

February 4, 2019

VIA ECFS

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

**Re: *Electronic Delivery of MVPD Communications, MB Docket No. 17-317*
 *Modernization of Media Regulation Initiative, MB Docket No. 17-105***

Notice of Ex Parte Presentation

Dear Ms. Dortch:

In previous presentations in MB Docket No. 17-317,¹ Charter Communications, Inc. (“Charter”) has urged the Commission to clarify the applicability of the “advance notice” rules to situations in which a cable operator and a programmer or a broadcaster remain in carriage negotiations, even during the final 30 days of an agreement. Charter explained that in such situations, an outcome in which carriage of a station or programming service is terminated should not be considered “within the control” of the cable operator and thus the advance notice requirement in Section 76.1603(b) of the Commission’s rules should not apply.²

These are not the only situations in which service changes effective in less than 30 days occur outside the control of the cable operator. As the result of a broadcaster’s recent sale of stations, for instance, Charter was provided information only two weeks before closing that the sale would result in a change in programming of the affected stations. Because the amount of lead time was wholly outside Charter’s control, it is clear that the 30-day advance notice requirement in Section 76.1603(b) was not therefore applicable in these circumstances.

¹ Letter from Maureen O’Connell, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-317 (filed Feb. 15, 2018) (“Charter February 15 Letter”); Letter from Maureen O’Connell, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-317 (filed June 28, 2018).

² Charter February 15 Letter at 1-6.

In light of these examples of changes that are outside of a cable operator's control, the Commission should also repeal the advance notice requirement in Section 76.1603(c) as duplicative and unnecessary³ or at least clarify that this requirement is also applicable only for changes within the operator's control. While the rule does not explicitly refer to changes within the operator's control, the requirement to provide notice "before implementing any ... service change" effectively imposes such a limit. An operator can only provide advance notice of a change that is within its control.⁴

Please contact me if you have any questions regarding these matters.

Sincerely,

/s/ Maureen O'Connell

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cc: Martha Heller
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³ *Id.* at 6-7. Charter also urged the Commission to repeal Section 76.1603(d).

⁴ The Media Bureau's 2006 finding that Section 76.1603(c) "is not limited to circumstances where the change in programming services is within the control of the cable operator," *Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, 9023 ¶ 21 (MB 2006), is fundamentally at odds with the obligation under the rule to provide *advance* notice and raises serious due process and fairness issues. *See Union Pac. R. Co. v. U.S. Dep't of Homeland Sec.*, 738 F.3d 885, 893 (8th Cir. 2013) (agency interpretation that imposes penalties for actions outside party's control "may violate the due process clause"); *All. for Cannabis Therapeutics v. Drug Enf't Admin.*, 930 F.2d 936, 940 (D.C. Cir. 1991) ("Impossible requirements imposed by an agency are perforce unreasonable . . .").