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January 3, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 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 nine (9) copies of the Exceptions of the Broadband Cable Association of Pennsylvania to Initial Decision Denying Intervention in the above-referenced dockets.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek
Pamela C. Polacek

Counsel to the Broadband Cable Association of Pennsylvania

DOCUMENT FOLDER

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

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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 E-MAIL AND FIRST CLASS MAIL

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Pamela C. Polacek

Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

Dated this 3rd day January, 2007, in Harrisburg, Pennsylvania.

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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 Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.	Docket Nos.:	A-310800F0010 A-311095F0005 A-311225F0003

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EXCEPTIONS OF THE
BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA
TO INITIAL DECISION DENYING INTERVENTION

I. INTRODUCTION

On September 29, 2006, Commonwealth Telephone Company ("CTCo"), CTSI, LLC ("CTSI"), and CTE Telecom, LLC ("CLD") (collectively, "Joint Applicants") filed a Joint Application with the Pennsylvania Public Utility Commission ("PUC" or "Commission") seeking approval by the Commission for the proposed acquisition by Citizens Communication Company ("Citizens") of the Companies' parent, Commonwealth Telephone Enterprises, Inc. ("CTE"). The Broadband Cable Association of Pennsylvania ("BCAP") subsequently filed a Protest and Petition to Intervene on October 30, 2006. On November 10, 2006, the Joint Applicants filed Joint Answers and Preliminary Objections seeking to dismiss BCAP's Protest and Petition to Intervene, to which BCAP submitted its Answer on November 20, 2006. On December 14, 2006, presiding Administrative Law Judge ("ALJ") Susan D. Colwell issued an Initial Decision ("I.D.") finding that the PUC should deny BCAP's Protest and Petition to Intervene for lack of standing.

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The I.D. erred in applying Commission precedent to deny BCAP's Protest and Petition to Intervene. Contrary to the holding of the I.D., BCAP, as an association of both current and potential competitors with the Joint Applicants, asserts an interest that is substantial, direct, and immediate. Moreover, the interest maintained by BCAP's members comports with established Federal and State public policy of promoting competition in rural territories. By denying the Protest and Petition to Intervene, the I.D. impedes the ability of BCAP's members, and their affiliates, to protect competitive and market entry interests requiring access to CTCo's facilities that will invariably be affected by the PUC's approval of the Joint Applicants' request.

Pursuant to Section 5.533 of the Commission's Regulations, 52 Pa. Code § 5.533, BCAP hereby files these exceptions urging the Commission to reject the ALJ's findings and to grant the Protest and Petition to Intervene with full party status.

II. EXCEPTIONS

A. Exception No. 1: The Initial Decision's Limitation of Standing to Protest and Intervene to Only Those Entities with Competing Authority, and to Those Seeking Competing Authority, is Inappropriate.

The I.D. states that "[s]tanding to protest is established when the protestant either holds competing authority *or has filed an application for competing authority*." I.D., p. 8 (emphasis included). The I.D. continues: "Without either holding or having filed for competing authority, the interest in the case by a party is a generalized interest, not the legally protectible and tangible interest required." Id. Additionally, the I.D. declares that the BCAP member competition with CTCo is not within the regulation of the Commission. Id. at 10. Upon this reasoning, the I.D. then determines that BCAP lacks standing to protest or intervene in this matter. BCAP respectfully excepts.

Under State and Federal statutory schemes to encourage competitive entry into telecommunication fields, limiting intervention to only those entities with current authority, or pending requests for authority, is inappropriate. Intervention by potential competitors, including an association seeking appropriate determinations to encourage entry by its members and their affiliates, is in the public interest. This applies equally to jurisdictional and non-jurisdictional competition.

The Telecommunications Act of 1996 ("TA-96") imposes on all local exchange carriers specific obligations regarding resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation arrangements for the transport and termination of telecommunications. See 47 U.S.C. § 251(b). Section 251(c) of TA-96 imposes additional obligations on Incumbent Local Exchange Carriers ("ILECs") regarding negotiation of agreements, interconnection, unbundled access, resale, public notice of changes in telecommunications services, and collocation. See id. § 251(c). The stated purpose of TA-96 is "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality service for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." See id. Preamble. Section 253 thus restricts the states from establishing any "statute, regulation or other ... legal requirement" that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Id. § 253(a).

Pennsylvania similarly codified, in Chapter 30 of the Public Utility Code, its strong policy to "promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas." 66 Pa. C.S. §§ 3011(8) and (12). This policy is also intended, in part, to "[p]romote and encourage the provision of advanced

services and broadband deployment in the service territories of local exchange telecommunications companies without jeopardizing the provision of universal service." Id. §3011(12). Chapter 30 therefore establishes the Pennsylvania regulatory scheme that furthers these policy objectives, consistent with TA-96. As with TA-96's protections against barriers to entry, Chapter 30 is also intended to ensure "that rates, terms and conditions for protected services are reasonable and do not impede the development of competition." Id. § 3011(5).

As a result of the aforementioned Federal and State policies promoting competition for telecommunications and advanced services, and the interdependence of potential entrants on the monopoly facilities of the ILEC, it is inappropriate to apply the motor carrier precedent cited in the I.D. in ruling on BCAP's Protest and Petition to Intervene. ILECs, and especially ILECs in rural territories, control the ability of customers of competing service providers offering an array of telecommunications, advanced and information services to communicate with the ILEC's customers served by the Public Switched Telephone Network ("PSTN"). Motor carriers do not rely on access to each other's services and facilities in the same manner and, as a result, motor carrier applicants do not have the opportunity to delay or obstruct competitive initiatives in the manner that ILECs such as CTCo have. These differences in regulatory structures for the two industries militate in favor of a different, and more expansive, intervention opportunity for potential competitors in telecommunications matters.

