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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 NATIONAL ASSOCIATION OF
14 AFRICAN AMERICAN-OWNED
15 MEDIA, a California limited liability
16 company; and ENTERTAINMENT
17 STUDIOS NETWORKS, INC., a
California corporation,

18 Plaintiffs,

19 v.

20 CHARTER COMMUNICATIONS,
INC., a Delaware corporation;
21 FEDERAL COMMUNICATIONS
COMMISSION, a federal agency; and
22 DOES 1 through 10, inclusive,

23 Defendants.
24
25
26
27
28

CASE NO. 2:16-cv-00609

**COMPLAINT FOR CIVIL RIGHTS
VIOLATION; FOR DAMAGES;
AND FOR INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiffs National Association of African American – Owned Media
2 (“NAAAOM”) and Entertainment Studios Networks, Inc. (“Entertainment Studios”)
3 allege claims against Defendants Charter Communications, Inc. (“Charter”), the
4 Federal Communications Commission (“FCC”) and DOES 1 through 10, inclusive,
5 (collectively, “Defendants”) as follows:

6 **INTRODUCTION**

7 **A. Background**

8 1. This case is about racial discrimination in contracting for television
9 channel carriage. At the direction of its President and Chief Executive Officer, Tom
10 Rutledge, Defendant Charter Communications has intentionally excluded African
11 American–owned media companies, including Plaintiff Entertainment Studios, from
12 contracting for carriage on its television distribution platform. Rutledge did this
13 himself and by and through his subordinates, including Allan Singer, Senior Vice
14 President of Programming at Charter.

15 2. Entertainment Studios—a 100% African American–owned media
16 company with a portfolio of seven, 24-hour, high definition television networks
17 currently carried by AT&T U-Verse, Verizon Fios and DirecTV, among others—has
18 been attempting to enter into a carriage agreement with Charter for years, to no
19 avail.¹ Rutledge has refused to take, or return, any of Entertainment Studios’ calls
20 or to meet with Byron Allen, the African American founder, chairman and CEO of
21 Entertainment Studios. Even when Entertainment Studios implores Rutledge’s
22 underlings to approach Rutledge regarding the launch of Entertainment Studios’
23 channels on Charter’s television system, Rutledge refuses to consider a possible
24 carriage deal with this African American–owned media company.

25 _____
26 ¹ A carriage agreement is a contract between a multichannel video programming
27 distributor, such as Charter, and a channel vendor/programmer, such as
28 Entertainment Studios, granting the distributor the right to “carry” (that is,
distribute) the programmer’s channels.

1 3. Rutledge’s unwavering refusal to negotiate a carriage deal with
2 Entertainment Studios effectively blocks Entertainment Studios’ portfolio of
3 television networks from reaching Charter’s millions of subscribing television
4 viewers. Charter currently provides cable television services to more than four
5 million subscribers and is poised to dramatically increase its television footprint
6 with the acquisition of Time Warner Cable (currently the fourth-largest television
7 distributor in the United States) and Bright House Networks (tenth-largest).

8 4. If these acquisitions go through, Charter will become the third-largest
9 television distributor, and the second-largest cable and broadband internet operator,
10 in the United States with more than seventeen million subscribers. This merged
11 television distributor will be headed up by Rutledge—who is a blatant racist.

12 5. Charter’s merger application is currently pending before the Federal
13 Communications Commission (“FCC”), one of the federal agencies tasked with
14 reviewing the merger to ensure that it will serve the public interest. This public
15 interest evaluation considers a multitude of factors, including whether the proposed
16 merger would promote a diversity of information sources to the public. Needless to
17 say, diversity requires the economic inclusion of African American–owned media
18 companies.

19 6. Diversity is a core concern for FCC merger approval. Indeed, a driving
20 purpose of the Federal Communications Act and the First Amendment is to ensure
21 the widest possible dissemination of information from diverse sources. Yet the FCC
22 has done nothing to protect the voices of African American–owned media
23 companies in the face of increased media consolidation.

24 7. Instead, the FCC works hand-in-hand with these merging television
25 distribution companies to enable and facilitate their Civil Rights violations. The
26 FCC’s apparent standard operating procedure is to obtain and accept sham diversity
27 commitments from merger applicants, in excess of its statutory duties.
28

1 8. Unlike a merger condition, these diversity “commitments” are shielded
2 from judicial review under the dubious pretense that the merging parties
3 “volunteered” to them. But, in actual practice, the FCC routinely encourages, and
4 then accepts as reliable, these empty diversity promises in order to ostensibly satisfy
5 the law’s diversity requirements.

6 9. These commitments—whose genesis is, at best, questionable—do
7 nothing to actually protect or promote diversity in the media industry. They merely
8 foster a public impression that the FCC is taking steps to enhance diversity. In
9 reality, these superficial commitments—entered into with non-media, non-channel-
10 owner civil rights groups—harm African American–owned media companies. The
11 FCC’s conduct actually facilitates the economic exclusion African American–owned
12 media companies and supports white ownership using African American “fronts.”

13 10. In this regard, the FCC has violated—and continues to violate—
14 Entertainment Studios’ equal protection rights under the due process clause of the
15 U.S. Constitution. The FCC enables and facilitates Charter’s racial discrimination
16 in contracting, in violation of 42 U.S.C. § 1981.

17 11. Given Charter’s record of refusing to do business with African
18 American–owned media companies, as detailed herein, Charter’s proposed merger
19 with Time Warner Cable and Bright House Networks will neither promote diversity
20 nor be in the public interest. Rutledge is now trying to cast Charter as a promoter of
21 diversity, despite his and Charter’s sordid record of refusing to do business with
22 African American–owned media companies.

