

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY OF THE
AMERICAN CABLE ASSOCIATION**

The American Cable Association (“ACA”) respectfully submits this reply in support of its petition for reconsideration of the Commission’s order in the above-captioned matter (the “Order”). ACA’s petition challenges only one aspect of the Order—the overbuild condition, which requires New Charter to deploy broadband Internet access service, of 60 Mbps or more, to at least one million locations already served by providers offering speeds of at least 25 Mbps. For the reasons explained in ACA’s petition, that overbuild condition is contrary to precedent; exacerbates putative merger harms; and adversely affects consumer welfare.

No party contends otherwise. Commission precedent, the Communications Act, and constitutional principles require that merger conditions be directed to mitigating a merger-specific harm or confirming a merger-specific benefit. No one claims the overbuild condition meets that requirement. With respect to the public interest, no one denies that, far from mitigating the merger-specific concerns raised by the Order, the overbuild condition would exacerbate them. The Order expresses concern that New Charter’s expansive footprint and subscriber base will give it the incentive and ability to harm online video distributors and programmers. But the overbuild condition exacerbates that concern by requiring New Charter to expand its footprint

and subscriber base even further (at the expense of smaller providers).¹ And no one disputes that such government-mandated expansion will harm consumers in the long run by redirecting investment from efficient network upgrades, and the replacement of analog video with digital, to satisfying an uneconomic overbuild mandate.² Nor does anyone suggest that the Order anywhere addresses the harms the overbuild condition imposes.

New Charter urges that, in the event the Commission strikes the condition, it should find that all merger-related transfers “remain[] in the public interest.”³ ACA agrees. The Commission has already found that the transfers are in the public interest, even when combined with an unlawful overbuild condition that exacerbates putative merger harms and injures consumers. If that is correct, it necessarily follows that the transfers will also be in the public interest when that unlawful, inefficient, and welfare-damaging overbuild condition is removed. The Commission should grant ACA’s petition for reconsideration and strike the overbuild condition.

¹ Far from disputing this, the one commenter to address this issue wholeheartedly agrees. Unitel Comments in Support of Reconsideration 5 (filed June 14, 2016) (“[T]he buildout condition increases and exacerbates the harm caused by the merger by artificially mandating that an even larger New Charter be created, thereby further increasing its market concentration.”).

² Once again, the commenters addressing the issue all agree. *See, e.g.*, Competitive Enterprise Institute Pet. for Reconsideration 2-3 (filed June 9, 2016) (“[T]his condition ‘diverts capital that the merged company could use to improve service to their existing customers or expand service to households without advanced services, *harming these consumers.*’”); NTCA Pet. for Reconsideration 9-10 (filed June 9, 2016) (“[The condition] would force New Charter to use resources that might better be used to improve service to existing customers or expand service to households without advanced services.”).

³ Charter Opp’n to Reconsideration 1-2 n.6 (filed June 20, 2016).

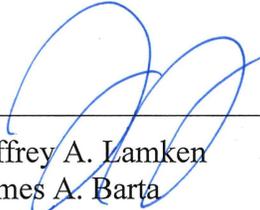
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CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. §1.47, I hereby certify that on June 27, 2016, the foregoing document was electronically filed and served on the following parties by both electronic mail and U.S. mail:

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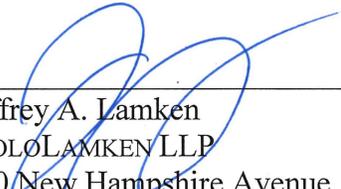
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