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July 22, 2020

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Petition of Charter Communications, Inc. to Sunset Merger Conditions*,
WC Docket No. 16-197

Dear Secretary Dortch:

Pursuant to 47 C.F.R. § 76.7(b)(1), the Office of the Attorney General of the Commonwealth of Massachusetts (“Massachusetts AGO”) hereby files comments responding to the Petition of Charter Communications, Inc. filed on June 17, 2020 (“Petition”) by Charter Communications, Inc. (“Charter”) that seeks to sunset two conditions of Charter’s merger with Time Warner Cable Inc. and Bright House Networks, LLC, which are set forth in the Commission’s order approving that merger (“Merger Order”).¹ The Petition asks the Commission to sunset in May 2021 the Merger Order’s seven-year (1) prohibition on data caps and usage-based pricing² and (2) interconnection obligations.³

As the Commonwealth’s ratepayer advocate and enforcer of the state’s consumer protection statutes, the Massachusetts AGO files these comments to oppose sunsetting the prohibition on data caps and usage-based pricing and to ask the Commission to maintain this merger condition for the full seven-year term. The Merger Order requires Charter to have demonstrated that the prohibition on data caps and usage-based pricing is “no longer in the public interest” in order to take advantage of the sunset provision.⁴ It has failed to do so.

¹ See *In re Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327 (2016).

² *Id.* at 6370 ¶ 86.

³ *Id.* at 6389–91 ¶¶ 131–136.

⁴ *Id.* at 6558, App’x B § XII. In its Petition, Charter relies extensively on the Commission’s comment in the Merger Order that the Commission’s “ability to predict New Charter’s future market power based on the current record diminishes the farther into the future we look.” See Petition at 1 (quoting Merger Order at 6370 ¶ 86). The Commission’s comment, however, was not made in relation to the sunset provision. Rather, the Commission’s comment was made in relation to its rejection of Charter’s proposed three-year term and adoption of the longer

As the COVID-19 pandemic took hold of the country in March of this year, the Commission took swift action and spurred broadband providers to suspend terminations, waive late fees, and open Wi-Fi hot spots as part of the Commission's Keep Americans Connected Pledge.⁵ The Commission recognizes how vital broadband connectivity is for blunting the disruption from the pandemic to our country's economic fabric. It also recognizes that access to broadband is vital to telehealth, remote learning, and the need for human interaction during a time requiring social distancing and sheltering at home.⁶ As part of its efforts to ensure that Americans can do these essential things, the Commission asked broadband providers to go beyond the Pledge and commended their additional steps, such as lifting data caps, in order to help consumers.⁷

The COVID-19 pandemic continues, the Commonwealth's residents are still being asked to stay at home and social distance, and it is unclear that there is an end in sight to our almost complete reliance on broadband for participating in the economy and accessing essential services. Some public health researchers have suggested that social distancing may be necessary throughout 2021 into 2022 in order to fight the pandemic.⁸ As the effectiveness of potential vaccines and timelines for mass distribution of those vaccines still remain open questions, it is more likely than not that Massachusetts residents will continue to rely heavily on broadband as their sole means of connection to the world beyond May 2021, when Charter seeks to sunset the data-cap prohibition.

In light of the continued pandemic, the resulting increase in residential broadband use,⁹ and Charter's position as the sole fixed-broadband provider in almost all of its Massachusetts

seven-year term. Merger Order at 6370 ¶ 86 (agreeing with commenters' concerns regarding term length and making no mention of the sunset provision); *see also* Reply to Opposition by Free Press at 14–18, *In re 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 (Nov. 12, 2015). Contrary to what Charter suggests by quoting the Commission out of context, the Merger Order shows that seven years, not five years, is the default term for the data-cap prohibition, and any deviation requires a showing by Charter that sunsetting the prohibition is in the public interest. *Id.* at 6370 ¶ 86 and 6558, App'x B § XII.

⁵ Press Release, FCC, *Chairman Pai Launches the Keep Americans Connected Pledge* (Mar. 13, 2020), <https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf>.

⁶ *See In re Promoting Telehealth for Low-Income Consumers/COVID-19 Telehealth Program*, Report and Order, 35 FCC Rcd 3366 (2020); *see also* Press Release, FCC, *Chairman Pai Extends Keep Americans Connected Pledge Through End of June Due to Ongoing COVID-19* (Apr. 30, 2020), <https://docs.fcc.gov/public/attachments/DOC-364090A1.pdf>; Press Release, FCC, *FCC and U.S. Department of Education Promote Remote Education So Students Can Continue Learning* (Apr. 27, 2020), <https://docs.fcc.gov/public/attachments/DOC-364006A1.pdf>; Blog Post, Chairman Ajit Pai, *Stepping Up to the Coronavirus Challenge*, FCC (Mar. 24, 2020), <https://www.fcc.gov/news-events/blog/2020/03/24/stepping-coronavirus-challenge>.

