



January 29, 2016

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**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:

In response to Petitions to Deny in the above-referenced transaction (“Transaction”), Charter, Time Warner Cable and Bright House Networks (the “Applicants”) assert that the increased scale from the proposed merger would enable the new entity (“New Charter”) to realize substantial cost savings and that a portion of the economic gains would likely be passed onto subscribers. However, there is ample evidence in the record that same dynamic would harm competition in the local markets.

NTCA – The Rural Broadband Association is a national association of more than 900 members. All of NTCA’s members are rural incumbent local exchange carriers, most of whom also provide video and broadband services to their rural communities. Several NTCA members compete directly with Charter, Time Warner Cable or Bright House Networks for voice, video and/or broadband subscribers in at least a small geographic portion of their rural serving areas.

The Applicants acknowledge and claim as a public interest benefit the fact that New Charter will have access to more favorable video programming pricing and contract terms, that as a smaller company it would not, and that it will likely pass a portion of those savings to its subscribers. However, the declaration of Dr. David Evans filed in the proceeding confirms NTCA’s fears that the Transaction would significantly harm smaller competitors and new entrants. Dr. Evans determines that the Transaction would result in a significant increase in prices as a result of the horizontal combination of the Applicants.<sup>1</sup> The Transaction would “significantly increase the prices that video programmers would pay the Applicants to distribute their content to subscriber households” and also that the increased market power over video programming would raise barriers to entry and reduce competition in local broadband.<sup>2</sup>

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<sup>1</sup> See David S. Evans, *Economic Analysis of the Impact of the Proposed Merger of Charter, Time Warner Cable and Bright House Networks on Broadband Entry and Competition*, MB Docket No. 15-149 (Jan. 15, 2016) (“Evans Declaration”).

<sup>2</sup> Evans Declaration ¶¶16-20, 35-68.

New Charter's increased market power over video programmers resulting from the merger would discourage entry and expansion by smaller broadband providers that would otherwise compete against Charter or Time Warner Cable for customers. Even if one were to accept the Applicants' claim that programming cost savings would be passed through to consumers, the horizontal combination would significantly "harm competition in the provision of intermediation service to video programmers for access and distribution and in the provision of competitive local broadband services."<sup>3</sup>

Applicants claim that one of the major public interest benefits of the Transaction is the increased bargaining power over programmers and the partial pass-through of the savings to consumers. However, the Transaction would harm competition itself. Lack of affordable access to video programming, as compared to the New Charter, will have a materially negative impact on the ability of small providers and new entrants to operate as effective competitors. Potentially thousands of rural Americans will be left without meaningful access to choice in the video and broadband marketplace. And a less competitive market translates to less pressure on the fewer, larger companies to pass along any of savings realized as a result of a merger to the benefit of consumers.

In determining whether the proposed transaction will serve the public interest, the Commission must carefully weigh the extent to which the financial and economic benefits that the Applicants attribute to the transaction will come at the expense of its competitors, retail customers and the wholesale customers of the newly combined entity. The Applicants have not established that the potential merger-specific benefits to the public interest will outweigh the potential for harms. NTCA therefore reiterates its call that the Transaction be denied.

Thank you for your attention to this correspondence.

Sincerely,

/s/ Jill Canfield

Jill Canfield

Vice President – Legal & Industry

Assistant General Counsel

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<sup>3</sup> Evans Declaration ¶¶15.