

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Charter Communications, Inc.,</b>	)	CSR-8955-Z
<b>Time Warner Cable Pacific West LLC, and</b>	)	
<b>Bresnan Communications, LLC</b>	)	
	)	MB Docket No. 18-91
Petition for Declaratory Ruling,	)	
Enforcement Order, and Further Relief For	)	
Violations of Sections 76.1603 and 76.309	)	
of the Commission's Rules	)	
	)	
<b>Charter Communications, Inc., and</b>	)	
<b>Falcon Telecable,</b>	)	CSR-8956-Z
<b>Time Warner Cable Pacific West LLC, and</b>	)	
<b>Bresnan Communications, LLC</b>	)	
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Petition for Declaratory Ruling,	)	
Enforcement Order, and Further Relief For	)	MB Docket No. 18-101
Violations of Sections 76.1603 and 76.1619	)	
of the Commission's Rules	)	

**OPPOSITION TO PETITIONS FOR DECLARATORY RULING,  
ENFORCEMENT ORDER, AND FURTHER RELIEF**

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April 26, 2018

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## SUMMARY

This dispute arises out the decision by Northwest Broadcasting, Inc. (“Northwest”) to pull its authorization for Charter Communications, Inc., Time Warner Cable Pacific West LLC, Falcon Telecable, and Bresnan Communications, LLC (collectively, “Charter”) to retransmit Northwest’s stations KYMA, KSWT, KPVI, KIEM and KVIQ (“the stations”) on its cable systems.<sup>1</sup> In essence, the City of Yuma, Arizona (“Yuma”), the Town of Jackson, Wyoming (“Jackson”), the City of El Centro, California (“El Centro”), and Crescent City, California (collectively, “Petitioners” or “Municipalities”) seek to hold Charter responsible for Northwest’s decision to withhold its programming from Charter and its customers to gain leverage in retransmission consent negotiations.

Based wholly on Northwest’s inaccurate and one-sided version of this dispute, the Municipalities allege that Charter should have provided 30 days’ advance notice to subscribers of Northwest’s decision. They make unfounded claims of “misrepresentations” regarding Charter’s efforts to inform subscribers of—and provide free access to—alternative sources for the content carried by the stations. Finally, they improperly seek to impose rate regulation on Charter through a demand for refunds and an unwarranted reduction in Charter’s Broadcast TV Surcharge.

Charter emphatically denies the Municipalities’ allegations, and the Commission should deny the Petitions in their totality. Contrary to Petitioners’ claims, Charter’s actions were completely consistent with Section 76.1603(b), which requires a cable operator to provide 30 days’ advance notice of a change in programming services only with respect to changes that are

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<sup>1</sup> KYMA and KSWT were carried on Charter’s Yuma and El Centro systems, KPVI on Charter’s Jackson system, and KIEM and KVIQ on Charter’s Crescent City system.

“within the control” of the cable operator. Petitioners’ argument that the blackout was “within the control of [Charter],” relying as it does on Northwest’s self-interested and inaccurate version of the dispute, fails for lack of a credible factual foundation.

As demonstrated below and in the attached declaration of Adam Weinstein, Northwest, not Charter, caused the removal of the stations from Charter’s cable service by withdrawing retransmission consent after refusing Charter’s offer to continue carrying the stations’ signals under the existing terms and conditions while negotiations continued. This occurrence was not a “scheduled” event of the sort the Commission has elsewhere found to be within a cable operator’s control. Moreover, unlike the situation in the *NFL Network* dispute invoked by Petitioners, Northwest never offered the 30-day extension that the Media Bureau found significant in determining that the cable operator in that proceeding should have provided advance notice.

As required by the Commission’s rules, Charter provided notice of the blackout to its Yuma, Jackson, El Centro, and Crescent City subscribers “as soon as possible” after learning that Northwest had terminated its authorization for Charter to retransmit the stations. Section 76.1603(c), which imposes a separate obligation to notify franchising authorities of certain programming changes, is inapplicable here because none of the Municipalities are certified to regulate basic tier rates.

The Municipalities’ claim that Charter’s failure to adjust its Broadcast TV Surcharge violates Section 76.1619 is also unfounded. Charter’s subscriber bills clearly and concisely identify and describe the Broadcast TV Surcharge. Just as Charter negotiates retransmission consent with local broadcast television station owners on a nationwide basis, the Broadcast TV Surcharge is determined on the basis of Charter’s anticipated nationwide retransmission consent

costs and collected on a national, per subscriber basis. Charter therefore does not adjust the Broadcast TV Surcharge each time a local broadcaster's station or stations are added or removed from its cable systems.

The Commission should likewise deny the Municipalities' request for an order requiring Charter to make refunds, including of the Broadcast TV Surcharge. The blackout did not effect a rate increase as the Municipalities contend. In any event, mandated refunds would constitute impermissible rate regulation since none of the Municipalities is certified to regulate basic cable rates, and Charter's Terms of Service expressly preclude subscribers from seeking refunds in the event of a blackout.

Finally, because Charter has not committed any of the rule violations alleged by Petitioners, their demand for forfeitures is without foundation.

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**OPPOSITION TO PETITIONS FOR DECLARATORY RULING,  
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Charter hereby submits this consolidated Opposition to the Petitions filed by the City of Yuma, Arizona, the Town of Jackson, Wyoming, the City of El Centro, California,<sup>2</sup> and Crescent City, California<sup>3</sup> in the above-captioned dockets.

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<sup>2</sup> Petition for Declaratory Ruling, Enforcement Order, and Further Relief For Violations of Sections 76.1603 and 76.309 of the Commission's Rules, *In re Charter Communications, Inc.*, CSR-8955-Z, MB Docket No. 18-91 (Mar. 15, 2018) ("Yuma et al. Petition").

<sup>3</sup> Petition for Declaratory Ruling, Enforcement Order, and Further Relief For Violations of Sections 76.1603 and 76.1619 of the Commission's Rules, *In re Charter Communications, Inc.*, CSR-8956-Z, MB Docket No. 18-101 (Apr. 4, 2018) ("Crescent City Petition"). Yuma, Jackson, and El Centro join in Crescent City's Petition to the extent it seeks relief in addition to that sought in their Petition. *Id.* at ii-iii. The Media Bureau established April 26, 2018 as the deadline for Charter to file its opposition to both Petitions.

## **I. INTRODUCTION**

This dispute arises out of the decision by Northwest to pull its authorization for Charter to retransmit KYMA, KSWT, KPVI, KIEM, and KVIQ on its cable systems.<sup>4</sup> In essence, the Municipalities seek to hold Charter responsible for Northwest's decision to withhold its programming from Charter and its customers to gain leverage in retransmission consent negotiations. Based wholly on Northwest's inaccurate and one-sided version of this dispute, the Municipalities allege that Charter should have provided 30 days' advance notice to subscribers of Northwest's decision. They make unfounded claims of "misrepresentations" regarding Charter's efforts to inform subscribers of—and provide free access to—alternative sources for the content carried by the stations. Finally, they improperly seek to impose rate regulation on Charter through a demand for refunds and an unwarranted reduction in Charter's Broadcast TV Surcharge.

Charter deeply regrets the disruption that Northwest has caused its valued subscribers and appreciates their request to resolve this dispute as soon as possible. Charter continues to work toward reaching a fair agreement that is in the best interests of its customers, however, it remains Charter's responsibility to ensure that Northwest does not take advantage of Charter's subscribers by imposing above-market rates for its programming. To argue, as the Municipalities do, that the outcome of Charter's negotiations with Northwest was "within the control" of Charter is tantamount to arguing that Charter was compelled to accept Northwest's unreasonable offer—regardless of its adverse impact on subscribers—because that is the only way that Charter could have controlled the outcome of the negotiations. The Commission should

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<sup>4</sup> KYMA and KSWT were carried on Charter's Yuma and El Centro systems, KPVI on Charter's Jackson system, and KIEM and KVIQ on Charter's Crescent City system.

reject their attempt to use the Commission's procedures to punish Charter for refusing to agree unilaterally to Northwest's patently unreasonable retransmission consent terms.

