

## Uniform Cover and Calendar Sheet

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| 1. <b>REPORT DATE:</b><br>February 7, 2007  | 2. <b>BUREAU AGENDA NO.:</b><br>FEB-2007-OSA-0035* |
| 3. <b>BUREAU:</b> Office of Special Assistants  |  |
| 4. <b>SECTION(S):</b>   | 5. <b>PUBLIC MEETING DATE:</b><br>February 8, 2007 |
| 6. <b>APPROVED BY:</b><br>Director: C.W. Davis 7-1827<br>Mgr/Spvr: R. Marinko 3-3930<br>Legal Review: |  |
| 7. <b>PERSONS IN CHARGE:</b><br>A. Arnold 7-8032 AA<br>M. Samuel 7-1888                               | 9. <b>EFFECTIVE DATE OF FILING:</b><br>N/A         |
| 8. <b>DOCKET NO.:</b> A-310800F0010;<br>A-311095F0005; A-311225F0003                                  | <b>DOCUMENT FOLDER</b>                             |

9. (a) **CAPTION** (abbreviate if more than 4 lines)  
(b) **Short summary of history & facts, documents & briefs**  
(c) **Recommendation**

(a) Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC (Joint Applicants) . . . for the Acquisition by Citizen Communications Company of all Stock of the Joint applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc. (**Petition For Emergency Order or, in the Alternative, Stay of Proceeding Pending Adjudication of Broadband Cable Association of Pennsylvania's Party Status**).

(b) On September 29, 2006, Joint Applicants filed an Application with the Commission seeking approvals necessary for their parent corporation to be acquired by Citizens Communications Company. The Application was published in the *Pennsylvania Bulletin*, wherein a deadline was provided for the receipt of protests and petitions to intervene. On October 30, 2006, the Broadband Cable Association of Pennsylvania (BCAP), among other prospective participants, filed a protest and petition to intervene. The Application was assigned to the Office of Administrative Law Judge, per Administrative Law Judge (ALJ) Susan D. Colwell, for such hearings as necessary and the issuance of a Recommended or Initial Decision. On November 10, 2006, Joint Applicants, joined by Citizens, filed preliminary objections to dismiss the protests and petitions to intervene of BCAP, *et al.* By Initial Decision (I.D.) dated December 14, 2006, ALJ Colwell granted the preliminary objections and dismissed BCAP as a party. BCAP filed Exceptions to the December 14, 2006 I.D. Replies to Exceptions were filed by Joint Applicants. On January 26, 2007, BCAP filed a Petition for Emergency Order, or in the alternative, a stay of the proceeding pending adjudication of BCAP's status.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which grants the Exceptions, reverses the Initial Decision consistent with the draft Opinion and Order and declares the Petition for Emergency Order moot. (**REMAND**)

Order Doc. No. 651552v1

Calendar Doc. No. 652655v1

11. **MOTION BY:** Commissioner Chm. Holland

Commissioner Pizzigrilli - Yes

Commissioner Fitzpatrick - Yes

**SECONDED:** Commissioner Cawley

Commissioner

**CONTENT OF MOTION:** Staff recommendation adopted.

**DOCKETED**  
FEB 23 2007



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

February 8, 2007

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

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DOCUMENT  
FOLDER

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.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 8, 2007 has adopted  
an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

encls  
cert. mail  
MH

See attached list for additional parties of record.

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held February 8, 2007

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

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.

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

Initial Decision Regarding The Preliminary Objections  
Of Commonwealth Telephone Company, CTSI, LLC  
and CTE Telecom, LLC d/b/a Commonwealth Long  
Distance Company To Dismiss Protest and Petition  
to Intervene of the Broadband Cable Association of  
Pennsylvania and RCN Corporation

Petition For Emergency Order Or In the Alternative,  
Stay of Proceeding Pending Adjudication of the  
Broadband Cable Association of Pennsylvania's  
Party Status

**OPINION AND ORDER**

**BY THE COMMISSION:**

This proceeding is the Joint Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth, CTCO, or Joint Applicants). *See* Docket No. A-310800F0010; A-311095F0005; and A-311225F0003. Joint Applicants have initiated proceedings before the Commission seeking approvals necessary for their parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Citizens) (Application hereafter).

