



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

2006 OCT 13 PM 3:56

SECRETARY'S BUREAU

William R. Lloyd, Jr.  
Small Business Advocate

(717) 783-2525  
(717) 783-2831 (FAX)

October 13, 2006

**HAND DELIVERED**

ORIGINAL

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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:

I am delivering for filing today the original plus three copies of the Notice of Intervention, Public Statement, and Notice of Appearance, on behalf of the Office of Small Business Advocate in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lauren M. Lepkoski  
Assistant Small Business Advocate  
Attorney ID No. 94800

KJR

DOCUMENT  
FOLDER

Enclosures

cc: Parties of Record

116

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 : Docket Nos.  
APPROVALS UNDER THE PUBLIC UTILITY : A-310800F0010  
CODE FOR THE ACQUISITION BY CITIZENS : A-311095F0005  
COMMUNICATIONS COMPANY OF ALL : A-311225F0003  
OF THE STOCK OF THE JOINT APPLICANTS' :  
CORPORATE PARENT, COMMONWEALTH :  
TELEPHONE ENTERPRISES, INC. :

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NOTICE OF INTERVENTION  
OF THE OFFICE OF SMALL BUSINESS ADVOCATE

The Office of Small Business Advocate ("OSBA") files this Notice of Intervention with respect to the above-captioned Application ("Application") pursuant to Section 5.71(a)(1) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission ("Commission"), 52 Pa. Code §5.71(a)(1). In support of this Notice of Intervention, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

KJR

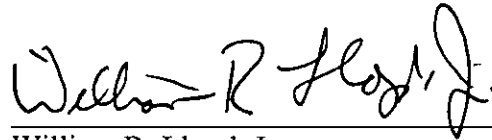
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**DOCKETED**  
NOV 15 2006

2. Representing the OSBA in this proceeding is:

Lauren M. Lepkoski  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
llepkoski@state.pa.us

Respectfully submitted,



William R. Lloyd, Jr.  
Small Business Advocate  
Attorney I.D. No. 16452

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525

Date: October 13, 2006

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**PUBLIC STATEMENT OF  
THE SMALL BUSINESS ADVOCATE  
CONCERNING THE INTEREST  
OF SMALL BUSINESS CONSUMERS  
TO BE PROTECTED BY THE FILING OF A  
NOTICE OF INTERVENTION  
AT DOCKET NOS. A-310800F0010, A-311095F0005, AND A-311225F0003**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement setting forth the specific interest of small business consumers to be protected by the intervention in any proceeding involving those interests before the Public Utility Commission ("PUC" or "Commission"). This public statement relates to the filing today by the Small Business Advocate of a Notice of Intervention in the proceeding involving the proposed acquisition by Citizens Communications Company of the Commonwealth Telephone Enterprises, Inc., which was filed with the Commission on or about September 29, 2006, at Docket Nos. A-310800F0010, A-311095F0005, and A-311225F0003.

Citizens Communications Company is the parent of the Frontier Companies, which are incumbent local exchange carriers ("ILECs") serving customers in Pennsylvania.

Commonwealth Telephone Enterprises, Inc., is the parent of Commonwealth Telephone Company, which is an ILEC serving customers in Pennsylvania.

The Office of Small Business Advocate ("OSBA") has intervened in this case to assure that the interests of the small business customers served by these various ILECs are adequately represented and protected.

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NOV 15 2006

The OSBA will participate in this proceeding to the extent necessary to identify and advance any issues that are important to small business consumers.

Date: October 13, 2006

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 :Docket Nos. A-310800F0010,  
for the Acquisition By Citizens Communications : A-311095F0005,  
Company of All of the Stock of the Joint : A-311225F0003  
Applicants' Corporate Parent, Commonwealth :  
Telephone Enterprises, Inc. :

**NOTICE OF APPEARANCE**

The Office of Small Business Advocate, pursuant to 52 Pa. Code § 1.24, hereby  
enters the appearance of Lauren Lepkoski, in the above-captioned proceedings.

Documents in this proceeding should now be served on the following:

Lauren M. Lepkoski, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101  
(717) 783-2525  
(717) 783-2831  
[llepkoski@state.pa.us](mailto:llepkoski@state.pa.us)

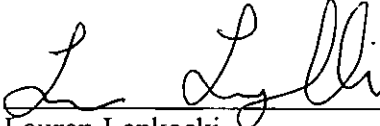
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OCT 13 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

in the above-captioned proceeding.

**DOCUMENT  
FOLDER**

  
\_\_\_\_\_  
Lauren Lepkoski  
Assistant Small Business Advocate  
Attorney ID No. 94800

Office of Small Business Advocate  
300 North Second Street – Suite 1102  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)

Dated: October 13, 2006

**DOCKETED**  
NOV 15 2006

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 :       Docket Nos. A-310800F0010,  
for the Acquisition By Citizens Communications :       A-311095F0005,  
Company of All of the Stock of the Joint :       A-311225F0003  
Applicants' Corporate Parent, Commonwealth :  
Telephone Enterprises, Inc. :

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Notice of Intervention, Public Statement, and Notice of Appearance, on behalf of the Office of Small Business Advocate by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Veronica Smith  
Chief Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-3265  
(717) 787-0481 (fax)  
[verosmith@state.pa.us](mailto:verosmith@state.pa.us)  
**(E-mail and Hand Delivery)**

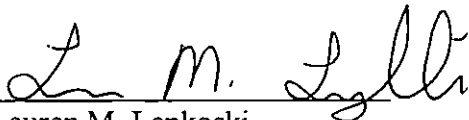
Irwin A. Popowsky, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[spopowsky@paoca.org](mailto:spopowsky@paoca.org)  
**(E-mail and Hand Delivery)**

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

Johnnie E. Simms, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)  
[josimms@state.pa.us](mailto:josimms@state.pa.us)  
**(E-mail and Hand Delivery)**

Raymond Ostroski, Esquire  
Commonwealth Telephone Enterprises, Inc.  
100 CTE Drive  
Dallas, PA 18612  
(570) 631-2802  
(570) 631-2895 (fax)  
**(First class mail only)**

Hilary Glassman, Esquire  
Citizens Communications Company  
3 High Ridge Park  
Stamford, CT 06905  
(203) 614-5047  
(203) 614-4651 (fax)  
**(First class mail only)**

  
Lauren M. Lepkoski  
Assistant Small Business Advocate  
Attorney ID No. 94800

Date: October 13, 2006

2006 OCT 13 PM 3:56  
SECRETARY'S BUREAU

**Scott J. Rubin**  
Attorney ♦ Consultant

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

October 27, 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 each of two documents in the above-referenced matter: (1) Protest of Communications Workers of America and (2) Preliminary Objections of Communications Workers of America.

I have served a copy of both documents on all parties of record, as shown on the Certificates of Service attached to each document, as well as on the Chief 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: Veronica Smith, Chief Administrative Law Judge  
All parties

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2006 OCT 29 AM 11:52  
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SECRETARY'S BUREAU

*SR*

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA. PUBLIC  
UTILITY  
COMMISSION  
SECRETARY'S BUREAU

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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.	:	

**DOCKETED**  
JAN 03 2007

**DOCUMENT  
FOLDER**

PROTEST  
OF  
COMMUNICATIONS WORKERS OF AMERICA

Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, the Communications Workers of America (CWA), hereby files this Protest against the Joint Application filed by Commonwealth Telephone Company (Commonwealth), CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company in the above-captioned proceeding. In support of this Petition, CWA states as follows:

1. CWA is an international labor union with its principal place of business at 501 Third St., NW, Washington, DC 20001; telephone: 202-434-1100. CWA also maintains an office in Pennsylvania to represent the interests of its 22,500 members in Pennsylvania, including its approximately 425 members who are employed by Commonwealth. CWA's Pennsylvania office is located at 230 South Broad Street, 19th Floor, Philadelphia, PA 19102.

2. CWA will be represented in this case by, and all documents should be served upon its attorney:

Scott J. Rubin  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Phone: (570) 743-2233  
Fax: (570) 743-8145  
e-mail: scott@publicutilityhome.com

3. This proceeding concerns the proposed sale of the common stock of Commonwealth's corporate parent to Citizens Communications Company (Citizens).

4. The Application does not demonstrate how the proposed sale will provide an affirmative benefit to the public or otherwise be consistent with the public interest, as required by 66 Pa. C.S. § 1102(a)(3) and relevant judicial precedent, other than in vague terms. The Application does not provide evidence of any specific, verifiable benefits to consumers from the proposed transaction. For example, the Application does not provide any concrete evidence that the transaction will benefit Commonwealth's consumers with increased investment in the network and commitments to maintain, and if necessary increase, staffing levels to ensure quality service and deployment of advanced service to Commonwealth's local telephone customers.

5. In fact, the proposed transaction could result in a financially weaker Commonwealth, with fewer resources to invest in local telephone infrastructure and operations. Citizens is a highly leveraged company and will become even more leveraged as a result of this transaction. Net debt will increase by \$960 million, and debt to earnings (EBIDTA) ratio will increase from 3.2 to 3.5, an unreasonably high level for a public utility holding company.

6. There are other glaring omissions in the Application. For example, the Application does not provide any meaningful information regarding what will happen to Commonwealth's

employees. In a public presentation made by Commonwealth and Citizens when the transaction was announced, the companies projected annual savings of \$30 million plus \$10 million in non-cash compensation costs. The detail behind those figures has not yet been provided, but CWA is concerned that some of these savings may occur by reducing the number of employees at Commonwealth, including members of CWA. Citizens is in the process of a call center consolidation, and CWA is particularly concerned about the impact of that consolidation on Commonwealth's Wilkes-Barre call center.

7. CWA also is concerned that, to the best of CWA's knowledge, Citizens and Commonwealth have not clearly and unequivocally committed to honoring the collective bargaining agreement with CWA, including all pensions and benefits contained therein.

8. The Application does not provide adequate financial information to evaluate the transaction. The application does not include any post-merger plans or projections and provides no financial projections whatsoever.

9. Preliminary analysis of FCC ARMIS data reveals that service provided by Citizens in Pennsylvania is declining, and key metrics for Citizens' six study areas in Pennsylvania are significantly below Citizens' national average. For example, Citizens' national average for trouble reports per 100 lines in 2005 was 2.88., but Citizens' Pennsylvania study areas reported 3.95, 3.5, 3.37, 3.31, 2.2, and 1.84. The Commission should investigate the service record at Citizens and Commonwealth, and the impact of the proposed acquisition on the quality of service at both companies' operations in Pennsylvania.

10. The Commission also should investigate the impact of the proposed sale on employment to ensure that staffing will be adequate to provide consumers with quality service. The Commission also should investigate network investment plans to ensure that

Commonwealth consumers receive concrete, verifiable benefits in terms of accelerated deployment of advanced services, particularly in the rural portions of Commonwealth's service territory.

11. There are undoubtedly other issues that a more complete review of the Application, supporting testimony (when it is filed), and other documents provided in the course of this proceeding would reveal. The Commission, therefore, should provide ample time in the schedule for the parties to conduct discovery, prepare testimony and exhibits, cross-examine witnesses, file briefs and reply briefs, and conduct settlement negotiations.

12. No other party to this proceeding represents the interests of CWA.

13. CWA intends to actively and fully participate in this proceeding to ensure that the interests of its members are fully protected and represented in this matter. Such participation may include conducting discovery, presenting testimony, cross-examining witnesses, and filing briefs and other pleadings.

WHEREFORE, CWA Protests the Joint Application and respectfully requests the Pennsylvania Public Utility Commission to (1) deny the Joint Application as filed; (2) conduct a full investigation of the benefits and detriments to the public (including customers and employees of Commonwealth) of the proposed transaction; (3) ensure that Citizens and Commonwealth would be adequately capitalized and not unduly burdened with debt that is unrelated to their regulated operations; (4) ensure that Citizens and Commonwealth will have the financial resources to make needed capital investments in its Pennsylvania network and other facilities; (5) if the Commission determines that the transfer in some form should be approved, impose conditions on the transfer that will protect the public interest, including the interests of

Commonwealth's customers and employees; and (6) grant such other relief as the Commission deems appropriate.

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: October 27, 2006

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VERIFICATION

---

I, Debbie Golden, the Research Economist of Communications Workers of America, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 10/27/06

Debbie Golden

---

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

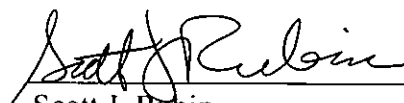
Johnnie Simms  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

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

Irwin Popowsky  
Office of Consumer Advocate  
555 Walnut St., Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

  
\_\_\_\_\_  
Scott J. Rubin  
Counsel for CWA

Dated: October 27, 2006

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SECRETARY'S BUREAU

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	:	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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NOTICE TO PLEAD

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To: Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC, d/b/a  
Commonwealth Long Distance Company

Pursuant to 52 Pa. Code § 5.101, you are hereby notified to file a written response to the enclosed Preliminary Objections within ten (10) days from service hereof or a judgment may be entered against you.

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: October 27, 2006

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	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.	:	

**DOCKETED**  
JAN 03 2007

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PRELIMINARY OBJECTIONS  
OF  
COMMUNICATIONS WORKERS OF AMERICA

Pursuant to 52 Pa. Code § 5.101, the Communications Workers of America (CWA), hereby files these Preliminary Objections to the Joint Application filed by Commonwealth Telephone Company (Commonwealth), CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company in the above-captioned proceeding, stating as follows:

Preliminary Objection 1: Legal Insufficiency of Application

1. The Application is legally insufficient and incomplete because it does not include verified averments from Pennsylvania public utilities that must file applications for approval of this transaction. Specifically 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 (collectively "the Frontier companies") are public utilities

in Pennsylvania that must seek approval for an affiliate of theirs, Citizens Communications Company, to acquire a Pennsylvania public utility.

2. Section 1102 of the Public Utility Code requires a public utility to obtain a certificate of public convenience and necessity before an affiliate of the utility can acquire another public utility in Pennsylvania. In particular, the statute states that a certificate is required for “any affiliated interest of a public utility ... to acquire from ... any person or corporation ... the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

3. Citizens Communications Company (Citizens), the proposed acquirer of Commonwealth, is the parent company of the Frontier Companies and is an affiliated interest of the Frontier Companies.

4. The Application does not contain a request by the Frontier Companies for approval of their affiliate to acquire a Pennsylvania public utility.

5. The Application does not contain any information about the Frontier Companies or the effects of the proposed transaction on those companies.

6. Adequate notice of the Application was not provided to customers or employees of the Frontier Companies (for example, through a bill insert or by publication in newspapers of general circulation within the service areas of the Frontier Companies).

7. The notice published in the *Pennsylvania Bulletin* does not identify Citizens as an affiliated interest of the Frontier Companies and does not even mention the Frontier Companies.

8. The Commission cannot determine whether the proposed transaction is in the public interest without considering the impacts it will have on the Frontier Companies, including those companies' employees and customers.

Preliminary Objection 2: Nonjoinder of a Necessary Party

9. Paragraphs 1 through 8 are incorporated herein by reference.

10. The Application does not include the Frontier Companies as parties. The Frontier Companies are legally required to join in the Application, and be parties to this proceeding, because an affiliate of theirs is the proposed acquirer of an ownership interest in a Pennsylvania public utility.

WHEREFORE, CWA objects to the Application because the Application is legally insufficient and fails to join necessary parties. CWA respectfully submits that the Application must be stricken, with the Applicants given the right to file an Amended Application (as provided in 52 Pa. Code § 5.101(h)) to (1) include the Frontier Companies as indispensable parties; (2) provide relevant information concerning the effects of the proposed transaction on the Frontier Companies, including their customers and employees; and (3) provide notice of the Application to customers and other affected persons in the service areas of the Frontier Companies. CWA further submits that the time period for the filing of protests or petitions to intervene should be extended to allow time for customers or other interested persons in the Frontier Companies' service areas to receive notice of the Amended Application.

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: October 27, 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


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

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

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

Irwin Popowsky  
Office of Consumer Advocate  
555 Walnut St., Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

  
\_\_\_\_\_  
Scott J. Rubin  
Counsel for CWA

Dated: October 27, 2006

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OCT 27 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**H**awke  
 **M**ckeon  
  **S**niscak &  
   **K**ennard 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

October 30, 2006

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
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;  
**PETITION TO INTERVENE**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Petition to Intervene of Citizens Communications Company.

Should you or any member of the Commission Staff have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,

  
Lillian S. Harris

LSH/ajt  
Enclosure

DOCUMENT  
FOLDER

RECEIVED  
2006 OCT 30 PM 4:07  
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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

22

**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	:	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.	:	

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**PETITION TO INTERVENE**

---

AND NOW COMES Citizens Communications Company ("Citizens"), by and through its attorneys in this matter, Hawke McKeon Sniscak & Kennard LLP, and files this Petition to Intervene in the above-captioned Application proceeding pursuant to 52 Pa. Code Section 5.71 *et seq.* In support thereof, Citizens represents as follows:

1. The above-captioned Application was filed on September 29, 2006, as a result of the execution, on September 17, 2006, of an Agreement and Plan of Merger ("Merger Agreement") pursuant to which Citizens Communications Company ("Citizens") will acquire the stock of Commonwealth Telephone Enterprises, Inc. ("CTE") and, indirectly, the stock of Joint Applicants.

**DOCUMENT  
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2. Public notice, published in the Pennsylvania Bulletin (36 Pa. B. 6355), set October 30, 2006 as the due date for Petitions To Intervention and, therefore, this Petition is timely filed.

3. The Application set forth a thorough statement of Citizens' identity, including its interest in the Application (See paragraphs, 11-16), and explained that the public interest is served by Commission approval of the proposed transaction (See, paragraphs 31-46). The averments of the Application are fully incorporated herein by reference, as if fully set forth herein. A verification by Citizens was attached to the Application.

4. Citizens seeks intervention on the grounds that the disposition of the Application will or may directly and materially affect its interests, including its interest in closing the transaction set forth in the Merger Agreement. Citizens' interest is not adequately represented by any other party. Citizens seeks full party status as an intervenor.

5. The administration of this proceeding will be enhanced by the participation of Citizens as the party proposing to purchase the stock of CTE, the Applicants' parent company

6. Citizens supports the proposed transaction and the Commission's approval of the Application as filed. Citizens intends to address all aspects of the Application, including the positive public benefits that will accrue under the *City of York* decision.<sup>1</sup>

---

<sup>1</sup> *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. Supreme 1972) (emphasis added).

WHEREFORE, for all of the foregoing reasons, Citizens Communications Company ("Citizens") respectfully requests that the Commission:

1. Grant this Petition to Intervene in the above-captioned proceeding and enable it to participate as a full party/protestant;
2. Grant the instant Application; and
3. Grant such other relief as may be appropriate.

Respectfully submitted,



---

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](mailto:lharris@hmsk-law.com)


Counsel for Citizens Communications Company

DATED: October 30, 2006

*VERIFICATION*

I, Lillian S. Harris, counsel for Citizens Communications Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

October 30, 2006

  
\_\_\_\_\_  
Lillian S. Harris

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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 participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

**By First Class Mail**

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

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

Raymond Ostroski, Esquire  
Commonwealth Telephone Enterprises  
100 CTE Drive  
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Office of Small Business Advocate  
Suite 1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1921

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



\_\_\_\_\_  
Lillian S. Harris

Dated this 30th day of October, 2006

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McNees Wallace & Nurick LLC  
attorneys at law

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

October 30, 2006

**VIA HAND DELIVERY**

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

**ORIGINAL**

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**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 eleven (11) copies of the Protest and Peition to Intervene of the Broadband Cable Association of Pennsylvania ("BCAP") in the above-referenced dockets (i.e., four copies for each docket number).

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

**DOCUMENT  
FOLDER**

Counsel to the Broadband Cable  
Association of Pennsylvania

PCP/nk  
Enclosures  
Attachment  
c: Certificate of Service

69

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 Stock of the Joint :  
Applicants' Corporate Parent, :  
Commonwealth Telephone Enterprises, Inc. :

Docket Nos.: A-310800F00107  
A-311095F0005  
A-311225F0003

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---

**PROTEST AND PETITION TO INTERVENE OF  
THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA**

---

Pursuant to 52 Pa. Code §§ 5.51(a) and 5.72, the Broadband Cable Association of Pennsylvania ("BCAP") hereby files this Protest and Petition to Intervene to the above-captioned Joint Application. In support of this Protest and Petition to Intervene, BCAP states as follows:

1. Petitioner is the Broadband Cable Association of Pennsylvania ("BCAP"). 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's members also are introducing innovative IP-enabled service options through their cable networks.

2. BCAP is represented for purposes of this proceeding by the following counsel:

Pamela C. Polacek  
Adam L. Benshoff  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717.232.8000 (phone)  
717.237.5300 (fax)  
ppolacek@mwn.com  
abenshoff@mwn.com

DOCUMENT  
FOLDER

DOCKETED

OCT 31 2006

ORIGINAL

All inquiries regarding this matter should be directed to Ms. Polacek.

3. On September 29, 2006, Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC ("CLD") (collectively, "Companies") 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"). The Joint Applicants claim that the merger is necessary or proper for the service, accommodation, convenience, and safety of the public and will "affirmatively promote the 'service, accommodation, convenience, [and] safety of the public' in some substantial way." Joint Application, ¶ 31.

4. BCAP is an association of Pennsylvania cable television operators, equipment suppliers, programmers and other allied companies. Its members collectively provide cable service to approximately 3.8 million homes in Pennsylvania. An increasing number of BCAP members are providing voice service offerings to customers in Pennsylvania using PUC-certificated telephone affiliates and other non-jurisdictional arrangements. Additional BCAP members are interested in providing IP-enabled digital voice services to consumers in Pennsylvania. In addition to seeking to compete with Incumbent Local Exchange Carriers ("ILECs") such as CTCo regarding video programming and high speed data service options, BCAP members have affiliates that are certificated to provide Competitive Local Exchange Carrier ("CLEC") service in Pennsylvania in potential competition with CTSI. Affiliates of other BCAP members are providing and/or seeking to provide voice services in competition with CTCo. As current and potential competitors to CTCo, CTSI and the Frontier companies already owned by Citizens in Pennsylvania for data, video and voice services, BCAP's members have a

direct interest in this proceeding that is not represented by any other party. See 52 Pa. Code §5.72 (standards for intervention). BCAP, as an association, has standing to participate in this matter to advance its members' interests. See Solid Waste Management Assoc. v. Casey, 135 Pa. Commw. 134, 144-145, 580 A.2d 893, 899 (1990); Paratransit Assoc. of Delaware, Inc. v. Yurusalim, 114 Pa. Commw. 279, 284, 538 A.2d 651, 653 (1988). Under both its current designation and previous name, the Pennsylvania Cable and Telecommunications Association, BCAP has participated in numerous PUC proceedings implementing Chapter 30 of the Public Utility Code and the Telecommunications Act of 1996 ("1996 Act").

5. The Joint Applicants claim "numerous positive benefits" of this acquisition, and specifically assert: "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. As an association of entities engaged in or potentially entering the "cable telephony" business that must compete with CTCo and other of the Joint Applicants' subsidiaries, BCAP is concerned that the combined entity will have the ability to exercise market power in Pennsylvania and to otherwise engage in activities to thwart the legitimate business interests of cable telephony providers. As a result, BCAP files this Protest to request that the Commission deny the Joint Application unless and until the Joint Applicants can affirmatively demonstrate pro-competitive public benefits in Pennsylvania from the proposed transaction.

