

October 12, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *Ex Parte* Communication

***In re* Improving Competitive Broadband Access to Multiple Tenant
Environments**

GN Docket No. 17-142

Dear Ms. Dortch:

Horry Telephone Cooperative (“HTC”) recently submitted comments in this proceeding,¹ arguing that “large companies . . . use . . . bulk billing practices to push out competition” in multiple dwelling unit buildings (“MDUs”).² HTC then went on to claim that Charter’s bulk billing arrangement with Homeowners’ Associations (“HOAs”) in the Myrtle Beach metropolitan area represented a “below cost” offering that “effectively eliminated HTC’s ability to compete in these communities for the foreseeable future” because HTC, which “does not have the nationwide leverage to subsidize competitive markets and does not own content, cannot match Charter’s below-market offers on broadband, and in some cases, is prohibited by contract from offering bulk billing discounts on video.”³ From these baseless allegations, HTC argued that the Commission should “re-visit the use of bulk billing arrangements to ensure that such practices are not used as a cover for larger carriers to gain market share, or worse, to engage in anti-competitive behavior.”⁴

HTC’s comments are meritless. They raise nothing beyond the arguments against bulk billing that have been rejected by the Commission and, in this proceeding, rebutted by NCTA.⁵ Evidence presented by numerous stakeholders demonstrates that bulk billing arrangements between MDUs and multichannel video program distributors (“MVPDs”) benefit HOA residents,

¹ See Comments of Horry Telecommunications Cooperative, Inc., GN Docket No. 17-142 (July 24, 2017), <https://ecfsapi.fcc.gov/file/1072459875706/HTC%20Comments%20GN%20Docket%2017-142%20FINAL.pdf> (hereinafter HTC Comments).

² *Id.* at 3.

³ *Id.* at 3-4.

⁴ *Id.* at 4-5.

⁵ See Second Report and Order, *In re Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units*, MB Docket No. 07-51, 25 FCC Rcd 2460 (Mar. 2, 2010) (hereinafter 2010 Exclusive Service Contracts Order); Comments of NCTA – The Internet & Television Ass’n, GN Docket No. 17-142 (July 24, 2017), <https://ecfsapi.fcc.gov/file/10724112013828/072417%2017-142%20Comments.pdf> (hereinafter NCTA Comments).

who receive Charter's high value products at competitive prices, and enhance the deployment of broadband services.⁶ HTC's own letter acknowledges the benefits of bulk billing "in settings with high turnover."⁷ While HTC nonetheless criticizes bulk billing agreements between Charter and the Myrtle Beach HOAs, there is no logical reason why the benefits of bulk billing should not accrue to HOAs and their residents. Indeed, when the Commission concluded that bulk billing is usually pro-competitive because it produces "reduced rates and operational efficiencies and . . . enhanc[es] deployment of broadband,"⁸ it expressly included centrally managed residential real estate developments like HOAs in its analysis.⁹

Charter's experience provides ample evidence that its bulk billing agreements with HOAs are, in fact, pro-competitive and benefit members and residents of the HOAs: First of all, they are products of arms-length negotiations. The HOAs act independently of Charter and negotiate in their own best interests. And Charter—contrary to HTC's unfounded allegations—does not offer its services "below cost," but rather at a cost that allows Charter to recover its investment. Second and relatedly, by ensuring a stream of revenue from HOA members to Charter, these bulk billing agreements provide the financial stability necessary for Charter to do the expensive work required to make broadband service available to more consumers: accessing rights-of-way, building conduits, laying wire, and repairing streets once the wire is laid. Third, as HTC itself acknowledges, these agreements result in better prices for HOA residents.¹⁰ In fact, agreements between Charter and HOAs are arguably even more pro-competitive than agreements between Charter and other types of MDUs because the homeowners, unlike renters in an MDU, have representation in the HOAs that determine which MVPD will service their residences.

And while HTC makes much of the alleged "long-term nature" of Charter's agreements with HOAs in the Myrtle Beach area, those agreements are only five to seven years in length. That period is the minimum amount of time required for Charter to recoup the funds it expended in bringing broadband service to an HOA. At the end of that time, the HOA can consider bids from,

⁶ See, e.g., 2010 Exclusive Service Contracts Order, 25 FCC Rcd at 2461, ¶ 2 ("The record before us shows that bulk billing arrangements predominantly benefit consumers, through reduced rates and operational efficiencies, and by enhancing deployment of broadband."); NCTA Comments 5 ("By buying service in 'bulk' and making it available to all tenants, building owners can effectively offer tenants service at a discounted price far *below* the competitive retail rates generally available to subscribers throughout the community."); *id.* at 6 ("[U]nlike exclusive service contracts, which its rules prohibit – bulk billing does not prevent alternative providers from offering service in a[multiple tenant environment], and . . . many consumers choose to subscribe to those second services." (footnote and quotation marks omitted)).

⁷ HTC Comments 2.

⁸ See 2010 Exclusive Service Contracts Order, 25 FCC Rcd at 2461, ¶ 2.

⁹ See *id.* at 2461, ¶ 1, n.3 (defining "multiple dwelling unit" to "include a multiple dwelling unit building (such as an apartment building, condominium building or cooperative) and any other centrally managed residential real estate development (such as a gated community, mobile home park, or garden apartment) . . . "); see also *Lansdowne on the Potomac Homeowners Ass'n v. OpenBand at Lansdowne, LLC*, 713 F.3d 187 (4th Cir. 2013) (applying the Commission's MDU exclusivity prohibition to an HOA).

¹⁰ HTC Comments 4.

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and negotiate with, other providers. In these circumstances, bulk billing agreements hardly “foreclose competition in a substantial share of the line of commerce affected.”¹¹

In short, Charter’s bulk billing arrangements with HOAs are pro-competitive, and good for the HOA residents that receive discounted rates. There is no sound policy basis for restricting such arrangements in the HOA context, just as there is no sound policy basis for restricting them in the context of other types of MDUs. Accordingly, Charter asks that the Commission reject HTC’s entreaties to prohibit telecommunications and video providers from using bulk billing arrangements with HOAs and other MDUs.

Respectfully submitted,

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¹¹ *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961) (explaining standards for finding that exclusive dealing agreements comply with federal antitrust laws and holding that twenty-year exclusive dealing arrangement was justified by the utility’s need for assured supply).