

CAPTION SHEET

E MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00 :
2. BUREAU: LAW :
3. SECTION(S): : 4. PUBLIC MEETING DATE:
5. APPROVED BY: : 00/00/00
DIRECTOR: :
SUPERVISOR: :
6. PERSON IN CHARGE: : 7. DATE FILED: 10/02/03
8. DOCKET NO: I-00030099 : 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: DEVELOPMENT OF LOOP MIGRATION PROCESS

COMP/APP COUNTY:

UTILITY CODE: 999999

ALLEGATION OR SUBJECT

DEVELOPMENT OF AN EFFICIENT LOOP MIGRATION PROCESS.

DOCUMENT
FOLDER

OCT 02 2003

Conceded

CAPTION SHEET

CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00 :
 2. BUREAU: LAW :
 3. SECTION(S): : 4. PUBLIC MEETING DATE:
 5. APPROVED BY: : 00/00/00
 DIRECTOR: :
 SUPERVISOR: :
 6. PERSON IN CHARGE: : 7. DATE FILED: 10/02/03
 8. DOCKET NO: I-00030099 : 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: INVESTIGATION/ILECS UNBUNDLE NETWORK

COMP/APP COUNTY: UTILITY CODE: 999999

ALLEGATION OR SUBJECT

X INVESTIGATION INTO OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS TO UNBUNDLE NETWORK ELEMENTS.

DOCKETED
OCT 3 2003

DOCUMENT FOLLO...



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

to be published 10-18-03

IN REPLY PLEASE
REFER TO OUR FILE

October 7, 2003

I-00030099

Mary Jane Phelps, Director
Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

Re: Notice
Investigation into the Obligations of
Incumbent Local Exchange Carriers to
Unbundle Local Circuit Switching for
the Enterprise Market – Protective Order
Docket No. I-00030100

DOCKETED

OCT 14 2003

DOCUMENT

Dear Ms. Phelps:

Enclosed please find two (2) copies of the Commission's order in the above-captioned proceeding. The Commission requests that this order be published in its entirety as a notice in the Pennsylvania Bulletin.

Very truly yours,

Veronica A. Smith
Executive Director

Enclosure

cc: Regulatory Coordinator DelBiondo
Docketing

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

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ROSS A. BUNTROCK

DIRECT LINE: (202) 887-1248

EMAIL: rbuntrock@kelleydrye.com

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA
TOKYO, JAPAN

October 9, 2003

VIA OVERNIGHT MAIL

DOCKETED
OCT 22 2003

RECEIVED

OCT 09 2003

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17105

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Dockets I-00030100, ^MA-00031754, ^IM-00030099

DOCUMENT

Dear Ms. Izzo:

Enclosed for filing on behalf of InfoHighway Communications Corporation ("InfoHighway") and Manhattan Telecommunications Corporation ("MetTel"), please find an original and three copies of Orders issued by the Second Circuit Court of Appeals yesterday. The Second Circuit granted the motions filed by InfoHighway and MetTel to stay pending judicial review, the 90 day enterprise switching portions of the FCC's Triennial Review Order,¹ including the TRO's requirement that state public service commissions conduct 90 day enterprise switching impairment proceedings.

The Second Circuit granted the stay motions on a temporary basis pending a hearing and decision on the merits of the stay motion by a motions panel. It is my understanding that the Second Circuit is planning to transfer the docket to the D.C. Circuit, which will be responsible for reviewing and deciding the merits of the appellants' stay requests. It is also my

¹ *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, FCC 03-36 (Aug. 21, 2003) ("TRO").*

84

KELLEY DRYE & WARREN LLP

October 9, 2003

Page Two

understanding that NARUC has interpreted the Second Circuit's order as staying the enterprise switching proceedings at the state level, including this docket. The D.C. Circuit's ruling will likely ultimately determine for the parties to this proceeding, and the Commission, whether the requirements for the conduct of the 90 day state commission enterprise switching proceedings will be changed, either by the appellate courts or by the FCC.

Very truly yours,



Ross A. Buntrock

Enc.

cc: Maryanne Martin (via email)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): FCC 03-38 03-40606(L)

Caption (use short title)

Motion for: Stay Pending Judicial Review

Manhattan Telecommunications Corporation.

v.

Federal Communications Commission and United States of America

Set forth below precise, complete statement of relief sought:
Petitioner requests the Court to stay portions of the FCC's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (FCC 03-38) issued on Aug. 21, 2003 in Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Dkt. 01-338 which prohibit the use of unbundled network element platforms to service Enterprise customers and the mechanism by which State Public Service Commissions conduct impairment analyses until ruling is made on petitioner's Pet. for Rev.

MOVING PARTY: Manhattan Telecommunications Corporation
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: Federal Communications Commission

MOVING ATTORNEY: Robert A. Aamoth*
(name of attorney, with firm, address, phone number and e-mail)

OPPOSING ATTORNEY (Name): John A. Rogovin*
(name of attorney, with firm, address, phone number and e-mail)

Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500, Washington, DC 20036
(202) 856-9800
raamoth@kelleydrye.com

Federal Communications Commission
445 12th Street, S.W., Washington, DC 20554
(202) 418-1735
jrogovin@fcc.gov

Court/Judge/Agency appealed from: Federal Communications Commission

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? Yes No
B. been obtained? Yes No
Is oral argument requested? Yes No
(requests for oral argument will not necessarily be granted)
Has argument date of appeal been set? Yes No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency:

Signature of Moving Attorney: Robert J. Aamoth, Esq. Date: 9/30/03

Has service been effected? Yes No
(Attach proof of service)

ORDER

DOCKETED

OCT 22 2003

Before: Hon. Guido Calabresi, Circuit Judge.

IT IS HEREBY ORDERED that this motion is GRANTED on a temporary basis, until this motion is heard and decided by a motions panel of this Court.

Courtesy copy

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
By: Laura Eastman

DOCUMENT

03-406014 L

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

03-406014/c

Caption (use short title)

Docket Number(s): FCC 03-38

InfoHighway Communications Corporation,

Motion for: Stay Pending Judicial Review

v.

Set forth below precise, complete statement of relief sought: Petitioner requests the Court to stay portions of the FCC's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (FCC 03-38) issued on Aug. 21, 2003 in Review of the Section 251 Unbundling

Federal Communications Commission and United States of America

Obligations of incumbent Local Exchange Carriers, CC Dkt. 01-338 which prohibit the use of unbundled network element platforms to service Enterprise customers and the mechanism by which State Public Service Commissions conduct impairment analyses until ruling is made on petitioner's Pet. for Rev.

MOVING PARTY: InfoHighway Communications Corp.

OPPOSING PARTY: Federal Communications Commission

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Robert A. Aarnoth* [name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY [Name]: John A. Rogovin* [name of attorney, with firm, address, phone number and e-mail]

Kelley Drye & Warren LLP 1200 18th Street, N.W., Suite 500, Washington, DC 20036 (202) 955-9600 rearnoth@kelleydrye.com

Federal Communications Commission 445 12th Street, S.W., Washington, DC 20554 (202) 418-1735 jrogovin@fcc.gov

Court/Judge/Agency appealed from: Federal Communications Commission

Please check appropriate boxes:

Has consent of opposing counsel: A. been sought? Yes No B. been obtained? Yes No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No

Is oral argument requested? Yes No (requests for oral argument will not necessarily be granted)

Has this relief been previously sought in this Court? Yes No

Has argument date of appeal been set? Yes No If yes, enter date _____

Requested return date and explanation of emergency: _____

Signature of Moving Attorney: Robert A. Aarnoth Date: 9/30/03

Has service been effected? Yes No [Attach proof of service]

ORDER

Before: Hon. Guido Calabresi, Circuit Judge.

IT IS HEREBY ORDERED that this motion is GRANTED on a temporary basis, until this motion is heard and decided by a motions panel of this Court.

Courtesy copy

FOR THE COURT: ROSEANN B. MACKECHNIE, CLERK By: Laura K. ...



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

Carol F. Pennington
Acting Small Business Advocate

October 17, 2003

(717) 783-2525
(717) 783-2831 (FAX)

HAND DELIVERED

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

DOCUMENT
FOLDER

**Re: Investigation into the Obligations of Incumbent Local Exchange
Carriers to Unbundle Local Circuit Switching for the Enterprise
Market and to Unbundle Network Elements
Docket Nos. I-00030100 and I-00030099**

**Development of an Efficient Loop Migration Process
Docket No. M-00031754**

RECEIVED
2003 OCT 17 PM 1:15
SECRETARY'S BUREAU

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the:

1. Notice of Intervention of the Small Business Advocate in the above captioned matter; and
2. Public Statement of the Small Business Advocate relating to the filing of that Notice of Intervention.

Copies of each of the documents listed above are being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

Enclosures

cc: Hon. Robert A. Christianson
Chief Administrative Law Judge

Parties of Record

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

Carol F. Pennington
Acting Small Business Advocate

October 17, 2003

(717) 783-2525
(717) 783-2831 (FAX)

TO: ALL PARTIES OF RECORD:

Re: Investigation into the Obligations of Incumbent Local Exchange
Carriers to Unbundle Local Circuit Switching for the Enterprise
Market and to Unbundle Network Elements
Docket Nos. I-00030100 and I-00030099

Development of an Efficient Loop Migration Process
Docket No. M-00031754

DOCUMENT
FOLDER

The Office of Small Business Advocate has retained the services of Allen Buckalew as its expert witness in this case. In order to provide our consultant all materials, including discovery, testimony, briefs, etc., in a timely fashion, we request that you add the name of Mr. Buckalew to your service lists so that he receives copies of documents when they are served in this case. Those items should be addressed to:

Mr. Allen Buckalew
J.W. Wilson & Associates, Inc.
Rosslyn Plaza C- Suite 1104
1601 North Kent Street
Arlington, VA 22209
(703) 243-1049
(703) 243-3389 (fax)

DOCKETED
OCT 22 2003

If you have any questions or concerns, please do not hesitate to contact me. Thank you in advance for your cooperation.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

cc: Mr. Allen Buckalew

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for The Enterprise Market : : **Docket No. I-00030100**
: :
: :
: :
Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements : : **Docket No. I-00030099**
: :
: :
Development of an Efficient Loop Migration Process : : **Docket No. M-00031754**
: :

**OFFICE OF
SMALL BUSINESS ADVOCATE
NOTICE OF INTERVENTION**

DOCUMENT
FOLDER

The Office of Small Business Advocate, an agency of the Commonwealth authorized by the Small Business Advocate Act (Act 181 of 1988, 73. P.S. §§399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission, files this Notice of Intervention in this proceeding pursuant to the provisions of 52 Pa. Code §5.71(a)(1).

Representing the Office of Small Business Advocate in this proceeding is:

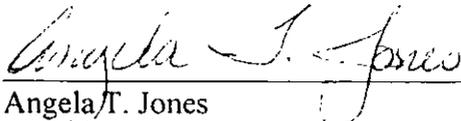
Angela T. Jones
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)
E-mail: anjones@state.pa.us

DOCKETED
OCT 22 2003

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

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Angela T. Jones
Assistant Small Business Advocate

Dated: October 17, 2003

**PUBLIC STATEMENT OF THE
SMALL BUSINESS ADVOCATE
CONCERNING THE INTEREST
OF SMALL BUSINESS CONSUMERS
OF INCUMBENT LOCAL EXCHANGE CARRIERS
TO UNBUNDLE LOCAL SWITCHING FOR THE ENTERPRISE
MARKET AND TO UNBUNDLE NETWORK ELEMENTS
DOCKET NOS. I-00030100 and I-00030099
and
DEVELOPMENT OF AN EFFICIENT LOOP
MIGRATION PROCESS
DOCKET NO. M-00031754**

DOCUMENT
FOLDER

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Public Utility Commission or any other agency or court. This Public Statement relates to the filing today by the Office of Small Business Advocate of its Notice of Intervention in the proceedings outlined by the Commission in its Procedural Order entered October 3, 2003.

The Office of Small Business Advocate will represent the interests of the small business customers in these proceedings relating to unbundling elements for local exchange service. These proceedings are critical to progressive competition in this Commonwealth. The Office of Small Business Advocate is particularly concerned that the consumer is not burdened with in-efficiency of service or quality while a competitive marketplace is sustained.

