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**REDACTED – FOR PUBLIC INSPECTION**

December 14, 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,<sup>1</sup> DISH Network Corporation (“DISH”) hereby submits the attached public, redacted version of the *ex parte* letter dated December 14, 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 Highly Confidential Information in the Applicants’ filings and submissions to the Commission in response to the Commission’s Information Requests. 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*.

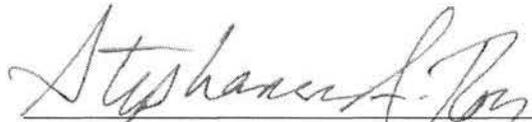
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<sup>1</sup> *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149, Protective Order, DA 15- 110 (Sept. 11, 2015) (“Protective Order”).*

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Please contact me with any questions.

Respectfully submitted,



Pantelis Michalopoulos  
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Enclosure

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**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:

As DISH Network Corporation (“DISH”) advised in its Reply,<sup>1</sup> usage-based pricing (“UBP”) is in the cards for New Charter, despite the Applicants’ protests to the contrary.<sup>2</sup> In fact, Charter appears to be **{{BEGIN HCI** **END HCI}}** Applicants’ internal documents confirm this. Not only Charter, but all three cable companies have been **{{BEGIN HCI** **END HCI}}**. Moreover, the documents confirm that Charter likes UBP for the wrong reason: **{{BEGIN HCI** **END HCI}}** over-the-top (“OTT”) services, which threaten the Applicants’ historical “transport margin” for video delivery.<sup>3</sup> A safe

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<sup>1</sup> DISH Network Corp., Reply, MB Docket No. 15-149, at 15 (Oct. 13, 2015) (“DISH Reply”).

<sup>2</sup> See Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership, Opposition to Petitions to Deny and Response to Comments, MB Docket No. 15-149, at 19 (Nov. 2, 2015) (“Opposition”) (asserting that Charter “has no plans” to engage in usage-based billing).

<sup>3</sup> Historically, the cable industry has talked in terms of margin on video services. As OTT competition has threatened traditional cable services and programmer demands have increased the cable industry’s cost factor, the “video services margin” has been renamed the “transport  
(Continued...)

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prediction emerges from the documents: New Charter will deploy UBP the minute after any condition prohibiting it expires.

Why is UBP dangerous here? Not only does it restrict Internet use by consumers, ISPs can employ it to discriminate against third-party services by exempting ISP-affiliated content and services from usage allotments. We already see this in the marketplace: Comcast's own services are exempt from the caps on Internet usage the company imposes on some of its customers, and as Roger Lynch, *Sling TV* CEO, has explained, the caps work to preclude any use of Comcast's Internet services to replace Comcast video with an OTT provider.<sup>4</sup>

As Applicants' documents make clear, Charter, Time Warner Cable, and Bright House Networks are {{BEGIN HCI  
END HCI}}. What is more, Applicants {{BEGIN HCI  
END HCI}} it allows the annihilation of OTT services.

Charter itself is {{BEGIN HCI  
END HCI}} of UBP to address the {{BEGIN HCI  
END HCI}}.<sup>5</sup> As DISH conveyed last week, Charter has been preparing to counter this {{BEGIN HCI  
END HCI}}<sup>6</sup> threat to its core cable business for years. Indeed, Charter now seems to recognize that the competitive threat of OTT has been realized, with management observing that {{BEGIN HCI  
END HCI}}.<sup>7</sup> It appears that UBP is key to Charter's strategy in confronting {{BEGIN HCI  
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margin"—i.e., the premium charged by cable operators to deliver content. See Moffett Nathanson, *U.S. Cable & Satellite: Usage Based Pricing . . . Maybe Not Dead Yet After All?*, at 4, 26 (Oct. 13, 2015) ("Moffett Nathanson").

<sup>4</sup> See Jon Brodtkin, *Sling CEO: Comcast Data Caps So Low They Hurt Competing Video Products*, ARSTECHNICA.COM (Dec. 7, 2015), <http://arstechnica.com/business/2015/12/sling-ceo-comcast-data-caps-so-low-they-hurt-competing-video-providers/>.

<sup>5</sup> {{BEGIN HCI

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<sup>6</sup> {{BEGIN HCI

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<sup>7</sup> {{BEGIN HCI

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Even as Charter has pursued a facial strategy of differentiating itself from competitors that use data caps and usage fees, Charter has been actively preparing for the day when it, **{{BEGIN HCI** **END HCI}}**. Internal Charter documents show that Charter has been **{{BEGIN HCI** **END HCI}}**.<sup>8</sup> That evaluation continued through **{{BEGIN HCI** **END HCI}}**, as Charter management expressly acknowledged that **{{BEGIN HCI**

**END HCI}}**.<sup>9</sup> The following year, Charter management explored **{{BEGIN HCI** **END HCI}}**.<sup>10</sup>

Today, Charter appears poised to **{{BEGIN HCI** **END HCI}}**. The very same day that Charter filed the Public Interest Statement for this transaction, **{{BEGIN HCI**

