

**Before the
Federal Communications Commission
Washington, D.C.**

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

**JOINT REPLY
OF
LINCOLNVILLE NETWORKS, INC., TIDEWATER TELECOM, INC., AND UNITEL, INC.
TO
OPPOSITION OF APPLICANTS**

In accordance with the Public Notice issued by the Commission on September 11, 2015, Lincolnvill Networks, Inc., Tidewater Telecom, Inc., and UniTel, Inc. (the "Maine Rural Telephone Companies," "Maine RTCs" or "MRTCs") hereby submit this Joint Reply to the Opposition to their Petition to Deny, which was served by Charter Communications, Inc., Time Warner Cable Inc. ("TWC"), and Advance/Newhouse Partnership (collectively the "Applicants") on November 2, 2015.

In their Opposition (pages 79-81), the Applicants provide no meaningful response to the issues and arguments presented by the Maine RTCs. The Applicants' lead argument is their mis-characterization that the Maine RTCs are complaining "that New Charter will be *too* effective a competitor." The Maine RTCs are not complaining that New Charter will be too effective a competitor. The Maine RTCs recognize that New Charter will be an even stronger competitor than TWC. However, the Maine RTCs urge that, as a consequence, the Commission must act to mitigate the harmful consequences on the goals of universal service in the areas served by small rural telephone companies. Similarly, the Maine RTCs do not seek to impose conditions "simply because" doing so will level the playing field. Rather, the Maine RTCs seek to impose conditions

to mitigate the specific harms to the public interest in universal service, which will result in rural areas when the playing field is tipped further by the Merger. Thus, the fundamental concern reflected in the Petition of the Maine RTCs is the impact of the Merger on the future of universal service in these areas.

Yet, in their Opposition, the Applicants have completely failed to address the issue of the nature and degree of the Merger's impacts on the RTCs and the resulting harm to the public interest in universal service. The Applicants' silence in the face of their burden of proof confirms for the record those impacts and harms as described by the Maine RTCs. Accordingly, unless appropriate conditions are adopted, the Application must be denied.

Instead of addressing the existence and magnitude of the harms, the Applicants claim that the complaints of the Maine RTCs lack any nexus to the transaction. The issue is not whether "complaints" have a nexus to the Merger. The issue is whether the harms to universal service have a nexus to the Merger. The Maine RTCs have expressly set forth how the increased competitive strength of New Charter will cause increased harm to the Maine RTCs' ability to meet their universal service obligations and thereby harm the goals of universal service. (Maine RTCs' Petition to Deny, p. 3-6.) On the other hand, the Applicants, who have the burden of proof, have made no effort to support their bare assertion that there is no nexus. Accordingly, both the harms and the nexus stand proven.

Claiming that the Maine RTCs can simply make these harms go away by increasing their rates or USF funding does nothing to disprove that harms will result from the Merger, but merely seeks to sidestep the issue. In addition, the Applicants' claims ignore the hard reality that if an RTC increases its rates in this competitive environment, it will exacerbate its competitive losses; and they ignore the hard reality of there being no governmental appetite for increased USF funding. Thus, the remedy must be found within the confines of the Commission's ability to impose conditions in this proceeding.

The Maine PUC decision of February 22, 2013, referenced in footnote 310 of the Opposition, did not deny the existence of the harmful effects of increased cable telephone competition. Rather, the Order assumed such harms exist, and declined to suspend LNP obligations at that time, on the presumption that increased universal service funding would be available to offset the losses due to increased competition. (The issue of the future of USF funding, let alone increased USF funding, remains unresolved in the Maine Legislature, where TWC has opposed increased USF funding).

Moreover, the Applicants ignore the more salient point that the Maine PUC has, in fact, acted to suspend LNP obligations as a legitimate method to protect the universal service responsibilities of RTCs from the adverse burdens of increased competition. The Applicants, in misplaced reliance on the 2013 MPUC Decision, argue that the Commission should deny the request to suspend LNP for the reason that such a request has been supposedly “squarely rejected by the Maine Commission.” (Opposition, p. 81.) Actually, in the 2013 Decision, the Maine PUC declined to suspend LNP on the grounds that undue economic burden would be offset by state USF funding.¹ However, the Maine PUC did not reject the suspension of LNP as a legitimate remedy for competitive harm where necessary to prevent undue economic burden.

