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April 26, 2018

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

In Re: Charter Communications Inc. Falcon Telecable, Time Warner Cable Pacific West LLC,  
and Bresnan Communications, LLC, MB Docket No. 18-91, MB Docket No. 18-101

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Dear Madam Secretary:

Hard to believe, but Charter/ Spectrum is right about this . . .

While I share frustrations expressed in other comments and agree that Charter/Spectrum should compensate subscribers for the absence of NBC programming, I believe that Charter/Spectrum is basically correct in its current negotiating posture with Northwest Broadcasting. The cause of the problem is obsolete Federal policy — not the lack of 30-day notice, breach of the Town of Jackson's cable franchise agreement, bad-faith negotiating positions, or other technical legal points that may have merit but completely miss the bigger picture.

The core problem is the inevitable result of the “must-carry / retransmission consent” regime established in the 1992 Cable Act (ironically titled the “Cable Television **Consumer Protection** and **Competition** Act of 1992”, passed over President GHW Bush's veto). What began as a sensible FCC mandate for cable operators to carry “local” broadcasts (at no cost) has morphed into Congressionally-gifted leverage for broadcasters to negotiate higher retransmission consent fees from cable and satellite operators — fees that by some reports have grown from \$215 million in 2006 to \$9.3 **billion** in 2017 and are obviously headed much higher. Consumers don't need to choose sides in the high stakes special-interest battle between the broadcasters and the cable/satellite providers to figure out who really ends up paying **that** bill.

In a rational free market:

(1) Pocatello, Idaho NBC affiliate KPVI would not have Federally-imposed special status as a “local” broadcaster for a Jackson Hole, Wyoming cable operator. The station is owned by a Michigan firm that makes absolutely no attempt to broadcast its signal over the mountains into Wyoming and very rarely covers Jackson Hole or any other Wyoming news. Pocatello is 140 miles and a 2-1/2 hour drive from Jackson, WY, so Pocatello advertisers are unlikely to benefit from exposure to Jackson Hole consumers, and there are few (if any) economic or social ties between the communities — Nielsen DMA

notwithstanding. [I realize that Charter/Spectrum could petition for a market re-designation, but they are busy frying much bigger fish, so to speak.]

(2) Charter/Spectrum for Jackson, WY would be free to negotiate to carry a Wyoming-based NBC affiliate (Casper or Cheyenne) that actually has an interest in Wyoming news and affairs — or a regional NBC affiliate in Salt Lake City or Denver — if it determined that customers in Jackson Hole might be more interested in those alternatives. The channel lineup would be based on actual consumer preferences, not quirky and complex Federal rules that normal people can't understand.

(3) Syndication exclusivity and network non-duplication rules — whether through FCC regulation or through network agreements with individual broadcast stations — would be unenforceable as blatantly anti-competitive and against public policy because they are clearly contrary to the best interests of 21st century media consumers.

Of course, all of the above rational outcomes are currently prohibited by Federal communications law and/or regulations, which appear to assume that free markets can't possibly serve the public interest.

Only Congress can fix the problems it created 25 years ago, but the FCC could adopt a rule mandating continued carriage during renegotiation of expired retransmission consent agreements (under previously existing terms), pending the outcome of the inevitable “good faith negotiations” fight between the broadcaster and the cable provider, which could account for financial adjustment between those special interests. [It was supposed to be **Consumer Protection** legislation, not a communication lawyers' benefits bill!]

In explaining his 1992 veto, President Bush objected to special interest provisions, including those designed to force cable companies to pay broadcasters to carry their otherwise-free broadcast programs. It took longer than he expected (for the greed of the broadcasters and their rigged-market opportunity to catch up with the greed of the cable companies), but he was right that the government's attempt to manage the rapidly-evolving marketplace was fundamentally flawed. The FCC has wisely backed away from premature regulation of the evolving Internet service market based on hypothetical “net-neutrality” fears (another high stakes special-interest battle having almost nothing to do with consumer protection), and it should do what it can to reduce or re-balance over-regulation in the cable market as well.

Charter/Spectrum's Jackson, WY service leaves much to be desired, but forcing it to cave in a retransmission fee dispute will only drive cable subscriber prices higher — and detract from the current efforts to upgrade obsolete, legacy cable to faster and greater-capacity fiber-optic cable that will benefit our Wyoming community far more than paying higher prices to a Michigan firm on its Idaho investment in KPVI.

[On a personal note, there are many Washington Capitals hockey fans like me here in Jackson Hole, as I know there are at the FCC in Washington. We were blacked out from the Super Bowl and the Winter Olympics, as you have heard, and we are now blacked out of Stanley Cup Playoff games for the Caps on NBC. Please think of us as you enjoy watching them.]

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