**END HCI}}**.<sup>11</sup>

To be an effective discrimination tool, of course, UBP needs to be accompanied by selective application.<sup>12</sup> Charter knows this **{{BEGIN HCI**

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<sup>8</sup> **{{BEGIN HCI** **END HCI}}**

<sup>9</sup> **{{BEGIN HCI** **END HCI}}**

<sup>10</sup> **{{BEGIN HCI** **END HCI}}**

<sup>11</sup> **{{BEGIN HCI** **END HCI}}**

<sup>12</sup> See *Kneecapping the Future: Comcast’s Unjustified Internet Caps and the Plan to Kill Video Competition*, FREE PRESS, [https://www.freepress.net/sites/default/files/resources/Comcast%20New%20Caps%20Factsheet\\_FINAL.pdf](https://www.freepress.net/sites/default/files/resources/Comcast%20New%20Caps%20Factsheet_FINAL.pdf) (last visited Dec. 10, 2015) (explaining that Comcast’s usage caps are “the company’s latest move to protect itself against the disruptive threat posed by emerging online video competition . . . . Caps like these, which have no legitimate engineering or economic purpose, distort markets through economic discrimination.

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**END HCI}}**<sup>13</sup> Regulators recognize that UBP threatens to distort the broadband marketplace, particularly when broadband providers employ UBP to prefer their own content and services.<sup>14</sup>

Nor can Charter’s merger partners be expected to temper Charter’s plans. Time Warner Cable is well known as the industry pioneer in UBP,<sup>15</sup> and Bright House Networks **{{BEGIN**

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Used to discourage consumers from using competitors’ services, these unjustified limitations restrain innovation and competition, ensuring the continued dominance of the incumbent’s preferred business model.”); John Bergmayer, *Comcast’s Latest Zero-Rating Plan Threatens Video Choice*, PUBLIC KNOWLEDGE BLOG (Nov. 20, 2015), <https://www.publicknowledge.org/news-blog/blogs/comcasts-latest-zero-rating-plan-threatens-video-choice> (“Comcast’s exemption of [its own service’s traffic] from data caps presents a straightforward example of the anticompetitive problems zero-rating can raise, and provides little consumer benefit.”). Even industry advocates of UBP admit that a “move to usage based pricing would have profound implications far beyond cable. Companies across the media and distribution chain would be affected.” See Moffett Nathanson at 28.

<sup>13</sup> **{{BEGIN HCI**

**END HCI}}**

<sup>14</sup> The Government Accountability Office (“GAO”), for example, recently found that “providers—especially those facing limited competition—could use UBP as a means to increase their profits which could result in UBP having negative effects, including increased prices paid by consumers, reductions in content and applications accessed by consumers, and increased threats to network security.” GAO, *Broadband Internet: FCC Should Track the Application of Internet Usage-Based Pricing and Help Improve Consumer Education*, GAO-15-108, at 2 (Nov. 2014); *id.* (finding “UBP could reduce innovation for applications and content if consumers ration their data”). Accordingly, GAO urged the FCC to track UBP and improve consumer education on the practice so that the agency is prepared to take action to protect consumer interests. Chairman Wheeler has stated, “[t]he Commission recognizes the potential significance of data caps and other usage-based pricing” and plans to closely monitor UBP practices. See Letter from Tom Wheeler, FCC Chairman, to Ron Johnson, Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, at 1 (Feb. 4, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332052A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332052A1.pdf). In fact, the Commission specifically sought comment on whether to consider factors like pricing and data allowances beyond just deployment to evaluate the adequacy of broadband services. Public Notice, *FCC Launches Inquiry for Annual Broadband Progress Report*, GN Docket No. 15-191 (Aug. 6, 2015).

<sup>15</sup> See DISH Reply at 15-16.

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year, **END HCI}}**<sup>16</sup> In a presentation to Bright House management this

**END HCI}}**<sup>17</sup> And, like Charter, Bright House appears poised to act as **END HCI}}**

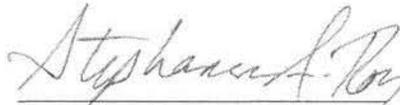
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**END HCI}}**<sup>18</sup>

\* \* \*

Charter’s enthusiasm for UBP and its potential for discriminating against OTT rivals further undermine the already hollow condition on UBP that the Applicants have proffered. If allowed to merge, the Applicants will have an increased incentive and ability to leverage UBP across their collective footprint—whether today or in three years—to push OTT services to the margins. For these reasons, among others, the FCC should deny the merger.

Sincerely,



Pantelis Michalopoulos  
Stephanie A. Roy  
*Counsel to DISH Network Corporation*

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<sup>16</sup> **END HCI}}**

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<sup>17</sup> **END HCI}}**

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<sup>18</sup> **END HCI}}**

that **END HCI}}**

**END HCI}}** BHN internal documents show

**END HCI}}**.