



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

November 15, 2006

DOCUMENT
FOLDER

SECRETARY'S BUREAU

2006 NOV 15 PM 3:55

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long distance Company for All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.
Docket Nos. A-310800F0010;
A-311095F0005, and A-311225F0003

Dear Norm:

Enclosed you will find two copies of the Office of Consumer Advocate's Interrogatories, Set I, in the above-referenced proceeding. Please send two copies of your responses to the undersigned and one copy to our consultant:

Bob Loube
110601 Cavalier Dr.
Silver Spring, MD 20901
(301) 681-0338
(301) 681-0339 (fax)
bobloube@earthlink.net

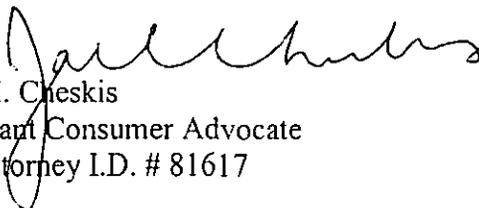
In accordance with the Commission's Rules of Practice and Procedure, we request that the Company provide verified answers to these inquiries within fifteen (15) days of service. Also, please forward the verified answers as they are completed, rather than waiting until the responses to the full set are completed. We would appreciate it if you would communicate any objections you may have to these interrogatories as soon as possible.

JR

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If you have any questions, please call us. By copy of this letter, copies of these interrogatories have been served upon all parties. A certificate of service showing service of these interrogatories on all parties has been filed with Secretary McNulty of the Pennsylvania Public Utility Commission as required by 52 Pa. Code §5.341(b).

Sincerely,


Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. # 81617

Enclosures

cc: All parties of record
James J. McNulty (Certificate of Service Only)

*91330

CERTIFICATE OF SERVICE

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company for All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F0010; A-311095F0005, and A-311225F0003

I hereby certify that I have this day served a true copy of the foregoing document, The Office of Consumer Advocate's Interrogatories, Set I, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of November, 2006.

SERVICE BY INTER-OFFICE MAIL

Robert V. Eckenrod, Esq.
Office of Trial Staff
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard, Esq. (E-Mail & 1st Class)
Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Raymond Ostroski, Esq.
Commonwealth Telephone
Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Hilary Glassman, Esq.
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Pamela C. Polacek, Esq.
McNees Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Scott J. Rubin
3 Lost Creek Dr.
Selinsgrove, PA 17870

Jennifer A. Duane, Esq.
2001 Edmund Halley Drive, 2nd Fl.
Reston, VA 20191



Shaun A. Sparks
PA Attorney I.D.#87372
ssparks@paoca.org
Joel H. Cheskis
PA Attorney I.D.#81617
jcheskis@paoca.org
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
*91234



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 20, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

2006 NOV 20 PM 4:00
SECRETARY'S BUREAU

RE: Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communication Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.; Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Answer of the Broadband Cable Association of Pennsylvania ("BCAP") to Commonwealth Telephone Company's Preliminary Objections in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the protest, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*

Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

**DOCUMENT
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PCP/nk

Enclosures

c: Certificate of Service
Honorable Susan D. Colwell (via hand delivery)

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CERTIFICATE OF SERVICE

ORIGINAL

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Joel Cheskis, Esq.
Shaun Sparks, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, PA 17101

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Johnnie Simms, Esq.
Robert Eckenrod, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

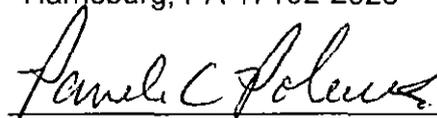
Jennifer A. Duane, Esq.
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

Raymond Ostroski, Esq.
Sr. V. P., General Counsel and Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Sr. V.P. and General Counsel
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John F. Povilaitis, Esq.
Ryan, Russell, Odgen & Seltzer, L.P.
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025


Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

Dated this 20th day November, 2006, in Harrisburg, Pennsylvania.

RECEIVED
SECRETARY'S OFFICE
NOV 20 2006 4:00 PM

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 JUL 20 PM 4:01
SECRETARY'S BUREAU

Joint Application of Commonwealth :
Telephone Company, CTSI, LLC and :
CTE Telecom, LLC d/b/a Commonwealth : A-310800F0010
Long Distance Company For All Approvals : Docket Nos.: A-311095F0005
Under the Public Utility Code for the : A-311225F0003
Acquisition By Citizens Communications :
Company of All Stock of the Joint :
Applicants' Corporate Parent, :
Commonwealth Telephone Enterprises, Inc. :

**ANSWER OF THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA TO
COMMONWEALTH TELEPHONE COMPANY'S PRELIMINARY OBJECTIONS**

Pursuant to 52 Pa. Code Sections 5.61 and 5.101, the Broadband Cable Association of Pennsylvania ("BCAP") hereby files this Answer to the Preliminary Objections filed by Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD"), and Citizens Communications Company ("Citizens") (hereinafter collectively referred to as the "Joint Applicants" or "Applicants") seeking dismissal of BCAP's Protest and Petition to Intervene. As required by the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, BCAP's Answer corresponds by numbered paragraph with the Preliminary Objections filed by the Joint Applicants.

For the reasons stated herein, BCAP respectfully requests that this Commission deny the request of the Joint Applicants and grant its previously filed Protest and Petition to Intervene.

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I. SUMMARY OF ARGUMENT

Contrary to the assertions of the Joint Applicants, BCAP has satisfied all requirements established by the Commission's regulations regarding Protests and Intervention. BCAP has more than adequately demonstrated the standing requisite to protest and intervene in this proceeding, as established by its status as an association of *both* potential *and* current competitors of one or more of the Joint Applicants, and by the demonstration of the harm that *may* occur as a result of the approval of the acquisition. The Commission's regulations clearly permit interventions by an entity with "an interest which may be directly affected." 52 Pa. Code § 5.72(a)(2). Moreover, the PUC can allow participation by any entity with an "interest of such nature that participations of the petitioner may be in the public interest." *Id.* at 5.72(a)(3). BCAP clearly meets both criteria. Notwithstanding the Joint Applicants' assertion of a stricter requirement for establishing such standing, nothing more is required by the Commission's regulations.

Assuming, *arguendo*, that the Joint Applicants are correct that BCAP must meet a more restrictive requirement, it has more than adequately done so in its Protest and Petition to Intervene. BCAP has detailed anti-competitive actions of CTCo that not only demonstrate harm already suffered by BCAP members (a standard not necessary to prove), but also the potential harm inherent in the proposed transaction (the only requirement necessary for a valid protest or petition to intervene). CTCo's belief that its Protests to various Competitive Local Exchange Carrier ("CLEC") applications are lawful does not negate the pattern of conduct to delay competitors from entering its territory.

Moreover, in their initial application the Joint Applicants claim numerous public benefits—particularly as related to new services and CLECs—that will ostensibly result from the

transaction they propose to enter. It is inappropriate for the Joint Applicants to avoid the burden of proving these public benefits by attempting to require a protestant to affirmatively prove, at the risk of losing the ability to protect its interests, that the proposed acquisition will be harmful. Contrary to the assertions of the Preliminary Objections, BCAP offered factual evidence indicating how the proposed acquisition may adversely affect the interests of its members, and why the Joint Applicants' claims of public benefit are inadequate. Under the Commission's procedural regulations governing protest and intervention, BCAP is burdened with doing nothing more. The burden of demonstrating public benefit is the Joint Applicants' alone, and they cannot reasonably expect a protestant to alleviate this burden by requiring it to argue the full merits of an undeveloped, unresolved case in a preliminary Protest or Petition to Intervene.

Finally, the Joint Applicants claim enhancement of CLEC competition as one of the public benefits of their proposed transaction, yet subsequently assert that CLECs and potential competitors lack standing to protest or intervene in this proceeding. See Joint Application at ¶¶ 44-45. Obviously, the entities that can best assist the Commission in evaluating the veracity of these claims are the current and potential competitors. Although many services provided by BCAP members are not subject to the PUC's jurisdiction, several BCAP members have chosen to pursue CLEC certification in CTC's territory. See Joint Petition of Commonwealth Telephone Company and Service Electric Telephone Company, LLC for Approval of a Negotiated Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996, Docket No. A-310651F7003; Application of Blue Ridge Digital Phone Company to Provide Telecommunications Services in the Commonwealth of Pennsylvania in the Service Territories of Alltel Telephone Company, Commonwealth Telephone Company and Palmerton Telephone Company as a Facilities-Based Competitive Local Exchange Carrier and Interexchange Toll

Reseller, Dockets Nos. A-310183F0002, AMA, AMB and AMC. In addition, the PUC has the opportunity to ensure that other competitive services such as interconnected IP-enabled voice services can be introduced in CTCo's service territory without facing unnecessary and unlawful resistance by CTCo based on the uncertain federal and state regulatory regimes for these innovative offerings.

Contrary to the claims of the Joint Applicants, the relief sought by BCAP in its protest is readily available. If the PUC does not find that Joint Applicants meet the City of York standard, the Commission can deny the Application. See City of York v. Pa. Public Utility Commission, 295 A.2d 825 (Pa. 1972). Alternatively, the Commission has the broad discretionary authority to impose conditions on parties seeking a Certificate of Public Convenience. This allows the Commission to approve mergers and acquisitions that it may otherwise find inconsistent with its policies or contradictory to law. BCAP has effectively presented legitimate concerns, based upon factual evidence, that may affect the validity of the proposed transaction. BCAP asks nothing more than for the Commission to exercise the authority that it holds and reject the transaction or impose conditions on the Joint Applicants to make this transaction more compatible with law and policy and to ensure that the Joint Applicants live up to the promises and proposed reasons for the approval of the transaction.

II. BACKGROUND

1. Admitted. However, BCAP has no knowledge or information regarding the corporate or capital structure of the Applicants.

2. Admitted.

3. Admitted.

4. Admitted. BCAP filed a Protest and Petition to Intervene on October 30, 2006.

5. The Joint Applicants' distributed Direct Testimony statements are documents that speak for themselves. The substance of these statements, which have not been entered into the record in this proceeding, is irrelevant to ruling on the motion to dismiss. The Joint Applicants cannot avoid legitimate issues raised by BCAP and others regarding the impact of the proposed transaction on competitors for PUC-regulated voice and other non-regulated voice services solely by the manner in which the Joint Applicants choose to submit their case in chief.

6. Denied. The averments contained in this paragraph are legal arguments or conclusions of law to which no response is required; however, by way of response, the Joint Applicants *misstate the law*. In order to satisfy the requirements for eligibility to protest or intervene in a Commission proceeding, protestants/intervenors are required only to demonstrate an interest that *may* be affected by the proposed transaction. 52 Pa. Code § 5.72(a)(2). In addition, intervention may be allowed where the entity's participation is otherwise in the public interest. *Id.* at 5.72(a)(3). Standing is established concurrently with this interest, and is not a separate element to be proven in a protest/petition to intervene. Moreover, as explained herein, BCAP meets the more stringent standard that the Joint Applicants seek to apply.

III. BCAP HAS SATISFIED THE COMMISSION'S REGULATIONS REGARDING STANDING TO PROTEST AND INTERVENE IN THIS PROCEEDING.

7. Denied. BCAP's Protest and Petition to Intervene speaks for itself. However, by way of response, Service Electric Telephone is a partially-owned subsidiary of a BCAP member and is currently certificated in CTCo's territory. BCAP has an interest in ensuring on behalf of its member that CTCo fulfills its promise of enhanced treatment of CLECs. See Joint Application at ¶ 45 ("The experience gained by Citizens ... may enhance CLEC competition in CTCo's territory in two ways: (a) responding effectively to competition by providing new services and pricing options to customers; and (b) *ensuring that CLECs are treated appropriately* in

accordance with the complex regulatory rules that apply to transactions between ILECs and CLECs." (emphasis added)). In addition, other BCAP members may consider entering the CTCo territory if the regulatory roadblocks and hurdles created by CTCo's obstructionist behavior related to CLEC applications and facilitating interconnection with the Public Switched Telephone Network ("PSTN") for other non-jurisdictional voice services is repudiated. Furthermore, it is inappropriate for CTCo to argue that potential entrants should be denied participation when it is CTCo's own litigation behavior that is preventing these entities from becoming actual competitors in the territory. Moreover, the Commission has specifically recognized that advocacy groups serving customers at potential risk of loss, similar to BCAP, have a direct, substantial and immediate interest that confers standing. See PUC v. Columbia Gas of Pennsylvania, Docket No. R-00049783 (Order entered on November 4, 2005).

8. Denied. For the reasons stated in ¶ 7, BCAP maintains an interest in this proceeding as an association consisting of current competitors with CTCo, as well as potential competitors with CTCo and its potential affiliates. Furthermore, for reasons discussed in greater detail below, BCAP maintains that it has more than adequately established standing to proceed in this case regardless of whether the Joint Applicants' claim in this paragraph is correct, and regardless of whether members of BCAP are considered to be "potential competitors."

9. For the reasons stated in ¶ 7, BCAP maintains an interest in this proceeding as an association consisting of current competitors with CTCo, as well as potential competitors with CTCo and its potential affiliates. Therefore, BCAP facially satisfies the direct, substantial, and immediate interest standard as described by the Joint Applicants. Having said this, the issue of some BCAP members currently being only potential competitors with CTCo and its proposed affiliates speaks directly to one of the interests that BCAP holds in protesting this application.

The direct harm presented by the proposed transaction is that CTCo and the new entity will have increased resources, motivation, and opportunity to continue to aggressively block competitive entrance into its territories, thereby further entrenching the "potential competitor" status of these BCAP members. BCAP members have a distinct, present interest in preserving the ability to compete with CTCo, and with the combined entity, as CLECs or as potential CLECs, and as non-PUC regulated providers of voice services through IP-enabled strategies that rely on interconnection with CTCo's network. These members have an interest in potentially expanding their business, no less than the Joint Applicants have in expanding theirs. In addition, BCAP members have an immediate, direct and substantial interest in exploring the enhanced treatment of CLECs and other competitive service providers after the acquisition, which the Joint Applicants claim as a public benefit supporting approval by the PUC. In no manner has BCAP "admitted" that it lacks standing.

10. This paragraph contains a quotation from an Order, which is a document that speaks for itself; however, the cases cited by the Joint Applicants in this and in the following paragraph, addressing the issue of standing for "potential competitors," are easily distinguished from this case and from the procedure and events that gave rise to BCAP's Protest and Petition to Intervene.¹ The Joint Application itself raises the issues addressed by BCAP, and establishes the best argument that even the "potential competitor" members of BCAP have standing to protest and participate in this proceeding. The Joint Applicants assert certain public benefits that will result from this transaction, including enhancement of "[c]ompetition for telecommunications

¹ As an initial matter, the case cited by the Joint Applicants for the proposition that potential CLECs are not protected by the protest and intervention process, Application of Superior Water Company, and Petition of Valley Run Water Company for Rescission or Amendment, Docket No. A-212955F0016, Opinion and Order entered December 5, 2005 at 4-5, is simply inapplicable on its face. As demonstrated by the excerpt included in the Preliminary Objections, Valley Run was not a certified utility. It was not in a position to compete, or to potentially compete, with Superior.

service" and "CLEC competition." Joint Application at ¶¶ 44, 45. The burden for this belongs to the Joint Applicants, who must demonstrate by a preponderance of the evidence that these public benefits actually exist. See City of York, 295 A.2d at 828. By proposing CLEC and other competition as a "public benefit," the Joint Applicants have acknowledged and admitted the interest that CLECs and other competitors have in this proposed transaction, and clearly imply that this interest applies to potential as well as current CLECs and other competitive providers that are ready to bring this beneficial competition to customers in the territory. This public benefit issue is one that must be evaluated by the Commission to determine its potential positive and negative impact on affected parties, i.e., CLECs, potential CLECs and other competitive providers. See Middletown Township v. Pa. Public Utility Commission, 482 A.2d 674 (Pa. Cmwlth. 1984). However, rather than assisting the Commission with this determination, the Joint Applicants incongruously propose that these obviously affected parties have no standing to participate in this determination. By way of further answer, BCAP incorporates herein its response in ¶ 11, below.

11. According to the Joint Applicants, the cases cited in this paragraph and in the previous paragraph arguably stand for the general proposition that "potential competitors," by sole reason of being potential competitors, lack standing to protest or intervene in proceedings such as this one (a legal argument and conclusion that BCAP is not required to respond to, and reserves the right to deny). However, by raising the issue of CLEC competition as a potential public benefit of the proposed transaction, the Joint Application elevates the interest of potential CLECs to one that unequivocally qualifies for standing in this case, as an interest that is substantial, direct, and immediate. It is inappropriate for the Joint Applicants to attempt to alleviate their burden of proving this public benefit by attempting to exclude the only participants

who can adequately challenge and test this assertion. In addition, the telecommunications industry is fundamentally different from the water industry because both state and federal law encourage competition in telecommunications, while the water industry remains a monopoly industry structure. By way of further answer, BCAP incorporates herein its response in ¶ 10, above.

IV. BCAP'S PROTEST AND PETITION TO INTERVENE COMPORTS FULLY WITH THE ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE COMMISSION.

12. This section claims that the BCAP's Protest and Petition to Intervene must be dismissed because it "lacks substance" by being merely speculative; however, under the Commission's regulations, this does not defeat the Protest and Petition to Intervene. By nature, the Joint Application presents matters of pure speculation as regarding the purported public benefits of the proposed acquisition. To the extent that BCAP's "allegations of negative impacts ... are completely speculative arguments", as the Joint Applicants claim, they are necessarily so in measured response to the speculative proposals of the Joint Application. In accordance with 52 Pa. Code § 5.72(a)(2), the Protest and Petition to Intervene satisfies the requirements for eligibility to intervene by claiming an interest "which *may* be directly affected and which is not adequately represented by existing participants, and as to which the petitioner *may* be bound by the action of the Commission in the proceeding." (emphasis added). Any speculative harm asserted by BCAP is limited as such only by the speculative nature of the claims made by the Joint Applicants. Until and unless the Joint Applicants prove the public benefits proposed in the application, particularly those that assert enhanced competition and which trigger the concerns of BCAP, the claims of BCAP must remain speculative. This does not, however, mean that these concerns are invalid.

13. Denied. No additional evidence, beyond that which was provided in BCAP's Protest and Petition to Intervene, is required to demonstrate that this proposed acquisition may negatively affect the interests of BCAP and its members. That CTCo elects to use what it believes are legitimate means to advance its anti-competitive strategies, and thereby block entry of potential competitors into its territory, is irrelevant. When viewed as a whole, CTCo's actions with respect to competitive entry in its service territory indicate a pattern of conduct and clear intent to obstruct competition.

14. Denied. Once again, as discussed in ¶¶ 10 through 12, above, the issue regarding this transaction's effect on competition was acknowledged by the Joint Application, by promoting competition as a public benefit. Under the City of York standard, the burden is on the Joint Applicants to demonstrate that this benefit is legitimate. It is not BCAP's burden to prove that it is not. BCAP has demonstrated an interest in promoting competition, and has presented factual evidence of how this has previously been, and may prospectively be, hindered by the proposed transaction. See BCAP Protest and Petition to Intervene at ¶ 6. In addition, because the Commission has not issued rulings in the Sprint or Core Communications cases, it is premature to definitively conclude that CTCo's protests were "legitimate."

A. Merits of CTCo's Protests in CLEC Application Case

15. BCAP does not dispute the status of CTCo's previously filed protests. The remaining averments of this paragraph constitute argument and conclusion and do not require responsive pleading. However, by way of response, BCAP maintains that the determination of the CTCo's "record of performance" as potentially painting the picture of CTCo "belligerently acting as [a] ... bully to thwart competition" is a factual determination to be made by the Commission through formal proceedings where the Joint Applicants are required to prove the

alleged public benefits of the proposed transaction. At the very least, the Joint Applicants should be forced to prove that this transaction will actually enhance competition, as they claim.

16. The ALJ's Recommended Decision is a document that speaks for itself. BCAP was not a party to the Core Communications case and lacks sufficient knowledge, information, or belief to respond to this assertion.

17. The ALJ's Recommended Decision is a document that speaks for itself. BCAP is seeking to become a party to the Sprint case and has filed Exceptions to the ALJ's Recommended Decision arguing that Sprint meets the requirements to be certified as a CLEC and that CTCo otherwise has an obligation under state and federal law and policy to enter into interconnection arrangements with Sprint so that Blue Ridge and others can offer interconnected IP-enabled services, for which the Federal Communications Commission ("FCC") and the PUC have pursued "hands off" regulatory policies, to date, except for certain important requirements enacted by the FCC regarding items such as E911 and numbering resources. See generally Investigation into Voice Over Internet Protocol as a Jurisdictional Service, Docket No. M-00031707 (Order entered May 24, 2004); In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, Docket Nos. 04-46, 05-196 (First Report and Order and Notice of Proposed Rulemaking issued June 3, 2005).

18. BCAP does not dispute the assertions contained in this paragraph; however, BCAP reserves the opportunity to comment on the circumstances of the settlement and protest as demonstrating a pattern of anti-competitive behavior by CTCo.

19. BCAP does not dispute the assertions contained in this paragraph.

20. Blue Ridge has since filed its CLEC application for the purpose of competing in CTCo's territory. CTCo has protested this application. As the Joint Applicants note, this case is

currently pending before the Commission. BCAP denies that it is necessary for Blue Ridge to be certificated under this arrangement and that Sprint cannot be a CLEC entitled to interconnection with CTCO under state and federal law. By way of further response on this issue, BCAP incorporates herein its answer in ¶ 23.

21. BCAP has not reviewed the pleadings in the Sprint proceeding regarding the motion to join Blue Ridge and has no information to admit or deny this paragraph. By way of further response, BCAP incorporates herein its response in ¶ 23 to address Blue Ridge's reason for not participating in the proceeding.

22. Admitted. By way of response, this information is irrelevant to BCAP or Blue Ridge's right to participate in this proceeding.

23. Denied. As BCAP explained in its own Exceptions in the Sprint case, it is unnecessary for Blue Ridge to seek certification as a CLEC for the proposed arrangement. It is BCAP's understanding that Blue Ridge filed its application not to concede jurisdiction, but to ensure that customers could have access to this competitive service as soon as possible, despite the uncertainty regarding the regulatory status of the Blue Ridge services and the Sprint CLEC application. In addition, BCAP is absolutely correct in stating that "over eighteen months after Sprint and Blue Ridge began the Pennsylvania regulatory process ..., customers in the CTCO territory continue to be denied this competitive offering from Blue Ridge due to CTCO's regulatory maneuvering." BCAP Protest and Petition to Intervene at ¶ 6. The Sprint application was the result of a joint venture entered into by Blue Ridge and Sprint to provide innovative services, which was authorized in other states without the "last mile" party needing CLEC certification. See, e.g., Berkshire Telephone Corp. v. Spring Communications Company L.P. and New York Public Service Commission, No. 05-CV-6502, U.S. Dist. Ct. for W.D. New York,

Decision and Order issued October 27, 2006. It was only due to the hostile stance taken by CTCo that necessitated the filing by Blue Ridge.

24. Denied. There is nothing unreasonable in comparing Blue Ridge's CLEC application to the Frontier tariff filing, as the disparity in treatment demonstrates the tools that CTCo has to meet competitive entry without erecting regulatory barriers. Moreover, this provides firm evidence of the probability that CTCo would introduce a similar offering after approval, which may occur before Sprint and/or Blue Ridge get the certificate[s] and interconnection agreements needed to compete. Finally, it is curious that Frontier markets its service as "digital phone" when it appears to have no "digital" component as described by the Joint Applicants.

25. BCAP lacks sufficient knowledge, information, or belief to respond to these assertions regarding the RCN case.

26. BCAP lacks sufficient knowledge, information, or belief to respond to these assertions regarding cases in which BCAP is not a party.

27. BCAP denies that any of the information previously discussed regarding the application proceedings is at all relevant to ruling on CTCo's motion to dismiss and denies that CTCo's protests have or had merit.

28. Admitted and denied. BCAP admits that the CLEC cases have separate evidentiary records and will be reviewed by the PUC. BCAP itself does not have a CLEC application pending and, as such, does not require "leverage" to resolve a case. Moreover, concerns regarding the purported public benefits from future enhanced treatment of competitors must be adjudicated in this proceeding. The relief sought by BCAP in this proceeding is nothing more than what it claims to be: An attempt to ensure that competition within the CTCo and

combined entity territories is not defeated by a continual pattern of obstruction experienced by multiple parties at the hands of CTCo.

29. Denied. BCAP has not asked for a determination of any case not present before the Commission in this docket. Contrary to the Joint Applicants' wild accusation, BCAP's position does not require a finding that CTCo's pending or prior protests are "frivolous" or "without merit." The factual determination at issue in this proceeding is not whether the individual protests are frivolous or without merit, but whether they constitute a pattern of anti-competitive conduct when viewed as a whole, and whether the proposed transaction stands to maintain or increase this pattern, or if it will actually provide the public benefit that it claims. In addition, the Commission has many other issues to determine here related to the claimed public benefits of enhanced competition and more equitable treatment of competitors.

30. BCAP agrees that this proceeding should not involve already docketed matters, and makes no request to do so.

B. The Alleged "Speculative" Nature of the BCAP's Protest

31. Denied. The averments of this paragraph have been answered in detail in ¶¶ 10-14, above. By way of further answer here, BCAP incorporates those paragraphs, and reiterates that regardless of the means chosen to oppose competitive entry in the past, the actions of CTCo, when taken as a whole, indicate a clear pattern of conduct intent on hindering competition in its territory. This is now further supported by the contradictory positions taken by the Joint Applicants in promoting competition as a public benefit on one hand (see generally, Joint Application), then opposing intervention in the only proceeding that will allow the Commission to evaluate this purported public benefit, on the other (see generally, Preliminary Objections).

In addition, the Joint Applicants must establish affirmative public benefits, including support for claims regarding competition and more equitable treatment of CLECs.

32. Denied. The Joint Applicants attempt to minimize the affect that the combined entity will have on competition in Pennsylvania, by implying that the proposed acquisition will be unnoticeable in the market. In its Protest and Petition to Intervene, BCAP clearly states its concern that CTCo and the Frontier ILECs "have considerable flexibility to introduce digital voice offerings preemptively and on minimal notice prior to even facing competition from BCAP members for the service." BCAP Protest and Petition to Intervene at ¶ 8. The Joint Applicants' market power in their incumbent territories, rather than the entire Commonwealth of Pennsylvania, is at issue.

33. BCAP lacks sufficient knowledge, information, or belief to respond to this assertion made by RCN.

34. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. BCAP denies that its Protest is not factually specific.

35. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. BCAP denies that its Protest is not sufficiently specific or that the pleading is otherwise not fully compliant with the PUC's regulations and procedures. Moreover, the burden remains on the Joint Applicants to prove that this request meets the City of York test.

36. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. BCAP denies that its Protest is not sufficiently specific or that the pleading is otherwise not fully compliant with the PUC's regulations and procedures.

Moreover, the burden remains on the Joint Applicants to prove that this request meets the City of York test.

37. Denied. The averments in this paragraph have been answered in detail in ¶¶ 29 and 32, above. By way of further answer, BCAP therefore incorporates those paragraphs herein.

38. BCAP lacks sufficient knowledge, information, or belief to respond to this assertion regarding RCN's pleading.

39. Denied. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. By way of response, BCAP's Protest and Petition to Intervene clearly establish the requirements for participation in this matter.

IV. REQUESTED RELIEF

40. BCAP has no application cases pending before this Commission. Therefore, the Joint Applicants' accusation that BCAP is using its protest as a means to "gain an advantage" is misplaced and improper. As stated in ¶ 28, above, BCAP is merely attempting to ensure that competition within CTCo's territory is promoted and protected. Notwithstanding the Joint Applicants' indignation, the Commission has broad authority, pursuant to 66 Pa.C.S. §§ 1102 and 1003, to impose conditions on applicants for Certificates of Public Convenience seeking approval of mergers and acquisitions. Section 1103 states that the Commission, "in granting such certificate, may impose such conditions as it may deem to be just and reasonable." 66 Pa.C.S. § 1103(a). Through its Protest and Petition to Intervene, BCAP has identified a legitimate competitive interest that may be affected by the granting of the application. In protesting and requesting intervention, BCAP has petitioned the Commission to make a factual determination whether the public benefits claims of the Joint Applicants are real, or whether, as BCAP asserts, the proposed acquisition will promote anti-competitive activities. The

Commission has the responsibility of making this determination (see Middletown, 482 A.2d at 682), and has the discretion to impose conditions that will prevent negative effects on competition, should this potential be found, or to ensure that the other benefits promised by the Joint Applicants come to fruition. See 66 Pa.CS §1103(a). BCAP asks nothing more than for the Commission to exercise its authority and discretion.

