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November 28, 2006

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NOV 28 2006

Federal Communications Commission  
Office of the Secretary

**VIA COURIER**

Ms. 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 and Commonwealth Telephone Enterprises, Inc., For Section 214 Authority to Transfer Control of Domestic and International Authorization, File No. ITC-T/C-20060929-00450, WC Dkt. No. 06-184

Dear Ms. Dortch:

Attached for filing on behalf of RCN Corporation and RCN Telecom Services, Inc. ("RCN") is a Response to Opposition.

An original and nine (9) copies of this letter are enclosed. Please date-stamp and return the enclosed extra copy of the filing in the attached envelope. Questions regarding this filing may be addressed to the undersigned.

Respectfully submitted,

Michael W. Fleming  
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Counsel for RCN Corporation

*A Professional Corporation*

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

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NOV 28 2006

Federal Communications Commission  
Office of the Secretary

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In re: Application of )  
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Citizens Communications Company )  
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and )  
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Commonwealth Telephone Enterprises, Inc. )  
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For Section 214 Authority to Transfer )  
Control of Domestic and International )  
Authorization )  
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File No. ITC-T/C-20060929-00450  
WC Dkt. No. 06-184

**RESPONSE TO OPPOSITION**

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Dated: November 28, 2006

Counsel for RCN Corporation and  
RCN Telecom Services, Inc.

## SUMMARY

The Applicants fail to refute the main allegations asserted by RCN that the merger is not in the public interest: (1) Commonwealth faces virtually no wireline competition now, due in large part to anticompetitive conduct; (2) Citizens values this lack of competition highly, and will therefore seek to maximize its value; and (3) Citizens will exacerbate the anticompetitive conduct post-merger by having greater resources to use to stymie competition and by implementing additional anticompetitive practices. These allegations are not “empty.” They are taken directly from statements made by executives of Commonwealth and Citizens and not refuted by Applicants in their filing.

It makes no difference, for purposes of the Commission’s public interest review, that there is an ongoing proceeding at the Pennsylvania PUC. This is not simply a commercial dispute being adjudicated by the Pennsylvania regulator. The proceeding at the Pennsylvania PUC is instead just one instance of Commonwealth’s current anticompetitive conduct. RCN filed a routine application for additional regulatory authority. Commonwealth then intervened and turned a routine proceeding into a contested case. The Commission cannot defer to the ongoing Pennsylvania PUC proceeding without also condoning Commonwealth’s conduct that has kept a routine application case from being resolved in the first place.

RCN has identified proposed merger conditions that are directly related to the harms to the public interest anticipated by RCN. First, RCN asked for a condition that Commonwealth cease the practice of opposing CLEC applications for authority to operate in Commonwealth territory. This proposed condition is merger-specific because this is one of the vehicles Commonwealth commonly uses to impede competitive entry. Citizens will have the means and incentive to continue the practice following the merger because Citizens will want to maintain

Commonwealth's ILEC revenues from captive ratepayers for as long as possible. Second, RCN asked for a condition that the merger be conditioned on a "fresh look" for any long-term contracts with customers that Citizens or Commonwealth may enter into before a competitive carrier is able to provide services in Commonwealth's territory. This proposed condition is merger-specific because Citizens has announced plans to offer free services to customers throughout its territory in exchange for executing a long-term commitment to take a triple-play bundle of products from Citizens. It is merger-specific also because Citizens has announced its intention to offer long-term contracts for all of its customers in Commonwealth territory, a practice that Commonwealth has not adopted. Third, RCN asked that approval of the merger be conditioned on Citizens and Commonwealth agreeing not to assert a rural exemption under state or federal law against a competitive carrier making a bona fide request for interconnection under section 251(c) in the Commonwealth territory. This proposed condition is merger-specific because application of the rural carrier exemption at this point would only have the effect of impeding competitive entry to those carriers, for example, that need access to unbundled local loops or collocation in order to be able to compete with Commonwealth following its acquisition by Citizens.

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

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| In re: Application of                    | ) |                                 |
|  | ) |                                 |
| Citizens Communications Company          | ) |                                 |
|  | ) |                                 |
| and                                      | ) | File No. ITC-T/C-20060929-00450 |
|  | ) | WC Dkt. No. 06-184              |
| Commonwealth Telephone Enterprises, Inc. | ) |                                 |
|  | ) |                                 |
| For Section 214 Authority to Transfer    | ) |                                 |
| Control of Domestic and International    | ) |                                 |
| Authorization                            | ) |                                 |

