

Writer's Direct Dial Number: (850) 521-1706  
Writer's E-Mail Address: bkeating@gunster.com

February 10, 2021

**E-PORTAL FILING**

Mr. Adam Teitzman, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

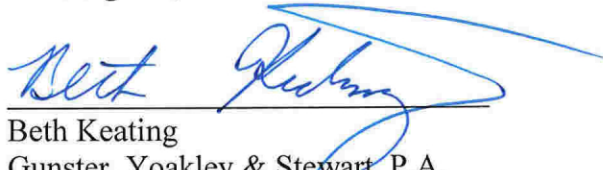
**Re: Docket No. 20210013-TX - In re: Application for designation as an eligible telecommunications carrier to receive rural digital opportunity fund auction (Auction 904) support for voice and broadband services and request for expedited consideration, by Bright House Networks Information Services (Florida), LLC.**

Dear Mr. Teitzman:

Attached for filing, please find the attached Supplemental Authority in Support of Application of Bright House Networks Information Services (Florida), LLC for Designation as an Eligible Telecommunications Carrier.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions or concerns.

Kind regards,

  
Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

Enclosure (Supplemental Filing)

Cc:// Office of General Counsel (Murphy)

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of	)	Docket No. 20210013-TX
	)	
Application of Bright House Networks	)	
Information Services (Florida), LLC for	)	
Designation as an Eligible	)	
Telecommunications Carrier to Receive Rural	)	
Digital Opportunity Fund Auction (Auction	)	
904) Support for Voice and Broadband Services	)	

**SUPPLEMENTAL AUTHORITY IN SUPPORT OF APPLICATION OF BRIGHT HOUSE  
NETWORKS INFORMATION SERVICES (FLORIDA), LLC FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

---

Bright House Networks Information Services (Florida), LLC (“Charter”) respectfully submits this supplemental authority in support of its application for designation as an eligible telecommunications carrier (“ETC”) filed in the above-captioned docket on January 6, 2021.

**EXECUTIVE SUMMARY**

A question has arisen as to whether Charter is a “telecommunications company” as defined by Florida law. To be a telecommunications company, the applicant must: (1) offer two-way telecommunications service; (2) to the public for hire; (3) within this state; and (4) by the use of a telecommunications facility. As we show below, Charter meets each of those four criteria; therefore, it is a telecommunications company.

Although Charter’s corporate affiliates offer a retail VoIP service that is not a telecommunications service, Charter offers switched access service and local interconnection service that, without a doubt, *are* telecommunications services. Further, Charter offers these services to the public for hire by the use of mixed-use facilities that also include telecommunications related equipment and facilities. Charter therefore meets the definition of a

“telecommunications company” under Florida law, which in turn makes it eligible for designation as an ETC.

#### SUPPLEMENTAL AUTHORITY

**A. Charter has been a certificated telecommunications provider in Florida for 20 years.**

Charter is a Delaware limited liability company registered with the Florida Secretary of State to transact business in the State of Florida. It is also certificated as a competitive local exchange carrier (“CLEC”) by the Florida Public Service Commission. It has held its CLEC certificate since 2001.

In the present proceeding, Charter has applied to the Commission for designation as an ETC. It seeks this designation as part of its obligations as a winning bidder under the FCC’s Rural Digital Opportunity Fund (“RDOF”) Phase I Auction. By statute, any entity seeking designation as an “eligible telecommunications carrier” in Florida must first be a “telecommunications company.” West’s F.S.A. § 364.10(1)(a). A question has arisen as to whether Charter is in fact a “telecommunications company,” despite having held a certificate from the Commission since 2001.

The Florida statute defines a telecommunications company as any

[C]orporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.

West’s F.S.A. § 364.02(13).

As an initial matter, we note that the term “corporation” includes any “company.” *Id.* at (6). There is no dispute that Charter is a “corporation” as defined by the statute. Beyond that, the statutory definition of “telecommunications company” comprises four elements:

1. The offering of two-way telecommunications service;
2. To the public for hire;
3. Within this state; and
4. By the use of a telecommunications facility.

The question is whether Charter meets each of these four statutory criteria. As we show below, it does.

**B. Charter offers two-way telecommunications service in this state.**

At the outset, we note that Charter and its affiliates offer a variety of services, some of which *are* regulated telecommunications services and some of which *are not*. For example, it has been suggested that Charter offers retail VoIP and broadband services to Florida customers. This is something of a misstatement. Charter does not directly offer VoIP or broadband services to end-user customers today. These services are offered by Charter's sister companies, which are separate legal entities. As a participant in RDOF, Charter will ultimately be responsible for offering VoIP and broadband services within its service area, but the FCC's RDOF rules expressly permit an ETC participating in the program to offer those services through affiliated entities and Charter intends to do so in Florida.<sup>1</sup>

Charter, on the other hand, offers services that *are* telecommunications services under Florida law – in particular, wholesale switched access service and local interconnection service. *See In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC*

---

<sup>1</sup> *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and other Procedures for Auction 904*, FCC 20-77 at ¶¶ 138-139, 2020 WL 3166244 (June 11, 2020) (providers may satisfy RDOF obligations by “offering [] service through an affiliate...”).

Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (March 1, 2007) (“*In re Time Warner Cable*”) (holding that switched access and local interconnection services are telecommunications services).

Charter’s telecommunications services are described in its tariffs available on the website of its parent, Charter Communications, Inc., at [www.spectrum.com/policies/telephone-tariff](http://www.spectrum.com/policies/telephone-tariff) and in its reports previously accepted by the Commission. Charter’s Access Services Price List, for instance, describes the “regulations and rates applicable to the furnishing of competitive access service” in Florida and has been maintained continuously since its original issue date of March 29, 2007.<sup>2</sup> Additionally, Charter has regularly filed Local Telephone Service Provider Regulatory Assessment Fee Returns declaring millions of dollars of “Local Service Revenues” and “Network Access Revenues” from its provision of local interconnection services and switched access services, respectively. The Commission has accepted these reports, along with the hundreds of thousands of dollars of Regulatory Assessment Fees that have been paid annually by Charter. In short, there is no question that Charter has been providing two-way telecommunications services in Florida and complying with the Commission’s requirements (including its fee requirements) while doing so.

**C. Charter offers these services “to the public for hire.”**

Charter offers switched access service and local interconnection service in Florida, both of which are telecommunications services. The question then becomes: Are these services offered “to the public for hire”? In Charter’s case, they are.

---

<sup>2</sup> See *Bright House Networks Information Services (Florida), LLC Access Services Price List*, Florida Price List No. 2, Issued March 29, 2007, at Original Page 1; *Bright House Networks Information Services (Florida), LLC, Regulations and Schedule of Intrastate Charges Applying to Local Telecommunications Services Within the State of Florida*, Issued Feb. 8, 2021.

The Florida statute's requirement that a telecommunications company offer its services "to the public for hire" tracks the federal Communications Act, which similarly restricts the definition of "telecommunications services" to those services that are offered "for a fee directly to the public." 47 U.S.C. § 153(53). Regardless of the slight difference in phrasing, the phrase "to the public for hire" means "as a common carrier." *See American Tel. & Tel. Co. v. F.C.C.*, 572 F.2d 17, 24 (2<sup>nd</sup> Cir. 1978) ("a common carrier is one which undertakes indifferently to provide communications service *to the public for hire*, regardless of the actual owner") (emphasis added).

Charter offers switched access service and local interconnection service on a wholesale basis, meaning its customers are other communications providers. However, it is important to note that a service provider does not have to provide *retail* service to be acting as a common carrier. On several occasions, the FCC has explained very clearly that the distinction between common carriage and non-common carriage does not turn on the distinction between retail and wholesale:

The definition of "telecommunications services" in the Act does not specify whether those services are "retail" or "wholesale," but merely specifies that "telecommunications" be offered for a fee "directly to the public, or to such classes of users as to be effectively available directly to the public." In *NARUC II*, the D.C. Circuit stated that "[t]his does not mean that the particular services offered must practically be available to the entire public; a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users."

*In re Time Warner Cable* at ¶ 12.

The issue, therefore, is not whether the service in question is sold at retail or wholesale,<sup>3</sup> but whether the service is offered on a common carrier basis – that is, to the public:

Thus, the question at issue in this proceeding is whether the relevant wholesale telecommunications "services" are offered "directly to the public, or to such classes of users as to be effectively available

---

<sup>3</sup> To be clear, Charter's switched access service and local interconnection service are fully functional services and not merely the provision of a "telecommunications facility" as described in F.S.A. §§ 364.02(13)(a-b).

directly to the public.” Indeed, the definition of “telecommunications services” long has been held to include both retail and wholesale services under Commission precedent.

*Id.*

In this case, Charter does offer switched access service and local interconnection service on a common carrier basis – that is, to the public. As described in Charter’s Access Services Price List, with respect to every toll free telephone call originated on Charter’s network and every long distance telephone call terminated to Charter’s network, Charter holds itself out as a common carrier to provide switched access services to third-party interexchange companies for the origination or termination of those long distance calls.<sup>4</sup> In this regard, Charter provides the same switched access services that have been provided by incumbent local telephone companies to the long distance industry since the beginning of the long distance market in the 1980s. Likewise, as described in Charter’s local tariff, Charter offers its local interconnection service, which includes connections between a customer’s “broadband facilities and the public switched telephone number” to any company seeking to purchase such services.<sup>5</sup>

**D. Charter offers these services by the use of telecommunications facilities.**

Finally, the Florida statute requires that a telecommunications company offer its telecommunications services “by the use of a telecommunications facility.” In telecommunications, the term “facility” is very broad and effectively encompasses any physical thing that is used to provide telecommunications. Harry Newton, *Newton’s Telecom Dictionary* 458 (25<sup>th</sup> ed. 2009). Tracking this usage, the Florida statutes provide that the term “telecommunications

---

<sup>4</sup> See *Bright House Networks Information Services (Florida), LLC Access Services Price List*, Florida Price List No. 2, Issued March 29, 2007, at Second Revised Page 13 (stating “The Company provides Switched Access to Customers pursuant to this tariff to enable such Customers to access End Users.”).

