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

In the Matter of	)	
	)	
Citizens Communications Company	)	
and Global Crossing Ltd.	)	DA 00-2366
	)	
Applications for Transfer of Control	)	
Pursuant to Section 214 and 310(b)	)	
of the Communications Act, as Amended	)	

JOINT CONSOLIDATED OPPOSITION TO PETITIONS TO DENY AND REPLY TO COMMENTS

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December 6, 2000

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SUMMARY

Applicants filed transfer of control applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, to accomplish the proposed transaction. On November 20, 2000, CWA, Choice One, and PULP each filed in opposition to these applications. CWA and Choice One filed Petitions to Deny, while PULP filed Comments. Each party merely recycled similar comments filed with the New York Public Service Commission (""NYPCS"), apparently hoping to get two "bites at the apple."

At the outset, CWA's and Choice One's petitions fail to comply with the Commission's substantive and procedural requirements for petitions to deny and must, therefore, be dismissed. Specifically, neither CWA, nor Choice One filed affidavits establishing a *prima facie* case that approval of the applications would be contrary to the public interest. This omission deprives the Commission of facts with which to analyze otherwise unsupported allegations and thus requires dismissal of the filings.

In addition, CWA, PULP and Choice One each raise issues that have little to no relevance to proposed transaction. Further, the concerns raised by these parties are improperly focused on the conduct of the transferor rather than the fundamental qualifications of the transferee. As a consequence, the filings simply do not offer sufficient reasons for the Commission to deny or condition approval of the proposed transaction.

Finally, the substance of Choice One's petition is premised upon unfounded allegations of anticompetitive conduct on the part of a Global Crossing subsidiary, FTR. While Applicants are disturbed by such unsupported and careless accusations, they nevertheless demonstrate that Choice One's complaints have no basis in law or fact, and must be dismissed.

Applicants, therefore, urge the Commission to disregard the November 20, 2000 filings of CWA, PULP and Choice One and promptly approve the proposed transfer of control without condition or qualification.

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INTRODUCTION

Global Crossing Ltd. ("Global Crossing") and Citizens Communications Company ("Citizens") (jointly "Applicants"), pursuant to Public Notice of the Federal Communications Commission ("Commission"),[1] hereby jointly oppose the Petitions to Deny filed by the Communications Workers of America ("CWA") and Choice One Communications of New York, Inc. ("Choice One"), and reply to the Comments of the Public Utility Law Project ("PULP").

BACKGROUND

Pursuant to a Stock Purchase Agreement by and between Global Crossing, its wholly owned subsidiary Global Crossing North America, Inc. and Citizens (the "Agreement"), Citizens has agreed to purchase directly or indirectly the stock of Global Crossing's incumbent local exchange carriers ("ILECs"). These companies operate in

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[1] *See* "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).

Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Ohio, New York, Pennsylvania and Wisconsin.

In all of these states except New York, the stock of the ILECs is wholly-owned by Frontier Subsidiary Telco Inc., an intermediate subsidiary which is currently wholly-owned by Global Crossing North America, Inc., which in turn is wholly-owned by Global Crossing. Under the Agreement, Citizens will purchase all of the stock of Frontier Subsidiary Telco Inc.

The stock of all of the ILECs in New York -- Frontier Telephone of Rochester, Inc. ("FTR"), Frontier Communications of Rochester, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of AuSable Valley, Inc., and Frontier Communications of Seneca-Gorham, Inc. -- is wholly-owned by Global Crossing North America, Inc. Under the Agreement, Citizens will purchase all of the stock of these LECs.

Global Crossing and Citizens filed transfer of control applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, to accomplish the proposed transaction. On November 20, 2000, CWA, Choice One, and PULP each filed in opposition to these applications. Each party has filed substantially similar comments with the New York Public Service Commission (""NYPCS"), apparently hoping to get two "bites at the apple." As demonstrated in Section I, CWA and Choice One fail to meet the fundamental procedural and substantive requirements for a Petition to Deny. Section II demonstrates that CWA, PULP and Choice One raise issues that have little to no relevance to proposed transaction, and are largely focused on the conduct of the transferor rather than the fundamental qualifications of the transferee. It also demonstrates that the petitions are substantively meritless.

