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July 9, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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PA PUD
SECRETARY'S BUREAU

Re: Joint Petition of

Citizens Telephone Company of Kecksburg, Consolidated Communications of Pennsylvania Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, North Penn Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, and Venus Telephone Corporation and for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Section 252(b) with Choice One Communications of Pennsylvania, Inc., CTC Communications Corporation, FiberNet Telecommunications of Pennsylvania, LLC, Docket Nos.:

A-2010-2185119,	A-2010-2185131,	A-2010-2185138,	A-2010-2185147,
A-2010-2185150,	A-2010-2185154,	A-2010-2185162,	A-2010-2185167,
A-2010-2185170,	A-2010-2185183,	A-2010-2185185,	A-2010-2185188,
A-2010-2185190,	A-2010-2185193,	A-2010-2185194,	A-2010-2185195,
A-2010-2185198,	A-2010-2185199,	A-2010-2185200,	A-2010-2185201,
A-2010-2185202,	A-2010-2185203,	A-2010-2185205,	A-2010-2185206,
A-2010-2185208,	A-2010-2185209,	A-2010-2185211,	A-2010-2185215,
A-2010-2185216,	A-2010-2185225,	A-2010-2185228,	A-2010-2185229,
A-2010-2185231,	A-2010-2185238,	A-2010-2185245,	and A-2010-2185258

Dear Secretary Chiavetta:

Enclosed for filing on behalf of the Rural Petitioners, please find an original and three (3) copies of the Rural Petitioners' Prearbitration Conference Memorandum.

Approximately four hours ago, we received a settlement offer from Choice One. We have not had a chance to fully review the document and its presentation is not noted in the attached Memorandum due to its timing. We did want to note for Administrative Law Judge Jones, however, its receipt.

Rosemary Chiavetta, Secretary
July 9, 2010
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If you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:



Norman Kennard

Attachments

cc: Honorable Angela T. Jones
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re:	:	
	:	
Joint Petition of	:	
Citizens Telephone Company of Kecksburg,	:	Docket Nos. A-2010-2185119
Consolidated Communications of Pennsylvania Company,	:	A-2010-2185131
Hickory Telephone Company,	:	A-2010-2185138
Ironton Telephone Company,	:	A-2010-2185147
Lackawaxen Telecommunications Services,	:	A-2010-2185150
Laurel Highland Telephone Company,	:	A-2010-2185154
North Penn Telephone Company,	:	A-2010-2185162
Palmerton Telephone Company,	:	A-2010-2185167
Pennsylvania Telephone Company,	:	A-2010-2185170
Pymatuning Independent Telephone Company	:	A-2010-2185183
South Canaan Telephone Company, and	:	A-2010-2185185
Venus Telephone Corporation	:	A-2010-2185188
	:	A-2010-2185190
for Arbitration of Interconnection Rates, Terms	:	A-2010-2185193
and Conditions Pursuant to 47 U.S.C. Section 252(b) with	:	A-2010-2185194
	:	A-2010-2185195
Choice One Communications of Pennsylvania, Inc.,	:	A-2010-2185198
CTC Communications Corporation, and	:	A-2010-2185199
FiberNet Telecommunications of Pennsylvania, LLC	:	A-2010-2185200
	:	A-2010-2185201
	:	A-2010-2185202
	:	A-2010-2185203
	:	A-2010-2185205
	:	A-2010-2185206
	:	A-2010-2185208
	:	A-2010-2185209
	:	A-2010-2185211
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	:	A-2010-2185238
	:	A-2010-2185245
	:	A-2010-2185258

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**PREHEARING CONFERENCE MEMORANDUM **
OF RURAL PETITIONERS

AND NOW, comes Citizens Telephone Company of Kecksburg; Consolidated Communications of Pennsylvania Company, Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; North Penn Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; and Venus Telephone Corporation (“Rural Petitioners”), by their attorneys, and hereby submits this Prearbitration Conference Memorandum in connection with the Prearbitration Conference to be held in the above captioned matter on Monday, July 12, 2010, at 10:00 a.m.