As demonstrated below and in the attached declaration of Adam Weinstein, the blackout of the stations was not within Charter's control, and therefore the requirement in the Commission's rules to provide 30 days' advance notice is inapplicable to the blackout. Northwest, not Charter, caused the removal of the stations from Charter's cable service by withdrawing retransmission consent after refusing Charter's offer to continue carrying the stations' signals under the existing terms and conditions while negotiations continued. Charter repeatedly tried to negotiate in good faith with Northwest since October of last year. Despite Northwest's track record of instigating blackouts after making exorbitant and unreasonable fee requests,<sup>5</sup> Charter remained hopeful that an agreement that was mutually beneficial and fair for its subscribers could be reached.

As required by the Commission's rules, Charter provided notice of the blackout to its Yuma, Jackson, El Centro, and Crescent City subscribers "as soon as possible" after learning that Northwest had terminated its authorization for Charter to retransmit the stations. In addition to on-screen announcements and emails to subscribers, Charter launched a website to provide them with additional information that included alternative means of accessing "must have" television content on the Northwest channels. Charter also notified the Municipalities, even though such notification was not required in this instance. In addition, all of the Municipalities are Charter subscribers and so received subscriber notice contemporaneously with the blackout.

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<sup>5</sup> See *infra* note 26.

As set forth below, the Municipalities' other claims are equally without foundation and their request for refunds and forfeitures are therefore without foundation. The Commission should deny the Petitions in full.

## **II. NORTHWEST'S DECISION TO BLACK OUT THE STATIONS WAS NOT WITHIN CHARTER'S CONTROL.**

### **A. The Municipalities' Version of Events Is Fundamentally and Thoroughly Inaccurate.**

Negotiations between cable operators and broadcasters usually come down to the final 30 days of an agreement—indeed, often to the final day or hours—and are frequently marked by vigorous and even at times contentious exchanges. The negotiations between Charter and Northwest were no different. The facts are that Charter worked hard, up to the last minute, to reach an agreement with Northwest on mutually acceptable terms. Unfortunately, Northwest continued to insist on unprecedented rate increases that would have led to increased prices for Charter's subscribers in Yuma, Jackson, El Centro, and Crescent City.

In concluding that Charter, not Northwest, was solely to blame for the blackout and thus that the blackout was “within the control” of Charter for purposes of triggering Section 76.1603(b)'s 30-day advance notice requirement, the Municipalities rely exclusively on a declaration provided by Brian Brady, Northwest's CEO. As the Weinstein Declaration and the attached email exchanges demonstrate, however, the Brady Declaration contains numerous factual inaccuracies, omissions, and erroneous characterizations of the facts and the sequence of events that led up to the blackout.

To begin, Mr. Brady asserts that he reached out to Charter eight months before expiration of the contract to start negotiations, and suggests that there were no contacts, discussions or

proposals exchanged by Charter until two weeks before expiration.<sup>6</sup> The reality is that *Charter* advocated beginning carriage negotiations early when the parties first met in June 2017.

However, Northwest did not send its first proposal until October 11, 2017, for the carriage agreement that was set to expire on January 31, 2018.<sup>7</sup>

During the remainder of the fall and into the winter, Charter and Northwest engaged in ongoing discussions, with both parties providing various proposals and counterproposals in an attempt to reach agreement prior to the January 31, 2018 expiration of their carriage agreement.<sup>8</sup> Again contrary to the Brady Declaration's contention that Charter did not provide a written carriage proposal until February 2, 2018, two days after the existing agreement expired,<sup>9</sup> the reality is that Charter provided written carriage proposals to Northwest on October 25, 2017 and November 20, 2017.<sup>10</sup> When Northwest rejected those proposals, Charter followed with a verbal proposal on January 17, 2018, but received no response from Northwest during the vital two week period leading up to the January 31, 2018 expiration.<sup>11</sup>

After two weeks of silence, Charter reached out to Northwest on Wednesday, January 31 to request an extension of the agreement.<sup>12</sup> That day, Northwest made a verbal proposal that would have required Charter to blindly sign a carriage agreement as Northwest refused to

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<sup>6</sup> Brady Declaration ¶ 3.

<sup>7</sup> See Attachment A at 14 (email from Northwest to Charter (Oct. 11, 2017) attaching proposed carriage agreement).

<sup>8</sup> Declaration of Adam Weinstein ¶ 6 ("Weinstein Declaration"), attached hereto as Attachment B.

<sup>9</sup> Brady Declaration ¶ 3.

<sup>10</sup> See Attachment A at 11-13 (emails from Charter to Northwest (Oct. 25, 2017 & Jan. 31, 2018) indicating the dates of Charter's written counterproposals).

<sup>11</sup> Weinstein Declaration ¶ 8.

<sup>12</sup> See Attachment A at 11-12 (email from Charter to Northwest Broadcasting (Jan. 31, 2018)).

disclose the rates. Nevertheless, on January 31, Charter and Northwest agreed to a 24-hour extension of the existing carriage agreement.<sup>13</sup>

While Mr. Brady asserts that Charter never asked for any extension prior to the original expiration date of the agreement,<sup>14</sup> the reality is that the parties agreed to two 24-hour extensions after the original expiration. On Friday, February 2, after the second of those extensions, Charter made an offer that would have increased its carriage fees over prior proposals.<sup>15</sup> Charter also asked for an extension through Sunday, February 4 so that subscribers would be able to watch the Super Bowl, with a promise to work through the entire weekend to attempt to conclude a long-term deal, given that Northwest operates the local NBC affiliate in many of its television markets, including in the markets serving the Municipalities.<sup>16</sup> Northwest refused.

Similarly, while Mr. Brady asserts that Northwest offered Charter an extension *through* February 3, 2018 so that it could have time to review and respond to Charter's written proposal,<sup>17</sup> the reality is that Northwest offered Charter only a *seven-hour extension* on February 2 (allowing negotiations to continue from 5:00 pm EST through midnight on February 2) and countered Charter's offer to increase its carriage fees with a proposal that was still nearly double the rates that were in existence at the time of the contract expiration.<sup>18</sup>

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<sup>13</sup> See *id.* at 7-9 (emails between Charter and Northwest (Jan. 31, 2018) indicating 24-hour extension of existing carriage agreement).

<sup>14</sup> Brady Declaration ¶ 5.

<sup>15</sup> See Attachment A at 7 (emails between Charter and Northwest (Feb. 1, 2018) indicating another 24-hour extension of existing carriage agreement).

<sup>16</sup> See *id.* at 1, 4 (emails from Charter to Northwest (Feb. 2, 2018) requesting an extension of the carriage agreement until Monday, February 5, 2018 and indicating a willingness to negotiate through the weekend).

<sup>17</sup> Brady Declaration ¶ 4.

<sup>18</sup> See Attachment A at 1-2, 4-6 (emails from Northwest to Charter (Feb. 2, 2018) offering a counterproposal, an extension through midnight, February 2, 2018 and rejecting Charter's offer to continue negotiations through the weekend).

Finally, while Mr. Brady asserts that Charter removed the stations from its cable systems at 5:00 pm EST on February 2,<sup>19</sup> the reality is that *Northwest's* refusal of Charter's reasonable request to extend negotiations through February 4 to ensure access to the Super Bowl caused negotiations to end. When Northwest terminated Charter's authorization to carry the stations on February 2,<sup>20</sup> Charter lost the required retransmission consent, leading to the blackout. Indeed, Northwest itself posted a message shortly after talks broke down acknowledging that negotiations had been proceeding "in good faith," but that they had reached "a standstill" and that consequently "Charter no longer has the rights to carry our programming."<sup>21</sup> This is clear evidence that both sides in contentious carriage negotiations prepare in advance for a potential blackout. To do otherwise would be a disservice to Charter's customers.

**B. Northwest's Continuing Insistence on Unreasonable Carriage Proposals, Not Charter, Caused the Blackout.**

The reason for the breakdown in negotiations between Charter and Northwest, and thus the blackout, is simple: the carriage proposals Northwest offered Charter were unreasonable and unwarranted. Northwest's initial proposal was without precedent: It would have increased carriage fees by over 150 percent.<sup>22</sup> These rates are more than double the per subscriber rate Charter pays any other broadcaster in the entire country.<sup>23</sup> In fact, Northwest told Charter's

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<sup>19</sup> Brady Declaration ¶ 4.

