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November 14, 2003

**VIA HAND DELIVERY**

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James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

DOCUMENT

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. I-00030099

Dear Secretary McNulty:

On behalf of Sprint Communications Company, L.P., (hereinafter "Sprint"), enclosed please find an original and three (3) copies of Sprint's responses to Preliminary Discovery Requests propounded by the Commission on October 3, 2003 in the above-referenced proceeding.

The enclosed responses are provided by Sprint as a certificated Competitive Local Exchange Carrier (CLEC) currently providing local service in Pennsylvania. While Sprint does lease dark fiber facilities for the provision of long distance service, Sprint does not own or lease any switching, transport or high-capacity loop facilities for the provision of local service in Pennsylvania. Therefore, Sprint has marked the individual interrogatory responses as "Not Applicable".

Should you have any questions regarding this letter or the attached diskette, please contact me by phone at (717) 245-6346 or by email at [sue.e.benedek@mail.sprint.com](mailto:sue.e.benedek@mail.sprint.com). Thank you.

Sincerely,

Sue Benedek

ZEB/jh  
enclosures  
cc: Certificate of Service (*via electronic and first-class mail*)

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ORIGINAL

**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 1:**

Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in Pennsylvania, regardless of whether the switch itself is located in Pennsylvania. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 2:**

Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in Pennsylvania, regardless of whether the switch itself is located in Pennsylvania. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 3:**

For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term. *See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.*

**Response:**

Not applicable.

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Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 4:**

For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term. *See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.*

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 5:**

With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines; and (c) business customers to whom you provide DS1, ISDN-PRI, or other high capacity lines. For purposes of this question, "high capacity" means DS1 or equivalent or higher capacity lines, including, but not limited to DS1, ISDN-PRI, DS3, OCn.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 6:**

For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Switching - 7:**

Provide a list of all switches from which you offer or provide switching capacity to another local service provider for use in providing qualifying service anywhere in Pennsylvania.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
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Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport - 1:**

For each ILEC, identify, by name, address, and CLLI code, each ILEC wire center (by the name, address, and CLLI code of that wire center) in which you have established a collocation arrangement or in which such arrangements have been ordered.

**Response:**

Not applicable.

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COMMUNICATIONS SECTION

**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport – 2:**

For each wire center identified in your response to Question 1, provide the number of arrangements by wire center, identify the transport facilities that currently serve such collocation arrangement (or that will serve such arrangement and that you are currently in the process of constructing, ordering, purchasing, or arranging for the use of). For purposes of this Question, “transport facilities” (a) does not include unbundled facilities obtained from the petitioning ILEC, and (b) does include dark fiber.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport – 3:**

For each transport facility identified in the response to Question 2, identify the transport technology utilized (*e.g.*, fiber optic (specify whether dark or lit), microwave, radio, or coaxial cable), and the quantity/capacity of the facility deployed.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
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Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport – 4:**

For each wire center and transport technology identified in the responses to Questions 1-3, identify the type of termination equipment utilized in the collocation arrangement.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport – 5:**

For each transport facility identified in your response to Question 2, state whether the facility is owned by you or whether you acquired rights to utilize it under a lease or other some other form of non-ownership arrangement. (If the facility was provisioned through the use of dark fiber that you acquired and subsequently “lit,” answer separately for the fiber and the optronics utilized.) If the facility is not owned by you, identify the entity that owns the facility and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport – 6:**

Identify and describe any arrangements into which you have entered with another entity for such other entity's use of transport facilities in Pennsylvania that you own or control, on a lease or other basis.

**Response:**

Not applicable.

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**Investigation into the Obligations of Incumbent Local Exchange  
Carriers to Unbundle Network Elements  
Docket No. - I-00030099**

**Response of Sprint Communications Company, L.P. to the  
Questions Propounded by the Pennsylvania Public Utility Commission**

**Sponsoring Witness: Gerald Flurer**

**Transport - 7:**

Provide a list of all recurring and non-recurring rate elements and rates when a CLEC purchases UNE-Loop and special access, EEL, DS1, or DS3 transport from the ILEC rate center to the CLEC rate center.

**Response:**

Not applicable.

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PA. PUBLIC UTILITY COMMISSION  
REGULATORY BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of )  
Incumbent Local Exchange Carriers to ) Docket No. I-00030099  
Unbundle Network Elements )

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this 14<sup>th</sup> day of November, 2003, served a true copy of the foregoing Responses upon the persons below via first-class and electronic mail, in accordance with the requirements of 52 Pa. Code §1.54:

Julia A. Conover, Esquire  
Suzan D. Paiva, Esquire  
William B. Peterson, Esquire  
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*(3 copies)*

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Robert C. Barber, Esquire  
AT&T Communications of PA, Inc.  
3033 Chain Bridge Road  
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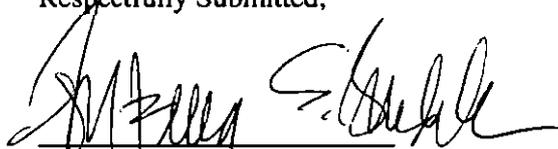
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Respectfully Submitted,



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PA. PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

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Senior Attorney

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November 14, 2003

**BY OVERNIGHT MAIL**

Mr. James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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NOV 14 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Investigation Into Obligations Of Incumbent  
Local Exchange Carriers To Unbundle Network Elements  
Docket No. I-00030099

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned proceeding the original and three (3) copies of AT&T Communications of Pennsylvania, LLC.'s Answer to Verizon Pennsylvania Inc.'s Petition to Initiate Proceedings.

Please do not hesitate to contact me with any questions regarding the enclosures.

Very truly yours,

  
Robert C. Barber

Enclosures

cc: Service List (w/ encl)

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ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligations of )  
Incumbent Local Exchange Carriers to )  
Unbundle Network Elements )

Docket No. I-00030099

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AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC'S  
ANSWER TO VERIZON PENNSYLVANIA INC.'S  
PETITION TO INITIATE PROCEEDINGS

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

The Commission has a long standing commitment to ensuring that competitors have access to the unbundled network elements they need to compete effectively for residential and small business customers in Verizon Pennsylvania Inc.'s local exchange market. The foundation of these efforts has been the establishment of the unbundled network elements platform ("UNE-P") as a mechanism for offering customers a meaningful competitive choice. In fact, over four years ago the Commission, declaring that the "importance of a CLEC's ability to obtain UNEs as a 'platform' cannot be overemphasized," rejected Verizon's efforts to constrain the availability of unbundled network switching and the UNE platform.<sup>1</sup> Instead, the Commission, applying the standards established in the Telecommunications Act of 1996 and relying on a massive evidentiary record, held that "UNE-P is the only effective way for CLECs to begin immediately offering competitive local exchange services to a broad range of customers, particularly

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<sup>1</sup> *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999 ("Global Order"), at 87.