41. BCAP does not request specific relief in this proceeding regarding the Frontier Companies. As subsidiaries of Citizens, and as potential affiliates of CTCo, however, any conditions imposed by the Commission must necessarily apply to the Frontier Companies as well.

42. BCAP lacks sufficient knowledge, information, or belief to respond to this assertion by RCN.

43. Even assuming, as Joint Applicants claim, that the ability to protest is a "due process right"—an argument for which the Joint Applicants fail to provide sufficient support for BCAP to effectively respond—the Commission is still well within its authority to restrict the exercise of this "right" if it is found to be within the public interest. See 66 Pa.C.S. § 1103. See also Bell Telephone Co. v. Utility Commission, 309 U.S. 30 (1940) (Where the Supreme Court of Pennsylvania determined that the Public Utility Commission properly found "evidence justifying the finding of ... unreasonable discrimination in the transaction of its intrastate business," the United States Supreme Court held, "In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs."). BCAP asks nothing more than for the opportunity to represent its interests before the Commission to conduct the proper hearings to determine whether such action

is necessary. If the Commission finds that the proposed acquisition is in violation of state or federal law promoting competition, it is free to reject the application or impose conditions that will bring the transaction into harmony with the law. Once again, it is wholly irrelevant that none of CTCo's prior actions have been determined to be abusive as of today. The issue at hand is the proposed acquisition, and the question to be determined is whether these prior actions, taken as a whole and coupled with the proposed transaction, will indicate the public benefit as claimed in the Joint Application, or rather will produce a continuing anti-competition environment.

44. Admitted and denied. Parties may certainly request a change in the Commission's entry procedures and BCAP reserves the right to do so; however, the Commission need not wait until a generic request is made. Because the Joint Applicants claim that approval of their application is necessary for the enhancement of competition, there is nothing that prevents the Commission from changing these entry procedures as they relate to the Joint Applicants.

45. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. By way of response, however, BCAP respectfully submits that the filing of unnecessary protests may be a barrier to entry, especially when ten years have expired since changes in the laws were enacted to bring competition for telecommunications services to consumers.

46. Denied. Considering the current size of CTCo and the even greater size and capabilities that the combined entity will have upon approval of this transaction, there is little reason to believe that the Joint Applicants will still require the regulatory protection that CTCo receives under its status as a "rural telephone company." BCAP incorporates ¶¶ 40, 43 in this answer.

47. Denied. BCAP submits that the Commission has the authority to remove CTC's rural exemption based upon a finding under Section 252(f)(1)(ii) that the this protection no longer meets the "unduly economically burdensome, ... technically feasible, and ... consistent with Section 254" requirements based on the enhanced size of the post-merger corporate family and other reasons articulated by the Joint Applicants for approval of this transaction.

48. BCAP lacks sufficient knowledge, information, or belief to respond to this assertion regarding RCN.

V. RCN STANDING

49-57. BCAP lacks sufficient knowledge, information, or belief to respond to these assertions regarding RCN.

WHEREFORE, BCAP respectfully requests that the Pennsylvania Public Utility Commission deny the Preliminary Objections of the Joint Applicants and grant the Protest and Petition to Intervene filed by BCAP in this proceeding

Respectfully submitted

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*

Pamela C. Polacek (I.D.#78276)
Adam L. Benschhoff (I.D. #200498)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (phone)
717.237.5300 (fax)

Counsel to the Broadband Cable Association of
Pennsylvania

Dated: November 20, 2006



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 20, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

2016 NOV 20 PM 4:00
SECRETARY'S BUREAU

RE: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Answer of Blue Ridge Digital Phone Company to Commonwealth Telephone Company's Preliminary Objections in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the protest, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

Counsel to Blue Ridge
Digital Phone Company

**DOCUMENT
FOLDER**

PCP/nk
Enclosures
c: Certificate of Service
Honorable Susan D. Colwell (via hand delivery)

67

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Joel Cheskis, Esq.
Shaun Sparks, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, PA 17101

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Johnnie Simms, Esq.
Robert Eckenrod, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

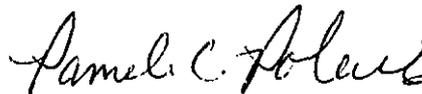
Jennifer A. Duane, Esq.
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

Raymond Ostroski, Esq.
Sr. V. P, General Counsel and Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Sr. V.P. and General Counsel
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John F. Povilaitis, Esq.
Ryan, Russell, Odgen & Seltzer, L.P.
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025



Pamela C. Polacek

Counsel to Blue Ridge Digital
Phone Company

SECRETARY'S BUREAU
2006 NOV 20 PM 4:00

Dated this 20th day November, 2006, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006-10-20 PM 4:00
SECRETARY'S BUREAU

Joint Application of Commonwealth :
Telephone Company, CTSI, LLC and :
CTE Telecom, LLC d/b/a Commonwealth : A-310800F0010
Long Distance Company For All Approvals : Docket Nos.: A-311095F0005
Under the Public Utility Code for the : A-311225F0003
Acquisition By Citizens Communications :
Company of All Stock of the Joint :
Applicants' Corporate Parent, :
Commonwealth Telephone Enterprises, Inc. :

**ANSWER OF THE BLUE RIDGE DIGITAL PHONE COMPANY TO
COMMONWEALTH TELEPHONE COMPANY'S PRELIMINARY
OBJECTIONS**

Pursuant to 52 Pa. Code Sections 5.61 and 5.101, Blue Ridge Digital Phone Company ("Blue Ridge") hereby files this Answer to the Preliminary Objections filed by Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD"), and Citizens Communications Company ("Citizens") (hereinafter collectively referred to as the "Joint Applicants" or "Applicants") seeking dismissal of Blue Ridge's Protest and Petition to Intervene. As required by the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, Blue Ridge's Answer corresponds by numbered paragraph with the Preliminary Objections filed by the Joint Applicants.

For the reasons stated herein, Blue Ridge respectfully requests that this Commission deny the request of the Joint Applicants and grant its previously filed Protest and Petition to Intervene.

**DOCUMENT
FOLDER**

DOCKETED
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ORIGINAL

I. SUMMARY OF ARGUMENT

Contrary to the assertions of the Joint Applicants, Blue Ridge has satisfied all requirements established by the Commission's regulations regarding Protests and Intervention. Blue Ridge has more than adequately demonstrated the standing requisite to protest and intervene in this proceeding, as established by its status *both* a potential competitor of CTCo *and* a current competitor of CTSI, and by the demonstration of the harm that *may* occur as a result of the approval of the acquisition. Although the Joint Applicants go to great lengths to argue that CTCo's past actions in protesting competitive entry into the CTCo were appropriate, this is largely irrelevant to whether Blue Ridge should be permitted to participate in this proceeding to both assist the Commission in the evaluation of the claimed affirmative public benefits of the proposed transaction and raise arguments that the approval is contrary to the public interest, including the suggestion of conditions that could be placed on any approval to create public benefits. Blue Ridge meets the Commission's standards for intervention under Section 5.72(a)(2) (having an "interest which may be directly affected and which is not adequately represented by existing participants") and Section 5.72(a)(3) (having "[a]nother interest of such nature that participation of the petitioner may be in the public interest"). See 52 Pa. Code § 5.72(a)(2) and (3).

The Joint Application contains numerous references to how approval of the acquisition will enable the Joint Applicants to introduce new services to customers:

- "Citizens is a respected, long-time participant in the local exchange marketplace, focusing largely on rural and suburban communities. In recent years, Citizens has determined to emphasize its focus on rural and suburban communities, a market, which it believes, has been underserved in the telecommunications environment. The instant transaction will permit both Citizens and Joint Applicants to sharpen their focus on the areas where they are best able to provide their customers with innovative and value-added services, and the combined size and depth of expertise of the companies will enhance their abilities to provide these services in additional areas." Joint Application, ¶ 33 (emphasis added).

- "The service territories of the Frontier Companies and CTCo fit together exceptionally well. The combined size and depth of expertise of the companies will help create a 'critical mass' of employees, customers and technology. The combined companies' increased size will give them an increased ability to focus on growing their customer base through new business opportunities, expansion of existing services, and new service bundling opportunities and offers." Joint Application, ¶ 34 (emphasis added).
- "One driving force behind the proposed transaction is the need to grow the business. Applicants believe that the expanded business opportunities of the combined company will enable it to enhance and improve its overall presence in Pennsylvania." Joint Application, ¶ 36.
- "Citizens is committed to meeting the needs and telecommunications requirements of small and medium-sized communities and ensuring that these communities become part of the information superhighway. The transaction will permit both Citizens and Joint Applicants to sharpen their focus on the areas where they are best able to provide their customers with innovative and broad reaching services with bundling choice options. For example, Citizens has a higher penetration of high-speed internet access (i.e., DSL) than does CTCo and, therefore, will seek to accomplish higher customer acceptance by CTCo customers, as well." Joint Application, ¶ 37 (emphasis added).
- "The two companies, in combination, will enhance the range of telecommunications services and choices, regulated and unregulated, available to customers more rapidly. For example, Citizens intends to immediately introduce CTCo subscribers to its ask.com co-branded portal, wireless modem, ESPN 360 (customized sporting event highlights) and Frontier Secure Connections (Computer Associates' firewall, virus and anti-span software). Further, as bundled packages of telecommunications services are increasingly popular among customers, Citizens intends to improve the scope and value of bundled packages of services available to CTCo customers." Joint Application, ¶ 38 (emphasis added).
- "The combination with Citizens will help to ensure continuity of CTE's trend of prudent investment and the commitments that CTCo has made in its Chapter 30 Network Modernization Plan, which remain unaffected by the proposed acquisition. Citizens is and will remain committed to providing new, advanced services to all of its customers wherever technologically feasible and economically reasonable. Citizens' presence will help the Joint Applicants to anticipate technology changes and build for an evolving marketplace." Joint Application, ¶ 40 (emphasis added).
- "The increased size and depth of expertise of the combined companies will provide the resources needed to reduce the time to market of new service offerings." Joint Application, ¶ 42.
- "Competition for telecommunications service will be enhanced, as the combined size and depth of expertise of Citizens and CTE will enable them to compete more effectively with other facilities-based competitors, including cable telephony and wireless carriers." Joint Application, ¶ 44.

- "The experience gained by Citizens, across its twenty-four state operation in responding to the forces of competition may enhance CLEC competition in CTCo's territory in two ways: (a) responding effectively to competition by providing new services and pricing options to customers; and (b) ensuring that CLECs are treated appropriately in accordance with the complex regulatory rules that apply to transaction between ILECs and CLECs." Joint Application, ¶ 45.
- "Moreover, by associating Citizens with CTSI, this Pennsylvania CLEC will be a stronger competitor in the telecommunications market. Citizens intends to continue ownership and operation of CTSI." Joint Application, ¶ 46.

Law and policy on both the state and federal levels permit and encourage competition for the very telecommunication services and other services that the Joint Applicants tout as resulting from the proposed transaction. Clearly, a company such as Blue Ridge that is currently seeking to enter the CTCo market has a legitimate interest in participating in this proceeding to ascertain through discovery and otherwise whether approval of this transaction will provide CTCo with an unfair competitive advantage and how exactly the promise of enhanced CLEC competition and competition for other services in CTCo's territory contained in the Joint Application will be realized.

Finally, contrary to the claims of the Joint Applicants, the relief sought by Blue Ridge in its protest is available. The Commission has broad discretionary authority to impose conditions on parties seeking a Certificate of Public Convenience. In addition, to the extent the Joint Applicants cannot meet the affirmative public benefit test set forth in the City of York decision and the Commission cannot craft conditions to satisfy the standard, the Commission can deny the application. Blue Ridge asks nothing more than for the Commission to exercise the authority to deny the Joint Application or take any other action that it deems necessary and in the public interest to place conditions on the approval.

II. BACKGROUND

1. Admitted. However, Blue Ridge has no knowledge or information regarding the corporate or capital structure of the Applicants.

2. Admitted.

3. Admitted.

4. Admitted. Blue Ridge filed a Protest and Petition to Intervene on October 30, 2006.

5. Admitted in part and denied in part. It is admitted that the Joint Applicants circulated prepared direct testimony statements. It is denied that these statements are relevant to the request to dismiss Blue Ridge's Protest.

6. Denied. The averments contained in this paragraph are legal arguments or conclusions of law to which no response is required. However, by way of response, the Joint Applicants misstate the law. In order to satisfy the requirements for eligibility to protest or intervene in a Commission proceeding, protestants/intervenors are required only to demonstrate an interest that *may* be affected by the proposed transaction or that their participation may be in the public interest. 52 Pa. Code § 5.72(a)(2) and (3). Standing is established concurrently with this interest, and is not a separate element to be proven in a protest/petition to intervene.

III. BLUE RIDGE HAS SATISFIED THE COMMISSION'S REGULATIONS REGARDING STANDING TO PROTEST AND INTERVENE IN THIS PROCEEDING.

7. Denied. In its Protest and Petition to Intervene, Blue Ridge clearly states that it has provisional authority to operate as a [CLEC] in the service territories of Verizon Pennsylvania, Inc., and Verizon North, Inc., and is seeking CLEC certification in the territories of [CTCo]." Blue Ridge Protest and Petition to Intervene at ¶ 1. To the extent that CTSI and its potential affiliates compete in the Verizon territories, CTSI currently

stands in competition with Blue Ridge under Blue Ridge's provisional CLEC authority. Considering this provisional CLEC authority in the Verizon territories, and the fact that its pending CLEC application for CTCo's territory has yet to be decided, it is premature and inappropriate to refer to Blue Ridge as simply a "potential competitor." At a minimum, as a current competitor to CTSI, Blue Ridge has a direct interest in this proceeding "which is not represented by any other party." 52 Pa. Code § 5.72.¹ Moreover, as CTCo's own actions are preventing Blue Ridge from being classified as a current competitor due to CTCo's opposition to both the Sprint and Blue Ridge applications, any distinction that can be asserted between the participation of existing and potential competitors should be ignored.

8. Denied. For the reasons stated in ¶ 7, Blue Ridge maintains an interest as a current competitor of CTSI, as well as a potential competitor with CTCo and its potential affiliates. Furthermore, for reasons discussed in greater detail below, Blue Ridge maintains that it has more than adequately established standing to participate in this case regardless of whether the Joint Applicants' claim in this paragraph is correct, and regardless of whether Blue Ridge is considered to simply be a "potential competitor."

9. Denied. For the reasons stated in ¶ 7, Blue Ridge maintains an interest in this proceeding as a current competitor of CTSI, as well as a potential competitor with CTCo and its potential affiliates. Therefore, Blue Ridge facially satisfies the direct, substantial, and immediate interest standard as described by the Joint Applicants. Having said this, the unresolved application of Blue Ridge to compete with CTCo and its

¹ By implication, 52 Pa. Code § 5.72 establishes the regulatory standard for the standing of competitors. § 5.72(c) states under the supersession provision, that "Subsections (a) and (b) are identical to 1 Pa. Code § 35.28 (relating to eligibility to intervene)." On close reading, however, Section 35.28—in the General Rules of Administrative Practice and Procedure—is not identical. It does, however, provide valuable insight into the intent of § 5.72. Section 35.28(a)(2) contains the additional clause, "The following may have an interest: consumers, customers or other patrons served by the applicant or respondent; holders of securities of the applicant or respondent; employees of the applicant or respondent; *competitors* of the applicant or respondent." Though omitted therein, Section 5.72, by stating that the two provisions are "identical" should be read as incorporating, rather than excluding, this meaning as well.

proposed affiliates as a CLEC, arguably relegating it only a potential competitor, speaks directly to one of the interests that Blue Ridge holds in protesting this application. The direct harm presented by the proposed transaction is that CTCo and the new entity will have increased resources, motivation, and opportunity to continue to aggressively block competitive entry into its territories, thereby permanently relegating Blue Ridge to the "potential competitor" status. Blue Ridge has a distinct, present interest in preserving the ability to compete with CTCo, and with the combined entity. Blue Ridge has an interest in potentially expanding its business, no less than the Joint Applicants have in expanding theirs. However prospective this final competitive result may be, the current interest is no less substantial, direct, and immediate simply because the goals and results have yet to reach fruition. The injury that Blue Ridge potentially faces is the removal or further delay of this ability to pursue competitive goals.

10. Denied. The cases cited by the Joint Applicants in this and in the following paragraph, addressing the issue of standing for "potential competitors," are easily distinguished from this case and from the procedure and events that gave rise to Blue Ridge's Protest and Petition to Intervene.² As quoted in the "summary" section of this Answer, the Joint Application itself raises the issues addressed by Blue Ridge, and establishes the best argument that even the "potential competitor" status of Blue Ridge provides the requisite standing to protest and participate in this proceeding. The Joint Applicants assert certain public benefits that will result from this transaction, including enhancement of "[c]ompetition for telecommunications service" and "CLEC competition." Joint Application at ¶¶ 44, 45. The burden for this belongs to the Joint

² As an initial matter, the case cited by the Joint Applicants for the proposition that potential CLECs are not protected by the protest and intervention process, Application of Superior Water Company, and Petition of Valley Run Water Company for Rescission or Amendment, Docket No. A-212955F0016, Opinion and Order entered December 5, 2005 at 4-5, is simply inapplicable on its face. As demonstrated by the excerpt included in the Preliminary Objections, Valley Run was not a certified utility. It was not in a position to compete, or to potentially compete, with Superior.

Applicants, who must demonstrate by a preponderance of the evidence that these public benefits actually exist. See City of York v. Pa. Public Utility Commission, 295 A.2d 825, 828 (Pa. 1972). By proposing enhanced CLEC competition as a "public benefit," the Joint Applicants have acknowledged and admitted the interest that CLEC's and other competitors have in this proposed transaction, and clearly imply that this interest applies to potential as well as current competitors that will bring these beneficial services to the customers in the CTCo territory. This public benefit issue is one that must be evaluated by the Commission to determine its potential positive and negative impact on affected parties, i.e., current and future competitors. See Middletown Township v. Pa. Public Utility Commission, 482 A.2d 674 (Pa. Cmwlth. 1984). However, rather than assisting the Commission with this determination, the Joint Applicants incongruously propose that these obviously affected parties have no standing to participate in this determination. By way of further answer, Blue Ridge incorporates herein its response in ¶ 11, below.

11. Denied. The cases cited in this paragraph and in the previous paragraph arguably stand for the general proposition that "potential competitors," by sole reason of being potential competitors, lack standing to protest or intervene in proceedings such as this one (a legal argument and conclusion that Blue Ridge is not required to respond to, and reserves the right to deny). However, by raising the issue of CLEC competition as a potential public benefit of the proposed transaction, the Joint Application elevates the interest of potential CLECs to one that unequivocally qualifies for standing in this case, as an interest that is substantial, direct, and immediate. In addition, unlike the cases cited by the Joint Applicants, Blue Ridge is a current competitor with CTCI and in the process of seeking to compete with CTCo. Furthermore, given state and federal law and policy in support of competitive entry, competitors clearly have an interest in change of control

applications filed by incumbents. By way of further answer, Blue Ridge incorporates herein its response in ¶ 10, above.

IV. BLUE RIDGE'S PROTEST AND PETITION TO INTERVENE COMPORTS FULLY WITH THE ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE COMMISSION.

12. Denied. This section claims that the Blue Ridge's Protest and Petition to Intervene must be dismissed because it "lacks substance" by being merely speculative. However, under the Commission's regulations, this does not defeat the Protest and Petition to Intervene. To the extent that Blue Ridge's "allegations of negative impacts ... are completely speculative arguments", as the Joint Applicants claim, they are necessarily so in measured response to the speculative proposals of the Joint Application. In accordance with 52 Pa. Code § 5.72(a)(2), the Protest and Petition to Intervene satisfies the requirements for eligibility to intervene by claiming an interest "which *may* be directly affected and which is not adequately represented by existing participants, and as to which the petitioner *may* be bound by the action of the Commission in the proceeding." (emphasis added). Any speculative harm asserted by Blue Ridge is limited as such only by the speculative nature of the claims made by the Joint Applicants. Until and unless the Joint Applicants prove the public benefits proposed in the application, particularly those that assert enhanced competition and which trigger the concerns of Blue Ridge, the claims of Blue Ridge must remain speculative. This does not, however, render these concerns are invalid.

13. Denied. No additional evidence, beyond that which was provided in Blue Ridge's Protest and Petition to Intervene, is required to demonstrate that this proposed acquisition *might negatively affect the its interests*. In addition, the Joint Applicants bear the burden to prove that the claimed public benefits will be realized; Blue Ridge does not bear the burden to prove that the claimed benefits, including enhanced competition, will

not be realized. This is a factual issue for the Commission to decide and not a legal issue that can be definitively ruled on through granting the request to dismiss Blue Ridge's Protest.

14. Denied. As discussed in ¶¶ 10 through 12, above, the issue regarding this transaction's effect on competition was acknowledged by the Joint Application, by promoting competition as a public benefit. Under the City of York standard, the burden is on the Joint Applicants to demonstrate that this benefit is legitimate. It is not Blue Ridge's burden to prove that it is not. Blue Ridge has demonstrated an interest in promoting competition, and has presented factual evidence of how this has previously been, and may prospectively be, hindered by the proposed transaction. See Blue Ridge Protest and Petition to Intervene at ¶ 5.

A. Merits of CTCo's Protests in CLEC Application Case

15. Blue Ridge does not dispute the status of CTCo's previously filed protests. The remaining averments of this paragraph constitute argument and conclusion and do not require responsive pleading. However, by way of response, Blue Ridge maintains that the determination of the CTCo's "record of performance" as potentially painting the picture of CTCo "belligerently acting as [a] ... bully to thwart competition" is a factual determination to be made by the Commission through formal proceedings where the Joint Applicants are required to prove the alleged public benefits of the proposed transaction. The claimed legitimacy of CTCo's prior protests is irrelevant and the Joint Applicants should be forced to prove that this transaction will actually enhance competition, as they claim.

16. Blue Ridge is not involved in the Core Communications proceeding and, as a result lacks sufficient knowledge, information, or belief to respond to this assertion.

The ALJ's Initial Decision remains pending before the Commission, which ultimately will determine whether to uphold CTCo's protest, and is a document that speaks for itself.

17. Blue Ridge is not involved in the Sprint proceeding and, as a result lacks sufficient knowledge, information, or belief to respond to this assertion. The ALJ's Recommended Decision remains pending before the Commission, which ultimately will determine whether to uphold CTCo's protest, and is a document that speaks for itself.

18. Blue Ridge is not involved in the Service Electric proceeding and, as a result lacks sufficient knowledge, information, or belief to respond to this assertion.

19. Blue Ridge does not dispute the assertions contained in this paragraph.

20. Blue Ridge has since filed its CLEC application for the purpose of competing in CTCo's territory. CTCo has protested this application. As the Joint Applicants note, this case is currently pending before the Commission. By way of further response on this issue, Blue Ridge incorporates herein its answer in ¶ 23.

21. Blue Ridge does not dispute the averments of this paragraph, but does however incorporate herein its response in ¶ 23 to address its reason for not participating in the proceeding.

22. Admitted. By way of further response, the fact that Blue Ridge filed its Application "one day before Exceptions were due to be filed to the ALJ's Decision denying Sprint a certificate" is irrelevant.

23. Denied. The Joint Applicants' speculation regarding Blue Ridge's action is inaccurate. Blue Ridge recognizes that regulatory uncertainty exists at the state and federal levels regarding: (a) whether Sprint is entitled to CLEC certification to facilitate the contract between Blue Ridge and Sprint; and (b) whether Blue Ridge's service offering is subject to the PUC's jurisdiction. Regarding these issues, Blue Ridge has not "conceded" its beliefs that: (a) Sprint legally is entitled to CLEC certification and

interconnection; and (b) Blue Ridge's services as a matter of law and/or policy should not be subject to the PUC's jurisdiction. Blue Ridge is, however, willing to voluntarily seek CLEC certification to ensure that this lingering regulatory uncertainty, which was created in part by CTCo's protest of the Sprint application, does not unduly delay the introduction of an innovative competitive voice option for customers in the CTCo territory. Contrary to the Joint Applicants' accusation, "reluctan[ce] to concede Commission jurisdiction over its services" played no part in its initial non-participation as a formal party.

24. Denied. In the context of reviewing a transaction that the proponents claim is necessary to enable CTCo to more effectively meet competitive entry by cable telephony, BCAP's comparison of the ease of introduction of a "digital phone" service by Frontier ILECs and the lengthy delay experienced by Blue Ridge to introduce digital voice services in the CTCo territory is entirely appropriate.

25. Blue Ridge is not involved in the RCN proceeding and, as a result lacks sufficient knowledge, information, or belief to respond to this assertion. The matter remains pending before the Commission, which ultimately will determine whether to uphold CTCo's protest.

26. Admitted with respect to the assertions regarding Blue Ridge.

27. Denied. Contrary to the Joint Applicants' assertion, these issues are irrelevant to the decision regarding the attempt to dismiss the Blue Ridge Protest. To date, the PUC has not upheld a litigated protest by CTCo.

28. Denied. The relief sought by Blue Ridge in this proceeding is nothing more than what it claims to be: An attempt to ensure that competition within the CTCo and combined entity territories is not defeated by a continual pattern of obstruction experienced by multiple parties at the hands of CTCo and that the claimed public benefit of enhanced competition can be realized.

29. Denied. Blue Ridge has not asked for a determination of any case not present before the Commission in this docket.

30. Blue Ridge agrees that this proceeding should not involve the merits of already docketed matters, and makes no request to do so.

B. The Alleged "Speculative" Nature of Blue Ridge's Protest

31. Denied. The averments of this paragraph have been answered in detail in ¶¶ 10-14, above. By way of further answer here, Blue Ridge incorporates those paragraphs, and reiterates that regardless of the means chosen to oppose competitive entry in the past, the actions of CTCo, when taken as a whole, indicate a clear pattern of conduct intent on hindering competition in its territory. This is now further supported by the contradictory positions taken by the Joint Applicants in promoting competition as a public benefit on one hand (see generally, Joint Application), then opposing intervention by competitors in the proceeding that will allow the Commission to evaluate this purported public benefit, on the other (see generally, Preliminary Objections).

32. Denied. The Joint Applicants attempt to minimize the affect that the combined entity will have on competition in Pennsylvania, by implying that the proposed acquisition will be unnoticeable in the market. The more relevant inquiry is whether the Joint Applicants will exercise market power in their own service territories. It is unnecessary for Blue Ridge to claim that Citizens "has 'exploited' CLECs or 'stifled competition'" in the past, or that Citizens "brings such propensities as the new owner of CTCo." However, Blue Ridge has clearly maintained in its Protest and Petition to Intervene that the combined entity will potentially stand in a position to do so upon approval of the acquisition. Blue Ridge has experienced, first hand, CTCo's attempts to delay competition in its territory through CTCo's protest to the Sprint and Blue Ridge CLEC applications, and it stands to reason that this corporate practice will continue and

potentially expand to the "five small rural local exchange" territories owned by Citizens. This is a risk that Blue Ridge can ill afford. The Joint Applicants have professed a public benefit of enhanced competition. They now have the burden of demonstrating this before the Commission.

33. Blue Ridge lacks sufficient knowledge, information, or belief to respond to this assertion by RCN.

34. The averments in this paragraph are legal argument or conclusions of law to which no responsive pleading is required. Blue Ridge denies, however, that its pleadings fail any factual specificity obligation.

35. The averments in this paragraph are legal argument or conclusions of law to which no responsive pleading is required. Blue Ridge denies, however, that its pleadings are not fully compliant with the applicable requirements of the PUC's rules and regulations.

36. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. Blue Ridge incorporates its responses to ¶¶ 35 and 36.

37. Denied. The averments in this paragraph have been answered in detail in ¶¶ 29 and 32, above. By way of further answer, Blue Ridge therefore incorporates those paragraphs herein.

38. Blue Ridge lacks sufficient knowledge, information, or belief to respond to this assertion regarding RCN.

39. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required. Blue Ridge denies that any basis exists to dismiss its Protest in this matter.

IV. REQUESTED RELIEF

40. Denied. The Joint Applicants' accusation that Blue Ridge is using its protest as a means to "gain an advantage" is misplaced and improper. As stated in ¶ 28, above, Blue Ridge is merely attempting to ensure that the public benefit of competition within CTCo's territory is promoted and protected. Blue Ridge has not requested any relief other than for a denial of the application or for any other action that the Commission deems appropriate. In ruling on a proposed transaction where the Joint Applicants claim public benefits related to the introduction of new services and competitive alternatives to meet other carriers' competition, it clearly is relevant for the Commission to consider the extent of current competition and ways to enhance the benefits of competition for the Joint Applicants' customers through the market, including through services introduced by entities other than the Joint Applicants. This may include removing CTCo's ability to use its purported "rural" status as a shield to delay competitive entry, especially on a facilities basis, after the transaction.

