

February 8, 2016

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

**Re:** 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:

On February 4, 2016, Gene Kimmelman, John Gasparini, Dallas Harris, Meredith Rose, and John Bergmayer of Public Knowledge (PK) met with Jim Bird (Office of General Counsel), Adam Copeland (Wireline Competition Bureau), Hillary DeNigro (Media Bureau), Brendan Holland (Media Bureau), Owen Kendler (Office of General Counsel), Betsy McIntyre (Wireline Competition Bureau), MaryBeth Murphy (Media Bureau), Kiley Naas (Office of General Counsel), and Susan Singer (Media Bureau) of the FCC to discuss its concerns with the Charter/Time Warner Cable/Bright House merger as proposed.

First, PK believes that Charter's proposed broadband-related conditions are insufficient to protect the public interest. The most fundamental problem with those proposals is that 3 years is far too short a period. If the purpose of such conditions is, among other things, to protect consumers by ensuring that online video has an opportunity to grow without being thwarted by cable incumbents, then any such conditions must be of a sufficient duration to allow new competition to develop. A ten-year duration for conditions provides a sufficient window for investors to have confidence that new business models will have a chance to develop and form streaming competitors to become established. Additionally, despite the sign-off of a number of large interconnection partners, the Commission has a duty to ensure that the proposed merger would not harm the public interest by creating interconnection obstacles for parties who have not reached separate agreements with Charter. Furthermore, any Open Internet-related conditions much more closely track the Commission's Order (including the Internet conduct rule). PK did note that Charter's commitment to refrain from imposing data caps on its customers is a positive development, were the commitment to be sufficiently extended.

PK noted that its concerns with the merger go beyond actions the merged company could take with respect to its broadband connections: new Charter's buying power and leverage over programmers could enable it to prevent content from migrating online, undermining potential online competitors. In particular, most-favored nation and alternative distribution method provisions in programming contracts can disadvantage online video providers, who do not benefit from the competitive protections afforded to MVPDs by 47 U.S.C. § 548 and its implementing regulations. Smaller programmers in particular can be prevented from exploring new business

models and future sources of revenue by such provisions, and even larger programmers may find that complex and interrelated contractual agreements can constrain how they can offer programming in new ways to viewers.

Additionally, new Charter's control over its customers' set-top boxes—the primary way most of its customers interact with video—gives it the ability to prevent viewers from having streamlined access to online video at all. As a recent filing from Nvidia illustrates, Charter is already interfering with the online video market by refusing to authenticate TV Everywhere apps on certain devices—actions that should inform the Commission's reception of any claims by Charter that it is open to making MVPD content available on unaffiliated third-party devices. PK noted that the Commission is about to open proceedings addressing some of these issues, in its media diversity NOI and set-top box NPRM. However, this merger also raises specific harms in these areas and any potential merger commitments must address them.

Finally, PK noted the danger that coordinated effects and parallel action between new Charter and other large broadband providers pose to consumers, which amplify the threats described above. Such potential harms mean that the Commission must proceed with caution when analyzing this merger and must either reject it or ensure that any conditions it imposes are enforceable and effective. PK also argued that the broad mandate of the public interest test gives the Commission the authority to remedy any harms that this merger would exacerbate.

Respectfully submitted,

/s/ John Bergmayer

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