<sup>20</sup> The Municipalities assert that "Charter timed the channel deletion at the end of the week, when it must have known that its subscribers would have had little opportunity to find an alternative way to ensure delivery of the Super Bowl, or other programming" and in order "to place the most pressure on Northwest." Petition at 10. This is rank speculation and is belied by the facts. As described above, Charter asked Northwest for an extension through Sunday, February 4, *specifically* to allow its customer to watch the Super Bowl and promised to work through the entire weekend to attempt to conclude a long-term deal. Weinstein Declaration ¶ 11.

<sup>21</sup> A representative example of Northwest's messaging is attached hereto as Attachment C.

<sup>22</sup> Weinstein Declaration ¶ 4.

<sup>23</sup> *Id.*

negotiators that its proposed fees also were significantly higher than the fees paid to Northwest by *any other* distributor of their stations.<sup>24</sup>

Northwest still wanted an 80 percent increase in the rate Charter pays for its programming at the time Northwest pulled its authorization on February 2, 2018,<sup>25</sup> and it continues to seek fees that are higher than what Charter pays any other broadcast station in the country. While Charter was prepared for a reasonable increase in carriage fees over the expiring agreement, it could not and would not agree to such an unwarranted increase—an increase that would substantially and unfairly impact its subscribers.

Requests for exorbitant increases in fees and an unwillingness to reach a reasonable resolution of these issues have become a pattern with Northwest in programming carriage negotiations. In the last several years alone, Northwest's requests for outrageous fees have led to blackouts with video distributors around the country including with Verizon FiOS, Cable One, DirecTV, and DISH Network.<sup>26</sup> This conduct is wholly within Northwest's control, not Charter's. In contrast, Charter has negotiated fairly and successfully for carriage with hundreds of broadcast stations and has never faced the extended blackout of a local station affiliated with one of the Top 4 television networks (ABC, NBC, CBS or FOX).

**C. Charter Provided Prompt Notice of the Blackout to Subscribers and the Municipalities.**

Charter hoped for a mutually beneficial resolution with Northwest. So long as negotiations were ongoing and a resolution therefore remained possible, notice of a blackout was

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶ 11.

<sup>26</sup> See, e.g., Daniel Frankel, *Cable One and Northwest end blackout*, FierceCable (Feb. 3, 2017), <https://www.fiercecable.com/cable/cable-one-and-northwest-end-blackout>; *Retrans Showdown: Northwest Broadcasting Goes After DirecTV*, CableFax, (June 15, 2015), <http://www.cablefax.com/distribution/retrans-showdown-northwest-broadcasting-goes-directv>.

premature. While the Municipalities allege that Charter “deliberately chose *not* to notify either the Municipalities or its subscribers” in order to “position itself to use public outrage about the blackout for better leverage in subsequent negotiations,” there is no basis for this conclusion on the part of the Municipalities and is contrary to the actual facts.<sup>27</sup> As noted above, Charter has negotiated hundreds of programming deals with broadcasters and has never faced the extended blackout of a local station affiliated with one of the Top 4 television networks, so it continued to believe that an agreement was possible.

Once Northwest discontinued its authorization for Charter to carry the stations, however, Charter immediately provided notice to its affected subscribers by making on-air announcements within minutes of Northwest pulling its authorization for Charter to carry the signals, sending emails, and launching a website where they could get additional information about the blackout.<sup>28</sup> In addition, all of the Municipalities are Charter subscribers and so received subscriber notice contemporaneously with the blackout. The blackout was also widely reported in the local media of each Municipality.<sup>29</sup>

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<sup>27</sup> Yuma et al. Petition at 12; Crescent City Petition at 10.

<sup>28</sup> See e.g., Northwest Deal Homepage, <https://www.northwestfairdeal.com/> (last visited Apr. 26, 2018). While Charter began preparing this notice and associated public relations campaign in advance of the blackout, this is not evidence that Charter prematurely decided to remove Northwest’s channels from its cable systems. Cf. Yuma et al. Petition at 7; Crescent City Petition at 6. Rather, Charter took these steps as a precaution whenever retransmission consent negotiations may go down to the wire. See *supra* at note 26.

<sup>29</sup> See e.g., *Charter, Eureka Stations Blame Each Other*, Del Norte Triplicate (Feb. 6, 2018), <http://www.triplicate.com/news/5982423-151/charter-eureka-stations-blame-each-other>; Mara Knaub, *Spectrum, Northwest Pointing Fingers*, Yuma Sun (Feb. 6, 2018), <https://www.pressreader.com/usa/yuma-sun/20180206/281496456734735>; Edwin Delgado, *NBC v. Spectrum*, Imperial Valley Press (Feb. 6, 2018), <https://www.pressreader.com/usa/imperial-valley-press/20180206/281556586276866>; Allie Gross, *Local NBC Affiliate Pulled from Spectrum Cable Ahead of Super Bowl*, Jackson Hole News & Guide (Feb. 2, 2018), [http://www.jhnewsandguide.com/jackson\\_hole\\_daily/local/local-nbc-affiliate-pulled-from-spectrum-cable-ahead-of-super/article\\_348d3659-7a32-5f87-b493-08e167b8ee95.html](http://www.jhnewsandguide.com/jackson_hole_daily/local/local-nbc-affiliate-pulled-from-spectrum-cable-ahead-of-super/article_348d3659-7a32-5f87-b493-08e167b8ee95.html).

**D. Charter Took Proactive Steps to Ensure that Its Negotiations with Northwest Did Not Harm Subscribers.**

Charter also took a proactive approach to try to minimize the potential harm to its subscribers in the event that negotiations with Northwest failed. To confirm that the stations would be available over-the-air in the affected communities, Charter consulted the Commission's station coverage data before representing that subscribers in the Municipalities could watch Northwest's stations over-the-air in the event of a blackout.<sup>30</sup>

Charter also arranged for all of its Yuma, Jackson, El Centro, and Crescent City customers who subscribe solely to Broadcast Basic to have free access to NBC's online Olympics programming within its NBCSports app.<sup>31</sup> When Charter learned that some of its subscribers could not access portions of the Olympics content within the app, Charter immediately contacted NBC to resolve the problem. It is Charter's understanding that NBC resolved the technical issues within 36 hours.<sup>32</sup>

**III. CHARTER DID NOT VIOLATE THE COMMISSION'S RULES.**

**A. The Advance Notice Requirement Only Applies to Changes that Are "Within the Control" of the Cable Operator.**

Charter clearly complied with the Commission's notice rule. Section 76.1603(b) requires customers to be notified of any changes in rates, programming services or channel positions "as soon as possible."<sup>33</sup> While it also requires notice to be "given to subscribers a minimum of thirty (30) days in advance of such changes," this obligation applies only "if the change is *within the control* of the cable operator."<sup>34</sup>

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<sup>30</sup> Weinstein Declaration ¶ 15.

<sup>31</sup> *Id.* ¶ 16.

<sup>32</sup> *Id.* ¶ 17.

<sup>33</sup> 47 C.F.R. § 76.1603(b).

<sup>34</sup> *Id.* (emphasis added).

As explained above, Charter provided notice of the blackout to its Yuma, Jackson, El Centro, and Crescent City subscribers “as soon as possible” after learning that Northwest had terminated its authorization for Charter to retransmit the signals of the stations. Section 76.1603(b)’s additional requirement to provide 30-day advance notice is inapplicable here because the programming change was not “within the control” of Charter. It was Northwest’s decision, not Charter’s, to deny the contract extension requested by Charter and thereby remove the channels from Charter’s cable service. Charter indicated its willingness to Northwest to continue carrying the signals of the stations under the existing terms and conditions while negotiations continued, but Charter is not allowed under the law to carry them without explicit authorization from the broadcast licensee.<sup>35</sup> To argue, as the Municipalities do, that the outcome of the negotiations was “within the control” of Charter is tantamount to arguing that Charter was compelled to accept Northwest’s unreasonable offer—because that was the only way that Charter could have controlled the outcome of the negotiations.

The Media Bureau’s *NFL Network Reconsideration Order* does not support the Municipalities’ claim. There, the Bureau found that Time Warner Cable violated the advance notice rule because the NFL Network “‘offered to allow Time Warner to continue to carry [it] on pre-existing terms and conditions’ for 30 days.”<sup>36</sup> In light of the NFL Network’s offer, the facts

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<sup>35</sup> See 47 U.S.C. § 325(b)(1)(A) (barring cable operator retransmission of a broadcast signal, except with the “express authority of the originating station”); 17 U.S.C. § 111(c)(1) (granting cable systems a copyright license for the retransmission of broadcast content, but only where carriage of the broadcast station is “permissible under the rules, regulations, or authorizations of the Federal Communications Commission.”).

