Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	RM 11728
Petition for Rulemaking to Amend	)	MB Docket No. 14-__
The Commission's Rules Governing	)	
Practices of Video Programming Vendors	)	

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Alexander Hoehn-Saric
Senior Vice President, Government Relations
CHARTER COMMUNICATIONS, INC.
1099 New York Avenue, NW
Suite 650
Washington, DC 20001
(202) 621-1900

Samuel L. Feder
Jessica Ring Amunson
Adam G. Unikowsky
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

September 29, 2014

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Charter Communications, Inc. hereby submits these comments in support of Mediacom Communications Corporation's ("Mediacom") Petition for Expedited Rulemaking ("the Petition").[1]

INTRODUCTION AND EXECUTIVE SUMMARY

In the two decades since Congress enacted the Cable Act of 1992, the entire media landscape has changed, with a dramatic shift in the balance of power between multichannel video programming distributors (MVPDs) and programmers. When Congress passed the Cable Act in 1992, cable providers controlled over 98% of the market for video distribution, with a single provider in each market. Congress was concerned that cable providers would use their market strength to dictate unfair terms for the carriage of broadcast channels and independent cable programming. Those days are long gone. There are now multiple MVPDs and over-the-top providers competing with each other in every market in the country. MVPDs risk losing customers to their rivals if they are unable to show desirable programming. The result is that programmers are now in the driver's seat. Consolidated into the "Big 6," four of which are affiliated with must-have major broadcast networks, programmers now dictate the terms and

[1] Petition for Expedited Rulemaking, *In re Petition for Rulemaking to Amend the Commission's Rules Governing Practices of Video Programming Vendors*, RM 11728, MB Docket No. 14-__ (FCC July 21, 2014).

conditions on which they will allow the distribution of their programming, while MVPDs scramble to compete for market share with each other as well as over-the-top providers like Netflix, Hulu, and Amazon.

Exploiting their position of power, programmers are demanding ever increasing compensation and more and more onerous terms for carriage. Among the most pernicious of the programmers' demands is "forced bundling"—the requirement that MVPDs purchase large bundles of programming networks and resell those bundles to their customers. Forced bundling means that MVPDs who would prefer to offer smaller or different packages of channels are required to buy and resell numerous unpopular channels that their customers will never watch. This problem is particularly pronounced with respect to sports programming. Nearly half of the average subscriber's MVPD bill is attributable to fees for sports channels that are forcibly bundled with other channels and regularly watched by only 15-20% of subscribers.[2]

As programmers' market power has increased, the problem of forced bundling has only gotten worse. In 2006, the average number of bundled channels for cable's Expanded Basic Service was 71, at a cost of $45.26. In 2014 those figures had skyrocketed to forced bundles of 160 channels at a cost of $64.41, and those costs are still increasing.

MVPDs that resist programmer demands for forced bundling or other forms of increased compensation risk programming blackouts, causing further consumer harm. Such blackouts have increased exponentially, from just a dozen such instances in 2010, to 127 blackouts in 2013.[3] Indeed, just this month, Raycom Media blacked out Big Four network affiliates on

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[2] Joe Flint & Meg James, *Sports Cost, Even If You Don't Watch*, L.A. TIMES, Dec. 2, 2012, at A1.

[3] *Reauthorization of the Satellite Television Extension and Localism Act Before the S. Comm. on the Judiciary*, 113th Cong., at 1 (Mar. 26, 2014) (testimony of Alison A. Minea, Director and

DirecTV in 37 markets, covering about 13.1% of U.S. television households, for seven days.[4] Moreover, as Mediacom notes, to strengthen their negotiating position with respect to a given MVPD during a blackout, programmers also have begun to selectively block content available on their websites to that MVPD's Internet customers.[5]

Consumer harms are further exacerbated by the additional practice of volume discounts offered by some programmers. This practice of providing lower prices to those MVPDs that reach large numbers of subscribers skews competition in favor of the largest MVPDs, leading to a reduced ability of smaller MVPDs to compete on price with the larger MVPDs in their markets. Even a mid-sized cable provider like Charter is dwarfed by the size of the competitors in its markets—the nationwide DBS providers and the much-larger telcos. Smaller MVPDs face even more daunting disparities in their scale and risk being forced out of business. The result is reduced competition for consumers.