Before the Commission for consideration are two matters arising in connection with the Application. We have before us the Exceptions of the Broadband Cable Association of Pennsylvania (BCAP) to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Susan D. Colwell, issued on December 14, 2006. The December 14, 2006 Initial Decision (December 14 I.D.) granted the preliminary objections of Joint Applicants to BCAP's protest and petition to intervene in the proceedings.<sup>1</sup> Exceptions were filed by BCAP on January 3, 2007. Replies to the BCAP Exceptions were filed by Joint Applicants on January 22, 2007.

In the cover letter accompanying its January 22, 2007 Replies to the BCAP Exceptions, Joint Applicants advise that on Friday, January 19, 2007, a "unanimous" settlement petition was filed with presiding ALJ Colwell. We take official notice that a Recommended Decision addressing the merits of the proposed settlement, "Settlement Agreement," has been issued by the Commission's Secretary Bureau on January 31, 2007. 66 Pa. C.S. § 331(g).

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<sup>1</sup> *See Initial Decision Regarding the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom LLC d/b/a Commonwealth Long Distance to Dismiss Protest and Petition to Intervene of the Broadband Cable Association of Pennsylvania and RCN Corporation.*

The second matter before us for consideration is the self-styled “Petition for Emergency Order or in the Alternative Stay of Proceeding Pending Adjudication of the Broadband Cable Association of Pennsylvania’s Party Status” (BCAP Emergency Petition). The BCAP Emergency Petition was filed on January 26, 2007. On January 31, 2007, the Commission issued a Secretarial Letter<sup>2</sup> which established an expedited schedule for consideration of the BCAP Emergency Petition. Pursuant to the directives in the Secretarial Letter, interested parties were to respond by Noon, February 5, 2007, with no opportunity for replies. On February 2, 2007, we received the Answer of Joint Applicants to the BCAP Emergency Petition.

As noted, this Opinion and Order will address the two, above-referenced matters arising in connection with the Application. Consideration of the merits of the Application will be addressed in a separate order.

### **Background**

The Application was filed on September 29, 2006. As noted, the Application requests approvals necessary under the Public Utility Code for the parent company of Joint Applicants, Commonwealth Telephone Enterprises, Inc. (CTE), to be acquired by Citizens. *See* 66 Pa. C.S. §§ 1102; 1103; and 52 Pa. Code § 69.901.

The transaction is described by Joint Applicants as a change in indirect ownership. Pursuant to a September 17, 2006, Agreement and Plan of Merger, Citizens will acquire control of CTE in a cash and stock acquisition. As a result of the transaction, CTE will become a wholly owned, direct subsidiary of Citizens. Upon closing, the

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<sup>2</sup> Electronic service of this correspondence was effected on all Parties of Record on January 30, 2007.

combined company will represent the seventh largest local telephone exchange company in the United States with *pro forma* annual revenues of approximately \$2.4 billion dollars and operations extending across twenty-four states. (Application at 3, 8).

The Application was published in the *Pennsylvania Bulletin* on October 14, 2006, 36 *Pa. B.* 6355. Protests were due October 30, 2006.

On October 30, 2006, BCAP filed a Protest and Petition to Intervene.<sup>3</sup> BCAP is a statewide trade association of cable operators. Collectively, its members provide video service to 3.8 million homes in Pennsylvania. BCAP advises that its members are also introducing Internet-Protocol (IP) enabled service options which, presumably, will include voice telephony through cable networks. See BCAP Protest at 1; 4. In addition to seeking to compete with incumbent local exchange carriers (ILECs) such as Joint Applicants, regarding video programming and high speed data service options, BCAP members have affiliates that are certificated to provide competitive local exchange telephone service in potential competition with CTSI, LLC. (Application at 4). Based on the foregoing, BCAP asserted that, as current and potential competitors to CTCo, CTSI and the "Frontier" companies,<sup>4</sup> its members have a direct interest in the proceeding that is not represented by any other party. *Id.* citing *Solid Waste Management*

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<sup>3</sup> The following entities also filed a Protest and Petition to Intervene: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); and Blue Ridge Digital Phone Company (Blue Ridge).

<sup>4</sup> Citizens is the seventh largest local exchange company in the United States. It owns ILEC subsidiaries serving, approximately, 2.14 million access lines in twenty-four states. Citizens acquired Frontier Subsidiary Telco, LLC, the immediate parent of the five "Frontier" companies operating in Pennsylvania. See, *Joint application of Frontier Communications of Breezewood, et al., for Approval of the Acquisition of All the Stock of the Utilities' Corporate Parent, Frontier Subsidiary Telco, Inc., by Citizens Communications Co.*; Docket No. A-310400F0003, et al. (Order entered December 8, 2000). (Application at 6-7).