**RESPONSE TO OPPOSITION**

RCN Corporation and RCN Telecom Services, Inc. (together "RCN"), pursuant to 47 C.F.R. § 1.1206, hereby respond to the Joint Consolidated Opposition of Citizens Communications Company and Commonwealth Telephone Enterprises, Inc. to Petition to Deny, filed on November 17, 2006 ("Opposition"), in reply to the Petition to Deny of RCN filed on November 13, 2006 ("Petition to Deny"). RCN petitioned the Commission to deny the above-captioned Application ("Application") requesting approval for the transfer of control of domestic and international licenses from Commonwealth Telephone Enterprises, Inc., and its subsidiaries including Commonwealth Telephone Company ("Commonwealth"), to Citizens Communications Company ("Citizens").<sup>1</sup> Because Citizens and Commonwealth (together, "Applicants") have failed to refute RCN's arguments that the merger would not be in the public

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<sup>1</sup> *Domestic Section 214 Application Filed For the Transfer of Control of Commonwealth Telephone Enterprises, Inc. to Citizens Communications Company*, WC Docket No. 06-184, DA 06-2231 (Oct. 27, 2006); *Streamlined International Applications Accepted for Filing*, Report No. TEL-01082S (Oct. 27, 2006).

interest, and because Applicants have failed to demonstrate that the merger would serve the public interest, RCN respectfully restates that the Application should be denied.<sup>2</sup>

I. APPLICANTS FAIL TO REFUTE RCN'S CENTRAL ARGUMENT THAT THE MERGER IS NOT IN THE PUBLIC INTEREST

The Applicants fail to refute the main allegations asserted by RCN that the merger is not in the public interest: (1) Commonwealth faces virtually no wireline competition now, due in large part to anticompetitive conduct; (2) Citizens values this lack of competition highly, and will therefore seek to maximize its value; and (3) Citizens will exacerbate the anticompetitive

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<sup>2</sup> The Applicants yet again accuse RCN of opposing the merger “for the sole purpose of delaying the administrative process.” Opposition at 21; *see also* Response to Request to Remove Application from Streamlined Processing at 6-7 (Applicants stating that RCN’s opposition is intended “solely for delay”). As an initial matter, the Applicants’ argument was rejected the first time it was made when the International Bureau removed the application to transfer the international license from streamlined processing as a result of RCN’s request. RCN is not seeking to delay this proceeding; it is urging the Commission to deny approval of the Application because the merger is not in the public interest.

Further, RCN states again that both Commonwealth and Citizens do not expect to consummate the merger (assuming it is approved by the Commission) until “mid 2007.” Petition to Deny at n.20; Reply to Response to Request to Remove Application from Streamlined Processing at 2. The issues raised by RCN can be thoroughly reviewed by the Commission within the eight-month window that the Applicants already expect. Further, the Applicants’ merger agreement anticipates extending the closing date to September 17, 2007, as circumstances warrant. Agreement and Plan of Merger, dated as of September 17, 2006, Among Commonwealth Telephone Enterprises, Inc., Citizens Communications Company, and CF Merger Corp., at 49. If anything, the Applicants’ expectation of a substantial review period gives this Commission additional flexibility to consider any and all issues related to the merger that the Commission might consider relevant and appropriate.

In fact, the Applicants’ entire argument that RCN is trying to delay Commission review assumes that the Applicants are entitled to some shortened review absent RCN’s participation in this case. Both the domestic and international license applications were denied streamlined processing already so the International Bureau and the Wireline Competition Bureau have no fixed deadlines to complete their review responsibilities. The informal timeline for review of transfer of control applications—particularly for the transfer of control of ILEC assets—is 180 days. *See* <http://www.fcc.gov/transaction/timeline.html>. This case warrants more than routine consideration because it will combine the seventh largest ILEC with the eleventh largest ILEC in the country. It was not long ago that the seventh largest ILEC in the country was the smallest Regional Bell Operating Company, Pacific Telesis Group, followed in size by companies like GTE and Sprint. The Commission would scarcely consider an expedited review process for transfers of control of any ILEC of that size. There is no reason not to allow for a thorough review of this case as well.

conduct post-merger by having greater resources to use to stymie competition and by implementing additional anticompetitive practices. These allegations are not “empty.”<sup>3</sup> They are taken directly from statements made by executives of Commonwealth and Citizens and not refuted by Applicants in their filing.

- (1) Commonwealth faces virtually no wireline competition now, due in large part to anticompetitive conduct.

RCN demonstrated that Commonwealth has “not seen any uptick in competition from the cable industry in [Commonwealth’s] service territory.”<sup>4</sup> As a result of this lack of competition, Commonwealth’s financial results have been consistent.<sup>5</sup> The amount of competition from cable companies providing a VOIP product is “very small.”<sup>6</sup> There is only one cable provider that offers voice services today, and it does very little marketing.<sup>7</sup> It is in only a small part of Commonwealth’s serving territory.<sup>8</sup> None of the other cable providers currently provide a voice offering.<sup>9</sup> The one cable provider that competes with Commonwealth is Service Electric.<sup>10</sup>

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<sup>3</sup> Opposition at 3. Applicants also misquote RCN as saying Commonwealth’s practices are “abusive,” Opposition at 12, Commonwealth is “‘throttling’ competition,” Opposition at 14, and that Commonwealth is engaged in an “abusive attempt to circumvent the policies and goals of the Act,” Opposition at ii (Summary). While RCN does not necessarily dispute the accuracy of those characterizations, those words do not appear in RCN’s Petition to Deny. RCN respectfully submits that the Commission should ignore Applicants’ attempts to distract the Commission from the salient issues through the false attribution of fake quotes to RCN.

