November 23, 2015

BY ECFS

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

Re: Notice of Ex Parte Letter, 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:

In accordance with the Protective Order in the above-captioned proceeding, DISH Network Corporation ("DISH") hereby submits the attached public, redacted version of its ex parte letter dated November 23, 2015. DISH has denoted with "{{BEGIN HCI END HCI}}" symbols where Highly Confidential Information has been redacted. The designated Highly Confidential Information in the letter was taken from or derived from Highly Confidential Information in the Applicants' filings and the Media Bureau's November 13, 2015 filing in the above-referenced proceeding. A Highly Confidential version of this letter is being simultaneously filed with the Commission and will be made available pursuant to the terms of the Protective Order.

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1 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, Protective Order, DA 15-110 (Sept. 11, 2015) ("Protective Order").
Please contact me with any questions.

Respectfully submitted,

Stephanie A. Roy
Counsel for DISH Network Corp.

Enclosure
November 23, 2015

By ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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:

DISH Network Corp. ("DISH") has shown that the overwhelming duopoly that the proposed deal would usher in could suffocate independent online video distributors ("OVDs"), particularly those trying to take head-on the duopolists, New Charter and Comcast. Foreclosure by just these two access providers would be a one-two knockout blow for an OVD.1

These fears have been reinforced by new data released by the Commission. When DISH filed its Petition to Deny, the most recent numbers available to the parties were the FCC’s market-wide figures from the end of 2013 and the Applicants’ own statements as to their high-speed broadband subscribers as of the end of 2014.2 Both the Applicants and DISH based their estimates of post-transaction market share on these figures.3 Since then, for the benefit of the


2 Id. at 26-27 & n.95; see also id. at 28 n.102.

3 Id. at 27-28; see also Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, Applications and Public Interest Statement, MB Docket No. 15-149, at 6 n.10 (June 25, 2015).
parties to this proceeding, the Commission released 2014 residential fixed broadband counts for the Applicants and the market as a whole. These data corroborate DISH’s concern with the market concentration this merger portends.

According to the FCC’s data, as of the end of 2014, Charter, Time Warner Cable (“TWC”), and Bright House Networks (“BHN”) had a combined total of \{\textbf{BEGIN HCI} \textbf{END HCI}\} subscribers to 25+ Mbps downstream service. We also know that Comcast reports that almost all of its Internet subscribers receive 25+ Mbps downstream service. Taking all of Comcast’s reported 2014 year-end Internet subscribers as high-speed (21,962,000) and adding them to the combined total from the Applicants in this merger, yields a total of \{\textbf{BEGIN HCI} \textbf{END HCI}\} 25+ Mbps subscribers between what would become the two duopolists if this merger is allowed to proceed. This means that more than \{\textbf{BEGIN HCI} \textbf{END HCI}\} percent of the high-speed Internet access market would be controlled by just two firms. As DISH has shown, the Department of Justice has disapproved of mergers that would have resulted in the duopolists’ combined market share below the figure at issue here. The Department of Justice has done so for precisely the issue that DISH has raised—the fact that such market concentration between two firms would allow for coordinated action even without active collusion between the players.

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\footnote{\textit{Id.} at Exhibit 1b.}


\footnote{The Commission reports that there were a total of 41,649,046 subscribers to 25+ Mbps downstream service at the end of 2014. See FCC Data PN Exhibit 1a.}

\footnote{Complaint, \textit{United States v. Anheuser-Busch InBev SA/NV et al.}, No. 1:13-cv-00127 1-2 (Jan. 31, 2013) (challenging a transaction that would have given the two largest firms in the market a combined 72 percent market share).}
The FCC should not allow an already concentrated market for high-speed broadband access to become even more so. The threats to competition and the public interest are clear. DISH urges the FCC to deny the transaction as it is currently presented.

Respectfully submitted,

Stephanie A. Roy
Counsel for DISH Network Corp.