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residential and small business customers,” and directed Verizon make UNE-P immediately available.<sup>2</sup>

The Commission had it exactly right. It was only in the wake of the Global Order that that competition for residential and small business customers began to emerge in Pennsylvania, and then only through the use of the UNE platform. In fact, as in the rest of the country, competition based on the “platform” of unbundled network elements now accounts for the overwhelming share of residential and small business local competition in the Commonwealth. It is thus unsurprising that the Federal Communications Commission (“FCC”) in its Triennial Review Order (“TRO”) made a national finding that competitive local exchange carriers are impaired without access to the platform.<sup>3</sup>

Given its historic antipathy to the platform in Pennsylvania, it also should come as no surprise that Verizon rejects this Commission’s and the FCC’s determinations. Instead, Verizon seeks to eliminate UNE-P and the competition that it has fomented once and for all – or, in the felicitous words of one senior Verizon

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<sup>2</sup> *Id.* The Commonwealth Court subsequently held in rejecting Verizon’s challenge to this determination that the Commission’s decision to make UNE-P available was “clearly in accordance” with the requirements of both federal and state law. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania PUC*, 763 A.2d 440, 513 (Pa. Cmwlth. Ct. 2000).

<sup>3</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, “Report And Order And Order On Remand And Further Notice Of Proposed Rulemaking,” No. FCC 03-36, released August 21, 2003 (“TRO”).

executive, to “kill those little suckers.”<sup>4</sup> To that end, Verizon has submitted a petition to initiate a proceeding requesting that the Commission overturn the presumptions established by the FCC. In that petition, Verizon, relying on an overly simplistic and completely self-serving reading of the TRO, as well as on numerous assumptions regarding the extent to which CLECs have been able to compete for mass market customers without UNE-P, seeks to eliminate unbundled switching for mass market customers – and thus the UNE platform -- as a competitive alternative throughout most of its service territory.<sup>5</sup> Similarly, and again relying on a series of unfounded assumptions and legal interpretations, Verizon requests that the Commission find that it is not required to provide unbundled transport on a large number of routes among and between Verizon central offices.<sup>6</sup>

The Commission should reject this effort to ignore the intent and plain language of the TRO. Although a detailed factual response to Verizon’s claims is not possible at this early stage of the proceeding – a situation that is not helped by the fact Verizon, as of the date of this filing, continues to withhold from the CLECs such basic information as the identity and location of the “trigger” candidates on which it is relying to rebut the FCC’s presumption<sup>7</sup> – it is nevertheless clear that

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<sup>4</sup> Verizon Senior Vice President Lawrence Babbio; speaking at a Salomon Smith Barney investors conference, quoted *Telecommunications Reports Daily*, January 7, 2003.

<sup>5</sup> Verizon Pennsylvania Inc.’s Petition to Initiate Proceedings at 2, 7.

<sup>6</sup> VZ-PA Petition at 2, 12.

<sup>7</sup> Verizon withheld this information even in its purported “proprietary” version of its October 31 filing, apparently on the grounds that it constitutes third party proprietary data. Counsel for AT&T requested that Verizon produce this information on November 10. As of the date of this filing Verizon has yet to respond to that request. However, if Verizon’s claims regarding other CLECs suffer from the same defects

Verizon's overall approach to this case does not comply with the substantive mandate of the TRO.

To be sure, the TRO contemplates that ILECs such as Verizon may attempt to overcome the national presumption to maintain unbundled switching and dedicated transport in particular states. It made it just as clear, however, that overturning these presumptions even under the competitive "triggers" must be based on detailed proof that local competition, in specific geographic markets within the state, is sufficiently viable to produce market forces that will restrain VZ-PA's pricing power and spur VZ-PA to provide quality service and to innovate, given the operational and economic barriers that preclude CLECs from serving mass market customers with their own switches and transport. Stated another way, before the Commission can reverse the presumptive availability of UNE-P under the "self-provisioned switching" trigger, for example, it must determine that "mass market" residential and small business customers throughout the relevant market would be able to choose from among three facilities-based CLECs, each actively promoting the availability of services comparable in "cost, quality and maturity" to Verizon's services.<sup>8</sup>

Verizon's case does not envision any such searching analysis by this Commission. To the contrary, the practice advocated by VZ-PA essentially would have the Commission unthinkingly "count to three" and then declare the national

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that appear to afflict its claims regarding AT&T's presence as a facilities-based local exchange provider in Pennsylvania, it is clear that it has markedly overstated the level of facilities-based competition in Pennsylvania. This is a matter that will require substantial discovery and evidentiary development to flesh out.

<sup>8</sup> See TRO ¶ 499 n. 1549.

finding rebutted, without examining whether the trigger-candidate CLECs satisfy the qualitative and quantitative dimensions of the trigger analysis identified in the TRO, and without considering whether there are operational and economic impairments that would preclude effective competitive choices for Pennsylvania's residential and small business telephone subscribers.<sup>9</sup>

Cutting corners in the name of administrative expediency in the manner that VZ-PA proposes may serve its interests in preserving its monopoly, but it would undermine one of the TRO's primary goals – that is, to recognize the market barriers faced by new entrants.<sup>10</sup> Indeed, notwithstanding Verizon's efforts to ignore them, it is essential that marketplace realities must be considered in light of any attempt by VZ-PA to rebut the FCC's presumption with respect to mass market switching. As the FCC stated, evidence of facilities deployment by a CLEC is neither conclusive

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<sup>9</sup> Verizon suggests that the FCC has circumscribed this Commission's ability, within the context of the TRO's "trigger" analysis, to consider all appropriate factors in determining whether CLECs would be impaired in the absence of UNE-P. See VZ-PA's Petition at 1. As discussed above, this suggestion flies in the face of the TRO itself. Just as important, it is not consistent with Verizon's reading of the TRO in other fora. For example, in pleadings filed in support of a Petition for Mandamus filed in federal court, Verizon, along with other ILECs, describes the TRO as "delegating the ultimate determinations [concerning unbundling requirements] entirely to the states, guided only by a laundry list of open-ended factors. . . ." *United States Telecom Association v. FCC*, Nos. 00-1012, 00-1015 et al., Reply Brief in Support of Petitions for a Writ of Mandamus to Enforce the Mandate of This Court (D.C. Cir. Oct. 16, 2003), at 6. Verizon also described the "competitive triggers" as leaving the states "to their own judgment in deciding the central issue of market definition." *Id.* at 9. And specifically with respect to the switching trigger, Verizon noted that the TRO "unquestionably" required that a state commission's determination to overturn the FCC's presumption of impairment must be based on a determination that "a market is already fully competitive before providing relief . . ." *Id.* at 11.

<sup>10</sup> See TRO ¶ 84. It would also contravene the TRO provisions specifying impairment may continue in markets that "facially satisfy the self-provisioning trigger." TRO ¶ 503.

nor presumptive with regard to the self-provisioning trigger without additional information.<sup>11</sup> In weighing such information, consideration must be given to extent of such facilities, their ability to serve a defined market, and how mature and stable the market is.<sup>12</sup> Also, the self-provisioning trigger may only be satisfied if it is apparent that the candidate CLECs “demonstrate adequately the technical and economic feasibility of an entrant serving the mass market with its own switch . . . .”<sup>13</sup>

The FCC has stressed that “[a]ny reasonable application of the impairment standard and unbundling requirements should be economically rational.”<sup>14</sup> This means that the trigger aspect of the mass market switching analysis must be applied in a manner that will produce economically rational results.<sup>15</sup> Thus, nothing in the *Triennial Review Order* requires – or permits – the Commission to turn a blind eye to competitive realities by merely counting CLEC facilities. For this reason, the Commission must determine whether a trigger-candidate CLEC is serving mass market customers – both residential and small business – broadly across a defined market, with comparable speed of service delivery and quality of service, so that mass market customers across the market will indeed perceive the CLEC as a reliable competitive alternative supplier. If this is not the case, the mere presence of

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<sup>11</sup> TRO ¶ 94.

