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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005

ORDER

December 21, 2006

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996, and

FORMAL CASE NO. 988, IN THE MATTER OF THE DEVELOPMENT OF UNIVERSAL SERVICE STANDARDS AND THE UNIVERSAL SERVICE TRUST FUND FOR THE DISTRICT OF COLUMBIA, Order No. 14156

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") directs Verizon Washington DC, Inc. ("Verizon DC") and the competitive local exchange carriers ("CLECs") listed in footnote No. 2 to each deposit \$368.19 for Formal Case No. 962 and \$836.37 for Formal Case No. 988 into the Treasury of the District of Columbia to the credit of the account, "Office of the People's Counsel Agency Fund."

**II. BACKGROUND**

2. On December 8, 2006, the Office of the People's Counsel ("OPC") filed with the Commission two Notices of Agency Fund Requirements ("NOAFR" or "Notice") and proposed Orders in Formal Case Nos. 962 and 988.<sup>1</sup> OPC requests that the Commission direct Verizon DC and 21 CLECs<sup>2</sup> to deposit proportionate shares of \$8,100.18 into the Treasury of the District of Columbia to the credit of the fiduciary account known as the "Office of the People's Counsel Agency Fund" to meet expenses incurred by OPC in fulfilling its statutory mandate to represent

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<sup>1</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Office of the People's Counsel Notice of Agency Fund Requirements, ("Formal Case No. 962 NOAFR"), filed December 8, 2006; *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia*, Office of the People's Counsel Notice of Agency Fund Requirements, ("Formal Case No. 988 NOAFR"), filed December 8, 2006.

<sup>2</sup> OPC proposes to assess the following CLECs: 1-800 Reconnex, Inc. d/b/a US Tel, A.R.C. Networks d/b/a InfoHighway, AT&T Communications of Washington DC, LLC, ATX Licensing, Inc. d/b/a ATX Telecommunications Services, Broadwing Communications, LLC f/k/a Focal Communications,, CTC Communications Corp. d/b/a One Communications, Cypress Communications Operating Company, Global Crossing Telemanagement, Inc., LightWave Communications, Looking Glass Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, Metropolitan Telecommunications of DC d/b/a MetTel, NOS Communications, Paetec Communications, Inc., Quantum Shift Communications, Inc., Qwest Communications Corporation, Starpower Communications, LLC, Teleport Communications of Washington DC, Inc., US LEC of Virginia, LLC, VIC-RMTS-DC d/b/a Verizon Avenue, and XO Communications Services, Inc.

ratepayers in Formal Case No. 962.<sup>3</sup> OPC also requests the same parties to submit proportionate shares of \$18,400.14 into the Treasury of the District of Columbia to the credit of the fiduciary account known as the "Office of the People's Counsel Agency Fund" to meet expenses incurred by OPC in fulfilling its statutory mandate to represent ratepayers in Formal Case No. 988.<sup>4</sup>

3. The record reflects that on October 19, 2006, a copy of the recommended Formal Case No. 988 Notice and a proposed Commission order were submitted to Verizon DC and 22 CLECs.<sup>5</sup> The record also reflects that on October 25, 2006, a copy of the recommended Formal Case No. 962 Notice and a proposed Commission order were submitted to Verizon DC and 22 CLECs.<sup>6</sup> The record further reflects that oppositions to the Formal Case No. 988 Notice were filed by Verizon DC and Verizon Access (jointly "Verizon DC"),<sup>7</sup> Andre Temnorod (identified as Chief Operating Officer of Business Telecom, Inc. ("BTI"),<sup>8</sup> AT&T Communications of Washington DC, LLC and Teleport Communications of Washington, DC, Inc. (jointly

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<sup>3</sup> Formal Case No. 962 NOAFR at 2-3. OPC calculates that Verizon DC and the CLECs should each pay \$368.19 by dividing the \$8,100.18 total by the 22 entities to be assessed.

<sup>4</sup> Formal Case No. 988 NOAFR at 2-3. OPC calculates that Verizon DC and the CLECs should each pay \$836.37 by dividing the \$18,100.14 total by the 22 entities to be assessed.

