UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice Antitrust Division 450 5th Street, N.W., Suite 7000 Washington, DC 20530 Plaintiff, v. CHARTER COMMUNICATIONS, INC., 400 Atlantic Street Stamford, CT 06901, TIME WARNER CABLE INC., 60 Columbus Circle New York, NY 10023, ADVANCE/NEWHOUSE PARTNERSHIP, 5823 Widewaters Parkway East Syracuse, NY 13057, and BRIGHT HOUSE NETWORKS, LLC, 5823 Widewaters Parkway East Syracuse, NY 13057 Defendants.	**CASE NO.** **JUDGE:** **FILED:**

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed combination of Charter Communications, Inc. ("Charter"), Time Warner Cable Inc. ("TWC"), and Advance/Newhouse Partnership's ("Advance/Newhouse") subsidiary, Bright House Networks, LLC ("BHN") (collectively referred to herein as "New Charter"), which would create the second-largest cable company and the third-largest multi-channel video distributor in the United States.

I. INTRODUCTION

1. Online video programming distributors ("OVDs") are beginning to revolutionize the way Americans receive and experience video content. With access to an adequate Internet connection, consumers can now choose among a number of OVDs to access collections of movies and television shows, including original content, at any time and on a device of their choosing. The early OVDs, such as Netflix, Hulu, and Amazon, focused on offering on-demand video to their customers and have developed video services that have already proven popular. Several newer OVDs, including DISH Network's Sling TV and Sony's Playstation Vue, have introduced services that offer live television channels in addition to on-demand content. And several television networks, including CBS, HBO, and Showtime, have launched OVD services to distribute their own programming over the Internet directly to subscribers. Continued growth of OVDs promises to deliver more competitive choices and a greater ability for consumers to customize their consumption of video content to their individual viewing preferences and budgets.

2. The emergence of OVDs threatens to upend the competitive landscape. For years, incumbent cable companies such as Comcast, TWC, and Charter have served the majority of American video households. Although these companies now face competition from the two direct broadcast satellite ("DBS") providers, DirecTV and DISH Network, and, in some areas, from telephone companies ("telcos") like AT&T and Verizon that also offer video services, all of these distributors – collectively referred to as multichannel video programming distributors ("MVPDs") – offer fairly similar products and pricing. Most notably, all of these MVPDs sell

content to consumers primarily through large and costly video bundles that include hundreds of channels of programming that many customers neither desire nor watch.

3. In order for an OVD to successfully compete with the traditional MVPDs, it needs both the ability to reach consumers over the Internet and the ability to obtain programming from content providers that consumers will want to watch. Importantly, incumbent cable companies often can exert significant influence over one or both of these essential ingredients to an OVD's success, because they provide broadband connectivity that OVDs need to reach consumers and are also a critical distribution channel for the same video programmers that supply OVDs with video content. To the extent a transaction, such as the one at issue here, enhances an MVPD's ability or incentive to restrain OVDs' access to either of these critical inputs, and thus to prevent OVDs from becoming a meaningful new competitive option, consumers lose.

4. MVPDs have responded to the emergence of OVDs in various ways. Many MVPDs have sought to keep their customers from migrating some or all of their viewing to OVDs by taking steps to make their services more attractive to consumers, for example, by allowing their subscribers to receive programming over the Internet through websites or apps and providing expanded video-on-demand offerings. But some MVPDs have sought to restrain nascent OVD competition directly by exercising their leverage over video programmers to restrict the programmers' ability to license content to OVDs. To this end, some MVPDs have sought so-called Alternative Distribution Means ("ADM") clauses in their programming contracts that prohibit programmers from distributing content online, or have placed significant restrictions on online distribution. No MVPD has sought and obtained these restrictive ADMs as frequently, or as successfully, as TWC.

