

**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)	
)	

COMMENTS
OF
UNITEL, INC.
IN SUPPORT OF PETITION FOR RECONSIDERATION
FILED BY NTCA – THE RURAL BROADBAND ASSOCIATION

UniTel, Inc. hereby submits these Comments in support of the Petition for Reconsideration filed by NTCA – The Rural Broadband Association ("NTCA"), on June 9, 2016.¹ UniTel joins in the NTCA's arguments regarding the broadband buildout condition in the Merger Order, especially with regard to the harm it would cause in areas served by rural telephone companies.

UniTel is a "rural telephone company" as defined by 47 U.S.C. §153(44); and has been designated by the Maine Public Utilities Commission as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. §214(e), and as such is obligated to provide to subscribers in its service territory the elements of universal telephone service established pursuant to 47 U.S.C. §254(c). UniTel has participated as a party to this proceeding as a member of the Maine Rural Telephone Companies ("MRTC").

¹ UniTel also shares in many of the concerns raised in the Petition for Reconsideration of the American Cable Association ("ACA"), also filed on June 9, 2016.

As is the case with rural telephone companies generally, the service territory of UniTel has substantially higher costs to serve per customer, compared to non-rural areas. Due to a combination of efficient, community-based operations, limited landline competition, and prescribed levels of universal service support from federal and/or state sources, UniTel is meeting the overarching purpose of the universal service principles set forth in Section 254(b) of the TelAct, to ensure the preservation of a carrier of last resort in rural service territories and that quality telecommunications and informational services are available to all areas of the rural service area, including rural, insular, or high cost areas, at reasonable, comparable and affordable rates.

As is the case with members of NTCA (NTCA Petition, p. 102), UniTel competes directly with New Charter member, Time Warner Cable, and serves adjoining areas. Accordingly, UniTel would be directly and adversely affected by buildouts resulting from the condition in the Merger Order. As ACA points out, the overbuild and its adverse competitive impacts will largely occur in areas served by smaller providers, which will be the likely targets of the artificial competition. (ACA Petition, e.g. p. 8-9, 12, and ACA Report) Regretfully, the Merger Order reflects no consideration of the impacts of the buildout condition on rural telephone companies like UniTel, their customers, nor the public policy objectives of the universal service policy.

In their Petitions for Reconsideration, the NTCA and ACA have demonstrated that the artificial mandate of broadband buildout to be conducted by New Charter into high cost rural areas will impose unnecessary and detrimental competition on the existing rural providers and interfere with the Commission's nascent program for CAF support for such areas. The buildout condition, if implemented in the service area of UniTel, will also exacerbate harms already clearly demonstrated in these proceedings in the previous filings of the Maine Rural Telephone Companies.

1. The Merger Causes Harms to Rural Telephone Companies and Universal Service.

In earlier filings in this proceeding, UniTel has placed law, facts and argument into the record, demonstrating harms to be caused by the merger, which will cause undue economic burden on UniTel, diminish its ability to acquire video programming at reasonable pricing, and impede its ability to continue to provide universal service in the rural areas it serves.² These harms will undermine the public interest in universal service and the availability of voice and broadband services, at reasonable and comparable prices, in rural areas. These issues and concerns were also summarized in a letter addressed to Commissioner Wheeler, dated April 22, 2016, which was electronically filed in this proceeding. Yet the Merger Order has neglected to substantively address the issues and the special concerns of areas served by small rural providers. UniTel will summarize its arguments and facts once again, as they serve as relevant backdrop for the increased harms to result from the adoption of the buildout condition:

- The public interest to be protected by the Commission under the broad aims of the Communications Act includes the preservation of universal service. In the past, the Commission has articulated and reaffirmed this public interest in the preservation of universal service, particularly in rural areas. See Order of January 30, 2014, in *Technology Transitions Docket*, GN Docket No. 13-5, ¶¶50-51. (MRTC Petition to Deny, p. 7-8.)

- The Communications Act does not grant the goals of competition supremacy over the goals of universal service. Rather, both goals must be balanced, as recognized by the Commission in its 2011 Declaratory Ruling in *Petition of CRC Communications of Maine and Time Warner Cable, Inc. for preemption Pursuant to Section 253 of Communications Act, Declaratory Ruling*, 26 FCC Red. 8259 (2011), fn. 12 (MRTC Petition to Deny, p. 8.)

² See Joint Petition to Deny Applications, filed by Lincolnville Networks, Inc., Tidewater Telecom, Inc., and UniTel, Inc. on October 13, 2015 ("MRTC Petition to Deny"); and Joint Reply to Opposition of Applicants, filed by Lincolnville Networks, Inc., Tidewater Telecom, Inc., and UniTel, Inc. on November 12, 2015 ("MRTC Reply").