41. Blue Ridge has not requested relief regarding the Frontier Companies.

42. Blue Ridge lacks sufficient knowledge, information, or belief to respond to this assertion by RCN.

43. Even assuming, as Joint Applicants claim, that the ability to protest is a "due process right"—an argument for which the Joint Applicants fail to provide sufficient support for Blue Ridge to effectively respond—the Commission is still well within its authority to restrict the exercise of this "right" if it is found to be within the public interest. See 66 Pa.C.S. § 1103. See also Bell Telephone Co. v. Utility Commission, 309 U.S. 30 (1940) (Where the Supreme Court of Pennsylvania determined that the Public Utility Commission properly found "evidence justifying the finding of ... unreasonable discrimination in the transaction of its intrastate business," the United States Supreme

Court held, "In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs.). Blue Ridge asks nothing more than for the opportunity to represent its interests before the Commission to conduct the proper hearings to determine whether such action is necessary. If the Commission finds that the proposed acquisition is in violation of state law promoting competition, it is free to reject the application or impose conditions that will bring the transaction into harmony with the law. Once again, it is wholly irrelevant that none of CTCo's prior actions have been determined to be abusive. The issue at hand is the proposed acquisition, and the question to be determined is whether these prior actions, taken as a whole and coupled with the proposed transaction, will indicate the public benefit as claimed in the Joint Application, or rather will produce a continuing anti-competition environment.

44. Admitted and denied. Parties may certainly request a change in the Commission's entry procedures; however, Blue Ridge denies that the Commission must wait until a generic request is made. Because the Joint Applicants claim that approval of their application is necessary for the enhancement of competition, there is nothing that prevents the Commission from changing these entry procedures as they relate to the Joint Applicants to provide further enhancements to the competitive options available to customers in the Joint Applicants' territories.

45. The averments in this paragraph are legal argument or conclusion of law to which no responsive pleading is required; however, by way of response, Blue Ridge denies that the ability to protest entry applications cannot act as a barrier to entry under Section 253 of the Telecommunications Act of 1996, 47 U.S.C. § 253.

46. Though it has not requested this relief, Blue Ridge maintains that considering the current size of CTCo and the even greater size and capabilities that the combined entity will have upon approval of this transaction, there is little reason to believe that the Joint Applicants will still require the regulatory protection that CTCo receives under its status as a "rural telephone company."

47. Denied. Blue Ridge submits that the Commission has the authority to remove CTCo's rural exemption based upon a finding under Section 252(f)(1)(ii) that the this protection no longer meets the "unduly economically burdensome, ... technically feasible, and ... consistent with Section 254" requirements and that the PUC can do so in this proceeding.

48. Blue Ridge lacks sufficient knowledge, information, or belief to respond to this assertion regarding RCN.

V. RCN STANDING

49-57. Blue Ridge lacks sufficient knowledge, information, or belief to respond to these assertions regarding RCN.

WHEREFORE, Blue Ridge respectfully requests that the Pennsylvania Public Utility Commission deny the Preliminary Objections of the Joint Applicants and approve the Protest and Petition to Intervene filed by Blue Ridge in this proceeding.

Respectfully submitted

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (I.D.#78276)
Adam L. Benshoff (I.D. #200498)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (phone)
717.237.5300 (fax)

Counsel to the Blue Ridge Digital
Phone Company

Dated: November 20, 2006

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025

TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816
WWW.RYANRUSSELL.COM

November 20, 2006

WYOMISSING OFFICE

SUITE 210
1150 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA
19610-1208
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – 2nd Floor
Harrisburg, PA 17120

ORIGINAL

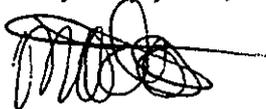
Re: Joint Application of Commonwealth Telephone Company,
CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long
Distance Company for all approvals under the Public Utility Code
for the acquisition by Citizens Communications Company of all of
the stock of the joint applicants' corporate parent, Commonwealth
Telephone Enterprises, Inc., Docket Nos. A-310800F0010,
A-311095F0005, A-311225F0003

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of RCN Corporation and RCN Telecom Services, Inc. to the Joint Answers and Preliminary Objections of Commonwealth Telephone Company, CTSI LLC, CTE Telecom, LLC and Citizens Communication Company in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

DOCUMENT
FOLDER

Very truly yours,



Matthew A. Totino

Enclosures
JFP/ck

c. Certificate of Service

SECRETARY'S BUREAU
PA P.U.C. BUREAU
2006 NOV 20 AM 11:21

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

2006 NOV 20 AM 11:21
SECRETARY'S BUREAU

Joint Application of :
Commonwealth Telephone Company, :
CTSI, LLC, and CTE Telecom, LLC : A-310800F0010
d/b/a Commonwealth Long Distance Company : A-311095F0005
for all approvals under the Public Utility Code : A-311225F0003
for the acquisition by Citizens Communications :
Company of all of the stock of the joint applicants' :
corporate parent, Commonwealth Telephone :
Enterprises, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA HAND DELIVERY and ELECTRONIC MAIL

Norman J. Kennard, Esquire
Lillian S. Harris, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101
Phone: (717) 236-1300
Fax: (717) 236-4841
[njkenard@hmsk-law.com](mailto:njkennard@hmsk-law.com)
lharris@hmsk-law.com

Michael W. Fleming
Brian McDermott
WILLIAMS MULLEN
8270 Greensboro Drive
McLean, VA 22102
Phone: (703) 760-5248
Fax: (703) 748-0244
mffleming@williamsmullen.com

VIA FIRST CLASS and ELECTRONIC MAIL

Lauren M. Lepkoski, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
Phone: (717) 783-2525
Fax: (717) 783-2831
llepskoski@state.pa.us

Irwin Popowsky, Esquire
Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor
Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
spopowsky@paoca.com

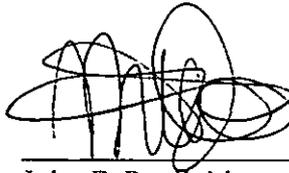
J. Edward Simms, Esquire
PA Public Utility Commission
400 North Street, 2nd Floor
Commonwealth Keystone Building
Harrisburg, PA 17120
Phone: (717) 787-1976
Fax: (717) 772-2677
josimms@state.pa.us

Joseph Kahl
Sr. Director, Regulatory and External Affairs
RCN Corporation
1849 Butler Street
Easton, PA 18042
Phone: (610) 438-0119
Fax: (610) 438-0133
joseph.kahl@rcn.net

Raymond Ostroski, Esquire
Commonwealth Telephone Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612
Phone: (570) 631-2802
Fax: (570) 631-2895
ravo@epix.net

Hilary Glassman, Esquire
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905
Phone: (203) 614-5047
Fax: (203) 614-4651

November 20, 2006



John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2006 NOV 20 8:11:21
SECRETARY'S BUREAU

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC and CTE	:	
Telecom, LLC d/b/a Commonwealth Long	:	
Distance Company for All Approvals	:	Docket Nos. A-310800F0010
Under the Public Utility Code for the	:	A-311095F0005
Acquisition by Citizens Communications	:	A-311225F0003
Company of All of the stock of the	:	
Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**ANSWER OF RCN CORPORATION AND RCN TELECOM SERVICES, INC.
TO THE ANSWER AND PRELIMINARY OBJECTIONS OF
COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC, AND CTE
TELECOM, LLC d/b/a COMONWEALTH LONG DISTANCE COMPANY AND
CITIZENS COMMUNICATIONS COMPANY**

RCN Corporation and RCN Telecom Services, Inc. (together "RCN") respectfully submits this Answer pursuant to the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.101(b), in opposition to the Preliminary Objections filed by Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance ("Commonwealth") and Citizens Communications Company ("Citizens" and together "Joint Applicants") filed in the above-captioned matter. For the reasons set forth below, RCN respectfully requests that the Commission grant RCN's Petition to Intervene and deny the Preliminary Objections filed by the Joint Applicants. In support thereof, RCN avers as follows:

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I. Introduction.

The Joint Applicants have presented no grounds that warrant dismissal of RCN's Protest or that warrant a denial of its Petition to Intervene. To begin, Joint Applicants apply the wrong legal standard for evaluating RCN's right to participate in this proceeding as an Intervenor. Incorrectly, the Joint Applicants argue that the merits of RCN's Petition to Intervene should be addressed by the aggrievement standard used to evaluate standing, which is whether a direct, immediate and substantial interest of a person has been adversely affected. However, the Commission's regulations and related case law make it clear that an Intervenor need only establish a direct interest that is not capable of being addressed by another party. The Commission's regulations also make clear that granting Intervenor status is a preliminary determination and that it is not confirmation that an Intervenor is aggrieved by an order of the Commission.

Nor is there any merit to the argument that RCN's Protest is insufficient or that RCN should be barred from raising certain issues at this time. The test for evaluating whether a Protest has been properly lodged is whether it is legally sufficient in terms of the grounds of the Protest and the Protestant's standing.¹ RCN's Protest clearly states the grounds of the protest and the facts establishing its standing to protest. The

¹ Unlike the standard for intervention, the Commission's regulations do not clarify what it means to have standing to protest, i.e., whether the more liberal "direct" interest standard used for intervention should apply or whether the more rigorous "direct, immediate and substantial" interest standard used to assess aggrievement should apply. However, in this situation where RCN has filed both a Petition to Intervene and a Protest that raise the same or similar issues, it would seem inconsistent to apply the more rigorous standard when considering that RCN can pursue the issues raised in its Protest even as an Intervenor. That is because Intervenor status is generally afforded the same rights as any other party to the proceeding. See Pennsylvania Appellate Practice, § 501.7. In any event, even under the more rigorous "aggrievement" standard, RCN would still have standing to Protest. As a certificated carrier with a pending CLEC application in the Commonwealth services territory, RCN would be aggrieved by an unconditioned approval of the Joint Application. This aggrievement is evident, given the impact that the acquisition will have on the proposed services that RCN intends to offer in the Commonwealth service territory.

Answers/Preliminary Objections erroneously argue that the Protest should be adjudicated as being without merit, which is not the issue before the ALJ at this time. Rather, the issue is whether RCN's Protest is legally sufficient, which it is.

First, Commonwealth's attempts to unlawfully impede and delay RCN from providing competitive services in Commonwealth's service territory and the Commission's obligation to review the competitive impacts of the proposed transaction have put into play the "competitive harm" issues raised in RCN's protest. It is a fact that by protesting RCN's application for authority to operate in its service territory, Commonwealth is challenging the legal and technical fitness of a CLEC that has already received Commission certification in other service territories and already renders excellent service to Pennsylvania customers on a daily basis. Such conduct evidences Commonwealth's commitment to use its resources to delay competition. Such conduct raises the question of whether those resources should be bolstered through the proposed acquisition and makes it a relevant issue that RCN, as a pending competitor, has standing to raise.

Furthermore, Commonwealth represented in the Joint Application that "[c]ompetition for telecommunications service will be enhanced, as the combined size and depth of expertise of Citizens and CTE will enable them to compete more effectively with other facilities-based competitors, including cable telephony and wireless carriers."² Consistent with its Protest, RCN's participation in this proceeding will show that Commonwealth is committed not to competing effectively, but rather, to blocking effective competitors.

² Joint Application at 14.

These very Answer/Preliminary Objections that propose erroneous legal standards for evaluating RCN's standing to intervene and protest confirm Commonwealth's determination to use its resources to frustrate the interests of competitors in a non-legitimate manner. The Answer/Preliminary Objections are the metaphorical equivalent of a person angrily screaming and shouting that they do not have an anger management problem.

A. Joint Applicants have cited an erroneous legal standard for evaluating RCN's Petition to Intervene.

The Commission has a clear and straightforward standard for intervention in a proceeding. Section 5.72 of the Commission's regulations states that to achieve party status in a proceeding as an Intervenor, a petitioner must have an "interest" in the proceeding such that intervention is necessary or appropriate. The interest must be directly affected and not adequately represented by other parties,³ and the regulations recognize that meeting this standard permits a petitioner to participate in a proceeding. Thus, to establish Intervenor status, the Commission's regulations are clear that a party need not show a "direct, immediate and substantial" interest as alleged by Joint Applicants, but rather, must show only that it has a direct interest, which is not adequately represented by existing participants.

³ 52 Pa. Code § 5.72(a)(1). This regulation also provides for intervention as of right.

The question of whether an intervening party has standing to contest the outcome of a specific issue, i.e. whether they are aggrieved, is a separate matter. Section 5.75(c) of the Commission's regulations states that meeting the standard for intervention does not mean that a person is aggrieved.⁴ Despite the clear "direct interest" standard set forth in the Commission's regulations and the clear distinction between aggrievement and standing to intervene, the Joint Applicant's Answer/Preliminary Objections erroneously argue that RCN must meet the more rigorous aggrievement standard (whether its interests are "direct, immediate and substantial"), in order to intervene in this proceeding. Whether RCN is aggrieved cannot be determined until the end of this proceeding. However, that issue will never be reached if RCN is barred from this case at its start, as Joint Applicants seek.

B. RCN has a clear interest in this proceeding, including a direct interest in the competitive impacts of the proposed acquisition.

RCN and other CLECs are attempting to become competitors of Commonwealth in its service territory. For RCN, this certification request represents an expansion of its existing Pennsylvania service territory. Commonwealth filed a protest of the grant of that authority, and the grounds of that protest listed below are relevant to the overarching question in this case of whether the proposed acquisition is in the public interest, which includes a review of whether the proposed acquisition is anti-competitive.⁵ More specifically, the grounds of that protest are relevant to the specific issue of whether the merger increases the likelihood that Commonwealth will bring more vigor to its campaign against lawful competition.

⁴ 52 Pa. Code § 5.75(c).

⁵ See Joint Application of SBC Communications, Inc. and AT&T Corp., A-311163F0006, et al. (October 6, 2005) at 27-28.

- Commonwealth asserts that the Commission must conduct a complete “public need” review before the RCN application should be granted despite clear Commission precedent that fitness is the sole criterion to be used in evaluating such an application, that facilities-based competition in rural territories is in the public interest and that an applicant need not prove public need on an individual case-by-case basis.⁶
- Commonwealth alleges that RCN, an already certificated CLEC, lacks financial, technical and managerial fitness despite a rebuttable presumption of continuing fitness established by Commission precedent and despite the fact that RCN provided substantial evidence of its fitness.
- RCN has made it clear in its application that it seeks neither unbundled network elements from Commonwealth or the right to resell Commonwealth retail products. Thus, there is no possible issue of whether a rural carrier exemption from competition should apply to Commonwealth with respect to RCN.

RCN sees an enormous inconsistency between the stance of the Joint Applicants presented in this case and Commonwealth’s actual conduct in Pennsylvania on the issue of competition. As a CLEC bearing the brunt of Commonwealth’s efforts to preclude competition in its territory, RCN has an interest in exploring the Joint Applicants’ assertions that approval of the proposed acquisition will make Commonwealth a stronger competitor. Commonwealth has cited other proceedings where its Protests were sustained by an ALJ or the Commission and suggests this bolsters the appropriateness and lawfulness of its opposition to RCN. From RCN’s perspective, the real issue is Commonwealth’s behavior toward current applications like RCN’s. The fact that some of

⁶ See, e.g. Application of AT&T Communications of Pennsylvania, Inc. and TCG Pittsburgh to Amend their Certificates of Public Convenience to Begin to Offer, Render, Furnish or Supply Facilities-Based Competitive Local Exchange Services in the service territories of ALLTEL Pennsylvania, Inc., et al., Docket Nos. A-310125F0002, et al. (Order entered April 10, 2001) (AT&T/TCG Order) at 25; Application of MCImetro Access Transmission Serv., LLC for Approval to offer, render, furnish or supply telecommunications service as a Competitive Local Exchange Carrier in the service territories of ALLTEL Pennsylvania, Inc. and North Pittsburgh Telephone Company, Docket Nos. A-310752F0002AMA and AME (Order entered August 11, 2005) (MCI Order) at 3.

Commonwealth's Protests have been sustained is irrelevant. Even a broken clock tells the correct time twice a day.

Clearly as a competitive carrier seeking to compete directly with Commonwealth in its service territory a CLEC such as RCN is the appropriate party to raise these competitive issues. The Commission's regulations on intervention make relevant whether the presence of other parties ensure adequate representation on an issue. Clearly, other parties are not as well positioned to address these competitive issues as they relate specifically to RCN.

C. The Joint Applicants have not established that the scope of issues raised by RCN should be curtailed.

The Joint Applicants argue that RCN does not have standing to raise consumer and employee issues.⁷ Again, the Joint Applicants raise both the "intervention" standard and the "aggrievement" standard as the purported test used to determine whether RCN may cite these concerns as part of its interest which is "directly affected" by the merger proceeding.

Consumer and employee interests are broad categories of interests on which a variety of parties could have perspectives. An inappropriate elimination of employees could impact Commonwealth's retail customers' service, an issue OCA might pursue. But, this issue could also impact the efficiency with which Commonwealth can implement an interconnection agreement, which is a wholesale service issue proper for a CLEC to pursue. Similarly, the impact of Commonwealth impeding the entry and the operation of competitors in its territory is a "consumer" issue that a CLEC, as a carrier seeking to serve those same Commonwealth customers, can raise and explore. At this

⁷ Answers/Preliminary Objections, p. 26, ¶ 49-57,

point, it is premature to consider striking broad categories of issues, such as consumer or employee issues, from the issues RCN may raise in the proceeding.

The Joint Applicants' opposition to RCN's Petition to Intervene and their Preliminary Objections should be denied. RCN's Petition to be an Intervenor should be granted and its scope of issues it may raise should not be curtailed at this time.

II. RCN's response to the numbered paragraphs in the Answer/Preliminary Objections.

AND NOW, RCN, by and through its counsel, answers the Preliminary Objections, as follows:

Application Background

1. Denied. The allegations regarding the Agreement and Plan of Merger are denied as the document speaks for itself. RCN does not have firsthand knowledge or information sufficient to form a belief as to the truth of the allegations regarding stock ownership and therefore, requests proof thereof, if relevant, at hearing.

2. Admitted in part. Denied in part. The allegation regarding the filing date of the Application is admitted. To the extent that this paragraph contains any legal conclusions, no response is required. In any event, RCN denies that the only legal source requiring Commission approval of the proposed acquisition is a Policy Statement. Commission approval is required under Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3).

3. Admitted.

4. Admitted.

5. Admitted in part. Denied in part. The allegation regarding the distribution date of the Direct Testimony is admitted. The allegations regarding the content of the testimony are denied as the testimony speaks for itself.

6. Denied. This paragraph represents a legal conclusion to which no response is required. In any event, as a timely Intervenor, RCN must show that it has “[a]n interest which may be directly affected and which is not adequately represented by existing participants...” 52 Pa. Code § 5.72. The outcome of this proceeding will directly impact RCN's ability to effectively compete in the Pennsylvania marketplace, and RCN's interests in this regard cannot be adequately protected by any other party in this proceeding. Therefore, RCN's participation in this proceeding is necessary to protect that interest.

As a timely protestant, RCN must provide a legally and factually sufficient basis to support the grounds raised in its Protest, which has been done here, and must have standing to protest, which it also has. 52 Pa. Code §§ 5.52(a), 5.101. As a certificated carrier with a pending CLEC application in the Commonwealth services territory whose ability to compete will be impacted by the proposed transaction, RCN clearly has standing to protest. Regarding the substance of the protest, RCN opposed the Application because Joint Applicants have failed to demonstrate that the proposed acquisition is in the public interest. RCN pleaded with sufficient factual and legal specificity that the acquisition will actually cause harm by giving Commonwealth, which already exercises significant market power, greater resources and greater incentive to continue to engage in anticompetitive and discriminatory behavior, which prevents otherwise qualified carriers like RCN from providing competitive, facilities-based

alternatives to customers in the Commonwealth service territory. RCN pleaded with sufficient *factual and legal* specificity about Commonwealth's specious opposition to the application of RCN to provide competitive local exchange services in Commonwealth's service territory, which has served to unlawfully impede, delay and interfere with the entry of a facilities-based carrier into the Commonwealth service territory that is clearly fit to provide such service.

Standing to Protest

7. Admitted in part. Denied in part. The allegation regarding the content of the CLEC Protests and Petitions are denied as the pleadings speak for themselves. By way of further answer, it is specifically denied that in its Protest/Petition to Intervene, RCN asserted that its interest "may be directly affected." Rather, RCN asserted that this proceeding will directly impact RCN's ability to compete in Pennsylvania. As noted by RCN in Paragraph 4 of its Petition to Intervene:

This proceeding raises important issues whose resolution will directly impact RCN Telecom Services, Inc. ability to effectively compete in the Pennsylvania marketplace. RCN is therefore directly affected by the approvals sought in this Joint Application and should be given party status. At this time RCN is opposed to the granting of the *Joint Application* as filed due to the harm it will impose on the public interest.

Although RCN admits that, due to anti-competitive behavior by Commonwealth, it is currently not providing competitive local exchange services in Commonwealth's service territory, RCN denies that this fact precludes it from having a direct interest that is adversely affected by the approval of the Application. As a fit competitor seeking to provide facilities-based local exchange service in the Commonwealth service territory and as pleaded by RCN in its Petition to Intervene, the outcome of this proceeding will directly impact its ability to compete in Pennsylvania. As pleaded by RCN in its Protest,

the proposed acquisition will give Commonwealth, which already has and exercises significant market power, greater resources and greater incentive to continue to engage in anticompetitive and discriminatory behavior, which prevents or delays otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory.

8. Denied. This paragraph represents a legal conclusion to which no response is required. In any event, RCN denies that it has failed to meet the standard for timely intervention at 52 Pa. Code § 5.72(a). As a fit competitor seeking to provide facilities-based local exchange service in the Commonwealth service territory and as pleaded by RCN in its Petition to Intervene, the outcome of this proceeding will directly impact its ability to compete in Pennsylvania, and RCN's interest in competition cannot be adequately addressed by any other party. As previously noted, RCN pleaded in its Protest that the acquisition will give Commonwealth, which already has and exercises significant market power, greater resources and greater incentive to continue to engage in anticompetitive and discriminatory behavior. As previously noted, such action prevents otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory.

The allegations regarding the definition of "direct" in the *William Penn* case are denied as the case speaks for itself. It is also denied that a party seeking Intervenor status before the Commission must prove a substantial, immediate and direct interest. Rather, consistent with Section 5.72(a) of the Commission's regulations and Commission precedent,⁸ all that the party must show is that it has a direct interest that will be

⁸ See, e.g. Petition of ALLTEL Pennsylvania, Inc., 199 Pa. PUC LEXIS 78.

adversely impacted by the outcome of the proceeding and that the interest cannot be adequately addressed by another party.⁹

9. Denied. This paragraph represents a legal conclusion to which no response is required. In any event, RCN denies that a party seeking Intervenor status before the Commission must prove an immediate interest. Rather, consistent with Section 5.72(a) of the Commission's regulations, all that the party must show is that it has a direct interest that will be adversely impacted by the outcome of the proceeding and that the interest cannot be adequately addressed by another party.¹⁰ By way of further answer, RCN denies the characterization of its interest as "potential." As noted in the Protest, Commonwealth has filed an application to provide competitive local exchange service in the Commonwealth service territory and as such, is seeking to compete directly with Commonwealth. Moreover, to the extent that RCN is not currently certificated to provide local exchange services in the Commonwealth territory, RCN cites to Commonwealth's discriminatory and anti-competitive conduct referenced in its Protest, which serves to prevent otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory. The allegations regarding the definition of "substantial" interest in the *Whitehall Township* case are denied as the case speaks for itself.

⁹ In support of its erroneous application of the more stringent "direct, immediate and substantial interest" standard, Joint Applicants cite to *Apple v. Pa. Ins. Dep't*, 431 A.2d 1183 (Pa. 1981). However, that case is inapplicable here because it deals with standing to file a complaint, which has a more rigorous legal standard, and not standing to intervene. Moreover, the Court did not reference the existence of any insurance department regulations containing a specific intervention standard such as the one in Section 5.72(a) of the Commission's regulations, which clearly specifies that only a direct interest in the outcome of a proceeding that cannot be adequately represented by another party is required for Intervenor status.

¹⁰ See *supra* fn. 21.

10. Denied. The allegations regarding the Commission's decision in the *Superior Water* case are denied as the Opinion and Order speaks for itself. In any event, the *Superior Water* case is inapplicable here. First, the *Superior Water* case addressed standing to rescind a prior Commission order and not standing to intervene. Therefore, the more liberal "direct interest" standard applicable to intervention was not applicable in that case. In addition, unlike the party in the *Superior Water* case that was seeking to rescind the prior Commission order and was not a certificated utility, RCN is a certificated public utility in Pennsylvania. RCN is certificated as a CLEC in Pennsylvania in the Verizon territories and has filed for equivalent authority in the Commonwealth service territory.

11. Denied. The allegations regarding the Commission's decision in the *Country Club Gardens* case are denied as the Opinion and Order speaks for itself. In any event, RCN denies that it is only a "potential" competitor to Commonwealth. Unlike the Joint Protestants in the *Country Club Gardens* case, who did not provide any evidence that they were attempting to provide service to the same customers as the Joint Applicants, RCN has filed an application seeking to provide competitive local exchange services in the Commonwealth service territory and as such, is seeking to compete directly with Commonwealth. Moreover, to the extent that RCN is not currently certificated to provide local exchange services in the Commonwealth territory, RCN cites to Commonwealth's discriminatory and anti-competitive behavior referenced in its Protest, which serves to prevent or delay otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory.

Substance of the Protests

12. Denied. To the extent that this paragraph does not contain any factual averments, no response is required. To the extent that this paragraph contains averments with respect to the Blue Ridge, Sprint and BCAP pleadings, the documents speak for themselves. In any event, RCN denies that the negative impacts of the proposed acquisition that have been raised by the CLECs are speculative. The allegations regarding the content and character of the RCN Protest are denied as the pleading speaks for itself.

13. Denied. To the extent that this paragraph does not contain any factual averments, no response is required. To the extent that this paragraph contains averments with respect to Blue Ridge, Sprint and BCAP that do not apply to RCN, no response is required. In any event, RCN's denies that the evidence in support of its Protest is limited to the mere fact that Commonwealth protested its CLEC application. Rather, RCN's opposition to the proposed acquisition is based on the specious grounds provided by Commonwealth in its Protest of the CLEC application and the fact that by seeking to impede and/or delay the entry of a facilities-based carrier that is otherwise fit to provide the proposed services, Commonwealth has engaged in anticompetitive and discriminatory conduct.

14. Denied. To the extent that this paragraph does not contain any factual averments, no response is required. To the extent that this paragraph contains conclusions of law, no response is required. To the extent that this paragraph contains averments with respect to Blue Ridge, Sprint and BCAP that do not apply to RCN, no response is required.

In any event, it is specifically denied that Commonwealth's Protest to the CLEC application of RCN has merit. Although the law is crystal clear that fitness is the sole criterion to be used in determining whether to grant competitive facilities-based entry into the territory of a rural telephone company,¹¹ Commonwealth has asserted lack of public need as one of its grounds to oppose RCN's CLEC application. Such a ground is clearly erroneous, in light of the Commission's generic finding under Section 1103(a) of the Code that facilities-based competition in the rural service territories is in the public interest and that an individual CLEC applicant seeking to provide facilities-based service in the territory of a rural telephone company need not prove public need on an individual, case-by-case basis.¹²

Commonwealth also has challenged RCN's CLEC application on fitness grounds. This challenge is also without merit, in light of the fact that as a previously certificated carrier, RCN is entitled to a rebuttable presumption of fitness¹³ and in light of the fact that RCN has provided substantial evidence of fitness in the application case. Furthermore, Commonwealth has failed to provide any concrete or credible evidence that calls into question the technical, financial or legal fitness of RCN. Rather, the Protest amounts to nothing more than vague, general, unsubstantiated allegations that do not come close to meeting the required threshold to rebut the presumption of fitness and the evidence provided by RCN in support of its CLEC application.

¹¹ See, e.g. MCI Order at 3.

¹² See, e.g. AT&T/TCG Order at 24-25.

¹³ AT&T/TCG Order at 17.

In addition, Commonwealth cannot claim a rural exemption under Section 251(f)(1)(A) of the Telecommunications Act of 1996¹⁴ ("TA-96) as a basis to block RCN's entry into the Commonwealth territory. As made clear in its amended CLEC applications, RCN is not seeking access to unbundled network elements or resale services under Section 251(c) of TA-96. Therefore, Commonwealth's right to any federal rural exemption has not been triggered by the RCN CLEC application case. Commonwealth's Protest amounts to nothing more than an attempt to maintain its non-competitive fiefdom over the customers in its service territory and represents a thinly veiled attempt to delay, impede and otherwise interfere with facilities-based competition from a provider that is clearly fit to provide such service.

