

# CONSTANTINE CANNON LLP

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January 14, 2016

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

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

Dear Ms. Dortch:

On, January 13, 2016, the undersigned accompanied Ken Plotkin, President of Hauppauge Computer Works, Inc., in a meeting with Owen Kendler (Office of General Counsel), Elizabeth McIntyre (Wireless Communications Bureau), and Jessica Campbell, Chris Clark, Lyle Elder, Brendan Holland, Brendan Murray (by phone), John Wong, and Sean Yun, all of the Media Bureau, with respect to the above-entitled matter. Mr. Plotkin and the undersigned as counsel (“Hauppauge”) said Hauppauge has no reason to oppose these transactions, provided that the merged entity would be under the same obligations to both supply and support CableCARDS that presently apply to other major cable operators.

Mr. Plotkin explained that Hauppauge is a small entrepreneurial company with a line of products reliant on CableCARDS for the display of video programming on personal computers. Hauppauge distributes its products on a national basis through major retailers. In the event that CableCARDS are not available from any major cable operator, or are not adequately supported, Hauppauge’s products would be returned to its retailers and Hauppauge’s viability would be severely threatened.

In answer to questions Hauppauge reviewed that the obligation for major cable operators to offer and supply CableCARDS stems from explicit language in the Commission’s 1998 First Report & Order,<sup>1</sup> in which the Commission directly and without limitation obliged the eight largest operators, including Charter’s predecessor company and Time Warner Cable, to supply

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<sup>1</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Report and Order (rel. June 24, 1998) (“First R&O”).

“POD” modules, the industry’s name at that time for CableCARDS.<sup>2</sup> The Commission bolstered this instruction in its 2003 Second Report & Order, which included specific references to industry standards on which CableCARD technology is based, and required cable operators to implement these standards in supporting CableCARDS.<sup>3</sup> In the 2010 Third Report & Order<sup>4</sup> the Commission again explicitly instructed cable operators to supply CableCARDS, and amended its rules to require that multistream CableCARDS be provided, for self-installation, to any subscriber requesting one.<sup>5</sup>

Hauppauge explained that its present concern arises out of an April 2013 two-year “integration ban” waiver granted to Charter by the Media Bureau that, subject to conditions pertaining to a projected “downloadable security” alternative, could also relieve Charter of its obligation to continue to supply CableCARDS to all customers who request one.<sup>6</sup> Hauppauge noted that the conditional provisions for the post-waiver period had been premised on Charter’s representation that it was a relatively small operator with widely dispersed subscribers who might be better served by a purely “downloadable” approach, provided that “*upon completion of the two-year waiver period, Charter must file a declaration certifying that it has deployed a downloadable security system that employs a software-based security with a hardware root of trust housed in a commodity chip and is no longer using integrated security on any of its*

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<sup>2</sup> “The early cable removable security cards were called Point-of-Deployment (POD) modules. CableLabs later coined the term CableCARD™ .... These are two names for the same thing.” CableLabs, *OpenCable CableCARD*, [http://www.cablelabs.com/opencable/primer/cablecard\\_primer.html](http://www.cablelabs.com/opencable/primer/cablecard_primer.html).

<sup>3</sup> *In The Matter Of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Dkt. No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking (rel. Oct. 9, 2003). These rules were vacated on other grounds, relating to DBS, in *EchoStar Satellite LLC v. FCC*, 704 F.3d 992 (D.C. Cir 2013), but have remained important technical references by the Commission and by the Media Bureau, as in the case of the Charter Waiver Order discussed below.

<sup>4</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Third Report and Order and Order on Reconsideration (rel. Oct. 14, 2010) (“Third R&O”).

<sup>5</sup> 47 C.F.R. § 76.1205(b)(1) was added to the Commission’s rules in its Third R&O, released Oct. 14, 2010; see Third R&O, App. B at 45-46.

<sup>6</sup> *Charter Communications, Inc.’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1) of the Commission’s Rules*, MB Dkt. No. 12-328, CSR-8740-Z, CS Dkt. No. 97-80, Memorandum Opinion and Order (rel. Apr. 18, 2013) (“Order”).

systems.”<sup>7</sup> Hauppauge said that the present point is not whether or not Charter has defaulted on its obligations, or whether intervening circumstances, such as the STELAR legislation and the DSTAC process may have made them less relevant; these may be matters of debate. The point is that, in light of the pending merger applications and present circumstances, there is no reason why the merged company, as potentially the second largest cable operator, should be immune from the CableCARD supply and support obligations that pertain to every other major cable operator.

Accordingly, Hauppauge argued that if the transactions proceed, the merged entity should be subject to conditions requiring that New Charter, like other cable operators, must supply CableCARDS to all of its subscribers who request them, and must support their operation adequately. Hauppauge suggested these conditions as providing appropriate assurance to its retail distributors and its customers that such supply and support would continue:

- New Charter commit to supplying CableCARDS to subscribers for 10 years, or until no new or existing subscriber has asked New Charter for a CableCARD for a new retail device for 24 consecutive months.
- New Charter commit to supporting CableCARDS indefinitely and to comply with the Commission’s CableCARD technical rules as set forth at 47 CFR 76.640, 76.1205, and 76.1602, including the obligations to provide multistream CableCARDS, support self-installation, provide alternatives for switched digital video transmission, and non-discrimination against competitive devices in setting fees and offering discounts.
- New Charter commit to provide retail CableCARD devices with access to all of the linear channels available to its subscribers.<sup>8</sup>

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<sup>7</sup> Order at 9, emphasis added, internal footnotes omitted. No such certification appears in MB Dkt. No. 12-328.

<sup>8</sup> “Subscribers must be able to use the devices they purchase at retail to access all of the linear channels that comprise the cable package they purchase. Providing retail navigation devices and leased navigation devices with equivalent access to linear programming at an equivalent service price is essential to a retail market for navigation devices.” Third R&O at par. 14.

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This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

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Elizabeth McIntyre  
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