DOCKETED
OCT 22 2003

Dated: October 17, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Investigation into the Obligations of
Incumbent Local Exchange Carriers to
Unbundle Local Circuit Switching for
The Enterprise Market** : : **Docket No. I-00030100**
:
:
:
:
Investigation into the Obligations of :
Incumbent Local Exchange Carriers to : **Docket No. I-00030099**
Unbundle Network Elements :
:
:
Development of an Efficient Loop : **Docket No. M-00031754**
Migration Process :

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Notice of Intervention and Public Statement on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

Hon. Robert A. Christianson
Chief Administrative Law
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

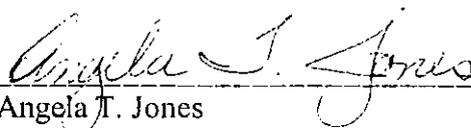
Philip F. McClelland, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)

Kandace F. Melillo, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

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Angela T. Jones
Assistant Small Business Advocate

Date: October 17, 2003

KELLEY DRYE & WARREN LLP

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BRUSSELS, BELGIUM

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA
TOKYO, JAPAN

October 17, 2003

ORIGINAL

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17105

DOCUMENT

Re: Dockets I-00030100, ^HI-00031754, ^IM-00030099

Dear Mr. McNulty:

Pursuant to the October 14 e-mail from Maryanne R. Martin, Assistant Counsel to the Commission, setting forth an Extension of Deadline to File Petitions and Answers in PA Docket I-00030100 et al, enclosed for filing on behalf of InfoHighway Communications Corporation ("InfoHighway") and Manhattan Telecommunications Corporation ("MetTel"), please find an original and three copies of the Petition to Initiate Proceedings, as well as a public version and confidential version of the supporting Joint Declaration of Peter Karoczkai and David Aronow ("Declaration"). The confidential version of the Declaration is being filed with the Commission in accordance with 52 PA. CODE § 5.423 and will be provided to requesting parties pursuant to the terms of the Commission's Protective Order dated October 2, 2003.

RECEIVED

OCT 17 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

KELLEY DRYE & WARREN LLP

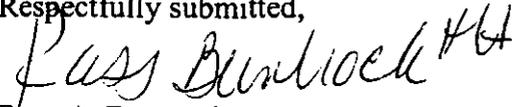
Pennsylvania Public Utility Commission

October 17, 2003

Page Two

Please date-stamp the duplicate copy of this filing and return it in the enclosed self-addressed, postage-paid envelope. If you have any questions regarding this filing, please contact the undersigned counsel at (202) 887-1248.

Respectfully submitted,


Ross A. Buntrock

Enc.

cc: Maryanne Martin (via email and overnight delivery)
Alan Kohler, Wolf Block (via email and overnight delivery)
Julia Conover, Verizon (via email and overnight delivery)
Bill Peterson, Verizon (via email and overnight delivery)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligations of)
Incumbent Local Exchange Carriers to)
Unbundle Local Circuit Switching for)
The Enterprise Market)
Investigation into the Obligations of)
Incumbent Local Exchange Carriers)
To Unbundle Network Elements)
Development of an Efficient Loop)
Migration Process)
_____)

Docket No. I-00030100

Docket No. ~~I-00031754~~

I-00030099

Docket No. ~~M-00030099~~

M-00031754

DOCKETED

OCT 23 2003

PETITION TO INITIATE PROCEEDINGS OF
INFOHIGHWAY COMMUNICATIONS AND MANHATTAN
TELECOMMUNICATIONS CORPORATION

DOCUMENT

Genevieve Morelli
Ross A. Buntrock
KELLEY DRYE & WARREN, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

Counsel to the Petitioners

RECEIVED

OCT 17 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUILDING

October 17, 2003

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for The Enterprise Market	)	Docket No. I-00030100
)	
Investigation into the Obligations of Incumbent Local Exchange Carriers To Unbundle Network Elements	)	Docket No. I-00031754 <i>I - 00030099</i>
)	
Development of an Efficient Loop Migration Process	)	Docket No. M-00030099 <i>M - 00031754</i>
)	
)	

PETITION TO INITIATE PROCEEDINGS OF
INFOHIGHWAY COMMUNICATIONS AND MANHATTAN
TELECOMMUNICATIONS CORPORATION

I. INTRODUCTION

InfoHighway Communications Corporation ("InfoHighway") and Manhattan Telecommunications Corporation ("MetTel") (collectively, the "Petitioners"), by their undersigned counsel and pursuant to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") October 2, 2003 Procedural Order in the above referenced dockets,¹ formally petition the Commission to seek a narrowly tailored waiver of the Federal Communications Commission's ("FCC") findings regarding the ability of competitive local exchange carriers ("CLECs") to serve the DS1 enterprise market without access to unbundled local circuit switching ("ULS"). The Petitioners are observing the deadlines established in the Procedural

¹ Procedural Order, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) ("Procedural Order").

Order in an abundance of caution, despite the fact that the U.S. Court of Appeals for the Second Circuit has granted the respective motions of the Petitioners, and temporarily stayed the effectiveness of those portions of the FCC's Triennial Review Order² ("TRO") which provide the basis for the Commission to conduct this proceeding.³

The Petitioners submit that as a matter of law, the Stay issued by the Second Circuit applies nationwide. Accordingly, this Commission is bound by the Second Circuit's temporary Stay. A "stay" has the legal effect of "arresting a judicial proceeding by order of a court."⁴ Accordingly, while the Stay is in effect, the law provides that the portion of the TRO stayed by the Second Circuit, including the ninety day "mechanism by which State Public Service Commissions conduct impairment analyses" is suspended until such time as the Stay is lifted, made permanent or the various petitions for review filed regarding that portion of the TRO are ruled upon. Accordingly, the 90-day deadline established by the FCC for this proceeding cannot, during the pendency of the Stay, be enforced as a matter of law. For the Commission to go forward with this proceeding would render the Second Circuit's Stay a nullity. To the extent that the temporary Stay is not made permanent by the D.C. Circuit, then the ninety day clock for this proceeding will be re-started once the stay is lifted.

² *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, FCC 03-36 (Aug. 21, 2003).*

³ *See Manhattan Telecommunications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40606(L) (Oct. 8, 2003); InfoHighway Communications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40608(L) (Oct. 8, 2003) ("Stay").*

⁴ BLACK'S LAW DICTIONARY 983 (6th ed. 1991).

The Petitioners understand that the Commission has determined to maintain the deadlines set forth in the Procedural Order established in this case. Therefore, while the Petitioners maintain that the effective temporary Stay obviates the need for this proceeding at this time, and indeed renders this proceeding in violation of the Stay, the Petitioners nonetheless observe the Procedural Order's requirements, and hereby request that the Commission determine that the Petitioners are impaired without access to ULS to serve their existing installed base of enterprise market customers as of October 2, 2003.

In addition, Petitioners request that the Commission adopt a process to review any post-UNE prices for local switching proposed by Verizon, while preserving the Petitioners' ability to demonstrate broader impairment in a future, more thorough, review of operational and economic impairment. In support of this Petition, the Petitioners attach hereto the Initial Joint Declaration of Peter Karocakai, Senior Vice President of InfoHighway Communications, Inc. and David Aronow, President of Manhattan Telecommunications Corp ("Initial Joint Declaration"). The Petitioners have standing to petition the Commission to initiate this proceeding by virtue of the fact that they serve a number of existing customers in the state of Pennsylvania using a combination of unbundled local circuit switching and unbundled DS1 loops. The precise number of existing customers served by the Petitioners is set forth in the Initial Joint Declaration, filed herewith. The Petitioners ask that the Commission accord this customer data the protection accorded "Highly Confidential Proprietary Information," consistent with the Protective Order in this case.⁵

⁵ Protective Order at ¶¶ 3, 4, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) ("Protective Order").

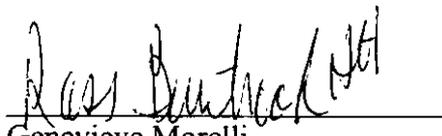
Pursuant to the procedural rules established by the Commission in the Procedural Order, the Petitioners hereby set forth their representatives in this proceeding who shall receive all official Commission documents and whom all discovery requests in this proceeding shall be served on behalf of the Petitioners:

Genevieve Morelli
Ross A. Buntrock
Heather T. Hendrickson
KELLEY DRYE & WARREN, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (telephone)
gmorelli@kelleydrye.com
rbuntrock@kelleydrye.com
hhendrickson@kelleydrye.com

II. CONCLUSION

The Petitioners submit that the Commission should, in the face of the Stay issued by the Second Circuit, hold this proceeding in abeyance until the Stay is lifted. To the extent the Commission decides to proceed, the Commission should: (1) seek a waiver from the FCC of its national finding of no impairment for DS1 enterprise customers as it applies to the existing installed base of competitive providers; (2) exercise its authority to require Verizon to retain its current rates for local circuit switching until the Commission has determined the lawfulness of any replacement rates for local circuit switching no longer required to be made available as an unbundled network element pursuant to section 251(c)(3) of the federal Telecommunications Act of 1996; and (3) take notice that the 90 day timeframe established by the FCC does not afford UNE-P carriers a meaningful time or opportunity to be heard on whether they are impaired without access to local switching to serve enterprise customers and that evidence of operational and economic impairment may be presented at a later date.

Respectfully submitted,



Genevieve Morelli
Ross A. Buntrock
Heather T. Hendrickson
KELLEY DRYE & WARREN, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)
Counsel to the Petitioners

October 17, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation into the Obligations of)
Incumbent Local Exchange Carriers)
Unbundle Local Circuit Switching for)
The Enterprise Market)
Investigation into the Obligations of)
Incumbent Local Exchange Carriers to)
To Unbundle Network Elements)
Development of an Efficient Loop)
Migration Process)
_____)

Docket No. I-00030100
Docket No. ~~I-00031754~~
I-00030099
M-00031754
Docket No. ~~M-00030099~~

RECEIVED

OCT 17 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

INITIAL JOINT DECLARATION OF
PETER KAROCZKAI, SENIOR VICE PRESIDENT
OF INFOHIGHWAY COMMUNICATIONS, INC.
AND DAVID ARONOW, PRESIDENT OF
MANHATTAN TELECOMMUNICATIONS CORPORATION
IN SUPPORT OF PETITION TO INITIATE PROCEEDINGS

DOCKETED
OCT 23 2003

INTRODUCTION AND PURPOSE

1. My name is Peter Karoczkai. I am Senior Vice President of InfoHighway Communications Corporation ("InfoHighway"). My business address is 1333 Broadway, Suite 1001, New York, New York 10018.
2. My name is David Aronow. I am the President of Manhattan Telecommunications Corporation ("MetTel").¹ My business address is 44 Wall Street, New York, New York 10005.

DOCUMENT

¹ InfoHighway and MetTel will collectively be referred to as the "Petitioners."

1 3. Today InfoHighway and MetTel petition the Pennsylvania Public Utility Commission
2 (“PUC” or “Commission”) to initiate a proceeding to review the national finding of no
3 impairment for local circuit switching used to serve customers with DS1 or higher
4 capacity loops, as required by the Federal Communications Commission (“FCC”) in the
5 Triennial Review Order (“TRO”).²

6 4. As we indicate in our Petition, we are observing the deadlines established in the
7 Procedural Order, despite the fact that the U.S. Court of Appeals for the Second Circuit
8 has granted the respective motions of the Petitioners, and temporarily stayed the
9 effectiveness of those portions of the FCC’s TRO which provide the basis for the
10 Commission to conduct this proceeding.³

11 5. We believe that as a matter of law, this Commission is bound by the Second Circuit’s
12 temporary Stay, and that while the Stay is in effect, the law requires that the Commission
13 hold its ninety day proceeding in abeyance. To the extent that the Commission decides
14 to maintain the existing procedural schedule it risks jeopardizing the legality of this
15 proceeding.

16 6. However, the Commission staff has indicated that the Commission intends to adhere to
17 the schedule established in the Procedural Order; therefore, we are providing our
18 testimony in support of our Petition today.