<sup>4</sup> Petition to Deny at 9.

<sup>5</sup> Petition to Deny at 9-10.

<sup>6</sup> Petition to Deny at 10.

<sup>7</sup> Petition to Deny at 10.

<sup>8</sup> Petition to Deny at 10.

<sup>9</sup> Petition to Deny at 10.

Commonwealth objected to Service Electric's competitive entry until Service Electric agreed with Commonwealth to limit the scope of its competitive entry.<sup>11</sup> Given that these statements came directly from Commonwealth's own executives and from public documents available from the Pennsylvania Public Utilities Commission ("Pennsylvania PUC"), it is difficult indeed to see how Applicants can argue that the RCN Petition to Deny is "utterly devoid of facts" without providing substantial documentation to refute Applicants' own public statements.<sup>12</sup>

Commonwealth claims to face competition from Verizon, AT&T, XO Communications, and Sprint.<sup>13</sup> This statement may be true if you consider the wireless affiliates of Verizon, AT&T, and Sprint, but it does not appear to be true for wireline competition.<sup>14</sup> RCN has been unable to identify any CLEC other than Service Electric that has CLEC authority to serve Commonwealth territory, an interconnection agreement with Commonwealth, and numbers for exchanges within Commonwealth territory. Indeed, even pressed with arguments that it faces no wireline competition, to date Applicants have failed to identify even one meaningful wireline competitor. One would have expected Commonwealth's executives to have mentioned any

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<sup>10</sup> Petition to Deny at 10.

<sup>11</sup> Petition to Deny at 10.

<sup>12</sup> Opposition at 9.

<sup>13</sup> Opposition at 20.

<sup>14</sup> Note that Commonwealth claims that it faces competition from Sprint, but also touts that it has been successful at denying other CLECs the ability to enter Commonwealth territory to provide service. Opposition at 14. One of those CLECs denied competitive entry so far as a result of Commonwealth's opposition is Sprint. See Petition to Intervene of Sprint Communications Company, L.P., *Joint Application of Commonwealth Telephone Company, CTSI, LLC, CTE Telecom, LLC d/b/a Commonwealth Long Distance Company, For All Approvals Under the Public Utility Code for the Acquisition by Citizens Communications Company of All of the Stock of Joint Applicant's Corporate Parent, Commonwealth Telephone Enterprises, Inc.*, Pennsylvania PUC Dkt. No. A-310800F0010, A-311095F0005, A-311225F0003 (Oct. 30, 2006) ("Sprint Petition to Intervene").

wireline competitors other than Service Electric when Wall Street analysts asked about the state of competition during Commonwealth's quarterly earnings call in early November.<sup>15</sup>

RCN respectfully submits that Commonwealth has not responded to RCN's argument because Commonwealth does not, in fact, face any meaningful wireline competition. Nor does that lack of competition stem from any lack of interest from potential competitors.<sup>16</sup> Sprint, Blue Ridge Cable, Service Electric Communications, and RCN have all attempted recently to enter Commonwealth's markets to provide voice products in competition with Commonwealth.<sup>17</sup> Commonwealth opposed the competitive entry of all four CLECs. It has been successful so far in keeping Sprint out of its markets, primarily because Sprint was seeking to use a business

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<sup>15</sup> Final Transcript, CTCO-Q3 2006 Commonwealth Telephone Enterprises, Inc. Earnings Conference Call, Nov. 7, 2006 (attached as Exhibit C to Petition to Deny).

<sup>16</sup> Commonwealth repeats the accusation several times in its Opposition that "RCN has waited ten years" to enter Commonwealth's markets. Opposition at 17, 19, 20. This statement is patently false. All competition with rural LECs in Pennsylvania was effectively prohibited until January 2003, at which time the Pennsylvania PUC lifted its "blanket suspension" of rural LEC interconnection obligations granted pursuant to Section 251(f)(2) of the Telecom Act. *Petition of Rural Incumbent Local Exchange Carriers for a 36-month Suspension of Interconnection Requirements Limited to Only Those Requirements Set Forth in §251(b)(1) and (c) of the Telecommunications Act of 1996; Petition to Join and for Relief Under §251(f)(2) of the Telecommunications Act of 1996*, Order, Pennsylvania PUC Docket No. P-00971177 (Jan. 15, 2003).