Petitioners have failed to offer sufficient reasons for the Commission to deny or condition approval of the proposed transaction. Global Crossing and Citizens, therefore, urge the Commission to disregard these filings and grant the applications for transfer of control.

ARGUMENT

I. THE PETITIONS TO DENY FAIL TO ESTABLISH A *PRIMA FACIE* CASE THAT THE PROPOSED TRANSFER WOULD NOT SERVE THE PUBLIC INTEREST.

The Commission undertakes a two-step analysis in judging the sufficiency of every petition to deny.[2] First, it determines whether the petition and its supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. During this step, the Commission assumes that the specific facts set forth by the complaining party are true, without reference to contrary evidence,[3] provided the facts alleged are supported by the affidavit of a person with knowledge of the facts alleged.[4] If a petition establishes a *prima facie* case, the Commission then determines whether, on the basis of the application, the pleadings, and other matters which it may officially notice, a substantial and material question of fact is presented. If there are no substantial and material questions, and the Commission is able to find that the application would be in the public interest, the application is granted.[5] The filings of CWA and Choice One utterly fail to meet these basic legal standards.

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

3 *Id.* at 1561.

4 47 U.S.C. § 309 (d)(1); 47 C.F.R. § 1.939(d).

5 47 U.S.C. § 309.

Neither of the petitions to deny is supported by affidavits. Indeed, the Petitions contain little more than unsupported allegations and conclusory facts and, as a result, cannot serve to establish the required *prima facie* case.[6] The Commission has long recognized the petitions to deny that consist only of "ultimate, conclusory facts or more general affidavits . . . are not sufficient."[7] In short, the petitions are devoid of facts upon which the Commission can adjudicate the request for denial or condition of the transfer applications. The Commission should, therefore, summarily dismiss the petitions to deny.

II. CWA, CHOICE ONE, AND PULP RAISE QUESTIONS THAT ARE NOT MATERIAL TO THE PROPOSED TRANSACTION AND LACK MERIT IN ANY EVENT.

In accordance with its obligations under Section 310(d) and 214 of the Communications Act, the Commission must determine whether approval of the proposed transfers of control will serve the public interest, convenience and necessity.[8] That analysis includes matters such as transferee qualifications, , productivity enhancements, improved incentives for innovation, and the advancement of FCC policy goals.[9] CWA, PULP, and Choice One, however, do not raise questions that are germane to any of these considerations. Instead of focusing on the qualification of Citizens as the transferee, the filings erroneously concentrate on alleged conduct by

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6 *Rocky Mountain Radio Co.*, 1999 LEXIS 4751 (October 1, 1999); *KOLA, Inc.*, 11 FCC Rcd 14297 (1996) (citing *Beaumont Branch of NAACP v. FCC*, 854 F.2d 501, 507 (D.C. Cir. 1988)); *Texas RSA 1 Limited Partnership*, 7 FCC Rcd 6584, 6585 (1992).

7 *Gencom, Inc. v. FCC*, 832 F.2d 171, n. 11 (D.C. Cir. 1987). In addition to this fatal flaw, Applicants note that Choice One's filing is also procedurally defective. Choice One's Petition exceeds 10 pages, but lacks a summary or table of contents. *See* 47 C.F.R. § 1.49(b), (c).

8 47 U.S.C. §§ 214, 310(d).

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

Global Crossing and its subsidiaries. These allegations do not rise to the level of calling Global Crossing's basic qualifications into question.