<sup>5</sup> *Formal Case No. 988*, Letters to J. Henry Ambrose, Verizon Washington DC, Inc. and Verizon Access Services, Timothy O'Hara, AT&T Communications of Washington DC, LLC and Teleport Communications of Washington, DC, Inc., Karen Potkul, XO Communications Services, Inc., Ingrid Weaver, VIC-RTMS-DC d/b/a Verizon Avenue, Ed Griffin, US LEC of Virginia, LLC, Abebi Wolfe, Starpower Communications, LLC, Randy Burns, Qwest Communications Corporation, Jenna Brown, Quantum Shift Communications, Inc., J.T. Ambrosi, Paetec Communications, Inc., Rowena Hardin, NOS Communications, Andoni Economou, Metropolitan Communications of DC, Jodi J. Caro, Looking Glass Networks, Inc., Mark Ricigliano, LightWave Communications, Diane Peters, Global Crossing Telemanagement, Inc., Nicole Browne, Cypress Communications, Jie Cui, CTC Communications, Andre Temnorod, Business Telecom, Inc., Daniel E. Meldazis, Broadwing Communications, Doreen Flash, TX Licensing, Inc. d/b/a ATX Telecommunications, Tada Vaitkus, ARC Networks d/b/a InfoHighway Communications, Dennis Kelly, 1-800-Reconnex, Inc. from Derryl Stewart King, Agency Administrator, dated October 19, 2006.

<sup>6</sup> *Formal Case No. 962*, Letters to J. Henry Ambrose, Verizon Washington DC, Inc. and Verizon Access Services, Timothy O'Hara, AT&T Communications of Washington DC, LLC and Teleport Communications of Washington, DC, Inc., Karen Potkul, XO Communications Services, Inc., Ingrid Weaver, VIC-RTMS-DC d/b/a Verizon Avenue, Ed Griffin, US LEC of Virginia, LLC, Abebi Wolfe, Starpower Communications, LLC, Randy Burns, Qwest Communications Corporation, Jenna Brown, Quantum Shift Communications, Inc., J.T. Ambrosi, Paetec Communications, Inc., Rowena Hardin, NOS Communications, Andoni Economou, Metropolitan Communications of DC, Jodi J. Caro, Looking Glass Networks, Inc., Mark Ricigliano, LightWave Communications, Diane Peters, Global Crossing Telemanagement, Inc., Nicole Browne, Cypress Communications, Jie Cui, CTC Communications, Andre Temnorod, Business Telecom, Inc., Daniel E. Meldazis, Broadwing Communications, Doreen Flash, TX Licensing, Inc. d/b/a ATX Telecommunications, Tada Vaitkus, ARC Networks d/b/a InfoHighway Communications, Dennis Kelly, 1-800-Reconnex, Inc. from Derryl Stewart King, Agency Administrator, dated October 25, 2006.

<sup>7</sup> *Formal Case No. 988*, Letter to Derryl Stewart King, Agency Administrator, from J. Henry Ambrose, Verizon DC and Verizon Access ("Verizon DC 962 Oppositions"), dated October 26, 2006.

<sup>8</sup> *Formal Case No. 988*, Letter to Derryl Stewart King, Agency Administrator, from Alexander E. Gertsberg, Counsel for Andre Temnorod ("Temnorod 988 Opposition"), dated October 31, 2006.

“AT&T”),<sup>9</sup> and Metropolitan Telecommunications of DC (“MetTel”).<sup>10</sup> Three oppositions to the Formal Case No. 962 Notice were submitted by AT&T,<sup>11</sup> Andre Temnorod,<sup>12</sup> and MetTel.<sup>13</sup> Additionally, the records contain responses from OPC’s Agency Administrator to the objections.<sup>14</sup>

4. After OPC filed its NOAFRs with the Commission, AT&T filed an objection to the NOAFRs.<sup>15</sup> Subsequently, OPC submitted an errata to its Formal Case No. 962 NOAFR on December 12, 2006.<sup>16</sup>

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<sup>9</sup> *Formal Case No. 988*, Letter to Derryl Stewart King, Agency Administrator, from Philip S. Shapiro, AT&T Communications of Washington DC, LLC and Teleport Communications of Washington DC, Inc. (“AT&T 988 Opposition”), dated October 25, 2006.