<sup>17</sup> See Sprint Petition to Intervene; Protest and Petition to Intervene of Blue Ridge Digital Phone Company, *Joint Application of Commonwealth Telephone Company, CTSI, LLC, CTE Telecom, LLC d/b/a Commonwealth Long Distance Company, For All Approvals Under the Public Utility Code for the Acquisition by Citizens Communications Company of All of the Stock of Joint Applicant's Corporate Parent, Commonwealth Telephone Enterprises, Inc.*, Pennsylvania PUC Dkt. Nos. A-310800F0010, A-311095F0005, A-311225F0003 (Oct. 30, 2006); *Application of Service Electric Telephone Company, LLC for expanded authority to offer, render, furnish or supply telecommunications services as a Competitive Local Exchange Carrier to the public in the Commonwealth of Pennsylvania in the service territories of Commonwealth Telephone Company et al.*, Pennsylvania PUC Dkt. Nos. A-310651F0002AMA et al, Order (Aug. 21, 2006); *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*, Pennsylvania PUC Dkt No. A-310554F0002 (filed May 1, 2006).

model that did not involve deploying its own facilities to end users.<sup>18</sup> Commonwealth permitted Service Electric to enter its market once Service Electric agreed to limit its competitive entry. And Commonwealth is currently actively opposing the competitive entry of RCN and Blue Ridge Cable, even though both companies already have cable facilities in place within the Commonwealth markets, already provide cable service to end users within the Commonwealth markets, and are ready to add voice telephone service to their product offerings as soon as they receive the necessary regulatory approvals (and enter into interconnection agreements with Commonwealth, through which Commonwealth can be expected to identify additional ways to impede competitive entry by CLECs and delay competitive choices for consumers). In RCN's case, Commonwealth's opposition to RCN's competitive entry on grounds of lack of "fitness" is clearly anticompetitive because RCN is already providing telephone service immediately across the Commonwealth territory boundary in Verizon territory. RCN obviously has the fitness to provide telephone service within Pennsylvania since RCN is already doing it, and there is no reason to conceive that service within Commonwealth territory requires some additional showing of fitness.<sup>19</sup>

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<sup>18</sup> *Application of Sprint Communications Company, L.P. For Approval to Offer, Render, Furnish, or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Pennsylvania PUC Dkt No. A-310183F0002AMA, Interim Decision (May 22, 2006). *See also* "Sprint Pushes Wholesale VoIP Offering, Rural Incumbents Balk," *Communications Daily*, Nov. 27, 2006, at 1-3.

<sup>19</sup> Likewise, Applicants' statement that RCN "has yet to demonstrate how its Lehigh Valley and Philadelphia-based facilities can be used to provide service hundreds of miles away in Bedford and Tioga Counties" is absurd. Opposition at 14-15. RCN is not aware of any federal or state law, regulation or other authority that imposes having last-mile facilities in place in each and every RLEC or ILEC exchange as a prerequisite to obtaining territory-wide CLEC certification. Under Commonwealth's fanciful standard, a CLEC would be required to provide the Pennsylvania PUC with a business plan to deploy fiber in Erie in order to compete with Verizon in Philadelphia, 400 miles away.

Commonwealth faces almost no wireline competition, due in large part to the anticompetitive conduct of Commonwealth. Compare Commonwealth's experience with wireless carriers, which RCN recognizes are active within Commonwealth's markets. Why have they been able to enter Commonwealth's markets while wireline competitors have not? The primary difference is that Commonwealth lacks the ability to block the regulatory authority that CMRS carriers need to provide service within Commonwealth territory. It is clear that where Commonwealth can stonewall the regulatory approval process to impede competition, it will.

- (2) Citizens values this lack of competition highly, and will therefore seek to maximize its value

RCN also demonstrated in its Petition to Deny that Citizens values the lack of competition highly, and will have even greater incentive and capability to restrict competitive entry following the merger. RCN showed that the CEO of Citizens stated to the investment community on the day the merger was announced that Commonwealth was an attractive target "first and foremost" because of its rural carrier profile.<sup>20</sup> Part of that rural carrier profile was the "very fragmented cable competition" that Commonwealth faces.<sup>21</sup> Since neither Commonwealth nor Citizens provides cable television service, "very fragmented cable competition" could refer only to the potential competition to the revenues Commonwealth receives as an incumbent telephone service provider.

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<sup>20</sup> Petition to Deny at 12.

<sup>21</sup> Petition to Deny at 12.

