



A handwritten signature in black ink that reads "Johanna".

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November 17, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Global Crossing Ltd Transfer of Control, DA 00-2366

Dear Secretary Salas:

Choice One Communications of New York, Inc. respectfully submits an original and four (4) copies of its Petition in connection with the application of Global Crossing Ltd. and Citizens Communications Company for the transfer of control of the indirect, wholly-owned subsidiaries of Global Crossing Ltd. to Citizens Communication Company pursuant to section 214 of the Communications Act of 1934.

In addition, one copy of the petition is being sent to Johanna Mikes, Justin Connor, Wayne McKee, and the International Transcription Service pursuant to the Public Notice in this proceeding.¹ A courtesy copy is also being sent to Global Crossing, Ltd. and Citizens Communications Company.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned at (518) 689-3401.

Very truly yours,

A handwritten signature in black ink that reads "Christopher J. Hanifin".

Christopher J. Hanifin
Director,
Legal and Regulatory Strategy

Enclosure

¹ *Global Crossing Ltd. Seeks FCC Consent For Transfer Of Control Of Frontier to Citizens Communications Company*, Public Notice, DA 00-2366 (rel. October 19, 2000).

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November 2000, a copy of the foregoing Petition of Choice One Communications of New York, Inc. was served on the following parties via first class postage-paid United States mail and, if marked by an asterisk, by electronic mail:

Magalie Roman Salas
Secretary
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Signed:


Debi Condon
Branch Administrator
Choice One Communications

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)
)
Citizens Communications Company and)
Global Crossing Ltd.)
)
Applications for Transfer of Control)
Pursuant to Sections 214 and 310(d))
of the Communications Act, as amended)
)

DA 00-2366

**PETITION OF CHOICE ONE COMMUNICATIONS OF NEW YORK, INC.
TO DENY AND DEFER THE TRANSFER OF CONTROL APPLICATIONS
OF GLOBAL CROSSING AND CITIZENS COMMUNICATIONS COMPANY**

Pursuant to the Public Notice issued on October 19, 2000¹, Choice One Communications of New York, Inc. ("Choice One") petitions the Federal Communications Commission ("Commission" or "FCC") to deny and defer the applications in the above-captioned proceeding. Global Crossing Ltd. ("Global Crossing") and Citizens Communications Company ("Citizens") ("Joint Petitioners") have filed applications pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214, requesting Commission approval to transfer control of international and domestic authorizations held by indirect, wholly-owned subsidiaries of Global Crossing (collectively "Frontier") to Citizens. While the Joint Petitioners have also filed an application for Commission consent to transfer control to Citizens of a cable television relay service authorization held by Frontier Cable of Wisconsin, Inc., Choice One will only comment on the Frontier (all New York State-based operations) to Citizens transfers.

¹ *Global Crossing Ltd. Seeks FCC Consent For Transfer Of Control Of Frontier to Citizens Communications Company, Public Notice*, DA 00-2366 (rel. October 19, 2000).

I. Introduction

Choice One provides local exchange services within the service territories of Frontier, which includes Frontier Telephone of Rochester ("FTR"), the second largest incumbent local exchange carrier in New York State. Choice One has an approved interconnection agreement with FTR and interconnects and obtains unbundled network elements ("UNEs") from FTR. Citizens' ability to abide by the commitments set forth in the application and potential conditions attached to the FCC's consent for transfer of control will therefore have a substantial and direct impact on Choice One's provisioning of service within Frontier's and FTR's service territory.

II. Commission Authority

Before the Commission can approve the transfer of control of authorizations and licenses in connection with a proposed merger, sections 214(a) and 310(d) of the Communications Act require the FCC to find that the proposed transfers serve the public interest.² The legal standards of sections 214(a) and 310(d), which the FCC must apply to the transfers in this proceeding, require the Commission to weigh the potential public interest harms against the potential public interest benefits.³ The Communications Act's public interest standard requires the Commission to consider both the possible competitive effects of the proposed transfers and the broader aims of the Communications Act and federal communications policy.⁴ The Commission has held that these aims include, among other things, implementing Congress' pro-competitive, deregulatory national policy framework designed to open all communications markets to competition, preserving and

² 47 U.S.C. Sections 214(a), 310(d); see also *Application of Worldcom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum, Opinion and Order, 13 FCC Red 18,025, 18,030-35, paras. 8-14 ("WorldCom Order").