5. The combination of TWC with Charter and BHN will result in a larger MVPD with a greater ability and incentive to secure restrictions on programmers that limit or foreclose OVD access to important content. The Defendants, along with other MVPDs and OVDs, compete with one another as buyers of video content and serve as alternative distribution channels for national video programmers to build viewership scale. Since New Charter would have nearly 60 percent more subscribers than TWC standing alone, the merger will make New Charter a more vital distribution channel for these video programmers than each of the Defendants individually. Hence, as a result of the merger, New Charter will have greater bargaining leverage to insist that video programmers limit their distribution to OVDs.

6. In addition, with its much larger subscriber base, New Charter would gain significant additional benefits from impeding OVD competition. Today, Charter, TWC, and BHN each only act to protect its own MVPD profits. After the merger, however, New Charter would act to protect the much larger combined video revenues of all three Defendants. That is, while prior to the merger TWC has an incentive to obtain restrictive contract clauses to protect its $10.4 billion in video revenues, New Charter would have a much larger incentive to protect the Defendants' over $16 billion in aggregated video revenues.

7. With more to gain from imposing ADMs and other contractual restrictions and with greater bargaining leverage with programmers to insist on such provisions, New Charter will be well-positioned to restrain continued OVD growth by limiting or foreclosing OVD access to the video content that is vital to their competitiveness. Accordingly, the proposed combination of Charter, TWC, and BHN is likely to substantially lessen competition in the provision of video programming distribution in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. JURISDICTION AND VENUE

8. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Charter, TWC, and BHN from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants Charter, TWC, and BHN all provide video distribution services to programmers in the flow of interstate commerce, distributing video programming to millions of consumers in numerous states within the United States. Accordingly, Defendants' activities substantially affect interstate commerce. The Court has subject matter jurisdiction over this action and these Defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Defendants have consented to personal jurisdiction and venue in the District of Columbia for the purposes of this action.

III. THE PARTIES AND THE PROPOSED TRANSACTION

11. Defendant Charter is a Delaware corporation with headquarters in Stamford, Connecticut. With over 4.2 million video subscribers across 28 states, Charter is the third-largest cable company in the United States (behind Comcast and TWC) and the sixth-largest MVPD in the nation. In 2014, Charter reported total revenues of around $9.1 billion. Nearly 49% of those revenues, around $4.4 billion, were derived from Charter's video business.

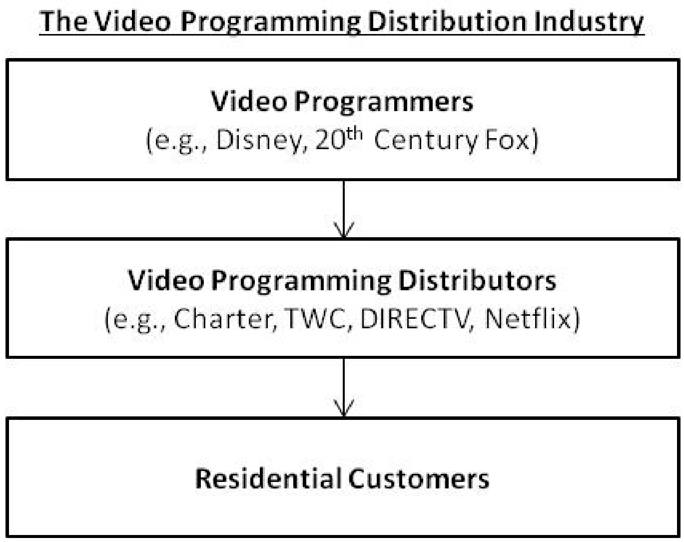
12. Defendant TWC is a New York corporation with headquarters in New York, New York. With over 10.8 million video subscribers across 30 states, TWC is the second-largest cable company in the United States (behind only Comcast), and the fourth-largest MVPD in the country. In 2014, TWC reported total revenues of approximately $22.8 billion. Around 45% of those revenues, or about $10.4 billion, were derived from TWC's video business.

13. Defendant Advance/Newhouse is a New York partnership with headquarters in East Syracuse, New York, and the sole owner of Defendant BHN, a Delaware limited liability company headquartered in East Syracuse, New York. BHN is the sixth-largest cable company in the United States and the ninth-largest MVPD. BHN owns cable systems serving around 2 million video customers across six states. In 2014, BHN generated total revenues of around $3.7 billion, approximately $1.5 billion of which were derived from its video business.

