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Via ECFS

Gigi Sohn, Counselor to the Chairman
Jessica Almond, Legal Advisor to the Chairman
David Grossman, Chief of Staff to Commissioner Clyburn
Matthew Berry, Chief of Staff to Commissioner Pai
Robin Colwell, Chief of Staff to Commissioner O'Reilly
Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Written *Ex Parte* Presentation

Expanding Consumers' Video Navigation Choices
MB Docket 16-42

Commercial Availability of Navigation Devices
CS Docket 97-80

Proposed Transfer of Control of Time Warner Cable, Inc.
and Charter Communications Inc. and Proposed Transfer of
Control of Bright House Networks from Advance/New-
house Partnership to Charter Communications Inc.
Docket 15-149

Proposed Assignment or Transfer of Control of Licenses
and Authorizations from Cablevision Service Corporation
to Altice N.V.
Docket 15-257

Dear Ms. Sohn, Ms. Almond, Mr. Grossman, Mr. Berry, Ms. Colwell and Ms. Dortch:

Zoom Telephonics, Inc. ("Zoom") wishes to address arguments made in four *ex parte* meetings with Commission staff and NTCA- The Rural Broadband Association on October 25, 2016.¹

NTCA took the position that Section 629(a) of the Communications Act does not

¹Although this presentation is addressed to Docket 16-42, out of an abundance of caution, this notice is also being filed in Dockets 15-149 and 15-257.

“provide authority to regulate the facilities of an Internet Service Provider (“ISP”) used in the provision of BIAS that is subject to the common carrier provisions of Title II of the Communications Act.”

NTCA’s argument mirrors the view that Charter Communications, Inc. took in an *ex parte* meeting with the General Counsel on September 8, 2016. Zoom thoroughly debunked these arguments in a written *ex parte* presentation submitted on September 22, 2016. For your convenience, a copy of that submission is provided as Attachment A hereto.

The principle that common carrier status under the Communications Act does not exempt a party from regulation of other activities is hardly new or a controversial. Indeed, as recently as this week, the Commission filed a brief which quoted another brief filed in 2002, stating that “the fact that a defendant was regulated by the FCC as a Title II common carrier “[w]as not determinative of the question of whether [it] acted as a common carrier in connection with the practices at issue.” Brief of the Federal Communications Commission filed in *FTC v. AT&T Mobility LLC*, No. 15-16585 (filed October 24, 2016) at 3 (*quoting* Brief of the Federal Communications Commission in *FTC v. Verity Int’l, Ltd.*, No. 00-Civ-7422 (March 11, 2002) at 2). For your convenience, a copy of that submission is provided as Attachment B hereto.

Please contact me if you wish discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Jay Schwartzman".

Andrew Jay Schwartzman
Counsel to Zoom Telephonics, Inc.

ATTACHMENT A

ATTACHMENT B