<sup>36</sup> See *In re Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, 9021 ¶ 17 (MB 2006) (“*NFL Network Reconsideration Order*”) (quoting Petition for Reconsideration).

of which neither party contested, the Bureau concluded that Time Warner Cable's decision to reject the offer and drop the Network constituted "control" within the meaning of the rule.<sup>37</sup>

Here, by contrast, Northwest only provided Charter with a series of 24-hour extensions and refused to extend the agreement even for a few days, much less an entire month, on pre-existing terms and conditions. Thus, Northwest's decision to withdraw authorization to retransmit the five stations' signals was not within Charter's control even as that concept was applied in the *NFL Network Reconsideration Order*. Indeed, the Media Bureau strongly suggested that in circumstances such as those in this case, a cable operator would *not* be found to be in control of a decision to black out stations.<sup>38</sup>

The Media Bureau explained in the *NFL Network Reconsideration Order* that one of the "principal purposes" of Section 76.1603 was to provide consumers with the ability "to make alternative arrangements to view programming that is dropped *by a cable provider*"<sup>39</sup>—not where a blackout is the result of a programmer's or broadcaster's refusal to agree to reasonable terms or provide an extension on existing terms. Petitioners cite this statement, but conveniently overlook the express linkage to action by the cable operator.

In this case, however, Charter itself ensured fulfillment of this objective by making arrangements with NBC so that all of its subscribers could watch the streamed version of the Olympics, and took reasonable steps to attempt to verify the over-the-air availability of the

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<sup>37</sup> See *id.* ("it is undisputed that the NFL Network 'offered to allow Time Warner to continue to carry the network on pre-existing terms and conditions' for 30 days and that Time Warner refused this offer." (emphasis added) (quoting Petition for Reconsideration)).

<sup>38</sup> See *id.* ("Had the NFL been unwilling to provide Time Warner with the legal right to continue to carry its programming, this might well have been a different case.").

<sup>39</sup> *Id.* at 9023 ¶ 23 (emphasis added).

stations in the affected areas. It then immediately notified customers of these alternatives.<sup>40</sup>

Any contrary interpretation would result in Charter having to constantly notify its customers anytime its begins retransmission consent negotiations with a broadcaster, leading to unnecessary customer confusion and potentially driving subscribers to other multichannel video programming distributors at a time when competition is fiercer than ever.

It is also irrelevant that Charter knew in advance that the agreement was set to expire on January 31, 2018,<sup>41</sup> or that Charter began preparing for a possible blackout in advance.<sup>42</sup> The test under Section 76.1603(b) is whether the change in programming is “within the control of the cable operator,”<sup>43</sup> not whether the change is merely a potential outcome of ongoing contract negotiations. That Charter undertook prudent measures to prepare for a blackout does not mean that Charter controlled the outcome of negotiations. Indeed, as noted above and in the Weinstein declaration, Charter remained hopeful up until the end that the negotiations would result in a mutually acceptable agreement as there is often a series of multiple short-term extensions that occur before the signing of a new agreement. In fact, Charter has undertaken similar steps in

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<sup>40</sup> The Commission should take the opportunity presented by this Petition to clarify as a general matter the applicability of the 30-day advance notice requirement in the context of ongoing negotiations as this requirement as currently structured has become outdated and anticompetitive given that Charter’s competitors, such as satellite companies, are not subjected to this requirement. Specifically, the Commission should clarify that the 30-day advance notice requirement does not apply when a cable operator and a programmer or a broadcaster remain in carriage negotiations, even during the final 30 days of an agreement. If those negotiations fail and the channel goes dark as a result, the cable operator would be required to provide notice to subscribers “as soon as possible.” As under the *NFL Network Reconsideration Order*, if a programmer or broadcaster offers at least a 30-day extension of the expiring agreement on the same terms and conditions as that agreement, the operator would be required to provide 30-day advance notice running through the first 30 days of the extension period. The offer of an extension on different terms and conditions would not trigger the requirement, however. See Letter from Maureen O’Connell, Vice President, Regulatory Affairs, Charter, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 17-317 (Feb. 15, 2018).

<sup>41</sup> Yuma et al. Petition at 5; Crescent City Petition at 4 (“Northwest reached out to Charter approximately eight months *before* the scheduled expiration date); *id.* (“Charter appears to have presented an oral proposal on November 20, 2017, which it reiterated on January 17, 2018 – two weeks *before* the agreement was scheduled to expire.”).

<sup>42</sup> Yuma et al. Petition at 7; Crescent City Petition at 6 (noting that “Charter had in fact been planning its post-blackout notice and public relations campaign for weeks.”).

<sup>43</sup> 47 C.F.R. § 76.1603(b).

negotiations with other broadcasters that ended with the signing of a new agreement prior to the existing agreement's expiration.

The Municipalities point to the definition of “normal operating conditions” in Section 76.309(c)(4)(ii) of the Commission’s rules to bolster its argument that a mutual failure in carriage negotiations should be deemed to be “within the control” of the cable operator alone, apparently because failed negotiations is not in the list of conditions not within the operator’s control.<sup>44</sup> Even assuming *arguendo* that this definition is relevant to the advance notice rule, that list is expressly non-exclusive,<sup>45</sup> and the type of events deemed within the operator’s control, as the Municipalities themselves note, are those “‘generally scheduled by the cable operator’ . . . [or that] ‘the operator knows the schedule reasonably well in advance of the event,’” such as special promotions or pay-per-view events.<sup>46</sup> The ultimate failure of negotiations carried on during the last month of a contract are neither “generally scheduled” nor “know[n] reasonabl[y] well in advance,”<sup>47</sup> and thus are outside the scope of the cable operator’s control even under the definition in Section 309(c)(4).<sup>48</sup> Charter was therefore not obligated to provide its subscribers with advance notice of the blackout under Section 76.1603(b).

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<sup>44</sup> Yuma et al. Petition at 11; Crescent City Petition at 8.

<sup>45</sup> 47 C.F.R. § 76.309(c)(4)(ii) (“Those conditions which are not within the control of the cable operator *include, but are not limited to*. . .” (emphasis added)).

<sup>46</sup> Yuma et al. Petition at 11 (citing *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection & Customer Service*, Report & Order, 8 FCC Rcd 2892, 2903 ¶ 43 (1993) (adopting customer service obligations for cable operators)); 47 C.F.R. § 76.309(c)(4)(ii).

<sup>47</sup> In fact, the vast majority of those negotiations—as many as 99 percent—end successfully. See Phil Kurz, *Alliance Cries Foul Over TV Retrans Blackouts*, TVTechnology (Jan. 9, 2018) <http://www.tvtechnology.com/news/0002/alliance-cries-foul-over-tv-retrans-blackouts/282527>.

<sup>48</sup> Charter does not concede the relevance to this case of the definition of “normal operating conditions” in Section 76.309(c)(4)(ii) of the Commission’s rules or the cited order.

Finally, far from being “deceptive [and] misleading,” as the Municipalities groundlessly assert,<sup>49</sup> the notice that Charter did provide its subscribers, including the Municipalities, clearly and accurately described the options available to subscribers for viewing the stations’ content. As explained above, Charter undertook reasonable due diligence, consulting the Commission’s station coverage data, to confirm that Northwest’s over-the-air signals were available in each of the affected Municipalities before making the representation to subscribers that they could watch the Super Bowl and other NBC programming over-the-air.<sup>50</sup> That certain subscribers may not have been able to receive a good quality signal is not the result of any misrepresentation by Charter but rather reflects the inherent limitations in the data that the Commission itself acknowledges.<sup>51</sup> Likewise, Charter took affirmative steps to authorize its subscribers in the affected Municipalities to access the Olympics content within the NBC app. The technical issues that precluded some subscribers from gaining access to the app were outside of Charter’s control and, in any case, were resolved reasonably promptly after Charter brought them to NBC’s attention.<sup>52</sup>

**B. Section 76.1603(c) is Inapplicable.**

Petitioners also allege that Charter has violated the notice requirement in Section 76.1603(c) of the Commission’s rules by failing to notify the Municipalities of the blackout,<sup>53</sup> but this requirement is inapplicable. Section 76.1603(c) is a vestige of the rate regulation regime adopted pursuant to the 1992 Cable Act that has since been repealed and superseded. The link to

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<sup>49</sup> Cf. Yuma et al. Petition at 11; Crescent City Petition at 10.

