

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**REPLY OF THE GREENLINING INSTITUTE**

**TO OPPOSITION TO PETITIONS TO DENY AND RESPONSE TO COMMENTS**

The Greenlining Institute (“Greenlining”) hereby files this Reply to Opposition to Petitions to Deny and Response to Comments in the above-captioned matter pursuant to Section 309(d)(I) of the Communications Act of 1934,<sup>1</sup> and the FCC's Public Notice of September 11, 2015.<sup>2</sup>

**I. APPLICANTS HAVE NOT PROVIDED SUFFICIENT INFORMATION TO MEET ITS BURDEN OF PROOF.**

In its Petition to Deny, Greenlining noted that Applicants appeared to be improperly shifting the burden of proof to the Commission and parties that opposed the transaction:

This is not the first time that Greenlining has seen an Applicant make vague references to merger benefits, requiring the Commission to do the “heavy lifting” of determining the appropriate markets, defining those markets, and then calculating the merger effects on those markets. Greenlining believes that Applicants are engaging in this strategy in the hopes of overwhelming the Commission’s limited resources, resulting in a less thorough review of the proposed transaction.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 309(d)(I) (2011).

<sup>2</sup> FCC Public Notice, DA 15-1010, Docket No. 11-65 (September 11, 2015) (Establishing Pleading Cycle).

<sup>3</sup> Greenlining Petition to Deny at 6-7 (citations omitted).

Greenlining specifically noted the insufficiency of Applicants' market analysis<sup>4</sup> and the transaction's impact on small businesses,<sup>5</sup> low-income consumers,<sup>6</sup> diversity,<sup>7</sup> and employment.<sup>8</sup>

It appears that Applicants are continuing this strategy in their Opposition. For example, in its Petition to Deny, Greenlining argues that Applicants have not provided sufficient information regarding the expanded Charter's low-cost broadband offering.<sup>9</sup> Applicants respond by stating that "information about the program is publicly available."<sup>10</sup> Applicants, are, of course, well within their rights to craft their Application in any manner they see fit. However, nothing changes the fact that Applicants bear the burden of proving by a preponderance of the evidence that the proposed transfer does not harm the public interest.<sup>11</sup>

## **II. APPLICANTS HAVE NOT PROVIDED SUFFICIENT INFORMATION TO DEMONSTRATE CLAIMED EFFICIENCIES.**

### **A. Applicants Have Not Provided Sufficient Information to Demonstrate that New Charter's Proposed Low-Cost Broadband Offering Will Benefit Low-Income Consumers.**

In its Petition to Deny, Greenlining noted that the Application provides no meaningful information that would allow the Commission to conclude that New Charter's proposed low-cost broadband program would benefit low-income customers.<sup>12</sup> In their Opposition, Applicants characterize these concerns as "unfounded," but provide no new information regarding the specific pricing, speeds, or eligibility requirements of the program. In fact, Applicants admit that Charter is "still developing the details of the low-income program" It appears that Applicants are

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<sup>4</sup> Greenlining Petition to Deny at 7.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 14.

*Id.* at 9.

<sup>10</sup> Opposition at 84, note 322.

<sup>11</sup> Order In the Matter of Applications of AT&T Inc. and Celco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Celco Order).

<sup>12</sup> Greenlining Petition to Deny at 9.

attempting to portray the promise of a nebulous, undefined low-cost program as a merger benefit. The Commission should reject claims that the program will benefit consumers until Applicants can provide sufficient specificity for the Commission to evaluate those claims. The Application provides no meaningful information that would allow the Commission to conclude that New Charter's broadband program for low-income customers would benefit those customers, and accordingly benefit the public interest.

**B. Applicants Have Not Provided Sufficient Information to Demonstrate that New Charter's Proposed Diversity Programs Will Serve the Public Interest.**

To Applicants' credit, their Opposition provides additional information regarding New Charter's plans to promote corporate, supplier, and philanthropic diversity.<sup>13</sup> Unfortunately, this additional information lacks any meaningful detail which would be sufficient for the Commission to conclude that New Charter's diversity practices would serve the public interest. Additionally, while Applicants restate New Charters' intent to "incorporate and expand upon Time Warner's Cable's recognized best practices,"<sup>14</sup> Applicants have still not provided any information about Time Warner Cable's specific diversity practices. Accordingly, the Application provides no meaningful information that would allow the Commission to conclude that New Charter's diversity commitments would benefit the public interest

**III. APPLICANTS HAVE NOT PROVIDED SUFFICIENT INFORMATION TO DEMONSTRATE THAT CLAIMED EFFICIENCIES ARE VERIFIABLE.**

Applicants object to Greenlining's claims that the proposed transaction creates the risk of public interest harms because New Charter has made no commitments regarding (1) continuing to offer Lifeline service in Time Warner Cable's service territory. Applicants apparently argue that because Charter has not requested approval of any changes in rates, terms or conditions of

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<sup>13</sup> Opposition at 83.

<sup>14</sup> *Id.*

Time Warner's service in California, this somehow means that Charter will not do so in the future.<sup>15</sup> Interestingly, Applicants carefully avoid stating that if the Commission approves the merger, New Charter will continue to offer Lifeline service in Time Warner Cable's service territory. In the absence of any such commitment, there is a substantial risk that, post-merger, New Charter will decide not to offer Lifeline. Accordingly, the proposed transaction poses a serious risk to low-income consumers.

Similarly, Applicants conflate Time Warner Cable and Bright House's purported lack of plans to repatriate jobs to the United States with those companies **inability** to repatriate those jobs in the absence of a merger.<sup>16</sup> Even if Applicants have demonstrated that Time Warner Cable and Bright House do not intent to repatriate jobs in the absence of a merger, Applicants have not demonstrated that Time Warner Cable and Bright House lack the ability to do so. Accordingly, the Commission should reject Applicant's claim that any repatriated jobs are a merger-specific benefit.

### CONCLUSION

For the above-stated reasons, Greenlining respectfully requests that the Commission deny the Application or, in the alternative, further investigate the public interest impacts of the proposed transaction.

Respectfully submitted,

Dated: November 12, 2015

/s/ Paul Goodman  
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Senior Legal Counsel  
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<sup>15</sup> Opposition at 29.

<sup>16</sup> *Id.* at 31.

## CERTIFICATE OF SERVICE

I, Paul Goodman, hereby certify that on this 12<sup>th</sup> day of November, 2015, I caused true and correct copies of the foregoing to be served by first class or electronic mail to the following counsel of record:

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