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November 17, 2006

Via Electronic Filing and Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Re: Application of Citizens Communications Company ("Citizens") and Commonwealth Telephone Enterprises, Inc. ("Commonwealth") for Section 214 Authority to Transfer Control of Domestic and International Authorization
File No. ITC-T/C-2006-0929-00450
WC Docket No. 06-184

Dear Ms. Dortch:

On behalf of Citizens Communications Company ("Citizens") and Commonwealth Telephone Enterprises, Inc. ("Commonwealth") (Citizens and Commonwealth, "Applicants"), enclosed please find a Joint Consolidated Opposition of Citizens Commonwealth to Petition to Deny. Applicants are simultaneously filing this Opposition in WC Docket No. 06-184 via ECFS.

An original and nine (9) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

Catherine Wang
Jeffrey R. Strenkowski

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of	)	
CITIZENS COMMUNICATIONS COMPANY	)	File No. ITC-T/C-2006-0929-00450
and	)	WC Docket No. 06-184
COMMONWEALTH TELEPHONE ENTERPRISES, INC.	)	
And Their Operating Subsidiaries, For Grant of Authority Pursuant to Section 214 of the Communications Act of of 1934 and Sections 63.04 and 63.18 of the Commission's Rules to Complete a Transfer of Control of Commonwealth Telephone Enterprises, Inc., a Domestic and International Carrier, to Citizens Communications Company	)	

JOINT CONSOLIDATED OPPOSITION OF CITIZENS COMMUNICATIONS COMPANY AND COMMONWEALTH TELEPHONE ENTERPRISES, INC. TO PETITION TO DENY

Dated: November 17, 2006

TABLE OF CONTENTS

Page

Summary i

I. INTRODUCTION 1

II. BACKGROUND 2

III. ARGUMENT 3

A. RCN's Petition Should be Dismissed as an Abuse of the Commission's Transfer Review Process in Order to Gain Advantage in a Carrier Dispute Properly Before Another Forum 3

B. RCN's Petition to Deny Fails to Establish a Prima Facie Case That the Proposed Transfer of Control Will Not Serve the Public Interest 7

C. RCN's Petition is Meritless, Wholly Unsupported by Facts Evidencing "Anti-Competitive Conduct," and Should Be Summarily Dismissed by the Commission 11

1. RCN's Petition Focuses Solely on an Existing Dispute Under Consideration by the Pennsylvania Public Utility Commission, an Issue that is Not Merger-Specific 12

2. Commonwealth's Dispute with RCN in Pennsylvania is a Justified and Appropriate Exercise of Its Rights Under Pennsylvania and Federal Law 14

3. RCN's Complaints Focus on Commonwealth, the Transferor, Rather than the Qualifications of Citizens as the Transferee 15

4. RCN's Suggestion That the Merger Will Provide an Incentive for Commonwealth to Engage in "Anti-Competitive Conduct" is Speculative and Wholly Unsupported 17

5. RCN Mischaracterizes the Level of Competition Facing Commonwealth and Citizens 20

6. The Petition to Deny Makes No Claims With Respect to the Provision of International Services by Applicants 20

D. RCN's Proposed Merger Conditions are Frivolous 21

IV. CONCLUSION 25

Summary

RCN's Petition in this proceeding is nothing more than a transparent attempt to bootstrap a dispute unrelated to the proposed transaction and properly under consideration before another highly competent forum, the Pennsylvania Public Utility Commission, into the Commission's review of the Application. In substance, RCN has offered nothing more than empty allegations of anti-competitive behavior and speculative competitive harm supposedly arising from the proposed transaction. RCN's Petition contorts the Commission's public interest standard in unprecedented ways. However, the Commission has been careful in the past not to permit parties to subvert the Commission's transfer process into a private "forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act." The Commission has also already determined merger proceedings are not the proper forum to raise already pending carrier disputes, especially ones already pending before the Commission or a state public utility commission.

While the Commission has the duty to weigh the public interest benefits against the public interest harms of a proposed transaction, that analysis includes whether the transaction would result in a violation of the Communications Act; result in a violation of Commission Rules; substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act; and whether the merger promises to yield affirmative public interest benefits. RCN has made no showing that the merger would in any way violate the Act, frustrate the implementation of the Commission's rules, or otherwise cause harm to existing competition.

Further, RCN has utterly failed to meet the basic requirements of a petition to deny: a showing that a grant of the application would be *prima facie* inconsistent with the public interest. RCN's Petition is not supported by adequate facts or affidavits that demonstrate the Petitioners'

interest in this transfer proceeding, nor any facts demonstrating that grant of the Application is *prima facie* inconsistent with the public interest, convenience and necessity. It is replete with conclusory facts and unsupported allegations, and should therefore be summarily dismissed by the Commission.

RCN has offered no analysis of Citizens qualifications to effectuate the merger, nor does it offer any evidence that Commonwealth has engaged in anti-competitive or discriminatory behavior. Certainly, the fact that Commonwealth is participating in RCN's certification proceedings before the Pennsylvania Public Utility Commission does not rise to level of an "abusive attempt to circumvent the policies and goals of the Act." The Petition clearly evidences RCN's transparent attempts to manipulate this Commission's domestic and international transfer proceedings for delay and in order to create leverage with the Applicants in the ongoing Pennsylvania proceeding.

