Charter
COMMUNICATIONS®

March 2, 2007

Chairman Kevin J. Martin
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: *Charter Communications, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7049-Z; CS Docket No. 97-80

Dear Chairman Martin:

In my February 12, 2007 letter to the Commission, I explained Charter's critical need for a waiver from the integration for low-cost set-top boxes in light of Charter's severe financial constraints and its need to conserve its limited resources to devote to the digital transition in its widely scattered, rural service areas.[1] The purpose of this letter is to describe the application of the Commission's standard for grant of a waiver under Sections 1.3 and 76.7 of its rules to the facts presented in the February 12 letter, and to demonstrate that a waiver is justified by, and is consistent with, the Commission's obligations under the Act.

Section 76.7(i) authorizes the Commission to grant waivers where application of a general rule would not, on balance, serve the public interest;[2] while Section 1.3 allows for waivers upon a showing of "good cause."[3] The Commission will accordingly "take a 'hard look' at meritorious applications for waiver, and [] consider all relevant factors."[4] A generally-beneficial regulation may be waived in individualized circumstances where application of the rule would result in costs to the public that would outweigh its incremental benefits. As the D.C. Circuit explained in *WAIT Radio v. FCC*:

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[1] *See* Letter from Neil Smit, President & CEO, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket 97-80 (Feb. 12, 2007) ("*February 12, 2007 Ex Parte*").

[2] 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request . . . .").

[3] 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

[4] *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1191-1192 (D.C. Cir. 1983) (vacating FCC denial of waiver request, holding that once the premise of the rule had been shown not to apply, the "logic of applying [the rule] collapses," and it was arbitrary to apply the rule, *id.* at 1192, 1195). *See also WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("[A] general rule, deemed valid because the overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest."); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

> The Commission is charged with administration in the "public interest." That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the "public interest" for a broad range of situations, does not relieve it of an obligation to seek out the "public interest" in particular, individualized cases.[5]

One such important individualized circumstance that the Commission frequently considers to be a basis for waiver is financial hardship. The Commission has repeatedly recognized that a regulated company's "financial difficulties" present a "special circumstance" for consideration separate and apart from its "traditional waiver factors."[6] The Commission has looked to a variety of types of information to assess a company's financial situation as a basis for waivers, such as audited balance sheets and income statements;[7] evidence of significant savings that would result from a waiver;[8] and evidence of a history of losses, such as companies that "have consistently lost money and have shown a negative cash flow."[9] Charter has submitted precisely this audited documentation of financial hardship in its February 12, 2007 *ex parte* submission.

Negative cash flow is an especially relevant criteria in the Commission's consideration of Charter's financial condition, because cash is what Charter would use (to the extent available) to fund both the capital expense of new, non-integrated set-top boxes and also its digital transition. The Commission has held in other contexts that a "waiver is more likely to be granted where [a requesting party] has had a negative cash flow for the previous three years."[10] Charter has had negative free cash flow in each of the past five years.[11] Charter's significant negative cash flow contrasts markedly with other public MSOs, both large and small. *See* Exhibit 1 attached hereto. Indeed, a risk statement specifically mentioned in Charter's recent SEC filings notes that, in light of its successive years of negative net income and negative free cash flow, it may not be in the future able to generate sufficient cash flow to "service and repay our debt, operate our

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[5] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[6] *Capital Cities/ABC, Inc. (Transferor) and The Walt Disney Company (Transferee)*, 11 FCC Rcd 5841, 5872-73 (1996) ("We have also waived our rules ... in order to avoid a 'fire sale.' The cases in which we have granted waivers based on these factors, however, either involved stations suffering serious financial difficulties, or strong showings regarding our traditional waiver factors.")

[7] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66,Report and Order, 17 FCC Rcd 4055, 4083 ¶ 73 (2002).

[8] *Big Ben Communications, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8129, 8131 (1995) (For example, in granting a waiver necessary to permit a merger of stations, the Commission explained of net savings of at least $117,450 resulting from the merger, "This fact is especially compelling, since, as shown in the waiver request, each station in the proposed combination has experienced varying degrees of financial difficulty in the past.")

[9] *Applications of BREM Broadcasting and WKRG-TV, Inc., for assignment of the licenses of WCOA-AM and WJLQ-FM*, 9 FCC Rcd 1330 (1994).

[10] *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd 12903, 12939-40, ¶ 81 (1999). *See also* Assignment of License of WCWN-TV, a subsidiary of Tribune Broadcasting Co., to Freedom Broadcasting of New York, DA 06-2338 (Nov. 22, 2006) at 2.