Senior Counsel of Regulatory Affairs DISH Network L.L.C.), *available at* http://www.judiciary.senate.gov/imo/media/doc/03-26-14MineaTestimony.pdf.

[4] *See* Cynthia Littleton, *CBS, Fox Affiliates in Major Markets Go Dark on DirecTV Amid Retrans Dispute*, VARIETY (Sept. 2, 2014, 7:37 AM), *available at* http://variety.com/2014/tv/news/cbs-fox-affiliates-in-major-markets-go-dark-on-directv-amid-retrans-dispute-1201295846/.

[5] For example, Viacom blocked Cable One Internet subscribers from accessing Viacom networks' online content during a carriage dispute in April 2014. *See* Mike Farrell, *Viacom Blocks Online Access to CableOne Subs*, MULTICHANNEL.COM (Apr. 30, 2014, 7:30 PM), http://www.multichannel.com/news/news-articles/viacom-blocks-online-access-cableone-subs/374283. Similarly, during its August 2013 carriage dispute with Time Warner Cable, CBS blocked Time Warner Cable subscribers in a number of major markets from accessing full episode content on CBS.com. *See* Todd Spangler, *CBS Blocks Time Warner Cable Internet Users from Full Episodes Online*, VARIETY (Aug. 2, 2013, 5:07 PM), *available at* http://variety.com/2013/digital/news/cbs-blocks-time-warner-cable-internet-users-from-full-episodes-online-1200573080/#.

Accordingly, Charter supports Mediacom's call for the Commission to combat these anti-competitive practices by programmers. And, as the Petition explains, the Commission has ample authority to regulate these practices.[6]

First, the Commission may regulate forced bundling and volume discounting as "program carriage agreements" under Section 616 of the Communications Act. Although Section 616 does not explicitly mention forced bundling or volume discounting, the D.C. Circuit's case law firmly establishes that the Commission may use a general grant of authority like that in Section 616 to enact new requirements in light of industry developments—and industry developments fully justify regulations such as those sought by the Petition here.

Second, the Commission may enact such regulations pursuant to Section 628 of the Communications Act. Although Congress may not have anticipated the practices of forced bundling or volume discounting when it enacted Section 628, the courts have made clear that the Commission's authority under Section 628 broadly sweeps to any practice that has an anticompetitive effect on the MVPD industry, regardless of whether that practice was foreseen when Section 628 was enacted.[7]

Third, in the numerous instances in which broadcast stations are included in the programmers' forced bundles or volume discounts, the Commission may enact the proposed regulations under Section 325 of the Communications Act. Section 325 permits the Commission to regulate agreements governing the exercise by television broadcast stations of the right to

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[6] Charter also supports Mediacom's call for the Commission to put a stop to programmers' blacking out their Internet content to customers of MVPDs in carriage disputes. *See* Comments of Cablevision Systems Corp. and Charter Commc'ns, Inc., *In re Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, at 16-18 (FCC June 26, 2014).

[7] *See Cablevision Sys. Corp. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011); *Nat'l Cable & Telecomms. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

grant retransmission consent. This broad grant of authority amply covers programmers who condition their exercise of such consent on forced bundling or who charge discriminatory fees.

I. There Are Strong Policy Reasons To Regulate The Anticompetitive Practices of Forced Bundling and Volume Discounting.

As described above, the practices of forced bundling and volume discounting are harming consumers. The Commission's authority is needed to require that MVPDs and their customers are not forced to subsidize programming no one wants and to ensure that smaller MVPDs are not subject to price discrimination through volume discounting.

A. The Commission Should Regulate Forced Bundling.

Programmers regularly strong-arm MVPDs into carrying increasingly large bundles of networks for higher and higher carriage fees, using negotiating tactics such as blackouts if they do not get their way. This practice of forced bundling harms competition both among content providers and among MVPDs, and ultimately harms consumers. The Commission should step in and regulate this practice.

The programming landscape is very different from what it was when Congress enacted the Cable Act in 1992. While MVPDs now face competition in every market, the video programming market is now consolidated into six large companies, each of which owns numerous cable networks and holds significant market power.[8] This concentration of power into so few hands has resulted in two mutually reinforcing effects that have aggravated the problem of forced bundling. First, when multiple programming sources are owned by the same large media conglomerate, MVPDs can no longer force them to compete against each other for the MVPDs' business. Second, larger media companies have a greater incentive to promote bundling—a company that owns dozens of networks will obviously want MVPDs to purchase

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[8] Petition at 2.

every single one of those networks. Thus, programmer consolidation has both increased programmers' *ability* to impose forced bundling, as well as their *incentive* to impose forced bundling.