<sup>12</sup> *Id.*

<sup>13</sup> TRO ¶ 501.

<sup>14</sup> TRO ¶ 78.

<sup>15</sup> See TRO ¶¶ 55-56, 69.

the putative rival in the marketplace will not restrain VZ-PA's pricing power, much less provide a meaningful competitive alternative to consumers.

In short, the Commission should not conclude that a mass-market trigger has been satisfied unless it is satisfied that the actual experience of the candidate CLECs identified by Verizon does in fact prove that all significant operational and economic impairments have been overcome such that Pennsylvania's residential and small business customers in the market would continue to have competitive choices even if CLECs were denied the ability to use UNE-P in some geographic market. Put simply, before concluding that a trigger has been met and UNE-P eliminated, the Commission must be assured that consumers are made no worse off by its decision.

As with the trigger analysis, determining the cut-off point between the mass market and the enterprise market and defining the relevant geographic market are all inextricably linked to the discovery and analysis of data regarding the operational and economic realities in the Pennsylvania local exchange marketplace. During the analysis of the triggers and the associated economic and operational issues, the cut-off between the mass market and the enterprise market must also be established. The determination of the number of voice grade lines that represent a reasonable cross-over point between the mass market and the enterprise market is required before the Commission can apply a trigger to determine whether a CLEC is using its own switch to serve the mass market.<sup>16</sup>

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<sup>16</sup> TRO ¶ 497.

These matters cannot be resolved on the basis of raw, unanalyzed discovery data alone, and certainly not on the basis of Verizon's unverified say-so. Rather, the FCC's guidance makes clear that in defining the geographic markets, the full range of economic and operational issues must be fully exposed and considered, both to determine whether an additional CLEC has the ability to enter the mass market, and to measure the obstacles to expansion, if any, facing a trigger candidate found to be serving an area substantially smaller than the geographic market VZ-PA has identified. Such determinations involve an inquiry into and analysis of:

- ❖ "the locations of customers actually being served (if any) by competitors;"<sup>17</sup>
- ❖ "variation in factors affecting competitors' ability to target and serve specific markets economically and efficiently using currently available technologies;"<sup>18</sup>
- ❖ Whether a CLEC serving some customers with its own switch is "capable of serving" other areas;<sup>19</sup>
- ❖ Variation in costs and revenue opportunities in different areas;<sup>20</sup> and
- ❖ Any other "variation in factors affecting competitors' ability to serve each group of customers," such as variations in line densities and other factors that may affect the scale and scope economies associated with switch deployment, including whether there is adequate collocation space in a central office and whether the ILEC can handle large volumes of hot cuts.<sup>21</sup>

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<sup>17</sup> TRO, ¶ 495.

<sup>18</sup> TRO, ¶ 495.

<sup>19</sup> TRO ¶499, n. 1552.

<sup>20</sup> TRO ¶ 496.

<sup>21</sup> TRO ¶¶ 495-496.

Thus, contrary to Verizon's efforts to downplay, or even ignore, these issues, the TRO requires the Commission and the parties to analyze the many aspects of economic and operational impairment relevant to a proper definition of geographic markets before putting competition and consumers at risk.

One of the most significant of these impairment issues is Verizon's inability to overcome the difficulties associated with performing hot cuts in the volumes necessary to sustain a fully competitive mass market.<sup>22</sup> In fact, the FCC's determination that there is impairment in the mass market without local switching was motivated "in part, by the problems with the hot cut process – a problem that the FCC also found was not likely to be corrected until Verizon "implement[s] batch cut processes."<sup>23</sup>

Verizon, understandably, would prefer to divorce consideration of this issue from its effort to eliminate UNE-P. That gambit, however, ignores the reality that the volume of individual hot cuts Verizon has preformed to date would be dwarfed by those that it would be required to accomplish if UNE-P were no longer available. It also flies in the face of the provisions of the TRO. The FCC clearly states that implementation of a state approved batch hot cut process should cause CLECs to "begin to utilize self-provisioned switches in greater number going forward," and that "*in subsequent reviews*" of self-provisioning "states **will begin to find that requesting carriers are not impaired.**"<sup>24</sup> The TRO thus makes it plain that the

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<sup>22</sup> TRO, ¶¶ 439-440, 459.

<sup>23</sup> TRO ¶ 502.

<sup>24</sup> TRO ¶ 502 (emphasis added).

impairment that exists today will continue until or unless the batch hot cut process implemented by the Commission meets the needs of commercial mass-market volumes in a manner that promotes effective and efficient competition.<sup>25</sup>

In fact, in order for VZ-PA to successfully challenge the national finding of impairment with respect to any geographic market, it must demonstrate that it has successfully operationalized a seamless, low cost loop facility migration process, that can serve both residential and small business mass market customers at commercial volumes throughout the relevant market using UNE-L. Thus, at the end of this proceeding, the Commission must be in a position to determine whether VZ-PA has eliminated all operational barriers, including, at a minimum, impediments that may arise through issues associated with collocation, the delays and cost of unbundled loop provisioning, migration of all loop types between and among CLECs and VZ-PA, the impact of IDLC loops as an impediment to UNE-L competition, and the ability of VZ-PA's interconnection and tandem network to handle the substantially increased volumes in a UNE-L-only world.<sup>26</sup> VZ-PA must also demonstrate that its processes are commercially reasonable for line-splitting, line-

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<sup>25</sup> The hot cut charge is only one of the additional costs that a CLEC faces (and that VZ-PA does not) when the CLEC provides service using VZ-PA loops connected to the CLEC's own switch. Before the first VZ-PA loop can be "hot cut" to the CLEC's switch, the CLEC must incur costs to (i) establish collocation space in VZ-PA's wire center, (ii) equip that space with the necessary racks, frames and electronics to connect the loop once the hot cut is made, digitize its signal, and aggregate traffic from multiple loops onto transport facilities, (iii) establish transport facilities between the collocation space and the building housing the CLEC's switch, and (iv) install and operationalize equipment, including electronics, to "de-aggregate" each loop's signal and establish the connection with the CLEC switch. Even if VZ-PA's hot cuts were free of charge and perfectly performed, the CLEC still incurs these other costs and VZ-PA does not.

<sup>26</sup> See TRO ¶¶ 512-514.

sharing,<sup>27</sup> and other DSL-related arrangements affecting the provision of voice service to “mass-market” customers. VZ-PA’s *promises* regarding its ability to perform and its actual performance are insufficient.<sup>28</sup>

As is evident from this discussion, the issues that the Commission must address in this case are myriad and complex. That is only appropriate, however, given the enormous potential impact of this case on Pennsylvania’ residential and small business customers, and for the Commonwealth’s economy in general, if Verizon has its way. If, as Verizon would have it, a given market is poorly defined, or the viability and market impact of actual competition is overestimated (or not considered at all), or the practical obstacles and limitations confronting competitors are not thoroughly evaluated, mass market customers in Pennsylvania could find themselves without any meaningful competitive alternatives.