[11] *See February 12, 2007 Ex Parte* at 2 and Exhibits 4-6.

business, respond to competitive challenges or fund our other liquidity and capital needs."[12] The purchase of CableCARD devices to replace its existing low-cost models would cost Charter more than $50 million between mid-2007 and the end of 2009. These funds are needed for Charter's digital transition in the period leading up to the DTV transition scheduled for February 2009.[13] In fact, Charter can fund the purchase of CableCARD-devices only by diverting funds from other critical projects of demonstrable public interest such as the digital transition.[14] Denial of Charter's waiver request would therefore "derail[] Charter's ambition to move nearly all of its systems to digital simulcast by 2009 in concert with the DTV transition."[15]

Under the standards of *WAIT Radio*, a waiver should be granted in these circumstances because it would produce concrete digital transition benefits that would outweigh the uncertain incremental benefit of applying the integration ban to Charter's low-cost devices that are the subject of Charter's waiver request. *See, e.g.*, CSR-6235-Z, *Pace Micro Technology PLC Petition for Special Relief and Interim Relief*, 19 FCC Rcd 1945 (2004) (granting a permanent waiver upon finding that a recall of non-compliant set-top boxes would cause inordinate burden and expense compared to the lesser benefits that would result from denial of waiver). *See also Knoxville Channel 8 Limited Partnership*, 4 FCC Rcd 4760, 4761 (1989) (a forced sale of a station to accomplish compliance with a Commission rule "could work an economic hardship ... without significant offsetting public interest benefits.")

The Commission has previously given financial hardship considerations particular weight for Charter and other operators of small cable systems, which are more expensive per-subscriber to operate. For example, the Commission found that "Charter has shown sufficient economic hardship to warrant" a three-year waiver of certain EAS requirements in its small systems based upon evidence of a disproportionate equipment cost.[16] Similarly, in adopting the plug-and-play MOU in 2003, the Commission also expressly recognized the need to give special consideration of waivers for small systems:

> We recognize ... that there may be a negative cost impact upon some small systems as a result of compliance with these obligations .... To the

[12] *See February 12, 2007 Ex Parte* at 2-3 and Exhibit 7.

[13] *See February 12, 2007 Ex Parte* at 1-2.

[14] Charter Request for Waiver at 15 (July 14, 2006) ("To be able to offer non-integrated, limited-functionality set-top boxes, Charter would have to bear the enormous capital costs of the integration ban up front. Whatever the capabilities of larger cable operators, Charter simply does not have adequate financial resources to undertake this expense for all of its new devices.") (citing "Charting A New Course," MULTICHANNEL NEWS, Jun. 19, 2006, and "Charter, Hurt By Satellite TV, Posts Wider Loss," WALL STREET JOURNAL, Mar. 2, 2005).

[15] Charter Reply Comments at 2-3 (September 28, 2006).

[16] *See Charter Communications, Inc., Operator of 153 Cable Systems in 24 States, Petition for Declaratory Relief and/or Waiver of the Commission's Emergency Alert System Requirements for Cable Television Systems*, File No. EB-03-TS-090, Order, 19 FCC Rcd 13178 (rel. July 21, 2004). *See also Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, Report and Order, 17 FCC Rcd 4055, 4083 ¶ 73 (2002) (providing for case-by-case waivers of EAS deadline for small systems "upon a showing of financial hardship").

extent that small cable systems would experience economic hardship as a result of these obligations, we will consider waiver requests on a case-by-case basis.[17]

The significant majority of Charter's cable systems are small systems. Of Charter's 389 headends, 303 (78%) serve fewer than 15,000 subscribers, and 280 (72%) serve fewer than 10,000 subscribers. Charter does not operate any of the 25 largest cable systems in the country.[18] Seventy-five percent of Charter's subscribers live outside of the nation's twenty largest DMAs and, in fact, the majority of Charter's customers within those top DMAs are in their outlying areas.[19] Because of Charter's disproportionate share of small and rural systems (*see* Exhibit 3 -- map showing distribution of cable systems of the ten largest MSOs),[20] its digital transition will cost more per subscriber because of higher distribution costs and relatively greater number of headends for its subscriber base.

In this case, Charter's unique financial situation makes relief imperative. Charter's negative free cash flow, and its large debt and high leverage prevent Charter from simultaneously bearing the enormous capital costs of the integration ban and fully funding its digital transition in its disproportionately small and rural system footprint. In light of these unique facts, grant of the requested waiver would be fully consistent with Commission precedent and would serve the public interest.