19

² *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, FCC 03-36 (Aug. 21, 2003).*

³ *See Manhattan Telecommunications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40606(L) (Oct. 8, 2003); InfoHighway Communications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40608(L) (Oct. 8, 2003) (“Stay”).*

1 **REQUIREMENTS OF THE TRO**

2 7. In the TRO, the FCC established a national finding that competitive local exchange
 3 carriers (“CLECs”), such as InfoHighway and MetTel, are not impaired without access to
 4 unbundled local circuit switching (“ULS”) when serving DS1 enterprise customers,
 5 despite the FCC’s admission that the record contained limited and incomplete data as to
 6 whether unbundled network element platform (“UNE-P”) competitors are impaired with
 7 respect to enterprise customers.

8 8. The FCC recognized that “a geographically specific analysis could possibly demonstrate
 9 that competitive carriers are impaired without access to unbundled incumbent LEC local
 10 circuit switching for DS1 enterprise customers in a particular market.”⁴ and that UNE-P
 11 carriers could suffer specific “cost and operational disadvantages” that could make it
 12 economic to serve enterprise customers only through ILEC-supplied local switching in
 13 certain market segments.⁵ Therefore, the FCC created a procedural mechanism whereby
 14 UNE-P carriers can present data to individual state commissions showing that they are
 15 impaired without access to ILEC-supplied local switching.⁶

16 9. Unfortunately, the timeframe necessary to prepare and present such a case to this
 17 Commission far exceeds the 90 days allotted by the FCC. At a minimum, InfoHighway
 18 and MetTel submit that this Commission would require a significant amount of market
 19 data be available in order to demonstrate economic and operational impairment, and such
 20 data cannot be compiled, analyzed and presented in the highly compressed time period
 21 allocated by the FCC.

⁴ TRO, ¶454.

⁵ *Id.*

⁶ *Id.*, ¶¶454-458.

- 1 10. Even in the absence of this specific market information, however, the Petitioners are
 2 certain that there are many areas throughout the state of Pennsylvania in which carriers
 3 are economically impaired from providing DS1 enterprise service in the absence of
 4 ULS.⁷
- 5 11. Given the unfortunate time constraints imposed by the FCC, we ask the Commission to
 6 seek a waiver of the FCC’s national finding as it pertains to the installed base of DS1
 7 UNE-P customer lines served by CLECs. The Petitioners respectfully request, however,
 8 that the Commission exercise its authority to require Verizon to retain its current rates for
 9 local circuit switching until the Commission has determined the lawfulness of any
 10 replacement rates for local circuit switching no longer required to be made available as an
 11 unbundled network element pursuant to section 251(c)(3) of the federal
 12 Telecommunications Act of 1996.⁸ In addition, we request that the Commission take
 13 note that the 90-day timeframe established by the FCC does not afford UNE-P carriers a
 14 meaningful time or opportunity to be heard on whether they are impaired without access
 15 to local switching to serve enterprise customers and that evidence of operational and
 16 economic impairment may be presented at a later date.
- 17 12. The continued availability of the UNE-P based competition resulting from the presence
 18 of the Petitioners in the DS1 enterprise market in Pennsylvania is vital to maintaining
 19 vibrant and robust competition for small and medium sized businesses (“SMBs”) in the
 20 state. InfoHighway and MetTel are small companies who have focused on providing

⁷ The Petitioners provide herein HIGHLY CONFIDENTIAL proprietary information, as defined in paragraphs 3 and 4 of the Protective Order adopted by the Commission in this proceeding on October 2, 2003 and respectfully request that the information be treated in a fashion consistent with the Protective Order. See Protective Order, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) (“Protective Order”).

⁸ Telecommunications Act of 1996, Publ. L. No. 104-104, 110 Stat., 56, 56 (1996) (“1996 Telecom Act”).

1 high quality, customer-centric service to the SMB market using unbundled DS1
2 switching.

3 13. The FCC fundamentally misunderstood the barriers to serving the installed DS1 customer
4 base of the Petitioners. That is, at the present time, no process exists for migrating
5 existing DS1 circuits from the ILECs' switch to a competitively provided switching
6 facility. A flash cut elimination of ULS to serve the installed customer base of
7 InfoHighway and MetTel will result in the return of our customers to Verizon, and
8 monopoly status for Verizon.

9 14. The FCC also erred in adopting a universal finding of no impairment to serve the DS1
10 market while failing to provide carriers -- and this Commission -- adequate time and the
11 tools necessary to rebut that finding. Unless the Commission requires Verizon to
12 maintain existing local switching rates on an interim basis until any replacement rate is
13 determined by the Commission to be just and reasonable, and acknowledges the need to
14 review the impairment issue once the inputs needed to show economic impairment are
15 established in the 9-month mass-market local switching proceeding, competition for
16 small and medium businesses in Pennsylvania could suffer irreparable harm.

17
18 **THE TRO'S FINDINGS REGARDING THE AVAILABILITY OF ULS TO SERVE THE**
19 **DS1 ENTERPRISE MARKET ARE MISTAKEN**

20 15. In the TRO the FCC made a national finding "that the denial of access to unbundled
21 switching would not impair a competitor's ability to serve the enterprise market,
22 including all customers which are serviced by the competitor over loops of DS1 capacity
23 and above."⁹ In making its national finding of 'no impairment' for the DS1 enterprise

⁹ *Id.*, ¶ 453.

1 market, the FCC reasoned that “there are few barriers to deploying competitive switches
 2 to serve customers in the enterprise market at the DS1 capacity and above, and thus no
 3 operational or economic impairment on a national basis.”¹⁰

4 16. The FCC specifically recognized, however, that “while the record shows that cut over
 5 cost differentials are eliminated and other operational challenges may be mitigated when
 6 competitive carriers use their own switches to serve enterprise customers, the
 7 characteristics of enterprise markets do not eliminate all of the cost and operational
 8 disadvantages.”¹¹

9 17. The FCC found, that “while the record of the [TRO] proceeding does not contain
 10 evidence identifying any particular markets where competitive carriers would be
 11 impaired without unbundled access to local circuit switching to serve enterprise
 12 customers, state commissions are uniquely positioned to evaluate local market conditions
 13 and determine whether DS1 enterprise customers should be granted access to unbundled
 14 incumbent LEC local circuit switching.”¹² In order to rebut the FCC’s national finding of
 15 no impairment in the DS1 enterprise market, the FCC directed state commissions, within
 16 90 days of the effective date of the TRO, to make “an affirmative finding of impairment
 17 showing that carriers providing service at the DS1 capacity and above should be entitled
 18 to unbundled access to local circuit switching in a particular market” and directed the
 19 state commissions to “define the relevant markets” using the criteria set forth in the
 20 TRO.¹³

¹⁰ *Id.*, ¶ 451.

¹¹ *Id.*, ¶ 454.

¹² *Id.*, ¶ 455.

¹³ *Id.*

- 1 18. In examining whether operational impairment exists, the FCC ordered states to “consider
 2 whether incumbent LEC performance in provisioning loops, difficulties in obtaining
 3 collocation space due to lack of space or delays in provisioning by the incumbent LEC, or
 4 difficulties in obtaining cross-connects in an incumbents’ wire center, are making entry
 5 uneconomic.”¹⁴ Regarding economic criteria, the FCC requires states to “consider all
 6 relevant factors in determining whether entry is uneconomic in the absence of” ULS.¹⁵
- 7 19. Specifically, the FCC held that states “must find that entry into a particular market is
 8 uneconomic in the absence of unbundled local circuit switching” and in doing so, must
 9 “weigh competitive LECs’ potential revenues from serving enterprise customers in a
 10 particular geographic market against the cost of entry into that market.”¹⁶ In evaluating
 11 “potential revenues” the states must consider all likely revenues to be gained from
 12 entering the enterprise market, as well as the prices that CLECs are likely to be able to
 13 charge, after considering the retail rates that ILECs charge.
- 14 20. The FCC has required the Commission, and every other state commission, to do the
 15 impossible in a 90-day proceeding: state commissions have 90 days to complete a
 16 significant number of complex and integrally-related tasks associated with rebutting the
 17 national impairment finding regarding the DSL market. A number of the determinations
 18 that the Commission will be required to make in the 9-month mass market switching
 19 proceeding are equally essential to resolve the inquiries required in the 90-day enterprise
 20 market proceeding.

¹⁴ *Id.*, ¶ 456.

¹⁵ *Id.*, ¶ 458.

¹⁶ *Id.*, ¶ 457.

1 21. In the 9-month proceeding the Commission is charged with, among other tasks,
 2 developing geographic market definitions for local switching and defining the product
 3 market (*i.e.*, crossover from the “mass market” to the “enterprise market”).¹⁷ However,
 4 due to “the expected difficulties and detailed information needed in conducting the
 5 [customer and geographic market] inquiry,” the customer and geographic market
 6 determinations will not be available until the state commissions complete the mandatory
 7 9-month proceeding for mass-market UNE-P customers.

8 22. In effect, the FCC required UNE-P carriers to provide data for specific customer and
 9 geographic markets 6 months before the relevant market definitions are to be established.
 10 By that date, the enterprise customer prohibition will have been in effect for 6 months,
 11 and all current enterprise customers will have been migrated off of UNE-P.

12 23. The Commission must recognize that the outcome of this proceeding could radically
 13 change whether and to what extent competitive companies operate in the state of
 14 Pennsylvania. Moreover, any change in the way CLECs provision service will impact
 15 consumers throughout affected Pennsylvania markets.

16 24. Given the incredibly high stakes, the Commission should petition the FCC for the limited
 17 waiver requested herein and should adopt a requirement that the current local switching
 18 rates remain in effect until such time as the Commission has determined the lawfulness of
 19 any replacement rates for local switching not required to be made available by Verizon
 20 pursuant to section 251(c)(3) of the 1996 Telecom Act.

21

¹⁷ *Id.*, ¶¶ 508-10.

THE COMMISSION SHOULD PETITION THE FCC TO REQUIRE ILECS TO PROVIDE ULS FOR THE INSTALLED BASE OF ENTERPRISE MARKET CUSTOMERS

25. In reaching its national finding that competitors are not impaired without access to ULS for DS1 enterprise customers, the FCC noted that enterprise DS1 customers are not susceptible to the operational pit-falls associated with the hot cut process, because no hot cut process is used to provision DS1 circuits.¹⁸ The FCC reasoned that while the hot cut process is “a significant source of impairment,” it does not affect the migration of enterprise DS1 circuits because for DS1 customers it is economically feasible to “digitize the traffic and aggregate the customer’s voice loops at the customer’s premises”¹⁹

26. The FCC significantly relied upon the absence of a hot cut process in reaching its finding of no impairment for the DS1 enterprise market, reasoning that because “the conversion process for enterprise customers generally involves the initiation of service to the competitor’s new digital loop while the incumbent’s service remains in place” rather than using a hot cut process, CLECs avoid the outages, costs, and service degradation associated with hot cuts.²⁰ The FCC concluded that “competitive LECs generally face the same opportunities and challenges as incumbents on connecting such facilities to their switches.”²¹

27. The FCC’s ‘logic’ is deficient. The FCC, in effect, reasons that there is no impairment caused by the process used to migrate customers because *no such process exists*. The FCC failed to acknowledge that the lack of any process for migrating customers’ loops

¹⁸ TRO, ¶ 451.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

1 from ILEC to CLEC switches itself creates a significant operational impairment. Even
2 where alternative facilities to the UNE Platform are available, it is impossible for carriers
3 to transfer their existing base of enterprise customers from UNE-P to such alternative
4 facilities without encountering the operational and technical barriers that constitute legal
5 impairment.

6 28. In short, the TRO creates an absurd situation where, after 90 days, in the absence of a
7 state commission rebuttal of the no impairment finding, the only way for a CLEC's
8 installed DS1 enterprise customer to avoid the significant delay, disruption, confusion
9 and cost caused by the absence of a loop migration process is to return to the ILEC, who
10 can immediately begin providing service without subjecting the customer to any of the
11 pain remaining with the CLEC would result in.

