



POLICY & ACTION FROM CONSUMER REPORTS

February 12, 2016

**FOLLOW-UP TO STAFF QUESTION**

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

ATTN: Owen Kendler et al

Re: Follow-up to Staff question in MB Docket No. 15-149, *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*

Dear Ms. Dortch:

Consumers Union (CU), the policy and advocacy arm of Consumer Reports, submits this letter in response to a staff question raised regarding the idea of requiring the merged Charter/TWC/BHN to enter into a “programming purchasing cooperative” with other OTT, cable, satellite, and other conduits for transmitting programming content to consumers as a possible means of protecting against the potential for the merged company to use its market power to anti-competitively disadvantage its rivals and reduce consumer choice and quality. CU believes there are significant risks in relying on such a cooperative for that purpose; while it could potentially provide some incremental protection, it might not be sufficiently effective.

Indeed, such a cooperative, by including the dominant company, could have the effect of acting similarly to a “Most Favored Nation” agreement, by permitting the dominant company to drive negotiations with programming providers to deals tailored to its own needs and market advantages. In that case, while the “same deal” would ostensibly be available to all members of the cooperative, in reality the terms of that “same deal” would not be as useful to the other members of the cooperative. Meanwhile, the other members, by virtue of being part of the cooperative, would be locked in to those unfavorable terms, precluded from negotiating different terms with a programming provider that would be better tailored to their own needs and market advantages, and would thus better enable them to be viable competitors and make competitive inroads.

The potential for abuse of this type of condition is one illustration of the significant potential difficulties and risks that can arise in relying on conditions to remedy the harms that we believe would result from this merger. CU urges the FCC, as well as DOJ, to investigate thoroughly and to take whatever action is warranted, based on the investigation, to effectively protect competition, consumers, and the public interest.

Respectfully submitted,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name "George" being the most prominent.

George P. Slover  
Senior Policy Counsel  
Consumers Union