Indeed, the PowerPoint slides that accompanied the presentation highlight the “fragmented cable competition” as a key asset of Commonwealth on two separate pages – essentially concluding that continued lack of competition is essential to the merger.<sup>22</sup> Remarkably, despite the substantial public interest implications for customers in Commonwealth service territory, Applicants do not even attempt to explain this statement by Citizens in their Opposition. Moreover, in response to the Applicants’ claim that RCN’s Petition to Deny is focused on Commonwealth’s conduct without considering Citizens’ qualifications as transferor, RCN’s focus on Citizens’ own views of the merger and how it values Commonwealth proves otherwise.<sup>23</sup>

Further, as RCN explained, Citizens will be acquiring the revenue stream of a rural ILEC with “fragmented” competition and will have every incentive to protect that revenue stream from erosion from competitors, particularly wireline service providers that offer a clear substitute to the ILEC service offerings.<sup>24</sup> Protection of the ILEC revenue stream will be key if Citizens expects to recover the costs of the acquisition quickly, as it does.<sup>25</sup> The Applicants suggest that RCN is criticizing the Applicants merely for being profit-seeking entities.<sup>26</sup> This is simply not true. Maximizing the return on competitive investment is a laudable goal; impeding competition in order to maximize and retain monopoly profits is not. Earning a profit by providing a better

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<sup>22</sup> See Citizens Communications Acquisition of Commonwealth Telephone Enterprises, September 2006, at 4 and 5. Attached as Exhibit A.

<sup>23</sup> Opposition at 15-16.

<sup>24</sup> Petition to Deny at 12-13.

<sup>25</sup> Petition to Deny at 13 n.29.

<sup>26</sup> Opposition at 19.

product, better service, lower costs, or new products is to be encouraged, but excluding competitors and then recouping the transaction costs of a merger from captive ratepayers should not be considered acceptable by this Commission.

- (3) Citizens will exacerbate the anticompetitive conduct post-merger by having greater resources to use to stymie competition and by implementing additional anticompetitive practices.

RCN demonstrated that putting the financial and regulatory muscle of a company like Citizens, with \$2.1 billion in annual revenues, behind a single-state entity like Commonwealth suddenly gives Commonwealth the clout and leverage of a national carrier.<sup>27</sup> The combined entity will have significantly more resources to draw upon to use to stymie competition, such as opposing simple applications by competitors for the regulatory authority to provide service in Commonwealth territory.

Another way that RCN has identified that it expects Citizens to protect the ILEC revenue stream and impede competition is through the use of long-term contracts.<sup>28</sup> The Applicants ignore RCN's main argument on this point and instead tout the benefits of long-term contracts.<sup>29</sup> Locking up customers in long-term contracts before there is competitive entry, however, is not a benefit that should be encouraged because the long-term offers are made and accepted without the benefit of comparison to competitive alternatives. Without the presence of effective competition, consumers would be committing to sub-optimal arrangements and future

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<sup>27</sup> Petition to Deny at 11.

<sup>28</sup> Petition to Deny at 14-16.

<sup>29</sup> Opposition at 19.

competitors would be prevented from competing for those customers. What makes the problem worse in this particular situation is that Commonwealth does not use long-term contracts, and Citizens has stated that it will introduce the practice to Commonwealth territory upon completion of the merger.<sup>30</sup> The result will be, at best, diminished competition within Commonwealth's territory, or worse, creating an environment in which competitors will go elsewhere before entering Commonwealth territory. Contrary to the Applicants' assertion that RCN "has not provided any evidence supporting such a claim," RCN has demonstrated that Citizens will take actions that will prevent competitive entry in the future.<sup>31</sup>

Taken together, (1) Commonwealth's current lack of competition, attributed in part to anticompetitive conduct, (2) the high value Citizens places on Commonwealth's lack of competition, and (3) the evidence that Citizens will commit the resources and implement new strategies to impede competition following the merger, establish a prima facie case that the merger would not be in the public interest. The Applicants have provided no evidence to the contrary but instead have attempted merely to put a more favorable gloss on their anticompetitive conduct. The Applicants have failed to address RCN's concerns that the competitive landscape in Commonwealth territory will be bleaker following the merger. As a result, the Commission should conclude that the merger is not in the public interest and decline to grant the transfer of control.

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<sup>30</sup> Petition to Deny at 15.

II. IT MAKES NO DIFFERENCE THAT THE PENNSYLVANIA PUC IS  
CONDUCTING A PROCEEDING IN WHICH RCN AND  
COMMONWEALTH ARE OPPOSED

The gist of the Applicants' Opposition is that RCN is attempting to bring an ongoing commercial dispute with Commonwealth, which is already being considered by the Pennsylvania PUC, into this transfer of control proceeding. The sole intent of that argument is to distract the Commission from considering the implications of the merger on the public interest.