In addition, RCN has provided a legally and factually sufficient basis for its Protest. RCN opposed the Application because Joint Applicants have failed to demonstrate that the acquisition is in the public interest. RCN pleaded with sufficient factual and legal specificity that the acquisition will actually cause harm by giving Commonwealth, which already exercises significant market power, greater resources and greater incentive to continue to engage in anticompetitive and discriminatory behavior, which prevents otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory. RCN pleaded with sufficient factual and legal specificity about Commonwealth's specious opposition to the application of RCN to provide competitive local exchange services in Commonwealth's service territory, which has served to impede, delay and otherwise

¹⁴ Under Section 251(f)(1)(A), a rural telephone company is not exempt from the Section 251(c) obligations (access to network elements, etc.) if the company has received a bona fide request for interconnection, services, or network elements, and the state commission determines that such a request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of TA-96.

interfere with the entrance of facilities-based competition into the Commonwealth service territory from a carrier that is clearly fit to provide such service.

15. Admitted in part. Denied in part. RCN admits that Commonwealth has filed a Protest to RCN's CLEC application to provide facilities-based local exchange service in the Commonwealth service territory and that the parties are currently engaged in settlement negotiations. The allegations regarding the outcomes of the litigated Commonwealth protests are denied as the Commission orders and any relevant settlement documents resolving these protests speak for themselves. RCN is without firsthand knowledge or information sufficient to form a belief as to the number of protests to CLEC applications that Commonwealth has filed and therefore, requests proof thereof, if relevant, at hearing. To the extent that this paragraph contains averments with respect to Blue Ridge that do not apply to RCN, no response is required. To the extent that this paragraph contains an averment that characterizes Commonwealth's record of performance and as such, is not an averment of fact, no response is required.

16. Denied. The allegations regarding the Initial Decision in the Core Communications, Inc. case referenced by Joint Applicants are denied as the decision speaks for itself.

17. Denied. The allegations regarding the Protest of Sprint and the Initial Decision in the Sprint Communications Company, L.P CLEC case referenced by Joint Applicants are denied as the documents speak for themselves.

18. Admitted in part. Denied in part. RCN admits that Commonwealth and Service Electric submitted a revised interconnection agreement on or about May 16, 2006 for Commission approval. RCN is without firsthand knowledge or information regarding the process that led to a settlement in the Service Electric CLEC application case and requests proof thereof, if relevant, at hearing.

19. Admitted in part. Denied in part. It is admitted that RCN's application to provide facilities-based competitive local exchange services in the Commonwealth territory that was filed in May of 2006 is pending before the Commission. RCN denies that the merits of Commonwealth's Protest has been properly adjudicated as the Presiding Officer in the application proceeding has yet to rule on RCN's Preliminary Objections seeking to dismiss Commonwealth's Protest. To the extent that this paragraph contains averments with respect to Blue Ridge that do not apply to RCN, no response is required.

20. Denied. The allegations regarding Commonwealth's reply to exceptions are denied as the pleading speaks for itself. To the extent that this paragraph contains averments that characterize the Blue Ridge application and thus, are not factual in nature, no response is required. To the extent that this paragraph contains averments with respect to Sprint and Blue Ridge that do not apply to RCN, no response is required.

21. Denied. RCN denies the allegations regarding the second order disposing of various motions as the order speaks for itself. To the extent that this paragraph contains averments of fact referencing the procedural history of the Sprint/Blue Ridge case that do not apply to RCN, no response is required.

22. Admitted, based upon information and belief.

23. This paragraph does not contain any factual averments to which a response is required.

24. Denied. The allegations regarding the Frontier tariff are denied as the tariff speaks for itself. To the extent that this paragraph contains averments that are not factual in nature and do not address RCN, no response is required.

25. Denied. The allegations regarding RCN's CLEC Application, its Preliminary Objections in the application case and Commonwealth's answer to RCN's Preliminary Objections in the application case are denied as the pleadings speak for themselves. RCN specifically denies that its financial statements demonstrate continuing losses and a precarious financial position. As a previously certificated carrier, RCN is presumed to be fit, and RCN submitted substantial evidence that it is in good financial standing. To the extent that this paragraph contains averments that question the technical nature of RCN's proposed service and as such, are not factual in nature, no response is required. In any event, RCN's CLEC application was submitted with a supporting affidavit and verification made under oath that it intends to provide facilities-based local exchange services primarily through its Hybrid Fiber Coax distribution network that will service as the "last mile" facilities. Moreover, RCN is not aware of any federal or state law, regulation or other authority that imposes having last-mile facilities in place in each and every RLEC or ILEC exchange as a prerequisite to obtaining territory-wide CLEC certification. Under Commonwealth's fanciful standard, a CLEC would be required to provide the Commission with a business plan to deploy fiber in Erie in order to compete with Verizon in Philadelphia. Such an outcome has no basis in fact, law or policy.

To the extent that this paragraph contains any legal conclusions regarding the merits of Commonwealth's Protest to RCN's CLEC application or regarding the proper forum, no response is required. In any event, RCN denies that Commonwealth's Protest has merit and denies that this acquisition proceeding is not the proper forum to address Commonwealth's anti-competitive and discriminatory conduct with respect to RCN's CLEC application. Such conduct will continue and only be exacerbated if the Commission approves the proposed acquisition as requested by Joint Applicants.

26. Admitted in part. Denied in part. The allegations regarding the settlement and procedural status of the RCN application proceeding are admitted. To the extent that this paragraph contains averments regarding the settlement history and procedural status of the Blue Ridge case that do not apply to RCN, no response is required.

27. Denied. To the extent that this paragraph contains averments that characterize Commonwealth's reasons for discussing the CLEC application proceedings and as such, are not factual in nature, no response is required. In any event, RCN denies that Commonwealth's Protest of RCN's CLEC application in the Commonwealth territory has merit. Commonwealth's opposition to RCN's CLEC application is based entirely on specious arguments that seek only to unlawfully impede or delay RCN's competitive entry. For example, Commonwealth has asserted that the Commission must conduct a complete "public need" review before it can grant RCN's application. However, this position is clearly erroneous because the law is crystal clear that fitness is the sole criterion to be used in determining whether to grant competitive facilities-based entry into the territory of a rural telephone company,¹⁵

¹⁵ See, e.g. Application of MCImetro Access Transmission Serv., LLC for Approval to offer, render, furnish or supply telecommunications service as a Competitive Local Exchange Carrier in the service

Commonwealth also has challenged RCN's CLEC application on fitness grounds. This challenge is also without merit, in light of the fact that as a previously certificated carrier, RCN is entitled to a rebuttable presumption of fitness and in light of the fact that RCN has provided substantial evidence of fitness in the application case.¹⁶

In addition, Commonwealth cannot claim a rural exemption under Section 251(f)(1)(A) of the Telecommunications Act of 1996¹⁷ ("TA-96) as a basis to block RCN's entry into the Commonwealth territory. As made clear in its amended CLEC applications, RCN is not seeking access to unbundled network elements or resale services under Section 251(c) of TA-96. Therefore, Commonwealth's right to assert a federal rural exemption has not been triggered in the RCN CLEC application case.

To the extent that this paragraph contains averments regarding other CLEC application cases that do not apply to RCN, no response is required.

28. Admitted in part. Denied in part. To the extent that this paragraph contains averments that are not factual in nature, no response is required. In any event, RCN admits that its CLEC application case should be litigated using the standards applicable to entry cases. However, it is denied that the relief sought by RCN is an attempt to create leverage over Commonwealth to concede the exercise of due process. To the extent that this paragraph contains averments regarding other CLEC application cases that do not apply to RCN, no response is required.

territories of ALLTEL Pennsylvania, Inc. and North Pittsburgh Telephone Company, Docket Nos. A-310752F0002AMA and AME (Order entered August 11, 2005).

¹⁶ AT&T/TCG Order.

¹⁷ Under Section 251(f)(1)(A), a rural telephone company is not exempt from the Section 251(c) obligations (access to network elements, etc.) if the company has received a bona fide request for interconnection, services, or network elements, and the state commission determines that such a request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254.

29. Denied. To the extent that this paragraph contains averments that are not factual in nature, no response is required. In any event, RCN denies that it is asking the Commission to rule on the merits of its CLEC application case for the Commonwealth territory as part of this case. Rather, RCN is seeking a denial of the proposed acquisition due to the competitive harms that will occur from the proposed acquisition or, in the alternative, is seeking relief in the form of conditions to offset the competitive harms that will occur. To the extent that this paragraph contains averments regarding other CLEC application cases that do not apply to RCN, no response is required.

30. Denied. To the extent that this paragraph does not contain any factual averments, no response is required. In any event, the allegations regarding the Joint Application are denied as the pleading speaks for itself. Moreover, RCN avers that its CLEC application case for the Commonwealth service territory is directly related to this acquisition proceeding. In its Protest, RCN pleaded with sufficient factual specificity regarding the specious nature of Commonwealth's opposition to RCN's application and the fact that the anti-competitive and discriminatory conduct exhibited by Commonwealth that will only be exacerbated if the proposed acquisition is approved as requested.

31. Denied. The allegations regarding the CLEC protests are denied as the pleadings speak for themselves. To the extent that this paragraph contains averments that characterize the premise RCN's assertions in its Protest and are not factual in nature, no response is required. In any event, it is denied that the potential harm from the proposed acquisition raised by RCN is "exaggerated" or "speculative." Rather, the harm is based on the fact that the acquisition will provide Commonwealth with additional resources and

incentive to engage in the type of anti-competitive conduct that has occurred in RCN's CLEC application proceeding, which is evident with Commonwealth's specious opposition to the entry of a facilities-based carrier that is clearly fit to provide such service. To the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

32. Denied. It is denied that RCN did not allege facts in support of its claim that the acquisition will provide Commonwealth with access to the enormous resources of Citizens that will be used to further stifle competition in its markets. At pages 6 of its Protest, RCN provided factual support regarding the resources of Citizens and how those resources coupled with a continued federal rural exemption of Commonwealth can lead to significant impediments to competitive entry. It is further denied that RCN has not provided any factual support that a Citizens-owned Commonwealth will be motivated to engage in anti-competitive behavior. RCN provided factual support for this conclusion at pages 6-8 of its Protest with its discussion of Citizen's motivation behind the acquisition and also based this conclusion on Commonwealth's conduct in RCN's CLEC application proceeding for the Commonwealth service territory, which is detailed in at pages 9-12 of its Protest. To the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

33. Admitted in part. Denied in part. It is admitted that in its Protest, RCN averred that the implementation of customer contracts would have major implications for competitive carriers like RCN. To the extent that this paragraph contains averments regarding the use of customer contracts that are not factual in nature, no response is required. In any event, RCN denies that the use of these contracts will not be anti-

competitive. At page 8 of its Protest, RCN referenced statements by Citizens that it would immediately implement a strategy to provide service to customers under contracts after it has completed its acquisition of Commonwealth. RCN averred that this practice is anti-competitive because Citizens would be locking up the most valuable customers to long-term commitments, thereby making competitive entry more difficult for new entrants and preventing competition for business. Further, it is disingenuous of Applicants to suggest that it was RCN's choice to delay entry to Commonwealth's territory "for 10 years" when competition with rural LECs was effectively prohibited by Commission Order until January 2003.

34. Denied. The allegations regarding the failure to plead with specificity are not factual in nature and therefore, no response is required. The allegations regarding the Commission's position on sufficiency of pleadings are denied as the Commission's order referenced in this paragraph speaks for itself.

35. Denied. The allegations regarding pleading requirements under the Pennsylvania Rules of Civil Procedure are denied as the rules speak for themselves.

36. Denied. The allegations regarding the protest pleading requirements in the *Distribution Freight Systems* case are denied as the Commission's decision speaks for itself.

37. Denied. RCN denies that its Protest is "devoid of facts" or that it consists of speculation. RCN pleaded with sufficient factually and legal specificity that the proposed acquisition will cause harm by giving Commonwealth, which already has significant market power, greater resources and greater incentive to continue to engage in anticompetitive behavior, which prevents otherwise qualified carriers like RCN from

providing competitive, facilities-based alternatives to customers in the Commonwealth service territory. RCN pleaded with sufficient factual and legal specificity about Commonwealth's specious opposition to RCN's CLEC application in Commonwealth's service territory, which has served to impede the development of competitive, facilities-based competition from a carrier that is clearly fit to provide such service. To the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

38. Admitted in part. Denied in part. It is admitted that at pages 7-8 of its Protest, RCN averred that one way for Citizens to maximize Commonwealth's return is to impede competitive entry wherever possible, such as by delaying and obstructing entry by companies like RCN that have already established communications networks within Commonwealth territory. In its Protest, RCN further averred that the need to maximize Commonwealth's return becomes even more crucial following the acquisition, due to the nature of the proposed transaction and the fact that Citizens must return that investment to its own shareholders as soon as possible (75% of the purchase is payable in cash, and the remainder in Citizens' stock). Maximizing the return on competitive investment is a laudable goal; impeding competition in order to maximize and retain monopoly profits is not.

39. Denied. See RCN's response in paragraphs 32, 37 of this Answer.

40. Denied. To the extent that this paragraph contains averments characterizing RCN's use of this proceeding and the appropriateness of its requests for relief that are not factual in nature, no response is required. The allegations regarding the content of RCN's Protest are denied as the pleading speaks for itself. To the extent that

this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

41. To the extent that this paragraph contains averments regarding the Preliminary Objections filed by another party in this matter that do not apply to RCN, no response is required.

42. Admitted in part. Denied in part. The allegations regarding Citizens of Kecksburg are admitted. The allegations regarding the Armstrong Telecommunications, Inc. pleading are denied as the Petition speaks for itself.

43. Denied. RCN is without firsthand knowledge or information regarding the generic Commission proceeding referenced by Joint Applicants and requests proof thereof, if relevant, at hearing. To the extent that this paragraph contains legal conclusions, no response is required. In any event, even though a public utility in Pennsylvania has a right to protest an application for a certificate of public convenience, this right is not absolute. As required under Sections 5.52(a) and 5.101 of the Commission's regulations, a Protestant must provide a legally and factually sufficient basis to support the grounds raised in a Protest, which Commonwealth has failed to do in its Protest of RCN's CLEC application.

44. Denied. This paragraph contains averments that are not factual in nature and therefore, no response is required. In any event, RCN denies that it is threatening to "disenfranchise" the rights of Commonwealth to protest. Rather, RCN is exercising its rights in this proceeding to protest the acquisition and is exercising its rights in its CLEC application proceeding to seek dismissal of a protest that is completely without merit. To

the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

45. Denied. The allegations regarding the TA-96 implementation order referenced by Joint Applicants and the allegations regarding Code Section 316 are denied as these sources of law speak for themselves.

46. Denied. The allegations regarding the implementation order referenced by Joint Applicants and the allegations regarding Code Chapter 30 are denied as these sources of law speak for themselves. To the extent that this paragraph contains averments regarding Commonwealth rural telephone company status that are not factual in nature, no response is required. To the extent that this paragraph contains legal conclusions, no response is required. To the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

47. Denied. The allegations regarding Section 251 of TA-96 are denied as the statute speaks for itself. To the extent that this paragraph contains averments regarding the rural exemption that are not factual in nature, no response is required. To the extent that this paragraph contains legal conclusions, no response is required. In any event, RCN denies that a CLEC has the burden of proof when challenging a RLEC's rural exemption under Section 251(f)(1). By Order entered on January 15, 2003 at Docket No. P-00971177, the Commission made clear that the rural exemption under Section 251(f)(1) rural exemption is subject to challenge by a party requesting interconnection. According to the Commission, the exemption may be terminated unless the rural ILEC provides evidence that continued exemption is warranted. Thus, upon a bona fide request

for interconnection from a CLEC, the RLEC has the burden to prove that the exemption is still necessary pursuant to the factors outlined in TA-96. To the extent that this paragraph contains averments regarding the other CLEC protests that do not apply to RCN, no response is required.

48. Admitted in part. Denied in part. It is admitted that RCN amended its CLEC application in the Commonwealth service to clarify that it was seeking to provide only facilities-based service. This clarification made clear that the services RCN was seeking to provide within Commonwealth's service territory did not implicate any rural carrier exemption under Section 251(f)(1) of TA-96. To the extent that this paragraph contains averments regarding RCN's requests for relief regarding the rural exemption that are not factual in nature, no response is required. To the extent that this paragraph contains legal conclusions, no response is required. In any event, as discussed in paragraph 47 of this Answer, RCN denies that a CLEC has the burden of proof when challenging a RLEC's rural exemption under Section 251(f)(1).

Consumer and employee issues

49. Admitted in part. Denied in part. It is admitted that RCN's Protest recommends that the Commission obtain further information from the Joint Applicants to support their claims of positive benefits to the public and that the Commission investigate the issues referenced in paragraph 49 of Joint Applicants Objections. It is denied that RCN does not have standing to raise these issues in its Protest. Under the City of York standard of review in acquisition cases and subsequent Commission cases, the issues raised by RCN are appropriately before the Commission as part of this proceeding. Moreover, RCN has standing to address these issues to the extent that they impact the

same consumers that RCN seeks to serve and to the extent that they impact competition and Commonwealth's ability to meet its obligations under an interconnection or similar agreement with a competitor.

50. Denied. To the extent that this paragraph contains a legal conclusion, no response is required. By way of further answer, it is premature to conclude that RCN does not have standing to raise in its Protest the issues referenced by Joint Applications in paragraph 49 of their Answer/Preliminary Objections. RCN has standing to address these issues to the extent that they impact competition and Commonwealth's ability to meet its obligations under an interconnection or similar agreement with a competitor. Similarly, the impact of Commonwealth's attempts to impede the entry and the operations of competitors in its territory is a "consumer" issue that a CLEC, as a carrier seeking to serve those same consumers, should be able to explore as part of this proceeding.

51. Denied. RCN has stated a claim that meets the Commission's standards for timely intervention. The outcome of this proceeding will directly impact RCN's ability to effectively compete in the Pennsylvania marketplace, and RCN's interests in this regard cannot be adequately protected by any other party in this proceeding. Therefore, RCN's participation in this proceeding is necessary to protect that interest.

52. Denied. See RCN's response in paragraph 50 of this Answer.

53. Denied. The allegations regarding the definition of "direct" in the *William Penn* case and other cases referenced by Joint Applicants are denied as the cases speak for itself.

54. Denied. It is premature to conclude that the issues raised by RCN with respect to public benefits are not relevant to a potential competitor. For example, the

effects of the acquisition on post-transaction employment levels could impact competition and Commonwealth's ability to meet its obligations under an interconnection or similar agreement with a competitor. Similarly, the impact of Commonwealth's attempts to impede the entry and the operations of competitors in its territory is a "consumer" issue that a CLEC, as a carrier seeking to serve those same consumers, should be able to explore as part of this proceeding. To the extent that this paragraph contains averments that characterize the issues referenced in paragraph 49 of the Joint Applicant's Answer/Preliminary Objections that are not factual in nature, no response is required.

55. Denied. The allegations regarding the definition of "immediate" in the *George* case referenced by Joint Applicants are denied as the case speaks for itself.

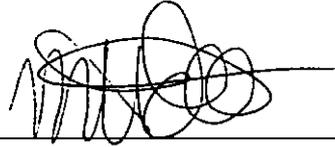
56. Denied. To the extent that this paragraph contains averments regarding RCN's representation of consumers that are not factual in nature, no response is required. The allegations regarding the *Manufacturer's Association* case are denied as the case referenced by Joint Applications speaks for itself.

57. Denied. To the extent that this paragraph contains averments regarding the role of the statutory advocates that are not factual in nature, no response is required. To the extent that this paragraph contains legal conclusions, no response is required. In any event, the impact of Commonwealth's attempts to impede the entry and the operations of competitors in its territory is a "consumer" issue that a CLEC, as a carrier seeking to serve those same consumers, should be able to explore as part of this proceeding.

III. Conclusion

WHEREFORE, on account of the foregoing reasons, RCN Corporation and RCN Telecom Services, Inc. respectfully request that the Commission deny the Preliminary Objections filed by Joint Applicants and grant any other such relief as may be lawful, just and reasonable under the circumstances.

Respectfully Submitted,



Dated: November 20, 2006

John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
(717) 236-7714
(717) 236-7816 (fax)

Michael W. Fleming
Brian McDermott
WILLIAMS MULLEN
8270 Greensboro Drive
McLean, VA 22102
(703) 760-5248

Attorneys for RCN Corporation and RCN Telecom
Services, Inc.

Scott J. Rubin

Attorney ✦ Consultant

3 Lost Creek Drive ✦ Selinsgrove, PA 17870 ✦ (570)743-2233 ✦ Fax: (570)743-8145 ✦ scott@publicutilityhome.com

November 20, 2006

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

ORIGINAL

Re: Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company for all approvals under the Public Utility Code for the acquisition by Citizens Communications Company of all of the stock of the joint applicants' corporate parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Answer of Communications Workers of America to Preliminary Objections.

I have served a copy of the document on all parties of record, as shown on the Certificate of Service attached to the document, as well as on the Administrative Law Judge.

I also have enclosed an additional copy of each document that I would appreciate having time-stamped and returned in the enclosed envelope.

**DOCUMENT
FOLDER**

Sincerely,


Scott J. Rubin

Enclosure

cc: Susan Colwell, Administrative Law Judge
All parties

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

Joint Application of Commonwealth :
Telephone Company, CTSI, LLC and CTE :
Telecom, LLC, d/b/a Commonwealth Long :
Distance Company for all approvals under : Docket No. A-310800F0010
the Public Utility Code for the acquisition : Docket No. A-311095F0005
by Citizens Communications Company of : Docket No. A-311225F0003
all of the stock of the joint applicants' :
corporate parent, Commonwealth :
Telephone Enterprises, Inc. :

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ANSWER OF
COMMUNICATIONS WORKERS OF AMERICA
TO PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code § 5.101(f), the Communications Workers of America (CWA), hereby files this Answer to the Preliminary Objections of Commonwealth Telephone Company (Commonwealth), CTSI, LLC, CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company, and Citizens Communications Company (Citizens) in the above-captioned proceeding.

I. The Preliminary Objections Should Be Denied Because They Are Improper

Initially, CWA opposes the so-called Preliminary Objections filed by Commonwealth and Citizens because they do not comply with the Commission's regulations for Preliminary Objections. Specifically, the Commission's regulations state:

Preliminary objections must ... be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous

or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a). The document filed by Commonwealth and Citizens does not raise any of these issues and, therefore, is not properly the subject of preliminary objections.

Commonwealth and Citizens attempt to circumvent the Commission's regulation by stating that they are "seeking dismissal of portions of [CWA's] Protest and to limit the participation of the CWA to issues that the CWA has standing to raise pursuant to the Commission Regulation at 52 Pa. Code Section 5.101(a)(5)." Yet, as quoted above, section 5.101(a)(5) does not authorize motions to dismiss a portion of a pleading or motions to limit the scope of a participation through preliminary objections. Rather, section 5.101 only permits allegations of "lack of capacity to sue, nonjoinder of a necessary party, or misjoinder of a cause of action."

Commonwealth and Citizens allege none of these. Indeed, they acknowledge that CWA has standing to participate in this proceeding. Preliminary Objections, p. 2.¹ Instead, they are attempting to limit the issues CWA can raise in this case. Such claims are properly raised through the filing of a motion in limine.²

¹ Commonwealth and Citizens do not even discuss nonjoinder of a necessary party or misjoinder of a cause of action, and they do not appear to apply here.

² The Commission is familiar with motions in limine, though they are usually filed after testimony has been submitted on a topic that is alleged to be beyond the scope of the proceeding or beyond a party's interest. For example, in *Pa. PUC v. Philadelphia Gas Works*, 223 PUR4th 412 (Pa. PUC 2003), the Commission affirmed a presiding officer's order granting a utility's motion in limine to prohibit a labor union from raising issues in a restructuring proceeding that are the subject of collective bargaining.

Restricting preliminary objections to the six topics stated in the regulations is important because preliminary objections are an extraordinary type of pleading that requires a much more rapid response than a typical motion. (Compare 52 Pa. Code § 5.101(f) allowing 10 days to respond to preliminary objections with 52 Pa. Code § 5.103(c) allowing 20 days to respond to motions.) Further, the limited and very early nature of preliminary objections also result in the regulations requiring the administrative law judge to issue a decision within 30 days (52 Pa. Code § 5.101(g)), where no such time limit applies to motions.

Moreover, preliminary objections, as their name implies, come at the very outset of the proceeding – before discovery has been conducted and before the parties have had an opportunity to fully develop the issues. Thus, preliminary objections are properly limited to matters that must be resolved at an early stage of a proceeding, such as ensuring that the Commission has jurisdiction and that the proper parties are participating.

It even appears that Commonwealth and Citizens implicitly recognize that they are filing a motion and not preliminary objections. Thus, on page 2 of the document, they present a “Summary of Motion.” Drafting a motion and calling it a preliminary objection is not permissible and, as noted above, severely prejudices the parties and imposes an unreasonable burden on the administrative law judge.

CWA submits, therefore, that the so-called preliminary objections filed by Citizens and Commonwealth must be denied because the document does not raise any of the topics that are the proper subject of preliminary objections.

II. CWA Should Be Permitted to Participate on All Relevant Issues

Even if the Administrative Law Judge determines that the Preliminary Objections have been properly filed, the Preliminary Objections still should be denied. The essence of

Commonwealth's and Citizens' claim is that CWA should not be able to participate on any issues dealing with the proposed transaction's impacts on (1) customer service, safety, and reliability; (2) network deployment; or (3) the financial circumstances of Citizens and/or Commonwealth.

CWA strongly disagrees with this claim. First, it should be noted that CWA has been a party to several recent proceedings before this Commission that involved telecommunications utility mergers or corporate reorganizations.³ In those cases, CWA participated on issues directly related to customer service, network deployment, operations and maintenance practices, and financial impacts, among others. No party to those cases raised a claim that these issues were not directly related to the interests of CWA and its members.

Indeed, as CWA will explain in its testimony in this case (if such testimony is necessary to protect CWA's interests), these types of issues are at the forefront of concerns for CWA and its members at telecommunications utilities throughout the country. In particular:

- CWA has a direct interest in the impact of a proposed transaction on the financial health of its employer, so that the employer can continue to operate, maintain, repair, and upgrade facilities in a safe and responsible manner; and continue to employ enough personnel to reliably and safely serve the public.
- CWA has a direct interest in determining if a proposed transaction will affect the safety and quality of service provided by the utility. CWA's members must operate, maintain, and repair the utility's facilities, as well as staff customer service centers. If the

³ For example, just during 2005 and 2006, CWA has participated in the following proceedings before this Commission: Joint Application of SBC Communications, Inc. and AT&T Corporation, Docket Nos. A-311163F0006, et al.; Joint Application of The United Telephone Company of Pennsylvania d/b/a Sprint, Docket Nos. A-313200F0007, et al.; Joint Application of Alltel Pennsylvania, Inc., Docket Nos. A-310325F0006; and Joint Application of Verizon Communications Inc. and MCI Inc., Docket Nos. A-310364F0003, et al.

transaction will lead to changes in maintenance practices, operational procedures, call center staffing and location, such changes could have a direct impact on CWA and its members.

- CWA has a direct interest in determining if a proposed transaction will encourage or discourage the deployment of advanced network services. CWA's members are responsible for implementing many of a utility's policies on network deployment. Unfortunately, for some utilities this includes allowing the traditional telephone network to deteriorate to unsafe and unreliable levels, so that more resources can be placed into the deployment of advanced services. Other utilities take the extreme opposite approach and fail to deploy advanced services quickly enough to meet consumer demand. This approach can result in the utility losing customers and revenues, which can lead to the utility reducing expenditures on employees, customer service, and safe operating and maintenance practices. As noted above, CWA's members perform the physical work on the network and have a direct interest in ensuring the safe and reliable operation of those facilities. They also have an interest in ensuring that a proposed transaction will not result in adverse consequences for the network or CWA's members.
- Finally, CWA can serve as an important resource for the Commission and other parties concerning a utility's existing practices and how those practices might be affected by a proposed transaction. Indeed, the Public Utility Code specifically recognizes the importance of having utility employees and their representatives serve as this type of resource to the Commission. Sections 3019 and 3316 of the Code, 66 Pa. C.S. §§ 3019(i) and 3316, contain protections for utility employees who participate in Commission proceedings, or who provide information to the Commission or public advocates. This

protection exists in the law precisely because it is important to allow utility employees to provide information about relevant aspects of a utility's operations or practices.