<sup>50</sup> Weinstein Declaration ¶ 15.

<sup>51</sup> See Media Bureau, FCC, DTV Reception Maps, <https://www.fcc.gov/media/engineering/dtvmaps>.

<sup>52</sup> Weinstein Declaration ¶ 17.

<sup>53</sup> Yuma et al. Petition at 11; Crescent City Petition at 10.

the 1992 Act rate regulation regime is made clear by the requirement that the operator “briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels),”<sup>54</sup> corresponding to rate adjustment factors under that regime. But rate regulation of tiers other than the basic tier was repealed effective April 1, 1999,<sup>55</sup> and none of the Municipalities are certified to regulate Charter’s basic rates. Accordingly, the rule has no bearing on this dispute.

Even if it were applicable, Section 76.1603(c) pertains to situations in which a cable operator has by choice implemented a programming service change or adjusted the rates charged to customers, neither of which is the case here. Rather, the change results solely from Northwest’s decision to rescind Charter’s authorization to carry the stations. In any event, as documented above, the Municipalities did receive notice of Northwest’s decision to withdraw authorization.

**C. Charter’s Broadcast TV Surcharge Does Not Violate Section 76.1619.**

The Municipalities contend that Charter’s description of the Broadcast TV Surcharge is not “clear” and “understandable” because the surcharge does not vary with the number of retransmission consent stations on a given cable system.<sup>56</sup> The Municipalities’ argument amounts to a claim that any such surcharge must be imposed on a market-by-market basis, and adjusted each time a channel is added or removed from one of Charter’s cable systems, in order to meet the “clear” and “understandable” requirement in Section 76.1619.<sup>57</sup> Such a claim is in

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<sup>54</sup> 47 C.F.R. § 76.1603(c) (“[P]rogramming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change.”).

<sup>55</sup> See 47 U.S.C. § 543(c)(4).

<sup>56</sup> Crescent City Petition at 10-12.

<sup>57</sup> Crescent City Petition at 11 (“what is identified as a retransmission consent fee *must* in fact reflect the fee being paid by a given group of subscribers.” (emphasis added)).

essence an impermissible demand for rate regulation of the surcharge. While Petitioners may prefer a surcharge imposed on a market-by-market basis,<sup>58</sup> this is not the way Charter assesses the surcharge and it is not the way the surcharge is described on subscriber bills or on Charter's website. Rather, just as Charter negotiates national rather than local agreements with each broadcaster electing retransmission consent, the Broadcast TV Surcharge is imposed on a national, per subscriber basis.<sup>59</sup> As is true for the similar charge imposed by other multichannel video programming distributors, Charter's surcharge recoups only a portion of the total retransmission consent fees that Charter pays each year.<sup>60</sup> Charter sets the fee, typically on an annual basis, to reflect its *anticipated* retransmission expenses for the upcoming year. Consequently, Charter does not adjust the surcharge each time a channel is added or removed from the lineup of one of its systems.<sup>61</sup> This practice provides subscribers with predictability regarding the amount of the fee.<sup>62</sup>

The Municipalities claim that Charter's bills are unclear regarding the surcharge, but nowhere on its subscriber bills or its website does Charter represent that the surcharge is a direct, one-to-one pass through of retransmission expenses Charter incurs in each local market. Rather, Charter's description of the Broadcast TV Surcharge on its website and the representations on its subscriber bills broadly describe the rationale for the surcharge. On certain subscriber bills,

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<sup>58</sup> Crescent City Petition at 12 ("Due to the elimination of Northwest's channels, however, Charter is no longer incurring the same expenses.").

<sup>59</sup> Declaration of David Andreski ¶ 2 ("Andreski Declaration"), attached hereto as Attachment D.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶ 3. Even if Charter were to adjust the surcharge each time a channel is removed from the lineup of one of its systems, the decrease would be minimal because the surcharge is a reflection of Charter's nationwide retransmission consent costs.

<sup>62</sup> *Id.*

Charter indicates that the surcharge “reflects costs incurred from local Broadcast TV stations.”<sup>63</sup>

On others, Charter directs subscribers to visit its website, which explains that the surcharge is intended to recoup retransmission consent costs in general, not with respect to particular stations in particular markets.<sup>64</sup>

On their way to asserting that the surcharge should be reduced, the Municipalities rehash claims against any retransmission consent surcharge that have long since been resolved in favor of such a fee.<sup>65</sup> While the Petition does not appear to rely on these claims, Charter responds to them briefly. First, the Broadcast TV Surcharge is not, as the Municipalities contend, an impermissible “add-on” or “additional rate.”<sup>66</sup> The Commission long ago held that a cable operator is not “preclude[d from] the itemization of additional costs (whether or not governmentally imposed)”<sup>67</sup> as long as the operator includes such costs in its single rate for cable service.<sup>68</sup> As is clear from the subscriber bills attached to the Municipalities’ Petition, the

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<sup>63</sup> Crescent City Petition at Ex. D (Included in the petition is the Declaration of Marcela Piedra, which attaches the Exhibit D referenced here).

<sup>64</sup> Spectrum, Billing FAQs: What is the Broadcast TV Surcharge on my statement? (last visited Apr. 26, 2018), <https://www.timewarnercable.com/en/support/faqs/faqs-account-and-billing/billing/what-is-the-broadcast-tv-surcharge-on-my-statement.html>:

As a direct result of local broadcast, or “network-affiliated,” TV stations increasing the rates to Charter Communications to distribute their signals to our customers, we’ll be passing those charges on as a Broadcast TV Surcharge.

Petitioners cite this same passage from Charter’s FAQs. Crescent City Petition at 6-7.

<sup>65</sup> Crescent City Petition at 11.

<sup>66</sup> *Id.*

<sup>67</sup> *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5967 ¶ 545 (1993) (“1993 Rate Regulation Order”).

<sup>68</sup> *Id.* at 5971-72 ¶ 551. As the Municipalities acknowledge, the Commission expressly recognized that “there will be costs associated with cable systems complying with their copyright and retransmission consent obligations” and allowed that “[t]hese may be identified to subscribers if that is done in a manner that does not conflict with other provisions of the law (e.g. prohibited by franchise agreement).” *See id.* at 5969 ¶ 547 n.1402.

Broadcast TV Surcharge is included in the single rate that Charter charges subscribers for its cable service, which is clearly and prominently displayed on the first page of Charter's bills.<sup>69</sup>

Nor is it inaccurate or misleading for Charter to describe the Broadcast TV Surcharge as a fee "to recover costs of complying with its governmental obligations."<sup>70</sup> While retransmission consent fees themselves may not be "*imposed by any governmental authority*" (in the sense that they are not directly levied on Charter by the government), they certainly are a cost of complying with "government obligations" (because the obligation to pay for retransmission consent stems from federal law, which prevents Charter from carrying a broadcast station without its consent). It is therefore entirely accurate to describe the Broadcast TV Surcharge as a fee "to recover costs of complying with its governmental obligations."<sup>71</sup>

Finally, Federal law recognizes that there should be no regulation of rates in a competitive marketplace where customers can choose the provider that offers the best value and service.<sup>72</sup> Here, it is undisputed that under Federal law the Municipalities have no authority to regulate Charter's rates.<sup>73</sup> Thus, insofar as the Municipalities seek to have the Commission order

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<sup>69</sup> Crescent City Petition at Ex. D (Included in the petition is the Declaration of Marcela Piedra, which attaches the Exhibit D referenced here).

<sup>70</sup> Crescent City Petition at 11.

<sup>71</sup> The Commission's *1993 Rate Regulation Order* is not to the contrary. There, the Commission concluded that retransmission consent fees were not fees "*imposed by any governmental authority*" within the meaning of Section 622(c) of the Cable Act of 1992 and therefore were not the sort of charges that franchising authorities were required to allow cable operators to separately itemize. *1993 Rate Regulation Order*, 8 FCC Rcd at 5969-70 ¶ 547 (emphasis added). The Commission did not address the question, raised by the Municipalities here, whether Charter's Broadcast TV Surcharge is accurately described as a fee "to recover costs of complying with its governmental obligations." See Crescent City Petition at 11.