I. The Parties

The Rural Petitioners are incumbent local exchange carriers (“ILECs”) operating in Pennsylvania under the jurisdiction of the Pennsylvania Public Utility Commission (“Commission”). The Rural Petitioners operate in territories near and adjacent to Verizon Pennsylvania, Verizon North and CenturyLink (United Telephone), as well as overlay various intermodal competitors (cable and wireless) and receive traffic, both local and toll, delivered by various Choice One companies. Consolidated Communications of Pennsylvania did not receive a request letter in either June or November 2009 and, therefore, should be discontinued as a Rural Petitioner.

Choice One Communications of Pennsylvania, Inc. (“Choice One PA”) is certificated to operate as an IXC reseller, CAP and facilities-based IXC in Pennsylvania granted pursuant to Commission Order entered May 4, 1999, at Docket No. A-310781, A-310781F0003, and A-

310781F0004, respectively. Choice One PA was also granted CLEC authority pursuant to Commission Order entered May 25, 1999, at Docket No. A-310781F0002 in the service territories of Verizon Pennsylvania and Verizon North.

CTC Communications Corp. (“CTC Corp”) is authorized to provide statewide intrastate long distance services (“IXC”), as well as facilities-based competitive local exchange (“CLEC”) and competitive access (“CAP”) services the service territories of Verizon Pennsylvania, Verizon North and CenturyLink (United Telephone) under certificates issued by the Commission at PA PUC Docket Nos. A-310295F0001, A-310295F0002 and A-310295F003, respectively.

FiberNet Telecommunications of Pennsylvania, LLC (“FiberNet”) holds authority in Pennsylvania to provide service as an IXC reseller, CLEC and CAP was certificated pursuant to Commission Order entered September 20, 1999, at Docket Nos. A-310828 F0002 and A-310828 F0003.

CTC Corp One, Choice One PA, and FiberNet are all believed to be affiliates of a common parent, ONE Communications Corp.

II. Factual Background

Various Choice One entities¹ collectively submitted identical requests for the negotiation of interconnection agreements to the Rural Petitioners on June 18, 2009.² These same Choice

¹ Choice One Communications of Ohio Inc.; Choice One Communications of Pennsylvania, Inc.; Choice One Communications of Rhode Island Inc.; Choice One Communications of Connecticut Inc.; Choice One Communications of Maine Inc.; Choice One Communications of Massachusetts Inc.; Choice One Communications of New York Inc.; Choice One Communications of New Hampshire Inc.; US Xchange of Indiana, L.L.C.; US Xchange of Illinois, L.L.C.; US Xchange of Wisconsin, L.L.C.; and US Xchange of Michigan, L.L.C. After this Petition for Arbitration was filed, Choice One revised its request to include only Choice One Communications of Pennsylvania, Inc., CTC Communications Corp. and FiberNet. See Rural Petitioners’ letter to Secretary Chiavetta dated June 30, 2010.

² With the exception that Laurel Highland Telephone Company’s letter is dated June 5, 2009. Attached to the Petition for Arbitration as Exhibit A.

One entities subsequently renewed their request for interconnection by letter dated November 24, 2009.³

The Rural Petitioners have been diligently attempting to negotiate an interconnection agreement with Choice One since June of 2009.⁴ However, despite numerous attempts by the Rural Petitioners to move this matter along and numerous exchanges of emails and telephone calls, Choice One has declined to respond and engage in good faith negotiations with the Rural Petitioners concerning any terms and conditions of interconnection.⁵

On June 25, 2010, Rural Petitioners filed the instant Petition for Arbitration, requesting that the Commission enter an order approving the interconnection agreement submitted by Rural Petitioners to Choice One. The Petition sets forth the history of the Rural Petitioners attempts to negotiate an interconnection agreement and Choice One's refusal to do so.⁶

The Petition alleges that Choice One has refused to negotiate in good faith.⁷ Choice One has refused to set up meetings. Choice One has ignored emails. Choice One has not objected to, but nevertheless, has refused to provide information in response to Rural Petitioners' reasonable requests. At no time prior to the filing of the Petition did Choice One present an interconnection agreement to Rural Petitioners.⁸ At no time has Choice One offered any response whatsoever to the interconnection agreement presented by Rural Petitioners. At no time has Choice One raised any issues with the interconnection agreement presented by Rural Petitioners or on any other point.

³ Attached to the Petition for Arbitration as Exhibit C.

