Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Docket Established For Monitoring	)	WC Docket No. 16-197
Compliance With The Conditions Imposed In	)	
The Charter Communications-Time Warner	)	
Cable-Bright House Networks Order	)	
	)	

REPLY COMMENTS OF FREE PRESS

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EXECUTIVE SUMMARY

The COVID-19 pandemic has made it abundantly clear that unlimited home broadband connections are a necessary utility service. The evidence from April through June, when most ISPs suspended their caps, demonstrates that ISP data caps and overage fees are completely unnecessary abuses of market power. All networks performed well while their operators continued to earn high profit margins, as usage skyrocketed.

Against this backdrop, Charter is asking the Commission to let the company out of the commitments it made in 2016, to (1) not impose data caps and overage fees, and (2) not abuse its terminating access monopoly power, by instead continuing to accept settlement-free the traffic destined for its internet customers. It is not surprising that Charter would seek to escape the promises it made to win Commission approval for its acquisitions of Time Warner Cable ("TWC") and Bright House Networks.[1] Charter, because of its position as the dominant broadband provider for a significant portion of the United States, possesses tremendous market power; as a rational economic actor in an uncompetitive utility market, it wants to exercise that power to increase its already high profits.

But whether or not early removal of the conditions Charter agreed to is in Charter's own interest is not the standard that governs the Commission's actions. The Communications Act requires that this decision be unquestionably in the public internet. Charter failed to meet its burden to demonstrate that removal of these particular merger conditions would be in the public interest. Therefore the Commission must reject Charter's petition.

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[1] *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, Memorandum Opinion and Order, 31 FCC Rcd 6327 (2016) ("*Charter TWC MO&O*").

As Free Press documents in these reply comments, the market forces that necessitated these merger conditions have not improved since 2016. Charter's dominance over the local broadband internet access market and the national market for online video distribution actually has increased in the interim. Charter and Comcast together dominate the national broadband market and the market for home video delivery. Together they serve more than half of all home internet subscribers, and nearly two-thirds that receive services meeting the Commission's definition of "advanced telecommunications." Charter and Comcast offer service to more than 72 percent of households that are located in a Census block where such advanced telecommunications services are deployed, and are the only available option for nearly one quarter of these homes. Though the Commission in its 2016 decision hoped that new ISPs would emerge to challenge this national cable duopoly and the local cable/telephone company ISP duopoly, that did not happen. Though the online video market has grown substantially since 2016, this is in part <u>because</u> of the merger conditions, not in spite of them. Charter and other ISPs have even more incentive now to exercise their market power, as the increased demand for online video means ISPs stand to profit even more through the imposition of caps, fees and other discriminatory practices. Therefore the need for these conditions has only increased since 2016.

Charter's petition contains no actual arguments or evidence that <u>any</u> consumers have been harmed by these merger conditions, or that their removal would benefit a single internet subscriber. As we document herein, Charter's network quality and value are superior to other Cable ISPs that already impose data caps and interconnection fees. Charter's network performance also exceeds that of most other ISPs, and continues to do so even as data usage increases, and as customers' usage at uncapped ISPs exceeds usage for capped providers.

The merger conditions did not hinder Charter's ability to offer an industry-leading broadband service, and it did not need to sacrifice operational growth or profitability to ensure its customers could use their unlimited connections. Charter's internet business grew at a faster rate than its similarly-situated peers. Since the merger, Charter's number of residential subscribers grew by 25 percent compared to 21 percent for Comcast. During this time Charter was able to convert potential new customers at a better rate than Comcast in most quarters. Charter's stock price is up nearly 150 percent since the closing in 2016, while Comcast's increased 45 percent. The conditions have not impacted profitability either. Charter's net income margin exceeded Altice's in 13 of the 16 quarters since Charter completed the merger.

And while discussions of capital investments in the broadband industry are often overtly political and free of necessary context, the fact is that Charter is investing more of its money back in its network. Since closing this merger, Charter has invested $32 billion in cable capital expenditures while Comcast invested $29.5 billion. Since the merger Charter's average quarterly capital intensity (cable capital investments as a percentage of cable service revenues) is 18.4 percent, compared to Comcast's lower relative investment level of 13.3 percent.

In sum, Charter failed to demonstrate that removing these commitments two years early would be in the public interest. It is now more clear than ever that internet users need open, uncapped and unmetered connections to participate in the economy and society. Charter has demonstrated that offering unfettered access is good for its customers and its own business. But Charter has increased its market power and retains strong incentives to harm the public interest by abusing that market power in ways the merger conditions prevent. The Commission must protect the public interest and reject Charter's petition.

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I. Charter Has Failed to Demonstrate that Removal of the Merger Conditions, Which Prohibit It From Imposing Data Limitations and Overage Fees and From Exercising its Terminating Access Monopoly Powers, Would Be in the Public Interest.

When the Commission approved Charter's acquisition of TWC's cable systems and customers, it found after an exhaustive review "that the transaction as proposed would likely cause public interest harms."[2] The Commission noted that the transaction "may also produce modest public interest benefits," but it concluded that "the potential benefits are insufficiently large, specific, and imminent to outweigh all likely potential harms."[3]

To address those harms, the Commission adopted conditions. Included among those was the condition that "for seven years, we prohibit New Charter from imposing data caps or charging usage-based pricing for its residential broadband service. This condition ensures that New Charter will continue Charter's past pricing practices and protects subscribers from paying fees designed to make online video consumption more expensive leading subscribers to stick with a traditional pay-TV bundle."[4] Also among the conditions was the requirement that Charter offer settlement-free interconnection for a period of seven years, in order "to prevent New Charter from raising prices on companies that deliver Internet traffic—including online video traffic—requested by its broadband subscribers."[5] Nowhere in the lengthy *Charter TWC MO&O* order itself did the Commission even mention the possibility of shortening the terms of these already-too short conditions. Not until the very last paragraph of the first appendix to the order

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[2] *Charter TWC MO&O* ¶ 454 (emphases added).

[3] *Id.*

[4] *Id.* ¶ 9 (emphasis added).

[5] *Id.*

did the Commission note that Charter could "nine (9) months prior to the fifth anniversary of the Closing Date," ask the agency to "seek public comment on whether the Company has demonstrated that those Conditions are no longer in the public interest."[6]

The chance of lifting these critical protections early would come as an unwelcome surprise to most Charter customers, paving the way for the cable giant to impose more fees on them directly and indirectly. Yet if the Commission adheres to the merger review standard in the Communications Act and its own merger approval order for this transaction, those customers should have nothing to fear: Charter has not demonstrated that the data cap and interconnection conditions are no longer in the public interest. In fact, Charter did not even try to make a public interest case. Its entire argument is based on the observation that the online video distribution ("OVD") market is growing, and the claim that because of that growth, these two critical conditions that have enabled it to happen should go away.[7] This argument ignores the fact that the merger made Charter the second largest cable Multiple Systems Operator ("MSO") in the country. It likewise ignores the fact that an important reason the OVD marketplace is where it is today is because of these very conditions, which required Charter to agree that it would operate with a pro-OVD approach—one that benefited its own customers as well as customers of other ISPs inside and outside of Charter's service territory.

Critical to the Commission's review of the Petition's request is the impact that granting it would have on the public interest, not just some observations about an abstract "marketplace." What will be the impact on Charter's own customers, or the customers of Charter's duopoly

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[6] *Id.*, App. B at 232.

[7] Petition of Charter Communications, Inc., WC Docket No. 16-197 (filed June 18, 2020) ("Petition").

home internet competitors, if the Commission gives Charter the green light to impose unnecessary limits and fees? Charter barely mentions these impacts on people in its Petition. On the question of allowing it to impose data caps and fees, Charter's argument is that the condition restricting this practice "artificially hamstrings Charter's ability to allocate the costs of maintaining its network in a way that is efficient and fair for all of its customers—above-average, average, and light users alike."[8] Pronouncements on these vague notions of fairness and efficiency may sound like good cover to Charter's executives. Yet the quantifiable reality is that Charter currently offers and delivers (in what is demonstrably an ineffectively competitive market) one of the highest-quality and most affordable home broadband internet access services in the nation, a fact it constantly touts in its ads.[9] As we demonstrate in these reply comments, during the period that these conditions have been in effect:

- Charter's network performance exceeds that of other similarly-situated ISPs.
- Charter's advertised prices are lower than those of similarly-situated ISPs.
- Charter's offerings are of far higher value (price per Mbps) than those of similarly-situated ISPs.
- Charter's internet revenue growth has mirrored that of other similarly-situated ISPs, but its Average Revenues per User ("ARPU") are lower than those of similarly-situated ISPs.
- Charter was (and is still) able to deliver to its customers this high-quality uncapped internet service during a time when average data use is increasing at a rapid pace, and during a time when the proportion of customers using more than 1 terabyte of monthly data exceeded 10 percent.[10]

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[8] *Id.* at 23.

[9] Charter's ads routinely mention its performance in the Commission's Measuring Broadband in America studies. This empirical research demonstrated that Charter's service delivers on its advertised speeds more consistently than do other top ISPs. See discussion *infra*.

