Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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 the Transfer of Control of	)	
Licenses and Authorizations	)	
	)	

PETITION TO DENY OF WRITERS GUILD OF AMERICA WEST, INC.

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I. INTRODUCTION AND SUMMARY

Writers Guild of America, West, Inc. ("WGAW") respectfully submits the following Petition to Deny ("Petition") *the Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations* ("Application"). The proposed merger was announced less than a month after Comcast Corporation ("Comcast") abandoned its bid to acquire Time Warner Cable Inc. ("TWC" or "Time Warner Cable"). The Federal Communications Commission ("FCC" or "Commission") correctly recognized the harms the Comcast-Time Warner Cable merger presented to competition and consumers, with Chairman Wheeler stating, "The proposed merger would have posed an unacceptable risk to competition and innovation especially given the growing importance of high-speed broadband to online video and innovative new services."[1] Now, by taking on extraordinary levels of debt, Charter Communications, Inc. ("Charter") proposes to acquire Time Warner Cable and Bright House Networks ("Bright House"), increasing its size more than threefold, becoming the nation's second-largest wired Internet service provider ("ISP") and third-largest multichannel video programming distributor ("MVPD"). The merged entity ("New Charter") will account for a large share of national video distribution markets, which will increase its incentive and ability to engage in practices that harm competition, consumers and content creators.

Charter, TWC and Advance/Newhouse Partnership (jointly, "Applicants") assert that because the merger will expand broadband customers, New Charter "will have every incentive to

[1] Statement from FCC Chairman Tom Wheeler on the Comcast-Time Warner Cable Merger, (Apr. 24, 2015), https://www.fcc.gov/document/chairmans-statement-comcast-twc-merger.

promote online video distributors and other edge providers."[2] However, the Commission has documented the incentive of MVPDs to harm online video distributors ("OVDs") because of the potential threat they represent to pay-television ("pay-tv") revenues.[3] Broadband customers may generate a higher profit margin for Applicants, but video services accounted for 49% of Charter revenue[4] and 44% of TWC revenue[5] in 2014. New Charter will not have an incentive to promote broadband growth at the expense of such a major source of revenue.

Contrary to Applicants' assertions, the merger does reduce competition despite the relative lack of overlap in serving customers at a local level. The FCC's General Counsel recently noted of the Comcast-TWC merger that the Commission had to assess the impact of the proposed transaction on national distribution markets.[6] Because most television networks and OVDs seek national distribution, this transaction reduces their options for reaching consumers.

[2] Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations, *Public Interest Statement,* MB Docket No. 15-49, at 6 (filed June 25, 2015) ("*Application*").

[3] *See* Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, *Memorandum Opinion and Order*, MB Docket No. 10-56, 26 FCC Rcd. 4238, 4268-4271, ¶¶ 78-83 (2011) ("*Comcast-NBCU Order*"). *See also* Applications of AT&T Inc. and DIRECTV for Content to Assign or Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order,* MB Docket No. 10-56, ¶ 205 (2015) ("*AT&T-DirecTV Order*"); and Protecting and Promoting the Open Internet, GN Docket No. 14-28, *Report and Order on Remand, Declaratory Ruling, and Order,* ¶ 140 (2015) ("*2015 Open Internet Order*").

[4] Charter Communications, Inc., 2014 Annual Report (Form 10-K) at 5 (Feb. 24, 2015), *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjcxNzA2fENoaWxkSUQ9LTF8VHlwZT0z&t=1.

[5] Time Warner Cable Inc., 2014 Annual Report (Form 10-K) at 42, 46 (Feb. 13, 2015), *available at* http://d1lge852tjjqow.cloudfront.net/CIK-0001377013/667ba850-28a8-48c5-a119-2cda58c82c2f.pdf.

[6] Jonathan Sallet, Federal Communications Commission General Counsel, Remarks as Prepared for Delivery at the Telecommunications Policy Research Conference at 12 (Sept. 25, 2015), *available at* https://www.fcc.gov/document/speech-general-counsel-jon-sallet-lessons-recent-merger-reviews ("*Sallet Remarks*").

Further, if the transaction is approved, two companies—Comcast and New Charter—will control the overwhelming majority of the national high-speed broadband market. This concentration will increase the ability of these two firms to set the terms of access to both sides of the broadband market in an anticompetitive manner. Applicants offer certain time-limited conditions in an attempt to frame the merger as pro-competitive and pro-consumer, but the conditions are insufficient to outweigh the significant harms.

Applicants claim that "the merged entity will have no incentive to disadvantage online or traditional programmers to protect revenues from its own programming interests, as Charter and Bright House Networks do not own any broadcast or cable TV interests outside of local news, sports, and public affairs programs, and Time Warner Cable owns only local channels plus a few regional sports networks."[7] Such a statement fails to recognize the ownership interests that John C. Malone and Advance/Newhouse Partnership ("Advance/Newhouse") have in major programmers. These relationships will transfer to the nation's second-largest ISP and third-largest MVPD, enhancing both the ability and incentive of New Charter to harm competition in the pay-tv and OVD markets. The Commission has previously found that vertical harms can occur when a distributor and a programmer are related through "ownership and positional interests"[8] of executives, officers and directors of corporations. WGAW urges the Commission to employ a similar analysis in this transaction.

The amount of debt proposed to finance this transaction, coupled with the existing debt of Charter and TWC, threatens the financial health of New Charter. New Charter will have to

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[7] *Application* at 6.

[8] News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, *Memorandum Opinion and Order*, MB Docket No. 07-18, 23 FCC Rcd. 3265, 3268, ¶ 5 (2008) ("*Liberty Media-DIRECTV Order*").

devote significant financial resources to servicing its debt, which calls into question its ability to follow through on the promises made by Applicants. Rather than invest in research and development ("R&D") and infrastructure, New Charter may have to divert significant resources to interest payments, foregoing investment and ultimately harming consumers. Further, the need to generate sufficient cash to make interest payments will incentivize New Charter to use any means necessary to limit cord-cutting and increase broadband profitability.

Applicants have submitted a short list of claimed benefits and proposed commitments to support approval of this merger, but many are not specific to the transaction and will be inadequate to mitigate harms. For example, the offer to continue TWC's digital upgrades cannot be considered a benefit of the transaction, as the investment was already underway. In addition, the offer to abide by the Commission's Open Internet rules, which are currently in effect and apply to all of the Applicants, is not transaction-specific. Further, TWC has made public statements regarding its commitment to unlimited Internet service, reducing the effect of Applicants' time-limited pledge to abstain from imposing data caps on New Charter's Internet service.[9] The proposal of a corporate board of directors that will feature more independent directors than those appointed by Liberty Broadband Corporation ("Liberty Broadband") and Advance/Newhouse and the proposal to have independent directors review related-party transactions will be insufficient to address the vertical harms of this merger.

The proposed merger will not serve the public interest because it will decrease competition in important national video distribution markets and WGAW respectfully requests the merger be denied.

[9] Jeff Simmermon, *Launching an Optional Usage-Based Broadband Pricing Plan in Southern Texas*, Time Warner Cable Untangled (Feb. 27, 2012), http://www.twcableuntangled.com/2012/02/launching-an-optional-usage-based-pricing-plan-in-southern-texas-2/.

II. WGAW HAS STANDING

WGAW is a labor organization that represents more than 8,000 professional writers of film, television, online video programming, local news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in theaters are written by WGAW members and the members of its affiliate, Writers Guild of America, East (jointly, "WGA").

WGAW has standing in this proceeding because Guild members create much of the national television programming that is distributed by Applicants. Each year, more than 3,000 WGAW members are employed on television projects.[10] In 2014, almost 3,900 WGAW members reported $725 million in writing compensation for television projects.[11]

In addition, WGA members are also the creators of original video programs now offered by OVDs including Netflix, Amazon, Hulu and Crackle. The rise of the OVD market has produced new creative and economic opportunities for writers. Writers have also benefited from services that offer consumers online availability of television series and feature films. Millions of consumers visit television network websites and Hulu each month to catch up on recent television episodes. Subscription OVDs offer entire television series and thousands of movies for an affordable monthly price. Amazon and iTunes also offer consumers the ability to rent or purchase individual titles. Writers have earned almost $90 million in residual income from such online services licensing or selling television series and feature films.[12]

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[10] Writers Guild of America West, Annual Financial Report, at 2 (June 29, 2015), *available at* http://www.wga.org/uploadedFiles/who_we_are/annual_reports/annualreport15.pdf.

[11] *Id.*

[12] *Id.* at 4.

III. PUBLIC INTEREST REVIEW

Commission approval of proposed mergers and license transfers, pursuant to Section 310(d) of the Communications Act, requires that the transaction serve "the public interest, convenience, and necessity."[13] In order to evaluate the transaction, the Commission must measure the potential public interest harms of the merger and balance them against the potential public interest benefits to determine whether, in total, the transaction meets the Communications Act standard. The Commission's review of claimed benefits contemplates whether the benefits are transaction-specific, unlikely to occur in the absence of the transaction, and are verifiable.[14] Further, benefits must not "inure solely to the benefit" of the parties.[15] To mitigate harms and ensure that the public interest is served, the Commission may consider and impose relevant conditions when approving a merger. Applicants bear the burden of demonstrating, by a preponderance of evidence, that the proposed transaction will serve the public interest.[16]

The Commission's charge to ensure that the transaction preserves and promotes the public interest incorporates the broad goals of the Communications Act. These include a preference for preserving and enhancing competition in relevant markets, accelerating deployment of advanced telecommunications services and ensuring a diversity of information sources and services to the public.[17] The Commission's standard of review incorporates

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[13] 47 U.S.C. § 310(d).

