

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of  
Section 63.71 Application of  
OpenBand of Virginia, LLC  
To Discontinue Services

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) Docket No. \_\_\_\_\_  
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**LANDSLOWNE OF THE POTOMAC HOMEOWNERS  
ASSOCIATION, INC.’S COMMENTS IN RESPONSE TO  
OPENBAND OF VIRGINIA, LLC’S SECTION 63.71 APPLICATION**

Lansdowne on the Potomac Homeowners Association, Inc. (“Association”), hereby responds to OpenBand of Virginia, LLC’s application to discontinue the provision of all communication services (voice, video, and Internet) to the residents of the Lansdowne on the Potomac community. OpenBand is currently the only wireline provider serving Lansdowne, and its application creates a serious risk that—at least temporarily—the 2155 homes in Lansdowne will not be able to receive wireline service from any provider. Although the Association is currently working with another provider to begin serving the community, there is no assurance that the other provider will be able to finish transitioning all homes by October 15, 2018—the date that OpenBand proposes to stop service. The Commission should not automatically grant OpenBand’s application and should permit OpenBand to discontinue service only after another wireline provider offers reasonable substitute service to all the residents of Lansdowne on the Potomac and residents have had a reasonable opportunity to transition their service.

**ARGUMENT**

A carrier may not “discontinue, reduce, or impair service to a community, or part of a community,” unless the Commission determines that “neither the present nor future public

convenience and necessity will be adversely affected thereby.”<sup>1</sup> Under the Commission’s implementing rules, an application to discontinue service is generally granted “unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected.”<sup>2</sup> Ordinarily, such a grant happens automatically. But “[w]here comments on a discontinuance application allege that the service has no reasonable substitute or that either present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations.”<sup>3</sup> Moreover, in cases where “the record raises concerns regarding a lack of reasonable substitutes . . . [and] a need for additional time to fully transition to alternative providers in order to avoid a potential loss or disruption of service to customers,” the Commission has found that the public interest is not served by the automatic grant of an application.<sup>4</sup>

Lansdowne is a centrally-managed residential real-estate development located in Loudoun County, Virginia on which are located 2155 single-family attached and detached homes. As a result of an agreement between the community’s developer and OpenBand, OpenBand for many years held an exclusive easement to provide all wireline communications services in Lansdowne on the Potomac. Thus, while OpenBand identifies itself as a “non-dominant provider of telecommunication services,” the reality is that its arrangement with the developer has allowed OpenBand to exclude all other wireline providers from accessing the

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<sup>1</sup> 47 U.S.C. § 214(b).

<sup>2</sup> *Application of Sprint Commc’ns Co. L.P. to Discontinue Domestic Telecommunications Servs. Not Automatically Granted, Further Comment Requested*, Public Notice, 23 FCC Rcd. 11543, 11544 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Lansdowne property, and no other wireline provider, other than OpenBand, currently serves Lansdowne.<sup>5</sup>

After years of litigation between the Association and OpenBand, which culminated in the invalidation of a portion of OpenBand's exclusive easement,<sup>6</sup> the parties eventually reached a settlement whereby the Association had the option to purchase the Internet and voice portions of OpenBand's exclusive easement (OpenBand took the position that while it could not preclude another provider from providing video service, it could preclude the provision of wireline voice and Internet service).

The Association exercised its option to purchase the remainder of the exclusive easement, and subsequently entered into a bulk-services agreement with Comcast for the provision of video and Internet services. To perform that agreement, as noted in OpenBand's application, Comcast agreed to purchase OpenBand's network in the Lansdowne community.<sup>7</sup> Comcast's purchase of OpenBand's existing facilities will undoubtedly minimize the difficulty and the amount of time needed to complete the transition from OpenBand to Comcast. It is the Association's understanding, however, that Comcast cannot simply unplug OpenBand's system and connect

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<sup>5</sup> OpenBand and its affiliates, in fact, successfully resisted Adelphia Cable Communications' (now Comcast) efforts to obtain access to Lansdowne on the Potomac for the purpose of installing its facilities, arguing that OpenBand at Lansdowne, the entity created to hold the exclusive easement, was not a "utility" subject to the Pole Attachment Act and consequently, its easement exclusivity rights precluded Adelphia from installing and providing communication services in Lansdowne. *See UCA, LLC v. Lansdowne Community Development, LLC*, 215 F. Supp. 2d 742, 756 (E.D. Va. 2002).

<sup>6</sup> *See Lansdowne on the Potomac Homeowners Ass'n, Inc. v. OpenBand at Lansdowne, LLC*, 713 F.3d 187 (4th Cir. 2013) (invalidating OpenBand's exclusive video easement).

<sup>7</sup> The Association is unaware that OpenBand filed an application for approval to transfer control of its network under Section 214.

the Lansdowne network to its own. Rather, Comcast must install a completely new fiber network within the existing conduit it purchased from OpenBand.

While the Association has no reason to believe Comcast and OpenBand are not working expeditiously and cooperatively to ensure a seamless transition from one to the other, completing this work is complicated and far from being completed. As of this filing, it is the Association's understanding that Comcast has been able to transition only a small fraction—less than 100 homes of the 2155 homes in Lansdowne—to its network. For that reason, simply permitting OpenBand to terminate service on a date certain—October 15, 2018—without ensuring a continuity of service will adversely affect the Association's residents. Indeed, because of the access exclusivity OpenBand has wielded for decades, there are no other wireline providers capable of providing service. Lansdowne's residents have no choice but to rely on OpenBand for their wireline communication services until Comcast is able to fully complete the transition from OpenBand to Comcast.

The availability of wireline communication services is critical to the residents of Lansdowne. Many residents run their businesses from their homes; others frequently telecommute, including a radiologist who requires communication services to remotely analyze patient medical records. Many residents use OpenBand's voice services for their homes, potentially leaving these homes without a wireline 911 calling option. Many residents rely on other services that are exclusively delivered over OpenBand's high-speed Internet service, such as home security and monitoring services. And at least one resident relies on OpenBand's wireline communication services for critical health monitoring services.

The Association does not seek to prolong OpenBand's provision of communication services to its residents, but the transition from OpenBand to Comcast must be done in a

responsible manner that ensures the residents' uninterrupted access to critical communication services. The Commission, therefore, should exercise its statutory authority to grant an application to discontinue service subject to "such terms and conditions as in its judgment the public convenience and necessity may require."<sup>8</sup> The Commission should condition the grant of OpenBand's application upon its certification that every home in Lansdowne is receiving, or capable of receiving, reasonable substitute wireline voice, Internet, and video services from a substitute wireline provider. This certification will ensure the critical continuity of service mandated by 47 U.S.C. § 214 and the residents of Lansdowne require.

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<sup>8</sup> 47 U.S.C. § 214(a).