6. The Joint Applicants claim this acquisition will "enhance CLEC competition" by "ensuring that CLECs are treated appropriately in accordance with the complex regulatory rules that apply to transactions between ILECs and CLECs" (Joint

Application, ¶ 45); however, CTCo has already engaged in behavior that indicates otherwise. By way of example, since May 2005, CTCo has aggressively blocked the efforts of Sprint Communications Company L.P. ("Sprint") and Blue Ridge Digital Phone Company ("Blue Ridge"), the subsidiary of a BCAP member, to offer to consumers in the CTCo territory a digital voice service through an innovative partnership. Sprint and Blue Ridge developed a structure to introduce a facilities-based voice service offering in portions of the CTCo territory by leveraging the existing facilities and strengths of each company (*i.e.*, Blue Ridge's access to "last mile" facilities connected to consumers' households and Sprint's switching facilities and telecommunications expertise). As it had done in other states, Sprint filed for CLEC certification and interconnection in the CTCo territory. See Application of Sprint Communications Company L.P., Docket Nos. A-310183F0002AMA, A-310183F0002AMB, and A-310183F0002AMC, Recommended Decision issued May 22, 2006. CTCo opposed the request, claiming that Sprint could not be granted a CLEC certificate for the proposed wholesale services it would provide to Blue Ridge and that CTCo has no other obligation to interconnect. Subsequently, when Blue Ridge filed for a CLEC certificate to provide the proposed digital voice service in the CTCo territory, CTCo protested the Blue Ridge application, again questioning whether Blue Ridge could be granted a CLEC certificate for the proposed arrangement and questioning Blue Ridge's fitness. See Application of Blue Ridge Digital Phone Company, Docket Nos. A-311397F0002AMA, A-311397F0002AMB, and A-311397F0002AMC, Application filed June 13, 2006. Over eighteen months after Sprint and Blue Ridge began the Pennsylvania regulatory process to obtain the necessary interconnection rights and authorizations to support the digital voice offering, customers in the CTCo territory continue to be denied this competitive offering from Blue Ridge due to CTCo's regulatory maneuvering. In the meanwhile, CTCo's potential sister-

affiliates if this transaction is approved were permitted to introduce a digital voice offering on two day's notice. See e.g. Frontier Communications of Pennsylvania, LLC, Supplement No. 93 to Telephone PA P.U.C. No. 14 (filed October 3, 2006; effective October 5, 2006), Docket No. R-00061848. If the "more complete and robust set of services" (Joint Application, ¶ 35) that CTCo will offer after the transaction includes digital voice service, then it hardly seems to be fair or appropriate treatment of competitors by CTCo to use the regulatory process to delay other companies' entry into the marketplace.

7. In addition, CTCo should not be permitted to use the threat of competitive entry from CLECs and need to combat innovative competitive offerings from other entities as a basis to support this acquisition while it simultaneously engages in activities to block competitive entry and the introduction of innovative offerings such as Blue Ridge Phone's digital voice service in the CTCo territory. To the extent the Commission allows this conflicting attitude about the benefits of competition to continue, the merger will not provide affirmative public benefits for Pennsylvania consumers. See City of York v. Pennsylvania Pub. Util. Comm'n, 295 A.2d 825, 828 (Pa. 1972). Concrete and actionable commitments to advance competition are necessary; mere paper promises of competitive benefits and better treatment of CLECs (and potential CLECs) are insufficient to yield the necessary public benefits that must be demonstrated to approve this acquisition.

8. BCAP respectfully submits that the additional resources and capital available to CTCo will provide the Companies with more leverage to use the regulatory process to exploit smaller CLECs, and to further block the applications of other potential CLECs as it has already done to Sprint and Blue Ridge. This is especially inappropriate when CTCo and the Frontier ILECs in Pennsylvania have considerable flexibility to

introduce digital voice offerings preemptively and on minimal notice prior to even facing competition from BCAP members for the service. To the extent this occurs, the merger will not provide affirmative public benefits for Pennsylvania consumers. See City of York v. Pennsylvania Pub. Util. Comm'n, 295 A.2d 825, 828 (Pa. 1972).

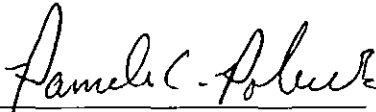
9. Finally, given the financial strength of the post-transaction proposed corporate parent as "the 7<sup>th</sup> largest telephone exchange company in the United States, with pro forma annual revenues of approximately \$2.4 billion and operations across twenty-four states" and with "approximately 2.6 million access lines, 388,000 High-Speed Internet subscribers and 6,600 employees" (Joint Application, ¶ 15), BCAP submits that any approval of this Joint Application must be conditioned on CTCo and the other Frontier telephone companies in Pennsylvania foregoing future arguments for special regulatory treatment based on their alleged "rural" status. Clearly, a large corporate entity with such expansive operations does not need regulatory protection from the impacts of competitive entry.

10. As set forth above, BCAP members may be directly affected by the Commission's decision regarding the Joint Application if the transaction results in market dominance for CTCo or the other subsidiaries. See 52 Pa. Code § 5.72(a)(1) (Eligibility to Intervene). BCAP submits that no other party can adequately represent the interests of BCAP and its members in this matter. See id. Moreover, BCAP's motivation to advance competitive voice options in Pennsylvania renders its participation in this proceeding in the public interest. Id. § 5.72(a)(3).

**WHEREFORE**, BCAP respectfully requests that the Pennsylvania Public Utility Commission deny the Joint Application of CTCo and Citizens for approval of merger and take such other actions as are reasonably necessary to ensure that the public interest is fulfilled.

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 Broadband Cable Association  
of Pennsylvania

Dated: October 30, 2006



**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 HAND DELIVERY**

Lillian S. Harris, Esq.  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
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Harrisburg, PA 17101

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The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
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Raymond Ostroski, Esq.  
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Hilary Glassman, Esq.  
Sr. V.P. and General Counsel  
Citizens Communications Company  
3 High Ridge Park  
Stamford, CT 06905

  
\_\_\_\_\_  
Pamela C. Polacek

Counsel to the Broadband Cable  
Association of Pennsylvania

Dated this 30<sup>th</sup> day October, 2006, in Harrisburg, Pennsylvania.



McNees Wallace & Nurick LLC  
attorneys at law

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October 30, 2006

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 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 eleven (11) copies of the Protest and Petition to Intervene of Blue Ridge Digital Phone Company in the above-referenced dockets (i.e., four copies for each docket number).

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

Counsel to Blue Ridge  
Digital Phone Company

**DOCUMENT  
FOLDER**

PCP/nk  
Enclosures  
Attachment  
c: Certificate of Service

*68*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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 :  
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Company of All Stock of the Joint :  
Applicants' Corporate Parent, :  
Commonwealth Telephone Enterprises, Inc. :

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

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**PROTEST AND PETITION TO INTERVENE  
OF BLUE RIDGE DIGITAL PHONE COMPANY**

---

Pursuant to 52 Pa. Code §§ 5.51(a) and 5.72, Blue Ridge Digital Phone Company, LLC ("Blue Ridge Phone") hereby files this Protest and Petition to Intervene in the above-captioned Joint Application. In support of this Protest and Petition to Intervene, Blue Ridge Phone states as follows:

1. Blue Ridge Phone is a subsidiary of Blue Ridge Cable Technologies, Inc. t/a Blue Ridge Communications ("Blue Ridge Cable"), with offices in Palmerton, Pennsylvania. Blue Ridge Cable currently offers digital cable, On Demand, Digital Video Recording, and high speed Internet Access service to over 175,000 homes in Pennsylvania. Blue Ridge Phone has provisional authority to operate as a Competitive Local Exchange Carrier ("CLEC") in the service territories of Verizon Pennsylvania, Inc., and Verizon North, Inc., and is seeking CLEC certification in the territories of Commonwealth Telephone Company ("CTCo"), Windstream Pennsylvania, Inc. f/k/a Alltel Pennsylvania, Inc., and Palmerton Telephone Company.

2. Blue Ridge Phone is being represented for purposes of this proceeding by the following counsel:

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OCT 31 2006

Pamela C. Polacek  
Adam L. Benshoff  
McNees Wallace & Nurick LLC  
100 Pine Street  
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All inquiries regarding this matter should be directed to Ms. Polacek.

3. On September 29, 2006, Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC ("CLD") (collectively, "Companies") 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"). The Joint Applicants claim that the merger is necessary or proper for the service, accommodation, convenience, and safety of the public and will "affirmatively promote the 'service, accommodation, convenience, [and] safety of the public' in some substantial way." Joint Application, ¶ 31.

4. The Joint Applicants claim "numerous positive benefits" of this acquisition, and specifically assert that "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. As a CLEC that competes with CTSI and that seeks to compete with CTCo as a facilities-based cable telephony provider, Blue Ridge Phone is very concerned that the combined entity will have the ability to exercise market power in Pennsylvania and to otherwise engage in activities to thwart the legitimate business interests of Blue Ridge Phone. As a result, Blue Ridge Phone files

this Protest to request that the Commission deny the Joint Application unless and until the Joint Applicants can affirmatively demonstrate pro-competitive public benefits in Pennsylvania from the proposed transaction.

5. Although the Joint Applicants claim this acquisition will "enhance CLEC competition" by "ensuring that CLECs are treated appropriately in accordance with the complex regulatory rules that apply to transactions between ILECs and CLECs" (Joint Application, ¶ 45), CTCo is currently engaging in behavior that indicates otherwise. On June 13, 2006, Blue Ridge Phone filed with the Commission an application seeking approval to provide telecommunications services to the public as a facilities-based CLEC and Interexchange Toll Reseller in CTCo's territory. See Application of Blue Ridge Digital Phone Company, Docket No. A-311397F0002 AMB, Application filed June 13, 2006. Blue Ridge Phone voluntarily sought CLEC authority to address CTCo's prior protest and objections to Sprint Communications Company L.P.'s ("Sprint") efforts to obtain CLEC authority in order to interconnect with CTCo to facilitate Blue Ridge Phone's offering of a digital voice service option in portions of CTCo's territory. See Application of Sprint Communications Company L.P., Docket Nos. A-310183F0002AMA, A-310183F0002AMB, and A-310183F0002AMC, Recommended Decision issued May 22, 2006. On August 7, 2006, CTCo filed a protest, seeking to deny CLEC authority for Blue Ridge Phone.

7. Despite claims to the contrary, Blue Ridge Phone remains concerned that the sole purpose of this acquisition is exclude competition, and not to enhance it, as the combined company strives to "enhance and improve its overall presence in Pennsylvania" as "the 7<sup>th</sup> largest local exchange company in the United States." Joint Application, ¶¶ 12 and 36. Blue Ridge Phone respectfully submits that the additional resources and capital available to CTCo will provide the Companies with more leverage to use the regulatory

process to exploit smaller CLECs and to further hinder Blue Ridge Phone's ability to compete.

8. As set forth above, Blue Ridge Phone may be directly affected by the Commission's decision regarding the Joint Application if the transaction results in market dominance for CTCo or the other subsidiaries. See 52 Pa. Code § 5.72(a)(1) (Eligibility to Intervene). Due to the ongoing competitive relationship and issues between Blue Ridge Phone and CTCo, Blue Ridge Phone submits that no other party can adequately represent the interests of Blue Ridge Phone in this matter. See id. Moreover, Blue Ridge Phone's interest and first-hand knowledge of these issues renders its participation in this proceeding in the public interest. Id. § 5.72(a)(3).

**WHEREFORE**, Blue Ridge Digital Phone Company respectfully requests that the Pennsylvania Public Utility Commission deny the Joint Application of CTCo and Citizens for approval of merger and take such other actions as are reasonably necessary to ensure that the public interest is fulfilled.

Respectfully submitted

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*

Pamela C. Polacek (I.D. # 78276)  
Adam L. Benschhoff (I.D. #200498)  
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Harrisburg, PA 17108-1166  
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717.237.5300 (fax)

Counsel to Blue Ridge Digital Phone  
Company

Dated: October 30, 2006



**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 HAND DELIVERY**

Lillian S. Harris, Esq.  
Hawke McKeon Sniscak & Kennard LLP  
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Raymond Ostroski, Esq.  
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Hilary Glassman, Esq.  
Sr. V.P. and General Counsel  
Citizens Communications Company  
3 High Ridge Park  
Stamford, CT 06905



Pamela C. Polacek

Counsel to Blue Ridge Digital  
Phone Company

Dated this 30<sup>th</sup> day October, 2006, in Harrisburg, Pennsylvania.

ORIGINAL

LAW OFFICES  
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October 30, 2006

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VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Harrisburg, PA 17120


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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 Petition to Intervene and Protest of RCN Corporation and RCN Telecom Services, Inc. on behalf of RCN Corporation in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

  
John F. Povilaitis

Enclosures  
JFP/ck

c. Certificate of Service

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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

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SECRETARY'S BUREAU

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PETITION TO INTERVENE

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ORIGINAL

RCN Corporation and RCN Telecom Services, Inc. (together "RCN") pursuant to the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code § 5.71 - § 5.75, submits this Petition to Intervene in the above-captioned proceeding. In support of this Petition, RCN states the following:

1. RCN Telecom Services, Inc. is a competitive telecommunications carrier, authorized by the Commission to provide telecommunications service to customers in Pennsylvania. RCN Telecom Services, Inc. is certificated in Pennsylvania and is currently doing business in Pennsylvania as an Interexchange Reseller (statewide authority at Docket No. A-310554), as a Competitive Access Provider (statewide authority at Docket No. A-310554F0003), and as a Competitive Local Exchange Carrier in the service territory of Verizon Pennsylvania, Inc. (Docket No. A-310555F0002). RCN Corporation is the parent of RCN Telecom Services, Inc., and is one of the largest facilities-based competitive providers of bundled phone, cable and

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high speed Internet services delivered over its own fiber-optic local network to consumers in major markets in the U.S.

2. RCN Telecom Services, Inc. is seeking authority from the Commission to provide competitive local exchange service in the service territory of Commonwealth Telephone Company.<sup>1</sup>

3. By order published in the *Pennsylvania Bulletin*, Vol. 36, No. 41, p. 6355, the Commission set October 30, 2006 as the deadline for interventions in this proceeding. RCN's Petition to Intervene is timely filed.

4. 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.

5. RCN's interests represent an interest which cannot be adequately protected by any other party in this proceeding. Therefore, RCN's participation in this proceeding is necessary to protect that interest.

WHEREFORE, RCN Corporation and RCN Telecom Services, Inc. respectfully request that the Commission grant their Petition to Intervene in this proceeding.

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<sup>1</sup> 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, (Dkt No. A-310554F0002).

Respectfully submitted,



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Dated: October 30, 2006

Counsel for  
RCN Corporation and RCN Telecom Services, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PA PUC**  
**SECRETARY'S BUREAU**

Joint Application of	)	
	)	
Commonwealth Telephone Company,	)	
CTSI, LLC, and CTE Telecom, LLC	)	
d/b/a Commonwealth Long Distance Company	)	A-310800F0010
	)	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.	)	

**PROTEST OF RCN CORPORATION AND RCN TELECOM SERVICES, INC.**

RCN Corporation and RCN Telecom Services, Inc. (together "RCN"), through their undersigned counsel, and pursuant to 52 Pa. Code § 5.51 and the Rules of the Pennsylvania Public Utility Commission ("Commission"), hereby protests the Joint Application filed for approval of the proposed acquisition of the stock of the corporate parent of Commonwealth Telephone Company by Citizens Communication Company ("Application"). RCN Corporation is the owner of RCN Telecom Services, Inc., a telecommunications carrier with authorization to serve the public in Pennsylvania as a CLEC, IXC reseller and CAP services provider. The Application should be denied because Commonwealth Telephone Company and its affiliates ("Applicants") have failed to demonstrate that the acquisition is in the public interest. Instead, the acquisition would harm the public interest because it 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 otherwise qualified carriers like RCN from providing competitive, facilities-based alternatives to customers in the Commonwealth service territory. In the alternative, if the Commission allows the

proposed transaction to proceed, it should impose conditions on the Applicants to offset the harms to the public interest caused by their anticompetitive conduct.

## **I. INTRODUCTION.**

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. RCN Telecom Services holds a certificate of public convenience from the Commission and has extensive operations within Pennsylvania through its operations in the Lehigh Valley and the Philadelphia area. RCN has maintained cable network facilities in Pennsylvania for 20 years. Outside Pennsylvania, RCN provides service in the Boston, New York, Washington, D.C., Chicago, and Los Angeles metropolitan markets. What distinguishes RCN from most other competitive local exchange carriers ("CLECs") is its focus on serving the residential market.

What also 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. As is evident from its filing of a completely unmeritorious Protest, Commonwealth, however, is opposed to RCN's competitive presence and has fought to prevent RCN's entry into its lucrative telephone market.

On May 1, 2006, RCN Telecom Services filed an Application with this Commission to expand its authority so as to provide competitive local exchange telephone service in the entire

service territory of Commonwealth (“Expansion Application”).<sup>1</sup> Commonwealth opposed the Expansion Application through the filing of a Protest that is completely without merit. In order to address Commonwealth’s concerns regarding RCN’s possible use of unbundled network elements and RCN’s ability to resell Commonwealth’s retail services, RCN subsequently amended its Expansion Application to clarify that RCN would not resell Commonwealth’s services and would not seek to obtain UNEs from Commonwealth. Thus, this clarification made clear that the services RCN was seeking to provide within Commonwealth’s service territory did not implicate any “rural carrier exemption” Commonwealth might choose to assert under Section 251(f)(1) of the Telecommunications Act of 1996. However, as discussed in more detail below, Commonwealth, continues to assert baseless arguments against RCN’s Expansion Application, solely to impede and delay RCN’s entry into the market in which Commonwealth maintains monopoly status.

The acquisition of Commonwealth by Citizens will only exacerbate the anticompetitive conduct of Commonwealth by giving Commonwealth greater resources and greater incentive to keep RCN out its market for as long as possible. The Commission should deny the Application, or, at a minimum, offset the harms caused by Commonwealth’s anticompetitive conduct by imposing conditions on the transaction.

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<sup>1</sup> 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, (Dkt No. A-310554F0002). 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.

## II. STANDARD OF REVIEW.

The Commission reviews transfer of control applications, like the one submitted by Commonwealth, under Chapter 11 of the Public Utility Code. The Applicants are required to obtain a certificate of public convenience from the Commission before they may lawfully consummate the transaction. Pursuant to Section 1103(a) of the Public Utility Code, the application for a certificate of public convenience may be granted by the Commission only if it finds or determines that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”<sup>2</sup>

In addition, Section 1103(a) of the Public Utility Code provides that the Commission in granting a certificate of public convenience “may impose such conditions as it deems just and reasonable.”<sup>3</sup> By imposing conditions, the Commission may approve a merger that would not otherwise meet the City of York legal standards.<sup>4</sup>

In the SBC/AT&T merger proceeding, the Commission stated that when reviewing the proposed merger of two telecommunications companies, it must “examine the merger in the broad context of the telecommunications industry in Pennsylvania.”<sup>5</sup> Further, the Commission stated that it “must view the public interest benefits [of a proposed merger] in the context of the

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<sup>2</sup> 66 Pa. C.S. §1103(a). See, *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972) (City of York) (holding that a proponent of a merger has the burden of proving by a preponderance of the 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); *Middletown Township v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Commw. 1984) (holding that the benefits and the detriments of the merger will be measured under the public interest test as they impact on “all affected parties”).

<sup>3</sup> 66 Pa. C.S. §1103(a).

<sup>4</sup> 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., MCIMetro 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).

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

telecommunications industry in Pennsylvania, as a whole.”<sup>6</sup> The Commission also stated that “the public interest considerations are broad and not foreclosed by a finding of the benefits to outweigh the detriments of a merger, by even the slightest degree.”<sup>7</sup> The Commission has noted that “the public interest involves broad considerations and is not merely focused upon the interest of the parties, per se.”<sup>8</sup> The Commission has also explained that “the public interest standard is a broad standard that encompasses examining whether, for example, 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 reasonable rates.”<sup>9</sup>

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<sup>6</sup> SBC/AT&T Order at 27.

<sup>7</sup> Id. at 24.

<sup>8</sup> Application of MFS Intelenet of Pennsylvania, Inc., A-310203F0002, 1995 Pa. PUC LEXIS 87, 14 n.8 (October 4 1995).

<sup>9</sup> SBC/AT&T Order at 27-28.

### III. ARGUMENT.

- A. **The acquisition of Commonwealth by Citizens will harm the public interest because it will give Commonwealth greater resources and greater incentive to continue to engage in anticompetitive behavior.**

The acquisition of Commonwealth by Citizens will harm the public interest because it will give Commonwealth access to the enormous resources of Citizens that will be used to further stifle competition in its markets. Citizens is the seventh largest carrier in the United States, with more than 2.1 million ILEC access lines across 24 states. Citizens has more than \$2.1 billion in annual revenues, and its Frontier Communications brand is well-recognized nationwide. Putting this kind of financial and regulatory muscle behind a single-state entity like Commonwealth suddenly gives Commonwealth the clout and leverage of a national carrier.

At the same time, Commonwealth would retain the right to claim its rural carrier exemption under section 251(f)(1) of the Telecommunications Act. Under the rural carrier exemption, Commonwealth would not be obligated to provide unbundled network elements—especially local loops to residential end users— or collocation of facilities, or make its retail offerings available for resale at the wholesale discount.<sup>10</sup> Therefore, a carrier that wanted to compete with Commonwealth to serve residential end users would be required to build facilities throughout the Commonwealth territory and could not rely on leasing or reselling components of the Commonwealth network or services without first going through the process of defeating any assertion of the rural carrier exemption. A carrier with the financial resources of Citizens armed with a rural carrier exemption could place significant impediments to competitive entry.

The acquisition of Commonwealth by Citizens also will harm the public interest because it will give Commonwealth a greater incentive to keep competition out of its markets.

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<sup>10</sup> Commonwealth has already agreed to direct interconnection of its network with the networks of CMRS carriers and other CLECs.

Commonwealth is a rural telephone company with more than 323,000 access lines and \$331 million of annual revenues. Commonwealth has few, if any, wireline service competitors. In fact, the acquisition of Commonwealth was predicated on maximizing the value of the company through continued exploitation of its monopoly status as a rural telephone company. In announcing the acquisition, the Chief Executive Officer of Citizens Communications stated that Commonwealth was an attractive target "first and foremost" because of its rural carrier profile.<sup>11</sup> One aspect that made Commonwealth so attractive was the "fragmented cable competition" within its service territory. Since Commonwealth provides no cable television services, the "fragmented cable competition" could refer only to the potential competition to its monopoly revenues from cable companies such as RCN providing telephone service. The term "fragmented competition" indicates Citizens' belief that Commonwealth faces no immediate threat to its revenue-earning potential and therefore, would be in a position to maximize profits through its monopoly status.

It is these monopoly revenues that Citizens will have a greater incentive to protect if its acquisition of Commonwealth is approved. Citizens will pay Commonwealth shareholders more than \$1.15 billion for the company, and 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).<sup>12</sup> One way to maximize Commonwealth's return is to impede competitive entry

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<sup>11</sup> Conference call with Wall Street analysts, September 18, 2006. A webcast of the conference call is available until December 18, 2006, on the Citizens Communications website. It may also be accessed at <http://event.on24.com/eventRegistration/EventLobbyServlet?target=lobby.jsp&eventid=28383&sessionid=1&key=7924862B92C15E2D6C79F09A4C9FAB53&eventuserid=8121957>. See also "Citizens Communications: Acquisition of Commonwealth Telephone Enterprises, September 2006," PowerPoint presentation, attached as Exhibit A.

