “subscription-vulnerable” because of affordability challenges or the decreased likelihood to purchase premium services, a company’s priorities for upgrades will likely not be those who are economically vulnerable.

Given these risks, the Commission must work to actively prevent digital discrimination through merger conditions and enforcement mechanisms because the agency has the statutory authority to ensure increased market concentration does not deepen the digital divide.

C. Required Conditions for Addressing Digital Equity Concerns

If the Commission were to consider approving this transaction despite its substantial harms, comprehensive digital equity conditions would be essential. These should include:

Enhanced Affordability Programs: The merged entity should be required to offer low-income broadband plans at no more than \$30 per month with no installation fees, equipment charges, or credit checks. Eligibility should extend to households at or below 200% of the Federal Poverty Guidelines or participating in a federal assistance program that is consistent with former ACP standards. The program should provide the same clearly defined speed tiers and customer protections available to all other subscribers.

Enhanced Broadband Adoption Programs: The merged entity should be required to expand their digital skills and digital literacy programs across their expanded footprint. Access to affordable broadband is critical for closing the digital divide, but households also need the skills and confidence to safely navigate the digital world. These programs should be offered at no-cost to participants, offered at accessible and trusted community organizations, and address the full

spectrum of online experience include basic computer usage, telehealth platform usage, and job reskilling and upskilling,

Non-Discrimination Monitoring: The merged entity should be required to publish granular service availability and pricing data by census block, undergo annual third-party audits comparing service quality across neighborhoods with similar cost characteristics, and commit to non-discriminatory marketing and promotional practices with no zip-code-based disparities.

Community Investment Requirements: The company should be required to make specific commitments for network upgrades and service expansions in underserved communities, with binding timelines and enforceable penalties for non-compliance.

V. THE TRANSACTION WOULD HARM WORKERS

Workers at Charter and Cox face a more uncertain future if this transaction is approved. Based on a review of the companies' labor records and statements related to this transaction, we find that the parties are planning to reduce benefits for long-term Cox employees; Charter has failed to fulfill previous merger-related jobs commitments; Charter has recently reduced and restructured its customer service workforce; the parties' technician workforce has faced extensive wage theft and misclassification; and Charter's anti-union activity has chilled workers' ability to exercise freedom of association. This record demonstrates that the parties' public interest claims related to its employment practices are not made in good faith. The transaction would further entrench the company's market power over workers and should be denied.

A. The Parties Plan to Reduce Benefits for Long-Term Cox Employees

The combined company plans to reduce benefits for Cox employees, which could hinder the parties' ability to maintain a stable workforce and achieve claimed benefits of the transaction, and contradicts claims in the public interest statement about the New Charter offering "robust" benefits. An internal FAQ shared with Cox employees states that employees hired before 2017 will lose their defined pension plan and all workers will lose eligibility for retiree healthcare after the deal goes through.⁴⁰

⁴⁰ Cox Communications & Charter Communications, [General FAQs](#), July 10, 2025.

B. Charter Has Not Fulfilled Previous Merger-Related Employment Commitments

Charter Communications has a recent history of making bold claims of job creation when seeking support for new acquisitions. In 2017, Charter Communications Chairman Tom Rutledge attended a meeting with President Trump to tout the 20,000 new jobs that would be created through Charter’s acquisitions of Brighthouse Networks and Time Warner Cable. The job growth, Rutledge claimed, would be driven by new network investments and bringing call center work back to the United States.⁴¹ Charter never met its commitment for 20,000 new jobs. In December 2016, after the acquisitions, Charter employed 91,500 workers. According to Charter’s 10-K SEC filings, the highest employee count since 2017 was in 2022 when the company employed 101,700 – achieving barely half of its job creation claims. As of its most recent filing in December 2024, Charter employed 94,500 workers.⁴²

C. Charter’s Cuts to Customer Service Jobs Undermines Public Interest Claims

Charter recently cut a significant number of customer service jobs and restructured its customer service operations, raising questions about the parties’ claims that “New Charter will extend its industry-leading jobs practices across the combined company, with a 100% U.S.-based sales and customer service employee workforce.”⁴³ In June 2025, Charter announced planned layoffs of 1,200 workers at four call centers.⁴⁴ In February 2024, Charter permanently closed 3 call centers in Milwaukee, WI; Syracuse, NY; and Cincinnati, OH laying off nearly 650 workers

⁴¹ Eggerton, John, “Trump, Charter's Rutledge Hail Call Center Repatriation, Investment,” *Broadcast and Cable*, 3/24/2017, <https://www.nexttv.com/news/trump-charters-rutledge-hail-call-center-repatriation-investment-164387>.