In summary, it is unreasonable, inconsistent with established Commission practice, and violative of the spirit of the Public Utility Code to deny CWA the ability to participate on all issues in this proceeding. Of course, if Citizens or Commonwealth believes that CWA's testimony strays into areas that are outside the scope of this proceeding or outside a witness's expertise, then they are free to file appropriate motions to limit the scope of the proceeding or strike the offending portion of the testimony. If an issue is properly before this Commission, however, it is not proper to restrict CWA from participating on that issue.

III. Response to Numbered Paragraphs of Preliminary Objections

1. Admitted.
2. Admitted. By way of further answer, Commission approval of the proposed transaction would be required under 66 Pa. C.S. § 1102(a)(3), even if the Commission had not issued a policy statement interpreting that section.
3. Admitted.
4. Admitted. By way of further answer, CWA withdrew its Preliminary Objections on November 13, 2006, because of statements contained in pleadings subsequently filed by Citizens and Commonwealth.
5. Admitted. By way of further answer, CWA did not aver that any of its members are customers of Commonwealth because it does not know precisely how many of its employees reside within Commonwealth's service area, and because CWA does not believe that such an averment is necessary in order for CWA to fully participate in this proceeding. If, however, the

Administrative Law Judge finds that CWA will not be able to fully participate on all issues unless it can demonstrate that it represents customers of Commonwealth, then CWA will file an amended Protest (pursuant to 52 Pa. Code § 5.101(h), which authorizes the filing of an amended pleading within 10 days if a preliminary objection is granted) to add its interest as a representative of various customers of Commonwealth.

6. Admitted.
7. Admitted.
8. No response is required to the Joint Petitioners' acknowledgement.
9. Admitted in part and denied in part. It is admitted that Joint Petitioners have correctly quoted from CWA's constitution, but it is denied that the cited language restricts CWA's interest in this proceeding. The issues CWA raised in its Protest to which Joint Petitioners object (such as quality and reliability of service, network deployment, and the financial impact of the proposed transaction) are directly related to CWA's efforts to improve "working conditions and other conditions of employment" for its members and the advocacy of "laws beneficial to them." CWA would note that the term "laws" as used in its constitution is not limited to statutes and regulations, but also frequently includes CWA's participation in adversarial administrative and judicial proceedings, such as this one.⁴
10. No response is required to Joint Petitioners' statement of what they seek.
11. Admitted in part and denied in part. It is admitted that CWA is not a consumer advocate as such, though there is often a commonality of interest between consumers and CWA

⁴ In addition to the cases cited in note 3, above, see for example: *Application of EchoStar Communications Corp.*, 67 Fed. Reg. 68,599 (Nov. 12, 2002) (FCC specifically grants CWA party status in a merger proceeding); *Covad Communications Co. v. Bell Atlantic Corp.*, 398 F.3d 666 (D.C. Cir. 2005) (CWA participated in appellate proceeding involving regulatory issues by filing an amicus brief).

members. It is denied that CWA has no standing to raise issues related to advanced services deployment, the adequacy of service, or financial issues, as CWA discusses above.

12. Denied. It is denied that CWA's interests can or should be narrowly limited to "employment levels and continuation of the current union contract." As CWA discusses above, CWA's interest is considerably broader than only negotiating the provisions of a collective bargaining agreement. CWA's interests include, for example, issues concerning the financial effects of a proposed transaction on its employer; the effects of a proposed transaction on the safety and reliability of the utility's facilities; impacts of a proposed transaction on CWA members' ability to provide reasonable service to the public through the utility's call centers; changes that may occur in the utility's operating, maintenance, and repair practices as a result of the proposed transaction; among others.

13. Denied, as CWA discusses in detail above.

14. Admitted.

15. Denied. The issues of network deployment, customer service adequacy, and financial impacts go beyond "consumer and ratepayers interests;" these issues also directly affect utility employees.

16. Admitted.

17. Denied, as CWA discusses in detail above. By way of further answer, the "protections offered by statute" extend to the public, of which utility employees (and their authorized representatives) are an important part. As CWA discusses above, the Public Utility Code specifically recognizes the important contribution that utility employees can make to proceedings addressing these important issues.

18. Admitted in part and denied in part. It is admitted that the Commission generally does not permit an individual to claim the right to represent the interests of a broad group of consumers. The Commission, however, frequently permits organizations to represent the interests of its members, when it is shown that there is some nexus between the organization and the specific utility. For that reason, the Commission consistently recognizes that utility labor unions have a legitimate, representational interest in participating in all types of Commission proceedings, including rate cases, mergers, reorganizations, service-quality and reliability investigations, rulemaking dockets, among others.⁵ It is also admitted that the Commission will allow representatives to participate “where it aids the development of facts necessary to proper disposition of the issues.” As discussed above, CWA has important information and a unique perspective on these issues that will aid in the development of a complete record on these issues.

19. Denied. CWA denies that it is claiming to protect consumer interests. Rather, CWA is protecting the interests of its members which include their ability to safely and reliably serve the public. It also is denied that the presence of OCA and OSBA affect the ability of CWA or any other party to fully participate in a proceeding. Indeed, the statutes establishing those offices specifically state that consumers with standing are not prohibited from fully participating in Commission proceedings because of OCA’s and OSBA’s participation. 71 P.S. § 306-6(a) (OCA: “Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court.”); 73 P.S. § 399.48 (OSBA: “Nothing

⁵ In addition to the cases cited in note 3, above, see for example: *Pa. PUC v. Duquesne Light Co.*, Docket No. R-00061346 (Recommended Decision of ALJ Gesoff approving settlement dated Oct. 4, 2006); *Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company’s Petition to Amend Benchmarks for Electric Distribution Reliability*, Docket No. P-00042115 (order of Feb. 17, 2006, adopting Recommended Decision of ALJ Colwell); *Inspection and Maintenance Standards for the Electric Distribution Companies*, Docket No. L-00040167, 36 Pa. B. 6097 (Oct. 7, 2006).

contained in this act shall in any way limit the right of any small business consumer to bring a proceeding before either the commission or a court.”).

20. Denied, as discussed in detail above.

WHEREFORE, CWA respectfully requests the Administrative Law Judge to dismiss the Preliminary Objections filed by Commonwealth and Citizens.

Respectfully submitted,



Scott J. Rubin, Esq.
Pa. Supreme Court ID: 34536
3 Lost Creek Drive
Selinsgrove, PA 17870

Counsel for:
Communications Workers of America

Dated: November 20, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail.

Norman J. Kennard
Hawke McKeon Sniscak & Kennard, LLP
P.O. Box 1778
Harrisburg, PA 17105

Hilary Glassman
Senior VP and General Counsel
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Robert Eckenrod
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Lauren Lepkoski
Office of Small Business Advocate
300 North Second St., Suite 1102
Harrisburg, PA 17101

John Povilaitis
Ryan Russell Ogden & Seltzer LLP
800 North Third St., Suite 101
Harrisburg, PA 17102-2025

Raymond Ostroski
Senior VP, General Counsel & Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

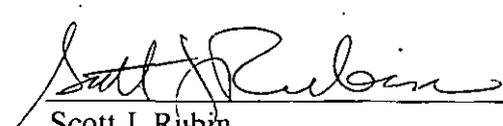
Lillian S. Harris
Hawke McKeon Sniscak & Kennard, LLP
P.O. Box 1778
Harrisburg, PA 17105

Shaun Sparks / Joel Cheskis
Office of Consumer Advocate
555 Walnut St., Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Pamela Polacek
McNees Wallace & Nurick
P.O. Box 1166
Harrisburg, PA 17108-1166

Jennifer Duane
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

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Scott J. Rubin
Counsel for CWA

Dated: November 20, 2006



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OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

November 20, 2006

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company for All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.
Docket Nos. A-310800F0010;
A-311095F0005, and A-311225F0003

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Answer to the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and to Dismiss Portions of Protest and Limit Participation of the Communications Workers of America in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

DOCUMENT
FOLDER

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. # 81617

Enclosures

cc: Hon. Susan D. Colwell, ALJ
All parties of record *91305

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Joint application of	:	
	:	
Commonwealth Telephone Company CTSI,	:	A-31800F0010
LLC, and CTE Telecom, LLC d/b/a	:	A-311095F0005
Commonwealth Long Distance Company	:	A-311225F0003
For All Approvals Under The Public Utility	:	
Code for the Acquisition By Citizens	:	
Communications Company of All of the Stock	:	
Of the Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

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SECRETARY'S BUREAU

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PRELIMINARY OBJECTIONS OF
COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC, AND
CTE TELECOM, LLC d/b/a COMMONWEALTH
LONG DISTANCE COMPANY AND CITIZENS
COMMUNICATIONS COMPANY
TO DISMISS PORTIONS OF PROTEST AND
LIMIT PARTICIPATION OF
THE COMMUNICATIONS WORKERS OF AMERICA

The Pennsylvania Office of Consumer Advocate (OCA) submits this Answer to the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company (hereinafter collectively referred to as Commonwealth) to Dismiss Portions of the Protest and Limit Participation of the Communications Workers of America (CWA):

I. INTRODUCTION

On September 17, 2006 Commonwealth and Citizens Communications Company signed a Plan of Merger for Commonwealth's corporate parent, CTE, to become a

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wholly-owned, direct subsidiary of Citizens. Citizens will acquire the stock of CTE, and indirectly, its subsidiaries. On September 29, 2006, pursuant to 66 Pa.C.S. §1102(a)(3), Commonwealth requested approval of the Plan from the Pennsylvania Public Utility Commission (Commission), which is required for stock transactions that result in a change in control of a public utility.

On October 27, 2006, the CWA filed a Protest in response to the application. The OCA filed a Protest and Notice of Intervention on October 30, 2006. On November 10, 2006, Commonwealth filed Preliminary Objections in response to the CWA Protest. In its Preliminary Objections, Commonwealth argues, among other things, that the Commission should limit CWA's participation and dismiss portions of its Protest because other parties, particularly the OCA and the Office of Small Business Advocate (OSBA), would adequately represent the interests of consumers, which CWA intends to pursue.

As discussed further below, the Commission should reject Commonwealth's assertion in its Preliminary Objections that the OCA and OSBA's presence in this proceeding somehow diminishes CWA's right to participate in this case. The Commission has rejected this argument in prior proceedings, and this argument should be rejected here as well by denying Commonwealth's Preliminary Objections.

II. ARGUMENT

A. The OCA's Participation In This Proceeding Does Not Serve As A Bar To The Participation Of Other Interested Parties.

In its Preliminary Objections, Commonwealth argues that "the CWA possesses no legal right (and claims no right) to represent the interests of consumers. Nor does the CWA represent 'the public interest.'" Preliminary Objections at 2. Commonwealth

further argues that “the interests of the union are not causally connected to non-employment related issues” and that the “CWA is not vested with the rights of a consumer advocate.” Id. As such, Commonwealth argues that CWA’s Protest should be limited to only those “issues relating to employment levels or the continuation of the current union contract.” Id. at 6. Commonwealth contends that CWA’s concerns raised in its Protest regarding “increased investment in the network,” “quality service” and other consumer related and public interest issues should be eliminated. Id. at 4.

Commonwealth’s Preliminary Objections are without merit and should be rejected. To begin, Commonwealth’s reliance on the Consumer Advocate’s participation in this proceeding as a reason for the Commission to limit CWA’s participation and dismiss portions of its Protest is in legal error. Section 309-6 of the legislation creating the Consumer Advocate specifies that: “Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court.” 71 P.S. §309-6; *see also*, Barasch v. Pa. P.U.C., 119 Pa. Commw. 81, 546 A.2d 1296, 95 P.U.R. 4th 528 (1988), *modified on denial of reargument by*, 119 Pa. Commw. 81, 550 A.2d 257 (Pa. Commw., 1989)(notice to the Office of Consumer Advocate does not constitute notice to the customers of a utility).

Commonwealth claims that the consumer interests that CWA raised in its Protest are already “adequately represented by the existing participants.” Preliminary Objections at 8, *quoting* 52 Pa. Code § 5.72(a)(2). The OCA submits that Commission rules allow for CWA’s participation regarding the public interest in this proceeding. Section 5.72(a) of the Pennsylvania Code provides:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is

necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa.Code §5.72(a). The interests represented and arguments advanced by the OCA, OSBA, and CWA are not necessarily identical.

The OCA, OSBA and CWA have access to different bases of experience and information and, as a result, have different interests. The OCA's presence in this proceeding may not accommodate all that the CWA may seek to achieve in this proceeding. It is unlikely that the participation of the CWA and the OCA would be completely duplicative. Furthermore, the CWA has participated in recent similar telecommunications proceedings filed pursuant to Section 1102 of the Public Utility Code before this Commission raising interests similar to those raised in its Protest in this proceeding in which the OCA and OSBA were also a party without its participation being limited. The Commission should not limit the participation of a party seeking to represent interests that are not identical to those of the other parties, as CWA is here.

In South River Power Partners, L.P., v. Pennsylvania Public Utility Commission, 673 A.2d 422 (1996), the Commonwealth Court rejected arguments, similar to those being advanced by Commonwealth in their Preliminary Objections, which sought to limit participation based on OCA involvement. The court stated:

we must reject South River's contention that the active participation in this case by the Office of the Consumer Advocate and various other interested parties eliminates the need for notice to be provided to West Penn's customers.

Id. at 426. The Court continued:

While the majority of West Penn's customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that West Penn's customers be notified of the PUC hearing and be afforded an opportunity to participate in that proceeding if they so choose.

South River at 427. The Commonwealth Court's decision in South River shows that a party's participation in a proceeding may not be inhibited because the OCA is participating in that same proceeding, as Commonwealth argues in its Preliminary Objections.

Furthermore, Commonwealth's Preliminary Objections fail to recognize that many of the public interest and consumer issues that CWA raises in its Protest are important both to consumers and the CWA for varying reasons. For example, service quality is clearly important to both the CWA and to consumers. The workload and job security for the CWA employees will be impacted to the extent that service quality changes as a result of the merger. If service quality decreases, there will be a need for CWA's employees to correct such deficiencies. If Citizens determines to decrease expenditures on service quality related issues, this decision would impact both consumers and CWA employees.

Additionally, network modernization issues also affect CWA as well as consumers. To the extent that Citizens determines to increase or decrease the pace of its network modernization deployment, CWA's employees will again be affected based on

the need for their services to install the necessary equipment as part of that deployment. Of course, consumers will also be affected in their ability to access high-speed internet access services depending on the decisions of the merged entity.

Furthermore, members of the CWA may also be customers of Commonwealth and therefore can raise consumer and public interest issues in that capacity as well.

Therefore, it is clear that Commonwealth's argument that the CWA Protest should somehow be limited because of the OCA's presence in this proceeding is legally incorrect. Commonwealth's argument is, therefore, in error and the Commission should deny Commonwealth's Preliminary Objections.

B. The Public Utility Commission's Rules On Standing Are Broad Enough To Allow CWA's Participation As Articulated In Its Protest.

Standing before an administrative agency articulate in the Commission's regulations that "[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought." 52 Pa.Code §5.72(a). Furthermore, the Commission's Rules of Administrative Practice and Procedure are broad and are to be liberally construed. The Commission has wide latitude to allow parties to participate in proceedings before it. 52 Pa. Code § 1.2.

Previously, the Commission has found that standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency stating:

Unlike standing to appeal, which is determined by the application of guidelines pronounced by the appellate courts, standing before an administrative agency is primarily within the discretion of the agency. Whether parties should be permitted to intervene in a commission

proceeding is within the discretion of the commission to be exercised within each individual case. *See, W.J. Dillner Transfer Co. v. Pa. P.U.C.*, 175 Pa. Sup. 461, 107 A.2d 159 (1954); *Arsenal Board of Trade v. Pa.P.U.C.*, 166 Pa. Sup 548, 72 A.2d 612 (1950); and *City of Pittsburgh v. Pa.P.U.C.*, 153 Pa. Sup. 83, 33 A.2d 641 (1943).

Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co., 75 Pa.P.U.C. 598 at 603 (1991), *citing* Re L&H Trucking Co., Inc. 55 Pa.P.U.C. 469 (1982). Therefore, under Section 5.72 of the Pennsylvania Code, *supra*, and Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, CWA should be able to participate in this proceeding as articulated in its Protest, particularly in light of the Commission's additional discretion in this area.

The CWA has also satisfied the standard articulated in William Penn Parking Garage, Inc., v. City of Pittsburgh, 346 A.2d 269, 282 (Pa. 1975), which Commonwealth cites to in its Preliminary Objections. The William Penn standard states that in order to have standing a party must have a "direct, immediate, and substantial" interest in the litigation. *Id.* Members of CWA stand to be adversely affected by this merger, particularly if issues such as service quality and network modernization, discussed above, are not properly addressed. Consequently, CWA has a "direct, immediate, and substantial" interest in ensuring that the transaction is structured to protect the interests of its members.

As previously discussed, the interests of the CWA members are not necessarily the same as those advanced by the OCA. Because CWA has a substantial interest in this proceeding, CWA's participation in this proceeding should not be limited and Commonwealth's Preliminary Objections should be denied.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that Commonwealth's Preliminary Objections should be denied because its proposal to limit CWA's participation and dismiss portions of CWA's Protest is contrary to law and Commission policy.

Respectfully submitted,



Joel H. Cheskis
Assistant Consumer Advocate
Attorney I.D. No. 81617

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Dated: November 20, 2006
91600

CERTIFICATE OF SERVICE

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company for All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F0010; A-311095F0005, and A-311225F0003

I hereby certify that I have this day served a true copy of the foregoing document, The Office of Consumer Advocate's Answer to the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Portions of Protest and Limit Participation of the Communications Workers of America, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 20th day of November, 2006.

SERVICE BY INTER-OFFICE MAIL

Robert V. Eckenrod, Esq.
Office of Trial Staff
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

ORIGINAL

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard, Esq.
Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

SECRETARY'S BUREAU
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Raymond Ostroski, Esq.
Commonwealth Telephone
Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Pamela C. Polacek, Esq.
McNees Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Scott J. Rubin
3 Lost Creek Dr.
Selinsgrove, PA 17870

Jennifer A. Duane, Esq.
2001 Edmund Halley Drive, 2nd Fl.
Reston, VA 20191



Shaun A. Sparks
PA Attorney I.D.#87372
ssparks@paoca.org
Joel H. Cheskis
PA Attorney I.D.#81617
jcheskis@paoca.org
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
*91234



Sprint Nextel
2001 Edmund Halley Drive, Second Floor
Reston, Virginia 20191
Mailstop: VARESP0201-A208
Office: (703) 592-7781 Fax: (703) 592-7404

Jennifer A. Duane
Attorney, State Regulatory/Northeast
Jennifer.a.duane@sprint.com

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November 20, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA OVERNIGHT MAIL

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: Joint Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code For the Acquisition by Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.
Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Dear Secretary McNulty:

I enclose for filing in the above-referenced docket an original and three (3) copies of the Answer of Sprint Communications Company L.P. ("Sprint") to the Joint Answers and Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company L.P., the Broadband Cable Association of Pennsylvania and RCN Corporation and RCN Telecom Services, Inc. All parties have been served in accordance with the attached Certificate of Service.

Please return a filed-stamped copy of this letter in the enclosed self-addressed, postage-prepaid envelope. If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

**DOCUMENT
FOLDER**

Sincerely,

Jennifer A. Duane

Enclosure

cc: Susan D. Colwell, Administrative Law Judge (via electronic and regular mail)
Parties on the attached Certificate of Service (via electronic and regular mail)

85

NOV 20 2006

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

In re Joint Application of :
Commonwealth Telephone Company :
CTSI, LLC, and : A-310800F0010
CTE Telecom, LLC d/b/a Commonwealth : A-311095F0005
Long Distance Company : A-311225F0003
For All Approvals Under the Public :
Utility Code for the Acquisition by :
Citizens Communications Company of :
All of the Stock of the Joint Applicant's :
Corporate Parent, Commonwealth :
Telephone Enterprises, Inc. :

ANSWER OF SPRINT COMMUNICATIONS COMPANY L.P. TO THE PRELIMINARY OBJECTIONS OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC AND CTE TELECOM, LLC D/B/A COMMONWEALTH LONG DISTANCE COMPANY TO DISMISS SPRINT'S PROTEST AND PETITION TO INTERVENE

Pursuant to 52 Pa. Code § 5.101(f), Sprint Communications Company L.P. ("Sprint") hereby files this Answer to the Preliminary Objections filed by Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI") and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD") (collectively the "Joint Applicants") seeking the dismissal of the Protest and Petition to Intervene filed by Sprint on October 30, 2006 in the above-referenced proceeding. In support of its Answer, Sprint states as follows:

I. SUMMARY OF ANSWER

The Joint Applicants argue that Sprint, through its Protest and Petition to Intervene, fails to demonstrate standing to oppose the proposed acquisition of the Joint Applicants by Citizens Communications Inc. ("Citizens") and fails to raise facts sufficient to cause a denial

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of the Joint Application. Additionally, Joint Applicants state that the relief Sprint is seeking through its protest is not available to it in this proceeding.¹

Sprint filed its Protest and Petition to Intervene to urge the Commission to impose certain conditions on its approval of the Joint Applicants' proposed acquisition by Citizens that would facilitate competitive entry into the local service territory of CTCo. The Commission has jurisdiction over the proposed acquisition in accordance with 66 Pa. C.S. § 1102(a) (3), which applies the Commission's certification processes to sales, acquisitions or transfers of public utility property, including stock.² Under 66 Pa. C.S. § 1103(a), the Commission may approve such acquisitions provided it finds the grant of the certificate to be necessary or proper for the service, accommodation, convenience or safety of the public. In granting the certificate, the Commission may impose such conditions as it deems to be just and reasonable. *Id.* Under the legal standard set forth in *City of York v. Pennsylvania Pub. Util. Comm'n*,³ the proponent of a merger has the burden of demonstrating by a preponderance of evidence that the merger is in the public interest because it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

The Joint Applicants have asserted that its acquisition by Citizens provides the affirmative public benefits demanded by the *City of York* case and that the approval of the transaction is in the public interest. They emphasize that the merger will enhance competition for telecommunications services because the combined companies will be better able to compete more effectively with other facilities-based competitors, including cable

¹ Joint Applicants' Preliminary Objections at 3.

² 52 Pa. Code § 69.901.

³ 295 A.2d 825, 828 (Pa. 1972).

telephony and wireless carriers.⁴ Additionally, the Joint Applicants argue that Citizen's experience in responding to competition across its twenty-four state operating territory may enhance CLEC competition in CTC's service area by "(a) responding effectively to competition by providing new services and pricing options to customers; and (b) ensuring that CLECs are treated appropriately in accordance with the complex regulatory rules that apply to transactions between ILECs and CLECs."⁵

In this regard, the Joint Applicants' Application supports Sprint's standing to *intervene and protest its application as a current and potential competitor based on their claims that the merger is necessary to enable them to more effectively compete with new entrants into their service territories. Additionally, Sprint's participation is needed to evaluate their claim that, after the merger, CLECs will be treated appropriately in accordance with state and federal regulations governing competition between ILECs and CLECs. If the Joint Applicants intend to use these competitive factors to satisfy the City of York standards for merger approval, then their actual and potential competitors are necessary participants to comment on these competitive claims. In reviewing prior mergers of telecommunications companies, the Commission has stated that it must examine the merger and its public interest benefits in the broader context of the telecommunications industry in Pennsylvania as a whole.*⁶ The Commission takes a broad view of the public interest standard, encompassing such factors as whether the merger will have an "anti-competitive effect or will impair the technical, managerial or financial fitness of the jurisdictional utilities affected to continue to *provide adequate telecommunications services to Pennsylvania customers at just and*

⁴ *Id.* at ¶ 44.

⁵ *Id.* at ¶ 45.

⁶ *Joint Application of SBC Communications, Inc. and AT&T Corp.*, Docket No. A-311163F0006, et. al. Order at 27-28 (October 6, 2005) ("SBC/AT&T Order").

reasonable rates.”⁷ Thus, it is entirely appropriate and in keeping with past Commission practice to permit Sprint to intervene and participate in this proceeding.

Sprint does not necessarily oppose the Commission’s approval of the proposed acquisition; however, it contends that the Commission should condition its approval of the proposed acquisition on obtaining assurances from CTCo and from Citizens that it will not use the Commission’s CLEC application and entry procedures to thwart and unduly delay facilities-based competitive entry into their combined service territories. The Joint Applicants state that they intend to use the combined resources of the two companies to improve their competitive position and offer a broader range of innovative telecommunications services and products to compete more effectively with cable telephony, wireless carriers and VoIP providers. At the same time, the Commission should not permit CTCo to impede competitive entry into its service territory by these same alternative local service providers. The Commission should demand that firm commitments to advance competition are put in place to ensure that the vaunted affirmative public benefits of the proposed merger claimed by the *Joint Applicants* are realized.

II. SPRINT’S RESPONSE TO PRELIMINARY OBJECTIONS AND NUMBERED PARAGRAPHS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part and denied in part. Sprint admits that the Joint Applicants distributed Direct Testimony in support of its Application on November 10, 2006. Sprint denies that the

⁷ *Id.*

testimony presents a comprehensive examination of the nature and breadth of competition within their service territory.

6. The statements contained in paragraph 6 are legal conclusions to which no response is required.

A. Preliminary Objection 1

7. Admitted in part and denied in part. Sprint admits that it is actively seeking a certificate to provide voice telephony service within CTCo's service territory and as such it is a potential competitor of CTCo.⁸ Sprint denies that as a potential competitor its interest may not be directly or adversely affected by the proposed acquisition. Given that Sprint filed its application to become certified to operate in CTCo's service territory on May 4, 2005, a prime reason that it is not currently an actual competitor of CTCo's is partly a result of CTCo's conduct in protesting its CLEC application.

8. Denied. Sprint's Protest and Intervention Petition demonstrated that its interests in competing in the service territory of CTCo may be directly affected by the proposed acquisition and its interest is not adequately represented by existing participants.

9. Denied in part. Sprint is actively seeking to compete in CTCo's service territory and its interest in doing so may be impacted by the proposed acquisition. This status confers an immediate, direct and substantial interest in this matter. By way of further response, the remainder of paragraph 9 contains legal statements to which no response is required. The referenced provision of the Commission's order speaks for itself.

⁸ Application of Sprint Communications Company L.P. for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania, Docket Nos. A-310183F0002AMA, A-310183F0002AMB, A-310183F0002AMC.

10. The contents of paragraph 10 are legal statements to which no response is required. By way of further response, the referenced provision of the Commission's order speaks for itself.

11. The contents of paragraph 11 are legal statements to which no response is required. The referenced provision of the Commission's order speaks for itself.

B. Preliminary Objection 2

12. Sprint denies that its allegations of the negative impacts of the proposed acquisition are speculative. Sprint's Protest stated that CTCo's regulatory posture in prior certification proceedings, where it routinely protests applications for CLEC entry into its service territory, runs counter to its claim in the Joint Application that CLEC competition would be enhanced. There is nothing speculative about this claim. It is undisputed that CTCo has filed protests to every CLEC application that has sought entry into its service territory. Regardless of the merits of its protests, its conduct in doing so underscores the notion that CLEC entry into its territory has been delayed and hindered by this regulatory tactic. There is nothing in the Joint Application to suggest that CTCo's conduct will change after its merger with Citizens or to demonstrate that CLEC competition will be enhanced by the proposed acquisition.

13. Denied. By way of further response, Sprint notes that while CTCo protested its CLEC application, the other two rural carriers in whose service territory Sprint sought entry – *Palmerton and AllTel Pennsylvania n/k/a Windstream Pennsylvania* – did not exercise their rights of protest.

14. Denied. Sprint is not disputing the legitimacy of CTCo's right to protest its CLEC application; however, the continued exercise of this right serves to impede competitive entry

and is inconsistent with the pro-competitive benefits the Joint Applicants claim will be realized by the proposed merger.

15. Admitted in part and denied in part. The cases in which CTCo filed protests are a matter of public record. CTCo has filed protests in each of the CLEC applications that have been filed seeking entry into its service territory, which represents five to date, and it hardly demonstrates CTCo's embrace of CLEC competition.

16. The contents of paragraph 16 pertain to the Core CLEC application matter. Sprint is without sufficient information about the case to either admit or deny the statements contained therein.

17. Admitted in part and denied in part. The ALJ's initial decision in Sprint's CLEC certification proceeding speaks for itself.

18. The contents of paragraph 18 pertain to the Service Electric CLEC application matter. Sprint is without sufficient information about the case to either admit or deny the statements contained therein.

19. The contents of paragraph 19 pertain to the Blue Ridge and RCN CLEC applications. Sprint is without sufficient information about the case to either admit or deny the statements contained therein.

20. Admitted in part and denied in part. Sprint admits that the Blue Ridge CLEC application is related to the Sprint CLEC application. Sprint denies CTCo's characterization of the *Sprint/Blue Ridge business model for offering facilities-based local voice service* competition to Pennsylvania consumers.

