

REDACTED – FOR PUBLIC INSPECTION

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VIA ECFS

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:

On February 5, 2015, representatives of Charter Communications, Inc. ("Charter"), Time Warner Cable Inc. ("TWC"), and Advance/Newhouse Partnership ("Advance/Newhouse") (collectively, the "Applicants") met with Federal Communications Commission ("Commission") staff copied at the bottom of this letter. Participating for Charter were: Catherine Bohigian, Executive Vice President, Government Affairs; Alex Hoehn-Saric, Senior Vice President, Government Affairs; Christianna Barnhart, Vice President, Regulatory Affairs; and John Flynn and the undersigned of Jenner & Block. Participating for TWC were Steven Teplitz, Senior Vice President of Government Relations, and Matt Brill of Latham & Watkins. Steven Horvitz of Davis Wright Tremaine participated on behalf of Advance/Newhouse.

During the meeting, the Applicants addressed filings by INCOMPAS,¹ NVIDIA Corporation ("NVIDIA"),² TiVo Inc. ("TiVo"),³ Hauppauge,⁴ and Time Warner Inc. along with its subsidiary Home Box Office, Inc. (together "HBO").⁵ As the Applicants explained, in addition to being unfounded, the concerns raised by these commenters are not tied to transaction-specific harms, and the conditions they seek are not justified.

¹ Letter from Markham C. Erickson, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 27, 2016); Letter from Markham C. Erickson, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 21, 2016).

² Letter from Markham C. Erickson, Counsel to NVIDIA Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 20, 2016).

³ Letter from Henry Goldberg and Devendra T. Kumar, Counsel to TiVo Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 21, 2016) ("TiVo Letter").

⁴ Letter from Robert Schwartz, Counsel to Hauppauge, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 14, 2016) ("Hauppauge Letter").

⁵ Letter from Steven G. Bradbury, Counsel to Time Warner Inc. and Home Box Office, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 13, 2016) ("HBO Letter").

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A. INCOMPAS Fails to Demonstrate Transaction-Specific Harm.

INCOMPAS asserts that the Transaction would reduce New Charter's programming costs, which would harm smaller MVPDs' ability to provide residential broadband Internet access services.⁶ As the Applicants explained in the meeting and in their January 29 filing, INCOMPAS's arguments about programming price harms are incorrect.

INCOMPAS's expert, Dr. Evans, agrees that the Transaction will generate cost savings and that these savings will be passed through to consumers, but nevertheless suggests that these cost savings will harm broadband competition. Neither INCOMPAS nor Dr. Evans offers any evidence that New Charter's programming cost savings would hamper either broadband entry or investment. Without that evidence, their claims of harm are entirely unsubstantiated. Indeed, Dr. Evans's theory depends on the questionable assumption that a provider's decision to enter a particular market depends on the incumbent provider's costs. As Dr. Katz points out, however, Google Fiber has recently entered markets where there was already a larger incumbent MVPD whose relative size would have given it an advantage in terms of programming costs.⁷ If Dr. Evans's theory were correct, then Google Fiber would not have entered these markets. Moreover, Dr. Evans's theory is viable only if one assumes that New Charter will offer broadband at a lower cost than smaller MVPDs. But lower costs to consumers would be a Transaction benefit, not a harm.

B. There Is No Basis For TiVo and Hauppauge's Proposed CableCARD Conditions.

TiVo and Hauppauge both express concerns about the continued supply and support of CableCARDS by New Charter following the proposed merger, asking the Commission to impose a number of requirements on New Charter's treatment of CableCARDS.⁸ But there is no basis for concern—and neither TiVo nor Hauppauge identify any—that New Charter will fail to supply and support CableCARDS. Charter alone has over five million set-top boxes in circulation that utilize CableCARDS, and it will acquire millions more as a result of the Transaction. New Charter will continue to purchase, distribute, and service CableCARDS—whether used in New Charter's own devices or in those purchased by its subscribers from third parties—for years to come, even as New Charter moves toward deployment of Worldbox, which will utilize a downloadable conditional access security system. Indeed, if New Charter were to discontinue providing and servicing CableCARDS—as TiVo and Hauppauge suggest that it will—millions of New Charter customers would be unable to access the company's cable video service. It will therefore be in New Charter's interest to ensure the proper functioning of CableCARD devices for the foreseeable future.

⁶ See, e.g., Declaration of Dr. David S. Evans, Chairman of Global Economics Group, LLC, at ¶ 71 (Jan. 15, 2016) (attached to Letter from Markham C. Erickson to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 15, 2016)).

⁷ See Surreply Declaration of Michael L. Katz, ¶ 27 (Jan. 29, 2016) (attached to Letter from John L. Flynn to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 29, 2016)).

⁸ TiVo Letter at 1-2; Hauppauge Letter at 1-2.

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C. HBO Misconstrues Statements By Charter Executives.

HBO claims that statements by Charter executives indicate that New Charter will seek to harm content providers that deliver content “over the top” (“OTT”) in order to preserve the cable bundle.⁹ Although the Applicants do not know for sure which statements HBO highlighted in its presentation, Charter’s CEO, Tom Rutledge, has been transparent and unequivocal that—far from fearing the broken bundle—New Charter is enthusiastic about the rise of OTTs like HBO Now. First, OTTs like HBO Now help drive demand for broadband service. Second, OTTs like HBO Now also provide customer choice and thus lessen a programmer’s ability to tie and increase programming prices on an otherwise non-market basis. These shifting dynamics may give New Charter greater flexibility in packaging and thereby provide an opportunity to sell content in a more customer tailored manner.

D. NVIDIA’s Concerns About SHIELD TV Are Misguided.

NVIDIA incorrectly claims that Charter has blocked access to Television Everywhere (TVE) apps in order to competitively disadvantage NVIDIA’s SHIELD TV device. As a general matter, Charter has worked diligently to provide its subscribers access to content over various platforms (e.g., iOS, Android, web browsers) as well as on immobile devices such as Roku through its app. With respect to TVE apps, programmers that create an app will approach Charter to implement an authentication procedure and identify the devices on which they would like the app to run. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

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

Sincerely,

/s/ Samuel L. Feder

Samuel L. Feder
Counsel for Charter Communications, Inc.

cc: Adam Copeland
Elizabeth Cuttner
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⁹ See HBO Letter at 1-2.