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August 2, 2006

FILED ELECTRONICALLY AND FIRST-CLASS MAIL SERVICE
The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration with Chesnee Telephone Company, Inc., **Docket No. 2006-137-C**
Petition of Charter Fiberlink SC – CCO, LLC for Arbitration with West Carolina Rural Telephone Cooperative, **Docket No. 2006-138-C**
Petition of Charter Fiberlink SC – CCO, LLC for Arbitration with Lockhart Telephone Company, **Docket No. 2006-139-C**
Petition of Charter Fiberlink SC – CCO, LLC for Arbitration with Piedmont Rural Telephone Cooperative, Inc., **Docket No. 2006-142-C**

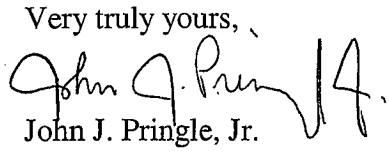
Dear Mr. Terreni:

Enclosed is the original and one copy of the **Motion of Charter Fiberlink, SC – CO, LLC *in Limine* to Exclude Identified Portions of the Direct Testimony of Douglas Duncan Meredith,** filed on behalf of Charter Fiberlink SC – CCO, LLC in the above-referenced dockets.

I have discussed this Motion with counsel for the Respondents.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

Very truly yours,



John J. Pringle, Jr.

cc: C. Lessie Hammonds, Esquire, Shannon Bower Hudson, Esquire
John Bowen, Esquire, Margaret Fox, Esquire
Charles A. Hudak, Esquire
Enclosures

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In Re: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Chesnee Telephone Company, Inc. Concerning Interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)))))))))	Docket No. 2006-137-C
In Re: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with West Carolina Rural Telephone Cooperative Concerning Interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)))))))))	Docket No. 2006-138-C
In Re: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Lockhart Telephone Company Concerning Interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)))))))))	Docket No. 2006-139-C
In Re: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Piedmont Rural Telephone Cooperative, Inc. Concerning Interconnection under the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)))))))))	Docket No. 2006-142-C

MOTION OF CHARTER FIBERLINK SC – CCO, LLC *IN LIMINE* TO EXCLUDE
IDENTIFIED PORTIONS OF THE DIRECT TESTIMONY OF DOUGLAS DUNCAN MEREDITH

COMES NOW Charter Fiberlink SC – CCO, LLC ("Charter Fiberlink"), by its undersigned counsel, and hereby submits to the Public Service Commission of South Carolina (the "Commission") this Motion *in Limine* to Exclude Identified Portions of the Direct Testimony of Douglas Duncan Meredith. For the reasons stated herein, Charter Fiberlink respectfully requests that the Commission rule that upon motion at the hearing, the Commission will exclude from evidence the portions identified below of the prefiled Direct Testimony of Douglas Duncan Meredith filed on July 20, 2006 in the form of three (3) separate documents by Chesnee Telephone Company, West Carolina Rural Telephone Cooperative, Inc., Lockhart Telephone Company and Piedmont Rural Telephone Cooperative, Inc. (collectively, "Respondents") on the ground that the witness, who is not an attorney or trained in the law, is purporting to testify concerning the applicable law to be applied in this arbitration and to legal conclusions.

1. The prefiled Direct Testimony of Douglas Duncan Meredith filed by Respondents is replete with instances where Mr. Meredith testifies concerning the law that he contends should apply to this arbitration and sets forth legal opinions and conclusions. It is well-established that such testimony is inadmissible even when the witness is an attorney. Moreover, because Respondents' witness is not an attorney, he is not qualified to hold or express an opinion concerning the law.