21. Admitted.

22. Admitted.

23. The contents of paragraph 23 pertain to Blue Ridge's CLEC application and BCAP's Protest and Petition to Intervene. Sprint is without sufficient information about these matters to either admit or deny the statements contained therein.

24. The contents of paragraph 24 pertain to BCAP's Protest and Petition to Intervene. Sprint is without sufficient information about these matters to either admit or deny the statements contained therein.

25. The contents of paragraph 25 pertain to RCN's CLEC application proceeding. Sprint is without sufficient information about these matters to either admit or deny the statements contained therein.

26. The contents of paragraph 26 pertain to RCN's and Blue Ridge's CLEC application proceedings. Sprint is without sufficient information about these matters to either admit or deny the statements contained therein.

27. Denied in part. Regardless of the merits of a protest, there is no question that the filing of a protest in a CLEC certification proceeding effectively delays competitive entry and turns what should be a routine examination of the fitness of the applicant into a protracted and contentious evidentiary proceeding. Consequently, the decision to file a protest in these certification proceedings cannot be viewed as consistent with a pro-competitive policy.

28. Denied in part. Sprint denies that its protest is designed to extract concessions from CTCo regarding its CLEC application proceeding, which is currently pending before the full Commission on exceptions.

29. The contents of paragraph 29 contain conclusions of law to which no response is required.

30. Admitted in part and denied in part. Sprint admits that the proposed acquisition is a commercial transaction between two parent companies. Sprint denies that the intent of its protest is to force the litigation of already docketed proceedings.

31. Denied. Sprint denies that its protest is speculative. Sprint's assertion that permitting rural incumbent carriers to protest applications for certification in their service territories acts as a barrier to entry can be documented. The filing of a protest in a CLEC certification proceeding effectively delays competitive entry and turns what should be a routine examination of the fitness of the applicant into a protracted and contentious evidentiary proceeding.

32. Denied. Given CTCo's propensity to block competitive entry into its service territory by protesting CLEC certification applications, there has been no demonstration in the Joint Application that this anti-competitive conduct will not continue after the proposed acquisition is completed.

33. The contents of paragraph 33 pertain to RCN's Protest and Petition to Intervene. Sprint is without sufficient information to either admit or deny the statements contained therein.

34. The contents of paragraph 34 contain legal statements, conclusions of law and a request for relief to which no response is required. The referenced provision of the Commission's order speaks for itself.

35. The contents of paragraph 35 are legal statements and conclusions of law to which no response is required.

36. The contents of paragraph 36 contain legal statements and conclusions of law to which no response is required. The referenced provisions of the Commission orders speak for themselves.

37. The contents of paragraph 37 contain conclusions of law to which no response is required.

38. The contents of paragraph 38 pertain to RCN's Protest and Petition to Intervene. Sprint is without sufficient information to either admit or deny the statements contained therein.

39. The contents of paragraph 39 contain conclusions of law to which no response is required.

C. Preliminary Objection 3

40. Denied. By way of further response, Sprint's protest is simply asking the Commission to impose conditions on its approval of Citizen's acquisition of the Joint Applicants that would facilitate a pro-competitive environment in the combined service territory. Imposing conditions on a merger is a standard remedy to protect the public interest and prevent the merged entity from engaging in anticompetitive and discriminatory behavior after the transaction is completed.⁹

41. Denied. The Frontier companies are part of the acquiring company and as noted above, imposing conditions on a merger and acquisition is a standard practice to satisfy the public interest standard and prevent anticompetitive conduct post-merger completion.¹⁰

⁹ *Joint Application of Verizon Communications Inc. and MCI, Inc., MCI Metro Access Transmission Services LLC, MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., TTI National Inc., Teleconnect Long Distance Services and System Co. d/b/a Telecom USA for Approval of Agreement and Plan of Merger*, Docket Nos. A0310580F0009, A-310752F0006, A-310364F0003, A-312025F0005, A-310407F0003, A-310401F0006 (December 15, 2005).

¹⁰ *Id.*

42. The contents of paragraph 42 pertain to RCN's Protest and Petition to Intervene. Sprint is without sufficient information to either admit or deny the statements contained therein.

43. Admitted in part and denied in part. Sprint admits that the Commission's orders implementing the 1996 Act established certain procedures governing the entry of competitive telecommunications service providers. The remainder of paragraph 43 is denied.

44. Admitted in part and denied in part. Sprint admits that it could petition the Commission to change its CLEC entry procedures in a separate docket established for that purpose. Sprint denies that it is threatening CTCo with disenfranchisement in this proceeding.

45. The contents of paragraph 45 are legal statements and conclusions of law to which no response is required. The referenced provision of the Commission order and the statutory reference speak for themselves.

46. Admitted in part and denied in part. Sprint admits that Congress created a classification of rural telephone companies and established certain rights and obligations associated with that status. Sprint denies that it is demanding that CTCo concede its rural telephone company status conferred by the 1996 Telecommunications Act in this proceeding. By way of further response, however, Sprint contends that using the rural exemption as a shield from competition is inconsistent with the Joint Application's stated affirmative public benefit that the proposed acquisition will enhance CLEC competition.

47. Admitted in part and denied in part. Sprint admits that Congress established procedures for the removal of the rural exemption. The referenced provisions of the Act speak for themselves and are legal statements and conclusions of law to which no response is required. Sprint denies that it is seeking the removal of CTCo's rural exemption in this

proceeding; however, Sprint contends that using the rural exemption as a shield from competition is inconsistent with the Joint Application's stated affirmative public benefit that the proposed acquisition will enhance CLEC competition.

48. The contents of paragraph 48 pertain to RCN's Protest and Petition to Intervene. Sprint is without sufficient information to either admit or deny the statements contained therein.

49. The contents of paragraphs 49 through 57 pertain to RCN's Protest and Petition to Intervene. Sprint is without sufficient information to either admit or deny the statements contained therein.

III. CONCLUSION

WHEREFORE, for the above-stated reasons, Sprint respectfully requests the Commission to dismiss the Joint Applicants' Preliminary Objections and consider Sprint's protest in its evaluation of the proposed acquisition of Joint Applicants by Citizens and impose appropriate conditions for the purpose of facilitating entry into their service territories for the provision of competitive local telecommunications services.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



Jennifer A. Duane
2001 Edmund Halley Drive, Second Floor
Reston, Virginia 20191
Mailstop: VARESP0201-A208
(703) 592-7791 (Voice)
(703) 592-7404 (Facsimile)
(703) 599-7416 (PCS)
Jennifer.a.duane@sprint.com

Dated: November 20, 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code For the Acquisition by Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.

Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Service List

I hereby certify that I have on this 20th day of November 2006 served a true and correct copy of Sprint Communications Company L.P.'s Answer to the Joint Answers and Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company L.P., the Broadband Cable Association of Pennsylvania, and RCN Corporation and RCN Telecom Services, Inc. on the following persons by electronic and First Class U.S. Mail in accordance with the requirements of 52 Ps. Code § 1.54.

Shaun A. Sparks
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1921

Johnnie E. Simms,
Robert V. Eckenrod
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17105-3265

Scott Rubin
3 Lost Creek Drive
Selinsgrove, Pennsylvania 17810

Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

Lillian S. Harris
Hawke McKeon Sniscak & Kennard LLP

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101

Hilary Glassman
Citizens Communications Company
3 High Ridge Park
Stamford, Connecticut 06905

Raymond Ostroski
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, Pennsylvania 18612

John F. Povilaitis
Matthew A. Totino
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025

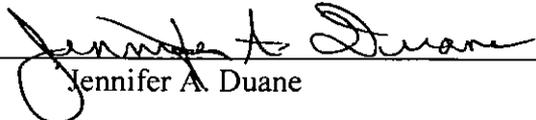
Pamela C. Polacek
McNees Wallace & Nurick

ORIGINAL

Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

100 Pine Street
P.O. Box 1166
Harrisburg, PA 17102-2025

Honorable Susan D. Colwell
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265


Jennifer A. Duane

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

ORIGINAL

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

November 20, 2006

BY HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

DOCUMENT
FOLDER

RE: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under The Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003. **OSBA PROTEST**

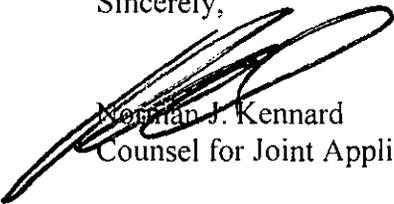
Dear Secretary McNulty:

We represent Joint Applicants in the above matter and have received the Office of Small Business Advocate's ("OSBA") Protest dated October 30, 2006. The Joint Applicants do not oppose the participation of the OSBA in this case.

Although Joint Applicants deny many of the allegations set forth in the OSBA's Protest, the Rules and Regulations of the Public Utility Commission do not contemplate the filing of Answers to Protests. See *Re Consumers Pennsylvania Water Company - Shenango Valley Division*, Docket No. A-212750F0007, 95 Pa. P.U.C. 5, 2001 WL 1542265. Joint Applicants, accordingly, do not intend to file an Answer to the OSBA's Protest.

Thank you for your attention to this matter.

Sincerely,



Norman J. Kennard
Counsel for Joint Applicants

NJK/ajt

cc: Honorable Susan D. Colwell
Per Certificate of Service

2006 NOV 20 PM 3:50
SECRETARY'S BUREAU

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL

Shaun A. Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1921

Johnnie E. Simms
Robert V. Eckenrod
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Pamela C. Polacek
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870

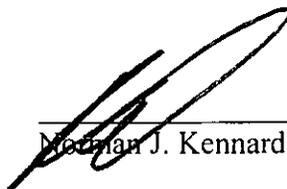
Lillian S. Harris
Hawke McKeon Sniscak & Kennard
100 N. 10th Street
P.O. Box 1778
Harrisburg, PA 17105-1778

Hilary Glassman
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Raymond Ostroski
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer, LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Jennifer A. Duane
Sprint Nextel
2001 Edmund Halley Drive
Second Floor
Reston, VA 20191


Matthew J. Kennard

Dated this 20th day of November, 2006.

SECRETARY'S BUREAU
2006 NOV 20 P.11 3:50



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RECEIVED
2006 NOV 22 PM 4:02
PA P.U.C.
SECRETARY'S BUREAU

RE: Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communication Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.; Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Prehearing Memorandum of the Broadband Cable Association of Pennsylvania ("BCAP") in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the Prehearing Memorandum, and kindly return them for our filing purposes. Thank you.

**DOCUMENT
FOLDER**

DOCKETED
NOV 30 2006

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

PCP/nk

Enclosures

c: Certificate of Service
Honorable Susan D. Colwell (via e-mail and hand delivery)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

2006 NOV 22 PM 4:02
SECRETARY'S BUREAU

VIA E-MAIL AND FIRST CLASS MAIL

Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Joel Cheskis, Esq.
Shaun Sparks, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, PA 17101

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Johnnie Simms, Esq.
Robert Eckenrod, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

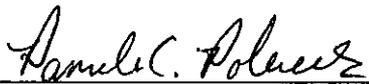
Jennifer A. Duane, Esq.
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

Raymond Ostroski, Esq.
Sr. V. P, General Counsel and Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Sr. V.P. and General Counsel
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John F. Povilaitis, Esq.
Ryan, Russell, Odgen & Seltzer, L.P.
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025



Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

Dated this 22nd day November, 2006, in Harrisburg, Pennsylvania.

ROTHFELDER STERN, L.L.C. ORIGINAL

LAW OFFICES
625 CENTRAL AVENUE
WESTFIELD, NJ 07090

MARTIN C. ROTHFELDER*^o*^p
BRADFORD M. STERN*
*ALSO ADMITTED IN NH
^oALSO ADMITTED IN MO
*ALSO ADMITTED IN PA
^pALSO ADMITTED IN NY

TELEPHONE (908) 301-1211
FAX (908) 301-1212
WEBSITE www.rothfelderstern.com

November 21, 2006

VIA OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth, Keystone Building
Harrisburg, PA 17105-3265

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NOV 21 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
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Re: In re Joint Application of Commonwealth
Telephone Company CTSI, LLC, and CTE
Telecom, LLC d/b/a Commonwealth Long Distance
Company for All Approvals Under the Public Utility
Code for the Acquisition by Citizens
Communications Company of All of the Stock of the
Joint Applicant's Corporate Parent, Commonwealth
Telephone Enterprises, Inc. - Docket Nos. A-
310800F0010, A-311095F0005, and A-311225F0003

Dear Mr. McNulty:

Enclosed please find the original and three copies, plus one extra copy of the
Motion for Admission Pro Hac Vice of Jennifer A. Duane.

Please return a file stamp copy of the extra copy to us in the enclosed self-addressed
stamped envelope.

Sincerely,



Martin C. Rothfelder

cc: Service list

19

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	
CTSI, LLC, and	:	A-310800F0010
CTE Telecom, LLC d/b/a Commonwealth	:	A-311095F0005
Long Distance Company	:	A-311225F0003
	:	
For All Approvals Under the Public	:	
Utility Code for the Acquisition by	:	
Citizens Communications Company of	:	
All of the Stock of the Joint Applicant's	:	
Corporate Parent, Commonwealth	:	
Telephone Enterprises, Inc.	:	

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**MOTION FOR ADMISSION PRO HAC VICE
OF JENNIFER A. DUANE**

Pursuant to 52 Pa. Code §1.22(b) and P.A.B.A.R. 301, Martin C. Rothfelder, a member of the bar of the Commonwealth of Pennsylvania, respectfully moves for the admission of the following individual to appear as an attorney on behalf of Sprint Communications Company L.P ("Sprint") in the above-referenced proceeding.

Jennifer A. Duane, Esquire
Sprint Communications Company L.P.
2001 Edmund Halley Drive, Second Floor
Reston, Virginia 20191
Mailstop: VARESP0201-A208
e-mail: jennifer.a.duane@sprint.com
Phone: 703-592-7781
Fax: 703-592-7404

In support of this motion, the movant states:

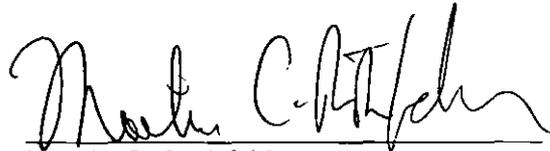
1. I am an active member of the Pennsylvania Bar (Attorney No. 85479), the Missouri bar, the New York Bar, the New Hampshire bar and the New Jersey bar. I am in private practice, assisting clients in telecommunications and public utility oriented regulatory, legal, and legislative matters in Pennsylvania and other states..

2. Jennifer A. Duane is a member in good standing of the bars of Maryland and the District of Columbia.

3. Ms. Duane has been actively involved in numerous regulatory proceedings on behalf of Sprint's sister affiliates operating in other jurisdictions and has previously represented Sprint in various regulatory matters in Pennsylvania before the Pennsylvania Public Utility Commission.

WHEREFORE, I move that Jennifer A. Duane be admitted to practice *pro hac vice* on behalf of Sprint in the above-captioned proceeding.

Respectfully submitted,



Martin C. Rothfelder
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
mrothfelder@rothfeldrstern.com
(908) 301-1211

Counsel for Sprint Communications
Company L.P.

Date: November 21, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom,
LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public
Utility Code For the Acquisition by Citizens Communications Company of
All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone
Enterprises, Inc.**

Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Service List

I hereby certify that I have on this 21th day of November 2006 served a true and correct copy of the foregoing document on the following persons by electronic and First Class U.S. Mail in accordance with the requirements of 52 Pa. Code § 1.54.

Shaun A. Sparks
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1921

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101

Johnnie E. Simms,
Robert V. Eckenrod
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17105-3265

Hilary Glassman
Citizens Communications Company
3 High Ridge Park
Stamford, Connecticut 06905

Scott Rubin
3 Lost Creek Drive
Selinsgrove, Pennsylvania 17810

Raymond Ostroski
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, Pennsylvania 18612

Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

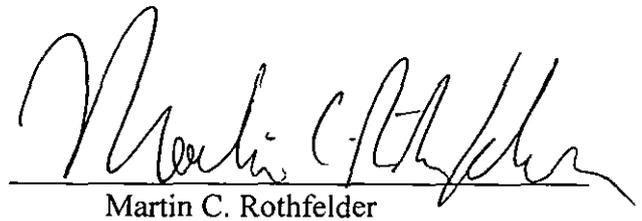
John F. Povilaitis
Matthew A. Totino
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025

Lillian S. Harris
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

Pamela C. Polacek
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17102-2025

Jennifer A. Duane
Sprint
401 9th Street, NW
Suite 400
Washington, DC 20004

Honorable Susan D. Colwell
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265



Martin C. Rothfelder

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

November 22, 2006

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Re: Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company for all approvals under the Public Utility Code for the acquisition by Citizens Communications Company of all of the stock of the joint applicants' corporate parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F00010, A-311095F0005, A-311225F0003

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Prehearing Memorandum of Communications Workers of America in the above-referenced proceeding.

I have served a copy of the document on all parties of record, as shown on the Certificate of Service attached to the document, as well as on the Administrative Law Judge.

I also have enclosed an additional copy of each document that I would appreciate having time-stamped and returned in the enclosed envelope.

**DOCUMENT
FOLDER**

Sincerely,



Scott J. Rubin

Enclosure

cc: Susan Colwell, Administrative Law Judge
All parties

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2006 NOV 27 AM 9:52
PA P.U.C.
SECRETARY'S BUREAU

54

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PUBLIC
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Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC and CTE	:	
Telecom, LLC, d/b/a Commonwealth Long	:	
Distance Company for all approvals under	:	Docket No. A-310800F0010
the Public Utility Code for the acquisition	:	Docket No. A-311095F0005
by Citizens Communications Company of	:	Docket No. A-311225F0003
all of the stock of the joint applicants'	:	
corporate parent, Commonwealth	:	
Telephone Enterprises, Inc.	:	

PREHEARING MEMORANDUM OF
COMMUNICATIONS WORKERS OF AMERICA

Pursuant to the Prehearing Conference Order dated November 13, 2006, of Administrative Law Judge Susan Colwell, Communications Workers of America (CWA) hereby files this Prehearing Memorandum.¹

1. Party Identification. CWA represents approximately 425 employees of Commonwealth Telephone Company (Commonwealth). CWA filed a Protest on October 27, 2006, to which Commonwealth and Citizens Communications Company (Citizens) filed Preliminary Objections on November 10, 2006. CWA filed an Answer to the Preliminary Objections on November 20, 2006. CWA is represented by the undersigned counsel, upon whom all documents should be served.

2. Issues: CWA's Protest sets forth the major categories of issues that CWA intends to investigate in this proceeding. CWA cannot be more specific at this point because it has not yet received the confidential portion of the testimony and exhibits filed by Commonwealth and

¹ CWA notes that it was not served with either the ALJ's prehearing order or the Commission's hearing notice. CWA respectfully requests the ALJ to ensure that the Commission's service list is complete and accurate.

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Citizens on November 10, 2006, and because the discovery process is just getting underway.

3. Discovery: CWA has not yet engaged in discovery, pending the receipt of the confidential portion of the testimony and exhibits filed by Commonwealth and Citizens.

4. Witnesses: At the present time, CWA expects to call one person as an expert witness in this proceeding:

Debbie Goldman
Communications Workers of America
501 Third St., NW
Washington DC 20001-2797
Email: dgoldman@cwa-union.org

CWA asks that, in addition to service on its counsel, one copy of all discovery requests, discovery responses, testimony, and exhibits be served on Ms. Goldman, either by email or by overnight delivery. CWA reserves the right to call additional (or substitute) witnesses as the issues develop in this case. CWA will notify the ALJ and the parties if it decides it is necessary to call additional (or substitute) witnesses.

5. Settlement: CWA is willing to participate in settlement negotiations concerning any and all issues that affect its interests in this case, and it is pleased that the proposed schedules that have been circulated appear to include adequate time for conducting settlement discussions.

6. Schedule: CWA will work with the other parties to develop a schedule.

Respectfully submitted,



Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870
(570) 743-2233
scott.j.rubin@gmail.com

Counsel for Communications Workers of America

Dated: November 22, 2006

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail.

Norman J. Kennard
Hawke McKeon Sniscak & Kennard, LLP
P.O. Box 1778
Harrisburg, PA 17105

Hilary Glassman
Senior VP and General Counsel
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Robert Eckenrod
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Lauren Lepkoski
Office of Small Business Advocate
300 North Second St., Suite 1102
Harrisburg, PA 17101

John Povilaitis
Ryan Russell Ogden & Seltzer LLP
800 North Third St., Suite 101
Harrisburg, PA 17102-2025

Raymond Ostroski
Senior VP, General Counsel & Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

Lillian S. Harris
Hawke McKeon Sniscak & Kennard, LLP
P.O. Box 1778
Harrisburg, PA 17105

Shaun Sparks / Joel Cheskis
Office of Consumer Advocate
555 Walnut St., Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Pamela Polacek
McNees Wallace & Nurick
P.O. Box 1166
Harrisburg, PA 17108-1166

Jennifer Duane
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191



Scott J. Rubin
Counsel for CWA

Dated: November 22, 2006

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

November 22, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Honorable Susan D. Colwell
Administrative Law Judge
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

**DOCUMENT
FOLDER**

Re: Joint Application of Commonwealth
Telephone Company CTSI, LLC and CTE
Telecom, LLC d/b/a Commonwealth Long
Distance Company for All Approvals Under
the Public Utility Code for the Acquisition
By Citizens Communications Company of
All of the Stock of the Joint Applicants'
Corporate Parent, Commonwealth
Telephone Enterprises, Inc.
Docket Nos. A-310800F0010;
A-311095F0005, and A-311225F0003

Dear Judge Colwell:

Enclosed please find the Office of Consumer Advocate's Prehearing
Memorandum in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached
Certificate of Service.

Sincerely,

Joe H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. # 81617

Enclosures

cc: All parties of record *91673

05/11/06
11:00
05/11/06
11:00

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Commonwealth Telephone Company CTSI,
LLC and CTE Telecom, LLC d/b/a Commonwealth Long
Distance Company For All Approvals Under The Public Utility
Code for the Acquisition By Citizens Communications Company
of All of the Stock of the Joint Applicants' Corporate Parent,
Commonwealth Telephone Enterprises, Inc.

:
:
: A-310800F0010
: A-311095F0005
: A-311225F0003
:
:

**PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE**

OCT 30 2006
11 11 30 AM '06

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Order of Administrative Law Judge Susan D. Colwell dated November 13, 2006, the Pennsylvania Office of Consumer Advocate (OCA) hereby submits this Prehearing Memorandum:

I. INTRODUCTION

On September 29, 2006, Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company (collectively, Commonwealth) filed a Joint Application with the Commission proposing that the Commission approve the acquisition of all of the stock of Commonwealth's corporate parent, Commonwealth Telephone Enterprises, by Citizens Communications Company (Citizens). The Joint Application states that the purpose of the proposed acquisition is for Citizens to grow its business. Joint Application at 12. The OCA filed a Protest and Public Statement on October 30, 2006. As discussed further below, the OCA raised a number of issues in its Protest, based on a preliminary review of the

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Joint Application, that the Commission must address before granting its approval. Several other parties also filed a Protest on October 30, 2006 in response to the Joint Application.

The Commission established a Prehearing Conference for November 29, 2006 before ALJ Colwell. ALJ Colwell issued a Prehearing Conference Order on November 13, 2006. The OCA files this Prehearing Memorandum in response to that Prehearing Conference Order.

II. ISSUES

The proposed transaction must provide substantial affirmative benefits to Pennsylvania consumers as required by law – specifically, sections 1102 and 1103 of the Public Utility Code, section 69.901 of the Commission’s regulations, 52 Pa. Code § 69.901, and other applicable precedent. *See e.g., City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972) (*York*). The Joint Applicants are a large Pennsylvania incumbent local exchange carrier (LEC) and its affiliated competitive local exchange carrier and long distance carrier.

As the OCA articulated in its Protest, given the number of Pennsylvania utility consumers served by Commonwealth, the OCA seeks to ensure that Citizens, the acquiring company, is able to meet the needs of Commonwealth’s Pennsylvania customers, and to provide substantial affirmative benefit in support of the proposed transaction. Citizens already operates five local exchange companies in Pennsylvania through its Frontier affiliate. These companies are: Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; Frontier Communications of Pennsylvania, LLC; and Frontier Communications of America. The OCA submits that the customers of those companies also may be affected by this acquisition and their interests must be considered as well.

The OCA submits that the Joint Application, as filed, does not support the conclusion that the acquisition of Commonwealth by Citizens will provide substantial, affirmative public benefits, or that it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way -- as Pennsylvania law requires for Commission approval. A “do no harm” standard is not the standard for Commission approval of utility mergers and acquisitions in Pennsylvania. Rather, Pennsylvania utilities must pass a “substantial affirmative benefits” test in order to gain the approval of such a transaction.

To ensure that the Joint Applicant meets all applicable standards, the OCA intends to investigate the following factual issues:

- Merger savings: The Joint Application does not reflect a commitment to flow through any merger savings to Pennsylvania consumers.
- Quality of Service: The Commission must require as a condition of approval of the merger that the merged company improve service quality and establish benchmarks to ensure that service quality does in fact improve.
- Employment levels: The Commission should ensure that the levels of employment for these companies in Pennsylvania are sufficient to ensure improved service quality.
- Investment levels: the merged entity must make a commitment with respect to the level of investment in Pennsylvania telecommunications infrastructure to ensure that Pennsylvania consumers receive substantial, affirmative benefits as a result of this merger.
- Competitive impact: The Commission should seek a commitment from the merged company that the transaction will not reduce competition in the provision of telecommunications services.
- Lifeline: The Commission should require the merged company to promote the availability of Lifeline discounts for all eligible customers.
- Continuation of PUC jurisdiction: The Commission should ensure that it retains jurisdiction over all relevant aspects of the merged company.

Furthermore, the OCA will also respond to whatever factual issues may be raised by other parties in this proceeding. Additionally, the OCA has already served two sets of discovery in this proceeding and may raise issues that arise in those, or future, responses.

III. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witness in this proceeding:

Dr. Robert Loube
Rhoads and Sinon, LLC
10601 Cavalier Drive
Silver Spring, Maryland 20901

Telephone Number: 301-681-0338
E-mail Address: bobloube@earthlink.net

Dr. Loube may present testimony in written form and may also attach various exhibits, documents, and explanatory information that will assist in the presentation of the OCA's case.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of this case, all parties of record will be notified.

IV. PROTECTIVE ORDER

The Companies have previously circulated a proposed Protective Order so that a consensus proposed Protective Order can be submitted to the ALJ for approval.

V. DISCOVERY RULES

The OCA does not propose any changes to the discovery regulations at this time.

VI. PROPOSED PROCEDURAL SCHEDULE

The OCA and other anticipated active parties are in discussions to develop a schedule for this proceeding so that all the different issues can be addressed. The OCA will cooperate with the ALJ and other parties in establishing a schedule for this proceeding.

VII. MISCELLANEOUS

The OCA will be represented in this case by Assistant Consumer Advocates Joel H. Cheskis and Shaun A. Sparks. The OCA requests that copies of all documents be served on the OCA as follows:

Shaun A. Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Telecopier: (717) 783-7152
E-mail: ssparks@paoca.org
jcheskis@paoca.org

The OCA is amenable to settlement discussions and will participate in whatever settlement discussions are scheduled.

Respectfully submitted,



Joel H. Cheskis
Attorney ID No. 81617
Shaun A. Sparks
Attorney ID No. 87372
Assistant Consumer Advocates

For: Irwin A. Popowsky
Consumer Advocate

Pennsylvania Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Date: November 22, 2006

91674

CERTIFICATE OF SERVICE

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company for All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F0010; A-311095F0005, and A-311225F0003

I hereby certify that I have this day served a true copy of the foregoing document, The Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of November, 2006.