First, it makes no difference, for purposes of the Commission's public interest review, that there is an ongoing proceeding at the Pennsylvania PUC. This is not simply a commercial dispute being adjudicated by the Pennsylvania regulator. The proceeding at the Pennsylvania PUC is instead just one instance of Commonwealth's current anticompetitive conduct. RCN filed a routine application for additional regulatory authority. Commonwealth then intervened and turned a routine proceeding into a contested case. RCN attempted to resolve Commonwealth's ostensible concerns by making abundantly clear that RCN was not seeking to impose obligations on Commonwealth from which Commonwealth is otherwise currently exempt as a rural telephone company. Nevertheless, Commonwealth persisted in its opposition to RCN's application. The Commission cannot defer to the ongoing Pennsylvania PUC proceeding without also condoning Commonwealth's conduct that has kept a routine application case from being resolved in the first place. Delaying resolution of RCN's application for expanded CLEC authority harms consumers in Commonwealth territory by denying them competitive options for telephone service.

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<sup>31</sup> Opposition at 18.

The Applicants refer to two other merger cases in which competitors to the applicants sought to bring ongoing commercial disputes into the Commission's public interest review.<sup>32</sup> These cases are easily distinguishable because RCN's dispute with Commonwealth has not even risen to the level of a commercial dispute yet. RCN is not even allowed to provide telephone service in Commonwealth territory.<sup>33</sup> RCN does not even have an interconnection agreement with Commonwealth. RCN cannot even allege a breach of contract or the failure by Commonwealth to comply with certain interconnection obligations required by the Telecom Act as in the cases cited by the Applicants because RCN has been blocked from taking the first steps to becoming a competitor to Commonwealth. There is no commercial relationship between RCN and Commonwealth right now that could be the basis for a commercial dispute.

Commonwealth also attempts to justify its anticompetitive conduct against RCN by claiming that it has been successful in the past when it opposed CLEC applications for authority.<sup>34</sup> This assertion does not justify Commonwealth's conduct with RCN. As explained above, the circumstances around RCN's application for CLEC authority are quite different from those in the cases Commonwealth successfully opposed. RCN already provides cable service inside Commonwealth territory and already has last-mile facilities to the customers RCN will serve initially. RCN already provides facilities-based telephone service within Pennsylvania,

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<sup>32</sup> Opposition at 5-6.

<sup>33</sup> Commonwealth tries to create the impression that RCN has nothing to complain about because RCN "has not engaged in any significant marketing efforts in those Commonwealth areas where they do offer service." Opposition at 18. Commonwealth is clearly wrong because there are no Commonwealth areas where RCN offers telephone service. RCN has not been able to offer any telephone services in Commonwealth territory solely because of Commonwealth's opposition to RCN's competitive entry.

<sup>34</sup> Opposition at 18.

and provides it in territory immediately adjacent to Commonwealth's territory. Neither of the CLEC applicants in the cases referred to by Commonwealth could make such a claim. Unlike those cases, which arguably sought an expanded definition of what CLEC authority in Pennsylvania entails, RCN's application is a straightforward request to be able to provide all CLEC services currently permitted by state and federal law and within the limits of Commonwealth's rural carrier exemption.

Moreover, the ongoing cases at the Pennsylvania PUC do not require deferral by this Commission because only the FCC is in a position to assess the interstate and international implications of the consolidation of Commonwealth and Citizens. As RCN has demonstrated, the acquisition of Commonwealth by Citizens is likely to impede competition within Commonwealth's markets, which will impede the provision of competitive interstate and international services to consumers in those markets.<sup>35</sup> The FCC's public interest review runs separate from the Pennsylvania PUC's review, and the Commission cannot simply defer to the Pennsylvania PUC on these important issues of anticompetitive conduct and the blocking of competitive entry to Commonwealth's markets.

In addition, Citizens is the seventh largest ILEC in the country with operations in 24 states. Its presence in Pennsylvania is minor in comparison to its operations in other states. Therefore, the Pennsylvania PUC is not in a position to assess the full impact of the merger. The

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<sup>35</sup> Along these lines, the Applicants' assertion that RCN makes no claims with respect to the provision of international services is wrong. Opposition at 20-21. As RCN explained, the standard for review of the Application is the same for both the domestic and international licenses. Reply to Response to Request to Remove Application from Streamlined Processing at 4-5. If the merger is not in the public interest for one type of license, it cannot be in the public interest for the other type. As RCN has demonstrated, the merger is not in the public interest and both applications should be denied.

Commission, on the other hand, has a long-recognized expertise in issues related to the provision of interstate and international services, and can view the transaction from a national perspective.

III. RCN HAS PROPOSED CONDITIONS ON APPROVAL OF THE MERGER  
THAT ARE NECESSARY AND APPROPRIATE

The Applicants also complain that the conditions that RCN has proposed to offset the harms to competition that are expected to result from the merger have no relation to the merger itself.<sup>36</sup> To the contrary, RCN has identified proposed merger conditions that are directly related to the harms to the public interest anticipated by RCN.