In fact, the Maine PUC, itself, has previously applied the suspension of LNP as an offset to competitive impacts. When TWC filed a motion to dismiss the initial request for suspension of LNP, the MPUC denied the motion and upheld the justiciability of the petition for suspension. (See Order dated July 27, 2012 in Maine Suspension Proceedings.) The MPUC then subsequently ordered that LNP be temporarily suspended pending resolution of the suspension proceedings.

¹ The Maine PUC stated, “[S]uch a suspension is unnecessary because this Commission has statutory authority ‘to ensure that provider of last resort service is available in all areas of the State at reasonably comparable rates’ through the use of a MUSF.” (MPUC 2013 Order, p. 15.) Furthermore, it should be kept in mind that any statement of the Maine PUC in the Maine Suspension Proceedings which might seem to suggest that the consumer benefits of LNP may outweigh the competitive harm of cable telephone service was made in the context of the Commission’s assumption that the undue economic burden would be offset by funds from the MUSF. The Maine PUC has not ruled that competitive benefits alone are justification to deny suspension of LNP.

(Order dated August 23, 2012.) Similarly, in the Maine PUC 2013 Order, dated February 22, 2013, the Commission Maine PUC delayed the effect of the Order to June 30, 2013, until there was greater certainty regarding the mechanism for MUSF support, thereby requiring that the suspension of LNP should continue in effect. These actions by the Maine PUC actually applied, and thereby upheld, LNP suspension as a valid mechanism which can be used to mitigate undue economic burden caused by cable telephone competition, where the circumstances are appropriate. Accordingly, the Maine PUC did not “squarely reject” LNP suspension and it continues to be a viable remedy, and also a reasonable subject for a condition to be imposed by the Commission in this proceeding.

The final argument of the Applicants is another bare statement, that the Maine RTCs' request for conditions providing access to content at their head ends and providing for unbundling of certain elements have no basis in law or policy. The Applicants neither cite nor provide any legal or policy argument in support of this assertion. The reason for this absence is self-evident. The legal basis for this remedy is clearly found in the Commission's legal authority to condition its approval of a merger upon reasonable conditions. The policy basis is also self-evident. New Charter will have singular control over an expansive and non-duplicable network of facilities essential to the effective and competitive provision of telecommunications services, and it will have the economic power and physical assets to dominate smaller local competitors. A requirement that New Charter make facilities, such as dark fiber, interoffice facilities and fiber to the premise, accessible to competitors on reasonable terms at any technically feasible point and at rates based on TWC's total element long run incremental cost, will mitigate this impact, so that RTCs can continue to maintain universal service, and thereby benefit the public interest.

At the bottom line of the Applicants' Opposition is the argument that competition is paramount to any other interest in this proceeding. That is not correct. The paramount interest in this merger proceeding is the public interest – in all of its facets, including the interest in universal

service. The Communications Act does not mandate the supremacy of the competition over the goals of universal service. Rather, both goals must be balanced, as stated by the Commission in the FCC 2011 Declaratory Ruling, fn. 12: “As noted by the Maine rural LECs, section 251(f) reflects a balance between the goals of universal service and local competition, which “sometimes complement and sometimes compete with each other.” (Emphasis added).

If the merger is allowed to go forward, a reasonable set of conditions will be required to ensure the public interest goals of universal service by mitigating the undue economic burden of cable telephone competition in rural areas, to promote broadband availability by protecting the financial health of the Maine RTCs so they can invest in its deployment, and to foster equitable competition so that the Maine RTCs can fairly compete. In order to meet these objectives, the Maine RTCs have proposed the conditions in their Petition to Deny and continue to urge their adoption by the Commission. The proposed temporary suspension on LNP availability and reciprocity with regard to wholesale obligations are valid mechanisms for promoting this objective.

Conclusion

In the final analysis, the Applicants view the effects of the Merger solely from the perspective of the impact on competition, and they completely fail to address the effects of the increased competition on areas where such increased competition will harm the goals of universal service. The Maine RTCs urge that the Commission (1) hold the Applicants to their burden of proof on the universal service issue and other issues, (2) carefully consider the impact of the Merger transactions on providers of universal service in rural areas and, (3) if the Applications are to be approved, to impose conditions to protect universal service and mitigate the potential harms in rural areas.

Accordingly, for all of the reasons stated herein, the Maine RTCs respectfully request that the Commission disregard the arguments against Maine RTCs in the Applicants’ Opposition and

grant the Maine RTCs' Petition to Deny the Applications, unless its approval of the Applications is subject to the conditions described herein, or reasonably comparable conditions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joseph G. Donahue, hereby certify that on November 12, 2015, I caused true and correct copies of the foregoing Petition to Deny to be served electronically to the following:

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