

CAPTION SHEET

CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00	:	
2. BUREAU: FUS	:	
3. SECTION(S):	:	
5. APPROVED BY:	:	4. PUBLIC MEETING DATE:
DIRECTOR:	:	00/00/00
SUPERVISOR:	:	
6. PERSON IN CHARGE:	:	7. DATE FILED: 04/25/03
8. DOCKET NO: A-310800 F0009	:	9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: COMMONWEALTH TELEPHONE ENTERPRISES INC

RESPONDENT/APPLICANT: COMMONWEALTH TELEPHONE CO.

COMP/APP COUNTY:

UTILITY CODE: 310800

ALLEGATION OR SUBJECT

APPLICATION OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC, AND CTE TELECOM, LLC FOR ALL APPROVALS UNDER THE PUBLIC UTILITY CODE FOR THE CONVERSION AND SALE OF VOTING STOCK OF THE CORPORATE PARENT, WHEREBY ACCOMPLISHING A CONVERSION OF CTE "B" SHARES TO CTE COMMON STOCK, ETC. DOCKET NUMBERS: FOR COMMONWEALTH TELEPHONE COMPANY: A-310800F0009; FOR CTSI LLC: A-311095F0004 AND FOR CTE TELECOM INC: A-311225F0002.

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APR 30 2003

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**Hawke &**  
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April 25, 2003

VIA HAND DELIVERY

A 310800F000 9

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

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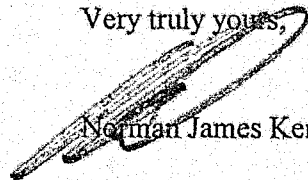
Re: Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC For All Approvals Under The Public Utility Code For The Conversion and Sale of Voting Stock Of The Corporate Parent; Docket Nos A-310800F\_\_\_\_; A- 311095F\_\_\_\_; and A- 311225F\_\_\_\_; Application

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the above-referenced Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC as well as our check in the amount of \$350 representing the filing fee.

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

Very truly yours,



Norman James Kennard

NJK/tap  
Enclosures

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

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of :

Commonwealth Telephone Company;

CTSI, LLC ; and

CTE Telecom, LLC;

For All Approvals Under The Public Utility Code For :

The Conversion and Sale of Voting Stock Of The  
Corporate Parent

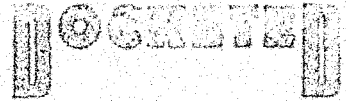
: Docket Nos.

A- 310800F 0009

A- 311095F

A- 311225F

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APR 30 2003

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

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 "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 ("Consolidated Application"), for all approvals required for the transaction described herein as evidenced by the issuance of Certificates of Public Convenience and, in support thereof, state as follows:

I. INTRODUCTION

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  
100 CTE Drive  
Dallas, PA 18612

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

Norman James Kennard  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
(717) 236-1300

## II. OVERVIEW

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") 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.

4. Currently, there are two outstanding issuances of CTE common stock. The first, the "common stock" of CTE, possesses one vote per share (approximately 21.6 million shares outstanding). The second type, "B shares," carry 15 votes per share (approximately 2 million shares outstanding). Shares of CTE are publicly traded on the NASDAQ stock exchange under the symbols "CTCO" and "CTCoB." Level 3 Communications, Inc. ("LVLT") currently owns

approximately 1.0 million of CTE B shares and, thus, controls approximately 29% of the voting interest in CTE.

5. This Application is being filed before the Commission for the purpose of accomplishing a conversion of CTE "B" shares to CTE common stock which will result in "dissipation of the largest voting interest" in CTE and, thus, become a jurisdictional event under the Commission's Policy Statement at 52 Pa. Code §69.901.

6. It is the present intent of CTE to have its shareholders approve, at the annual shareholder meeting tentatively scheduled in mid-June 2003, a proposal that would amend its Articles of Incorporation to effect a conversion of all of its currently issued and outstanding B shares into common shares. CTE and LVLT have entered into an agreement whereby Level 3 has agreed to vote for this proposal at the 2003 Annual Shareholders Meeting of CTE. If the above noted proposal is approved by CTE shareholders, LVLT's B shares will be converted to common shares and LVLT will then hold a voting interest in CTE of approximately 4.6%, at which time LVLT will only be the third largest shareholder of CTE.<sup>1</sup>

7. In 1994, the Commission formulated a Policy Statement interpreting 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).<sup>2</sup> The Commission determined that:

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<sup>1</sup> The largest shareholder, once the conversion of B shares is accomplished, is a group of funds owned or controlled by a financial institution, which is believed to own approximately 1.9 million of common and 360,000 of B shares at the present time. The second largest expected shareholder is also a financial institution.

<sup>2</sup> 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.

- 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.<sup>3</sup>

8. Thus, the proposed conversion of B shares to common shares will dissipate LVLT’s “controlling interest” to a point where the resulting LVLT-held block of common shares is no longer the largest, an event which requires application for a Certificate of Public Convenience under the Policy Statement.

9. The Joint Petitioners understand and acknowledge that, if another person or entity would propose to purchase sufficient shares to become a new “controlling interest” (i.e., 20% or more of the voting interest in CTE), then prior PAPUC approval will be required under the Commission’s Policy Statement. However, CTE does not anticipate that a new controlling interest will be created by the proposed transaction.

10. The transaction represents a change in indirect ownership only. Ownership of the Joint Applicants will continue to reside in the parent company, CTE.

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<sup>3</sup> 52 Pa. Code §69.901(b)(2).

### III. DESCRIPTION OF APPLICANTS

11. CTCo, a rural local exchange carrier, is incorporated as a Pennsylvania corporation and provides a full range of high-quality, low-cost telephone and related services over a network through out, or in portions of, 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 provides local exchange service to 335,000 main 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.

12. CTSI is incorporated as a Pennsylvania corporation and is a full-service, facilities-based CLEC offering bundled local, all-distance telephone, vertical services, DSL and Internet access. CTSI holds a Certificate of Public Convenience to offer service as a CLEC issued by this Commission at Docket No. A-311095 Order entered June 22, 2001.

13. CLD is incorporated as CTE Telecom, LLC in the Commonwealth of Pennsylvania and 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.