³ *WorldCom Order*, 13 FCC Red at 18,030-31, para 9.

advancing universal service, and accelerating private sector deployment of advanced services.⁵ Where necessary to accomplish these aims, the Commission may attach conditions to the transfer of authorizations or licenses to ensure that the public interest is served by the transaction.⁶ Choice One steadfastly believes that the Commission should attach meaningful conditions to the proposed transfer of authorizations so that this transaction will be consistent with the public interest.

III. Joint Petitioners Regulatory Mandates

Since the Joint Petitioners, both either large incumbent local exchange carriers or larger corporate entities that include large incumbent local exchange carriers, are not bound by the Section 271 performance checklist in order to promote competition for long distance entry, the Commission must review the proposed applications very carefully to ensure that the competitive aims of the Act and the public interest are clearly served. For this same reason, the Commission should resist the inevitable arguments of the Joint Petitioners that the issues raised by Choice One are only state and not interstate issues, and therefore outside the scope of this matter or the FCC's jurisdiction. } This proceeding, given the absence of pro-competitive mandates and Section 271 safeguards, highlights the need for the Commission to attach meaningful continuous conditions to the proposed transfer of authorizations.

FCC
Jurisdiction

The two incumbent carriers involved in this transaction are permitted to provide local and long distance service without a regulatory review of the competitive landscape in these territories. This fact directly impacts Competitive Local Exchange Carriers ("CLECs"), like Choice One, who

⁴ See, 47 U.S.C. Sections 214(c), Worldcom Order, 13 FCC Rcd at 18,030-31 para 9.

⁵ See, e.g., *WorldCom Order*, 13 FCC Rcd at 18,030-31 para 9; 47 U.S.C. sections 254, 259, 332(c)(7), 706; Preamble to Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *Id.* at 18,031-32, para. 10 (quoting 47 U.S.C. Sections 214(c), 303(r)).

seek to open all communications markets to competition and accelerate private sector deployment of advanced services.

Absent a regulatory review of the competitive landscape in these territories, the New York Public Service Commission ("NYPSC") has imposed an incentive rate plan or regulatory plan that serves as a proxy, of sorts, for the competitive safeguards contained in the 271 checklist and other pro-competitive mandates. The New York State incentive rate plan that governs Frontier and FTR (where Choice One provides service) is called the Open Market Plan ("OMP" or "the Plan"). The OMP (including all modifications thereto) sets forth specific rules pertaining to the provisioning of wholesale services to CLECs.⁷ Renewed observance of the OMP and other regulatory mandates that promote competition and advanced services through, in part, conditions in this proceeding, is an especially necessary undertaking since Choice One and other carriers have encountered situations with Frontier and FTR where its attentiveness to the OMP and the promotion of competition has either been dilatory or nonexistent.

Choice One also expresses concern regarding other issues that challenge FTR's (and Frontier's) commitment to service quality and its advancement of competition. To this end, Choice One will raise the issues that are frustrating or otherwise inhibiting the promotion of a pro-competitive, deregulatory policy framework that is designed to open all markets to competition and accelerate private sector deployment of advanced services.

⁷ *Opinion and Order Establishing New Terms of Open Market Plan and Rate Plan (Opinion No. 00-04) in Case 93-C-0103 and Case 93-C-0033*. For specific reference to FTR's obligations to wholesale "carrier-to-carrier" service quality measures under the Open Market Plan, see *Joint Proposal for Open Market Plan Continuation and Modification, Case 93-C-0103 and Case 93-C-0033, Section 11, Page No. 13-18*.

IV. Inhibiting The Promotion Of A Pro-Competitive, Deregulatory Policy Framework That Is Designed To Open All Markets To Competition

1) FTR is obligated to provide all forms of collocation under the state incentive regulatory plan as well as under the various Commission decisions and orders. Choice One, however, has encountered substantial difficulty in obtaining full collocation with adequate interconnection facilities at most of FTR's central offices. In particular, collocation at the Bushnell's Basin, Victor, Spencerport-Long Pond, and Todd Mart Plaza central offices took almost a year to implement from when they were first requested. The resulting resistance and delay only served to hamper competition and our ability to service customers in these markets. As might be expected from previous remarks, the FCC's recent decision to require collocation in 90-days is apparently unacceptable to FTR.