[10] According to a recent study by OpenVault, total home internet data usage increased 47 percent during the first quarter of 2020 compared to the first quarter 2019, with the average household using 402.5 gigabytes per month. This average increased to 440 gigabytes in April. OpenVault

As we discuss herein, Charter's customers—when compared to customers of other ISPs—are receiving higher quality services at lower prices, and appear to be making good use of these services without fear of hitting a data cap and getting a surprise bill. Charter has failed to demonstrate any ongoing harm to any segment of customers ("above-average, average, and light users"); and it certainly hasn't indicated that removal of the conditions would lead to price reductions for any customer. But implicit in Charter's argument is that the conditions somehow make the company financially worse off than its peers; and that but for these conditions, Charter would generate additional profits that then, somehow, the magic of this duopoly market for high-speed home internet service would force it to invest, all to make Charter's operations more "efficient and fair." This is of course a ridiculous notion belied by the facts: Charter already operates in a manner far more "fair" for internet customers than are the capped plans of Charter's rival ISPs. Charter delivers a higher quality, higher speed service at lower prices, without limitations and surprise usage penalties. But the company isn't putting itself into financial distress to do so:

- Charter's stock price is up 148 percent since the closing of the TWC transaction in 2016. During this time, Comcast's stock price increased 45 percent.
- Altice, the second largest publicly-traded, "pure-play" MSO in the United States, saw its stock price decline 23 percent since its 2017 incorporation. But during that same time period, Charter (the nation's largest pure-play MSO) saw its share price increase 69 percent.[11]

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also found that 10 percent of subscribers used more than 1 terabyte of monthly data during the first quarter of 2020, a sharp increase from the 4 percent of users exceeding this threshold in first quarter 2019. Notably, subscribers on uncapped plans on average used 7 percent more than those on metered plans. *See* "Broadband Insights Report Q1 2020," OpenVault (May 2020) ("*OpenVault Report*").

[11] As discussed further in Part III.B below, we compare Charter's operational metrics to Comcast's when and where it is possible to do so fairly, because both are far larger than other

- Charter's profit margins have consistently exceeded Altice's too. Charter's net income margin exceeded Altice's in 13 of the 16 quarters since Charter closed on its TWC purchase.

Indeed, the conditions may have incentivized Charter to invest more in its network instead of imposing unnecessary limitations—contrary to the glib and meritless claims made by a few initial commenters[12] to suggest that removing the conditions would, magically, spur more investment.

- Charter is investing <u>more</u> of its money back in its network.
    - Since the closing of the TWC merger, Charter has invested $32 billion in cable capital expenditures. During this time, Comcast's cable capital expenditures totaled $29.5 billion.
    - Charter's average quarterly capital intensity (cable capital investments as a percentage of cable service revenues) since the merger is 18.4 percent, compared to Comcast's lower 13.3 percent.

These facts, discussed more fully below, demonstrate that Charter has failed to meet its burden of showing removal of the data cap and interconnection conditions would benefit the public interest. Charter's customers have benefited and continue to benefit from the conditions. And customers of competing ISPs have benefited indirectly. The market remains a duopoly. Yet Charter's commitment not to impose data caps, and its commitment not to impose artificial slow downs of video with interconnection dispute brinkmanship, had and continue to have tremendous benefits. They have incentivized Charter to compete on quality and price. Its advertisements tout Charter's lack of data caps, and emphasize its ability to deliver high-quality online video content

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MSOs and far larger than other ISPs. But because Comcast is vertically integrated and operates a number of non-MSO businesses, we also compare Charter's financial performance to Altice USA's, since Altice is publicly traded, pure-play MSO closest in size to Charter.

[12] *See, e.g.*, Comments of Progressive Policy Institute, WC Docket No. 16-197 (filed July 22, 2020), wherein filers ignore the actual history of Charter's investment under these conditions as well as any other specific evidentiary justification and base their support for the Petition on a painfully generalized "central belief that a lighter touch on regulation will lead to increased investment."

to its ISP customers. This marketplace positioning acts to discipline the legacy local exchange carrier ("LEC") competitors typically making up the other half of these local duopoly markets, and discourages them from imposing even more harmful conditions on their customers.

These are the facts of what has been; but critical to the Commission's analysis here is what is likely to happen if the conditions are removed, using the same analytical approach applied in the 2016 review. As we demonstrate exhaustively herein, the marketplace realities that necessitated the Commission's adoption of these merger conditions when it allowed the formation of a nationwide Cable duopoly have not changed in any way that would indicate the conditions are no longer in the public interest. Indeed, Charter's dominance and market power has grown since 2016. None of the wholly new broadband competition for which the Commission naively hoped has emerged. And duopolies are never pro-consumer. The majority of households in Charter's footprint have a choice between Charter and a much-slower, capped xDSL service from a legacy LEC ISP. What's more, for households in Charter's footprint lucky enough to have a fiber LEC alternative, the majority of those are served by a fiber-to-the-home ("FTTH") ISP that imposes data caps and overage fees.

The Commission's merger review standard requires merger approval to be in the public interest. This merger was approved, but only based on Charter's agreement to abide by these conditions. Removal of these conditions will <u>not</u> serve the public interest. At best, Charter once "freed" from the conditions would continue to abide by them for the remaining two years, but that outcome is unlikely given the findings of the *Charter TWC MO&O* approving the merger and the current realities of the cable-dominated broadband duopoly. A more likely outcome is that Charter would join most other ISPs and impose data caps and overage fees, as well as exercise its terminating access monopoly power over the interconnecting backhaul ISPs and CDN operators that deliver to Charter the content requested by Charter customers. And it is likely that the removal of this last line of nondiscrimination protections would set off a series of deals for vertical content partnerships: one ISP might offers “free” online content from one OVD, but of course it’s only “free” for people already paying handsomely for that ISP’s internet service; while a second ISP would offer for “free” (to its paying broadband customers) the vertically integrated streaming services that this second ISP itself owns. But each ISP would penalize other OVD services that don’t strike such partnership deals, and the viewers of those competing OVD services would pay the price.

Lastly, even if Charter were to apply its new data caps in a non-discriminatory manner that did not favor particular OVD services or the ISPs’ own pay-TV offerings, this would still result in a net negative for the public interest. If even one single Charter customer is impacted by caps and overage fees (directly or indirectly), that is a worse outcome for the public interest than the status quo. Initially it is likely that Charter would impose the same caps and fees that are common amongst other ISPs, and that are already ensnaring a growing share of customers.[13]

In the midst of a pandemic that shows no sign of ending, one that may have altered how we work and learn for the foreseeable future, the Commission and Chairman Pai had to plead

[13] As customers become more comfortable with substituting (and in some instances, replacing) traditional multichannel video with online content, caps that were once viewed as “generous” are impacting more and more consumers. For example, two percent of Cox’s customers exceeded its 1 terabyte per month cap three years ago. Today, more than 10 percent of its customers would exceed this artificial and unnecessary limitation. *Compare* Mike Freeman, “Cox Communications to begin charging heavy Internet users who exceed monthly data caps,” *San Diego Union Tribune* (Sept. 26, 2017), *with* Jeff Baumgartner, “Cable One will boost data plans, but not scrap its cap,” *Light Reading* (June 25, 2020). *See also OpenVault Report*, *supra note 9*.

with the nation's ISPs to act in the public interest and suspend caps and overage fees. That the chairman had to do this is a perfect illustration of why letting Charter out of its commitments early is not in the public interest.[14]

II. The Market Conditions that Necessitated These Prohibitions on Data Caps and Terminating Access Monopoly Fees Have Not Improved Since 2016, as Charter Has Increased Its Dominance Over the Local Broadband Internet Access Market and the National Market for Online Video Distribution.

In its analysis of the Charter/TWC merger, the Commission noted that "the Applicants have failed to prove that BIAS [Broadband Internet Access Service] entry or expansion will likely occur in a timely or sufficient manner to counteract the transaction's competitive effects," and that "[b]ecause entry and expansion will not diminish New Charter's BIAS shares in the foreseeable future, subscribers will continue to have no (or limited) alternative cable or fiber BIAS options when faced with data caps and UBP [Usage-Based Pricing] designed to deter online video consumption."[15] The Commission then went on to (apparently, based on the redactions in the order) cite internal, highly confidential Charter documents that spoke to the company's potential plans for data caps and fees.

The Commission then agreed with Free Press and other commenters who noted that these underlying concerns wouldn't vanish after just a few years.[16] But the merger approval order nonetheless cast a hopeful eye towards the future, stating that a seven-year period could "provide

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[14] Despite recording massive internet subscriber gains and revenue growth in the midst of pandemic, and operating its network without issue while suspending its own cap policy, Comcast moved to immediately reinstate these limits and fees when its "Keep America Connected" pledge expired. So did many other ISPs, such as Cox. *See, e.g.,* Rob Pegoraro, "Data caps still alive as pledges from internet service providers expire," *USA Today* (July 1, 2020).

[15] *Charter TWC MO&O* ¶ 86.

[16] *Id.* at note 285.

the high-speed BIAS provider market sufficient time to develop further with additional investments in fiber from established wireline BIAS providers, Wireless 5G technology, use of smartgrid fiber for broadband, additional overbuilding, and other potential competitors to traditional wired BIAS providers."[17] While there have been some notable additional fiber investments from competitors in Charter's territory, much of this was from AT&T—a company that not only imposes data caps across all of its services, but does so in precisely the discriminatory manner that the Commission was concerned about in the merger approval order.[18] But nothing else on this wish-list of future local broadband competition materialized, and Charter's dominance in the local home internet market has only increased, as slow and capped xDSL services have become uncompetitive alternatives in the streaming video era.

Indeed, the increased customer demand for reliable streaming video and the increased number of hours (and bandwidth) customers use for streaming video today mean that Charter has even more incentive now to abuse its market power. It would do so in order to retain its position in the video delivery market, and to extract economic rents from the customers of OVDs (and from OVDs themselves, or their transit and CDN partners) due to Charter's control over the last mile. The share of customers subscribing to xDSL has only gone down since 2016, with a decrease only somewhat offset in certain areas by increased LEC fiber deployments. Fixed wireless, mobile wireless, and satellite services have not emerged as serious third-pipe competitors. And as we've moved into the streaming video era, the minimum transmission

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[17] *Id.* ¶ 86.