14. On May 23, 2015, Charter, TWC, and Advance/Newhouse entered into a series of agreements that would combine Charter, TWC, and BHN into a single company, New Charter. Pursuant to these agreements, (1) Charter and TWC would merge in a transaction valued at over $78 billion; and (2) Charter would acquire BHN from Advance/Newhouse in a transaction valued at $10.4 billion. The combined entity would have nearly 17.4 million video subscribers across 41 states, making it the second-largest cable company and third-largest MVPD, accounting for nearly 18% of all MVPD subscribers in the United States.

IV. THE VIDEO PROGRAMMING DISTRIBUTION INDUSTRY

15. There are two distinct levels to the video programming distribution industry. At the “upstream” level, video programmers license their content to video programming distributors – both OVDs and traditional MVPDs including Charter, TWC, and BHN. At the “downstream” level, the video programming distributors then sell subscriptions to various packages of that content and deliver the content to residential customers.



16. Video programmers produce themselves, or acquire from other copyright holders, a collection of professional, full-length programs and movies. These video programmers then typically aggregate this content into branded networks (*e.g.*, NBC, ESPN, or The History Channel) to create a 24-hour-per-day television service that is attractive to consumers. Many of the largest video programmers control the rights to multiple networks. Except for networks of purely local or regional interest, the video programmers will contract with video programming distributors across the country to distribute the content to consumers.

17. In order to acquire the rights to distribute each network, video programming distributors pay the video programmer a license fee. Generally, MVPDs and OVDs pay the video programmer a monthly per-subscriber fee. These license fees are an important revenue stream for video programmers. Most of the remainder of their revenues comes from fees for advertisements placed on their networks.

18. Video programmers rely on video programming distributors to reach consumers. Unless a video programmer obtains carriage in the packages of video programming distributors that reach a sufficient number of consumers, the programmers will be unable to earn enough revenue in licensing or to attract enough advertising revenue to generate a return on their

investments in content. For this reason, video programmers prefer to have as many video programming distributors as possible carry their networks, and particularly seek out the largest MVPDs that reach the most customers. If the programmer is unable to agree on acceptable terms with a particular distributor, the programmer's content will not be available to that distributor's customers. This potential consequence gives the largest MVPDs significant bargaining leverage in their negotiations with programmers.

V. RELEVANT MARKET

19. The timely distribution of professional, full-length video programming to residential customers ("video programming distribution") constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18. Both MVPDs and OVDs are participants in this market.

20. Video programming distribution is characterized by the aggregation and delivery of professionally produced content. This content includes scripted and unscripted television shows, live programming, sports, news, and movies licensed from a mixture of broadcast and cable networks, as well as from movie studios. Video programming can be viewed immediately by consumers, whether on demand or as scheduled.

