May 4, 2016

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

Re: *Ex Parte* disclosure pursuant to 47 C.F.R. § 1.1206(b) in MB Docket No. 15-149

Dear Ms. Dortch:

On May 2, 2016, I met, on behalf of the National Hispanic Media Coalition ("NHMC"), with David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Mignon Clyburn. During the meeting, I discussed a number of issues pertaining to the proposed combination of Charter Communications, Time Warner Cable, and Bright House Networks (collectively, "Applicants"). Notably, I expressed NHMC's opposition to the proposed merger and urged Commissioner Clyburn to vote against approval absent strong conditions requiring participation in the Lifeline program and ensuring greater diversity of programming available on the resulting cable system.

I shared with Mr. Grossman that Alex Nogales, President and CEO of NHMC, offered testimony opposing the proposed transaction before the California Public Utilities Commission ("CPUC"). In California, Mr. Nogales argued that the merger does not serve the public interest stating:

> A combination of two of the largest multichannel video programming distributors ("MVPDs") and broadband providers in the country would consolidate significant market power in these industries across California and nationwide. Such concentration of power would necessarily have a significant impact on Latinos because the resulting entity will have the ability to pick and choose the video programming delivered to consumers and the nature and cost of the communications services that it provides.[1]

[1] Reply Comments of Alex Nogales on Behalf of the National Hispanic Media Coalition, Cal. Pub. Util. Comm'n Proceeding A.15-07-009 (Jan. 15, 2016), *available at* http://www.nhmc.org/wp-content/uploads/2016/01/Reply-Testimony-of-NHMC.pdf ("NHMC CPUC Testimony").

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Mr. Nogales also told the CPUC that he did not believe conditions could mitigate the "serious and permanent harms that this concentration of market power could generate."[2] He also pointed out that compliance with merger conditions has traditionally been difficult to track and enforce.

However, knowing that the Chairman's office circulated an order recommending approval of the transaction, NHMC strongly recommended that Commissioner Clyburn vote against such an item absent provisions addressing two critical issues: New Charter's participation in the Lifeline program and programming diversity. Such provisions were noticeably absent from the proposed conditions outlined by Chairman Wheeler in a statement released on April 25th.[3]

New Charter Should Be Required to Participate in The Lifeline Program to Mitigate Price Increases Faced by Low-income Consumers

In this meeting, I expressed to Mr. Grossman NHMC's belief that the Commission should add conditions to the circulated item that would direct New Charter to become a Lifeline provider and require it to alter its proposed low-income program to maximize its value for Lifeline-eligible customers. Such conditions could help mitigate price increases that this transaction will likely cause for low-income consumers. As NHMC noted in testimony filed with the CPUC:

> For a residential user near NHMC's headquarters in Pasadena, [California,] the lowest priced standalone broadband service from Charter is a 60 Mbps downstream connection offered at a promotional rate of $39.99 for 12 months. At a nearby Los Angeles zip code serviced by Time Warner Cable, a consumer is able to access three standalone broadband offerings that are less expensive than Charter's base service: 50 Mbps down at a promotional rate of $34.99 per month; 10 Mbps down at a promotional rate of $29.99 per month; and 3 Mbps down for an "everyday low price" of $14.99 per month. According to [Applicants], "New Charter will soon bring base speed tiers ... to Charter's current standard minimum of 60 or 100 Mbps at uniform pricing in TWC and and [Bright House Network ("BHN")] territories, including in California."[4]

Moreover, low-income users, who are least able to bear price fluctuations, may face significant price increases in certain markets. As NHMC noted before the CPUC:

> …New Charter will offer a 30 Mbps down connection to qualifying customers at a cost of $14.99 per month and [has noted] that BHN customers currently enrolled in BHN's low-income program, Connect2Compete, will be allowed to

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[2] *Id.*
[3] Press Release, Federal Communications Commission, Statement of FCC Chairman Tom Wheeler on Recommendation Concerning Charter/Time Warner Cable/Bright House Networks (Apr. 25, 2016).
[4] NHMC CPUC Testimony.

> subscribe to New Charter's program. What is not noted is that BHN's Connect2Compete offering is priced at $9.95 per month, meaning that current or prospective low-income subscribers in BHN's footprint will face a 50 percent price increase following the close of this transaction. The [consumers] served by low-income programs like Connect2Compete are among the least able to absorb such a significant price spike and, therefore, any gains in broadband adoption facilitated by BHN's program could be wiped away virtually overnight.[5]

NHMC concedes that New Charter's proposed low-income program contemplates offering a more robust service than BHN's current Connect2Compete product. However, that fact alone does nothing to provide relief to cost sensitive consumers. Requiring New Charter to take steps necessary to allow its eligible customers to receive Lifeline support is one way to directly mitigate likely price increases.