[14] *Comcast-NBCU Order*, 26 FCC Rcd. at 4330-4331, ¶ 226.

[15] *Id.*

[16] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4341, ¶ 251; *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3276-3277, ¶ 22; *AT&T-DirecTV Order*, ¶ 18; General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation, Transferee, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd. 473, 610, ¶ 316, 317 (2004) ("*News Corp.-Hughes Order*").

[17] *Comcast-NBCU Order*, 26 FCC Rcd. at 4248, ¶ 23; *AT&T-DirecTV Order*, ¶ 19.

methodologies and principles from antitrust analysis, but is not limited by that framework. Instead, the Commission's competitive analysis considers whether a transaction enhances, rather than simply preserves, competition and looks broadly at potential and future competition in order to advance the public interest.[18]

IV. NEW CHARTER'S TIES WITH MAJOR PROGRAMMERS INCREASE THE INCENTIVE AND ABILITY TO HARM COMPETING DISTRIBUTORS, OVDS AND UNAFFILIATED PROGRAMMERS

The Commission has found that mergers that involve vertically-integrated video programmers and distributors can increase the ability and incentive of the merging firm to harm competing MVPDs, OVDs and unaffiliated programmers.[19] In *Liberty Media-DirecTV*, the FCC noted that both Congress and the Commission recognized that "the incentive to engage in anticompetitive pricing or withholding strategies implicitly exists where there is vertical integration."[20] The Commission has also found that the potential for anticompetitive harm may occur even when the link between programmer and distributor comes through the "combined ownership and positional interests"[21] of company officers and directors. In addition, in both *News Corp.-Hughes* and *Liberty Media-DirecTV*, transactions involving an MVPD and related programming assets, the Commission found that the largest shareholder had de facto control.[22] In both transactions the Commission also found that although the largest shareholder did not have

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[18] *Comcast-NBCU Order*, 26 FCC Rcd. at 4248, ¶ 24.

[19] *See News Corp.-Hughes Order*, 19 FCC Rcd. at 476-477, ¶ 4; *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3268, ¶ 5; *Comcast-NBCU Order*, 26 FCC Rcd. at 4240, ¶ 3.

[20] *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3301, ¶ 79.

[21] *Id.* at 3268, ¶ 5.

[22] *News Corp.-Hughes Order*, 19 FCC Rcd. at 476, ¶ 2; *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3267, ¶ 2.

majority control of the organization, the notion that other shareholders would follow the direction of the largest shareholder was not unreasonable.[23] This proposed merger raises similar concerns because John C. Malone controls New Charter's largest shareholder, Liberty Broadband, and also owns a controlling stake in major programmers Discovery Communications and Starz.

A. New Charter's Largest Shareholder Controls Major Programming Assets

i. Liberty Broadband

In 2014, Liberty Media Corporation spun-off Liberty Broadband Corporation to investors, making it a publicly-traded company. According to the company's website, "Liberty Broadband Corporation's principal assets consist of its interest in Charter Communications, its subsidiary TruePosition and a minority equity investment in Time Warner Cable."[24] Greg Maffei is the President and CEO of Liberty Broadband and also serves on the board of directors. John C. Malone is the Chairman of the board and the largest shareholder of Liberty Broadband. According to the company's proxy statement, John C. Malone owns shares in Liberty Broadband that represent 47.1% of voting power.

The Application states that Liberty Broadband will contribute $5 billion to help finance the merger.[25] If the transaction is approved, Liberty Broadband will be the largest shareholder of New Charter, controlling 18-19% of company stock.[26] In addition, Liberty Broadband, through

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[23] *News Corp.-Hughes Order*, 19 FCC Rcd. at 519, ¶ 98; *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3290-3292, ¶¶ 55-59**.**

[24] *Company Overview*, Liberty Broadband Corporation, http://www.libertybroadband.com/Company-Overview.aspx (last visited Oct. 8, 2015).

[25] *Application* at 15.

[26] *Id.*

proxy rights granted by Advance/Newhouse, will control the voting rights of 25% of New Charter stock. Liberty Broadband will also nominate 3 of the 13 board members to New Charter.[27]

ii. Discovery Communications

Discovery Communications ("Discovery") is a publicly-traded global media company that operates television channels in the U.S. and 220 other countries.[28] In 2008 Discovery Holding Company and Advance/Newhouse Programming Partnership[29] combined ownership interests in Discovery Communications Holding LLC to create Discovery. In the United States, Discovery operates ten national networks, the largest of which are Discovery Channel, TLC and Animal Planet.[30] These networks are available in 97 million, 95 million and 94 million homes in the United States, respectively.[31] The company's annual report to shareholders notes that these three channels generated 70% of the company's U.S. revenue.[32]

Advance/Newhouse Programming Partnership holds 32.3% of Discovery's Series A Common Stock and 35.2% of the company's Series C Common Stock.[33] The former CEO of

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[27] *Id.* at 16.

[28] Discovery Communications, Inc., 2014 Annual Report (Form 10-K) at 4 (Feb. 19, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1437107/000143710715000004/disca-2014123110k.htm ("*Discovery 2014 Annual Report*").

[29] Advance/Newhouse Programming Partnership is 65% owned by Newhouse Programming Holding Corp and 35% by Advance Programming Holdings, LLC. Discovery Communications, Inc., 2015 Proxy Statement (Form Def 14A) at 100 (May 20, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1437107/000119312515119082/d897844ddef14a.htm.

[30] *Discovery 2014 Annual Report* at 5-7.

[31] *Id.* at 5, 6.

[32] *Id.* at 7.

[33] Discovery Communications, Inc., 2015 Proxy Statement (Form Def 14A) at 99 (May 20, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1437107/000119312515119082

Advance/Newhouse Communications and Bright House is the Chairman of the board of Discovery. The current CEO of Advance/Newhouse Communications is also a member of the Discovery board. John C. Malone is a member of the board of directors and owns almost all of Discovery's Series B Common Stock. According to Discovery's Proxy Statement, Malone's stock ownership represents 28.7% of voting power in Discovery.[34] Several members of the board are also board members of various Liberty entities.

iii. Starz

Starz Inc. is a publicly-traded corporation that was spun-off from Liberty Media Corporation in 2013. Starz Inc. is a global media company that operates pay-television networks Starz, Encore and Movieplex. According to the company's annual financial report, Starz had 23.3 million subscribers at the end of 2014 and Encore had 34 million.[35] Starz Inc. also produces original programming available on its networks. Greg Maffei, CEO of Liberty Broadband, is Chairman of the board of Starz Inc. John C. Malone owns stock representing 47.2% voting power in Starz.[36]

B. Harm to Competing MVPDs

If the merger is approved, the vertical relationships that Discovery and Starz have with Charter and Bright House will shift to the nation's third-largest MVPD. The merger will make

/d897844ddef14a.htm.

[34] *Id.* at 102.

[35] Starz, 2014 Annual Report (Form 10-K) at 5 (Feb. 25, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1507934/000150793415000014/starz_10-kx12312014.htm.

[36] Starz, 2015 Proxy Statement (Form Def 14A) at 4 (Apr. 23, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1507934/000150793415000034/starz_2015xproxy.htm.

New Charter a larger competitor nationally and regionally in areas such as Los Angeles where TWC and Charter currently offer MVPD service in the same designated market area ("DMA"). The larger size of New Charter increases its incentive and ability to harm competing MVPDs through control of access to "must-have" programming, a category which the Commission has previously found to include national cable programming.[37] Discovery is one of the seven largest television programmers, which collectively account for 95% of television viewing hours in the United States.[38] It is one of the largest suppliers of cable television networks focused on unscripted programming and has few close substitutes. For example, in the second quarter of 2015, the television show *Deadliest Catch,* which airs on Discovery Channel was ranked as the top unscripted cable series among viewers 25-54.[39] Discovery also reportedly aired all five of cable's top unscripted series in the second quarter of 2015.[40] Discovery also recently noted that it was the 8th ranked basic cable network in viewers ages two and up.[41] In addition, Starz ranked as the second-most widely distributed premium pay-tv network in the fourth quarter of 2014.[42]

New Charter may engage in anticompetitive strategies such as temporary or permanent foreclosure of access to affiliated programming or limiting on-demand licensing of affiliated

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[37] *Comcast-NBCU Order*, 26 FCC Rcd. at 4254, ¶ 36.

[38] U.S. Gov't Accountability Office, GAO 13-576, Report to the Acting Chairwoman of the Federal Communications Commission, Video Marketplace: Competition is Evolving, and Government Reporting Should Be Reevaluated at 6 (2013).

[39] Press Release, Discovery, Discovery Channel Sets Ratings and Viewership Records in 2Q2015 with Sweeping Increases vs 2Q2014 (July 7, 2015), https://press.discovery.com/us/dsc/press-releases/2015/discovery-channel-sets-ratings-and-viewership-3601/.

