Charter
COMMUNICATIONS®

October 16, 2007

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

Re: Ex Parte Meeting, MB Docket No. 07-51

Dear Ms. Dortch:

On Monday, October 15, 2007, Neil Smit, CEO of Charter Communications, Inc., Megan Delany, Vice President and Senior Counsel of Charter Communications, Inc., Paul Glist of Davis Wright Tremaine LLP, and Al Mottur of Brownstein, Hyatt, Farber, and Schreck PC met in separate meetings with: Commissioner Michael J. Copps and Rick Chessen, Legal Advisor to Commissioner Copps; and Commissioner Jonathan S. Adelsten and Rudy Brioché, Legal Advisor to Commissioner Adelstein. In addition, Neil Smit, Megan Delany, and Paul Glist also met in separate meetings with: Chairman Kevin J. Martin and Monica Desai, Chief of the Media Bureau; Christina Chou Pauzé, Legal Advisor to Commissioner McDowell, and John Hunter, Legal Advisor to Commissioner McDowell; and Commissioner Deborah Taylor Tate and Amy Blankenship, Legal Advisor to Commissioner Tate. The participants discussed Charter's comments and reply comments in the above-referenced proceeding, and the following additional concerns.

Exclusive MDU access agreements have significant pro-competitive and pro-investment benefits that the Commission should protect as it re-evaluates its rules. The agreements reached in negotiations with sophisticated building owners yield significant consumer benefits such as lower rates, customer service benchmarks and commitments, infrastructure maintenance, and security channels.[1] In addition to these consumer benefits from exclusive access MDU agreements, also important in this proceeding is the

[1] For instance, Charter has an agreement with a Georgia MDU which requires commencement of outage response within two hours of receiving notice from the property manager, and a resolution of the problem within no less than four hours. Exclusive MDU agreements frequently contain an obligation to build closed circuit networks connected with security cameras to be displayed on a channel chosen by the MDU owner, where MDU residents can view doorways, entry gates, and other common areas on a dedicated cable channel to enhance property security. Charter has such provisions in MDU contracts in California, Georgia, Tennessee, South Carolina, North Carolina, and Alabama.

1919 Pennsylvania Ave., N.W., Suite 200 • Washington, DC • 20006
www.charter.com • *tel:* 202.828.9873 *fax:* 202.452.0067

investment Charter makes in extending plant to outlying MDUs and in rebuilding and replacing the archaic SMATV building wiring and limited analog antenna infrastructure. It takes substantial investment in advanced wiring to deliver residents digital signals, high definition, high speed Internet access, and choice in voice service to MDU residents. These investments are neither risk-free nor cost-free: limited-term exclusive agreements help to assure that the advanced wiring investment will be available for Charter's use, and thereby justify the investment as financially prudent. Twice the Commission has reviewed such agreements—in 2000, and again in 2003—and concluded that there was no basis for prohibiting these agreements.

Charter's experience with exclusive agreements in the same time frame has demonstrated the wisdom of preserving incentives for investment in plant deployment and advanced wiring projects. For example, Charter recently acquired a Michigan SMATV system operator providing low quality service and committed to upgrading the system. Charter's total investment was $3.5 million dollars. It will take 5 years to earn a return on that investment (ROI). Likewise, we acquired another Michigan complex poorly served by a PCO with no digital channels and poor data service; we purchased and upgraded all facilities at a cost of $390,000 with an ROI period of over 5 years. Charter invested over $200,000 in access fees and wiring construction costs for a Georgia MDU at estimated ROI period of 5 and a half years. A California project cost us $30,000 in wiring construction for a new MDU with an estimated ROI period of over 3 years. Similarly, we made a $30,000 investment in upgrading the wiring in a Tennessee MDU in order to provide residents with phone service that will take Charter over 4 and a half years to recover. In order to better illustrate how common this investment process is, Charter sampled several MDU properties in each of its divisions. As shown in Exhibit A, the average ROI across all divisions is approximately 3 years, although some are much longer. We could not make such investments and expect to recover our costs without assurances that, for some period of time, we would be the only video provider using the wiring that we installed.