Finally, RCN's proposed merger conditions are completely frivolous, not related to the proposed merger, and bad public policy. First, RCN's outrageous demand that both Citizens and Commonwealth be prohibited from participating in CLEC application proceedings in Pennsylvania would have the FCC impose an unprecedented regulatory "gag-order," dangerously meddle in Pennsylvania Public Utility Commission proceedings, and likely lead to more, not fewer, under-qualified carriers entering the market. Similarly, the Commission should summarily dismiss RCN's demand for limits on customer contracts, as such contracts used widely in the industry are hardly an example of "anti-competitive conduct," have no relevance to the proposed merger and if limited would harm consumers. Third, RCN has no basis whatsoever for a merger condition aimed at removing the Applicants' rural exemption. Even if the Commission were legally able to do so, there is simply no nexus between Commonwealth's status as a rural carrier and future interconnection issues that RCN speculates may someday arise, and the approval of

the pending Application by the Commission. As the conditions have no relevance to the merger and would in fact make bad policy adverse to the public interest, the Applicants respectfully request that the Commission reject RCN's reckless proposals and summarily dismiss its Petition.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of the Application of	)	
CITIZENS COMMUNICATIONS COMPANY	)	File No. ITC-T/C-2006-0929-00450
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JOINT CONSOLIDATED OPPOSITION OF CITIZENS COMMUNICATIONS COMPANY AND COMMONWEALTH TELEPHONE ENTERPRISES, INC. TO PETITION TO DENY

I. INTRODUCTION

Citizens Communications Company ("Citizens") and Commonwealth Telephone Enterprises, Inc. ("Commonwealth") (collectively, the "Applicants"), pursuant to Public Notice issued by the Federal Communications Commission ("Commission"),[1] hereby jointly oppose the Petition to Deny ("Petition") filed by RCN Corporation and RCN Telecom Services, Inc. (collectively "RCN") in the above-captioned dockets.

[1] *See Domestic Section 214 Application Filed for the Transfer of Control of Commonwealth Telephone Enterprises, Inc. to Citizens Communications Company, Non-Streamlined Pleading Cycle Established*, Public Notice, DA 06-2231 (rel. Oct. 27, 2006) ("*Public Notice*").

II. BACKGROUND

In connection with an Agreement and Plan of Merger ("Agreement") dated as of September 17, 2006, on September 29, 2006, Citizens and Commonwealth filed an Application,[2] pursuant to Section 214 of the Communications Act of 1934,[3] as amended (the "Act") and Section 63.04 of the Commission's Rules,[4] requesting Commission authority to transfer control of Commonwealth to Citizens.[5] The Applicants did not request presumptive streamlined treatment for this application pursuant to Section 63.03 of the Commission's Rules because Citizens and its subsidiaries provide incumbent local exchange service in areas that are adjacent to incumbent local exchange service areas of one or more Commonwealth subsidiaries. The Applicants nevertheless requested that, although the service area adjacencies technically disqualified the Application from presumptive streamlined treatment, the Commission use similar timeframes for comments and approval as would be used for a streamlined application because immediately following the transaction: (1) Citizens and its subsidiaries, including Commonwealth, will hold

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[2] *See Citizens Communications Company and Commonwealth Telephone Enterprises, Inc., And Their Operating Subsidiaries, for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 and 63.18 of the Commission's Rules to Complete a Transfer of Control of Commonwealth Telephone Enterprises, Inc., a Domestic and International Carrier, to Citizens Communications Company*, WC Docket No. 06-184, File No. ITC-T/C-2006-0929-00450 (filed Sept. 29, 2006) ("Application"). The Applicants have already received authority from the Commission's Wireless Bureau for the transfer of control of Commonwealth's wireless licenses to Citizens. *See Wireless Telecommunications Bureau, Action, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports*, Public Notice, Rep. No. 2707 (Nov. 1, 2006); *Wireless Telecommunications Bureau, Action, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports*, Public Notice, Rep. No. 2683 (Oct. 11, 2006).

[3] 47 U.S.C. § 214.

[4] 47 C.F.R. § 63.04.

[5] On October 16, 2006, the Applicants supplemented their application. *See* Letter from Jeffrey R. Strenkowski, Bingham McCutchen LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-184 (filed October 16, 2006).

less than a ten percent (10%) share of the interstate, interexchange market; and (2) to the extent Applicants' affiliates are incumbent local exchange carriers in other markets, these affiliates have in combination fewer than two (2) percent of the subscriber lines installed in the aggregate Nationwide.[6]

On November 13, 2006, RCN filed a Petition to Deny; a filing substantially similar to a petition to deny filed with the Pennsylvania Public Utility Commission ("PA PUC") protesting the proposed merger.

III. ARGUMENT

A. RCN's Petition Should be Dismissed as an Abuse of the Commission's Transfer Review Process in Order to Gain Advantage in a Carrier Dispute Properly Before Another Forum

RCN's Petition in this proceeding is nothing more than a transparent attempt to bootstrap a dispute unrelated to the proposed transaction and properly under consideration before another highly competent forum--here, the PA PUC--into the FCC's process as a means to gain commercial advantages in the PA PUC proceeding, which was begun prior, and is wholly unrelated, to the transaction. RCN's real issue, of course, is that Commonwealth, the company proposed to be acquired by Citizens, has raised concerns about RCN's fitness to serve before the PA PUC.[7] Whatever this Commission may think about RCN's qualifications in Pennsylvania, it is not an issue properly the subject of the FCC's transfer review process.

RCN gamely attempts to manufacture a cognizable "public interest" argument under the Communications Act with a volley of empty allegations of anti-competitive behavior and specu-

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[6] *See* Application, at 2.

[7] *See Protest of Commonwealth Telephone Company to the Application of RCN Telecom Services Inc. for Approval to Amend its Certificate of Public Convenience to offer, render, furnish, or supply telecommunications services to the public as a Competitive Local Exchange Carrier in the service territory of Commonwealth Telephone Company,* Docket No. A-310554F0002 (PA PUC June 12, 2006).

lative competitive harm supposedly arising from the proposed transaction. The Petition boldly puts forth several conclusory, unsupported statements to the effect that Commonwealth has engaged in anti-competitive conduct in Pennsylvania, that Citizens has announced that it will prevent competition in Pennsylvania, and that the proposed transaction will "exacerbate" such anti-competitive conduct as its justification for this Commission to intervene and halt the transaction or place onerous (and unprecedented) conditions on the transaction. However, this sound and fury signify nothing--the facts remain that the Petition fails to raise any credible argument or evidence that the proposed transaction is adverse or in any way a threat to the public interest.