*Assoc. v. Casey*, 580 A.2d 893 (Pa. Commw. 1990); *Paratransit Assoc. of Delaware, Inc. v. Yurasalim*, 538 A.2d 651 (Pa. Commw. 1988).

On November 10, 2006, Joint Applicants filed preliminary objections to dismiss the Protest of BCAP.

On November 8, 2006, a Notice of Prehearing Conference was issued and a prehearing conference was scheduled for November 29, 2006 in Harrisburg, Pennsylvania. On November 13, 2006, the ALJ issued a prehearing order which set forth the procedural requirements of a hearing before the Commission and required the parties to submit prehearing memoranda in accordance with the Commission's regulations.

On November 20, 2006, BCAP filed Answers to the Joint Applicants' Preliminary Objections.

ALJ Colwell issued four separate Orders in this case; three of which address the protests, petitions to intervene, and preliminary objections of various participants. In the December 14 I.D. which we consider in this Order, ALJ Colwell, as noted, granted the Preliminary Objections of Joint Applicants to the Protest and Petition to Intervene of BCAP. BCAP was, therefore, dismissed as an active participant and has not been entitled to participate as a party in the proceedings.

## Discussion

### A. **Exceptions to December 14 I.D. Granting Joint Applicants' Preliminary Objections**

On consideration of the positions of BCAP and Joint Applicants, we shall grant the Exceptions of BCAP consistent with the discussion contained in this Opinion and Order.<sup>5</sup> We, therefore, reverse the December 14 I.D. and conclude that BCAP has shown an interest which is sufficient for intervention in the Application proceedings.

Presiding ALJ Colwell correctly cites the proper starting point for our consideration of the petition of BCAP seeking intervention. Our regulations at 52 Pa. Code § 5.572 provide, in pertinent part:

#### **§ 5.72. Eligibility to intervene.**

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

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<sup>5</sup> Any Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Cons. Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Commw. 1993); *see also, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Commw. 1984).

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

In addition to our regulations, we are also guided by the pertinent case law discussing the types of interests sufficient for purposes of intervention.

In the seminal case of *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 202, 346 A.2d 269, 286 (1975), the Pennsylvania Supreme Court concluded that one who seeks to challenge governmental action must show a direct and substantial interest and, in addition, must show a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as “immediate” rather than “remote.” Consequently, in order to have standing, a person must be “aggrieved” or adversely affected by the matter he seeks to challenge. *See Parents United for Better Schools, et al., v. School District of Phila., et al.*, 684 A.2d 689 (Pa. Commw. 1994), citing *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992) – a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. To surpass that interest, the interest must be substantial, direct, and immediate.

The presiding ALJ, in reaching the conclusion to deny BCAP intervention in this proceeding, was influenced by two primary considerations. First, the presiding ALJ makes an analogy to the scheme of regulation established in the telecommunications industry, to the motor carrier industry:

In merger and acquisition cases, where it is the action for which approval is sought that may or may not result in harm to the protestants, there can be no existing, actual harm until the transaction has occurred. This is analogous to motor carrier cases in which approval is sought for new or additional

authority, and protests may be filed against the transaction based on the potential harm.

\* \* \*

Standing to protest is established when the protestant either holds competing authority or has filed an application for competing authority. 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.

(December 14 I.D., slip op. at 7-8).

Second, the ALJ placed reliance on the considerations addressed by the Commission in *Pa. Petroleum Assoc. v. Pa. Power & Light Co.*, 377 A.2d 1279 (Pa. Commw. 1977), *aff'd* 488 Pa. 308, 412 A.2d 522 (1990)(*Pa. Petroleum Association*), to conclude that BCAP has not shown an interest which is direct, immediate, and substantial, for intervention in this matter. The pertinent reasoning is set forth below:

The Commission has addressed participation by associations. In *Appalachian Gas Sales, Inc. v. Philadelphia Electric Company*, 67 Pa. PUC 246 (1988), the Appalachian Gas Sales, Inc. (AGS), had filed a Complaint on its own behalf although it had acted as agent for two of PECO's gas customers. The Commission found that the customers would have had standing to file complaints, and that AGS could establish its own independent cause of action against Respondent because AGS was also a marketer of gas, as well as a customer of PECO, and thus was affected by the terms of the PECO tariff.