The Joint Applicants' filing touts enhanced competition, the introduction of new services and better treatment of CLECs as purported affirmative public benefits that demonstrate the compliance of the proposed transaction with the City of York test. See Joint Application of Commonwealth Telephone Company, et al., ¶¶ 38, 40, 42, 44 and 45 (attached as "Attachment A"). As an association of entities that have clearly expressed their desire to enter CTCo's rural

territory to provide similar jurisdictional and non-jurisdictional services, BCAP has a direct and substantial interest in participating in this application proceeding to ensure that any explicit or implicit barriers to entry in the CTCo or Frontier territories are removed as a condition of approving the acquisition. Concluding that only entities with current or pending CLEC authorization have standing to participate in this proceeding will effectively result in the perpetuation of actions by CTCo and/or Frontier that result in cable telephony and other competitors deciding to not enter these rural territories. This is not consistent with the PUC's pro-competitive mandates regarding telecommunications services, advanced services and broadband deployment under State and Federal law.

In the distinct context of telecommunications, PUC precedent supports this strong public policy that the interests of potential competitors should be considered in reviewing proposed acquisitions and mergers as an element of promoting and preserving competition. For example, in *Re Bell Atlantic Corporation*, 93 Pa. P.U.C. 395, 403-404 (Order Entered November 4, 1999), the Commission clearly stated that it must consider the effect that a potential merger between telecommunications entities will have on potential competition. In assessing market power concerns related to a loss of competition between two merging telecommunications companies, the Commission succinctly declared that when assessing the competitive effects of a merger, it "must identify the market participants" and "examine how competition is likely to be affected in the relevant markets." Id. Therefore, according to the Commission, it "must evaluate the changes in market concentration and the changes *in potential competition* created by the merger." Id. at 404 (emphasis added). In so holding, the Commission also determined that it must assess the anti-competitive effect of a merger as it applies to "precluded competitors"—those entities "that would likely enter in the absence of entry barriers that TA-96 is intended to eliminate"—as well

as to "potential competitors." Id. at 403. Although this category of "precluded competitors" is arguable one of a further removed immediacy than the category of "potential competitors," the Commission recognized the necessity of protecting these interests, as well. The Commission based its decision to include the interests of precluded competitors in its analysis of the policies promulgated in Chapter 30 and TA-96 to ensure that ease of competitive entry into incumbent territories is protected. See id. at 404. Similarly, in this context, extending intervention rights to those entities that may enter the CTCo or Frontier territories in the future, but do not have pending applications for competing authority, will promote the Commonwealth's efforts to encourage competitive entry by a multitude of service providers in rural areas.

In *Re Rural and Small Incumbent Local Exchange Carriers*, 93 Pa. P.U.C. 388, 389 (Order Entered October 19, 1999), the Commission also clearly affirmed, "The Telecommunications Act of 1996 ... imposes upon incumbent local exchange carriers the duties and obligations designed to develop competitive markets in the telecommunications industry." (Citation omitted). Then, on an application from an ILEC for suspension of these requirements, the Commission granted the Petition to Intervene of a potential competitor, stating that such intervention "facilitates performance of our pro-competitive obligations under the TA-96 and state law." Id. at 390.

Of critical importance to the question posed by the I.D. in this case, the intervening potential competitor in *Re Rural and Small ILECs* had not yet applied for interconnection. The Commission, focusing on the policy favoring competition, appropriately granted party status in spite of this fact. Similarly, in the context of an application proceeding relying on competitive service enhancement to customers and improved treatment of potential CLEC entrants as affirmative public benefits, the Commission should allow participation by an association of

potential entrants, even if neither the association nor all of its members possess current or pending CLEC authorization in the territories.

However, even if the I.D. is correct that standing to protest is strictly limited to those entities with current or pending competing authority (which it is not), the I.D. misapplies this standard to BCAP. BCAP consists of members, who are directly, or through their subsidiaries and affiliates, currently authorized to compete in CTCo's territory. CTCo's own response to discovery identifies at least two BCAP members (i.e., Armstrong Cable and Service Electric) that are providing "voice in CTCo." See Joint Applicants' Responses to Office of Consumer Advocate Interrogatories, Set II (attached hereto as "Attachment B"). Blue Ridge Cable currently is seeking CLEC authority to compete with CTCo. The ALJ recognized Blue Ridge's standing in this case by granting its Protest and Petition to Intervene. See Order Disposing of the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications LP, and RCN Telecom Services, Inc., Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003 (Dec. 14, 2006). Given the longstanding recognition of the ability of associations to advocate for members' interests in proceedings before this Commission and the commonality of interests, other BCAP members appropriately relied on the association to present and advance their interests in this proceeding. 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). Thus, even if the Commission agrees with the ALJ's analysis that only parties with present or pending authority have standing to protest and intervene, BCAP, as

an association whose members would have standing to participate on an individual basis, fulfills this requirement.

The direct, immediate and substantial interest test used to evaluate intervention under Section 5.72(a)(2) of the Commission's regulations can be satisfied by parties that are potential competitors that rely on access to the ILEC's monopoly facilities, regardless of whether those entities hold or are currently seeking competing CLEC authority in the ILEC's service territory. BCAP's Protest and Petition to Intervene ("Attachment C" hereto), as well as its Answer to the Preliminary Objections ("Attachment D" hereto), adequately establish its standing to participate in this proceeding as an association of current and potential competitors to CTCo, CTSI and the Frontier companies for voice, data and video services. The I.D. should be reversed and BCAP should be provided full party status in this matter.

B. Exception No. 2: The Initial Decision Improperly Excludes BCAP's Protest and Petition to Intervene Based on an Erroneous Application of Distinctions (1) Between an Interest in Pure Competition and an Interest Promoting Access to Facilities; (2) Between Uncertificated and Certificated Competition; and (3) Between Interests Held by BCAP Members and Interests Held by Their Affiliates.

