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October 20, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149

Dear Ms. Dortch:

On October 16, 2015, Nicolas Pujet, Senior Vice President, Corporate Strategy; Paul Savill, Senior Vice President, Product Management; David Siegel, Vice President, Product Management; and I, on behalf of Level 3 Communications, LLC (“Level 3”), spoke by telephone with David Brody, Octavian Carare, Adam Copeland, and Eric Ralph of the Wireline Competition Bureau; William Dever, Owen Kendler, and Joel Rabinovitz of the Office of General Counsel; William Reed of the Enforcement Bureau; Susan Singer of the Media Bureau; and Robert Cannon and Scott Jordan of the Office of Strategic Planning and Policy Analysis regarding the above-captioned matter.

At the request of Commission staff, the Level 3 representatives discussed concerns Level 3 has regarding Charter’s recently announced settlement-free peering policy.¹ The Level 3 representatives noted that today, Level 3 and Charter do not peer to exchange Internet traffic. But, the Level 3 representatives observed, Charter’s announced policy is one that leaves important questions unanswered and contains provisions that should be modified if the policy is to form the basis for peering relationships. In particular, the Level 3 representatives highlighted the following concerns with the policy:

¹ See Letter from Samuel L. Feder, Counsel for Charter Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (filed July 15, 2015).

1. Duration. Charter promises to maintain its policy only through December 31, 2018. In Level 3's view, a reasonable agreement would need to last for a longer period to ensure stability, performance and scalability for the Internet ecosystem. The Level 3 representatives observed that a five- to seven-year commitment would be more reasonable, and would be consistent with other traffic exchange agreements Level 3 has signed.

2. Scope of traffic exchange. In Level 3's view, the Charter policy should explicitly cover all Internet traffic, including CDN (Content Delivery Network) traffic.

3. Trial period. The Charter policy provides for a trial period prior to the establishment of a peering relationship, but, the Level 3 representatives explained, there is no reason for any trial to apply to entities that already interconnect and exchange traffic with either Charter or Time Warner Cable.

4. New interconnection locations. Charter's policy provides that it may unilaterally add new interconnection locations, in addition to the nine locations it has already identified. In Level 3's view, adding new interconnection locations may be appropriate under some circumstances, but those new interconnection locations should be mutually acceptable. Of course, a peering agreement could reasonably provide that consent to a new location may not be unreasonably withheld.

5. Traffic exchange capacity augmentation. Charter's policy provides for augmentation of existing interconnection capacity, but, unfortunately, the terms that govern augmentation are unclear. A better approach would be to discard the criteria for augmentation specified in the policy and to instead require each party to augment, at its own expense, when utilization exceeds 70 percent for a defined, reasonable period. The augmentation provision should also anticipate that either Charter or its peer could acquire other networks that have existing interconnection arrangements, and the augmentation provision should accommodate migrating that existing capacity in a reasonable manner.

5. Interconnection suspension. Charter's policy provides that Charter may suspend an interconnection agreement in the event of a security threat to the network or if traffic grows beyond a certain threshold. While Charter's desire to protect its network from attack is reasonable—and is a goal shared by all network operators, including Level 3—mere traffic growth does not constitute a threat that warrants suspension.

6. Nondiscrimination. In Level 3's view, Charter's policy should prohibit either peer from discriminating against peering traffic in any way based on origin, destination, or type of traffic.

Recently, Charter and Level 3 have discussed a potential peering agreement and in those discussions, Charter has expressed an openness to considering Level 3's concerns. Level 3 and Charter have not, however, signed or announced a mutually agreeable peering agreement.

Marlene H. Dortch
October 20, 2015
Page 3

Please contact me if you have any questions regard this filing.

Sincerely,

/s/ Joseph C. Cavender
Joseph C. Cavender

cc: Commission meeting participants