

July 19, 2013

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

Re: Notice of *Ex Parte* Meeting in GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure; Technology Transitions Policy Task Force; WC Docket No. 13-149, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services; WC Docket No. 13-150, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services; MB Docket No. 12-328, Charter Communications, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules

Dear Ms. Dortch,

On July 18, 2013, Harold Feld, On June 6, 2013, Harold Feld, Senior Vice President, Michael Weinberg, Vice President, John Bergmayer, Senior Staff Attorney, Jodie Griffin, Senior Staff Attorney, and Margaret Macdonald, Legal Intern, of Public Knowledge (PK) met with Rebekah Goodheart, Travis Litman, Julie Thompson, Louis Peraertz, Sarah Whitesell, and Brendan Murray, with regard to the above mentioned proceedings as well as data caps and CableCARD rules.

PK asked the Commission to remove Verizon's pending 214(a) petition from the streamlined "fast track" consideration. The New York Public Service Commission (NYPSC) has extended the public docket in its consideration of Verizon's application to permanently amend its tariff for Fire Island to September 13, and will receive a report from Verizon on November 1. The Commission has previously noted the importance of the NYPSC supervision of this process in its evaluation.

The data collected by the NYPSC has enormous value to the Commission's evaluation of the impact of discontinuance of copper service on Fire Island. Furthermore, the FCC should not undermine the state process by granting approval to the 214(a) by default while the NYPSC public comment period is still open. Accordingly, the FCC should take the pending 214(a) applications in Docket Nos 13-149 and 13-150 off streamlined consideration.

As the Bureau observed in the Public Notice in 13-150, the situation on Fire Island and the New Jersey Barrier Island are unique in the Commission's experience and wholly unexpected. The Commission has always assumed that, when a portion of a copper network is destroyed by natural disaster, the carrier

will rebuild the network at some point in the future. Because this application raises unique questions with significant implications for the overall transition of the public switched telephone network (PSTN), the Commission should take the time to fully consider the matter.

More generally, consistent with the *notice ex parte* filed by PK on June 12 in the above captioned proceedings, PK urged that the Commission open a process independent of pending 214(a) applications to provide guidance to carriers with regard to their obligations in the event a network serving a community (or portion of the community) is damaged or destroyed and the carrier wishes to replace the network with an alternative technology. As the events surrounding Fire Island and New Jersey Barrier Islands show, there is much confusion over both the process by which a carrier notifies the FCC of its intent to replace its previous network with an alternative, and what the carrier must demonstrate to show that the replacement satisfies the requirement of Section 214(a) that discontinuance of the old network does not impair service to the community or is otherwise contrary to the public convenience and necessity.

PK also asked the Commission to begin gathering information on how and why Internet Service Providers (ISPs) are using data caps. PK expressed concern that the lack of information surrounding data caps is preventing important discussions from taking place. An analysis of industry practices would facilitate those discussions.

The costs of data caps to consumers and society are becoming increasingly clear. Data caps are becoming the way that ISPs influence behavior on the Internet and have huge potential for abuse. These potentials are highlighted by Comcast's attempt to exempt its own streaming video from its data cap, or rumors that ESPN is negotiating to be exempt from caps. ISPs have not been forthcoming with information on why data caps are necessary, or on how they measure whether the cap is meeting those goals.

Until recently, Internet speed provided the means for pricing differentiation. Data usage is increasingly being used for that purpose, but it is inherently more difficult for consumers to understand. Penalties for excess use occur weeks after that use, instead of simply manifesting themselves in slower speeds. Caps also have implication for video competition, and could discourage development and investment in online video services.

Because of the potential for abuse, the Commission should seek information on which carriers are imposing caps, how the cap is structured, and for what purpose. This information is crucial to beginning a conversation on data caps.

PK also asked the Commission to reinstate those portions of CableCARD that were weakened by its recent waiver.<sup>1</sup> Section 629 of the Telecommunications Act of 1996, which directs the Commission to ensure that a market develops for competitive video devices, is still in effect, and the current implementation of that statutory directive, CableCARD, is an established technology with many users. Furthermore, any modifications to the Commission's implementation of Section 629 should be done through an open process with an opportunity for the public to comment, and not through an obscure waiver proceeding.

Respectfully submitted,  
/s/Maggie Macdonald  
Summer Law Clerk  
Public Knowledge

cc:

Rebekah Goodheart

Travis Litman

Louis Peraertz

Sarah Whitesell

Brendan Murray

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<sup>1</sup> In the Matter of Charter Communications, Inc. Request for Waiver, Memorandum Opinion and Order, April 18, 2013, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022304818>.