According to the I.D., under *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company*, 377 A.2d 1270 (Pa. Cmwlth. Ct. 1977), "BCAP has no standing." I.D. at 10. To support this conclusion, the ALJ cites the Commission's statement in *Pa. Pub. Util. Comm'n v. Pennsylvania Gas & Water*, 76 Pa. P.U.C. 537, 541 (Order Issued October 29, 1993) that "to the extent the gas marketer or broker asserts an interest that is purely competitive, *Pa. Petroleum Association* would carry more force and would be dispositive of the standing question." Id. The I.D. then apparently concludes that BCAP's proposed interest is purely competitive and that *Pa. Petroleum Association* therefore precludes standing. Additionally, the I.D. concludes that due to

the "uncertificated" nature of the competition sought by BCAP, and because BCAP apparently claims no direct, but only affiliated interests in competition, it does not have standing to protest or intervene. BCAP respectfully makes exception to these conclusions.

First, the Commission's precedent cited in *Pa. Petroleum Association* and *Pennsylvania Gas & Water* requires a conclusion opposite to the one reached by the ALJ. In stating its opinion regarding the association standing of BCAP, the I.D. correctly notes that "where [an association] asserts an interest grounded in obtaining access to facilities which are monopolistic in nature and in their practical effect, we find sufficient basis on which to distinguish *Pa. Petroleum Association*." *Pennsylvania Gas & Water*, 76 Pa. P.U.C. at 541. Therefore, though a purely competitive interest asserted by an association may arguably be excluded under *Pa. Petroleum Association*, standing for the association will be preserved if the interest asserted is "grounded in obtaining access to facilities which are monopolistic in nature." Id. The I.D. then summarizes: "While the *PG&W* decision highlights the Commission's readiness to permit those entities which are seeking access to the facilities which are monopolistic in nature to participate in Commission proceedings, *Pa. Petroleum Association* is squarely on point for those associations which do not represent entities seeking access to those facilities." I.D., p. 10.

The I.D. fails to recognize that the *Pennsylvania Gas & Water* distinction quoted above defines the substance of the interest that BCAP maintains on behalf of its members. As the Commission is well aware, cable companies throughout the nation are examining strategies to introduce new and innovative services to customers using the cable facilities deployed to provide traditional cable television services to subscribers. A key component of many of these services is the ability to receive and complete calls to the PSTN, which, in a rural territory such as CTCo's, is controlled by the ILEC. Without interconnection to these facilities, competitors will

not be able to produce a marketable product, and will therefore be unable to compete. As ILECs, the Joint Applicants' companies—particularly CTCo—hold facilities that, "by their nature and practical effect," are clearly monopolistic. Therefore, even if the Commission determines BCAP's interest to be purely competitive under *Pa. Petroleum Association*, the *Pennsylvania Gas & Water* distinction applies to confer standing on BCAP to participate in this proceeding.

The I.D., however, further excludes BCAP's standing on the basis that the interest it expresses is "not just competition," but "*uncertificated competition.*" Id. (emphasis included). This is a fragile distinction in the developing telecommunications and information services landscape. As the Commission may recall, in 2004 it prudently declined to make any legal or policy determinations regarding the regulatory status of the various forms of Voice over Internet Protocol ("VoIP") services that cable operators and other entities are developing for the benefit of consumers. See *Investigation into Voice Over Internet Protocol as a Jurisdictional Service*, Docket No. M-00031707, p. 4 (May 24, 2004) ("VoIP Investigation Order"). As a result of this decision, innovative options are being offered in many areas of the Commonwealth. Consumers in some rural areas, however, do not have access to the same types of valuable service offerings because ILECs such as CTCo interpret the Commission's regulatory forbearance (pending further clarification from the Federal Communications Commission) as a sign that ILECs have no obligation to interconnect and exchange traffic. The Commission has the opportunity to rectify this anti-competition and anti-consumer stance by CTCo and the Frontier ILECs as a way to create affirmative public benefits to support approval of this transaction. Requiring BCAP's members to seek CLEC authority as a condition of participating in this proceeding to raise this

important issue effectively reverses the Commission's prior determinations in the *VoIP Investigation Order*.

As explained above, the overarching policy governing Federal and State regulation of utilities is a policy of promoting competition, of removing barriers to competitive entry, and of promoting advanced services in ILEC territories. See generally TA-96, §§ 251, 253; 66 Pa. C.S. § 3011. The competition sought by BCAP members is one that the Commission should view in the light of this overarching policy. Therefore, whether the competition sought by BCAP members may be for services that do or do not require a certificate of public convenience, it should not preclude the association from providing valuable input to further the Commission's efforts to promote competition and reduce barriers to entry. The Joint Application itself asserts that the transaction will enhance the Joint Applicants' ability "to compete more effectively with other facilities-based competitors, including cable telephony and wireless carriers." Joint Application, ¶44. If the Commission views enhanced competition against non-jurisdictional services such as wireless and cable telephony as a public benefit of this transaction, then clearly it should ensure that CTCo and Frontier abstain from anti-competitive behavior against these non-jurisdictional services as a condition of approval of this transaction. The competition that BCAP members seek is the ability to enter into the monopolistic territory, and to interconnect with the facilities of CTCo and its potential affiliates. This squarely comports with the permissible scope of intended State and Federal policy.

Finally, in closely related reasoning, the I.D. appears to deny BCAP's Protest and Petition to Intervene on the basis that BCAP asserts interests of affiliates of its members, and not the actual interests of the primary "named" BCAP members themselves. See generally I.D., pp. 8-10. Thus, the I.D. distinguishes the interests that BCAP members have from the interests that

affiliates of BCAP members have, and asserts that this distinction is probative to BCAP maintaining standing to protest or intervene. The ALJ asserts, "the BCAP pleadings do not claim that the association itself is comprised of entities which would have standing, either as existing CLECs in the CTCo or CTSE territory, or as customers." Id. at 10.