[18] *See e.g.*, Jon Brodkin, "AT&T exempts HBO Max from data caps but still limits your Netflix use," *Ars Technica* (June 2, 2020); Phillip Dampier, "AT&T Drops Data Caps for Free if You Subscribe to DirecTV Now," *Stop The Cap* (Dec. 19, 2018).

speeds required has increased, which in turn has increased Charter's and other MSOs' market power in areas where LECs still primarily rely on xDSL.

A. Charter and Comcast Dominate the National Broadband Market and the Market for Video Delivery.

Charter and Comcast control more than half of all U.S. residential fixed terrestrial internet connections (approximately 25 and 26 percent respectively).[19] Charter's national share of home broadband subscribers, after acquiring TWC and at the time of the merger's approval, was just 20 percent.[20] At 25 megabits per second ("Mbps") downstream and 3 Mbps upstream (the FCC's minimum speed threshold for what it considers"advanced telecommunications") we estimate that Charter and Comcast combined control nearly two-thirds of all such connections (between 30 and 32 percent for Charter, between 31 and 33 percent for Comcast).

Moreover, as AT&T rapidly abandons its DirecTV platform, Charter and Comcast are increasing their dominance over the traditional Multichannel Video Programming Distributor ("MVPD" market. And it's not just AT&T. As LECs generally abandon their multichannel efforts, Charter and Comcast grow in strength. These two giant MSOs, with their growing dominance in broadband and their legacy advantages in multichannel distribution, have substantial control over the entire U.S. video market and its future evolution. Indeed, Charter actually saw pay TV customer <u>growth</u> during the second quarter of 2020, a feat not seen in years at other MVPDs and one that came in the midst of historic unemployment.[21]

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[19] Free Press analysis of Media Census data from Kagan, a media research group within the TMT offering of S&P Global Market Intelligence.

[20] *Charter TWC MO&O* ¶ 113.

[21] Charter added a net of 102,000 video customers during the second quarter of 2020 compared to a loss of 70,000 in the first quarter of the year, a loss of 105,000 in the fourth quarter of 2019,

Charter's size, and its inability to impose either data caps or terminating access fees, is important to shaping outcomes in the U.S. OVD market and the OVD consumer experience. Charter is by far the largest ISP right now without data caps and overage fees, serving four times as many households as the next-closest unlimited data ISP. Charter serves 26.3 million residential subscribers (one-quarter of all internet households), while Verizon serves just 6.47 million "consumer" internet customers .

Figure 1: Top 10 U.S. Wired ISPs by Data Cap Policy

ISP	Share of U.S. Residential Wired Broadband Subscribers	Data Cap Policy
Comcast	26%	Data Caps/Fees
Charter	25%	No Data Caps/Fees
AT&T	14%	Data Caps/Fees
Verizon	6%	No Data Caps/Fees
Cox	5%	Data Caps/Fees
CenturyLink	5%	Data Caps/Fees
Altice	4%	No Data Caps/Fees
Frontier	3%	No Data Caps/Fees
Mediacom	1%	Data Caps/Fees
Windstream	1%	Data Caps/Fees

Source: Free Press analysis of S&P Global data; company SEC filings

Like most other MSOs, Charter has taken advantage of the low-upgrade costs of DOCSIS technology. Charter's entire network is fully upgraded to DOCSIS 3.1 (with fiber deployments too in just a small fraction of its service territory). Ubiquitous deployment of this most recent cable modem technology gives Charter the ability to offer unlimited internet access to its entire customer base, and that access enables high-quality video streaming and replacement of

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and a loss of 150,000 in the third quarter of 2019. Comcast lost a net 477,000 video customers during the second quarter of 2020.

Charter's traditional cable services with virtual MVPD (or "vMVPD") services—something Charter has emphasized in its advertisements. Charter offers its DOCSIS 3.1 service to one-third of all U.S. households (see Figure 2). And Charter's DOCSIS 3.1 service is available to more than 35 percent of all households that are located in Census blocks with at least one ISP offering 25 Mbps downstream service, while its share of the potential market increases at higher speed thresholds (see Figure 2).[22] Charter's ownership of the cable wire attached to more than one-third of U.S. households gives it the ability and incentive to harm consumers and the public interest through the use of discriminatory caps, fees, interconnection policies, and other means (such as those governed by the 2015 *Open Internet Order*, to which Charter also agreed to adhere).

[22] In other words, when we look at areas where any truly high speed service is available, Charter's dominance and potential market share only grows further. Charter offers 50 Mbps or higher downstream service in blocks containing 36 percent of all households that are located in blocks with one or more wired ISPs reporting deployment of 50 Mbps downstream service. Charter offers 100Mbps or higher downstream service in blocks containing 36.4 percent of all households that are located in blocks with one or more wired ISPs reporting deployment of 100 Mbps downstream service. And Charter offers 300 Mbps or higher downstream service in blocks containing 37.8 percent of all households that are located in blocks with one or more wired ISPs reporting deployment of 300 Mbps downstream service.

Figure 2:
Charter Deployment by Technology Type
(Percent of Households in Census Blocks by Type, June 30, 2019 Form 477)

Charter Technology	Percent of Households in Charter's Footprint	Percent of All U.S. Households	Percent of All U.S. Households in Blocks with Wired ISP	Percent of All U.S. Households in Blocks with Wired ISP at/above 25Mbps Downstream
Any	100%	33.2%	34.2%	35.4%
Fiber-to-the-Home	1%	0.3%	0.3%	0.3%
DOCSIS 2	0%	0.0%	0.0%	0.0%
DOCSIS 3.0	0%	0.0%	0.0%	0.0%
DOCSIS 3.1	100%	33.2%	34.2%	35.4%

Note: 99.6% of the households in Charter's FTTH blocks are in blocks where Charter also offers D3.1.

B. Charter is the Dominant ISP in its Service Territory.

As the Commission indicated in the merger approval order adopting these conditions, Charter's market power derives both from its national share as well as its local share. Charter's power to shape the future of the broadband, video and internet content markets is a function of its national scale; but Charter's ability to exercise this power comes from its dominance in local markets, and households' lack of competitive alternatives.

Charter's main national competitor is AT&T, which offers service to 50 percent of the households in Charter's footprint (see Figure 3). Charter's next-closest competitor is Frontier, which offers service to 17 percent of the households in Charter's footprint. The other two national LECs, Verizon and CenturyLink, offer services to 11 and 10 percent respectively of the households in Charter's service area. Other LECs serve 10 percent of the households in Charter's footprint, and nearly 4 percent of Charter households have no wired broadband alternative at all.

Figure 3:
Charter Deployment by Wired Competitor
(Percent of Households in Charter Census Blocks, June 30, 2019 Form 477)

Charter Wired Competitor	Percent of Charter's Total Household Coverage
AT&T	50.1%
Frontier	17.3%
Verizon	10.8%
CenturyLink	9.6%
Other	9.5%
No Wired Competitor	3.5%

Note: Some figures may not add up to 100% due to blocks where two LECs above report offering service.

Source: Free Press Analysis of FCC Form 477 Data as of June 30, 2019.

Charter remains the overwhelmingly dominant provider of truly high-speed broadband services capable of supporting vMVPD and OVD delivery in its local territories. For more than one-quarter of the households in its footprint, Charter is the only available option for a 25 Mbps service (see Figure 4).[23] At speeds above 100 Mbps, which may be required for larger households using multiple 4K video streams, nearly half the households in Charter's footprint have no alternative wired ISP.[24]

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[23] According to its most recent FCC Form 477 filing, Charter offers speeds above 300 Mbps to 99.6 percent of the households in its residential footprint.

[24] According to FCC Form 477 deployment data, Charter faces competition from two or more wired ISPs in 20 percent of the households in its Census block territory, but that drops to 14 percent for blocks with one or more wired ISPs offering 25 Mbps; to 12 percent for blocks with one or more wired ISPs offering 50 Mbps; 10 percent for blocks with one or more wired ISPs offering 100 Mbps; and 5 percent for blocks with one or more wired ISPs offering 300 Mbps. These data are unverified and may be overstated due to CLEC over-reporting. *See, e.g.*, Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 18-238 (filed Mar. 5, 2019).

Figure 4:
Charter Deployment by Presence of Wired Downstream Speed Competition
(Percent of Households in Charter Census Blocks, June 30, 2019 Form 477)

Available Wired Downstream Speed	Percent of Households In Charter's Footprint Where Charter is Only Wired ISP	Percent of Households In Charter's Footprint Where Charter Competes Against One or More Wired ISPs
Any Downstream Speed	3.5%	96.5%
>25 Mbps Downstream	25.7%	74.3%
>50 Mbps Downstream	33.6%	66.4%
>100 Mbps Downstream	42.3%	57.7%
>300 Mbps Downstream	64.2%	35.8%

Source: Free Press Analysis of FCC Form 477 Data as of June 30, 2019.

For nearly 60 percent of the households in Charter's footprint, high-speed internet choice is non-existent. More than 55 percent of the households in Charter's footprint have no available fiber competitor, and nearly four percent more have no wired internet choice but Charter at any speed. But even for those households in Charter's territory fortunate enough to have one or more high-speed choices, that choice is often limited to an ISP that already imposes data caps and overage fees. According to the most-recent Form 477 data, 41 percent of the households in Charter's footprint are passed by a FTTH ISP (see Figure 5). The largest of these FTTH competitors, AT&T, imposes caps on its fiber customers. While Verizon and Frontier do not currently impose caps on their FTTH customers, it is by no means clear that they will maintain their no-caps policy for their FTTH services once Charter's merger conditions are sunset. Verizon has already run a trial of the idea.[25]

[25] Abrar Al-Heeti, "Verizon plays with data caps in limited billing trial," *CNET*, May 17, 2018.