A. CWA's Petition Fails to Raise Any Material Issues.

CWA's petition is intended solely to force Global Crossing to transfer the frozen employee pension plan assets and liabilities to Citizens as part of the proposed transaction.[10] Absent such a condition, CWA asserts that grant of the transfer applications could negatively effect Global Crossing's workers' pension and retiree health benefits and force Citizens to seek price cap relief.[11]

CWA's concerns are misplaced for a number of reasons. First, CWA's members are contractually entitled to receive the benefits they bargained for with this fund, regardless of whether Global Crossing or Citizens holds the plan. CWA has failed to offer any evidence to show that its members will not receive their bargained-for benefits.[12]

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10 CWA at 1-2.

11 *Id.* In the only remotely cognizable federal communications law claim that CWA raises, it asserts (*id.* at 7-8) that the Commission might be required to afford Citizens price cap relief in the future to fund increased spending on health and welfare benefits. This is specious. In no sense could such increased spending be considered exogenous under the Commission's price cap regulations. *See* 47 C.F.R. § 61.44(c). CWA is confusing the price cap treatment of an accounting change with increased spending on health and welfare benefits. The two are not even remotely comparable.

12 Citizens has agreed to honor the existing collective bargaining agreements. Further, the proposed sale of Frontier will have no adverse impact on the benefits accrued and frozen under the terms of the Global Crossing Pension Plan ("Plan"). The Plan assets are maintained in a "qualified retirement plan." As such, their payment is assured by ERISA and the Internal Revenue Code. The benefits accrued under that plan cannot be reduced or eliminated. Neither the amount, the timing, nor the forms of benefit payable can be adversely changed or eliminated as a matter of law. Any perception that these benefits are "insecure" if they remain in the qualified retirement plan of Global Crossing is misplaced. In addition, the sales agreement between Citizens and Global Crossing does nothing to alter the security of these benefits.

Second, by filing with the FCC, CWA has chosen the wrong forum. CWA's concerns regarding the disposition of the pension fund are not even tangentially related to the Commission's public benefit analysis of the proposed transaction. Indeed, such matters are governed under the Employee Retirement Income Security Act ("ERISA"), the nations labor laws, and the collective bargaining agreement between Global Crossing and the CWA -- not the Communications Act. In short, Applicants believe this is a matter over which the Commission cannot and should not assert jurisdiction. Moreover, CWA has already raised this matter in detail before the NYPSC and the matter is being considered in that context.[13] Thus, the Commission need not consider the merits of CWA's Petition.

B. PULP's Comments Do Not Raise Any Material Issues.

PULP, like CWA, raises only a single question -- Lifeline enrollment.[14] Unlike CWA, however, PULP does not *oppose* the transaction, but rather asks that measures be taken to require these ILECs to increase the Lifeline enrollment to a level at or above the statewide average.[15] While Lifeline enrollment is a significant public policy issue, it has little or no bearing on the matter currently before the Commission, *viz.*, whether the proposed transaction is in the public interest. Further, like CWA, PULP has already raised this matter before the NYPSC.[16] The states play a significant role in Lifeline

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13 *Joint Petition of Global Crossing and Citizens Communications Company for Approval of the Transfer of Capital Stock of their New York ILECs and Frontier Subsidiary, Telco, Inc. to Citizens Communications, and for the Authorization Needed*, Case No. 00-C-1415, Comments of the Communications Workers of America (filed October 13, 2000).

14 PULP at 2.

15 *Id.*

16 *See id.*, Attachment.

administration and the Public Service Commission is the proper forum for this issue to be resolved.[17]

C. Choice One's Petition Does Not Raise Material Issues and Its Concerns Are Substantively Meritless.

In its Petition, Choice One opposes the acquisition of FTR by Citizens based upon unsupported allegations of anti-competitive conduct on the part of FTR.[18] In light of these allegations, Choice One proffers a laundry list of vague, non-specific demands including ongoing "monitoring and enforcement" by the Commission as well as an unequivocal commitment by FTR to develop a true competitive marketplace.[19]

Choice One's Petition suffers the same flaw as the filings of CWA and PULP -- it does not raise issues material to the Commission's public interest review of the proposed transaction. Choice One seeks to cloak this failing by referring to the fact that the public interest standard requires the Commission to consider the competitive impacts of any proposed transaction.[20] Choice One then offers a list of complaints against FTR regarding interconnection, collocation, and the provisioning of wholesale services. It alleges that FTR's conduct in these matters "frustrate[e] or otherwise inhibit[] the promotion of a pro-competitive, deregulatory policy framework that is

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17 *See, e.g., Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas*, Twelfth Report, 2000 FCC LEXIS 3482 ¶ 41; 47 C.F.R. § 54.409(a).

