

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of)	
)	
Charter Communications, Inc.)	MB Docket No. 15-149
Time Warner Cable Inc., and)	
Advance/Newhouse Partnership)	
)	
For Consent to Assign or Transfer Control)	
Of Licenses and Authorizations)	

REPLY COMMENTS OF GRANITE TELECOMMUNICATIONS, LLC

I. Introduction

Granite Telecommunications, LLC (“Granite”) provides these comments in response to the Application filed by Charter Communications, Inc. (“Charter”), Time Warner Cable, Inc. (“TWC”), and Advance/Newhouse Partnership (“Bright House”) (collectively, “Applicants”) for approval of their proposed combination,¹ and to the October 13, 2015 filings of AT&T and DISH Network.²

Granite provides voice and data communications to national companies across the entire United States that need a small number of voice lines (typically 1 to 10 lines) at a significant number of locations. Granite’s customers often have multiple locations in thinly populated rural and suburban areas. For instance, the United States Postal Service is a Granite customer and nearly every town has a post office. Granite provides service to post offices and other business

¹ *Applications of Charter Commc’ns, Inc., Time Warner Cable Inc., and Advance/Newhouse P’ship For Consent to the Transfer of Control Of Licenses and Authorizations, Public Interest Statement*, MB Docket No. 15-149 (filed June 25, 2015) (“Application”).

² Letter Comments of AT&T Inc. (filed Oct. 13, 2015) (“AT&T Comments”); Petition to Deny of DISH Network Corp. (filed Oct. 13, 2015 (DISH Petition”).

customers in towns as small as approximately 200 people. Granite provides these national businesses with the ability to obtain service from a single supplier at their disparate retail locations nationwide. Granite's business customers seek the efficiency of a single source of supply at multiple locations. Because no single supplier has, or reasonably could have, facilities serving all of these types of customer's locations, to meet the demand for such services, Granite obtains, through agreements with incumbent telephone companies, a commercial wholesale platform voice service that is a combined package of an unbundled voice grade (DS0) loop, local switching and shared transport.

Because Granite's customers only have limited demand for communications service at any given location, most of the locations at which Granite provides service are typically ill-suited for competitive fiber deployment. Wireless services are not a viable substitute because they do not provide the features and reliability that Granite's customers desire. Without construction to extend their networks, cable companies infrequently have facilities at the locations where Granite's customers - convenience stores, gas stations, drug stores, chain restaurants, and post offices - need service.³ As a result, Granite depends on the ILEC for reasonably-priced wholesale inputs necessary to serve its customer locations with relatively modest bandwidth requirements.

II. Argument

Plainly, any merger eliminates potential competition between the merging parties. As DISH asserts, absent a merger, "opportunities for network expansion abound for Charter and TWC" and, because the Charter and TWC networks are often adjacent, "there are no greater

³ Granite recently submitted information to the Commission in which Granite stated that only fifteen percent (15%) of its customer locations were serviceable by cable providers without construction costs. Letter from Thomas Jones, Counsel, Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., at Attach. (filed June 3, 2015). At none of these locations do cable providers offer Granite a comparable wholesale voice product.

targets for network expansion than Charter's and TWC's own territories."⁴ It appears, however, that rather than compete with one another by building facilities outside their local franchise areas, quite apart from the proposed merger, Applicants and other cable companies have already agreed to team up with one another. As AT&T noted in its comments,⁵ Comcast has touted this agreement in some detail in a press release, claiming that it "has signed network agreements with other cable operators to further support national accounts."⁶ The Wall Street Journal reported more specifically that Comcast has "struck wholesale agreements with cable operators including Cox Communications Inc., Time Warner Cable Inc., Charter Communications Inc., Cablevision Systems Corp. and Mediacom Communications Corp., to offer services using their pipes."⁷

This stands in stark contrast to the portrait the Applicants paint in their filing in which they claim that a merger is necessary for their telecommunications business serving multi-location customers because "[c]ustomers typically prefer a single network, with a single set of technical standards and a single point of contact for customer support—benefits that Charter, Time Warner Cable, and Bright House Networks operating as independent companies cannot provide to many businesses."⁸ While acknowledging that Applicants could partner with one another rather than combine, they assert that "such partnering efforts bring high transaction

⁴ DISH Petition at 58-59.

