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Christopher M. Arfaa, Principal  
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admitted in Pennsylvania

January 5, 2011

***Via Electronic Filing***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg , PA 17120

Re: Consolidated Communications Enterprise Services, Inc. v. Omnipoint  
Communications Inc. d/b/a T-Mobile, *et al.*, Docket No. C-2010-2210014

Dear Secretary Chiavetta:

Enclosed for electronic filing in the referenced matter please find the Motion of T-Mobile for Oral Argument on Preliminary Objections, with certificate of service.

I understand from the Office of Administrative Law Judge that this matter has not yet been assigned to a specific ALJ. Therefore, we have served a copy of motion on the Office of ALJ, as indicated in the certificate of service.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

Christopher M. Arfaa

Enclosures

Cc: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONSOLIDATED COMMUNICATIONS  
ENTERPRISE SOLUTIONS, INC.,

Complainant,

v.

OMNIPOINT COMMUNICATIONS INC. d/b/a  
T-MOBILE, OMNIPOINT COMMUNICATIONS  
ENTERPRISES LP d/b/a T-MOBILE, and VOICE  
STREAM PITTSBURGH LP d/b/a T-MOBILE or  
such other affiliated entities as are involved in the  
provision of CMRS service and the delivery of  
intrastate traffic to CCES,

Respondents

Docket No. C-2010-2210014  
*(Electronic Filing)*

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**NOTICE TO PLEAD**

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TO: **Consolidated Communications Enterprise Solutions, Inc.**

You are hereby notified that, if you do not file a written answer to the attached Motion of T-Mobile for Oral Argument on Preliminary Objections and Request that Complainant be Directed to Respond Within Five Days Of Service **twenty (20) days** from service, the assigned Presiding Officer and/or the Commission may rule upon the motion without additional input. **You are further notified that the Motion requests that the Presiding Officer direct that your response be filed five (5) days from service.** All pleadings, such as an answer to the enclosed motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned attorney for Respondents.

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*Attorney for Respondents*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONSOLIDATED COMMUNICATIONS  
ENTERPRISE SOLUTIONS, INC.,

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OMNIPOINT COMMUNICATIONS INC. d/b/a  
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**MOTION OF T-MOBILE FOR ORAL ARGUMENT  
ON PRELIMINARY OBJECTIONS  
AND  
REQUEST THAT COMPLAINANT BE DIRECTED TO RESPOND  
WITHIN FIVE DAYS OF SERVICE**

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Pursuant to 52 Pa. Code § 5.103 and § 5.532, respondents Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LP d/b/a T-Mobile, and Voice Stream Pittsburgh LP d/b/a T-Mobile, on behalf of themselves and their affiliates involved in the provision of CMRS service in Pennsylvania and the delivery of intrastate traffic to complainant Consolidated Communications Enterprise Services, Inc. (“CCES”) (collectively, “T-Mobile”), respectfully request that the Presiding Officer allow and fix a time for presentation of oral argument on T-Mobile’s preliminary objections to CCES’s complaint. In light of the short timeframe for deciding preliminary objections, T-Mobile further requests that the Presiding Officer direct CCES to respond to this motion no later than January 11, 2011. In support of the motion and request, T-Mobile states as follows:

## I. Oral Argument On T-Mobile's Preliminary Objections Is Warranted

1. T-Mobile filed its preliminary objections to CCES's complaint on December 6, 2010. CCES filed its answer to the preliminary objections on January 4, 2011.<sup>1</sup> The Commission's rules provide that "[a] preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer."<sup>2</sup>

2. Section 5.532 of the Commission's rules provide that the Presiding Officer may allow presentation of oral argument:

When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may, either on the presiding officer's own motion or at the request of a party, allow and fix a time for the presentation of oral argument, imposing limits on the argument that are deemed appropriate.<sup>3</sup>

3. The allegations of the complaint, and thus the preliminary objections, raise complex questions of state and federal law relating to intercarrier compensation between competitive local exchange carriers and wireless service providers, the interplay between federal and state jurisdiction over CLEC-Wireless interconnection matters, and the Commission's authority to grant the relief requested.<sup>4</sup> Moreover, the law in this area is rapidly evolving

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<sup>1</sup> CCES's answer to the preliminary objections was originally due on December 16, 2010. In response to CCES's request, the Secretary granted an extension through January 4, 2011 for the filing of both CCES's answer to the preliminary objections and its reply to the new matter raised in T-Mobile's answer to the complaint.

<sup>2</sup> 52 Pa. Code § 5.101(g).