12 29. The Petitioners hereby request that the Commission seek a waiver from the FCC to allow
13 CLECs in the state of Pennsylvania to continue to serve their installed DS1 customer base
14 utilizing ULS, until such time as the ILEC has implemented a loop migration system—
15 including procedures to provide switch-port settings—to allow DS1 customers' circuits to
16 be migrated between carriers.

17 30. Currently, InfoHighway serves [REDACTED – HIGHLY CONFIDENTIAL] DS1
18 customers in the state of Pennsylvania using unbundled local switching in combination
19 with DS1 loops.

20 31. Currently, MetTel serves [REDACTED – HIGHLY CONFIDENTIAL] customers in
21 the state of Pennsylvania using unbundled local switching in combination with DS1
22 loops.

1 **IN THE ABSENCE OF A HOT-CUT PROCESS INFOHIGHWAY AND METTEL ARE**
 2 **OPERATIONALLY IMPAIRED IN SERVING DS-1 CUSTOMERS**

3
 4 32. The FCC concluded in the TRO that there is no hot cut process available for converting
 5 enterprise DS-1 customers from an ILEC's switch to CLEC switching. Rather, CLECs
 6 today provision DS-1 service using what is referred to as a "parallel service delivery"
 7 process which is a costly, labor intensive process that is extremely prone to failure and
 8 typically causes disruption to the end-user customer. In the TRO the FCC described the
 9 parallel service delivery process:

[T]he conversion process for enterprise customers generally involves the initiation of service to the competitor's new digital loop while the incumbent's service remains in place. During the migration of an enterprise customer from analog services to a new digital loop, the enterprise customers remain on the incumbent's analog facilities while the new digital loop is installed and service initiated. Similarly where enterprise customers are being converted from the digital facilities, the competing carrier installs and initiates service on a new digital loop in parallel with the customer's existing service.²²

20 33. The parallel service delivery process, however, is not as seamless or efficient as the
 21 FCC's description would have one believe, and competitors have repeatedly requested
 22 that Verizon work cooperatively with carriers to develop a hot cut process. To date,
 23 Verizon has failed to take any steps toward doing so.

24 34. The parallel service delivery process requires competitors to undertake a series of steps
 25 that are extremely complex and which must be executed flawlessly in order to get the
 26 circuit up and running. The process is even more complicated when it involves the
 27 provisioning of primary rate interface ("PRI") circuits.

²² TRO, ¶ 452 (notes omitted).

- 1 35. The table, set forth below in paragraph 39, contrasts the basic steps that must be executed
 2 in migrating DS1 facilities from an ILEC to a CLEC: (1) the CLEC must order and
 3 install the DS1 loop and IOF facilities; (2) transmission facilities must be made
 4 operational and tested for basic transmission capability; and (3) the equivalent switch
 5 operations must be established in the CLEC network that were being utilized by Verizon
 6 to serve the end-user both physical switch operations and software applications for PRI
 7 circuits.
- 8 36. Switching over a PRI customer involves the following steps: (1) determining Verizon's
 9 PRI settings;²³ (2) new CLEC settings must be mapped for transparent operation by the
 10 customer; (3) the vendor must set PBX settings at the end user's premises; (4) testing
 11 must be conducted to confirm that the circuit is up and running; and (5) LNP must be
 12 performed with the cutover CLEC.
- 13 37. Each of these steps are labor intensive and time consuming. If the Commission fails to
 14 obtain a waiver from the FCC to require Verizon to continue to provide ULS to the
 15 installed DS1 customer base of UNE-P CLECs, InfoHighway and MetTel will, in all
 16 likelihood, lose their installed customer base for good, because the steps that must be
 17 taken in order to migrate these customers to competitive switching facilities put
 18 InfoHighway and MetTel at a significant disadvantage vis-a-vis Verizon. Verizon simply
 19 has to make a billing change in order to take a customer back from the UNE-P CLEC

²³ There is not currently a process in place to coordinate these steps between the CLEC and the ILEC. PRI interfaces have a variety of user-adjustable settings between the customer premises equipment and the switch. Before a PRI circuit can be migrated the exact settings must be known so that the new switch will interoperate with the customer PBX in exactly the same way. If the switch-types are different (i.e., you are moving from a Lucent to a Nortel switch), then an added complexity – mapping the old settings to the new settings in a way that the customer experience is transparent – arises.

1 while the UNE-P CLEC is forced to subject its customer to service disruption in order to
 2 continue providing service.

3 38. Our customers were sold service by the UNE-P CLEC on the expectation that they would
 4 not have to endure any disruption in their service provisioning; now these same
 5 customers will face the dislocation they were promised need never occur. In addition,
 6 they will be forced to shoulder the cost and burden of having their PBX vendor roll a
 7 truck to change PBX settings on-site at their premises.

8 39. The following table sets forth the steps a CLEC must take in order to keep a customer,
 9 and contrasts those steps with the steps that Verizon must take:

Steps Required of CLEC to Keep Customer	Steps for Customer to Go to Verizon
Order T-1 loop to end user premise	Electronic Transfer to Retail
Order IOT (interoffice transport) to the CLEC switch or collocation	
CLEC rolls truck to test circuit for basic transmission quality and make sure that the new DS-1 jack is accessible for cutover onto the PBX.	
Verizon must provide CLEC with the PRI settings on the existing circuit.	
PBX Vendor/CLEC Map PRI Settings to assure that customer experience is transparent between new and old switch.	
CLEC establishes cross connection of DS-1 at collocation and at its switch. CLEC programs with PRI settings	
PBX vendor rolls Truck for x-connect and Reprogramming of PBX to new PRI settings (if needed)	
CLEC coordinates LNP and effects cutover	

10
 11 40. Given the harm that the Petitioners will suffer if they are forced to move their installed
 12 DS1 customer base to alternate facilities, the Petitioners hereby request that the
 13 Commission seek a waiver from the FCC to allow CLECs in the state of Pennsylvania to

1 continue to serve their installed DS1 customer base utilizing ULS, until such time as the
 2 ILEC has implemented a loop migration system—including procedures to provide
 3 switch-port settings—to allow DS1 customers’ circuits to be migrated between carriers.

4 **THE COMMISSION MUST EXAMINE POST-UNE PRICING OF LOCAL SWITCHING**

5 41. Under section 271 of the Act, Regional Bell Operating Companies (“RBOCs”) have an
 6 independent obligation to provide competitors with local circuit switching – including
 7 PRI switch ports -- at rates, terms and conditions that are “just and reasonable” and not
 8 unreasonably discriminatory, in compliance with sections 201 and 202 of the Telecom
 9 Act.

10 42. Specifically, the FCC held in the TRO that section 271(c)(2)(b) establishes an
 11 independent obligation for BOCs to provide access to loops, switching, transport and
 12 signaling regardless of any unbundling required under section 251.²⁴ The FCC held that
 13 the applicable pricing standard for elements required to be provided pursuant to section
 14 271 is “whether they are priced on a just, reasonable and not unreasonably discriminatory
 15 basis,” the standards set forth in sections 201(b) and 202(a) of the Act.²⁵

16 43. In order to ensure that the rates charged by Verizon whenever local switching is made
 17 available under section 271 are in all cases just and reasonable, the Commission should
 18 adopt an order requiring that the current rates for ULS remain in effect until the
 19 Commission has determined that any replacement rate Verizon seeks to charge meets the
 20 sections 201 and 202 pricing standard.

²⁴ TRO, ¶ 653.

²⁵ *Id.*, ¶ 656.

1 44. Under the authority granted to the Commission to establish rates for intrastate
2 telecommunications services, the Commission has ample authority to establish rates of
3 local circuit switching required to be made available pursuant to section 271.
4 45. Therefore, the Commission should exercise its authority to require Verizon to charge rate
5 that are just and reasonable, in compliance with the Act. The only way for the
6 Commission to ensure that Verizon fulfills its obligations under section 271 is to require
7 continuation of the current rates – which have been determined to be just and reasonable
8 – until any replacement rates can be judged against the statutory standard of sections 201
9 and 202.

10 **CLECS MUST HAVE THE FLEXIBILITY TO PRESENT EVIDENCE OF**
11 **IMPAIRMENT BEYOND THE INITIAL 90-DAY PERIOD**

12 46. As the Petitioners stated at the outset, the TRO imposed upon UNE-P suppliers of DS1
13 circuits an impossible task. In the TRO, the FCC prohibited all carriers who utilize UNE-
14 P from serving pre-existing or new “enterprise customers” (larger business subscribers
15 with sufficient revenues to justify use of digital facilities).²⁶ The FCC gave UNE-P
16 competitors 90 days from the TRO’s effective date to persuade state commissions to
17 petition the FCC for a waiver of the enterprise customer prohibition on a state-specific
18 basis.²⁷

19 47. The 90 days allotted by the FCC clearly will not allow participants to prepare and submit
20 the impairment data needed to make the showings required by the FCC. Accordingly, in
21 order to have a full and complete record, informed by the decisions reached in the 9-
22 month mass market local switching proceeding, the Petitioners submit that the

²⁶ *Id.*, ¶¶451-58.

²⁷ *Id.*, ¶528.

1 Commission should allow parties to present evidence of impairment beyond the 90-day
2 deadline established by the FCC.

3 48. The 90-day proceedings contemplated by the FCC require state commissions petitioning
4 the FCC for waiver to support such waiver petitions based on specific customer and
5 geographic market determinations that will not be finalized *until six months after the 90*
6 *day period has expired*, at the conclusion of the 9-month mass market proceeding.²⁸

7 49. Put simply, it is an incoherent procedure whereby UNE-P carriers are given a severely
8 limited window to present evidence showing impairment on a market-specific basis when
9 the relevant markets will not be defined until six months after the window has closed.

10 50. The 90-day procedure poses an absurd dilemma for UNE-P competitors: they have a
11 mere 90 days to attempt to persuade each state to save a significant customer segment but
12 they are denied the critical customer and geographic market definitions that are necessary
13 for proving their case.

14 51. As stated above, the customer and geographic market determinations must be made by
15 the state commission in the mandatory 9-month proceeding for mass market UNE-P
16 customers. The FCC stated that due to “the expected difficulties and detailed information
17 needed in conducting the [customer and geographic market] inquiry, we allow the states
18 nine months to make this identification.”²⁹

19 52. **In effect, the FCC is requiring UNE-P carriers to provide data for specific customer**
20 **and geographic markets six months before the relevant market definitions are to be**
21 **established.** At no time did the FCC explain how a UNE-P carrier could be reasonably
22 expected to present evidence to persuade a state commission to make an impairment

²⁸ *Id.*, ¶¶455-58.

²⁹ *Id.*, ¶451 n.1376.

1 finding for enterprise customers when the critical customer and geographic market
2 definitions -- which the FCC itself has required UNE Platform carriers to use when
3 proving their case -- will not be finalized until six months after the 90-period has closed.

4 53. At bottom, the critical customer and geographic market definitions necessary to support a
5 waiver petition by a state commission for enterprise customers likely will not be finalized
6 in any state until on or about June 27, 2004. By that date, the enterprise customer
7 prohibition will have been in effect for six months, and all current enterprise customers
8 will have been migrated off of the UNE Platform.

9 CONCLUSION

10 54. The Petitioners submit that the Commission should, in the face of the Stay issued by the
11 Second Circuit, hold this proceeding in abeyance until the Stay is either lifted.

12 55. The Commission should: (1) seek a waiver from the FCC of its national finding of no
13 impairment for DS1 enterprise customers as it applies to the existing installed base of
14 competitive providers; (2) exercise its authority to require Verizon to retain its current
15 rates for local circuit switching until the Commission has determined the lawfulness of
16 any replacement rates for local circuit switching no longer required to be made available
17 as an unbundled network element pursuant to section 251(c)(3) of the 1996 Telecom Act;
18 and (3) take notice that the 90 day timeframe established by the FCC does not afford
19 UNE-P carriers a meaningful time or opportunity to be heard on whether they are
20 impaired without access to local switching to serve enterprise customers and that
21 evidence of operational and economic impairment may be presented at a later date.