18 Choice One at 5-9, 11-14.

19 *Id.* at 17.

20 *Id.* at 2-3.

designed to open all markets to competition and accelerate private sector deployment of advanced services."[21]

While Choice One is correct that the Commission's analysis also includes a framework for assessing the competitive impact of a transaction on the relevant telecommunications market, the Commission is not thereby compelled to consider the issues merely because Choice One labels them competition issues.[22] Germane issues are subject to a rigorous competitive analysis. The Commission first defines the relevant product and geographic markets. Second, the Commission identifies significant current and potential participants in each relevant market, especially those likely to play a significant competitive role. Third, the Commission evaluates the horizontal effects that the proposal may have on competition in the relevant markets. Ultimately, the Commission will weigh any competing harmful and beneficial effects to determine whether, on balance, the proposal is likely to enhance competition in the markets in question or otherwise serve the public interest.

Other than vague references to frustrating competition, Choice One provides no discussion of the potential impact upon competition in the telecommunications market.[23] Instead, Choice One provides a litany of complaints regarding specific conduct by FTR.[24] In other words, Choice One is trying to shoe horn matters that are properly the

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21 *Id.* at 4.

22 *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20008-14; *Application of Motorola, Inc. and American Mobile Satellite Corporation for Consent to Transfer Control of Ardis Company*, 13 FCC Rcd 5182, 5189-92 (1998); *Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, 13 FCC Rcd at 8898-8902.

23 Choice One at 4.

24 Choice One raises two issues that arguably rise to the level of a federal communications law claim. The first is its erroneous allegation that FTR does not offering subloop unbundling. *Id.* at 13. Choice One has never requested subloop unbundling and has never brought this up as an issue with FTR's account management team. FTR will follow

subject of a complaint or enforcement proceeding into the Commission's public interest analysis of the proposed transaction. If Choice One believes FTR has violated the Communications Act, the appropriate procedure is a complaint under section 208 of the Act, or some other enforcement action, not the instant transfer of control proceeding.

Further, as a matter of substance, Choice One's complaints have no place in this proceeding. Indeed, to the extent that Choice One is raising interconnection and collocation issues, section 251 of the Communications Act has specifically reserved those matters to state jurisdiction.[25] The Commission simply has no opportunity to address these issues.

There can be no concern that Choice One will be left without recourse as the NYPSC has been active in this area. The NYPSC has already established the Open Market Plan ("OMP"), a regulatory plan which establishes competitive safeguards.[26] As Choice One states, the OMP sets forth specific rules pertaining to the provisioning of wholesale services to CLECs.[27] Thus, while Choice One may have concerns regarding FTR's "attentiveness to the OMP," such matters are properly brought before, and addressed by, the NYPSC, not this Commission. Indeed, Choice One has raised virtually the identical complaints that are set forth in its Petition to the NYPSC .

Moreover, Choice One's complaints are improperly focused on the conduct of FTR, *the transferor*. It makes no challenge involving Citizens or its qualifications as the

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all applicable FCC requirements if and when there is a bona fide request for subloop unbundling. The second is its assertion that FTR is improperly assessing end user common line charges on Choice One. *Id.* at 8 & n.10. As Choice One admits (*id.*), it has already raised this issue in a separate petition to the Commission and FTR will respond in that context. This complaint has no place in this proceeding.

25 47 U.S.C. § 251.

