

22 July 2020

**VIA ECFS**

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

Re: Notice of Ex Parte, Docket Established for Monitoring Compliance with The Conditions Imposed in The Charter Communications-Time Warner Cable-Bright House Networks Order, WC Docket No. 16-197.

Dear Ms. Dortch:

We, the undersigned organizations, urge the Federal Communications Commission to grant the petition of Charter Communications, Inc. The time has come—indeed, has long passed—to sunset the conditions prohibiting the use of data caps/usage-based pricing and mandating settlement-free interconnection, as the Commission contemplated when it approved Charter’s merger with Time Warner Cable and Bright House Networks in 2016.

Over the past four years, the Commission has collected ample evidence that both the marketplace for online video content and related broadband services are working effectively. Charter’s petition adds copious new evidence of how competitive these marketplaces have become. The jury has returned its verdict. Online video distributors (“OVDs”) have enjoyed explosive growth since 2016, even while many of the country’s largest broadband providers—with the notable exclusion of Charter—offer plans with usage-based pricing mechanisms. As the data makes clear, the merger conditions do nothing but force Charter to compete on an unlevel playing field, while bringing no benefits to edge providers or consumers. The Commission should therefore allow these conditions, which had little or no justification even when they were first adopted, to sunset on May 18, 2021.

The marketplace for online video content has never been more vibrant or competitive. The explosion in video streaming services—the main driver of internet traffic today —has delivered consumers endless amounts of content from a host of different platforms and providers. As demand for streaming video has grown exponentially over the past four years, unsurprisingly OVDs providing that content have grown exponentially as well. Importantly, all of this growth and innovation is driven by consumer demand and competition in the marketplace, not by regulation (since only Charter is bound by the outdated conditions).

Broadband providers have responded to these market dynamics by offering consumers more access to edge content—not by picking favorites, as the Commission once feared. Providers have increased speeds, sought out beneficial partnerships to bring unaffiliated OVDs onto their platforms, struck interconnection deals, and invested billions of dollars in infrastructure projects to accommodate consumer demand. All of this has occurred in the years since the Commission rejected heavy-handed

regulation of the internet for the simple reason that competition protects consumers and market participants alike and spurs innovation and investment.

As the Commission surmised in the Restoring Internet Freedom Order, broadband providers' and edge providers' incentives fundamentally are aligned. Edge providers succeed by drawing traffic to their content and acquiring new subscribers to their services. And broadband providers succeed by giving their subscribers smooth, untrammelled access to the edge content they want. Unfortunately, the Commission did not recognize these economic realities in its 2016 merger order. As a result, it imposed counterproductive conditions that were unnecessary to support the growth and development of OVD platforms.

Top-down regulation distorts the market merely reflecting regulators' biases while stymying market growth and evolution. As regulatory tools go, merger conditions are particularly risky in this regard. They are often treated as a "vehicle for advancing" an "ambitious [regulatory] agenda," instead of "safeguard[ing] the public interest," to borrow Chairman Pai's words. Merger conditions frequently impose inefficient requirements on a single market participant—based only on speculation about the new company's incentives to engage in anticompetitive behavior—while letting its competitors operate free of such restrictions. This unfounded and uneven approach to regulation distorts the market, frequently harming consumers and competition. That is certainly the case here.

Accordingly, the time has come to let the previous Commission's likely misguided and certainly outdated merger conditions on Charter sunset. By taking this action, the Commission will promote continuing innovation and competition for online video content and related broadband services while allowing the marketplace—and not artificial regulation—to govern this vibrant part of the economy.

Respectfully submitted,

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Innovation Economy Institute

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Citizens Against Government Waste

Phil Kerpen  
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