<sup>10</sup> *Formal Case No. 988*, Letter to Derryl Stewart King, Agency Administrator, from David Aronow, President, Metropolitan Telecommunications (“MetTel 988 Opposition”), dated November 1, 2006.

<sup>11</sup> *Formal Case No. 962*, Letter to Derryl Stewart King, Agency Administrator, from Philip S. Shapiro, AT&T Communications of Washington DC, LLC and Teleport Communications of Washington DC, Inc. (“AT&T 962 Opposition”), dated October 31, 2006.

<sup>12</sup> *Formal Case No. 962*, Letter to Derryl Stewart King, Agency Administrator, from Alexander E. Gertsberg, Counsel for Andre Temnorod (“Temnorod 962 Opposition”), dated October 31, 2006.

<sup>13</sup> *Formal Case No. 962*, Letter to Derryl Stewart King, Agency Administrator, from David Aronow, President, Metropolitan Telecommunications (“MetTel 962 Opposition”), dated November 1, 2006.

<sup>14</sup> *Formal Case No. 988*, Letter to Alexander E. Gertsberg, Counsel for Andre Temnorod, from Derryl Stewart King, Agency Administrator (“OPC Temnorod 988 Response”), dated November 27, 2006; Letter to Philip S. Shapiro, AT&T, from Derryl Stewart King, Agency Administrator (“OPC AT&T 988 Response”), dated December 1, 2006; Letter to J. Henry Ambrose, Verizon DC, from Derryl Stewart King, Agency Administrator (“OPC Verizon DC 988 Response”), dated December 1, 2006; Letter to David Aronow, President, MetTel, from Derryl Stewart King, Agency Administrator (“OPC MetTel 988 Response”), dated December 1, 2006; *Formal Case No. 962*, Letter to Alexander E. Gertsberg, Counsel for Andre Temnorod, from Derryl Stewart King, Agency Administrator (“OPC Temnorod 962 Response”), dated November 27, 2006; Letter to Philip S. Shapiro, AT&T, from Derryl Stewart King, Agency Administrator (“OPC AT&T 962 Response”), dated December 1, 2006; Letter to David Aronow, President, MetTel, from Derryl Stewart King, Agency Administrator (“OPC MetTel 962 Response”), dated December 1, 2006.

<sup>15</sup> *Formal Case Nos. 962 and 988*, Letter to Dorothy Wideman, Commission Secretary, from Philip Shapiro, Senior Attorney, AT&T (“AT&T Objection”), filed December 11, 2006.

<sup>16</sup> *Formal Case No. 962*, Errata (“OPC Errata”), filed December 12, 2006.

### III. DISCUSSION

#### A. OPC NOAFRs

5. In Formal Case No. 988, OPC avers that it requires outside technical expertise to competently provide advice to the Commission on the effects of the proposed intercarrier compensation plan, known as the Missoula Plan.<sup>17</sup> Similarly, OPC has also determined that it needs technical expertise to provide advice on further actions to be taken in Formal Case No. 962.<sup>18</sup> For both of these proceedings, OPC proposes to retain the services of J.W. Wilson & Associates, in particular Allen G. Buckalew. Mr. Buckalew has extensive experience in handling telecommunications economic policy issues. He provided technical assistance to OPC in Formal Case Nos. 777, 850, 916, 920, 922, and 990.<sup>19</sup> In Formal Case No. 988, OPC also seeks to retain the services of a second employee of J.W. Wilson & Associates, Roger R. Rodriguez.<sup>20</sup>