In a prior era, programmers' market power was balanced by cable providers' monopoly over video distribution to customers within their service areas. But those local monopolies no longer exist. Cable operators now face fierce competition from DBS providers, Verizon, and AT&T, as well as over-the-top services such as Netflix, Hulu, and Amazon. This intense competition greatly reduces cable operators' ability to resist the programmers' demands. A cable operator knows that if it does not carry a popular network, it will lose customers to its competitors who carry that programming. And the availability of programming over the Internet has only strengthened the programmers' hand in maintaining forced bundling. As explained in the Petition, programmers seeking to impose forced bundling on MVPDs now not only threaten to black out their television programming but also threaten to block access to their Internet programming as well.[9]

The well publicized negotiations between Cablevision and Viacom demonstrate the current power dynamic. Viacom is the exclusive distributor of programming for highly popular channels such as Nickelodeon, Comedy Central, BET, and MTV. Without these "core networks," an MVPD would lose customers to its competitors. Viacom is also the exclusive distributor of programming for a number of less popular channels, including networks like Centric, CMT, CMT Pure Country, Logo, MTV Hits, and Palladia (which Viacom refers to as its "suite networks"). In the parties' carriage negotiations, Cablevision wanted to carry only the core networks in order to carry other channels from other content providers. But the pricing

[9] Petition at 13.

Viacom would offer for such an arrangement was not economically viable—far exceeding the rate for carrying *both* the core and the suite networks. Cablevision thus acceded to Viacom's demands and took the whole bundle of core and suite networks.[10] Had Cablevision not acceded to the demand, Cablevision would have almost certainly faced a blackout of Viacom programming, similar to the one faced by about 850 small cable providers nationwide earlier this year, when Viacom pulled 14 of its channels from those providers, leaving 5.2 million subscribers in small towns and rural communities without access to its programming.[11]

The harm to consumers from forced bundling is clear. Because programmers require carriage of their bundled channels on the most popular programming tiers, MVPDs are precluded from offering cheaper or more attractive programming packages to their customers. This eliminates a valuable means by which MVPDs could otherwise compete against one another. As one scholar recently explained, "Distributors forced to bundle are denied an effective competitive tool: the ability to offer customized or à la carte packaging that could attract new viewers or retain current viewers disgruntled by the high-priced and unwieldy bundles."[12]

Forced bundling not only means less competition among MVPDs, it also leads to decreases in competition among networks. Clearly, two networks do not have the incentive to compete with each other if they know that cable providers will be forced to carry both. As long as a cable network is owned by one of the "Big Six," carriage of that network will be virtually

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[10] These facts are detailed in the complaint Cablevision filed against Viacom charging that its forced bundling constitutes an antitrust violation. *See* Complaint, *Cablevision Sys. Corp. v. Viacom Int'l, Inc.*, No. 1:13-cv-01278-LTS-JLC (S.D.N.Y. Mar. 7, 2013), ECF No. 9.

[11] Alex Ben Block, *Viacom Blackout on Small Cable Distributors to End*, THE HOLLYWOOD REPORTER (April 1, 2014, 2:39 PM), *available at* http://www.hollywoodreporter.com /news/viacom-blackout-small-cable-distributors-692777.

[12] Warren S. Grimes, *The Distribution of Pay Television in the United States: Let an Unshackled Marketplace Decide*, 5 J. INT'L MEDIA & ENT. L. 1, 11-13 (2013).

guaranteed, leading to a reduced incentive to improve the quality of programming. Further, forced bundling arrangements make it extremely difficult for independent programmers to ensure carriage of their programming. A cable provider who is already forced to carry hundreds of networks may have limited channel capacity or programming flexibility to carry additional networks that are not affiliated with the Big Six. And customers who are already forced to buy hundreds of channels may balk at paying more for an even larger bundle that includes additional independent networks.