2) Choice One has recently encountered an issue with promised collocation at FTR's Willow Pond central office. Choice One's initial request for space at the Willow Pond office was rejected by FTR for lack of space. Choice One secured adjacent space; however, the interconnection construction offered by FTR between the two locations was cost prohibitive. Choice One then requested that the NYPSC inspect the site, and when it did, it was determined that there was actually adequate space for collocation. Choice One, therefore, cancelled its adjacent space lease. Now, FTR has again rejected Choice One's collocation application because it fears potential issues with its landlord over the collocation (i.e., the landlord may view collocation as subletting the space, which is supposedly prohibited by the lease). Choice One must note that this problem is theoretical, and to its knowledge, FTR has no actual lawsuit pending against it on this issue. However, Choice One has recently learned that FTR may be attempting to rent the same space as Choice One would need to rent to secure adjacent collocation. While Choice One hopes that this means FTR is willing to provide adequate collocation to Choice One, there is no assurance of this fact, to date.

On the other hand, FTR has previously demanded that Choice One negotiate the lease modification with FTR's own landlord prior to collocation. This request is without precedent. While Choice One is agreeable to discussing a prompt and mutually beneficial resolution to this matter, it is not legal nor proper for Choice One to negotiate FTR's lease agreements with its landlords. Also, Choice One lacks legal standing with the landlord, as a non-party to the lease, for any negotiations. The manifest weight of the law is undeniably in favor of Choice One's federally mandated right to collocate, as it is for FTR's duty to provide for collocation. The Commission and the NYPSC have made this point abundantly clear.⁸ As with all of its leases, if there is a real legal question, FTR is required to answer it on its own behalf and not draw Choice One into its legal battles. Without an actual case, this is just one example of failed results and protracted logistical difficulties with FTR, deterring competitive entry and ultimately thwarting Choice One from offering service to desiring consumers. Accordingly, it represents an obvious violation of the OMP and FCC collocation rules. The Commission should take these circumstances into account in its collocation orders and affirm that FTR must provide physical collocation to Choice One. Choice One would also note that FTR is under the jurisdiction of and no doubt fully aware of the Commission's collocations orders, which is curious, considering FTR's contrary behavior to the Commission's clear mandates.

3) FTR has yet to offer dark fiber to Choice One as an unbundled network element ("UNE") even though Choice One requested it a year ago and it has subsequently been mandated to be offered as a UNE by the FCC. Accordingly, FTR should be forced to comply with FCC and state requirements (including the OMP).

⁸ The NYPSC has adopted the Commission's collocation orders with the intent to enforce them. See, Cases 99-C-0715 and 95-C-0657, Order Directing Tariff Revisions (issued and effective August 31, 1999).

4) Choice One faces continued problems with UNE hot cuts and cutovers with FTR. Frequently, FTR will change a UNE loop to Choice One, thereby taking a local customer out of service, without first notifying Choice One or coordinating the cutover.

5) FTR often fails to coordinate the local number portability process with such cutovers (in violation of its own published policies), again taking a customer out of service. FTR has an inadequate and intermittent circuit connection to the Local Number Portability ("LNP") database. FTR does not take this into account when it performs a hot cut, and has not taken the time to correct this serious problem, even though it knows that this affects Choice One (and other competitors), more than it does FTR.

6) FTR has also informed Choice One that it will limit Choice One's maximum cutover threshold to an arbitrary volume set unilaterally by FTR. Nowhere in any FCC order or in the OMP is this permitted, yet FTR has instituted this policy. FTR has told Choice One that its arbitrary limit is reasonable and is a decision it has the power to make. Choice One contends that since FTR is adequately compensated for whatever work Choice One would need, such limits can only serve one purpose - to delay and ultimately frustrate competition. The Commission should investigate this policy and direct FTR to provide all services requested in a timely manner.

7) Choice One has repeatedly complained to FTR that its technicians frequently fail to mark or miss-mark circuit terminations, especially Digital Subscriber Loop ("DSL") termination. FTR knows that DSL terminations do not have dial tone on them, so they cannot be recognized and tested on site without adequate delimitation by FTR (who is in sole possession of the circuit information). Again, these oversights cause repeated cutover delays and unnecessary repair orders (all of which are expensed to Choice One), and both result in severe anti-competitive effects.

