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REDACTED – FOR PUBLIC INSPECTION

January 4, 2016

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,¹ DISH Network Corporation (“DISH”) submits the attached public, redacted version of its *ex parte* letter dated January 4, 2016. 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. 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*.

Please contact me with any questions.

Respectfully submitted,



Andrew Golodny
Counsel for DISH Network Corp.

Enclosure

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).*

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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:

DISH Network Corporation (“DISH”) files this letter to correct the Applicants’ continued misrepresentations of Time Warner Cable’s (“TWC’s”) pre-merger network buildout plans. In their application, Charter and TWC tried to claim TWC’s complete digital transition as a key benefit of the merger.¹ In response, DISH presented extensive evidence that TWC already had plans to complete its digital and TWC Maxx transition {{ **BEGIN HCI** **END HCI** }} the Applicant’s 30-month deadline.²

Despite being presented with documentary evidence detailing these plans, as culled from Applicants’ own files, the Applicants have continued to insist that such investments would not

¹ See Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership, Public Interest Statement at 19, MB Docket No. 15-149 (June 25, 2015).

² See DISH Network Corp., Petition to Deny, MB Docket No. 15-149 at 34-38 (Oct. 13, 2015) (“DISH Petition”); Reply of DISH Network Corp., MB Docket No. 15-149 at 24-31 (Nov. 12, 2015) (“DISH Reply”).

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occur *but for* the merger. In an *ex parte* letter, TWC asserted that its Maxx program was intended to upgrade only {{ BEGIN HCI END HCI }} of TWC's systems to all-digital and only {{ BEGIN HCI END HCI }} of its systems to increased broadband speeds, and that {{ BEGIN HCI END HCI }}³ Charter repeated that claim in its December 4, 2015 submission to the Commission.⁴

But TWC's strategy documents indicate that TWC had {{ BEGIN HCI END HCI }}⁵ And TWC's assertion {{ BEGIN HCI END HCI }} is *directly belied* by the sworn deposition of a TWC senior executive given to the Department of Justice during the Comcast/TWC transaction proceeding. In that testimony, {{ BEGIN HCI

END HCI }}

The TWC executive responded:

{{ BEGIN HCI

END HCI }}⁶

³ See Letter from Matthew A. Brill, Counsel to TWC, to Marlene Dortch, FCC, MB Docket No. 15-149 at 2 (Nov. 19, 2015).

⁴ Ex Parte Letter from John L. Flynn to Marlene Dortch at 8 (Dec. 4, 2015).

⁵ {{ BEGIN HCI

END HCI }}

⁶ Charter Communications, Inc., Response to FCC Information and Data Request, MB Docket No. 15-149, Exhibit 65-2 at 34-35 (filed Oct. 13, 2015).

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TWC’s plan was thus not a {{ BEGIN HCI END HCI }} year plan extending to the end of {{ BEGIN HCI END HCI }} and to {{ BEGIN HCI END HCI }} TWC’s systems. It was a {{ BEGIN HCI END HCI }} and {{ BEGIN HCI END HCI }} its systems. This fact, conveniently denied by the Applicants now, is corroborated not only by the TWC executive’s testimony, but also by abundant contemporaneous, pre-merger TWC strategy and budget materials, as explained below.

One of TWC’s own exhibits submitted in response to the FCC’s Information Request shows that {{ BEGIN HCI END HCI }}⁷ The same exhibit shows that {{ BEGIN HCI END HCI }}⁸ Consistent with the deposition testimony, the exhibit lays out a plan {{ BEGIN HCI END HCI }}⁹ Similarly, {{ BEGIN HCI END HCI }}

As far back as 2013, TWC contemplated {{ BEGIN HCI END HCI }}¹⁰ This evidence impeaches thoroughly TWC’s current litigation position that {{ BEGIN HCI END HCI }}¹¹ This evidence impeaches thoroughly TWC’s current litigation position that {{ BEGIN HCI END HCI }}¹²

⁷ Time Warner Cable Inc., Response to FCC Information and Data Request, MB Docket No. 15-149, Exhibit 73-05 (filed Oct. 13, 2015).

⁸ *Id.*

⁹ *Id.* {{ BEGIN HCI END HCI }}

END HCI }}

¹⁰ {{ BEGIN HCI END HCI }}

END HCI }}

¹¹ {{ BEGIN HCI END HCI }}

¹² Ex Parte Letter from Matthew A. Brill to Marlene Dortch at 2 (Nov. 19, 2015).

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Contrary to TWC’s claims, the use of **END HCI }** in certain TWC materials does not support the Applicants’ theory that TWC’s transition plans were simply speculation. What uncertainty is shown by the documents was focused on the **END HCI }**

END HCI } No uncertainty emerges about **END HCI }** This **END HCI }**
BEGIN HCI } is made clear by **END HCI }**

END HCI }¹³

The **END HCI }** for Maxx was also reflected in contemporaneous budget projections. In November 2014, **END HCI }**

END HCI }¹⁴ Indeed, it was only recently (first with the attempted merger with Comcast and now with Charter) that **END HCI }**

END HCI }¹⁵ For example, **END HCI }**

END HCI }¹⁶

¹³ **END HCI }**

END HCI }

¹⁴ **END HCI }**

END HCI }

¹⁵ **END HCI }**

END HCI }

¹⁶ **END HCI }**

END

(Continued...)

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* * *

The extensive documentary evidence described above shows that **{{ BEGIN HCI**

END HCI }} Such upgrades cannot therefore be claimed as benefits of the proposed merger with Charter.

Sincerely,



Pantelis Michalopoulos

Stephanie A. Roy

Counsel for DISH Network Corporation

END HCI }}