

United States Senate

WASHINGTON, DC 20510

February 25, 2016

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Attorney General Lynch and Chairman Wheeler:

We write to express our significant concern that Charter Communications' planned acquisition of Time Warner Cable and Bright House Networks could have negative effects on consumer choice, competition, and innovation in the broadband and online video distribution (OVD) marketplaces. The proposed "New Charter" would effectively create a nationwide broadband duopoly, leaving New Charter and Comcast largely in control of the essential wires that connect most Americans to how we commonly communicate and conduct commerce in the 21st century. The two companies would control nearly two thirds of the nation's high-speed broadband homes.¹ We request that the Department of Justice (DOJ) and Federal Communications Commission (FCC) carefully evaluate how the proposed Charter-Time Warner Cable-Bright House Networks deal could impact the telecommunications market. New Charter must not only prove that this deal would not harm consumers, but they must also demonstrate that it would actually benefit them and promote the public interest.

Today, broadband service is not a luxury; it is an economic and social necessity for consumers and businesses. Ensuring competitive, affordable, and open access to broadband networks is essential to the United States remaining the leader in developing and promoting the latest and greatest in new ideas and technologies. Unfortunately, the proposed deal raises serious concerns about the future of this critical marketplace because it would establish a duopoly in the high-speed broadband industry. Comcast and New Charter's dual dominance of the market could lead to a number of concrete harms to consumers, including higher prices and fewer innovative services.

Greater consolidation amongst existing broadband incumbents stands in contrast to what we need today: *greater competition*. The majority of American consumers already have few, if any, choices available for high-speed broadband to their homes and struggle to find standalone high-speed broadband service at a competitive price. The FCC recently found that the United States

¹ At or above 25 Mbps/3 Mbps, as defined by the FCC.

already ranks 31st out of 33 countries in cost for fixed standalone broadband plans.² We are understandably skeptical about how allowing Charter to significantly increase its market concentration and permitting a Comcast-New Charter high-speed broadband duopoly will enhance broadband competition.

We are also concerned about how a significant undertaking of debt will impact New Charter's ability to fulfill its proposed commitments to serve the public interest. New Charter will emerge from the proposed deal with billions of dollars of debt—a debt that might ultimately be passed on to its customers or cause New Charter to slow investments to improve its own network. While New Charter has committed to building out its network, including in rural areas, should the deal be approved, we question whether the newly formed company will have the resources necessary to achieve this critical goal.

Furthermore, in the video marketplace, where OVDs have the increasing ability to expand consumer choice for programming, New Charter could have an increased incentive to close off the possibility of new OVD competitors, causing harms to the online streaming service market and consumers. For example, if just two companies—New Charter and Comcast—stifle video streaming services, OVDs could be left without an effective way to enter the homes of a majority of high-speed broadband customers. New Charter would also enjoy increased bargaining power when negotiating video programming fees, which could allow it to underprice smaller cable companies and new entrant video services, potentially threatening their ability to compete and limiting the delivery of broadband service to rural America.

The DOJ has explained that cable companies are “essential gatekeepers to what customers watch, and how they watch it.”³ In effect, New Charter would be able to serve as the gatekeeper to millions of consumers—a very powerful tool—particularly for the nearly two-thirds of customers within New Charter's territory who would lack access to at least one alternative high-speed broadband provider.

It is critical that the DOJ and FCC thoroughly address all of the potential harms a Charter-Time Warner Cable-Bright House Networks deal would bring to the telecommunications marketplace and consumers and act to prevent any possible harm. Thank you for your continued attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator



Al Franken
United States Senator

² FCC, Fourth International Broadband Data Report (2015), available at <https://www.fcc.gov/reports/international-broadband-data-report-fourth>

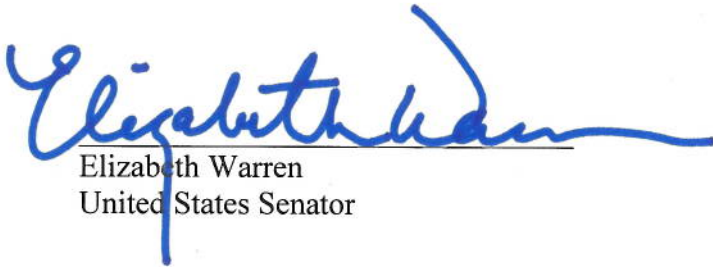
³ Prepared Remarks of Assistant Attorney General Antitrust Division, DOJ, Video Competition: Opportunities and Challenges, at 5 (Oct. 9, 2015), available at <http://www.justice.gov/opa/speech/assistant-attorney-general-bill-baer-delivers-keynote-address-future-video-competition>



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