8) FTR has acknowledged that it does not always properly record the existence of wholesale DSL circuits in its engineering databases. Therefore, it can disable Choice One DSL loops in search of spare facilities for its own retail customers. The resulting repair requests for such situations are often ill defined and tedious, adding to customer problems.

9) Choice One has recurring problems with FTR's wholesale billing, requiring Choice One to spend time and money to question and audit these bills. FTR continues to resist and question Choice One's purchases out of its state tariffs for network components such as multiplexing equipment and trunking facilities, and is constantly shifting its tariff filings to disadvantage Choice One.

During the past year, Choice One has also been assessed Carrier Access Line Charges ("CALCs") by FTR on local loops used to provide service to Choice One's end user customers. Choice One operates as a facilities-based CLEC and purchases local loops from FTR as UNEs. This matter has been filed with the Commission for resolution.

The Commission has previously concluded that an ILEC may not recover CALCs under such circumstances⁹, yet FTR has refused to refund Choice One for the CALCs paid to-date.¹⁰

10) FTR continues to use the repair process to delay competitive entry. When Choice One issues a repair request, FTR will examine only a small portion of its network for trouble (e.g., a segment of the loop or only the frame wiring, etc.), and then close the trouble ticket. Because the

⁹ *First Report & Order, In The Matter of Implementation of the Local Competition Provisions in The Telecommunications Act of 1996* (FCC 96-325), 11FCC Rcd 15499, para. 364 (1996) (We further conclude that when a carrier purchases a local loop for the purpose of providing interexchange services or exchange access services, incumbent LECs may not recover the subscriber line charge (SLC) now paid by end users. The SLC recovers the portion of loop costs allocated to the interstate jurisdiction, but as discussed in outside of the current separations process. The unbundled loop charges paid by new entrants under section 251(c)(3) will therefore recover the unseparated cost of the loop, including the interstate component now recovered through the SLC. If end users or carriers purchasing access to local loops were required to pay the SLC in this situation, LECs would enjoy double recovery, and the effective price of unbundled loops would exceed the cost-based levels required under section 251(d)(1).

¹⁰ The issue of applying end user subscriber line charges have become the subject of a separate FCC complaint by Choice One against FTR.

circuit often still does not function, Choice One is required to issue another trouble report for the same circuit and start the entire process over again, with the resulting wasted time and expense. Choice One is confident that FTR employs end-to-end trouble shooting with its retail clients and does not understand why the same repair process should not apply to Choice One's repair issues. Also, as noted above, the rapid opening and closing of trouble reports leads to a false indication of completed repairs.

While Choice One did not expect FTR to have every policy and procedure in place from its first order, it does expect FTR's performance to improve with time. This is not the case, leading to the inescapable conclusion that FTR is either indifferent to competition, or purposely anti-competitive. Either situation, if not remedied prior to the proposed merger, would contradict the statements of the Joint Petitioners, and therefore, fail to meet the public interest test required for approval of the Joint Petition.

11) To FTR's credit, Choice One is afforded frequent operational meetings with FTR wherein all of these issues, and more, are discussed in detail. However, there have been few resolutions, resolutions are never in the time frames promised, and often when an issue is resolved, a new one appears to take its place on the agenda. It is clear to Choice One that despite the earnest efforts of specific individuals assigned to Choice One's account, FTR as an organization is not committed to serving our wholesale needs. Though FTR has presented itself as a company committed to service quality, its failures as a wholesale service provider demonstrates a glaring indifference to the end users of Choice One as well as those of other CLECs. Until FTR makes a meaningful commitment, with adequate monitoring and penalties for failure, Choice One believes this anti-competitive environment will continue and frustrate the Commission's pro-competitive aims.