In its quest to throw sand in the gears of a transaction wholly unrelated to its dispute with one of the applicants, RCN contorts the Commission's public interest standard in unprecedented and disturbing ways. The Commission has been careful in the past not to permit parties to subvert the Commission's transfer process into a private "forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act."[8] In rejecting attempts to import commercial and other disputes into the FCC's transfer proceedings, this Commission has reminded parties:

> It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that flow from the proposed transaction - i.e., harms and benefits that are "merger-specific." The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.[9]

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[8] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd. 6547, 6550 (2001) ("*AOL-Time Warner Order*").

[9] *AOL-Time Warner Order*, at 6550.

In this case, the Commission should not permit RCN to contort the Commission's public interest review standard to serve its parochial commercial aims. In the Citizens merger with Global Crossing, the Commission was squarely confronted with a petitioner, Choice One, seeking to use that proceeding to resolve a carrier dispute pending before a state utility commission. Choice One similarly tried to gain advantage over the transferor in that proceeding claiming in a petition filed in the FCC transfer process that it had encountered substantial difficulty and delay in obtaining collocation with adequate interconnection facilities at most central office facilities.[10] The Commission dismissed Choice One's objections and rightly determined that "a Commission merger proceeding is not the correct forum to air and resolve inter-carrier disputes, *especially ones that are already the subject of a proceeding at a state commission.*"[11]

Similarly, in the merger proceeding concerning SBC and Southern New England Telecommunications, Inc., the Commission declined to address Omnipoint's objections based on its dispute with SBC in which it alleged SBC was refusing to provide billing and collection services, and making unreasonable demands concerning collocation arrangements. Once again, the Commission stated that such issues were not merger-specific matters appropriate for considera-

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[10] *See Joint Applications of Global Crossing Ltd., and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, 16 FCC Rcd. 8507 at 8511-12 (2001) ("*Citizens-Global Crossing Order*") (dismissing the petition to deny of a competitive carrier seeking to enter issues surrounding a carrier dispute into a merger proceeding).

[11] *Citizens-Global Crossing Order*, at 8512, n. 27 (emphasis supplied) (noting that the disputes raised by Choice One were already being addressed in a state proceeding). Without opining as to the merits of Choice One's potential complaint or whether it is appropriate for the FCC to consider this issue in any FCC proceeding while the state proceeding was pending, the Commission stated clearly "we conclude that these disputes should not be addressed through this review process, but rather should be handled through the appropriate complaint or enforcement processes. If Choice One wishes to pursue the general section 251 allegations brought forth in its comments, they should be addressed in an enforcement or complaint proceeding pursuant to section 208 of the Act." *Citizens-Global Crossing Order*, at 8512.

tion in a merger proceeding.[12] In declining to address Omnipoint's inter-carrier disputes, the Commission emphasized that those disputes were pending in a separate proceeding, and the public interest would be served by addressing those disputes separately from the merger proceeding.[13]

The Applicants urge the Commission to follow its sensible precedent in its transaction proceedings and to dismiss RCN's Petition. Carrier disputes, such as those brought forth by RCN's Petition, are not merger-related issues and should not be entertained by the Commission in this transfer proceeding.[14] If RCN believes Commonwealth has violated the Act, the appropriate remedy would be to file a complaint, rather than trying to leverage and delay the proposed merger to seek concessions from the Applicants to which it is otherwise not entitled.[15] RCN has filed no such complaint to date simply because it has no grounds to do so. As such, RCN should not be allowed to subvert the administrative review process concerning the Application by attempting to bring such carrier-specific disputes forward in this proceeding. Delay itself is a weapon that RCN has already used in this proceeding. The Petition raises no justification for delay or denial of a grant of the Application, and RCN has no basis to decide what timeframes are appropriate for Commission review in this case as it is not a party to the merger nor an agent for the FCC in its duty to review the proposed merger.

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[12] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor to SBC Communications, Inc., Transferee*, 13 FCC Rcd. 21292 at 21306 (1998) ("*SBC-SNET Order*") (emphasis supplied).

[13] *SBC-SNET Order*, at 21306.

[14] *See AOL-Time Warner Order*, at 6550.

[15] The conditions presented by RCN speak clearly as to the goals that the company seeks to achieve through its delay of the Applicant's merger. The first condition is nothing more than a thinly veiled attempt to ensure that Commonwealth lifts its protest of RCN's CLEC application before the PA PUC.

B. RCN's Petition to Deny Fails to Establish a *Prima Facie* Case That the Proposed Transfer of Control Will Not Serve the Public Interest

Section 214 of the Act requires the Commission to determine whether the proposed transfer of control of authorizations and licenses is in the public interest.[16] As the Commission has recognized, opponents of proposed transactions have a high burden of proof to justify Commission intervention or rejection of a business transaction. In reviewing a proposed transfer transaction, the Commission must "*weigh the potential public interest harms against the potential public interest benefits* and to ensure that, *on balance, the merger serves the public interest* which, at a minimum, requires that it does not interfere with the objectives of the Communications Act."[17] The Commission looks to four overriding questions in assessing the public interest aspects of a proposed transaction: (1) whether the transaction would result in a violation of the Communications Act; (2) whether the transaction would result in a violation of Commission Rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act, or would interfere with the objectives of that and other statutes; and (4) whether the merger promises to yield affirmative public interest benefits.[18] In support of the Commission's review, Sections 1.939, 63.20 and 63.52 of the Commission's Rules require that petitions to deny:

> contain *specific allegations of fact* sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity. Such allegations of fact shall, except for those of which official notice may be

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[16] 47 U.S.C. § 214.

[17] *SBC-SNET Order* at 21298-99 (emphasis supplied). The Wireless Bureau has already deemed the wireless license transfers to be in the public interest and has approved the transfer of Commonwealth's licenses to Citizens. This approval is necessarily contingent on the approval of the Wireline and International Bureaus allowing the Applicants to transfer the relevant 214 authorizations. Thus, the requirements under Section 309 and 310 remain relevant to the Commission's analysis of RCN's Petition.

[18] *See Applications of Ameritech Corp., Transferor and SBC Communications Inc., Transferee*, 14 FCC Rcd. 14712 at 14737-38 (1999).