⁵ AT&T Comments at 5.

⁶ Press Release, Comcast, Comcast Business Announces New Unit Targeting Fortune 1000 Enterprises (Sept. 16, 2015), <http://corporate.comcast.com/newsinformation/news-feed/comcast-business-announces-new-unit-targeting-fortune-1000-enterprises>.

⁷ Shalini Ramachandran, Comcast To Sell Data Services to Big Firms Nationwide, Wall St. J. (Sept. 16, 2015), <http://www.wsj.com/articles/comcast-to-sell-data-services-to-big-firmsnationwide-1442376240>.

⁸ Application at 35.

costs, as multiple networks and personnel must be coordinated.”⁹ The Application concedes that although TWC “has pursued such multiple-provider arrangements with Comcast in the past, it has found the arrangements to be very challenging.”¹⁰

The Applicants’ experts further suggest that a “benefit of increased geographic scope is that the post-merger firm will be better able to serve multi-location businesses.”¹¹ This is because they contend that “[b]usinesses with locations that currently span all of the Charter, TWC and [Bright House] footprint will be better served by the post-merger firm, because all of the business’s locations will be served by a single provider rather than three separate providers.”¹² Accordingly, “these multi-location businesses will gain a ‘one-stop-shopping’ benefit that will reduce their costs.”¹³

It appears that the Applicants’ case for Commission approval is inconsistent with the reality that is reflected in Comcast’s announcement of the cooperation agreements. On the one hand, the Applicants claim the merger will help them avoid the problems inherent in partnering with other cable companies to compete; yet at the same time the Applicants are already parties to at least one wholesale agreement that provides for the very partnering the Applicants claim can only take place via merger.

The Commission should investigate this apparent inconsistency and review the Applicants’ agreements with Comcast and any related agreements between the Applicants and other cable companies for the provision of telecommunications services. Either way, the

⁹ Application at 36.

¹⁰ *Id.*

¹¹ Application at 36, citing Declaration of Fiona Scott Morton ¶ 20 (attached as Exhibit D to the Application).

¹² *Id.*

¹³ *Id.*

Applicants' entry into the business telecommunications markets poses serious risks to competition as the result of collusion rather than competition among the cable companies. It certainly appears that the merged company, along with Comcast, Cox and others, has the opportunity and incentive to collude, rather than compete, in the market for multi-location enterprise services. As AT&T notes, "cable companies share common, national rivals in broadband, video, and telecommunications services. These geographically segregated cable companies therefore have incentives to coordinate their activities and have demonstrated the ability to do so."¹⁴ The Commission's analysis of mergers has regularly considered whether the proposed combination "increases the potential for coordinated interaction by firms remaining in the post-merger market."¹⁵ This is because such coordination has adverse impacts on competition and consumers. In considering the Application, the Commission should investigate the existing arrangements between the Applicants and other cable companies and whether such arrangements impede competition. This is particularly important because while these companies are also in the video business, to the extent they offer telecommunications services they are obligated to provide such services upon reasonable request, and on rates, terms and conditions that are reasonable under Section 201(b)¹⁶ and at rates that are not unreasonably discriminatory.¹⁷ And to the extent they provide local exchange or exchange access they are obligated to offer them for resale.¹⁸

¹⁴ AT&T Comments at 2.

¹⁵ *Applications of NYNEX Corporation Transferor, - and - Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985, 20046 ¶ 121 (1997) ("*Bell Atlantic/NYNEX Merger Order*").

¹⁶ 47 U.S.C. § 201(b).

¹⁷ 47 U.S.C. § 202(a).

¹⁸ 47 U.S.C. § 251(c)(4).

The Commission's review should analyze whether the Agreements offer services to other parties to the Agreements that the Applicants do not offer to provide to other similarly situated companies that are in the market to purchase wholesale service from any of the Applicants. The Commission should also review whether, if there are agreements between the Applicants and other non-cable company purchasers, the cable company cooperation agreements discriminate in favor of the cable companies. These agreements among cable companies will not disappear if Charter, TWC and BrightHouse are allowed to merge. Rather, they will be easier to coordinate, as the number of separate parties to the agreements will be reduced as the result of the merger.