2. The law of South Carolina is clear that expert testimony on issues of law is inadmissible. *Dawkins v. Fields,* 354 S.C. 58, 65-66, 580 S.E.2d 433 (2003). In *Dawkins*, the South Carolina Supreme Court held that the trial court properly refused to consider an expert affidavit "because [the expert witness]'s affidavit primarily contained legal arguments and conclusions."[1] In that case, the Supreme Court affirmed the trial court's exclusion of a law professor's affidavit ***in its***

[1] *Id.* at 65.

entirety although it "arguably offered some helpful, factual information"[2] in addition to the objectionable legal argument. Like the affidavit in *Dawkins* except for the fact that it is presented in question and answer format, Mr. Meredith's prefiled Direct Testimony "reads as if it could have been respondents' oral argument ... ."[3] In fact, certain portions of Mr. Meredith's testimony ***are*** arguments that counsel for the Respondents have made in these Dockets. For example, Mr. Meredith argues that 47 C.F.R. § 51.715 does not apply to the Respondents. (Testimony concerning consolidated Issue 28, Page 2, lines 5-13). Counsel for Respondent Piedmont makes exactly the same argument in Piedmont's Return to Motion filed in Docket No. 2006-142-C at Paragraph 1 thereof: "As an initial matter, the regulation cited by Charter, 47 C.F.R. § 51.715, does not even apply to Piedmont." Unlike the Court's ruling in *Dawkins*, however, Charter Fiberlink seeks a ruling excluding only the improper legal argument and legal conclusions in Mr. Meredith's testimony, and not factual testimony or statements of the Respondents' positions on the issues.

3. This Commission has recognized that testimony concerning conclusions of law is objectionable and inadmissible in 47 U.S.C. § 252(b) arbitration proceedings. In *In re: Joint Petition for Arbitration on Behalf of NewSouth Communications Corp, et al.*, Docket No. 2005-57-C, Order No. 2006-19 (January 12, 2006), the Commission held that testimony by an attorney is objectionable when it consists of "inappropriate opinion testimony as to conclusions of law."[4] In that case the Commission declined "to parse [the witness]'s testimony separating objectionable advocacy from permissible factual testimony,"[5] but Charter Fiberlink has identified below the specific portions of

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2 *Id.* at 66.

3 *Id.*

4 Order No. 2006-19 at 6, citing S.C.R.E. 704 and *Shields v. S.C. Dept. of Highways*, 303 S.C. 439, 447, 401 S.E.2d 185 (1991).

5 *Id.* at 7.

Mr. Meredith's testimony that should be excluded as impermissible testimony concerning legal conclusions.

4. The legal opinions and conclusions in Mr. Meredith's prefiled Direct Testimony should be excluded from the record for the additional reason that Mr. Meredith is not an attorney, and so is not qualified to offer opinions on legal issues, nor does his experience as a regulatory consultant qualify him to do so. *Weststeyn Dairy 2 v. Eades Commodities Co.*, 280 F. Supp. 2d 1044, 1078 (E.D. Cal. 2003). In that case, the court excluded the testimony of a Certified Public Accountant regarding whether a trust relationship existed under the facts at issue, holding that the witness's experience as a "trustee, executor and accommodator" did not qualify him "to give a legal opinion on an issue of law" concerning trusts. Similarly, Mr. Meredith's extensive experience as a telecommunications consultant and regulatory witness does not make him competent to render a legal opinion. *See also Christiansen v. National Savings and Trust Co.*, 683 F.2d 520, 529 (D.C. Cir. 1982) ("lay legal conclusions are inadmissible in evidence").

5. By bringing this Motion, Charter Fiberlink does not seek to preclude Respondents from advancing the legal opinions and arguments contained in Mr. Meredith's prefiled Direct Testimony. Respondents' attorneys, who are subject to the Rules of Professional Conduct[6] and subject to discipline by the South Carolina Supreme Court, are free to advance such opinions and arguments in their briefs and oral argument if they believe them to be meritorious. Charter Fiberlink seeks only to exclude Mr. Meredith's incompetent testimony giving his legal opinions and legal conclusions.