Figure 5:
Charter Deployment by Wired Competitor Technology Type
(Percent of Households in Charter Census Blocks, June 30, 2019 Form 477)

Competitor Technology	Percent of Charter's Total Household Coverage
Fiber-to-the-Home	41.4%
AT&T FTTH	16.0%
Verizon FTTH	6.2%
Frontier FTTH	8.2%
CenturyLink FTTH	1.0%
Other ISP FTTH	10.2%
Non-Fiber Competitor	55.1%
No Wired Competitor	3.5%

Note: Some figures may not add up to 100% due to blocks where two LECs above report offering FTTH.

Source: Free Press Analysis of FCC Form 477 Data as of June 30, 2019.

As noted in Figure 5, the majority of households in Charter's footprint have no available fiber competitor. This lack of fiber competition has a substantial impact on competition overall, and on the ability and incentive for Charter to exercise market power through the use of discriminatory caps and fees if it were permitted to do so. For most of Charter's customers and potential customers, there really is no viable alternative if they intend to use their broadband connection for an online video alternative to Charter's traditional cable TV services. According to Form 477 deployment data, the median maximum available downstream speed from other ISPs is 18 Mbps in Census blocks where Charter faces xDSL but no FTTH competition. This median increases to 25 Mbps if we weight by the number of households in a block. In other words, half of the households in blocks where Charter's various LEC competitors do not offer fiber-to-the-home service are unable to purchase from that LEC competitor what the FCC still defines as the minimum speed for "advanced telecommunications" broadband capability.

Charter's advantages illustrated by all of the deployment data above are helping it to gain outsized market share relative to its competitors. According to Free Press's analysis of S&P Global data, as of year-end 2019, Charter controlled 59 percent of the wired broadband subscribers in the ZIP codes where it offers service. (Demonstrating cable's general dominance, these same data indicate that Comcast's share is 57 percent of the wired subscribers in its footprint). But this subscriber data includes customers at all speeds, including those customers who do not prioritize the higher transmission speeds needed for online video. Given that Form 477 data shows Charter is the only wired ISP offering downstream speeds at or above 25 Mbps to 26 percent of the households in its Census block footprint, Charter's local share of the "advanced telecommunications-capable" market is certainly far higher than its overall 59 percent residential internet share. At 25 Mbps downstream and the higher transmission speeds that are increasingly required for households using broadband to carry their video services, Charter is an unchallenged monopolist in the majority of its service area, and an overwhelmingly dominant provider even where it faces competition.

III. Charter's Petition Failed to Demonstrate any Public Interest Benefits From Early Sunsetting of These Merger Conditions.

A. Charter's Network Quality and Value Are Superior to Other Cable ISPs That Already Do Impose Data Caps and Interconnection Fees.

A constant feature of Charter's television and radio advertisements is how much better its network performance is compared to other ISPs, "according to the FCC."[26] These commercials

[26] Free Press watched a number of Charter's Spectrum TV and internet ads archived at iSpot.tv. Many of the ads include the phrase "with faster speeds more consistently according to the FCC." These commercials also typically include actors proclaiming the lack of Spectrum data caps (*e.g.*, "And we don't have to worry about data caps anymore!"). Little do they know that Charter wants to flip the script now.

refer to the results of the Commission's Measuring Broadband in America Reports (also known as the "SamKnows" reports). The most recent such report (the "Ninth Report") found that "[c]ustomers of Charter, Comcast, Cox, Mediacom, Optimum, Frontier Fiber and Verizon Fiber (FiOS) experienced median download speeds that were very consistent; i.e., they provided greater than 90% of the advertised speed during peak usage period to more than 80% of panelists for more than 80% of the time."[27] The prior report ("Eighth Report") noted that "Optimum and Charter, which are cable-based companies, provided average download speeds over 92% and 93%, respectively, of advertised rates to 95% of their panelists."[28] Cox and Mediacom, also cable-based companies, provided median speeds of at least 55% and 59% of advertised speed to 95% of their panelists. Comcast's value in the Eighth Report was 67 percent. The just-released Ninth Report also shows Charter outperforming all other cable ISPs, with 95 percent of Charter's subscribers receiving average download speeds of 92.1 percent of advertised rates, compared to 82.2 percent for Comcast, 81.8 percent for Cox, 79.7 percent for Mediacom, and 69 percent for Altice. Charter's consistency of delivery also outperformed its primary xDSL competitor, AT&T, which saw 95 percent of its customers receiving average download speeds of just 69.8 percent of its advertised rates.[29]

Charter has maintained its lead atop the Commission's performance measurements despite imposing no caps, overage fees or terminating access fees, and despite the growth in

[27] See FCC, Office of Engineering and Technology, Ninth Measuring Broadband America Fixed Broadband Report, at 16 (Aug. 3, 2018) ("Ninth Report").

[28] See FCC, Office of Engineering and Technology, Eighth Measuring Broadband America Fixed Broadband Report, at 58 (Dec. 14, 2018).

[29] Ninth Report at 53.

online video use. This superior performance alone demonstrates the absurdity in the arguments that Charter would be able to better serve its customers if it could only jettison the merger conditions.[30]

But it should also be noted that even with this higher level of performance and quality, Charter's customers are not currently being forced to pay more than customers of other cable company ISPs. Indeed, Charter's <u>topline</u> prices are often better than other ISPs' prices, and don't come with the potential for surprise overage fees. In most of its markets, Charter's bottom tier offering is 200 Mbps downstream with no caps, no fees and a free modem, for $44.99 to $49.99 per month. Where Comcast even offers that speed, Comcast's 200 Mbps tier comes with a promotional price of $54.99 monthly.[31]

Though there is a need for lower-priced, lower-speed offerings too, Charter's baseline service does offer substantially more value than other ISPs do. Charter's 200 Mbps/$45 offering

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[30] *See, e.g.*, Comments of Information Technology & Innovation Foundation, WC Docket No. 16-197, at 2 (filed July 22, 2020). ITIF admits that usage-based pricing does not serve as a useful tool for managing network congestion, but still suggests that using "[c]aps and usage-based pricing, when implemented appropriately, is simply a fairer, and often more socially progressive, way to price the use of network resources," going so far as to argue that "[t]his kind of price discrimination could help reduce the digital divide by enabling lower income users to pay less for Internet access than they would in the absence of these tools." The implication is that usage-based pricing schemes would allow lower-income users to reduce their network usage in order to keep their bills lower. Besides subjecting lower-income users to an inequitable burden that would discourage innovative and beneficial broadband usage, this hypothetical scenario is belied by the facts. As discussed extensively below, while lower-priced plans would be helpful too across the market, Charter presently offers lower prices and better value propositions than many of its competitors—including those that currently employ data caps and usage-based pricing.

[31] Free Press analysis of First-half 2020 Multichannel Internet pricing data from Kagan, a media research group within the TMT offering of S&P Global Market Intelligence. Comcast's prices have substantial variation across its markets, even when the analysis is limited to just its promotional pricing.

equates to $0.23 per Mbps. Comcast's 100 Mbps "Performance" tier is priced in several markets at $40 monthly, or $0.40 per Mbps. Other cable ISPs offer a far higher price and worse value proposition. Cable One's 100 Mbps tier comes with a promotional price of $45 monthly, with a very low monthly cap of 300 gigabytes ("GB").

Charter's prices and value proposition are also comparable to or better than those of its few FTTH competitors. AT&T's 300 Mbps tier in the Dallas, Texas market comes with a promotional rate of $50 per month, but charges a $10 overage fee for each 50 GB used above the 1 terabyte cap. Verizon's 300 Mbps FiOS offering has no data caps, but its promotional rate is $60 per month and subscribers are forced to rent Verizon's router for an additional $15 per month (or they have the option to purchase it for $200). Similarly, Frontier's FiOS promotional offering in some of its markets is $40 per month for 500 Mbps, but it requires an additional $15 per month in equipment and "broadband service" fees.

In sum, Charter's customers currently enjoy a higher quality internet experience at a lower price and higher value than customers of other cable ISPs and of its LEC competitors. Charter customers are free to replace traditional cable TV services with over-the-top alternatives, and they can do so without worrying about overage fees. There is simply no evidence that the conditions have made things worse for <u>any</u> of Charter's customers. Indeed, they seem to fare better than customers of other ISPs, which demonstrates that the Commission's merger conditions designed to incentivize abundance and discourage scarcity are working as intended.

B. The Merger Conditions Have Not Hindered Charter's Operational Growth. Its Internet Business Grew at a Faster Rate Than the Business of Its Similarly-Situated Peers Not Subject to Conditions.

