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January 14, 2016

VIA ECFS

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

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

Dear Ms. Dortch:

This letter responds to recent filings by DISH Network Corporation (“DISH”) claiming that internal documents show that Charter Communications, Inc. (“Charter”) is planning to foreclose OVDs (including DISH’s own OTT service, *Sling TV*)¹ and deploy usage-based billing (“UBB”).² DISH’s claims—which rely on the public’s lack of access to the unredacted version of documents, mischaracterizations of out-of-context quotes, and disregard of other record documents—are meritless. Read in context, the documents on which DISH relies, as well as documents in the record that DISH fails to cite, show Charter’s recognition that OVDs are overwhelmingly positive for the company because they drive growth of its higher-margin broadband business. That is why Charter has never adopted data caps, UBB, or charged for interconnection. If anything, DISH’s intensive review of internal Charter documents provides only additional support for approving the Transaction.

¹ Letter from P. Michaelopoulos and S. Roy, Counsel to DISH Network Corporation, to M. Dortch, Secretary, FCC, MB Docket No. 15-149 (Dec. 7, 2015) (“DISH OVD Letter”); Letter from P. Michaelopoulos and S. Roy, Counsel to DISH Network Corporation, to M. Dortch, Secretary, FCC, MB Docket No. 15-149 (Dec. 21, 2015) (“DISH *Sling TV* Letter”).

² Letter from P. Michaelopoulos and S. Roy, Counsel to DISH Network Corporation, to M. Dortch, Secretary, FCC, MB Docket No. 15-149 (Dec. 14, 2015).

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A. New Charter Has No Incentive To—and Will Not—Foreclose OVDs

DISH argues that the proposed Transaction should be denied because Charter is “actively” engaged in a long-term strategy of foreclosing OVDs.³ Nothing could be further from the truth. As Dr. Fiona Scott Morton has explained, OVDs are the major driver of Internet traffic growth, which in turn drives consumer demand for high-speed data services.⁴ Because New Charter’s profit margins on these high-speed data services are higher than on other services, efforts to impede OVDs would ultimately reduce New Charter’s bottom-line growth. New Charter will instead be incentivized to help OVDs prosper.⁵

As discussed below, despite DISH’s efforts to comb through documents for evidence to contradict this fundamental point, these and other documents in the record show only that Charter is focused on providing excellent and innovative services in order to remain competitive in a changing marketplace, including through strategic partnerships with OVDs.⁶

Documents Reflecting Charter’s Consideration of OVD Partnerships. DISH is wrong that Charter has been “focused with laser intensity on countering” the so-called threat posed by OVDs.⁷ To the contrary, Charter views the availability of OVD services in its footprint as a benefit to Charter, its customers, and OVDs. That is in part why Charter has affirmatively sought partnerships with OVDs in order to **[BEGIN HIGHLY CONFIDENTIAL**

³ DISH *Sling TV* Letter at 1; DISH OVD Letter at 3.

⁴ See Declaration of Dr. Fiona Scott Morton, Theodore Nierenberg Professor of Economics at the Yale School of Management and Senior Consultant at Charles River Associates, ¶¶ 78, 103-05 (Nov. 2, 2015).

⁵ *Id.*; see also Joint Opposition at 16 (Nov. 2, 2015); Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 219-20 (Oct. 13, 2015) (explaining further why New Charter’s profitability and future success depends far more on its broadband business than its video business).

⁶ See, e.g., **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

⁷ DISH OVD Letter at 4.

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[END HIGHLY CONFIDENTIAL INFORMATION]⁸

The documents in the record reflect Charter’s OVD-friendly approach and make clear that the company views OVDs as a complement to Charter’s cable service. Far from reflecting a desire to “counter[the] threat” of OVDs,⁹ the primary document on which DISH relies contains

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL

INFORMATION]¹⁰ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] precisely the point that the Applicants have emphasized repeatedly here and elsewhere: **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY

CONFIDENTIAL INFORMATION]¹¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL

INFORMATION]¹² This conclusion is consistent with [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]¹³

⁸ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY

CONFIDENTIAL INFORMATION]; see also Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 92-97.

⁹ DISH OVD Letter at 4.

¹⁰ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

¹¹ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**

¹² **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**

¹³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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DISH argues that [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] provides evidence that Charter considers OTT services a “threat” to its cable business.¹⁴ In fact, the email notes that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]¹⁵ Notwithstanding DISH’s repeated reference [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]¹⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]¹⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]¹⁸ Moreover, even if the cited email somehow suggested an intent to foreclose OVDs—which it clearly does not—

[END HIGHLY CONFIDENTIAL INFORMATION]

¹⁴ DISH OVD Letter at 1 [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]
¹⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

¹⁶ See DISH OVD Letter at 1; DISH *Sling TV* Letter at 1; DISH UBB Letter at 2.

¹⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

¹⁸ *Id.*; [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

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DISH ignores **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] before Charter's current CEO and executive team took over management of the company in early 2012. This and other documents DISH cites from this period cannot be evidence of the current company's plans.