⁴ Given the collective request by Choice One to the Rural Petitioners, Rural Petitioners are requesting a consolidated arbitration of the interconnection rates, terms and conditions with all of the Rural Petitioners.

⁵ See Petition for Arbitration Exhibits A-F.

⁶ See Petition for Arbitration at ¶¶ 6-20.

⁷ See Petition for Arbitration at ¶¶ 21-28.

⁸ Subsequent to the filing of the Petition, Choice One forwarded a marked-up interconnection agreement which simply deleted all references to the specifics of interconnection and compensation, thus, basically offering no agreement.

III. Paragraph 7 Issues

A. Tentative Schedule

Both parties agree that the following deadlines apply to this proceeding under the provisions of 47 U.S.C. § 252:

<u>Date</u>	<u>Action</u>
November 24, 2009	Renewed BR for ICA
January 19, 2010	Revised Request date (+ 46 days from original)
June 25, 2010	Rural Petitioners filed
June 28, 2010	Revised 160 th day (+ 46 days from original)
July 12, 2010	Pre-Arbitration Hearing
July 20, 2010	Choice One Answer Due (25 days from Petition)
August 31, 2010	Recommended Decision Due (Revised 220 th day) ⁹
October 19, 2010	PUC Order Due (End of Revised Nine Months)

The Rural Petitioners are not aware of any issues to be tried or brief and, therefore, are not suggesting a hearing or briefing schedule.

B. Issues to be Resolved.

There are only two issues before the Commission.

Issue 1 - Whether Choice One has violated its duty to negotiate in good faith.

Choice One plainly has violated its obligations under sections 251(c)(1) and 252(b)(5) of the 1996 Act¹⁰ and FCC rules 51.301(b), 51.301(c)(6), and 51.301(c)(8)¹¹ by intentionally

⁹ Due date for RD; per PUC Implementation Order

¹⁰ See 47 U.S.C. §§ 251(c)(1), and 252(b)(5).

¹¹ See 47 C.F.R. §§ 51.301(b), 51.301(c)(6), and 51.301(c)(8).

obstructing and delaying negotiations and the resolution of an agreement and by refusing to provide information necessary to execute such an agreement.

Choice One's conduct is a plain violation of the Act and the FCC's rules. Section 251(c)(1) of the Act provides that carriers -- both ILECs and CLECs -- have "a duty to negotiate in good faith . . . the particular terms and conditions of" interconnection agreements.¹² The Act further provides that a refusal to negotiate constitutes a violation of this duty. Section 252(b)(5) states: "Refusal to Negotiate. The refusal of any other party to the negotiation to participate further in the negotiations . . . shall be considered a failure to negotiate in good faith."¹³ And, as the Commission itself has recognized, the Act binds CLECs, and not just ILECs, to negotiate in good faith.¹⁴

Rule 51.301, by which the FCC implemented section 251(c)(1) of the Act, identifies two types of conduct that, by definition, constitute violations of the duty to negotiate in good faith.¹⁵ First, a carrier violates that duty by "intentionally obstructing or delaying negotiations or resolutions of disputes."¹⁶ In addition, a carrier's "[r]efus[al] to provide information necessary to reach agreement" violates this duty.¹⁷

Choice One has directly violated these prohibitions by repeatedly refusing to negotiate. In fact, it has failed to even acknowledge Verizon's repeated requests for negotiation for over

¹² 47 U.S.C. § 251(c)(1). The parties are likewise obligated under the terms of their existing interconnection agreement to "cooperate fully and act in good faith and consistently with the intent of the Act."

¹³ 47 U.S.C. § 252(b)(5).

¹⁴ See, e.g., *Opinion, Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996; Petition of Global Naps South, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief*, Case No. 8731, 1999 Md. PUC LEXIS 21, at *3 (Md. P.S.C. July 15, 1999) ("When a competing carrier asks an ILEC to provide interconnection, unbundled network elements, or resale, both the ILEC and the competing carrier have a duty to negotiate in good faith the terms and conditions of an agreement that accomplishes the 1996 Act's goals.") (citing 47 U.S.C. § 251(c)(1)).