23 12. Rutledge recently announced that Charter has entered into a
24 memorandum of understanding (“MOU”) with a dozen “multicultural leadership
25 organizations,” including Al Sharpton’s National Action Network, among other
26 non-media civil rights groups. Through the MOU, Charter has made a number of
27 symbolic commitments that it says it will implement upon approval of the merger,
28 including appointing minority members to its presently all-male, all-white Board of

1 Directors; appointing a so-called “Chief Diversity Officer”; and enhancing its
2 “involvement and investment” in organizations serving communities of color—*i.e.*,
3 making monetary “contributions”—pay offs—to non-media civil rights groups that
4 support the merger.

5 13. In other words, rather than actually doing business with African
6 American-owned media companies, Rutledge and Charter have chosen to secure
7 merger support by embracing Al Sharpton and other non-media civil rights groups.
8 But Al Sharpton neither owns nor operates a television network. Nor does Sharpton
9 speak for all Black people, and certainly not for all, or any, African American-
10 owned media companies. He is a token, a shill being used by Rutledge, Charter and
11 the FCC. Charter uses Al Sharpton as racial cover, which is far less expensive than
12 doing real business with African American-owned media companies, like
13 Entertainment Studios.

14 14. Sharpton has a well-documented business model and track record of
15 obtaining payments from corporate entities in exchange for his support on “racial
16 issues.” Sharpton can be bought on the cheap. Doing business with real African
17 American-owned media companies requires true economic inclusion for African
18 Americans—something that is unacceptable to Rutledge and Charter.

19 15. Rutledge and Charter’s motives are made evident by the “promises”
20 made in the MOU. Indeed, the MOU’s symbolic commitments do nothing to
21 promote diversity in the media industry. Charter has made no commitment—
22 through the MOU or otherwise—to contract with and thereby ensure true economic
23 inclusion for African American-owned media companies.

24 16. The MOU includes no pledge by Charter to launch African American-
25 owned and operated networks. Rather, Charter states only that it will “expand
26 programming targeting diverse audiences.” But this vague “commitment” does
27 nothing to promote and protect programming from—and economic inclusion of—
28 diverse sources, which is the very heart of the public interest diversity inquiry.

1 17. Charter’s MOU is nothing more than a ploy to garner FCC support for
2 and approval of its merger with Time Warner Cable and Bright House Networks. In
3 this regard, Charter has taken a page out of a familiar playbook—the same one
4 another cable giant, Comcast, used to gain approval of its 2011 merger with NBC-
5 Universal.

6 18. In the time leading up to its merger, Comcast, too, was criticized for its
7 poor track record in contracting for carriage with minority-owned media companies.
8 To counter the opposition to its merger, Comcast entered into memoranda of
9 understanding with some of the same non-media civil rights groups Charter has now
10 partnered with. Comcast, like Charter, made purely symbolic diversity
11 commitments, without any true intentions of doing business with African
12 American-owned media companies. And, indeed, post-merger, Comcast has
13 flouted its MOU commitments and steadfastly refused to do business with truly
14 African American-owned media companies.

15 **B. FCC Futility**

16 19. Charter is playing the same game as Comcast. And if the past is any
17 predictor of the future, Charter’s merger is on the path to approval. Just as the FCC,
18 in approving Comcast’s merger, chose to rely on Comcast’s sham diversity
19 commitments in an MOU, so too is the FCC on track to approving Charter’s merger
20 based on the same sham diversity commitments.

21 20. The FCC has established, repeatedly, that it is ready, willing and able to
22 give merger applicants significant credit for making “voluntary” diversity
23 commitments. Through this practice, the FCC has encouraged merger applicants—
24 including Charter—to take that route. The result provides the agency and the
25 merging parties with a “win-win” situation: The FCC can claim that it has secured
26 voluntary concessions (and, thus, can posture itself as a champion of diversity),
27 while the applicants get what they want—*i.e.*, agency approval.
28

1 21. Because of the supposedly “voluntary” nature of the “diversity
2 commitments,” the FCC’s actions in this regard are immune to judicial review. The
3 only losers here are the *bona fide* African American–owned media companies who
4 are left out in the cold. The FCC is exceeding its statutory duties; this practice
5 violates the law.

6 22. If the FCC approves Charter’s merger and Charter becomes the third-
7 largest television distributor in the United States, Entertainment Studios and other
8 African American–owned media companies will be shut out from Charter’s
9 seventeen million subscribers due to Charter’s racial discrimination in contracting.

10 23. The FCC has done nothing to enforce or investigate Comcast’s blatant
11 violations of the commitments it made in its MOU, signaling to Charter that empty
12 promises and symbolic gestures are all that is required to satisfy the FCC. There is
13 no accountability in the FCC.

14 24. Based on the FCC’s established practice of encouraging merger
15 applicants to enter into sham diversity agreements in order to secure merger
16 approval, the FCC is engaging in extra-legal activity exceeding its statutory duties.
17 It would therefore be futile for Plaintiffs to approach the FCC and seek relief
18 therein.

19 25. Absent court intervention, the FCC will approve Charter’s merger
20 based on its phony MOU, without consideration for Charter’s racially
21 discriminatory policies and practices in contracting for channel carriage, as detailed
22 herein. The FCC is thereby encouraging the racist and discriminatory practices of
23 Charter to continue unabated.

