

**Legislative Commission on Rural
Resources and the New York State
Assembly Standing Committee on
Local Governments**

Rural Broadband

**Testimony of the New York State
Department of Public Service**

September 17, 2019

Introduction:

Good morning Chairs May, Santabarbara and Thiele and other distinguished members. My name is Thomas Congdon, Executive Deputy of the Department of Public Service.

Availability and access to broadband is crucial to driving economic growth and opportunity, and we welcome this Committee's focus on rural New York communities that may be unserved or underserved by this essential service. While states do not directly regulate broadband, New York's Public Service Commission, and the staff at the Department of Public Service, are helping expand access to broadband services. Under state law requiring cable and telephone mergers to produce a public net benefit along with other regulatory initiatives, the Commission has required substantial private investment in broadband infrastructure throughout New York. Commission-ordered network expansions by Charter/Spectrum, Altice, FairPoint, and Verizon are well underway, and the Department's oversight of these projects will continue until they are complete, which is helping achieve Governor Andrew M. Cuomo's vision for universally available broadband. The Department works closely with Empire State Development's Broadband Program Office to maximize coordination of the projects we oversee with projects underway with BPO funding.

Today I will briefly summarize the Department's activities that are contributing to a nation-leading and unprecedented broadband buildout throughout the State.

Charter:

Charter is the largest cable provider in the State. It provides digital cable television, broadband internet and VoIP telephone service to more than two million subscribers in New York State in more than 1,150 communities, with a potential customer base of five million households in its franchise areas. On January 8, 2016, the Commission approved Charter's acquisition of Time Warner Cable, subject to several regulatory conditions to advance the public interest. The most notable conditions for today's discussion are a requirement to increase broadband speeds to 300 Mbps by the end of 2019, and a requirement to build out its network to pass an additional 145,000 un-served or under-served homes and businesses in the State's less densely populated areas within four years of the closing of the transaction.

In early 2017, the Commission determined that Charter would miss its first milestone to pass 36,250 premises by May 18, 2017 and commenced enforcement proceedings. A settlement was approved by the Commission in September 2017 that established a new enforceable buildout schedule with interim milestones and required Charter to pay \$1 million for missing the first milestone, and up to \$3 million for each of the remaining four milestones going forward.

In early 2018, Charter and Department staff disagreed on the eligibility of certain addresses claimed by Charter, including New York City addresses and BPO-awarded addresses, which led to the Commission issuing several additional enforcement orders, culminating in a July 2018 order revoking the Commission's approval of the merger. After months of intense negotiations, on April 19, 2019 Charter and staff reached a new settlement, which the Commission approved on July 11, 2019.

This summer's settlement agreement includes the following compliance obligations:

- Charter is required to complete the buildout of 145,000 passings entirely in Upstate New York and remove all New York City addresses it had previously claimed for compliance purposes;

- Charter is restricted to only a small number of addresses that overlap with BPO-awarded areas;
- Charter is required to pay \$12 million for further broadband buildout or buildout by other companies in addition to the 145,000 passings; and
- Charter must comply with a new buildout schedule that includes enforceable milestones every four months, with a final project completion by September 21, 2021. The penalty for missing any milestone is \$2,800 per passing, and any funds collected through this mechanism will also be used for additional broadband buildout.

The Department estimates Charter will invest between \$600 million and \$700 million to complete the buildout pursuant to the 2019 settlement, more than double the public benefit value estimated by the Commission in its 2016 merger approval. As of the time of the settlement, Charter had passed approximately 65,000 of the required 145,000 addresses across the State. Charter is required to pass more than 76,000 homes and businesses by September 30, 2019.

Under the settlement, Charter must maintain the communications plan and web portal established in the 2017 settlement agreement which provides local governments and individual consumers with information to determine whether they are included in Charter's revised buildout plan. Consumers can see if their address is included in Charter's broadband expansion plan service area by going to <http://www.bldlkup.com/>.

Altice and FairPoint:

In June 2016, the Commissions approved Altice's acquisition of Cablevision and in June 2017 Consolidated Communication Holding's acquisition of FairPoint both requiring system buildout and service improvements. Cablevision had nearly two million customers and served Long Island, New York City and the lower Hudson Valley. FairPoint and its subsidiaries had nearly 23,000 customers and served Chautauqua, Columbia, Dutchess and Rensselaer counties.