<sup>12</sup> Citizens has told the financial community that the acquisition will be "free cash flow accretive in first year," meaning that Citizens expects to be able to recoup its acquisition costs almost immediately. See note 14, supra. This indicates that the acquisition is low-risk to Citizens and that Commonwealth faces very little competition.

wherever possible, such as by delaying and obstructing entry by companies like RCN that have already established communications networks within Commonwealth territory.

Yet, Commonwealth is not opposed to competitive entry into the territory of other incumbent LECs. Commonwealth also owns a CLEC—CTSI, LLC—that competes with Verizon and Embarq in Pennsylvania. Commonwealth uses CTSI as a part of its “edge-out” strategy that effectively extends its own service footprint into other LECs’ territories in order to serve customers of Commonwealth that may need service to locations outside Commonwealth’s exchanges. Citizens has stated that not only will it continue the “edge-out” CLEC strategy, but it will also merge the CLEC operations with the ILEC operations where possible in order to reduce costs and increase earnings.<sup>13</sup> So it is clear that Citizens and Commonwealth recognize the value of the competition presented by CLECs, so long as the competition stays away from Commonwealth’s own service territory.

It is therefore crucial that RCN or any other qualified Applicant be permitted to enter Commonwealth’s entire market before Citizens takes control of the company. The CEO of Citizens has stated that there is one significant difference between Citizens and Commonwealth: Commonwealth does not provide service to customers under contracts.<sup>14</sup> Citizens has said it would immediately implement a strategy to provide service to customers under contracts after it has completed its acquisition of Commonwealth. This approach would have major implications for competitive carriers like RCN because Citizens would be locking up the most valuable customers to long-term commitments, thereby preventing competition for business. This strategy immediately makes competitive entry more difficult for new entrants. As the Federal Communications Commission has stated, “To the extent the [ILEC] can lock in the larger

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<sup>13</sup> See note 14, supra.

<sup>14</sup> See note 14, supra.

business customers whose traffic would economically justify the construction of new facilities, the [ILEC] can foreclose competition[.]”<sup>15</sup>

This is only one example of what CLECs can expect from Commonwealth telephone after it is acquired by Citizens, and demonstrates how crucial it is to enter the market before the acquisition is completed and Citizens is able to implement its changes. On the other hand, immediate competitive entry by RCN would provide competitive choices to residential consumers in Commonwealth’s service territory. Most of these residential customers have never been able to obtain telephone service from anyone but Commonwealth.

**B. Commonwealth’s conduct in the RCN Expansion Application proceeding before the Commission is anticompetitive and discriminatory and should not be rewarded in this proceeding.**

The acquisition of Commonwealth by Citizens is also not in the public interest because it will reward Commonwealth, and Commonwealth’s management and shareholders, for persistent anticompetitive and discriminatory behavior to the detriment of Pennsylvania consumers. RCN has facilities in place within Commonwealth territory to provide telephone service immediately; it needs only expanded CLEC authority from the Commission to provide such service. RCN has attempted to bring competitive telephone choices to customers within the Commonwealth territory and Commonwealth has responded by opposing RCN’s Expansion Application with specious arguments that seek only to 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 Expansion Application. This position, however, was squarely rejected by the Commission six years ago in the Vanguard Telecom decision when

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<sup>15</sup> Access Charge Reform Order, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262 (rel. Aug. 27, 1999) at ¶ 79.

it considered the review of applications by CLECs to expand into rural carrier territory.<sup>16</sup> In that case, the Commission ruled 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. Instead, a CLEC applicant must show only that it possesses the requisite technical, financial, and legal fitness to obtain certification to provide facilities-based service in rural territories.

Commonwealth also alleges, without basis or merit, that RCN lacks the financial, technical, and managerial fitness to provide service within Commonwealth's service territory. The argument is specious because RCN has already demonstrated to this Commission that it satisfies the fitness criteria in the course of its earlier certification proceedings.<sup>17</sup> The Commission has even recently *had the opportunity to review RCN's fitness to provide service in the course of granting the approvals needed to complete certain transactions related to RCN's bankruptcy and restructuring.*<sup>18</sup> Further, Commonwealth's management is intimately familiar with the fitness of RCN's management since Commonwealth and RCN were affiliates under common ownership by C-TEC Corp. ("C-TEC"). Several of the current executives of

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<sup>16</sup> Amended Application of Vanguard Telecom. Corp. for approval to offer, render, furnish or supply telecommunications service as a Competitive Local Exchange Carrier in the areas served by selected rural telephone companies, A-310621F0002 (Order entered August 17, 2000)

<sup>17</sup> RCN is already certificated in Pennsylvania and is currently doing business in Pennsylvania as an Interexchange Reseller (statewide authority at Docket No. A-310554), as a Competitive Access Provider (statewide authority at Docket No. A-310554F0003), and as a Competitive Local Exchange Carrier in the service territory of Verizon Pennsylvania, Inc. (Docket No. A-310555F0002).

<sup>18</sup> Securities certificate of RCN Telecom Services, Inc. to support, as a guarantor, the debt financing of its parent, RCN Corporation, (Docket No. S-00041022).

Commonwealth Telephone Enterprises, Inc., including the Chief Executive Officer, Michael J. Mahoney, had been senior executives at RCN.<sup>19</sup>

In addition, the Commission has ruled that a carrier that is already certificated as a CLEC enjoys a rebuttable presumption of continuing fitness based on certification as a CLEC actively engaged in the provision of service in other parts of the state.<sup>20</sup> Commonwealth has provided no information to rebut the presumption of fitness. RCN certainly satisfies the fitness criteria and is thereby entitled to have its CLEC authority expanded to include the Commonwealth service territory. Clearly, Commonwealth's opposition to the RCN Expansion Application is an example of an attempt to delay, impede, and otherwise interfere with facilities-based competition from a provider that is obviously fit to provide such service.

Intentional obstruction of competition violates federal and state law in a number of ways. Under 47 CFR § 51.301(c)(6), Commonwealth has a duty to negotiate with RCN in good faith and intentionally obstructing resolutions of disputes violates such a duty.<sup>21</sup> Further, Commonwealth's conduct in the RCN Expansion Application proceeding is unjust and unreasonable under section 201 of the federal Communications Act because it serves only to delay competitive entry. Commonwealth's baseless opposition to RCN's petition is also discriminatory under section 202 of the federal Communications Act and section 63.143 of the Pennsylvania Public Utility Code because Commonwealth has entered into interconnection arrangements with other CLECs and CMRS carriers within its territory.

RCN's Expansion Application does not implicate any assertion by Commonwealth of a claimed rural carrier exemption under section 251(f)(1). RCN can provide service in

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<sup>19</sup> RCN's and Commonwealth's history together as affiliates may also demonstrate why Commonwealth is so strongly opposed to RCN's entry to its markets: Commonwealth has close knowledge of RCN's network and ability to provide competitive services.

<sup>20</sup> AT&T/TCG Order at 17.

<sup>21</sup> Petition of Cellco Partnership d/b/a Verizon Wireless, P-0021995, Opinion and Order (Jan. 18, 2005) at 27, n.28

competition with Commonwealth through an interconnection arrangement that does not implicate the exemption, and which Commonwealth has already agreed to provide to another CLEC and several CMRS providers. By amending its Application, RCN has made it clear that it is not seeking unbundled network elements from Commonwealth, nor does RCN seek to resell Commonwealth retail products by obtaining a wholesale service discount from Commonwealth. Therefore, the rural carrier exemption should not be an issue in the consideration of RCN's Expansion Application.

**C. The Applicants fail to satisfy the City of York standard for transfer of control applications.**

The Applicants make passing reference to the City of York standard that they must satisfy in order for the Commission to approve the proposed transfer of control, but they fail to show that the transfer will result in the positive benefits mandated by the City of York decision.<sup>22</sup> Applicants suggest that adding the backing of a company with Citizens' financial strength will make the deployment of advanced services more likely, yet Commonwealth has already committed to complete broadband availability throughout the Commonwealth service territory by the end of 2008 as a part of its Chapter 30 Network Modernization Plan.<sup>23</sup> As a result, this implied commitment is not merely speculative, it is illusory. In addition, Applicants identify "the need to grow the business" as a "driving force" behind the acquisition, and that these expanded business opportunities are a purported benefit to consumers.<sup>24</sup> Yet Commonwealth's views on "growing the business" as a positive public benefit are completely one-sided: growing the business is a commendable goal for Commonwealth, but allowing a competitor to grow its

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<sup>22</sup> Application at 11.

<sup>23</sup> Petition for Amended Alternative Regulation and Network Modernization Plan of Commonwealth Telephone Company, Dkt. No. P-00961024F1000, Order (Mar. 3, 2005).

<sup>24</sup> Application at 12.

business should be discouraged, if Commonwealth is to be believed. Commonwealth's efforts to intentionally stymie RCN's attempts to grow RCN's business should indicate to the Commission how little Commonwealth truly values new services for consumers within Commonwealth's territory. The benefit of "growing the business" inures solely to shareholders and management in Commonwealth's world view, and not to the public. The remainder of the purported benefits—such as the offering of Citizens' web portal and customized sporting event highlights—are inconsequential and could be provided right now by any number of competitors. The Applicants have failed to demonstrate positive public benefits as required by the City of York.

**D. The proposed transfer of control of Pennsylvania's third largest ILEC requires more thorough review than that proposed in the Application.**

As explained above, Applicants have failed to satisfy the City of York standard for showing a positive public benefit as a result of the proposed acquisition. The Commission should request further information from the Applicants to support their claims of positive benefits to the public and then assess the validity of that information. Commonwealth Telephone provides local exchange service in 67 exchanges in 20 counties. It provides service to more than 323,000 access lines as a carrier-of-last-resort incumbent local exchange carrier. For example, the Commission needs to test whether the acquisition of the third largest ILEC in Pennsylvania by the seventh largest ILEC in the United States will actually accelerate broadband deployment throughout Commonwealth's rural territory any more than Commonwealth has already committed to provide.

The Commission also needs to confirm whether consumers—who have virtually no competitive alternatives within Commonwealth's market—will share in the financial rewards of the proposed acquisition or whether the cost savings and expanded business opportunities will

flow through solely to shareholders and management. In addition, the proposed acquisition represents a consolidation of major ILEC interests within Pennsylvania. Hundreds of thousands of consumers will be affected by this transaction. The Commission should consider reaching out to those consumers throughout Commonwealth's territory through public input hearings to assess their views on Commonwealth's operations and whether consolidation with a larger ILEC will provide benefits to them. Many of these consumers would be reluctant to file comments in this proceeding but may be willing to raise relevant issues for the Commission's consideration in local meetings.

Further, the Applicants make no commitments to promoting a policy of diversity at the newly merged entity. Such a commitment should be essential to a company the size of the combined Citizens and Commonwealth that plays such an integral role in the Pennsylvania economy. The Commission should inquire about Citizens and Commonwealth's continued commitment to diversity in the workplace.

The Commission should also inquire about the newly merged entity's commitment to preserving jobs in Pennsylvania. Citizens has represented that it expects to realize approximately \$30 million a year in cash savings as a result of combining the two companies. The Commission should investigate how much of those savings are the result of economies of scale, and how much of those savings are the result of elimination of overlapping job functions. If the savings are the result of the elimination of jobs, the Commission should investigate whether job reduction will come through natural attrition of the work force or whether Citizens will use layoffs to reduce its work force at the combined telephone company.

The Commission should also investigate Citizens' estimate and planned use of merger cost savings. Until ILECs like Commonwealth have embraced a complete transition to

competitive markets, the Commission will be required to assess Commonwealth's rates, costs, and profitability to ensure that Commonwealth's end users are not being exploited. The Commission should ensure that Commonwealth's captive rate-payers share in the benefits of the proposed acquisition.

Extensive discovery and full trial-type hearings before an Administrative Law Judge are necessary to fully explore the foregoing issues, as well as others that will undoubtedly arise in the course of examining the merits of the merger proposal. RCN requests that these applications be assigned to the Office of Administrative Law Judge for a Recommended Decision on the factual, legal and policy issues raised in the Protest.

### **III. THE COMMISSION SHOULD ORDER CONDITIONS TO OFFSET THE COMPETITIVE HARMS.**

RCN has demonstrated that the proposed transfer of control of Commonwealth to Citizens is not in the public interest because it will give Commonwealth greater resources and greater incentive to continue to engage in anticompetitive behavior. For this reason, the Application should be denied.

Even if the Commission permits the transaction to proceed, it must delay approval of the Application until RCN and Commonwealth have had their differences resolved by the Commission in the proceeding to expand RCN's certificated authority to include Commonwealth service territory. RCN filed its Petition with the Commission on May 1, 2006, almost five months earlier than Commonwealth and Citizens filed their transfer of control Application. The Commission must first resolve the question of competitive entry before Commonwealth should be granted the benefit requested in its Application.

As explained above, the Commission should conclude that the ongoing competitive harms and the likelihood that the merged entity will have the means and the incentive to continue to engage in anticompetitive behavior demonstrate that the proposed transaction is not in the public interest. In order for the transaction to proceed, therefore, the Applicants must be willing to agree to steps to be taken to offset the ongoing harms to the public interest. Section 1103(a) of the Public Utility Code provides that the Commission in granting a certificate of public convenience “may impose such conditions as it deems just and reasonable.”<sup>25</sup> By imposing conditions, the Commission can approve a merger that would not otherwise meet the City of York legal standards.<sup>26</sup>

RCN proposes that the Commission consider imposing on Citizens and Commonwealth the following conditions, *inter alia*, in order for their Application to be approved:

First, Citizens and Commonwealth must cease and desist from anticompetitive and discriminatory conduct against other carriers. They must agree not to oppose petitions from carriers previously certificated in Pennsylvania to provide competitive local exchange services to expand service into Citizens or Commonwealth service territory, and to the extent necessary, cease Commonwealth’s opposition to the RCN Petition. Agreeing to this step will not mean that unqualified carriers will be permitted to compete with rural LECs in the future. The Commission will continue to exercise its oversight authority to approve CLEC service expansion petitions under the standards established in the Armstrong and Vanguard Telecom decisions.<sup>27</sup> Those

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<sup>25</sup> 66 Pa. C.S. §1103(a).

<sup>26</sup> See Application for Authority to Transfer Control of Trigen-Philadelphia Energy Corporation, A-130375F5000 (April 7, 2005).

<sup>27</sup> Application of Armstrong Telecommunications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Service as a Competitive Local Exchange Carrier in the Service Territory of Citizens Telephone Company – Kecksburg, A-311014F0002AMA (Order entered September 9, 2005); Amended Application of Vanguard Telecom. Corp. for approval to offer, render, furnish or supply telecommunications service as a Competitive Local Exchange Carrier in the areas served by selected rural telephone companies, A-310621F0002 (Order entered August 17, 2000).

standards are sufficient to ensure that only those carriers that meet the Commission's standards for technical, financial, and legal fitness are qualified to provide local exchange service in rural exchanges.

Second, the merger should be conditioned on Citizens and Commonwealth agreeing not to assert a rural exemption under state or federal law against a competitive carrier making a bona fide request for interconnection in the Commonwealth territory. The Commission has already taken a number of steps to prepare rural LECs for competition, including the elimination of what was referred to as the absolute or blanket rural exemption under Section 251(f)(2).<sup>28</sup> Rural LECs in Pennsylvania already are required to comply with the obligations imposed on local exchange carriers by sections 251(a) and 251(b) of the Telecommunications Act. The only remaining obligations for which Citizens and Commonwealth could remain exempt would be those imposed by section 251(c) of the Act. And one Citizens subsidiary—Citizens of Kecksburg—has already had that limited exemption removed by this Commission.<sup>29</sup> Further, the rural carrier exemption was not intended to protect incumbent carriers like Citizens that have a presence in more than 23 states serving more than 2.6 million access lines and earning annual revenues in excess of \$2.4 billion. A rural carrier exemption may be appropriate to protect rural LECs whose financial position is sufficiently precarious so that government protection is needed in order to ensure universal service policy objectives, but it is clearly not appropriate for a company with the financial strength and size of a company like the combined Citizens/Commonwealth entity.

RCN believes that given the opportunity, other competitive carriers would leap at the chance to compete with Citizens within Citizens' territories on the same terms that they compete

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<sup>28</sup> Petition of Rural Incumbent Local Exchange Carriers for a 36-month Suspension of Interconnection Requirements Limited to Only Those Requirements Set Forth in §251(b)(1) and (c) of the Telecommunications Act of 1996, Docket No. P-00971177 (Order entered January 15, 2003).

<sup>29</sup> *Armstrong Telecommunications, Inc. v. Pennsylvania Public Utilities Commission*, 835 A.2d 409 (Pa. Commw. 2003).

with Verizon and Embarq in Pennsylvania. As long as Citizens can hide behind a rural carrier exemption, open and fully competitive local exchange markets will be delayed. The Commission should rule as a condition for approval of the proposed transfer of control that Citizens and Commonwealth will agree not to oppose petitions filed by competitive carriers to terminate the rural carrier exemption under section 251(f)(1) within Pennsylvania.

#### IV. REQUEST FOR RELIEF.

For all the foregoing reasons, RCN respectfully requests that the Commission deny the Joint Application for the transfer of control of Commonwealth to Citizens or in the alternative, set the Application for hearing before an Administrative law Judge. If the Commission permits the proposed transaction to proceed, it must impose conditions on its approval as recommended by RCN, as well as others that may be appropriate, in order to offset the ongoing harms to the public interest that will result from the transaction. The Commission should also grant RCN any additional relief that the Commission deems appropriate.

Respectfully submitted,



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(703) 760-5248

Attorneys for RCN Corporation and RCN Telecom  
Services, Inc.

Dated October 30, 2006

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED  
2006 OCT 30 PM 3:43  
PA PUC BUREAU  
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 FIRST CLASS MAIL

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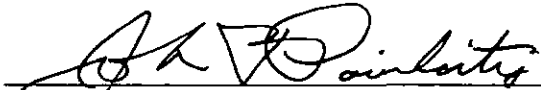
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Hilary Glassman, Esquire  
Citizens Communications Company  
3 High Ridge Park  
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Phone: (203) 614-5047  
Fax: (203) 614-4651

Date: October 30, 2006



---

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**Sprint**



Together with NEXTEL

**Sprint Nextel**

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**Jennifer A. Duane**

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

**ORIGINAL**

October 30, 2006

VIA OVERNIGHT MAIL

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor, Room N 201  
Harrisburg, Pennsylvania 17120

**RECEIVED**

OCT 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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 Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.  
Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

I enclose for filing an original and three (3) copies of the Petition to Intervene of Sprint Communications Company L.P. ("Sprint") in the above-referenced docket.

As evidenced by the attached Certificate of Service, all parties have been served with a copy of this document. Please date stamp the enclosed copy of this transmittal letter and return it to me in the enclosed self-addressed, postage-prepaid envelope. If you have any questions concerning this filing, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Jennifer A. Duane

Enclosure

cc: Certificate of Service

**DOCUMENT  
FOLDER**

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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.** :

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

**RECEIVED**

**OCT 30 2006**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**PETITION TO INTERVENE OF  
SPRINT COMMUNICATIONS COMPANY L.P.**

Pursuant to 52 Pa. Code §§ 5.71-5.74, Sprint Communications Company L.P.

("Sprint") respectfully petitions the Pennsylvania Public Utility Commission ("Commission" or "PUC") to intervene in the above-captioned proceeding. In support of the Petition, Sprint states as follows:

1. 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"). The Joint Applicants state 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

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(“CTE”) and, indirectly, the stock of the Joint Applicants. CTE will then become a wholly-owned, direct subsidiary of Citizens.

2. Notice of the filing appeared in the Pennsylvania Bulletin on October 14, 2006. 36 Pa. B. 6355. Pursuant to that notice, petitions to intervene are to be filed with the Commission by October 30, 2006.

3. The Joint Applicants assert that the proposed stock 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.<sup>1</sup>

4. In support of the proposed acquisition, the Joint Applicants claim that it 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.<sup>2</sup> 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 CTCo’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.”<sup>3</sup>

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.<sup>4</sup> On May 4, 2005, Sprint filed an

---

<sup>1</sup> 66 Pa. C.S. § 1103(a).

<sup>2</sup> *Id.* at 14, ¶ 44.

<sup>3</sup> *Id.* at 14-15, ¶ 45.

<sup>4</sup> *Application of Sprint Communications Company L.P. to Amend its Certificate of Public Convenience to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-310183F0002, Opinion and Order (December 5, 1996);

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.<sup>5</sup>

6. 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, including the filing of direct and rebuttal testimonies and briefs, the presiding Administrative Law Judge issued on May 22, 2006 an Initial Decision finding that the Commission should deny Sprint's application. The ALJ's initial decision is currently pending before the Commission on exceptions.

7. Sprint sought CLEC certification to interconnect with CTCo and other incumbent local exchange carriers to facilitate the provision of certain telecommunications services to cable service providers, including Blue Ridge Communications ("Blue Ridge").<sup>6</sup> Under its arrangements with these cable service providers, Sprint is responsible for providing interconnection to the public switched telephone network ("PSTN"), switching, all intercarrier compensation, numbering resources, administration and porting, domestic and international interexchange service, exchange access, operator and directory assistance and numerous back office functions.<sup>7</sup>

8. Given its interests in offering local telecommunications services in the service territory of CTCo, Sprint may be directly affected by the resolution of this matter. *See* 52 Pa. Code § 5.72(a)(2). The Joint Applicants assert that the proposed combination with Citizens

---

Application amended to include the service territories of GTE North, Inc. n/k/a Verizon North, Inc. and the United Telephone Company of Pennsylvania d/b/a Sprint, Opinion and Order (April 30, 1998).

<sup>5</sup> 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.

<sup>6</sup> Docket Nos. A-310183F0002AMA et. al, ALJ's Initial Decision at 8-9.

<sup>7</sup> *Id.* at 4-5.

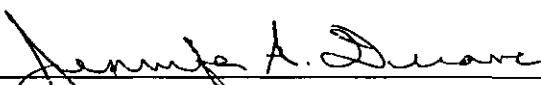
will advance competition for telecommunications services in their respective markets, including CTCO's local service area, and will permit the combined company to more effectively and efficiently compete with other facilities-based local service providers. The Commission's approval of this acquisition will impact Sprint's ability to effectively operate and compete in the local exchange market controlled by these companies. No other party can represent Sprint's interests in the outcome of this proceeding.

9. Due to the important policy issues under consideration in this proceeding, including the status of facilities-based local service competition in the service territory of CTCO, Sprint submits that its participation in this matter is in the public interest. *See* 52 Pa. Code § 5.72(a)(3). Accordingly, good cause exists to grant this Petition to Intervene.

WHEREFORE, Sprint respectfully requests that the Commission grant this Petition to Intervene in this proceeding.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



---

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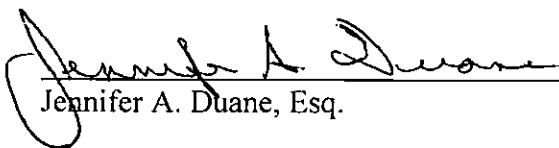
Dated: October 30, 2006

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STATE OF VIRGINIA     )  
                                  )  
COUNTY OF FAIRFAX    )

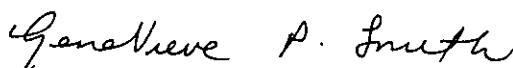
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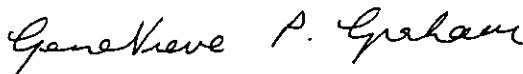
JENNIFER A. DUANE, being duly sworn according to law, deposes and says that she is counsel to Sprint Communications Company L.P., that in this capacity she is authorized to and does make this affidavit for Sprint Communications Company L.P., and that the facts set forth in the foregoing Petition to Intervene are true and correct to the best of her knowledge, information, and belief.