<sup>3</sup> 52 Pa. Code § 5.532(a). Although the rules do not specify or limit the availability of oral argument with respect to particular matters, Presiding Officers have heard oral argument on preliminary objections. *See, e.g., In re: Petition of the Borough of Frackville for Interlocutory Review and Answer to a Material Question (Petition of Frackville Area Municipal Authority for Issuance of a Declaratory Order)*, Docket No. P-2008-2016340, Opinion and Order, 2008 WL 4614217 (Pa. P.U.C. Aug. 21 2008) (noting oral argument held on preliminary objections).

<sup>4</sup> See generally authority cited in the Preliminary Objections of T-Mobile, filed December

pursuant to decisions by the Federal Communications Commission, the federal appellate and district courts, and state commissions across the nation.<sup>5</sup>

4. The preliminary objections and the answer thereto assert sharply conflicting interpretations of the law governing this matter.

5. The Commission's rules do not permit further briefing in support of or in opposition to preliminary objections.

6. The presentation of oral argument on T-Mobile's preliminary objections will permit the parties to identify any areas of agreement, further explain areas of disagreement, and bring any new authority to the attention of the Presiding Officer.

7. Oral argument will also provide the Presiding Officer an opportunity to delve more deeply into differences between the parties' respective legal positions.

8. In view of the complexity of the legal issues, the lack of opportunity for further briefing, and the short deadline for decision, presentation of oral argument on T-Mobile's preliminary objections would serve the public interest.

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6, 2010.

<sup>5</sup> For example, after the preliminary objections were filed, a California PUC ALJ issued a proposed decision dismissing a CLEC complaint similar to the one at issue here on grounds similar to those raised by T-Mobile. See Proposed Decision Dismissing Complaints Without Prejudice, *Pac-West Telecomm, Inc. v. Sprint Spectrum, L.P. et al.*, Cal. Pub. Utils. Comm'n Case 09-12-014 (Dec. 14, 2010) (McKenzie, ALJ), available at <http://docs.cpuc.ca.gov/efile/PD/128158.pdf>.

## **II. Complainant Should Be Directed To Respond Within Five Days Of Service**

9. On January 5, 2011, the undersigned contacted Norman Kennard, Esq., counsel for CCES, to request concurrence in this motion. Mr. Kennard refused concurrence and stated that CCES opposes this motion.

10. If the Presiding Officer ultimately decides to allow presentation of oral argument, it should be scheduled promptly in view of the Commission's requirement that preliminary objections will be decided within 30 days of assignment to a presiding officer.<sup>6</sup>

11. The question whether oral argument on the preliminary objections is warranted is straightforward and requires minimal argument. It certainly does not require the standard 20 days allowed for response to all motions. Therefore, CCES will suffer no prejudice or undue inconvenience if it is directed to file an expedited response to this motion within five days of electronic service as requested herein.

12. In view of the deadline for decision, the minimal argument required to respond to this motion, and the lack of prejudice to CCES, T-Mobile respectfully requests that CCES be directed to respond to its motion for oral argument within five (5) days of service.<sup>7</sup>

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<sup>6</sup> 52 Pa. Code § 5.101(g).

<sup>7</sup> Assuming electronic service of this motion on January 5, 2011, CCES's response would be due on Monday, January 10, 2011.

WHEREFORE, for all of the foregoing reasons, T-Mobile respectfully requests that the Presiding Officer—

- a. Direct CCES to file any response to this motion within five (5) days of service of the motion;
- b. Grant this motion;
- b. Allow and fix a time for presentation of oral argument on the Preliminary Objections of T-Mobile to the Complaint; and
- c. Grant such other relief as may be just and proper.

Dated: January 5, 2011

Respectfully submitted,

*Of Counsel:*

Garnet Hanly  
T-MOBILE  
401 9th Street NW, Suite 550  
Washington, D.C. 20004

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*Counsel for Respondents*

## CERTIFICATE OF SERVICE

I, Christopher M. Arfaa, hereby certify that I have this day electronically filed the foregoing **Motion of T-Mobile for Oral Argument on Preliminary Objections and Request that Complainant be Directed to Respond within Five Days Of Service** with the Pennsylvania Public Utility Commission, in accordance with the requirements of 52 Pa. Code § 1.32. I further certify that I have caused a copy of the filed document to be served upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

**By Electronic Mail Notice and First Class Mail:**

Norman J. Kennard, Esquire  
Thomas, Long, Niesen & Kennard  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
**nkennard@thomaslonglaw.com**

**By Federal Express – Overnight Delivery:**

Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2nd Floor, L-M West  
400 North Street  
Harrisburg , PA 17120

DATE OF SERVICE: January 5, 2011

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