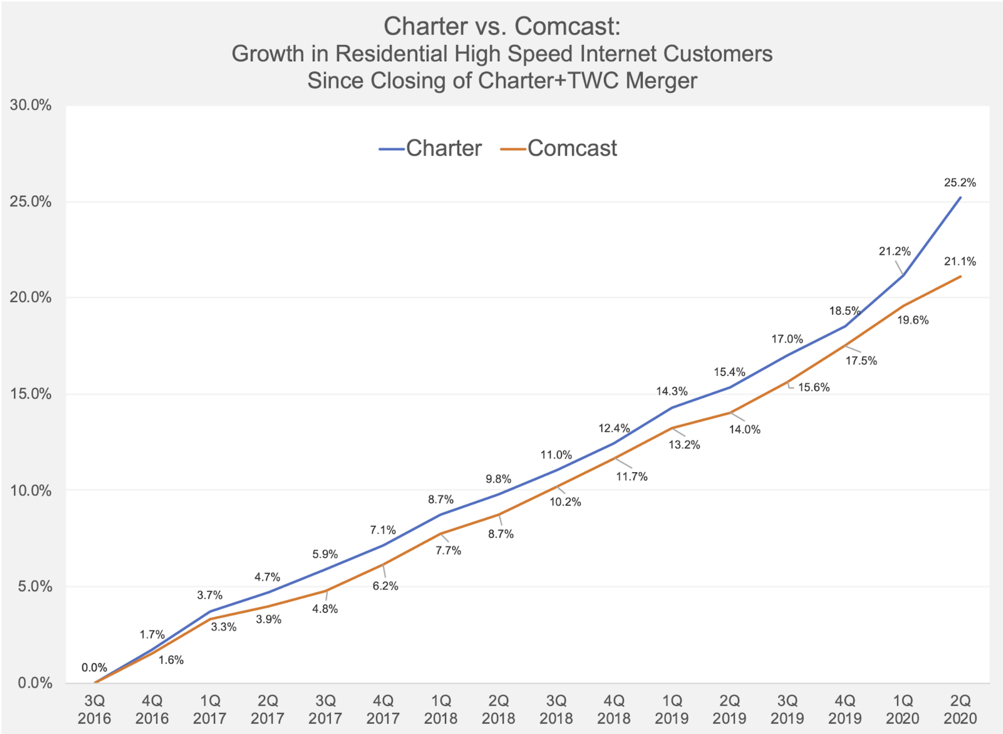
The facts are clear: Charter offers its customers and potential customers an internet service that is one of the highest-rated in the United States in terms of quality, reliability, consistency and utility. It offers this service at prices that are as good or better than those charged by other cable ISPs and by Charter's LEC competitors. It is able to do this without imposing data caps and fees that would harm its internet customer and harm the growth of online video services. Because Charter's network passes more than one-third of U.S. households, its inability to exercise its market power through the use of caps and terminating access fees has enabled the online video marketplace to grow to what it is today. But we are at a critical juncture: Virtual MVPD services have seen impressive growth, but price increases are starting to diminish the value proposition of these cable replacement services. Caps and overage fees already keep a large number of internet users served by companies other than Charter from trying out and fully utilizing these cable TV replacements. If suddenly only a small fraction of the nation's households had an uncapped high-speed ISP available to them, these pro-competitive online video services would be certain to disappear.

But video entertainment is just one of many uses for broadband telecommunications service. The COVID-19 pandemic has created demand for uncapped connectivity, so people can work from home and children can participate in distance learning. The need for unlimited data was so apparent that the FCC Chairman himself politely asked the nations' ISPs to cease imposing these caps during this past spring. Many ISPs promised to comply, and everything functioned well. There were no notable congestion issues, and ISPs managed to grow their internet businesses at historic rates as the already high demand for connectivity at home skyrocketed. This should come as no surprise: Charter's own experiences since 2016 demonstrate that unlimited networks are a win for consumers and a win for the ISP too.

Below we offer a comparison of Charter's and Comcast's operational performance in recent years. Comcast is Charter's most similarly-situated peer in terms of network technology and size. Comcast's network passes 59.2 million homes and businesses, while Charter's passes 51.6 million. Comcast serves 29.4 million total high-speed internet subscribers (27.2 million residential), while Charter serves 28.1 million total high-speed internet subscribers (26.3 million residential). Both companies employ DOCSIS 3.1 technology, and both operate systems in markets big and small. Thus, comparing Comcast's and Charter's operational performance since the Charter/TWC merger closed offers insight into the impact—or lack thereof—of these merger conditions on Charter's business trajectory.

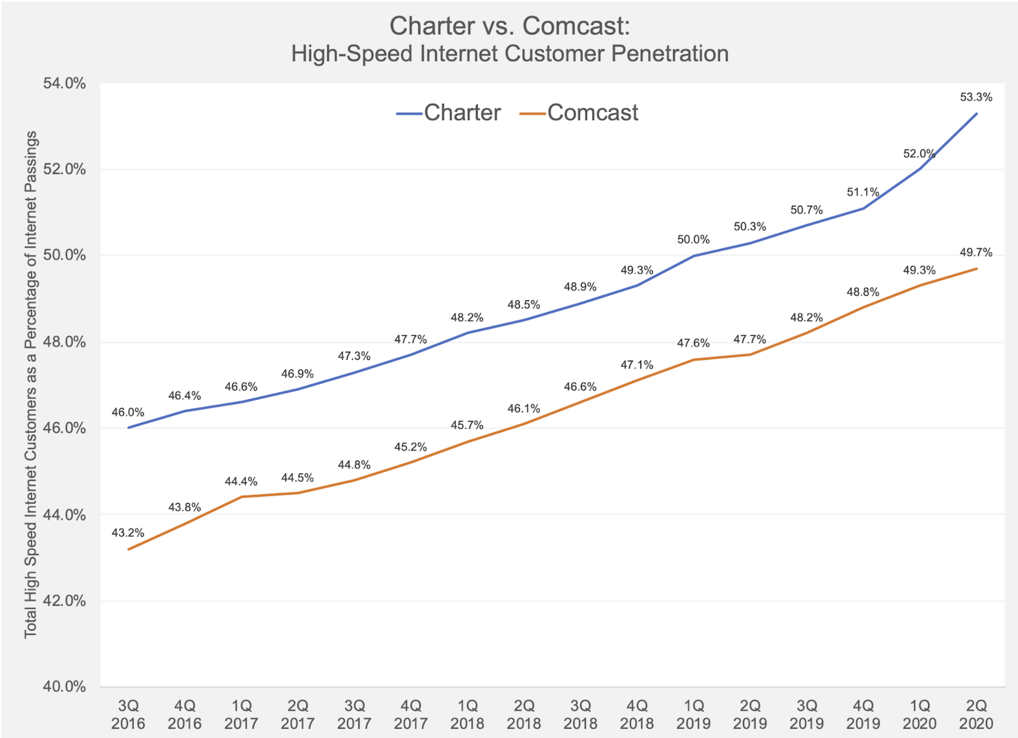
As Figure 6 indicates, Charter's high-speed internet subscriber base grew at a faster rate than Comcast's. Since the third quarter of 2016, Charter's number of residential subscribers grew by 25.2 percent compared to 21.1 percent for Comcast. Charter has also been able to convert potential new customers at the same or better rate than Comcast (see Figure 7). Charter's internet penetration (internet customers as a percentage of internet premises passed) increased from 46 percent in the third quarter of 2016 to 53.3 percent at the end of the second quarter of 2020 (a 15.9 percent increase). During this same time, Comcast's internet penetration went from 43.2 percent to 49.7 percent (a 15 percent increase).

Figure 6:



Source: Company SEC filings

Figure 7:



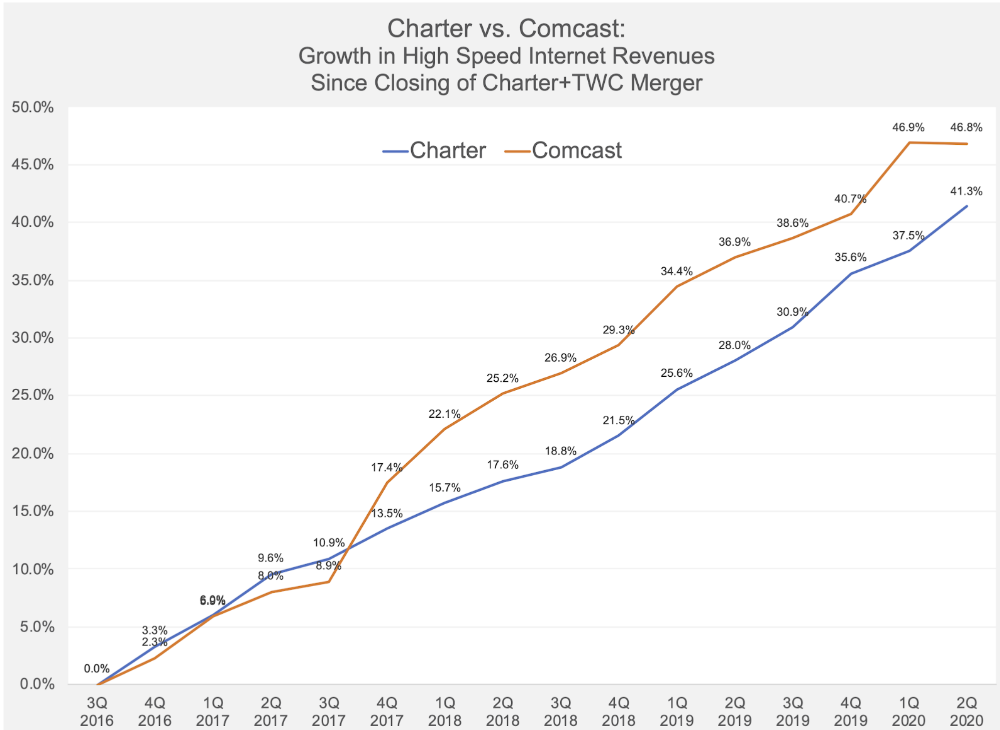
Source: Company SEC filings

While Charter's residential internet customer growth and its internet customer penetration totals and growth have exceeded Comcast's since the closing of the TWC merger, Comcast's internet revenues and ARPU saw higher growth than Charter's. As Figure 8 reflects, Charter's quarterly internet revenues have grown 41.3 percent since the third quarter of 2016, compared to Comcast's 46.8 percent growth. Though Charter's monthly ARPU per internet user was higher than Comcast's at the close of the TWC merger ($47.82 versus $46.88), Charter's ARPU growth since late 2017 has been somewhat shallower than Comcast's (see Figures 9 and 10). Since the merger closed, Charter's quarterly internet ARPU has increased 12.4 percent compared to Comcast's 21.3 percent increase. As of the end of June 2020, Comcast's internet ARPU was $56.63 compared to $53.74 for Charter.