Very truly yours,

Neil Smit
President & CEO
Charter Communications, Inc.

cc: Heather Dixon

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[17] *Commercial Availability of Navigation Devices*, CS Docket 97-80, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20,885, ¶ 27 (2003).

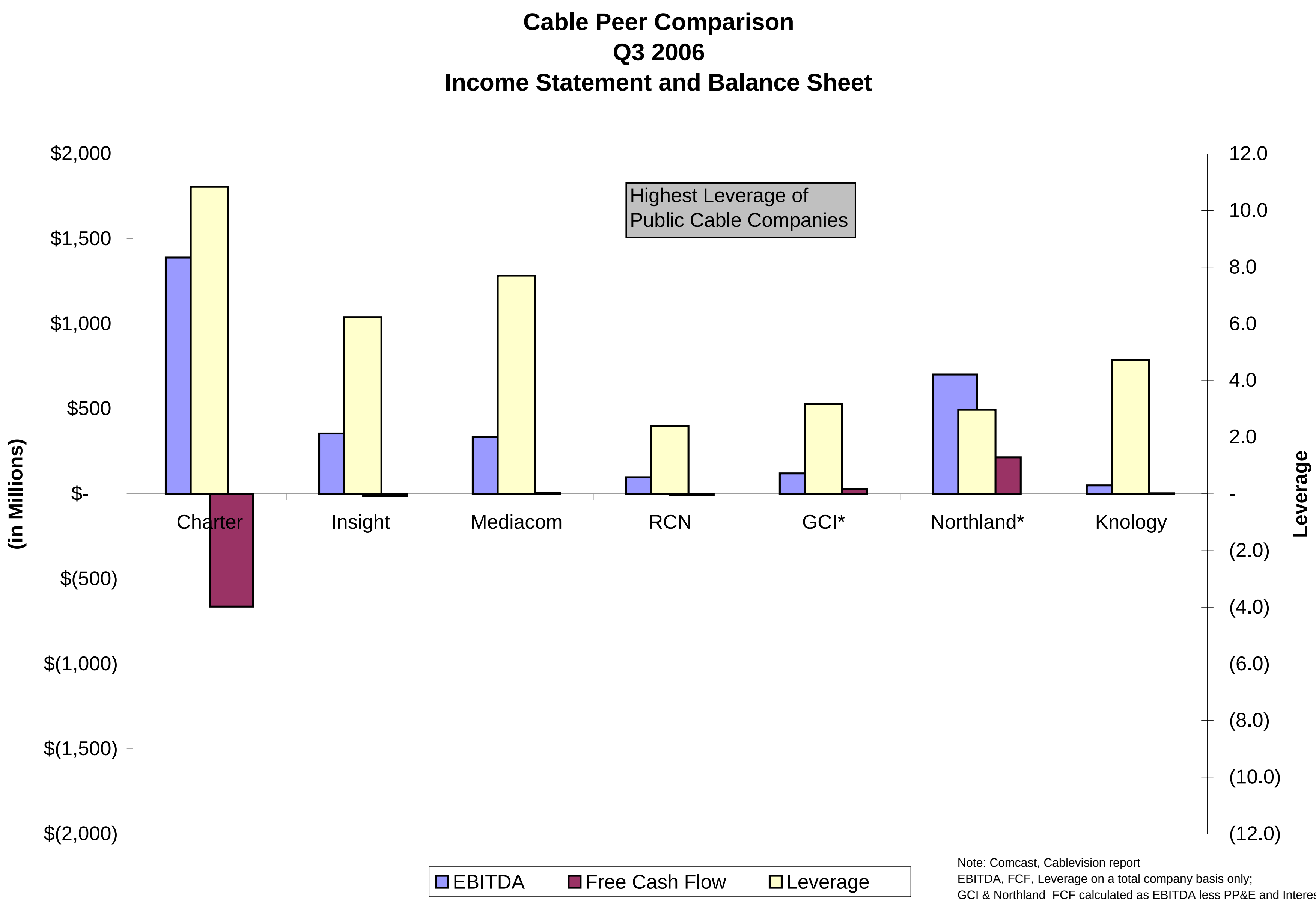
[18] *See* Exhibit 2 (also available at http://www.ncta.com/ContentView.aspx?contentId=72).

[19] For example, Charter's subscribers within the Minneapolis DMA are located in Eau Claire, Wisconsin, 92 miles from downtown Minneapolis.

[20] This map is provided for illustrative purposes only and may not reflect all recent MSO transactions.