#### **IV. DESCRIPTION OF PROPOSED TRANSACTION**

14. Appendix "A" hereto is a complete and accurate copy of the Recapitalization Agreement dated April 24, 2003 between LVLТ and CTE. Approval of this Commission is requested for the entirety of the transaction set forth therein.

15. Organizational charts depicting the transactions described herein are attached as Appendix "B." These demonstrate that there is no change in ownership or organization of the jurisdictional utilities.

16. There will be no assignment of the certificates of public convenience or of the tariffs of the Joint Applicants, which will retain the same corporate identities and relationships with CTE as they did prior to the conversion.

17. The proposed transaction will be transparent to Joint Applicants' customers, who will be provided with the same level of service at the same rates.

#### **V. FINANCIAL INFORMATION AND CORPORATE AUTHORIZATIONS**

18. Joint Applicants' latest financial filings with the Commission are incorporated herein by reference. The income statements and balance sheets of Joint Applicants are not affected by the proposed transaction in any way.

19. CTE's most recent financial statements, as filed at the U.S. Securities and Exchange Commission, are incorporated herein by reference.<sup>4</sup>

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<sup>4</sup> <http://www.sec.gov/Archives/edgar/data/310433/000095010903001409/0000950109-03-001409-index.htm>

20. CTE intends to ask its shareholders to vote to approve the issuance of additional CTE common shares and the extinguishment of "B stock" at the next annual shareholder meeting, currently scheduled in mid-June 2003. CTE anticipates shareholder approval and requests Commission approval of the transaction prior to the annual shareholder meeting.

## **VI. APPROVAL OF THIS APPLICATION IS IN THE PUBLIC INTEREST**

21. Approval of the transaction proposed in this Application is in the public interest for the following reasons:

- a. The conversion of "B stock" eliminates a super voting stock at CTE and, therefore, distributes voting power more evenly and equitably;
- b. The holding of CTE stock is more widely distributed among the public, rather than concentrated;
- c. The equal distribution of voting control among the common shareowners promotes a fairer and more efficient decision making process; and
- d. The dissipation of a controlling interest will enhance CTE's ability to attract capital as well as strengthen its competitive position in the industry.

## **VII. OTHER PROVISIONS**

22. The proposed transaction is to be 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.

23. All Joint Applicants have paid all special and general assessments levied upon them by the Commission pursuant to the Public Utility Code and the Commission's Regulations.

24. The transaction contemplated by this Application will be recorded in accordance with the Uniform System of Accounts prescribed by this Commission.

25. 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").

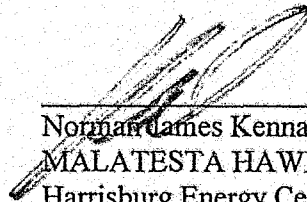
**VIII. PRAYER FOR RELIEF AND REQUEST FOR FINDINGS**

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

(a) Grant all approvals, as evidenced by the issuance of related Certificates of Public Convenience, required for the Joint Applicants to undertake the transaction described in this Application; and

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

Respectfully submitted,



---

Norman James Kennard  
MALATESTA HAWKE & McKEON LLP  
Harrisburg Energy Center  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778  
Telephone: (717) 236-1300  
Facsimile: (717) 236-4841


Counsel for Joint Applicants

DATED: April 25, 2003

VERIFICATION

I, Raymond B. Ostroski, Senior Vice President, General Counsel and Corporate Secretary, Commonwealth Telephone 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: 4/25/03

  
(Signature)

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

SECRETARY'S BUREAU

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\_\_\_\_\_  
Norman James Kennard

DATED: April 25, 2003

**RECAPITALIZATION AGREEMENT**

dated as of

**April 24, 2003**

among

**Commonwealth Telephone Enterprises, Inc.**

**Eldorado Equity Holdings, Inc.**

and

**Level 3 Communications, Inc.**

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## RECAPITALIZATION AGREEMENT

AGREEMENT dated as of April 24, 2003 among Commonwealth Telephone Enterprises, Inc., a Pennsylvania corporation (the "**Company**"), Level 3 Communications, Inc., a Delaware corporation ("**Level 3**"), and Eldorado Equity Holdings, Inc., a Delaware corporation ("**Eldorado**").

WHEREAS, Eldorado is the owner of 1,017,061 issued and outstanding shares (the "**Owned Shares**") of the Company's Class B Common Stock, par value \$1.00 per share ("**Class B Common Stock**");

WHEREAS, Eldorado is an indirect, wholly owned subsidiary of Level 3;

WHEREAS, the Company proposes to (i) amend the Company's Articles of Incorporation to effect a recapitalization of its Class B Common Stock pursuant to which, if approved by the requisite shareholder approval, each share of Class B Common Stock will be reclassified and converted (the "**Recapitalization**") into 1.09 shares of the Company's Common Stock, par value \$1.00 per share ("**Common Stock**"), substantially in the form of Exhibit A attached hereto (the "**Recapitalization Amendment**"), and (ii) amend and restate the Company's Articles of Incorporation to eliminate the Class B Common Stock, and all provisions related thereto, from the Articles of Incorporation, substantially in the form of Exhibit B attached hereto (the "**Restatement Amendment**", and collectively with the Recapitalization Amendment, the "**Charter Amendment**"), in each case, by filing an articles of amendment (each, an "**Articles of Amendment**"), to the Company's Articles of Incorporation with the Department of State of the Commonwealth of Pennsylvania;

WHEREAS, a special committee of the Board of Directors of the Company composed solely of independent directors (the "**Special Committee**") has unanimously determined that this Agreement, the Recapitalization and the Charter Amendment are fair to and in the best interests of the holders of Class B Common Stock and to the holders of Common Stock (excluding, in each case, Level 3, Eldorado and their respective Subsidiaries) and recommended that the Board of Directors approve this Agreement, the Recapitalization and the Charter Amendment;

WHEREAS, the Board of Directors, taking into account the findings and recommendation of the Special Committee and the terms and conditions of this Agreement, (i) has determined that this Agreement, the Recapitalization and the Charter Amendment are fair to and in the best interests of the holders of Class B Common Stock and to the holders of Common Stock (excluding, in each case, Level 3, Eldorado and their respective Subsidiaries), (ii) has approved this Agreement, the Recapitalization and the Charter Amendment and (iii) has resolved to recommend that the shareholders of the Company approve the Charter Amendment;

WHEREAS, the Company desires to obtain Level 3's and Eldorado's support of the Charter Amendment and Level 3 and Eldorado are willing to agree to the Charter Amendment and to vote the Owned Shares in favor of approval of the Charter Amendment when presented to the Company's shareholders for approval, subject to and in accordance with the terms and conditions of this Agreement;

WHEREAS, the Recapitalization is intended to constitute a reorganization of the Company within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual representations and warranties, covenants, agreements and conditions set forth in this Agreement, the parties hereto agree as follows:

*Definitions:*

**"Additional Shareholder Approval"** means the affirmative vote in favor of approving the Charter Amendment by a majority of the votes cast by the holders of Common Stock, voting as a separate class.