24 **C. Racial Discrimination**

25 26. Plaintiff Entertainment Studios is a 100% African American–owned
26 media company involved in the production and distribution of television
27 programming through broadcast television, its seven cable television channels and
28 its subscription-based internet service. It is the only 100% African American–

1 owned video programming producer and multi-channel operator/owner in the
2 United States. It is a victim of Charter’s racial discrimination in contracting and the
3 FCC’s practice of providing its governmental stamp-of-approval on racial
4 discrimination in the media industry, in violation of law.

5 27. Charter has come up with every excuse in the book to avoid doing
6 business with Entertainment Studios. For example, Charter claimed to have
7 “bandwidth challenges,” but in reality it was reserving all of its bandwidth for other,
8 non-African American-owned networks. It also claimed that it was not launching
9 any new networks “for the foreseeable future,” a statement which has been belied by
10 Charter’s launch of several new channels during the same time period, including (as
11 just one example) white-owned RFD-TV.

12 28. Entertainment Studios was also told by Charter personnel that Charter’s
13 President and CEO, Tom Rutledge, “doesn’t meet with programmers,” and thus they
14 should not reach out to him to discuss a carriage deal. The truth is, Rutledge does
15 not meet with African American-owned programmers, like Entertainment Studios.
16 He has been witnessed meeting with other, white-owned programmers. Rutledge is
17 pulling the strings at Charter and is orchestrating its pretextual excuses for its
18 discriminatory refusal to do business with Entertainment Studios.

19 29. On information and belief, Charter currently spends upwards of \$4
20 billion annually to license video programming via channel carriage agreements. Of
21 this, nothing is paid to 100% African American-owned multi-channel media
22 companies. This discrepancy is the result of—and evidences—racial discrimination
23 in contracting, in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

24 30. Section 1981 was enacted to eradicate racial discrimination in
25 contracting. It was enacted after the adoption of the Thirteenth Amendment
26 eradicating slavery, to outlaw racial discrimination in contracting. Under Rutledge,
27 Charter’s business model is to engage in economic exclusion of African American-
28 owned media companies by “buying” the support of an African American shill

1 (Sharpton) to mask Charter’s racist business practices. This business model
2 completely undermines the purpose and intent of the Civil Rights Act and
3 constitutes unlawful discrimination under § 1981.

4 31. Through this lawsuit, Entertainment Studios and NAAAOM seek to
5 vindicate their rights under 42 U.S.C. § 1981 and to enforce their due process rights
6 under the Fifth Amendment to the U.S. Constitution. To that end, Plaintiffs seek an
7 order compelling the FCC to discontinue its facilitation of Charter’s racial
8 discrimination in contracting for channel carriage and end the practice of allowing
9 sham MOUs to satisfy diversity requirements.

10 **PARTIES, JURISDICTION AND VENUE**

11 **D. Plaintiffs**

12 32. Plaintiff NAAAOM is a California limited liability company, with its
13 principal place of business in Los Angeles, California.

14 33. NAAAOM was created and is working to obtain for African
15 American–Owned media companies the same contracting opportunities as their
16 white counterparts for, among other things, distribution, channel carriage, channel
17 positioning and advertising dollars. Its mission is to secure the economic inclusion
18 of African American–owned media companies in contracting, the same as white-
19 owned media companies. NAAAOM currently has six members.

20 34. Historically, because of the lack of distribution/advertising support and
21 economic exclusion, African American–owned media companies have been forced
22 either to (i) give away significant equity in their enterprises; (ii) pay exorbitant sums
23 for carriage, effectively bankrupting the business; or (iii) go out of business
24 altogether, pushing African American–owned media to the edge of extinction.

25 35. As alleged herein, Entertainment Studios—a member of NAAAOM—
26 is being discriminated against on account of race in violation of 42 U.S.C. § 1981.
27 Entertainment Studios thus has standing to seek redress for such violations in its
28 own right. The interests at stake in this litigation—namely, the right of African

1 American-owned media companies to make and enforce contracts in the same
2 manner as their white-owned counterparts—are consonant with NAAAOM’s
3 purpose. NAAAOM seeks only injunctive relief, so the individual participation of
4 its members is not required.

5 36. Plaintiff Entertainment Studios Networks, Inc. is a California
6 corporation, with its principal place of business in Los Angeles, California.
7 Entertainment Studios is a 100% African American-owned television production
8 and distribution company. It is the only 100% African American-owned video
9 programming producer and multi-channel operator/owner in the United States.

10 37. Entertainment Studios is a bona fide Minority Business Enterprise as
11 defined by the National Minority Supplier Development Council, Inc. and as
12 adopted by the Southern California Minority Supplier Development Council.

13 38. Entertainment Studios was founded in 1993 by Byron Allen, an African
14 American actor / comedian / media entrepreneur. Allen is the sole owner of
15 Entertainment Studios. Allen first made his mark in the television world in 1979,
16 when he was the youngest comedian ever to appear on “The Tonight Show Starring
17 Johnny Carson.” He thereafter served as the co-host of NBC’s “Real People,” one
18 of the first reality shows on television. Alongside his “on-screen” career, Allen
19 developed a keen understanding of the “behind the scenes” television business.
20 Over the past 22+ years, he has built Entertainment Studios as an independent media
21 company.

22 39. Entertainment Studios has carriage contracts with more than 40
23 television distributors nationwide, including AT&T/DirecTV, VerizonFIOS,
24 Suddenlink, RCN and CenturyLink. These television distributors broadcast
25 Entertainment Studios’ networks to their millions of subscribers.

