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October 17, 2019

Notice of Ex Parte -- Filed Via ECFS

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

In re Charter Communications, Inc. Petition for Determination of Effective Competition, MB
Docket No. 18-283

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Federal Communications Commission's ("Commission") rules, the Massachusetts Department of Telecommunications and Cable ("MDTC") hereby provides notice that on October 16, 2019, the undersigned spoke via phone with Kate Black, Media Policy Advisor for Commissioner Rosenworcel.

During the call, I emphasized the impact that granting Charter's Petition for effective competition would have on vulnerable consumers.¹ Cable rates remain the most frequent complaint that our Consumer Division receives. If the Commission grants the Petition, Charter plans in some communities to almost double the rate paid by the vulnerable populations that subscribe to the basic service tier.² This would have deleterious impacts on those with fixed incomes.

Regardless of the harmful consumer implications, however, I reiterated that such rate increases are not warranted, because Charter has not met its burden of demonstrating that it is subject to effective competition under the local exchange carrier ("LEC") test.³ I described the

¹ See *Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283 (2018).

² See *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *Charter Notice of Ex Parte Presentation* (Mar. 7, 2019) (describing Charter's planned rate increases); *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Notice of Ex Parte Presentation* (Mar. 11, 2019).

³ See 47 U.S.C. § 543(a)(2)(A); 47 C.F.R. § 76.907(b) (placing the burden to establish effective competition based on the LEC test on the cable operator).

incongruity of Charter claiming competition from a service for which Charter controls the sole means of transmission.⁴ Indeed, DirecTV's service is neither true competition to Charter from an economics standpoint, nor effective competition from a legal standpoint under the LEC test.⁵

During the call, I also referenced the elimination of DirecTV Now in favor of AT&T TV Now, and suggested that the Commission should not grant a Petition based on a named service that is no longer offered.⁶ We also discussed the unpredictable nature of the streaming video services market, and the various media coverage of a potential AT&T sale of DirecTV.⁷

Finally, we discussed some of the unintended consequences that might result if the Commission grants the Petition, including the possibility that broadcasters will use the Order to impose the retransmission consent regime on online video distributors and the possibility that online video distributors will use the Order to impose nondiscriminatory program access requirements on cable operators. I stated that the question of whether to put online video distributors on regulatory par with multichannel video programming distributors (MVPDs) is certainly a question worth answering, but that the Commission has an open proceeding on that question which would be the proper forum for resolving such a question.⁸

Pursuant to section 1.1206 of the Commission's rules, this notice is being filed electronically via ECFS with your office. Please do not hesitate to contact me should you have any questions.

Respectfully,

/s/ Sean M. Carroll

Sean M. Carroll
General Counsel

cc: Kate Black

⁴ See *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Opposition* at 13 (Oct. 25, 2019) ("The only broadband service available in the franchise areas that Charter references [in the Petition] is its own broadband service."). Significantly, the Commission has found that mobile broadband is not a full substitute for fixed broadband. *In re Inquiry Concerning Deployment of Advanced Telecomms. Capability to All Ams. in a Reasonable & Timely Fashion*, GN Docket No. 17-199, 2018 Broadband Deployment Report, ¶ 18 (Feb. 2, 2018).

⁵ See *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Opposition* at 4-9, 11-23 (Oct. 25, 2019).

⁶ See Press Release, AT&T, DIRECTV NOW Rebrands Under AT&T TV Family (July 30, 2019) https://about.att.com/newsroom/2019/directv_now_rebrands_under_att_tv.html; *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Supplement to Motion for Abeyance* (Aug. 5, 2019).

⁷ See, e.g., Shalini Ramachandran & Drew FitzGerald, *AT&T Explores Parting Ways With DirecTV*, The Wall Street Journal, Sept. 18, 2019 <https://www.wsj.com/articles/at-t-explores-parting-ways-with-directv-11568841544>; *In re Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Motion for Abeyance* (June 17, 2019).

⁸ See *In re Promoting Innovation & Competition in the Provision of Multichannel Video Programming Distribution Servs.*, MB Docket No. 14-261, *Notice of Proposed Rulemaking* (Dec. 19, 2014).