

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	
	)	
Applications of Charter Communications, Inc.,	)	
Time Warner Cable Inc. and	)	MB Docket No. 15-149
Advance/Newhouse Partnership	)	
	)	
For Consent to Assign or Transfer	)	
Control of Licenses and Authorizations	)	

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**

Zoom Telephonics, Inc. (“Zoom”) respectfully replies to the June 20, 2016 *Opposition of Charter Communications, Inc. to Zoom Telephonics, Inc.’s Petition for Reconsideration* (“*Opposition*”).

In the *Opposition*, Charter Communications, Inc. (“Charter”) starts by observing that it has closed on its transaction and that Zoom did not seek a stay. *Opposition* at p. 1. This is of no moment. The *Decision* is not final because a timely *Petition for Reconsideration* has been filed. Parties proceed at their own risk in closing before a decision is final and, whether or not there is a stay, the Commission is free to modify or even rescind its decision on reconsideration.

Although a decision is not final until Commission and court review is over, parties are free to act on the basis of effective decisions, unless stayed. The parties to a sale, therefore, may close the transaction when the Commission’s decision is effective, but before finality. They proceed at their own risk in such cases, however, because the Commission or the courts may later require the sale to be undone.<sup>1</sup>

Charter argues that Zoom may not seek reconsideration of the Commission’s May 10, 2016 *Decision*,<sup>2</sup> because Zoom is simply rearguing “claims that Zoom already made – and the

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<sup>1</sup> Arnold L. Chase, 4 FCCRcd 5085 (1989).

<sup>2</sup> *Charter Communications, Inc.*, FCC 16-59 (released May 10, 2016) (“*Decision*”).

Commission already rejected - in its prior briefing to the Commission.”<sup>3</sup> Charter is correct that Zoom made these arguments, but it is not the case that the Commission considered and rejected them. Rather, as Zoom discussed, the Commission “deferred” consideration of the issues Zoom raised with respect to Section 629 of the Telecommunications Act Of 1996 and did not rule upon the other legal authorities Zoom cited.

It is true, as Charter says, that the Commission “devoted a full six pages” to Zoom’s arguments,<sup>4</sup> but contrary to what Charter says, the Commission did not “analyz[e] Zoom’s contentions. There is a difference between describing what was in Zoom’s pleadings and ruling upon those arguments, and the Commission did not rule upon them. It is also true that, as Charter says in quoting one sentence of the *Decision*, that the Commission said that “the proposed transaction will not violate any statutory provision or rule.”<sup>5</sup> but the very next sentence makes plain that this conclusion did not apply to Zoom’s allegations. Rather, as to Zoom, the Commission clearly referred the reader to “Section V.G.3 below...”<sup>6</sup> But, as Zoom showed in its *Petition for Reconsideration*, the Commission did not rule on any of Zoom’s arguments.<sup>7</sup>

Charter does not suggest, nor could it, that the Commission undertook any examination of the facts pertaining to its billing practices as they relate to the statutes that Zoom invoked. Thus, as Zoom said in the *Petition for Reconsideration*, the Commission deferred consideration of some key public interest issues, and its decision on these questions must be reconsidered and reversed.

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<sup>3</sup> *Opposition* at p. 2.

<sup>4</sup> *Opposition* at p. 3.

<sup>5</sup> *Id.*, at p. 3 (quoting *Decision* at p. 13, ¶33).

<sup>6</sup> *Decision* at p. 34, ¶33.

<sup>7</sup> *Petition for Reconsideration* at pp. 3-8.

Wherefore, Zoom asks that the Commission grant the Petition for Reconsideration and all such other relief as may be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Jay Schwartzman". The signature is fluid and cursive, with a large initial "A" and "S".

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June 24, 2016

## CERTIFICATE OF SERVICE

I certify that on June 24, 2016, copies of the foregoing *Reply to Opposition to Petition for Reconsideration* have been served by email and United States Mail to the following:

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In addition a copy of the foregoing *Petition for Reconsideration* has been delivered by email to the Commission's duplicating contractor:

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Andrew Jay Schwartzman