

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.	:	

**DOCUMENT
FOLDER**

**ORDER GRANTING THE JOINT MOTION OF COMMONWEALTH TELEPHONE
COMPANY, CTSI, LLC, AND CTE TELECOM, LLC d/b/a COMMONWEALTH
LONG DISTANCE COMPANY AND CITIZENS COMMUNICATIONS COMPANY
FOR PROTECTIVE ORDER**

On December 21, 2006, 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") filed a Motion for a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §5.423(a), citing the following support:

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

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. The OCA, OSBA and OTS ("Statutory Parties") and the Communications Workers of America ("CWA") are participants in this case. Blue Ridge Digital Phone Company ("Blue Ridge"), Sprint Communications Company LP ("Sprint"), and RCN Corporation and RCN Telecom Services, Inc. ("RCN") (collectively "CLECs") have filed protests to the Joint Application and been accepted into the case.

5. Highly confidential and proprietary information has been provided in discovery and presented in testimony and exhibits in this proceeding. Such information includes commercially-sensitive data that is highly confidential to the Joint Applicants and Citizens.

6. Proprietary treatment, in the form of the attached suggested Protective Order, is justified because such information would be of substantial value to the competitors of Joint Applicants, Citizens and their respective affiliates and its release would substantially harm the Joint Applicants, Citizens and their respective affiliates. The release of this information would allow competitors to gain knowledge of confidential information related to the operations, financial and operating results, and marketing, strategic and business plans of the Joint Applicants, Citizens and their respective affiliates, thereby placing the producing party at a severe competitive disadvantage. Furthermore, limitation on the disclosure of information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding.

7. The attached suggested Protective Order sought by the Joint Applicants and Citizens will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

8. The CWA, OCA, OSBA and OTS have all reviewed the proposed protective order and state they have no objection to it. While the Joint Applicants have made numerous changes in the document in an attempt to satisfy concerns raised by a few of the CLECs, notably RCN, it does appear that RCN and the CLECs still may have one or two issues with this proposed Order. However, the Joint Applicants cannot agree to the further changes.

9. At this point in the proceeding, it is more important to file the proposed Order, inasmuch as Proprietary and Highly Confidential Information has been flowing to the CWA, OCA, OSBA and OTS for some time now and an Order is not in place. Moreover, the information has not been distributed to the CLECs, since there is no order and no agreement.

Blue Ridge Digital Phone Company indicated that it did not oppose the Protective Order. RCN Telecom Services, Inc. (RCN) filed an Answer in opposition for two reasons: (1) to the proposed definition of "Highly Confidential," which was proposed to expand beyond the limitations recognized in the Commission's regulation, 52 Pa. Code § 5.423(e), which indicates that the designation should only be used to avoid "severe and extreme prejudice"; and (2) to clarify that RCN's law firm in Virginia, listed in the PUC pleadings as additional counsel of record, would have access to discovery responses marked as "highly confidential" and therefore, limited to "counsel of record" and whatever outside experts employed for this proceeding. Ordering Paragraph 5(b).

Joint Applicants responded by stating that they had already provided some documents to some parties, marked as "Highly Confidential," and that it would be onerous to try to locate those documents to rename them under a different standard. Without the "highly confidential" label available, Joint Applicants contend that it would be potentially be placed at a competitive disadvantage since its competitors would have access to information that they would not under the more restrictive designation.

Joint Applicants continued to oppose dissemination of "highly confidential" information to counsel from the Virginia law firm of Williams

Mullen, since neither of the two named individuals were authorized to practice law in Pennsylvania, either as bar members or pro hac vice. They are apparently from the firm that is representing RCN before the Federal Communications Commission, and their access to highly confidential information in the Pennsylvania Commission proceeding opens the possibility that the information could be used in the federal proceeding.

The parties negotiated a compromise whereby the regulation standard would be included in the definition of "highly confidential" for the discovery propounded after the date of this Order. The Commission regulation which provides that the designation of "proprietary," which includes the more restrictive designation of "highly confidential," may be challenged by a party receiving the information thusly labeled, 52 Pa. Code § 5.423 (c)(5), is not changed by this addition.

In addition, RCN filed a Motion for Admission Pro Hac Vice for Michael W. Fleming, Esq., of the Virginia law firm of Williams Mullen which, if granted, moots the objection of the Joint Applicants regarding Mr. Fleming's right to view highly confidential documents. Joint Applicants ask that it be emphasized that no highly confidential or proprietary documents discovered in this proceeding may be used in any other proceeding in any other jurisdiction. As that is one of the terms of the Protective Order which the parties have agreed upon, such a restriction is already in effect upon entry of this Order.

THEREFORE,

IT IS ORDERED:

1. That this Protective Order is hereby granted with respect to all materials and information identified at Ordering Paragraphs 2 and 3 which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials in any form which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to another party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY" (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information shall include, but is not limited to, information that is either specified as confidential by its terms, or pertains to business practices that are commercially sensitive, or which is ordinarily considered and treated as proprietary or confidential by the producing party; and, all information contained therein or derived therefrom, including but not limited to all copies, excerpts or summaries thereof.

