

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Applications of |) | MB Docket No. 15-149 |
| |) | |
| Charter Communications, Inc., |) | |
| Time Warner Cable Inc., and |) | |
| Advance/Newhouse Partnership |) | |
| |) | |
| For Consent to Assign or Transfer |) | |
| Control of |) | |
| Licenses and Authorizations |) | |

ORDER ON RECONSIDERATION

Adopted: September 10, 2018

Released: September 10, 2018

By the Commission:

1. On May 5, 2016, the Commission adopted a Memorandum Opinion and Order approving, subject to conditions, the applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for consent to transfer various licenses and other authorizations from the transacting parties to a new company (Charter).¹ The Competitive Enterprise Institute (CEI), along with four individuals (together, the Petitioners), seek reconsideration of the Commission's imposition of conditions, contending that the conditions were unwarranted and unnecessary and beyond the Commission's authority.² We now dismiss the Petition for Reconsideration.

2. We dismiss the Petition for two independent reasons. *First*, neither CEI nor any of the four individual Petitioners who claim to be injured by the conditions placed on the license transfers specifically objected to the conditions about which they now complain. Under our rules, Petitioners are barred from objecting to the Charter conditions for the first time on reconsideration. Although CEI submitted opening comments in this proceeding, it did not specifically object to any of the conditions about which it now complains, nor did it make any further comments. Despite the fact that *all* of the conditions were requested by various entities in their opening comments,³ CEI filed neither a Response to the opening

¹ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327 (2016) (*Order*). Then-Commissioner Pai dissented and Commissioner O'Rielly dissented in part. *See id.*

² Petition for Reconsideration of the Competitive Enterprise Institute, John France, Daniel Frank, Jean-Claude Gruffat, and Charles Haywood, MB Docket No. 15-149 (filed June 9, 2016).

³ *See Order*, 31 FCC Rcd at 6364-65, para. 79 and footnotes therein (discussing commenters' requests for conditions prohibiting data caps and usage-based pricing); *id.* at 6390-91, para. 134 and footnotes therein (discussing commenters' requests for conditions

comments nor an Opposition to the petitions to deny nor a Reply, in which it objected to the conditions sought and provided its reasons why.⁴ Having failed to do so, CEI may not raise those arguments on reconsideration.⁵ With respect to the four individual Petitioners, they cannot seek reconsideration in their own right: None participated previously in this proceeding, nor did they provide any reasons in the Petition for Reconsideration for why they did not.⁶ Because none of Petitioners' timely raised the challenges they now make, the Petition for Reconsideration is dismissed.

3. *Second*, Petitioners lack standing under the Communications Act and the Commission's rules to challenge the conditions placed on the Charter transaction.⁷ CEI has not alleged any injury in its own right. Nor can CEI claim associational standing when it has not established (a) that it is a membership organization, (b) that any of the individual Petitioners are in fact members, and (c) that the named individuals would themselves have standing.

4. In the Public Notice seeking comment on Charter's applications, the Commission made clear to all interested persons that "[p]ersons and entities that do not file petitions to deny, however, even if they file comments, generally may not seek reconsideration of the Commission's decision regarding the transfer of control of the licenses or authorizations at issue or appeal a final decision to the

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regarding settlement-free interconnection); *id.* at 6505, para. 385 and footnotes therein (discussing commenters' requests for conditions requiring build-out of broadband availability to underserved or unserved areas); *id.* at 6526-27, paras. 446-48 and footnotes therein (discussing commenters' requests for conditions requiring applicants to offer lower broadband rates to low-income individuals). Petitioners therefore had more than adequate notice of and an opportunity to comment on the possibility that the conditions would be imposed, contrary to their argument otherwise (Petition at 7-10).

⁴ Responses to Comments and Oppositions to Petitions to Deny are typically filed by the applicants or those who support their applications, while Replies to the Responses or Oppositions are typically filed by those who seek the imposition of conditions or oppose the applications, although commenters who support the applications have occasionally filed both types of pleadings. In this case, CEI filed neither.

⁵ See 47 C.F.R. § 1.106(c); *see, e.g., Petition of U.S. Telecom for Forbearance*, Order Denying Petition for Reconsideration, 32 FCC Rcd 3885, 3887, para. 8 & n.19 (2017) ("We cannot allow [a party] to sit back and hope that a decision will be in its favor and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." (quoting *Colo. Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941))). Furthermore, the Petitioners have not indicated why they could not have raised these objections earlier in the proceeding. *See KAXT, LLC, (Assignor) and OTA Broadcasting (SFO), LLC (Assignee)*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 18 (2017) (Commission may reject newly-raised facts and arguments on reconsideration if petitioner fails to demonstrate they were unknown and could not have been learned of through the exercise of ordinary diligence).