12) Choice One is concerned about Citizens' ability as a prospective parent company to promote competition in FTR's local markets. Citizens only provides telecommunications services to essentially small market and rural territories where competition has generally been less intense than in larger markets such as Rochester, or nonexistent altogether. Citizens Communications, formerly known as Citizens Utilities, is a fast-growing community-based telecommunications provider. Citizens Communications is in the process of acquiring nearly 2 million local telephone access lines as a result of agreements with GTE, US WEST, and Global Crossing Ltd. When the transactions are completed, they will expand the locations where Citizens Communications provides telecommunications services from 15 states today to 26 states.¹¹

13) Moreover, Choice One must question Citizens' claim to experience and expertise in providing advanced wholesale services. Specifically, Choice One asks that Citizens define what experience it has, if any, in developing acceptable carrier-to-carrier service guidelines, UNE elements, and operational support systems. Choice One requests that Citizens list for the Commission any proceedings it has participated that have resulted in a Citizen's ILEC providing wholesale services to competitors and the resulting state of competition in such market(s). Choice One requests that Citizens be required to provide assurances that the issues identified above would all be satisfactorily addressed prior to granting the proposed applications.

¹¹ Citizens Communications owns almost 86 percent of Electric Lightwave, Inc. <http://www.eli.net> a broadband integrated communications company providing Internet, data, voice and dedicated access services to communication-intensive companies. Electric Lightwave, Inc. owns and operates high-speed fiber-optic networks in the United States and operates a leading national Internet and data network.

V. Inhibiting The Promotion And Acceleration Of Private Sector Deployment Of Advanced Services.

1) FTR is negligent in providing adequate wholesale tariffs, technical support systems, and back office procedures for such services while aggressively advertising and promoting these services to its retail clients. For example, FTR promotes its DSL services on TV, radio, newspaper, and billboard advertising but has yet to provide Choice One with a reliable DSL wholesale provisioning process. This lacks competitive parity.

In general, FTR's tariff filings for wholesale services have shown a serious lack of clarity regarding the terms, conditions, and rates by which services such as Line Sharing, Pair Swapping, Engineering Record-Look Ups, Operational Support, and Collocation are to be deployed. They fail to provide sufficient detail regarding crucial aspects of the provisioning process, such as ordering intervals for local loops. In its tariffs, FTR has introduced rates and charges for wholesale services in a manner that differs significantly from those of other local exchange carriers such as Verizon New York, Inc. Choice One, as well as other CLECs, has questioned the methodology by which FTR has developed prices for wholesale services; in response, FTR has stated its refusal to provide any cost justification for these prices.

2) FTR provides a DSL loop-prequalification database for use by competitors. Unfortunately, the information in this database is frequently incorrect. Moreover, if Choice One places an order for a loop based on this information, and the loop ultimately (often near the time of actual installation) is found to be unqualified, Choice One is charged for its service order, even though it relied on faulty information, from FTR, to place the initial order.

FTR's response to this issue is to suggest that Choice One use an "engineering" look up service that FTR provides. This solution is impractical for two reasons: first, the same data that is available in the engineering lookup populates the prequalification database (or if it does not, then

FTR is withholding competitive information from Choice One); and second, this only serves to require Choice One to spend more money to provision a loop than FTR spends for the same retail service.

3) FTR provides DSL via "line splitting" (a process of using a single copper wire to provide both DSL and voice services by a competitive provider). However, FTR has never published a wholesale process for this service (in situations where two different companies provide the DSL and voice services on the same wire, the process is called "line sharing") and has failed to answer Choice One's demands for the service. In fact, FTR readily acknowledges on its wholesale web site its lack of an Operational Support System, ("OSS") for line sharing and its absence of any line splitting ordering process.

Choice One specifically requests that the Commission prohibit FTR's provision of DSL services (as established in FTR's FCC tariffs) using line splitting until it has a wholesale process for the service in place and operational at commercially acceptable volumes.

4) All orders for wholesale services by Choice One to FTR receive a reply for the due date of the installation known as a Firm Order Commitment ("FOC"). FTR does not honor its FOC dates for links used to provide DSL, as it has an affirmative policy that it can either change or withdraw them at any time after they have been issued to Choice One up to and including the FOC date, and frequently does, with disastrous results to Choice One's potential customers. To this end, FTR must honor these commitments by prequalifying the links in a timely manner prior to issuing a FOC, and FOC dates should be honored.