As the Commission undoubtedly is aware, with the introduction of competition in various previously regulated industries, many corporations now consist of multiple entities, affiliates and subsidiaries organized for specific and limited purposes. This reality of corporate law and governance should not bar a group of companies, such as the BCAP members, from jointly advocating through a single association for issues that are important for both their traditional broadband cable television interests and the regulatory environment necessary to advance their entry into other competitive endeavors that the PUC has a mandate to promote. Requiring the BCAP members to create a separate association to advocate regarding the cable telephony issues of importance to their subsidiaries before this Commission would be wasteful. The Commission should therefore reject this distinction.

C. The I.D. Erred by Failing to Conclude that BCAP's Intervention is Otherwise in the Public Interest.

In denying the Protest and Petition to Intervene, the I.D. questions only whether BCAP establishes its interest as substantial, direct, and immediate. Even if the I.D. is correct that BCAP has failed to meet this analysis (which is not correct), the I.D.'s reliance on this sole question inappropriately excludes the determination of whether the intervention serves the public interest. BCAP maintains that its Protest and Petition to Intervene not only asserts a direct, substantial, and immediate interest, but also presents a question that is clearly in the public interest. As such, intervention by BCAP in this matter is appropriate and necessary.

The criteria for eligibility to intervene in PUC proceedings are established by 52 Pa. Code § 5.72. Section 5.72 delineates three separate rights or interests that are "of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought":

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

52 Pa. Code § 5.72(a).

BCAP claims no interest that satisfies the first standard, and the I.D. addresses the issues regarding the second (though, as explained above, erroneously applies them to BCAP to deny the Protest and Petition to Intervene). The I.D. fails, however, to examine the last question: Whether BCAP asserts an interest "of such nature that participation of the petitioner may be in the public interest." Id. §5.72(a)(3). This last criterion for eligibility to intervene is separate and distinct. Clearly, the I.D. analysis focuses on whether BCAP has an "interest which may be directly affected" and whether BCAP's claimed interest is "substantial, direct and immediate." By analyzing BCAP's interest exclusively on the question of whether BCAP members are current or pending competitors with the Joint Applicants, the I.D. effectively ignores this critical public interest analysis that is a separate criteria for potential intervention under the Commission's regulation and a separate basis upon which BCAP's intervention should be granted under Section 5.72(a)(3).

A proper examination of the issues presented in the Protest and Petition to Intervene accordingly establishes that intervention by BCAP is in the public interest.[1] BCAP asserts an interest in ensuring that CTCo does not "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 ... in the CTCo territory." BCAP Protest and Petition to Intervene, p. 5. As explained in detail above, both TA-96 and Chapter 30 clearly hold the protection of competition, the introduction of innovative services, and the removal of barriers to entry as being important public policy goals. Moreover, the Commission itself has unequivocally stated that "[t]he extent of competition in the local exchange market, those conditions under which competition will be conducted fairly, and will be irreversible, are issues which must be addressed to determine whether [a] merger transaction ... is in the public interest." *Re Bell Atlantic Corporation*, 93 Pa. P.U.C. at 411.

BCAP maintains an interest in protecting competition for innovative services, and in removing inappropriate barriers to competitive entry. This interest is clearly one that both Federal and State policy recognizes as being in the public interest. Therefore, regardless of whether its members maintain interests that "may be directly affected" by the merger under Section 5.72(a)(2), BCAP and its members' interests are clearly "of such nature that participation ... may be in the public interest" under Section 5.72(a)(3). The I.D.'s denial of the Protest and Petition to Intervene erroneously excludes the entity best able to preserve this important public interest.

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[1] Notably, the third intervention criteria does not state that the claimed interest must be directly affected (i.e., direct). (cont'd footnote)

III. CONCLUSION

For the reasons stated above, BCAP satisfies Commission precedent and the statutory requirements for standing to protest and intervene. Furthermore, permitting BCAP to protest and intervene in this proceeding is the most effective way for the PUC to ensure that Federal and State policy of promoting competition and removing barriers to entry is preserved. BCAP urges the Commission to grant these Exceptions, reverse the Initial Decision, grant BCAP's Protest and Petition to Intervene with full party status and ensure that BCAP's due process rights are protected upon its readmission as a party to this proceeding by affording BCAP the full opportunity for discovery, the submission of testimony and all other litigation activities that occurred between issuance of the Initial Decision and BCAP's readmission as an active party.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By Pamela C. Polacek

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Counsel for the Broadband Cable Association of Pennsylvania

Dated: January 3, 2007

(continued footnote)
See 52 Pa. Code §5.72(a)(3).

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September 29, 2006

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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; **APPLICATION**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the 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. Also enclosed is a check in the amount of $350.00, which represents the filing fee.

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,

[redacted], Kennard

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Enclosure

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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 Long Distance Company	:	A-311225F0003
	:	
For All Approvals Under The Public Utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.	:	

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AND NOW COME, 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 file, pursuant to the Pennsylvania Public Utility Code and the regulations of the Pennsylvania Public Utility Commission ("Commission"), this Joint Application ("Application"), as a single submittal under 52 Pa. Code §1.34, for all approvals required for the transaction described herein as evidenced by the issuance of a Certificate of Public Convenience and, in support thereof, state as follo

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OVERVIEW

Applicants

1. The names and addresses of the Joint Applicants are:

Commonwealth Telephone Company
39 Public Square
Wilkes-Barre, PA 18702

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CTSI, LLC
100 CTE Drive
Dallas, PA 18612

CTE Telecom, LLC
d/b/a Commonwealth Long Distance Company
100 CTE Drive
Dallas, PA 18612

2. The name and address of the Joint Applicants' attorney in this matter is:

Norman J. Kennard
Hawke McKeon Sniscak & Kennard, LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300 (Tel)
(717) 236-4841 (Fax)

3. The Joint Applicants are wholly owned affiliates, either directly or indirectly, of:

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

Commonwealth Telephone Enterprises, Inc. ("CTE"), a publicly traded Pennsylvania company (NASDAQ: CTCO), 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.