[40] *Id.*

[41] Press Release, Discovery, Discovery Channel Delivers Third Consecutive Record-Breaking Quarter in Ratings and Viewership (Oct. 5, 2015), https://press.discovery.com/us/dsc/press-releases/2015/discovery-channel-delivers-third-consecutive--3668/.

[42] Press Release, Starz Inc., Starz Reports First Quarter 2015 Financial Results (Apr. 30, 2015), http://ir.starz.com/releasedetail.cfm?releaseid=909777.

programming in order to increase the attractiveness of New Charter's service compared to direct competitors. In prior transactions, such as *News Corp-Hughes*, the Commission found that temporary foreclosure could be profitable even when permanent foreclosure is not, particularly in markets that exhibit consumer inertia.[43] The Commission found that "consumers choosing an MVPD are subject to inertia and partial lock-in, because, among other things, there are switching costs associated with changing providers…."[44] Temporarily withholding a competitor's access to Discovery's suite of channels could incentivize consumers to switch to New Charter. While Discovery may temporarily forego revenue during the dispute, the new subscribers may remain with New Charter after the dispute because of switching costs. Therefore, a strategy that causes a temporary loss in programming revenue may ultimately be profitable for New Charter. Such anticompetitive behavior is possible because John C. Malone and Advance/Newhouse own large stakes in both companies.

C. Harm to OVDs

The Commission has previously found that "broadband providers have incentives to interfere with and disadvantage the operation of third-party Internet-based services that compete with their own services."[45] In the *Comcast-NBC Universal* transaction, the FCC and DOJ recognized that a vertically-integrated MVPD-ISP with control over programming would have both incentive and ability to harm OVD competition through a variety of mechanisms.[46] The proposed transaction raises similar concerns. Charter's growth as a video provider and ISP will

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[43] *News Corp.-Hughes Order*, 19 FCC Rcd. at 511, ¶ 79.

[44] *Id.*

[45] *2015 Open Internet Order*, ¶ 140, cited in *AT&T-DirecTV Order*, ¶ 205.

[46] *Comcast-NBCU Order*, 26 FCC Rcd. at 4268-4269, ¶ 78; DOJ Competitive Impact Statement in *Comcast-NBCU*, ¶¶ D(4) and D(1).

increase its motivation to act anti-competitively and stifle the pro-consumer growth of online video.

In this transaction, Charter will increase its video subscribers from 4.3 million to 17.3 million.[47] Applicants claim that the combined company will have no incentive to interfere with OVDs or online content because to do so would be "directly contrary to [their] clear economic interest in expanding subscribership to [their] broadband network."[48] Applicants support this claim by noting that the new company's future depends more on broadband than on video services, referencing the higher gross margins on broadband.[49] Applicants' argument obscures the complexity of this dynamic. While broadband is a high profit margin business for cable companies, pay-tv is mature, and there is evidence that some subscribers are substituting online video and broadband for cable.[50] MVPD-ISPs benefit from the growth of online video and broadband only as far as they complement, rather than replace, pay-tv. As such, MVPD-ISPs have strong incentives to guide broadband development in this direction and to prevent cord-cutting from becoming a larger trend. Finally, the Commission has specifically rejected arguments similar to those made by Applicants, noting in *AT&T-DirecTV*, "We disagree that Applicants' incentive to attract and retain broadband subscribers precludes any incentives to engage in conduct that hinders consumers' access to unaffiliated OVDs."[51] As noted in the

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[47] *Application* at 28.

[48] *Id.* at 46.

[49] *Id.* at 49.

[50] Press Release, Leichtman Research Group, Pay-TV Providers Lost About 470,000 Subscribers in 2Q 2015 (Aug. 17, 2015), http://www.leichtmanresearch.com/press/081715release.html.

[51] *AT&T-DirecTV Order*, ¶ 205.

context of the Comcast-TWC merger, this incentive increases along with the number of video customers because New Charter will be able to internalize more of the benefit.[52]

New Charter's vertical programming relationships will increase the ability to use control of such programming to harm OVDs. The Commission wrote in *Comcast-NBCU* that Comcast's "withholding of the online rights to similar NBCU programming would make OVDs less competitive. If an OVD is to fully compete against a traditional MVPD, it must have a similar array of programming. Comcast has strong incentives not to let this occur."[53] New Charter will have similarly strong incentives. New Charter will not have an interest in making the OVD market a more attractive alternative to its own offerings and because of the relationships with Starz and Discovery, New Charter will have the ability to limit access to such content.

The incentive is not theoretical. Statements by John C. Malone and other executives suggest a strong desire to limit the attractiveness of OVD competitors. It has been reported that in 2012, Starz did not renew its licensing agreement with Netflix in hopes of limiting the growth of the company.[54] While this strategy was ultimately unsuccessful it raises questions regarding what various Malone-controlled entities may do to limit the attractiveness of the OVD market in order to benefit New Charter. For instance, in 2013, Malone reportedly said that cable operators should work together to create a rival to Netflix that would deliver programming over the

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[52] *Sallet Remarks* at 13. ("Without the merger [Comcast-TWC], a company taking action against OVDs for the benefit of the Pay TV system as a whole would incur costs but gain additional sales – or protect existing sales – only within its footprint. But the combined entity, having a larger footprint, would internalize more of the external "benefits" provided to other industry members.")

[53] *Comcast-NBCU Order*, 26 FCC Rcd. at 4272-4273, ¶ 86.

[54] Michael Wolff, *Michael Wolff on Charter's Future as John Malone Makes Last Grasp at Netflix*, The Hollywood Reporter (June 3, 2015), http://www.hollywoodreporter.com/news/michael-wolff-charters-future-as-799706.

Internet nationally.[55] Starz's CEO was quoted in 2014 saying "I think it's really shortsighted for all these networks to be selling their shows to Netflix."[56] Discovery Channel President Rich Ross was quoted earlier this year saying the network was in "hand to hand combat" with Netflix.[57]

When these statements are placed in the context of the proposed merger, there is a clear concern that Malone may use the various programming assets he controls to limit the development of competition in the OVD market. Such anticompetitive strategies include refusing to license programming or delaying the availability of programming. While the incentive to take such actions clearly already exists, it will be considerably greater should the transaction be approved because the combined company's larger share of the MVPD market will capture more of the benefit of anticompetitive actions that disadvantage OVDs in favor of MVPDs.[58]

D. Harm to Unaffiliated Programmers

Vertically-integrated MVPDs have an incentive to favor affiliated networks in distribution. New Charter's increased scale in distribution will enhance its power to foreclose programming competitors by temporarily or permanently refusing to carry unaffiliated networks on New Charter's cable systems. New Charter may also leverage its power as a distributor to advantage Discovery networks by placing unaffiliated channels in less desirable positions within

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[55] Liana B. Baker, *U.S. cable companies should create Netflix Rival: Malone*, Reuters (Oct. 10, 2015), http://www.reuters.com/article/2013/10/10/us-liberty-netflix-idUSBRE9990OC20131010.

[56] Christopher Zara, *Starz vs. Netflix: CEO Chris Albrecht Calls Streaming Giant A Myopic Content Strategy, And He Has A Point*, International Business Times (Dec. 9, 2014), http://www.ibtimes.com/starz-vs-netflix-ceo-chris-albrecht-calls-streaming-giant-myopic-content-strategy-he-1745724.

[57] Mark Sweney, *Discovery US boss: we're in 'hand to hand combat' with Netflix*, The Guardian (Aug. 23, 2015), http://www.theguardian.com/media/2015/aug/23/discovery-netflix-online-tv-binge-viewing.

[58] *Sallet Remarks* at 13.

basic cable tiers or lineups or by using increased scale to negotiate payments to unaffiliated networks below competitive market rates. The increased size and leverage of New Charter may also allow it to negotiate more restrictive distribution deals that limit the attractiveness of competing services. For instance, New Charter could use its increased bargaining power to force third-party programmers into affiliate agreements that restrict the ability to license content to OVDs.

E. Conditions Do Not Address Vertical Harms

Applicants offer limited commitments to separate the interests of Liberty Broadband, Advance/Newhouse and New Charter. These include the promise that a majority of the 13-person board will not be nominated by Advance/Newhouse or Liberty Broadband,[59] a limit on Liberty Broadband's equity interests in New Charter,[60] a mandate that Advance/Newhouse or Liberty Broadband affiliates' programming transactions require approval of a majority of unaffiliated directors, a requirement that a majority of the directors on four committees be unaffiliated with Liberty Broadband or Advance/Newhouse, and a requirement that any Liberty Broadband or Advance/Newhouse-related transactions exceeding $100,000 in a calendar year be approved by the independent Audit Committee.[61] However, these commitments fail to sufficiently insulate New Charter's decision-making from the outsized influence of key shareholder John C. Malone. The Commission has found similar insulation proposals inadequate in prior transactions, noting that even a nominally "independent" board could still be subject to

[59] *Application* at 16.
[60] *Id.* at 54.
[61] *Id.*

the influence of a controlling or influential shareholder.[62] In addition, these commitments do not address the ability of New Charter to harm MVPD and OVD rivals through temporary or permanent foreclosure of programming.