5) FTR's tariffs provide for three levels of circuit quality (Level 1, 2, and 3) which FTR provides to its retail clients (for the provision of DSL). Choice One would like to use all three of these circuit types; however, FTR does not have a reliable ordering procedure or pricing for Level 2

and 3 circuits (despite repeated requests from Choice One to provide same) that allows Choice One to predict its circuit costs. The system today operates as a "blank check" with Choice One paying the bill because FTR does not maintain a reliable loop qualification database and charges excessive rates for manual loop qualifications (as compared to other carriers with similar services). FTR should ensure that any such charges are TELRIC-based pursuant to the state-mandated OMP.

In addition, FTR maintains that it need not offer the same type and grade of circuit to Choice One that it offers to its own retail clients. For example, FTR will provision a loop with substandard load coil conditioning for Choice One, and when this is identified as the solution to a customer complaint, will refuse the repair, even though it admits that it will do such for its retail clients.

6) Choice One has repeatedly notified FTR concerning its failure to provide a process for constructing facilities when a wholesale order is returned with a "no facilities" notation. Choice One contends that FTR does not offer Choice One parity with its retail customers in these instances.

7) Sub-loop unbundling, although mandated by the Commission and mentioned specifically by the Joint Petitioners, is non-existent in FTR's network.

8) FTR prices its own DSL (Internet access) product at \$39.95 (or less during promotions). However, FTR's wholesale loop costs range up to \$21.92 for monthly recurring charges plus non-recurring charges (and imposition of end user carrier line charges as discussed below). If a conditioned loop is required (if even available), Choice One is clearly prohibited from competing against FTR because FTR has improperly allocated costs to competitive services that it does not impose on itself. In the end, Choice One's wholesale costs are higher than FTR's retail prices.

9) In connection with line sharing, FTR does have pricing for the line-sharing unit in its tariff. However, the price is astronomical (especially when compared to FTR's retail pricing for DSL service to end users) as compared to Choice One's cost for the unit if purchased commercially.

10) FTR does not offer Choice One an opportunity to install its own line sharing device, although the Commission and the NYPSC has ruled that this is required of other carriers.

11) Choice One, as well as other CLECs, have filed extensive comments regarding FTR's proposed advanced services wholesale tariffs, and Choice One incorporates its comments by reference in this filing.¹² These concerns are currently before the NYPSC. The essential nature of the questions raised in these filings, as they relate to the proposed transaction, strongly suggest to Choice One that these specific questions must be answered before the Commission or the NYPSC reaches a decision regarding the proposed merger. 12) Joint Petitioners have acknowledged their intent to further competition in their respective markets. It is the position of Choice One that the best strategy for the Joint Petitioners to demonstrate this resolve is to facilitate the introduction of CLEC services offered to end user customers. This requires the rapid deployment of crucial wholesale services (as noted above). It also requires that the rates and charges for such services be reasonably priced and cost-justified in accordance with appropriate state and federal guidelines. Many of these rate questions are to be answered as part of the OMP process. However, the OMP was created without contemplation of the proposed transaction (and without benefit of FTR's recent performance).

VI. Other Harms To The Public Interest

1) The Joint Petitioners emphasize FTR's commitment to competition, but the latter has yet to provide reasonable intervals for the provisioning of wholesale services that match the equivalent retail service (e.g., a UNE link takes twice as long to provision as a retail local loop, although it is

¹² *Comments of Choice One Communications of New York Inc. on Revisions to Frontier Telephone on Rochester, Inc. P.S.C. Tariff No. 1 – Telephone Issued April 28, 2000. Comments filed May 28, 2000 and Comments on Choice One Communications of New York Inc. on Revisions to Frontier Telephone on Rochester, Inc. P.S.C. Tariffs No. 1 And No. 3 – Telephone Issued May 26, 2000. Comments filed June 9, 2000. Case Nos. 93-C-0103 and 93-C-0033.*

identical to the latter, providing the same service with the same functionality). Intervals are also frequently missed.

2) Although penalties are in place for noncompliance with the OMP, these penalties do not go into effect until the year 2001 and cannot, at present time, provide any effective incentive to promote improved Carrier-to-Carrier service standards in the Rochester market. This is why the Commission must closely review the proposed transaction from the federal perspective.