The following language could form the basis of a condition directing New Charter to become a Lifeline provider:

> New Charter must take the necessary steps to become a full participant in the Lifeline program thereby allowing its customers to apply Lifeline subsidies to its service offerings. Accordingly, New Charter must apply to become an Eligible Telecommunications Carrier ("ETC") as defined by 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, in each of the states where it has customers, and/or a Lifeline Broadband Provider ETC, through the federal process described in 47 C.F.R. § 54.202. After becoming a participant in the Lifeline program, New Charter will continue to fully participate in Lifeline for a period of at least fifteen years.

In order to facilitate use of Lifeline by eligible New Charter customers, the Commission should build upon the low-income program proposed by Applicants in a way that would allow any Lifeline-eligible customer to qualify for the program.[6] Doing so would allow eligible consumers to subscribe to New Charter's robust 30 Mbps downstream service for an out-of-pocket cost of only $5.74 per month.[7] NHMC believes that making such a valuable service available to low-income consumers at this price point could have a significant positive impact on broadband adoption among many on the wrong side of the digital divide.

The Commission could craft such a condition by starting with the following language:

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[5] *Id.*

[6] As proposed, only a portion of Lifeline-eligible customers would qualify to participate in New Charter's program.

[7] Applicants have proposed creating a service offering for low-income consumers that would be priced at $14.99. Eligible consumers would be able to apply their $9.25 Lifeline subsidy to this program leaving them responsible for only $5.74.

> Eligibility requirements for New Charter's low-cost broadband program shall precisely mirror the consumer eligibility requirements of the Federal Communication Commission's Lifeline program, including qualification requirements currently found in 47 C.F.R. 54.409 and/or any superseding requirements. Eligibility criteria should continue to mirror Federal Lifeline qualification criteria even if the FCC decides to alter such criteria at a date after the institution of New Charter's program. New Charter will continue to offer its low-cost broadband program for a period of at least fifteen years.

Without the inclusion of such conditions, low-income consumers will face the full brunt of the potential harms of this massive consolidation. Further, by failing to embrace the opportunity to secure New Charter's participation in Lifeline, the Commission will miss an important opportunity to foster the type of competition among Lifeline providers that would set its modernized program up for success. As the Commission noted in its recent Lifeline modernization order, "The success of [the] modernized program…depends on participation from providers to give eligible low-income households a choice between quality services."[8]

New Charter Should Be Asked to Voluntarily Commit to Offer Carriage to Independent and Diverse Programmers

In our meeting, I noted to Mr. Grossman that NHMC was disappointed that the Chairman's statement did not contemplate facilitating opportunities for independent and diverse programmers.[9] This is particularly puzzling given the Commission's recent inquiry into challenges faced by these programmers as they attempt to secure carriage on MVPD systems.[10] NHMC is particularly concerned as this transaction would make New Charter a primary gatekeeper to distribution of video programming to a number of incredibly diverse markets, including Southern California and New York City.

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[8] *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration at 250 (rel. Apr. 27, 2015).

[9] At least one Memorandum of Understanding entered into by Charter has explored enhancing distribution for programmers serving diverse audiences. However, in NHMC's view this MOU is insufficient to address our concerns and NHMC declined an invitation to sign it. Memorandum of Understanding Between Charter Communications, Inc. and The Multicultural Leadership Organizations (Jan. 15, 2016), *available at* https://charterresourcecenter.com/wp-content/uploads/2016/01/New-Charter-and-Multicultural-Organizations-MOU-FINAL-1-15-2016.pdf.

[10] *See In the Matter of Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, MB Docket No. 16-41 (rel. Feb. 18, 2016).

While I did not propose a specific remedy in this meeting, due to the distribution challenges that many existing and nascent independent and diverse programmers have already brought to the Commission's attention in this and other dockets, I offered that a well-designed set aside of channel capacity for qualified entities could be a potential path forward.

Please do not hesitate to contact me should you have any questions about this submission.

Sincerely,

/s/ Michael Scurato
Michael Scurato
Vice President, Policy
National Hispanic Media Coalition

Cc: David Grossman