

April 22, 2019

Howard J. Symons
Tel +1 202 639 6078
HSymons@jenner.com

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 April 18, 2019, Elizabeth Andrion and Maureen O'Connell of Charter Communications, Inc. ("Charter") and the undersigned on behalf of Charter met with Matthew Berry and Alex Sanjenis of Chairman Pai's office regarding the above-captioned matter.

During the meeting, we summarized the legal and policy arguments in support of a determination that DIRECTV NOW satisfies the LEC Test,¹ as set forth in Charter's filings in this proceeding. In particular, we explained that the requirement that a LEC affiliate offer comparable video programming services "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 area.² We noted that interpreting "directly to subscribers" to mean that a LEC affiliate must use its own facilities to provide service, as opponents have suggested, contradicts the statutory directive that the LEC Test may be satisfied "by *any* means" other than direct-to-home

¹ See 47 U.S.C. § 543(l)(1)(D).

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

satellite.³ We also explained that the reference to the “facilities of such carrier or its affiliate” does not apply to the LEC Test as a whole, as is clear from the fact that the phrase is set off by parentheses where it is limited to MVPDs.⁴ Finally, we pointed out that the Media Bureau designated this proceeding “permit-but-disclose” on November 13, 2018, providing ample notice and opportunity for all interested parties to comment on Charter’s petition.⁵

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

Sincerely,

/s/ *Howard J. Symons*

Howard J. Symons

cc: Matthew Berry
Alex Sanjenis

³ See § 543(l)(1)(D) (emphasis added); Charter Reply at 9. Such an interpretation is similarly inconsistent with the legislative history of the LEC Test. See 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 4 n.14 (Feb. 1, 2019) (“February 1 Ex Parte”).

⁴ See also February 1 Ex Parte at 1-4.

⁵ See Public Notice, Establishment of “Permit-but-Disclose” Ex Parte Procedures For Charter Communications, Inc.’s Petition for Determination of Effective Competition, MB Docket No. 18-283, DA 18-1154, at 1-2 (rel. Nov. 13, 2018) (“Given the potential impact of our determination of whether competition from DIRECTV NOW satisfies the LEC effective competition test, which may have effects beyond the specific matter at issue in the Petition, adoption of modified *ex parte* procedures is appropriate in this case.”).