⁷ Press Release, FCC, *FCC Chairman Thanks Companies that Have Gone Above and Beyond the Keep Americans Connected Pledge* (Mar. 18, 2020), <https://docs.fcc.gov/public/attachments/DOC-363135A1.pdf>.

⁸ Stephen M. Kissler, Christine Tedijanto, Edward Goldstein, Yonatan H. Grad, & Marc Lipsitch, *Projecting the Transmission Dynamics of SARS-CoV-2 Through the Postpandemic Period*, *Science* (May 22, 2020), at 860, <https://science.sciencemag.org/content/368/6493/860> (“We projected that recurrent wintertime outbreaks of SARS-CoV-2 will probably occur after the initial, most severe pandemic wave. Absent other interventions, a key metric for the success of social distancing is whether critical care capacities are exceeded. To avoid this, prolonged or intermittent social distancing may be necessary into 2022.”).

⁹ Press Release, FCC, *Chairman Pai Hears from Broadband and Telephone Service Providers that Traffic Is Up but Networks Are Performing Well* (Apr 2., 2020), <https://docs.fcc.gov/public/attachments/DOC-363493A1.pdf>; *see also*

territories, it is not in the public interest to grant Charter’s request to sunset the data-cap prohibition as of May 2021. Charter’s Petition discusses how the data caps imposed by other companies have impacted the online video distributor market. Notably, however, Charter makes no representation that it will maintain those same data caps or how it intends to implement data caps once the prohibition is lifted.¹⁰ It would be somewhat perverse if less than a year from now—when Massachusetts residents may very well still be relying on broadband to maintain all aspects of their lives—Charter imposes data caps or pricing models on captive customers that dramatically increase the price of broadband for the average household.¹¹ Removing the data-cap and usage-based pricing prohibition during this extraordinary time is not in the public interest.

Because Charter cannot meet its public-interest burden in light of the ongoing pandemic and the increasing need for broadband that will most likely last beyond 2021—if not permanently—the Massachusetts AGO respectfully requests that the Commission deny Charter’s request to sunset the prohibition on data caps and usage-based pricing.

Respectfully submitted,

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Paul Schneider, *COVID-19 Impact: Broadband Usage Jumps 47% in Q1, Nears YE2020 Expectations*, Multichannel News (May 4, 2020), <https://www.multichannel.com/pr-feed/covid-19-impact-broadband-usage-jumps-47-in-q1-nears-ye2020-expectations> (reporting on OpenVault’s study concluding that COVID-19 substantially changed broadband usage patterns, including with regard to data speeds and data usage, “perhaps permanently”).

¹⁰ See Petition at 21–23. Charter also fails to provide any evidence of usage-based cost impacts to support its claim that usage-based pricing might help more equitably allocate costs among customers. See Petition at 23.

¹¹ Charter spends a decent amount of its Petition painting itself as a good corporate citizen, especially with regard to its COVID-19 response. It is worth noting a lawsuit against Charter regarding its broadband speeds, which resulted in a multimillion-dollar settlement, and an investigation into Charter’s labor practices during the pandemic, both by the New York Attorney General. See Rachel Abrams, *Spectrum Employees Are Getting Sick Amid Debate over Working from Home*, N.Y. Times (Apr. 21, 2020), <https://www.nytimes.com/2020/04/21/business/spectrum-employees-coronavirus.html>; Press Release, New York State Office of the Attorney General, A.G. Underwood Announces Record \$174.2 Million Consumer Fraud Settlement with Charter for Defrauding Internet Subscribers (Dec. 18, 2018), <https://ag.ny.gov/press-release/2018/ag-underwood-announces-record-1742-million-consumer-fraud-settlement-charter>. The Massachusetts AGO also has expressed concerns about the service Charter provides to its broadband customers in a separate docket. See Comments of the Massachusetts AGO, *In re Petition of Charter Communications, Inc. for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI*, MB Docket No. 18-283 (Oct. 25, 2018). Accordingly, the Massachusetts AGO has reason to believe that Charter may elect to implement data caps or usage-based pricing models that will have an impact on households with average broadband usage.

cc: Mike Ray, Wireline Competition Bureau (via email)
Joel Rabinovitz, Office of the General Counsel (via email)

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

In the Matter of

**Conditions Imposed in the Charter Communications-
Time Warner Cable-Bright House Networks Order**

**Petition of Charter Communications, Inc. to Sunset
Merger Conditions**

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CERTIFICATE OF SERVICE

I, Timothy J. Reppucci, hereby certify that on this 22nd day of July, 2020, a copy of the foregoing comments was filed electronically with the Commission through the ECFS system and that a copy of the foregoing was served by electronic mail to the following:

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