Upsides to the Charter Merger

The FCC was right to approve the cable merger – as long as its conditions are met.

By Steven S. Ross / *Broadband Communities*

There's a new broadband giant in town. The Charter merger with Time Warner Cable and acquisition of Bright House Networks, for $90 billion in cash, debt assumption and stock, combines 19.4 million broadband subscribers in almost 40 states, creating the second-largest broadband internet provider in the United States. It also combines 17.3 million video customers to create the nation's third-largest video provider.

As there was almost no overlap in the three entities' service areas, customers will see no reduction in direct competition. In most places, broadband and video are duopolies at best – typically a phone company and a cable company competing with legacy technologies.

The merger solves – at least temporarily – a problem long recognized by owners of the multiple-dwelling-unit buildings that TWC serves. TWC inherited so much debt and tax liability when it was cut away from Time Warner (more than $22 billion in debt, $12 billion in future taxes owed) that it has been hard-pressed to provide uniformly good service. Although TWC expanded its network to serve 400,000 more homes from 2013 through the end of 2015, many customers get only 2 Mbps internet connections, according to TWC's filings – a tenth the speed the FCC considers as "broadband."

TWC had just $1.1 billion cash on hand at the end of 2015 – two weeks' operating capital – and half of that was due suppliers. Higher interest rates would erase that margin. Talk about living paycheck to paycheck.

Those problems are now Charter's. The company has a good reputation for service. However, the FCC notes that, at triple its previous size, Charter faces different incentives with different resources "that could lead it to hamper or prevent its current and future online video rivals from expanding, becoming more competitive or starting up in the first place."

In response, Charter says it views online video distributors as driving broadband demand and would not engage in actions to undermine their viability. Consumer advocates worry that Wall Street will demand that Charter milk its assets and that Charter, now heavily debt-laden, would have to comply.

Charter could use its broadband network or its increased bargaining position with content providers to disadvantage smaller competitors. The FCC has banned such activities for the next seven years and says it will monitor to ensure that Charter meets the letter and spirit of the requirements. Sports broadcasting will probably be an early battleground. TWC has 17 regional sports networks and, with Bright House, owns more than 6 percent of MLB.

The FCC wants Charter to offer a low-cost broadband option and add 2 million homes to its service areas, half of them by overbuilding competitors. Will this lead to competition with small carriers or will it bless customers with real competition among the majors?

Some of that overbuilding will apparently be in California, where the state regulator wants Charter to provide service to low-income communities. To obtain California's approval of phone service licenses, Charter pledges to provide at least 30 Mbps download/4 Mbps upload at an initial price of $14.99 per month to households that have children enrolled in the National School Lunch Program and to seniors who receive Supplemental Security Income. Charter will make a good-faith effort to enroll 350,000 low-income California broadband customers within five years.

The FCC prohibited Charter from imposing data caps or charging usage-based pricing for residential broadband for the next seven years. To prevent Charter from raising prices to the companies that deliver internet traffic to its customers, the FCC expanded Charter's existing free interconnection commitments; operators will qualify more easily and may increase their traffic and expand their services faster before needing to pay.

In coordination with the Department of Justice, the FCC prohibited Charter from entering into or enforcing contractual terms that prevent programmers from distributing content online or penalize them for doing so. Again, this is for seven years or until a more business-friendly administration appears.

The merger has two extra potential benefits for consumers. Advance Publications, which owned Bright House, gets a significant amount of money to invest in new digital services. And TWC, a formidable advocate for state laws that restrict municipal broadband networks, even in places where it could not improve its own service, has been merged out of existence. ❖

Contact the Hawk at steve@bbcmag.com.