Salsgiver Communications, Inc.

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October 16, 2007

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WC Docket No. 07-151 – North Pittsburgh Systems, Inc. and Consolidated Communications Holdings, Inc. Domestic Section 214 Application for Transfer of Control

Dear Ms. Dortch:

As President of Salsgiver Communications, Inc. ("Salsgiver"), I write to correct the record and respond to the Supplement submitted by Consolidated Communications Holdings, Inc. ("CCH") in a letter dated September 13, 2007 (the "Supplement"). This correction is necessary not only to ensure an accurate and complete record, but also to provide additional reasons that the FCC should not grant the joint application of North Pittsburgh Systems, Inc. ("NPSI") and CCH (the "Application") unless subject to clear conditions and commitments such as those set forth below.

CCH incorrectly asserts that North Pittsburgh Telephone Company ("NPTC"), a subsidiary of NPSI, is "already complying" with the FCC's order requiring NPTC to offer pole access to Salsgiver's affiliate, Salsgiver Telecom.[1] In fact, after the release of the *Salsgiver Telecom Order* in May 2007, NPTC failed to comply with the mandates of that order in any way.[2] NPTC's only discernible action within this time period was to re-send cost estimates for make-ready work that had been requested in 2005 by Salsgiver Communications – some two years before the release of the FCC order in question. Thus, NPTC did not move to grant access either in a timely fashion or on reasonable terms according to the mandates set forth in the *Salsgiver Telecom Order*.

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[1] *See Salsgiver Telecom, Inc. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, File No. EB-06-MD-002, DA 07-2150 (Enforcement Bur. rel. May 24, 2007) ("*Salsgiver Telecom Order*").

[2] *See id.*, ¶ 28 (ordering NPTC to (1) immediately commence survey and engineering work on the poles to which Salsgiver Telecom seeks to attach; (2) grant access to NPTC's poles within 60 days from the date of the order; and (3) commence accepting and processing Salsgiver Telecom pole attachment applications and conducting any necessary engineering or make-ready arrangements no later than 15 days from the date of the order).

NPTC's failure to comply with the *Salsgiver Telecom Order* and its continued stonewalling of Salsgiver Telecom's make-ready requests are matters for the Enforcement Bureau to decide. Thus far, that Bureau has decided these matters against NPTC in pole attachment complaint proceedings initiated by Salsgiver Telecom and other competitive providers attempting to offer services in NPTC's incumbent local exchange carrier territory.[3]

Nevertheless, NPTC's continued gamesmanship and inattention to pole attachment requests by competitive providers amply demonstrate that the proposed merger raises competitive concerns. CCH's promise in the Supplement, to "ensure that NPTC continues to comply" with its obligations under the Pole Attachment Act and various Enforcement Bureau orders going forward, is largely meaningless because NPTC has never begun to comply with these requirements in the first place. In the absence of enforceable conditions on the merged entity, the combination of CCH and NPSI would only exacerbate the existing anti-competitive conditions in NPTC's incumbent local exchange carrier market and strengthen the company's capability and incentives to stifle competition as NPTC and its affiliates begin offering new services in NPTC's territory.

Core Communications, Inc. ("Core") filed a letter in this docket on October 3, 2007, that provides further evidence of the potential for harm to competitive providers in NPTC's territory should the merger be approved without conditions. Core reported that NPTC is engaging in "dilatory tactics" in carrier-to-carrier interconnection negotiations, using tactics similar to those that NPTC employs in the pole attachment context.[4] All of the same hallmarks of anti-competitive protectionist behavior are on display in these interconnection negotiations, right down to NPTC's "disdain" for agency orders that reject NPTC's failed challenges to competitive providers' status and rights to access.[5] Core also cites comments submitted to the Pennsylvania PUC by the United States Department of Justice, which indicated that there are "incentives and opportunities for rural ILECs to delay entry, at limited cost to themselves"[6] in situations such as this.

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[3] *See id.*; *see also Fiber Technologies Networks, L.L.C. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, File No. EB-05-MD-014, 22 FCC Rcd 3392 (Enforcement Bur. 2007); *DQE Communications Network Services, LLC v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, File No. EB-05-MD-027, 22 FCC Rcd 2112 (Enforcement Bur. 2007). Another Salsgiver complaint against NPTC, based on similar facts, is pending before the Enforcement Bureau. *See Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, Pole Attachment Complaint, File No. EB-06-MD-004 (filed Mar. 20, 2006).