Forced bundling also contributes to the exponentially rising costs of programming. In 2006, the basic cable networks charged MVPDs $16.3 billion.[13] By 2012, basic cable networks charged MVPDs almost $29 billion.[14] Some MVPDs have seen programming costs rise by as much as 30% since 2008.[15]

Of course, it is the consumers who ultimately bear these costs. The price of MVPD service, and the number of bundled networks that consumers are forced to buy, have gone up in direct response to increased programming costs. According to the Commission's 2014 Report on Cable Industry Prices, the average number of bundled channels for Expanded Basic Service has risen from 71 in 2006 to 160 in 2013, while the average cost of expanded basic cable has increased from $45.26 to $64.41.[16] Thus, customers continue to pay more for more channels, the vast majority of which they do not want and will never watch. Further, the burden of these

[13] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, 8771-72 ¶ 367 (2012).

[14] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10,496, 10,661-62 ¶ 336 (2013).

[15] Shalini Ramachandran & Christopher S. Stewart, *Time Warner Warns of Fee Cuts*, WALL ST. J., Dec. 4. 2012, at B6.

[16] *In re Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 29 FCC Rcd 5280, 5286-87 ¶ 15 tbl. 1 (2014).

excess costs falls disproportionately on viewers who do not watch sports. Nearly half of the cost of cable television is allotted to sports programming, which is watched by only 15% to 20% of the population. As a result, non-sports viewers effectively subsidize the television-watching habits of sports viewers.[17]

In sum, the time for the Commission to end forced bundling is now. As a result of programmers' negotiating tactics, MVPDs are forced to choose between massive bundles of unwanted networks at higher and higher prices, or blackouts of the most popular events and shows on television. Either way, consumers are harmed.

B. The Commission Should Regulate Volume Discounting.

The Commission should also act to end the practice of discriminatory volume discounting by programmers.[18] The price disparities resulting from this practice are dramatic. For instance, in the case of fees from broadcasters, smaller MVPDs often pay over twice as much for the same station as larger MVPDs.[19]

The harm to consumers from volume discounting is palpable. First and most obviously, consumers of smaller MVPDs pay higher rates.[20] Second, higher rates deplete the funds available for broadband deployment. This is especially problematic because small MVPDs who pay the higher rates typically operate in rural areas—the very areas in which broadband deployment is most necessary.[21] And third, volume discounting skews competition in local markets in favor of the largest competitors, such as the nationwide DBS providers and the large

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[17] Grimes, 4 J. Int'l Media & Ent. L., at 8.

[18] Petition at 18-24.

[19] Comments of American Cable Ass'n at 78-84, *In re Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71 (FCC May 27, 2011).

[20] *Id.* at 84-85.

[21] *Id.* at 85-86.

telcos. Because these large MVPDs pay less for programming, it makes it difficult for smaller MVPDs in the same local markets to compete with them on price, forcing some out of business and impeding greater competition.

II. The Commission Has The Statutory Authority To Regulate Forced Bundling And Volume Discounting.

The Petition points to three specific statutory provisions that authorize the Commission to enact the proposed regulations.[22] As explained below, each of those provisions independently provides ample authority for the Commission to enact the proposed rules.

A. The Commission Has Authority Under Section 616 Of The Communications Act To Enact The Proposed Rules.

The Commission can act to regulate volume discounting and forced bundling under Section 616 of the Communications Act, which directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." Mediacom's proposed regulations fall squarely within this provision, as forced bundling and volume discounts are embodied in "program carriage agreements."[23]

To be sure, Section 616 goes on to state that the Commission's program-carriage regulations must include certain provisions designed to prevent MVPDs from exercising market power over programmers.[24] But there is no basis—textual or otherwise—for precluding the Commission from relying on Section 616 to regulate abusive practices by programmers, such as forced bundling and volume discounts. Congress consciously chose broad language that

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[22] Petition at 25-34.

[23] Even if forced bundling and volume discounts were not subject to the Commission's authority to regulate "program carriage agreements," such practices could be regulated as "related practices." There thus can be no question of the Commission's authority here.

[24] *See* 47 U.S.C. § 536(a)(1)-(3).

specifically anticipated that *either* MVPDs *or* programmers might have undue market power, and gave the Commission ample authority to regulate both.