The information provided in the Application, combined with Securities and Exchange Commission ("SEC") filings make clear that New Charter will be controlled by entities and individuals that also control major programmers. The Commission must recognize that, post-merger, this control over programming will be combined with significantly greater distribution of both pay-tv and Internet service. As a result, New Charter will have increased incentive and ability to use programming relationships to advantage the company in distribution and to disadvantage competing MVPDs, OVDs and unaffiliated programmers.

V. THE PROPOSED MERGER WILL HARM COMPETITION IN THE BROADBAND MARKET

This merger will transform Charter into the nation's second-largest wired ISP, with 19.4 million broadband subscribers, second only to Comcast's 22 million subscribers.[63] This growth will increase both the incentive and the ability of New Charter to use its increased size to harm OVDs. In addition, this combination will place just two companies in control of the country's broadband future by further consolidating a market already lacking in competition at both national and local levels. As the Commission is well aware, the consumption of video has changed rapidly in the last several years, with the Internet increasing in prominence as a platform for video distribution and consumption. This rise has prompted increased demand for higher Internet speeds, which promotes investment in broadband.

[62] *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3290, ¶ 55.
[63] *Application* at 45.

Applicants attempt to position this merger as occurring in a robustly competitive broadband market, claiming that the market consists of "cable and telco-based competitors engaging in head-to-head competition throughout most of the U.S., new entry underway by Google fiber and other new wireline entrants, and rapid improvements in both terrestrial and satellite-based wireless competitors."[64] This image of vigorous competition between multiple providers is illusory and disguises the continued dominance of cable operators in the provision of high-speed Internet service suitable for viewing online video. In evaluating the transaction at hand, it is important for the Commission to appropriately define the broadband market as wired connections of 25 Mbps or higher, despite Applicants' protests against doing so.[65]

The Commission has historically found the wired and wireless Internet markets to be separate, and continues to note "significant concerns about the quality and reliability of the mobile and satellite service data, and also…concerns about other factors, such as latency concerns and usage allowances."[66] Use of this analysis is appropriate: although there have been improvements to the speed of wireless offerings, wireless data plans are not viable alternatives for online video consumption because of high costs and Internet data thresholds. For example, Verizon currently charges $20 per month for 2 GB of data for a tablet. Smartphone data plans start at $30 a month for 1 GB and $15 for each GB over.[67] Using a mobile device to replace an

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[64] *Application* at 60.

[65] *Id.* at 6, note 11.

[66] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion,* GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry On Immediate Action to Accelerate Deployment, 30 FCC Rcd. 1375, 1379, ¶ 9 (2015) ("*2015 Broadband Progress Report*").

[67] *Data Only Plan,* Verizon, http://www.verizonwireless.com/landingpages/data-only-plan/ (last visited October 8, 2015); *Verizon Plan*, Verizon, http://www.verizonwireless.com/landingpages /verizon-plan/ (last visited Oct. 8, 2015).

average month of television viewing, currently 151 hours,[68] with HD video on a mobile network would require at least 150 GB of data for a tablet[69] and 37 GB a month for a smartphone.[70] For tablets, data costs would exceed $710—the price for a 100 GB plan—and smartphones would require about $300 a month—the cost for a 40 GB plan.[71] Given these costs, wireless Internet cannot be considered a competitive alternative to wired broadband.

A speed threshold of 25 Mbps or higher is entirely appropriate for determining the competitive context in which Applicants operate. The FCC has ruled that "advanced telecommunications capability" means speeds of 25 Mbps or higher,[72] reflecting the widespread use of and need for higher speeds to accommodate growing demand for Internet applications and services, most prominently online video. At this speed threshold, the dominance of wired options is clear: cable broadband currently represents 71% of residential Internet connections over 25

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[68] Nielsen, The Total Audience Report, Q1 2015, at 12, tbl.3 (2015) ("*Total Audience Report*"). Data shows viewers spent 151 hours and 33 minutes watching linear television per month.

[69] Verizon estimates that each hour of HD video streamed on a tablet uses 1 GB of data. To stream 151 hours of HD video on a tablet would require 150 GB of data. *Data Calculator,* Verizon, http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp (last visited Oct. 8, 2015). Select "Tablet" on the "Add a Device" drop-down menu and scroll down to "How much data does a 4G Tablet use?"

[70] Verizon estimates that each hour of video streamed to a smartphone over a 3G network requires 250 MB of data and each hour of video streamed to a smartphone over a 4G network requires 350 MB of data. Streaming 151 hours of video over a 3G network would take 37,750 MB or 36.8 GB. Streaming 151 hours of video over a 4G network would take 54,250 MB or 53 GB. *Data Calculator,* Verizon, http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp (last visited Oct. 8, 2015). Select "Smartphone" on the "Add a Device" drop-down menu and scroll down to "How much data does a 3G/4G Smartphone use?"

[71] *Data Only Plan,* Verizon, http://www.verizonwireless.com/landingpages/data-only-plan/ (last visited October 8, 2015); *Verizon Plan,* Verizon, http://www.verizonwireless.com/landingpages/verizon-plan/ (last visited Oct. 8, 2015).

[72] *2015 Broadband Progress Report,* 30 FCC Rcd. at 1377, ¶ 3.

Mbps.[73] Fiber to the home ("FTTH") is the only wired alternative to provide comparable speeds, representing 10% of residential connections over 25 Mbps.[74] It has been thoroughly documented elsewhere that cable providers consider fiber their only true competition.[75] However, the high cost of deploying fiber means that significant expansion, either nationwide or only within Applicants' service areas, is unlikely.[76]

Los Angeles County, a major market that will be affected by the transaction, illustrates the lack of competition common in broadband. Post-merger, only 22% of County residents within New Charter's footprint will have access to both cable and fiber Internet services. Seventy-two percent of residents served by New Charter will have no alternative provider at 25 Mbps, and 28% will have a choice of one other provider. Roughly 70% of County residents, or 6.8 million people, will only have a choice between New Charter and one DSL provider.[77] As such, the majority of County residents will have only New Charter as their option for high-speed

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[73] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, Internet Access Services: Status as of December 31, 2013, at 31 (Oct. 2014).

[74] *Id.*

[75] Joint Petition to Deny of Future of Music Coalition and Writers Guild of America West, Inc. in the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 14-57, at 46-48 (Aug. 25, 2014) ("*WGAW-FMC Comcast Petition to Deny*"); Tom Wheeler, Chairman, FCC, Prepared Remarks at the 1776 Headquarters, Washington DC: The Facts and Figures of Broadband Competition, at 5 (Sept. 4, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf; Chris Morran, *AT&T Touts "Lower Prices" For Gigabit Internet; Still Charges $40 More If Google Fiber Isn't Around*, Consumerist (Sept. 30, 3015), http://consumerist.com/2015/09/30/att-touts-lower-prices-for-gigabit-internet-still-charges-40-more-if-google-fiber-isnt-around/.

[76] *WGAW-FMC Comcast Petition to Deny* at 46-47.

[77] WGAW analysis of National Telecommunications and Information Administration data and 2010 Census Block Data. US Department of Commerce, National Telecommunications and Information Administration, State Broadband Initiative, California (CSV format Dec. 31, 2013).

Internet service. This example highlights the market power New Charter will have locally if the merger is approved.

It is also appropriate to assess the impact of this merger on the broadband Internet market nationally because ISPs are "last-mile" distributors of OVD services. These services, which include Netflix, Amazon, YouTube and many others, are national providers that require access to New Charter's network to reach consumers. Applicants dismiss concerns regarding the national broadband market by noting that the combined company would serve "fewer than 30% of national broadband customers" with speeds above 25 Mbps/3 Mbps.[78] However, this ignores the level of consolidation of the rest of the market, where Comcast enjoys a 50% market share. Following this merger, then, two companies will control close to 80% of high-speed wired broadband connections, easing the ability for firms to coordinate to set market access terms.[79]

Applicants' control over high-speed Internet connections and the lack of alternative providers will give New Charter the power to set prices for services and dictate access and distribution terms for edge providers and online video services. Applicants' combined size will enable New Charter, potentially in collusion with Comcast, to exert significant influence over the development of the OVD market, encouraging innovation that only benefits Applicants' own business. Future competition with Applicants' content and MVPD offerings will be foreclosed.

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[78] *Application* at 46.

[79] Applicants project their market share as of December 31, 2014 at "less than 30%" of wired 25 Mbps+ connections, and 21% of all wired connections. Comcast Corporation reported a 54.2% market share of wired 25 Mbps+ subscribers in September 2014. Therefore we can conclude that New Charter has between 21% and 30% of 25 Mbps+ wired connections, and that New Charter + Comcast will have between 75% and 84%. *Application* at 6 and note 10; Opposition to Petitions to Deny and Response to Comments of Comcast Corporation and Time Warner Cable Inc. in the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 14-57, at 147 (Sept. 23, 2014).

