

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

In the Matter of)	
Section 63.71 Application of)	Docket No. _____
OpenBand of Virginia, LLC)	
to Discontinue Services)	
)	

OPENBAND OF VIRGINIA, LLC’S REPLY TO THE
COMMENTS OF THE LANSLOWNE OF THE POTOMAC
HOMEOWNERS ASSOCIATION, INC.

OpenBand of Virginia, LLC (“OpenBand”) respectfully submits its reply to the August 27, 2018 comments filed by the Lansdowne of the Potomac Homeowners Association, Inc. (“HOA”) in response to OpenBand’s Section 63.71 application to discontinue offering service at the Lansdowne on the Potomac subdivision in Loudoun County, Virginia. The HOA misreads both OpenBand’s application as well as the Commission’s service discontinuance rules. 47 C.F.R. § 63.71. Accordingly, the Commission should approve OpenBand’s service discontinuance request, notwithstanding the HOA’s comments otherwise.

The HOA argues that OpenBand seeks “to terminate service on a date certain – October 15, 2018 – without ensuring a continuity of service,” which, according to the HOA, would “adversely affect” residents. HOA Reply at 4. The HOA is wrong on all three points. OpenBand’s application plainly states that the planned service discontinuance will occur “on or about October 15, 2018.” OpenBand expressly declined to provide a “date certain” when services would finally be discontinued in recognition of the need for flexibility in facilitating the transition to Comcast Cable Communications Management, LLC (“Comcast”), which has purchased most of OpenBand’s network at the Lansdowne on the Potomac subdivision.

Indeed, at Comcast's request, OpenBand and Comcast recently agreed that OpenBand would continue providing service to subdivision residents beyond October 15, 2018 pursuant to a facility lease agreement by which OpenBank leases the network assets it sold to Comcast to ensure "continuity of service." This agreement now gives Comcast until November 15, 2018 to complete its network deployment. So that Lansdowne residents are not "adversely effected," OpenBand is continuing to work cooperatively with Comcast to facilitate the network migration and is keeping customer informed of the progress. In fact, OpenBand recently sent customers an updated service discontinuance notice, a copy of which is attached.

The Commission should reject the HOA's request to delay approval of OpenBand's Section 63.71 application until Comcast "offers reasonable substitute service to all the residents of Lansdowne on the Potomac and residents have had a reasonable opportunity to transition their service." HOA Reply at 1. Once Comcast has completed its network deployment and is offering service to Lansdowne residents, OpenBand will have effectively discontinued service because it will no longer be able to lease from Comcast the network assets required to serve customers in the subdivision. If it does not obtain Commission authorization now, before Comcast's network deployment is complete, OpenBand could be held in violation of Commission rules.

Under the circumstances, the Commission should grant OpenBand's application so that OpenBand is authorized to discontinue service, with the understanding that OpenBand will continue serving Lansdowne on the Potomac residents until Comcast has completed its network deployment. Once Comcast's network has been fully deployed, subdivision residents, by definition, will have an adequate wireline alternative to OpenBand. And, Comcast will have every financial incentive to migrate residents as quickly as possible to its network.

The Commission also should reject the HOA's request to condition approval on OpenBand's "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." HOA Reply at 5. First, there is no legal authority – and the HOA cites none – for the Commission imposing such a "certification" obligation.

Second, because it has sold nearly all its network assets at the Lansdowne on the Potomac subdivision to Comcast, OpenBand has no insight into those residents who are receiving or are capable of receiving Comcast service. Thus, OpenBand could not provide the requested certification, even if it were required under Section 63.71, which is not the case.¹

Third, the HOA's attempt to impose service discontinuance requirements on OpenBand for "Internet" and "video services" is inconsistent with Section 63.71, which only applies to the discontinuance of OpenBand's voice offerings. While notifying residents of its intent to discontinue all communications-related services provided at Lansdowne on the Potomac, Commission approval is not required for OpenBand to cease providing broadband and video services, which are not subject to the Section 63.71 process.²

¹ The HOA's suggestion that OpenBand failed to seek Commission approval under Section 214 "to transfer control of its network" to Comcast represents a misunderstanding of the FCC's rules. HOA Reply at 3, n.7. Section 214 speaks in terms of a carrier discontinuing, reducing, or impairing service, expressly noting that "nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment ..." 47 U.S.C. § 214(a) (emphasis added). By selling network assets to Comcast, OpenBand's "facilities necessary for providing service remain in place," which avoids any Section 214 issue associated with that sale. *See Fairmount Tele. Co., Inc. v. Southern Bell Tele. & Tele. Co.*, 55 RR 2d 139, ¶ 17 (Comm. Carrier Bureau 1983).

