Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Applications of Charter Communications, Inc.	)	MB Docket No. 15-149
Time Warner Cable, Inc., and	)	
Advance/Newhouse Partnership	)	
	)	
For Consent to Transfer Control of Licenses	)	
and Authorizations	)	

REPLY OF
NTCA–THE RURAL BROADBAND ASSOCIATION
TO RESPONSE/OPPOSITION TO PETITION TO DENY

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association hereby submits its Reply to Response/Opposition to Petitions to Deny in the above-captioned proceeding.[1] NTCA is a national association of more than 900 members. All of NTCA's members are rural incumbent local exchange carriers ("RLECs"), many of whom also provide video, wireless and broadband services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless to consumers and businesses. The majority of NTCA's members offer video service to their rural consumers and several compete directly with Charter, Time Warner, or Bright House Networks (the "Applicant") for voice, video and/or broadband subscribers in at least a portion of these

[1] *Commission Seeks Comment on Applications of Charter Communications, Inc., Time Warner Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Public Notice, DA 15-1010 (rel. Sep. 11, 2015).

serving areas.[2] Despite the hurdles of distance, topography, and lack of density that come with providing any communications service in sparsely-populated rural areas, rural providers have made great strides in making high quality video services (via traditional cable TV and IPTV systems) to a large majority of the consumers in their service areas.

NTCA joins petitioners in expressing reservations about the proposed transaction and argues that it is not in the public interest.[3] Respondents to a recent NTCA membership survey indicated that the single biggest barrier to providing video services is obtaining access to reasonably-priced programming, followed by competing with other providers.[4] This merger will exacerbate both of these significant competitive issues.

The proposed transaction will unite into one entity substantial video distribution and programming assets.[5] Specifically, Charter is the seventh largest MVPD, while Time Warner is the fourth largest and Bright House the tenth; the combined entity ("New Charter") will serve 17.3 million customers and will become the nation's third largest MVPD.[6] New Charter would

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[2] In a recent NTCA membership survey, 87% of respondents indicate that they currently provide video service and 60% compete with an incumbent cable company, most in only a select portion of their incumbent or competitive service territories. *See,* *http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/NTCA_2015VideoCompetitionSurvey.pdf* ("NTCA/INCOMPAS 2015 Video Competition Survey")

[3] Petition to Deny of COMPTEL, MB Docket No. 15-149 (fil. Oct. 13, 2015); Petition to Deny of Public Knowledge, Consumers Union, Common Cause, and Open MIC, MB Docket No. 15-149 (fil. Oct. 13, 2015); Comments of the American Cable Association, MB Docket No. 15-149 (fil. Oct. 13, 2015) ("ACA"); Comments of Cincinnati Bell Extended Territories, LLC, MB Docket No. 15-149 (fil. Oct. 13, 2015); Comments of The California Emerging Technology Fund, MB Docket No. 15-149 (fil. Oct. 13, 2015); Comments of AT&T, MB Docket No. 15-149 (fil. Oct. 13, 2015).

[4] NTCA/INCOMPAS 2015 Video Competition Survey

[5] ACA, p. 8.

[6] *Id.*, pp. 8-9.

wield substantial power, dictating the terms of its owned content and creating a significant competitive disparity between itself and its smaller rivals.

If the transaction is approved, New Charter will own substantial "must have" and non-substitutable video programming, specifically networks such as Discovery and Starz. The combined entity will have the ability and incentive to drive up and/or withhold such video content from competitors, which will have the effect of increasing prices for consumers, reducing competition, and limiting rural providers and their competitive affiliates' ability to invest in improving the quality and reach of their broadband networks.[7] In terms of the analysis of the proposed transaction and its effect on the video services market and competition therein, the most recent and relevant example of how the Commission should analyze the instant transaction is the Comcast acquisition of NBCU. In that proceeding, the Commission analyzed Comcast's ability and incentive to "harm competing MVPDs by withholding content or raising programming prices."[8] The Commission's analysis of this issue rightly concluded that the "transaction gives Comcast an increased ability to disadvantage some or all of its video distribution rivals by exclusion, causing them to become less effective competitors."[9] Central to

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7 To be competitive in the residential broadband marketplace, competitive wireline providers must offer broadband and linear video service. *See, e.g., National Broadband Plan*, at 38. Indeed, "[w]hen smaller carriers are able to offer video and broadband services together, data shows that broadband adoption increases by 24 percent." *COMPTEL, ITTA, NTCA letter to Chairman Thune on Video Reform, at 1, June 22, 2015, http://www.ntca.org/images/stories/Documents/videohearingletter.pdf*. The Commission has long recognized that residential consumers continue to prefer to purchase both broadband and linear video services together in a bundled product. *See, e.g. , Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Sixteenth Report, 30 FCC Rcd. 3253, at 3271, ¶39 (2015).