⁴² Company 10-K filings.

⁴³ Public Interest Statement, page 65.

⁴⁴ Frankel, Daniel, “Charter Lays Off More Than 1,000 Call Center Employees Amid Continued Consolidation,” *NextTV*, 6/20/2024. <https://www.nexttv.com/news/charter-lays-off-more-than-1000-call-center-employees-amid-continued-consolidation>

and shifting work to other locations.⁴⁵ These actions suggest Charter is not committed to maintaining a stable workforce and the workers who transfer from Cox may face increased job insecurity.

D. The Parties' Violations of Employment Law Undermine Public Interest Claims

Both Charter and Cox rely on a heavily outsourced technician workforce. The cable companies and their subcontractors have faced litigation over misclassification of workers as independent contractors and wage theft, contradicting public interest claims about the quality of jobs the parties create.

Together, Charter and Cox have paid more than \$45 million in penalties for employment-related legal violations, safety violations, or employment-related settlements over the past fifteen years.⁴⁶ For example, Cox Communications settled a wage theft class action suit in November 2021 for \$1.85 million that alleged the company was rounding down hours worked and not providing breaks for a group of 500 technicians in California.⁴⁷

Charter reports that its contracted workforce completes approximately 15% of the company's service installations, which suggests a contracted installation technician workforce of approximately 5,000 workers.⁴⁸ That figure does not include the number of contracted

⁴⁵ Frankel, Daniel, "Charter Says It's Shifting and Expanding Its Call Centers to Keep Up With Its Changing Business, Has No Plans to Move Them Back Overseas," *NextTV*, 2/1/2024, <https://www.nexttv.com/news/charter-says-its-shifting-and-expanding-its-call-centers-to-keep-up-with-its-changing-business-has-no-plans-to-move-them-back-overseas>.

⁴⁶ Good Jobs First violation tracker, Accessed 9/26/2025, (\$2,516,575 in fines for Cox Communications, \$42,719,088).

⁴⁷ *Christone Feltz v. Cox Communications Cal., LLC et al.* Case No. CV 19-2002 JVS, (JDEx)<https://www.casemine.com/judgement/us/62f9db76a8633330f61f7831>.

⁴⁸ Charter 2024 Annual Report: "In 2024, our in-house field operations workforce handled approximately 85% of our customer premise service transactions. In addition, we have been growing our in-house construction teams to perform a portion of our network expansion initiatives." The bio of Tom Monaghan, EVP of Field Operations claims he manages 30,000 technicians. If all 30,000 are in-house techs and 15% of the total field tech work is outsourced, then there are approximately 5,300 contractors.

technicians that work on outside plant construction. In a factsheet for Labor Service Suppliers, Charter outlines requirements for providers of labor services and states, “companies must provide a minimum mix of 70% W-2s for 1099 workers,” making clear that Charter allows its contractors to continue the practice of hiring technicians as independent contractors.⁴⁹ Cox does not disclose information regarding its contracted workforce.

Contractors that work for Charter and Cox have been involved in extensive litigation in recent years over the misclassification of their employees as independent contractors. Court decisions show that both cable companies outsource work to contractors that routinely misclassify employees as independent contractors and engage in wage theft.

- In October 2022, a Rhode Island court found that seven technicians working for a Cox Communications contractor, M+M Communications, were misclassified as independent contractors and deprived of minimum wages, minimum shift pay, and overtime pay during their employment and awarded more than \$2 million (wages, liquidated damages, fees). While Cox was dismissed as a joint-employer, the case determined misclassification by Cox’s subcontractor.⁵⁰
- In May 2022, the Ohio Supreme Court upheld the Ohio Bureau of Workers' Compensation’s determination that a Time Warner Cable (acquired by Charter in 2015) contractor, Ugicom, misclassified installers as independent contractors and owed about \$341,000 in workers’ comp premiums.⁵¹
- In July 2020, an installation technician working for a Cox subcontractor, Quality Technologies, alleged that he was misclassified as an independent contractor and attempted to represent a class of similarly situated technicians. A federal district court ruled that the arbitration provision in the contract the worker signed precluded litigation over the issue and required him to go through arbitration with the company instead.⁵²

⁴⁹ Charter Communications, “Requirements for Field Operations Labor Service Suppliers,” May 2022,

https://corporate.charter.com/sites/default/files/2022-09/Charter_Fact%20Sheet_Field%20Ops%20Service%20Requirements_051022_0.pdf.