6. The contract ceilings for J. W. Wilson & Associates for Formal Case Nos. 988 and 962 are \$18,400.14 and \$8,100.18, respectively, with out-of-pocket expenses to be specifically accounted. The services of one contractor, Mr. Buckalew, will be used for both proceedings, while the services of a second contractor, Roger R. Rodriguez, will be used solely for Formal Case No. 988. Mr. Buckalew will be compensated at the rate of \$200 per hour, while Mr. Rodriguez will be compensated at the rate of \$150 per hour.<sup>21</sup>

#### B. NOAFR Compliance with D.C. Code Section 34-912, D.C. Code Section 34-2002(m), and Commission Regulations

7. The Commission is required to determine whether OPC's NOAFR complies with D.C. Code Section 34-912(a)(2), which provides as follows:

When any such investigation, valuation, revaluation, or other proceeding of any nature is begun by the Commission or the Office of the People's Counsel, either the Commission or the Office of the People's Counsel shall . . . determine from time to time the

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<sup>17</sup> On July 24, 2006, the National Association of Regulatory Utility Commissioners' ("NARUC") Task Force on Intercarrier Compensation, a group of industry representatives convened by NARUC, filed a proposed intercarrier compensation reform plan with the Federal Communications Commission ("FCC") (the "Missoula Plan"). In response to the FCC's request to comment on the Missoula Plan, the Commission requested parties to comment on the plan's effects in the District of Columbia to assist the Commission in preparing the requested comments. See, *Formal Case No. 988*, Order No. 14069, rel. September 27, 2006.. *Formal Case No. 988 NOAFR* at 1.

<sup>18</sup> *Formal Case No. 962 NOAFR* at 1.

<sup>19</sup> *Formal Case No. 988 NOAFR* at 3; *Formal Case No. 962 NOAFR* at 4.

<sup>20</sup> *Formal Case No. 988 NOAFR* at 3.

<sup>21</sup> *Formal Case No. 962 NOAFR* at 4; *Formal Case No. 988 NOAFR* at 4.

reasonable and necessary expenditures required to fully carry out the respective statutory responsibilities with regard to such . . . other proceeding. Once the Office of the People's Counsel has determined its requirements, the Office shall submit its determination for review by the Commission. Based on the record established by the Office's determination of its requirement for special franchise tax funds, the Commission shall review the Office's determination solely to determine whether it is consistent with the statutory authority of and rules issued by the Office, whether it is supported by findings, whether those findings are sustained by substantial evidence in the record submitted to the Commission, and whether it is within the limitations enumerated in [D.C. Code Section 34-912 (a)(3)].<sup>22</sup>

8. Because Formal Case Nos. 962 and 988 arise from the implementation of D.C. Code Section 34-2002(k), the millage limit for OPC for this case is different than that included in D.C. Code Section 34-912(a)(3). The millage limit for all proceedings arising under D.C. Code Section 34-2002(k) is \$150,000.<sup>23</sup> OPC's past requests have not reached this limit. Thus, OPC's Agency Fund requirements of \$18,400 for Formal Case No. 988 and of \$8,100 for Formal Case No. 962 do not exceed this statutory millage limit.

9. The Commission has reviewed the information submitted by OPC in support of its NOAFRs and finds that OPC, as required by Sections 1401.2 and 1405.2 of the Commission's Rules of Practice and Procedure,<sup>24</sup> has:

- A) Provided the total amount sought from the utility and the date on which payment is required to be made by the utility;
- B) Identified the contractors hired;
- C) Described the qualifications of the contractors;
- D) Described the work to be performed by the contractors;
- E) Identified the number of persons to be employed by the contractors on the contracts;
- F) Provided the rate of compensation on an hourly basis for each person employed by the contractors; and

<sup>22</sup> D.C. Code, 2001 Ed. § 34-912(a)(2).

<sup>23</sup> D.C. Code, 2001 Ed. § 34-2002(m).

<sup>24</sup> See 15 D.C.M.R. § 1401.2 and 15 D.C.M.R. 1405.2 (1991). These sections clarify the evidentiary requirements for the submissions of NOAFRs by OPC.