In *Pa. Publ. Util. Comm'n v. PG&W, et al.*, Docket Nos. R-922169, R-922169C001, and R-922169C002 (1992 Pa. PUC LEXIS 113)(Order Issued October 29, 1992), the Commission

answered the specific question: “Do independent natural gas producers and marketers have standing to intervene in a proceeding involving the tariff filing of a regulated gas utility?” The Commission found that the regulatory scheme of the Commission had changed considerably since prior cases had been issued, and that the Commission’s mandate to require gas transportation tariffs resulted in the transportation of natural gas to be in the public interest. Therefore, the association representing these interests was afforded standing. The holding distinguished the AGS case as well as *Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co.*, Docket Nos. C-902902, C-913239 (Order entered December 20, 1991). The relevant paragraph reads:

Returning to the case at hand, we observe 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. Where, the marketer or broker asserts an interest grounded in obtaining access to facilities which are monopolistic in nature and in their practical effect, we find a sufficient basis on which to distinguish *Pa. Petroleum Association*. [note 3] *Pa. Publ. Util. Comm’n v. PG&W*, 1992 Pa. PUC LEXIS 113 at \*12.

The Commission Order’s reference to *Pa. Petroleum Association* is especially relevant here. 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. The interest that BCAP expresses is not just competition, it is *uncertificated competition*. BCAP states that its members *have affiliates* which are certificated, and seeks to rely on that tenuous relationship to support a finding of standing here. BCAP states that it “has an interest in ensuring on behalf of its member that CTCO fulfills its promise of enhanced treatment of CLECs . . . . In addition,

other BCAP members may consider entering the CTCo territory . . . .” BCAP Answer, p. 6.

BCAP states that it “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. However, the Commission has stated that “we observe 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. “ See *Pa. Publ. Util. Comm’n v. PG&W, supra*. Under *Pa. Petroleum Association*, BCAP has no standing.

Although it is likely that some of the *affiliates* of some of the members would have standing, 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 CTSI territory, or as customers. The members may be competing, but that competition occurs outside the certification granted by the Commission. The competition is in cable telephony, which is not currently regulated. Therefore, the association cannot have standing either in its own right or on behalf of the members in a proceeding before this Commission to determine whether to approve the acquisition of the Joint Applicants’ stock by Citizens Communications Company. Accordingly, the Petition to Intervene of the Broadband Cable Association of Pennsylvania will be denied, and its Protest dismissed for lack of standing.

(December 14 I.D., slip op. at 9-11; note omitted).

In its Exceptions, BCAP initially emphasizes the regulatory scheme of the federal Telecommunications Act of 1996, 47 U.S.C. §§ 251, *et seq.*, (TA-96), and Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3011(8) and (12), to argue that it is not appropriate to limit standing to protest and to intervene to only to those entities with

competing authority or those seeking competing authority. (Exc. at 2-8). BCAP explains that as a result of the federal and state regulatory policies promoting competition for telecommunications and advanced services, and the interdependence of potential entrants on the monopoly facilities of the ILEC, *i.e.*, the Public Switched Telephone Network (PSTN), it is inappropriate to apply the motor carrier precedent to an examination of the interest sought to be raised by BCAP in this matter. (Exc. at 4).

BCAP goes on to explain that Commission precedent supports the 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. *See* Exc. at 5 citing *Re Bell Atlantic Corp.*, 93 Pa. PUC 395, 403-404 (1999); also BCAP Exc. at 6 discussing the “precluded competitors” doctrine.

BCAP also asserts that, to the extent the ALJ may be correct in holding that standing should only be limited to those entities with current or pending competing authority, that standard was misapplied to its Petition and Protest. (Exc. at 7). BCAP states that two of its members, Armstrong Cable and Service Electric, are providing voice telephony in CTCo’s service territory. (Exc. at 7). It further explains that another one of its members, Blue Ridge, is seeking CLEC authority to compete with CTCo. *Id.* In sum, BCAP states that:

Given the longstanding recognition of the ability of associations to advocate for members’ interests in proceedings before the Commission and the commonality of interests, other BCAP members appropriately relied on the association to present and advance their interests in this proceeding.

(Exc. at 7).