3. In addition, parties may designate extremely sensitive Proprietary Information as "HIGHLY CONFIDENTIAL" (hereinafter referred to as "Highly Confidential Information") and, thus, secure the additional protections set forth in this Order pertaining to such material. Highly Confidential Information shall be such Proprietary Information that: (a) constitutes or describes the producing party's (or its affiliates) marketing or sales plans including *inter alia*, costing and pricing aspects thereof, competitive strategies, non-public market share and other data, market share projections, customer and other agreements and the terms thereof (to the extent not publicly available), marketing materials and ideas that have not yet been disclosed publicly, customer-identifying information, customer prospects for services that are subject to competition, or similar documents; or (b) constitutes non-public financial or operating information where failure to classify said information as Highly Confidential would impose

sever and extreme prejudice on the producing party for discovery propounded after the date of entry of this Order.

4. *Proprietary Information and Highly Confidential Information* placed into the evidentiary record shall be made available to the Commission and its advisory Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information or Highly Confidential Information shall be permitted only in accordance with this Order.

5. Proprietary Information and Highly Confidential Information shall be made available in this proceeding pursuant to the following procedures:

a. Proprietary Information. Prior to making Proprietary Information available to any employee, officer or director of a party for purposes of participating in this proceeding, a party's counsel shall deliver a copy of this Order to such person and shall receive the written acknowledgement from that person in the form attached to this Order and designated as Appendix "A." Counsel shall promptly deliver to the producing party a copy of the executed acknowledgement form. Counsel of record to the parties are deemed to have reviewed this Order and agreed to its content and, therefore, shall not be required to sign Appendix "A."

b. Highly Confidential Information. Information designated as Highly Confidential shall be provided only to counsel of record, including counsel representing the Office of Consumer Advocate, Office of Small Business Advocate and Office of Trial Staff, and such other attorneys within the same law firm, government bureau, or legal department as counsel of record, who are legally advising a party and who have executed Appendix "A" and to outside experts retained by a party for purposes of this proceeding to the extent set forth below. If the counsel of record desires to disclose Highly Confidential Information to any persons other than counsel of record or the party's outside expert, she or he shall submit a written request to the producing party's counsel. If the requesting and producing parties are unable to reach agreement with respect

to such a request, they may submit the issue orally to the presiding Administrative Law Judge for resolution. Highly Confidential information shall not be disclosed to any person who has marketing, product development, market analysis, market entry, financial planning, strategic planning or similar responsibilities for (i) any party to this proceeding or any competitor of a party; or (ii) any person employed or retained by or reasonably anticipated to be employed or retained by a party or a competitor of a party, or any person who will have those responsibilities in the foreseeable future. In addition, where a person has any duty conflicting with this limitation, but that person is responsible for making litigation decisions in this proceeding for the Party, and where the information is critical to such decision-making, that person shall take all reasonable steps to limit his or her exposure to Highly Confidential information and it will be a direct violation of this Protective Order for such person to rely on Highly Confidential information obtained through discovery in this case to carry out marketing, product development, market analysis, market entry, financial planning, strategic planning or any other responsibilities not directly related to this proceeding. Highly Confidential information may be viewed by an outside expert(s) retained by a party for purposes of this proceeding, provided such expert(s) fully meets all of the qualifications of this paragraph for access to Highly Confidential information and, prior to disclosure, the party provides an affidavit signed by such expert attesting to his or her qualifications under this paragraph and receives an acknowledgement from the disclosing party. Counsel of record to the parties are deemed to have reviewed this Order and agreed to its content and, therefore, shall not be required to sign Appendix "A."

c. No other persons may have access to Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in Ordering Paragraph 5, counsel for a party of record shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as "Appendix A." Counsel shall promptly deliver a copy of this executed acknowledgment form to the producing party.

7. A producing party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an

appropriate proprietary stamp or typewritten or handwritten designation on such data or documents. *Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the producing party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.*

8. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. § 552(b)(4) until such time as the information is found to be non-proprietary.

9. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. § 66.1(2) until such time as the information is found to be non-proprietary.

10. Any public reference to Proprietary Information or Highly Confidential Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

11. Part of any record of this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Ordering Paragraph 10 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential

Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to an Order of an Administrative Law Judge or the Commission. Unresolved challenges arising under Ordering Paragraph 12 shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa. Code § 5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent such guidance is available.

12. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the admissibility of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

13. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed.

Dated: January 5, 2007


Susan D. Colwell
Administrative Law Judge

APPENDIX "A"
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Joint Application of	:	
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Commonwealth Telephone Company	:	A-310800F0010
CTSI, LLC, and	:	A-311095F0005
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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.	:	

NONDISCLOSURE AGREEMENT

The undersigned is the expert, officer, member, employee or counsel of _____
 _____ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary and Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

 Signature

 Print Name

 Address

 Employer

Date: _____

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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