**"Affiliate"** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.

**"Business Day"** means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

**"Knowledge"** or **"knowledge"** of any Person that is not an individual means the knowledge of any of such Person's Officers.

**"Lien"** means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset.

**"Material Adverse Effect"** means, with respect to any Person, a material adverse effect on the financial condition, business, assets or results of operations of such Person and its Subsidiaries, taken as a whole, excluding (A) changes or conditions generally affecting the industries in which the Person and its Subsidiaries operate and (B) changes in general economic, regulatory or political conditions.

**"1933 Act"** means the Securities Act of 1933, as amended, together with the rules and regulations promulgated by the SEC thereunder.

“1934 Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated by the SEC thereunder.

“Officer” of any Person means any executive officer of such Person within the meaning of Rule 3b-7 of the 1934 Act.

“Pennsylvania Law” means the Pennsylvania Business Corporation Law.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Required Shareholder Approval” means the affirmative vote in favor of approving the Charter Amendment by a majority of the votes entitled to be cast (i) by the holders of Class B Common Stock and Common Stock, voting together as a single class and (ii) by the holders of Class B Common Stock, voting as a separate class.

“SEC” means the Securities and Exchange Commission.

“Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person.

## ARTICLE 1 THE CHARTER AMENDMENT

Section 1.01. *The Effective Time.* As soon as practicable after satisfaction or waiver, to the extent permitted hereunder, of all conditions to the Charter Amendment, the Company shall cause the two Articles of Amendment to be executed and concurrently filed with the Department of State of the Commonwealth of Pennsylvania and make all other filings or recordings required by Pennsylvania Law in connection with the Charter Amendment. The Recapitalization Amendment shall become effective (the “Effective Time”) at the close of business on the date the two Articles of Amendment are filed as described in this paragraph or at such later time as may be specified in the Articles of Amendment by agreement of the Company and Level 3 and the Restatement Amendment shall become effective immediately after the Effective Time.

Section 1.02. *Recapitalization.* Upon the Effective Time, each share of Class B Common Stock outstanding immediately prior to the Effective Time shall be reclassified and converted into 1.09 shares of Common Stock (the “Exchange Ratio”) (subject to the payment of cash in lieu of fractional shares of Class B Common Stock as specified below) by virtue of the filing of the related Articles

of Amendment and without any action on the part of any holder of Class B Common Stock.

Section 1.03. *Surrender and Payment.* (a) Prior to the Effective Time, the Company shall appoint an agent (the "Exchange Agent") for the purpose of exchanging certificates that evidence shares of Class B Common Stock for certificates evidencing the shares of Common Stock (the "Certificates") to which the holder shall be entitled as a result of the Recapitalization. Promptly after the Effective Time, the Company shall send, or shall cause the Exchange Agent to send, to each holder of shares of Class B Common Stock at the Effective Time a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates to the Exchange Agent) for use in such exchange.

(b) Each holder of shares of Class B Common Stock that have been converted into shares of Common Stock shall be entitled to receive, upon surrender to the Exchange Agent of a Certificate, together with a properly completed letter of transmittal, certificates evidencing shares of Common Stock in respect of the shares of Class B Common Stock evidenced by a Certificate. The shares of Common Stock issued as part of such Recapitalization, at the Company's option, shall be in uncertificated book-entry form, transmitted to the holder through the Depository Trust Company's electronic delivery system, unless a physical certificate is requested by a holder of a Certificate or is otherwise required under applicable law. The Exchange Agent shall accept such Certificates upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. From and after the Effective Time, shares of Class B Common Stock shall no longer be deemed to be outstanding and shall not have the status of Class B Common Stock, and all rights of the holders of Class B Common Stock shall cease, except for the right to shares of Common Stock in accordance with the Recapitalization.

(c) If any portion of Common Stock to which a holder is entitled is to be paid to a Person other than the Person in whose name the surrendered Certificate is issued, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or other taxes required as a result of such payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of the Exchange Agent that such tax has been paid or is not payable.

(d) Any amounts remaining unclaimed by holders of shares of Class B Common Stock two years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any governmental authority) shall become, to the extent permitted by applicable law, the property of the Company free and clear of any claims or interest of any Person previously entitled thereto.

(e) No dividends or other distributions with respect to the Common Stock issued as a result of the Recapitalization, and no cash payment in lieu of fractional shares as provided in Section 1.05, shall be paid to the holder of any Certificates representing shares of Class B Common Stock not surrendered until such Certificates are surrendered as provided in this Section.

(f) The Company and the Exchange Agent may establish other arrangements consistent with the intent of this Section 1.03 to effect the exchange of shares of Class B Common Stock held in book-entry form for shares of Common Stock into which they are reclassified and converted as result of the Recapitalization.

Section 1.04. *Adjustments.* If, during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur, including by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period, the Exchange Ratio and its determination shall be appropriately adjusted.

Section 1.05. *Fractional Shares.* No fractional shares of Common Stock shall be issued in the Recapitalization. All fractional shares of Common Stock that a holder of shares of Class B Common Stock would otherwise be entitled to receive as a result of the Recapitalization shall be aggregated and if a fractional share results from such aggregation, such holder shall be entitled to receive, in lieu thereof, an amount in cash without interest determined as follows: The Exchange Agent or other agent of the Company shall (i) aggregate such fractional interests, (ii) sell the shares resulting from the aggregation and (iii) allocate and distribute the net proceeds received from the sale (after deducting commissions and other expenses arising from such sale), without interest, among the holders of the fractional interests as their respective interests appear.

