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March 11, 2019

Ex Parte Letter -- Filed Via ECFS

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

In re Charter Communications, Inc. Petition for Determination of Effective Competition, MB
Docket No. 18-283

Dear Ms. Dortch:

The Massachusetts Department of Telecommunications and Cable (“MDTC”) respectfully submits this *ex parte* letter in response to the recent disclosure of Charter Communications, Inc. (“Charter”) that a grant of its petition in the above-captioned proceeding would directly result in increased prices for Charter’s Massachusetts subscribers.¹

Charter’s disclosure confirms what we already knew. Charter’s petition is by definition a claim that it is subject to competitive market forces in the subject communities. But Charter’s acknowledgement of the immediate, substantial rate increases that deregulation would produce makes clear that DIRECTV NOW does not provide any competitive check on Charter’s rates.² Charter states that in certain Massachusetts communities, a grant of its petition would result in a rate increase from \$12.49 to \$23.89—an overnight increase of 91% for some of our most vulnerable subscribers, who merely seek a connection to local news and programming.³

¹ See, e.g., Letter from Howard J. Symons, Counsel, Charter Commc’ns, Inc, to Marlene H. Dortch, Sec’y, FCC, MB Docket No. 18-283 (Feb. 28, 2019) (“Charter Ex Parte Disclosure”).

² Contrary to Charter’s assertion in its petition, DIRECTV NOW’s subscriber base is in significant decline, further belying the claim that the streaming service provides competition to Charter. Daniel Frankel, *DirecTV Now Lost a Staggering 14% of Its Users in Q4*, MULTICHANNEL NEWS (Jan. 30, 2019), <https://www.multichannel.com/news/directv-now-lost-14-percent-of-its-users-in-q4> (last visited Mar. 5, 2019) (reporting that DIRECTV NOW lost 267,000, or 14% of its users in the fourth quarter of 2018). But see Charter Petition for Determination of Effective Competition, MB Docket No. 18-283 at 4 (Sept. 14, 2018) (asserting that DIRECTV NOW’s “subscriber base is growing”).

³ Charter Ex Parte Disclosure; see also *Petition of Charter Commc’ns to establish & adjust basic serv. tier programming, equip., & installation rates for cmty.s. in Mass. served by Charter Commc’ns that are subject*

Congress adopted the local exchange carrier (“LEC”) effective competition test to account for the competition that facilities-based telephone companies would provide in their service areas.⁴ Charter has not carried its burden of demonstrating that DIRECTV NOW provides that competition, or that it has otherwise satisfied the LEC test.⁵ Accordingly, the Federal Communications Commission (“Commission”) should deny Charter’s petition.

Pursuant to section 1.1206 of the Commission’s rules, this letter is being filed electronically via ECFS with your office. Please do not hesitate to contact me should you have any questions.

Respectfully,

/s/ Sean M. Carroll

Sean M. Carroll
Deputy General Counsel

cc: Howard J. Symons
Bruce A. Olcott
Timothy J. Reppucci

to rate reg., D.T.C. 18-7 (filed Nov. 1, 2018) (“Charter Rate Petition”). Including Charter’s Broadcast TV Surcharge, the total increase in these communities would be from \$20.99 to \$35.88. Notably, there is one outlier community at the top of Charter’s range of regulated rates; every other regulated rate is at least \$4.00 lower, and the average regulated rate is over \$7.00 lower. *Id.*

⁴ 47 U.S.C. § 543(l)(1)(D); 141 CONG. REC. S8243 (daily ed. June 13, 1995) (statement of Sen. Pressler).

⁵ 47 C.F.R. § 76.907(b) (placing the burden of demonstrating the presence of LEC-test-based effective competition on cable operators); *see also, e.g.*, MDTC Opposition to Charter Commc’ns, Inc.’s Petition for Special Relief, MB Docket No. 18-283 at 4-23 (Oct. 25, 2018).