26 40. Entertainment Studios owns and operates seven high definition
27 television networks (channels), six of which were launched to the public in 2009 and
28 one in 2012. Entertainment Studios produces, owns and distributes over 32

1 television series on broadcast television, with thousands of hours of video
2 programming in its library. Entertainment Studios' shows have been nominated for,
3 and won, the Emmy award. A copy of an Entertainment Studios promotional
4 presentation highlighting key aspects of the company and the programming it
5 produces is attached hereto as **Exhibit A**.

6 41. In December 2012, Entertainment Studios launched "Justice Central," a
7 24-hour, high definition court/informational channel featuring several Emmy-
8 nominated and Emmy-award winning legal/court shows. After just three years,
9 Justice Central has already proved itself a successful channel, boasting tremendous
10 ratings growth across key television viewing periods and demographics.

11 **E. Defendants**

12 42. Charter Communications, Inc. is a Delaware corporation with its
13 principal place of business in Stamford, Connecticut. Charter also has an office, is
14 registered to do business and operates in California. Charter is currently the
15 seventh-largest television distribution company in the United States, providing
16 subscription television services to more than four million subscribers. If its merger
17 application goes through, it will become the third-largest television distribution
18 company in this country, with more than seventeen million subscribers.

19 43. The Federal Communications Commission is the federal administrative
20 agency tasked with regulating interstate and international communications by radio,
21 television, wire, satellite and cable.

22 44. Plaintiffs are informed and believe, and on that basis allege, that
23 Defendants DOES 1 through 10, inclusive, are individually and/or jointly liable to
24 Plaintiffs for the wrongs alleged herein. The true names and capacities, whether
25 individual, corporate, associate or otherwise, of Defendants DOES 1 through 10,
26 inclusive, are unknown to Plaintiffs at this time. Accordingly, Plaintiffs sue
27 Defendants DOES 1 through 10, inclusive, by fictitious names and will amend this
28 Complaint to allege their true names and capacities after they are ascertained.

1 **F. Jurisdiction & Venue**

2 45. This case is brought under a federal statute, § 1981 of the Civil Rights
3 Act, and under the Constitution of the United States; as such, there is federal
4 question jurisdiction under 28 U.S.C. § 1331. Venue of this action is proper in Los
5 Angeles because Charter resides in this district, as defined in 28 U.S.C. § 1391; and
6 the acts in dispute were committed in this district.

7 **FACTS**

8 **A. Racial Discrimination in the Media**

9 46. Racial discrimination in contracting is an ongoing practice in the media
10 industry, with far-reaching adverse consequences. It effectively excludes African
11 American–owned media companies and African American individuals—and their
12 diverse viewpoints—from the vast majority of the television viewing audience.

13 47. Major television channel distributors, like Charter, have unique power
14 to limit the viewpoints available in the public media. Channel owners, like
15 Entertainment Studios, are reliant upon the services of television distributors, like
16 Charter, to provide access to their distribution platforms not only to realize
17 subscriber and advertising revenue, but also to reach television consumers
18 themselves.

19 48. Charter has control over television distribution on its distribution
20 platform; its exclusion of African American–owned channels has contributed to the
21 near-extinction of African American ownership in mainstream media, and this
22 exclusion is self-perpetuating.

23 49. There is a statistic that highlights the inequity here: Charter’s President
24 and CEO, Tom Rutledge—the main perpetrator of the discrimination recounted
25 herein—was paid \$16.1 million in compensation in 2014 alone, while 100% African
26 American–owned media companies received *nothing* by way of license fees from
27 Charter.

28

1 50. White-owned media has worked hand-in-hand with governmental
2 regulators to perpetuate the exclusion of truly African American–owned media
3 companies from contracting for channel carriage. This has been done through,
4 among other things, the use of “voluntary” diversity commitments made by merging
5 television distribution companies in order to secure merger approval from the FCC.

6 51. To satisfy their diversity commitments, these merger applicants then
7 use “token fronts” and “window dressing”—African American shills posing as
8 “fronts” or “owners” of so-called “Black cable channels” that are actually majority
9 owned and controlled by white-owned businesses.

10 **B. The FCC’s Prior Track Record – Comcast/NBC-Universal Merger**

11 52. In connection with its 2010 bid to acquire NBC Universal, television
12 distributor Comcast misled and circumvented the FCC and its diversity requirements
13 by the use of, and through, a sham “diversity” MOU.

14 53. In the time leading up to the merger, Comcast was criticized for its
15 failure to do business with minority-owned media companies, including African
16 American–owned media companies.

17 54. As with Charter’s merger with Time Warner Cable and Bright House
18 Networks, Comcast’s merger was subject to regulatory approval by the FCC.
19 Entertainment Studios and other minority-owned media companies opposed
20 Comcast’s merger bid, publicly criticizing Comcast for its failure to do business
21 with African American–owned media companies. Entertainment Studios urged the
22 FCC to impose merger conditions that would address Comcast’s discriminatory
23 practices in contracting for channel carriage.

24 55. Realizing that its racist practices and policies jeopardized the approval
25 of the NBC-Universal acquisition, Comcast entered into a MOU with non-media
26 civil rights groups, including Al Sharpton’s National Action Network. These non-
27 media civil rights groups are not television channel owners and do not operate in the
28 television channel business.

1 56. Through the MOU, Comcast purported to address the widespread
2 concerns regarding the lack of diversity in channel ownership on its systems by,
3 among other things, committing to launch several new networks with minority
4 ownership and establishing “external Diversity Advisory Councils” to advise
5 Comcast as to its “diversity practices,” including in contracting for carriage.