22 56. This concludes our Declaration.
23

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ORIGINAL

October 21, 2003

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17105

DOCUMENT

**Re: Amended Joint Petition and Joint Declaration: Dockets I-00030100,
I-0003~~1754~~, M-0003~~0099~~**
0099 1754

Dear Mr. McNulty:

Pursuant to Staff Counsel request, attached please find an original and three copies of the amended Joint Petition and Joint Declaration filed on behalf of ARC Networks, Inc. d/b/a InfoHighway and Metropolitan Telecommunications Corporation of PA. No changes have been made to either the Joint Petition or Joint Declaration other than to clarify the company names of the petitioners and declarants for the record.

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KELLEY DRYE & WARREN LLP

Pennsylvania Public Utility Commission
October 21, 2003
Page Two

Please date-stamp the duplicate copy of this filing and return it in the enclosed self-addressed, postage-paid envelope. If you have any questions regarding this filing, please contact the undersigned counsel at (202) 887-1248.

Respectfully submitted,


Ross A. Buntrock

Enc.

cc: Maryanne Martin (via email and overnight delivery)
Alan Kohler, Wolf Block (via email and overnight delivery)
Julia Conover, Verizon (via email and overnight delivery)
Bill Peterson, Verizon (via email and overnight delivery)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for The Enterprise Market)	
)	
	)	Docket No. I-00030100
)	
Investigation into the Obligations of Incumbent Local Exchange Carriers To Unbundle Network Elements	)	Docket No. I-0003 1754
	)	0099
)	
Development of an Efficient Loop Migration Process	)	Docket No. M-0003 6099
	)	1754
)	
)	
)	

**PETITION TO INITIATE PROCEEDINGS OF
ARC NETWORKS, INC. D/B/A INFOHIGHWAY AND METROPOLITAN
TELECOMMUNICATIONS CORPORATION OF PA**

DOCKETED
NOV 03 2003

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Counsel to the Petitioners

October 17, 2003

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OCT 21 2003

PA. PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for The Enterprise Market	)	)	)	)	Docket No. I-00030100
Investigation into the Obligations of Incumbent Local Exchange Carriers To Unbundle Network Elements	)	)	)	)	Docket No. I-0003 1754 0099
Development of an Efficient Loop Migration Process	)	)	)	)	Docket No. M-0003 0099 1754
_____))))	

**PETITION TO INITIATE PROCEEDINGS OF
ARC NETWORKS, INC. D/B/A INFOHIGHWAY AND METROPOLITAN
TELECOMMUNICATIONS CORPORATION OF PA**

I. INTRODUCTION

ARC Networks, Inc. d/b/a InfoHighway ("InfoHighway") and Metropolitan Telecommunications Corporation of PA ("MetTel") (collectively, the "Petitioners"), by their undersigned counsel and pursuant to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") October 2, 2003 Procedural Order in the above referenced dockets,¹ formally petition the Commission to seek a narrowly tailored waiver of the Federal Communications Commission's ("FCC") findings regarding the ability of competitive local exchange carriers ("CLECs") to serve the DS1 enterprise market without access to unbundled local circuit switching ("ULS"). The Petitioners are observing the deadlines established in the Procedural

¹ Procedural Order, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) ("Procedural Order").

Order in an abundance of caution, despite the fact that the U.S. Court of Appeals for the Second Circuit has granted the respective motions of the Petitioners, and temporarily stayed the effectiveness of those portions of the FCC's Triennial Review Order² ("TRO") which provide the basis for the Commission to conduct this proceeding.³

The Petitioners submit that as a matter of law, the Stay issued by the Second Circuit applies nationwide. Accordingly, this Commission is bound by the Second Circuit's temporary Stay. A "stay" has the legal effect of "arresting a judicial proceeding by order of a court."⁴ Accordingly, while the Stay is in effect, the law provides that the portion of the TRO stayed by the Second Circuit, including the ninety day "mechanism by which State Public Service Commissions conduct impairment analyses" is suspended until such time as the Stay is lifted, made permanent or the various petitions for review filed regarding that portion of the TRO are ruled upon. Accordingly, the 90-day deadline established by the FCC for this proceeding cannot, during the pendency of the Stay, be enforced as a matter of law. For the Commission to go forward with this proceeding would render the Second Circuit's Stay a nullity. To the extent that the temporary Stay is not made permanent by the D.C. Circuit, then the ninety day clock for this proceeding will be re-started once the stay is lifted.

² *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, FCC 03-36 (Aug. 21, 2003).*

³ *See Manhattan Telecommunications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40606(L) (Oct. 8, 2003); InfoHighway Communications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40608(L) (Oct. 8, 2003) ("Stay").*

⁴ BLACK'S LAW DICTIONARY 983 (6th ed. 1991).

The Petitioners understand that the Commission has determined to maintain the deadlines set forth in the Procedural Order established in this case. Therefore, while the Petitioners maintain that the effective temporary Stay obviates the need for this proceeding at this time, and indeed renders this proceeding in violation of the Stay, the Petitioners nonetheless observe the Procedural Order's requirements, and hereby request that the Commission determine that the Petitioners are impaired without access to ULS to serve their existing installed base of enterprise market customers as of October 2, 2003.

In addition, Petitioners request that the Commission adopt a process to review any post-UNE prices for local switching proposed by Verizon, while preserving the Petitioners' ability to demonstrate broader impairment in a future, more thorough, review of operational and economic impairment. In support of this Petition, the Petitioners attach hereto the Initial Joint Declaration of Peter Karocakai, Senior Vice President of ARC Networks, Inc. d/b/a InfoHighway and David Aronow, President of Metropolitan Telecommunications Corporation of PA ("Initial Joint Declaration"). The Petitioners have standing to petition the Commission to initiate this proceeding by virtue of the fact that they serve a number of existing customers in the state of Pennsylvania using a combination of unbundled local circuit switching and unbundled DS1 loops. The precise number of existing customers served by the Petitioners is set forth in the Initial Joint Declaration, filed herewith. The Petitioners ask that the Commission accord this customer data the protection accorded "Highly Confidential Proprietary Information," consistent with the Protective Order in this case.⁵

⁵ Protective Order at ¶¶3, 4, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) ("Protective Order").

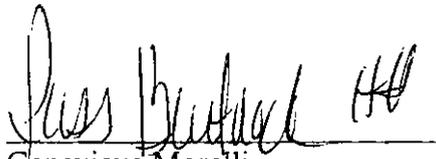
Pursuant to the procedural rules established by the Commission in the Procedural Order, the Petitioners hereby set forth their representatives in this proceeding who shall receive all official Commission documents and whom all discovery requests in this proceeding shall be served on behalf of the Petitioners:

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II. CONCLUSION

The Petitioners submit that the Commission should, in the face of the Stay issued by the Second Circuit, hold this proceeding in abeyance until the Stay is lifted. To the extent the Commission decides to proceed, the Commission should: (1) seek a waiver from the FCC of its national finding of no impairment for DSL enterprise customers as it applies to the existing installed base of competitive providers; (2) exercise its authority to require Verizon to retain its current rates for local circuit switching until the Commission has determined the lawfulness of any replacement rates for local circuit switching no longer required to be made available as an unbundled network element pursuant to section 251(c)(3) of the federal Telecommunications Act of 1996; and (3) take notice that the 90 day timeframe established by the FCC does not afford UNE-P carriers a meaningful time or opportunity to be heard on whether they are impaired without access to local switching to serve enterprise customers and that evidence of operational and economic impairment may be presented at a later date.

Respectfully submitted,



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Counsel to the Petitioners

October 17, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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- 5 Investigation into the Obligations of)
- 6 Incumbent Local Exchange Carriers)
- 7 Unbundle Local Circuit Switching for)
- 8 The Enterprise Market)
- 9)
- 10 Investigation into the Obligations of)
- 11 Incumbent Local Exchange Carriers to)
- 12 To Unbundle Network Elements)
- 13)
- 14 Development of an Efficient Loop)
- 15 Migration Process)
- 16)
- 17)

Docket No. I-00030100

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

**INITIAL JOINT DECLARATION OF
PETER KAROCZKAI, SENIOR VICE PRESIDENT
OF ARC NETWORKS, INC. D/B/A INFOHIGHWAY
AND DAVID ARONOW, PRESIDENT OF
METROPOLITAN TELECOMMUNICATIONS CORPORATION OF PA
IN SUPPORT OF PETITION TO INITIATE PROCEEDINGS**

DOCUMENT

INTRODUCTION AND PURPOSE

- 31 1. My name is Peter Karoczka. I am Senior Vice President of ARC Networks, Inc. d/b/a
- 32 InfoHighway ("InfoHighway"). My business address is 1333 Broadway, Suite 1001,
- 33 New York, New York 10018.
- 34 2. My name is David Aronow. I am the President of Metropolitan Telecommunications
- 35 Corporation of PA ("MetTel").¹ My business address is 44 Wall Street, New York, New
- 36 York 10005.

¹ InfoHighway and MetTel will collectively be referred to as the "Petitioners."

1 3. Today InfoHighway and MetTel petition the Pennsylvania Public Utility Commission
 2 (“PUC” or “Commission”) to initiate a proceeding to review the national finding of no
 3 impairment for local circuit switching used to serve customers with DS1 or higher
 4 capacity loops, as required by the Federal Communications Commission (“FCC”) in the
 5 Triennial Review Order (“TRO”).²

6 4. As we indicate in our Petition, we are observing the deadlines established in the
 7 Procedural Order, despite the fact that the U.S. Court of Appeals for the Second Circuit
 8 has granted the respective motions of the Petitioners, and temporarily stayed the
 9 effectiveness of those portions of the FCC’s TRO which provide the basis for the
 10 Commission to conduct this proceeding.³

11 5. We believe that as a matter of law, this Commission is bound by the Second Circuit’s
 12 temporary Stay, and that while the Stay is in effect, the law requires that the Commission
 13 hold its ninety day proceeding in abeyance. To the extent that the Commission decides
 14 to maintain the existing procedural schedule it risks jeopardizing the legality of this
 15 proceeding.

16 6. However, the Commission staff has indicated that the Commission intends to adhere to
 17 the schedule established in the Procedural Order; therefore, we are providing our
 18 testimony in support of our Petition today.

19

² *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, FCC 03-36 (Aug. 21, 2003).*

³ *See Manhattan Telecommunications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40606(L) (Oct. 8, 2003); InfoHighway Communications Corp. v. FCC, Order Granting Temporary Stay, Docket No. 03-40608(L) (Oct. 8, 2003) (“Stay”).*

1 **REQUIREMENTS OF THE TRO**

2 7. In the TRO, the FCC established a national finding that competitive local exchange
 3 carriers (“CLECs”), such as InfoHighway and MetTel, are not impaired without access to
 4 unbundled local circuit switching (“ULS”) when serving DS1 enterprise customers,
 5 despite the FCC’s admission that the record contained limited and incomplete data as to
 6 whether unbundled network element platform (“UNE-P”) competitors are impaired with
 7 respect to enterprise customers.

8 8. The FCC recognized that “a geographically specific analysis could possibly demonstrate
 9 that competitive carriers are impaired without access to unbundled incumbent LEC local
 10 circuit switching for DS1 enterprise customers in a particular market,”⁴ and that UNE-P
 11 carriers could suffer specific “cost and operational disadvantages” that could make it
 12 economic to serve enterprise customers only through ILEC-supplied local switching in
 13 certain market segments.⁵ Therefore, the FCC created a procedural mechanism whereby
 14 UNE-P carriers can present data to individual state commissions showing that they are
 15 impaired without access to ILEC-supplied local switching.⁶

16 9. Unfortunately, the timeframe necessary to prepare and present such a case to this
 17 Commission far exceeds the 90 days allotted by the FCC. At a minimum, InfoHighway
 18 and MetTel submit that this Commission would require a significant amount of market
 19 data be available in order to demonstrate economic and operational impairment, and such
 20 data cannot be compiled, analyzed and presented in the highly compressed time period
 21 allocated by the FCC.

⁴ TRO, ¶454.

⁵ *Id.*

⁶ *Id.*, ¶¶454-458.