Because the risks are so substantial, the Commission necessarily must ensure that it develops a complete picture of the status of competition in the State, ensuring that careful consideration is given to the geographic areas that Verizon asserts to be the subject of effective competition and to the extent of competition actually being offered in those areas by the CLECs that Verizon identifies as “trigger candidates.” AT&T believes that, at the end of such an inquiry, Verizon will be found to have failed in its efforts to defeat competition, and, consistent with the FCC’s

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<sup>27</sup> Hot cut processes must be able to work with line-sharing so long as line-sharing remains available.

<sup>28</sup> The FCC is explicit on this point with respect to hot cuts: mere “promises of future hot cut performance,” even when based on testimony submitted by ILECs like Verizon “attesting to their willingness and ability to handle any requested volume of hot cuts,” will not be sufficient evidence to establish that the operational impairments currently inherent in the hot cut process have been overcome. TRO n. 1437.

presumption, the availability of UNE-P as a competitive alternative for mass market customers in Pennsylvania will be preserved. Similarly, Verizon's efforts to eliminate dedicated transport as an unbundled element will be found to be without merit.

Further answering Verizon's Petition, AT&T responds to the enumerated paragraphs in Verizon's Petition as follows:

1. The averments in Numbered Paragraphs 1 through 6, 9 through 19, and 21-23 of the Petition consist of conclusions of law and/or Verizon's interpretation of the provisions of the provisions of the TRO to which no response is required. To the extent a response is deemed necessary, the TRO is the best evidence of its terms, and Verizon's averments are denied.

2. AT&T is without sufficient information with which to determine the validity of the averments in Numbered Paragraph 7 concerning Verizon's inability to determine if CLECs are providing wholesale switching, and therefore denies the same.

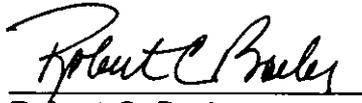
3. AT&T denies the allegations set forth in Numbered Paragraphs 8 and 20.

WHEREFORE, for all of the forgoing reasons, AT&T requests that Verizon's request for a finding of "no impairment" for mass market switching and dedicated transport be denied in its entirety.

Respectfully submitted,

**AT&T Communications  
of Pennsylvania, LLC**

By its Attorneys,



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(703) 691-6061

Of Counsel:  
Mark A. Keffer

Dated: November 14, 2003

Certificate of Service  
Docket No. I-00030099

The undersigned hereby certifies that true and correct copies of AT&T Communications of Pennsylvania, LLC.'s Answer to Verizon Pennsylvania, Inc.'s Petition to Initiate Proceedings were caused to be served on the persons named below by overnight mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

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\_\_\_\_\_  
Robert C. Barber

Dated: November 14, 2003

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SECRETARY'S BUREAU

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November 14, 2003

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Mr. James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth of Pennsylvania  
P. O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

DOCUMENT

DOCKETED

NOV 20 2003

**Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements; Docket No. I-000300099; Petition to Intervene by XO Pennsylvania, Inc.**

Dear Mr. McNulty:

Pursuant to the Pennsylvania Public Utility Commission's ("PAPUC" or "Commission") October 2, 2003 Procedural Order,<sup>1</sup> XO Pennsylvania, Inc. ("XO PA" or the "Company"), a wholly-owned subsidiary of XO Communications Inc., by its attorneys, hereby submits this Petition to Intervene in the above-referenced proceeding.

XO PA (previously known as NEXTLINK PA) has provided facilities-based competitive local exchange and competitive access provider in the Commonwealth of Pennsylvania since 1998.<sup>2</sup> The Company is an active provider of telecommunications and data services in the Commonwealth, offering bundled local service as well as dedicated voice and data telecommunications services primarily to Pennsylvania business customers.

<sup>1</sup> *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market, Investigation into the Obligations of Incumbent Local Exchange Carriers Unbundle Network Elements, and Development of an Efficient Loop Migration Process*, Procedural Order, Docket No. I-00030100, I-00030099, M-00031754 (Adopted, October 2, 2003, Entered October 3, 2003).

<sup>2</sup> *See Order*, Docket Nos. A-310758, dated December 17, 1998, *see also Order*, Docket No. A-310260 F0003, for NEXTLINK to provide service in Pennsylvania, dated November 5, 1997, respectively.

Mr. James J. McNulty  
November 14, 2003  
Page 2

XO PA intends to participate in this proceeding to the extent Verizon challenges the Federal Communications Commission's finding of impairment with respect to loops and transport UNEs. The Company believes its participation in the proceeding will be valuable as it will provide the Commission with additional insight determining the true extent of impairment that CLECs face in Pennsylvania. Finally, no party will be harmed or prejudiced by the addition of XO PA as an active party to this proceeding.

Please add the following persons to the service list in this proceeding:

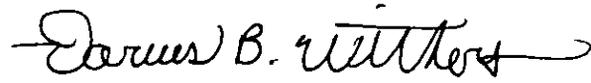
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Mr. James J. McNulty  
November 14, 2003  
Page 3

Kindly date-stamp the duplicate copy of this filing and return it in the self-addressed, postage paid envelope. Please feel free to contact the undersigned counsel at (202) 955-9774, if you have any questions regarding this filing.

Respectfully submitted,



Enrico C. Soriano  
Steven A. Augustino (*admitted pro hac vice*)  
Darius B. Withers (*admitted pro hac vice*)  
*Counsel to XO Pennsylvania, Inc.*

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November 14, 2003

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth of Pennsylvania  
P. O. Box 3265  
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PAPUC  
SECRETARY'S BUREAU

**Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements; Docket No. I-00030099; Petition to Intervene by Focal Communications Corporation of Pennsylvania**

DOCUMENT

Dear Secretary McNulty:

Pursuant to the Pennsylvania Public Utility Commission's ("PAPUC" or "Commission") October 2, 2003 Procedural Order,<sup>1</sup> Focal Communications Corporation of Pennsylvania ("Focal" or the "Company"), a wholly-owned subsidiary of Focal Communications Corporation, by its attorneys, hereby submits this Petition to Intervene in the above-referenced proceeding.

Focal has provided competitive local exchange ("CLEC"), competitive access provider ("CAP"), and facilities-based and reseller interexchange telecommunications services in the Commonwealth of Pennsylvania since 1998.<sup>2</sup> The Company currently offers a broad range of products to businesses in major metropolitan areas in Pennsylvania, including local, long

<sup>1</sup> *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market, Investigation into the Obligations of Incumbent Local Exchange Carriers Unbundle Network Elements, and Development of an Efficient Loop Migration Process*. Procedural Order, Docket No. I-00030100, I-00030099, M-00031754 (Adopted, October 2, 2003, Entered October 3, 2003).

<sup>2</sup> *See Order*, Docket Nos. A-310630, A-310630F0002, A-310630F0003, A-310630F0004, dated February 26, 1998.

KELLEY DRYE & WARREN LLP

James J. McNulty, Secretary  
November 14, 2003  
Page Two

distance, toll free, international, dedicated Internet access, Integrated Voice and Data (IVAD), and conference calling, and other telecommunications services.