In its second Exception, BCAP argues that the December 14 I.D. improperly applies distinctions between: (1) an interest in pure competition and an interest in promoting access to facilities; (2) uncertificated and certificated competition; and (3) interests held by BCAP members and interests held by their affiliates. (Exc. at 8-12).

Here, BCAP argues that the considerations addressed by the Commission in *Pa. Petroleum Assoc.* and *Pa. Gas and Water, supra*, of obtaining access to facilities which are monopolistic in nature “defines the substance of the interest that BCAP maintains on behalf of its members.” (Exc. at 9). BCAP further goes on to note:

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.

(Exc. at 9-10).

BCAP further objects to the ALJ’s distinction between uncertificated competition as a basis for the denial of its intervention. It notes that this is a “fragile” distinction in the developing telecommunications and information area, as noted by the Commission’s recent order wherein it declined to make any definitive policy determinations concerning the jurisdictional status of certain of these developing technologies, particularly Voice Over Internet Protocol (VoIP). See Exc. at 10, citing *Investigation into Voice Over Internet Protocol as a Jurisdictional Service*, Docket No.

M-00031707 (May 24, 2004). BCAP also, almost parenthetically, observes that consumers in some rural areas do not have access to the same types of service offerings represented by IP-enabled technologies 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.” *Id.*

BCAP’s final point in its second Exception is to object to the distinction made by the presiding ALJ between its members and affiliates of its members. BCAP notes that, 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 business purposes. (Exc. at 12). This business reality should not, argues BCAP, prevent its members from jointly advocating, through a single association, for issues that are important for both their traditional broadband cable interests and the regulatory environment necessary to advance their interests into other competitive endeavors. *Id.*

In its third and final Exception, BCAP relies on the language of our regulation at 52 Pa. Code § 5.72, to assert that the ALJ committed error in concluding that intervention is not, otherwise, in the public interest. (Exc. at 12-14).

In its Replies to Exceptions, Joint Applicants emphasize the fact that BCAP seeks to use the current and potential interests of its members and companies affiliated with its members to claim a direct interest in the proceeding. (R.Exc. at 2). Joint Applicants assert that BCAP has not shown the requisite substantial, direct, and immediate interest in this proceeding. (R.Exc. at 2-3). Joint Applicants would frame the question for the Commission’s consideration in this matter as follows:

Whether an association, whose protest names no members with an interest or names members whose interests have been satisfied, has standing to advance generalized interests regarding competitive entry in a merger application case that does not affect those interests and where entry is the subject of separate statutory procedures?

(R.Exc. at 3).

Joint Applicants propose that this Commission should answer their essential question in the negative. They essentially assail BCAP's interests in this matter as a *generalized interest in removing barriers to entry*. Joint Applicants further reply that the instant, parent-level merger, does not affect the entry issues raised by BCAP, and that the relief sought by BCAP, which pertains to cable company certification and interconnection, are not available in this proceeding. Rather, Joint Applicants state that these are rights which will be adjudicated for individual entities – not an association.

(R. Exc. at 4).

Joint Applicants further note that, to the extent individual members of BCAP have been named, those members have had their interests satisfied. (R.Exc. at 4-5). Finally, Joint Applicants reply to the individual contentions raised in BCAP's Exceptions.

## **B. Disposition**

We shall reverse the ALJ and grant party status to BCAP. We conclude that the nature of the interests asserted by BCAP must be assessed in light of the industry, the telecommunications industry and the statutory schemes which this Commission has responsibility to administer. We find it *inadvisable to rely on a "bright line" distinction* as suggested by Joint Applicants and the December 14 I.D. to reach a conclusion as to

whether an interest asserted in a merger/acquisition of telecommunications companies is sufficiently substantial, direct and immediate.

Cable operators are now intrinsically involved in the development of competitive alternatives in the telephone local exchange market through developing, innovative, IP-enabled, and other technologies. In *Application of Sprint Communications, et al. . . .*, Docket No. A-310183F0002AMA, *et al.*, this Commission observed that the regulatory scheme of TA-96 expressly contemplated the development of voice service competition between cable operators and rural ILECs through the inclusion of an exception to the standing exemption of Section 251(f)(1)(C) of TA-96, 47 U.S.C. § 251(f)(1)(C); slip op. at 22.