1 10. Even in the absence of this specific market information, however, the Petitioners are
 2 certain that there are many areas throughout the state of Pennsylvania in which carriers
 3 are economically impaired from providing DS1 enterprise service in the absence of
 4 ULS.⁷

5 11. Given the unfortunate time constraints imposed by the FCC, we ask the Commission to
 6 seek a waiver of the FCC’s national finding as it pertains to the installed base of DS1
 7 UNE-P customer lines served by CLECs. The Petitioners respectfully request, however,
 8 that the Commission exercise its authority to require Verizon to retain its current rates for
 9 local circuit switching until the Commission has determined the lawfulness of any
 10 replacement rates for local circuit switching no longer required to be made available as an
 11 unbundled network element pursuant to section 251(c)(3) of the federal
 12 Telecommunications Act of 1996.⁸ In addition, we request that the Commission take
 13 note that the 90-day timeframe established by the FCC does not afford UNE-P carriers a
 14 meaningful time or opportunity to be heard on whether they are impaired without access
 15 to local switching to serve enterprise customers and that evidence of operational and
 16 economic impairment may be presented at a later date.

17 12. The continued availability of the UNE-P based competition resulting from the presence
 18 of the Petitioners in the DS1 enterprise market in Pennsylvania is vital to maintaining
 19 vibrant and robust competition for small and medium sized businesses (“SMBs”) in the
 20 state. InfoHighway and MetTel are small companies who have focused on providing

⁷ The Petitioners provide herein HIGHLY CONFIDENTIAL proprietary information, as defined in paragraphs 3 and 4 of the Protective Order adopted by the Commission in this proceeding on October 2, 2003 and respectfully request that the information be treated in a fashion consistent with the Protective Order. See Protective Order, Docket Nos. I-00030100, I-00031754, M-00030099 (October 2, 2003) (“Protective Order”).

⁸ Telecommunications Act of 1996, Publ. L. No. 104-104, 110 Stat., 56, 56 (1996) (“1996 Telecom Act”).

1 high quality, customer-centric service to the SMB market using unbundled DS1
2 switching.

3 13. The FCC fundamentally misunderstood the barriers to serving the installed DS1 customer
4 base of the Petitioners. That is, at the present time, no process exists for migrating
5 existing DS1 circuits from the ILECs' switch to a competitively provided switching
6 facility. A flash cut elimination of ULS to serve the installed customer base of
7 InfoHighway and MetTel will result in the return of our customers to Verizon, and
8 monopoly status for Verizon.

9 14. The FCC also erred in adopting a universal finding of no impairment to serve the DS1
10 market while failing to provide carriers -- and this Commission -- adequate time and the
11 tools necessary to rebut that finding. Unless the Commission requires Verizon to
12 maintain existing local switching rates on an interim basis until any replacement rate is
13 determined by the Commission to be just and reasonable, and acknowledges the need to
14 review the impairment issue once the inputs needed to show economic impairment are
15 established in the 9-month mass-market local switching proceeding, competition for
16 small and medium businesses in Pennsylvania could suffer irreparable harm.

17
18 **THE TRO'S FINDINGS REGARDING THE AVAILABILITY OF ULS TO SERVE THE**
19 **DS1 ENTERPRISE MARKET ARE MISTAKEN**

20 15. In the TRO the FCC made a national finding "that the denial of access to unbundled
21 switching would not impair a competitor's ability to serve the enterprise market,
22 including all customers which are serviced by the competitor over loops of DS1 capacity
23 and above."⁹ In making its national finding of 'no impairment' for the DS1 enterprise

⁹ *Id.*, ¶ 453.

1 market, the FCC reasoned that “there are few barriers to deploying competitive switches
 2 to serve customers in the enterprise market at the DS1 capacity and above, and thus no
 3 operational or economic impairment on a national basis.”¹⁰

4 16. The FCC specifically recognized, however, that “while the record shows that cut over
 5 cost differentials are eliminated and other operational challenges may be mitigated when
 6 competitive carriers use their own switches to serve enterprise customers, the
 7 characteristics of enterprise markets do not eliminate all of the cost and operational
 8 disadvantages.”¹¹

9 17. The FCC found, that “while the record of the [TRO] proceeding does not contain
 10 evidence identifying any particular markets where competitive carriers would be
 11 impaired without unbundled access to local circuit switching to serve enterprise
 12 customers, state commissions are uniquely positioned to evaluate local market conditions
 13 and determine whether DS1 enterprise customers should be granted access to unbundled
 14 incumbent LEC local circuit switching.”¹² In order to rebut the FCC’s national finding of
 15 no impairment in the DS1 enterprise market, the FCC directed state commissions, within
 16 90 days of the effective date of the TRO, to make “an affirmative finding of impairment
 17 showing that carriers providing service at the DS1 capacity and above should be entitled
 18 to unbundled access to local circuit switching in a particular market” and directed the
 19 state commissions to “define the relevant markets” using the criteria set forth in the
 20 TRO.¹³

¹⁰ *Id.*, ¶ 451.

¹¹ *Id.*, ¶ 454.

¹² *Id.*, ¶ 455.

¹³ *Id.*

- 1 18. In examining whether operational impairment exists, the FCC ordered states to “consider
 2 whether incumbent LEC performance in provisioning loops, difficulties in obtaining
 3 collocation space due to lack of space or delays in provisioning by the incumbent LEC, or
 4 difficulties in obtaining cross-connects in an incumbents’ wire center, are making entry
 5 uneconomic.”¹⁴ Regarding economic criteria, the FCC requires states to “consider all
 6 relevant factors in determining whether entry is uneconomic in the absence of” ULS.¹⁵
- 7 19. Specifically, the FCC held that states “must find that entry into a particular market is
 8 uneconomic in the absence of unbundled local circuit switching” and in doing so, must
 9 “weigh competitive LECs’ potential revenues from serving enterprise customers in a
 10 particular geographic market against the cost of entry into that market.”¹⁶ In evaluating
 11 “potential revenues” the states must consider all likely revenues to be gained from
 12 entering the enterprise market, as well as the prices that CLECs are likely to be able to
 13 charge, after considering the retail rates that ILECs charge.
- 14 20. The FCC has required the Commission, and every other state commission, to do the
 15 impossible in a 90-day proceeding: state commissions have 90 days to complete a
 16 significant number of complex and integrally-related tasks associated with rebutting the
 17 national impairment finding regarding the DS1 market. A number of the determinations
 18 that the Commission will be required to make in the 9-month mass market switching
 19 proceeding are equally essential to resolve the inquiries required in the 90-day enterprise
 20 market proceeding.

¹⁴ *Id.*, ¶ 456.

¹⁵ *Id.*, ¶ 458.

¹⁶ *Id.*, ¶ 457.

- 1 21. In the 9-month proceeding the Commission is charged with, among other tasks,
2 developing geographic market definitions for local switching and defining the product
3 market (*i.e.*, crossover from the “mass market” to the “enterprise market”).¹⁷ However,
4 due to “the expected difficulties and detailed information needed in conducting the
5 [customer and geographic market] inquiry,” the customer and geographic market
6 determinations will not be available until the state commissions complete the mandatory
7 9-month proceeding for mass-market UNE-P customers.
- 8 22. In effect, the FCC required UNE-P carriers to provide data for specific customer and
9 geographic markets 6 months before the relevant market definitions are to be established.
10 By that date, the enterprise customer prohibition will have been in effect for 6 months,
11 and all current enterprise customers will have been migrated off of UNE-P.
- 12 23. The Commission must recognize that the outcome of this proceeding could radically
13 change whether and to what extent competitive companies operate in the state of
14 Pennsylvania. Moreover, any change in the way CLECs provision service will impact
15 consumers throughout affected Pennsylvania markets.
- 16 24. Given the incredibly high stakes, the Commission should petition the FCC for the limited
17 waiver requested herein and should adopt a requirement that the current local switching
18 rates remain in effect until such time as the Commission has determined the lawfulness of
19 any replacement rates for local switching not required to be made available by Verizon
20 pursuant to section 251(c)(3) of the 1996 Telecom Act.

21

¹⁷ *Id.*, ¶¶ 508-10.

1 THE COMMISSION SHOULD PETITION THE FCC TO REQUIRE ILECS TO
2 PROVIDE ULS FOR THE INSTALLED BASE OF ENTERPRISE MARKET
3 CUSTOMERS

4 25. In reaching its national finding that competitors are not impaired without access to ULS
 5 for DS1 enterprise customers, the FCC noted that enterprise DS1 customers are not
 6 susceptible to the operational pit-falls associated with the hot cut process, because no hot
 7 cut process is used to provision DS1 circuits.¹⁸ The FCC reasoned that while the hot cut
 8 process is “a significant source of impairment,” it does not affect the migration of
 9 enterprise DS1 circuits because for DS1 customers it is economically feasible to “digitize
 10 the traffic and aggregate the customer’s voice loops at the customer’s premises”¹⁹

11 26. The FCC significantly relied upon the absence of a hot cut process in reaching its finding
 12 of no impairment for the DS1 enterprise market, reasoning that because “the conversion
 13 process for enterprise customers generally involves the initiation of service to the
 14 competitor’s new digital loop while the incumbent’s service remains in place” rather than
 15 using a hot cut process, CLECs avoid the outages, costs, and service degradation
 16 associated with hot cuts.²⁰ The FCC concluded that “competitive LECs generally face
 17 the same opportunities and challenges as incumbents on connecting such facilities to their
 18 switches.”²¹

19 27. The FCC’s ‘logic’ is deficient. The FCC, in effect, reasons that there is no impairment
 20 caused by the process used to migrate customers because *no such process exists*. The
 21 FCC failed to acknowledge that the lack of any process for migrating customers’ loops

18 TRO, ¶ 451.

19 *Id.*

20 *Id.*

21 *Id.*

1 from ILEC to CLEC switches itself creates a significant operational impairment. Even
 2 where alternative facilities to the UNE Platform are available, it is impossible for carriers
 3 to transfer their existing base of enterprise customers from UNE-P to such alternative
 4 facilities without encountering the operational and technical barriers that constitute legal
 5 impairment.

6 28. In short, the TRO creates an absurd situation where, after 90 days, in the absence of a
 7 state commission rebuttal of the no impairment finding, the only way for a CLEC's
 8 installed DS1 enterprise customer to avoid the significant delay, disruption, confusion
 9 and cost caused by the absence of a loop migration process is to return to the ILEC, who
 10 can immediately begin providing service without subjecting the customer to any of the
 11 pain remaining with the CLEC would result in.

12 29. The Petitioners hereby request that the Commission seek a waiver from the FCC to allow
 13 CLECs in the state of Pennsylvania to continue to serve their installed DS1 customer base
 14 utilizing ULS, until such time as the ILEC has implemented a loop migration system—
 15 including procedures to provide switch-port settings—to allow DS1 customers' circuits to
 16 be migrated between carriers.

17 30. Currently, InfoHighway serves [REDACTED – HIGHLY CONFIDENTIAL] DS1
 18 customers in the state of Pennsylvania using unbundled local switching in combination
 19 with DS1 loops.

20 31. Currently, MetTel serves [REDACTED – HIGHLY CONFIDENTIAL] customers in
 21 the state of Pennsylvania using unbundled local switching in combination with DS1
 22 loops.

IN THE ABSENCE OF A HOT-CUT PROCESS INFOHIGHWAY AND METTEL ARE OPERATIONALLY IMPAIRED IN SERVING DS-1 CUSTOMERS

32. The FCC concluded in the TRO that there is no hot cut process available for converting enterprise DS-1 customers from an ILEC's switch to CLEC switching. Rather, CLECs today provision DS-1 service using what is referred to as a "parallel service delivery" process which is a costly, labor intensive process that is extremely prone to failure and typically causes disruption to the end-user customer. In the TRO the FCC described the parallel service delivery process:

[T]he conversion process for enterprise customers generally involves the initiation of service to the competitor's new digital loop while the incumbent's service remains in place. During the migration of an enterprise customer from analog services to a new digital loop, the enterprise customers remain on the incumbent's analog facilities while the new digital loop is installed and service initiated. Similarly where enterprise customers are being converted from the digital facilities, the competing carrier installs and initiates service on a new digital loop in parallel with the customer's existing service.²²

33. The parallel service delivery process, however, is not as seamless or efficient as the FCC's description would have one believe, and competitors have repeatedly requested that Verizon work cooperatively with carriers to develop a hot cut process. To date, Verizon has failed to take any steps toward doing so.