¹⁵ 47 C.F.R. § 51.301(c) (listing actions that, "among others," would violate the duty to negotiate in good faith"); See also *BellSouth Corp.*, 15 FCC Rcd 21756 ¶ 3 (2000) ("In implementing section 251(c)(1), the Commission adopted section 51.301(c) of its rules, which sets forth a non-exclusive list of actions or practices that, if proven, would violate the duty to negotiate in good faith.").

¹⁶ 47 C.F.R. § 51.301(c)(6).

¹⁷ *Id.* § 51.301(c)(8).

the Act, applicable state laws and the orders of this Commission. The agreement is not discriminatory, and is consistent with the public interest, convenience, and necessity.

Any other resolution would work a hardship upon the Rural Petitioners, who have diligently attempted to develop an interconnection agreement with Choice One, without success due to Choice One's failure to engage the Rural Petitioners in any substantive discussion. To the extent that Choice One now presents issues, there is little time to respond. Consideration of any last-minute objections or changes to the proposed interconnection agreement would essentially reward Choice One for its intentional delays.

C. Disputed Material Facts

The Rural Petitioners are not aware of any disputed material facts. None have been raised by Choice One.

D. Stipulation Of Uncontested Facts

Rural Petitioners believe that all facts set forth in its Petition and contained in the proposed interconnection agreement, whether implicit or explicit, should be stipulated to.

E. Scheduling Oral Arbitration Proceedings Confined To The Material Facts Disputed By The Parties

Given there have no disputed material facts raised by Choice One in a timely fashion, Rural Petitioners do not see a reason for oral arbitration proceedings.

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F. Testimony and Briefs

1. Whether Evidence Must Be Submitted Under Oath

Again, Rural Petitioners do not see any need for the production of evidence, given the lack of disputed material facts raised by Choice One. However, to the extent that evidence might be required in this proceeding, Rural Petitioners believe it should be submitted under oath.

2. Whether Evidence Should Be Pre-Filed

Choice One has never raised any disputed material facts, as noted previously. To the extent that it is permitted, at this late stage, to raise material facts, it should do so promptly and in writing.

3. Whether Preliminary Statements Should Be Required

For the same reasons set forth above at F.2., any evidentiary presentation by Choice One, should it be allowed to submit one, should be required in writing.

4. Whether Memoranda or Briefs Are Necessary

Again, given the lack of disputed facts and law, Rural Petitioners do not, at this point, believe that memoranda or briefs are necessary. To the extent that Choice One raises such matters and is permitted to proceed with them, then memoranda or briefs may be necessary.

**G. Other Matters That May Aid in Expediting the Orderly Conduct
And Disposition of the Proceeding and the Furtherance of Justice**

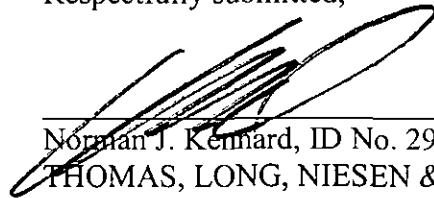
Currently pending before Your Honor is a Motion to Consolidate and Petition for Protective Order filed by the Rural Petitioners.

Rural Petitioners also served their Interrogatories, Set I, upon Choice One on July 6, 2010, and request that Your Honor rule that answers are due within ten days of service on July 16, 2010.

Finally, as noted previously, Consolidated Communications Company of Pennsylvania should be discontinued as a Rural Petitioner.

Rural Petitioners are not aware of any other matters that may aid in expediting this proceeding. The most expeditious way to deal with this case, is to proceed to approve the interconnection agreement proposed by the Rural Petitioners.

Respectfully submitted,



Norman J. Kennard, ID No. 29921
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Attorneys for Rural Petitioners

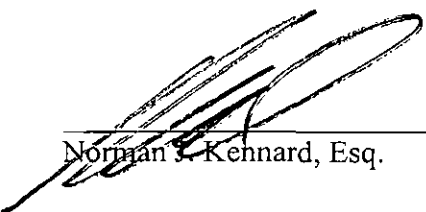
DATE: July 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July 2010 copies of the foregoing document have been served, via electronic and first class mail, postage prepaid at Harrisburg, Pennsylvania, as indicated, upon the persons listed below in accordance with the requirements of 52 Pa Code §§ 1.54 and 1.55 of the Commission's rules.

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