Statement of Jurisdiction

4. In 1994, the Commission formulated 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 remoteness" (i.e., ownership tier).[1] The Commission determined that:

> A transaction or series of transactions which results in a new "controlling interest" requires approval when the transaction results in a different entity becoming the beneficial holder of a largest voting interest in the utility or parent.
>
> A transaction or series of transactions which results in the elimination of a "controlling interest" requires approval when the transaction or transactions results in the dissipation of the largest voting interest in a utility or parent.

The term "controlling interest" is defined to be any interest held by a person or group acting in concert which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent.[2]

The Transaction Generally

5. This Application is filed 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 CTE and, indirectly, the stock of Applicants. That is, pursuant to the Merger Agreement, the Joint Applicants' corporate parent, CTE, will become a wholly-owned, direct subsidiary of Citizens.

6. 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.

[1] *52 Pa. Code § 69.901. While Policy Statements are not legally binding, they are intended to provide guidance regarding how the Commission would decide a particular question.*
[2] *52 Pa. Code § 69.901(b)(2).*

Designated Contacts

7. In addition to the undersigned counsel, the designated contacts for questions and correspondence concerning this Application are:

For Commonwealth Telephone Enterprises:

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Senior Vice President, General Counsel and Secretary
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For Citizens Communications:

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Senior Vice President and General Counsel
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(203) 614-5047 (Tel)
(203) 614-4651 (Fax)

Lillian S. Harris, Esquire
Hawke McKeon Sniscak & Kennard, LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300 (Tel)
(717) 236-4841 (Fax)

DESCRIPTION OF APPLICANTS

8. CTCo, a rural local exchange carrier incorporated in Pennsylvania, provides local, vertical, regional long distance and broadband services over a network established in Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Lackawanna, Lancaster, Lehigh, Luzerne, Lycoming, Monroe, Northampton, Schuylkill,

Sullivan, Susquehanna, Tioga, Wyoming, and York Counties, an approximately 5,000-square-mile service territory. CTCo currently provides local exchange service to approximately 313,366 access lines in seventy-nine telephone exchanges. CTCo holds Letters Patent and Certificates of Public Convenience to offer telephone service in Pennsylvania at Commission Docket Nos. A-9610, A-76155, A-80433, A-81356, A-82106, A-83156, A-85690, A-96978, A-96933, A-99981, A-00101891, A-00102711, and A-310800. CTCo is a "Rural Telecommunications Carrier" as defined in section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56) which this Commission has recognized in its Orders entered at Docket No. M-00960799,[3] and for the purposes of Act 183, 66 Pa. C.S. §3011 *et seq.*[4]

9. CTSI, a competitive local exchange carrier ("CLEC") operating in the service territories of Verizon Pennsylvania, Inc., Verizon North, Inc. and The United Telephone Company d/b/a Embarq Pennsylvania, is incorporated as a Pennsylvania corporation and is a full-service, facilities-based CLEC offering bundled local, long distance telephone, vertical services, DSL and Internet access. CTSI holds a Certificate of Public Convenience issued by this Commission at Docket No. A-311095 Order entered June 22, 2001. CTSI provides competitive local exchange service to approximately 137,821 access lines in 18 Pennsylvania counties.

10. CLD, organized as CTE Telecom, LLC in the Commonwealth of Pennsylvania, provides long distance telephone service as a switched-based reseller in portions of Pennsylvania pursuant to a Certificate of Public Convenience issued by Commission Order entered on December 23, 2002 at Docket No. A- 311225.

[3] *Re: Implementation of the Telecommunication Act of 1996*, Docket No. M-00960799; Orders entered June 3, 1996 and September 9, 1996.
[4] See, CTCo Chapter 30 Plan at 1.

CITIZENS

11. Citizens Communications Company, a publicly traded Delaware company (NYSE: CZN), is a highly-regarded, full-service communications service provider and the seventh largest local exchange telephone companies in the country. Citizens offers telephone, television and internet services, as well as bundled offerings, ESPN360 streaming video, security solutions and specialized bundles for small businesses and home offices.

12. Citizens is focused upon successfully operating telecommunications companies in small and medium-sized rural markets. During the last eight years, Citizens has grown to become a substantial presence in the rural local exchange carrier segment of the telecommunications market. Citizens currently owns incumbent local exchange carrier subsidiaries serving approximately 2,145,000 telephone access lines in twenty-four states: Alabama, Arizona, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, West Virginia and Wisconsin.[5] Branded as Frontier, Citizens services are provided primarily to residential customers and principally include access services, local services, long distance services, data and internet services, directory services, and television services.

13. In Pennsylvania, Citizens owns and operates five local exchange companies: 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

[5] *Citizens Telecommunications Company of New York, Inc. an original subsidiary of Citizens, provides* basic local exchange service in a small portion of Pennsylvania from a switch located in New York State.

the "Frontier Companies").[6] The smaller companies among these provide local service in portions of some of Pennsylvania's most rural areas, Potter, McKean, Schuylkill, Bedford, Bradford, Tioga, Lycoming and Fulton Counties and operate between one and four exchanges. Frontier Communications of Pennsylvania, Inc., the largest of the Frontier Companies, serves approximately 30,000 local access lines, divided into four exchanges, located predominantly in Lancaster County. Collectively, the Frontier Companies provide local telecommunications service to approximately 39,000 access lines in Pennsylvania. A sixth Citizens subsidiary, Frontier Communications of America, is certified by the Commission as an interexchange reseller, and a facilities-based and resale local exchange carrier.