These differences are potentially due to a number of factors (such as differences in the presence of fiber competition and other ISP competitors; local demographics; or Charter's need to blend in and transition legacy TWC customers onto Charter plans). But this data does still indicate that while Charter's pricing power is significant and similar to Comcast's, Charter's lack of a "below the line" data cap fee revenue stream from overage charges and other penalties may have limited its exercise of pricing power.[32]

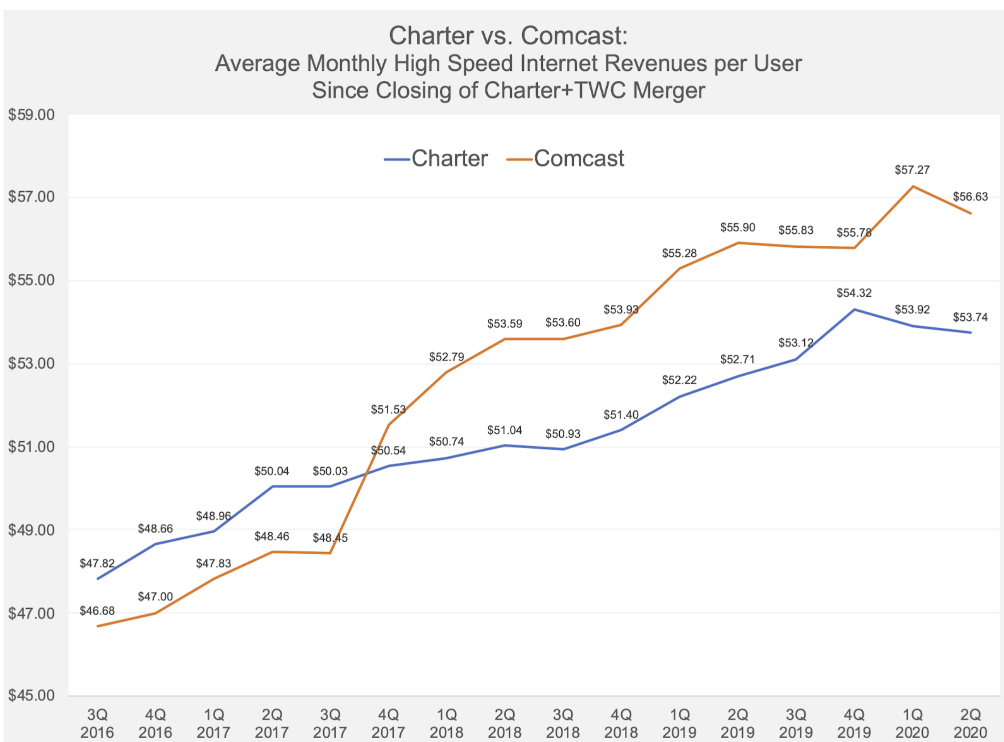
[32] ISP advertisements typically promote the monthly service price, before additional fees suchs as equipment rental, taxes, and data overage fees. The "above the line" monthly prices that are explicitly signaled in advertisements are always lower than the final monthly cost, and Charter's inability to tack on even more internet revenues beyond its advertised price is likely reflected in the above ARPU data comparison. However, we also note that Comcast offered gigabit-level speeds in its footprint earlier than Charter did, which could explain some of the observed differences in the respective ARPU trajectories.

Figure 8:



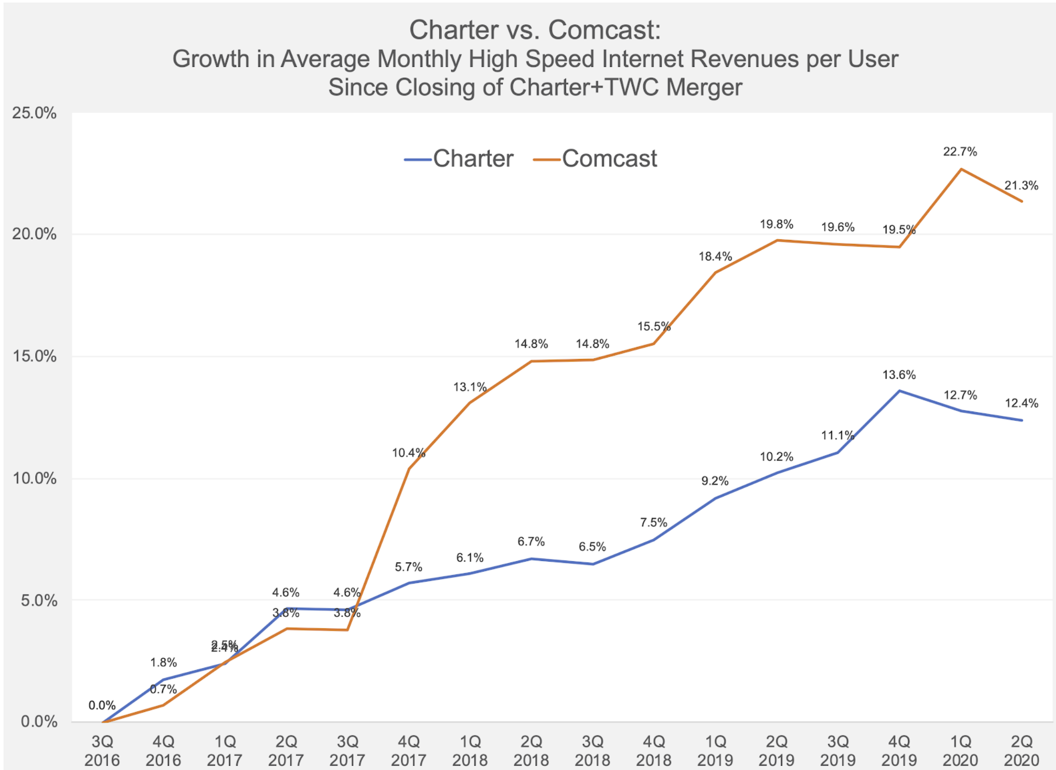
Source: Company SEC filings

Figure 9:



Source: Company SEC filings

Figure 10:

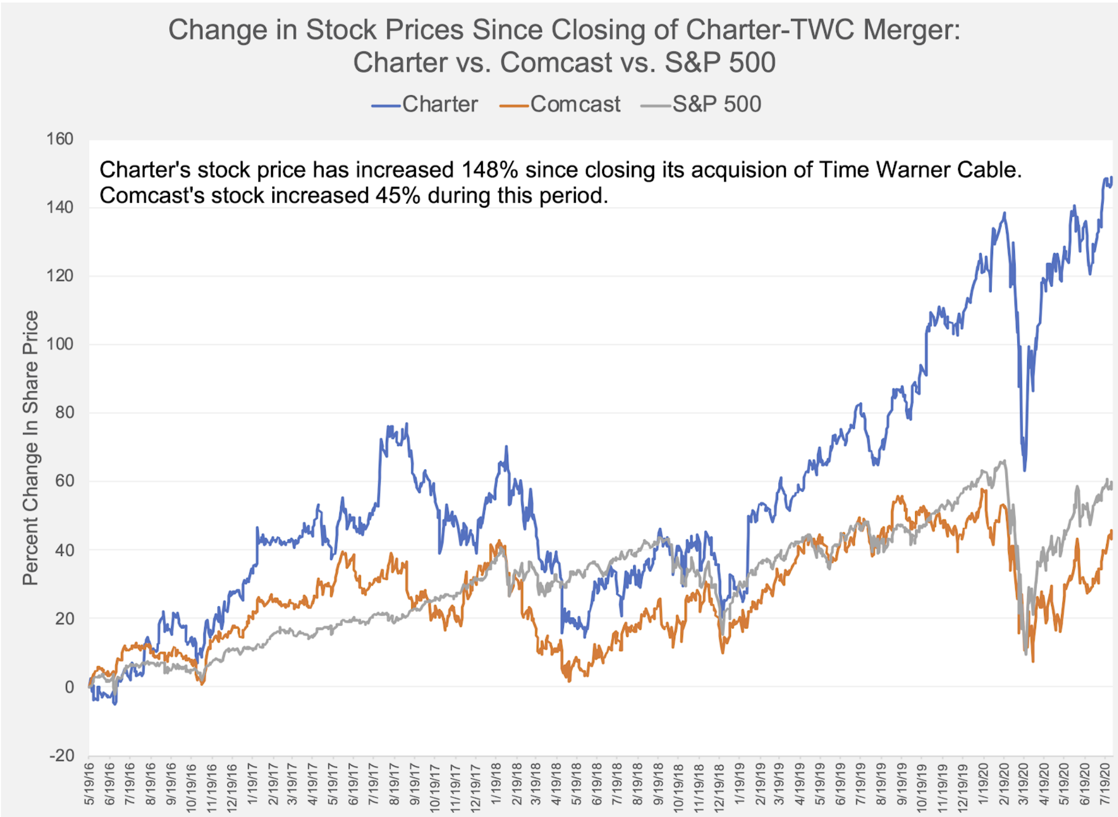


Source: Company SEC filings

C. The Merger Conditions Have Not Hindered Charter's Financial Growth. Charter's Stock Performance Leads the ISP Sector and Its Profitability is Similar to or Better Than That of its Similarly-Situated Peers.