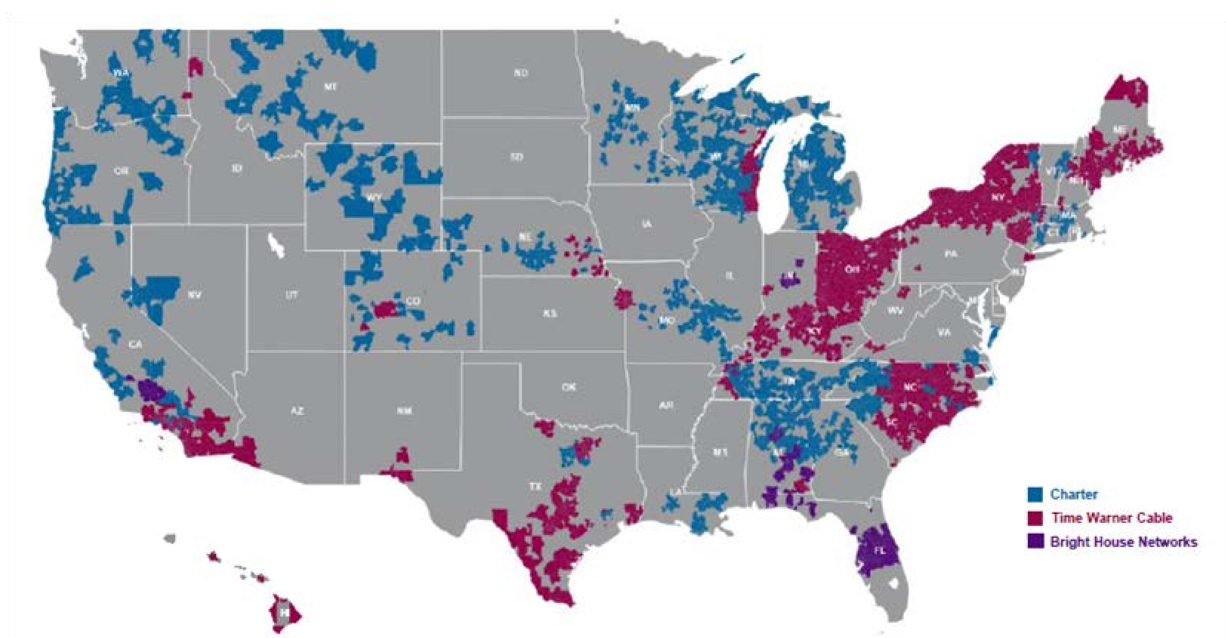
21. Consumers purchase video programming distribution services from among those distributors that can offer such services directly to their home. The DBS operators, DirecTV and DISH, can reach almost any customer in the continental United States who has an unobstructed line of sight to their satellites. OVDs are available to any consumer with Internet service sufficient to deliver video of an acceptable quality. In contrast, wireline-based distributors such as cable companies and telcos generally must obtain a franchise from local, municipal, or state authorities in order to construct and operate a wireline network in a specific area, and then build

lines to homes in that area. A consumer cannot purchase video programming distribution services from a wireline distributor operating outside its franchise area because the distributor does not have the facilities to reach the consumer's home. Thus, although the set of video programming distributors able to offer service to individual consumers' residences is generally the same within each local community, the set can differ from one local community to another.

22. Each local community whose residents face the same competitive choices in video programming distribution comprises a local geographic market and section of the country under Section 7 of the Clayton Act, 15 U.S.C. § 18. A hypothetical monopolist of video programming distribution in any of these geographic areas could profitably raise prices by a small but significant, non-transitory amount.

23. The specific geographic markets relevant to this action are the numerous local markets throughout the United States shown in the map below where either Charter, TWC, or BHN is the incumbent cable operator.

Figure 1: Service Areas of Charter, TWC, and BHN



In order to protect its profits in these geographic markets, which cover around 48 million U.S. television households across 41 states, New Charter will have an incentive to prevent rival OVDs from obtaining, or to raise the costs of those rivals obtaining, programming for their services. Because these OVD competitors also serve homes outside New Charter's service areas, however, other local markets may be affected, with the anticompetitive effects of the transaction likely extending to the whole nation.