VII. Conditions

Choice One recognizes that the Commission, where necessary, may attach conditions to the transfer of authorizations or licenses to ensure that the public interest is served by the transaction.¹³ Choice One steadfastly believes that the Commission should, at a minimum, attach conditions to the proposed transfer of authorizations so that this transaction will be consistent with the public interest. Choice One respectfully proposes the following conditions for Commission consideration:

1. The Joint Petitioners should be required to provide assurances that the issues identified above would all be satisfactorily addressed prior to approving the applications;
2. The Joint Petitioners should be required to implement, within a Commission established deadline, other pro-competitive initiatives (e.g., sub-loop unbundling and line sharing) as a pre-condition for Commission approval of the applications;
3. FTR should be required to stop all retail Digital Subscriber Loop ("DSL") provisioning to its retail clients using line splitting arrangements until it has in place a verified wholesale process for line sharing that provides installation parity for competitors. This parity includes installation time intervals, repair and provisioning processes, availability of CLEC-owned line sharing devices,

¹³ 47 U.S.C. Sections 214(c), 303(r).

and line sharing at commercially reasonable volumes (e.g., no charge for the high frequency portion of the loop);

4. The Commission could give consent and approve the transfer of control on a pending basis and only grant final approval, in 180 days, if the Commission finds that the competitive and advanced services issues cited herein are cured. If they are not cured, the Commission could then revoke the pending approval or significantly fine the Joint Petitioners until such issues are satisfactory to the Commission.

VIII. Conclusion

Choice One does not seek to permanently deny the Joint Petitioners the consent action they seek. We only request that such consent be given only if and when the Joint Petitioners demonstrate by their actions that they are, as ILECs, helping to implement Congress' pro-competitive, deregulatory national policy framework designed to open all communications markets to competition, preserving and advancing universal service, and accelerating private sector deployment of advanced services. Choice One takes this action instead of seeking a harsher, more justified demand that the Commission deny the Joint Petitioners' applications. Instead, Choice One continues, in the face of unequal and anti-competitive behavior, to have faith in a more positive, regulatory outcome.

The Commission is known for its exemplary dedication to the importance of the "public interest" in matters such as the Joint Petition, like the leadership it demonstrated in the MCI/WorldCom decision, the SBC/Ameritech decision, the Verizon 271 entry decision, among others. As this filing amply exhibits, such diligence is again required, and a real and substantial question as to the public interest benefit of the Joint Petition is before the Commission.

Choice One accepts and agrees with the Joint Petitioners' commitment to maintain the OMP and expand other pro-competitive initiatives (e.g., sub-loop unbundling and line sharing) as a pre-condition for Commission approval of the Joint Petition. However, Choice One submits that resolving the numerous issues discussed herein is an indispensable part of that commitment.

Choice One also makes the drastic requests that the Commission, as a condition of the Joint Petition, suspend FTR's federal DSL tariff, and order FTR to immediately cease all DSL provisioning to its retail clients using line splitting arrangements until there is in place a verified wholesale process for line sharing that provides installation parity for competitors. This parity includes installation time intervals, repair and provisioning processes, availability of CLEC-owned line sharing devices, and line sharing at commercially reasonable volumes.

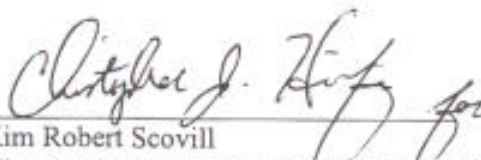
Choice One requests that Citizens answer the questions posed regarding its past experience with providing wholesale services for competitors. Choice One also requests that the Commission investigate and sanction FTR for failure to provide collocation at the Willow Pond office, and for arbitrarily setting volume limits for Choice One's cutovers. Both actions are clear violations and should be addressed immediately. Lastly, Choice One has cited specific instances of anti-competitive activity by FTR that must be addressed with specific remedies and operational remedies prior to granting final consent of the merger. Choice One and FTR meet regularly to discuss issues, but as noted herein, little progress has been made at these meetings, to date.

The public interest will adequately be served only if Frontier and FTR are required by the Commission, through ongoing monitoring and enforcement, to cease its anti-competitive activities, comply with FCC mandates, and commit unequivocally to developing a true competitive marketplace.

Respectfully submitted,

CHOICE ONE COMMUNICATIONS
OF NEW YORK, INC.

By:



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Date: November 17, 2000