

March 14, 2019

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BY ELECTRONIC DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20054

**Re: Notice of Ex Parte Presentation**

**Petition of Charter Communications, Inc., for a Determination of Effective  
Competition in 32 Massachusetts Communities and Kauai, HI**

**MB Docket No. 18-283; CSR No. 8965-E**

Dear Ms. Dortch:

On March 12, 2019, Maureen O’Connell of Charter Communications, Inc. (“Charter”) and the undersigned on behalf of Charter met with Alex Sanjenis of Chairman Pai’s office regarding the above-captioned matter. This ex parte summarizes that meeting, including Charter’s response to the March 11, 2019, ex parte filing by the Massachusetts Department of Telecommunications and Cable (“MDTC”) in this docket.<sup>1</sup>

During the meeting, we summarized the legal and policy arguments in support of a determination that DIRECTV NOW satisfies the LEC Test. As detailed in Charter’s Petition and Reply to Oppositions in this proceeding, we explained that DIRECTV NOW meets the LEC Test because it is a comparable video programming service that is offered directly to subscribers “by...means” other than direct-to-home satellite. We explained that the requirement that a LEC affiliate offer service “directly to subscribers” is nothing more than a requirement that the LEC affiliate must have (or offer to have) a direct customer relationship with consumers in the franchise

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<sup>1</sup> Letter from Sean M. Carroll, Deputy General Counsel, MDTC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-283 (Mar. 11, 2019) (“MDTC March 11 Ex Parte”).

area.<sup>2</sup> We also explained that, contrary to respondents' contention, the LEC Test is not limited to video programming services delivered over LEC facilities.<sup>3</sup> Finally, we reiterated that the need for a broadband connection to receive DIRECTV NOW is not an impediment to the offering of DIRECTV NOW in light of the fact that more than 80 percent of households in Massachusetts and Hawaii subscribed to broadband in 2016, a number that has likely risen since then.<sup>4</sup>

In response to a question Mr. Sanjenis raised at the meeting, we noted that the monthly charge for the basic service tier in the affected franchise areas will be Charter's national rate of \$23.89 if the Commission grants Charter's Petition in this matter. The regulated monthly rates in Massachusetts for the basic tier currently range from \$12.49-\$23.99; the regulated monthly rate in Kauai is \$18.49.<sup>5</sup> The lowest price DIRECTV NOW package is \$50 per month.<sup>6</sup>

We also responded to MDTC's claim that the change to the basic rate that would result from the grant of Charter's petition "makes clear that DIRECTV NOW does not provide any competitive check on Charter's rates."<sup>7</sup> We explained that any difference in rates does not mean that current rates in Massachusetts (or Hawaii) are competitive, or that Charter's national rate is not competitive. To the contrary, the Charter systems in the 39 other states charging the national rate are subject to effective competition and no franchising authority other than the MDTC and the DCCA has challenged that conclusion. Thus, Charter's national rate is in fact the competitive market rate. By contrast, the rates in the only two jurisdictions in the nation that continue to engage in rate regulation are the product of historical anomalies that date back to the beginning of rate regulation decades ago and bear little if any relationship to competitive market rates. The wide range of regulated rates in Massachusetts, demonstrates their arbitrary nature of government-imposed rate regulation.

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<sup>2</sup> See Charter Communications, Inc. Reply to Oppositions, MB Docket No. 18-283, CSR-8965-E, at 14 (Nov. 19, 2018) ("Charter Reply").

<sup>3</sup> See Charter Reply at 3-4; Letter from Howard J. Symons, Counsel to Charter Communications, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-283, CSR-8965-E, at 1-4 (Feb. 1, 2019) ("February 1 Ex Parte").

<sup>4</sup> Charter Reply at 18-19; February 1 Ex Parte at 6-7.

<sup>5</sup> All Charter cable subscribers also pay a Broadcast TV Surcharge, a pass-through fee reflecting charges assessed to Charter by the owners of local broadcast or local "network-affiliated" TV stations. See <https://www.spectrum.net/support/my-account/broadcast-tv-surcharge/> ("What is the Broadcast TV Surcharge on my statement?"). The national rate for this surcharge will be \$11.99 starting with March 2019 bills. The regulated rate for this surcharge in Massachusetts ranges from \$8.50-\$9.95; the regulated rate in Kauai is \$8.85.

<sup>6</sup> See <https://www.directvnow.com/#packages> (last visited Mar. 14, 2019).

<sup>7</sup> MDTC March 11 Ex Parte at 1.

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In the end, MDTC's argument is a red herring. The forward-looking LEC Test that Congress enacted in 1996 recognized that LECs or LEC affiliates will provide effective competition to cable operators using "any means" other than direct-to-home satellite. As Charter has demonstrated, the provision of DIRECTV NOW fully satisfies that test.

Please contact the undersigned if you have any questions about this matter.

Sincerely,

*/s/ Howard J. Symons*

Howard J. Symons

cc: Alex Sanjenis  
Joel Miller  
Evan Swartzrauber  
Kate Black  
Michael Scurato  
Michelle Carey  
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