<sup>72</sup> 47 U.S.C. § 543(a)(2)(A). Courts have interpreted the term "rate" in the context of Section 623 broadly as "the amount of money charged to subscribers to receive cable service." *Storer Cable Commc'ns v. City of Montgomery*, 806 F. Supp. 1518, 1543 (M.D. Ala. 1992).

<sup>73</sup> *In re Amendment to the Commission's Rules Concerning Effective Competition*, Report and Order, 30 FCC Rcd 6574, 6577-78 ¶ 6 (2015) ("*Effective Competition Order*"); see also Digital Infrastructure & Video Competition Act of 2006, Cal. Pub. Util. Code § 5820(c) ("The holder of a state franchise shall not be deemed a public utility as a result of providing video service under this division [, and] [t]his division shall not be construed as granting authority to the commission to regulate the rates, terms, and conditions of video services."); An Ordinance of the Town of Jackson, Wyoming, Granting A Franchise to Bresnan Communications, LLC for the Construction and

Charter to “show how the Broadcast TV Surcharge was calculated, and to reduce or eliminate the fee and require appropriate refunds[.]”<sup>74</sup> their Petition represents an unlawful attempt at rate regulation.

**D. The Commission Is Not Authorized to Order Charter to Issue Refunds.**

The Municipalities allege that, in addition to violating the 30-day notice requirement, the blackout of Northwest’s stations effected a rate increase, because as a result of the blackout, subscribers are paying the same rates for diminished service.<sup>75</sup> The Municipalities therefore ask the Commission to “[e]nsure appropriate refunds are issue to affected Charter subscribers..., including the inappropriate imposition of the full Broadcast TV Surcharge.”<sup>76</sup> Once this dispute with Northwest is resolved, Charter will make the determination if credits will be issued. If a credit is issued, customers will automatically receive a notification and adjustment on their billing statements. Charter is working to reach a deal that is both fair for its subscribers and mutually beneficial, and is hopeful the dispute will be resolved.

That said, there is no basis for the Commission to *order* refunds. The Municipalities’ request should therefore be denied. First, the blackout did not result in a rate increase as the Municipalities contend. Cable operators, including Charter, regularly adjust their cable lineups by adding or removing channels depending on various factors, including consumer demand, programming prices, and carriage obligations. Under the Municipalities’ theory, every time Charter removed a channel from its cable lineup, it would be required to lower its rates and/or

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Operation of a Cable System § 4.12 (June 2015) (“The Town may regulate [Charter’s] rates and charges . . . to the extent permitted under applicable law.”); Cable Television License Agreement between the City of Yuma, Arizona and Time Warner Cable Pacific West LLC § 9(a) (Mar. 2015) (“[Yuma] may regulate [Charter’s] rates and charges but must exercise its rights in accordance with federal law.”).

<sup>74</sup> Crescent City Petition at 13.

<sup>75</sup> Yuma et al. Petition at 12; Crescent City Petition at 10.

<sup>76</sup> Yuma et al. Petition at 12; Crescent City Petition at 13.

issue subscribers a refund. Conversely, every time Charter added a channel, it would be entitled to raise subscribers' rates. Such frequent rate adjustments would be impracticable. Likewise, as explained above, the Broadcast TV Surcharge is not determined on a market-by-market basis and therefore no refund is owing.

Second, an order requiring Charter to issue refunds to subscribers, including refunds of the Broadcast TV Surcharge, would constitute impermissible rate regulation. As noted above, Section 623 of the Communications Act prohibits states, franchising authorities, and the Commission from regulating the rates of a cable service if the Commission finds that the cable system is subject to effective competition.<sup>77</sup> The Commission has found that cable operators are presumptively subject to effective competition in all markets,<sup>78</sup> and none of the Municipalities has filed a certification seeking to rebut this presumption. An order requiring Charter to refund affected subscribers is undoubtedly a form of rate regulation, because a refund decreases "the amount of money charged to subscribers to receive cable service."<sup>79</sup> In the absence of a finding that Charter is not subject to effective competition in these Municipalities, the Commission does not have the authority to order Charter to issue refunds.

Finally, Charter's Terms of Service expressly preclude subscribers from seeking refunds in the event of a blackout.<sup>80</sup> Subscribers affected by the Northwest blackout have several other options, however. They can watch the removed stations over-the-air where available. They can watch NBC (and other Top 4 network programming) online and through each network's over-

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<sup>77</sup> 47 U.S.C. § 543(a)(2)(A).

<sup>78</sup> *Effective Competition Order*, 30 FCC Rcd at 6577-78 ¶ 6.

<sup>79</sup> *Storer Cable Commc'ns*, 806 F. Supp. at 1543.

<sup>80</sup> Spectrum Residential Cable Services Agreement § 8(b), <https://www.spectrum.com/policies/residential-terms.html> (emphasis added).

the-top app. And ultimately, if they are dissatisfied with their Spectrum cable service as a result of the loss of the stations, they can terminate, at any time and without penalty.<sup>81</sup>

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should deny the Municipalities' Petitions for Declaratory Ruling, Enforcement Order, and Further Relief and find Charter not liable for any violations alleged therein.

To the best of my knowledge, information and belief formed after reasonable inquiry, this *Opposition to Petition for Declaratory Ruling, Enforcement Order, and Further Relief* is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose.

Respectfully submitted,

/s/ Maureen O'Connell

Maureen O'Connell  
Vice President, Regulatory Affairs

Charter Communications, Inc.  
601 Massachusetts Avenue, NW  
Suite 400W  
Washington, DC 20001  
(202) 621-1922

April 26, 2018

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<sup>81</sup> Spectrum Residential General Terms and Conditions of Service §§ 15(a), (d), <https://www.spectrum.com/policies/residential-terms.html>.

## CERTIFICATE OF SERVICE

I, Maureen O'Connell, hereby certify that, on this 26th day of April, 2018, I caused a copy of the foregoing *Opposition to Petition for Declaratory Ruling, Enforcement Order, and Further Relief* to be filed electronically with the Commission through the ECFS system and caused a copy of the foregoing to be served upon the following individuals by electronic mail:

Elizabeth Martyn  
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Sunny Huynh  
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Crescent City, California, and the  
Town of Jackson, Wyoming*

/s/ Maureen O'Connell  
Maureen O'Connell  
Vice President, Regulatory Affairs  
Charter Communications, Inc.  
601 Massachusetts Avenue, NW  
Suite 400W  
Washington, DC 20001  
(202) 621-1922

# ATTACHMENT A

[REDACTED]

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**From:** [REDACTED]@charter.com>  
**Sent:** Friday, February 02, 2018 5:23 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: To discuss

[REDACTED]

For the record, we proposed an extension through the Super Bowl which you flat out rejected. Also, my proposed extension came with the offer to remain in my office actively engaged in negotiations through the entire weekend which you also rejected.

[REDACTED]

**From:** [REDACTED]@northwestbroadcasting.com]  
**Sent:** Friday, February 02, 2018 5:14 PM  
**To:** [REDACTED]@charter.com>  
**Cc:** [REDACTED]@brownrudnick.com>  
**Subject:** Fwd: To discuss

[REDACTED]

For the record, Charter was offered an extension first through midnight tonight, then through 5 PM tomorrow, Saturday February 3rd, which you told me you choose to not accept.

Thanks

[REDACTED]

----- Forwarded message -----  
**From:** [REDACTED]@charter.com>  
**Date:** Fri, Feb 2, 2018 at 2:39 PM  
**Subject:** RE: To discuss  
**To:** [REDACTED]@northwestbroadcasting.com>

[REDACTED]

I just called you and you are evidently unavailable. You have our proposal and our offer to extend through the weekend so we can continue to dialog.

However, as you know, we are not permitted to carry your stations after 5pm/ET tonight (20 minutes from now) so I am hopeful you will provide me direction immediately.