  
\_\_\_\_\_  
Jennifer A. Duane, Esq.

SWORN TO and subscribed

Before me this 30<sup>th</sup> day of October, 2001

  
\_\_\_\_\_  
Notary Public

⊗ Commissioned as 

GENEVIEVE P. GRAHAM  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES AUG. 31, 2007

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OCT 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



**CERTIFICATE OF SERVICE**

I, Mable L. Semple, certify that I have served a true copy of the Petition to Intervene of Sprint Communications Company L.P. by First Class U.S. mail, postage prepaid and /or FedEx to the parties listed below.

Dated in Reston, VA on Wednesday, October 30, 2006

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Assistant Consumer Advocate  
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LLP  
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Raymond Ostroski, Esq.  
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P.O. Box 1778  
Harrisburg, PA 17105

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

  
Mable L Semple update 10/30/06

**Sprint**



Together with NEXTEL

**Sprint Nextel**

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**Jennifer A. Duane**

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Jennifer.a.duane@sprint.com

**ORIGINAL**

October 30, 2006

VIA OVERNIGHT MAIL

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor, Room N 201  
Harrisburg, Pennsylvania 17120

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OCT 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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 Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003

Dear Secretary McNulty:

I enclose for filing an original and three (3) copies of the Protest of Sprint Communications Company L.P. ("Sprint") in the above-referenced docket.

As evidenced by the attached Certificate of Service, all parties have been served with a copy of this document. Please date stamp the enclosed copy of this transmittal letter and return it to me in the enclosed self-addressed, postage-prepaid envelope. If you have any questions concerning this filing, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Jennifer A. Duane

**DOCUMENT  
FOLDER**

Enclosure

cc: Certificate of Service

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**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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. :**

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

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**OCT 8 0 2006**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**PROTEST OF SPRINT COMMUNICATIONS COMPANY L.P.  
TO THE JOINT APPLICATION OF COMMONWEALTH TELEPHONE  
COMPANY, CTSI, LLC AND CTE TELECOM, LLC D/B/A COMMONWEALTH  
LONG DISTANCE COMPANY FOR APPROVAL OF THE ACQUISITION OF  
COMMONWEALTH TELEPHONE ENTERPRISES, INC. BY  
CITIZENS COMMUNICATIONS COMPANY**

Pursuant to 52 Pa. Code § 5.51, Sprint Communications Company L.P. ("Sprint") hereby files this protest to the above-referenced Joint Application of Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI") and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company ("CLD") (collectively the "Joint Applicants") 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. In support of its protest, Sprint states as follows:

**I. BACKGROUND**

1. On September 29, 2006 the Joint Applicants filed an Application with the Pennsylvania Public Utility Commission ("Commission") seeking approval for its proposed

**DOCUMENT  
FOLDER**

**DOCKETED**  
**NOV 0 1 2006**

acquisition by Citizens Communications Company (“Citizens”). The Joint Applicants state that, pursuant to an Agreement and Plan of Merger (“Merger Agreement”) executed on September 17, 2006, Citizens will acquire the stock of Commonwealth Telephone Enterprises (“CTE”) and, indirectly, the stock of the Joint Applicants. CTE will then become a wholly-owned, direct subsidiary of Citizens.<sup>1</sup>

2. Notice of the filing appeared in the Pennsylvania Bulletin on October 14, 2006. 36 Pa. B. 6355. The notice directed the filing of formal protests with the Commission by October 30, 2006.

3. The Joint Applicants assert that its acquisition by Citizens provides affirmative public benefits and that the approval of the transaction is in the public interest. It contends that the proposed stock 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.<sup>2</sup> The Joint Applicants state that Citizens offers telephone, television and Internet services as well as a variety of bundled services focused on small and medium-sized markets and assert that the proposed combination will permit it to broaden the scope of its existing product offerings to its customers and expand business opportunities that will improve its overall presence in Pennsylvania.<sup>3</sup>

4. In further support of the proposed acquisition, the Joint Applicants claim that it 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.<sup>4</sup> Additionally, the Joint Applicants argue that

---

<sup>1</sup> Joint Application at ¶ 17.

<sup>2</sup> 66 Pa. C.S. § 1103(a).

<sup>3</sup> Joint Application at ¶¶ 11, 36 and 38.

<sup>4</sup> *Id.* at ¶ 44.

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."<sup>5</sup>

## II. INTEREST OF PROTESTANT IN THE JOINT APPLICATION

5. The name and address of Protestant is:

Sprint Communications Company L.P.  
2001 Edmund Halley Drive  
Reston, Virginia 20191

6. The name, address and telephone number of the Protestant's counsel:

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](mailto:Jennifer.a.duane@sprint.com)

7. 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.<sup>6</sup> On May 4, 2005, Sprint filed an application seeking the Commission's approval to offer telecommunications services as a

---

<sup>5</sup> *Id.* at ¶ 45.

<sup>6</sup> *Application of Sprint Communications Company L.P. to Amend its Certificate of Public Convenience to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-310183F0002, Opinion and Order (December 5, 1996); *Application amended to include the service territories of GTE North, Inc. n/k/a Verizon North, Inc. and the United Telephone Company of Pennsylvania d/b/a Sprint*, Opinion and Order (April 30, 1998).

CLEC in the service territories of Alltel Pennsylvania, Inc., CTCo and Palmerton Telephone Company.<sup>7</sup>

8. 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, including the filing of direct and rebuttal testimonies and briefs, the presiding Administrative Law Judge issued on May 22, 2006 an Initial Decision finding that the Commission should deny Sprint's application. The initial decision is currently pending before the Commission on exceptions.

9. Sprint sought CLEC certification to interconnect with CTCo and other incumbent local exchange carriers to facilitate the provision of certain telecommunications services to cable service providers, including Blue Ridge Communications ("Blue Ridge").<sup>8</sup> Under its arrangements with cable service providers, Sprint is responsible for providing interconnection to the public switched telephone network ("PSTN"), switching, all intercarrier compensation, numbering resources, administration and porting, domestic and international interexchange service, exchange access, operator and directory assistance and numerous back office functions.<sup>9</sup>

10. Blue Ridge filed an application for certification as a CLEC in CTCo's territory on June 13, 2006.<sup>10</sup> CTCo has protested Blue Ridge's CLEC application as well and requested an evidentiary hearing.

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<sup>7</sup> *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.

<sup>8</sup> Docket Nos. A-310183F0002AMA, et. al, ALJ's Initial Decision at 8-9.

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Application of Blue Ridge Digital Phone Company to Provide Telecommunications Services in the Commonwealth of Pennsylvania in the Service Territories of Windstream Pennsylvania, Inc. f/k/a Alltel Telephone Company, Commonwealth Telephone Company and Palmerton Telephone Company as a Facilities*

### III. BASIS OF PROTEST

11. 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.<sup>11</sup> 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.*

12. Sprint submits this protest 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. Although the Joint Applicants assert that its proposed merger with Citizens will enhance CLEC competition in CTCo's local service territory, CTCo's regulatory posture in prior certification procedures, where it routinely protests applications for CLEC entry into its operating service area, belies this claim.

13. Sprint contends that the Commission should condition its approval of the proposed acquisition on obtaining assurances from CTCo and 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

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*Based Competitive Local Exchange Carrier and Interexchange Toll Reseller, Docket Nos. A-311397F0002AMA, AMB and AMC.*

<sup>11</sup> 52 Pa. Code § 69.901.

same time, the Commission should not permit CTCo to impede competitive entry into its service territory by these same alternative local service providers. Permitting rural incumbent LECs to routinely protest applications filed by competitive telecommunications carriers for CLEC authority in their service territories and to demand evidentiary hearings before the grant of operational authority acts as a genuine and significant barrier to entry and defeats the pro-competitive purposes of the Telecommunications Act of 1996 ("Act").

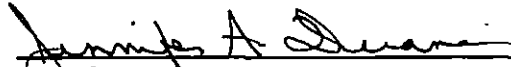
14. The Act, and the public interest, demands that competitive alternatives in local telecommunications services be extended to consumers in Pennsylvania's rural markets as well as in its urban areas.

#### **IV. CONCLUSION**

WHEREFORE, for the above-stated reasons, Sprint respectfully requests the Commission to 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)  
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[Jennifer.a.duane@sprint.com](mailto:Jennifer.a.duane@sprint.com)

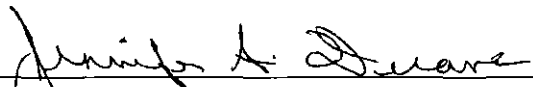
Dated: October 30, 2006

AFFIDAVIT

STATE OF VIRGINIA     )  
                                  )  
COUNTY OF FAIRFAX    )

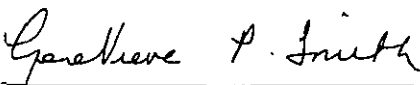
ss:

JENNIFER A. DUANE, being duly sworn according to law, deposes and says that she is counsel to Sprint Communications Company L.P., that in this capacity she is authorized to and does make this affidavit for Sprint Communications Company L.P., and that the facts set forth in the foregoing Protest are true and correct to the best of her knowledge, information, and belief.

  
\_\_\_\_\_  
Jennifer A. Duane, Esq.

SWORN TO and subscribed

Before me this 30<sup>th</sup> day of October, 2001

  
\_\_\_\_\_  
Notary Public

\* Commissioned as Genevieve P. Graham

GENEVIEVE P. GRAHAM  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES AUG. 31, 2007



RECEIVED

OCT 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

I, Mable L. Semple, certify that I have served a true copy of the Protest of Sprint Communications Company L.P. by First Class U.S. mail, postage prepaid and /or FedEx to the parties listed below.

Dated in Reston, VA on Wednesday, October 30, 2006

Philip F. McClelland, Senior Assistant  
Consumer Advocate, Joel H. Cheskis,  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
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Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2<sup>nd</sup> Floor West  
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Office of Small Business Advocate  
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Norman Kennard, Esq.  
Hawke, McKeon, Sniscak & Kennard,  
LLP  
100 North Tenth Street  
Harrisburg, PA 17101

Raymond Ostroski, Esq.  
Senior Vice President, General Counsel  
and Secretary  
Commonwealth Telephone Enterprises,  
Inc.  
100 CTE Drive  
Dallas, PA 18612

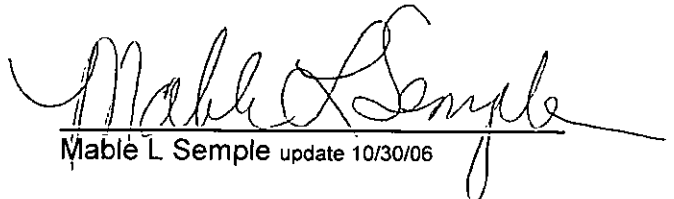
Hilary Glassman, Esq.  
Senior Vice President, General Counsel  
Citizens Communications Company  
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Stamford, Connecticut 06905

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

**RECEIVED**

OCT 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
Mable L. Semple update 10/30/06



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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

IRWIN A. POPOWSKY  
Consumer Advocate

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

October 30, 2006

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

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PA PUC  
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, and A-311225F0003

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Protest and Public Statement 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,  
  
Shaun A. Sparks  
Assistant Consumer Advocate  
PA Attorney I.D. # 87372

Enclosures

cc: All parties of record \*91305

63

**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-310800F00105  
A-311095F0005  
A-311225F0003

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SECRETARY'S BUREAU

**ORIGINAL**

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**PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE**

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The Office of Consumer Advocate (OCA) hereby files this Protest in the above-captioned Joint Application proceeding pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission or PUC), 52 Pa. Code §§ 5.71 and 5.51, and sections 1102 and 1103 of the Public Utility Code, 66 Pa.C.S. §§ 1102 and 1103.

**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.

**DOCUMENT  
FOLDER**

**DOCKETED**  
NOV 03 2006

The OCA now files this Protest to ensure that the proposed transaction provides 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. 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.

In addition, 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.

Based on a preliminary review of the Joint Application, the OCA would raise a number of issues that the Commission must address before granting its approval. 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. The Joint Application provides that the acquisition “will be transparent to the Joint Applicants’ customers” and that the

“Joint Applicants’ rates will not be affected by the transaction.” *Joint Application* at 10. This speaks to a “do-no-harm” approach that the Pennsylvania Supreme Court has previously rejected. *See York* at 141. 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.

Therefore, the Commission must examine this Joint Application carefully to ensure that Pennsylvania telecommunications consumers receive substantial affirmative benefits. In that regard, the OCA will represent the interests of Pennsylvania consumers in this matter, and will seek to ensure that the Joint Applicants demonstrate that the proposed transaction provides affirmative public benefits. The OCA will also seek to ensure that the parties to this transaction support the service, accommodation, convenience, and safety of the public now and into the future.

## **II. PROTEST**

1. This Protest is filed in the name of Irwin A. Popowsky, Consumer Advocate, 555 Walnut Street, 5<sup>th</sup> Floor, Forum Place, Harrisburg, PA 17101-1923. The Consumer Advocate’s attorneys in this matter are Joel H. Cheskis and Shaun A. Sparks, Assistant Consumer Advocates.

2. The OCA is authorized by law to represent the interests of utility consumers in all proceedings before this Commission. 71 P.S. §§ 309-1, *et seq.* The OCA files this Protest to ensure that the interests of Pennsylvania’s telecommunications consumers are protected regarding all aspects of the Joint Application.

3. The Joint Application must be examined pursuant to Sections 1102 and 1103 of the Public Utility Code.

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. §1102(a)(1)-(3). The statute provides, in pertinent part, as follows:

Upon application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

...

(3) For any public utility or affiliated interest of a public utility as defined in section 2101 . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service. . . .

66 Pa.C.S. §1102(a)(3). The Commission must consider the public interest in determining whether to grant a certificate of public convenience in response to an application under this section of the Code.

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. Section 1103 of the Code provides:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 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).

6. To obtain a certificate of public convenience in an acquisition or merger proceeding, applicants have the burden of proving by a preponderance of the evidence that a transfer of control is in the public interest. The Courts of Pennsylvania have held that applicants seeking approval under these provisions of the Code must demonstrate by a preponderance of the evidence that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *York*; Middletown Twp. v. Pa. PUC, 482 A.2d 674, 682 (Commw. Ct. 1984). *See also*, Re: DQE, Inc., 88 Pa. PUC 467, 474 (1998); Newtown Artesian Water Company, 76 Pa. PUC 260, 262 (1992). To ensure that applications such as this are in the “public interest,” the Commission may impose conditions on its granting of the certificate of public convenience. Re: DQE, Inc., 88 Pa. PUC at 474.

7. In the Application, the Joint Applicants identify themselves in the Application as Commonwealth Telephone Company, CTSI LLC, and CTE Telecom, LLC, and also identify their counsel in this matter. Joint Application at ¶ 1, 2.

8. In the Application, the Joint Applicants request permission to transfer control of their corporate parent, Commonwealth Telephone Enterprises, to Citizens. Joint Application at ¶ 6. This section of the Joint Application provides:

The transaction represents a change in indirect ownership only. Ownership of the Applicants will continue to reside in the parent company, CTE. The Joint Applicants will retain the same subsidiary corporate relationships to CTE as they did prior to the proposed stock transfer.

Id.

9. While the Joint Applicants discuss Citizens in the Application, and provide contact information for that company, neither Citizens nor any of its affiliated Pennsylvania jurisdictional utilities are parties to the Joint Application. Joint Application at ¶ 4.

10. Furthermore, neither Citizens nor any of its jurisdictional affiliates have intervened in this proceeding.

11. The OCA submits that issues involving Citizens' jurisdictional affiliates are relevant to this proceeding. Citizens has publicly stated that it will have control of the Commonwealth group of companies, will re-brand those companies with the Frontier name and has made public filings and presentations indicating that it intends to make significant changes in areas of Commonwealth's personnel and operations to achieve synergies with the Frontier companies. The OCA submits that the impact of those changes may be felt by customers of Citizens' Pennsylvania Frontier affiliates as well as those of Commonwealth.

12. The OCA submits that in order to consider this Application, the Commission and the parties must obtain information from Citizens' Pennsylvania affiliated jurisdictional utilities regarding how the proposed transaction affirmatively promotes the service, accommodation, convenience or safety of the customers of Citizen's Pennsylvania Frontier Companies. To the extent that the Joint Applicants seek to obtain synergies through consolidation of functions with Citizens' Frontier companies, the impact on those customers is clearly relevant to this proceeding.

13. In addition to the above, the Joint Application as filed raises a number of issues the Commission must address before granting its approval. The OCA submits that the Joint Application does not support a conclusion that the proposed transfer of control will provide substantial affirmative benefits to the public in Pennsylvania or that it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way as required by Pennsylvania law. The benefits alleged in the Joint Application are conclusory and

lack the necessary detail and explanation required by Pennsylvania's utility acquisition and merger approval standards.

14. For example, the OCA has concerns regarding a number of issues in part because of the absence of detail regarding these matters:

- a. While Commonwealth discusses enhanced access to advanced services at page 11 of the Joint Application, Commonwealth makes no commitment to provide such services beyond that contained in its existing Chapter 30 Plan, or provide information on how the new company will meet its Chapter 30 obligations.
- b. Joint Applicants' proposed capital structure and financial plans are not clearly discussed or explained in the filing;
- c. OCA understands that Citizens may assume a substantial amount of debt (up to 990 million dollars) to finance the proposed stock acquisition, and the treatment of this debt is not clearly discussed or explained in the filing;
- d. It is unclear how the proposed transaction may impact Commonwealth's and/or Citizens' credit ratings;
- e. OCA understands that Citizens seeks to achieve approximately \$20 million in wage synergy savings from the Commonwealth companies.<sup>1</sup> Commonwealth fails to discuss this aspect of the proposed transaction and fails to discuss how this may affect employment levels and the pensions of its Pennsylvania employees, as well as the employment levels and pensions of employees of the Pennsylvania Frontier Companies;
- f. Dividends and other financial arrangements between Commonwealth and its new parent are unclear;
- g. Commonwealth fails to discuss how any part of the anticipated synergy savings will flow through to Commonwealth's or Citizens' Frontier customers in the form of lower rates or rate consolidations in adjoining service areas;
- h. It is further unclear whether Commonwealth will secure the new debt of its parent, and how this may affect the security of the assets of the operating company; and

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<sup>1</sup> See <http://www.czn.net/> (last visited 10/16/2006) (comments of Maggie Wilderotter, Chairperson and CEO of Citizens, outlining the proposed transaction to various investment analysts).

- i. It is further unclear whether Commonwealth will maintain its present level of service quality, and adequately fund its operations, or have the resources available to improve its service quality.

Many of these issues are relevant to the consumers and operations of both Citizens' Frontier Companies and Commonwealth in Pennsylvania.

17. The OCA submits that if the Commission approves the proposed transaction, the Commission must ensure that the new Company is able to provide safe and adequate service at just and reasonable prices in order to promote the service, accommodation, convenience, and safety of the public.

18. The OCA would also request that the Commission hold public input hearings in the Commonwealth and Frontier service territories should substantial public interest in this proceeding arise.

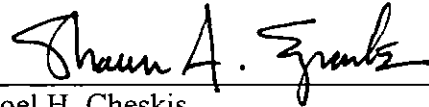
19. The OCA reserves the right to raise additional issues as may be necessary.

### **III. CONCLUSION**

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold hearings regarding the above-captioned Joint Application. The OCA further requests that the Commission deny this Application unless the Commission determines that the approval of the Joint Application would be in the public interest and would provide substantial affirmative benefits for Pennsylvania consumers. Alternatively,

the Commission should impose such just and reasonable conditions upon the transfer of control to ensure that it meets the requirements set forth above.

Respectfully submitted,



---

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

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

For: Irwin A. Popowsky  
Consumer Advocate

Date: October 30, 2006  
91170

PUBLIC STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 19, 1976, authorizes the Consumer Advocate to represent the interests of Pennsylvania consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Formal Protest in this matter.

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). Citizens is the parent corporation of the Frontier companies which are jurisdictional Pennsylvania telephone utilities. The Joint Application states that the purpose of the proposed acquisition is for Citizens to grow its business.

The OCA filed its Protest in this matter to ensure that the proposed transaction offers substantial affirmative benefits to Pennsylvania consumers as required by law – specifically, sections 1102 and 1103 of the Public Utility Code, and section 69.901 of the Commission's regulations, 52 Pa. Code § 69.901. Commonwealth is one of Pennsylvania's larger incumbent local exchange carriers (LECs). Given the number of Pennsylvania utility consumers served by Commonwealth and by the Frontier companies, and the geographic size of Citizens' proposed service territory, the OCA seeks to ensure that Commonwealth and the Frontier Companies will in fact be able to meet the needs of their Pennsylvania customers if the proposed transaction

occurs. The OCA is concerned with the impact of the transaction on customers of Citizens Pennsylvania Frontier affiliates as well as those of Commonwealth.

Based on a preliminary review of the Joint Application, the OCA would raise a number of issues that must be addressed by the Commission before granting its approval. The OCA submits that the Joint Application, as filed, does not necessarily support the conclusion that the proposed transaction 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.

The OCA will represent the interests of Pennsylvania utility consumers in this matter, and will work to ensure that the Joint Applicants demonstrate that the proposed transaction provides substantial affirmative public benefits. The OCA will also seek to ensure that the acquisition will support the service, accommodation, convenience and safety of the public into the future should the Commission ultimately approve the Joint Application.

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 Protest and Public Statement, 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 30th day of October, 2006.

SERVICE BY INTER-OFFICE MAIL

Johnnie E. Simms, Esq.  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

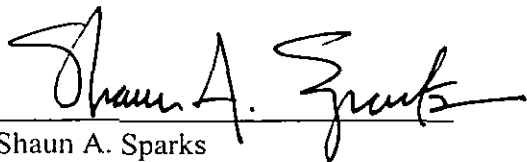
Norman J. Kennard, Esq.  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
Harrisburg, PA 17101

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

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

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Hilary Glassman, Esq.  
Citizens Communications Co.  
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Stamford, CT 06905



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

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\*91234



OFFICE OF SMALL BUSINESS ADVOCATE  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

ORIGINAL

William R. Lloyd, Jr.  
Small Business Advocate

(717) 783-2525  
(717) 783-2831 (FAX)

October 30, 2006

**HAND DELIVERED**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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, and A-311225F0003**

*A-311095F0005*

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Protest, on behalf of the Office of Small Business Advocate in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lauren M. Lepkoski  
Assistant Small Business Advocate  
Attorney ID No. 94800

DOCUMENT  
FOLDER

Enclosures

cc: Parties of Record

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SECRETARY'S BUREAU

7

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. :

Docket Nos. A-310800F00010  
A-311095F00053  
A-311225F0003

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SECURITY'S BUREAU  
PA. P.U.C.

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Protest, on behalf of the Office of Small Business Advocate by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Veronica Smith  
Chief Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-3265  
(717) 787-0481 (fax)  
[verosmith@state.pa.us](mailto:verosmith@state.pa.us)  
**(E-mail and Hand Delivery)**

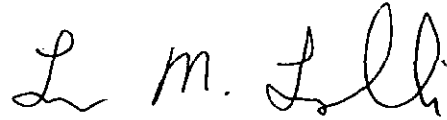
Irwin A. Popowsky, Esquire  
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(717) 772-2677 (fax)  
[josimms@state.pa.us](mailto:josimms@state.pa.us)  
**(E-mail and Hand Delivery)**

Raymond Ostroski, Esquire  
Commonwealth Telephone Enterprises, Inc.  
100 CTE Drive  
Dallas, PA 18612  
(570) 631-2802  
(570) 631-2895 (fax)  
**(First class mail only)**

Hilary Glassman, Esquire  
Citizens Communications Company  
3 High Ridge Park  
Stamford, CT 06905  
(203) 614-5047  
(203) 614-4651 (fax)  
**(First class mail only)**



---

Lauren M. Lepkoski  
Assistant Small Business Advocate  
Attorney ID No. 94800

Date: October 30, 2006

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. :

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

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PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ORIGINAL

**PROTEST**  
**OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate ("OSBA") files this Protest with respect to the above-captioned Application ("Application") pursuant to Sections 5.51(a) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission ("Commission"), 52 Pa. Code §5.51(a) and in accordance with the notice published at 36 Pa.B 41. In support of this Protest, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission. The OSBA filed a Notice of Intervention in this proceeding on October 13, 2006.