14. Citizens has a strong income statement and balance sheet and is financially qualified to complete the CTE acquisition and to operate the acquired properties in a manner that is consistent with the public interest. A copy of Citizens' most recent Annual Report to Shareholders, which is the same as its Form 10K as filed with the Securities and Exchange Commission ("SEC"), is attached hereto as **Appendix**

[6] Citizens' acquisition of Frontier Subsidiary Telco, LLC, the immediate parent of the five Frontier companies operating in Pennsylvania, was approved by the Commission by Order entered December 8, 2000. *Joint Application of Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., Frontier Communications of America, Inc., For All approvals Under the Public Utility Code To Complete the Merger with and Transfer of all of the Utilities' Stock of the Corporate Parent, Frontier Subsidiary Telco, Inc. by Citizens Communications Co.*, Docket Nos. A-310400F003; A-310550F003; A-311750F003; A-312600F002; A-311250F003; and A-310153F003, Order entered December 8, 2000 ("*Citizens Frontier Acquisition Order*"). These companies are wholly owned by Frontier Subsidiary Telco, LLC by virtue of transactions previously approved by this Commission. Frontier Communications of Breezewood, Inc. (Docket No. A-310400F500, Dec. 18, 1986); Frontier Communications of Canton, Inc. (Docket No. A-310550F500, June 11, 1987); Frontier Communications of Lakewood, Inc. (Docket No. A-311750F500, Sept. 1, 1988); Frontier Communications of Oswayo River, Inc. (Docket No. A-105765F500, Dec. 7, 1984); and Frontier Communications of Pennsylvania, Inc. (Docket No. A-311250F500).

"A."[7] Similarly, CTE is a financially sound corporation[8] and, combined, the companies will continue to be financially strong.

15. Upon closing of this transaction, the combined company will strengthen its standing as the 7th largest local telephone exchange company in the United States, with pro forma annual revenues of approximately $2.4 billion and operations across twenty-four states. Operations under the brand name of Frontier will have approximately 2.6 million access lines, 388,000 High-Speed Internet subscribers and 6,600 employees.

16. As Citizens has stated in its 2005 Annual Report:

> Our objective is to be the leading provider of communications services to homes and businesses in our service areas. We are committed to delivering innovative and reliable products and solutions with an emphasis on convenience, service and customer satisfaction. We offer a variety of voice, television and internet services that are available as bundled or package solutions or, for some products, a la carte. We believe that superior customer service and innovative product positioning will continue to differentiate us from our competitors in the marketplace.[9]

REQUEST FOR APPROVAL OF THE TRANSFER OF CONTROL

Description of the Transaction

17. On September 17, 2006, Citizens and CTE entered into an Agreement and Plan of Merger ("Merger Agreement") whereby Citizens will acquire control of CTE and, indirectly, CTE's utility subsidiaries, the Joint Applicants. As a result of the transaction, CTE will become a wholly owned, direct subsidiary of Citizens.

18. Under the Agreement, Citizens will assume the existing debt and acquire all outstanding shares of CTE for a total consideration of $1.16 billion in a cash and

[7] Citizen's SEC Form 10Q for the most recent period (second quarter of 2006) is found at http://czn.com/Invest/SECDocuments.aspx and incorporated herein by reference.
[8] CTE's SEC Form 10Q for the most recent period (second quarter of 2006) is found at http://cte.com/investor/sec_filings.html and incorporated herein by reference.
[9] Appendix "A" at 3.

stock transaction as determined by the arms length negotiation of the parties. Citizens intends to finance the cash portion of the purchase price with a combination of cash on hand and debt. Citizens has obtained a commitment from Citigroup for the financing necessary to complete the acquisition.

19. **Appendix "B"** hereto is a complete and accurate copy of the Agreement and Plan of Merger dated September 17, 2006 between Citizens and CTE. Approval of this Commission is requested for the entirety of the transactions set forth therein.

20. Organizational charts depicting the transactions described herein are attached as **Appendix "C."** These demonstrate that there is no change in direct ownership or organization of the Joint Applicants.

21. The transaction does not involve assignment or creation of any certificates of public convenience or tariffs held or published by CTE's operating utility subsidiaries. Rather, all shares of CTE will be transferred to Citizens, and Joint Petitioners, upon closing, will retain the same corporate status as they do today.

22. No securities issued by the Joint Applicants are affected. The current financing and capital structure of the Joint Applicants will not be affected by the transaction.

23. The books of account of the Joint Applicants will not be affected by the transaction. The income statements and balance sheets of Joint Applicants are not affected by the proposed transaction in any way.

24. No customers are proposed to be transferred by this transaction. Joint Applicants, including CTSI, the CLEC, will continue operation.

25. The transaction will be transparent to Joint Applicants' customers, who will enjoy the same or better level of service as they do today. All customers will continue to be served in the same manner they are served today, with the same high level of service quality. The Joint Applicants' customers will be notified of the change.

26. The Joint Applicants' rates will not be affected by the transaction.

27. The proposed transaction will not affect the regulatory authority of the Commission over the Joint Applicants.

FINANCIAL INFORMATION AND CORPORATE AUTHORIZATIONS

28. CTE's most recent Annual Report to Shareholders is attached hereto as **Appendix "D"**.

29. Certified copies of Board of Directors' Resolutions of CTE and Citizens authorizing the Merger Agreement are attached hereto as **Appendices "E" and "F,"** respectively.

30. All annual and other reports, tariffs, certificates of notification, applications for certificates of valuation, applications for approval of the issuance of securities, and securities certificates filed with the Commission by CTCo, CTSI, CLD, Citizens or their predecessor and constituent companies are made part hereof by reference.