> taken, be supported by affidavit of a person or persons with personal knowledge thereof.[19]

It is well-settled that the Commission must undertake a two-step analysis to judge the sufficiency of petitions to deny.[20] First, the Commission must determine whether the petition and supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest, and that the petitioner demonstrates it is a party in interest.[21] If a petition establishes a *prima facie* case, the Commission then determines whether, on the basis of the application, the pleadings, and other materials and facts which it may officially notice, a *substantial* and *material* question of fact is presented.[22] If there are no substantial and material questions presented, and the Commission is able to determine that grant of the application would be in the public interest, the application is approved.[23] The Petition filed by RCN utterly fails to meet these basic legal standards.

First, RCN's Petition is not supported by adequate facts or affidavits that demonstrate the Petitioners' interest in this transfer proceeding, nor any facts demonstrating that grant of the Application is *prima facie* inconsistent with the public interest, convenience and necessity. RCN's declaration simply states that the declarant "has personal knowledge of the allegations of fact contained in the Petition to Deny."[24] Indeed, the Petition and affidavit contain little more than unsupported allegations and conclusory statements and, as a result, do not establish a *prima*

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[19] 47 C.F.R. §§ 1.939(d), 63.20(d) & 63.52(c) (emphasis supplied).

[20] *See Astroline Communications v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

[21] *See* 47 C.F.R. §§ 1.939(d), 63.20(d) & 63.52(c).

[22] *See Astroline Communications,* at 1561

[23] 47 U.S.C. § 214.

[24] RCN Petition, Declaration of Richard Ramlall (dated Nov. 10, 2006).

facie case required by the Commission's Rules.[25] The Commission has long recognized that petitions to deny that consist only of "ultimate conclusory facts or more general affidavits are not sufficient."[26] In short, the Petitions are utterly devoid of facts upon which the Commission can properly adjudicate RCN's requests for denial (or condition) of the proposed transfer of control of Commonwealth to Citizens. The Commission should, therefore summarily dismiss the Petition filed by RCN.

Further, on balance, the public interest benefits associated with the proposed merger vastly outweigh any vague allegations of harm to RCN that could possibly result from the merger with respect to its ability to enter the Pennsylvania marketplace as a CLEC. As noted in the Application, the Applicants expect significant consumer benefits to result from the transaction. Based on the expanded advanced network capabilities, technical and financial resources, and complementary services, the Applicants expect to deliver a broader array of services, including innovative advanced services, to a broader customer base.[27] As recently as November 16, 2006, the Commission reiterated that the service efficiencies associated with a transfer of control between ILECs with adjacent service territories serves the public interest.[28]

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[25] *See Rocky Mountain Radio Co., LLP, Assignor and AGM-Rocky Mountain Broadcasting I, LLC Assignee for Assignment of Licenses of Seven Colorado Radio Stations and Moss Entertainment Licensee, Inc., Assignor and Salisbury Broadcasting Colorado, LLP, Assignee for Assignment of Licenses of Five Colorado Radio Stations,* 15 FCC Rcd. 7166 (1999); *Applications of KOLA, Inc., Assignor and Ray M. Stanfield, Receiver, Assignee; Ray M. Stanfield, Receiver, Assignor and Inland Empire Broadcasting Corp., Assignee for Assignment of the License of Radio Station KOLA(FM), San Bernardino, California,* 11 FCC Rcd. 14297 (1996) (citing *Beaumont Branch of NAACP v. FCC,* 854 f.2d 501, 507 (D.C. Cir. 1988)); *Application Texas RSA 1 Limited Partnership for Facilities in the Domestic Cellular Telecommunications Service on Frequency Block B in Market No. 652, Texas 1 - Dallam RSA,* 7 FCC Rcd. 6584, 6585 (1992).

[26] *Gencom, Inc. v. FCC,* 832 F.2d 171, n. 11 (D.C. Cir. 1987).

[27] *See* Application, at 7.

[28] *See Wireline Competition Bureau Grants Consent for the Transfer of Control of the Assets of North Dakota Telephone Company to SRT Communications, Inc.*, Public Notice, DA 06-2318, at n.2 (rel. Nov. 16, 2006) (citing the *Citizens-Global Crossing Order*).

The Application also demonstrates that Citizens is a respected, long-time participant in the local exchange marketplace, and has made a commitment to focus on rural and suburban communities, which it views as traditionally under-served. The service territories of Citizens' Frontier subsidiaries and Commonwealth fit together exceptionally well with no overlap. The proposed transaction will make possible numerous customer benefits due to resulting cost-efficiencies, greater technical expertise, and customer service resources. The purchase by Citizens offers Commonwealth a larger parent organization with greater management resources focused on the local exchange business. Citizens shares Commonwealth's history of commitment to excellent customer service and Citizens has also committed to meeting the needs and telecommunications requirements of small and medium-sized communities and ensuring that these communities benefit from the "information superhighway." The instant transaction will permit both Citizens and Commonwealth to sharpen their focus on the areas where they are best able to provide their customers with innovative and value-added services. For example, Citizens has greater experience in delivering high speed internet access (*i.e.*, DSL) than does Commonwealth and, therefore, the Applicants expect that the transaction will help to successfully bring those advanced services to a greater number of legacy Commonwealth customers. These new and enhanced strengths will allow the combined Citizens and Commonwealth to compete more effectively with other facilities-based competitors, including cable telephony and wireless carriers, all to the benefit of the Applicant's customers.[29]

RCN's claims that the Applicants have failed to meet their public interest burden is clearly unfounded. The Application itself lists numerous public benefits expected to flow from the merger, as noted above, including the potential for greater penetration of broadband services

[29] *See* Application, at 8.

and acceptance by consumers. Indeed, several of the public interest benefits associated with the transaction were noted by RCN itself in the Petition: greater financial support of both Citizens and Commonwealth,[30] reduction of costs,[31] enhanced ability to offer consumer discounts and incentives for service commitments,[32] enhanced ability to offer "Triple Play" and other innovated service offerings and packages,[33] the ability to compete more effectively with other service providers (such as wireless services, CLECs, and cable company entrants),[34] and the ability to grow the customer base through new business opportunities.[35] Clearly, the benefits associated with the proposed transaction far outweigh any speculative harms of which RCN complains. RCN's public interest "harms" are simply regurgitations of an existing dispute it has with Commonwealth before the PA PUC and are in no way tied to the result of the Commission's approval of the Application. As such, they should be dismissed as irrelevant to the instant proceeding.

