May 4, 2016

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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 Wednesday, May 4, 2016, the undersigned from NTCA – The Rural Broadband Association ("NTCA") met with Robin Colwell, advisor to Commissioner O'Rielly, to express concerns about the above referenced merger of Charter Communications, Inc., Time Warner Cable, Inc. and Bright House Networks (the "Applicants").

NTCA appreciates the careful efforts employed by the Commission to date in reviewing the potential implications of the proposed merger of the Applicants on consumers and competitive marketplaces. Unfortunately, the merger conditions that NTCA understands are currently under consideration appear aimed largely at either advancing specific and narrow priorities related to broadband regulation or addressing concerns raised by one sector – edge providers. By contrast, the conditions that have been reported publicly appear to ignore the very real and concerning effects of the transaction on consumers and competition in the broader video distribution marketplace and the potential harm to existing providers – those that own and operate the networks that make the services provided by edge providers possible. The net harms of the transaction in this broader marketplace would outweigh any perceived benefit and ultimately, the transaction must be rejected.

Operating as a small multichannel video programming distributor ("MVPD") in a rural community is a challenging and expensive endeavor. Many NTCA members offer such service because it is unavailable to subscribers through other outlets (including even over-the-air or via satellite in many rural communities) and because it encourages broadband adoption. According to a recent NTCA member survey, the single biggest barrier to providing video services is obtaining access to reasonably-priced programming, followed by competing with other providers.[1] This merger will exacerbate both of these significant competitive issues to the detriment of rural providers and the consumers they serve.

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[1] NTCA/INCOMPAS video competition survey, available at *http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/NTCA_2015VideoCompetitionSurvey.pdf*

Small video providers who compete with New Charter for customers cannot retain subscribers if they are unable to offer similar rates and terms. Loss of subscribers in the small towns in which New Charter is most likely to compete makes the business case for investment and sustainability of networks in the more rural areas even worse than it already is. The idea that lower programming fees might benefit New Charter's customers fails to recognize that New Charter's windfall necessarily harms competitive choices in the MVPD marketplace, to whom content owners are likely to turn to "make up the slack" on lost revenues.

Indeed, New Charter's decreased fees will almost certainly cause program distributors to extract additional funds from the country's smallest video providers, including those that do not compete with New Charter. The Applicants discount this concern explaining, "programmers already engage in tailored negotiations with distributors and bargain for the highest fees they can obtain from smaller distributors."[2] However, this specific transaction will impact the competitiveness of video distribution and exacerbate an already skewed marketplace.

Any view that the currently contemplated conditions will spur and protect video competition in the marketplace appear focused mostly on "spur," looking at markets the Commission desires to grow rather than markets where providers are already serving hundreds of thousands or millions of consumers. Conditions preventing data usage caps and charging for interconnection are, consistent with recent themes at the Commission, most clearly designed to protect and promote the business plans of edge/on-line providers and help new entrants with new delivery platforms to gain a strong foothold. Whatever one's views on the merits of such conditions, they will not protect against harms to the networks that are a prerequisite for online services. More specifically, such conditions will not address the harms this transaction poses to existing competing small network providers or to rural consumers who are not served by the largest cable providers.

Many of the financial and economic benefits that the Applicants attribute to the transaction will ultimately come at the expense of smaller competitors who will be forced to "make up the slack" in content owner revenues. This in turn harms consumers, leaving those in rural America in particular paying more for content so that New Charter consumers in urban and suburban areas can pay less. Unless the Applicants specifically agree to a condition that ensures that smaller rural MVPDs will have the opportunity to obtain content according to similar terms, conditions and prices as the New Charter, the potential for harms of this transaction far outweigh any potential benefits.

As the nation's third largest MVPD, New Charter would wield substantial power, dictating the terms of its owned content and creating a significant competitive disparity between itself and its smaller rivals. The Applicants acknowledge New Charter will have access to favorable pricing and contract terms that its smaller competitors will not.[3] Rural providers lack the scope and scale necessary to obtain the volume discounts on video programming available to carriers the size of New Charter. This dynamic has ramifications across the industry both for those small entities who compete directly with New Charter and for those that do not – and more importantly, for the consumers in rural areas served by these small businesses.

In addition to these concerns about how the transaction will affect consumers served by competitive MVPDs and the dearth of conditions related thereto, published reports indicate that the Commission may also be considering a broadband build-out requirement as a condition to merger

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[2] *Opposition to Petitions to Deny and Response to Comments of Charter, Time Warner, and Bright House Networks*, MB Docket No. 15-149 (fil. Nov. 2, 2015), p. 59.
[3] Id.

approval. In particular, New Charter would reportedly be required to provide a high-speed connection to a large amount of customers that lack any such connection today.[4]

It is important that any such condition, if imposed, be coordinated with other Commission initiatives intended to extend broadband to unserved consumers; a lack of coordination would likely lead to duplicative and wasteful efforts to reach certain unserved locations even as other unserved locations remain ignored altogether. For example, the Connect America Fund ("CAF") Phase II unserved area build outs by price cap carriers are just commencing, and the Commission is still in the process of developing the CAF II competitive bidding process for areas the price cap carriers choose to leave unserved. The Commission also released a recent order creating new CAF mechanisms for rate of return regulated companies, which include buildout requirements for all RLECs, whether or not they elect model-based support.[5] Thus, the Commission has several, relatively nascent steps underway – utilizing several billion dollars per year of universal service fund resources – aimed at reaching currently unserved consumers.

To the extent that any merger condition on New Charter mandates the deployment of networks into unserved areas as well, it is essential that such a measure be coordinated with the high-cost program and the Commission's CAF initiatives. In the absence of coordination, resources would be wasted as one could see currently unserved areas become served by two different firms -- one investing to satisfy regulator-imposed merger conditions and the other investing pursuant to regulator-driven, USF-supported buildout obligations – while other unserved areas would continue to sit without any broadband services at all. Thus, if the Commission decides to move forward with this merger and to condition it on buildout requirements, any such requirements should specifically exclude any areas where CAF support is being made available and buildout obligations are already attached to the recipient, and should instead target those unserved locations that CAF dollars will not reach.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ *Jill Canfield*
Jill Canfield
Vice President, Legal & Industry
Assistant General Counsel

cc: Robin Colwell

[4] FCC Chairman Statement on Charter/Time Warner/BHN Merger (April 25, 2016).
[5] *See, In the Matter of Connect America Fund, et.al.,* WC Docket No. 10-90, *et. al.,* Report and Order and Further Notice of Proposed Rulemaking (rel. March 30, 2016).