Though Comcast and Charter are similarly-situated peers, Charter's equity value grew substantially larger than Comcast's during the period following the closing of the Charter/TWC merger. Since May 19, 2016, Charter's share price has increased 148 percent, compared to Comcast's increase of 45 percent (and, for a baseline, a 59 percent increase in the S&P 500 index. Pre-pandemic, Charter's share price had risen 137 percent compared to Comcast's 53 percent gain.

Figure 11:



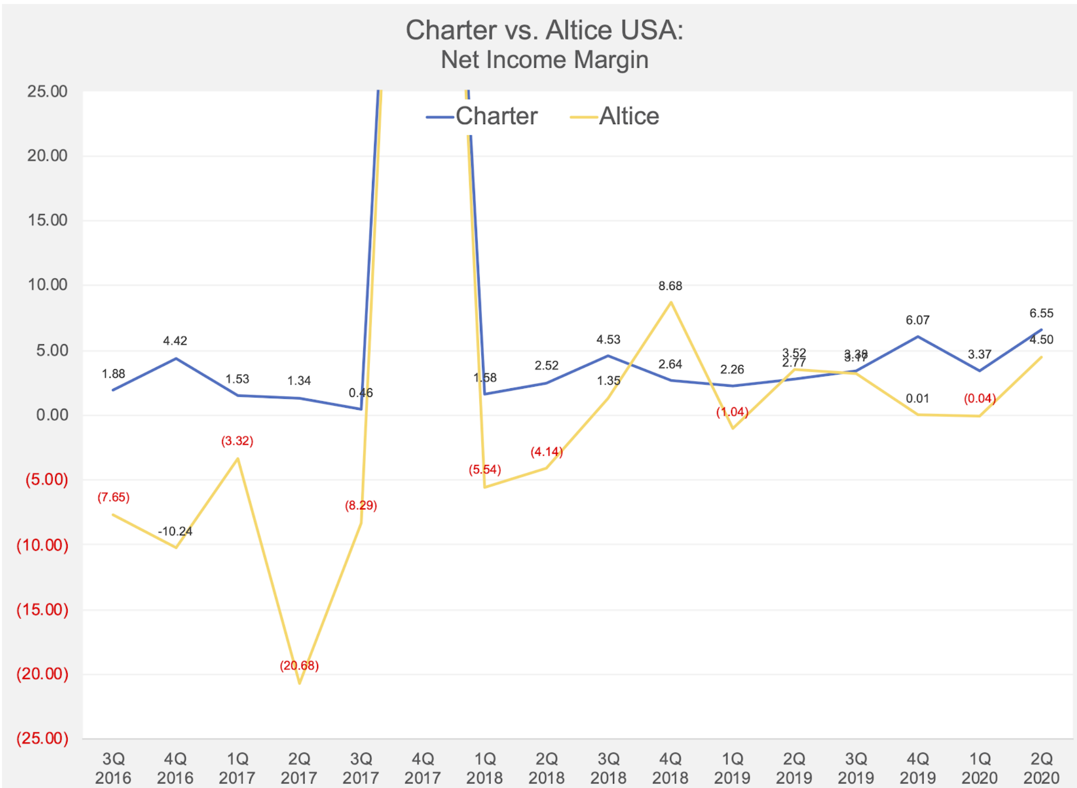
Source: Free Press analysis of published closing stock market prices

We acknowledge there are limits to the comparability of different ISPs, especially when comparing profitability metrics for differently constructed conglomerates. Comcast is a vertically-integrated company that owns national cable and broadcast networks, over-the-top streaming services, foreign multichannel distributors, movie studios, and theme parks. Charter is a pure-play MSO, and its only vertical assets are a few local cable channels. Thus we also offer comparisons of financial performance between Charter and Altice, the nation's second-largest, publicly-traded pure-play MSO. Since mid-2017 when Altice became an independent publicly-traded company,[33] its share price has fallen 23 percent. During this period, Charter's

[33] Altice Europe entered the U.S. with its purchase of the Suddenlink cable systems, a deal that closed in December 2015. It then closed on its purchase of Cablevision's systems in June 2016.

stock price increased 69 percent. Charter's net income margin also exceeded Altice's in 13 of the 16 quarters since Charter closed on its TWC purchase.

Figure 12:

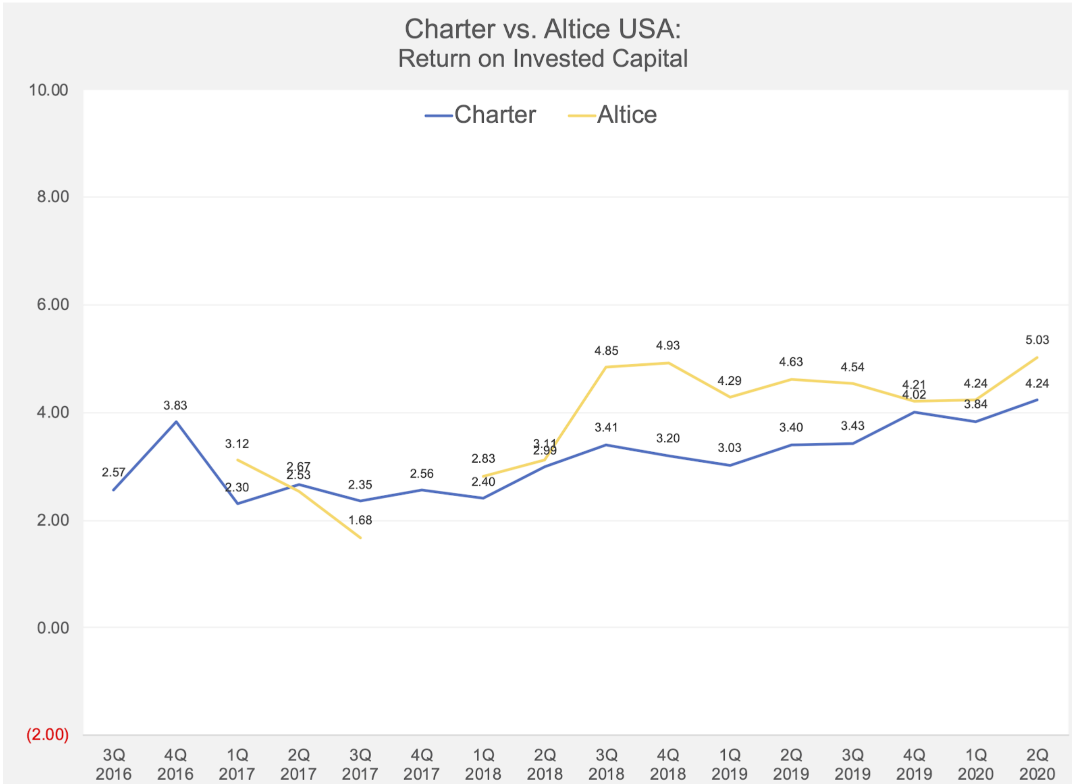


Source: Company SEC filings. Values for 4Q 2017 (not shown) were abnormally high due to the one-time impact of the Tax Cuts and Jobs Act of 2017.

Return on capital is another common financial metric that can be used to measure a company's bottom line financial performance. As Figure 13 indicates, Charter and Altice have enjoyed similar returns since the third quarter of 2016.

The company's European parents spun off Altice USA as an independent company that began trading on the New York Stock Exchange in June 2017.

Figure 13:



Source: Company SEC filings. Missing values are due to incomplete reporting by Altice during certain quarters.

D. Prevented from Profiting from Artificial Scarcity, Charter has Invested More in its Network than Comcast Has Since Closing the Time Warner Cable Merger.

Meaningful comparisons of capital expenditures between two or more ISPs is an analytical exercise that requires substantial care and explanation, which is missing from most discussions concerning broadband industry investment. Analytical caution is required for a number of reasons, most notably that each ISP may be on a different part of its upgrade cycle, or may utilize different underlying technologies that come with vastly differing capital costs.