[4] *See* Letter from Michael B. Hazzard, Counsel to Core Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-151, at 1-2 (submitted Oct. 3, 2007) ("Core Letter").

[5] *See id.* at 2.

[6] Comments of the U.S. Department of Justice, *Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Pa. P.U.C. Docket No. M-00960799, at 6 (submitted Mar. 27, 2007); *see also* Core Letter at 2-3 (citing additional examples culled from the Department of Justices comments and Core's own experience of NPTC tactics used to delay competitive entry altogether or exact promises intended to limit the scope of competition).

NPTC has shown time and again that it will take any such opportunity to delay entry and deployment by competitors, as NPTC routinely refuses to negotiate with competitive providers and prioritizes its own interests in an anti-competitive fashion. Furthermore, approving the merger without conditions likely would enrich the merging parties in return for NPTC's abusive practices. The "golden parachutes" of nearly $1 million each (after taxes)[7] to be paid to various NPSI executives may reflect, at least in part, these executives' success in delivering a relatively competition-free market to CCH. By refusing to approve the merger absent market-opening conditions, the FCC could send a signal to other rural ILECs that this sort of anti-competitive conduct will not be rewarded.[8]

In light of the strong likelihood that NPTC's refusals to comply with its obligations to allow for competitive entry in its incumbent local exchange carrier territory would worsen after the proposed merger, approval of the CCH-NPSI Application would not be in the public interest. Should the FCC approve the Application nonetheless, the only way to make sure that NPTC treats all competitors fairly – including Salsgiver and others – is to place conditions on the proposed transfer of control. Without such conditions, CCH and NPTC will have increased financial resources and increased incentives to continue these blatant abuses.

Salsgiver proposes that the merged entity commit to the following conditions prior to grant of the Application. As a condition for approval, CCH should:

1. Give the same priority that NPTC gives its own make-ready and construction work to any competitive provider request for attachment.

2. Allow requesting attachers to install and maintain attachments in the least-cost position on poles, so long as such attachments conform to standard engineering specifications.

3. Allow requesting attachers to perform any necessary made-ready work proposed by NPTC in accordance with NPTC specifications, and stipulate that NPTC will not, without due cause and justification, prevent the attacher from performing the work.

4. Make all pole attachment agreements publicly available, including agreements between NPTC and its affiliates. This practice would ensure that every competitive provider is treated equally and in a non-discriminatory manner by allowing new competitive providers to opt into existing agreements (as in the interconnection context), rather than continuing NPTC's past practice of drafting a new agreement for each negotiation and thereby delaying market entry or driving up entry costs.

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[7] *See* North Pittsburgh Systems, Inc. SEC Form 8-K, File No. 0-13716, at page 3 (filed July 1, 2007), *available at* http://www.northpittsburgh.com/statements/903020070706_8K.pdf.

[8] *See* North Pittsburgh Systems, Inc. SEC Form 10-Q, File No. 0-13716 (quarter ending June 30, 2007), *available at* http://www.northpittsburgh.com/statements/7482NPSI%202Q07%2010-Q%20(FINAL).pdf. As NPSI noted in this quarterly filing, "CLECs are not a significant competitive factor at the present time due to some of the protections still granted to [NPTC] as a rural [ILEC] . . . ." *Id.* at 16.

5. Treat all facilities-based and reselling competitive providers in non-discriminatory fashion by offering them the same terms that NPTC offers to its affiliates. This practice would help to ensure that the rates for equivalent services offered by NPTC and by its CLEC affiliate, Penn Telecom, (i) do not discriminate unfairly against unaffiliated providers and (ii) do not exceed reasonable rates based on competitive considerations.[9]

Please contact me or Matthew Wood, at Hogan & Hartson LLP (202-637-3576), should you have any questions about the above.

Respectfully submitted,

/s/ Loren Salsgiver

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cc: William Dever
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[9] For example, based on Salsgiver Inc.'s experience dealing with various NPSI subsidiaries, NPTC's CLEC affiliate Penn Telecom presently offers a DS-3 interconnect for DSL service at a cost of $1,400 per month within Verizon Territory, while the equivalent circuit provisioned by NPTC within its incumbent local exchange carrier territory costs $8,000 per month.