The D.C. Circuit's decision in *National Cable & Telecommunications Ass'n v. FCC* ("*NCTA*")[25] and *Cablevision Systems Corp. v. FCC,*[26] discussed below, confirm this point. Although those cases addressed Section 628 rather than Section 616, the structure of the two statutes is similar: both statutes involve a general grant of regulatory authority, followed by requirements that the Commission enact particular types of regulations.[27] In both *NCTA* and *Cablevision*, the petitioners alleged that Congress could not use the general rulemaking authority in Section 628(b) to go beyond the specific regulations enumerated in Section 628(c). In both cases, the D.C. Circuit squarely rejected this argument, reasoning that "Congress's enumeration of specific, required regulations in subsection (c) actually suggests that Congress intended subsection (b)'s generic language to cover a broader field."[28] As the Court explained in *Cablevision*, "the Commission's reliance on subsections (b) and (c)(1) to regulate conduct that subsection (c)(2) leaves unrestricted in no way contravenes congressional intent."[29] Indeed, the Court suggested that Congress deliberately structured the statute that way given that it was "[h]ardly clairvoyant, especially with respect to rapidly evolving technology," and that the

[25] 567 F.3d 659 (D.C. Cir. 2009).

[26] 649 F.3d 695 (D.C. Cir. 2011).

[27] *Compare* 47 U.S.C. § 548(b), (c)(1) (general authority) *with id.* § 536(a)(1) (same); *compare id.* § 548(c)(2) (requirement that Commission enact certain types of regulations) *with id.* § 536 (a)(3)-(5) (same).

[28] *Cablevision*, 649 F.3d at 705 (quoting *NCTA*, 567 F.3d at 665).

[29] *Id.* at 705-06.

enumerated list of regulations merely sought to address "the focus of concerns about anticompetitive withholding" without foreclosing other types of regulation.[30]

Precisely the same reasoning applies here. The regulations enumerated in Section 616(a) address the particular type of anticompetitive conduct that prevailed at the time of the statute's enactment, but the broad authority in Section 616(a) demonstrates that Congress intended for the statute to be flexible. Accordingly, Section 616 provides the Commission with authority to adopt the proposed regulations.

B. The Commission Has Authority Under Section 628 Of The Communications Act To Enact The Proposed Rules.

The Commission is also statutorily authorized to enact regulations governing forced bundling and volume discounting under Section 628(b) of the Communications Act. That provision states that "[i]t shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers."[31] The Commission has the authority to "prescribe regulations to specify particular conduct that is prohibited by" that provision,[32] and the proposed rules fall squarely within this grant of authority.

With respect to volume discounts, large cable operators and satellite cable programming vendors in which cable operators have an attributable interest regularly negotiate volume-based

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[30] *Id.* at 706.

[31] 47 U.S.C. § 548(b).

[32] *Id.* § 548(c)(1).

discounts. As explained in the Petition, the effect of these volume discounts is to "hinder[s] significantly" the ability of smaller MVPDs to distribute satellite cable programming to customers. Specifically, volume discounts prevent smaller MVPDs from competing with their larger rivals in local markets, thereby threatening smaller MVPDs' ability to offer programming. Volume discounts thus directly thwart Section 628's purpose—to "promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market."[33]

A similar analysis applies to forced bundling. MVPDs regularly purchase bundles of channels from satellite cable programming vendors. The practice of forced bundling "prevent[s]"—or, at a minimum, "hinder[s] significantly"—MVPDs from offering more attractive programming options to their customers, resulting in a reduction of competition among MVPDs and a reduced output of satellite cable programming.

As with the analysis of Section 616 discussed above, the fact that Congress may not have specifically contemplated that Section 628 would be used to address forced bundling and volume discounting in no way precludes the Commission from relying on Section 628 here. The D.C. Circuit has made abundantly clear that the Commission's authority under Section 628 is not limited to addressing the "primary evils" Congress had in mind when enacting the statute, but rather must be adaptive to address new evils. Thus for example, in *NCTA*, the D.C. Circuit held that Section 628(b) granted the Commission the authority to regulate agreements between cable companies and apartment buildings that had anti-competitive effects. The D.C. Circuit held that although policing *access* to programming by new-entrant MVPDs was "the primary evil that Congress had in mind," "nothing in the statute unambiguously limits the Commission to

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[33] 47 U.S.C. § 548(a).

regulating anticompetitive practices in the delivery of those kinds of programming by methods addressed to that narrow concern alone."[34]