8 *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4 (rel. Jan. 20, 2011) ("Comcast/NBCU Order"), ¶ 28.

9 *Id.*, ¶ 36.

this conclusion was the Commission finding that "the loss of Comcast-NBCU programming, including the programming contributed by NBCU, would harm rival video distributors, reducing their ability or incentive to compete with Comcast for subscribers."[10] Put another way, the Commission found that the transaction harmed competition itself, and the same holds true in the instant transaction for similar reasons.

Indeed, the Applicant acknowledges it will have access to favorable pricing and contract terms that its smaller competitors will not. Rural providers lack the scope and scale necessary to obtain the volume discounts on video programming available to carriers of the size and scale as New Charter. This dynamic has ramifications across the industry, both for those small entities who compete directly with New Charter and for those that those that do not.

Small video providers who compete with New Charter for customers cannot retain subscribers if they are unable to offer similar rates and terms. In response to such arguments, the Applicant notes that "lower programming fees will benefit New Charter's customers and make New Charter a better competitor."[11] It fails to recognize that New Charter's windfall in the form of decreased rates necessarily harms competitive choices in the MVPD marketplace.

Across the industry, New Charter's decreased fees will cause program distributors to extract additional funds from the country's smallest video providers. The Applicants discount this concern by explaining, "programmers already engage in tailored negotiations with

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[10] *Id*.

[11] *Opposition to Petitions to Deny and Response to Comments of Charter, Time Warner, and Bright House Networks*, MB Docket No. 15-149 (fil. Nov. 2, 2015), p. 59.

distributors and bargain for the highest fees they can obtain from smaller distributors."[12] However, this transaction is not about the existing deals between the distributors and the smallest video providers. It is about the impact this transaction will have on the competitiveness of the video distribution marketplace.

Furthermore, fewer, larger companies in the marketplace means discounted prices for those few, large providers that no other small provider or new entrant can obtain. The Katz Declaration states,"[p]etitioners' attempt to characterize the increased competitive pressures generated by programming cost savings as a public-interest harm is a classic example of confusing harm to competitors (which is what Cincinnati Bell and others are claiming) with harm to competition (which is a valid concern of public policy)."[13] While perhaps correct with respect to economic policy and competition policy in general, the hypothetical included along with this argument demonstrates the weakness of this argument specifically with respect to the issues herein. That is, Dr. Katz elaborates on the above statement by noting that "[w]hen an MVPD invests in an innovative, proprietary programming guide that is extremely attractive to consumers, the introduction of the new guide harms competitors. But the innovation benefits consumers and is, indeed, a benefit of the competitive process in action."[14] Yet Dr. Katz's example confuses the issue. An innovative "programming guide" is a far cry from access to affordable video content. Thus his hypothetical is misplaced in this context, as is his entire line of argument generally. In other words, harms to competitors in this context are one and the same

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[12] *Id.*

[13] Charter-TWC-BHN: Efficiencies Analysis, Declaration of Michael L. Katz, MB Docket No. 15-149 (fil. Nov. 2, 2015) ("Katz Declaration"), p. 45.

[14] *Id.*, p. 45.

with harms to competition. Lack of affordable access to the content, as compared to the New Charter, will have a materially negative impact on NTCA members' ability to operate as effective competitors, thereby leaving potentially thousands of rural Americans without access to choice in the video marketplace. And a less competitive market translates to less pressure on the fewer, larger companies to pass along any of the savings on content to the benefit of consumers. Approval of this merger would directly harm competitors and consumers, alike.

In determining whether the proposed transaction will serve the public interest, the Commission must carefully weigh the extent to which the financial and economic benefits that the Applicant attributes to the transaction will come at the expense of its competitors, retail customers and the wholesale customers of the newly combined entity. NTCA submits that the Applicant has not established that the potential for benefits to the public interest will outweigh the potential for harms. For this reason, approval of the transaction should be denied.

Respectfully Submitted,

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