Focal intends to participate in this proceeding to the extent Verizon challenges the Federal Communications Commission's finding of impairment with respect to loops and transport UNEs. The Company believes its participation in the proceeding will be valuable as it will provide the Commission with additional insight determining the true extent of impairment that CLECs face in Pennsylvania. Finally, no party will be harmed or prejudiced by the addition of Focal as an active party to this proceeding.

Please add the following persons to the service list in this proceeding:

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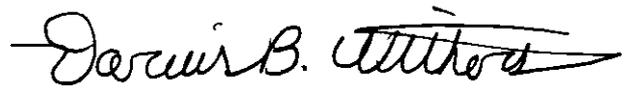
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KELLEY DRYE & WARREN LLP

James J. McNulty, Secretary  
November 14, 2003  
Page Three

Kindly date-stamp the duplicate copy of this filing and return it in the self-addressed, postage paid envelope. Please feel free to contact the undersigned counsel at 202-955-9774 if you have any questions regarding this filing.

Respectfully submitted,

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

Enrico C. Soriano  
Steven A. Augustino (*admitted pro hac vice*)  
Darius B. Withers (*admitted pro hac vice*)  
*Counsel to Focal Communications Corporation  
of Pennsylvania*

Enclosures

cc: Service List



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IRWINA. POPOWSKY  
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November 14, 2003

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

Re: Investigation into the Obligations of  
Incumbent Local Exchange Carriers to  
Unbundle Network Elements  
Docket No. I-00030099

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Answer to Verizon's Petition to Initiate Proceedings in the above-captioned matter.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Joel H. Cheskis  
Assistant Consumer Advocate

Enclosures

cc: All parties of record  
\*76655

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Investigation into the Obligations of :  
Incumbent Local Exchange Carriers to :  
Unbundle Network Elements :

Docket No. I-00003099

DOCKETED

NOV 19 2003

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ANSWER OF THE  
OFFICE OF CONSUMER ADVOCATE  
TO VERIZON PETITION TO  
INITIATE PROCEEDINGS

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NOV 14 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

On October 31, 2003, Verizon Pennsylvania Inc. (Verizon PA) filed its Petition asking the Public Utility Commission (PUC or Commission) to initiate a proceeding and make a finding that competitors are not impaired where they use their own local switching to serve the mass market in certain geographic areas and also where they use their own dedicated transport for specific interoffice routes.

The Office of Consumer Advocate (OCA) submits that Verizon's request for relief as to unbundled switching is overbroad and not supported by sufficient evidence. Through its Petition, Verizon seeks to be relieved of a portion of its statutory obligation under Section 251<sup>1</sup> of the Telecom Act. Verizon seeks to avoid offering competitors access to local service switching at Total Element Long Run Incremental Cost (TELRIC) rates in all of Density Cells 1, 2, and 3 in five Metropolitan Statistical Areas (MSAs). Verizon makes this contention based upon what it alleges to be evidence of certain facilities based competition. The OCA is concerned that adoption of Verizon's market definition and analysis will eliminate Unbundled

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<sup>1</sup> 47 U.S.C. § 251.

DOCUMENT

Network Element (UNE) switching and the UNE-Platform (UNE-P) that serves the majority of residential CLEC customers in Pennsylvania. This may well cause great harm to the competitive market for local telephone service and result in forcing many residential customers to migrate back to Verizon.<sup>2</sup>

More specifically, the OCA is concerned about the scope of this proceeding as Verizon has indicated in its Petition pertaining to Verizon North. The OCA also urges the Commission to carefully scrutinize Verizon's trigger-based case and reject Verizon's proposed market definition. The OCA submits that Verizon's market definition is overbroad and should not be defined based on density cells in each qualifying MSA. Rather, the market definition must be more granular. Furthermore, the market definition must more specifically exclude larger customers. Finally, Verizon's position that there are sufficient switching facilities to serve residential customers in the areas it requests findings of non-impairment is in error and should be rejected. The PUC should set this matter for hearing and make certain critical fact finding determinations, and establish a market definition that will prove workable and serve the interest of residential consumers and the public.

#### I. The Scope of This Proceeding

In this proceeding, Verizon PA has included information concerning Verizon North Inc. (Verizon North) wire centers and exchanges. The Petition is clearly filed by "Verizon-Pennsylvania Inc." Nonetheless, Verizon PA seems to have raised issues related to

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<sup>2</sup> This would be inconsistent with the FCC's Triennial Review Order which states that the impairment analysis is meant to "maintain appropriate incentives without throwing away the competition that exists today." Report and Order and Order on Remand, *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 03-36, fn. 1365 (rel. August 20, 2003) (TRO).

both Verizon PA and Verizon North. The Section 251 unbundling requirements apply to both Verizon Pennsylvania and Verizon North. The OCA will treat the Petition of Verizon PA as if it were properly filed on behalf of both Verizon operating companies.

Second, Verizon states that it “reserves the right to supplement its findings...” to include later developed evidence regarding Competitive Local Exchange Carrier (CLEC) provisioning of wholesale switching.<sup>3</sup> As Verizon acknowledges, evidence of CLEC wholesale switching relates to a different trigger under the TRO than is applied to using CLEC switches to offer retail service. Verizon refers to this as the “competitive wholesale facilities trigger.”<sup>4</sup>

The OCA opposes any attempt by Verizon to later broaden the scope of this case. Verizon admits it has not presented any evidence of CLEC wholesale switching. Verizon asserts that its “testimony and supporting documentation filed today demonstrates that Verizon meets the FCC’s objective mass market switching triggers....” *Id.* (emphasis on plural added). OCA submits that it is unreasonable for parties also to address in the future whether the competitive wholesale facilities trigger has been met in this 9-month proceeding.

As the PUC stated in its October 2, 2003 Procedural Order in this docket, Verizon bears the burden of proof in the proceeding.<sup>5</sup> Verizon has not made a *prima facie* case for a finding of non-impairment under the competitive wholesale switching facilities trigger. Accordingly, parties should not have the burden of going forward or burden of persuasion to show that this trigger has not been met.

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<sup>3</sup> Verizon Petition at 7.

<sup>4</sup> *Id.*

<sup>5</sup> PUC Procedural Order at 12.

## II. Verizon's Claim that the Self-Provisioning Trigger Has Been Met Should Be Rejected

### a. Introduction

Verizon asks the Commission to apply the self-provisioning switching trigger to determine that large portions of Verizon's service territory meet the non-impairment standard.<sup>6</sup> According to Verizon, the Commission's role is limited to defining the relevant geographic market and assessing whether the self-provisioning trigger is met in such markets.<sup>7</sup> If the trigger is met, Verizon states, "the Commission must make a finding of no impairment."<sup>8</sup> In addition, Verizon acknowledges that the Commission must make findings as to Verizon's ability to cut over unbundled loops in batches under a hot cut process.<sup>9</sup> This, according to Verizon, is the scope of the Commission's role. Additionally, while Verizon acknowledges that it could ask for a finding of non-impairment based on a "potential deployment case," Verizon declines to do so, choosing to "instead rest its case solely on the relevant trigger."<sup>10</sup>

The OCA takes exception to Verizon's overview of the Commission's role in two respects. First, as noted above, the OCA submits that Verizon has not made a *prima facie* case for application of the competitive wholesale switching facilities trigger in this proceeding.