APPROVAL OF THIS APPLICATION IS IN THE PUBLIC INTEREST

31. The proposed stock acquisition is "necessary and proper for the service, accommodation, convenience and safety of the public."[10] Moreover, the transaction "will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way."[11]

32. As noted by the Commission in its 2000 *Citizens Frontier Acquisition Order*, there are numerous positive benefits of horizontal alignment among rural local exchange carriers generally and specifically by Citizens:

> Control of the Frontier Utilities will become controlled by a holding company the operational subsidiaries of which are primarily local utilities in many jurisdictions. The applicants have provided in their application evidence of Citizens' financial strength together with evidence of Citizens' experience in managing communications utilities in many states.
>
> The applicants note in their filing that Citizens has specialized in providing local utility service to rural and suburban areas in many jurisdictions. The quality of service that Citizens and Frontier Telco have provided in the past through their jurisdictional subsidiaries promises that their intended expansion of services in Pennsylvania will contribute to more customers in outlying areas having available advanced services. The Chapter 30 Plans of the Frontier ILECs will remain unaffected by the proposed acquisitions, and the applicants aver that such services will include DSL service.[12]

These same positive attributes are inherent in the proposed acquisition by Citizens of a sixth rural Pennsylvania local exchange company, and its CLEC and long distance affiliates.

33. Citizens is a respected, long-time participant in the local exchange marketplace, focusing largely on rural and suburban communities. In recent years, Citizens has determined to emphasize its focus on rural and suburban communities, a

[10] 66 Pa. C.S. §1103.
[11] *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. Supreme 1972).
[12] *Citizens Frontier Acquisition Order*, supra, at 4-5.

market, which it believes, has been underserved in the current telecommunications environment. The instant transaction will permit both Citizens and Joint Applicants to sharpen their focus on the areas where they are best able to provide their customers with innovative and value-added services, and the combined size and depth of expertise of the companies will enhance their abilities to provide these services in additional areas.

34. The service territories of the Frontier Companies and CTCo fit together exceptionally well. The combined size and depth of expertise of the companies will help create a "critical mass" of employees, customers and technology. The combined companies' increased size will give them an increased ability to focus on growing their customer base through new business opportunities, expansion of existing services, and new service bundling opportunities and offers.

35. The proposed acquisition of CTE by Citizens will positively benefit Joint Petitioners' local exchange operations and customers. The purchase by Citizens offers the Joint Applicants a larger, parent organization focused on the local exchange business that shares CTE's history of commitment to excellent customer service. The merger will be virtually transparent to CTCo's local telephone subscribers, that is, customers will continue to be physically served by the same people serving them today. Indeed, the proposed stock transfer will produce a more complete and robust set of services for Joint Applicants' customers.

36. One driving force behind the proposed transaction is the need to grow the business.. Applicants believe that the expanded business opportunities of the combined company will enable it to enhance and improve its overall presence in Pennsylvania.

37. Citizens is committed to meeting the needs and telecommunications requirements of small and medium-sized communities and ensuring that these communities become part of the information superhighway. The transaction will permit both Citizens and the Joint Applicants to sharpen their focus on the areas where they are best able to provide their customers with innovative and broad reaching services with bundling choice options. For example, Citizens has a higher penetration of high speed internet access (i.e., DSL) than does CTCo and, therefore, will seek to accomplish higher customer acceptance by CTCo customers, as well.

38. The two companies, in combination, will enhance the range of telecommunications services and choices, regulated and unregulated, available to customers more rapidly. For example, Citizens intends to immediately introduce CTCo subscribers to its ask.com co-branded portal, wireless modem, ESPN 360 (customized sporting event highlights) and Frontier Secure Connections (Computer Associates' firewall, virus and anti-spam software). Further, as bundled packages of telecommunications services are increasingly popular among customers, Citizens intends to improve the scope and value of bundled packages of services available to CTCo customers.

39. Citizens intends to use the Frontier logo in the CTCo, CLD and CTSI operations, thereby identifying customers' services with a well-known and respected national brand.

40. The combination with Citizens will help to ensure continuity of CTE's trend of prudent investment and the commitments that CTCo has made in its Chapter 30 Network Modernization Plan, which remain unaffected by the proposed acquisition.

Citizens is and will remain committed to providing new, advanced services to all of its customers wherever technologically feasible and economically reasonable. Citizens' presence will help the Joint Applicants to anticipate technology changes and build for an evolving marketplace.

41. The transaction will not be the cause of any request for rate increases. CTCo's price cap form of regulation remains unchanged by the transaction. The books and records of the Pennsylvania subsidiaries will continue to be maintained in conformance with the Commission's relevant rules and regulations. Following the proposed transaction, the Pennsylvania utilities will continue to be subject to the Commission's jurisdiction and Pennsylvania regulatory laws.

42. The increased size and depth of expertise of the combined companies will provide the resources needed to reduce the time to market of new service offerings.

43. The combination of the non-duplicative operations of the Frontier Companies with CTCo and CTSI will not adversely affect regulated, wireline local exchange competition, since none of the companies competes in the market areas served by the other and neither is a likely entrant into the other's geographic markets.

44. 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.

45. The experience gained by Citizens, across its twenty-four state operation in responding to the forces of competition may enhance CLEC competition in CTCo's territory in two ways: (a) responding effectively to competition by providing new

services and pricing options to customers; and (b) ensuring that CLECs are treated appropriately in accordance with the complex regulatory rules that apply to transactions between ILECs and CLECs.

46. Moreover, by associating Citizens with CTSI, this Pennsylvania CLEC will be a stronger competitor in the telecommunications market. Citizens intends to continue ownership and operation of CTSI.

OTHER PROVISIONS

47. The proposed transaction is effective subject to approval of this Commission and is conditioned upon meeting the requirements and/or receiving the approvals of all regulatory agencies having jurisdiction over the Joint Applicants and the contemplated transaction, as well as obtaining approval of the shareowners of CTE.

48. All Joint Applicants have paid the special and general assessments levied upon them by the Commission pursuant to the Public Utility Code and the Commission's regulations. Any and all lawful future assessments of the Commission, special and general, will be paid.