6 57. In reality, the MOU was a ruse designed to secure merger approval
7 without obligating Comcast to do business with truly African American–owned
8 media companies. And the ruse worked: In 2011, the FCC approved Comcast’s
9 merger with NBC-Universal, emphasizing Comcast’s adherence to the
10 “commitments” it made in the MOUs.

11 58. But the FCC conducted no actual inquiry into Comcast’s
12 discriminatory practices in contracting for channel carriage. The FCC turned a blind
13 eye to Comcast’s racist practices and policies. And the FCC never made any effort
14 whatsoever to follow up as to whether Comcast actually fulfilled its “voluntary
15 commitments,” even in the face of substantial evidence demonstrating that Comcast
16 had violated those commitments entirely.

17 59. Post-merger, Comcast has flouted its MOU commitments. It has not
18 entered into carriage agreements with any truly African American–owned media
19 companies. Rather, the networks Comcast has launched pursuant to the MOU are
20 owned, controlled and backed by white-owned media and money. Comcast gave
21 African American celebrities token ownership interests in those channels to serve as
22 figureheads in order to cover up its racial discrimination in contracting.

23 60. The “external Diversity Advisory Councils” Comcast established are
24 also shams. Not only do the Council members have limited understanding of the
25 television industry and little-to-no experience operating television networks, but
26 Comcast has not given the Council any real authority to “advise” Comcast as to its
27 diversity initiatives in contracting for carriage. Instead, Comcast gave the Council
28 members a standard tour of its offices, and never even asked the members about

1 channel carriage. The Diversity Advisory Councils were nothing more than an
2 empty symbolic gesture to secure merger approval.

3 61. Despite Comcast’s failure to adhere to the diversity commitments it
4 made in the MOUs, the FCC has done nothing to cure Comcast’s violations or
5 otherwise enforce Comcast’s promises of diversity. The FCC has thus signaled to
6 Charter and any other media companies seeking approval of major mergers and
7 acquisitions that empty promises and symbolic gestures are all that is required to
8 satisfy the FCC that a proposed merger will promote diversity and thereby be in the
9 “public interest.”

10 62. There is no accountability imposed by the FCC. “Window dressing”
11 by way of sham “diversity” MOUs is how the FCC operates, and it is happening
12 again here in connection with the proposed Charter merger with Time Warner Cable
13 and Bright House Networks.

14 **C. Taking A Play Out of Comcast’s Playbook, Charter Enters Into An**
15 **MOU With Non-Media Civil Rights Groups**

16 63. Recently, Charter’s President and CEO, Tom Rutledge, announced that
17 Charter had entered into a memorandum of understanding with twelve
18 “multicultural leadership organizations”—*i.e.*, non-media civil rights groups—
19 including the National Urban League and Al Sharpton’s National Action Network.

20 64. Implementation of Charter’s MOU is *contingent upon* the approval of
21 Charter’s merger application by the FCC. Rutledge’s motive in entering into the
22 MOU is thus transparent: The pledges made by Charter are designed to facilitate
23 approval of the merger; Charter otherwise has no true intention of increasing
24 diversity or inclusion in its business practices, including with respect to contracting
25 for channel carriage. If the merger falls through, it is business as usual at Charter—
26 *i.e.*, diversity is not on the agenda.

27 65. Charter’s press release regarding the MOU states that the MOU
28 includes “specific steps” that Charter will take, post-merger, including the

1 following:

- 2 ▪ Appointing one African American, one Asian American / Pacific Islander
- 3 and one Latino American to its board of directors within two years of the
- 4 close of the transaction;
- 5 ▪ Appointing a so-called “Chief Diversity Officer”; and
- 6 ▪ Expanding “programming targeting diverse audiences.”

7 66. These first two commitments—to add minority members to its board of
8 directors and appoint a “Chief Diversity Officer”—are symbolic, empty promises.
9 They do nothing to enhance diversity of information sources available to Charter’s
10 subscribers, nor to advance diverse ownership or economic inclusion of African
11 American–owned media companies. The fact that, in 2016, Charter does not
12 already have a Diversity Officer indicates that Charter has no interest in diversity.
13 And as a matter of fact, Charter does not even have a woman on its Board of
14 Directors.

15 67. Nor does Charter’s vague commitment to “expand programming
16 targeting diverse audiences” promote diversity in ownership, or economic inclusion
17 of African American–owned media companies, in any real way. Through this
18 pledge, Charter committed only to distributing more programming “targeting”
19 diverse audiences. Charter has made no commitment to actually do business with
20 minority-owned media companies.

21 68. Without a commitment to doing business with minority-owned media
22 companies, there can be no true economic inclusion for such companies in the media
23 industry. Charter’s symbolic commitments to add minority members to its board
24 and appoint a “Chief Diversity Officer” do nothing to protect African American–
25 owned media companies, like Entertainment Studios, from continued economic
26 exclusion by Charter. Post-merger and post-implementation of the MOU, the
27 television content available to Charter’s seventeen million subscribers will continue
28 to be limited by Charter’s racial discrimination in contracting.

1 **D. Charter’s Discriminatory Refusal To Contract With Entertainment**
2 **Studios**

3 69. For over five years, Entertainment Studios has attempted to contract
4 with Charter for carriage of its television channels, to no avail. In fact, Charter’s top
5 programming official, Allan Singer, Senior Vice President, time and again refused
6 to meet with this African American–owned media company to discuss a possible
7 carriage deal, sometimes pushing Entertainment Studios’ meeting requests back by a
8 year or more.

9 70. At Rutledge’s direction, Singer and other Charter executives have
10 given Entertainment Studios multiple, pretextual excuses for why “now” was never
11 the right time to seek carriage.