C. RCN's Petition is Meritless, Wholly Unsupported by Facts Evidencing "Anti-Competitive Conduct," and Should Be Summarily Dismissed by the Commission

As noted above, Section 214 of the Communications Act requires that the Commission determine whether approval of the proposed transfers of control will serve the public interest,

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[30] *See* RCN Petition, at 11 (noting that Commonwealth will gain access to the "enormous resources" of Citizens). *See also id.* at 17.

[31] See RCN Petition, at 14.

[32] *See* RCN Petition, at 14.

[33] *See* RCN Petition, at 14.

[34] See RCN Petition, at 17. The Applicants note that they compete with other carriers, such as wireless providers and CLECs, not just cable companies.

[35] See RCN Petition, at 18. RCN states that this would benefit Commonwealth, not RCN. However, the Applicants note that the public interest benefits are weighed across the entire telecommunications industry and consumers, not solely on RCN's attraction of new customers.

convenience and necessity.[36] That analysis includes matters such as transferee qualifications, productivity enhancements, improved incentives for innovation, and the advancement of FCC policy goals.[37] RCN, however, offers only provocative statements and little in the way of credible evidence of any conduct or attribute that is anti-competitive or in any way cognizable in this FCC transfer proceeding. The vague allegations set forth by RCN do not rise to the level of calling into question Citizens' basic qualifications to acquire control of Commonwealth nor any other of the Commission's public interest considerations, and as such, should be dismissed by the Commission as inappropriate for consideration in a merger proceeding.

1. *RCN's Petition Focuses Solely on an Existing Dispute Under Consideration by the Pennsylvania Public Utility Commission, an Issue that is Not Merger-Specific*

In short, RCN's Petition suffers from a fatal flaw: it does not raise any substantive issues material to the Commission's public interest review of the proposed transaction. Instead, RCN attempts to shoehorn its objection into an FCC-issue by referring to the fact that the public interest standard requires the Commission to consider competitive impacts of the proposed transaction.[38] RCN then offers a list of complaints against Commonwealth (the transferor) regarding disputes the two companies have had before the PA PUC. RCN decries Commonwealth's participation in the pending PA PUC proceedings regarding RCN's qualifications as "abusive," "discriminatory" and "anticompetitive,"[39] instead of what they really are: lawful and

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[36] 47 U.S.C. § 214.

[37] *See generally Applications of NYNEX Corporation and Bell Atlantic Corporation*, 12 FCC Rcd. 19985, 20008-14 (1997) ("*Bell Atlantic-NYNEX Order*").

[38] *See* RCN Petition, at 5.

[39] *See* RCN Petition, at 7. While RCN claims that Commonwealth's arguments in the PA PUC proceeding are "contradicted by applicable law," the Applicants respond that it is the job of the ALJ and the PA PUC in that case to adjudicate Commonwealth's position in that matter, not RCN or the FCC.

appropriate regulatory filings before a competent regulatory agency implementing its state-specific policies and rules regarding competitive entry into Commonwealth's service territory.

While the Commission's analysis must assess the public interest, including, where relevant, an evaluation of the competitive impact of a transaction on the relevant telecommunications market, RCN may not simply convert the Commission's transfer proceeding into a parallel litigation of state-specific issues in a pending proceeding merely by attaching a "competition issue" label to its grievances.[40] RCN provides no analysis of the competitive nature of the geographic markets, the service markets, or the impact the merger will have on either simply because it has no analysis that can demonstrate any cognizable harm. As Citizens and Commonwealth do not have any overlapping territories, such an analysis could not demonstrate that the merger would decrease the current level of competition in the Applicants' markets.

As RCN's objections clearly flow from an underlying dispute between RCN and Commonwealth pending before the PA PUC, these issues fall squarely into the category of non-merger related matters that should not be entertained by the Commission in review of a transfer of control application.

Further, the Applicants submit that the complaints raised by RCN are not appropriate for Commission consideration at all. State public utility commissions have established CLEC entry requirements under which all new entrants must abide. Any complaint against Commonwealth with respect to these issues in Pennsylvania is reserved for consideration of the PA PUC in

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[40] *See Bell Atlantic-NYNEX Order,* 12 FCC Rcd. at 20008-14; *Application of Motorola, Inc. and American Mobile Satellite Corporation for Consent to Transfer Control of Ardis Company,* 13 FCC Rcd. 5182, 5189-92 (1998); *PacifiCorp Holdings, Inc. Transferor, and Century Telephone Enterprises, Inc. Transferee, For Consent to Transfer Control of Pacific Telecom, Inc. a Subsidiary of PacifiCorp Holdings, Inc.,* 13 FCC Rcd. 8891 at 8902 (1997) (concerning the Commission's four-step analysis of effects on competition).

administering its rules and policies, and as such, the Commission simply should not preempt the PA PUC's administration of its own rules through this merger proceeding.

2. *Commonwealth's Dispute with RCN in Pennsylvania is a Justified and Appropriate Exercise of Its Rights Under Pennsylvania and Federal Law*

RCN's Petition echoes the same sentiments that it has already raised with the PA PUC, arguing that the "merger will only enhance the ability of Applicants to inhibit competition."[41] RCN, however, presents no evidence in support of its rhetoric other than the fact that Commonwealth filed a protest raising issues of concern in Pennsylvania regarding RCN's CLEC application with the PA PUC, and against other CLECs in similar proceedings. Commonwealth's protest in these cases were, and remain, legitimate exercises of the rights afforded to the company under Pennsylvania and federal law, as administered by the PA PUC in granting such rights to all rural exchange carriers in the state.