First, RCN asked for a condition that Commonwealth cease the practice of opposing CLEC applications for authority to operate in Commonwealth territory.<sup>37</sup> As explained above, this is one of the vehicles Commonwealth commonly uses to impede competitive entry. Citizens will have the means and incentive to continue the practice following the merger because Citizens will want to maintain Commonwealth's ILEC revenues from captive ratepayers for as long as possible. This proposed condition is therefore merger-specific and granting the relief requested will make competitive entry easier for all competitive carriers without compromising the Pennsylvania PUC's authority or ability to ensure that only fit and qualified competitors enter Commonwealth's market.

Second, RCN asked for a condition that the merger be conditioned on a "fresh look" for any long-term contracts with customers that Citizens or Commonwealth may enter into before a

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<sup>36</sup> Opposition at 22.

<sup>37</sup> Petition to Deny at 20-21.

competitive carrier is able to provide services in Commonwealth's territory.<sup>38</sup> This proposed condition is merger-specific because Citizens has announced plans to offer free services to customers throughout its territory in exchange for executing a long-term commitment to take a triple-play bundle of products from Citizens. It is merger-specific also because Citizens has announced its intention to offer long-term contracts for all of its customers in Commonwealth territory, a practice that Commonwealth has not adopted. RCN's proposed condition would remedy the merger-specific harms of the combined Citizens/Commonwealth locking up customers to long-term contracts before carriers like RCN have even had the opportunity to compete for their business. Again, granting the relief requested by RCN would not only help level the playing field for competitors in Commonwealth's market, but it would also offset Citizens' stated goal of locking customers into long-term contracts while Commonwealth is the monopoly provider and thereby creating a significant disincentive for competitors to enter the market.

Third, RCN asked that approval of the merger be conditioned on Citizens and Commonwealth agreeing not to assert a rural exemption under state or federal law against a competitive carrier making a bona fide request for interconnection under section 251(c) in the Commonwealth territory.<sup>39</sup> The Pennsylvania PUC has provided sufficient notice to rural LECs to be prepared for competition that the protections provided by the rural carrier exemption are no longer needed. This proposed condition is merger-specific because application of the rural carrier exemption at this point would only have the effect of impeding competitive entry to those

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<sup>38</sup> Petition to Deny at 21.

carriers, for example, that need access to unbundled local loops or collocation in order to be able to compete with Commonwealth following its acquisition by Citizens. Applicants are simply wrong to claim that “[t]he 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.”<sup>40</sup> Applicants completely misconstrue the intent of the rural carrier exemption. Whatever its merits may be, the rural carrier exemption is certainly not intended to protect Commonwealth’s monopoly revenues so that other Commonwealth or Citizens affiliates will have the resources to compete in other markets. It strains credulity to think that Congress’ intent in passing the rural carrier exemption was to protect a company with more than \$2.5 billion in annual revenues and allow that company to cross-subsidize competitive markets with revenues from captive ratepayers.

Moreover, rather than Commission dictates, merger conditions are simply the commitments Applicants make if they wish to complete the transaction. Applicants always have the option of deciding that the costs or consequences of proposed merger conditions outweigh the expected benefits of the merger. In that case, Applicants have the option of foregoing the merger and continuing as separate entities.

RCN has demonstrated that the proposed acquisition of Commonwealth by Citizens is not in the public interest. The only way to balance the harms to the public interest caused by the acquisition is to condition the Commission’s approval on Citizens and Commonwealth consenting to take the steps that RCN has proposed above. The result would be to make

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<sup>39</sup> Petition to Deny at 21.

competitive entry far more likely in Commonwealth territory following the merger, thereby allowing consumers in Commonwealth's markets to take advantage of what the Applicants claim to be public benefits together with the benefits that will almost certainly be more likely as a result of additional competitive entry.

For all the foregoing reasons, RCN respectfully requests that the Commission deny the Joint Application for the transfer of control of the domestic and international licenses of Commonwealth to Citizens. If the Commission permits the proposed transaction to proceed, it must impose conditions on its approval as recommended by RCN, as well as others that may be appropriate, in order to offset the ongoing harms to the public interest that will result from the transaction. The Commission should also grant RCN any additional relief that the Commission deems appropriate.

Respectfully submitted,



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Dated: November 28, 2006

Counsel for RCN Corporation and RCN Telecom  
Services, Inc.

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<sup>40</sup> Opposition at 24.