Charter has also used such contracts to provide the economic foundation for rewiring low income and elder care/senior-citizen MDUs for advanced services. The ROI periods for these properties is considerably longer than the three-year average. For example, at a cost of $400,000, we extended plant and rebuilt wiring in an income-subsidized complex in Michigan to provide digital cable and Internet service, with an estimated ROI period of over 6 years. Another senior assisted living complex in Michigan cost $23,000 in plant investment, with an ROI period of over 5 years. Additional examples of Charter's service to low income and senior assisted-living facilities across its divisions are provided in Exhibit A.

As the Commission considers any changes to regulations for MDUs, it should be careful to preserve such investment incentives. First, it should recognize that investments of considerable benefit to broadband deployment, digital services, and consumer choice have been made under exclusive contracts entered in reliance on the current regulatory

structure, particularly as facilitating broadband deployment is currently one of the highest public interest goals in communications policy.[2] Whatever the Commission does with respect to future contracts, the Commission should nevertheless provide some means, such as a reasonable prospective sunset date, during which these legitimate investments may be recovered.

Second, the Commission should take care not to allow a desire to increase competitive choices for video services, inadvertently reduce competitive choices in voice and data offerings. Today, whether or not there is an "exclusive" contract for an MDU, telephone providers such as Verizon use existing copper telephone wiring to provide voice and DSL service. By contrast, cable providers like Charter must use their advanced cable wiring to deliver video, voice and high speed internet service. Although Verizon has promoted FiOS as a fiber to the premises solution, it has made no secret of its intention to run its lines only to the closet in MDUs, and to take over existing advanced (cable) wiring for the "last mile"—rather than build fiber to the unit.[3] That advanced wire is the line that cable uses to deliver voice and data in competition with Verizon. Once an MDU resident takes Verizon's video service, Charter will lose the wire it need to offer VoIP and high speed internet in competition with Verizon's telephone and DSL service. This will frustrate competition and reduce investment incentives in broadband wiring.

Unless the Commission takes proactive steps, its efforts to promote competition in video will *reduce* MDU resident's voice and data options because Verizon will be able to shield itself from competition in the (far less competitive) voice market[4] without even

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[2] *See, e.g., Petition of ACS of Anchorage, Inc.*, Memorandum Opinion & Order, FCC 07-149, Statement of Chairman Kevin J. Martin (rel. August 20, 2007), ("Promoting broadband deployment is one of the highest priorities of the FCC. To accomplish this goal, the Commission seeks to establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers.").

[3] *Broadband/FiOS Conversation with Brian Whitton, Executive Director of Access Network Design and Integration for Verizon*, March 23, 2007 ("In cases where we will be unable to pull fiber from the basement or entry point of the MDU to the living unit, we have certified other types of ONTs, namely a MDU ONT. This ONT would be located within the MDU, typically in the equipment room in the basement of the MDU, and would use the existing wiring in the MDU to carry high speed data and video to the living units."), available at http://policyblog.verizon.com/policyblog/blogs/policyblog/czblogger1/258/broadband-fios-conversation-with-brian-whitton.aspx (last visited October 15, 2007); *News Release: Verizon Launches Aggressive Plan to Bring FiOS Services to Apartments, Condos and Other Multi-Dwelling-Unit Sites*, March 8, 2006 ("When fiber has not been run all the way to the unit, a multi-customer ONT can be configured either to feed non-fiber wiring already in the building or to support non-fiber facilities the owner chooses to retrofit."), available at http://newscenter.verizon.com/press-releases/verizon/2006/page.jsp?itemID=29671535 (last visited October 15, 2007).