Section 1.06. *Withholding Rights.* The Company or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Article 1 such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of federal, state, local or foreign tax law. If the Company or the Exchange Agent, as the case may be, so withholds amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the relevant holder of the shares of Class B Common Stock.

Section 1.07. *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Company, the posting by such Person of a bond, in such reasonable amount as the Company may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue, in exchange for

such lost, stolen or destroyed Certificate, the Common Stock to be issued in respect of the shares of Class B Common Stock represented by such Certificate, as contemplated by this Article 1.

ARTICLE 2  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Level 3 and Eldorado that:

Section 2.01. *Corporate Existence and Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all corporate powers required to carry on its business as now conducted.

Section 2.02. *Corporate Authorization.* (a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Charter Amendment are within the Company's corporate powers and, except for the required approval of the Company's shareholders in connection with the Charter Amendment, have been duly authorized by all necessary corporate action on the part of the Company. The Required Shareholder Approval is the only vote of shareholders of the Company required under Pennsylvania Law or the Company's Articles of Incorporation to approve the Charter Amendment. This Agreement constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except (x) as the same may be limited by applicable bankruptcy, insolvency, moratorium or similar laws of general application relating to or affecting creditors' rights, and (y) for the limitations imposed by general principles of equity.

(b) At a meeting duly called and held, the Company's Board of Directors has, upon a recommendation of the Special Committee (i) unanimously determined that this Agreement, the Recapitalization and the Charter Amendment are fair to and in the best interests of the holders of Class B Common Stock and to the holders of Common Stock (excluding, in each case, Level 3, Eldorado and their respective Subsidiaries), (ii) unanimously approved this Agreement, the Recapitalization and the Charter Amendment and (iii) unanimously resolved to recommend approval of the Charter Amendment by the Company's shareholders.

Section 2.03. *Governmental Authorization.* The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Charter Amendment require no action by or in respect of, or filing with, any governmental body, agency, official or authority, domestic, foreign or supranational, other than (i) the filing of the Articles of Amendment with the Department of State for the Commonwealth of Pennsylvania as set forth in Section 1.02 hereof, (ii) compliance with any applicable requirements of the 1933 Act, the 1934 Act, and any other applicable securities laws, whether state or

foreign, (iv) approvals of and filings with the Federal Communications Commission (the "FCC") and the Pennsylvania Public Utilities Commission (the "PPUC"), and (v) any actions or filings the absence of which would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on the Company or to impair materially the ability of the Company to perform its obligations hereunder or consummate the Charter Amendment.

Section 2.04. *Non-contravention.* The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Charter Amendment do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Articles of Incorporation or Bylaws of the Company, (ii) assuming compliance with the matters referred to in Section 2.03, contravene, conflict with or result in a violation or breach of any provision of any applicable law, statute, ordinance, rule, regulation, judgment, injunction, order, or decree, (iii) require any consent or other action by any Person under, constitute a breach or default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under any provision of any agreement or other instrument binding upon the Company or any of its Subsidiaries or (iv) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, except for such contraventions, conflicts and violations referred to in clause (i) and for such failures to obtain any such consent or take any other action, defaults, terminations, cancellations, accelerations, changes, losses or Liens referred to in clauses (iii) and (iv) that would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on the Company or to impair materially the ability of the Company to perform its obligations hereunder or consummate the Charter Amendment.

Section 2.05. *Disclosure Documents.* The proxy statement of the Company to be filed with the SEC in connection with the Charter Amendment (the "Company Proxy Statement") and any amendments or supplements thereto will, when filed, comply as to form in all material respects with the applicable requirements of the 1934 Act. At the time the Company Proxy Statement or any amendment or supplement thereto is first mailed to shareholders of the Company, and at the time such shareholders vote on adoption of the Charter Amendment, the Company Proxy Statement, as supplemented or amended, if applicable, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 2.05 will not apply to statements in or omissions from the Company Proxy Statement based upon information furnished in writing to the Company by Level 3 or Eldorado specifically for use therein.

Section 2.06. *Finders' Fees.* There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Special Committee or the Company in connection with the Charter

Amendment who might be entitled to any fee or commission from Level 3 or Eldorado or any of their respective Subsidiaries upon consummation of the Charter Amendment.

Section 2.07. *Opinion of Financial Advisor.* The Special Committee has received the opinion of Allen & Company Incorporated, as financial advisor to the Special Committee, to the effect that, as of the date of this Agreement, the Exchange Ratio is fair, from a financial point of view, to the holders of Class B Common Stock and to the holders of Common Stock (other than, in each case, Level 3, Eldorado and their respective Subsidiaries).

Section 2.08. *Capitalization.* (a) On April 14, 2003, the authorized capital stock of the Company consisted of 85,000,000 shares of Common Stock, 15,000,000 shares of Class B Common Stock and 25,000,000 shares of Preferred Stock, without par value (the "Preferred Stock"). On April 14, 2003, the issued and outstanding shares of capital stock of the Company consisted of 21,642,125 shares of Common Stock and 2,025,381 shares of Class B Common Stock.

(b) Immediately following the Effective Time, the authorized capital stock of the Company shall consist of 85,000,000 shares of Common Stock and 25,000,000 shares of Preferred Stock.

(c) Upon their issuance and delivery at the Effective Time, the shares of Common Stock into which the shares of Class B Common Stock are being reclassified and converted pursuant to the Recapitalization (the "Reclassification Shares") will be duly authorized, validly issued, fully paid and non-assessable shares of the Company, free of all preemptive or similar rights, and entitled to the rights described in the Company's Articles of Incorporation, as amended by the Charter Amendment.

