

May 9, 2016

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting, Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership For Consent to Transfer Control of Licenses and Authorizations, MB Dkt. No. 15-149; Expanding Consumers' Video Navigation Choices, MB Dkt. No. 16-42; Commercial Availability of Navigation Devices, CS Dkt. No. 97-80

Dear Ms. Dortch:

The Computer & Communications Industry Association (CCIA)¹ respectfully submits this *ex parte* letter in the above-referenced proceedings. On May 5, 2016, the undersigned and John Bergmayer and Kate Forscey of Public Knowledge met with David Grossman, Chief of Staff and Media Policy Advisor for Commissioner Clyburn.² We discussed the implications of the proposed merger between Charter Communications, Time Warner Cable, and Advance/Newhouse Partnership for consumers who access MVPD programming and apps on third-party, video navigation devices.

Currently, subscribers of all three of the Applicants can access programming from apps on third-party devices by utilizing the MVPD's network. However, Charter prevents some lawful, non-harmful, third-party devices from accessing the authentication credentials necessary to utilize a number of apps that are not affiliated with Charter. By contrast, Time Warner Cable and Bright House subscribers can access those apps on the same third-party devices over the Time Warner Cable and Bright House networks. For example, as CCIA discussed previously in this docket,³ Charter prevents its subscribers

¹ CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion.

² Kim Bayliss of Grayling was also present but did not participate in the discussion described in this letter.

³ See Letter from Daniel O'Connor, Vice President Public Policy, Computer & Communications Industry Association (CCIA), to Marlene H. Dortch, Sec'y, FED. COMMC'NS COMM'N, MB Docket No. 15-149, MB Docket No. 15-64 (Feb. 11, 2016) (explaining the competitive implications of Charter blocking apps on third-party video navigation devices). A copy of this letter was provided during the meeting.

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from accessing the HBO Go app on NVIDIA's new SHIELD TV console, but Time Warner Cable and Bright House subscribers can access HBO Go on the same consoles.⁴

The blocking of apps on third-party devices affects the broader video ecosystem. Consumers have been told by their MVPDs that they can access programming from apps on third-party devices.⁵ However, this is not always the case for Charter subscribers. The undersigned urged that if the proposed merger is approved, the Commission impose a merger-specific remedy prohibiting Charter from restricting, degrading, or interfering with the use of lawful, non-harmful devices, like NVIDIA's SHIELD TV device.⁶ Such a condition would preserve the expectations of Time Warner Cable's and Bright House's current subscribers who own third-party devices and ensure future Charter subscribers benefit from accessing programming to which they have subscribed on a third-party device. This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,

/s/ John A. Howes, Jr.

Computer & Communications
Industry Association (CCIA)

CC: David Grossman

⁴ See Letter from Markham C. Erickson, Counsel for NVIDIA, to Marlene H. Dortch, Sec'y, FED. COMM'NS COMM'N, MB Docket No. 15-149 (Feb. 17, 2016) (explaining how Charter refuses to authenticate a variety of TV Everywhere apps, including HBO Go, Fox NOW, HGTV Watch, and STARZ Play). A copy of this letter was provided during the meeting.

⁵ Stacy Fuller, *While the Future of TV is Apps, the FCC is Locked in the Box of the Past*, AT&T PUBLIC POLICY BLOG (Feb. 3, 2016), <http://www.attpublicpolicy.com/fcc/while-the-future-of-tv-is-apps-the-fcc-is-locked-in-the-box-of-the-past/>; see Comments of AT&T, MB Docket 15-64, at 2 (filed Oct. 8, 2015) ("Consumers can readily access MVPD programming and services via MVPD apps that serve over 450 million consumer-owned devices, including Android and iOS smartphones and tablets, PCs and Macs, game consoles, Smart TVs, and other retail devices such as Roku, Google Chromecast, and Kindle Fire"); Comments of Comcast Corp., MB Docket 15-64, at 2-3 (filed Oct. 8, 2015) ("In fact, over 460 million connected devices support one or more MVPD apps, and 66 percent of them support apps from all of the top 10 MVPDs. To date, there have been more than 56 million downloads of MVPD apps, and on average each consumer household already has four retail devices with available MVPD apps.") (footnote omitted); see also Comments of NCTA, MB Docket 15-64, at 2 (filed Oct. 8, 2015) ("There have already been over 56 million MVPD app downloads to iOS and Android devices. Apps from MVPDs are now available on more than 460 million devices in the United States – more than twice the number of set-top boxes currently in use – including smartphones, tablets, smart TVs, streaming set-top boxes like Roku, game consoles, and other connected devices.").

⁶ See Letter from Markham C. Erickson, Counsel for NVIDIA, to Marlene H. Dortch, Sec'y, FED. COMM'NS COMM'N, MB Docket No. 15-149 (Apr. 5, 2016) ("At the request of a manufacturer of any lawful, non-harmful device that connects to the Internet, Charter shall, within 180 days, authenticate any video programming application: (1) designed to work with such device's operating system where as of the date of the request, Charter authenticates such application for use on a competing device or (2) that as of March 20, 2016 Time Warner Cable authenticated for use on such device's operating system."). A copy of this letter was provided during the meeting.