[4] 30.4 percent of subscribers receive multichannel video service from an entity other than the incumbent cable operator while only 11.9 percent of residential telephone lines are served by competitive LECs, according to the most recent Commission data. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶¶ 10, 13, 14, 16, Twelfth Annual

making the FiOS investment it has promised.[5] This is true because a rule banning exclusive MDU agreements will allow Verizon and other ILECs to immediately enter buildings and take cable operators' existing MDU wiring under the Commission's cable home wiring and cable home run wiring rules at Sections 76.802 and 76.804. The result would be that MDU residents would lose access to the current competitive voice and broadband Internet services their cable operators are providing over the same wire used to provide video. ILECs would therefore have no incentive to deploy fiber inside MDUs, as the alternative of taking over cable's MDU wiring not only gains the ILEC subscribers without the cost of investing in fiber but simultaneously eliminates the ability of a competitor to reach the same customers with competing voice and broadband offerings. The Commission should take specific steps to prevent an incumbent LEC from taking over the advanced wiring with which Charter offers competing voice and data services.

Sincerely,

/s/ Megan Delany

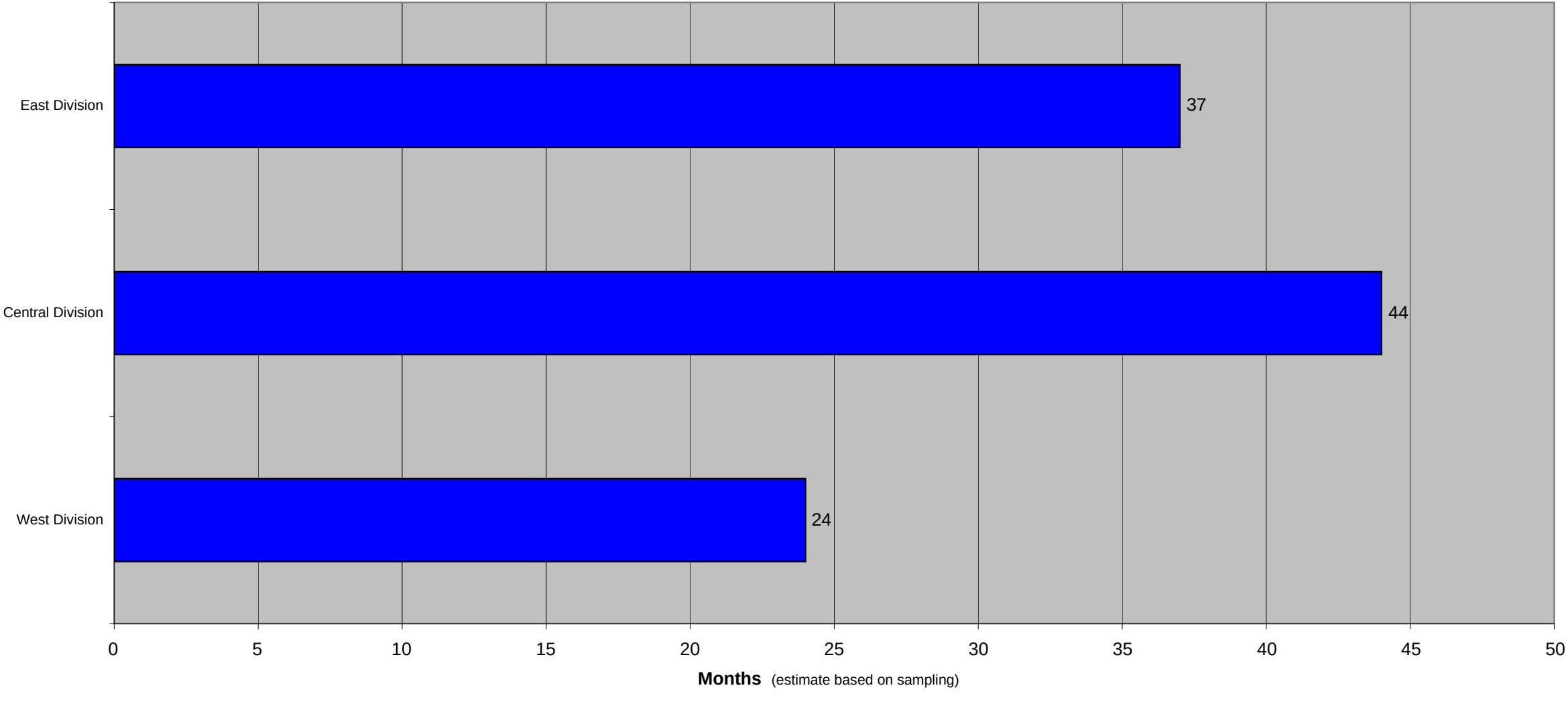
Megan M. Delany
Vice President and Senior Counsel
Charter Communications, Inc.

