

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
NEP Cellcorp, Inc.)	
)	
Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania)	DA 07-3602

To: Wireline Competition Bureau

MOTION TO STRIKE

NEP Cellcorp, Inc. (“NEP”), by its attorneys, pursuant to Section 1.41¹ of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby moves that the September 5, 2007 comments² filed by the Pennsylvania Public Utility Commission (“PA PUC”) in the above-captioned proceeding be stricken from the record. Due to procedural deficiencies, the PA PUC’s opposition should not be considered by the FCC as part of this proceeding.

The “reply comments” filed by the PA PUC do not “reply” to anything in the record, and therefore should not be considered a part of this proceeding. On August 15,

¹ 47 C.F.R. § 1.41.

² *In the Matter of Petitions of NEP Cellcorp., Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania and Corr Wireless Communications, LLC for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 09-45, DA 07-3602, Reply Comments of the Pennsylvania Public Utility Commission (September 5, 2007).

2007, the FCC released a *Public Notice*³ seeking comment on two separate Petitions for ETC Designation filed by NEP and Corr Wireless Communications, LLC (“Corr”). Pursuant to the FCC’s *Public Notice*, comments on NEP and Corr’s Petitions were due August 29, 2007 and reply comments were due September 5, 2007. No comments or oppositions were filed by August 29, 2007. The PA PUC submitted “reply comments” on September 5, 2007 opposing NEP’s Petition. The FCC’s rules clearly state that reply comments “shall be limited to matters raised in the oppositions.”⁴ Because no comments or oppositions were filed on or before August 29, 2007, the date oppositions or comments were due pursuant to the FCC’s *Public Notice*, there was no basis for reply comments. Clearly the PA PUC’s opposition did not relate at all to matters raised in comments or oppositions. The PA PUC has failed to justify why it could not file its opposition by August 29, 2007 or request an extension of the initial period for filing oppositions and/or comments. By filing its opposition on the date reply comments were due, the PA PUC has denied NEP an opportunity to refute the erroneous and untimely arguments made in its opposition. Accordingly, NEP requests that the FCC strike the PA PUC’s comments from the record.⁵

Because the PA PUC filed its opposition to NEP’s ETC Petition a week after comments and oppositions were due, and the PA PUC failed to serve a copy of its

³ *Comments Sought on the Petitions of NEP Cellcorp, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania and Corr Wireless Communications, LLC for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Public Notice, DA 07-3602 (August 15, 2007) (establishing August 29, 2007 and September 5, 2007 as the comment and reply comment dates, respectively).

⁴ 47 C.F.R. § 1.45(c).

⁵ The PA PUC’s filing was procedurally defective in other respects. The PA PUC failed to serve a copy of its comments on either NEP or NEP’s counsel. Because the PA PUC did not provide NEP notice or serve NEP with a copy of its filing, NEP only recently and by chance became aware of the PA PUC’s late filed opposition.

untimely opposition on NEP, the FCC should strike the PA PUC's opposition from the record and not consider it as part of this proceeding. Should the FCC decide to consider the PA PUC's untimely and erroneous opposition, NEP reserves the right to file a reply to the PA PUC's opposition within 5 days of the Commission's ruling on the instant Motion to Strike.⁶

Respectfully Submitted,

NEP CELLCORP, INC.

By: 

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Dated: October 10, 2007

⁶ 47 C.F.R. § 1.45.

Certificate of Service

I, Linda L. Braboy, with the firm of Bennet & Bennet, PLLC, hereby certify that I have on this 10th day of October 2007 caused a copy of the foregoing Motion to Strike to be delivered by first-class mail to the following:

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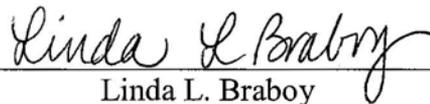
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