Regards,

[REDACTED]

**From:** [REDACTED]@northwestbroadcasting.com]  
**Sent:** Friday, February 02, 2018 4:29 PM  
**To:** [REDACTED]@charter.com>  
**Cc:** [REDACTED]@brownrudnick.com>  
**Subject:** To discuss

[REDACTED]

I appreciate you putting your offer in writing. I too am frustrated by the continued mischaracterizations you make about our conversations. Northwest has completed deals with many MPVD's over the last year and the rates we have recently offered you are in line with what our completed deals represent.

Northwest has not forced Charter to the brink of a blackout, Charter spent weeks refusing to negotiate and now an hour before an extension expires proposes a deal it knows won't get a deal completed, makes baseless allegations that we won't accept rates below our recent offer and represents Northwest's proposals as meaningless. This is no way to get a deal done. Charter is in control of its ability to purchase Northwest's programming and if they choose to let their contract expire that decision is Charter's alone.

I'm around if you what to speak.

[REDACTED]

--

[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED] [REDACTED]

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--  
[REDACTED]  
[REDACTED]  
Northwest Broadcasting, Inc.  
[REDACTED] [REDACTED]

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[REDACTED]

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**From:** [REDACTED]@charter.com>  
**Sent:** Friday, February 02, 2018 4:20 PM  
**To:** [REDACTED]  
**Subject:** Request for Extension thru this Weekend

[REDACTED]

As requested in our prior telephone conversation, Charter is agreeing to extend our agreement on a status quo basis through 5pm/ET on Monday, February 5 to avoid customer disruption during the Super Bowl. As you know, under federal law, carriage of your stations beyond 5pm/ET tonight requires your express consent.

Please reply with your decision before 5pm/ET.

Regards,  
[REDACTED]

**Charter**  
COMMUNICATIONS GROUP

[REDACTED]

**From:** [REDACTED]  
**Sent:** Friday, February 02, 2018 3:51 PM  
**To:** [REDACTED]@northwestbroadcasting.com>  
**Cc:** [REDACTED]@brownrudnick.com>; [REDACTED]@charter.com>  
**Subject:** RE: Offer 2.2.18

[REDACTED]

Northwest's proposal below is significantly above the rates we pay for Big 4 Stations in any of the numerous markets where we operate across the country. As we have discussed numerous times before, Charter is committed to doing a deal with Northwest, but at market rates for Big 4 stations.

[REDACTED] I am frustrated. In early November, Northwest sent Charter a proposal containing rates that you have acknowledged are far higher than anyone else is paying. Charter countered with rates that are well in line with what we are paying others, and Northwest responded with the exact same Big 4 rates it had proposed previously. We have told you on a number of occasions where we need to be to get a deal done – e.g., rates in line with what we pay others for Big 4 content. But Northwest has refused to come to the table with a realistic offer. Having forced us to the brink of a blackout, that Northwest has come down slightly on the rates is meaningless when Northwest's proposal is still so far above what Charter is paying any other broadcaster.

You've told us orally that you won't accept rates below those in your email. Nonetheless, in the spirit of trying to get this deal done so that we can continue to provide our subscribers with Northwest's stations, we are providing the counter proposal below. Please let me know if this gets us there – I will call you shortly to follow up.

**From:** [REDACTED]@northwestbroadcasting.com]

**Sent:** Friday, February 02, 2018 2:40 PM

**To:** [REDACTED]@charter.com>

**Cc:** [REDACTED]@brownrudnick.com>

**Subject:** Offer 2.2.18

[REDACTED]  
My job is getting deals done, not having them go off the rails. You asked me in our phone conversation a few minutes ago to put an offer in writing. This represents now multiple offers put in writing to you since you last put something in writing to me on November 20, 2017.

Assuming your company is sincere in not wanting to make a Charter corporate decision to deprive your customers of our programming, I anticipate that Charter will now make a genuine counter offer in writing.

This offer represents a dramatic move on the part of Northwest in Big 4 rates, in CW/MyNet Telemundo rates, and by following through on my telling you that we will drop the discussion about a third tier of pricing which others are paying us for.

I will look forward to your response in writing. And please let me know when you would like to reconvene by phone per our discussion.

Thanks

**BIG FOUR AFFILIATES**

(rates per subscriber per month per signal)

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: \$ [REDACTED]

2/1/20 to 1/31/21 \$ [REDACTED]

**CW/MyNET/Telemundo**

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: \$ [REDACTED]

2/1/20 to 1/31/21 \$ [REDACTED]

**Other programming channels (digi-nets, etc.)**

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: \$ [REDACTED]

2/1/20 to 1/31/21 \$ [REDACTED]

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[REDACTED]  
Northwest Broadcasting, Inc.  
[REDACTED]

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[REDACTED]

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**From:** [REDACTED]@northwestbroadcasting.com>  
**Sent:** Thursday, February 01, 2018 4:00 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: Extension to February 1, 2018 5 PM EST-Charter/Northwest

[REDACTED]  
Please consider this email permission for Charter Communications to continue carriage of Northwest Broadcasting, Inc. stations for 24 hours beyond the end date and time of the agreement extension under which our companies are currently operating.

It is understood that rates and terms reached will be retroactive to the start date of any new agreement reached, prospectively to begin February 1, 2018. Such retroactivity is applicable to any period not affected by a disruption in service.

Please acknowledge receipt of this extension and the minimal terms expressed here.



On Thu, Feb 1, 2018 at 1:15 PM, [REDACTED]@charter.com> wrote:

[REDACTED],

I know that [REDACTED] and [REDACTED] just spoke. I understand that [REDACTED] offered a one-day extension. We are agreeable to that so please confirm and I will be back in touch once I process the discussion.

Best,

[REDACTED]

**From:** [REDACTED]@northwestbroadcasting.com]  
**Sent:** Wednesday, January 31, 2018 4:35 PM  
**To:** [REDACTED]@charter.com>  
**Subject:** Re: Extension to February 1, 2018 5 PM EST-Charter/Northwest

Agreed.

[REDACTED]

On Wed, Jan 31, 2018 at 2:33 PM, [REDACTED]@charter.com> wrote:

[REDACTED]

This is to acknowledge that we accept your extension on the condition that any retroactivity shall only apply if there is no interruption in Service.

Please confirm you are in agreement prior to 5pm/et today.

Thanks

[REDACTED]



[REDACTED]

[REDACTED]

**From:** [REDACTED]@northwestbroadcasting.com]  
**Sent:** Wednesday, January 31, 2018 3:43 PM  
**To:** [REDACTED]@charter.com>  
**Cc:** [REDACTED]@brownrudnick.com>  
**Subject:** Extension to February 1, 2018 5 PM EST-Charter/Northwest

[REDACTED]

Please consider this email permission for Charter Communications to continue carriage of Northwest Broadcasting, Inc. stations for 24 hours beyond the end date and time of the agreement under which our companies are currently operating.

It is understood that rates and terms reached will be retroactive to the start date of any new agreement reached, prospectively to begin February 1, 2018.

Please acknowledge receipt of this extension and the minimal terms expressed here.

--

[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED]

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[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED]

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--

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED]

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[REDACTED]

---

**From:** [REDACTED]@northwestbroadcasting.com>  
**Sent:** Wednesday, January 31, 2018 11:50 AM  
**To:** [REDACTED]  
**Subject:** Re: Follow Up: Charter/Northwest

[REDACTED]  
We are interested in a productive discussion.

As far as I know, the only proposal discussed a couple of weeks ago was your restating that Charter's last offer from November 20, 2017. Based on our last conversation, I understood you to say that you were done negotiating. If there is something I missed in that discussion on January 17th, please share that with me. No reason to have a verbal sparring match over what was said or not said, however.

Other than 12:30-1 PM MST today, I am open to visiting with you by phone. Let's talk-I am available immediately.

[REDACTED]

On Wed, Jan 31, 2018 at 9:02 AM, [REDACTED]@[charter.com](mailto:[REDACTED]@charter.com)> wrote:

[REDACTED]

I haven't heard from you since our last conversation on January 17 when I had made you a proposal that you were going to process with your CEO, [REDACTED].

As you are aware, our agreement expires at 5pm/EST today. In order to avoid any unnecessary disruption for our customers and your viewers, Charter is willing to agree to a day-to-day extension on status quo terms to give us ample time to continue to discuss renewal terms that work for both parties. As you know, under federal law, Charter may not continue carriage of your stations beyond 5pm EST this evening without your express consent, so please let me know if you are granting this temporary extension.