Commonwealth's protests in each of these cases have merit, and have been upheld where litigated. One case has already been settled, and two others (RCN and Blue Ridge) are in the process of settlement. This record is a far cry from RCN's claim that Commonwealth has engaged in anti-competitive conduct by "throttling" competition in Pennsylvania. Commonwealth has expressed concerns of RCN's financial fitness given RCN's recent bankruptcy and about the effects of another RCN financial failure or outright cessation of business in the state, a basis of protest that the PA PUC has previously sustained.[42] Among other concerns raised by Commonwealth in the PA PUC proceeding, the company has also has challenged RCN's assertion that it is intending to be a "facilities-based" carrier when the company has yet to demonstrate how its

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[41] RCN Petition, at 4.

[42] *See, e.g., Application of Helicon Telephone Pennsylvania, LLC,* Docket No. A-310519, Order (PA PUC Oct. 15, 1999).

Lehigh Valley and Philadelphia-based facilities can be used to provide service hundreds of miles away in Bradford and Tioga Counties, for example.[43] RCN's arguments and Commonwealth's reply are pending before Administrative Law Judge Louis Cocheres at the PA PUC. Clearly, this PA PUC proceeding is the proper forum for the dispute between Commonwealth and RCN concerning RCN's CLEC application, not this merger proceeding. This Commission need not be concerned that RCN will be left without recourse with respect to the complaints it raises in the Petition, as they have already been raised and pleaded before the PA PUC in RCN's CLEC application proceeding.

3. *RCN's Complaints Focus on Commonwealth, the Transferor, Rather than the Qualifications of Citizens as the Transferee*

In its Petition, RCN opposes the transfer of control of Commonwealth to Citizens based upon wholly unsupported allegations of anti-competitive conduct on the part of Commonwealth, and meritless claims that such conduct may be further exacerbated by the acquisition of Commonwealth by Citizens.[44] RCN fails to demonstrate how the transfer of control of Commonwealth to Citizens will have any bearing whatsoever on how Citizens and its subsidiaries will conduct themselves after the merger takes place.[45] RCN's Petition is focused on the alleged conduct of Commonwealth, *the transferor.* It makes no challenge involving Citizens or its

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[43] RCN asserts in its application pending before the PA PUC that it will be providing service over its own facilities. *See* RCN PA PUC Application, at 10. However, if RCN plans to use other facilities, rather than its own, it is incumbent upon RCN to inform the PA PUC, revise its application as appropriate, and demonstrate the service to be provided is in fact a telecommunications service to be offered by a telecommunications service provider.

[44] See RCN Petition, at 2.

[45] Clearly, RCN's complaints against Commonwealth stem from long-standing disputes between the two companies currently pending before the PA PUC. Assuming that the merger is approved by the Commission, however, RCN could only benefit from having a new organization in control of Commonwealth that could change corporate policy with respect to those disputes. Even assuming that no change in corporate policy is forthcoming, RCN still will not see a net-negative effect from the proposed merger from its point of view towards those Pennsylvania disputes. In sum, the proposed merger can only serve to benefit RCN with respect to its current complaints against Commonwealth in Pennsylvania.

qualifications as the *transferee*, except unsupported allegations that Citizen's national platform could potentially allow Commonwealth to *continue* to engage in "anti-competitive" conduct going forward. In its *ex parte* filings and Petition, RCN concedes that Commonwealth has already filed its protest to RCN's CLEC application, and that the dispute between the companies is *already occurring*.[46] RCN does not allege that the merger will have any effect whatsoever on the Applicants to initiate any particular conduct or course of action.

In evaluating assignment and transfer applications, the Commission does not re-evaluate the qualifications of the assignor or transferor "unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing."[47] As discussed, RCN's allegations against Commonwealth, however, do not justify a hearing; they are wholly unsupported by any evidence whatsoever, generally fall outside the jurisdiction of the Commission, and are already subject to regulation under the PA PUC. Consequently, the Commission should not reevaluate the Applicants' qualifications, because RCN's complaints are essentially irrelevant to the Commission's evaluation of the Application. Therefore, the Commission should find that RCN's Petition does not merit any of the extraordinary relief it requests.

The Applicants take their responsibilities to this Commission and the state regulatory bodies seriously. Allegations of anti-competitive conduct are not taken lightly, and the Applicants are disturbed by RCN's careless, provocative and unsupported accusations regarding such conduct, especially given the lack of any evidentiary support by RCN. RCN has not filed a

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[46] *See generally* Letter from Michael Fleming to Marlene Dortch, WC Docket No. 06-184 (Oct. 30, 2006); Letter from Michael Fleming to Marlene Dortch, WC Docket No. 06-184 (Oct. 31, 2006); Letter from Brian McDermott to Marlene Dortch, WC Docket No. 06-184 (Nov. 1, 2006); Letter from Michael Fleming to Marlene Dortch, WC Docket No. 06-184 (Nov. 8, 2006).

[47] *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18433 at 18526 (2005) ("*Verizon-MCI Order*").

complaint with the Commission concerning any of the conduct it complains of in its Petition, and does not allege any violation of the Act on the part of the Applicants. While RCN claims that Commonwealth's actions are "anticompetitive" and "discriminatory," it makes no claim that such conduct violated the Communications Act, the Commission's rules, or any other applicable law or regulation. They have not because they cannot support such accusations. The Applicants therefore urge the Commission to immediately dismiss RCN's Petition as deficient.

4. *RCN's Suggestion That the Merger Will Provide an Incentive for Commonwealth to Engage in "Anti-Competitive Conduct" is Speculative and Wholly Unsupported*

RCN's claim that after the merger Commonwealth will have a greater incentive to engage in CLEC application protests going forward is completely unsupported, and speculative at best. The fact that Commonwealth engaged in a legitimate exercise of its rights in filing protests before the PA PUC does not constitute an abusive attempt to circumvent the policies and goals of the Act. Likewise, RCN has no basis to claim that the Commonwealth's legitimate use of its right to protest in the past is in any way indicative of anti-competitive conduct in the future. Such complaints are specious, and should be dismissed by the Commission.