Subsequently, in *Cablevision*, the D.C. Circuit held that Section 628 authorized the Commission to enact rules permitting access to *terrestrial* programming, even though the statute referred specifically to *satellite* programming. Relying on *NCTA*, the D.C. Circuit explained that "[w]hen Congress delegates broad authority to an agency to achieve a particular objective, agency action pursuant to that delegated authority may extend beyond the specific manifestations of the problem that prompted Congress to legislate in the first place."[35] This analysis applied with special force in the context of regulation of rapidly changing technology: "Congress may well have wanted to avoid dictating the rules the Commission must adopt for a nascent technology while leaving it with authority to act should regulation prove necessary."[36] Thus, the court held, Section 628 is sufficiently flexible that the Commission "could pursue the statute's objectives as industry technology evolves."[37]

NCTA and *Cablevision* establish the Commission's authority to regulate volume discounting and forced bundling under Section 628. While Congress may not have had these particular problems in mind when it enacted Section 628 in 1992, that was because the industry trends that precipitated these practices were not yet foreseeable. But the *effect* of these practices is the *effect* that Congress intended for the Commission to combat—a decrease in "competition and diversity in the multichannel video programming market."[38]

[34] 567 F.3d at 664.

[35] 649 F.3d at 707.

[36] *Id.*

[37] *Id.*

[38] 47 U.S.C. § 548(a).

Finally, although Section 628(c)(2)(B)(iii) permits satellite cable programming vendors in which cable operators have an attributable interest to "establish[] different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor,"[39] there has never been any evidence put forward that volume discounting by programmers meets this criteria—either generally or in any specific case.[40] In fact, as Mediacom explains, there is good reason to think volume discounts by programmers can never be justified under this provision.[41] Accordingly, at the very least, volume discounting should be allowed under Section 628 only upon a concrete and detailed accounting showing that the statutory criteria is met.[42]

C. The Commission Has Authority Under Section 325 Of The Communications Act To Enact The Proposed Rules.

The Commission also has the ability to regulate forced bundling and volume discounting pursuant to Section 325 of the Communications Act, which grants the Commission authority "to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage."[43] Of the six media giants, four bundle broadcast stations with their other stations and offers volume discounts to MVPDs who carry broadcast stations. Accordingly, the Commission has the authority to regulate each of these entities under Section 325.

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[39] *Id*. § 548(c)(2)(B)(iii).

[40] *See* Petition at 20-24.

[41] *See id.*

[42] *See id.* at 24-25.

[43] 47 U.S.C. § 325(b)(3)(A).

Further, imposing such regulations would be consistent with the purpose of Section 325. Section 325(b) was enacted to ensure that "the terms and conditions resulting from [retransmission-consent] negotiation" will be "based on competitive marketplace considerations."[44] Today, the terms and conditions of negotiations for broadcast signals are not "based on competitive marketplace considerations"; rather, they are distorted by the anticompetitive effect of forced bundling and volume discounting. The Commission has the authority to right this wrong by regulating those practices pursuant to Section 325.

CONCLUSION

The Commission should commence an expedited rulemaking and adopt rules restricting programmers from engaging in forced bundling and volume discounting.

Respectfully submitted,

/s/ Samuel L. Feder

Samuel L. Feder
Jessica Ring Amunson
Adam G. Unikowsky
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

Alexander Hoehn-Saric
Senior Vice President, Government Relations
CHARTER COMMUNICATIONS, INC.
1099 New York Avenue, NW
Suite 650
Washington, DC 20001
(202) 621-1900

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[44] *In re Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3371-72 ¶¶ 29-30 (2014) (internal quotation marks omitted).

CERTIFICATE OF SERVICE

I, Mary E. Gulden, hereby certify that on September 29, 2014, I caused true and correct copies of the foregoing Comments of Charter Communications, Inc. to be served on the following electronically as noted below:

Seth A. Davidson
Ari Z. Moskowitz
Edwards Wildman Palmer LLP
1255 23rd Street, NW
Eighth Floor
Washington, DC 20037
sdavidson@edwardswildman.com
amoskowitz@edwardswildman.com

Outside Counsel for Mediacom Communications Corporation

/s/ Mary E. Gulden
Mary E. Gulden
Jenner & Block LLP