The Commission required Altice to provide cable facilities, without extension fees, to all unserved or underserved residential and non-residential premises in the Town of Milan, Dutchess County, and to make a good faith bid into the BPO program to provide broadband service to the Barrier Island communities of Oak Beach and Gilgo Beach.

For the remainder of Cablevision's New York service areas, the Commission requires Altice to establish a fund to absorb customer line extension fees that otherwise would be assessed for the construction of cable facilities. Altice has completed its broadband expansion in the Town of Milan (approximately 730 locations) and to both Barrier Island communities of Oak Beach and Gilgo Beach. With regard to line extensions, Altice has extended its network to an approximate 45,166 households and small businesses at an estimated total cost of nearly \$27 million since the close of the transaction through June of this year.

For Consolidated, in addition to requiring them to fulfill prior commitments with the BPO, the Commission required a minimum investment of \$4 million in network reliability and service quality improvements including expansion of its Digital Subscriber Line (DSL) internet access service to a minimum of 300 additional locations, with an emphasis on the Taconic service territory. This approval provided enhanced service for customers in Chautauqua, Columbia, Dutchess and Rensselaer counties. Consolidated completed the BPO commitments in March of this year to bring broadband service to approximately 10,300 locations in the Upstate, Mid-Hudson, and Western parts of the State.

Verizon:

In a July 12, 2018 Order, the Commission approved a Joint Proposal (JP) between Verizon, the Department of Public Service, the Communications Workers of America, District 1 and the Public Utility Law Project of New York, Inc. that addressed service quality problems. The JP requires Verizon to make fiber-based broadband service available to certain additional households in the areas covered by any BPO grants it receives, beyond those households required under the terms of BPO grants it received. This commitment will result in approximately 20,500 additional houses being served by its fiber-based broadband network.

The JP also required Verizon to make fiber-based services available to 10,000 – 12,000 homes and businesses, approximately 4,000 of which would be in the Midstate and Upstate regions, within one year of Commission adoption of the JP.

Verizon has made fiber-based services available to 11,569 residence and business customers as of July 8, 2019 – 3,661 of those are located in the Upstate Region.

Next Generation Wireless:

The Commission has also taken actions to facilitate private investment in next generational wireless infrastructure that will further expand broadband coverage. Wireless carriers are on the cusp of deploying their next generation of wireless networks, known as 5G, which will provide high speed broadband over wireless networks. Wireless carriers design, build, own, monitor, and maintain small cell and distributed antenna system networks in New York. These networks are constructed and used by Federal Communications Commission licensed wireless carriers to serve the public in many areas of the State, and the deployment of the infrastructure is typically co-located on other pre-existing infrastructure such as utility poles, lamp posts, and buildings. One of the barriers to 5G deployment is regulatory and cost uncertainty regarding how the carriers access this pre-existing infrastructure.

In March, the Commission acted to eliminate one of these barriers by making it easier and less costly for telecommunication companies to attach wireless devices to existing utility poles. As a result, wireless companies will be able to improve broadband capabilities and roll-out of the new generation of cellular mobile communications that will provide greater data service functions, higher system capacities, and better device connectivity.

Gaining access to utility poles is essential to 5G deployment, as well as to improving coverage and capacity for existing 4G networks. The Commission's action in March provides certainty of a clear regulatory framework which the industry believes will result in substantial private investment in 5G deployment.

Franchise Agreements:

Approving cable franchise agreements promotes consumer choice and provides new service offerings in the respective communities while enhancing competition in the telecommunication marketplace. In the past 18 months the Commission has approved 25 original franchise agreements across the State.

The availability of state-of-the-art telecommunication services is vital for urban and rural communities, alike. Approving these original franchise agreements promotes consumer choice and provides new service offerings in the respective communities while enhancing competition in the telecommunication marketplace.

Importantly, the Commission's confirmation of these cable franchises authorizes construction of facilities to be used for cable television service, which will be bundled with other telecommunications services, including broadband internet service. In most cases, the cable lines will be installed on existing utility poles located in existing rights-of-way.

In closing, broadband is crucial to driving growth, improving our education system, and connecting New Yorkers to the 21st century global economy. Broadband remains an essential component for creating and sustaining economic opportunity in urban and rural areas throughout New York State, by connecting businesses with consumers and markets around the globe. The Department recognizes the importance of this effort to ensure people are connected.

Thank you. We'd be happy to answer any of your questions.