RCN's Petition cites to an investor call to show that "preventing competition is an important aspect of the Company's business model."[48] This outrageous claim, however, is based upon, nothing more than a statement by Commonwealth's Chief Executive Officer that to date competition from late entry cable companies has not increased significantly. This statement was made in response to a question from an analyst concerning the nature of Commonwealth's competition. The response provided to the analyst is true, there are not significant sources of competition from cable in Commonwealth's territory. We note, in that regard, that RCN waited ten years to enter

[48] RCN Petition, at 9.

the Commonwealth market, and has not engaged in any significant marketing efforts in those Commonwealth areas where they do offer service.[49] RCN also states that "[b]y bringing this issue up on its earnings call, Commonwealth considers the lack of competition critical for Wall Street Approval." First, the transcript of the call demonstrates that the analyst brought up the question of cable competition, not Commonwealth. Second, there is simply no logic in RCN's leap that Commonwealth's discussion of the facts and circumstances of the current level of competition by cable somehow proves that such an issue weighs heavily on Commonwealth and its desire for "Wall Street approval" inexorably leads to a "greater incentive for anticompetitive conduct."

RCN uses unsupported rhetoric to hide the fact that the Petition has no basis, such as its accusation that Citizens has "stated that it will take actions that will prevent successful competitive entry in the future."[50] The Applicants are aware of no such statement made by Citizens, and RCN has not provided any evidence supporting such a claim. Such conclusory and unsupported "facts" can not be the basis of a denial of the Application. RCN's failure to support such claims is not surprising, as no such statements have been made.

In sum, the premise of RCN's assertions is that the original act of protest by Commonwealth before the PA PUC was an abuse, even though Commonwealth's protests filed to date have been successful when litigated. RCN can point to no order or ruling that Commonwealth's protests were abusive or otherwise unable to support a claim. RCN similarly cannot provide any fact to demonstrate that the acquisition of Commonwealth, serving approximately 313,000 access lines in rural Pennsylvania markets, by a parent company that owns five small rural local exchange companies serving approximately 39,000 access lines in Pennsylvania will wield

[49] See RCN Petition, at 10.

[50] RCN Petition, at 4.

"market power" over RCN or other carriers in Pennsylvania. Further, there is no loss of a competitor in these markets because there is no service territory overlap between the Applicants.

Further, RCN's reference to Citizen's implementation of customer contracts is hardly an example of "anti-competitive conduct" and not a basis for denying the Application. Citizens already uses contracts in many service areas. They allow customers protection from future price increases, and their use is tied to the value of the services offered, not the level of competition in an area. Incentives and customer discounts are traditionally tied to a customer-determined length of service commitment. Because of the discounting arrangements offered in the bundles, or the other value offered to the consumer, Citizens asks that customers commit to the service for a period of time. There is an offer, consideration and acceptance. Customers are not obligated to take such packages, and all of the services offered under contracts are otherwise available to customers on other terms that do not carry a contract. This is a normal business practice across the entire telecommunications industry, including RCN, and further evidences the public benefits that will flow from the merger. RCN's choice to enter the market after ten years was by its own design, and arguments that the most valuable customers may be tied up under service contracts are speculative and unsupported.

RCN further argues that an additional incentive created by Citizens' acquisition is the desire to accelerate the return on investment on the acquired properties. The Applicants question whether RCN is attempting to kill this deal by painting the Applicants as profit-seeking entities. Every commercial company in America seeks to maximize profit, including RCN. Through all of its business transactions, including the acquisition of Commonwealth by Citizens, the Applicants also seek to do so. However, any suggestion that such profit incentives are inconsistent with the public interest or can somehow automatically translate into an incentive to abuse regulatory

process or otherwise drive the Applicants to attempt to impede competitive entry wherever possible, is unprecedented, unfounded and illogical. Yet, this is essentially the basis of RCN's Petition. In sum, RCN has failed to plead any factual basis to establish a harm, let alone a direct harm, that could possibly follow from the merger between Commonwealth and Citizens, nonetheless anything to warrant the denial of the Application altogether. Citizens' first corporate value is to put the customer first,[51] and the public interest benefits that will flow from the merger will do just that.

5. *RCN Mischaracterizes the Level of Competition Facing Commonwealth and Citizens*

RCN's Petition stems from the fact that Commonwealth has questioned RCN's fitness to enter the telecommunications market in Pennsylvania, and that Commonwealth faces little competition in its markets. However, RCN's Protest utterly fails to account for the fact that: 1) Commonwealth serves only rural markets in Pennsylvania, areas that across the country have historically been served by very few carriers; 2) RCN has waited ten years to enter these markets, which necessarily demonstrates that there would be little cable competition currently in place in those markets; and 3) Commonwealth already competes against a variety of wireless and other competitive service providers, including Verizon, AT&T, XO Communications, and Sprint. While rural carriers have not traditionally been subject to the same levels of competition traditionally found in urban and business markets, that is no basis for the denial of the Application.

6. *The Petition to Deny Makes No Claims With Respect to the Provision of International Services by Applicants*

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[51] *See* http://www.czn.net/About/MissionAndValues.aspx.

The Applicants note that although RCN took great pains to demand removal of the Application from the streamlined process with the International Bureau, claiming that RCN's forthcoming arguments would somehow lend insight into both domestic and international issues surrounding the proposed merger, no such arguments were raised in the Petition. In fact, RCN's Petition does not once discuss any international aspect of the merger, international products or services, or any other issue that would warrant the removal of the Application from streamlined processing by the International Bureau.

In substance, RCN has no valid grounds whatsoever to object to the transfer of international authorizations, which demonstrates that RCN's request for removal, as well as its Petition, have simply been "interposed for delay," in violation of 47 CFR § 1.52. The Petition clearly evidences RCN's transparent attempts to improperly delay the grant of authority by the Commission in order to create leverage with the Applicants in the ongoing PA PUC proceeding. As such, the Applicants renew their request that the Commission admonish RCN from abusing the Commission's rules for the sole purpose of delaying the administrative process.[52]

D. RCN's Proposed Merger Conditions are Frivolous

RCN seeks several merger conditions specific to the underlying dispute between Commonwealth and RCN before the PA PUC. These proposed conditions include:

1) Requiring Citizens and Commonwealth to not protest CLEC Applications in Pennsylvania;

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[52] *See Citizens Communications Company and Commonwealth Telephone Enterprises, Inc., and Their Operating Subsidiaries, for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 and 63.18 of the Commission's Rules to Complete a Transfer of Control of Commonwealth Telephone Enterprises, Inc., a Domestic and International Carrier, to Citizens Communications Company*, Response to Request to Remove Application from Streamlined Processing ,WC Docket No. 06-184, File No. ITC-T/C-2006-0929-00450, at 6 (filed Nov. 7, 2006). *See also* Public Notice, *Commission Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd. 3030 (1996) (stating that a pleading may be deemed frivolous if there is no "good ground to support it" or it is "interposed for delay).

