

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

In the Matter of

Charter Communications, Inc.

Petition for Determination of Effective Competition in:

32 Massachusetts Communities

MB 18-283
CSR-8965-E

**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
SUPPLEMENT TO MOTION FOR ABEYANCE**

The Massachusetts Department of Telecommunications and Cable (“MDTC”) submits this Supplement to update the record regarding its Motion for Abeyance (“Motion”) filed in the above-captioned proceeding.¹ In its Motion, the MDTC requested that the Federal Communications Commission (“Commission”) hold the proceeding in abeyance pending a stabilization of DIRECTV NOW’s declining subscriber base.² In light of the release of DIRECTV NOW’s Q2 2019 subscriber numbers, and the news that AT&T plans to rebrand the service, the MDTC hereby updates the record to further demonstrate the extraordinary circumstances that warrant the Commission granting the Motion.

¹ See *Petition of Charter Commc’ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, *MDTC Motion for Abeyance* (June 17, 2019).

² *Id.* As stated in the Motion, the Commission should also hold this proceeding in abeyance until it resolves its Further Notice of Proposed Rulemaking on cable rate regulation. See *id.* at 5-6; *In re Modernization of Media Regulation Initiative*, MB Docket No. 17-105, *Further Notice of Proposed Rulemaking & Report & Order*, FCC 18-148 (Oct. 23, 2018).

Since the MDTC filed the Motion, DIRECTV NOW has lost an additional 168,000 subscribers.³ In the last three quarters combined, DIRECTV NOW has lost a staggering 28% of its subscribers.⁴ The service's subscriber losses actually accelerated from Q1 2019 to Q2 2019, further questioning the viability of the service.⁵ The Commission should hold this proceeding in abeyance pending a stabilization of the service's subscriber base.

Moreover, although the new service's significant subscriber losses are alone reason to hold this proceeding in abeyance, AT&T's own recent actions further place the service's future in serious doubt. On July 30, 2019, AT&T issued a press release stating that "later this summer," DIRECTV NOW would be eliminated in favor of AT&T TV NOW.⁶ Charter's Petition is based wholly on the presence of DIRECTV NOW. If DIRECTV NOW were to cease to exist, it would be grounds for immediate dismissal of the Petition. In the meantime, however, and as stated in the Motion, the Commission should not, for many reasons, base a finding on an alleged competitor whose exit from the market is reasonably foreseeable.

³ Georg Szalai & Etan Vlessing, *HBO Max Will Feature Live Sports Content, AT&T Boss Says*, THE HOLLYWOOD REPORTER, July 24, 2019, <https://www.hollywoodreporter.com/news/at-ts-directv-now-loses-168000-subscribers-warnermedia-earnings-up-1226352>.

⁴ *See id.*; Motion at 3 & n.9.

⁵ *See* Georg Szalai & Etan Vlessing, *HBO Max Will Feature Live Sports Content, AT&T Boss Says*, THE HOLLYWOOD REPORTER, July 24, 2019, <https://www.hollywoodreporter.com/news/at-ts-directv-now-loses-168000-subscribers-warnermedia-earnings-up-1226352>.

⁶ Press Release, AT&T, DIRECTV NOW Rebrands Under AT&T TV Family (July 30, 2019), https://about.att.com/newsroom/2019/directv_now_rebrands_under_att_tv.html. This is after multiple media outlets recently reported, based on statements of AT&T executives, that AT&T had planned to merge DIRECTV NOW into a new service called HBO Max. *See* Luke Bouma, *The Future of DIRECTV NOW Is HBO Max According to AT&T*, CORD CUTTERS NEWS, July 19, 2019, <https://www.cordcuttersnews.com/the-future-of-directv-now-is-hbo-max-according-to-att/>; Daniel Frankel, *AT&T Gives Up on DirecTV Brand in Latest Streaming Ventures*, MULTICHANNEL NEWS, July 10, 2019, <https://www.multichannel.com/blog/att-gives-up-on-using-directv-brand-name-in-latest-streaming-ventures>.

The prospective elimination of the service that is Charter's sole basis for its Petition constitutes an extraordinary circumstance warranting the Commission's holding this proceeding in abeyance.⁷ The Commission should grant the MDTC's Motion.

Respectfully submitted,

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COMMISSIONER

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⁷ See 47 C.F.R. § 76.7(d). The MDTC continues to believe that the Commission should deny the Petition on the merits for the reasons stated in the MDTC's Opposition in this proceeding. See *Petition of Charter Commc'ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283, MDTC Opposition (Oct. 25, 2018).