

February 6, 2013

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Charter Communications, Inc.'s Request for Waiver of Section 76.1204(a)(1)  
of the Commission's Rules, CSR-8740-Z, MB Docket No. 12-328**

Dear Ms. Dortch:

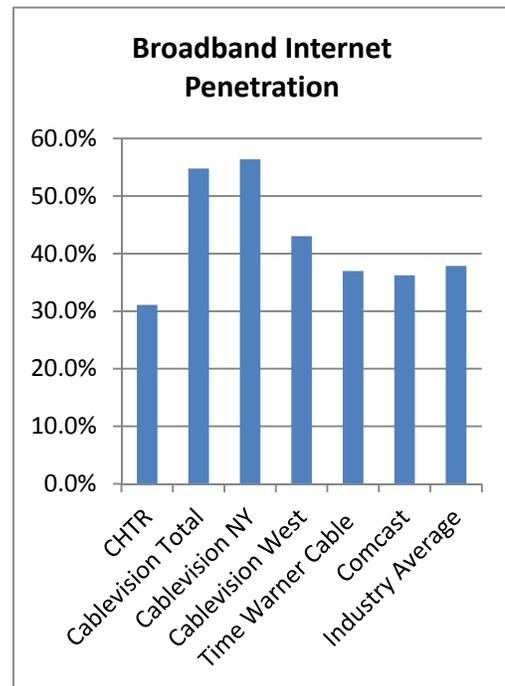
In its waiver request filed in the above-captioned proceeding, Charter emphasized that the distinctive footprint in which it seeks to roll out a new downloadable security system poses cost and operational burdens that are unique among large cable operators. The singularity of Charter's task is evident by comparison to Cablevision, which is also a top-five cable operator and which was granted a similar Commission waiver in 2009. Cablevision's roll out of downloadable security required deployment only in a concentrated urban market, the New York City metropolitan area, and only across a few tightly-clustered headends passing millions of homes. By contrast, Charter's rollout of downloadable security would require deployment across 190 headends in twenty-five states. More than half of the 639 U.S. counties that Charter serves are majority rural, and the cities it serves are primarily second tier cities (with obvious exceptions such as St. Louis and portions of Los Angeles and Dallas-Ft. Worth). Moreover, Charter's technology deployments are over widely dispersed, far less densely concentrated headends. Charter's headends pass a median of only 23,000 homes, a fraction of the subscribers per headend of other large cable operators. According to the Commission's National Broadband Map, Charter's service area is the least dense of the six largest cable operators.<sup>1</sup> This low density means that Charter's per-headend subscriber cost to deploy downloadable security would not only be far greater than such cost was to Cablevision, but also substantially higher than it would be for any other large cable operator. As a result of this greater expense and greater

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<sup>1</sup> Although the National Broadband Map is a work in progress that still requires refinement, it reports that Charter's service area is 393 people per square mile, compared to 1591 for Cox, 1021 for Comcast, 1016 for Cablevision, 817 for BrightHouse, and 716 for Time Warner Cable. See <http://www.broadbandmap.gov/about-provider>.

operational difficulty that Charter faces in deploying downloadable security and transitioning Charter's cable systems to digital, it is critical that Charter receive this waiver.<sup>2</sup>

The grant of this waiver request would not only address these unique burdens that Charter faces, but also would provide a distinctive path for attaining public interest benefits sought by the Commission. As noted above, more than half of the 639 counties that Charter serves are majority rural, and the cities it serves are primarily second tier cities. Charter's current broadband penetration of approximately 31% contrasts with Cablevision's penetration of 56% in markets where, with the benefit of Commission waiver, the latter has deployed downloadable security and transitioned to all-digital. Charter's current broadband penetration is also below each other large cable operator.



The Commission has repeatedly found that this digital transition delivers substantial benefits to consumers by “freeing up spectrum to offer new or improved products and services like higher-speed Internet access and high definition programming.”<sup>3</sup> Consequently, by facilitating Charter's deployment of downloadable security throughout its footprint, the waiver grant to Charter will uniquely accelerate the digital transition in rural America, an area that the Commission has previously acknowledged is in greater need of digital investment and a segment of the population widely acknowledged to be lagging behind in access to high speed broadband and other digital services. As Chairman Genachowski has said, “Too many Americans, particularly in rural areas, are still being left out of our broadband economy. In America's small towns, just as in its large cities, broadband is vital to economic growth, to job creation, to entrepreneurship and the success of small businesses, and to education and healthcare.”<sup>4</sup>

<sup>2</sup> The Commission has found that waivers from the integration ban facilitate a cable operator's transition to all-digital by lowering the cost of providing set-top boxes for every television connected to the network. See e.g., *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2921, 22 FCC Rcd 11780 (2007).

<sup>3</sup> *Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, et al.*, Report and Order, FCC 12-126, 56 CR 227, ¶ 3 (2012).

<sup>4</sup> See, e.g., Statement of Chairman Julius Genachowski, *Bringing Broadband to Rural America: Update to Report on a Rural Broadband Strategy*, GN Docket No. 11-16, 26 FCC Rcd 8681, 8712 (June 17, 2011).

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In its Request for Waiver, Charter committed to continue to support CableCARDs. Since the filing of Charter's request, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's Plug and Play Order.<sup>5</sup> In light of that ruling, Charter voluntarily commits to continue support for Unidirectional Digital Cable Products on Digital Cable Systems as set forth in Section 76.640 and to support CableCARD self-installation, M-Cards, switched digital video solutions, uniform CableCARD fees, and bring-your-own-box discounts as set forth in Sections 76.1205 and 76.1602 (b)(7), (8) of the Commission's Rules, notwithstanding the Court decision.

Very truly yours,

/s/

Paul Glist  
Counsel for Charter Communications, Inc.

cc: Bill Lake  
Michelle Carey  
Mary Beth Murphy  
Alison Neplokh  
Brendan Murray  
Adam Copeland

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<sup>5</sup> *EchoStar Satellite L.L.C., v FCC*, No. 04-1033 (D.C. Cir. January 15, 2013).