(d) As of April 14, 2003, there were outstanding (i) 21,642,125 shares of Common Stock, (ii) 2,025,381 shares of Class B Common Stock, (iii) employee stock options to purchase an aggregate of 1,414,841 shares of Common Stock, (iv) 139,810 Common Stock share units issued under the Company's Executive Stock Purchase Plan and no shares of Preferred Stock. Except for the right of holders to convert shares of Class B Common Stock into shares of Common Stock pursuant to the Company's Articles of Incorporation (the "Conversion Rights") and as set forth in this Section and except for changes since April 14, 2003 resulting from (1) the exercise of employee stock options outstanding on April 14, 2003, (2) issuances of stock options made in the ordinary course or to newly hired employees and the exercise of such options, (3) issuances of additional share units and restricted shares of Common Stock under any compensation plan or arrangement of the Company, (4) issuances by the Company from treasury of the employer match of Common Stock investment elections under the Commonwealth – Wealth Builder Plan, and (5) the conversion of shares of Class B Stock into shares of Common Stock pursuant to the Conversion Rights, there are outstanding no (a) shares of capital stock or other voting securities of the Company, (b) securities of the Company convertible into

or exchangeable for shares of capital stock or voting securities of the Company, or (c) options or other rights to acquire from the Company, or any obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company. Except for this Agreement and the Conversion Rights, there are no outstanding obligations of the Company or any Subsidiary of the Company to repurchase, redeem or otherwise acquire any securities of the Company. No stockholder of the Company is entitled to any preemptive or similar rights to subscribe for shares of capital stock of the Company.

Section 2.09. *Compliance with Securities Laws.* The issuance and delivery of the Reclassification Shares pursuant to the Recapitalization have been or will be exempt from the registration and prospectus delivery requirements of the 1933 Act, and have been or will be registered or qualified (or are or will be exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws.

Section 2.10. *Absence of Material Adverse Effect.* Since December 31, 2002, there has not occurred any Material Adverse Effect on the Company.

Section 2.11. *Reorganization.* The Recapitalization is intended to constitute a reorganization of the Company within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF LEVEL 3 AND ELDORADO

Level 3 and Eldorado represent and warrant to the Company that:

Section 3.01. *Corporate Existence and Power.* Each of Level 3 and Eldorado is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers required to carry on its business as now conducted.

Section 3.02. *Corporate Authorization.* The execution, delivery and performance by Level 3 and Eldorado of this Agreement are within Level 3's and Eldorado's corporate powers and have been duly authorized by all necessary corporate action on the part of Level 3 and Eldorado. This Agreement constitutes a valid and binding agreement of Level 3 and Eldorado, enforceable against Level 3 and Eldorado in accordance with its terms, except (x) as the same may be limited by applicable bankruptcy, insolvency, moratorium or similar laws of general application relating to or affecting creditors' rights, and (y) for the limitations imposed by general principles of equity.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by Level 3 and Eldorado of this Agreement and the consummation by the Company of the Charter Amendment require, with respect to Level 3 or

Eldorado, no action by or in respect of, or filing with, any governmental body, agency, official or authority, domestic, foreign or supranational, other than (i) the filing of the Articles of Amendment with the Department of State for the Commonwealth of Pennsylvania as set forth in Section 1.02 hereof, (ii) compliance with any applicable requirements of the 1933 Act, the 1934 Act, and any other applicable securities laws, whether state or foreign, (iii) approvals of and filings with the FCC and the PPUC and (iv) any actions or filings the absence of which would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on Level 3 or Eldorado or impair materially the ability of Level 3 or Eldorado to perform its obligations hereunder or the ability of the Company to consummate the Charter Amendment.

Section 3.04. *Non-contravention.* The execution, delivery and performance by Level 3 and Eldorado of this Agreement and the consummation by the Company of the Charter Amendment do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Level 3 or Eldorado, (ii) assuming compliance with the matters referred to in Section 3.03, contravene, conflict with or result in a violation or breach of any provision of any applicable law, statute, ordinance, rule, regulation, judgment, injunction, order, or decree, to the extent related to Level 3 or Eldorado, (iii) require any consent or other action by any Person under, constitute a breach or default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Level 3, Eldorado or any of their respective Subsidiaries is entitled, under any provision of any agreement or other instrument binding upon Level 3, Eldorado or any of their respective Subsidiaries or (iv) result in the creation or imposition of any Lien on any asset of Level 3, Eldorado or any of their respective Subsidiaries, except for such contraventions, conflicts and violations referred to in clause (ii) and for such failures to obtain any such consent or take any other action, defaults, terminations, cancellations, accelerations, changes, losses or Liens referred to in clauses (iii) and (iv) that would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on Level 3 or Eldorado or to impair materially the ability of Level 3 or Eldorado to perform its obligations hereunder or the ability of the Company to consummate the Charter Amendment.

Section 3.05. *Title to Shares of Class B Common Stock.* Level 3 owns 100% of the capital stock of Eldorado free and clear of any Lien. Eldorado is the record and beneficial owner of the Owned Shares and has good title, free and clear of all Liens and any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of the Owned Shares) to all of the Owned Shares. Except as contemplated by this Agreement, none of the Owned Shares is subject to any voting trust, proxy or other agreement with respect to the voting thereof. Except for the Owned Shares, none of Level 3, Eldorado or any of their respective Subsidiaries owns any shares of capital stock or voting securities,

or securities convertible into or exchangeable into capital stock or voting securities, of the Company.

Section 3.06. *Disclosure Documents.* None of the information provided in writing by Level 3 or Eldorado specifically for inclusion in the Company Proxy Statement or any amendment or supplement thereto, at the time the Company Proxy Statement or any amendment or supplement thereto is first mailed to shareholders of the Company or at the time the shareholders vote on adoption of the Charter Amendment, will contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Section 3.07. *Finders' Fees.* There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Level 3 or Eldorado who might be entitled to any fee or commission from the Company or any of its Subsidiaries upon consummation of the Charter Amendment.

ARTICLE 4  
COVENANTS OF THE COMPANY,  
LEVEL 3 AND ELDORADO

The Company agrees that:

Section 4.01. *Shareholder Meeting; Proxy Material.* (a) The Company shall cause a meeting of its shareholders (the "**Company Shareholder Meeting**") to be duly called and held as soon as reasonably practicable following the filing of a definitive proxy statement relating to such meeting for the purpose of voting on the Charter Amendment. The Board of Directors of the Company shall recommend approval of the Charter Amendment, and any related proposals, by the Company's shareholders.

