

July 8, 2020

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Charter Sunset Petition, WC Docket No. 16-197*

Dear Ms. Dortch:

The Wireline Competition Bureau (“Bureau”) issued a *Public Notice*¹ on June 22 seeking comment on whether it should grant the petition filed by Charter Communications, Inc. (“Charter”) requesting the sunset of two conditions imposed when Charter merged with Time Warner Cable Inc. (“TWC”) and Bright House Networks, LLC (“BHN”).² Newsmax Media, Inc. (“Newsmax”) believes that the Bureau issued its *Public Notice* nearly two months earlier than permitted under the *Merger Order* adopting the two conditions.³ The Bureau should hold this proceeding in abeyance until August 18, the date specified in the *Merger Order*.

In 2016, the full Commission approved the merger of Charter, TWC, and BHN. In doing so, it imposed a series of conditions on Charter. Those conditions included (1) a prohibition on Charter imposing data caps and usage-based pricing mechanisms; and (2) the requirement for Charter to offer to connect its Internet protocol (“IP”) network to any qualifying entity free of charge and on standardized terms. The Commission established that the merger conditions would remain in effect for seven years after the closing date of the transaction, but set up a process for Charter to petition for relief of the interconnection and data caps/usage-based pricing conditions as of the five-year anniversary of the transaction’s closing date (*i.e.*, as of May 18, 2021).⁴

On June 18, 2020, Charter filed such a Petition. Only two business days later, the Bureau placed Charter’s Petition on public notice.

Newsmax submits that the Bureau placed Charter’s Petition on public notice too early. In the *Merger Order*, the Commission specified the timing for a petition such as Charter’s.

¹ *Public Notice, Petition by Charter Communications, Inc. to Sunset Merger Conditions*, WC Docket No. 16-197, DA 20-652 (June 22, 2020) (“*Public Notice*”).

² Petition of Charter Communications, Inc., WC Docket No. 16-197 (filed June 18, 2020) (“*Petition*”).

³ Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd. 6327 (2016) (“*Merger Order*”).

⁴ *Id.*, App. B. XII; *Public Notice* at 2.

If, during the three (3) months after the fourth anniversary of the Closing Date, the Company petitions to shorten the term of the Conditions contained in Section III (Settlement-Free Interconnection) or Section IV (Data Caps and Usage-Based Pricing Condition) to five (5) or more years, *then the Wireline Competition Bureau shall, nine (9) months prior to the fifth anniversary of the Closing Date,* seek public comment on whether the Company has demonstrated that those Conditions are no longer in the public interest and will rule on the Company's petition on or before the fifth anniversary of the Closing Date.⁵

The parties closed the transaction on May 18, 2016.⁶ Charter thus had three months after “the fourth anniversary of the Closing Date” to file its petition (*i.e.*, three months after May 18, 2020, or until August 18, 2020). Charter did so well before its deadline. Accordingly, the Bureau was directed by the full Commission to seek public comment “nine (9) months prior to the fifth anniversary of the Closing Date,” or August 18, 2020.

This *Merger Order's* language grants the Bureau no discretion. It does not permit the Bureau to “seek” public comment “prior to” August 18, 2020. Nor does it permit the Bureau to “seek” public comment after August 18, 2020. The *Merger Order* states that the Bureau “shall . . . seek” public comment nine months prior to the fifth anniversary of the Closing Date. The Bureau failed to faithfully execute a clear and explicit directive from the full Commission. The Bureau patently lacks authority to deviate from the Commission's command in this way.

Newsmax has not decided whether it will participate in this proceeding. Generally speaking, however, questions about the continued appropriateness of behavioral conditions are best informed when all interested parties have the fullest possible record regarding compliance to date and current market conditions, as well as sufficient time to compose comments. This is especially called for in the present circumstances, where the ongoing COVID-19 pandemic has elicited a host of actions by broadband providers while complicating the task of drafting submissions to the Commission. By rushing to put the Petition out for comment in only two business days, the Bureau would inappropriately limit the available data and amount of time for assessment of the Petition, creating the appearance of undue favoritism toward the petitioners. Accordingly, Newsmax asks the Bureau to hold this proceeding in abeyance until August 18, 2020, as directed by the Commission.

Sincerely,



William M. Wiltshire
Counsel for Newsmax

cc: Mike Ray
Joel Rabinovitz

⁵ *Merger Order*, App. B, XII (“Term”) (emphasis added).

⁶ See Letter from John L. Flynn to Marlene H. Dortch, MB Docket No. 15-149 (June 17, 2016), <https://ecfsapi.fcc.gov/file/1062284114732/15-149.pdf>.