26 Choice One at 4.

27 *Id.*

transferee.[28] However, in evaluating assignment and transfer applications, the Commission does not re-evaluate the qualifications of the assignor or transferor "unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing."[29] As discussed, Choice One's allegations against FTR, however, do not justify a hearing; they are unsupported by affidavits or other evidence, generally fall outside the jurisdiction of the Commission, and are subject to regulation under the NYPSC's Open Market Plan. Consequently, the Commission should not reevaluate FTR's or Global Crossing's qualifications, because Choice One's complaints are essentially irrelevant. Therefore, the Commission can find that Choice One's Petition does not merit any of the extraordinary relief it requests.

Applicants undertake their responsibilities to this Commission and the state regulatory bodies with extraordinary seriousness and do not take lightly allegations of anti-competitive conduct. Applicants are thus disturbed by Choice One's careless and unsupported acusations regarding such conduct. Given the lack of evidentiary support proffered by Choice One, Applicants urge the Commission to immediately dismiss Choice One's Petition as wholly deficient. Nevertheless, despite Choice One's utter

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28 Adopting a "guilty until proven innocent" approach to Citizens, Choice One demands, without evidence of malfeasance, that Citizens be required to demonstrate its pro-competitive experience and expertise. *Id.* at 10. This request should be rejected out-of-hand. Contrary to Choice One's suggestions, Citizens is already providing UNEs to competitive LECs in its service territory. Further, Citizens would have no incentive to act in an anticompetitive fashion. Given its relative size and competitive position, it would be foolhardy for Citizens to do anything but fully support the Commission's fundamental pro-competitive, national policy framework designed to open telecommunications markets to competition.

29 *See, e.g., TeleCorp PCS, Inc.*, 2000 FCC LEXIS 5883 *14 (WTB October 27, 2000); *Vodafone AirTouch, PLC and Bell Atlantic Corporation*, 2000 FCC LEXIS 1683 *14 (WTB March 30, 2000); *Arch Communications Group, Inc. and Paging Network, Inc.*, 2000 FCC LEXIS 2161 *9 (WTB April 25, 2000).

disregard for the substantive and procedural requirements of the Commission, Applicants will address the specific allegations raised by Choice One. As demonstrated below, these allegations are without any basis in law or fact.

Choice One's complaints may be grouped into three broad categories: (1) alleged problems with collocation; (2) alleged problems with DSL provisioning; and (3) a miscellany of other complaints.

1. Choice One's Complaints Regarding Collocation Are Factually Inaccurate.

Choice One complains that it has encountered various problems in seeking collocation in FTR's facilities.[30] Choice One's statement that collocation at the Bushnell's Basin, Spencerport Long Pond and Todd Mart central offices has taken a year to implement is materially misleading. Although FTR and Choice One have discussed these offices on a number of occasions, FTR has never received a definitive request for collocation in those offices from Choice One. Moreover, since May 1, 2000, FTR has fulfilled 100% of all collocation requests for all CLECs within the 76 business day interval established as a metric by the NYPSC. The Commission should ignore Choice One's misleading attempt to create a false appearance of anti-competitive conduct.[31]

Choice One further claims that FTR must at any expense obtain landlord consent for Choice One to collocate in central office space that FTR leases from a third party,

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30 Choice One at 5-6.

31 The fact that this interval, as well as many others of which Choice One complains are subject to NYPSC metrics further demonstrates that Choice one's allegations are best addressed at the state level.

under a pre-existing lease that allows the landlord to withhold consent.[32] The case in question is an interesting one. Choice One entered into a lease of adjoining space in the same building, an arrangement that would have been a technically feasible alternative to collocation. When Choice One proceeded with its collocation request, it canceled its lease, understandably raising concerns with the landlord. The landlord informed FTR that it would not consent to Choice One's collocation pursuant to a clause in the lease that prohibits subleasing without landlord consent This is not FTR's legal battle as Choice One asserts; it is a problem caused by Choice One's collocation request and by its dealings with the landlord. Nothing in the FCC's rules requires FTR to renegotiate its pre-existing leases or to buy landlord consent to a sublease. FTR is at most obligated to cooperate with Choice One in bringing its own legal proceeding for a declaratory judgment on the lease,[33] or to cooperate with Choice One in establishing adjacent collocation. FTR has offered Choice One both of these alternatives. FTR may not lawfully be ordered to provide collocation at the risk of exposing itself to a lawsuit for damages and eviction as a result of Choice One's activities.