<sup>5</sup> *Bright House Networks Information Services (Florida), LLC, Regulations and Schedule of Intrastate Charges Applying to Local Telecommunications Services Within the State of Florida*, Issued Feb. 8, 2021, at Section 3.5.3(A).

facility' *includes* real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state." West's F.S.A. § 364.02(14) (emphasis added).

In providing its telecommunications services (switched access service and local interconnection service), there is no doubt that Charter employs the use of telecommunications facilities located in Florida. Charter utilizes loops (i.e., connections between switching facilities and customer premises) to originate and terminate calls to end users, and to deliver traffic to and from switching facilities and/or gateways. Charter uses fiber optic network facilities and routes to transport traffic between switching facilities, to interconnect with other carriers, such as incumbent local telephone companies with whom Charter exchanges local telephone calls, and to interconnect with public safety answering points for the delivery of 911 calls. Charter's network is part of a larger mixed-use network that also provides other non-telecommunications services. The fact that the entirety of its network is not telecommunications facilities does not mean that Charter does not also operate telecommunications facilities. Accordingly, Charter's facilities-based telecommunications network satisfies Florida's definition of "telecommunications facility."

**E. Charter's application is not in conflict with the Eighth Circuit's decision in *Charter Advanced Services (MN), LLC v. Lange*.**

Another question has been raised regarding whether Charter's position in support of its present application conflicts with the position taken by its sister company, Charter Advanced Services (MN), LLC ("Charter Advanced Services"), in a case against the State of Minnesota. In that case, Charter Advanced Services argued that its VoIP services were "information services"—not "telecommunications services"—as defined by the federal Communications Act. That case went to the Eighth Circuit, which ultimately agreed with Charter Advanced Services that its VoIP services were not telecommunications services. *See Charter Advanced Services (MN), LLC v.*



*Lange*, 903 F.3d 715 (8<sup>th</sup> Cir. 2018). It is useful to note that Charter Advanced Services did not offer non-VoIP services. As the Eighth Circuit noted, Charter Advanced Services' parent company had structured its Minnesota operations so that regulated and unregulated services were offered by different entities.<sup>6</sup>

Charter's position here is consistent with the ruling in *Lange*. In contrast to Charter Advanced Services, which offered *no* telecommunications services subject to state regulation, Charter does offer regulated telecommunications services within the state's jurisdiction. Charter's contention that it is eligible to be designated as an ETC does not depend upon a contention that the *VoIP or broadband services* it will offer through affiliates are telecommunications services, under either state or federal law. Rather, Charter contends that it provides telecommunications services separate and apart from any VoIP or broadband services offered by its affiliates, and that those telecommunications services both make it a "telecommunications company" and make it eligible for designation as an ETC.

**F. Charter meets all the criteria of a "telecommunications company."**

As discussed above, Charter meets each of the statutorily prescribed criteria of a "telecommunications company." Charter is therefore eligible for designation as an ETC under Florida law.

---

<sup>6</sup> The *Lange* litigation arose after the Minnesota Public Utilities Commission objected to the transfer of Charter's VoIP customers from its two regulated CLEC affiliates in Minnesota, Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (together, "Charter Fiberlink"), to Charter Advanced Services. See *Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 983 (D. Minn. 2017), *aff'd*, 903 F.3d 715 (8th Cir. 2018). The state commission's jurisdiction over *Charter Fiberlink* was never in dispute; it was precisely because Charter Fiberlink *was* a regulated carrier subject to the commission's regulatory authority that Charter "underwent a corporate reorganization in order to segregate its Voice over Internet Protocol [] services from its regulated wholesale telecommunications services." *Lange*, 903 F.3d at 717. Bright House Networks Information Services (Florida), LLC, the applicant for ETC designation here, is situated similarly not to Charter Advanced Services in the *Lange* litigation, but rather to Charter Fiberlink.

Respectfully submitted this 10<sup>th</sup> day of  
February, 2021,

Bright House Networks Information Services  
(Florida), LLC

Michael R. Moore  
Group VP Law – Telephone Regulatory  
Charter Communications, Inc.  
12405 Powerscourt Drive  
St. Louis, Missouri 63131  
Tel: (314) 394-9007  
Email: [Michael.Moore@charter.com](mailto:Michael.Moore@charter.com)

By:   
Beth Keating  
Gunster Law Firm  
215 South Monroe Street, Suite 601  
Tallahassee, FL 32301  
Tel: (850) 521-1706  
Email: [Bkeating@gunster.com](mailto:Bkeating@gunster.com)

Charles A. Hudak  
Friend, Hudak & Harris, LLP  
3 Ravinia Drive, Suite 1700  
Atlanta, Georgia 30346  
Tel: (770) 399-9500  
Email: [Chudak@fh2.com](mailto:Chudak@fh2.com)  
Email: [Jhomas@fh2.com](mailto:Jhomas@fh2.com)