VI. MARKET CONCENTRATION

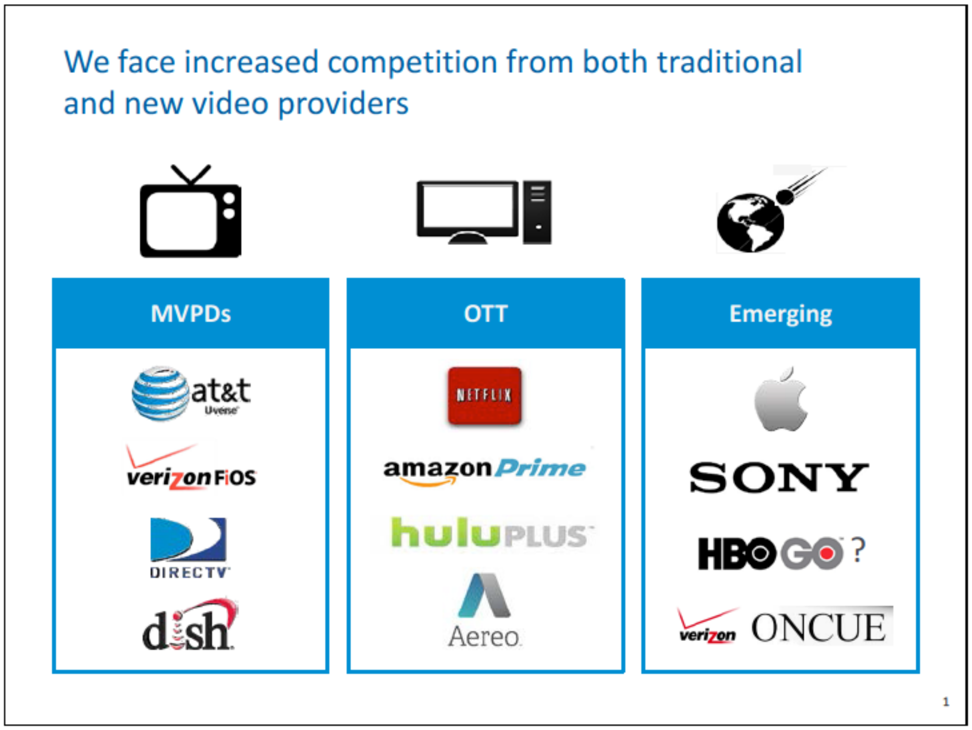
24. The incumbent cable companies typically have the highest share of subscribers within their respective service areas, often above 50 percent. The DBS providers, DirecTV and DISH, account for approximately one-third of the video programming distribution subscribers nationwide, although their shares vary by local market. The telcos, AT&T and Verizon, account for over 10 percent of video programming distribution nationwide and have successfully achieved penetration of up to 40 percent in some areas, but their video services remain limited to certain local markets and are unavailable to most American homes. In a handful of areas, other providers called "overbuilders" have constructed an additional wireline network to residential consumers, offering another competitive option for video and broadband service. But these overbuilders, including companies like RCN and Google Fiber, are available in very few communities, serving less than two percent of U.S. television households nationwide.

25. Although OVDs have acquired a significant number of customers over the last several years, they account for only five percent of total video programming distribution revenues. Nevertheless, established distributors such as Charter, TWC, and BHN view OVDs as a growing competitive threat and have taken steps to respond to OVD entry.

VII. ANTICOMPETITIVE EFFECTS

26. Charter, TWC, and BHN compete with DBS, overbuilder, and telco providers by upgrading their existing services, offering promotions and other price discounts, and introducing new product offerings. Consumers benefit from this competition by receiving better quality services, lower prices, and more programming choices. Competition between the incumbent cable companies and these alternative video providers has also fostered innovation, including the development of digital transmission, HD, and 4K programming, and the introduction of DVRs, video-on-demand, and ways to view content on other devices or away from home.

27. The continued development and expansion of OVDs could unlock additional competitive benefits. Today, many consumers purchase OVD services as a supplement to a traditional MVPD subscription. But in light of expanding OVD options, some consumers are switching from larger, more expensive MVPD bundles to slimmer and cheaper bundles. A small number of consumers are even "cutting the cord" – cancelling their MVPD subscription altogether and relying solely on one or more OVDs to receive content. And many younger consumers are emerging as "cord nevers" that do not seek out an MVPD subscription in the first place. Large cable companies such as Charter and TWC, which rely on their video businesses to deliver significant profit margins, have observed these developments with growing concern. In numerous internal documents, Defendants show a keen awareness of the competitive threat that OVDs pose. In fact, a TWC board presentation from February 2014 illustrated the threat posed by such emerging online competitors as a meteor speeding toward earth:



28. Because of the threat OVDs pose to their video business, some MVPDs have an incentive to engage in tactics that would diminish OVDs' ability to compete. TWC, in particular, has recognized that it can use its contracts with video programmers to try and foreclose OVD competitors from access to valuable content. TWC has been the most aggressive MVPD in the industry in seeking and obtaining restrictive contract provisions in its agreements with programmers that limit the programmer's ability to license programming to OVDs. Specifically, TWC has used the leverage that comes from its status as an important distribution channel for many video programmers to secure ADM provisions that either prevent the programmer from distributing its content online, or place certain restrictions on such online distribution. For example, some of TWC's ADMs prohibit any online distribution for a certain period of time; others prevent the programmers from distributing their content through OVDs that do not meet specific criteria that can be difficult for OVDs to satisfy (*e.g.*, requiring the OVD to include a minimum number of programming networks in its service).