Exhibit 1

Relative Leverage and Free Cash Flow of Public MSOs



Note: Comcast, Cablevision report
EBITDA, FCF, Leverage on a total company basis only;
GCI & Northland FCF calculated as EBITDA less PP&E and Interest Exp

Charter Communications, Inc.
Peer Comparison - Year to Date thru Sept 30, 2006

	Charter	Insight	Mediacom	RCN	GCI[a]	Northland[a]	Knology
Total Revenue	$ 4,024	$ 931	$ 897	$ 435	$ 357	$ 2,654	$ 192
Adjusted EBITDA (in millions)	$ 1,389	$ 355	$ 333	$ 98	$ 120	$ 703	$ 49
Analog Customers	5,476,600	1,318,800	1,394,000	372,000	121,800		178,708
Current Liabilities	$ 1,360	$ 281	$ 365	$ 155	$ 71	$ 530	$ 51
Long-term Debt	$ 18,799	$ 2,688	$ 3,084	$ 202	$ 473	$ 2,290	$ 271
Less: Cash & Equivalents	$ (85)	$ (19)	$ (26)	$ (44)	$ (37)	$ (40)	$ (12)
Net Debt	$ 20,074	$ 2,950	$ 3,423	$ 313	$ 507	$ 2,780	$ 310
Reported EBITDA (Total Company)	$ 1,389	$ 355	$ 333	$ 98	$ 120	$ 703	$ 49
Free Cash Flow	$ (663)	$ (13)	$ 7	$ (8)	$ 29	$ 216	$ 3

	Charter	Insight	Mediacom	RCN	GCI*	Northland*	Knology
EBITDA	$ 1,389	$ 355	$ 333	$ 98	$ 120	$ 703	$ 49
Free Cash Flow	$ (663)	$ (13)	$ 7	$ (8)	$ 29	$ 216	$ 3
Leverage	10.8	6.2	7.7	2.4	3.2	3.0	4.7

	Charter	Insight	Mediacom	RCN	GCI*	Northland*	Knology
Total Revenue	4,024	931	897	435	357	2,654	192
Net Debt	20,074	2,950	3,423	313	507	2,780	310
Analog Customers	5,476,600	1,318,800	1,394,000	372,000	121,800	-	178,708

Charter's pro forma results reflect the acquisition of cable systems in January 2006 and the sales of cable systems in July 2005 and certain sales of cable systems in the third quarter of 2006 as if they occurred as of January 1, 2006. The pro forma statements of operations do not include adjustments for financing transactions completed by Charter during the periods presented or certain dispositions of assets because those transactions did not materially impact Charter's adjusted EBITDA. However, all transactions completed in January 2006 and the third quarter of 2006 have been reflected in the operating statistics. The pro forma data is based on information available to Charter as of the date of this document and certain assumptions that we believe are reasonable under the circumstances. The financial data required allocation of certain revenues and expenses and such information has been presented for comparative purposes and is not intended to provide any indication of what our actual financial position, or results of operations would have been had the transactions described above been completed on the dates indicated or to project our results of operations for any future date.

(a) Free Cash Flow is a non-GAAP financial measure. GCI and Northland's FCF was calculated as follows:

	GCI	Northland
EBITDA	$ 120	$ 703
Less: Property, Plant & Equipment	$ (64)	$ (363)
Less: Interest	$ (26)	$ (124)
Free Cash Flows	$ 29	$ 216

Exhibit 2

Largest 25 Cable Systems in the United States
(December 2006)

