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**REDACTED – FOR PUBLIC INSPECTION**

November 23, 2015

*BY ECFS*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: Notice of *Ex Parte* Letter, Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149**

Dear Ms. Dortch:

In accordance with the *Protective Order* in the above-captioned proceeding,<sup>1</sup> DISH Network Corporation (“DISH”) hereby submits the attached public, redacted version of its *ex parte* letter dated November 23, 2015. DISH has denoted with “{{**BEGIN HCI END HCI**}}” symbols where Highly Confidential Information has been redacted. The designated Highly Confidential Information in the letter was taken from or derived from Highly Confidential Information in the Applicants’ filings and the Media Bureau’s November 13, 2015 filing in the above-referenced proceeding. A Highly Confidential version of this letter is being simultaneously filed with the Commission and will be made available pursuant to the terms of the *Protective Order*.

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<sup>1</sup> *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149, Protective Order, DA 15-110 (Sept. 11, 2015) (“Protective Order”).*

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**Step toe**  
STEPTOE & JOHNSON LLP

Please contact me with any questions.

Respectfully submitted,



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Stephanie A. Roy  
*Counsel for DISH Network Corp.*

Enclosure

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**Re: Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 15-149**

Dear Ms. Dortch:

DISH Network Corp. (“DISH”) has shown that the overwhelming duopoly that the proposed deal would usher in could suffocate independent online video distributors (“OVDs”), particularly those trying to take head-on the duopolists, New Charter and Comcast. Foreclosure by just these two access providers would be a one-two knockout blow for an OVD.<sup>1</sup>

These fears have been reinforced by new data released by the Commission. When DISH filed its Petition to Deny, the most recent numbers available to the parties were the FCC’s market-wide figures from the end of 2013 and the Applicants’ own statements as to their high-speed broadband subscribers as of the end of 2014.<sup>2</sup> Both the Applicants and DISH based their estimates of post-transaction market share on these figures.<sup>3</sup> Since then, for the benefit of the

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<sup>1</sup> DISH Network Corp., Petition to Deny, MB Docket No. 15-149, at 26-32 (Oct. 13, 2015) (“DISH Petition”).

<sup>2</sup> *Id.* at 26-27 & n.95; *see also id.* at 28 n.102.

<sup>3</sup> *Id.* at 27-28; *see also* Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, Applications and Public Interest Statement, MB Docket No. 15-149, at 6 n.10 (June 25, 2015).

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parties to this proceeding, the Commission released 2014 residential fixed broadband counts for the Applicants and the market as a whole.<sup>4</sup> These data corroborate DISH's concern with the market concentration this merger portends.

According to the FCC's data, as of the end of 2014, Charter, Time Warner Cable ("TWC"), and Bright House Networks ("BHN") had a combined total of **{}BEGIN HCI  
END HCI}** subscribers to 25+ Mbps downstream service.<sup>5</sup> We also know that Comcast reports that almost all of its Internet subscribers receive 25+ Mbps downstream service.<sup>6</sup> Taking all of Comcast's reported 2014 year-end Internet subscribers as high-speed (21,962,000)<sup>7</sup> and adding them to the combined total from the Applicants in this merger, yields a total of **{}BEGIN HCI  
END HCI}** 25+ Mbps subscribers between what would become the two duopolists if this merger is allowed to proceed. This means that more than **{}BEGIN HCI  
END HCI}** percent of the high-speed Internet access market would be controlled by *just two firms*.<sup>8</sup> As DISH has shown, the Department of Justice has disapproved of mergers that would have resulted in the duopolists' combined market share below the figure at issue here.<sup>9</sup> The Department of Justice has done so for precisely the issue that DISH has raised—the fact that such market concentration between two firms would allow for coordinated action *even without active collusion* between the players.

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<sup>4</sup> Public Notice, Media Bureau Makes Available Broadband Subscriber Data Relevant to Review of Proposed Charter-Time Warner Cable-Advance/Newhouse Transactions, MB Docket No. 15-149, DA 15-1310, Exhibit 1a (Nov. 13, 2015) ("FCC Data PN").

<sup>5</sup> *Id.* at Exhibit 1b.

<sup>6</sup> David L. Cohen, *Traveling to the Tar Heel State to Talk About Media Democratization and What the TWC Deal Means for North Carolina*, Comcast Voices (Mar. 25, 2015), <http://corporate.comcast.com/comcast-voices/traveling-to-the-tar-heel-state-to-talk-about-media-democratization-and-what-the-twc-deal-means-for-north-carolina> ("[O]ver 90% of our customers subscribe to speeds of 25 Mbps or higher. . .").

<sup>7</sup> Press Release, 3 Million Added Broadband from Top Providers in 2014, Leichtman Research Group (Mar. 5, 2015), <http://leichtmanresearch.com/press/030515release.html> (reporting total broadband subscribers at the end of 2014 as 21,962,000 for Comcast).

<sup>8</sup> The Commission reports that there were a total of 41,649,046 subscribers to 25+ Mbps downstream service at the end of 2014. See FCC Data PN Exhibit 1a.


<sup>9</sup> Complaint, *United States v. Anheuser-Busch InBEV SA/NV et al.*, No. 1:13-cv-00127 ¶¶ 1-2 (Jan. 31, 2013) (challenging a transaction that would have given the two largest firms in the market a combined 72 percent market share).

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The FCC should not allow an already concentrated market for high-speed broadband access to become even more so. The threats to competition and the public interest are clear. DISH urges the FCC to deny the transaction as it is currently presented.

Respectfully submitted,

  
Stephanie A. Roy  
*Counsel for DISH Network Corp.*