[REDACTED] I remain committed to continuing to engage in productive discussions with you. Given that you made clear on our last call that your inflated offer does not reflect the current "market" for retransmission consent fees by pointing out the fact that your proposed rates are considerably higher than the rates any other distributor has agreed to pay Northwest, we are hopeful you will reconsider your current approach that aims to

establish a deal with Charter that resets the marketplace rate to unprecedented levels, and instead enter into a fair deal with us that is in line with the recent deals we reached with 100+ other stations across the 41 states we serve.

Regards,

[REDACTED]



[REDACTED]

[REDACTED]

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--

[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED]

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[REDACTED]

---

**From:** [REDACTED]@charter.com>  
**Sent:** Wednesday, October 25, 2017 11:55 AM  
**To:** [REDACTED]  
**Subject:** FW: Follow Up  
**Attachments:** Charter.Northwest proposal.doc

[Fyi; shipped this AM](#)

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 11:55 AM  
**To:** [REDACTED]  
**Subject:** Follow Up

[REDACTED],

Thanks again for the time today. As discussed, attached is our counter proposal. I look forward to continuing to working through this with you.

Best,

[REDACTED]

**Charter**  
COMMUNICATIONS

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]@northwestbroadcasting.com>  
**Sent:** Wednesday, October 11, 2017 1:23 PM  
**To:** [REDACTED]  
**Subject:** Agreement-markup  
**Attachments:** Charter Retrans Agreement (9-24-17) and Charter Retrans Agreement (9-24-17) Red-line.DOCX

[REDACTED]

[REDACTED] -

Here is the markup from the Charter agreement. Some are a few parenthetical notes-questions that we have for you as to their applicability and necessity going forward.

The stations/market list could use some updating, as could the list of head-ends.

Thanks and I look forward to getting this put together with you.

Regards,

--  
[REDACTED]

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# ATTACHMENT B

## **DECLARATION OF ADAM WEINSTEIN**

1. I am Senior Vice President of Programming Acquisition at Charter Communications, Inc. ("Charter"). In this capacity, I am responsible for retransmission consent negotiations.

2. I was the lead negotiator for Charter in its negotiations with Northwest Broadcasting, Inc. ("Northwest") that are the subject of the foregoing Opposition to the Petition for Declaratory Ruling, Enforcement Order, and Further Relief. I was personally involved in all of the negotiations, including the interactions with Northwest described in this declaration.

3. Charter's retransmission consent agreement with Northwest was set to expire on January 31, 2018. In June 2017, I met with Northwest to discuss renewing the agreement. At that meeting, I advocated beginning negotiations early so that we could complete a new agreement well in advance of the expiration date. To that end, I asked Northwest to provide me with a proposal.

4. Northwest did not send its initial proposal until October 11, 2017. That proposal was without precedent: it would have increased the carriage fees Charter pays to Northwest by 150 percent over current fees for their stations Charter carries across the country to a per subscriber level that is more than double the per subscriber rate Charter pays any other broadcaster in the entire country. In fact, in a discussion with me on January 17, 2018, Northwest acknowledged that their proposed fees to date were significantly higher than the fees paid to Northwest by any other distributor of their stations.

5. I responded to Northwest's initial proposal with a written counterproposal on October 25, 2017. My counterproposal increased the amount of retransmission consent fees that the Charter would pay to Northwest.

6. During the remainder of the fall and into the winter, Northwest and I engaged in ongoing discussions, with both of us providing various proposals and counterproposals in an attempt to reach agreement prior to the January 31, 2018 expiration of the carriage agreement.

7. On November 2, 2017, Northwest responded to the October 25 counterproposal with another proposal. On November 20, 2017, I provided a second written counterproposal to Northwest. The next day, Northwest rejected my November 20 proposal and offered a proposal with the same exorbitant rates for their Big 4 stations. In December 2017, Northwest did not provide any new proposals, and my last contact with Northwest was an email exchange on December 30 informing me that their lead negotiator was going away on vacation for two weeks.

8. On January 12, 2018, Northwest's lead negotiator called me having returned from vacation and offered a new proposal. I called Northwest on January 17 to discuss its January 12 proposal. During this conversation I made a verbal counterproposal, which Northwest indicated it would consider. However, I received no response from Northwest on my counterproposal during the vital two week period leading up to the January 31, 2018 expiration of the carriage agreement.

9. After two weeks of silence, I reached out to Northwest by email on Wednesday, January 31 to request an extension of the agreement while they were working to respond to my offer. Northwest then responded by telephone, proposing a carriage agreement that did not include specified rates, and then asking Charter to blindly sign the agreement in that form. While it was unreasonable to ask Charter to sign such an agreement, we did agree to a 24-hour extension of the existing carriage agreement in order to continue negotiations.

10. On Thursday, February 1, Northwest and I agreed to another 24-hour extension while discussions continued.

11. On Friday, February 2, Northwest issued a proposal that was still 80 percent higher than current fees. An hour or so later, I issued another written proposal offering a further increase in carriage fees, and asked for an extension through Sunday, February 4 so that Charter's subscribers would be able to watch the Super Bowl. I also committed to working through the entire weekend in an attempt to reach a long term deal.

12. Northwest rejected this proposal and offered only a seven-hour extension through midnight of February 2.

13. With Northwest having refused my extension request, negotiations under the existing carriage agreement came to an end. Under the terms of the agreement, Northwest terminated Charter's authorization to carry its stations at 5:00 pm Eastern Standard Time on February 2, 2018.

14. While negotiations were ongoing, Charter took proactive steps to ensure that its subscribers would be able to view Northwest's stations in the event that it was not able to reach an agreement.

15. Charter's engineers reviewed the FCC's Digital TV maps to determine the signal strength for Northwest's stations, and then compared this station coverage data to zip codes in Charter's service area to confirm that its subscribers were located within the predicted coverage area of the stations.

16. Charter also provided USA Network to Broadcast Basic-only subscribers without charge in the markets where a Northwest station was the NBC affiliate, which enabled all those subscribers to get free access to the NBC Sports app featuring Olympic programming both on a live and On Demand basis.

17. On February 13, 2018, Charter learned that some of its subscribers could not access portions of the Olympic content within the NBC Sports app. The company immediately contacted NBC to resolve the problem, and it is my understanding that NBC resolved the technical issues within 36 hours.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Adam Weinstein  
SVP, Programming Acquisition  
Charter Communications, Inc.

Date: 4-26-18

# ATTACHMENT C

Redwood Television Partners and Charter have been in good faith negotiations to carry our CBS and NBC programming on their cable system for some time. Unfortunately, the negotiations are at a standstill and Charter no longer has the rights to carry our programming. Both KVIQ and KIEM will be removed from the Charter cable systems as of 5pm on Saturday, February 3, 2018. We offer our sincere apologies to you for this disruption in your service.

x



# ATTACHMENT D

## **DECLARATION OF DAVID ANDRESKI**

1. I am a Senior Vice President of Marketing Analytics at Charter Communications, Inc. ("Charter"). In this capacity, I am responsible for overseeing Charter's marketing data analysis and competitive intelligence efforts, including evaluating Charter's anticipated annual retransmission consent costs and calculating Charter's Broadcast TV Surcharge.

2. The Broadcast TV Surcharge is a normalized, per subscriber fee that Charter imposes on its cable subscribers nationwide in order to recoup a portion of the total retransmission consent fees that Charter pays each year to local broadcast television stations. It is therefore not a direct, one-to-one pass through of the retransmission expenses Charter incurs in each local market.

3. Charter sets the fee, typically on an annual basis, to reflect its anticipated retransmission expenses for the upcoming year. In part to provide subscribers with predictability regarding the amount of the fee, Charter does not adjust the surcharge each time it negotiates a new retransmission consent agreement or each time a channel is added or removed from the lineup of one of its systems. But even if Charter were to adjust the surcharge each time a channel is removed from the lineup of one of its systems, the decrease would be minimal because the surcharge is a reflection of Charter's nationwide retransmission consent costs.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



\_\_\_\_\_  
David Andreski  
Senior Vice President, Marketing Analytics  
Charter Communications, Inc.

Date: 4 - 26 - 18