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November 2, 2016

*Via ECFS*

Marlene Dortch, Secretary,  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Notice of Oral *Ex Parte* Presentation

Expanding Consumers' Video Navigation Choices  
MB Docket 16-42

Commercial Availability of Navigation Devices  
CS Docket 97-80

Proposed Transfer of Control of Time Warner Cable, Inc.  
and Charter Communications Inc. and Proposed Transfer of  
Control of Bright House Networks from Advance/New-  
house Partnership to Charter Communications Inc.  
Docket 15-149

Proposed Assignment or Transfer of Control of Licenses  
and Authorizations from Cablevision Service Corporation  
to Altice N.V.  
Docket 15-257

Dear Ms. Dortch:

On October 28, 2016, Andrew Jay Schwartzman, counsel to Zoom Telephonics, Inc. (“Zoom”) spoke by telephone with David Grossman, Chief of Staff to Commissioner Clyburn with respect to the above-captioned matters.<sup>1</sup>

In the conversation, Mr. Schwartzman reiterated the arguments Zoom has made in its prior meetings and filings with respect to the application of Section 629 of the Communications Act to navigation equipment and to cable modems in particular. He argued that the plain language of Section 629 mandates that the Commission require that bills must include the cost of

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<sup>1</sup>Although this presentation is addressed to Docket 16-42, out of an abundance of caution, this notice is also being filed in Dockets 15-149 and 15-257.

equipment leases as a line item and that the cost for such leases should not be subsidized. Should the Commission determine that these requirements are discretionary, Mr. Schwartzman explained that the Commission's policy goal of promoting a competitive retail equipment market can only be met if the Commission exercised such discretion.

With respect to the subsidization issue, Mr. Schwartzman reviewed the legislative history of Section 629 to emphasize that cable modems have never been subjected to regulation under local rules relating to charges for local basic video services. He also noted that the Commission has determined that the market for local broadband Internet service is not competitive.

Mr. Schwartzman also referred to Zoom's October 27, 2016 written ex parte presentation addressed to Mr. Grossman and four other staff members. (Accordingly, this notice is also being sent to those other staff members as well as John Williams of the Office of General Counsel, who was not listed in the October 27, 2016 presentation.) Mr. Schwartzman reiterated that all precedents hold that common carrier status does not preclude the Commission from regulating non-common carrier activities. Thus, if a party holds a cable franchise or an OVS certification, it is subject to the provisions of Section 629 whether or not it also provides broadband Internet access service or other common carrier services.

Respectfully submitted,



Andrew Jay Schwartzman  
Counsel for Zoom Telephonics, Inc.

cc. David Grossman, Chief of Staff to Commissioner Clyburn  
Gigi Sohn, Counselor to the Chairman  
Jessica Almond, Legal Advisor to the Chairman  
Matthew Berry, Chief of Staff to Commissioner Pai  
Robin Colwell, Chief of Staff to Commissioner O'Reilly  
John Williams, Office of the General Counsel