(b) In connection the Company Shareholder Meeting, the Company at its cost and expense shall (i) promptly prepare and file with the SEC, use its reasonable best efforts to have cleared by the SEC and thereafter mail to its shareholders as promptly as practicable the Company Proxy Statement and all other proxy materials for such meeting and (ii) otherwise comply with all legal requirements applicable to such meeting. The Company agrees that it shall promptly provide Level 3 with any comments received from the SEC relating to the Company Proxy Statement and give Level 3 and its counsel a reasonable opportunity to review and provide comments on any description of or reference to Level 3 or Eldorado, or any description of the reasons for and consequences of the Charter Amendment, set forth in any notice or proxy statement distributed to the shareholders in connection with the Company Shareholder Meeting, prior to any such distribution.

Section 4.02. *Nasdaq Listing.* The Company shall use its best efforts to cause the Reclassification Shares to be approved for quotation on Nasdaq Stock Market, subject to official notice of issuance.

Level 3 and Eldorado agree that:

Section 4.03. *Voting Of Shares.* (a) Level 3 and Eldorado shall, and shall cause their respective Subsidiaries, (i) to vote all shares of Class B Common Stock beneficially owned by any of them in favor of approval of the Charter Amendment and any related proposal at the Company Shareholder Meeting and (ii) not to cause or intentionally encourage any other person or entity to vote against the Charter Amendment or any related proposal or take any other action which would reasonably be expected to impair, delay or prevent the effectiveness of the Charter Amendment. Notwithstanding the foregoing, no officer or director of Level 3 or Eldorado who is also a member of the board of directors of the Company shall be obligated to take or refrain from taking any action he reasonably believes to be inconsistent with (i) such individual's obligations as a director to the Company or its shareholders or (ii) any applicable law, regulation, order or other requirement of any court or other governmental entity, including without limitation, the Pennsylvania Law.

(b) On or prior to the date of the Company Shareholder Meeting, neither Level 3 nor Eldorado shall directly or indirectly (i) grant any proxies or enter into any voting trust or other agreement or arrangement with respect to the voting of any shares of Class B Common Stock or Common Stock, (ii) purchase any Common Stock, or (iii) convert, sell, assign, transfer, encumber or otherwise dispose of, or enter into any contract, option or other arrangement or understanding with respect to the direct or indirect conversion, sale, assignment, transfer, encumbrance or other disposition of, any shares of Class B Common Stock or Common Stock, except in the case of this clause (iii) for transfers to a transferee that agrees to be bound by the terms and conditions of this Agreement pursuant to a written instrument reasonably acceptable to the Company; provided that in the event of any such transfer, Level 3, Eldorado and the transferee shall be jointly and severally liable for any breach of this Agreement or such instrument by such transferee.

The parties hereto agree that:

Section 4.04. *Reasonable Best Efforts.* (a) Subject to the terms and conditions of this Agreement, the Company shall use its reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the Charter Amendment. In connection therewith, the Company shall be primarily responsible for (i) preparing and filing as promptly as practicable with any governmental authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents in connection with the Charter

Amendment and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any governmental authority or other third party that are necessary, proper or advisable to consummate the Charter Amendment.

(b) Subject to the terms and conditions of this Agreement, Level 3 and Eldorado shall (i) cooperate with the Company in connection with the Company's carrying out of its obligations under subsection (a)(i) above and, (ii) where related to Level 3 or Eldorado, shall use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations in order for the Company to consummate the Charter Amendment.

(c) The parties shall not take any action in connection with this Agreement or the Charter Amendment that would result in the Recapitalization failing to qualify for the exemption from the registration requirements of the 1933 Act set forth in Section 3(a)(9) of the 1933 Act.

#### ARTICLE 5 CONDITIONS TO THE CHARTER AMENDMENT

Section 5.01. *Mutual Conditions.* Unless each of the following conditions is satisfied or, to the extent permitted by applicable law, waived by both the Company and Level 3, the Company shall not consummate the Charter Amendment:

(a) the Required Shareholder Approval and the Additional Shareholder Approval shall each have been obtained;

(b) no material provision of any applicable law or regulation and no judgment, injunction, order or decree preventing the consummation of the Charter Amendment shall be in effect; *provided, however,* that each of the parties shall have used its reasonable efforts to cause any such injunction or other order to be vacated or lifted;

(c) the Reclassification Shares shall have been approved for listing on the Nasdaq Stock Market, subject to official notice of issuance;

(d) all actions by or in respect of, or filings with, the FCC and the PPUC required to permit the consummation of the Charter Amendment shall have been taken, made or obtained; and

(e) there shall be no legal proceeding pending against any of the Company, Eldorado or Level 3 or its Board of Directors or officers challenging, or seeking the recovery of damages in connection with, the Recapitalization

which has a reasonable likelihood of success on the merits, and if successful, would materially adversely affect the Charter Amendment.

Section 5.02. *Condition Subject to Waiver by Level 3.* The Company shall not consummate the Charter Amendment unless the following condition is satisfied or waived by Level 3:

(a) all representations and warranties made by the Company in this Agreement shall be true and correct in all material respects as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Effective Time as though made by the Company on and as of the Effective Time.

Section 5.03. *Conditions Subject to Waiver by the Company.* The Company shall not be obligated to consummate the Charter Amendment unless the following conditions are satisfied or waived by the Company:

(a) all representations and warranties made by Eldorado and Level 3 in this Agreement shall be true and correct in all material respects as of the date hereof and, except to the extent such representations and warranties refer to a specific date, as of the Effective Time as though made by Eldorado and Level 3 on and as of the Effective Time; and

(b) there shall not have occurred any Material Adverse Effect on the Company.

## ARTICLE 6 TERMINATION

Section 6.01. *Termination.* This Agreement may be terminated and the Charter Amendment may be abandoned at any time prior to the Effective Time (notwithstanding any approval of the Charter Amendment or any other related proposal by the shareholders of the Company):

(a) by mutual written agreement of the Company and Level 3;

(b) by either the Company or Level 3, if:

(i) the Charter Amendment has not been consummated on or before the sixth month anniversary of the date hereof (the "End Date"); *provided* that the right to terminate this Agreement pursuant to this Section 6.01(b)(i) shall not be available to any party whose breach, or whose Subsidiary's breach, of any provision of this Agreement results in the failure of the Charter Amendment to be consummated by such time;

(ii) (A) there shall be any material provision of any law or regulation that makes consummation of the Charter Amendment illegal or otherwise prohibited or (B) any judgment, injunction, order or decree of any court or governmental body having competent jurisdiction enjoining the Company, Level 3 or Eldorado from consummating the Charter Amendment is entered and such judgment, injunction, judgment or order shall have become final and nonappealable; or

(iii) either the Required Shareholder Approval or the Additional Shareholder Approval shall not have been obtained at the Company Shareholder Meeting (or any adjournment thereof).