- Detailed evidence has been introduced in proceedings before the Maine PUC, and cited in the Petition to Deny, which demonstrates that the introduction of interconnected landline VOIP telephone service, in the locations where TWC has cable facilities, would cause undue economic burden to UniTel, and consequently harm the public interest goals of universal service. (MRTC Petition to Deny, p. 3-4.)

- New Charter will pour additional funds into TWC's efforts to acquire the lower cost customers of the incumbent rural carriers. The increased economic burden will lead to further diminution of UniTel's capacity to sustain universal service, and decreased capacity to invest in telecommunications and broadband network and services. (MRTC Petition to Deny, p. 5-6.)

- Rural telephone companies do not have the ability to compete on a parity basis with New Charter, which will have enhanced ability to obtain video programming at substantially lower pricing. (MRTC Petition to Deny, p. 5-6.)

- The Opposition of the Applicants to the MRTC Joint Petition to Deny completely failed to dispute or disprove the information and argument presented by MRTC. (MRTC Reply, p. 1-5).

In order to mitigate the harms of the merger, UniTel has also urged the adoption of reasoned conditions, including:

- New Charter should be required to waive, on a temporary basis, access to the enhancement of local number portability ("LNP") in its provisioning of cable telephone service in the service area of any rural telephone company with which it was not competing prior to January 1, 2014. (MRTC Petition to Deny, p. 9-10.)

- New Charter should be required to provide rural telephone companies with access to cable television transmissions received at its local head ends, subject to terms, conditions and costs comparable to those applicable to the local New Charter. (MRTC Petition to Deny, p. 10)

2. Increased Harms are Caused by the Buildout Condition.

Not only has the Merger Order failed to address substantively the above issues, concerns and proposed conditions, it has adopted a buildout condition which increases and exacerbates the harm. As argued and demonstrated by ACA, the buildout condition increases and exacerbates the harm caused by the merger by artificially mandating that an even larger New Charter be created, thereby further increasing its market concentration. (ACA Petition, p. 6, 8.) In light of the adoption of the buildout condition, there is now an increased need for the conditions proposed by the MRTC.

As pointed out by NTCA, the buildout condition will cause undue burden to rural providers and detriment to their customers. Although NTCA does not expressly note the corresponding harm to the goals of universal service, that consequence is evident in its arguments. While the buildout condition may be well-intentioned – and may have merit when implemented in areas where the existing provider has substantial resources and the ability to compete with New Charter on a level playing field – its implementation in rural areas is clearly harmful and counter-productive. The buildout condition ignores that in those areas rural telephone companies are operating under the additional demands and responsibilities of universal service.

Of further concern, as ACA has noted, the CEO of New Charter has publicly stated the intent to not build out into the service areas of other cable companies, but only into the service areas of telephone companies. (ACA Petition, p. 9a, fn. 30.) In effect, New Charter, on its own unilateral action, has carved out areas served by fellow cable companies from the impact of the buildout condition, and instead New Charter will concentrate the impact of the condition on areas

served by telephone companies. Thus, the competitive impact and burdens of the FCC's mandated buildout by New Charter will fall entirely on the shoulders of telephone companies, including rural telephone companies.

Rather than allow New Charter to unilaterally narrow the scope of the buildout condition to meet its own business objectives, UniTel respectfully urges that the Commission should act to narrow the scope of any buildout condition, not to meet the private business objectives of New Charter, but rather to meet the public policy objectives of universal service in rural areas.

UniTel has noted that its issues and concerns in these proceedings were summarily disregarded as "not transaction specific," in footnote 461 of the Merger Order, which asserted "the rural carriers in Maine will face the same level of competition as was the case before the transaction." However, the Merger Order has not cited nor discussed any evidence or analysis to support its prognostication about the level of New Charter competition in Maine (while at the same time ignoring the evidence in the record in this proceeding of increased economic and competitive power to be achieved by New Charter). Moreover, the Merger Order's declaration that the level of competition will remain the same is directly contradicted by the Merger Order's imposition of the buildout condition, by which it mandates that New Charter shall greatly increase the amount of competition it would otherwise have engaged in.

The inconsistency in the Merger Order and the harm to be caused by the buildout condition in rural areas must be mitigated. This can be done by implementing the conditions urged by UniTel in the Petition to Deny, and by limiting the application of the buildout condition so that it will apply only in areas not served by rural telephone companies.

Conclusion

UniTel urges the Commission to reconsider its Order regarding the buildout condition as requested by NTCA (and ACA) and to conduct further proceedings to address the issues and concerns raised by NTCA and related issues and concerns, including those expressed in these Comments. In doing so, UniTel requests that the Commission give renewed and explicit consideration to the conditions proposed in the MRTC Petition to Deny, and that the Commission act to expressly confine any buildout condition that remains in this proceeding to areas not served by small rural telephone companies.

Respectfully submitted,

UniTel, Inc.

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CERTIFICATE OF SERVICE

I, Joseph G. Donahue, hereby certify that on June 14, 2016, I caused true and correct copies of the foregoing Comments to be served electronically to the following:

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