

October 9, 2018

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation

Wireless Infrastructure, WT Docket No. 17-79

Wireline Infrastructure, WC Docket No. 17-84

Dear Ms. Dortch:

On October 4, 2018, Howard Symons of Jenner & Block LLP, and I met with Lisa Hone, Adam Copeland, John Visclosky, Ramesh Nagarajan, Benjamin Plante, Melissa Kirkel of the Wireline Competition Bureau, and Holly Saurer of the Media Bureau, regarding the above-captioned proceedings.

During the meeting, we reiterated our support for NCTA's request¹ to extend the legal analysis of Section 253 in the *Wireless Infrastructure Declaratory Ruling* to all "commingled" facilities that are capable of providing telecommunications services,² including cable systems that utilize their facilities to provide telecommunications services along with cable, broadband, and/or VoIP services.³ We noted that duplicate authorizations and excessive fees in addition to cable's franchise and franchise fee obligations impose undue burdens and costs that impede the

¹ Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 20, 2018).

² *Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 ¶ 36 (rel. Sept. 27, 2018) ("*Wireless Infrastructure Declaratory Ruling*").

³ See Letter from Rick Chesson, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 12 & n.39 (June 11, 2018) ("*NCTA June 11 Ex Parte*") (noting that "[m]any cable operators provide telecommunications services on a common carrier basis").

ability of cable operators to provide telecommunications services and so are preempted by Section 253.⁴ NCTA has previously documented these burdens.⁵

We urged quick action to extend the interpretation of Section 253 to wireline providers, including cable operators, in order to remove these barriers and to ensure regulatory parity.⁶ We noted that the *Wireline Infrastructure NOI* squarely presented these issues as they affect cable operators.⁷ The record strongly supports action to address these issues.⁸

Please direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

/s/ Christianna Barnhart
Christianna Barnhart
Vice President, Regulatory Affairs
Charter Communications, Inc.

⁴ See *Wireless Infrastructure Declaratory Ruling* ¶¶ 43-45 (excessive fees) (citing with approval judicial decisions holding that a 5 percent gross revenue fee for rights-of-way access “can run afoul of” Section 253); *id.* ¶¶ 81-83 (other requirements).

⁵ See *NCTA June 11 Ex Parte*, at 3-9; Comments of NCTA, WT Docket No. 17-79, WC Docket No. 17-84 (June 15, 2017) at 22-32 (“NCTA Comments”).

⁶ See *Wireless Infrastructure Declaratory Ruling* ¶ 39 (“We clarify that “[a] regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code” (citation omitted)).

⁷ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket 17-84, 32 FCC Rcd 3266, 3298 ¶ 104 (2017) (“*Wireline Infrastructure NOI*”) (“Our preliminary view is that Section 253 applies to fees other than cable franchise fees as defined by Section 622(g) of the Act.... [F]ranchise fees could be taken into account when determining whether other types of fees are excessive.”); *id.* at 3299 ¶ 108 (raising question of whether there are “local ordinances that erect barriers to the provision of telecommunications service especially as applied to new entrants”). The fact that questions specific to the authority of state and local governments under Title VI of the Communications Act are the subject of another Commission proceeding, see *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Second Further Notice of Proposed Rulemaking, MB Docket No. 05-311, FCC 18-131 (rel. Sept. 25, 2018), does not preclude the Commission from acting in the above-captioned proceedings regarding the applicability of Section 253 to cable operators.

⁸ See Comments of Charter Communications, Inc., WT Docket 17-79, WC Docket 17-84 (June 15, 2017), at 25-26; NCTA Comments at 23-24 (“The Commission should exercise its authority under Section 253 to prohibit local governments from imposing fees for broadband or telecommunications services offered by cable operators that place no additional burden on the public right-of-way.”); *NCTA June 11 Ex Parte* at 12-13.

Ms. Marlene H. Dortch

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cc: Lisa Hone
Adam Copeland
John Visclosky
Ramesh Nagarajan
Benjamin Plante
Melissa Kinkel
Holly Saurer