Second, Verizon's Petition fails to acknowledge that the TRO expressly allows state commissions that find non-impairment based upon application of either trigger to consider whether "some significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches."<sup>11</sup> In the event a state commission

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<sup>6</sup> Verizon Petition at 6-7.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 11.

<sup>10</sup> Verizon Petition at 9. Paragraph 494 of the TRO provides "If the triggers are not satisfied, the state commission shall proceed to the second step of the analysis, in which it must evaluate certain operational and economic criteria...." OCA notes that the TRO language appears framed as mandatory. However, Verizon appears to reject PUC consideration of this second step.

<sup>11</sup> TRO ¶ 503.

identifies such an “exceptional barrier to entry”, the state commission may petition the FCC for a waiver of application of that trigger, for so long as the barrier exists.<sup>12</sup> As explained below, Verizon has failed to show non-impairment in properly defined geographic and customer markets in the Verizon service territory. In the event the Commission does make a finding of non-impairment under the self-provisioning trigger in some market(s), OCA submits that the Commission’s next step is to consider whether there are also other barriers to entry.

b. Verizon’s Market Definition is overly Broad.

The OCA disagrees with Verizon’s proposal to define markets based on Density Cells 1, 2, and 3 in each qualifying MSA.<sup>13</sup> Verizon’s proposal is too broad; it attempts to broad-brush what must be a more refined analysis. The FCC’s instructions clearly indicate that the PUC is to engage in a granular analysis that is far more exacting than that proposed by Verizon in its Petition. The OCA opposes Verizon’s Petition because Verizon’s approach would unnecessarily eliminate the UNE Platform on a broad scale in a wide geographic area and would harm competition for local telephone service in Pennsylvania.

The scale of market definitions in this proceeding must range from something less than the entire state at the macro level, down to something as small as an individual wire center at the most granular level.<sup>14</sup> The TRO provides that “[s]tate commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level...”<sup>15</sup> This requirement speaks for itself. Concerning the level of granularity upon which state commissions should conduct this analysis, the FCC provides that such an examination must consider:

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<sup>12</sup> TRO ¶ 462.

<sup>13</sup> Verizon St. 1.0 at 11

<sup>14</sup> TRO ¶ 495; Verizon Petition at 7-8; Verizon St. 1.0 at 14.

<sup>15</sup> TRO ¶ 495.

[t]he locations of customers actually being served (if any) by competitors, the variation in factors affecting competitor's ability to serve each group of customers, and competitors ability to target and serve specific markets economically and efficiently using currently available technologies.<sup>16</sup>

To provide guidance on the latter factor, that of efficient targeting, the FCC writes “[f]or example, competitors are often able to target particular sets of customers, or customers in particular wire centers or rate zones.”<sup>17</sup> The OCA supports a granular approach to market definition in this proceeding, in accord with the FCC’s instructions.

In contrast, Verizon’s Petition and testimony attempt to persuade the PUC that a definition based on wire centers would be “contrary to the admonition of the FCC.”<sup>18</sup> It is clear that Verizon’s testimony in support of its Petition overstates the case, and as such, cannot be used to determine the future of telephone competition in this state.

c. Distinction between Enterprise and Mass Market Customers is Critical.

As noted above, geography and customer location are just part of the market definition process. In regard to the threshold distinguishing mass market from enterprise customers (the FCC’s crossover point), the FCC provides that “[f]or purposes of the examination described here, mass market customers are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops.”<sup>19</sup> This instruction is clear. Yet Verizon proposes that, if a CLEC serves a customer through multiple DS0 loops, the customer is part of the mass market because the CLEC “has obviously determined that it is economical to serve that customer that way... instead of using a higher capacity DS1 loop.”<sup>20</sup>

OCA opposes Verizon’s contention concerning mass-market definition. Barriers

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<sup>16</sup> TRO ¶ 495.

<sup>17</sup> TRO ¶ 495, fn 1539.

<sup>18</sup> Verizon St. 1.0 at 14.

<sup>19</sup> TRO ¶ 497.

<sup>20</sup> Verizon Petition at 10.

may lead a CLEC to serve a large customer through multiple DS0 loops not as the economical choice, but as the only available choice. What is clear is that inclusion of these large customers in the mass market may overstate the success of competitors. For example, those CLECs willing to serve large customers through multiple DS0s may still not serve - or stand ready to serve - individual residential consumers. The OCA submits that each market defined must include careful consideration of which customers are truly “mass market.”

d. Analysis of the Self-Provision of Switches to Serve Residential Customers.

Next, concerning triggers, the FCC provides “...the competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other. In addition, they should be using or offering their own separate switches” and must be serving the mass market on a commercial basis.<sup>21</sup> The OCA submits that some of the data used by Verizon to support its arguments may include switches that do not meet this criterion. It will be necessary to conduct extensive discovery and on-the-record cross-examination to test whether all the areas that Verizon alleges to be unimpaired under this standard actually are so.

The FCC placed additional conditions on whether a state could count a switch within any one market area for purposes of meeting the trigger thresholds. The FCC wrote that competitive switch providers must be actively providing service to mass-market customers, they must be operationally ready and willing to provide service to all customers in the designated market, and should be economically capable of serving the entire market as defined by the state commission.<sup>22</sup> The data used by Verizon to support its Petition does not demonstrate that these conditions are met where Verizon proposes to eliminate UNE-P. As such, the OCA contends

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<sup>21</sup> TRO ¶ 499.

<sup>22</sup> TRO ¶ 318.

that Verizon's Petition is inadequate according to the standards outlined by the FCC. Further information gatherings and hearings are necessary on this point.

e. Verizon's view of CLEC Facilities and Line Count Information Is Not Conclusive Proof that the Trigger Has Been Met.

As explained above, OCA submits that Verizon's market definition is overbroad geographically and flawed as to the proposed cross over point for identifying customers in the mass market. OCA also contests Verizon's position that there are sufficient switching facilities to serve residential customers in the density cell and MSA areas for which it requests the Commission make a finding of non-impairment. Verizon expressly states that it is not attempting to make a case that CLECs could compete, under a potential deployment analysis.<sup>23</sup> Thus, to meet its burden of proof that the self-provisioning trigger is met, Verizon must identify that "three or more unaffiliated competing carriers each is serving mass market customers in a particular market with the use of their own switches."<sup>24</sup> Although Verizon alleges that in the markets under its definition that sufficient CLECs are using self-provisioned switches to serve residential customers, OCA submits that Verizon's evidence is not conclusive.

One key question is whether the CLEC switches identified are truly serving the mass market, as the mass market is defined for this impairment analysis. As the TRO noted, switches deployed to serve the enterprise market may require "substantial modifications, and attendant costs..." before an enterprise switch may also serve mass-market customers.<sup>25</sup> Under Verizon's theory, residents in an apartment complex served by a CLEC are mass-market customers, even though Verizon acknowledges that the CLEC service is initially through DS1

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<sup>23</sup> Verizon Petition at 9.

<sup>24</sup> TRO ¶ 501.