DOCUMENT  
FOLDER

**DOCKETED**  
NOV 03 2006

2. Representing the OSBA in this proceeding is:

Lauren M. Lepkoski  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
llepkoski@state.pa.us

3. On September 29, 2006, an Application was 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 approval under Section 1102 of the Public Utility Code, 66 Pa. C.S. §1102, and Section 69.901 of the Commission’s Rules of Practice and Procedure, 52 Pa. Code §69.901, of the acquisition of their parent company—Commonwealth Telephone Enterprises, Inc. (“CTE”)—by Citizens Communications Company (“Citizens”). (Application, at 4-5).

4. CTE is a publicly traded Pennsylvania company that owns and controls all of the outstanding common stock of CTCo. CTCo is a rural local exchange carrier incorporated in Pennsylvania that owns and controls all of the stock of CTSI and CLD. (Application, at 3 and 8).

5. Citizens is a publicly traded Delaware corporation. Citizens owns and operates five local exchange companies in Pennsylvania: Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; and Frontier Communications of Pennsylvania, LLC (collectively, the “Frontier Companies”). (Application, at 11 and 13).

6. Section 1102(a) of the Public Utility Code, 66 Pa. C.S. §1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. §1102(a)(3).

7. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. §1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” City of York v. Pennsylvania Public Utility Commission, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

8. The Application raises several issues of concern that may require the Commission to reject the Proposed Acquisition or to approve it only after imposing conditions. These issues include:

a. Whether the Proposed Acquisition would provide affirmative benefits to both the CTE and the Frontier customers in Pennsylvania;

b. Whether the Frontier customers received the benefits that Citizens assured the Commission they would receive if Citizens acquired the Frontier Companies; and

c. Whether the Proposed Acquisition would provide increased and enhanced service offerings for CTE customers without harming the Frontier customers.

The foregoing concerns are discussed in more detail below. However, the OSBA reserves the right to pursue any additional issues which arise throughout the proceeding.

#### 11. Affirmative Benefits

In the Application, the Joint Applicants contend that the Proposed Acquisition will provide “numerous positive benefits” to CTE’s customers. (Application, at 32). The Joint Applicants claim that the same positive benefits that the Commission noted in Citizens’ acquisition of Frontier are inherent in the Proposed Acquisition by Citizens of CTE. (Application, at 11). The OSBA is concerned with the lack of specificity regarding the types of benefits CTE customers would receive if this Proposed Acquisition were approved by the Commission. The OSBA is also concerned that the Application does not identify any benefits that the Frontier customers would receive in regards to this Proposed Acquisition. The OSBA urges the Commission to investigate thoroughly the Joint Applicants’ claimed benefits to CTE customers, as well as the benefits, if any, to the Frontier customers. Furthermore, the OSBA urges the Commission to impose such conditions upon the Proposed Acquisition as may be necessary in order to ensure that affirmative public benefits claimed by the Joint Applicants actually do accrue to CTE customers, consistent with the standard set forth in York, 449 Pa. at 141, 295 A.2d at 828.

## 12. Citizens' Acquisition of Frontier

In Citizens' acquisition of Frontier, Citizens assured the Commission that it intended to provide advanced services for outlying areas, that it would increase the DSL services of Frontier's customers, and that the Chapter 30 Plans of the Frontier Companies would remain unaffected by the proposed acquisitions. (Application, at 11). As mentioned in Paragraph No. 12, the Joint Applicants claim that CTE customers would receive these same affirmative benefits if the Proposed Acquisition were approved by the Commission. (Application, at 11). OSBA urges the Commission to determine whether Citizens did, in fact, keep its commitment to the Frontier customers since Citizens claims the same types of benefits for Citizens' Proposed Acquisition of CTE.

## 13. Enhanced Services

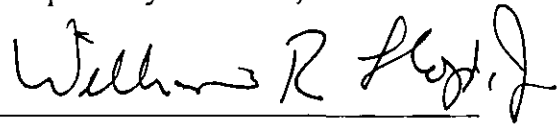
The Joint Applicants allege that one of the benefits of the Proposed Acquisition is that it would enhance the range of telecommunications services and choices, regulated and unregulated, to customers more rapidly. (Application, at 38). However, the Joint Applicants mention only two types of enhanced services Citizens intends to introduce to CTCO customers. (Application, at 38). The OSBA is concerned about the limited number of enhanced services which would be made available to CTE customers and what areas would be receiving these enhanced services. Furthermore, the Joint Applicants make no mention of how Citizens intends to fund these enhanced services it wants to offer to CTE customers. Therefore, the OSBA is concerned that Citizens may fund CTE enhanced services by using revenues from the Frontier Companies, which could delay broadband deployment or otherwise adversely affect the Frontier customers.

**WHEREFORE**, the Office of Small Business Advocate respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, regarding the Application. Upon completion of that investigation, the OSBA further requests that the Commission:

1. Reject the Application unless the Commission finds that the Proposed Acquisition is in the public interest; provides substantial, affirmative benefits to the customers of CTE and the Frontier Companies; and complies with the Public Utility Code; or, in the alternative,

2. Impose such terms and conditions upon approval of the Application as are necessary to ensure that the Proposed Acquisition is in the public interest; provides substantial, affirmative benefits to customers of CTE and the Frontier Companies; and complies with the Public Utility Code.

Respectfully submitted,



William R. Lloyd, Jr.  
Small Business Advocate  
Attorney I.D. No. 16452

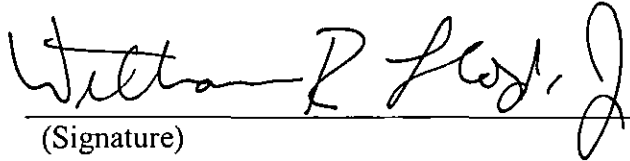
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)

Date: October 30, 2006

VERIFICATION

I, William R. Lloyd, Jr., hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: October 30, 2006

  
(Signature)

William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID #16452

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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 : Docket Nos. A-310800F0010,  
 Approvals Under the Public Utility Code : A-311095F005 and  
 for the Acquisition By Citizens : A-311225F0003  
 Communications Company of All of the :  
 Stock of the Joint Applicants' Corporate :  
 Parent, Commonwealth Telephone :  
 Enterprises, Inc. :

**NOTICE OF APPEARANCE**

Please enter the appearance of the Office of Trial Staff of the Pennsylvania Public Utility Commission in the above-captioned proceeding. Prosecutor(s) for the Office of Trial Staff, in addition to the undersigned will be:

**ROBERT V. ECKENROD, ESQUIRE**  
**Pa. Public Utility Commission**  
**Office of Trial Staff**  
**P.O. Box 3265**  
**Harrisburg, PA 17105-3265**  
**roeckenrod@state.pa.us**  
**(717) 787-1976**

**DOCUMENT  
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41

On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.



Johnnie E. Simms  
Chief Prosecutor  
PA Attorney I.D. #33911

Robert V. Eckenrod  
PA Attorney I.D. #84889  
Prosecutors for: Johnnie E. Simms  
Office of Trial Staff.

Dated: November 1, 2006

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 : Docket Nos. A-310800F0010,  
for All Approvals Under the Public : A-311095F005 and  
Utility Code for the Acquisition By : A-311225F0003  
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 am serving the foregoing **Notice of Appearance**,  
dated November 1, 2006, either personally, by first class mail, electronic mail, express  
mail and/or by fax upon the persons listed below:

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

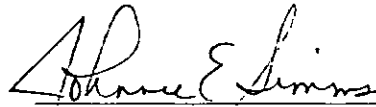
Lauren M. Lopkoski, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

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

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

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Shaun A. Sparks, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923



---

Johnnie E. Simms  
Chief Prosecutor  
Office of Trial Staff  
PA Attorney I.D. #33911

Dated: November 1, 2006  
Docket No. A-3100800F0010, et al.



McNees Wallace & Nurick LLC  
attorneys at law

ORIGINAL

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

October 31, 2006

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

**VIA HAND DELIVERY**

**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:

On October 30, 2006, Blue Ridge Digital Phone Company ("Blue Ridge") filed a Protest and Petition to Intervene in the above-referenced proceeding. The Certificate of Service attached to the transmittal letter for the filing contained a typographical error in the address for Mr. Ostroski. The enclosed revised Certificate of Service corrects this typographical error and confirms that a copy of the filing was sent to Mr. Ostroski at the correct address.

Copies of this letter are being serviced on the parties consistent with the attached Certificate of Service. Please date stamp the extra copies of this transmittal letter and the protest, and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Pamela C. Polacek

Counsel to Blue Ridge Digital  
Phone Company

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PCP/nk  
Enclosure

c: Certificate of Service

**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 HAND DELIVERY**

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

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of Trial Staff  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA FEDERAL EXPRESS**

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

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

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RECEIVED

  
Pamela C. Polacek

Counsel to the Blue Ridge Digital  
Phone Company

Dated this 30<sup>th</sup> day October, 2006, in Harrisburg, Pennsylvania.

**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

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of Trial Staff  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

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



Pamela C. Polacek

Counsel to Blue Ridge Digital  
Phone Company

Dated this 31<sup>st</sup> day October, 2006, in Harrisburg, Pennsylvania.



McNees Wallace & Nurick LLC  
attorneys at law

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

ORIGINAL

October 31, 2006

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

VIA HAND DELIVERY

**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:

On October 30, 2006, the Broadband Cable Association of Pennsylvania ("BCAP") filed a Protest and Petition to Intervene in the above-referenced proceeding. The Certificate of Service attached to the transmittal letter for the filing contained a typographical error in the address for Mr. Ostroski. The enclosed revised Certificate of Service corrects this typographical error and confirms that a copy of the filing was sent to Mr. Ostroski at the correct address.

Copies of this letter are being serviced on the parties consistent with the attached Certificate of Service. Please date stamp the extra copies of this transmittal letter and the protest, and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Pamela C. Polacek

Counsel to the Broadband Cable  
Association of Pennsylvania

PCP/nk

Enclosure

c: Certificate of Service

**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 HAND DELIVERY**

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

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

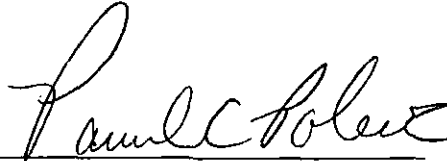
Office of Trial Staff  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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**VIA FEDERAL EXPRESS**

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

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

  
Pamela C. Polacek

Counsel to the Broadband Cable  
Association of Pennsylvania

Dated this 30<sup>th</sup> day October, 2006, in Harrisburg, Pennsylvania.

**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

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of Trial Staff  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

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



Pamela C. Polacek

Counsel to the Broadband Cable  
Association of Pennsylvania

Dated this 31<sup>st</sup> day October, 2006, in Harrisburg, Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA

DATE: October 31, 2006

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

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *JB*

Commonwealth Telephone Company

---

Attached is a copy of a Petition to Intervene, filed by Citizens Communications Company, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: LAW

ksb

DOCUMENT  
FOLDER

DOCKETED  
OCT 31 2006

DATE: October 31, 2006

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

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *KB*

Commonwealth Telephone Company

---

Attached is a copy of a Petition to Intervene and Protest, filed by Broadband Cable Association of Pennsylvania, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: LAW

ksb

DOCUMENT  
FOLDER

**DOCKETED**  
OCT 31 2006

COMMONWEALTH OF PENNSYLVANIA

DATE: October 31, 2006

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

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *KB*

Commonwealth Telephone Company

---

Attached is a copy of a Petition to Intervene and Protest, filed by Blue Ridge Digital Phone Company, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: LAW

ksb

DOCUMENT  
FOLDER

**DOCKETED**  
OCT 31 2006

COMMONWEALTH OF PENNSYLVANIA

DATE: October 31, 2006

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

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *ksb*

Commonwealth Telephone Company

---

Attached is a copy of a Petition to Intervene and Protest, filed by RCN Corporation and RCN Telecom Services, Inc., in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: LAW

ksb

DOCUMENT  
FOLDER

**DOCKETED**  
OCT 31 2006

DATE: November 1, 2006

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

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *KB*

Commonwealth Telephone Company

---

Attached is a copy of a Petition to Intervene, filed by Sprint Communications Company, L.P., in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: LAW

ksb

DOCUMENT  
FOLDER

# MEMO

November 1, 2006

**Subject:** Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company, for approval of 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

**To:** James J. McNulty, Secretary  
Secretary's Bureau

**From:** Robert A. Rosenthal, Director  
Bureau of Fixed Utilities Services

DOCUMENT  
FOLDER

The referenced Application was filed on September 29, 2006 and assigned to the Bureau of Fixed Utilities Services for review and recommendation. The Commission has subsequently received Protests from the Communications Workers of America, the Office of Small Business Advocate and the Office of Consumer Advocate. The Small Business Advocate has also filed a Notice of Intervention and Appearance.

Due to the Protests received, the Bureau of Fixed Utilities Services recommends that the Application be re-assigned to the Office of Administrative Law Judge for adjudication.

cc: Veronica A. Smith, Chief OALJ  
Eric Rohrbaugh, OALJ  
Kay Best, Secretary's Bureau  
Robert Wilson, FUS  
David Huff, FUS

RECEIVED

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A PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

DOCKETED

NOV 06 2006

**DATE:** November 6, 2006

**SUBJECT:** A-310800F0010; A-311095F0005;  
A-311225F0003

**TO:** Office of Administrative Law Judge

**FROM:** James J. McNulty, Secretary *ddt*

DOCUMENT  
FOLDER

**Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC, d/b/a Commonwealth Long Distance Company, for approval of the Acquisition by Citizens Communications Company of all of the Stock of the Joint Applicant's Corporation Parent, Commonwealth Telephone Enterprises, Inc.**

---

Pursuant to the request of Robert Rosenthal, Director, Bureau of Fixed Utility Services, the above-referenced application is hereby re-assigned to your Office due to protests being filed by several parties.

Attachment

cc: Bureau of Fixed Utility Services (reassignment memo only)

ddt

DOCKETED

NOV 06 2006

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

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November 8, 2006

**VIA HAND DELIVERY**

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

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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:

As requested at an application pre-filing meeting held on September 26, 2006, enclosed please find a preliminary estimate of position reductions that may occur as a result of the change of control of Commonwealth Telephone Enterprises, Inc. ("CTE").

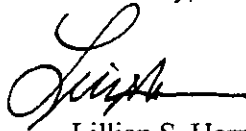
CTE and its various affiliates, regulated and unregulated, employ a total work force of approximately 1,130. The elimination of redundant positions related to governance and support services will account for the vast majority of the anticipated reduction in positions.

The attached spreadsheet represents the best estimate of the employment impacts available at this time. Citizens Communications Company ("Citizens") will continue to evaluate the necessary employment levels and other employment criteria and, as a result of that review, certain positions that are captured in the estimated position reductions in the attachment may remain in Pennsylvania. Information regarding possible employment impacts was shared with CTE's employees at a meeting this morning.

Citizens must align the organization to eliminate redundancies in job functions and gain efficiencies to allow these Pennsylvania companies to remain competitive. At the same time, Citizens will honor the terms of all existing collective bargaining agreements between CTE and unions. In addition, pursuant to the acquisition agreement, Citizens has agreed to honor CTE severance policies for a period of time.

We appreciate the opportunity to present this information to the Chairman, Commissioners and participants to the application docket.

Sincerely,



Lillian S. Harris  
Counsel for Citizens Communications Company

LSH/kml  
Enclosure

cc: Chairman Wendell F. Holland  
Vice-Chairman James H. Cawley  
Commissioner Kim Pizzigrilli  
Commissioner Terrance J. Fitzpatrick  
Lauren M. Lepkoski (OSBA)  
Robert V. Eckenrod (OTS)  
Shaun Sparks (OCA)  
Pamela C. Polacek (BCAP and Blue Ridge)  
Scott J. Rubin (CWA)  
John F. Povialitis (RCN)  
Jennifer A. Duane (Sprint Nextel)  
Raymond Ostroski (CTE)  
Hilary Glassman (Citizens)

**Commonwealth Telephone Enterprises / Citizens Communications  
Preliminary Estimate of Position Reductions**

	By the End of Year 1			By the End of Year 2			Total		
	CTCO <sup>(1)</sup>	Other <sup>(2)</sup>	Total	CTCO <sup>(1)</sup>	Other <sup>(2)</sup>	Total	CTCO <sup>(1)</sup>	Other <sup>(2)</sup>	Total
Positions	83	147	230	9	50	59	92	197	289

<sup>(1)</sup> Represents positions accounted for within Commonwealth Telephone Company (CTCO), the regulated local exchange company

<sup>(2)</sup> Represents positions accounted for within the deregulated entities; includes CTSI, LLC, epix Internet Services, and Commonwealth Telephone Enterprises

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
November 8, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

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

## DOCUMENT FOLDER

(SEE ATTACHED LIST)

Joint Application of Commonwealth Telephone Company, CTSI, LLC  
and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company,  
for approval of the Acquisition by Citizens Communications  
Company of all of the Stock of the Joint Applicant's Corporation  
Parent, Commonwealth Telephone Enterprises, Inc.

### NOTICE

This is to inform you that a Pre-Hearing Conference on the  
above-captioned case will be held as follows:

Type: Pre-Hearing Conference  
Date: Wednesday, November 29, 2006  
Time: 10:00 a.m.  
Location: Hearing Room 2  
Plaza Level  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Presiding: Administrative Law Judge Susan D. Colwell  
PO Box 3265  
Harrisburg, PA 17105-3265  
Phone: 717-783-5452  
Fax: 717-787-0481

**DOCKETED**  
DEC 05 2006

**KJR**

If you are a person with a disability, and you wish to attend the pre-hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988

pc: Judge Colwell  
Stacy Nolan, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

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

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November 9, 2006

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
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-310800F0010, A-311095F0005 and A-311225F0003;  
**ANSWER TO CWA PRELIMINARY OBJECTIONS**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Joint Answer of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to the Preliminary Objections filed by the Communications Workers of America.

Thank you for your attention to this matter.

Sincerely,

Norman J. Kennard

DOCUMENT FOLDER

NJK/ajt  
Enclosure

cc: Honorable Susan D. Colwell  
Per Certificate of Service

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

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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 : 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. :

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**JOINT ANSWER OF COMMONWEALTH TELEPHONE COMPANY,  
CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH  
LONG DISTANCE COMPANY AND CITIZENS  
COMMUNICATIONS COMPANY TO PRELIMINARY OBJECTIONS  
OF COMMUNICATIONS WORKERS OF AMERICA**

---

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 answer the Preliminary Objections to the above-captioned Joint Application as filed by the Communications Workers of America ("CWA") and, in response thereto, aver as follows:

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FOLDER**

**DOCKETED**  
NOV 14 2006

## I. SUMMARY OF ANSWER

The essence of the "Preliminary Objections" filed by the CWA appears to be that the Citizens-owned companies currently doing business in Pennsylvania ("Frontier Companies") should be Joint Applicants or at least formal parties to this proceeding.

The CWA's legal position that, although there is no change in any of the Frontier Companies' control or property, the Frontier Companies were required to be named Applicants, has no precedent and, in fact, has never been a requirement in Pennsylvania. The CWA's proposed reading of Section 1102 of the Public Utility Code<sup>1</sup> is completely inconsistent with any of the applications ever dealt with by the Commission. A review of several of the more recent applications adjudicated at the Commission clearly demonstrates that, when parent companies were undertaking transactions which did not affect their jurisdictional public utility holdings, the jurisdictional public utility holdings were not included in the application process. This practice was not objected to by the CWA, even though CWA was a party in a number of those litigated cases.

Second, the CWA's pleading fails any reasonableness test. There is no rationale offered for the proposition that a utility must request a certificate under Section 1102(a)(3), if no property is being bought or sold on its behalf and voting control remains unaffected by a transaction. There was no newspaper or billing notice required of the Commonwealth Companies in this case. How could such notice be required of the unaffected Frontier Companies?

The Joint Applicants and Citizens are not taking the position that any inquiry into the Frontier Companies is foreclosed. Citizens has filed a Petition to Intervene in this proceeding and has requested full party status. Citizens does not object to answering

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<sup>1</sup> 66 Pa. C.S. §1102.

relevant questions about the Frontier Companies and, indeed, has already answered discovery on this topic. Therefore, if the underlying CWA argument is that the Frontier Companies are somehow being shielded from review, such a claim is without merit.

Finally, the CWA, as the collective bargaining unit for CTCo union employees, has no interest in the Frontier Companies. The CWA does not represent employees of the Frontier Companies and has no collective bargaining agreement with them. Therefore, the CWA has no “direct, immediate and substantial” interest in the topic of the Frontier Companies’ participation and, hence, lacks any standing whatsoever to even raise the subject matter of the Preliminary Objections.

## **II. BACKGROUND**

1. 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 is a publicly-traded Pennsylvania company (NASDAQ: CTCO), which 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.

2. The transaction represents a change in indirect ownership only. Ownership of the Joint Applicants will continue to reside in the parent company, CTE. The regulated companies will retain the same subsidiary corporate relationships to CTE as they did prior to the proposed stock transfer.

3. The Joint Petitioners filed an Application requesting the issuance of a certificate of public convenience on September 29, 2006. Approval of the Commission 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 resulted in a change of control of a public utility regardless of ownership tier.<sup>2</sup>

4. 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.

5. On October 27, 2006, the Communications Workers of America filed a Protest, as well as Preliminary Objections.

6. CWA's Protest states that its standing to file protest is based upon its legal right "to represent the interests of its 22,500 members in Pennsylvania, including its approximately 425 members who are employed by Commonwealth [CTCo]."<sup>3</sup> There is no averment of any other legal interest.

### **III. CWA LACKS STANDING TO FILE PRELIMINARY OBJECTIONS INVOLVING THE INTERESTS AND PARTICIPATION OF THE FRONTIER COMPANIES**

7. The basis of the CWA's Preliminary Objections is the (incorrect) legal assertion that, even though the application does not involve the change in control or property of the Frontier Companies,<sup>4</sup> the Frontier Companies must nevertheless be

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<sup>2</sup> 52 Pa. Code § 69.901.

<sup>3</sup> CWA Protest at ¶ 1.

<sup>4</sup> 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 ("Frontier Companies").

included as parties seeking approval where their ultimate parent company seeks to acquire the stock of another Pennsylvania public utility. The CWA complains that customers and employees of the Frontier Companies have not received notice that Citizens is acquiring three additional Pennsylvania public utilities. For the reasons set forth below, Joint Applicants and Citizens disagree with this unprecedented and incorrect legal interpretation.

