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January 21, 2016

By ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Meeting, 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:

Representatives of INCOMPAS on January 19, 2016 met with the Federal Communications Commission staff listed on Appendix A of this letter to discuss the above-referenced transaction (“Transaction”). In attendance for INCOMPAS were David S. Evans, Global Economics Group; Howard Chang, Global Economics Group; Angie Kronenberg, Chief Advocate and General Counsel, INCOMPAS; Karen Reidy, Vice-President, Regulatory Affairs, INCOMPAS; Chip Pickering, Chief Executive Officer, INCOMPAS; and Markham C. Erickson, Andrew Golodny, and Damon Kalt of Steptoe & Johnson LLP. This letter provides an overview of the *ex parte* presentation.

We discussed the January 15, 2016 INCOMPAS filing and its accompanying Declaration filed by Dr. Evans. Dr. Evans discussed his findings that the proposed Transaction would result in a significant increase in prices that video programmers pay for distribution to the households of the parties to the Transaction. Further, the increased market power over video programming resulting from the Transaction would raise barriers to entry and reduce competition in local broadband. The Transaction would increase prices to video programmers under (a) a standard single-sided analysis that focuses only on video programmers as purchasers of distribution services and a (b) two-sided analysis that considers a partial pass-through of that price increase to subscriber households and the impact of the Transaction on the total price paid by video programmers and households together for distribution services.

There is no dispute in this docket that larger multichannel video programming distributors (“MVPDs”) pay substantially lower prices than smaller MVPDs for video programming. This Transaction, if approved, would substantially increase the bargaining power of New Charter over video programmers. In fact, Charter’s economist, Professor Michael Katz, agrees that New Charter would enjoy substantially increased bargaining power over programmers. Professor Katz also agrees that New Charter would pass through to subscribers only a portion of its cost savings resulting from its increased market power over video programmers. These findings, *per se*, eliminate the primary public interest benefit claimed by Charter.

Dr. Evans further finds that the Transaction would reduce competition in the provision of local broadband in the areas served by the parties to the Transaction. Professor Katz inadvertently points to evidence that supports this conclusion. In his declaration, Professor Katz relies on a 1997 study for the proposition that merging cable companies likely will pass through some of the cost savings resulting from increased bargaining power of video programmers. He fails to note that this study persuasively supports INCOMPAS’s findings that this same market power likely would result in less investment and competition in local markets served by the merging cable companies:

[B]oth wireline and wireless entrants will have considerable difficulty competing with incumbent monopolists privileged by substantial discounts on programming . . . if these discounts are substantial, the large MSOs may be able to effectively impede competitive entry via a first-mover, absolute cost advantage.¹

Please do not hesitate to contact me should you have any questions.

Sincerely,



Markham C. Erickson
Counsel for INCOMPAS

CC: Jon Sallet
Owen Kendler
Elizabeth McIntyre

¹ George S. Ford and John D. Jackson, *Horizontal Concentration and Vertical Integration in the Cable Television Industry*, 12 *Review of Industrial Organization* No. 4 at 514 (Aug. 1997).

APPENDIX A

**Federal Communications Commission Staff in Attendance For INCOMPAS January 19,
2016 Ex Parte Presentation**

Bill Rogerson
Bob Cannon
John Kiefer
Bakari Middleton
Mary Beth Murphy
Hillary DeNigro
Octavian Carare
Betsy McIntyre
George Williams
Andrew Erber
Brendan Holland
Julie Saulnier
Ty Bream
Katherine LoPiccalo
John Castle
Mike Ray
Joel Rabinovitz
Karen Schroeder
David Brody
Kiley Naas
Elizabeth Cuttner
Susan Singer
Owen Kendler
Jim Bird
Adam Copeland
Eric Ralph
Bill Lake
Jonathan Sallet
Eric Ralph