The party desiring to terminate this Agreement pursuant to this Section 6.01 (other than pursuant to Section 6.01(a)) shall give notice of such termination to the other parties.

Section 6.02. *Effect of Termination.* If this Agreement is terminated pursuant to Section 6.01, this Agreement shall become void and of no effect without liability of any party (or any shareholder, director, officer, employee, agent, consultant or representative of such party) to any other party hereto; *provided that*, if such termination shall result from the willful (i) failure of a party to fulfill a condition to the performance of the obligations of any other party or (ii) failure of a party to perform a covenant hereof, such party shall be liable for such failure. The provisions of this Section 6.02 and Sections 7.04, 7.06, 7.07, and 7.08 shall survive any termination hereof pursuant to Section 6.01.

## ARTICLE 7 MISCELLANEOUS

Section 7.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

*if to the Company, to:*

Commonwealth Telephone Enterprises, Inc.  
100 CTE Drive  
Dallas, PA 18612  
Attn: General Counsel

with a copy to:

Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017  
Attention: William Taylor  
Fax: (212) 450-3800

*if to Level 3 or Eldorado, to:*

Level 3 Communications, Inc.  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
Attn: General Counsel  
Fax: (720) 888-5619

with a copy to:

Willkie Farr & Gallagher  
787 Seventh Avenue  
New York, NY 10019  
Attention: David Boston  
Fax: (212) 728-8111

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 7.02. *Amendments; Waivers.* (a) Any provision of this Agreement may be amended or waived prior to the Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; *provided* that, after the approval of the Charter Amendment by the shareholders of the Company and without their further approval, no such amendment or waiver shall increase, reduce or change the amount or kind of consideration to be received in exchange for any shares of Class B Common Stock in the Recapitalization.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(c) The Company shall not amend or waive any right under this Agreement, or consent to or exercise any right to terminate this Agreement, unless such action is approved by the Special Committee.

Section 7.03. *Expenses.* All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense; *provided, however*, that all costs and expenses relating to approvals of and filings with the FCC and PPUC shall be borne by the Company.

Section 7.04. *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto, and in the case of the Company, the Special Committee, and any attempted assignment contrary to the terms hereof shall be null and void.

Section 7.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state.

Section 7.06. *Jurisdiction.* Except as otherwise expressly provided in the Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Charter Amendment shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in the Borough of Manhattan, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party.

Section 7.07. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CHARTER AMENDMENT.

Section 7.08. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

Section 7.09. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 7.10. *Captions; Interpretation.* (a) The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

(b) The parties hereto acknowledge that they have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

Section 7.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the Charter Amendment is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the Charter Amendment can be consummated as originally contemplated to the fullest extent possible.

Section 7.12. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

COMMONWEALTH TELEPHONE  
ENTERPRISES, INC.

By: \_\_\_\_\_

Name: Michael J. Mahoney

Title: President and Chief  
Executive Officer

LEVEL 3 COMMUNICATIONS, INC.

By: \_\_\_\_\_

Name:

Title:

ELDORADO EQUITY HOLDINGS, INC.

By: \_\_\_\_\_

Name:

Title:

**Recapitalization Amendment**

If the Charter Amendment is approved and effective, the following new Section 10 will be added after Section 9 of the Company's Articles of Incorporation.

10. *Reclassification of Shares.* Effective as of the close of business on [the date of filing with the Department of State of the Commonwealth of Pennsylvania of this Articles of Amendment to the Articles of Incorporation] (the "Effective Time"), each issued and outstanding share of the Class B Stock shall be reclassified and converted, without the action of any holder thereof, as and into 1.09 shares of validly issued, fully paid and nonassessable Common Stock. The number of authorized shares, the number of shares of treasury stock and the par value of the Common Stock and the Class B Stock shall not be affected by the foregoing reclassification of shares. The Corporation shall not issue fractional shares or scrip as the result of the reclassification of shares, but shall arrange for the disposition of fractional shares on behalf of those record holders of the Class B Stock at the Effective Time who would otherwise be entitled to fractional shares as a result of the reclassification of shares.

Restatement Amendment

If the Charter Amendment is approved and effective, immediately after the effectiveness of the Recapitalization Amendment, the Company's Articles of Incorporation will be amended and restated and shall read as follows:

\*\*\*\*\*

AMENDED AND RESTATED

ARTICLES OF INCORPORATION

OF

COMMONWEALTH TELEPHONE ENTERPRISES, INC.

1. The name of the corporation is Commonwealth Telephone Enterprises, Inc.
2. The location and post office address of the registered office of the corporation in this Commonwealth is 100 CTE Drive, Dallas, Pennsylvania 18612.
3. The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business, including manufacturing, processing, research and development, for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, as the same exists or may hereafter be amended.
4. The date of its incorporation is March 2, 1979.
5. The term for which the corporation is to exist is perpetual.
6. (a) *Classes and Number of Shares.* The total number of shares of stock that the corporation shall have authority to issue is 110,000,000, consisting of 85,000,000 shares of Common Stock, par value \$1.00, per share ("Common Stock"), and 25,000,000 shares of Preferred Stock ("Preferred Stock").

The Board of Directors is hereby empowered to the extent permitted by the Pennsylvania Business Corporation Law of 1988, as amended from time to time, to amend these Amended and Restated Articles of Incorporation by resolution or resolutions from time to time to divide the Preferred Stock into one or more classes or series, to determine

the designation and the number of shares of any class or series of Preferred Stock, to determine the voting rights, preferences, limitations and special rights, if any and other terms of the shares of any class or series of Preferred Stock and to increase or decrease the number of shares of any such class or series.