A. Online Video has Enhanced Competition and Choice in Video Programming, But is Subject to Interference from MVPD/ISPs

The online video market has been a necessary competitive development, increasing choice and flexibility for consumers. For writers, it has brought forth new buyers for their content and ideas, as well as the opportunity to distribute content directly to the public. This has had a positive effect on the diversity of information available to the public because the traditional entertainment industry is controlled by a handful of companies, which has limited diverse and independent content. Internet distribution has allowed companies like Netflix, Amazon, Hulu, Crackle, Yahoo and PlayStation to offer rising volumes of content from increasingly diverse and independent sources in direct competition with television networks. In 2013, Netflix premiered its first original series, *House of Cards*.[80] The show's critical and popular success demonstrated the viability of the online video market for original television-like programming. The growth of this segment has been robust. In 2013 there were 20 original television-length series released online. In 2014, with Amazon and Netflix reportedly spending close to $1 billion on original programming,[81] the number of series grew to 28 and is projected to reach 43 by the end of 2015. Amazon, Netflix and Yahoo have received Emmy nominations for their original series.[82] These

[80] Rebecca Greenfield, *The Economics of Netflix's $100 Million New Show*, The Wire (Feb. 1, 2013), http://www.thewire.com/technology/2013/02/economics-netflixs-100-million-new-show/61692/.

[81] Samantha Bookman, *A Closer Look at the Billions of Dollars Netflix, Amazon and Hulu Are Spending on Original Content*, FierceOnlineVideo (June 4, 2014), http://www.fierceonlinevideo.com/special-reports/closer-look-billions-dollars-netflix-amazon-and-hulu-are-spending-original.

[82] Cecilia Kang, *Netflix, Amazon Get Record Emmy Nods*, The Washington Post (July 16, 2015), https://www.washingtonpost.com/news/the-switch/wp/2015/07/16/netflix-amazon-get-record-emmy-nods/.

OVDs have also pioneered new release models and prompted traditional networks and MVPDs to adapt with their own alternative release models and more flexible content bundles.[83]

However, the viability of the OVD market is dependent upon the actions of numerous unaffiliated parties. Large OVDs must negotiate in the nationwide market for interconnection in order to reach consumers at all. An OVD subscription is worthless without an Internet connection fast enough to stream high-quality video, let alone fast enough to stream video without freezing, buffering or endlessly reloading. OVD viability also requires that Internet subscriptions, on a standalone basis or in conjunction with a pay-tv subscription, remain affordable to consumers so that they may watch OVD content. Though many OVDs are developing original programming, licensing content from unaffiliated programmers remains an important strategy for attracting consumers. OVDs must seek nationwide online distribution rights, leaving them vulnerable to discrimination from MVPDs that may demand exclusive distribution agreements with programmers. The growth of Internet-enabled set-top boxes ("STBs") and third-party streaming devices has made viewing online content on traditional television screens accessible and online content is becoming increasingly integrated into more traditional MVPD offerings. OVDs must negotiate with device manufacturers and MVPDs in order to ensure that consumers can access online content through their chosen medium. OVDs, as a result, will be extremely susceptible to anticompetitive behavior from New Charter.

[83] Jeff Baumgartner, *Comcast, FX, test Live TV/VOD Hybrid for 'The Bridge*', Multichannel News (Aug. 14, 2014), http://www.multichannel.com/news/technology/comcast-fx-test-live-tvvod-hybrid-bridge/383193; Cynthia Littleton, *NBC Embraces Binge-Viewing, Releasing All 'Aquarius' Episodes Online After Premiere,* Variety (Apr. 29, 2015), http://variety.com/2015/tv/news/nbc-embraces-binge-viewing-releasing-all-aquarius-episodes-online-after-premiere-1201484383/.

B. The Proposed Merger will Increase New Charter's Ability to Harm OVDs

This Petition has documented how the transaction will increase the incentive for New Charter to harm OVDs. Limiting OVD access to New Charter's vertical programming relationships is one way the company may act anti-competitively towards OVDs. Charter's growth as an ISP also increases the combined company's ability to successfully engage in practices that reduce competition in the OVD market. The variety of mechanisms through which this harm can be carried out, outlined below, are not sufficiently addressed by the voluntary commitments offered by Applicants, either alone or in combination with the Commission's Open Internet rules.

Applicants currently have the ability to interfere with OVDs but this ability will increase if the transaction is approved. Prior transactions have established data caps and control over interconnection as potential "levers" for ISPs to discriminate against unaffiliated content or services.[84] Applicants' voluntary, time-limited commitment to abstain from implementing data caps or charging select edge providers for interconnection should not preclude a thorough review of how effectively New Charter could use these mechanisms to harm online markets, nor does that commitment allay WGAW's concerns.

Data caps (also referred to as "data thresholds" or "usage-based billing") restrict how much data a subscriber may consume before incurring additional charges on a broadband bill. This is an effective restraint on the competitive pressure of OVDs, as it limits customers' ability to substitute a more flexible combination of Internet and online video services for the ever-escalating monthly cable bill. The amount of data consumed by a customer who would substitute

[84] *AT&T-DirecTV Order*, ¶¶ 206-7, 213, 217.

all of his or her TV viewing with online video viewing would make a capped Internet service prohibitively expensive. For example, Nielsen reports that Americans spend 151 hours a month watching traditional television.[85] Netflix estimates that an hour of HD video requires 3 GB of data, indicating that a household of two would need at least 906 GB of data to completely substitute online video for television viewing.[86] Comcast and AT&T, two of the largest ISPs to use data caps, each charge $10 for every 50 GB over the limit, which is generally 250 GB for AT&T and 300 GB per month for Comcast.[87] Under these pricing models, customers would have to pay an additional $120 to $140 per month for two average viewers to substitute television viewing with online video. Charter's recently discontinued data caps ranged from a limit of 100 GB per month on the lower tier to 500 GB per month on the upper tier, at which point a user who exceeded the limit could be cut off from Internet access, effectively discouraging use of data-intensive services.[88]

Data caps also create an opportunity to prioritize affiliated products or content and discriminate against unaffiliated products or content. Because data caps artificially restrict bandwidth, "zero rating," or exempting certain services from the caps, effectively drives traffic to the affiliated products and services that do not threaten to inflate customer bills. Data caps prevent viewers from taking advantage of the increased choice provided by online video, and

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[85] *Total Audience Report* at 12.

[86] *How can I control how much data Netflix uses?*, Netflix, https://help.netflix.com/en/node/87 (last visited Oct. 8, 2015).

[87] *What XFinity Internet Data Usage Plans will Comcast be Launching?*, Comcast, updated May 29, 2014, http://customer.comcast.com/help-and-support/internet/data-usage-what-are-the-different-plans-launching (last visited Oct. 8, 2015); *Broadband usage FAQs*, AT&T, http://www.att.com/esupport/article.jsp?sid=KB409045&cv=812&_requestid=288276 (last visited Oct. 8, 2015).

[88] Stacey Higginbotham, *Want to know if your ISP is capping data? Check our updated chart,* GigaOm (Nov. 15, 2013), https://gigaom.com/2013/11/15/data-cap-2013/.

simultaneously stifle growth in that market. Applicants' voluntary commitment to refrain from imposing data caps on New Charter's Internet service for three years is insufficient to address this concern.[89] Of note is that Charter had data caps on its Internet service from 2009 until approximately two months before the announcement of its deal to buy TWC.[90] This illustrates how easy it is for ISPs to impose, remove or change these caps as is politically expedient. It also calls into question the need to impose data caps at all.

Interconnection between a customer-facing ISP network and other networks provides another point where a powerful ISP can leverage its terminating monopoly power to extract rents from unaffiliated OVDs and edge providers. Consumer-facing ISPs can allow their interconnection points to become congested, and then charge OVDs additional fees when they need faster access to the last-mile network. This artificially raises operating costs for OVDs by raising the cost of access to consumers, harming OVD competition. Despite Applicants' claims that such obstruction of OVDs would result in a loss of subscribers, the opaque nature of such obstruction combined with the paucity of competition means that consumers will likely have little understanding of the nature of the problem, much less anywhere else to turn.

A study by Measurement Lab found conclusively that ISP interconnection had a "substantial impact on consumer internet performance" and that business relationships between ISPs, rather than technical issues, were at the root of "sustained performance degradation experienced by customers of…AT&T, Comcast, Centurylink, Time Warner Cable, and Verizon"

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[89] *Application* at 18-19.

[90] Karl Bode, *Charter Confirms New Caps,* DSL Reports (Feb. 4, 2009), http://www.dslreports.com/shownews/Charter-Confirms-New-Caps-100676; Phillip Dampier, *Charter Communications Quietly Eliminates Usage Caps That Were Rarely Enforced Anyway*, Stop the Cap! (March 5, 2015), http://stopthecap.com/2015/03/05/charter-communications-quietly-eliminates-usage-caps-that-were-rarely-enforced-anyway/.

when their traffic passed through points of interconnection with various backbone ISPs.[91] This degradation lasted for months, while the companies involved were unforthcoming about the nature of the problem, leaving their consumers in the dark.[92] Even if consumers were able to identify the cause of the issue and conclude that their ISP was interfering with OVD traffic, the major ISPs involved in the dispute—including the two main telco overbuilders—provided service to the majority of the nation, leaving customers with little recourse. Following these incidents, Netflix was forced to concede to paid interconnection deals with four of the involved ISPs.[93] This illustrates the ease with which a few large ISPs can coordinate to disadvantage unaffiliated OVDs, which will only become more practicable and attractive if this merger is permitted, with two ISPs acting as gatekeepers for close to 80% of high-speed Internet subscribers.