Documents Reflecting Charter's Video Strategy. Similarly, the document DISH cites stating that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] also supports a lack of animosity toward OVDs, as it lays out **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]¹⁹ Indeed, the document shows that, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁰
This is the same OVD-friendly strategy reflected in **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²¹

DISH ignores numerous other documents in the record reflecting Charter's technical efforts to make OVD content seamlessly available on Spectrum Guide, Charter's OVD-friendly

¹⁹ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁰ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
HIGHLY CONFIDENTIAL INFORMATION]

[END

²¹ See Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 92; see also **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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cloud-based user interface.²² Documents in the record also show that, in addition to providing streamlined access to Charter customers, Spectrum Guide is designed to make integration of third-party apps easier, faster, and cheaper.²³

Sling TV. With respect to *Sling TV* specifically, DISH goes to great lengths to highlight what DISH calls Charter's "laser-like" focus on DISH's own OTT service.²⁴ Here again, it is perfectly sensible for Charter to keep track of the offerings of other video services—including *Sling TV*—in order to guide its own video strategy. While DISH may think that there is something unusual or telling about [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]²⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]²⁶ such activities are of course ordinary business activities.

Much of DISH's complaint appears to be based on DISH's belief that Charter was [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

²² See, e.g., [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

[END

HIGHLY CONFIDENTIAL INFORMATION]

²³ See, e.g., [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]; see also Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 141.

²⁴ DISH *Sling TV* Letter at 2-4.

²⁵ *Id.* at 3 [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

²⁶ *Id.* [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

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[END HIGHLY CONFIDENTIAL INFORMATION] But DISH misunderstands the documents it cites. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁷ refers to initial development of Charter’s recently launched Spectrum Guide App on Roku devices, which enables Charter customers to view Charter’s cable TV service on a third party IP-enabled device.²⁸ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁹ DISH’s reliance on **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] is similarly misplaced.³⁰ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] not that Charter has any past or current business and development plans to offer an OVD service—which it does not.

Also unsupported and entirely false is DISH’s assertion that Charter has used “anticompetitive methods” to undermine *Sling TV*.³¹ DISH suggests that Charter somehow behaved anti-competitively because **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

²⁷ See *id.* at 5 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

²⁸ See Third Supplemental Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 1-2 (Nov. 3, 2015).

²⁹ See **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

³⁰ See DISH *Sling TV* Letter at 6 (citing, *e.g.*, Email from A. Singer to T. Rutledge and R. DiGeronimo, ESPN Disney (Feb. 19, 2015), CHR2-DOJ-00000096895).

³¹ See DISH *Sling TV* Letter at 7.

[END

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INFORMATION]³² But the very email exchange that DISH cites demonstrates **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]³³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]³⁴

In short, there is no basis for DISH’s arguments that New Charter will attempt to foreclose OVDs generally, or *Sling TV* specifically. The Applicants welcome a close examination of the documents cited in DISH’s papers, as well as documents contained in the record generally, as they reveal precisely what Charter has said all along—that Charter sees OVDs as an important part of New Charter’s growth strategy.

B. New Charter Has No Plans to Develop or Deploy UBB

As the Applicants have explained, UBB is inconsistent with New Charter’s operating strategy to offer simple, uniform pricing and **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**³⁵ Consequently, New Charter has no incentive to adopt UBB and has committed not to do so for three years.³⁶ DISH’s claim that

³² *Id.* at 4 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

³³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

³⁴ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

³⁵ See Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 163-64; **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

³⁶ Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 at 291; **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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UBB is “in the cards for New Charter”³⁷ is irrational when the very documents on which DISH relies and other documents in the record show just the opposite.

DISH claims that “[i]nternal Charter documents show that Charter has been evaluating various UBP scenarios since at least 2011.”³⁸ DISH neglects to point out, however, that each of these documents makes the case for why Charter should *not* deploy UBB. For example,
[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY
CONFIDENTIAL INFORMATION]³⁹ DISH also misrepresents a statement in a Charter document [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL
INFORMATION]⁴⁰ The quoted language appears in a 2012 document again explaining why Charter did *not* intend to deploy UBB but rather to focus on speed differentiation as a selling point for Charter’s data services.⁴¹ The same is true with respect to language DISH cites regarding [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY
CONFIDENTIAL INFORMATION]

³⁷ DISH UBB Letter at 1.

³⁸ *Id.* at 3.

³⁹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL
INFORMATION]

⁴⁰ DISH UBB Letter at 3 [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁴¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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[END HIGHLY CONFIDENTIAL INFORMATION]⁴²

Indeed, Charter's conclusions with respect to UBB are stated clearly in **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION]⁴³ which DISH neglects to cite. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]⁴⁴ Charter decided not to develop or deploy UBB for precisely these reasons.

The documents on which DISH relies show that Charter has responded to customers' increased desire for OVD content by focusing on attracting and retaining customers through superior quality and service. For instance, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]⁴⁵
[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

⁴² DISH UBB Letter at 4 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] Similarly misplaced is **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] See DISH UBB Letter at 3 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] The fact that an investor may desire greater business optionality says nothing about Charter's incentives or plans.

⁴³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

⁴⁴ *Id.*

⁴⁵ DISH UBB Letter at 2 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

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[END HIGHLY CONFIDENTIAL INFORMATION]⁴⁶ not, as DISH suggests, by attempting to deploy UBB.

DISH also cites a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] to suggest that Charter
[BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION]⁴⁷ But DISH fails to
cite the rest of the email exchange, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]⁴⁸

Please contact me if you have any questions regarding these matters.

Sincerely,

/s/ John L. Flynn

John L. Flynn
Counsel for Charter Communications, Inc.

cc: Vanessa Lemmé

⁴⁶ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]
⁴⁷ DISH UBB Letter at 2 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]
⁴⁸ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]