(b) *Approval of Certain Amendments.* With respect to any proposed amendment to these Amended and Restated Articles of Incorporation, other than an amendment made by action of the Board of Directors of the Company pursuant to the second paragraph of Section 6(a) hereof, that would (i) increase or decrease the par value of any class, (ii) alter or change the preferences, qualifications, limitations, restrictions or special or relative rights of the shares of Common Stock so as to affect the holders of Common Stock adversely, (iii) increase the authorized number of shares of Common Stock, (iv) authorize a new class of shares senior or superior in any respect to the shares of Common Stock, or (v) increase the number of authorized shares of any class senior or superior in any respect to the shares of Common Stock, the approval of a majority of the votes entitled to be cast by the holders of shares of Common Stock shall be obtained in addition to any other vote required by the Pennsylvania Business Corporation Law of 1988, as the same exists or may hereafter be amended, or by these Amended and Restated Articles of Incorporation. Except as required by law, no shareholder approval of any amendment made by action of the Board of Directors of the Company pursuant to the second paragraph of Section 6(a) hereof shall be required.

IN WITNESS WHEREOF, the undersigned corporation has caused these Amended and Restated Articles of Incorporation to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer, to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2003.

COMMONWEALTH TELEPHONE  
ENTERPRISES, INC.

By: \_\_\_\_\_  
Name:  
Title:

ATTEST: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

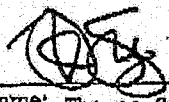
COMMONWEALTH TELEPHONE  
ENTERPRISES, INC.

By:

\_\_\_\_\_  
Name: Michael J. Mahoney  
Title: President and Chief  
Executive Officer

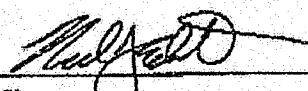
LEVEL 3 COMMUNICATIONS, INC.

By:

  
\_\_\_\_\_  
Name: Thomas G. Stortz  
Title: GVP & General Counsel

ELDORADO EQUITY HOLDINGS, INC.

By:

  
\_\_\_\_\_  
Name: Neil S. Eckstein  
Title: Director

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

COMMONWEALTH TELEPHONE  
ENTERPRISES, INC.

By: Michael J. Mahoney  
Name: Michael J. Mahoney  
Title: President and Chief  
Executive Officer

LEVEL 3 COMMUNICATIONS, INC.

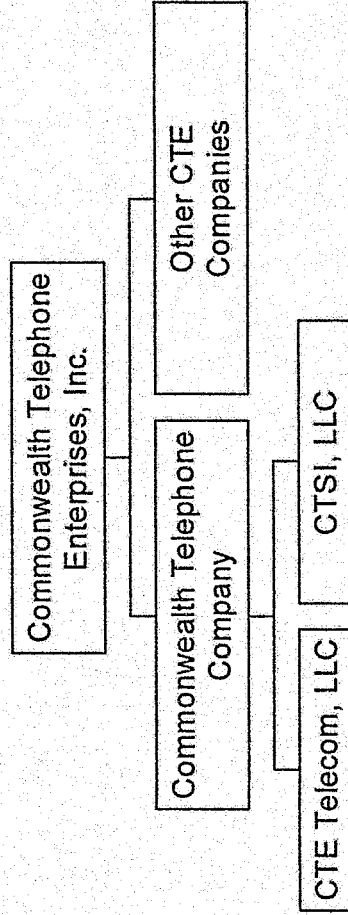
By: \_\_\_\_\_  
Name:  
Title:

ELDORADO EQUITY HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

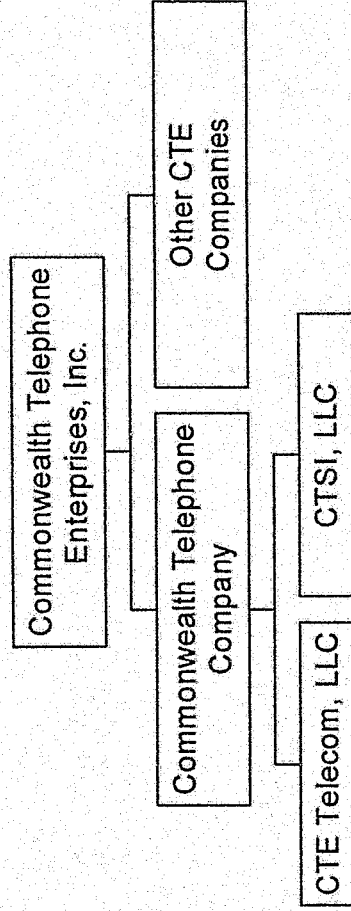
**Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC For All Approvals Under The Public Utility Code For The Conversion and Sale of Voting Stock Of The Corporate Parent**

**CORPORATE ORGANIZATION**  
Current



**Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC For All Approvals Under The Public Utility Code For The Conversion and Sale of Voting Stock Of The Corporate Parent**

**CORPORATE ORGANIZATION  
Post-Conversion**



COMMONWEALTH OF PENNSYLVANIA

DATE: April 30, 2003

SUBJECT: ~~A-310800 F0009~~; A-311095F0004;  
A-311225 F0002

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *ddt*

DOCKETED

APR 30 2003

APPLICATION OF COMMONWEALTH TELEPHONE  
COMPANY, CTSI LLC, AND CTE TELECOM LLC

DOCUMENT  
FOLDER

We attach hereto a copy of the Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC for approval of the conversion and sale of voting stock of the Corporate Parent, which has been captioned and docketed to the above numbers.

Applicant has served a copy of the application upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and has filed proof of such service with this Commission.

May we have a report prepared by your Bureau for Public Meeting.

Attachment

cc: Law Bureau

ddt

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

IN REPLY PLEASE  
REFER TO OUR FILE  
Secretary  
717-772-7777

April 30, 2003

A-310800F0009

A-311095F0004;

A-311225F0002

Norman James Kennard  
Malatesta Hawke and McKeon  
Harrisburg Energy Center  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17105

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DOCKETED

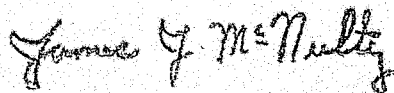
APR 30 2003

Dear Mr. Kennard:

Receipt is acknowledged of the Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC for approval of the conversion and sale of voting stock of the corporate parent, which has been captioned and docketed to the above numbers.

This matter will receive the attention of the Commission and you will be advised of any further necessary procedure.

Sincerely,



James J. McNulty  
Secretary

JJM:ddt