12 71. For example, in 2011, Entertainment Studios reached out to Charter to
13 discuss a possible carriage deal. Singer told Entertainment Studios they needed to
14 “be a bit patient.” He insisted that they try again “next year” instead.

15 72. When “next year” rolled around, Singer still would not give
16 Entertainment Studios the time of day. In 2012, Singer explained that, again, “now”
17 was not the right time. Speaking on behalf of Charter, Singer stated “we aren’t
18 launching.” As additional excuses, Singer also told Entertainment Studios that
19 Charter’s “bandwidth and operational demands have increased,” such that it did “not
20 have any opportunities for the foreseeable future.” Just as he did in 2011, Singer
21 told Entertainment Studios that a “meeting in 2012 doesn’t make sense.”

22 73. Charter’s pretextual claims that, in 2012, it was not launching any new
23 networks on its system and that it had bandwidth problems are provably false.
24 During this same period, Charter was in negotiations to launch several new white-
25 owned networks on its system. Indeed, in late 2012, Charter publicly announced
26 that it had entered into carriage agreements with, among others, Walt Disney
27 Company (for the Longhorn Network, among others) and Time Warner Cable
28 Sports.

1 74. Charter’s pretextual excuses and refusals to discuss a carriage deal with
2 Entertainment Studios continued into 2013. In 2013, Charter again told
3 Entertainment Studios that it would not launch its networks “for the foreseeable
4 future,” further stating that it would not even allow Entertainment Studios to make
5 “another pitch.”

6 75. According to Singer, Charter did not believe in Entertainment Studios’
7 “tracking model” because Entertainment Studios’ content not only appears on
8 Entertainment Studios’ channels, but is also sold to other broadcast stations and
9 cable networks. This is yet another made up excuse. Indeed, several white-owned
10 media companies with which Charter has carriage agreements have the same
11 business model—*i.e.*, their content not only appears on their channels but is also
12 sold to other networks. If this business model is satisfactory for these white-owned
13 networks, so too should it be satisfactory for this African American–owned media
14 company.

15 76. Also in 2013, Singer advised Entertainment Studios that Charter would
16 be willing to keep one of Entertainment Studios’ channels, Justice Central, in
17 consideration only for “the next e basic launches”—*i.e.*, the “expanded basic” or
18 second-highest penetrated tier in the industry. After several years of making no
19 progress with Charter, Entertainment Studios was surprised and excited by this
20 potential launch opportunity.

21 77. Entertainment Studios thanked Charter for its consideration of Justice
22 Central as part of its next e basic launches. But this potential launch opportunity
23 was too good to be true. Charter had no true intention of ever doing business with
24 Entertainment Studios. Shockingly, Singer told Entertainment Studios: “I was
25 being facetious. We are never doing e basic launches” In other words, the
26 only consideration Charter was willing to give to Entertainment Studios was for a
27 service that it *never intended* to launch or utilize. Singer also stated, “Even if you
28 get support from management in the field, I will not approve the launch of your

1 networks.”

2 78. Sensing that it could make no progress through Singer, Entertainment
3 Studios requested a meeting with Charter’s President and CEO, Tom Rutledge. But,
4 again, this avenue for negotiating carriage was thwarted. Singer told ESN that
5 Rutledge “does not meet with programmers.” To the contrary, however,
6 Entertainment Studios witnessed Rutledge meeting with Phillippe Daumann, CEO of
7 Viacom—*i.e.*, a programmer (who is white).

8 79. Thus, on its own initiative, ESN reached out to Rutledge in March
9 2013. Rutledge never even responded.

10 80. Charter’s excuses in 2013 for why Entertainment Studios would not be
11 eligible for a carriage deal “in the foreseeable future” are pretextual. In 2013, it was
12 publicly announced that Charter had entered into a channel carriage agreement with
13 white-owned/controlled RFD-TV, which provides programming focused on rural
14 and western lifestyle issues.

15 81. Despite Charter’s repeated refusals to negotiate for carriage with
16 Entertainment Studios, Entertainment Studios persisted. They reached out again in
17 June 2015. Despite several years of knocking on Charter’s door and countless
18 attempts to set in-person meetings and phone calls to discuss a carriage deal, Singer
19 feigned ignorance in response to Entertainment Studios’ renewed carriage request.

20 82. Singer lied. He claimed that he believed Entertainment Studios was
21 “no longer interested” in obtaining carriage on Charter’s system. Singer further
22 stated that “practice in the industry” dictated that Entertainment Studios “provide a
23 presentation about [its] channels as the first step to considering carriage,” and that
24 he “looked forward to learning more about them.” But Entertainment Studios had
25 already provided information about its channels to Singer on multiple occasions
26 throughout their years-long efforts to obtain carriage with Charter.

27 83. Singer’s comments in this regard were disingenuous. Entertainment
28 Studios at no time stopped seeking carriage on Charter’s system, and Singer had no

1 legitimate basis to believe they were “no longer interested” in a carriage deal.
2 Indeed, Singer often balked at Entertainment Studios’ persistence, telling them that
3 he did not need “another pitch” from the company and that it did not make sense to
4 “meet again” regarding Entertainment Studios’ request carriage. Singer was, once
5 again, just making up excuses to avoid doing business with this African American–
6 owned media company.

7 84. Entertainment Studios called Singer out on his lies and phony excuses.
8 And in doing so, Entertainment Studios copied several FCC commissioners,
9 including Chairman Wheeler, to notify them of Charter’s discriminatory practices in
10 contracting for carriage. In other words, the FCC has already been apprised of
11 Charter’s unfair and discriminatory business practices; hence Charter’s eagerness to
12 “prove” it is now a proponent of diversity in the media industry to get its merger
13 approved.

