



August 14, 2020

VIA ELECTRONIC FILING

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

Re: Ex Parte Notification

Charter Sunset Petition, WC Docket No. 16-197

Dear Ms. Dortch:

On August 13, 2020 Christopher Ruddy, CEO of Newsmax Media Inc., (“Newsmax”), and the undersigned of Capitol Resources LLC met with Commissioner Rosenworcel and Legal Advisor, Kate Black telephonically regarding the above-referenced proceeding.

Mr. Ruddy expressed his concern that the Wireline Communications 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.

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.¹

The parties closed the transaction on May 18, 2016.² 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,

¹ *Merger Order*, App. B, XII (“Term”).

² 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>.

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.

In addition, Mr. Ruddy explained that Newsmax relies on an over-the-top-streaming video feed of Newsmax TV to reach Charter subscribers whom it does not reach via traditional linear video packaging. As a result, sunseting the data cap and interconnection conditions will harm Newsmax’s ability to reach viewers and provide Charter with enhanced gatekeeping power.

Finally, Mr. Ruddy raised concern about Charter submitting a new economic declaration as part of its reply comments. This is new material information that should have been provided as part of Charter’s initial petition to the FCC. Newsmax believes that the public deserves an opportunity to comment on this new declaration.

Respectfully submitted,

/s/ John Simpson

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Consultant to Newsmax
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cc: Kate Black