Additionally, as noted by BCAP, the regulatory status of IP-enabled voice telephony has not been definitely resolved at the federal level. We find it inappropriate to discount the nature of an interest asserted based on this factor. In the context of telecommunications regulation, we variously decide matters arising under the statutory scheme of TA-96 and the Public Utility Code, in which entities over which we do not exercise jurisdiction are active participants, *e.g.*, wireless carriers.

Consistent with the standards of *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972), we would further agree with BCAP, that recent Commission precedent has acknowledged that the competitive effect on existing and potential competition of a merger and/or acquisition is appropriate in assessing the affirmative public benefits of the transaction. See *Joint Application of Verizon Communications, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*. Docket No. A-310580F0009, *et al.* (Order entered January 11, 2006).

Based on the foregoing, participation by an association of cable operators who are now competing and who may, in the immediate future, compete with Joint Applicants, is consistent with the intent of our regulation. We conclude that BCAP has shown an interest of “such nature that intervention is necessary or appropriate to the administration of the statute [TA-96 and the Public Utility Code] under which the proceeding is brought.” 52 Pa. Code § 5.72.

We do not find persuasive the arguments of Joint Applicants, to the effect that issues pertaining to competitive entry and interconnection are the only issues of substance which are raised by BCAP’s intervention. Accepting as true all well-pled averments of BCAP as the non-moving party, December 14 I.D. at 5-6, we find that an interest grounded in access to facilities which are monopolistic in nature, namely the PSTN, is an interest sufficient for participation of BCAP in a representative capacity. Certain of BCAP’s membership have, apparently, had their concerns satisfied by signing the Settlement Agreement. However, given the statutory scheme of TA-96, and Chapter 30 of the Public Utility Code, we are not persuaded to unduly limit the ability of other BCAP members to jointly advocate issues which are important to their interests in light of the proposed Application.

Our final consideration – a consideration which is of substantial concern to this Commission – is the public interest. We must balance the competing interests involved in our decision on BCAP’s Exceptions. As noted, we are aware of the January 31, 2007 Recommended Decision in which the merits of a settlement is addressed. As represented by Joint Applicants, all active parties are, apparently, signatories to the Settlement Agreement. We are also aware of the request of the Joint Applicants to have a Commission determination on their Application on or before March 1, 2007.

While this Commission has a policy of encouraging the settlement of proceedings, we are also obligated to considerations of the public interest, as a whole. We, therefore, conclude that the exclusion of BCAP as a party was based on an unduly narrow interpretation of the interests asserted. This Commission concludes that an association of cable operators has presented an interest sufficient for intervention and that the public interest will be promoted by affording it party status.

**C. BCAP Emergency Petition**

Based on our grant of the Exceptions of BCAP, we conclude that the BCAP Emergency Petition is moot.

**Conclusion**

Upon review and consideration of the positions of the Parties, we conclude that the public interest benefits of BCAP participation outweigh the reasons asserted by the ALJ for its exclusion; **THEREFORE,**

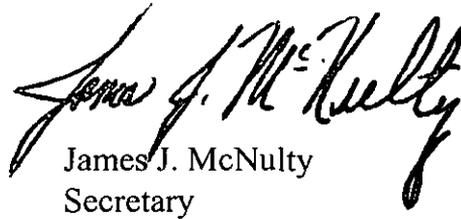
**IT IS ORDERED:**

1. That the Initial Decision of ALJ Susan Colwell in the above referenced proceeding is reversed, consistent with the discussion contained in this Opinion and Order.
2. That the Exceptions of Broadband Cable Association of Pennsylvania are granted, consistent with the discussion contained in this Opinion and Order.

3. That Petition for Emergency Order Or, In the Alternative, Stay of Proceeding Pending Adjudication of the Broadband Cable Association of Pennsylvania's Party Status is deemed moot.

4. That the proceedings are remanded to the Office of Administrative Law Judge for such further proceedings as necessary, including the possibility of a revised schedule for hearing that, wherein, the Broadband Cable Association of Pennsylvania may participate as a party.