14 85. Despite Entertainment Studios’ many attempts to reach out to
15 Chairman Wheeler and the FCC to address the rampant racism in the media
16 industry, Chairman Wheeler would not set a meeting with Entertainment Studios
17 founder, chairman and CEO, Byron Allen, or even return his numerous phone calls.

18 86. After Entertainment Studios called Singer out on his lies and excuses,
19 Singer finally agreed to set a meeting with Entertainment Studios in July 2015.

20 87. Entertainment Studios’ team traveled from their office in Los Angeles
21 to Charter’s headquarters in Connecticut, with the understanding that the purpose of
22 the meeting was to negotiate the terms of a carriage deal. But when they arrived,
23 they soon learned that was not the case. Singer dragged Entertainment Studios to
24 Connecticut just so he could say that he met with them and gave them consideration
25 for a carriage deal. But at the meeting, he made clear that Charter would never
26 consider doing business with Byron Allen’s company.

27 88. Once more, Singer gave Entertainment Studios all the excuses in the
28 book. For example, Singer told Entertainment Studios that Rutledge wanted to wait

1 to “see what AT&T does.” But AT&T already carried one of Entertainment
 2 Studios’ networks (Justice Central) at the time, and AT&T has since launched
 3 Entertainment Studios’ entire portfolio of channels on its television distribution
 4 system. Despite this—and despite Charter’s indication that it just wanted to wait to
 5 “see what AT&T does”—Charter still refuses to carry *any* of Entertainment Studios’
 6 channels.

7 89. Charter also told Entertainment Studios that it would have to wait until
 8 after the merger was approved to be considered for a carriage deal. According to
 9 Charter, until the merger is approved, there are “too many unknowns” to enter into a
 10 carriage deal with Entertainment Studios. Singer told Entertainment Studios: “You
 11 go back to the line”—*i.e.*, “Get to the back of the bus behind white-owned channels
 12 who have carriage.”

13 90. Charter just wanted to postpone the negotiations and lead
 14 Entertainment Studios to believe that it had a chance to obtain carriage on its system
 15 so that Entertainment Studios would not publicly oppose the merger on the basis of
 16 Charter’s racist refusal to do business with African American–owned media
 17 companies.

18 91. Charter also continued its mantra regarding limited bandwidth as a
 19 pretextual excuse to avoid doing business with Entertainment Studios in 2015. But
 20 despite its purported bandwidth limitations, Charter expanded the reach of its
 21 distribution of white-owned RFD-TV in 2015, when it began distributing RFD-TV
 22 across its entire television footprint—including in major urban cities such as Los
 23 Angeles and Atlanta where, presumably, the demand for rural networking is not
 24 nearly as high as the demand for the general audience, lifestyle networks offered by
 25 Entertainment Studios. More pretext.

26 92. Meanwhile, Singer has ceased returning Entertainment Studios’ calls
 27 altogether.

1 93. Charter is discriminating against Entertainment Studios on account of
2 race in connection with contracting for carriage in violation of the Civil Rights Act,
3 42 U.S.C. § 1981. Without access to viewers and without licensing fees and
4 advertising revenues from one of the largest video programming distributors in the
5 country, this African American–owned media company is being shut out and
6 severely damaged.

7 **FIRST CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS**
8 **(42 U.S.C. § 1981)**

9 **NAAAOM and Entertainment Studios Against Defendant Charter**

10 **A. Section 1981**

11 94. Plaintiffs refer to and incorporate by reference each foregoing and
12 subsequent paragraph of this Complaint as though fully set forth herein.

13 95. Charter has engaged in, and is engaging in, pernicious, intentional
14 racial discrimination in contracting, which is illegal under § 1981. Section 1981 is
15 broad, covering “the making, performance, modification, and termination of
16 contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the
17 contractual relationship.”

18 96. African Americans are a protected class under § 1981. Entertainment
19 Studios is a 100% African American–owned media company.

20 97. As alleged herein, Entertainment Studios attempted many times over
21 many years to contract with Charter to carry its channels, but Charter has refused,
22 providing a series of phony, pretextual excuses. Yet Charter has continued to
23 contract with—and make itself available to contract with—similarly situated white-
24 owned television channels.

25 98. Charter has refused to contract with Entertainment Studios for channel
26 carriage. Charter has a pattern and practice of refusing to do business, or offering
27 unequal contracting terms to, African American–owned media companies.
28

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1 **B. Damages**

2 99. But for Charter’s refusal to contract with Entertainment Studios,
3 Entertainment Studios would receive millions of dollars in annual license fees and
4 advertising revenue. Moreover, with distribution on one of the largest television
5 platforms in the nation, the demand for Entertainment Studios’ channels both
6 domestically and internationally would increase, leading to additional growth and
7 revenue for Entertainment Studios’ channels.

8 100. Based on the revenue Entertainment Studios would generate if Charter
9 contracted with them in good faith, Entertainment Studios would be valued at
10 approximately \$10 billion.

11 101. Similarly situated lifestyle and entertainment media companies are
12 valued at higher amounts. But for Charter’s refusal to contract with Entertainment
13 Studios, Entertainment Studios would have a higher valuation.

14 102. Accordingly, Charter’s unlawful discrimination has caused
15 Entertainment Studios in excess of \$10 billion in damages, according to proof at
16 trial; plus punitive damages for intentional, oppressive and malicious racial
17 discrimination.