- G) Provided the contract ceilings for the contract.<sup>25</sup>

### C. Oppositions and Objections

10. Notwithstanding the above conclusions, the Commission also reviews the NOAFRs to determine whether the objections to the proposed assessments raised by some of the parties have merit. The Commission's rules regarding OPC NOAFRs require parties to object in writing and explain the rationale for their objections. Grounds for objections include, but are not limited to the compensation rate of the contractor; the relevance of the contractor's work to the proceeding; and statutory millage limits.<sup>26</sup> The Commission's rules indicate that OPC is to make specific findings regarding each objection<sup>27</sup> and transmit all of these materials to the Commission for its review.<sup>28</sup>

11. OPC received four oppositions to its proposed assessment in Formal Case No. 988, and three oppositions to its proposed assessment in Formal Case No. 962. Of the four oppositions that OPC received in Formal Case No. 988, OPC rejected the three filed by Verizon DC, AT&T, and MetTel.<sup>29</sup> For the Formal Case No. 962 assessments, OPC rejected the two filed by AT&T and MetTel.<sup>30</sup> The Commission addresses each opposition in turn.

#### 1. Relevance to Formal Case No. 988

12. In its Formal Case No. 988 NOAFR, OPC states that the amount requested is to obtain technical assistance in preparing comments to the Commission on the Missoula Plan, an intercarrier compensation proposal currently being evaluated at the FCC. Verizon DC argues that OPC's memorandum in support of its request was submitted to Verizon DC three days after OPC filed its Missoula Plan comments to the Commission. Verizon DC contends that it does not know why OPC needs the funds requested and does not know whether the funds requested will relate to Formal Case No. 988.<sup>31</sup>

<sup>25</sup> Formal Case No. 988 NOAFR at 3-4; Formal Case No. 962 NOAFR at 4.

<sup>26</sup> 15 DCMR § 2002.2 (1985).

<sup>27</sup> 15 DCMR § 2003.2 (1985).

<sup>28</sup> 15 DCMR § 2004 (1985).

<sup>29</sup> Andre Temnorod's objection focused on his assertion that he was not the Chief Operating Officer of BTI, one of the assessed CLECs. OPC decided not to pursue its assessment action against Mr. Temnorod or BTI and recalculated the assessments due from each remaining party. Formal Case No. 988 NOAFR at 3, n.6.

<sup>30</sup> Andre Temnorod's objection focused on his assertion that he was not the Chief Operating Officer of BTI, one of the assessed CLECs. OPC decided not to pursue its assessment action against Mr. Temnorod or BTI and recalculated the assessments due from each remaining party. Formal Case No. 962 NOAFR at 4, n.6.

<sup>31</sup> Verizon DC Opposition at 1.

13. The Commission rejects Verizon DC's opposition to OPC's Formal Case No. 988 NOAFR. In its NOAFR, OPC clearly identified that the consultant's technical advice would be used to prepare comments on the Missoula Plan. Because the Missoula Plan proposes to change universal service funding, the Commission sought comments on the Missoula Plan in its universal service docket, Formal Case No. 988. OPC's NOAFR seeks funding for technical advice on issues that are clearly relevant to Formal Case No. 988; therefore, OPC's NOAFR is proper.<sup>32</sup>

## 2. Method of Calculating Assessments

14. AT&T objects to OPC's proposal to assess Verizon DC and the 21 CLECs an equal proportion of the consultant costs. Instead, AT&T argues that OPC should seek to recover its costs by assessing Verizon DC and the CLECs based on their reported jurisdictional revenues. AT&T contends that OPC's proposed cost recovery mechanism unfairly disadvantages smaller CLECs.<sup>33</sup> AT&T maintains that, in Formal Case No. 962, for example, smaller CLECs will not be involved in as many unbundled network element transactions as larger CLECs and Verizon DC. According to AT&T's reasoning, smaller CLECs should not be required to bear a larger proportion of expenses in comparison to the benefits that they would receive by a resolution of the Formal Case No. 962 issues. AT&T also argues that the issues related to the Missoula Plan and intercarrier compensation also rely heavily on call volumes, which vary widely among the CLECs assessed. AT&T argues that it would be more equitable to assess CLECs based on their revenue. Further, AT&T contends that individual case assessments should be collected based on jurisdictional revenue, similar to the costs for OPC's (and the Commission's) operating budget.<sup>34</sup> MetTel supports AT&T's contentions, arguing that OPC is barred by D.C. Code § 34-912(a)(3) from assessing MetTel more than one quarter of one percent of its jurisdictional revenue, so the proposed assessment is improper.<sup>35</sup>

