



**Kathleen Q. Abernathy**  
Executive Vice President, External Affairs

May 5, 2016

**VIA ECFS**

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly  
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 Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly:

I am submitting this letter in connection with the pending transaction of Charter Communications, Inc. (Charter) and Time Warner Cable, Inc. (TWC). Although Frontier Communications (Frontier) has not previously participated in this proceeding, I am filing this letter because our recent efforts to deliver local facilities-based competition to several communities in the Minnesota video market are being jeopardized by Charter. Frontier is concerned that with the increased scale and scope that will result following the approval of this acquisition, Charter will be able to expand its efforts to prevent or delay the development of video competition across all of its markets, including Minnesota. Therefore, Frontier asks that the Commission take note of Charter's anticompetitive actions and specifically require Charter to agree not to oppose or intervene in any effort by a competitive franchise applicant to obtain a local franchise.

As background, Frontier seeks to introduce video services in the City of Farmington, Minnesota, and has filed a local franchise application to do so. Charter has filed comments to block or delay that application.<sup>1</sup> Charter has also enlisted a large Washington, D.C., law firm – a law firm unfamiliar with the Minnesota market, the state of Minnesota competition, or the custom of franchise approvals in other Minnesota cities – to threaten the City of Farmington with legal action

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<sup>1</sup> See Letter from LeeAnn Herrera, Director, Government Affairs, Charter Communications, to Mayor Todd Larson and Members of the Farmington City Council (May 2, 2016) (attached).

if it approves Frontier’s franchise application.<sup>2</sup> In other words, just as Frontier seeks to introduce facilities-based competition in Minnesota, Charter is rolling out all the stops to block that competition.

The Commission has previously rebuked cable incumbents for this type of anticompetitive behavior. As the Commission has explained, there is “troubling . . . evidence” that incumbent providers have sought “to frustrate negotiations between [Local Franchising Authorities (“LFAs”)] and competitive providers, causing delay and preventing competitive entry.”<sup>3</sup> In particular, as Charter seeks to do here, incumbent cable operators have “use[d] threatened or actual litigation against LFAs . . . and have successfully delayed entry or driven would-be competitors out of town.”<sup>4</sup>

Charter has been extraordinarily aggressive in seeking to delay Frontier’s entry into the Farmington market, asking the City to reject Frontier’s application and impose unduly burdensome conditions, including overly aggressive build-out obligations. Charter’s objection is in reality an effort to have the LFA impose such onerous and unreasonable buildout obligations that Frontier, as the new entrant, would not be able to obtain a franchise agreement that will support a feasible business plan. As the FCC has recognized, “[b]uild-out requirements can deter market entry because a new entrant generally must take customers from the incumbent cable operator, and thus must focus its efforts in areas where the take-rate will be sufficiently high to make economic sense. Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent’s share, the second entrant cannot justify a large initial deployment. Rather, a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.”<sup>5</sup>

Charter’s aggressive tactics are not limited only to Frontier’s franchise application in Minnesota. Frontier is in the process of sending Charter a cease and desist letter for an apparent robocall marketing campaign in Texas. Charter or its vendor are apparently robocalling Frontier customers to schedule a date for installation, followed by additional robocalls advising customers of the installation date and installation time. Frontier is concerned that with Charter’s increased scale

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<sup>2</sup> See Letter from Gardner F. Gillespie, Sheppard, Mullin, Richter, & Hamilton LLP, Counsel to Charter, to Robert J. V. Vose, Kennedy & Graven, Counsel to Frontier (May 2, 2016) (attached).

<sup>3</sup> See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 ¶ 138 n.476 (2007).

<sup>4</sup> *Id.* ¶ 34; see also *id.* ¶ 138 n.476.

<sup>5</sup> *Id.* ¶ 35 (footnote omitted); see also *id.* ¶ 36 (“In many cases, build-out requirements also adversely affect consumer welfare. [The Department of Justice] noted that imposing uneconomical build-out requirements results in less efficient competition and the potential for higher prices.”).

and scope following the transaction, Charter will only expand these aggressive tactics.

Based on the FCC's focus on protecting competition in the video market and "removing unfair barriers" as part of its review of Charter's transaction,<sup>6</sup> the FCC should incorporate into its decision protections for facilities-based competition. Specifically, the Commission should not approve the transaction unless Charter voluntarily agrees to take steps to ensure that new entrants are not delayed in their ability to provide enhanced facilities-based video competition. Charter should also voluntarily withdraw all oppositions to pending competitive franchise applications before the Commission approves this merger. If the Commission is not willing to impose such a condition, however, Charter should at least agree (1) not to oppose any competitive franchise applicant's request or seek to delay a local franchising proceeding and (2) to make available in a single, readily accessible location on its website copies of all communications and descriptions of all oral and written ex parte contacts made by or on behalf of Charter with LFAs related to a potential competitive cable operator's application for a franchise.

Please feel free to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Abernathy". The signature is fluid and cursive, with a large loop at the end.

Kathleen Abernathy  
Executive Vice President, External Affairs

cc: Jessica Almond  
Matthew Berry  
Robin Colwell  
David Grossman  
William Lake  
Marc Paul

Attachments

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<sup>6</sup> See Statement of FCC Chairman Tom Wheeler On Recommendation Concerning Charter/Time Warner Cable/Bright House Networks (Apr. 25, 2016).