Charter also maintains that its lack of early termination fees or modem lease fees means that its customers could more readily switch to an alternative ISP in the case of OVD interference.[94] However, these features are not included among the practices that New Charter is committed to maintaining for any length of time, and so should not be treated as protection for

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[91] M-Lab Consortium, ISP Interconnection and its Impact on Consumer Internet Performance, at 4 (Oct. 28, 2014), http://www.measurementlab.net/static/observatory/M-Lab_Interconnection_Study_US.pdf.

[92] Open Technology Institute, 'Beyond Frustrated': The Sweeping Consumer Harms as a Result of ISP Disputes, at 3 (Nov. 2014), http://newamerica.org/downloads/OTI_Beyond_Frustrated_Final.pdf.

[93] Drew Fitzgerald, *Netflix Reaches Interconnection Deal With Verizon*, The Wall Street Journal (Apr. 28, 2014), http://www.wsj.com/articles/SB10001424052702304163604579530321917846620; Steve Kovach, *Netflix Is Now Paying AT&T So Your Videos Stream Faster*, Business Insider (July 29, 2014), http://www.businessinsider.com/netflix-att-sign-interconnection-deal-2014-7; Stacey Higginbotham, *Netflix is now paying Time Warner Cable for direct access and faster streams*, GigaOm (Aug. 19, 2014), https://gigaom.com/2014/08/19/netflix-is-now-paying-time-warner-cable-for-direct-access-and-faster-streams/.

[94] *Application* at 22.

consumers. The lack of competitive alternatives for customers will make such interference more appealing and profitable. New Charter will have significant incentive and ability to interfere with OVDs even before considering its programming interests. Though Applicants claim that their market share would be insufficient to engage in foreclosure, most OVDs operate nationally and if an ISP representing close to 30% of the broadband market were to engage in practices that harm OVDs, it would have an undeniably negative effect. In addition, the combined market share of New Charter and Comcast will be sufficient to determine the success or failure of the OVD market if they were to coordinate, which can be done by announcing policies in the press, for instance.

The Commission has also recognized a variety of additional mechanisms through which an MVPD-ISP could decrease the attractiveness of competing online content. The most significant of these, last-mile interference via blocking, throttling or paid prioritization, has been prohibited by the Commission's Open Internet rules and Title II reclassification of broadband service.[95] Pricing policies, set-top box access and content licensing all affect the viability of third-party OVD applications and services that must be accessed through New Charter's systems. Pricing that advantages or discounts bundled service may dissuade consumers from purchasing standalone broadband service and substituting an online video subscription for MVPD service.[96] STBs and video interfaces allow MVPDs substantial control over the end user's experience and provide another point where discrimination can occur. This control could take the form of foreclosing OVD applications or services from functioning on proprietary STBs, charging an unreasonably high rate from OVDs in order to gain access or favoring or promoting affiliated

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[95] *2015 Open Internet Order*, ¶ 59.

[96] *Comcast-NBCU Order*, 26 FCC Rcd. at 4279 ¶¶ 102-103.

applications or services via the STB.[97] As noted above, limiting access to affiliated or unaffiliated content can lessen the attractiveness of OVD services as an MVPD alternative. New Charter could use any of these mechanisms, or a combination thereof, to disadvantage OVD competition, either alone or in concert with other providers in order to increase the impact.

C. Merger Conditions Will be Insufficient to Prevent Harm to Online Markets

Applicants have offered voluntary commitments intended to address three identified means of discrimination against OVDs. Regarding consumer Internet pricing, they offer to refrain from charging consumers for use of specific third-party Internet applications, as well as from imposing data caps.[98] Regarding interconnection, they commit to maintain a settlement-free interconnection policy for edge providers who meet certain criteria[99] and to engage in "reasonable and non-discriminatory interconnection and [to] submit any interconnection disputes to the FCC for resolution on a case-by-case basis."[100] Regarding last mile interference, Applicants commit not to "block or throttle Internet traffic or engage in paid prioritization."[101] Each of these commitments is set to last for three years, except for the settlement-free interconnection policy, which will continue until December 31, 2018.

These commitments are deeply insufficient to counterbalance the increase in both ability and incentive to interfere with OVDs that New Charter will enjoy following the transaction.

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[97] *Id.* at 4277 ¶¶ 97-99.

[98] *Application* at 18-19.

[99] *In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations,* Ex Parte Communication from Samuel L. Feder to Marlene H. Dortch, Secretary, FCC (July 15, 2015) at 2.

[100] *Application* at 18-19.

[101] *Id.* at 3.

Applicants have offered no tangible commitments that will protect against harms to standalone broadband or discrimination via STB, video interfaces or content licensing, none of which are prohibited by the Commission's Open Internet rules. The time-limited commitments to refrain from data caps and charging for interconnection offer narrow protection that will vanish as soon as the commitment period ends, while all of the relevant incentives and abilities will remain in place. For instance, following the collapse of the Comcast-TWC merger, Comcast has expanded its usage-based billing trials.[102] It is highly unlikely that New Charter will not impose similar pricing as soon as the three year commitment concludes given the post-merger dominance of those two firms, threatening future OVD competition.

VI. NEW CHARTER'S HIGHLY LEVERAGED POSITION THREATENS VIABILITY

While Applicants assert that this merger will bring numerous public interest benefits, a claim that is debunked in this filing, the proposed structure of the deal calls into question the ability of New Charter to deliver on its promises should the merger be approved. While approximately 51% of the purchase price of TWC consists of Charter stock, this remains a leverage buyout with the assumption of large amounts of new debt by a new entity composed of two already heavily indebted companies. The inclusion of Bright House to the mix obscures, but does not fundamentally alter this fact.

Assuming that most Time Warner Cable shareholders choose the option of receiving $100 in cash and New Charter Class A common stock equivalent to 0.5409 shares of Charter's existing Class A common stock, the deal will require the assumption of $30 billion in new debt

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[102] Stacey Higginbotham, Your next Comcast bill may be priced per gigabyte, *Fortune* (Sept. 30, 2015), http://fortune.com/2015/09/30/comcast-broadband-pricing-wireless/.

based on the closing price of the stock on July 31, 2015 and the number of outstanding shares on that date.[103] The debt will be split if all assumptions hold between the two acquisitions: $28 billion for Time Warner Cable and $2 billion for Bright House. Charter has disclosed that it has secured the needed cash by issuing $15.5 billion of senior secured notes due 2020, 2022, 2025, 2035, 2045 and 2055 (the "Notes").[104] These notes are of various amounts ranging from $500 million to $3 billion and bear interest rates that rise with maturity dates. The weighted average of the interest rates is 5.259032 or 1.6 percent above the average rate for investment grade corporate issues as of October 2, 2015.[105] In addition, Charter has secured two medium term loans in the amounts of $1 billion and $2.8 billion with interest rates of LIBOR plus 250 basis points and 275 basis points respectively. These loans mature in 2021 and 2023.[106]

In addition to this new debt and possibly more issues this year, both Charter and TWC have existing debt. As of June 30 of this year, Time Warner Cable reported long term debt of $23 billion and Charter acknowledged $13 billion.[107] When these are added to the new debt detailed

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[103] Charter Communications, Inc., 2015 Proxy Statement (Form Def 14A) at 6 (Aug. 20, 2015), *available at* http://www.sec.gov/Archives/edgar/data/1091667/000119312515297454/d948531ddefm14a.htm. If the share price falls below this level, more cash would be necessary as the alternative of more cash and the lower share value would be more attractive to Time Warner Cable shareholders.

[104] *Charter Closes on $15.5 Billion Senior Secured Notes*, PR Newswire (July 23, 2015), http://www.prnewswire.com/news-releases/charter-closes-on-155-billion-senior-secured-notes-300118180.html.

[105] Investment grade and high yield rates as reported by the New York Times on October 2, 2015. *Markets, Business Day*, The New York Times, http://markets.on.nytimes.com/research/markets/overview/overview.asp?src=busfn (last visited on Oct. 9, 2015).

[106] *Charter Closes $1.0 Billion Term Loan H and $2.8 Billion Term Loan I Senior Secured Credit Facilities*, PR Newswire (Aug. 24, 2015), http://www.prnewswire.com/news-releases/charter-closes-10-billion-term-loan-h-and-28-billion-term-loan-i-senior-secured-credit-facilities-300132692.html.

[107] Time Warner Cable, Inc., Quarterly Report for period ended June 30, 2015 (Form 10-Q) at 45 (July 30, 2015), *available at* https://www.sec.gov/Archives/edgar/data/1377013/0001193125

above, the combined company will owe at least $55.3 billion.[108] While Time Warner Cable had a debt to EBITDA ratio of 2.82, a level still above the 2.02 level of rival Comcast, New Charter will have a ratio of 4.5, based on 2015 estimated results.[109] Free cash flow of the combined entity is forecast by Moody's to be no more than 5% of total debt. Moreover, the most recent financial reports from the two companies indicate that roughly one in three dollars of operating profits at Time Warner Cable and 95% of operating earnings at Charter go to pay interest on debt. The leverage of the combined company should ring alarm bells.