15. Section 34-2002(k) of the D.C. Code authorized the Commission to initiate proceedings to implement the federal Telecommunications Act of 1996 and the District of Columbia Telecommunications Competition Act of 1996. Two of the issues to be addressed in these proceedings were unbundling and universal service. Formal Cases Nos. 962 and 988 were established to resolve these issues, so they are proceedings that fall under section 34-2002(k).<sup>36</sup>

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<sup>32</sup> As part of its opposition, Verizon DC claims that OPC's original notice of the assessment was not delivered until after OPC had submitted its comments on the Missoula Plan to the Commission. However, Verizon DC does not explain how the timing of the assessment notice conflicts with the assessment authority granted to the Commission and to OPC by D.C. Code § 34-912 and the Commission's rules promulgated in accordance with that provision.

<sup>33</sup> AT&T Objection at 1.

<sup>34</sup> AT&T Objection at 2.

<sup>35</sup> MetTel Opposition at 1.

<sup>36</sup> D.C. Code, 2001 Ed. § 34-2002(k)(2) and (3).

16. The Commission and OPC's assessment statute creates specific requirements for cases that fall under section 34-2002(k). Section 34-912(b)(5) requires the following:

[t]he funding provisions of subsection (a) of this section shall not apply to local exchange carriers that are not the incumbent local exchange carrier, except, that such providers may be assessed for a proportionate share of the costs of the proceeding required under § 34-2002(k), up to a maximum amount of \$25,000 each.<sup>37</sup>

In the past, the Commission has determined that the statute requires only that each provider's share have some relationship to the whole and that the shares can be in equal parts.<sup>38</sup> OPC's assessment is consistent with that precedent. Although AT&T and MetTel disagree with that method, they have not argued that it is inconsistent with section 34-912(b)(5). Therefore, we decline to disapprove the NOAFR on this basis.

#### IV. CONCLUSION

17. The Commission finds that these NOAFRs contain the information required by Section 1405.2 of the Commission's Rules of Practice and Procedure that establishes standards for reasonable and necessary expenditures by OPC and that are supported by findings sustained by substantial evidence in the Commission's record. Furthermore, these NOAFRs are within the statutory limitations enumerated in Section 34-2002(m) of the D.C. Code. Finally, the Commission rejects the oppositions filed by Verizon DC, AT&T, and MetTel, finding that OPC properly calculated the amounts to be assessed Verizon DC and the CLECs.

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<sup>37</sup> D.C. Code, 2001 Ed. § 34-912(b)(5).

<sup>38</sup> *Formal Case No. 962*, Order No. 11053 at 3 (August 20, 1997). *See also*, *Formal Case No. 962*, Order No. 11147 at 1, 4-6 (March 18, 1998); *Formal Case No. 962*, Order No. 10985 at 3-4 (May 14, 1997)



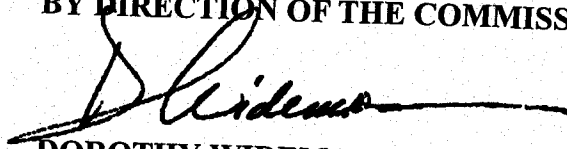
**THEREFORE, IT IS ORDERED:**

18. That not later than 15 days from the date of this Order, Verizon DC and the CLECs listed in footnote No. 2 are each directed to deposit \$368.19 for Formal Case No. 962 and \$836.37 for Formal Case No. 988 into the Treasury of the District of Columbia to the credit of the account, "Office of the People's Counsel Agency Fund."

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK**

A handwritten signature in black ink, appearing to read "D. Wideman", with a long horizontal flourish extending to the right.

**DOROTHY WIDEMAN  
COMMISSION SECRETARY**