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Via ECFS

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

RE: Proposed Transfer of Control of Time Warner Cable, Inc. and Charter Communications Inc. and Proposed Transfer of Control of Bright House Networks from Advance/Newhouse Partnership to Charter Communications Inc.

Docket 15-149

Dear Ms. Dortch:

On November 20, 2015, Andrew Jay Schwartzman, counsel to Zoom Telephonics, Inc. met with members of the Commission staff with respect to the above-captioned matter. In attendance were Brendan Murray (Media Bureau), Mary Beth Murphy (Media Bureau), Betsy McIntyre (Wireline Competition Bureau), Owen Kendler (Office of the General Counsel), Elizabeth Cuttner (Office of the General Counsel), Susan Singer (Media Bureau), Jeffrey Neumann (Media Bureau), Lyle Elder (Media Bureau), Hillary DeNigro (Media Bureau), Jessica Campbell (Media Bureau), Susan Aaron (Office of the General Counsel) and William Freedman (Office of the General Counsel).

Mr. Schwartzman initially discussed three undisputed premises: that promoting competition in the CPE markets has been longstanding Commission policy since *Carterfone*; that - unlike the market for set-top boxes - there is a strong retail market for cable modems; and, that the Commission has unequivocally ruled that Section 629 covers cable modems. He stated that while the Commission could grant the relief that Zoom has requested under Section 706, Title II or the public interest standard, he wished to place his emphasis on Section 629.

In discussing Section 629, Mr. Schwartzman pointed out that the plain language of Section 629 is unambiguous, and that there is no language in Section 629 which

contemplates that its unbundling and anti-subsidy provisions should apply only when there is no effective competition. He discussed how, in adopting Section 76.1206 in 1998, the Commission should not have been understood to have intended that the application of the unbundling and anti-subsidy provisions of Section 629 to cable modems would be tied to basic cable rate regulation for video services. Thus, notwithstanding plain language of Section 629 to the contrary, while the Commission may have contemplated that it would no longer enforce Section 629 as to set-top boxes once basic cable rate regulation no longer applied, the cross-reference to Section 76.923 could not have been intended to apply to cable modems. Mr. Schwartzman said that it is particularly important in this regard that the Commission has determined there is not effective competition in the high speed broadband market. In light of this, Zoom has shown in its petition to deny that Section 76.1206 is best read as not restricting application of the unbundling and anti-subsidization requirements to cable modems.

Mr. Schwartzman stated that a ruling that Charter must comply with unbundling and anti-subsidy requirements will not require a complicated regulatory structure. There has been no need for Commission intercession with respect to Charter's peers, which evidently have not had trouble understanding what they must do and have done so without the need for FCC enforcement. He stressed that the retail market has not only created price competition, but has also stimulated development of new and innovative technology, and said that Charter's present and future customers should also be able to realize these benefits.

In closing, Mr. Schwartzman told the staff that Zoom was asking that the Commission rule favorably on Zoom's petition to deny using its power under Section 629. In the event that the Commission is disposed to approve the applications, he asked that it impose a condition on Charter tracking Section 629 by specifying that it separately price its cable modem leases and Internet service and offer it at an unsubsidized price. This condition, he said, should be applied to all current and future Charter customers.

Respectfully submitted,



Andrew Jay Schwartzman
Counsel to Zoom Telephonics, Inc.

cc. Brendan Murray,
Mary Beth Murphy
Betsy McIntyre
Owen Kendler
Elizabeth Cuttner
Susan Singer

Jeffrey Neumann
Lyle Elder
Hillary DeNigro
Jessica Campbell
Susan Aaron
William Freedman