49. As indicated by the attached certificate of service, service of this Joint Application has been made upon the Commission's Office of Trial Staff ("OTS"), the Pennsylvania Office of the Consumer Advocate ("OCA"), and the Pennsylvania Office of the Small Business Advocate ("OSBA").

PRAYER FOR RELIEF AND REQUEST FOR FINDINGS

WHEREFORE, the Joint Applicants respectfully request that the Pennsylvania Public Utility Commission:

1. Find that the Joint Applicants have established that the transaction described by this Application provides affirmative public benefits and that approval of the transaction is in the public interest; and

2. Grant all approvals, as evidenced by the issuance of a Certificate of Public Convenience, required for Citizens and CTE to undertake the transaction described in this Application.

Respectfully submitted,

Norman J. Kennard (Attorney I.D. 29921)
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Harrisburg, PA 17105-1778
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njkennard@hmsk-law.com

Counsel for Joint Applicants

DATED: September 29, 2006

VERIFICATION

I, Raymond B. Ostroski, Senior Vice President, General Counsel and Corporate Secretary, Commonwealth Telephone Enterprises, Inc. and the Joint Applicants, 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: 9/29/06 (Signature)

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SECRETARY'S BUREAU

VERIFICATION

I, Hilary E. Glassman, Senior VP and General Counsel, 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).

Date: 9/29/06

(Signature)

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SECRETARY'S BUREAU

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

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

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

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

Kenneth J. Kennard

Dated this 29th day of September, 2006

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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 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

Responses to Interrogatories of the Office of Consumer Advocate, Set II

Person Answering:

OCA II-12: With regard to the Direct Testimony of Scott Burnside on behalf of the Joint Applicants, page 12, lines 2-5,

a. List the cable companies that have entered into an interconnection and reciprocal compensation agreement with CTCo.
b. List the cable companies that have requested CTCo to enter into an interconnection and reciprocal compensation agreement.
c. List the cable companies that provide broadband modem service.
d. List the cable companies that provide local telephone service.
e. For each cable company, list the counties in the CTCo service territory in which that cable company has a video franchise.

Answer:

a. See response to OCA II-9.
b. See response to OCA II-9.
c-e. See Attachment OCA II-12.

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OCA Set 2 Question 12 (c-e)

Cable Company	Broadband In CTCO (c)	Voice In CTCO (d)	Counties (e)
Adams CATV	Y	N	Susquehanna, Wyoming
Adelphia Cable TV	Y	N	Bradford, Columbia, Dauphin, Lackawanna, Luzerne, Schuylkill, Susquehanna, Wyoming
Armstrong Cable	Y	Y	Chester
Beaver Valley Cable Co	Y	N	Bradford, Sullivan
Blue Ridge Cable	Y	N	Bradford, Luzerne, Monroe, Northampton, Sullivan, Tioga, Wyoming
Charter Communications	N	N	Schuylkill
Comcast	Y	N	Berks, Chester, Dauphin, Lancaster, York
Eagles Mere-Laporte Cablevision	N	N	Sullivan
Herr Cable Company	N	N	Sullivan
Metrocast Inc	Y	N	Columbia, Luzerne, Schuylkill
RCN	Y	N	Northampton
Service Electric	Y	Y	Berks, Bucks, Columbia, Lehigh, Luzerne, Northampton, Schuylkill
Susquehanna Communications (Suscom)	Y	N	York
Time Warner	Y	N	Susquehanna, Tioga
Williamson Road TV Co.	N	N	Tioga
Wire Tele View Corp	Y	N	Schuylkill

Broadband data as of March 2004, updated for available providers in Dec. 2006
Voice data as of November 2006.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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 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 A-311225F0003

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
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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. 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 7th 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 _____

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Counsel to the Broadband Cable Association of Pennsylvania

Dated: October 30, 2006

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF DAUPHIN)

PAMELA C. POLACEK, being duly sworn according to law, deposes and says that she is counsel to the Broadband Cable Association of Pennsylvania, that in this capacity she is authorized to and does make this affidavit for the Broadband Cable Association of Pennsylvania, and that the facts set forth in the foregoing Protest and Petition to Intervene are true and correct to the best of her knowledge, information, and belief.

Pamela C. Polacek

Pamela C. Polacek, Esq.

SWORN TO and subscribed

before me this 30th day

of October, 2006.

Mary A Sipe

Notary Public

NOTARIAL SEAL
MARY A SIPE
Notary Public
CITY OF HARRISBURG, DAUPHIN COUNTY
My Commission Expires Mar 19, 2009

(SEAL)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 NOV 20 PM 2:00
PA PUC
SECRETARY'S BUREAU

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

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

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

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

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I. SUMMARY OF ARGUMENT

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

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

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

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

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

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

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

II. BACKROUND

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

2. Admitted.

3. Admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. REQUESTED RELIEF

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

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

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

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

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

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

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

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

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

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

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

V. RCN STANDING

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

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

Respectfully submitted

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek

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Dated: November 20, 2006

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF DAUPHIN)

PAMELA C. POLACEK, being duly sworn according to law, deposes and says that she is counsel to Broadband Cable Association of Pennsylvania, that in this capacity she is authorized to and does make this affidavit for Broadband Cable Association of Pennsylvania, and that the facts set forth in the foregoing Answer of the Broadband Cable Association of Pennsylvania to Commonwealth Telephone Company's Preliminary Objections are true and correct to the best of her knowledge, information, and belief.

Pamela C. Polacek

Pamela C. Polacek, Esq.

SWORN TO and subscribed

before me this 20th day

of November, 2006.

Mary A. Sipe

Notary Public

NOTARIAL SEAL
MARY A SIPE
Notary Public
CITY OF HARRISBURG, DAUPHIN COUNTY
My Commission Expires Mar 19, 2009

(SEAL)