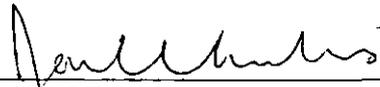
<sup>25</sup> TRO ¶ 441.

facilities.<sup>26</sup> OCA submits that Verizon has presented insufficient proof that the CLEC switches that it has identified are indeed equipped to serve the true mass market.

III. Conclusion

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate respectfully requests the Commission deny Verizon's request for a finding of non-impairment in the areas designated by Verizon and set this proceeding for hearing in order to develop a record on this issue.

Respectfully submitted,

  
Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett C. Sheridan  
Joel H. Cheskis  
Shaun A. Sparks  
Assistant Consumer Advocates

For: Irwin A. Popowsky  
Consumer Advocate

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Dated: November 14, 2003

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

---

<sup>26</sup> Verizon St. 1.0 at 32.

CERTIFICATE OF SERVICE

Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements  
Docket No. I-00030099

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Answer to Verizon's Petition to Initiate Proceedings, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14th day of November, 2003.

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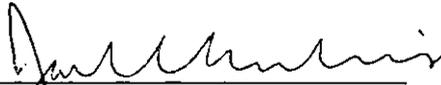
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November 14, 2003

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Mr. James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth of Pennsylvania  
P. O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

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NOV 24 2003

**Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements; Docket No. I-000300099; Petition to Intervene by SNIp LiNK, LLC**

Dear Mr. McNulty:

DOCUMENT

Pursuant to the Pennsylvania Public Utility Commission's ("PAPUC" or "Commission") October 2, 2003 Procedural Order,<sup>1</sup> SNIp LiNK LLC ("SNIp LiNK" or the "Company"), by its attorneys, hereby submits this Petition to Intervene in the above-referenced proceeding.

SNIp LiNK is a New Jersey-based competitive local exchange carrier ("CLEC") which has been certificated in the Commonwealth of Pennsylvania since 1999.<sup>2</sup> The Company currently offers service in Eastern Pennsylvania and LATA 228 and offers a full range of facilities-based Internet and telephony products, including Consumer Internet and Phone Services, Switched Business Internet and Phone Services and Dedicated Internet and Phone Services.

<sup>1</sup> *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market, Investigation into the Obligations of Incumbent Local Exchange Carriers Unbundle Network Elements, and Development of an Efficient Loop Migration Process*, Procedural Order, Docket No. I-00030100, I-000300099, M-00031754 (Adopted, October 2, 2003, Entered October 3, 2003).

<sup>2</sup> *See Order*, Docket No. A-310820, dated October 4, 1999.

Mr. James J. McNulty  
November 14, 2003  
Page 2

SNiP LiNK intends to participate in this proceeding to the extent Verizon challenges the Federal Communications Commission's finding of impairment with respect to loops and transport UNEs. The Company believes its participation in the proceeding will be valuable as it will provide the Commission with additional insight determining the true extent of impairment that CLECs face in Pennsylvania. Finally, no party will be harmed or prejudiced by the addition of SNiP LiNK as an active party to this proceeding.

Please add the following persons to the service list in this proceeding:

Anthony Abate  
President and CTO  
SNiP LiNK LLC  
100A Twinbridge Drive  
Pennsauken, New Jersey 08110  
[aabate@snipmail.net](mailto:aabate@snipmail.net)

Enrico A. Soriano, Esq.  
Steven A. Augustino, Esq.  
Darius B. Withers, Esq.  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
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[dwithers@kelleydrye.com](mailto:dwithers@kelleydrye.com)

Mr. James J. McNulty  
November 14, 2003  
Page 3

Kindly date-stamp the duplicate copy of this filing and return it in the self-addressed, postage paid envelope. Please feel free to contact the undersigned counsel at 202-955-9774 if you have any questions regarding this filing.

Respectfully submitted,



Enrico C. Soriano  
Steven A. Augustino (*admitted pro hac vice*)  
Darius B. Withers (*admitted pro hac vice*)  
*Counsel to SNIPLINK, LLC*

Enclosures

cc: Service List

**KELLEY DRYE & WARREN LLP**

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November 14, 2003

DOCUMENT

I-00030099

The Honorable Robert A. Christanson  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

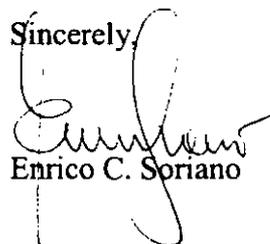
Re: Motion For Admission *Pro Hac Vice* of Steven A. Augustino, Genevieve Morelli, Ross A. Buntrock, Darius B. Withers, Erin W. Emmott, and Heather T. Hendrickson

Dear Judge Christanson:

Enclosed for your review and approval is an original and two copies of a Motion For Admission *Pro Hac Vice* of Steven A. Augustino, Genevieve Morelli, Ross A. Buntrock, Darius B. Withers, Erin W. Emmott and Heather T. Hendrickson. A duplicate copy has been provided for your convenience. Please date stamp the duplicate and return it in the self-addressed, postage-prepaid envelope.

Please feel free to contact the undersigned counsel at (202) 955-9600, if you have any questions regarding this matter.

Sincerely,

  
Enrico C. Soriano

ECS:pab  
Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligation of Incumbent Local Exchange Carriers To Unbundle Network Elements	) ) ) ) )	Docket No. I-00030099
Investigation into the Obligations of Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market	) ) ) ) )	Docket No. I-00030100
Development of an Efficient Loop Migration Process	) ) ) ) )	Docket No. M-0031754

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NOV 24 2003

DOCUMENT

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**MOTION FOR ADMISSION *PRO HAC VICE* OF  
STEVEN A. AUGUSTINO, GENEVIEVE MORELLI, ROSS A. BUNTROCK, DARIUS B.  
WITHERS, ERIN W. EMMOTT, AND HEATHER T. HENDRICKSON**

---

**NOW COMES** Enrico C. Soriano, a member in good standing of the Bar of the Supreme Court of Pennsylvania, on behalf of XO Pennsylvania, Inc., Choice One Communications of Pennsylvania Inc., SNiP LiNK, LLC, Broadview Networks, Inc., Focal Communications Corporation of Pennsylvania, BullsEye Telecom, ARC Networks, Inc., d/b/a InfoHighway Communications Corporation, McGraw Communications, Inc., Metropolitan Telecommunications of PA, Inc., and Talk America Inc. (collectively, "the Parties"), and hereby respectfully moves for admission *pro hac vice* of the Parties out-of-state counsel. In support thereof, the following is stated:

1. Rule 301 of the Pennsylvania Bar Admission Rules permits an attorney qualified to practice in the courts of another jurisdiction to be admitted to the Bar of this Commonwealth for purposes limited to a particular matter. See Pa. B.A.R. Rule 301.

2. Steven A. Augustino, Genevieve Morelli, Ross A. Buntrock, Darius B. Withers, Erin W. Emmott, and Heather T. Hendrickson, the Parties' out-of-state attorneys, are qualified to practice in jurisdictions which accord reciprocal privileges to members of the Bar of this Commonwealth.

3. Mr. Augustino is a partner with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423. He is a member in good standing of the Bars of the State of Maryland and the District of Columbia. Mr. Augustino has not been disbarred or suspended from the practice of law in the jurisdictions in which he is admitted, nor is he presently subject to pending disciplinary proceeding in any jurisdiction.