**BY THE COMMISSION**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: February 8, 2007

ORDER ENTERED:

FEB 08 2007

0001

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0002

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0003

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 BROADBAND CABLE ASSOCIATION OF PA (POR) P

0004

JOHN F. POVILAITIS, MATTHEW A. TOTINO  
 RYAN RUSSELL OGDEN & SELTZER LLP  
 800 NORTH THIRD STREET, SUITE 101  
 HARRISBURG PA 17102-2025  
 RCN CORPORATION & RCN TELECOM (POR) P

0005

LILLIAN S HARRIS NORMAN J KENNARD ESQS  
 HAWKE MCKEON SNISCAK & KENNARD LLP  
 100 NORTH TENTH STREET PO BOX 1778  
 HARRISBURG PA 17105-1778  
 CITIZENS COMMUNICATIONS COMPANY (POR)

0006

JENNIFER A DUANE  
 SPRINT COMMUNICATIONS COMPANY L.P.  
 2001 EDMUND HALLEY DRIVE  
 RESTON VA 20191  
 SPRINT COMMUNICATIONS COMPANY L.P. (POR) P

0007

ROBERT ECKENROD JOHNNIE SIMMS ESQS  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 PO BOX 3265  
 HARRISBURG PA 17105-3265  
 PA PUC - OTS

0008

W LLOYD JR, L LEPKOSKI, S WEBB  
 OFFICE OF SMALL BUSINESS ADVOCATE  
 300 N 2ND ST SUITE 1102 COMMERCE BLDG  
 HARRISBURG PA 17101  
 OSBA (POR) P

0009

IRWIN POPOWSKY JOEL CHESKIS  
OFFICE OF CONSUMER ADVOCATE  
555 WALNUT STREET 5TH FLOOR FORUM PLACE  
HARRISBURG PA 17101-1923  
OCA

P

0010

SCOTT J RUBIN ESQUIRE  
3 LOST CREEK DRIVE  
SELINGSGROVE PA 17870  
COMMUNICATIONS WORKERS OF AMERICA (CWA)

P

0011

RAYMOND OSTROSKI ESQUIRE  
100 CTE DRIVE  
DALLAS PA 18612  
COMMONWEALTH TELEPHONE ENTERPRISES INC

0012

HILARY GLASSMAN ESQUIRE  
THREE HIGH RIDGE PARK  
STAMFORD CT 06905  
CITIZENS COMMUNICATIONS COMPANY

0013

MICHAEL W. FLEMING, BRIAN MCDERMOTT  
WILLIAMS MULLEN  
8270 GREENSBORO DRIVE  
MCLEAN VA 22102  
RCN TELECOM SERVICES, INC.

COMMONWEALTH OF PENNSYLVANIA

DATE: February 8, 2007  
SUBJECT: A-310800 F0010 et al  
TO: Director, Bureau/Office of  
FROM: James J. McNulty, Secretary

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.

The Commission at Public Meeting held February 8, 2007 adopted an order in the above entitled proceeding

Please direct your attention to Paragraph 4 for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

**DOCUMENT  
FOLDER**

Secretary's Office  
Attn: Docketing Section  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR

Thank you for your cooperation in this matter!

Receipt acknowledged:



(signature)

(date)

2/9/07

**DOCKETED**  
FEB 27 2007

FA PUC

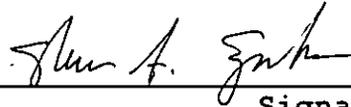
07 FEB -9 AM 8:49

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 8<sup>th</sup> day of February, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of February 8, 2007 at Docket No.A-310800 F0010 et al on behalf of:

IRWIN POPOWSKY JOEL CHESKIS SHAUN SPARKS  
OFFICE OF CONSUMER ADVOCATE  
555 WALNUT STREET 5TH FLOOR FORUM PLACE  
HARRISBURG PA 17101-1923

  
\_\_\_\_\_  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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SECRETARY'S BUREAU

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RECEIVED

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of February 8, 2007 at Docket No.A-310800 F0010 et al on behalf of:

W LLOYD JR L LEPKOSKI S WEBB  
OFFICE OF SMALL BUSINESS ADVOCATE  
300 N 2ND ST SUITE 1102 COMMERCE BL  
HARRISBURG PA 17101

FEB - 8 2007

\_\_\_\_\_  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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SECRETARY'S BUREAU

DOCUMENT  
FOLDER

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 9<sup>th</sup> day of February, 2007

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of February 8, 2007 at Docket No.A-310800 F0010 et al on behalf of:

**ORIGINAL**

ROBERT ECKENROD JOHNNIE SIMMS ESQS  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PO BOX 3265  
HARRISBURG PA 17105-3265

  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

**DOCUMENT  
FOLDER**

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