cable
National Cable & Telecommunications Association

Top 25 Cable Systems - As of December 2006

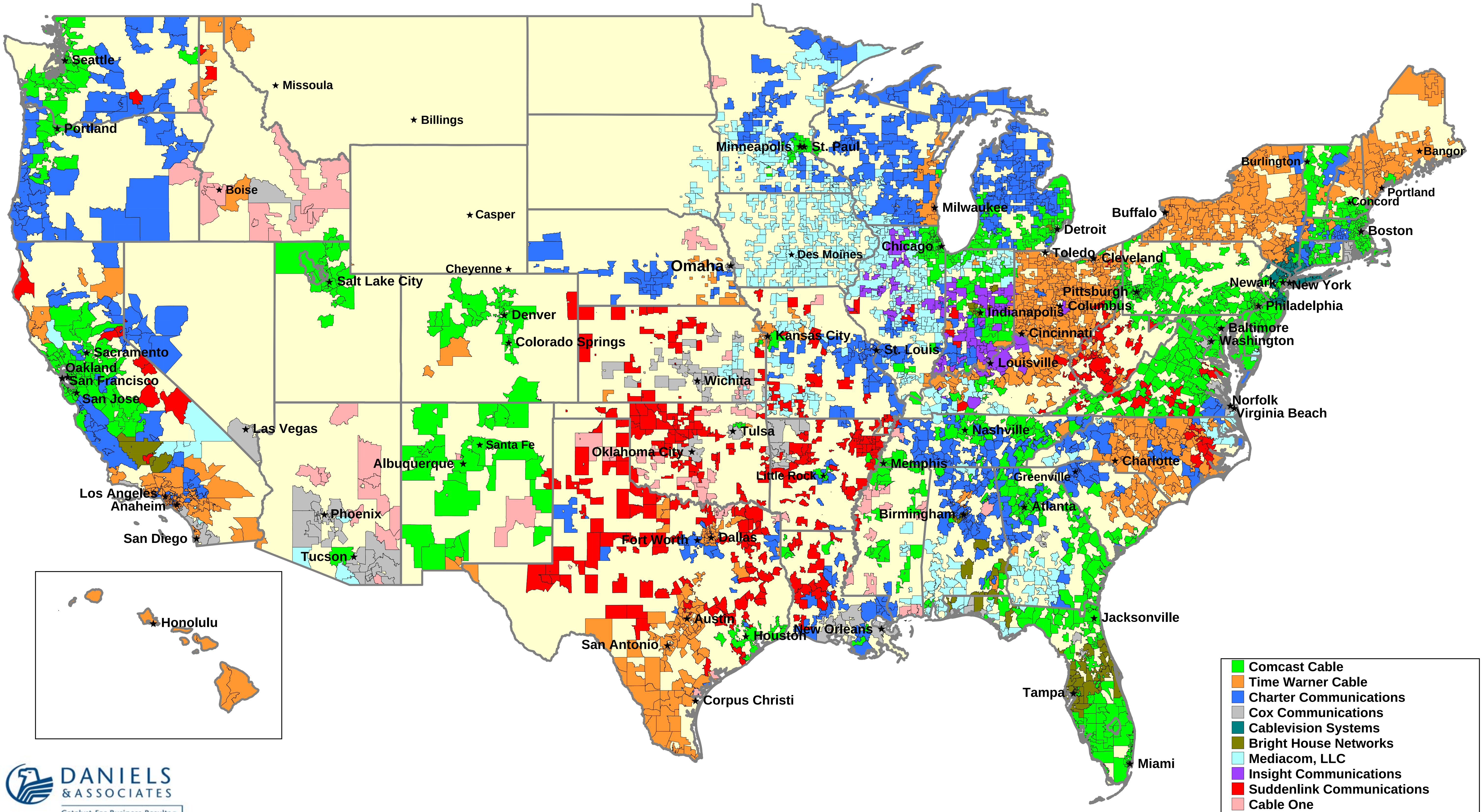
Rank	System Location	Operator	Basic Cable Customers
1	Houston, TX	Time Warner Cable	764,903
2	Tempe, AZ	Cox Cable Communications	508,919
3	Hicksville, NY	Cablevision Systems Corp.	458,163
4	San Diego, CA	Cox Cable Communications	420,408
5	Las Vegas, NV	Cox Cable Communications	410,256
6	Winter Park, FL	Bright House Networks	379,186
7	Denver, CO	Comcast Cable Communications	375,080
8	Seattle, WA	Comcast Cable Communications	328,890
9	San Antonio, TX	Time Warner Cable	317,557
10	Nashville, TN	Comcast Cable Communications	316,329
11	New York, NY	Time Warner Cable	315,734
12	Warwick, RI	Cox Cable Communications	302,860
13	Brooklyn, NY	Cablevision Systems Corp.	299,226
14	Louisville, KY	Insight Communications	287,304
15	Bronx, NY	Cablevision Systems Corp.	276,209
16	Verona, NJ	Comcast Cable Communications	272,984
17	Honolulu, HI	Time Warner Cable	259,567
18	Sacramento, CA	Comcast Cable Communications	247,829
19	Falls Church, VA	Cox Cable Communications	244,526
20	Salt Lake City, UT	Comcast Cable Communications	241,315
21	Jacksonville, FL	Comcast Cable Communications	238,050
22	Austin, TX	Time Warner Cable	236,504
23	Oklahoma City, OK	Cox Cable Communications	233,004
24	Elmhurst, IL	Comcast Cable Communications	228,723
25	Oakland, NJ	Cablevision Systems Corp.	226,449

Exhibit 3

Map of Service Areas of Ten Largest MSOs

Top Ten MSOs

Current Cable Ownership



Source: Claritas, Inc. and Daniels & Associates Database