⁵⁰ Juan Sigui, et al. v. M+M Communications, Inc., et al., C.A. No. 1:14-CV-00442, https://www.govinfo.gov/content/pkg/USCOURTS-rid-1_14-cv-00442/pdf/USCOURTS-rid-1_14-cv-00442-0.pdf.

⁵¹ State ex rel. Ugicom Enterprises, Inc. v. Morrison (Ohio Bureau of Workers' Compensation) — Ohio Supreme Court, May 24, 2022.

⁵² Roberts v. Cox Communications Inc., 3:20-CV-00392-FDW-DSC, 5/19/2021, <https://www.casemine.com/judgement/us/626f74aa714d58c85519c42a>.

- In November 2016, the US Department of Labor found drivers/“market contractors” working for Charter contractor, CES, were misclassified. CES agreed to pay \$350,000 in back wages & liquidated damages under the FLSA.⁵³
- In July 2015, the US Department of Labor announced a \$350,150 settlement with Cox contractor End 2 End Communications for failure to pay overtime to 246 employees who were paid on a per task basis.⁵⁴
- In 2015, an Arkansas Court of Appeals found that a technician installing Charter Communications services for TNT Cable Contractors was misclassified as an independent contractor. Christopher Singleton, a technician working for TNT, applied for unemployment benefits, which prompted an investigation by the Arkansas Department of Workforce Services concerning TNT's classification of cable installers as independent contractors, rather than as employees. TNT maintained that it was merely a “broker” of technician labor that sourced independent contractors to complete installs for Charter based on a fixed pay-per-job matrix. TNT Cable Contractors appealed the decision multiple times to the appellate court which made the final determination.⁵⁵

E. Charter’s Anti-Union Activity Suppresses Workers’ Rights

Charter has engaged in extensive union-busting against workers who have sought to organize and collectively bargain, suggesting the parties are likely as New Charter to use their enhanced market power to further suppress workers’ freedom of association. In the last five years, workers and unions have filed eighteen unfair labor practice charges against Charter at the National Labor Relations Board (NLRB).

Charter’s recent union-busting activity includes:

- In 2021, Charter was ordered to pay \$30,000 in back wages and reinstate an employee who was fired for protected organizing activity in Colorado Springs, CO.⁵⁶

⁵³ U.S. DOL, “Minnesota Cable Equipment Recovery Company to Pay \$350K to 41 Drivers, Market Contractors Misclassified as Independent Contractors.” November 10, 2016, <https://www.dol.gov/newsroom/releases/sol/sol20161110>.

⁵⁴ U.S. DOL v. Cable Equipment Services, Inc. (CES) — D. Minn., Nov. 10, 2016, <https://www.dol.gov/newsroom/releases/whd/whd20150730>.

⁵⁵ TNT Cable Contractors, Inc. Appellant V. Director, Department Of Workforce Services, And Chris Singleton Appellees. February 11, 2015. No. E-14-224,E-14-224, <https://case-law.vlex.com/vid/tnt-cable-contractors-inc-887517123>.

⁵⁶ NLRB Case Number 27-CA-247561, <https://www.nlr.gov/case/27-CA-247561> ; Good Jobs First Violation Tracker, <https://violationtracker.goodjobsfirst.org/violation-tracker/co-charter-communications-llc>.

- In 2019, Charter was ordered to pay \$229,847 in damages to three employees who were terminated or disciplined due to their protected union organizing activity in Bay City, MI.⁵⁷
- In March 2017, International Brotherhood of Electrical Workers Local 3 members in New York City went on strike against Charter. The former Time Warner Cable employees struck in response to Charter’s cuts to healthcare and pension benefits after the Time Warner Cable acquisition. The company refused the union's proposals and replaced its employees with strike breakers. Charter went as far as to demote a supervisor to a represented title to circulate a petition to decertify the IBEW’s representation of the employees.⁵⁸ In an NLRB election that included a large portion of the replacement workers, the workers lost union representation. Nearly five years after the strike began, the IBEW settled with the company and ceased strike activity.⁵⁹

Thus, Charter in particular has a record of chilling workers’ exercise of freedom of association.

Together the parties’ labor record raises serious questions about their public interest claims related to employment matters.

F. Conditions Are Necessary to Protect Labor Markets

In order to ensure well-functioning labor markets for telecom workers, the Commission should require the parties to commit to no reductions in employment for an extended period of time, at least seven years, and adopt a policy of neutrality towards union organizing.