34. The parallel service delivery process requires competitors to undertake a series of steps that are extremely complex and which must be executed flawlessly in order to get the circuit up and running. The process is even more complicated when it involves the provisioning of primary rate interface ("PRI") circuits.

²² TRO, ¶ 452 (notes omitted).

- 1 35. The table, set forth below in paragraph 39, contrasts the basic steps that must be executed
2 in migrating DS1 facilities from an ILEC to a CLEC: (1) the CLEC must order and
3 install the DS1 loop and IOF facilities; (2) transmission facilities must be made
4 operational and tested for basic transmission capability; and (3) the equivalent switch
5 operations must be established in the CLEC network that were being utilized by Verizon
6 to serve the end-user both physical switch operations and software applications for PRI
7 circuits.
- 8 36. Switching over a PRI customer involves the following steps: (1) determining Verizon's
9 PRI settings;²³ (2) new CLEC settings must be mapped for transparent operation by the
10 customer; (3) the vendor must set PBX settings at the end user's premises; (4) testing
11 must be conducted to confirm that the circuit is up and running; and (5) LNP must be
12 performed with the cutover CLEC.
- 13 37. Each of these steps are labor intensive and time consuming. If the Commission fails to
14 obtain a waiver from the FCC to require Verizon to continue to provide ULS to the
15 installed DS1 customer base of UNE-P CLECs, InfoHighway and MetTel will, in all
16 likelihood, lose their installed customer base for good, because the steps that must be
17 taken in order to migrate these customers to competitive switching facilities put
18 InfoHighway and MetTel at a significant disadvantage vis-a-vis Verizon. Verizon simply
19 has to make a billing change in order to take a customer back from the UNE-P CLEC

²³ There is not currently a process in place to coordinate these steps between the CLEC and the ILEC. PRI interfaces have a variety of user-adjustable settings between the customer premises equipment and the switch. Before a PRI circuit can be migrated the exact settings must be known so that the new switch will interoperate with the customer PBX in exactly the same way. If the switch-types are different (i.e., you are moving from a Lucent to a Nortel switch), then an added complexity – mapping the old settings to the new settings in a way that the customer experience is transparent – arises.

1 while the UNE-P CLEC is forced to subject its customer to service disruption in order to
 2 continue providing service.

3 38. Our customers were sold service by the UNE-P CLEC on the expectation that they would
 4 not have to endure any disruption in their service provisioning; now these same
 5 customers will face the dislocation they were promised need never occur. In addition,
 6 they will be forced to shoulder the cost and burden of having their PBX vendor roll a
 7 truck to change PBX settings on-site at their premises.

8 39. The following table sets forth the steps a CLEC must take in order to keep a customer,
 9 and contrasts those steps with the steps that Verizon must take:

Steps Required of CLEC to Keep Customer	Steps for Customer to Go to Verizon
Order T-1 loop to end user premise	Electronic Transfer to Retail
Order IOT (interoffice transport) to the CLEC switch or collocation	
CLEC rolls truck to test circuit for basic transmission quality and make sure that the new DS-1 jack is accessible for cutover onto the PBX.	
Verizon must provide CLEC with the PRI settings on the existing circuit.	
PBX Vendor/CLEC Map PRI Settings to assure that customer experience is transparent between new and old switch.	
CLEC establishes cross connection of DS-1 at collocation and at its switch. CLEC programs with PRI settings	
PBX vendor rolls Truck for x-connect and Reprogramming of PBX to new PRI settings (if needed)	
CLEC coordinates LNP and effects cutover	

10
 11 40. Given the harm that the Petitioners will suffer if they are forced to move their installed
 12 DS1 customer base to alternate facilities, the Petitioners hereby request that the
 13 Commission seek a waiver from the FCC to allow CLECs in the state of Pennsylvania to

1 continue to serve their installed DS1 customer base utilizing ULS, until such time as the
2 ILEC has implemented a loop migration system—including procedures to provide
3 switch-port settings—to allow DS1 customers' circuits to be migrated between carriers.

4 **THE COMMISSION MUST EXAMINE POST-UNE PRICING OF LOCAL SWITCHING**

5 41. Under section 271 of the Act, Regional Bell Operating Companies (“RBOCs”) have an
6 independent obligation to provide competitors with local circuit switching – including
7 PRI switch ports -- at rates, terms and conditions that are “just and reasonable” and not
8 unreasonably discriminatory, in compliance with sections 201 and 202 of the Telecom
9 Act.

10 42. Specifically, the FCC held in the TRO that section 271(c)(2)(b) establishes an
11 independent obligation for BOCs to provide access to loops, switching, transport and
12 signaling regardless of any unbundling required under section 251.²⁴ The FCC held that
13 the applicable pricing standard for elements required to be provided pursuant to section
14 271 is “whether they are priced on a just, reasonable and not unreasonably discriminatory
15 basis,” the standards set forth in sections 201(b) and 202(a) of the Act.²⁵

16 43. In order to ensure that the rates charged by Verizon whenever local switching is made
17 available under section 271 are in all cases just and reasonable, the Commission should
18 adopt an order requiring that the current rates for ULS remain in effect until the
19 Commission has determined that any replacement rate Verizon seeks to charge meets the
20 sections 201 and 202 pricing standard.

²⁴ TRO, ¶ 653.

²⁵ *Id.*, ¶ 656.

1 44. Under the authority granted to the Commission to establish rates for intrastate
 2 telecommunications services, the Commission has ample authority to establish rates of
 3 local circuit switching required to be made available pursuant to section 271.

4 45. Therefore, the Commission should exercise its authority to require Verizon to charge rate
 5 that are just and reasonable, in compliance with the Act. The only way for the
 6 Commission to ensure that Verizon fulfills its obligations under section 271 is to require
 7 continuation of the current rates – which have been determined to be just and reasonable
 8 – until any replacement rates can be judged against the statutory standard of sections 201
 9 and 202.

10 **CLECS MUST HAVE THE FLEXIBILITY TO PRESENT EVIDENCE OF**
 11 **IMPAIRMENT BEYOND THE INITIAL 90-DAY PERIOD**

12 46. As the Petitioners stated at the outset, the TRO imposed upon UNE-P suppliers of DS1
 13 circuits an impossible task. In the TRO, the FCC prohibited all carriers who utilize UNE-
 14 P from serving pre-existing or new “enterprise customers” (larger business subscribers
 15 with sufficient revenues to justify use of digital facilities).²⁶ The FCC gave UNE-P
 16 competitors 90 days from the TRO’s effective date to persuade state commissions to
 17 petition the FCC for a waiver of the enterprise customer prohibition on a state-specific
 18 basis.²⁷

19 47. The 90 days allotted by the FCC clearly will not allow participants to prepare and submit
 20 the impairment data needed to make the showings required by the FCC. Accordingly, in
 21 order to have a full and complete record, informed by the decisions reached in the 9-
 22 month mass market local switching proceeding, the Petitioners submit that the

²⁶ *Id.*, ¶¶451-58.

²⁷ *Id.*, ¶528.

1 Commission should allow parties to present evidence of impairment beyond the 90-day
 2 deadline established by the FCC.

3 48. The 90-day proceedings contemplated by the FCC require state commissions petitioning
 4 the FCC for waiver to support such waiver petitions based on specific customer and
 5 geographic market determinations that will not be finalized *until six months after the 90*
 6 *day period has expired*, at the conclusion of the 9-month mass market proceeding.²⁸

7 49. Put simply, it is an incoherent procedure whereby UNE-P carriers are given a severely
 8 limited window to present evidence showing impairment on a market-specific basis when
 9 the relevant markets will not be defined until six months after the window has closed.

10 50. The 90-day procedure poses an absurd dilemma for UNE-P competitors: they have a
 11 mere 90 days to attempt to persuade each state to save a significant customer segment but
 12 they are denied the critical customer and geographic market definitions that are necessary
 13 for proving their case.

14 51. As stated above, the customer and geographic market determinations must be made by
 15 the state commission in the mandatory 9-month proceeding for mass market UNE-P
 16 customers. The FCC stated that due to “the expected difficulties and detailed information
 17 needed in conducting the [customer and geographic market] inquiry, we allow the states
 18 nine months to make this identification.”²⁹

19 52. **In effect, the FCC is requiring UNE-P carriers to provide data for specific customer**
 20 **and geographic markets six months before the relevant market definitions are to be**
 21 **established.** At no time did the FCC explain how a UNE-P carrier could be reasonably
 22 expected to present evidence to persuade a state commission to make an impairment

²⁸ *Id.*, ¶¶455-58.

²⁹ *Id.*, ¶451 n.1376.

1 finding for enterprise customers when the critical customer and geographic market
2 definitions -- which the FCC itself has required UNE Platform carriers to use when
3 proving their case – will not be finalized until six months after the 90-period has closed.

4 53. At bottom, the critical customer and geographic market definitions necessary to support a
5 waiver petition by a state commission for enterprise customers likely will not be finalized
6 in any state until on or about June 27, 2004. By that date, the enterprise customer
7 prohibition will have been in effect for six months, and all current enterprise customers
8 will have been migrated off of the UNE Platform.

9 **CONCLUSION**

10 54. The Petitioners submit that the Commission should, in the face of the Stay issued by the
11 Second Circuit, hold this proceeding in abeyance until the Stay is either lifted.

12 55. The Commission should: (1) seek a waiver from the FCC of its national finding of no
13 impairment for DS1 enterprise customers as it applies to the existing installed base of
14 competitive providers; (2) exercise its authority to require Verizon to retain its current
15 rates for local circuit switching until the Commission has determined the lawfulness of
16 any replacement rates for local circuit switching no longer required to be made available
17 as an unbundled network element pursuant to section 251(c)(3) of the 1996 Telecom Act;
18 and (3) take notice that the 90 day timeframe established by the FCC does not afford
19 UNE-P carriers a meaningful time or opportunity to be heard on whether they are
20 impaired without access to local switching to serve enterprise customers and that
21 evidence of operational and economic impairment may be presented at a later date.

22 56. This concludes our Declaration.

23

Suzan DeBusk Paiva
Assistant General Counsel
Law Department



Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

October 21, 2003

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Ross A. Buntrock, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

DOCKETED

I-00030099 OCT 27 2003

DOCUMENT

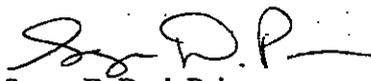
Re: Investigation into the Obligation of Incumbent Local Exchange
Carriers to Unbundle Local Circuit Switching for the Enterprise Market
Docket No. I-00030100

Dear Mr. Buntrock:

Verizon Pennsylvania Inc. has received the public version of the Petition to Initiate Proceedings filed on behalf of InfoHighway Communications Corporation and Manhattan Telecommunications Corporation, as well as the Joint Declaration of Peter Karoczkai and David Aronow, in the above-captioned matter. As provided in ordering Paragraph 5b of the Commission's October 3, 2003 Protective Order, as counsel of record for Verizon Pennsylvania Inc. I request a copy of the Joint Declaration including the Highly Confidential portion. This request only is for counsel of record as defined in Paragraph 5 of the Order; the information will not be disclosed to any Verizon experts without your prior agreement or a ruling changing the proprietary designation of the material.

Please do not hesitate to contact me if you have any questions.

Very truly yours,


Suzan DeBusk Paiva

SDP/sib

Via UPS Overnight Delivery
cc: Secretary James J. McNulty

Via E-Mail and UPS Overnight Delivery
Honorable Michael Schnierle
Attached Certificate of Service

RECEIVED
OCT 21 2003
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served a copy of the Request of Verizon Pennsylvania Inc. to InfoHighway Communications Corporation and Manhattan Telecommunications Corporation for Highly Confidential information, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 21st day of October, 2003.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Patricia Armstrong, Esquire
Regina L. Matz, Esquire
Thomas, Thomas, Armstrong
& Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108

Ross Buntrock, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Philip J. Macres, Esquire
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116

Norman Kennard, Esquire
Hawke McKeon Sniscak & Kennard
100 North Tenth Street
Harrisburg, PA 17101

Alan Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236



Suzan DeBusk Paiva
Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103
(215) 963-6068

[Faint circular stamp: RECEIVED 10/21/03]

DATE: October 22, 2003

SUBJECT: I-00030100;I-00030099;M-00031754

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary *JJ*

DOCKETED
OCT 23 2003
DOCUMENT

Investigation into Obligations of Incumbent Local Exchange
Carriers et al

Attached is a copy of a Petition to Initiate Proceedings, filed by Infohighway Communications and Manhattan Telecommunications Corporation, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS
LAW

was

ORIGINAL



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

October 23, 2003

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

DOCUMENT

RECEIVED
2003 OCT 23 PM 5:34
SECRETARY'S BUREAU

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 Notice of Intervention and Public Statement in the above-captioned proceeding.