Report (rel. March 3, 2006); *Local Telephone Competition: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 2 (rel. January 2007).

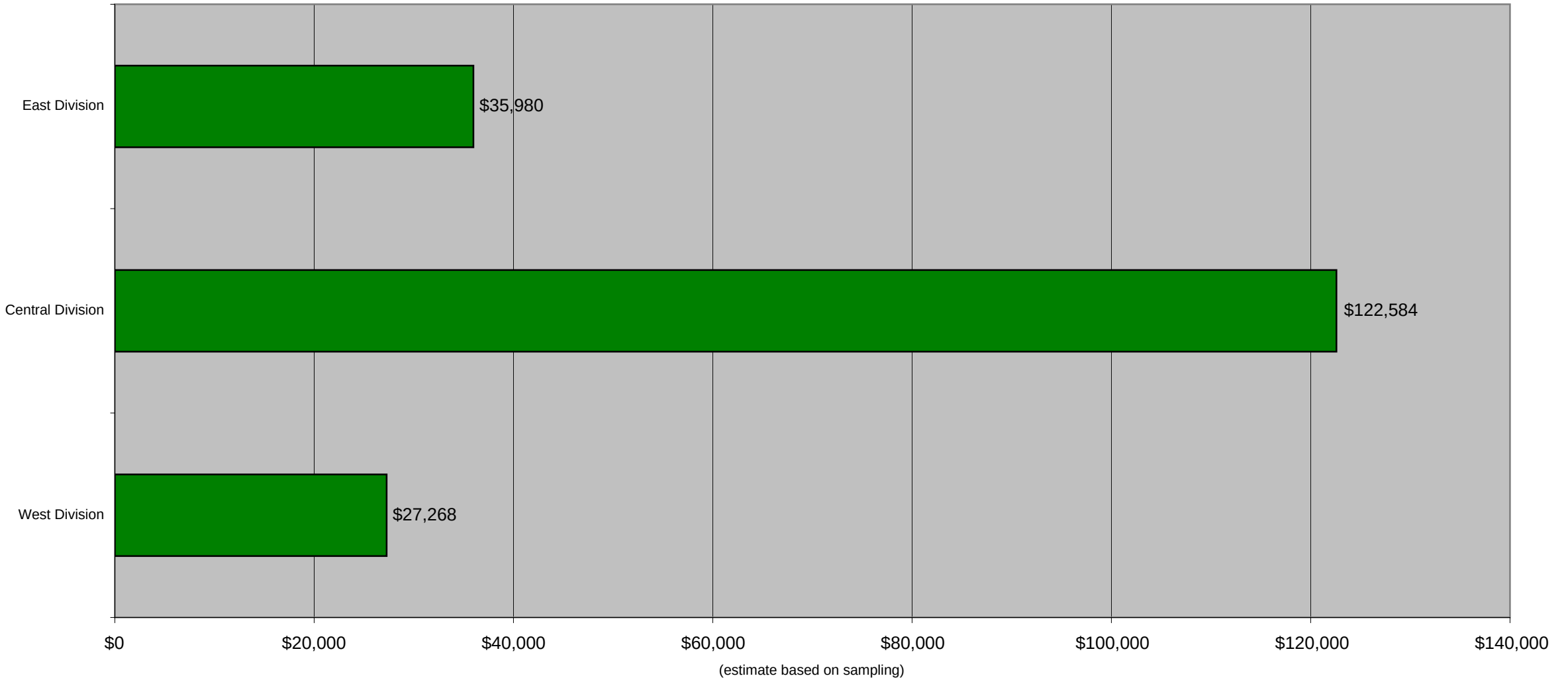
[5] For instance, in its cable franchise application Verizon promised the New Jersey Board of Public Utility Control that it would deploy fiber all the way to individual apartment units. *See Application by Verizon New Jersey for a Systemwide Cable Television Franchise*, New Jersey Board of Public Utilities, Docket No. CE0611076 2006, NJ PUC Lexis 74, December 18, 2006 ("VNJ has committed to providing service to MDUs on a non-discriminatory basis, with specific configurations dependent upon the nature of the MDU. VNJ has indicated, in its application, that it is currently in the process of successfully deploying FTTP in MDUs and that it will continue to do so in those facilities that are amenable. In those facilities where typical FTTP can not be used, VNJ has committed to determine technical solutions that will allow for service, and has developed an internal process for review and solution of MDU issues.").