The proposed combination between Charter, TWC and BrightHouse, coupled with the announced wholesale arrangement with Comcast and other cable companies, raises questions regarding competition between and among these companies in all markets. Under traditional competitive analysis, when two or more companies that compete or could compete in multiple markets, where each company possess a significant cost advantage over the other, each firm has an incentive to collude with the other(s) in order to avoid competing in the market where the other company(ies) possess a cost advantage.¹⁹ If one company "breaks" the tacit non-compete agreement, it knows that the other company(ies) will likely invade its home market as well.²⁰ As a result, both (all) companies suffer a net loss from the combined increases in costs (associated with competing in the market where other company has a cost advantage) and reduced prices (in its own market where it has a cost advantage in response to competition from second company).

The proposed combination and the agreement with Comcast present similar opportunities for collusion. Antitrust law recognizes that, "reducing the number of major incumbent [cable

¹⁹ See e.g., *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993).

²⁰ Phillip Areeda and Herbert Hovenkamp *Antitrust Law, An Analysis of Antitrust Principles and Their Application* ¶ 1141(a) (4th ed. 2015) ("Areeda").

operators], the merger[s] also increase[] the risk that the remaining firms will collude, either explicitly or tacitly.”²¹ The Commission has explained that such “collusion is more likely to occur where only a few participants comprise a market and entry is relatively difficult.”²²

The possibility of collusive behavior is particularly strong where, as here, conditions are conducive to detecting breaches in territorial divisions. The enterprise services market is currently characterized by existing territorial divisions among the ILECs and cable companies operating in their cable franchise territories, high market concentrations, significant barriers to entry,²³ and economies of scale.²⁴

Here the “agreement” between Comcast and its cable brethren, while nominally allowing “competition,” would appear to preclude the likelihood that any cable company will invest in self-deployed facilities in markets outside its own franchised territories. Where a company that has significant advantages in its franchise territory declines to take advantage of potentially profitable opportunities in another operator’s adjacent franchise area, resting on the tacit

²¹ *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, 14804 ¶ 207 (1999); see also, *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14762 ¶ 104 (1999) (“SBC/Ameritech Order”).

²² *Id.* at 14768-69 ¶ 121.

²³ See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8670 ¶ 90 (2010) (“Qwest Forbearance Order”) *aff'd* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

²⁴ See, e.g., *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2618, ¶ 154 (2005). (*subseq. history omitted*).

expectation that the adjacent company will do the same, thereby preserving each company's built in cost advantage in its own franchise area, an illustration of tacit coordination is presented.²⁵

While Granite recognizes that neither Comcast nor the Applicants are dominant carriers for the provision of telecommunications services in their cable franchise areas, the FCC need not limit its review of the proposed combination to whether their behavior violates the antitrust laws.²⁶ Rather the FCC's obligation is to protect the public interest, including whether the combination would "enhance ... competition."²⁷ The Commission's public interest authority enables it to rely upon its "extensive regulatory and enforcement experience"²⁸ to find a merger unlawful unless it imposes and enforces certain types of conditions that serve to "tip the balance" and result in a merger yielding net public interest benefits.²⁹ To conclude that a merger is in the public interest, "the Commission must 'be convinced that it will enhance competition.'"³⁰

III. Conclusion

For the aforementioned reasons, the Commission should thoroughly investigate the Applicants' cooperation agreements with other cable companies for the provision of

²⁵ Areeda ¶ 1141(a).

²⁶ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238, 4247 ¶ 22 (2011) ("Comcast/NBCU Order").

²⁷ See *Adelphia Order*, 21 FCC Rcd at 8218-19 ¶ 25.

²⁸ *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219 ¶ 26 citing *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21545 ¶ 43 (2004).

²⁹ *SBC/Ameritech Order*, 15 FCC Rcd at 14063 ¶ 52.

³⁰ *Id.* at 14062 ¶ 49 citing *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd at 19987 ¶ 2).

telecommunications services to determine if they are consistent with the Commission's goals of advancing competition to benefit the public interest.

Respectfully submitted,



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