With high interest charges draining operating profits, free cash flow, while remaining positive due to depreciation charges, may be insufficient to fund the investment necessary to follow through on the promised benefits of this merger. Management of New Charter will be pressed to satisfy the demands of creditors and shareholders, stakeholder groups that are likely to be privileged over customers. The public interest responsibilities of New Charter are, at best, subject to a high risk of neglect.

The management of Charter and its financial backers claim that New Charter will reap up to $800 million dollars of cost savings and undoubtedly savings will be considerable as staff is reduced and operations combined. However, combining three geographically separate operations and corporate cultures is not without issues, as Moody's points out in its assessment of credit risk

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15269291/d146752d10q.htm; Charter Communications, Inc., Quarterly Report for period ended June 30, 2015 (Form 10-Q) at 1 (Aug. 4, 2015), *available at* http://www.sec.gov/Archives/edgar/data/1091667/000109166715000185/chtr63015-10q.htm.

[108] Charter has reduced its debt level through the sales of stock to Liberty Interactive and Liberty Broadband. With these purchases the Liberty entities, controlled by John Malone, become the major stockholders in New Charter, with three board members.

[109] *Rating Action: Moody's places Charter's Ba3 CRF on review for upgrade following TWC merger announcement*, Moody's Investors Service (May 26, 2015), https://www.moodys.com/research/Moodys-places-Charters-Ba3-CFR-on-review-for-upgrade-following--PR_326171.

for New Charter. There is also risk of adverse developments in the macro environment. If consumers abandon pay-tv in larger numbers, if preferences of millennials continue to shift in favor of spending time on smartphones or if an economic recession makes consumers as a whole resistant to price increases, the revenue projections on which the benefits of this merger are predicated may fail to materialize. Any shortfall could be difficult for New Charter given the high levels of debt it will have.

VII. PROPOSED MERGER WILL FORECLOSE COMPETITION AND STIFLE INNOVATION

Historically cable operators have not competed directly, choosing instead to deploy service in non-overlapping areas. Direct MVPD competition has only emerged through new technologies such as satellite providers and telephone companies and other entrants such as Google Fiber and municipal broadband providers. Now, Internet distribution has enabled the rise of video services that do not require ownership of the facilities used to distribute content to the public, and this model has been proved viable by OVDs such as Netflix. This development has added much needed video competition. The past two years have seen an explosion of options for consumers to access pay-tv content via digital delivery. DISH and Sony Playstation are both currently offering virtual MVPD services that allow access to a variety of programming over the Internet, and Apple is reportedly planning a similar offering.[110] Individual networks such as HBO, CBS and Showtime are available for standalone purchase without a cable subscription and

[110] Joan E. Solsman, *Sling TV may add broadcast networks but won't force you to buy them,* CNET (May 7, 2015), http://www.cnet.com/news/sling-tv-may-add-broadcast-networks-but-wont-force-you-to-buy-them/; Jeff Baumgartner, *Apple OTT-TV Service Delayed to 2016: Report*, Multichannel News (Aug. 13, 2015), http://www.multichannel.com/news/next-tv/apple-ott-tv-service-delayed-2016-report/392987.

are viewable on a variety of third-party connected devices, and more networks announce similar offerings regularly.[111] At the same time, MVPD subscriptions are beginning to decline.[112]

These options, as well as the various national OVDs such as Netflix, Hulu and Amazon Prime have and will continue to put pressure on MVPDs to expand their virtual offerings. Recognizing the consumer demand for content on multiple devices and the movement of video distribution toward the virtual space, MVPDs have begun to offer more ways for their video customers to view programming. Comcast provides its video subscribers with access to many of its channels through its TV Everywhere app, Xfinity TV Go, and has recently announced its own subscription streaming service, which is available to Comcast Internet customers.[113] Time Warner Cable's TWC TV app allows for live viewing of nearly 300 channels on various third-party devices.[114] Charter's Spectrum TV app similarly allows customers to view live TV on a tablet or smartphone[115] and Applicants note that Charter's cloud-based Spectrum Guide, in app form, will be able to work with third-party devices such as Roku.[116] All of this pro-competitive

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[111] Keach Hagey, Shalini Ramachandran and Daisuke Wakabayashi, *Apple Plans Web TV Service in Fall*, The Wall Street Journal (Mar. 17, 2015), http://www.wsj.com/articles/apple-in-talks-to-launch-online-tv-service-1426555611.

[112] Janko Roettgers, *Pay TV Penetration Continues to Decline as New Households Don't Get Cable*, GigaOm (Sept. 3, 2014), https://gigaom.com/2014/09/03/pay-tv-penetration-continues-to-decline-as-new-households-dont-get-cable/.

[113] Adam Flomenbaum, *Comcast's Xfinity TV Go App Now Boasts 70 Channels and Is Used by 30% of Customers*, AdWeek (Feb. 19, 2015), http://www.adweek.com/lostremote/comcasts-xfinity-tv-go-app-now-boasts-70-channels-and-is-used-by-30-of-customers/50498.

[114] Ryan Faughnder, *Time Warner Cable to launch TV app on Xbox 360*, Los Angeles Times (June 28, 2013), http://articles.latimes.com/2013/jun/28/entertainment/la-et-ct-time-warner-cable-tv-app-xbox-360-20130627.

[115] *Spectrum TV App*, Charter, https://www.charter.com/browse/content/dlp-20a (last accessed Oct. 8, 2015).

[116] *Application* at 25.

expansion of Internet-based video options promotes investment in broadband by increasing demand for the higher speeds necessary for online video.

Currently, Charter and TWC's OVD offerings are limited to customers in the respective providers' footprints. However, these companies could easily follow DISH's lead and increase their own subscribership as well as overall competition by offering these virtual services outside of their local markets. Indeed, it makes little sense that they would not; the cloud-based nature of several of the offerings enhances their portability, and limiting their services to a specific geography limits the attractiveness and competitiveness of the services in a market that includes multiple national OVDs. Applicants state that they plan to "deploy an advanced mobile video application that will combine the best features of the pre-Transaction companies' apps into one integrated app."[117] This is presented as a benefit of the merger, but actually eliminates the very likely possibility of competitive entry by one or more of the firms into the others' markets, limiting future competition and innovation.[118]

VIII. BENEFITS DO NOT MEET PUBLIC INTEREST STANDARD

The Commission's public interest review of this transaction requires the Applicants to demonstrate that the benefits alleged are unlikely to occur without the merger, do not accrue only to the parties and are verifiable.[119] WGAW has demonstrated that the harms resulting from this

[117] *Id.* at 26.

[118] U.S. Department of Justice, *Non-Horizontal Merger Guidelines*, § 4.112 (June 14, 1984), *available at* http://www.justice.gov/atr/public/guidelines/2614.htm**.**

[119] *Comcast NBCU Order*, 26 FCC Rcd. at 4330-4331, ¶¶ 226-227; *NewsCorp-Hughes Order*, 19 FCC Rcd. at 610-611, ¶ 317; In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation, Assignors, to Time Warner Cable Inc., Assignees; Adelphia Communications Corporation, Assignors and Transferors, to Comcast Corporation, Assignees and Transferees, *Memorandum Opinion and Order*, MB Docket No. 05-192, 21 FCC Rcd. 8203, 8307, ¶ 244 (2006).

merger are likely to be substantial, which requires Applicants to demonstrate that claimed benefits are of a magnitude sufficient to overcome the expected harms.[120] Applicants have not made such a showing; most of the claimed benefits are not verifiable, are of questionable value or are not specific to the transaction. Instead, Applicants offer vague and nonspecific improvements, commit to rules and investments that already exist or are underway and provide no guarantee that consumers will see benefits from the transaction.

Applicants offer to "build upon Bright House Networks' broadband program for low-income consumers by making a broadband offering available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount."[121] However, there is virtually no information within the Application about either Bright House's existing program or New Charter's theoretical "improved" program. Bright House's Connect2Compete program, much like Comcast's Internet Essentials program, is based on qualification for the National School Lunch Program, and is not open to individuals who have been Bright House customers in the prior three months. Additionally, the program only enrolls customers around the start of the school year, has a two-year limit, and lacks an online enrollment mechanism.[122] This program, which offers 2 Mbps "Lite Internet" for $9.95, has significant barriers to entry for low-income populations and does nothing to help bridge the digital divide for the elderly or for childless adults. In comparison, Time Warner Cable's standalone Everyday Low Price Internet (2 Mbps, increased to 3 Mbps in Maxx areas) costs $14.99 per month, is available on the main TWC

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[120] *Comcast-NBCU Order*, 26 FCC Rcd. at 4247, 4331, ¶¶ 22, 227; *NewsCorp-Hughes Order*, 19 FCC Rcd. at 611, ¶ 318.

[121] *Application* at 20.

[122] *Connect2Compete Frequently Asked Questions*, Bright House, http://brighthouse.com/content/dam/residential/static/documents/Frequently_Asked_Questions_for_Connect_2_Compete.pdf (last visited Oct. 8, 2015).

website, has no extra sign-up process and is an easily accessible option for a much larger percentage of the low income population.[123] With no information about New Charter's "expanded" offering, this should not be considered a verifiable benefit of the transaction. Further, Charter's Internet products, with a base speed of 60 Mbps, include fewer options for lower speed tiers that may be more attractive to lower-income consumers. The extension of this lack of choice across TWC and Bright House networks threatens broadband affordability and limits customer choice in speed tiers.