2) Limits on customer contracts, including customer discounts and other incentives; and

3) Requiring Citizens and Commonwealth to not assert a rural exemption under existing federal and state law.[53]

Section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require." Unlike the role of antitrust enforcement agencies, the Commission's public interest authority enables it "to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest." [54] However, despite such broad authority, "the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[55] No conditions are warranted in this case.

RCN's proposed conditions are frivolous, not related to the proposed merger, and bad public policy. First, RCN urges that both Citizens and Commonwealth be prohibited from participating in CLEC application proceedings in Pennsylvania. This outrageous demand would have the FCC impose an unprecedented regulatory "gag-order," dangerously meddle in PA PUC proceedings, and excessively micromanage the competitive market all in an exercise of questionable legal authority. Such demand is so far from any issue relevant to the FCC's transfer proceeding it offers a true glimpse of RCN's transparent and inappropriate tactics. Forcing Commonwealth and Citizens to forgo their statutory right to protest the entry of a CLEC into

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[53] *See* RCN Petition, at 20-22.

[54] *Verizon-MCI Order at 18445. See also SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18290 at 18303 (2005) ("*SBC-AT&T Order*").

[55] *Verizon-MCI Order* at 18445.

their service territories, especially in cases where that entrant has recently filed for bankruptcy protection, would be a detriment to the public interest, because such protests allow Citizens and Commonwealth and the state public utility commissions, to review the qualifications of an entrant to offer service in their service territories. As stated by RCN, "[t]he Pennsylvania PUC's standards are sufficient to ensure that only those carriers that meet the standards for technical, financial, and legal fitness are qualified to provide local exchange service in rural exchanges."[56] Those standards include allowing other carriers, such as Commonwealth and Citizens, to oppose such applications, and to have the PA PUC determine whether those oppositions are warranted. Removing a safety net from the system could only result in more under-qualified carriers entering the market, not less. Such a result is clearly not a public interest benefit, but only an RCN-specific concession.

Similarly, the Commission should summarily dismiss RCN's demand for limits on customer contracts. Such contracts are hardly an example of "anti-competitive conduct," have no relevance to the proposed merger and if limited would harm consumers. As stated above, contracts allow customers protection from future price increases, and their use is tied to the value of the services offered, not the level of competition. These contracts are two-sided agreements. By imposing a condition on the use of such contracts, RCN seeks to remove the incentives and customer discounts that such contracts afford consumers. Without a service commitment, the Applicants will be unable to afford the benefits associated with these arrangements, which would again be a detriment to consumers and the public interest as a whole. Customer contracts are a normal business practice across the entire telecommunications industry (including RCN), and such business practices are regulated by the PA PUC and other state agencies. Again, this

[56] RCN Petition, at 21.

proposed condition is aimed only at gaining a concession from Commonwealth, not aimed at ensuring that the public interest is benefited from the merger as a whole.

Finally, the rural exemption that RCN complains of remains a statutory right of Citizens and Commonwealth, and there is no basis whatsoever for a merger condition aimed at removing this right. Even if the Commission were legally able to do so, there is simply no nexus between Commonwealth's status as a rural carrier and future interconnection issues that may someday arise, and the approval of the pending Application by the Commission. Again, carrier interconnection has been entrusted to the state commissions under Section 251 of the Act. RCN has made no showing whatsoever that Commonwealth or Citizens have abused (or will abuse) their status as rural carriers, has not alleged any violation of state or federal law, and cannot demonstrate that the removal of the rural exemption would in any way benefit the public interest. Further, Citizens is a holding company which operates dozens of local rural carriers under the Frontier brand. RCN's claim that these local companies do not deserve a rural exemption simply because together they have sizable annual revenues is specious. The rural exemption is administered on a company-by-company basis, not at a holding company level, and the FCC should not preempt the state's administration of that statutory provision. The loss of the rural exemption would only serve to lessen the Applicants and their subsidiaries abilities to compete on a market-by-market basis and provide quality telecommunications services to rural and suburban areas. This demand is simply another attempt by RCN to pave an easier path for its entry into the Pennsylvania markets of Commonwealth, not aimed at benefiting the public at large.

Again, RCN's proposed merger conditions are a transparent attempt to gain concessions from the Applicants, all of which involve the provision of local services under conditions established by state public utility commissions. These proposed conditions are so frivolous as to

border on recklessness. None of the conditions have any relevance whatsoever to the merger, and as such, should be denied by the Commission.

IV. CONCLUSION

RCN's seeks to use the FCC transfer proceeding to gain leverage over the Applicants in connection with a dispute between RCN and Commonwealth currently before the PA PUC. RCN thus seeks to embroil the Commission in a pending state proceeding wholly unrelated to the Commission's interests in this merger proceeding. The Petition provides nothing more than empty allegations of anti-competitive behavior and speculative competitive harm, none of which is supported by a scintilla of fact. RCN's proposed merger conditions are completely frivolous, not related to the proposed merger, and bad public policy. The Commission should follow its long-standing precedent and reject RCN's petition because it is a grievance unrelated to the merger proceedings and raises no relevant public interest issues. As such, the Applicants request that the Commission dismiss RCN's Petition and grant the Applicants request for transfer of control authority.

Respectfully submitted,

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Dated: November 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Joint Consolidated Opposition of Citizens Communications Company and Commonwealth Telephone Enterprises, Inc. to Petition to Deny was sent via first class mail, postage prepaid on November 17, 2006, to:

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