29. Although they offer service to residential customers in different local areas, each of the Defendants serves as an alternative distribution channel for nationwide video programmers to deliver their content to consumers and to build national viewership scale. Video programmers rely on traditional MVPDs to provide licensing fees and to build a large viewership base that is attractive to advertisers. Post-merger, New Charter will become one of the largest MVPDs in the country and will serve as a critical distributor for video programmers, offering access to over 17 million customers spread across 41 states. As a result, New Charter will have more leverage to demand that video programmers agree to forego or limit the licensing of programming to OVDs.

30. In addition, New Charter will have greater incentive to engage in conduct designed to make OVDs less competitive because the merged firm will be significantly larger than any of the Defendants individually. Because New Charter will have far more subscribers, it will also stand to lose more profits as OVDs continue to take business from traditional video distributors. Today, any conduct that Charter engages in to harm OVDs would only benefit Charter within its own service territory. After the merger, New Charter will internalize the combined benefits to Charter, TWC, and BHN of harming OVDs and therefore will have a greater incentive to do so, and will be willing to offer more consideration to video programmers to obtain licensing restrictions.

31. Restrictions imposed on video programmers by New Charter will likely make it more difficult for OVDs to obtain important content from programmers in the future. In order to comply with New Charter's restrictions, video programmers may have to effectively cease providing certain programming to an OVD altogether, or may be obligated to impose burdensome conditions on an OVD (such as the requirement to include a minimum number of programming networks in the service). Such actions could negatively affect OVDs' business

models and undermine their ability to provide robust video offerings that compete with the offerings of traditional MVPDs. By limiting OVDs' access to content that is important to their customers, the competitiveness of OVDs will likely be diminished and consumers will likely receive lower-quality services and fewer choices.

VIII. ENTRY

32. Entry or expansion of traditional video programming distributors will not be timely, likely, or sufficient to reverse the competitive harm that would likely result from the proposed merger of Charter, TWC, and BHN. Entry and expansion in the traditional video programming distribution business is difficult and time-consuming because it requires an enormous upfront investment to create distribution infrastructure such as building out wireline facilities or launching satellites. Entry or expansion into a new geographic area also typically requires approval from one or more regulatory bodies.

33. OVDs are less likely to enter or expand to develop into significant competitors if denied access to popular content as a result of the proposed transaction.

IX. VIOLATION ALLEGED

34. The United States hereby incorporates paragraphs 1 through 33.

35. Defendants' proposed combination of Charter, TWC, and BHN would likely substantially lessen competition in the numerous geographic markets for video programming distribution identified above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

36. Unless enjoined, the proposed transactions between Charter, TWC, and Advance/Newhouse would likely have the following anticompetitive effects, among others:

a. competition in the development, provision, and sale of video programming distribution services in each of the relevant geographic markets will likely be substantially lessened;

b. prices for video programming distribution services will likely increase to levels above those that would prevail absent the proposed transactions; and

c. innovation and quality of video programming distribution services will likely decrease to levels below those that would prevail absent the proposed transactions.

X. REQUESTED RELIEF

37. Plaintiff United States requests that this Court:

a. adjudge and decree that the proposed transactions violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. preliminarily and permanently enjoin the Defendants from carrying out the proposed transactions, or from entering into or carrying out any other agreement, understanding, or plan that would have the effect of bringing the video distribution businesses of Charter, TWC, and BHN under common ownership or control;

c. award the United States its costs in this action; and

d. award the United States such other and further relief as may be just and proper.

Dated: April 25 , 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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