8. In addition to the CWA's incorrect reading of 66 Pa.C.S. § 1102(a)(3), the CWA lacks standing to raise arguments which assert the interests of "customers or employees of the Frontier Companies."<sup>5</sup>

9. The CWA is required to establish a legally recognizable interest that is "direct, immediate and substantial" in order to participate on an issue. The interest must be specific to the entity, as opposed to the general public interest.<sup>6</sup> The subject matter is direct if the protestant's interest is adversely affected by the grant of a certificate and immediate if there is a close causal relationship between the asserted injury and the action challenged in the Protest.<sup>7</sup>

10. The CWA has only asserted an interest related to its status as the labor union representing CTCO employees who participate in collective bargaining. The pursuit by the CWA of any interest beyond that is inappropriate and should not be permitted by Your Honor.

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<sup>5</sup> CWA Preliminary Objections at ¶ 6.

<sup>6</sup> *William Penn Parking, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 469 (1975); *Apple v. Commonwealth Department of Insurance*, 431 A.2d 1183 (Pa. Cmwlth. 1981).

<sup>7</sup> *Application of Consumers Water Company – Shenango Water Division*, 95 Pa. PUC 5 (2001).

11. The CWA has not and cannot claim that it represents any Frontier Company employee, because it does not. The employees of the Frontier Companies do not participate in collective bargaining through any union representation.

12. The CWA's Preliminary Objections should be dismissed on the grounds that CWA lacks standing to raise the subject matter.

#### **IV. RESPONSE TO PRELIMINARY OBJECTIONS**

##### **A. Preliminary Objection 1**

13. Response to Paragraph 1. DENIED. No application is required by the Frontier Companies, since there is no change to either control or property owned by them. To be clear, the transaction for which approval is sought involves:

- No selling/buying of any property by or on behalf of any of the Frontier Companies; and
- No change of control in the Frontier Companies.

The transaction here involves the acquisition by Citizens of the parent of three additional Pennsylvania utilities that are not related in any way to the Frontier Companies. That is, the matter is a change in control of the Joint Applicants' parent.

14. Response to Paragraph 2. DENIED. It is DENIED that the Public Utility Code requires a public utility to obtain a certificate if its parent seeks to acquire the stock of another Pennsylvania public utility. The CWA's averment is a misreading of the statute to which no case law is cited in support.

The following recent mergers involved the sale or acquisition by a parent company which either retained or acquired utility company control, where the unaffected

utilities were not an applicant in the proceeding (i.e., the public utilities remaining with the selling parent or unaffected by a purchasing parent):

*Joint Application of the United Telephone Company of Pennsylvania d/b/a Sprint and of Sprint Long Distance for all Approvals Required in the Pennsylvania Public Utility Code in Connection with Changes in Control, Docket No. A-313200F007, Final Opinion and Order entered April 7, 2006. Non-participating PAUC jurisdictional affiliates: Sprint Communications, L.P.*

*Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger, Docket No. A-310580F009, Opinion and Order entered January 11, 2006. Non-participating PAUC jurisdictional affiliates: Verizon Pennsylvania, Inc. and Verizon North, Inc.*

*Joint Application of SBC Communications, Inc., and AT&T Corp. Together with its Certificated Pennsylvania Subsidiaries for Approval of Merger, Docket No. A-311163F006, Opinion and Order entered October 6, 2005. Non-participating PAUC jurisdictional affiliates: SBC Long Distance, LLC and ASC Telecom, Inc.*

*Consolidated Application of Bentleyville Communications Corporation trading as Bentleyville Telephone Company And BE Mobile Communications, Incorporated for all approvals required under the Public Utility Code for the transfer of stock to MJD Ventures, Inc., a subsidiary of FairPoint Communications, Inc., Docket Nos. A-310250F0002, A-310250F0003, A-310250F0004, A-310914F0001 and A-310480. Non-participating PAUC jurisdictional affiliates: Marianna and Scenery Hill Telephone Company and Marianna Tel, Inc.*

*Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Company for approval of: 1) the transfer by sale of all property used or useful in providing natural gas service to the public to UGI Corporation; 2) the immediate retransfer of all such property, by UGI Corporation, including gas supply and pipeline and storage capacity contracts, by UGI Corporation to UGI Newco Utilities, Inc., 3) the initiation by UGI Utilities Newco, Inc. of natural gas service in all territory in this Commonwealth where Southern Union Company does or may provide natural gas service; 4) the abandonment by Southern Union Company of all natural gas service in this Commonwealth; and 5) the transfer by UGI Corporation of all of the stock of UGI Utilities Newco, Inc. to UGI Utilities, Inc., Docket Nos. A-120011F2000, A-125146F5000*

and A-125146, Opinion And Order entered August 18, 2006. Non-participating PAUC jurisdictional affiliates: UGI Energy Services, Inc.

Were the CWA correct, every one of these applications were incorrectly filed and should have been dismissed. To the contrary, they were accepted and processed by the Commission.

15. Nor is joint applicant status or joinder required in the Commission's change of control policy which controls this Application:

§ 69.901. Utility stock transfer under 66 Pa.C.S. § 1102(a)(3).

(a) Background....

(2) Recently, the Commission has examined 66 Pa.C.S. §1102(a)(3) and determined that the transfer of stock or other voting interest of a utility's parent is jurisdictional regardless of the remoteness of the transaction if the effect of the transaction is to change the control of a utility. Joint Application of Commonwealth Telephone Company, et al., A-310800,F.0006, (October 22, 1993).

(b) Policy.

(1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.

*There is no requirement that any entities, other than those whose control is proposed to change, need permission for the transaction.*

16. Response to Paragraph 3. ADMITTED.

17. Response to Paragraph 4. ADMITTED in part and DENIED in part. By way of further response, the Frontier Companies are not properly applicants for a certificate of public convenience in this transaction. It is ADMITTED that there is no

request for issuance of a certificate of public convenience by the Frontier Companies, inasmuch as none is required.

18. Response to Paragraph 5. DENIED. The Application describes and clearly identifies the Frontier Companies as owned by Citizens, describes their service territory and discusses the services that they offer.<sup>8</sup> Prior approvals of the change of control of the Frontier Companies are also cited.<sup>9</sup> Moreover, the Commission's order approving the acquisition by Citizens of the Frontier Companies is cited and discussed at Paragraph 32 of the Application.

19. Response to Paragraph 6. ADMITTED in part and DENIED in part. It is ADMITTED that notice of the Application was not provided to customers or employees of the Frontier Companies. It is DENIED that such notice is required, inasmuch as the Frontier Companies' control and property is unaffected by the transaction.

20. Response to Paragraph 7. ADMITTED. By way of further response, there is no requirement that notice filed by the Commission's Secretary in the *Pennsylvania Bulletin* was required to identify Citizens as the parent company of the Frontier Companies.

21. Response to Paragraph 8. ADMITTED in part and DENIED in part. In this proceeding, the Joint Applicants must demonstrate that the proposed change of control is in the affirmative interest of their "public." It is DENIED that there is any requirement in this case that the Frontier Companies demonstrate a substantial positive benefit within their service territories. The Joint Applicants agree that the impacts upon

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<sup>8</sup> Application at ¶ 13.

<sup>9</sup> Application at footnote 6.

the Frontier Companies may be a relevant topic related to the Application, but not one raised by the CWA.

By way of further response, neither the Joint Applicants nor Citizens claim that the impacts upon the Frontier Companies is an irrelevant inquiry. In fact, Citizens has already answered discovery regarding the Frontier Companies and does not object to further relevant inquiries on this subject.

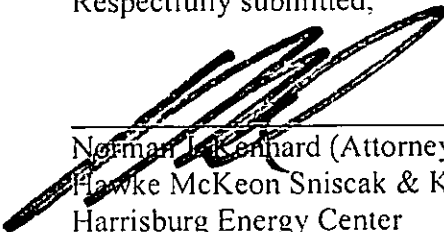
**B. Preliminary Objection 2**

22 *Response to Paragraph 9. Responses to Paragraphs 1 through 8, above, are incorporated herein by reference.*

23. *Response to Paragraph 10. ADMITTED in part and DENIED in part. It is ADMITTED that the Frontier Companies are not parties to this proceeding. It is DENIED that they are required to be parties to this proceeding. For the reasons set forth previously, the Frontier Companies are not “required to join in the application, and be parties to this proceeding,” as erroneously claimed by the CWA.*

WHEREFORE, Joint Applicants and Citizens respectfully request that the CWA's  
"Preliminary Objections" be dismissed.


Respectfully submitted,



---

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Counsel for Joint Applicants



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Counsel for Citizens Communications Company

DATED: November 9, 2006

**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).

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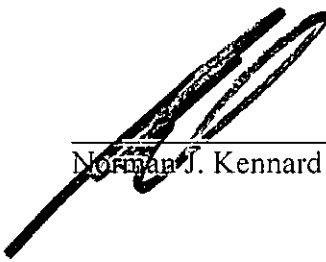
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Norman J. Kennard

Dated this 9th day of November, 2006

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November 9, 2006

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Honorable Susan D. Colwell  
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Commonwealth Keystone Building  
400 North Street, 2 West  
Harrisburg, PA 17120

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SECRETARY'S BUREAU

PA PUC

05 NOV 13 11:09:09

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.  
**COPIES OF FILINGS**

Dear Judge Colwell:

According to our records, the following documents have been filed in this case to date:

1. Application filed 9/29/06;
2. Protest of Communications Workers of America filed 10/27/06;
3. Preliminary Objections of Communications Workers of America filed 10/27/06;
4. Protest of Sprint Communications Company L.P. filed 10/30/06;
5. Petition to Intervene of Sprint Communications Company L.P. filed 10/30/06;
6. Protest of the Office of Consumer Advocate filed 10/30/06;
7. Protest of the Office of Small Business Advocate filed 10/30/06;
8. Petition to Intervene of RCN Corporation and RCN Telecom Services, Inc. filed 10/30/06;

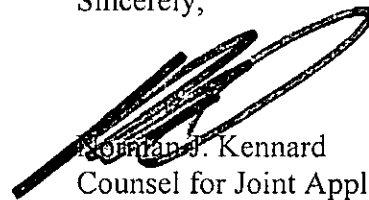
KJR

9. Protest of RCN Corporation and RCN Telecom Services, Inc. filed 10/30/06;
10. Petition to Intervene of Citizens Communications Company filed 10/30/06;
11. Protest and Petition to Intervene of Blue Ridge Digital Phone Company filed 10/30/06;
12. Letter and Certificate of Service correcting typographical error filed by Blue Ridge Digital Phone Company on 10/31/06
13. Protest and Petition to Intervene of Broadband Cable Association of Pennsylvania filed 10/30/06;
14. Letter and Certificate of Service correcting typographical error filed by Broadband Cable Association of Pennsylvania on 10/31/06;
15. Notice of Appearance of the Office of Trial Staff filed 11/3/06; and
16. Cover letter accompanying answers to OSBA discovery dated 11/7/06.

A copy of each is attached for your convenience.

If you have any questions, please do not hesitate to contact me

Sincerely,



Norman J. Kennard  
Counsel for Joint Applicants

NJK/ajt

Enclosure

cc: Per Certificate of Service (without enclosures)

**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**

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



Norman J. Kennard

Dated this 9<sup>th</sup> day of November, 2006.

**H**awke  
 **M**cKeon  
  **S**niscak &  
   **K**ennard LLP  
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November 10, 2006

Honorable Susan D. Colwell  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2 West  
Harrisburg, PA 17120

RECEIVED

NOV 14 2006

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 and A-311225F0003; **PREPARED DIRECT TESTIMONY AND EXHIBITS**

Dear Judge Colwell:

Enclosed please find the Prepared Direct Testimony and Exhibits that are being submitted in support of the above-noted application case.

Please note that Citizens Exhibit DM-2 to Citizens' Statement 1.0 contains Highly Confidential information. We have served the Highly Confidential exhibit on the OSBA, OCA and OTS and ask that it be treated as Highly Confidential. We will serve the exhibit on the other parties to the proceeding once a protective agreement is in place and appropriate nondisclosure signatures are obtained.

Thank you for your attention to this matter.

DOCUMENT  
FOLDER

Sincerely,

  
Norman J. Kennard

NJK/ajt  
Enclosure  
cc: Certificate of Service

05 NOV 14 11:07  
PA PUC  
KJR

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

**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**

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\_\_\_\_\_  
Norman J. Kennard

Dated this 10th day of November, 2006

**Hawke**  
 **McKeon**  
  **Sniscak &**  
   **Kennard LLP**  
**ATTORNEYS AT LAW**

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November 10, 2006

**VIA FEDERAL EXPRESS**  
James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
Harrisburg, PA 17105-3265

**RECEIVED**

NOV 10 2006

**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 and A-311225F0003;  
**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**

Dear Secretary McNulty:

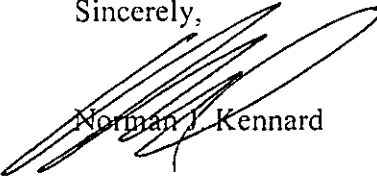
Enclosed for filing please find an original and three (3) copies of the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Portions of Protest and Limit Participation of the Communications Workers of America.

**DOCUMENT  
FOLDER**

7

Thank you for your attention to this matter.

Sincerely,



Norman J. Kennard

NJK/ajt

Enclosure

cc: Certificate of Service  
Honorable Susan D. Colwell

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 : 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. :

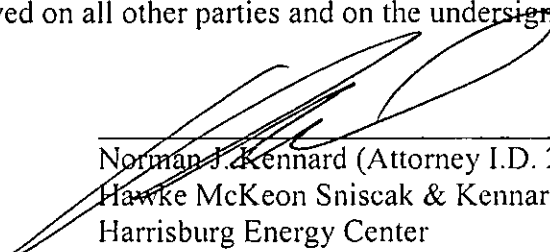
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**NOTICE TO PLEAD**

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TO: Communications Workers of America.

Pursuant to 52 Pa. Code §§ 1.56 and 5.101, you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections within ten (10) days from service of this notice (November 20, 2006), the facts set forth by Joint Applicants in the Preliminary Objections may be deemed to be true, thereby requiring no other proof and allowing an Administrative Law Judge to rule upon the Preliminary Objections without additional input. All pleadings, such as an Answer to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with copies served on all other parties and on the undersigned counsel.



---

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Counsel for Joint Applicants

November 10, 2006

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 : 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. :

**DOCKETED**  
DEC 18 2006

**DOCUMENT  
FOLDER**

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**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**

---

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 these Preliminary Objections seeking dismissal of portions of the Communications Workers of America (“CWA”) Protest and to limit the participation of the CWA to issues that the CWA has standing to raise pursuant to the Commission’s Regulation at 52 Pa. Code Section 5.101(a)(5) and, in support thereof, aver as follows:

## I. SUMMARY OF MOTION

The claim of standing contained in the CWA's Protest is the claim, not contested by the Applicants, that it "represents the interests of . . . approximately 425 members who are employed by Commonwealth [CTCo]." This is CWA's sole basis for alleging standing to protest this application. The CWA possesses no legal right (and claims no right) to represent the interests of consumers. Nor does the CWA represent the "public interest." Nevertheless, the CWA seeks to raise consumer issues, such as network deployment, service quality and the impact on rates of interest expense. For instance, CWA demands "concrete evidence that the transaction will benefit customers" and that "customers receive verifiable benefits in terms of accelerated deployment."

The CWA has no "direct, immediate and substantial" interest in these topics and, hence, lacks any standing to raise the subject matter or participate in these issues. The CWA is not vested with the rights of a consumer advocate.

The interests of the union are not causally connected to non-employment related issues. The protections offered by statute extend to customers and, service quality and deployment commitments are for the benefit of customers, not labor unions.

The record in this case will not suffer from a lack of issue development. Service-related issues have been raised by other parties like the OCA and the OSBA, who have been designated by the legislature to represent consumer interests. The OTS also is a participant. It serves no purpose to permit a party like CWA to participate on issues where it has no standing to raise the issue in the first place and no stake in the outcome.

## II. BACKGROUND

1. 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.

2. The Joint Petitioners 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.<sup>1</sup>

3. 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.

4. On October 27, 2006, the Communications Workers of America (“CWA”) filed a Protest, as well as Preliminary Objections.

5. CWA’s Protest states that its standing to file a protest is based upon its legal right “to represent the interests of its 22,500 members in Pennsylvania, including its approximately 425 members who are employed by Commonwealth [CTCo].”<sup>2</sup> There is no averment of any other legal interest.

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<sup>1</sup> 52 Pa. Code § 69.901.

<sup>2</sup> CWA Protest at ¶ 1.

6. In addition to raising employment issues, such as CWA member employee reductions<sup>3</sup> and the status of the collective bargaining agreement with the CWA,<sup>4</sup> the CWA's Protest also:

- Demands "concrete evidence that the transaction will benefit Commonwealth's consumers with increased investment in the network . . ."<sup>5</sup>
- Argues that "The Commission should investigate network investment plans to ensure that Commonwealth customers receive concrete, verifiable benefits in terms of accelerated deployment of advanced services, particularly in the rural portions of Commonwealth's service territory."<sup>6</sup>
- Seeks to raise issues relating to ensuring that "quality service" be maintained.<sup>7</sup>
- Alleges "that service provided by Citizens in Pennsylvania is declining," urging that the Commission "investigate the service record at Citizens and Commonwealth, and the impact of the proposed acquisition on the quality of service at both companies' operations in Pennsylvania."<sup>8</sup>
- Argues that the application "does not provide adequate financial information to evaluate the transaction. The application does not include any post-merger plans or projections and provides no financial projections whatsoever."<sup>9</sup>
- Goes so far as to allege that the transaction "could result in a financially weaker Commonwealth, with fewer resources to invest in local telephone infrastructure and operations," that the amount of debt held at the parent level is "an unreasonably high level for a public utility holding company."<sup>10</sup>
- Reserves the right to raise the other issues that "undoubtedly" will arise after a more complete review of the application, claiming that "ample time in the schedule" is necessary for the CWA to raise all of its issues.<sup>11</sup>

7. The relief sought by the CWA mirrors the issues that it claims to raise, including to:

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<sup>3</sup> *Id.* at ¶ 6.

<sup>4</sup> *Id.* at ¶ 7.

<sup>5</sup> *Id.* at ¶ 4.

<sup>6</sup> *Id.* at ¶ 10.

<sup>7</sup> *Id.* at ¶ 4 and ¶ 10.

<sup>8</sup> *Id.* at ¶ 9.

<sup>9</sup> *Id.* at ¶ 8.

<sup>10</sup> *Id.* at ¶ 5.

<sup>11</sup> *Id.* at ¶ 11.

- “ensure that Citizens and Commonwealth would be adequately capitalized and not unduly burdened with debt that is unrelated to their regulated operations . . .”<sup>12</sup>
- “ensure that Citizens and Commonwealth will have the financial resources to make needed capital investments in its Pennsylvania network and other facilities . . .”<sup>13</sup>
- “impose conditions on the transfer that will protect the public interest, including the interests of Commonwealth’s consumers . . .”<sup>14</sup>

### III. CWA LACKS STANDING TO FILE A PROTEST ON TOPICS NOT RELATED TO ITS POSITION AS COLLECTIVE BARGAINING REPRESENTATIVE OF CERTAIN CTCO EMPLOYEES

8. The Joint Petitioners acknowledge that the CWA is the collective bargaining agent for certain CTCo employees and that the CWA has negotiated an agreement that covers topics related to certain employment and work conditions.

9. The CWA’s representational interest is in matters of employment, as its constitution reflects:

The objects of the Union shall be:

- To unite the workers within its jurisdiction in a single cohesive labor union for the purpose of collective effort;
- To improve the conditions of the workers with respect to wages, hours, working conditions and other conditions of employment;
- To disseminate information among the workers respecting economic, social, political and other matters affecting their lives and welfare;
- To advance the interests of the workers by advocating the enactment of laws beneficial to them and the defeat or repeal of laws detrimental to them;
- To do all things which may be necessary or proper to secure for the workers the enjoyment of their natural rights.<sup>15</sup>

<sup>12</sup> CWA Protest at Prayer for Relief.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at (4)-(5).

<sup>15</sup> <http://www.cwa-secy-treas.org/resources/ConstitutionAug2004.PDF>.

10. The Joint Petitioners do not seek to dismiss those aspects of the CWA's protest which raise issues relating to employment levels or the continuation of the current union contract.

11. The CWA is not vested, however, with the rights of a consumer advocate. It has no standing to raise issues before this Commission related to advanced services deployment, the adequacy of service provided and the financial fitness of the parties.

12. CTCo submits that the CWA has failed to set forth facts establishing its standing to protest on any issues other than employment levels and continuation of the current union contract. A protestant must "set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined",<sup>16</sup> must state "the grounds of the protest",<sup>17</sup> and must "set forth facts establishing the protestant's standing to protest."<sup>18</sup>

13. The CWA has not established a legally recognizable interest that is "direct, immediate and substantial" as required under *William Penn*,<sup>19</sup> sufficient to participate on the financial, service and deployment issues set forth in its Protest.<sup>20</sup>

14. As stated by the Court in *William Penn*, "direct" means "that the person claiming to be aggrieved must show causation of the harm to its interest by the matter of which he complains." Other authorities have held that the subject matter is "direct" if the protestant's interest is adversely affected by the grant of a certificate and immediate if there is a close causal relationship between the asserted injury and the action challenged in the

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<sup>16</sup> 52 Pa. Code § 5.52(a)(1).

<sup>17</sup> 52 Pa. Code § 5.52(a)(2).

<sup>18</sup> 52 Pa. Code § 5.52(a)(3).

<sup>19</sup> *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975). Although *William Penn* involved appellate standing, the same requirement of a substantial, immediate and direct interest applies to standing before an administrative agency. *Apple v. Pennsylvania Dep't of Insurance*, 431 A.2d 1183 (Pa. Cmwlth. 1981).

<sup>20</sup> Those allegations are as described at paragraph 6 of this Motion.

protest.<sup>21</sup> The interest must be specific to the entity, as opposed to the general public interest.<sup>22</sup>

15. The CWA's claims of failure of network deployment for advanced services, customer service inadequacy, and the effects of debt service on rates are not relevant to the union's interest in employment and employment conditions. These are consumer and ratepayer interests.

16. The Commonwealth Court has defined "immediate interest" as one that "involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question."<sup>23</sup>

17. Here, the CWA has not and cannot demonstrate a causal connection between its status as employee collective bargaining representative and the service, deployment, and financial issues that it alleges. However, even if there were, the interests of the union are not causally connected to non-employment related issues and the union has no standing to raise them. The protections offered by statute extend to customers and, service quality and deployment are codified for the benefit of customers, not labor unions.

18. Likewise, the CWA should not be allowed to claim representation of consumers. The Commission's general policy is to disallow "representative" standing unless the parties represented are unable to pursue their own interests; however, the

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<sup>21</sup> *Application of Consumers Water Company – Shenango Water Division*, 95 Pa. PUC 5 (2001).

<sup>22</sup> *William Penn Parking*, 346 A.2d 469; *Apple*, 431 A.2d 1183.

<sup>23</sup> *George v. Pa. Pub. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999) (quoting *South Whitehall Twp. Police Service v. South Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989)).

Commission will allow it where it aids the development of facts necessary to proper disposition of the issues.<sup>24</sup>

19. The consumer interests that the CWA claims to protect are represented here. The CWA's non-union issues are clearly raised in the protests filed by statutory entities, the OCA and OSBA, and, although the Office of Trial Staff has filed no protest, it traditionally pursues consumer interests as one aspect of its role as protector of the public interest. Therefore, the CWA cannot maintain that consumers are "not adequately represented by existing participants."<sup>25</sup>

20. The pursuit by the CWA of any interest beyond that of a labor union representing CTCO employees that are members of its union is inappropriate and should not be permitted by Your Honor.