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[6] *See, e.g.*, South Carolina Rule of Professional Conduct 3.1: Meritorious Claims and Contentions:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

6. Charter Fiberlink requests that the Commission rule that the following portions of the prefiled Direct Testimony of Douglas Duncan Meredith on behalf of Chesnee Telephone Company, West Carolina Rural Telephone Cooperative, Inc., Lockhart Telephone Company and Piedmont Rural Telephone Cooperative, Inc. (concerning the Consolidated Common Issues) shall be excluded from evidence:

a. Page 5, lines 2 through 5;

b. Page 6, line 4 beginning with "[t]his Commission" through line 10 ending with "toll calls";

c. Page 7, line 11, the phrase "that go beyond what is contemplated by the Act";

d. Page 9, line 2 beginning with the word "beyond" through page 10, line 2, including footnotes 4 and 5;

e. Page 10, line 17 through page 11, line 5, including footnote 9;

f. Page 11, lines 8 through 11, including footnote 10;

g. Page 14, lines 3 through 10, including footnotes 12 and 13;

h. Page 14, line 15 beginning with the phrase "[t]he rule" through line 18;

i. Page 16, line 3 beginning with the word "I" through line 4;

j. Page 19, line 15 through line 17 ending with the word "Agreement"; and

k. Page 21, lines 9 through 12, including footnote 16.

7. Charter Fiberlink requests that the Commission rule that the following portions of the prefiled Direct Testimony of Douglas Duncan Meredith on behalf of Chesnee Telephone Company, West Carolina Rural Telephone Cooperative, Inc., and Lockhart Telephone Company (concerning consolidated Issue No. 28) shall be excluded from evidence:

a. Page 1, line 21 through page 2, line 2;

b. Page 2, lines 5 through 13, including footnote 1;

c. Page 2, footnote 2, beginning with the phrase "and would be contrary" through the end of the footnote;

d. Page 2, line 20 beginning with the word "because" through page 3, line 2;

e. Page 3, line 6 through line 8 ending with the word "rules" and the footnote number, as well as footnote 3;

f. Page 3, lines 18 through 23; and

g. Page 4, line 2, beginning with the word "apply" through line 3, ending with the word "or."

8. Charter Fiberlink requests that the Commission rule that the following portions of the prefiled Direct Testimony of Douglas Duncan Meredith on behalf of Piedmont Rural Telephone Cooperative, Inc. (concerning Issues 3, 4 and 5) shall be excluded from evidence:

a. Page 5, lines 1 through 8; and

b. Page 6, lines 16 through 18.

9. Charter Fiberlink respectfully requests that the Commission promptly grant this Motion and rule that the referenced portions of the prefiled Direct Testimony of Douglas Duncan Meredith may not be admitted into evidence. In the event that the Commission has not ruled on this Motion before August 3, 2006, when Charter Fiberlink's prefiled Rebuttal Testimony is due, Charter Fiberlink reserves the right to include in its prefiled Rebuttal Testimony legal argument and legal conclusions that are responsive to the purported legal analysis contained in the prefiled Direct Testimony of Douglas Duncan Meredith. Any such legal argument and legal conclusions contained in Charter Fiberlink's prefiled Rebuttal Testimony should be admitted into the record only to the

extent that they respond to portions of the prefiled Direct Testimony of Douglas Duncan Meredith identified above that are admitted into evidence.

WHEREFORE, for the foregoing reasons, Charter Fiberlink respectfully requests that the Commission rule that the indicated portions of the prefiled Direct Testimony of Douglas Duncan Meredith may not be admitted into evidence and grant Charter Fiberlink such other and further relief as the Commission determines to be just and proper.

RESPECTFULLY SUBMITTED, this 2nd day of August, 2006.

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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Motion of Charter Fiberlink, SC – CO, LLC *in Limine* to Exclude Identified Portions of the Direct Testimony of Douglas Duncan Meredith** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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Carol Roof

Carol Roof, Paralegal

August 2, 2006
Columbia, South Carolina