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February 21, 2017

**Via ECFS**

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

**Re: *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations, MB Docket No. 15-149***

Dear Ms. Dortch:

On February 16, 2017, Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), together with Jeffrey Lamken and James Barta, MoloLamken LLP, and the undersigned, counsel to ACA, met with Jay Schwarz, Acting Wireline Advisor to Chairman Pai, and Kirsten Harris, Law Clerk, Office of Chairman Pai, to discuss ACA’s request that the Commission reconsider the imposition of an overbuild condition on Charter Communications, Inc. (“Charter”) in its Order approving the transfer of licenses associated with Charter’s merger with Time Warner Cable, Inc., and Advance/Newhouse Partnership’s Bright House Networks.<sup>1</sup>

During the meeting, ACA representatives discussed the reasons for reconsidering the overbuild condition previously advanced in ACA’s Petition for Reconsideration.<sup>2</sup> ACA representatives emphasized that the overbuild condition was added at the eleventh hour and harms the congressional and Commission goal of closing the digital divide. The threat of government-mandated, uneconomic entry undermines the incentive for smaller operators to invest in expanding their networks to bring new and better broadband services to unserved or underserved populations. The overbuild requirement also means that Charter must expend resources to provide a *second* option to subscribers who *already have* service of 25 Mbps or faster. That will divert scarce resources from efforts to reach consumers *without any* broadband (or who lack access to speeds of 25 Mbps, a category that includes many current

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<sup>1</sup> *In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, MB Docket No. 15-149, (rel. May 10, 2016) (“Order”); Petition of American Cable Association for Reconsideration, MB Docket No. 15-149 (filed June 9, 2016) (“ACA Petition”). As a condition of its approval, the Commission required Charter to build out broadband to an additional 2 million subscribers, of which no fewer than one million must be outside new Charter’s footprint in areas where an existing broadband Internet access service provider offers 25 Mbps or faster service (the “overbuild condition”). Order, ¶ 388.

<sup>2</sup> ACA Petition 3-13; Reply Comments of American Cable Association, MB Docket No. 15-149, at 1-2 (filed Jun. 27, 2016) (no party disputed ACA’s contention that the overbuild condition is contrary to precedent, exacerbates putative merger harms, and adversely affects consumer welfare); see also Letter from Thomas Cohen, Kelley Drye and Warren, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (filed May 5, 2016) (protesting last-minute consideration of overbuild condition that, if adopted, would harm consumers happy with service from a small local provider, which would find itself unable to compete in the wake of an uneconomic, government-mandated overbuild).

Charter subscribers).<sup>3</sup> Those outcomes are at cross-purposes with policymakers' larger objective of bringing broadband to those without it and therefore will harm, rather than promote, the public interest.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Barbara Esbin

cc: Jay Schwarz  
Kristen Harris

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<sup>3</sup> ACA Petition 10-12.