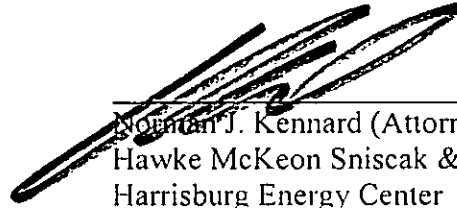
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<sup>24</sup> *Manufacturers' Association of Erie v. City of Erie – Bureau of Water*, 50 Pa. P.U.C. 43, 46 (1976); *Mid-Atlantic Power Supply Ass'n v. PECO Energy Co.*, 92 Pa. P.U.C. 414 (1999).

<sup>25</sup> 52 Pa. Code § 5.72(a)(2).

WHEREFORE, Joint Applicants and Citizens respectfully request that portions of the CWA's Protest be dismissed and its participation be limited to issues that it has standing to raise.

Respectfully submitted,



---

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Counsel for Joint Applicants



---

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[lharris@hmsk-law.com](mailto:lharris@hmsk-law.com)

Counsel for Citizens Communications Company

DATED: November 10, 2006

**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 and 1.56 (relating to service by participant).

**By Federal Express and Electronic Mail**

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**By First Class Mail and Electronic Mail**

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Norman J. Kennard

Dated this 10th day of November, 2006

**Hawke** ORIGINAL

**McKeon**

**Sniscak &**

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**KJR**

November 10, 2006

**RECEIVED**

NOV 10 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**VIA FEDERAL EXPRESS**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
Harrisburg, PA 17105-3265

**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; **JOINT ANSWERS AND PRELIMINARY OBJECTIONS AND ANSWERS 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 LP, THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA, AND RCN CORPORATION AND RCN TELECOM SERVICES, INC.**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of 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 LP, The Broadband Cable Association Of Pennsylvania, And Rcn Corporation And RCN Telecom Services, Inc.

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

*le*

Thank you for your attention to this matter.

Sincerely,



Norman J. Kennard

NJK/ajt  
Enclosure

cc: Certificate of Service  
Honorable Susan D. Colwell

NOV 10 2006

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

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.	:	

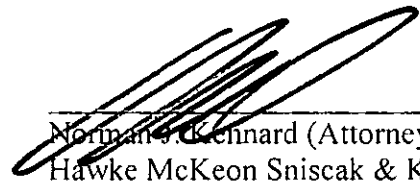
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**NOTICE TO PLEAD**

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TO: Blue Ridge Digital Phone Company; Sprint Communications Company LP; Broadband Cable Association Of Pennsylvania; and RCN Corporation and RCN Telecom Services, Inc.

Pursuant to 52 Pa. Code §§ 1.56 and 5.101, you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections within ten (10) days from service of this notice or by November 20, 2006, the facts set forth by the Joint Applicants and Citizens in the Preliminary Objections may be deemed to be true, thereby requiring no other proof and allowing an Administrative Law Judge to rule upon the Preliminary Objections without additional input. All pleadings, such as an Answer to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with copies served on all other parties and on the undersigned counsel.



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Counsel for Joint Applicants

November 10, 2006

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	:	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.	:	

**DOCKETED**  
DEC 18 2006

**DOCUMENT  
FOLDER**

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**ANSWER AND PRELIMINARY OBJECTIONS OF  
COMMONWEALTH TELEPHONE COMPANY,  
CTSI, LLC, 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 LP,  
THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA, AND  
RCN CORPORATION AND RCN TELECOM SERVICES, INC.**

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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 these Answers and Preliminary Objections seeking dismissal of the Protests and Petitions to Intervene filed by 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”) (collectively “CLECs”)

pursuant to the Commission's Regulations at 52 Pa. Code Sections 5.66 and 5.101(a)(3), (4), (5) and (6) and, in support thereof, aver as follows:

**I. SUMMARY OF MOTION**

The CLEC Protestants and Petitions to Intervene:

- Have not demonstrated standing to oppose the Joint Application;
- Have not raised facts sufficient to cause a denial of the Joint Application; and
- Are not seeking relief available to them in this proceeding.

Each of these shortcomings is grounds for dismissal.

The CLECs do not possess standing, as the interest they claim is only as **potential** competitors of CTCo who **may** be directly affected. By so doing, the CLECs have admitted that their interests are not substantial, direct and immediate. They have no vested interest in the outcome of this case and Commission precedent supports their exclusion.

Further, the CLECs' allegations of negative impacts of the proposed acquisition of CTCo's parent by Citizens are speculative. Commission regulations require protestants to state specific facts that, if true, would result in the denial of the Application. Speculative pleadings that are not fact-based should be dismissed.

The only demonstrable fact alleged by any of the CLECs is that CTCo filed a protest in the CLECs' own application cases. This does not demonstrate that approval of the acquisition of CTCo's parent by Citizens is contrary to the public interest. Where litigated, CTCo protests of CLEC applications have been sustained, including as to Sprint. Moreover, CTCo has settled CLEC cases in the past and continues to be actively engaged in settlement discussions with RCN and Blue Ridge in their respective

application cases. CTCo has validly, and in an unabusive manner, exercised rights granted by the Commission to all rural local exchange carriers.

From the mere fact of these CTCo protests, the CLECs extrapolate speculative theories of potential harm, claiming that CTCo will have “more leverage to use the regulatory process to exploit smaller CLECs” (Blue Ridge), additional resources “to further block the applications of other potential CLECs” (BCAP) or “a greater incentive to keep RCN out of its market for as long as possible.”

Fundamentally, the CLECs have failed to state a factual basis upon which their protests can be maintained that would result in a denial of the application at issue here. Unfounded accusations and speculation are not facts and facts are required to establish valid grounds of protest. Certainly, the fact that CTCo filed protests to prior CLEC applications is not evidence of abuse in and of itself and does not support the assertion that, post-transaction, CTCo will behave inappropriately. There is no factual explanation of the CLECs’ claim that joining the medium-sized CTCo, under common ownership, with the very small Frontier Companies will create “market power,” which will be used to “thwart” competition when it is not demonstrated that CTCo misused its legal rights in the first place.

Finally, the relief sought by the CLECs -- the surrender by CTCo (and the Frontier Companies) of the statutorily provided rural exemption and their due process rights -- is not available in this case. The CLECs demand that CTCo cease opposition to all CLEC applications, including theirs, now and in the future. They assert that the merger should be conditioned on Citizens and CTCo agreeing to surrender their rural exemptions from unbundled network elements, discounted resale and collocation under state or federal law.

Extracting the relinquishment of CTCo's and the Frontier Companies' state and federal rights, while certainly the CLECs' objective, is not attainable in this case. Congress established specific procedures for removal of the rural exemption, under which the CLECs would have the burden of proof. The procedures clearly do not include capitulation derived from extortive impact of protesting a parent-level change of control application.

## II. APPLICATION BACKGROUND

1. 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.

2. On September 29, 2006, the Joint Petitioners filed an Application requesting that the Pennsylvania Public Utility Commission ("PUC" or "Commission") issue a certificate of public convenience approving the change in control. The Commission's approval is required under a Policy Statement applying the certification requirements of 66 Pa. C.S. Section 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.<sup>1</sup>

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<sup>1</sup> 52 Pa. Code § 69.901.

3. The Commission published notice of the Joint Application 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.

4. On October 30, 2006, Blue Ridge, Sprint, BCAP and RCN filed Protests and/or Petitions to Intervene.

5. In support of the Application, the Joint Applicants and Citizens distributed Direct Testimony on November 10, 2006. The Joint Applicants extensively discuss the nature and scope of competition within their service territory. The competition reviewed is that which currently exists, consisting of wireless carriers and VoIP for voice, cable modem for broadband and Internet service providers for Internet dial-up traffic. None of these service providers are subject to a competitive local exchange carrier ("CLEC") certification process before the PUC.<sup>2</sup> The Applicants' testimony does not rely upon the pending applications of Sprint, Blue Ridge or RCN in making its points about the **current** level of competition within its service territory to support approval of the Application. The telecommunications world encompasses many more players than the CLECs and, while CTCo is attempting to settle the current cases involving the CLECs, CTCo does not address the merits of the applications or the potential impacts; in fact it does not mention them at all in its distributed testimony.

6. The CLEC protestants/intervenors must demonstrate that: they have standing to participate; they are adversely affected by the proposed transaction based upon factual allegations; and the relief they seek is available. As discussed in these Preliminary Objections, they have not made any such demonstration.

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<sup>2</sup> Prepared Direct Testimony of Scott Burnside. Joint Applicants St. 1.0.

### III. THE CLECS HAVE FAILED TO ESTABLISH STANDING TO FILE A PROTEST TO THE APPLICATION

7. All of the CLEC Protests and Petitions are based upon the key fact that the various entities are currently seeking certificates to provide telephony service within territory currently served by CTCo, as the incumbent local exchange service provider.<sup>3</sup> In their Petitions/Interventions, the CLECs assert only that they are **potential** competitors of CTCo whose interest **may** be directly affected. The CLECs do not possess existing competitive telephony operations within CTCo's territory that would be adversely affected by issuance of the certificate of public convenience requested in the Application.

8. The CLECs failed to claim "[a]n 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."<sup>4</sup> "Direct" means "that the person claiming to be aggrieved must show causation of the harm to its interest by the matter of which he complains."<sup>5</sup> Although *William Penn* involved appellate standing, the same requirement of a substantial, immediate and direct interest applies to standing before an administrative agency.<sup>6</sup>

9. Only an **immediate** interest in the subject matter of the proceeding supports standing to intervene.<sup>7</sup> The CLECs assert standing based on their interests as **potential** competitors and by so doing have admitted that their interests are not substantial, direct and immediate, as those terms are defined.<sup>8</sup>

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<sup>3</sup> Blue Ridge Protest and Petition to Intervene at ¶ 1; Sprint Petition to Intervene at ¶ 5; Sprint Protest at ¶ 7; BCAP Protest and Petition at ¶ 4; RCN Petition at ¶ 2; and RCN Protest at page 2.

<sup>4</sup> 52 Pa. Code § 5.72(a)(2).

<sup>5</sup> *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (1975).

<sup>6</sup> *Apple v. Pennsylvania Dep't of Insurance*, 431 A.2d 1183 (Pa. 1981).

<sup>7</sup> *Re L & H Trucking Co., Inc.*, 55 Pa. P.U.C. 469, 471 (1982).

<sup>8</sup> *South Whitehall Twp. Police Service v. South Whitehall Twp.*, 555 A.2d 793 (Pa. 1989).

A “substantial” interest is an interest in the outcome of the litigation that surpasses the common interest of all citizens in procuring obedience to the law. A “direct” interest requires a showing that the matter complained of caused harm to the party’s interest. An “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.<sup>9</sup>

10. In a recent proceeding, where an uncertificated water company challenged a Certificate of Public Convenience granted to another water company, arguing that it was seeking authority to provide service in an abutting area, the Commission denied the challenger’s participation for lack of standing.

First and foremost, we agree with Superior that Valley Run lacks standing to bring the Petition against the prior grant of the Certificate to Superior.... Superior points out that at the time of the grant of Superior’s Application at Docket No. A-212955F0016, **Valley Run was not a certificated water utility, nor is at this time.** Also, Superior states that the allegations regarding the status of Superior’s efforts to initiate public service fail to show that Valley Run’s interest in the grant of the Certificate are in any way substantial or direct. In addition, Valley Run cannot show that its interest is immediate, since there is **simply no statutory or constitutional protection which inures to Valley Run** in the context of the grant of the Certificate to Superior.<sup>10</sup>

11. Also recently, the Commission affirmed the dismissal of municipal protestants to an application requesting that the Commission approve a jurisdictional water utility’s acquisition of another water system’s assets, again addressing the interests of “potential” competitors:

The municipal authorities own and operate extensive water systems and have provided for an orderly progression of water service and development. Their service territories are also adjacent to Country Club’s system.... However, **the concern that the municipal authorities have for the steps that Aqua PA may take after it commences operations is**

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<sup>9</sup> *Id.* at 795 (Internal citations omitted).

<sup>10</sup> *Application of Superior Water Company, Inc. for a Certificate of Public Convenience authorizing service to the public in a portion of Washington Township, Berks County, Pennsylvania and Petition of Valley Run Water Company, L.L.C. for Rescission or Amendment*, Docket No. A-212955F0016, Opinion and Order entered December 5, 2005 at 4-5 (Emphasis added).

speculative and conjectural, not direct. Such conjecture **does not confer a direct interest in this proceeding.**

On page 5 of their Reply Exceptions, the Joint Applicants contend that the Joint Protestants are misusing the Commission's process to restrain trade – i.e., to keep an investor-owned company from entering the Lehigh County market. However, as noted by the ALJ, there are no allegations in the Motion to Dismiss or the Joint Protest that both Country Club and the municipal authorities are trying to serve the same customers or that any of the municipal authorities' systems are interconnected with Country Club's system. Thus, if anything, **the municipal authorities are potential competitors, and that is not enough to confer standing.**<sup>11</sup>

#### IV. THE CLEC PROTESTS LACK ADEQUATE SUBSTANCE

12. The CLECs' allegations of negative impacts of the proposed acquisition of CTCo's parent by Citizens are completely speculative arguments.

- “Blue Ridge is very concerned that the combined entity will have the ability to exercise market power in Pennsylvania and to otherwise engage in activities to thwart the legitimate business interests of Blue Ridge Phone.”<sup>12</sup> Elsewhere, Blue Ridge states that it “remains concerned that the sole purpose of this acquisition is to exclude competition, not enhance it.”<sup>13</sup>
- Sprint's claimed basis of its Protest is that “CTCo's regulatory posture in prior certification procedures, where it routinely protests applications for CLEC entry into its operating service area, belies” the claim that CLEC competition would be enhanced.<sup>14</sup>
- BCAP alleges that it “is concerned that the combined entity will have the ability to exercise market power in Pennsylvania and to otherwise engage in activities to

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<sup>11</sup> *Joint Application of Aqua Pennsylvania, Inc. and Country Club Gardens Water Company, Inc. for Inc. for Approval*, A-210104F0066; A-210620F2000, Opinion and Order entered April 7, 2006 at 8-9 (Emphasis added).

<sup>12</sup> Blue Ridge Protest and Petition to Intervene at ¶ 4.

<sup>13</sup> *Id.* at ¶ 4.

<sup>14</sup> Sprint Protest at ¶ 13.

thwart the legitimate business interests of cable telephony providers.”<sup>15</sup>

Elsewhere BCAP argues that, post-transaction, CTCo will possess “more leverage to use the regulatory process to exploit smaller CLECs, and to further block the applications of other potential CLECs as was already done to Sprint and Blue Ridge.”<sup>16</sup>

- RCN’s Protest, while much more bellicose, echoes the same sentiments as the other three, arguing that the acquisition “will only exacerbate the anticompetitive conduct of Commonwealth by giving Commonwealth greater resources and a greater incentive to keep RCN out of its market for as long as possible.”<sup>17</sup> RCN uses similar claims elsewhere, averring that “the enormous resources of Citizens . . . will be used to further stifle competition [in CTCo’s] markets” and the acquisition “will give Commonwealth [CTCo] a greater incentive to keep competition out of its markets.”<sup>18</sup>

13. The CLECs present no evidence in support of their rhetoric other than the fact that CTCo exercised its right to protest the Sprint<sup>19</sup> and Blue Ridge<sup>20</sup> applications, as well as filed a protest in the RCN CLEC application.<sup>21</sup>

14. There are two basic problems with the CLECs’ approach to this case.

- First, CTCo has filed legitimate protests in all instances, exercising rights granted by the Commission to all rural local exchange carriers in a 1996 generic order

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<sup>15</sup> BCAP Protest and Petition at ¶ 5.

<sup>16</sup> *Id.* at ¶ 8.

<sup>17</sup> RCN Protest at 3.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> Sprint Petition to Intervene at ¶ 6 and Sprint Protest at ¶ 8.

<sup>20</sup> Blue Ridge Protest and Petition at ¶ 5.

<sup>21</sup> RCN Protest at 2.

implementing the Telecommunications Act of 1996 (“TCA-96”). CTCo’s protests have merit and have been sustained where litigated in those proceedings.

- Second, the CLECs’ attempt to claim that CTCo will have a greater incentive and likelihood of filing protests in future CLEC application proceedings is both speculative and illogical. Fundamentally, the CLECs failed to state a basis upon which their protests could be maintained. Certainly, the fact that CTCo filed protests to prior CLEC applications is not evidence of abuse and does not support the assertion that, post-transaction, CTCo will behave inappropriately.

For all of these reasons, the CLEC protests lack adequate substance and should be dismissed on that basis.

#### **A. Merits of CTCo’s Protests in CLEC Application Cases**

15. CTCo filed five CLEC protests in the recent past. Of these cases, two were litigated and, in both, CTCo’s Protest was upheld by the presiding ALJ. One application case settled (Service Electric). The parties are in the process of attempting to settle the other two (Blue Ridge and RCN). This record of performance hardly justifies the picture that the CLECs would like to paint of CTCo belligerently acting as an alleged bully to thwart competition.

16. In the Core application case, CTCo is a party with several other rural local exchange companies. The protest was upheld by ALJ Weismandel, who found that:

- “Based upon the evidence in this case, **Core’s Amended Application** seeking authority to be a “facilities-based competitive local exchange carrier” **is a sham**. . . .

Whatever it may be, it is clear that Core is not, and would not be in the future, a facilities-based CLEC.”<sup>22</sup>

- “Despite the representations made in its Amended Application, evidence adduced at the Hearing in this case establishes that **Core is not now, and would not be in the future, a facilities-based CLEC** as that term has been understood in Pennsylvania since enactment of the Telecommunications Act of 1996.”<sup>23</sup>
- “While Core’s Amended Application could be denied because of its misrepresentation as seeking authority as a facilities-based carrier, it is also the case that **Core is not, and will not be, a ‘local exchange carrier.’**”<sup>24</sup>

The Core application is pending disposition before the full Commission.

17. Sprint argues here that CTCo protested the Sprint application in order “to thwart and unduly delay facilities-based competitive entry.”<sup>25</sup> The Presiding Administrative Law Judge disagreed, granted CTCo’s protest and denied Sprint’s application on substantive grounds,<sup>26</sup> finding that Sprint’s proposed wholesale, back office services are not local exchange services under either federal or Pennsylvania law.<sup>27</sup> Accordingly, the ALJ recommended that the application of Sprint for a certificate from this Commission to provide “telecommunications services as a competitive local

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<sup>22</sup> *Application of Core Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*; PA PUC Docket No. A-310922F0002AMA. Initial Decision at 21 (Emphasis added).

<sup>23</sup> *Id.* at 17 (Emphasis added).

<sup>24</sup> *Id.* (Emphasis added).

<sup>25</sup> Sprint Protest at ¶ 13.

<sup>26</sup> *Application of Sprint Communications Company L.P. To Amend Its Certificate of Public Convenience to Begin to Offer, Render, Furnish, and Supply Competitive Local Exchange Telephone Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A- 310183F0002AMA, Recommended Decision of ALJ Susan D. Colwell released May 25, 2006 (“*Sprint Application*”).

<sup>27</sup> Initial Decision at Conclusions of Law Nos. 1, 2 and 6

exchange carrier” should be denied.<sup>28</sup> The decision is also pending full Commission review on Exceptions filed by Sprint.

18. In the Service Electric CLEC application, after informal discovery sessions and without the need for hearings, settlement was reached whereby CTCo withdrew its protest and submitted a revised interconnection agreement, which has been approved by the Commission.<sup>29</sup>

19. The Blue Ridge and RCN applications are pending before the Commission and CTCo has filed protests, as have other rural local exchange companies. The merits of CTCo’s protest are properly adjudicated in those proceedings, as they were in the Core and Sprint application cases.

20. The Blue Ridge application case is closely related to the Sprint application. CTCo’s position in the Sprint case consistently has been that Blue Ridge, as the retail service provider, must be the applicant and not Sprint. As CTCo stated in its Reply Exceptions:

CTCo has always been clear that it does not object to Sprint assisting Blue Ridge. CTCo simply believes that Sprint does not deserve the privileges of a local exchange carrier since it will not be operating as one. Blue Ridge, as the local exchange carrier, should be the one asserting those rights and accepting the associated duties, an obligation it avoided until the eleventh hour of this proceeding.<sup>30</sup>

In the arrangement, Sprint’s functions as an intermediate relay point for calls between Blue Ridge and CTCo. Sprint is providing the back office and relay functions to allow Blue Ridge to interface with the public switched telephone network (i.e., other telephone

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<sup>28</sup> *Id.* at Ordering ¶ 1.

<sup>29</sup> *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, Opinion and Order entered August 19, 2004.

<sup>30</sup> *Sprint Application*, CTCo Reply Exceptions dated July 3, 2006, at 5-6.

companies). Local service is originated or terminated on CTCo's or Blue Ridge's networks.

21. Early in that proceeding, CTCo filed a Motion to Join Blue Ridge. Sprint opposed the Motion, stating: "It is not essential for Blue Ridge to participate in this proceeding[.]"<sup>31</sup> CTCo's Motion to Join Blue Ridge was denied.<sup>32</sup> Blue Ridge, for its part, neither filed an appearance nor participated in the Sprint application case.

22. Blue Ridge filed an Application to provide "facilities-based competitive local exchange carrier" services in CTCo's territory on June 13, 2006, one day before Exceptions were due to be filed to the ALJ's Decision denying Sprint a certificate.<sup>33</sup> The Blue Ridge application case is pending before Administrative Law Judge Ember Jandebour.

23. Blue Ridge was simply reluctant to concede Commission jurisdiction over its services and delayed its own filing. It is misleading, therefore, for BCAP to assert 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."<sup>34</sup>

24. Moreover, it is unreasonable for BCAP to compare Blue Ridge's application to provide service to a tariff filing made by the Frontier Companies.<sup>35</sup> A tariff offering is a completely different matter from a certificate case. Moreover, while titled

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<sup>31</sup> *Id.*, Opposition and Answer of Sprint to Motion to Join an Indispensable Party at 8 (¶ 18).

<sup>32</sup> *Id.*, Second Order to Dispose of Various Motions dated November 18, 2005 at 4-5 (emphasis added).

<sup>33</sup> *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 Facilities-Based Competitive Local Exchange Carrier and Interexchange Toll Reseller*, Docket Nos. A-310183F0002AMA, A-310183F0002AMB and A-310183F0002AMC, Application submitted June 13, 2006.

<sup>34</sup> BCAP Protest and Petition to Intervene at ¶ 6 (Emphasis added).

<sup>35</sup> BCAP Protest and Petition to Intervene at ¶ 6.

“Digital Phone” service, a review of the Frontier tariff reveals that this “Digital Phone” service is simply a basic bundle of standard telephony features, including an access line, vertical features and toll calling.<sup>36</sup>

25. In the RCN application case, RCN moved to dismiss CTCO’s protest on the basis of the same arguments RCN now makes here.<sup>37</sup> CTCO answered RCN’s Motion to Dismiss, responding to the exact same averments that RCN now recites here.<sup>38</sup> In its answer to RCN’s motion to dismiss, CTCO argued that it is rightfully concerned, given RCN’s recent bankruptcy,<sup>39</sup> about the effects of another RCN financial failure or outright cessation of business, a basis of protest that the Commission has previously sustained.<sup>40</sup> The summary RCN financial statements provided thus far demonstrate continuing losses and a precarious financial position. Moreover, CTCO has challenged RCN’s assertion that it is intending to be a “facilities-based” carrier, questioning how a how a company with Lehigh Valley and Philadelphia-based facilities can demonstrate that it will use those facilities to provide service hundreds of miles away in Bradford and Tioga Counties, for example.<sup>41</sup> There are other issues of merit also raised by CTCO in the RCN application case. RCN arguments and CTCO’s reply is pending before Administrative Law Judge Louis Cocheres. That is the proper forum for the dispute – this is not.