4. Ms. Morelli is a partner with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423. She is a member in good standing of the Bar of the District of Columbia. Ms. Morelli has not been disbarred or suspended from the practice of law in any jurisdiction in which she is admitted, nor is she presently subject to pending disciplinary proceeding in any jurisdiction.

5. Mr. Buntrock is an associate with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423. He is a member in good standing of the Bars of the Commonwealth of Virginia and the District of Columbia. Mr. Buntrock has not been disbarred or suspended from the practice of law in the jurisdictions in which he is admitted, nor is he presently subject to pending disciplinary proceeding in any jurisdiction.

6. Mr. Withers is an associate with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423. He is a member in good standing of the Bars of the State of Maryland and the District of Columbia. Mr. Withers has not been

disbarred or suspended from the practice of law in any jurisdiction in which he is admitted, nor is he presently subject to pending disciplinary proceeding in any jurisdiction.

7. Ms. Emmott is an associate with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423. She is a member in good standing of the Bars of the Commonwealth of Massachusetts and the District of Columbia. Ms. Emmott has not been disbarred or suspended from the practice of law in the jurisdictions in which she is admitted, nor is she presently subject to pending disciplinary proceeding in any jurisdiction.

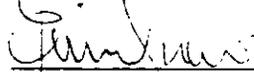
8. Ms. Hendrickson is an associate with the law firm of Kelley Drye & Warren LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036-2423.. She is a member in good standing of the Bars of the Commonwealth of Virginia and the District of Columbia. Ms. Hendrickson has not been disbarred or suspended from the practice of law in any jurisdiction in which she is admitted, nor is she presently subject to pending disciplinary proceeding in any jurisdiction.

9. Mr. Augustino, Ms. Morelli, Mr. Buntrock, Mr. Withers, Ms. Emmott, and Ms. Hendrickson are the Parties' counsel in various federal and state matters, and are familiar with the Parties' business and the instant proceeding. Consequently, Mr. Augustino, Ms. Morelli, Mr. Buntrock, Mr. Withers, Ms. Emmott, and Ms. Hendrickson are best qualified to represent the Parties' interests in this proceeding.

10. Finally, Mr. Augustino, Ms. Morelli, Mr. Buntrock, Mr. Withers, Ms. Emmott, and Ms. Hendrickson all possess the requisite character and fitness to represent the Parties' in the Commonwealth for the purpose of this proceeding. They have agreed to abide by all applicable statutes and regulations governing the practice of law in Pennsylvania.

**WHEREFORE**, the undersigned movant respectfully requests that the Commission grant *pro hac vice* admission to Steven A. Augustino, Genevieve Morelli, Ross A. Buntrock, Darius B. Withers, Erin W. Emmott, and Heather T. Hendrickson, pursuant to Rule 301 of the Pennsylvania Bar Admission Rules.

Respectfully submitted,



---

Enrico C. Soriano\*  
Pennsylvania Bar No. 63933  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
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**Counsel for XO Pennsylvania, Inc.;  
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Broadview Networks, Inc. and Focal  
Communications Corporation of  
Pennsylvania, BullsEye Telecom, ARC  
Networks, Inc., d/b/a InfoHighway  
Communications Corporation, McGraw  
Communications, Inc., Metropolitan  
Telecommunications of PA, Inc., and  
Talk America Inc.**

**Dated:** November 14, 2003

\*Also licensed to practice in New Jersey and the District of Columbia.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused a copy of the foregoing document to be sent this day  
by first class U.S. Mail, postage prepaid, to the parties named below:

Robert A. Christanson  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

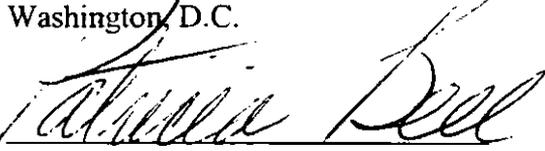
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James J. McNulty, Secretary  
Office of the Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, Pennsylvania 17120

Dated this 14<sup>th</sup> day of November 2003 at  
Washington, D.C.



Patricia Bell, Secretary  
KELLEY DRYE & WARREN LLP

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ORIGINAL

November 17, 2003

VIA HAND DELIVERY

DOCUMENT

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Harrisburg, PA 17105-3265

Re: Investigation into the Obligation Incumbent of Local  
Exchange Carriers to Unbundle Network Elements Docket  
No.; I-000300099

Dear Secretary McNulty:

Enclosed please find the original and three (3) copies of the Confidentiality Agreement,  
executed by Scot Dulin, in the above-reference matter.

Thank you for your attention to this matter.

Respectfully submitted,

Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw

cc: The Honorable Michael C. Schnierle  
Parties of Record

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WolfBlock Government Relations: Harrisburg, PA and Washington, DC  
Wolf, Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA EMAIL AND FIRST CLASS MAIL**

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Harrisburg, PA 17101-1921

Date: November 17, 2003

  
\_\_\_\_\_  
Alan Kohler, Esq.

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

APPENDIX A-2  
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PUBLIC UTILITY COMMISSION

Harrisburg PA 17105-3265

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NOV 20 2003

Investigation into the Obligations of  
Incumbent Local Exchange Carriers to  
Unbundle Network Elements

Docket No. I-000300099

**CONFIDENTIALITY AGREEMENT**

**DOCUMENT**

TO WHOM IT MAY CONCERN:

The undersigned is the Senior Vice President of ATX Communications (retaining party) and is not, or has no knowledge or basis for believing that he/she is: (1) an officer, board member, stockholder, partner or owner other than stock of any competitor of any party of record (producing party) or an employee of any competitor of the producing party who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; or (2) an officer, board member, stockholder, partner, or owner than stock of any affiliate of a competitor of the producing party. (See ¶5 of Protective Order).

The undersigned has read the Protective Order and understands that it and this Confidentiality Agreement deal with the treatment of Proprietary Information and Highly Confidential Proprietary Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order as a condition of access to the Proprietary Information and Highly Confidential Proprietary Information. Further, the undersigned, if an independent expert, represents that he/she has complied with the provisions of ordering paragraph number 5(a)(ii) of the Protective Order prior to executing this Confidentiality Agreement.

DATE: 13 Nov '03

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NOV 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Signature

Scott Dillner  
Print Name

Senior Vice President  
Status relative to Retaining Party

Employer

ATX Communications



**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office Of Administrative Law Judge  
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

November 17, 2003

In Re: **I-00030099**

(See attached list)

**Incumbent Local Exchange Carriers**

Investigation into the obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements.

**NOTICE**

This is to inform you that an Initial Prehearing Conference on the above-captioned case will be held as follows:

Type: Initial Prehearing Conference

Date: Tuesday, November 25, 2003

Time: 10:00 a.m.

Location: Hearing Room Number 2  
Plaza Level  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania

Presiding: Administrative Law Judge Michael C. Schnierle  
Administrative Law Judge Susan D. Colwell  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Telephone: (717) 783-5452  
Fax: (717) 787-0481

DOCUMENT  
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**DOCKETED**

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If you are a person with a disability, and you wish to attend the prehearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: 717-787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Schnierle  
Judge Colwell  
Steve Springer, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File