⁶ See 47 C.F.R. § 1.106(b)(1) ("If the petition is filed by a person who is not a party to the proceeding, it . . . shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.").

⁷ 47 U.S.C. § 405(a); *see* 47 CFR § 1.106(b)(1) ("[A]ny party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission . . . may file a petition requesting reconsideration of the action taken.").

courts.”⁸ To submit a petition for reconsideration in connection with an application involving Title III licenses, a petitioner must plead facts to establish that it is (1) a party in interest or (2) any other person aggrieved or whose interests are adversely affected by our licensing actions and (3) show good reason why it did not participate in the earlier stages of the proceedings.⁹ To establish standing, a petitioner must allege facts sufficient to show that the Commission’s action on the application would cause it to suffer a direct injury, establish that the injury can be traced to the challenged action, and demonstrate that the injury would be prevented or redressed by the requested relief.¹⁰ For these purposes, an injury must be both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”¹¹ There must be more than an “objectively reasonable likelihood” of threatened injury; such injury must be “certainly impending.”¹² An organization may meet these requirements in its own right or may demonstrate that one or more of its members meets them.¹³

5. The Petitioners do not allege facts sufficient to establish that they have met these standing requirements for filing a petition for reconsideration. With respect to CEI, it does not allege that it has been harmed as an organization by the conditions at issue, so it lacks standing in its own right to challenge the transaction. CEI also cannot establish associational standing to petition for reconsideration on behalf of the named individuals. To establish associational standing, an organization has the burden of showing (a) that it is a membership organization, (b) that certain named individuals are members, and (c) that those members themselves would have standing. CEI cannot establish any of these elements. First, neither CEI’s website nor its prior filed comments (nor its Petition for Reconsideration) describe CEI as a membership organization. While principles of associational standing allow associations to represent their members, those principles do not extend to allowing an organization that claims no injury and does not hold itself out to be a membership organization to argue its own views, purportedly on behalf of the general public.¹⁴ Second, CEI cannot establish that any named individuals are in fact members. The only individuals that it mentions

⁸ See *Commission Seeks Comment on Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, Public Notice, 30 FCC Rcd 9916, 9918 (MB 2015).

⁹ See 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1); *Application of AT&T Mobility Spectrum LLC and FiberTower Corporation for Consent to Transfer Control of 39 GHz Licenses*, Memorandum Opinion and Order, FCC 18-86, at 4, para. 6 (July 2, 2018) (*AT&T Mobility Spectrum Order*); *Daniel R. Goodman*, Memorandum Opinion and Order, 13 FCC Rcd 21944, 21962, para. 29 (1988).

¹⁰ *AT&T Mobility Spectrum Order*, FCC 18-86, at 4, para. 6 (citing *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Comm, LLC, NextWave Wireless, Inc. and San Diego Gas & Electric Company for Consent to Assign and Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012)); *Metropolitan Transportation Authority*, Proposed Order of Modification and Order on Reconsideration, 31 FCC Rcd 1436, 1440, para. 12 (2016).

¹¹ *AT&T Mobility Spectrum Order*, FCC 18-86, at 4, para. 6.

¹² *Id.*

¹³ *Id.* See generally *Sorenson Communications, LLC v. FCC*, 897 F.3d 214, 224 (D.C. Cir. 2018)..

¹⁴ See *Sorenson Communications, LLC v. FCC*, at 897 F.3d at 225.

in its petition are the four individual Petitioners, and CEI fails to describe any connection between those individual Petitioners and itself, other than that one serves on CEI's Board. It does not allege that any of the individual Petitioners are "members" of CEI as an association. As CEI cannot be seen as "representing" the four individual Petitioners, it lacks standing to seek reconsideration.

6. CEI also cannot established the third prong of associational standing, namely, that the named individuals would have standing to file a petition for reconsideration. Specifically, CEI has not shown that the four individuals have suffered any cognizable injury stemming from the conditions at issue. Absent such evidence, Petitioners have failed to establish standing to seek reconsideration.

7. For the above reasons, we conclude that Section 405 of the Act and our rules do not permit the Petitioners here to seek reconsideration of the Commission's decision imposing conditions on the grant of the applications in this proceeding.

8. Accordingly, **IT IS ORDERED**, pursuant to sections 4 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4, 405, and section 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration of the Competitive Enterprise Institute, John France, Daniel Frank, Jean-Claude Gruffat, and Charles Haywood **IS DISMISSED**.

COMMISSION

FEDERAL COMMUNICATIONS

Marlene H. Dortch
Secretary