2. Choice One's Complaints Regarding FTR's Provision of DSL Service Are Utterly Devoid of Merit.

Choice One alleges that information in the loop prequalification database "is frequently incorrect." [34] In fact, FTR has repeatedly requested Choice One to provide

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32 Choice One at 5-6.

33 Choice One asserts (*id.* at 6) that as a prospective subtenant it has no legal standing with respect to the landlord. This argument is unsupported by any authority. To the contrary, *see* Siegel, *New York Practice* §137 (1999), which states the familiar proposition that proceedings must be brought by the "real party in interest." FTR has no particular stake in litigating whether the landlord may properly withhold consent to Choice One's collocation. Choice One would the real party in interest in any litigation with the landlord.

34 Choice One at 11.

FTR with any inaccuracies so that they can be corrected. To date Choice One has provided fewer than five examples, with none reported since August 2000.

Choice One complains that it is charged for DSL installation when the loop is ultimately found to be unqualified.[35] In fact, Choice One is causing its own problem by declining to order or pay for a partial engineering lookup or a full engineering lookup. If Choice One used either of these services as they are intended to be used, it would save the service charge that it now pays for withdrawing its order after FTR performs the lookup itself (at FTR's expense) and finds the loop to be unqualified.[36]

Other grievances flow from Choice One's failure to order engineering lookups. Choice One asserts that FTR's failure to meet its FOC (Firm Order Commitment) dates for DSL links have had a disastrous result on its potential customers.[37] In fact, these problems resulted from discovering late in the process that lines were not qualified. This problem continues to be exacerbated by Choice One's decision not to order engineering lookups. FTR does not guarantee that the prequalification tool used by CLECs (and by FTR) captures all of the load coils and other factors that may disqualify a link. This situation is why FTR offers engineering lookups.

Yet another problem is caused by Choice One's decision not to order engineering lookups. Choice One asserts that FTR does not have a reliable ordering procedure or pricing for level 2 and 3 circuits.[38] The prices for load coil and bridge tap removal, which determine the prices for level 2 and 3 circuits, depend on the numbers of load coils and

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35 *Id.* at 11-12.

36 Choice One's complaint here regards a matter governed by FTR's *intrastate* tariff, a matter over which this Commission possesses no jurisdiction.

37 Choice One at 12.

38 *Id.* at 12-13.

bridge taps. Choice One is here demanding information obtainable only through the lookup process, but is unwilling to pay the tariffed rates for the lookups. The solution to Choice One's problem is within its control.

Choice One alleges that that FTR acknowledges on its web site its lack of any line splitting ordering process.[39] This statement is false. FTR extended an invitation to Choice One in February/March 2000 to participate in a line sharing trial. Choice One declined. FTR then developed a process collaboratively with CLECs who expressed an interest in participating in line sharing. FTR supplied the process to Choice One on July 21, 2000 and placed the process on its web site on August 2. Choice One's knowledge of the process is beyond peradventure as it has submitted questions and comments on the process. FTR cannot understand how Choice One can now claim that there is no process.

Choice One also demands Operational Support System support for line sharing and asks the Commission to prohibit FTR's retail provision of DSL until such support is developed.[40] Choice One does not specify precisely what it wants, but it appears to be some kind of flow-through EDI support for preordering or ordering transactions, because FTR's OSS already supports line sharing on a non-flow through basis. This matter has already been addressed by the NYPSC[41] which has required flow-through EDI ordering and preordering support to be available in 2001.

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39 Choice One at 12.