VI. Merger Commitments Must Address Transaction Harms, Not Serve Political Agendas

While petitioners believe that merger conditions are often necessary to protect important public interest concerns, the needs of labor, and consumer welfare, the Commission must ensure that any such conditions are tied to the transaction and are not used to extract unrelated ideological or political commitments from merging parties. The Commission’s authority is circumscribed both by constitutional limits and by the statutory requirement that conditions be

⁵⁷ NLRB Case Number 07-CA-140170, <https://www.nlr.gov/case/07-CA-140170> ; Good Jobs First Violation Tracker,

<https://violationtracker.goodjobsfirst.org/violation-tracker/mi-charter-communications-llc>.

⁵⁸ Sainato, Michael, “When a Company Tries to Decertify Its Union,” *In These Times*, 2/25/2019, <https://inthesetimes.com/article/charter-communications-strike-workers-replacement-decertify-spectrum-brand>.

⁵⁹ IBEW Local 3, Press Release, 6/2/2022, <https://local3ibew.org/news/spectrum-strike-comes-end>.

directed to preventing transaction-specific harms. Thus, the Commission may not use merger review as a vehicle to impose restrictions on editorial discretion, diversity initiatives, or other forms of expressive activity. Any attempt to solicit or accept such conditions would be ultra vires and unconstitutional. Merger review must remain viewpoint-neutral, tethered to communications policy and competition law, and focused on protecting consumers and promoting the public interest.

A. Content-Based Restraints Are Presumptively Invalid

Content-based restraints on speech are “presumptively unconstitutional” and subject to strict scrutiny.⁶⁰ Government efforts to enforce “neutrality” among viewpoints are inherently content-based, because they interfere with private editorial choices about which views to convey.⁶¹ Such conditions cannot survive strict scrutiny because they do not serve a compelling government interest, nor are they narrowly tailored to a merger-specific harm.

B. Lack of Nexus to Competitive Harms

Even aside from the First Amendment problems, viewpoint-based conditions fail the “essential nexus” requirement.⁶² The Supreme Court has been clear that government agencies may not leverage permitting or approval authority to demand unrelated concessions.⁶³ Thus, any conditions imposed by the FCC must directly address harms flowing from the transaction. Restrictions on matters such as DEI policies, editorial decisions, or news content bear no nexus to harms created by consolidation in the broadband market and therefore fall outside the scope of lawful merger remedies.

⁶⁰ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

⁶¹ *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2405 (2024) (explaining that compelled neutrality alters platforms’ “choices about the views they will, and will not, convey”).

⁶² *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837 (1987).

⁶³ *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013).

C. The Unconstitutional Conditions Doctrine

The unconstitutional conditions doctrine prohibits government from conditioning regulatory approval on the waiver of constitutional rights. As the Supreme Court has explained, “[Government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially his interest in freedom of speech.”⁶⁴ Conditioning merger approval on ideological neutrality or on the abandonment of expressive discretion would be unconstitutional.

D. Enforceability Limits

Unconstitutional conditions are unenforceable even if accepted by the parties. The fact that the government chooses to cloak its condition in the form of a regulatory approval does not exempt it from First Amendment scrutiny. As the Supreme Court has explained, “Congress cannot recast a condition on funding as a mere definition of its program” in an attempt to sidestep First Amendment limits.⁶⁵ Likewise, the FCC may not reframe compelled ideological commitments as “voluntary” merger conditions in order to evade the same constitutional restraints. Nor may the Commission retaliate against parties for refusing to comply with unlawful obligations, as such retaliation itself constitutes a First Amendment violation.⁶⁶

The Commission’s own precedent underscores this principle. In prior transactions, such as Charter’s 2016 acquisition of Time Warner Cable and Bright House Networks, the Commission imposed conditions directly tailored to merger-specific harms, including

⁶⁴ *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Similarly, in *Agency for Int’l Dev. v. Alliance for Open Society Int’l, Inc.*, 570 U.S. 205, 218 (2013), the Court struck down compelled ideological pledges as conditions of program participation, holding that government may not require recipients to “pledge allegiance” to its policy views.

⁶⁵ *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 547 (2001).

⁶⁶ *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

prohibitions on data caps, usage-based pricing, and paid interconnection. Those safeguards addressed concrete risks of consumer harm and anticompetitive conduct flowing from consolidation of broadband providers. By contrast, viewpoint-based or ideological restrictions bear no relation to the harms presented by this transaction. They would neither promote competition nor protect consumers, but instead would unlawfully intrude into protected expressive choices.

Conclusion

For the foregoing reasons, the Commission should deny the transaction as proposed.

Respectful submitted,

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