SERVICE BY INTER-OFFICE MAIL

Robert V. Eckenrod, Esq.
Office of Trial Staff
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard, Esq.
Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Raymond Ostroski, Esq.
Commonwealth Telephone
Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Hilary Glassman, Esq.
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Pamela C. Polacek, Esq.
McNees Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Scott J. Rubin
3 Lost Creek Dr.
Selinsgrove, PA 17870

Jennifer A. Duane, Esq.
2001 Edmund Halley Drive, 2nd Fl.
Reston, VA 20191



Shaun A. Sparks
PA Attorney I.D.#87372
ssparks@paoca.org
Joel H. Cheskis
PA Attorney I.D.#81617
jcheskis@paoca.org
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
*91234

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

DOCUMENT
FOLDER

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025
TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816
WWW.RYANRUSSELL.COM

WYOMISSING OFFICE
SUITE 210
1150 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA
19610-1208
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – 2nd Floor
Harrisburg, PA 17120

ORIGINAL

Re: Joint Application of Commonwealth Telephone Company,
CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long
Distance Company for all approvals under the Public Utility Code
for the acquisition by Citizens Communications Company of all of
the stock of the joint applicants' corporate parent, Commonwealth
Telephone Enterprises, Inc., Docket Nos. A-310800F0010,
A-311095F0005, A-311225F0003

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Prehearing Conference Memorandum of RCN Corporation and RCN Telecom Services, Inc. in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

Matthew A. Totino

Matthew A. Totino

Enclosures
JFP/ck

c. Certificate of Service

SECRETARY'S BUREAU
2006 NOV 22 4:11:13

34

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of	:	
Commonwealth Telephone Company,	:	
CTSI, LLC, and CTE Telecom, LLC	:	A-310800F0010
d/b/a Commonwealth Long Distance Company	:	A-311095F0005
for all approvals under the Public Utility Code	:	A-311225F0003
for the acquisition by Citizens Communications	:	
Company of all of the stock of the joint applicants'	:	
corporate parent, Commonwealth Telephone	:	
Enterprises, Inc.	:	

SECRETARY'S BUREAU
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**PREHEARING CONFERENCE MEMORANDUM
 OF RCN CORPORATION AND RCN TELECOM SERVICES, INC.**

To The Honorable Susan D. Colwell:

At the request of the Presiding Officer, RCN Corporation and RCN Telecom Services, Inc. (together "RCN") submit this Prehearing Conference Memorandum for purposes of the Initial Prehearing Conference scheduled for Wednesday, November 29, 2006 at 10:00 a.m. in Hearing Room 2 of the Commonwealth Keystone Building:

I. Name and Address of Complainant's Attorneys:

Counsel of record and contacts for RCN are as follows:

John F. Povilaitis
 Matthew A. Totino
 Ryan, Russell, Ogden & Seltzer LLP
 Suite 101
 800 North Third Street
 Harrisburg, Pennsylvania 17102-2025
 Phone: (717) 236-7714
 Fax: (717) 236-7816
 JPovilaitis@RyanRussell.com
 MTotino@RyanRussell.com

Michael W. Fleming
 Brian McDermott
 WILLIAMS MULLEN
 8270 Greensboro Drive
 McLean, VA 22102
 (703) 760-5248

RCN requests that as a courtesy, parties include the above counsel on their service lists.

II. Procedural Background

RCN is one of the largest facilities-based competitive providers of bundled phone, cable and high speed Internet services delivered over its own fiber-optic local network to consumers in major markets in the U.S. One factor that distinguishes RCN from most other competitive local exchange carriers ("CLECs") is its focus on serving the residential market. RCN Telecom Services, Inc. holds a certificate of public convenience from the Commission and has extensive operations within Pennsylvania in the Lehigh Valley and the Philadelphia area. Outside Pennsylvania, RCN provides service in the Boston, New York, Washington, D.C., Chicago, and Los Angeles metropolitan markets.

Another factor that distinguishes RCN from most other CLECs is its willingness and eagerness to provide telephone service to suburban markets in competition with rural telephone companies like Commonwealth. RCN is prepared to expand into Commonwealth's market immediately in order to add telephone service to the existing package of cable television services and high-speed Internet access offered throughout its footprint in Commonwealth's service territory.¹

¹ On May 1, 2006, RCN Telecom Services, Inc. filed an Application with this Commission to expand its authority to provide competitive local exchange telephone service in the entire service territory of Commonwealth. For clarification purposes, RCN since filed several amendments to its original application. *See Application of RCN Telecom Services, Inc. for approval to Amend its Certificate of Public Convenience to offer, render, furnish, or supply telecommunications services to the public as a Competitive Local Exchange Carrier in the service territory of Commonwealth Telephone Company*, (Docket No. A-310554F0002) ("Expansion Application"). Commonwealth has filed a Protest to RCN's application. RCN also sought to expand its authority to provide competitive local exchange telephone service to the territories served by Palmerton Telephone Company and Ironton Telephone Company. Those applications are also protested, and the parties are currently in the midst of settlement negotiations in an attempt to resolve all three of the protests.

On or about September 29, 2006, Commonwealth Telephone Company ("Commonwealth"), CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance (collectively, "Commonwealth Companies") and Citizens Communications Company ("Citizens and collectively, "Joint Applicants") filed a Joint Application with the Pennsylvania Public Utility Commission ("Commission") requesting issuance of a certificate of public convenience approving a change in control of Commonwealth. Under the proposed transaction, Citizens will acquire the stock of Commonwealth Enterprises, Inc., ("CTE") the corporate parent of the Commonwealth Companies that owns and controls all of the stock of the Commonwealth Companies. Thus, under the proposed transaction, Citizens will own, indirectly, the stock of the Commonwealth Companies, and CTE will become a wholly-owned, direct subsidiary of Citizens.

On or about October 30, 2006, numerous parties filed Protests and/or Petitions to intervene, including RCN, Sprint Communications, LP, Blue Ridge Digital Phone Company, the Broadband Cable Association of Pennsylvania (collectively, "CLECs") and the statutory advocates. In its Protest, RCN opposed the proposed acquisition on the grounds that it is not in the public interest. Specifically, RCN averred that the acquisition will cause harm by giving Commonwealth, which already exercises significant market power, greater resources and greater incentive to continue to engage in the anticompetitive and discriminatory behavior that it has exhibited in RCN's CLEC Expansion Application case. RCN averred that such conduct will only be exacerbated if the Joint Application is approved as requested. As a result, RCN respectfully requested that the Commission deny the Joint Application, or in the alternative, impose conditions on its approval as recommended by RCN.

In support of their Joint Application, Joint Applicants distributed their Direct Testimony on November 10, 2006. On this same date, Joint Applicants also filed their Answer and Preliminary Objections seeking to dismiss the Protests and Petitions to Intervene filed by the CLECs.

On November 20, 2006, RCN filed its Answer to the Preliminary Objections requesting that the Commission grant RCN's Petition to Intervene and deny the Preliminary Objections filed by the Joint Applicants. In its Answer, RCN asserted that it has standing to participate in the proceeding and based its status as a certificated carrier with a pending CLEC application in the Commonwealth services territory whose ability to compete will be impacted by the proposed transaction and whose interest cannot be adequately protected by another party. In addition, RCN asserted that it pleaded with sufficient legal and factual specificity regarding the harm that will result if the Joint Application is approved as requested.

By Prehearing Notice and Prehearing Order, the Commission scheduled a prehearing conference in this matter for Wednesday, November 29, 2006 at 10:00 a.m. before Your Honor. RCN files this prehearing memorandum in accordance with the Prehearing Order.

III. Statement of Issues

To obtain a Certificate of Public Convenience, Joint Applicants must show that the Application is necessary or proper for the service, accommodation, convenience or safety of the public and that the transaction is in the public interest.² To meet this statutory standard, the proposed acquisition or transfer must be shown to affirmatively

² 66 Pa. C.S. § 1103(a).

promote the public interest,³ and the benefits and detriments of the proposed transaction will be measured under the public interest test as they impact on "all affected parties."⁴ The public interest standard is a broad standard that encompasses examining whether, for example, the proposed acquisition or transfer will have an anti-competitive effect or will impair the technical, managerial or financial fitness of the jurisdictional utilities affected to continue to provide adequate telecommunications services to Pennsylvania customers at just and reasonable rates.⁵

Therefore, the primary task of the Commission in this proceeding is to determine whether the proposed acquisition meets the *City of York* "public interest" standard, including whether the proposed transaction will have an anti-competitive effect.

In addition, in order to ensure that a proposed acquisition or transfer is in the "public interest," the Commission may impose conditions on its granting of the Certificate of Public Convenience. As specified in Section 1103(a) and related Commission precedent, the Commission in granting a certificate, "may impose such conditions as it may deem to be just and reasonable."⁶ Therefore, the Commission must also consider whether to impose any conditions upon approval of the Joint Application.

³ *City of York*, 449 Pa. 136, 295 A.2d 825.

⁴ *Middletown Township v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlth. Ct. 1984).

⁵ See *Joint Application of SBC Communications, Inc. and AT&T Corp.*, A-311163F0006, et al. (October 6, 2005) at 28.

⁶ 66 Pa. C.S. § 1103(a); See *Application for Authority to Transfer Control of Trigen-Philadelphia Energy Corporation*, A-130375F5000 (April 7, 2005) at 5. See generally *Joint Application of Verizon Communications Inc., and MCI, Inc., MCI Metro Access Transmission Services LLC MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., TTI National, Inc., Teleconnect Long Distance Services and System Co. d/b/a Telecom USA for approval of Agreement and Plan of Merger*, Docket Nos. A-310580F0009, A-310752F0006, A-310364F0003, A-312025F0005, A-310407F0003, A-310401F0006 (Dec. 15, 2005).

IV. Proposed Procedural Schedule

RCN is willing to work with the Presiding Officer and the other parties in the proceeding to establish a reasonable procedural schedule, including a reasonable discovery schedule.

V. Proposed Witnesses

RCN anticipates that it will present a witness(es) to address the competitive impact of the proposed acquisition as well as any other issues raised in the Joint Application. The specific identity of the witness(es) is not known at this time.

Dated: November 22, 2006

Respectfully submitted,



John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
Email: JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

Michael W. Fleming
Brian McDermott
WILLIAMS MULLEN
8270 Greensboro Drive
McLean, VA 22102
(703) 760-5248

Attorneys for RCN Corporation and RCN Telecom
Services, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of :
Commonwealth Telephone Company, :
CTSI, LLC, and CTE Telecom, LLC : A-310800F0010
d/b/a Commonwealth Long Distance Company : A-311095F0005
for all approvals under the Public Utility Code : A-311225F0003
for the acquisition by Citizens Communications :
Company of all of the stock of the joint applicants' :
corporate parent, Commonwealth Telephone :
Enterprises, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA FIRST CLASS and ELECTRONIC MAIL

Norman J. Kennard, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101
Phone: (717) 236-1300
Fax: (717) 236-4841
[njkenard@hmsk-law.com](mailto:njkennard@hmsk-law.com)
lsharris@hmsk-law.com

Lauren M. Lepkoski, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
Phone: (717) 783-2525
Fax: (717) 783-2831
llepskoski@state.pa.us

Robert V. Eckenrod, Esquire
PA Public Utility Commission
400 North Street, 2nd Floor
Commonwealth Keystone Building
Harrisburg, PA 17120
Phone: (717) 783-6155
Fax: (717) 772-2677
roeckenrod@state.pa.us

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870
Phone: (570) 743-8145
Fax: (570) 743-8145
Email: scott@publicutilityhome.com
Michael W. Fleming

Brian McDermott
WILLIAMS MULLEN
8270 Greensboro Drive
McLean, VA 22102
Phone: (703) 760-5248
Fax: (703) 748-0244
mflaming@williamsmullen.com

Shaun Sparks, Esquire
Joel Cheskis, Esquire
Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor
Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
ssparks@paoca.org
jcheskis@paoca.org

Joseph Kahl
Sr. Director, Regulatory and External Affairs
RCN Corporation
1849 Butler Street
Easton, PA 18042
Phone: (610) 438-0119
Fax: (610) 438-0133
joseph.kahl@rcn.net

SECRETARY'S BUREAU

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Jennifer A. Duane, Esquire
Sprint Communications Company L.P.
2001 Edmund Halley Drive, 2nd Floor
Reston, Virginia 20191
Phone: (703) 592-7791
Fax: (703) 592-7404
Jennifer.a.duane@sprint.com

Raymond Ostroski, Esquire
Commonwealth Telephone Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612
Phone: (570) 631-2802
Fax: (570) 631-2895
ravo@epix.net

Lillian S. Harris, Esquire
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street
Harrisburg, PA 17105
Phone: (717) 236-1300
Fax: (717) 236-4841
Lsharris@hmsk-law.com

Hilary Glassman, Esquire
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905
Phone: (203) 614-5047
Fax: (203) 614-4651

Pamela C. Polacek, Esquire
Adam L. Benshoff
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108
Phone: (717) 232-8000
Email: ppolacek@mwn.com
abenshoff@mwn.com

November 22 2006



John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

DOCUMENT
FOLDER

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

November 22, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17105-3265

ORIGINAL

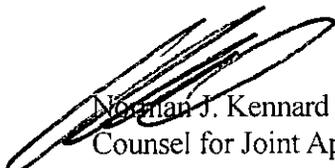
Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under The Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003; **PREHEARING MEMORANDUM OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH LONG DISTANCE COMPANY AND CITIZENS COMMUNICATIONS COMPANY**

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Prehearing Memorandum of Commonwealth Telephone Company, CTSI, LLC, CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Regards,


Norman J. Kennard
Counsel for Joint Applicants

NJK/ajt

cc: Honorable Susan D. Colwell (via hand delivery)
Per Certificate of Service

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SECRETARY'S BUREAU

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	A-310800F0010
CTSI, LLC, and	:	A-311095F0005
CTE Telecom, LLC d/b/a Commonwealth Long Distance Company	:	A-311225F0003
	:	
For All Approvals Under The Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.	:	

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**PREHEARING CONFERENCE MEMORANDUM OF
COMMONWEALTH TELEPHONE COMPANY,
CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH
LONG DISTANCE COMPANY AND
CITIZENS COMMUNICATIONS COMPANY**

Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD"), (hereinafter collectively referred to as the "Applicants" or "Joint Applicants") and Citizens Communications Company ("Citizens") hereby jointly file this Prehearing Conference Memorandum and, in support thereof, represent as follows:

PROCEDURAL BACKGROUND

On September 17, 2006, an Agreement and Plan of Merger ("Merger Agreement") was signed pursuant to which Citizens will acquire the stock of Commonwealth Telephone Enterprises, Inc. ("CTE") and, indirectly, the stock of Applicants. CTE owns and controls all of the outstanding

common stock of CTCo. In turn, CTCo owns and controls all of the stock of CTSI and CLD. That is, pursuant to the Merger Agreement, the Joint Applicants' corporate parent, CTE, will become a wholly-owned, direct subsidiary of Citizens.

The Joint Applicants filed an Application requesting the issuance of a certificate of public convenience on September 29, 2006. Commission approval is required under a Policy Statement applying the certification requirements of 66 Pa. C.S. §1102(a)(3) where a stock transaction or series of stock transactions results in a change of control of a public utility regardless of ownership tier. Copies were directly served upon the OCA, OSBA and OTS.

The Commission published notice of the Joint Application by the CTE Companies in the *Pennsylvania Bulletin* on October 14, 2006 (36 Pa. B. 6355), which required protests and petitions to intervene to be filed on or before October 30, 2006.

The OCA, OSBA and OTS ("Statutory Parties") are parties to this case. The OCA and OSBA filed protests on October 30, 2006. The OTS filed an Entry of Appearance on November 2, 2006. The Communications Workers of America ("CWA"), Blue Ridge Digital Phone Company ("Blue Ridge"), Sprint Communications Company LP ("Sprint"), the Broadband Cable Association of Pennsylvania ("BCAP") and RCN Corporation and RCN Telecom Services, Inc. ("RCN") have filed protests and/or interventions to the Joint Application. Citizens also filed a Petition to Intervene on October 30, 2006.

In support of the Application, the Joint Applicants and Citizens distributed Direct Testimony to the parties on November 10, 2006.

On November 10, 2006, the Joint Applicants and Citizens filed Joint Answers and Preliminary Objections addressed to the Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company LP, The Broadband Cable Association of Pennsylvania, RCN

Corporation, and RCN Telecom Services, Inc (“CLECs”). Answers were filed by the CLECs on November 20, 2006 and the matter is pending before Your Honor.

Also on November 10, 2006, the Joint Applicants and Citizens filed Preliminary Objections seeking dismissal of portions of CWA’s Protest and to limit the participation of CWA to issues that CWA has standing to raise. An answer was filed by CWA on November 20, 2006 and the matter is pending before Your Honor.

On November 20, 2006, the Joint Applicants submitted a letter stating that they do not oppose the participation of the OCA, OSBA and OTS.

On November 13, 2006, Your Honor issued a Prehearing Conference Order, which reviewed various procedural issues related to this proceeding and asked that each party distribute, at least three business days prior to the prehearing conference, a prehearing memorandum.

ISSUES

The applicable legal standard in this proceeding is whether approval of the proposed transaction is “necessary and proper for the service, accommodation, convenience and safety of the public.”¹ Moreover, the transaction must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.”²

The “necessary or proper” standard generally requires a showing of inadequacy of existing service, public need, and fitness to provide service.³ Here, the parties need not demonstrate inadequacy of existing service or public need for service because an existing utility operation exists.⁴

¹ 66 Pa. C.S. § 1103.

² *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. Supreme 1972).

³ *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762 (Pa. Cmwlth. 1985).

⁴ *Re Glenn Yeager, et al.*, 49 Pa. PUC 138 (1975) (continuing public need presumed where public utility service is already being provided in the service territory subject to the application).

Under Sections 1102 and 1103 of the Public Utility Code (“Code”);⁵ the Joint Applicants need only show that the party to whom the control of CTE is being transferred is legally, technically, and financially fit.⁶

Where, as here, Citizens is presently operating entities already certificated by the Commission to provide similar telecommunications services to the public, Citizens is presumed to be technically, financially and legal fit to provide the proposed service.⁷

In addition to the traditional fitness requirements, the Pennsylvania Supreme Court has determined that Section 1103 of the Code requires that applicants proposing mergers and acquisitions demonstrate that the transaction “will affirmatively promote the ‘service, accommodation, convenience, or safety of the public in some substantial way.’”⁸ This burden to prove “affirmative benefits” has been applied by the Commission and upheld by the courts in various consolidation and merger application cases since the *City of York* decision.⁹

In order to show affirmative benefits, the Joint Applicants must demonstrate that there are substantial public benefits that will result from the transaction and that those benefits outweigh any detriments that may consequently result.¹⁰ The standard does not require the Commission to disallow a transaction that might be detrimental to one particular party or another; rather, the Commission must

⁵ 66 Pa. C.S. §§ 1102 and 1103.

⁶ *Seaboard Tank Lines*, 502 A.2d at 764; *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

⁷ *South Hills Movers, Inc. v. Pennsylvania Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

⁸ *City of York*, *supra* (quoting 66 Pa. C.S. § 1103(a)). In *City of York*, the Supreme Court rejected the prior standard for approval of mergers whereby a merger had to be approved *unless* it was established that there would be some substantial public detriment. *City of York*, 295 A.2d at 828 (reversing *Northern Pa. Power Co. v. Pa. Pub. Util. Comm’n*, 5 A.2d 133 (Pa. 1939)).

⁹ See, e.g., *Re Verizon Communications, Inc.*, Docket No. A-310580F0009, 2006 WL 995853 at 11 (Pa. P.U.C.) (January 11, 2006); *Joint Application of PECO Energy Co. and Public Service Enterprise Group, Inc. with and into Exelon Corp.*, 2006 WL 559274 (Pa. P.U.C.) (February 1, 2006); *ARIPPA v. Pa. Pub. Util. Comm’n*, 792 A.2d 636, 655 (Pa. Cmwlth. 2002).

¹⁰ *Middletown Township v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984); *Re GPU, Inc.*, 96 Pa. P.U.C. 1, 14 (2001).

weigh and measure how the benefits and detriments “impact on all affected parties.” If the public benefits outweigh any detriments, the application should be approved.¹¹

Examples of substantial affirmative benefits that the Commission has accepted as satisfying the standard in *City of York* include: statements that economies of scale will occur in administrative, employee, executive and insurance areas; greater bargaining position for obtaining capital; improved labor market conditions; corporate structure and size more likely to attract investors; improved service, simplified relationships with other businesses and government agencies; and improved administration of tariffs and simplification of regulatory matters.¹² The affirmative benefit standard is a broad standard that does not require specific quantification of synergy savings.¹³

Section 1103 also authorizes the Commission to impose “just and reasonable” conditions upon the approval of an application; however, such power is not without limit. Any conditions imposed must be supported by substantial evidence, based upon matters within the Commission’s statutory jurisdiction, and cannot be unreasonably broad or vague.¹⁴

¹¹ *Id.* If the Section 1103 standard required rejection of an asset acquisition, consolidation, merger or change in control simply because there was some detriment to any party that could result, then such transactions would never be approved because there are always both benefits and detriments to any change in the status quo. When the *overall* affirmative public benefits outweigh any possible detriments, the standard has been met; any other conclusion is simply unrealistic and unachievable. As the Commission noted in *Re GPU, Inc.*, the 2001 merger between GPU and FirstEnergy, if the risks posed by possible detriments of the transaction are significant, which they are not here, the Commission can impose conditions on the approval of the merger so that said “risks do not outweigh the merger benefits.” *Re GPU, Inc.*, 96 Pa. PUC at 7.

¹² *City of York*, 295 A.2d at 828-29; *See also, Re PG Energy, supra* (substantial affirmative benefits included: more stable and financially robust company, economies through consolidation of certain public company functions and purchasing practices, enhanced ability to raise and attract capital, diversification of risk associated with smaller service area’s weather and economic conditions).

¹³ *Re SBC Communications, Inc.*, 2005 WL 2901682 at 14 (Pa. P.U.C.) (October 6, 2005); *Re Verizon Communications, Inc.*, 2006 WL 995853 at 11. There are many examples of asset acquisition or merger cases in which the Commission did not require quantification of affirmative benefits. *See, e.g., Application of Newtown Artesian Water Co. and Indian Rock Water Co.*, 76 Pa. P.U.C. 260 (1992) *Re PG Energy*, 1999 WL 1036580 (Pa. P.U.C.) (September 15, 1999); *Re Pennsylvania American Water Co.*, 97 Pa. P.U.C. 314 (2000). Indeed, the subjects of quantification of savings and pass-through of those savings to customers are more appropriately addressed in rate proceedings subsequent to application approval proceedings. *See Application of Newtown Artesian Water Co.*, *supra*; *Re PG Energy, supra*.

¹⁴ *Western Pa. Water Co. v. Pa. Pub. Util. Comm’n*, 311 A.2d 370 (1973) (condition imposed by Commission upon approval of water service application was not just and reasonable because it attempted to require action by the utility that was not within Commission’s jurisdiction to order unilaterally and was not based upon sufficient record evidence).

The Joint Application filed on September 29, 2006 and the Direct Testimony submitted on November 10, 2006 both discuss how the proposed transaction meets these applicable legal standards.

EVIDENCE

The Joint Applicants and Citizens have previously distributed the Direct Testimony of:

- Scott Burnside, Senior Vice President of Regulatory Affairs for Commonwealth Telephone Enterprises, Inc.; and
- Daniel McCarthy, Executive Vice President and Chief Operating Officer of Citizens Communications Company.

The Joint Applicants and Citizens reserve the right to call additional witnesses during the subsequent phases of this proceeding.

It is expected that the evidence presented will consist of the Application, testimony, exhibits produced with testimony, interrogatory responses and other documents, which will be identified as this case progresses.

DISCOVERY RULES

Discovery is proceeding in this matter. OSBA Set I has been answered. Answers to OCA Set I will be distributed shortly. The Joint Applicants are discussing the scope and burden of two OCA interrogatories in OCA Set I and hope to mutually resolve the matter. Objections are otherwise due to OCA Set I on November 28, 2006.

The Commission's Rules require that interrogatories be answered within twenty (20) days and objections be set forth within ten (10) days. The Joint Applicants and Citizens propose that, after the submission of the Protestants/Interventors Direct Testimony, the discovery time frames be reduced to five (5) business days for objections and ten (10) days for answers to discovery for the remainder of

the case. The Joint Applicants and Citizens also propose that electronic email service be established for all documents served in the case, including discovery, and that, where discovery is served after noon on a Friday, that the time for objections and answers will commence to run on the following Monday.

PROTECTIVE AGREEMENT

The Joint Applicants and Citizens have previously distributed to the parties a draft Protective Order, which will be filed shortly with Your Honor.

POSSIBILITIES FOR SETTLEMENT

Joint Applicants and Citizens are open to settlement discussions with all participants and are prepared to undertake such an effort at any time. The Joint Applicants and Citizens suggest that the parties set aside time after the November 29, 2006 Prehearing Conference to explore the issues and potential resolution.

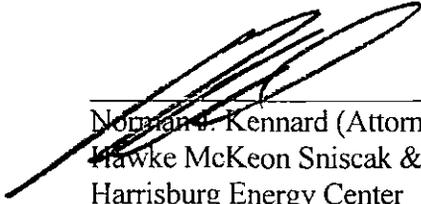
In response to Your Honor's request that a fixed date be established for settlement discussions, it is suggested that, once the Protestants/Intervenors file their testimony and their positions and supportive evidence are formally disclosed, this might be a particularly opportune time to diligently pursue settlement. Therefore, the proposed schedule establishes dates for settlement discussions at that time.

PROCEDURAL SCHEDULE

The Joint Applicants and Citizens have previously distributed to the parties a proposed schedule for this proceeding and are attempting to arrive at a stipulated schedule with the parties.

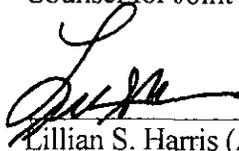
A copy of the proposed schedule is attached. The Joint Applicants and Citizens will be prepared to discuss the schedule further at the Prehearing Conference.

Respectfully submitted,



Norman J. Kennard (Attorney I.D. 29921)
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: (717) 236-1300
Facsimile: (717) 236-4841
[njkenard@hmsk-law.com](mailto:njkennard@hmsk-law.com)

Counsel for Joint Applicants



Lillian S. Harris (Attorney I.D. 50888)
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: (717) 236-1300
Facsimile: (717) 236-4841
lharris@hmsk-law.com

Counsel for Citizens Communications Company

DATED: November 22, 2006

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CTE/CITIZENS APPLICATION CASE SCHEDULE

Schedule:

<u>Event</u>	<u>Date</u>
• Application Filed	9/29/06
• Application Published (PA Bulletin)	10/14/06
• Protests Due	10/30/06
• CTE/Citizens Testimony Filed	11/10/06
• Prehearing Conference	11/29/06
• Protestant Testimony Due	1/3/07 (53 days from Applicant Testimony)
• Settlement Discussions	Weeks of 1/8 and 1/15/07
• CTE/Citizens Rebuttal	1/15/07 (12 days from Protestant testimony)
• Protestant's Surrebuttal Outline	1/29/07
• Hearings	February 1-2 (3 day transcripts)
• Briefs and Reply Briefs	2/23/07 and 3/9/07
• ALJ Decision	3/30/07 (21 days after Reply Briefs)

Other:

1. Settlement discussion can occur at any time, but parties to make concerted effort during time frame after Protestant/Intervenor testimony filed.
2. 5 calendar day turn around on discovery answers after 1/3/07 (2 days for objections), one day additional when served on a Friday after 2 pm. Applicants will serve discovery on Protestants/Intervenors on 1/5/07 before 2 pm with answers due on or before 1/11/07. Follow-up discovery expressly allowed.
3. Electronic service (e-mail) followed by 1st class mail.
4. Oral rejoinder permitted.
5. 3 day transcripts will be ordered.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

By First Class Mail

Joel H. Cheskis
Shaun A. Sparks
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1921

Johnnie E. Simms
Robert V. Eckenrod
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Pamela C. Polacek
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

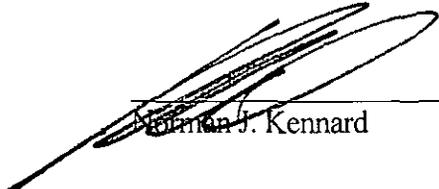
Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870

Hilary Glassman
Citizens Communications Co.
3 High Ridge Park
Stamford, CT 06905

Raymond Ostroski
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer, LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Jennifer A. Duane
Sprint Nextel
2001 Edmund Halley Drive
Second Floor
Reston, VA 20191


Norman J. Kennard

Dated this 22nd day of November, 2006

SECRETARY'S BUREAU

2006 NOV 22 PM 1:28



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

SECRETARY'S BUREAU

2006 NOV 22 PM 4:11

RE: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

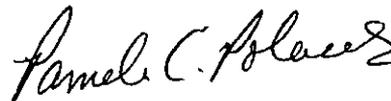
Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Prehearing Memorandum of Blue Ridge Digital Phone Company in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the Prehearing Memorandum, and kindly return them for our filing purposes. Thank you.