Exhibit A

Charter Communications, Inc., MB Docket No. 07-51
Average MDU Return on Investment (ROI) Periods by Division



Charter Communications, Inc., MB Docket No. 07-51
Average Investment per MDU Building



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Selected Illustrative Examples of Charter MDU Investments Within Past Two Years:

MDU Example by Division	Return on Investment (ROI) in Months	Total Investment	Notes:
East 1	46	$45,180	
East 2	42	$89,519	The investment was needed to provide telephone service to residents.
East 3	49	$37,501	
East 4	10	$8,400	
East 5	10	$6,000	
East 6	43	$44,820	This is an assisted living complex.
East 7	40	$31,500	The investment was needed to provide telephone service to residents.
East 8	26	$7,128	The investment was needed to provide telephone service to residents.
East 9	42	$30,800	The investment was needed to provide telephone service to residents.
East 10	57	$33,051	The investment was needed to provide telephone service to residents.
East 11	46	$61,880	The investment was needed to provide telephone service to residents.

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Central 1	47	$21,000	This is a senior citizen complex purchased from a PCO. Prior to the purchase, there was no digital service, limited channels, and poor Internet service.
Central 2	75	$433,000	This is an income subsidized complex purchased from a PCO which required re-wiring and a line extension. Prior to Charter's investment, the complex had limited channels, no digital service and no Internet service.
Central 3	45	$36,000	This is a senior assisted living complex. No cable service was available before Charter extended its cable plant to reach the residents.
Central 4	65	$201,500	The complex was previously served by a PCO without digital cable or Internet services available. Charter upgraded the wiring for advanced services.
Central 5	62	$23,600	A senior citizens complex served by a PCO with no digital cable or Internet service, Charter acquired the system and upgraded the wiring for all services.
Central 6	55	$13,750	Charter wired this newly built income-subsidized housing complex, making all advanced services available to residents.

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Central 7	42	$55,900	This senior citizens complex had no cable service until Charter agreed to extend its plant to reach the MDU.
Central 8	33	$78,000	Charter completely re-wired this complex formerly served by failed PCO that was providing no digital and poor data service.
Central 9	63	$390,000	A PCO was providing poor service, no digital channels, and poor Internet service to the residents. Charter purchased the unit and upgraded all facilities.
Central 10	37	$63,000	
Central 11	37	$18,750	
Central 12	10	$44,265	Charter re-wired the complex
Central 13	21	$102,000	
Central 14	30	$108,000	
Central 15	42	$250,000	
West 1	36	$76,000	
West 2	5	$28,000	
West 3	28	$117,325	Charter completely upgraded the property wiring.
West 4	13	$12,999	This investment involved new construction.
West 5	24	$61,246	

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West 6	59	$72,474	Charter undertook new construction to this property.
West 7	11	$13,600	
West 8	38	$29,895	This was a new build MDU project.
West 9	26	$17,968	Charter re-wired this senior citizens' complex.
West 10	28	$18,362	Charter undertook new construction to this property.
West 11	36	$23,000	This was a new build MDU project.
West 12	15	$8,007	
West 13	30	$16,120	This was a new build MDU project.
West 14	26	$10,020	
West 15	5	$5,600	
West 16	2	$2,100	This MDU houses low income residents.
West 17	32	$10,699	Charter undertook new construction to this property.
West 18	28	$12,314	Charter undertook new construction to this property.
West 19	23	$5,576	Charter undertook new construction to this property.
West 20	16	$4,057	Charter undertook new construction to this property.