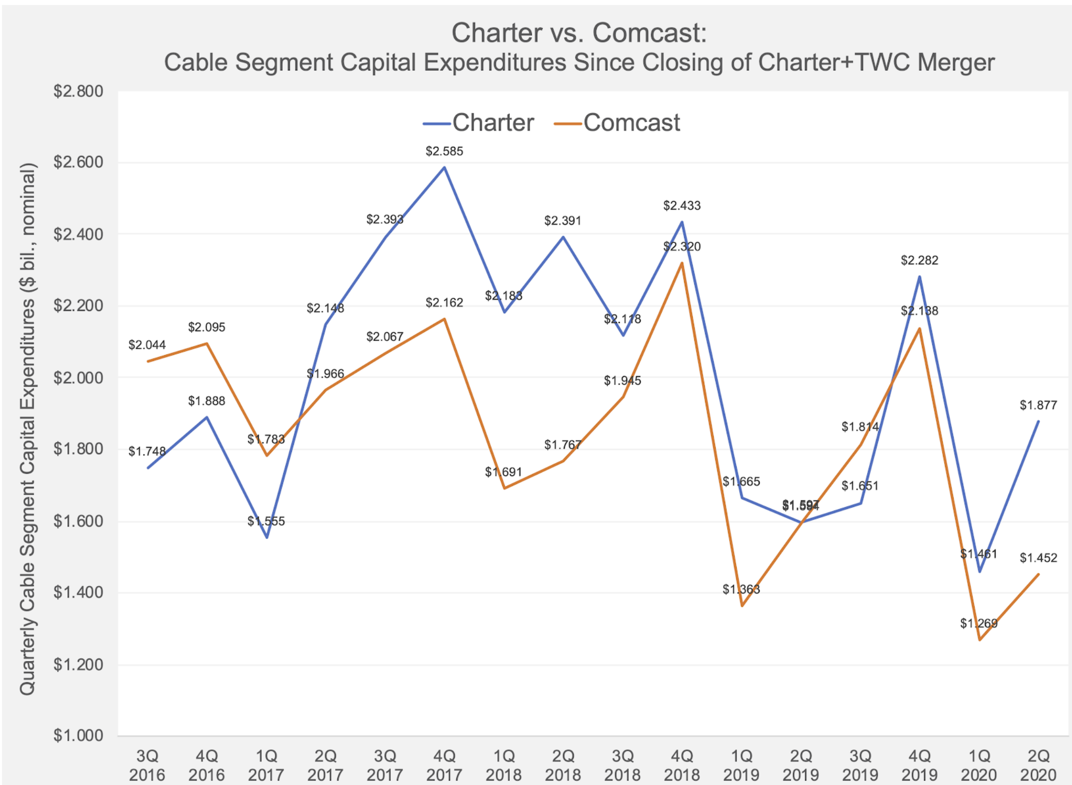
Charter and Comcast are very similar carriers: They are both MSOs, they pass and serve a similar number of customers, and each is large enough to enjoy scale efficiencies in capital equipment purchasing and deployment. Though Comcast had led on DOCSIS 3.0 and 3.1

deployment (while Charter's own rollout was slowed due to the TWC acquisition and then integration), the two companies are now close to equal in their tech upgrade cycle. Indeed, Charter has surpassed Comcast by offering DOCSIS 3.1 across its entire footprint, while Comcast offers that technology to just 97.1 percent of the households in its footprint (with the remaining households served with DOCSIS 3.0). With these caveats in mind, we note that since closing the TWC merger, Charter has invested more capital than Comcast ($31.975 billion vs. $29.47 billion). Since 2017, Charter's quarterly cable segment capital investments have exceeded Comcast's, despite the fact Comcast passes more locations and serves more customers than Charter (see Figure 14).

Furthermore, Charter's capital intensity (a measure of capital expenditures as a percentage of revenues) consistently has exceeded Comcast's (see Figure 15). This gap was largest during the period that Charter was integrating the TWC assets, but the gap favoring Charter remains to this day.

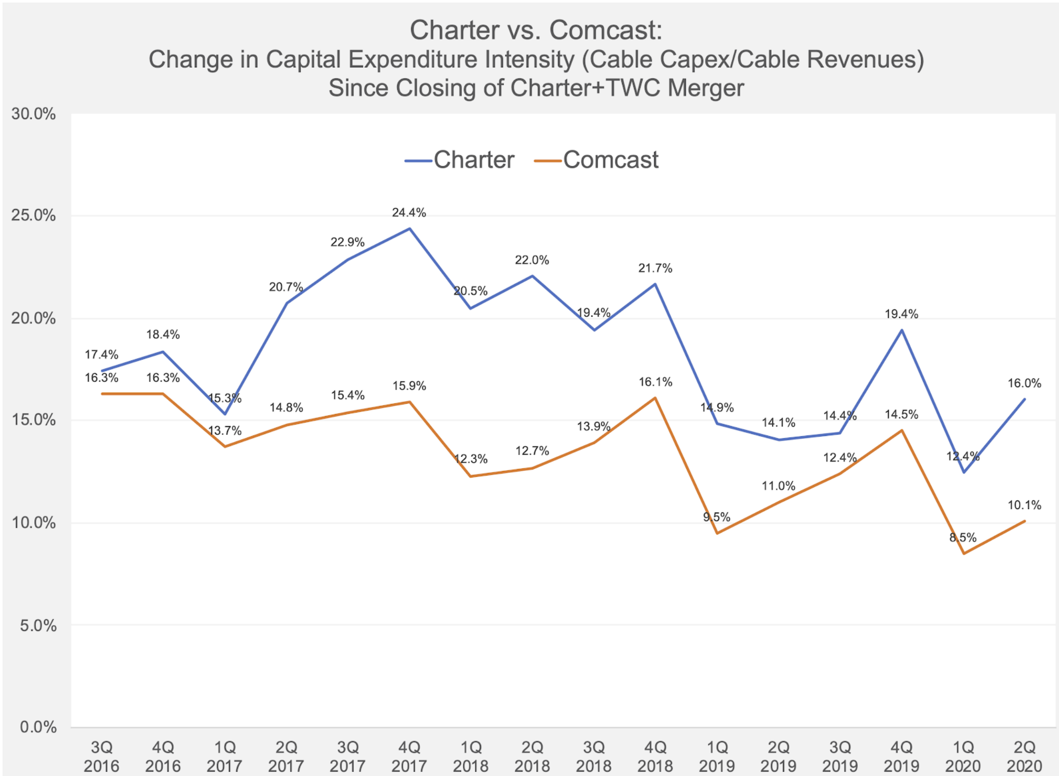
Again, we emphasize that capital expenditures are determined by a variety of factors, and even a series of snapshots over time do not tell the entire story of why there may be differences between companies or changes in expenditures. However, during the post-merger period, the merger conditions <u>worked</u> and incentivized Charter to make the investments needed to ensure its customers enjoyed a quality streaming video experience—all without data caps discouraging such use in the name of fictional "fairness" for internet users. Charter's customers, unlike Comcast's, are not thinking about a potential overage fee when they stream video. These factors may have combined to produce a relatively higher level of network investment at Charter compared to Comcast and other ISPs that can discourage streaming by penalizing customers for using their connections. Given this Commission's sometimes singular (but unsophisticated) focus on raw capital investment figures as the most important indicator of the broadband market's health and competitiveness, it should want to continue incentivizing Charter to provide unlimited and unmetered internet access service just as these conditions have so successfully done.

Figure 14:



Source: Company SEC filings

Figure 15:



Source: Company SEC filings

CONCLUSION

The Commission's merger review concluded in 2016 was exhaustive. It found that the Charter/Time Warner Cable merger would confer additional market power upon Charter, which would likely lead to meaningful public interest harms. It rejected Charter's arguments that the merger's scale efficiencies would work, through some magic of the market, to offset the harms the Commission concluded were likely. The Commission was only persuaded to approve the merger once Charter agreed to a number of conditions, including offering unlimited home internet access services and settlement-free interconnection. The Commission acknowledged that a seven-year window for these conditions probably might not be long enough; but in the end it did what the Commission often does: place hope in a potential future of more robust facilities-based competition, a hope that is never realized.

The Commission's hope was misplaced. The market power that the Commission was concerned about has not abated: Charter and Comcast dominate the national video delivery and home internet access markets, increasing their control since 2016. Charter has only increased its share of internet customers in its footprint, and the majority of the households in the company's service territory have a choice between Charter and an ISP that already imposes data caps. A substantial portion of the homes in Charter's footprint have very little meaningful choice if they intend to use their broadband connection to facilitate delivery of a video service that replaces a traditional cable TV service. Their only choice is between Charter and capped internet using dying DSL technology. Thus the marketplace conditions are ripe for Charter to exercise the market power gained from its TWC merger, to favor its own services and extract economic rents from these captured customers.

Unlike it did in its initial merger application, Charter is not arguing now that increasing its ability to exercise its market power would be in the public interest because the scale efficiencies would (allegedly) trickle down to consumers. Here Charter makes no public interest argument at all. It is simply asking the FCC to "level the playing field."[34] It asks for this supposed leveling without noting that it already enjoys cost and capacity advantages over its LEC competitors, and without noting that in the game played on this duopoly field, consumers

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[34] *See* Jon Brodkin, "Charter's donations to charities and lawmakers may help it impose data caps" (July 29, 2020) ("Charter told Ars last month that it doesn't 'currently' plan to impose data caps or change its interconnection policy. Instead, it merely seeks 'a level playing field so that we can continue to grow and provide superior service to our customers across the country.'").

will always lose. It is fundamentally Orwellian corporate-speak that ignores what a "playing field" actually is, and most importantly, the public interest aspects of what Charter apparently conceptualizes as a game in which it wants an even bigger margin of victory.

The Commission's merger conditions will sunset on their own in 2023. Charter has failed to meet its burden and demonstrate that early sunset of these prohibitions would be a net positive for the public interest. It simply can't make any credible arguments in that direction. That is because Charter's broadband business has thrived under these pro-consumer and pro-competition conditions. Their removal would only lead to public interest harms, as Charter seeks to do what most other ISPs do: impose unnecessary and sometimes discriminatory caps and interconnection policies in order to boost shareholder returns.

If there ever was any doubt about the inherent need for, and public interest benefits of, uncapped retail broadband service and settlement-free interconnection, the COVID-19 pandemic should erase all such doubt. A full one quarter of all U.S. broadband subscribers didn't need Chairman Pai to beg their ISP to suspend data caps during the pandemic, because the Commission already had prohibited Charter from imposing caps and exercising its market power in such a manner. Internet users in the U.S need open, uncapped and unmetered connections now more than ever. And judging from ISPs' pandemic-era financial disclosures, offering these open connections is a great business to be in. We respectfully urge the Commission to reject Charter's petition.

Respectfully Submitted,

/s/

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