DOCUMENT
FOLDER

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to Blue Ridge
Digital Phone Company

PCP/nk

Enclosures

c: Certificate of Service
Honorable Susan D. Colwell (via e-mail and hand delivery)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

2006 NOV 22 PM 4:11
SECRETARY'S BUREAU

VIA E-MAIL AND FIRST CLASS MAIL

Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Joel Cheskis, Esq.
Shaun Sparks, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, PA 17101

Lauren M. Lepkoski, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Johnnie Simms, Esq.
Robert Eckenrod, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

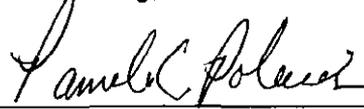
Jennifer A. Duane, Esq.
Sprint Nextel
2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

Raymond Ostroski, Esq.
Sr. V. P, General Counsel and Secretary
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Sr. V.P. and General Counsel
Citizens Communications Company
3 High Ridge Park
Stamford, CT 06905

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John F. Povilaitis, Esq.
Ryan, Russell, Odgen & Seltzer, L.P.
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025



Pamela C. Polacek

Counsel to Blue Ridge Digital
Phone Company

Dated this 22nd day November, 2006, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2006/11/22 PM 4:11
SECRETARY'S BUREAU

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC and	:	
CTE Telecom, LLC d/b/a Commonwealth	:	A-310800F0010
Long Distance Company For All Approvals	:	Docket Nos.: A-311095F0005
Under the Public Utility Code for the	:	A-311225F0003
Acquisition By Citizens Communications	:	
Company of All Stock of the Joint	:	
Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**PREHEARING MEMORANDUM OF
BLUE RIDGE DIGITAL PHONE COMPANY**

In accordance with the Prehearing Conference Order issued on November 13, 2006, Blue Ridge Digital Phone Company ("Blue Ridge") hereby submits this Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On September 29, 2006, Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC ("CLD") (collectively, "Joint Applicants") filed a Joint Application with the Pennsylvania Public Utility Commission ("PUC" or "Commission") seeking approval by the Commission for the proposed acquisition by Citizens Communication Company ("Citizens") of the Companies' parent, Commonwealth Telephone Enterprises, Inc. ("CTE"). Blue Ridge filed a Protest and Petition to Intervene on October 30, 2006. On November 10, 2006, the Joint Applicants filed Joint Answers and Preliminary Objections seeking to dismiss Blue Ridge's Protest and Petition to Intervene, to which Blue Ridge submitted its Answer on November 20, 2006. These filings remain outstanding and await disposition.

A description of Blue Ridge is set forth in Paragraph 1 of the Protest and Petition to Intervene. Blue Ridge has provisional Competitive Local Exchange Carrier ("CLEC") authority in the Verizon Pennsylvania, Inc., and Verizon North, Inc., territories and has an application pending for CLEC authority in the CTCO territory requesting authorization as a facilities-based carrier. CTCO has protested Blue Ridge's application.

II. ANTICIPATED ISSUES AND SUBISSUES

Blue Ridge is in the process of analyzing the filing; as a preliminary matter, however, Blue Ridge submits that the proceeding should address the following issues:

- a) Whether the proposed acquisition provides affirmative public benefits to satisfy the City of York standard, particularly as it pertains to the Joint Applicants' claims of enhanced competition and fair treatment of CLECs resulting from the transaction. See City of York v. Pennsylvania Public Utility Commission, 295 A.2d 825, 828 (Pa. 1972).
- b) Whether the proposed acquisition may produce or perpetuate an anti-competitive environment that will continue to block or impair Blue Ridge's efforts to introduce competitive service in the CTCO territory.
- c) Whether conditions should be placed on any approval of this proposed acquisition to create public benefits and/or ensure that the claimed benefits are achieved.

Blue Ridge reserves the right to expand this list based on its further analysis of the filing, discovery and issues raised by other parties.

III. PROPOSED WITNESSES

Blue Ridge's witness list is currently under development. In the event that Blue Ridge decides to sponsor testimony, it will inform the parties and the ALJ as soon as possible of the intended witness and topics of the testimony. Blue Ridge further reserves the right to participate in this proceeding through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs, exceptions and reply exceptions, if necessary.

IV. PROPOSED SCHEDULE AND DISCOVERY RULES

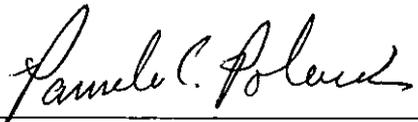
Attached to this memorandum is a proposed schedule for this proceeding. Blue Ridge will work with the parties to consider modifications to the Commission's standard discovery rules.

V. SETTLEMENT

Blue Ridge is willing to engage in settlement discussion to attempt to resolve this proceeding.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By  _____

Pamela C. Polacek, I.D. 78276
Adam L. Benshoff, I.D. 200498
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
717-232-8000
717-237-5300 (fax)

Counsel for Blue Ridge Digital Phone Company

Dated: November 22, 2006

**BLUE RIDGE DIGITAL PHONE COMPANY
PROPOSED SCHEDULE**

Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003

<u>Activity</u>	<u>Date</u>
Application Filed	9/29/06
Application Published	10/14/06
Protests Due	10/30/06
Joint Applicants' Prepared Direct Testimony	11/10/06
Other Parties' Prepared Direct Testimony	1/10/07
Joint Applicants' Rebuttal Testimony	2/13/07
Other Parties' Surrebuttal Testimony	3/13/07
Outline of Oral Rejoinder (if any)	3/19/07 (by noon)
Hearings	3/20-22/07
Main Briefs	4/30/07
Reply Briefs	5/14/07



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

2006 NOV 22 PM 4:02
SECRETARY'S BUREAU

RE: Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communication Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.; Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Prehearing Memorandum of the Broadband Cable Association of Pennsylvania ("BCAP") in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the Prehearing Memorandum, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

DOCUMENT
FOLDER

Counsel to the Broadband Cable
Association of Pennsylvania

PCP/nk

Enclosures

c: Certificate of Service
Honorable Susan D. Colwell (via e-mail and hand delivery)

67

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

2006-11-22 PM 4:02
SECRETARY'S BUREAU

VIA E-MAIL AND FIRST CLASS MAIL

Lillian S. Harris, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

Joel Cheskis, Esq.
Shaun Sparks, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
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Suite 1102, Commerce Building
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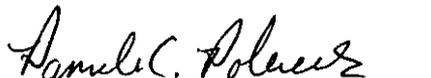
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2001 Edmund Halley Drive, 2nd Floor
Reston, VA 20191

Raymond Ostroski, Esq.
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Dallas, PA 18612

Hilary Glassman, Esq.
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Citizens Communications Company
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Stamford, CT 06905

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John F. Povilaitis, Esq.
Ryan, Russell, Odgen & Seltzer, L.P.
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025



Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

Dated this 22nd day November, 2006, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2006 NOV 22 PM 4: 02
SECRETARY'S BUREAU

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC and	:	
CTE Telecom, LLC d/b/a Commonwealth	:	A-310800F0010
Long Distance Company For All Approvals	:	Docket Nos.: A-311095F0005
Under the Public Utility Code for the	:	A-311225F0003
Acquisition By Citizens Communications	:	
Company of All Stock of the Joint	:	
Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**PREHEARING MEMORANDUM OF
THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA**

In accordance with the Prehearing Conference Order issued on November 13, 2006, the Broadband Cable Association of Pennsylvania ("BCAP") hereby submits this Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On September 29, 2006, Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC ("CLD") (collectively, "Joint Applicants") filed a Joint Application with the Pennsylvania Public Utility Commission ("PUC" or "Commission") seeking approval by the Commission for the proposed acquisition by Citizens Communication Company ("Citizens") of the Companies' parent, Commonwealth Telephone Enterprises, Inc. ("CTE"). BCAP subsequently filed a Protest and Petition to Intervene on October 30, 2006. On November 10, 2006, the Joint Applicants filed Joint Answers and Preliminary Objections seeking to dismiss BCAP's Protest and Petition to Intervene, to which BCAP submitted its Answer on November 20, 2006. These filings remain outstanding and await disposition.

BCAP is the statewide trade association of cable operators. Collectively, BCAP's members provide video service to over 3.8 million homes in Pennsylvania. BCAP members also are introducing innovative IP-enabled voice services and other services using cable networks throughout the Commonwealth of Pennsylvania. Affiliates of some BCAP members have filed with the PUC to obtain Competitive Local Exchange Carrier ("CLEC") authorization in the CTCo territory to provide competitive voice service alternatives to customers.

II. ANTICIPATED ISSUES AND SUBISSUES

BCAP is in the process of analyzing the Joint Application and reserves the right to raise all relevant issues and arguments in this matter. At this time, BCAP preliminarily submits that this proceeding should address the following issues:

- a) Does the proposed acquisition provide sufficient public benefits to satisfy the City of York standard? See City of York v. Pennsylvania Public Utility Commission, 295 A.2d 825, 828 (Pa. 1972).
- b) Do CTCo's actions in opposing CLEC certifications in its territory constitute an anti-competitive pattern of conduct that indicates potential future risk to competition that may result from approval of this acquisition?
- c) What impact will the proposed transaction have on competing service providers that are in, or planning to enter, the territories of CTSI, CTCo, and other potential affiliates?
- d) Should the Commission impose conditions on any approval of the proposed acquisition, including, but not limited to removal of the Joint Applicants' rural exemption/suspension and/or requirements for the Joint Applicants to interconnect and exchange traffic to facilitate the introduction of interconnected IP-enabled voice services in the Joint Applicants' territories?

III. PROPOSED WITNESSES

BCAP's witness list is currently under development. In the event that BCAP decides to sponsor testimony, it will inform the parties and the ALJ as soon as possible of the intended witness and topics of the testimony. BCAP further reserves the right to participate in this proceeding through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs, exceptions and reply exceptions, if necessary.

IV. PROPOSED SCHEDULE AND DISCOVERY RULES

BCAP supports the proposed schedule attached to the Blue Ridge Digital Phone Company Prehearing Memorandum. BCAP will cooperate with the parties to develop appropriate discovery rules for this proceeding.

V. SETTLEMENT

BCAP is willing to discuss settlement of this proceeding to address the issues identified in Section II of this Prehearing Memorandum.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek, I.D. 78276
Adam L. Benschhoff, I.D. 200498
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
717-232-8000
717-237-5300 (fax)

Counsel for the Broadband Cable Association of
Pennsylvania

Dated: November 22, 2006

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025
TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816
WWW.RYANRUSSELL.COM

WYOMISSING OFFICE
SUITE 210
1150 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA
19610-1208
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - 2nd Floor
Harrisburg, PA 17120

ORIGINAL

Re: Joint Application of Commonwealth Telephone Company,
CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long
Distance Company for all approvals under the Public Utility Code
for the acquisition by Citizens Communications Company of all of
the stock of the joint applicants' corporate parent, Commonwealth
Telephone Enterprises, Inc., Docket Nos. A-310800F0010,
A-311095F0005, A-311225F0003

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Prehearing Conference Memorandum of RCN Corporation and RCN Telecom Services, Inc. in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

DOCUMENT
FOLDER

Very truly yours,

Matthew A. Totino

Matthew A. Totino

Enclosures
JFP/ck

c. Certificate of Service

OFFICE SERVICES
NOV 22 2006

34

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of	:	
Commonwealth Telephone Company,	:	
CTSI, LLC, and CTE Telecom, LLC	:	A-310800F0010
d/b/a Commonwealth Long Distance Company	:	A-311095F0005
for all approvals under the Public Utility Code	:	A-311225F0003
for the acquisition by Citizens Communications	:	
Company of all of the stock of the joint applicants'	:	
corporate parent, Commonwealth Telephone	:	
Enterprises, Inc.	:	

RECEIVED
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SECRETARY'S OFFICE

**PREHEARING CONFERENCE MEMORANDUM
OF RCN CORPORATION AND RCN TELECOM SERVICES, INC.**

To The Honorable Susan D. Colwell:

At the request of the Presiding Officer, RCN Corporation and RCN Telecom Services, Inc. (together "RCN") submit this Prehearing Conference Memorandum for purposes of the Initial Prehearing Conference scheduled for Wednesday, November 29, 2006 at 10:00 a.m. in Hearing Room 2 of the Commonwealth Keystone Building:

I. Name and Address of Complainant's Attorneys:

Counsel of record and contacts for RCN are as follows:

John F. Povilaitis
 Matthew A. Totino
 Ryan, Russell, Ogden & Seltzer LLP
 Suite 101
 800 North Third Street
 Harrisburg, Pennsylvania 17102-2025
 Phone: (717) 236-7714
 Fax: (717) 236-7816
 JPovilaitis@RyanRussell.com
 MTotino@RyanRussell.com

Michael W. Fleming
 Brian McDermott
 WILLIAMS MULLEN
 8270 Greensboro Drive
 McLean, VA 22102
 (703) 760-5248

RCN requests that as a courtesy, parties include the above counsel on their service lists.

DOCUMENT
FOLDER

DOCKETED
NOV 30 2006

Hawke
 Mckeon
 Sniscak &
 Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

November 22, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17105-3265

ORIGINAL

Re: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under The Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003; **PREHEARING MEMORANDUM OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH LONG DISTANCE COMPANY AND CITIZENS COMMUNICATIONS COMPANY**

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Prehearing Memorandum of Commonwealth Telephone Company, CTSI, LLC, CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

DOCUMENT
FOLDER

Regards,


Norman J. Kennard
Counsel for Joint Applicants

NJK/ajt

cc: Honorable Susan D. Colwell (via hand delivery)
Per Certificate of Service

SECRETARY'S BUREAU
2006 NOV 22 PM 1:26

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

70

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	A-310800F0010
CTSI, LLC, and	:	A-311095F0005
CTE Telecom, LLC d/b/a Commonwealth	:	A-311225F0003
Long Distance Company	:	
	:	
For All Approvals Under The Public Utility	:	
Code for the Acquisition By Citizens	:	
Communications Company of All of the Stock	:	
of the Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

SECRETARY'S BUREAU

NOV 22 PM 1:28

**PREHEARING CONFERENCE MEMORANDUM OF
COMMONWEALTH TELEPHONE COMPANY,
CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH
LONG DISTANCE COMPANY AND
CITIZENS COMMUNICATIONS COMPANY**

Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD"), (hereinafter collectively referred to as the "Applicants" or "Joint Applicants") and Citizens Communications Company ("Citizens") hereby jointly file this Prehearing Conference Memorandum and, in support thereof, represent as follows:

PROCEDURAL BACKGROUND

On September 17, 2006, an Agreement and Plan of Merger ("Merger Agreement") was signed pursuant to which Citizens will acquire the stock of Commonwealth Telephone Enterprises, Inc. ("CTE") and, indirectly, the stock of Applicants. CTE owns and controls all of the outstanding

**DOCUMENT
FOLDER**

DOCKETED
NOV 30 2006



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

November 22, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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SECRETARY'S BUREAU
PA PUC

RE: Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos.: A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Prehearing Memorandum of Blue Ridge Digital Phone Company in the above-referenced dockets.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copies of this transmittal letter and the Prehearing Memorandum, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

**DOCUMENT
FOLDER**

DOCKETED
NOV 30 2006

Counsel to Blue Ridge
Digital Phone Company

PCP/nk
Enclosures

c: Certificate of Service
Honorable Susan D. Colwell (via e-mail and hand delivery)

CERTIFICATE OF SERVICE

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I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Hawke McKeon Sniscak & Kennard LLP
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P.O. Box 1778
Harrisburg, PA 17105

Norman J. Kennard, Esq.
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Shaun Sparks, Esq.
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Lauren M. Lepkoski, Esq.
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Sr. V. P, General Counsel and Secretary
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100 CTE Drive
Dallas, PA 18612

Hilary Glassman, Esq.
Sr. V.P. and General Counsel
Citizens Communications Company
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Stamford, CT 06905

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Selinsgrove, PA 17870

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Suite 101
800 North Third Street
Harrisburg, PA 17102-2025



Pamela C. Polacek

Counsel to Blue Ridge Digital
Phone Company

Dated this 22nd day November, 2006, in Harrisburg, Pennsylvania.

Sprint



Together with NEXTEL

Sprint Nextel

2001 Edmund Halley Drive, Second Floor

Reston, Virginia 20191

Mailstop: VARESP0201-A208

Office: (703) 592-7781 Fax: (703) 592-7404

Jennifer A. Duane

Attorney, State Regulatory/Northeast

Jennifer.a.duane@sprint.com

ORIGINAL

November 24, 2006

VIA OVERNIGHT MAIL

**DOCUMENT
FOLDER**

RECEIVED

NOV 24 2006

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Joint Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code For the Acquisition by Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.
Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Dear Secretary McNulty:

I enclose for filing in the above-referenced docket an original and three (3) copies of the Prehearing Memorandum of Sprint Communications Company L.P. ("Sprint"). All parties have been served in accordance with the attached Certificate of Service.

Please return a filed-stamped copy of this letter in the enclosed self-addressed, postage-prepaid envelope. If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Jennifer A. Duane

Enclosure

cc: Susan D. Colwell, Administrative Law Judge (via electronic and regular mail)
Parties on the attached Certificate of Service (via electronic and regular mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DOCKETED
NOV 30 2006

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	
CTSI, LLC, and	:	A-310800F0010
CTE Telecom, LLC d/b/a Commonwealth:	:	A-311095F0005
Long Distance Company	:	A-311225F0003
	:	
For All Approvals Under the Public	:	
Utility Code for the Acquisition by	:	
Citizens Communications Company of	:	
All of the Stock of the Joint Applicant's	:	
Corporate Parent, Commonwealth	:	
Telephone Enterprises, Inc.	:	

RECEIVED

NOV 24 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**DOCUMENT
FOLDER**

**PREHEARING MEMORANDUM OF
SPRINT COMMUNICATIONS COMPANY L.P.**

Pursuant to 52 Pa. Code § 5.222(d) and in accordance with the Prehearing Order issued by Judge Colwell on November 13, 2006,¹ Sprint Communications Company L.P. ("Sprint") hereby files its Prehearing Memorandum in the above-captioned proceeding.

I. INTRODUCTION AND BACKGROUND

On September 29, 2006 Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI") and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD") (collectively the "Joint Applicants") filed an Application with the Pennsylvania Public Utility Commission ("Commission") seeking approval for their proposed acquisition by Citizens Communications Company ("Citizens") under § 1102 of the Public Utility Code² and §

¹ While Sprint received a copy of the Prehearing Notice advising of the scheduling of a Prehearing Conference for Wednesday, November 29, 2006, it did not receive a copy of the Prehearing Order that apparently directed the filing of a Prehearing Memorandum by the parties three business days before the Prehearing Conference.

² 66 Pa. C.S. § 1102.

69.901 of the Commission's Rules of Practice and Procedure.³ The Joint Application states that, pursuant to an Agreement and Plan of Merger ("Merger Agreement") executed on September 17, 2006, Citizens will acquire the stock of its corporate parent, Commonwealth Telephone Enterprises ("CTE") and, indirectly, the stock of the Joint Applicants. CTE will then become a wholly-owned, direct subsidiary of Citizens.

Notice of the filing appeared in the Pennsylvania Bulletin on October 14, 2006⁴ and directed the filing of formal protests with the Commission by October 30, 2006. Sprint filed a timely Protest and Petition to Intervene. In addition to the statutory advocates, the Broadband Cable Association of Pennsylvania ("BCAP"), Blue Ridge Digital Phone Company ("Blue Ridge"), RCN Corporation and RCN Telecom Services ("RCN"), and the Communications Workers of America ("CWA") also filed protests and /or petitions to intervene.

Sprint intervened in the matter as a CLEC that is seeking entry into the service territory of CTCo to provide local exchange service.⁵ Sprint's protest urged the Commission to impose certain conditions on its approval of the Joint Applicants' proposed acquisition by Citizens that would facilitate competitive entry into the local service territory of CTCo.

On November 10, 2006, the Joint Applicants filed their Answer and Preliminary Objections seeking the dismissal of the Protests and Petitions to Intervene filed by the CLECs and CWA. Sprint filed its Answer on November 20, 2006 asking the Commission to deny the Joint Applicant's Preliminary Objections and grant Sprint's Petition to Intervene in this

³ 52 Pa. Code § 69.901.

⁴ 36 Pa.B 6355.

⁵ The Commission has certified Sprint as a competitive local exchange carrier ("CLEC") in the service territories of Verizon Pennsylvania, Inc., Verizon North, Inc. and the United Telephone Company of Pennsylvania d/b/a Embarq.⁵ On May 4, 2005, Sprint filed an application seeking the Commission's approval to offer telecommunications services as a CLEC in the service territories of Alltel Pennsylvania, Inc., CTCo and Palmerton Telephone Company.⁵ On June 6, 2005, CTCo filed a Protest and Motion to Dismiss Sprint's application for certification as a CLEC in its service territory. Following the conduct of extensive evidentiary proceedings, the ALJ issued an Initial Decision finding that the Commission should deny Sprint's application. The initial decision is currently pending before the Commission on exceptions.

matter. Sprint's Answer asserted that it had standing to protest the Joint Applicant's Application as a CLEC and competitor of the Joint Applicants whose ability to compete in their service territory will be impacted by the proposed acquisition. These motions are pending and await disposition.

The contact information for Sprint's counsel, upon whom all documents and correspondence related to this proceeding should be served, is as follows:

Jennifer A. Duane
Sprint Communications Company L.P.
2001 Edmund Halley Drive
Reston, Virginia 20191
Mailstop: VARESP0201-A208
(703) 592-7781 (voice)
(703) 592-7404 (facsimile)
Jennifer.a.duane@sprint.com

II. ISSUES PRESENTED

For the Commission to approve the Joint Applicant's Application as requested, the Joint Applicant's must demonstrate that the proposed acquisition is "necessary or proper for the service, accommodation, convenience, or safety of the public" consistent with the principles set forth in 66 Pa. C.S. § 1103.⁶ The Commission has jurisdiction over the proposed acquisition in accordance with 66 Pa. C.S. § 1102(a) (3), which applies the Commission's certification processes to sales, acquisitions or transfers of public utility property, including stock.⁷ In granting the certificate, the Commission may impose such conditions as it deems to be just and reasonable. *Id.* Under the legal standard set forth in *City of York v. Pennsylvania Pub. Util. Comm'n*,⁸ the proponent of a merger has the burden of demonstrating by a preponderance of evidence that the merger is in the public interest because

⁶ 66 Pa. C.S. § 1103(a).

⁷ 52 Pa. Code § 69.901.

⁸ 295 A.2d 825, 828 (Pa. 1972).

it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

The Joint Applicants claim that the proposed acquisition will enhance competition for telecommunications services because the combined companies will be better able to compete more effectively with other facilities-based competitors, including cable telephony and wireless carriers.⁹ Sprint submits the following preliminary issues that should be examined in this proceeding:

- Whether the proposed acquisition complies with the *City of York* legal standards by providing sufficient affirmative public benefits.
- Whether the Commission should impose conditions on any approval of the proposed merger to facilitate competitive entry by CLECs in the combined companies' service territories.

Sprint reserves the right to propose additional issues based on its further analysis of the Joint Application and its review of issues proposed by other parties.

III. WITNESSES

At this time, Sprint is evaluating whether to present a witness to testify as to the affirmative public benefits of the merger and its potential anti-competitive effects if appropriate conditions are not put in place. Sprint has not yet identified a witness to testify in this case, but will promptly advise the parties when Sprint's witness is determined. Sprint reserves the right to participate in this matter by submitting discovery, cross-examining other parties' witnesses, and filing briefs and exceptions, as necessary.

⁹ *Id.* at 14, ¶ 44.

IV. PROCEDURAL SCHEDULE

Sprint will work with the parties to develop a mutually acceptable schedule in this matter, including a reasonable discovery schedule.

V. SETTLEMENT

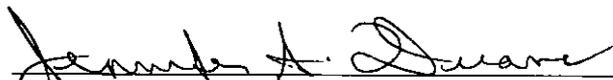
Sprint is willing to participate in any settlement discussions in an effort to reach a mutually agreeable resolution of this matter.

VI. METHOD OF SERVICE

Sprint proposes that parties serve all documents via e-mail, followed by a hard copy via overnight delivery.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



Jennifer A. Duane
2001 Edmund Halley Drive, Second Floor
Reston, Virginia 20191
Mailstop: VARESP0201-A208
(703) 592-7791 (Voice)
(703) 592-7404 (Facsimile)
(703) 599-7416 (PCS)
Jennifer.a.duane@sprint.com

Dated: November 24, 2006

**Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom,
LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public
Utility Code For the Acquisition by Citizens Communications Company of
All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone
Enterprises, Inc.**

Docket Nos. A-310800F0010, A-311095F0005, A-311225F0003

Service List

I hereby certify that I have on this 24th day of November 2006 served a true and correct copy of the foregoing document by Electronic and First Class U.S. Mail in accordance with the requirements of 52 Pa. Code § 1.54.

Shaun A. Sparks
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1921

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101

Johnnie E. Simms,
Robert V. Eckenrod
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17105-3265

Hilary Glassman
Citizens Communications Company
3 High Ridge Park
Stamford, Connecticut 06905

Scott Rubin
3 Lost Creek Drive
Selinsgrove, Pennsylvania 17810

Raymond Ostroski
Commonwealth Telephone Enterprises
100 CTE Drive
Dallas, Pennsylvania 18612

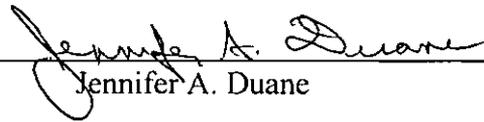
Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

John F. Povilaitis
Matthew A. Totino
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025

Lillian S. Harris
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street, P.O. Box 1778
Harrisburg, PA 17105-1778

Pamela C. Polacek
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17102-2025

Honorable Susan D. Colwell
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265


Jennifer A. Duane

OALJ Hearing Report

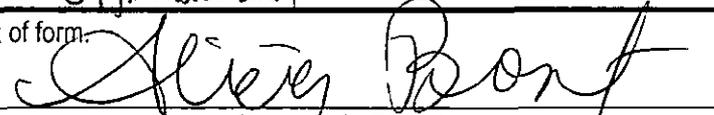
Please Check Those Blocks Which Apply

Docket No.:	A-310800F0010, A-311095F0005 & S-311225F0003	Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Case Name:	Joint Application of Commonwealth Telephone Company, CTSI, LLC & CTE Telecom, LLC d/b/a Commonwealth Long Distance Company	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Location:	HBG	Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date:	November 29, 2006	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ:	Susan D. Colwell	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:	SCHEDULE TO BE ISSUED DOCUMENT FOLDER	

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Lauren Lepkoski	Suite 1102 Commerce Building 300 N. 2nd St. City: Harrisburg State: PA Zip: 17101	OSBAKJR
Telephone: 717 783-2525	E-mail Address: llepkoski@state.pa.us	Fax Number: 717 783-2831
Steve Gray	Suite 1102 Commerce Building 300 N. 2nd St. City: Harrisburg State: PA Zip: 17101	OSBA
Telephone: 717 783-2525	E-mail Address: sgray@state.pa.us	Fax Number: 717 783-2831
John F. Pavilaitis Matthew A. Totino	Ryan, Russell, Ogden & Selzer, LLP 800 North 3rd Street, Suite 101 City: Harrisburg State: PA Zip: 17102-2025	RCN Corp. + RCN Telecom Services, Inc.
Telephone: 717 236 7714	E-mail Address: jpavilaitis@ryanrussell.com	Fax Number:

Check this box if additional parties or attendees appear on back of form.


 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address	Who are you representing?
Jennifer Duane	2001 Edmund Hallway Drive Reston 2nd floor Moulton: VA RESP 0201-A208 City: Reston State: VA Zip: 20191	Sprint
Telephone: 703-592-7181	E-mail Address: jennifer.a.duane@sprint.com	Fax Number: 703-592-7409
Scott J. Rubin	3 Lost Creek Dr City: Selinsgrove State: PA Zip: 17870	Communications Workers of America
Telephone: 570-743-2233	E-mail Address: scott.j.rubin@gmail.com	Fax Number: 570-743-8145
Shann Sparks Joel Cheski	555 Walnut St 5th Fl. Forum Place City: Harrisburg State: Pa Zip: 17104-1923	Office of Consumer Advocate
Telephone: 717 783 5848	E-mail Address: ssparks@paoca.org	Fax Number: 717783 7152
Norman Kennard	100 N. 10th Street City: Hbg State: PA Zip: 17101	Joint Applicants
Telephone: 717/236-1300	E-mail Address: njkennard@hmsk-law.com	Fax Number: 717/236-4841
Pamela Polacek	McNees Wallace & Nirk P.O. Box 1166 City: Hbg State: PA Zip: 17101-1166	Broadband Cable Association of Pennsylvania and Blue Ridge Digital Phone Company
Telephone: 717-237-5368	E-mail Address: ppolacek@mwn.com	Fax Number: 717-237-5306
Lillian S. Harris	Hawke McKern Sniscake + Kennard 100 N10th St City: Hbg State: PA Zip: 17101	Citizens Communication Company
Telephone: 717-236-1300	E-mail Address: LSHARRIS@HMSK-LAW.COM	Fax Number: 717-236-4841
Robert V. Eckert	P.O. Box 8265 City: Harrisburg State: PA Zip: 17105	OTS
Telephone: 717-787-1976	E-mail Address: rosetertod@state.pa.us	Fax Number:
Telephone:	E-mail Address:	Fax Number:

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.