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**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Written Ex Parte Communication***

**WC Docket No. 16-197**, *Docket Established For Monitoring Compliance With The Conditions Imposed In The Charter Communications-Time Warner Cable-Bright House Networks Order*

Dear Ms. Dortch:

In its order approving the merger of Charter Communications, Inc. (“Charter”) with Time Warner Cable and Bright House Networks, the Commission imposed several conditions on Charter, including prohibitions on Charter’s use of data caps and usage-based pricing (the “DC/UBP Condition”) and interconnection charges (the “Interconnection Condition”).<sup>1</sup> In accordance with the terms of the merger approval order, Charter has petitioned the Commission to sunset those two conditions, citing changes in marketplace conditions and practices that have occurred since the adoption of the merger approval order. On Friday, August 14, 2020, the United States Court of Appeals for the District of Columbia Circuit struck down the Interconnection Condition, but found that the appellants challenging the DC/UBP condition lacked standing.<sup>2</sup> Mediacom Communications Corporation (“Mediacom”), by its attorneys, hereby submits this *ex parte* letter in support of Charter’s petition for relief from the DC/UBP condition.

In its petition and reply comments, Charter has presented a compelling case for the Commission to sunset the DC/UBP condition, effective May 18, 2021, as provided for in the merger approval order.<sup>3</sup> The Commission’s stated purpose in imposing the DC/UBP condition on Charter was to address concerns that Charter would use data caps and usage-based pricing to harm online video competitors by making consumers’ consumption of online video more expensive than sticking with the traditional pay-tv bundle.<sup>4</sup> However, as Charter has demonstrated, today’s video

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<sup>1</sup> See e.g., *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 (“*Merger Order*”) at Appendix B.

<sup>2</sup> *Competitive Enterprise Institute, et al. v. FCC*, No. 18-1281 (D.C. Cir. Aug. 14, 2020) (“*CEI v. FCC*”).

<sup>3</sup> *Merger Order*, 31 FCC Rcd at Appendix B.

<sup>4</sup> *Id.* at 6329 ¶¶ 9, 48.

marketplace bears scant resemblance to that of five years ago. The numbers tell the tale: as growth in the video side of the cable business has stagnated or declined, growth in the broadband side of the business has been soaring. This is true not just for Charter, but for all cable companies, including Mediacom. Indeed, Mediacom now has more than twice as many high-speed data customers as it has traditional video customers.

This transformation in the video marketplace has occurred even as Mediacom and many other companies have rolled out creative pricing options for consumers, including the use of data caps and usage-based pricing. Consumers have flocked to online video services in ever growing numbers, creating incentives for the introduction of even more online video options. Yet, the opponents of the Charter petition claim that consumers “hate” these options and even suggest that the Commission should have found a way to bar not just Charter, but all cable operators from implementing data caps and usage-based pricing. The record growth in high speed data customers experienced by companies implementing data caps and usage-based pricing plans demolishes that argument.

For example, Mediacom offers its customers a menu of data capped service plans with varying usage allowances and speeds. While most of those plans provide customers with monthly usage allowances of at least 1 GB, Mediacom also offers budget-friendly plans with lower allowances (such as a 60 Mbps/5 Mbps plan with a 60 GB usage allowance for a retail price of \$29.99 per month). Moreover, each of Mediacom’s plans allows customers who exceed the data cap to purchase additional bandwidth on an a la carte basis rather than being forced into the next higher tier.

Allowing customers to select a plan that best fits their needs rather than forcing everyone into a one-size fits all approach is quintessentially in the public interest. Not every customer needs or wants the same amount of data capacity and, from month-to-month, some customers inevitably use less than their allowance while other customers exceed their allowance. As then Commissioner (and now Chairman) Pai stated in his dissenting statement on the Charter merger approval order, “A fundamental tenet of our free-market economy is that you will often have to pay more to purchase more of a good or service.”<sup>5</sup>

If companies could not structure their internet service “tiers” so that customers who use a limited amount of data – such as senior citizens – have a “budget-friendly” lower cap option while heavy users of data can opt for a higher cap at a higher price, and if companies could not make it possible for customers who occasionally exceed their cap to purchase additional capacity without having to migrate to a higher tier, one of two things would happen. Either everyone would end up paying more than they do today or, as Chairman Pai pointed out in his dissent to the merger approval order, lower-end users will effectively subsidize lower prices for heavy users.<sup>6</sup> Neither of these outcomes is what market-based pricing would produce.

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<sup>5</sup> *Id.* at 6667 (dissenting statement of Commissioner Pai).

<sup>6</sup> While the D.C. Circuit did not reach the merits of the judicial challenge to the DC/UBP condition, it is noteworthy that the Court characterized the argument that the DC/UBP Condition forces “rare Internet users to subsidize more frequent ones” as “persuasive[.]” *CEI v. FCC, supra* at 20 (citing *Merger Order* at 6667 (dissenting statement of Commissioner Pai)).



Obviously, Mediacom is not directly impacted by whether or not the Commission grants Charter's petition. But continuing the DC/UBP condition paints those companies that offer such options in a bad light and encourages efforts to restrict such options, notwithstanding the evidence that they are consumer-friendly. The marketplace, not regulatory mandates, should dictate how internet service is offered. The Commission should grant Charter's petition.

Respectfully submitted,

/s/ Seth A. Davidson

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