Applicants also argue that the transaction will deliver benefits through the savings enabled by increased scale, noting that New Charter will have enhanced bargaining power in negotiating licensing agreements with content producers. Increased licensing fees, MVPDs argue, squeeze profit margins if they are unable to pass on all cost increases to consumers. Given the relatively small number of large television programmers, it may be expected that MVPDs desire countervailing power. However, this argument would have more force if there were sufficient competition to ensure that such savings would be passed on to consumers. Because Applicants make no promise to lower prices to consumers, it would seem that this scale benefit will inure solely to New Charter.

Applicants also assert that New Charter's increased scale will produce savings in product development, capital equipment acquisition and administrative costs versus the three separate companies.[124] Product development and capital equipment upgrades are critical given the relative increase in competition from telecommunication companies, Google and, in some instance from

[123] *High Speed Internet Plans and Packages,* Time Warner Cable, http://www.timewarnercable. com/en/internet/internet-service-plans.html, (last visited Oct. 1, 2015).

[124] Declaration of Christopher L. Winfrey, MB Docket No. 15-149 ¶¶ 20-22 (July 25, 2015), attached as Exhibit C to Application ("*Winfrey Declaration*").

public authorities. However, the cable industry, and Charter in particular, has not shown the entrepreneurial character necessary to bring forth a high level of investment. Instead, Charter's management has viewed its business as producing a stable income stream sufficient to finance a high level of debt. This financial view of the firm does not ensure that the advantages of scale economies and enhanced bargaining power will result in benefits to the public or to the Company's customers. Charter's history of bankruptcy and extremely poor operating performance should in themselves disqualify this company from being the tool of industry consolidation even if one assumes this is a desirable objective.[125]

In addition, while Applicants reference the *Comcast-AT&T Broadband* transaction as evidence that increased scale benefits the public interest by spurring investment, this comparison is entirely inappropriate for the transaction at hand and the promised benefit dubious in this context. In *Comcast-AT&T Broadband*, the benefits enabled by scale were evaluated by the Commission in order to assess their likelihood without the transaction and whether they outweighed the potential harms. Comcast and AT&T argued that the scale provided by the merger would allow Comcast to upgrade AT&T's cable systems and deploy new services faster than AT&T alone, as AT&T's improvements had been slowed by "rising capital costs and significant budget constraints related to its heavy debt load."[126] The Commission accepted that, because AT&T's upgrades and build-out were hindered by financial constraints, Comcast was

[125] One possible consequence of cable industry consolidation is lower prices to content producers, lower budgets and reduced compensation to the creative employees of content producers and a general pattern of cost cutting across the industry. This "race to the bottom" would reduce the positive impact of the entertainment industry to the economy and benefit only the stockholders and debt holders of the combined company.

[126] Applications of Comcast Corporation and AT&T Corp. For Consent to the Transfer of Control of Licenses, *Memorandum Opinion and Order*, MB Docket No. 02-70, 17 FCC Rcd. at 23246, 23315, ¶ 179 (2002) ("*AT&T Broadband Order*").

likely to hasten the deployment of advanced services in AT&T service areas, and identified this as the only transaction-specific public interest benefit.[127] In addition, there were no vertical integration concerns to be countered in this transaction, as AT&T and Comcast each owned minimal interests in video programming aside from AT&T's interest in Time Warner Entertainment,[128] which was divested as a condition of the merger approval.[129] In the absence of additional harms identified by the Commission, the transaction-specific benefit of accelerated broadband deployment was sufficient to result in a net positive for the public interest. In this transaction, however, it is the acquiring entity whose financial stability is suspect: Charter's debt load is a cause for concern, and has previously threatened its ability to make necessary investments in broadband.[130] TWC, on the other hand, has not been handicapped in its capital expenditures, having announced investments of $100 million each year in network maintenance[131] and almost $4 billion each year in capital expenditures for network line extensions and enhancements among other things.[132]

Applicants promise to "expedite" the transition of TWC and Bright House's cable systems' to all-digital format, and commit to completing this transition within 30 months after

[127] *Id.* at 23329, ¶¶ 217-218.

[128] *Id.* at 23251, 23253, ¶¶ 14, 19, 20.

[129] *Id.* at 23329, ¶ 216.

[130] Robert Farzad, *Charter: Cable's Sucker Stock*, Bloomberg Business (May 28, 2006), http://www.bloomberg.com/bw/stories/2006-05-28/charter-cables-sucker-stock.

[131] Time Warner Cable Earnings Call, Q4 2013 Results, Seeking Alpha (Jan. 30, 2013), http://seekingalpha.com/article/1981291-time-warner-cable-management-discusses-q4-2013-results-earnings-call-transcript?part=single. Arthur Minson, CFO and EVP commented, "[t]o achieve all this, we plan to increase total capital spending to $3.7 billion to $3.8 billion a year in each of the next 3 years and to invest an incremental $100 million a year in operating expense in proactive maintenance of the network and Max [sic] rollout activities." *Id.*

[132] Time Warner Cable, TWC Operational and Financial Plan, at 18 (Jan. 30, 2014), *available at* http://ir.timewarnercable.com/files/4Q13/TWC_Operational%20and_Financial%20Plan_vFINAL.pdf.

close.[133] However, as TWC has provided no information publicly about when it expects to complete its digital transition, there is no way to confirm that Applicants' offered timeline is expedited. And while Applicants claim that they will continue to expand TWC's 300 Mbps Maxx upgrade speed, they commit to doing so only in "certain areas" and do not specify which.[134] New Charter claims that it intends to "further develop a base tier of residential service that pushes forward the success of online video services," but this appears to refer to Charter's existing 60 Mbps base tier, which is hardly a vast improvement over the 50 Mbps offering being rolled out as part of TWC's Maxx upgrades.[135] As TWC's digital transition and speed upgrades are already underway, these are not transaction-specific benefits.

Though Charter presents expansion of its "pro-consumer" service offerings as a benefit, including service without early termination fees or modem lease fees and standalone broadband,[136] it makes no tangible commitment to continue those practices, pledging only to not charge consumers for access to third-party applications or to impose data caps for three years.[137] Likewise, Applicants' commitment to not block or throttle Internet traffic or to engage in paid prioritization for three years is merely a commitment to follow existing rules and must not be treated as a transaction-specific benefit.

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[133] *Application* at 24; *Winfrey Declaration,* ¶ 12.

[134] *Application* at 23.

[135] *Id.* at 21.

[136] *Id.* at 22.

[137] Charter notes, "Consistent with Charter's current practices, we intend to offer these broadband services on a stand-alone as well as bundled basis, without data caps, usage-based pricing, modem fees, or early termination fees." See *Application* at 3. However, among these practices, only data caps are referenced next to an actual time-delineated commitment. *Id. at 18.*

IX. CONCLUSION

The proposed merger of Charter, Time Warner Cable and Bright House will have anticompetitive and anti-consumer effects on traditional video programming and digital platforms, as well as the consumers and creators who have benefitted from the development and growth of online video. Despite Applicants' claims to the contrary, this merger involves a significant expansion of distribution for a pay-tv and Internet provider with substantial programming relationships, giving the merged entity increased incentive and ability to use its expanded distribution power to disadvantage unaffiliated programmers, rival MVPDs and OVDs. Applicants' promised benefits for consumers and competition are not transaction-specific or verifiable. Particularly, the promised efficiencies and investments are highly questionable given the precarious financial position of the combined company.

This transaction will leave close to 80% of broadband subscribers in the country controlled by just two vertically-integrated MVPD-ISPs. These two companies will be well-positioned to determine the development of the broadband market, foreclosing future competition and innovation. The proposed conditions will not protect the public interest from the harms of this merger. As such, WGAW respectfully requests the Commission deny the proposed merger and license transfer because it is not in the public interest.

Respectfully submitted,

___________/s/________________
Ellen Stutzman
Senior Director of Research & Public Policy

___________/s/________________
Laura-Blum Smith
Research Analyst

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October 13, 2015

DECLARATION

I, Ellen Stutzman, declare under penalty of perjury that:

1. I have read the foregoing "Petition to Deny of Writers Guild of America, West, Inc."
2. I am the Senior Director of Research & Public Policy for the Writers Guild of America, West (WGAW), a labor organization representing writers of feature films, television series and online video programs, who, to the best of my knowledge and belief will be adversely affected if the Commission approves the merger.
3. WGAW members create a majority of the original scripted television programming distributed by Applicants through their MVPD service as well as original series available online through OVDs, who rely on Applicants to reach viewers.
4. In my best knowledge and belief, WGAW members will be directly and adversely affected if the Commission allows the proposed merger of Charter and Time Warner Cable and Bright House Networks to proceed. They will face fewer creative and economic opportunities if this merger is approved.
5. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

____________/s/_________________
Ellen Stutzman
Senior Director of Research & Public Policy
Writers Guild of America, West

CERTIFICATE OF SERVICE

I, Laura Blum-Smith, Research Analyst for the Writers Guild of America, West, Inc., certify on this 13th day of October, 2015, I caused true and correct copies of the foregoing letter and Petition to Deny to be served via electronic mail on the following parties listed below:

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