18 **SECOND CAUSE OF ACTION: VIOLATION OF DUE PROCESS**

19 **UNDER THE FIFTH AMENDMENT**

20 **NAAAOM and Entertainment Studios Against Defendant FCC**

21 103. Plaintiffs refer to and incorporate by reference each foregoing and
22 subsequent paragraph of this Complaint as though fully set forth herein.

23 104. Defendant FCC is violating the due process rights of NAAAOM and
24 Entertainment Studios by engaging in a pattern or practice of facilitating economic
25 exclusion of African Americans by encouraging merger applicants to execute sham
26 diversity MOUs in order to secure merger approval.

27 105. The FCC’s pattern of accepting sham commitments to diversity permits
28 television distributors, including Charter, to discriminate as described herein. This

1 amounts to a racially discriminatory practice and procedure.

2 106. The U.S. Supreme Court has held that the Fifth Amendment to the U.S.
3 Constitution contains an equal protection component prohibiting the federal
4 government from invidiously discriminating between individuals or groups,
5 including on the basis of race. This constitutional protection applies to actions by
6 governmental agencies such as the FCC, which are required to provide Americans
7 with equal protection of the laws without regard to race, based on the guarantee of
8 liberty in the due process clause of the Fifth Amendment.

9 107. Discrimination based on race by a federal agency such as the FCC is so
10 unjustifiable as to violate constitutional due process. The U.S. Supreme Court has
11 repeatedly invalidated federal actions fostering discrimination in violation of due
12 process clause.

13 108. In this case, the FCC’s pattern and practice of facilitating Charter’s
14 racial discrimination by encouraging and accepting sham “diversity” MOUs, while
15 in fact excluding African Americans from real economic inclusion, provides a
16 federal government stamp of approval on these discriminatory practices. The result
17 is that the FCC is complicit in Charter’s racial discrimination in contracting for
18 channel carriage, in violation of the U.S. Constitution.

19 109. Through the FCC’s policy of leading Charter and other television
20 distributors to eschew their commitments to diversity and true economic inclusion
21 of African American–owned media companies by creating a false pretense of racial
22 equality, the FCC denies Entertainment Studios and other African American–owned
23 media companies of the constitutionally required due process guarantee to be free of
24 government sanctioned invidious discrimination.

25 110. The FCC’s encouragement and acceptance of sham MOUs and its “lip
26 service” to African American–owned media companies fosters the false impression
27 that the FCC has taken diversity considerations into account when determining
28 whether a proposed merger is in the “public interest.” This constitutes a pattern or

1 practice of invidious discrimination in violation of the Fifth Amendment to the U.S.
2 Constitution.

3 111. The FCC’s established pattern and practice of facilitating
4 discrimination by television distributors, including Charter, happens behind closed
5 doors. There is no formal rule promulgated by the FCC governing this policy and
6 practice, nor is there any recount or record of this policy and practice when the FCC
7 approves a merger.

8 112. As a result, this discriminatory policy and practice by the FCC evades
9 judicial review through traditional channels such as the Administrative Procedure
10 Act. Indeed, nothing further could be gained by waiting for a final agency action, as
11 the FCC’s actions to facilitate discrimination have not and will not appear in any
12 administrative record.

13 113. Exhaustion of administrative remedies is not required for a U.S.
14 constitutional claim against a governmental agency. And based on the FCC’s
15 established practice of pretending to care about racial equality and claiming
16 diversity as an important value, while actually encouraging the economic exclusion
17 of African American–owned media companies, it would be futile for Plaintiffs to
18 approach the FCC to exhaust their administrative remedies.

19 114. Defendant FCC’s violations of the constitutional rights of NAAAOM
20 and Entertainment Studios causes serious, irreparable, and lasting harm to Plaintiffs.
21 Absent relief, the FCC will approve this merger under the façade of diversity and
22 racial equality while being complicit in Charter’s racially discriminatory policies
23 and practices in contracting for channel carriage, thus encouraging the racist and
24 discriminatory practices of Charter and other television distributors to continue
25 unabated.

26 115. Accordingly, Plaintiffs hereby seek injunctive relief precluding the
27 FCC from utilizing the sham diversity agreements offered by Charter in its
28 regulatory review of the Charter / Time Warner Cable / Bright House merger.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment, as follows:

1. Plaintiff Entertainment Studios prays for compensatory, general and special damages from Charter in excess of \$10 billion according to proof at trial;
2. Plaintiffs NAAAOM and Entertainment Studios pray for injunctive relief prohibiting Charter from discriminating against African American–owned media companies, including Entertainment Studios, based on race in connection with contracting for channel carriage;
3. Plaintiff Entertainment Studios prays for punitive damages, based on oppression and malice, according to Charter’s net worth;
4. Plaintiffs NAAAOM and Entertainment Studios pray for injunctive relief that the FCC discontinue its practice of facilitating sham “diversity” agreements/MOUs, including the Charter MOU described herein, and not rely on these agreements in considering whether to approve proposed mergers, including Charter’s proposed acquisition of Time Warner Cable and Bright House Networks;
5. Plaintiff Entertainment Studios prays for attorneys’ fees, costs and interest; and
6. Plaintiffs NAAAOM and Entertainment Studios pray for such other and further relief as the court deems just and proper.

DATED: January 27, 2016

MILLER BARONDESS, LLP

By: /s/ Louis R. Miller

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Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiff Entertainment Studios hereby demands trial by jury pursuant to the Seventh Amendment of the United States Constitution on the 42 U.S.C. § 1981 claim for damages.

DATED: January 27, 2016

MILLER BARONDESS, LLP

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