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<sup>36</sup> Frontier Communications of Pennsylvania, LLC, Supplement No. 93 to Telephone Pa. PUC No. 14, filed October 3, 2006.

<sup>37</sup> *Application of RCN Telecom Services, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier In the Service Territory of Commonwealth Telephone Company*, Docket No. A-310554F0002AMA, RCN Preliminary Objections dated June 22, 2006.

<sup>38</sup> RCN Protest at 10-11.

<sup>39</sup> RCN declared bankruptcy, long after divestiture from C-TEC Corp (the predecessor company to CTE) and the departure of Mr. Mahoney. RCN Protest at 10.

<sup>40</sup> *Application of Helicon Telephone Pennsylvania, LLC*, Docket No. A-310519, Order Adopted October 15, 1999.

<sup>41</sup> RCN asserts in its CLEC application that it will be providing service over its own facilities. RCN Application at ¶ 10. If RCN is not intending to use its own facilities and is planning on doing something else, it is incumbent upon RCN to inform the Commission, revise its application, and explain that the service proposed is that of a “telecommunications” service provider.

26. As it did with Service Electric, CTCo is currently attempting to negotiate settlements with both RCN and Blue Ridge. In the case of RCN, no hearing schedule has been established, discovery is stayed and RCN has sent numerous e-mails to Administrative Law Judge Cocheres advising him that settlement discussions are continuing and that the establishment of a formal schedule is unnecessary at the present time. In the case of Blue Ridge, Blue Ridge preferred to establish a litigation schedule with Judge Jandebour, which CTCo did not oppose, but in the meantime meetings are being held in an attempt to resolve the case.

27. The reason for bringing up this admittedly lengthy history of other pending application proceedings is that these proceedings are the basis of the CLECs' attempted interventions and protests into this case. The above recitation, documented from Commission records and decisions of the Commission and Administrative Law Judges, however, demonstrates that CTCo's protests consistently have had merit. Where litigated, CTCo protests have been sustained and have never been denied by the presiding Administrative Law Judge.

28. The CLECs' application cases should be litigated on the merits using the standards applicable to entry cases. The relief sought by the CLECs here are thinly disguised attempts to create leverage over CTCo to concede the exercise of due process rights to raise and seek resolution of valid concerns.

29. In order to reach the merits of the CLEC protests here, the CLECs are really asking that Your Honor decide the merits of the CLEC application cases themselves, since their protests here depend upon the factual assertion that CTCo's protests are frivolous and without merit. The cases have already been assigned and are

pending at their own separate dockets. Indeed, the Sprint protest was already ruled upon and CTCo's protest upheld.

30. The Joint Application here is a commercial transaction, a parent level acquisition, which should not be bogged down by forcing the litigation of already docketed proceedings that contain their own complexities and issues, which are different from those raised in this case.

### **B. Speculative Nature Of The CLEC Protests Here**

31. The only demonstrable fact alleged by any of the CLECs in support of their protests is that CTCo filed a protest in their CLEC application cases. From this they extrapolate exaggerated, speculative theories of potential harm:

- Blue Ridge “respectfully submits that the additional resources and capital available to CTCo will provide the Companies [CTCo] with more leverage to use the regulatory process to exploit smaller CLECs and to further hinder Blue Ridge Phone’s ability to compete.”<sup>42</sup>
- BCAP alleges that the additional resources of capital available to CTCo will provide “more leverage to use the regulatory process to exploit smaller CLECs, and to further block the applications of other potential CLECs as was already done to Sprint and Blue Ridge.”<sup>43</sup>
- Sprint argues that permitting rural incumbent carriers “to routinely protest applications . . . acts as a genuine and significant barrier to entry and defeats the pro-competitive purposes of the Telecommunications Act of 1996.”<sup>44</sup>

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<sup>42</sup> Blue Ridge Protest and Petition to Intervene at ¶ 7.

<sup>43</sup> BCAP Protest and Petition at ¶ 8

<sup>44</sup> Sprint Protest at ¶ 13.

- RCN claims that the proposed acquisition will give CTCo “access to the enormous resources of Citizens that will be used to further stifle competition in its markets, ” because CTCo will have “a greater incentive to keep competition out of its markets.”<sup>45</sup>

The premise of these assertions is that the original act of protest by CTCo was an abuse. Since that is inaccurate, the fact of CTCo’s protest cannot support the claim that there will be further abuse.

32. The CLECs allege no facts to support the claims that the acquisition of CTCo, serving 313,366 access lines<sup>46</sup> by a parent company that owns five small rural local exchange companies serving approximately 39,000 access lines in Pennsylvania<sup>47</sup> will wield “market power” over the CLECs in Pennsylvania. Nor is there any basis demonstrated by the CLECs to support the assertion that a Citizens-owned CTCo will be more motivated to engage in “anti-competitive behavior,” when it is not demonstrated that CTCo misused its rights in the first place. Nor is there any claim made in the CLEC protests that Citizens has “exploited” CLECs or “stifled competition” and brings such propensities as the new owner of CTCo.

33. RCN refers to a statement to Wall Street analysts that, post-closing, CTCo will implement customer contracts.<sup>48</sup> This is hardly “anti-competitive” and not a basis for denying this application. The use of contracts is tied to the value offered and also provided the customer with protection from price increases for the period of the contract, not necessarily the level of competition. Discounted arrangements offered in the bundles or other discounts offered to customers are often based upon a commitment to use the

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<sup>45</sup> RCN Protest at 6.

<sup>46</sup> Application at ¶ 8.

<sup>47</sup> Application at ¶ 13.

<sup>48</sup> RCN Protest at 7.

service for a period of time. This is simple business. In fact, it is common practice for CLECs to offer long term contracts to their customers. CTCO could undertake to put all of its customers under contract today and this would not be objectionable. It is no less objectionable that CTCO do so after this transaction is consummated. It was RCN's choice to delay entry into CTCO's service area for 10 years. It is speculative to assert that "the most valuable customers" will be tied up at such time as RCN is certificated by the Commission.

34. The failure to be factually specific is fatal. The Commission has shown little tolerance for protests that lack a factual basis and has summarily dismissed them.<sup>49</sup>

As stated by the Commission in *Southern Union*:

**[T]he OCA's protest is defective because it does not plead specific facts showing why the merger should not be approved or why it otherwise will not be in the public interest.** The matters complained of in the Protest, for example, do not affect whether this merger will have an anticompetitive effect or will impair the technical, managerial or financial fitness of PEI, PG Energy, and Honesdale to continue to provide adequate natural gas service to Pennsylvania customers at just and reasonable rates. *See e.g., Montague v. Philadelphia Elec. Co.*, 66 Pa. P.U.C. 24 (1988) (pursuant to 52 Pa. Code §5.101(a)(3), the Commission found that a moving party is entitled to judgment in its favor where it is clearly warranted and free from doubt that the filing does not state a basis for relief).<sup>50</sup>

35. This obligation is analogous to the Rules of Civil Procedure, which require that "the material facts on which a cause of action or defense is based shall be stated in a

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<sup>49</sup> *Re: Distribution Freight Systems, Inc.*, 66 Pa. PUC 231, 233 (1988); *Re: Ketrion, Inc.*, 67 Pa. PUC 394, 400 (1988) ("This type of generalized pleading in [an application] proceeding is not helpful to either the Commission or the public.")

<sup>50</sup> *Application Of PG Energy, Inc., Honesdale Gas Company And Southern Union Company For All Approvals Required Under The Public Utility Code Due To The Merger Of Pennsylvania Enterprises, Inc. Into Southern Union Company, The Merger Of Honesdale Gas Company Into PG Energy Inc., And The Merger Of PG Energy Inc. Into Southern Union Company As The Surviving Corporation*, Docket Nos. A-120011F0002, A-121200F2000 and A-122150F2000, Order entered September 15, 1999 at 7-8 (Emphasis added).

concise and summary form.”<sup>51</sup> This principle “would be thwarted if courts, rather than parties, were burdened with the responsibility of deciphering the cause of action from a pleading of facts which obscurely support the claim in question.”<sup>52</sup> This requirement is satisfied if the pleading contains averments of all material and relevant facts the party will eventually have to prove in order to obtain the relief requested, and such averments are sufficiently specific so as to enable the party served to frame an answer and prepare a defense.<sup>53</sup> Where the pleader's allegations state a claim upon which relief may be granted, a demurrer will not be sustained.

36. The Commission has summarily dismissed protests that lack a factual basis.<sup>54</sup> In *Re Distribution Freight Systems, Inc.*, the Commission dismissed a protest which made very basic claims and “parroted” the language of the statute.<sup>55</sup> The Commission found the protests to be without merit, noting that such “boilerplate” pleadings were of little value in a system where applications are often decided solely on the basis of written pleadings and evidence.<sup>56</sup> Several months later, the Commission echoed the findings of *Distribution Freight*, rejecting a similar “boilerplate” protest in *Re Ketron, Inc.*, stating:

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<sup>51</sup> Pa. R. Civ. P. 1019(a); See also *City of Philadelphia v. Kane*, 438 A.2d 1051, 1052 (Pa. Cmwlth. 1982) (in contrast to “notice pleading” jurisdictions, Pennsylvania is a fact pleading state).

<sup>52</sup> *Krajsa v. Key Punch, Inc.*, 622 A.2d 355, 357 (Pa. Super. 1993); cf. *Hohensee v. Luger*, 412 A.2d 1111, 1112 (Pa. Cmwlth. 1980) (pleading fails where the averments are so deficient that the tribunal could not adjudicate the claim without undertaking to research and rewrite them); Pa. R. Civ. P. 1019(f) (averments of time and place must be specifically averred); e.g. *Smith v. Brown*, 423 A.2d 743, 745-46 (Pa. Super. 1980) (complaint which, among other deficiencies, asserts defendant violated various laws without explaining what those laws were and the extent to which they were violated is insufficient); *Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. 1978) (in a negligence action, plaintiff must plead factual averments as to the duty owed by the defendant).

<sup>53</sup> *Commonwealth v. Shipley Humble Oil Co.*, 370 A.2d 438, 439-40 (Pa. Cmwlth. 1977); *Philadelphia County Intermediate Unit No. 26 et. al. v. Department of Educ.*, 432 A.2d 1121, 1125 (Pa. Cmwlth. 1981).

<sup>54</sup> *Re: Distribution Freight Systems, Inc.*, 66 Pa. PUC 231, 233 (1988); *Re: Ketron, Inc.*, 67 Pa. PUC 394, 400 (1988) (“This type of generalized pleading in [an application] proceeding is not helpful to either the Commission or the public.”).

<sup>55</sup> 66 Pa. P.U.C. 231, 232 (1988).

<sup>56</sup> *Id.* at 233.

This type of generalized pleading in a temporary authority proceeding is not helpful to either the Commission or the public. We are aware of no violations of the Public Utility Code or our regulations committed by Ketrion. Without more specific information, we cannot determine how approval of this application will adversely affect MPA.<sup>57</sup>

37. Here, the protests are devoid of facts and consist of speculation. This is understandable, given the absence of facts that demonstrate that CTCO has filed frivolous protests to “thwart competition” or that CTCO, under Citizens would be the same or worse. So the protests concoct allegations regarding “more leverage to use the regulatory process,”<sup>58</sup> but these are not demonstrated and are illogical.

38. RCN argues that an additional incentive is created by Citizens’ acquisition to accelerate the return on investment on the acquired properties.<sup>59</sup> This makes no sense. Every company in America seeks to maximize profit, RCN included. CTE and CTCO obviously seek to do so now. The profit incentive does not translate into abuse of process or a greater likelihood to “impede competitive entry wherever possible, such as by delaying and obstructing entry[.]”<sup>60</sup> Yet, this is the basis of RCN’s protest.

39. The CLEC protests have failed to plead any factual basis to establish a harm – let alone direct harm -- to themselves that would result from the acquisition of Joint Applicants by Citizens. Unfounded accusations and speculation are not facts. And facts are required to establish an interest in the outcome.

#### **IV. THE CLEC-REQUESTED RELIEF IS NOT AVAILABLE IN THIS CASE**

40. The relief sought by the CLECs reflects their interest in using this proceeding to gain an advantage in their own application cases:

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<sup>57</sup> 67 Pa. P.U.C. 394, 400 (1988).

<sup>58</sup> *Blue Ridge Protest and Petition to Intervene* at ¶ 7.

<sup>59</sup> RCN Protest at 7.

<sup>60</sup> *Id.* at 7-8.

- Sprint asks that the Commission “condition its approval of the proposed acquisition on obtaining assurances from CTCo and Citizens that it will not use the Commission’s CLEC application and entry procedures to thwart and unduly delay *facilities-based competitive entry in the combined service territories.*”<sup>61</sup>
- “BCAP submits that any approval of this Joint Application must be conditioned on CTCo and the other Frontier Companies of Pennsylvania foregoing future arguments for special regulatory treatment based upon their alleged ‘rural’ status.”<sup>62</sup>
- RCN seeks similar outcomes from this case, but seeks specific additional relief. First, this proceeding should be delayed “until RCN and Commonwealth have had their differences resolved by the Commission in the proceeding to expand RCN’s certificated authority[.]”<sup>63</sup> Indeed, RCN demands that CTCo “cease Commonwealth’s opposition to the RCN Petition [sic]” before the Citizens acquisition occurs.<sup>64</sup> Next, both Citizens and Commonwealth must “agree not to oppose petitions from carriers previously certificated in Pennsylvania to provide competitive local exchange services” in the Citizens and Commonwealth service territory.<sup>65</sup> Finally, RCN argues that “the merger should be conditioned on Citizens and Commonwealth agreeing not to assert their rural exemption under state or federal law against a competitive carrier making a bona fide request for interconnection in the Commonwealth territory.”<sup>66</sup>

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<sup>61</sup> Sprint Protest at ¶ 13.

<sup>62</sup> BCAP Protest and Petition at ¶ 9.

<sup>63</sup> RCN Protest at 15.

<sup>64</sup> *Id.* at 16.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 17.

Extracting capitulation of CTCo's and the Frontier Companies' state and federal rights, while certainly their objective, is not available to the CLECs in this case. The audacity of these suggestions is astonishing.

41. There is no basis to demand anything from the Frontier Companies, when they have requested nothing and where there is no requirement that they meet the *City of York* affirmative public benefits test.<sup>67</sup> The Frontier Companies are not parties to this proceeding and are not Joint Applicants in this case. Moreover, the factual basis of the CLECs' claim to relief involves CTCo and does not mention the Frontier Companies at all. Extraction of relief from the Frontier Companies is not available to the CLECs.

42. RCN is wrong to assert that "one Citizens subsidiary – Citizens of Kecksburg – has already had that limitation [the rural exemption] removed by this Commission."<sup>68</sup> If RCN performs further research it will discover that, indeed, Citizens Telephone Company of Kecksburg is an independent, privately-owned carrier that has no relationship whatsoever to Citizens Communications Company. Furthermore, Armstrong Telecommunications, Inc., several years ago, withdrew its opposition to the reinstatement of Citizens of Kecksburg's rural exemption.<sup>69</sup>

43. As to CTCo, its due process right to protest was granted by the Commission over ten years ago in a generic proceeding under which the Commission established, among other things, the procedures to be appropriately used in the CLEC certification process. CTCo has never been found by the Commission to have abused

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<sup>67</sup> See Joint Applicants' Answer to CWA Preliminary Objections filed November 9, 2006.

<sup>68</sup> RCN Protest at 17.

<sup>69</sup> *Petition for Suspension Under Section 251(f)(2) of the Telecommunications Act of 1996 of Citizens Telephone Company of Kecksburg*, Docket No. P-00971229, Petition for Amendment of the Opinion and Order entered April 28, 1999 dated December 2, 2003.

these rights and, as the prior recitation of the use of those rights attests, have never, in fact, been abused.

44. If the CLECs desire to change the Commission's entry procedures, then they should submit that request directly to the Commission and notify all the parties that have an interest in the outcome. Other rural local exchange companies have exercised their protest rights, but are not threatened with disenfranchisement.

45. Nor does a protest violate the TCA-96. As the Commission noted in 1996, when implementing the procedures:

While the entry preemption under Section 253(a) [the same provision cited here by the CLECs against CTCo's right to protest] is broadly expressed, the qualification to application of subsection (a) by subsection (b) appears to be equally broad. Although the state commission may not preclude new carriers from entering into any or all service markets, the state commission may continue to impose requirements pertaining to the terms and conditions under which services are provided to the consuming public as long as the requirements are competitively neutral.<sup>70</sup>

Unless and until revised by the Commission, that determination "shall be prima facie evidence of the facts found and shall be made conclusive upon all parties affected thereby[.]"<sup>71</sup>

46. Nor may the CLECs demand that CTCo concede its rural telephone company status conferred by the TCA-96. Congress created that classification for rural telephone companies, distinguishing them from the regional Bell operating companies, which stood to gain much from the passage of the TCA-96, including the ability to enter the long distance markets under the Section 271 process set forth in the Act. CTCo is a rural telephone company under the TCA-96, which this Commission has recognized in its

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<sup>70</sup> *Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, Tentative Decision at 9.

<sup>71</sup> 66 Pa.C.S. § 316.

Orders entered at Docket No. M-00960799,<sup>72</sup> and for the purposes of Act 183, 66 Pa. C.S. §3011 *et seq.*<sup>73</sup>

47. Congress established specific procedures for removal of the rural exemption, which does not include granting it as a prize to be derived from extortive impact of protesting a parent-level change of control application. Specifically, Congress said that the rural exemption will continue to apply:

until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) therefore).<sup>74</sup>

None of these procedures have been followed by the CLECs in this case. The CLECs have not pled any facts that would allow the Commission to make the requisite findings under Section 251(f)(1). Parenthetically, under a ruling of the 8<sup>th</sup> Circuit, the CLECs have the burden of proof in such a proceeding, not the rural local exchange company.<sup>75</sup>

48. Indeed, as RCN recites in its protest here, it originally sought to dissolve CTCo's rural exemption in its CLEC application case, which it subsequently withdrew, pursuing "facilities-based" service rights only.<sup>76</sup> Yet now, somehow, RCN has no apprehension in demanding that CTCo must agree "not to assert the rural exemption," if the Joint Applicants want this transaction approved. RCN cleverly avoids its burden of proof and the procedures established by Congress.

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<sup>72</sup> *Re: Implementation of the Telecommunication Act of 1996*, Docket No. M-00960799; Orders entered June 3, 1996 and September 9, 1996.

<sup>73</sup> See, CTCo Chapter 30 Plan at 1.

<sup>74</sup> 47 U.S.C.A. § 251(f)(1).

<sup>75</sup> *Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 762 (8<sup>th</sup> Cir. 2000), Section 251(a) and (b) "requires the party making the request [to terminate the rural exemption] to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption."

<sup>76</sup> RCN Protest at 12.

## V. RCN LACKS STANDING TO RAISE CONSUMER AND EMPLOYEE ISSUES

49. RCN's protest also seeks to raise a full spectrum of additional "positive public benefits" issues, addressing consumer and employee interests, which it has no standing to address. RCN raises issues regarding:

- Whether the applicants should be required to "accelerate broadband deployment" beyond CTCo's current Chapter 30 commitments.<sup>77</sup>
- Whether "consumers . . . will share in the financial rewards of the proposed acquisition[.]"<sup>78</sup>
- Commitments "promoting a policy of diversity" are "essential."<sup>79</sup>
- The employment effects of the merger.<sup>80</sup>
- The level of merger cost savings and encouraging the Commission to "ensure that Commonwealth's captive rate-payers share in the benefits of the proposed acquisition."<sup>81</sup>

50. RCN is not vested, however, with the rights of a consumer advocate. It has no standing to raise issues before this Commission related to advanced services deployment, customer synergy savings, workplace diversity, or employment.

51. CTCo submits that RCN has failed to claim "[a]n 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," as required under Commission regulations."<sup>82</sup>

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<sup>77</sup> RCN Protest at 13.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at page 14.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at page 15.

<sup>82</sup> 52 Pa. Code § 5.72(a)(2).

52. RCN has not established a legally recognizable interest that is “direct, immediate and substantial” as required under *William Penn*,<sup>83</sup> sufficient to participate on the financial, service and deployment issues set forth in its protest.<sup>84</sup>

53. As stated by the *William Penn* Court, “direct” means “that the person claiming to be aggrieved must show causation of the harm to its interest by the matter of which he complains.” Other authorities have held that the subject matter is “direct” if the protestant’s interest is adversely affected by the grant of a certificate and immediate if there is a close causal relationship between the asserted injury and the action challenged in the protest.<sup>85</sup> The interest must be specific to the entity, as opposed to the general public interest.<sup>86</sup>

54. RCN claims are not relevant to a potential competitor. These are consumer and ratepayer interests.

55. The Commonwealth Court has defined “immediate interest” as one that “involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.”<sup>87</sup>

56. Nor should RCN be allowed to claim representation of consumers. The Commission’s general policy is to disallow “representative” standing unless the parties

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<sup>83</sup> *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975). Although *William Penn* involved appellate standing, the same requirement of a substantial, immediate and direct interest applies the standing before an administrative agency. *Apple v. Pennsylvania Dep’t. of Insurance*, 431 A.2d 1183 (Pa. Cmwlth. 1981).

<sup>84</sup> Those allegations are as described at paragraph 6 of this Motion.

<sup>85</sup> *Application of Consumers Water Company – Shenango Water Division*, 95 Pa. PUC 5 (2001).

<sup>86</sup> *William Penn Parking*, 346 A.2d 269, 431 A.2d 1183.

<sup>87</sup> *George v. Pa. Pub. Util. Comm’n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999) (quoting *South Whitehall Twp. Police Service v. South Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989)).

represented are unable to pursue their own interests; however, the Commission will allow it where it aids the development of facts necessary to proper disposition of the issues.<sup>88</sup>

57. The consumer interests are represented here. These issues can be raised, if appropriate, by statutory entities, the OCA and OSBA, and, although the Office of Trial Staff has filed no protest, it traditionally pursues consumer interests as one component of its role as protector of the public interest. Therefore, RCN cannot maintain consumers are “not adequately represented by existing participants.”<sup>89</sup>

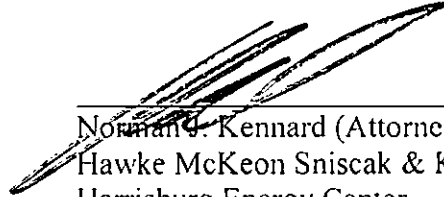
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<sup>88</sup> *Manufacturers' Association of Erie v. City of Erie – Bureau of Water*, 50 Pa.P.U.C. 43, 46 (1976); *Mid-Atlantic Power Supply Ass'n v. PECO Energy Co.*, 92 Pa.P.U.C. 414 (1999).

<sup>89</sup> 52 Pa. Code § 5.72(a)(2).

WHEREFORE, Joint Applicants and Citizens respectfully request that the Protests and Petitions to Intervene filed by Blue Ridge Digital Phone Company, Sprint Communications Company LP, the Broadband Cable Association of Pennsylvania, and RCN Corporation and RCN Telecom Services, Inc. ("RCN") be dismissed.

Respectfully submitted,



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Counsel for Citizens Communications Company

DATED: November 10, 2006

***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).

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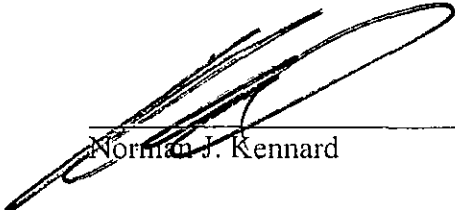
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