40 *Id.* at 11.

41 Case 99-C-0936, *Proceeding on Motion of the Commission to Determine the Nature and Extent of the Operations Support Systems to be Developed by Frontier Telephone of Rochester, Inc.*

Choice One asserts (but does not in any way demonstrate) that FTR is not offering parity when a wholesale order is returned with a "no facilities" notation.[42] Neither FTR nor Choice One has an automated process to put an order "on hold" and wait to see if facilities by chance become available. FTR is not required to build facilities at no charge to fulfill Choice One's orders, and Choice One has not requested or offered to pay the costs of network buildouts when no DS-0 facilities are available. FTR explained this to Choice One at a meeting on July 20, 2000, and has received no further response.

Choice One asserts that FTR is competing unfairly because conditioned loops cost more than FTR's retail DSL service.[43] The simple answer to this assertion is that when loop conditioning is required, FTR does not offer retail DSL service unless the end user chooses to pay for loop conditioning.

Choice One objects to an "astronomical" price for a "line sharing unit."[44] Choice One is apparently referring to the line splitter. Choice One offers no specifics of this pricing or of Choice One's costs for similar units, and FTR is therefore unable to respond in detail to this assertion. Neither has Choice One raised this issue as an action item with FTR. This is clearly an issue related to FTR's intrastate tariffs, not one related to an acquisition proceeding, and is clearly an intrastate matter.

Choice One asserts that FTR has acknowledged that it does not properly record the existence of wholesale DSL circuits in its engineering databases.[45] This is factually untrue. FTR uses a specific and unique circuit identifier in its engineering database.

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42 *Id.* at 13.

43 *Id.*

44 *Id.* at 13-14.

Choice One goes on to claim that FTR therefore often disables Choice One DSL loops in search of spare facilities for FTR retail customers. FTR denies this assertion, and requests Choice One to provide any examples it may have.

3. Choice One's Miscellaneous Complaints Lack Merit.

Choice One complains that FTR is not yet providing dark fiber as a UNE.[46] Choice One misstates and materially omits many significant facts in this assertion. In a meeting on February 7, 2000, FTR asked Choice One to provide a bona fide request for dark fiber, a request that was never answered. In May 2000, Choice One brought up the issue again in the context of a third party providing dark fiber to Choice One, and FTR requested that Choice One have their third party make a request. FTR is not aware of any outstanding request by Choice One for dark fiber.

Choice One next asserts that there are problems with UNE hot cuts and cutovers.[47] In fact, FTR is constantly coordinating cutovers, but Choice One is causing problems by changing dates at the last minute (too late to stop the disconnection) and providing inaccurate cable assignments. In every case of problems, FTR has worked immediately to bring customers back into service, including, if necessary, bringing them back to FTR facilities for a period of time.

Choice One asserts that FTR "often fails" to coordinate number portability.[48] In fact, FTR has a dedicated person to coordinate number portability. It appears that Choice One is referring to a brief period of time when Choice One first started hot cuts,

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45 *Id.* at 8.

46 *Id.* at 6.

47 *Id.* at 7.

48 *Id.*

when it was ultimately found that a trigger within FTR's CARS system was not set correctly. This is a typical kind of "startup" process problem, and it was promptly rectified. There simply is no problem left to fix.

Choice One claims that FTR has set an arbitrary threshold for cutovers.[49] In reality, FTR's threshold of 10 per hour per central office is completely equitable and reasonable. FTR cannot be expected to handle infinite volumes of peak demand, and Choice One should be required to spread out its requests reasonably. Choice One claims that FTR technicians "frequently fail to mark or miss-mark circuit terminations."[50] In reality, Choice One's technicians have been having trouble finding demarcation points, requiring FTR to dispatch a technician to lead Choice One's technician to the demarcation. FTR does tag conditioned loops. It is possible that this assertion by Choice One refers to an outstanding request that FTR should dispatch technicians to tag every POTS line that is subject to a future hot cut. FTR declines to do so, because: (1) Choice One refuses to pay for such dispatches; and (2) Choice One technicians are perfectly capable of conducting an extremely simple test at the demarcation point that identifies the telephone number of any POTS line. Choice One cannot have it both ways, it either conducts its own testing or pays FTR to do so.