² Under the circumstances, the HOA's claims about unidentified residents relying upon OpenBand's broadband services to "analyze patient medical records," for "home security and monitoring services," or "for critical health monitoring services" are irrelevant for Section 63.71 purposes. HOA Reply at 4. Furthermore, Comcast undoubtedly will make available robust broadband offerings that will more than adequately meet these residents' high-speed Internet needs, and OpenBand will continue to provide broadband services in the interim.

Fourth, the HOA overstates the number of voice customers impacted by OpenBand's Section 63.71 application and misrepresents their competitive alternatives. While there may be 2,155 homes in Lansdowne on the Potomac, OpenBand provides voice service to less than 900 customers in the subdivision – a number that will continue to dwindle as residents migrate to Comcast or abandon wireline voice service altogether. Even assuming residents “will not be able to receive wireline service from any provider,” which is not the case, the HOA conveniently ignores the numerous wireless alternatives for voice service available to residents – alternatives that the Commission considers in addressing service discontinuance applications.³

It is regrettable that the HOA opted to file comments with the Commission without first checking with OpenBand about the service continuity plans in place with Comcast – plans that should put to rest the HOA's concerns. However, OpenBand commits to working cooperatively with the HOA to make sure those concerns are adequately addressed. In the meantime, there is no valid reason to deny or any lawful basis to condition OpenBand's Section 63.71 Application to discontinue service in the manner the HOA proposes.

³ See, e.g., *Section 63.63 Application of Comcast IP Phone, LLC*, Order, 31 FCC Rcd 12346, ¶ 5 (2016) (granting Comcast's emergency request for authority to permanently discontinue interconnected VoIP service to customers in California, noting that the affected customers “have the option of obtaining comparable wireline voice service from AT&T, or wireless service from a number of carriers including AT&T and Verizon”).

September 12, 2018

Respectfully submitted,

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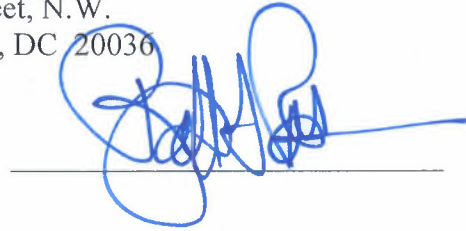
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing reply was served this 12th day of September 2018, by mailing a true and correct copy, postage prepaid, to the following persons at the addresses listed below:

Steven A. Fredley
Julie A. Veach
Mark D. Davis
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W.
Washington, DC 20036

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the person serving the documents.



CUSTOMER NOTIFICATION



From: customerservice@support.openband.net
Subject: OpenBand Service to Lansdowne on the Potomac
Extended

September 11,
2018

OpenBand Service to Lansdowne on the Potomac Extended

Dear OpenBand Customer,

Please be advised that OpenBand will continue to provide service to residents of Lansdowne on the Potomac (LOTP) beyond October 15, 2018, which is the date that Comcast had expected to complete its network deployment in the subdivision.

OpenBand continues to communicate with Comcast to ensure a smooth provider transition for LOTP residents. As Comcast completes construction and the ongoing activation of LOTP customers under its bulk-services agreement with the LOTP Homeowners Association, OpenBand has agreed to delay service discontinuance in LOTP until on or about **November 15, 2018**, after which OpenBand will cease providing all communications services within the LOTP property. The affected services that OpenBand will no longer provide to LOTP residents upon discontinuance include voice, video, Internet, and security monitoring.

Complete Comcast Installations Soon

At this point, all LOTP residents should be in contact with Comcast and have completed or scheduled appointments for fiber installation and service installation. If you have not scheduled one or more of these appointments, please do so immediately. Access Comcast service details, contact information and scheduling tools via the myXfinity page for LOTP: <https://lansdowne.myxfinityupdate.com/>

Once you know your Comcast service installation/activation date, be sure to contact OpenBand Customer Service to schedule termination of your OpenBand services.

OpenBand Potomac Club Office

With this extension, OpenBand will also continue customer service operations within the Potomac Club through Thursday, November 15, 2018. The standard hours of operation for OpenBand's Potomac Club office are: Monday-Friday; 9AM – 1PM and 2PM – 6PM. Upon terminating OpenBand services, LOTP residents should return all OpenBand video equipment to the Potomac Club office during these hours.

Service Discontinuance

OpenBand's discontinuance of service at LOTP is subject to the authorization of the Federal Communications Commission (the "FCC"). The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of OpenBand at Lansdowne, LLC. Comments should include specific information about the impact of this proposed discontinuance upon you, including any inability to acquire reasonable substitute service.

Thank you for your continued cooperation. Please contact OpenBand Customer Service with any questions or concerns.

Thank you,
OpenBand Customer Service

OpenBand Customer Service
(703) 961-1110

<http://support.openband.net>