# Exhibit A



Acquisition of Commonwealth Telephone Enterprises  
September 2006

# Safe Harbor Statement

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## FORWARD LOOKING STATEMENTS

This presentation contains forward-looking statements that are made pursuant to the safe harbor provisions of The Private Securities Litigation Reform Act of 1995. These statements are made on the basis of management's views and assumptions regarding future events and business performance. Words such as "believe", "anticipate", "expect" and similar expressions are intended to identify forward-looking statements. Forward-looking statements (including oral representations) involve risks and uncertainties that may cause actual results to differ materially from any future results, performance or achievements expressed or implied by such statements. These risks and uncertainties are based on a number of factors, including but not limited to: our ability to complete the acquisition of Commonwealth, to successfully integrate their operations and to realize the synergies from the acquisition; changes in the number of our revenue generating units, which consists of access lines plus high-speed internet subscribers; the effects of competition from wireless, other wireline carriers (through voice over internet protocol (VOIP) or otherwise), high speed cable modems and cable telephony; the effects of greater than anticipated competition requiring new pricing, marketing strategies or new product offerings and the risk that we will not respond on a timely or profitable basis; the effects of general and local economic and employment conditions on our revenues; our ability to effectively manage our operations, costs, capital spending, regulatory compliance and service quality; our ability to successfully introduce new product offerings, including our ability to offer bundled service packages on terms that are both profitable to us and attractive to our customers; our ability to sell enhanced and data services in order to offset ongoing declines in revenue from local services, switched access services and subsidies; changes in accounting policies or practices adopted voluntarily or as required by generally accepted accounting principles or regulators; the effects of changes in regulation in the communications industry as a result of federal and state legislation and regulation, including potential changes in access charges and subsidy payments, and regulatory network upgrade and reliability requirements; our ability to comply with federal and state regulation (including state rate of return limitations on our earnings) and our ability to successfully renegotiate state regulatory plans as they expire or come up for renewal from time to time; our ability to manage our operating expenses, capital expenditures, pay dividends and reduce or refinance our debt; adverse changes in the ratings given to our debt securities by nationally accredited ratings organizations, which could limit or restrict the availability, and/or increase the cost of financing; the effects of bankruptcies in the telecommunications industry which could result in more price competition and potential bad debts; the effects of technological changes and competition on our capital expenditures and product and service offerings, including the lack of assurance that our ongoing network improvements will be sufficient to meet or exceed the capabilities and quality of competing networks; the effects of increased medical, retiree and pension expenses and related funding requirements; changes in income tax rates, tax laws, regulations or rulings, and/or federal or state tax assessments; the effects of state regulatory cash management policies on our ability to transfer cash among our subsidiaries and to the parent company; our ability to successfully renegotiate expiring union contracts covering approximately 1,045 employees that are scheduled to expire during the remainder of 2006; our ability to pay a \$1.00 per common share dividend annually may be affected by our cash flow from operations, amount of capital expenditures, debt service requirements, cash paid for income taxes (which will increase in the future) and our liquidity; the effects of any future liabilities or compliance costs in connection with worker health and safety matters; the effects of any unfavorable outcome with respect to any of our current or future legal, governmental, or regulatory proceedings, audits or disputes; and the effects of more general factors, including changes in economic, business and industry conditions. In addition, we may be unable to implement some of our current business initiatives if we fail to recognize the benefits we expect to receive from certain transactions. These and other uncertainties related to our business are described in greater detail in our filings with the Securities and Exchange Commission, including our reports on Forms 10-K and 10-Q. We undertake no obligation to publicly update or revise any forward-looking statement or to make any other forward-looking statements, whether as a result of new information, future events or otherwise unless required to do so by securities laws.

## ADDITIONAL INFORMATION AND WHERE TO FIND IT

This material is not a substitute for the prospectus/proxy statement Citizens Communications Company and Commonwealth Telephone Enterprises, Inc. will file with the Securities and Exchange Commission. Investors are urged to read the prospectus/proxy statement which will contain important information, including detailed risk factors, when it becomes available. The prospectus/proxy statement and other documents which will be filed by Citizens Communications Company and Commonwealth Telephone Enterprises, Inc. with the Securities and Exchange Commission will be available free of charge at the SEC's website, [www.sec.gov](http://www.sec.gov), or by directing a request when such a filing is made to Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905, Attention: Investor Relations; or to Commonwealth Telephone Enterprises, Inc., 100 CTE Drive, Dallas, Pennsylvania 18612, Attention: Investor Relations. The final prospectus/proxy statement will be mailed to shareholders of Commonwealth Telephone Enterprises, Inc.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

Citizens Communications Company and Commonwealth Telephone Enterprises, Inc., and certain of their respective directors, executive officers and other members of management and employees are participants in the solicitation of proxies in connection with the proposed transactions. Information about the directors and executive officers of Citizens Communications Company is set forth in the proxy statement for Citizens Communications Company's 2006 annual meeting of shareholders. Information about the directors and executive officers of Commonwealth Telephone Enterprises, Inc. is set forth in the proxy statement for Commonwealth Telephone Enterprises, Inc.'s 2006 annual meeting of shareholders. Investors may obtain additional information regarding the interests of such participants in the proposed transactions by reading the prospectus/proxy statement for such proposed transactions when it becomes available.