Choice One asserts that FTR delays competitive entry by testing only a small portion of the loop when a trouble ticket is opened.[51] Choice One asserts that FTR should test end-to-end because FTR tests end-to-end with retail customers. The simple answer to this assertion is that FTR is not obligated to test Choice One's facilities; it is

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49 *Id.*

50 *Id.* at 7-8.

51 *Id.* at 8-9.

only obligated to test its own. Moreover, Choice One as a carrier has an obligation equal to FTR's to conduct testing. Choice One is instead depending upon FTR to do testing that Choice One should do itself.

Choice One asserts that FTR frequently misses Choice One's provisioning intervals.[52] This is a material misrepresentation that requires a factual rebuttal. In fact, FTR's provisioning results for Choice One are very good. The NYPSC's carrier-to-carrier standard for missed installation appointments is 90% of commitments made, and Choice One's results were 100% in May, 98.71% in June, 100% in July and 99.78% in August. The NYPSC's carrier-to-carrier standard for loops installed within 10 days is 95%. FTR's results for Choice One under this standard were 99.67% in May, 91.2% in June, 87.3% in July (due to weather problems affecting all customers) and 98.26% in August.

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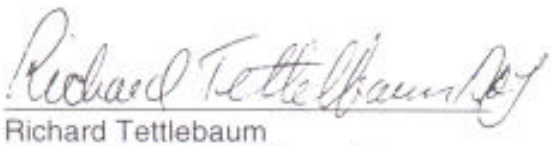
52 *Id.* at 12.

CONCLUSION

The Commission should promptly approve the proposed transfer of control without condition or qualification.

Respectfully submitted,

CITIZENS COMMUNICATIONS COMPANY



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GLOBAL CROSSING LTD.

Michael J. Shortley, III

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180 S. Clinton Avenue
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Attorney for Transferor

Of Counsel:

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December 6, 2000

DECLARATION OF GREGG C. SAYRE

I, Gregg C. Sayre, Senior Associate General Counsel – Local Operations, of Global Crossing North America, Inc. under penalty of perjury, hereby declare the following:

I have reviewed the preceding Joint Consolidated Opposition to Petitions to Deny and Reply to Comments of Global Crossing Ltd. and Citizens Communications Company and the facts presented therein are true and accurate to the best of my knowledge.

Gregg. C. Sayre

Sworn to before me this
5th day of December, 2000

Notary Public
CAROL A. PERSONTE
Notary Public, State of New York
Qualified in Monroe County
Commission Expires Dec. 8, 2002

DECLARATION OF RICHARD M. TETTELBAUM

I, Richard M. Tettelbaum, Associate General Counsel and Assistant Secretary, Citizens Communications Company, under penalty of perjury, hereby declare the following:

I have reviewed the preceding Joint Consolidated Opposition to Petitions to Deny and Reply to Comments of Global Crossing Ltd. and Citizens Communications Company and the facts presented therein are true and accurate to the best of my knowledge.

Dated this 5th day of December 2000.

CERTIFICATE OF INSURANCE

I, Karen S. Freeman, a secretary with the law firm of Wilkinson Barker Knauer, LLP, certify that on this 6th day of December, 2000, copies of the foregoing "Petition for Refund of Hearing Fee" were served by first-class U.S. mail, postage prepaid, or by hand delivery, upon the following:

* Johanna Mikes
Policy and Program Planning Division
Common Carrier Bureau
445 12th Street, S.W., Room 5-C163
Washington, D.C. 20554

* Justin Connor
Telecommunications Division
International Bureau
445 12th Street, S.W., Room 6-A832
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* Wayne McKee
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Karen S. Freeman

* Via Hand Delivery