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

Sincerely,

Barrett C. Sheridan
Assistant Consumer Advocate

Enclosures

cc: All parties of record
*76655

64

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED

OCT 27 2003

NOTICE OF INTERVENTION

Pursuant to 52 Pa. Code Sections 5.71-74, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. A copy of all correspondence and notices, documents, orders or other communications with respect to the above-captioned proceeding should be addressed to the following:

Barrett C. Sheridan
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923

bsheridan@paoca.org
(717) 783-5048; fax (717) 783-7152

Respectfully submitted,



Barrett C. Sheridan
Assistant Consumer Advocate

DOCUMENT

SECRETARY'S BUREAU

2003 OCT 23 PM 5:34

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DATED: October 23, 2003
00076649.doc

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and participate in the Commission's investigation of the obligation of Incumbent Local Exchange Carriers, such as Verizon Pennsylvania Inc., to offer Unbundled Network Elements (UNEs).

In August 2003, the Federal Communications Commission (FCC) revised its regulations which address the obligation of ILECs to offer to Competitive Local Exchange Carriers access to the ILEC's network through the purchase of UNEs. In response to the FCC's directive, the PUC initiated a 9 month proceeding to allow ILECs to challenge the regulatory presumption that CLECs require access to UNEs to serve the mass market, such as residential local exchange customers.

The OCA has intervened to assure that the interests of residential consumers are adequately addressed in these proceedings. The OCA is specifically concerned that residential consumers have competitive choices for affordable, reliable local exchange service. Elimination of CLEC access to UNEs may reduce the competitive options for residential customers. The OCA will actively participate in the Commission's investigation, through discovery, the presentation of expert testimony at hearings, and filing of briefs, to assure that any changes from the current regulatory scheme do not harm the interests of Pennsylvania residential telephone customers.

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 Notice of Intervention, 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 23rd day of October, 2003.

SERVICE BY INTER-OFFICE MAIL

Kandace Melillo, Esq.
Office of Trial Staff
Pa. Public Utility Commission
400 North Street, Fl. 2 West
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Julia A. Conover, Esq.
William Peterson, Esq.
Verizon Pennsylvania Inc.
1717 Arch Street, 32N
Philadelphia, PA 19103

Patricia Armstrong
Thomas, Thomas, Armstrong & Niesen
212 Locust St., Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Ross A. Buntrock
Kelley, Drye & Warren, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Alan Kohler, Esq.
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street
Suite 300
Harrisburg, PA 17101

Norman Kennard
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17108

Angela Jones, Esq.
Office of Small Business Advocate
300 North Second Street
1102 Commerce Bldg.
Harrisburg, PA 17101

Pennsylvania Telephone Association
P.O. Box 1169
Harrisburg, PA 17108-1169

Zsuzsuanna Benedek
Sprint
240 N. Third Street
Suite 201
Harrisburg, PA 17101



Philip F. McClelland
Senior Assistant Consumer Advocate
Barrett C. Sheridan
Assistant Consumer Advocate
Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
*76657

SECRETARY'S BUREAU

2003 OCT 23 PM 5: 34

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COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

October 28, 2003

Carol F. Pennington
Acting Small Business Advocate

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, P.O. Box 3265
Harrisburg, PA 17120

ORIGINAL

RECEIVED
03 OCT 30 AM 10:14
SECRETARY'S BUREAU
717) 783-2525
717) 783-2831 (FAX)

**Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market and to Unbundle Network Elements
Docket Nos. I-00030100 and I-00030099**

**Development of an Efficient Loop Migration Process
Docket No. M-00031754**

DOCUMENT

Dear Secretary McNulty:

Enclosed for filing is an executed copy of the Confidentiality Agreement signed by the Office of Small Business Advocate expert witness in the three proceedings listed above. The OSBA witness information is as follows:

Mr. Allen Buckalew
J.W. Wilson & Associates, Inc.
Rosslyn Plaza C- Suite 1104
1601 North Kent Street
Arlington, VA 22209
(703) 243-1049
(703) 243-3389 (fax)

Copies of each of the documents listed above are being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Angela T. Jones

Angela T. Jones
Assistant Small Business Advocate

Enclosures

cc: Hon. Michael C. Schnierle

Parties of Record

APPENDIX A-1
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Investigation into the Obligations of
Incumbent Local Exchange Carriers to
Unbundle Local Circuit Switching for the
Enterprise Market

Docket No. I-00030100

DOCKETED

NOV 03 2003

CONFIDENTIALITY AGREEMENT

DOCUMENT

TO WHOM IT MAY CONCERN:

The undersigned is the consultant of OSBA (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 _____ (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: 10/24/03

Allen G. Buckalew
Signature

Allen G. Buckalew
Print Name

OSBA
Status relative to Retaining Party

J. W. Wilson & Ass. Inc.
Employer

Address

RECEIVED

OCT 30 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ALLEN G. BUCKALEW
ECONOMIC COUNSEL
ROSSLYN PLAZA C • SUITE 1104
1601 NORTH KENT STREET • ARLINGTON, VA 22209

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-00031754
0099

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the CONSULTANT of OSBA (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 _____ (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 ¶15 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: 10/24/03

Allen G. Buck
Signature

Print Name
OSBA

Status relative to Retaining Party
J.W. WILSON & ASS. INC.
Employer

Address

RECEIVED

OCT 30 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ALLEN G. BUCKALEW
ECONOMIC COUNSEL
ROSELYN PLAZA C • SUITE 1104
1601 NORTH KENT STREET • ARLINGTON, VA 22209

APPENDIX A-3
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Development of an Efficient Loop
Migration Process

Docket No. M-00030099

1754

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Consultant of OSBA (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 _____ (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: 10/24/03

Allen Buckalew
Signature

RECEIVED

OCT 30 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Print Name
OSBA

Status relative to Retaining Party
J.W. Wilson & Ass. Inc
Employer

Address

ALLEN G. BUCKALEW
ECONOMIC COUNSEL
ROSSLYN PLAZA C • SUITE 1104
1601 NORTH KENT STREET • ARLINGTON, VA 22209

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Investigation into the Obligations of
Incumbent Local Exchange Carriers to
Unbundle Local Circuit Switching for
The Enterprise Market** : : **Docket No. I-00030100**
:
:
:
Investigation into the Obligations of :
Incumbent Local Exchange Carriers to : **Docket No. I-00030099**
Unbundle Network Elements :
:
Development of an Efficient Loop : **Docket No. M-00031754**
Migration Process :

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the foregoing document by first class mail upon the persons addressed below:

Hon. Michael Schnierle
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Julia A. Conover, Esquire
Vice President/General Counsel
William B. Petersen, Esquire
Verizon Pennsylvania, Inc.
1717 Arch Street, 32 North
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(215) 563-2658 (fax)

Alan Kohler, Esquire
Daniel Clearfield, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
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(717) 237-7161

Barrett C. Sheridan, Esquire
Philip F. McClelland, Esquire
Office of Consumer Advocate
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5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)

Kandace F. Melillo, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)

Michelle Painter, Esquire
MCI WorldCom
1133 19th Street, NW
Washington, DC 20036
(202) 736-6204
(202) 736-6242 (fax)

RECEIVED
PA. P.U.C.
SECRETARY'S BUREAU

03 OCT 30 AM 10:11

RECEIVED

Mr. Nego Pile
Lightship Telecom, LLC
1301 Virginia Drive, Suite 440
Fort Washington, PA 19034
(215) 641-0894
(215) 641-0531

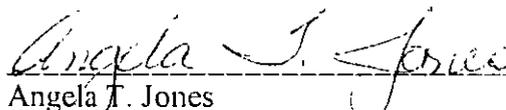
D. Mark Thomas, Esq.
Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
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Ross Buntrock, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Zsuzsanna E. Benedek, Esquire
Sprint
240 N. Third Street, Suite 201
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(717) 245-6213 (fax)

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(202) 424-7645 (fax)

Norman James Kennard, Esquire
Hawke McKeon Sniscak & Kennard
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
(717) 236-4841 (fax)



Angela T. Jones
Assistant Small Business Advocate

Date: October 28, 2003



ORIGINAL

Zsuzsanna E. Benedek
Senior Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Voice 717 236 1385
Fax 717 238 7844
sue.e.benedek@mail.sprint.com

October 29, 2003

VIA HAND DELIVERY

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

DOCUMENT

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

L -

Dear Secretary McNulty:

Attached please find an original and three (3) copies of the Petition to Intervene by Sprint Communications Company, L.P. (hereinafter "Sprint") in the above-captioned proceeding.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Sue Benedek

ZEB/jh

enclosures

cc: Certificate of Service (via electronic and first-class mail)
Julia A. Conover (via Federal Express)

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

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

I-
Docket No. ~~M~~-00030099

NOV 03 2003

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OCT 29 2003

**PETITION TO INTERVENE OF
SPRINT COMMUNICATIONS COMPANY, L.P.**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to the Pennsylvania Public Utility Commission ("Commission") Procedural Order entered on October 3, 2003 at Docket Nos. I-00030100, ~~I~~^M00031754 and ~~I~~^I00030099, Sprint Communications Company, L.P. ("Sprint") files this Petition to Intervene in the matter at Docket No. ~~I~~^F00030099. See also, 52 Pa. Code §5.74. In support thereof, Sprint states as follows:

DOCUMENT

1. Sprint is authorized to operate as a competitive local exchange carrier ("CLEC") in portions of the Commonwealth of Pennsylvania.

2. Sprint is one of the CLECs identified in the Commission's October 3, 2003 Opinion and Order. Sprint is required, per the Commission's Order, to provide responses to standard Commission data requests. Sprint is also named as an entity that must be served with any incumbent local exchange carrier ("ILEC") Petition to Initiate. See, Opinion and Order at 19, fn. 14 and Ordering Para. 4.

3. Sprint, the CLEC, seeks to be an active party in the matter at Docket No. ~~I~~^F00030099 concerning this Commission's Triennial Review Order ("TRO") proceeding to determine whether any ILEC filing a Petition to Initiate must continue to provide competing carriers with access to: (1) mass market high-capacity loops; (2) mass market switching; and (3) dedicated transport.

4. Documents can be served upon the following individual:

Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
e-mail: sue.e.benedek@mail.sprint.com

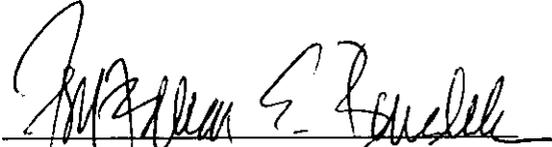
5. Sprint's participation in this proceeding will insure that its interests are protected on issues that may be presented in this proceeding. Sprint's interest will not be adequately represented by any other party to this proceeding.

6. According to the Commission's Procedural Order in this matter, Petitions to Initiate are due on October 31, 2003. Answers to said Petition are due November 14, 2003. In order to ensure that Sprint is served with a proprietary copy of any Petition to Initiate that may be filed, Sprint has executed Appendix A of the Proprietary Order entered in the above-captioned matter. Originals of Appendix A have been filed with Secretary McNulty concurrent with the filing of this Petition to Intervene. Also, copies of executed Appendix A have been served upon known interested entities.

7. Sprint is a competing carrier relative to Verizon Pennsylvania Inc. and Verizon North Inc. (collectively, "Verizon"). A copy of Sprint's Petition for Intervention along with a copy of Sprint's executed Appendix A of the Proprietary Order have been served upon counsel for Verizon for purposes of receipt of a proprietary version of any Petition to Initiate that may be filed by Verizon on October 31, 2003.

WHEREFORE, Sprint respectfully requests that the Commission grant this Petition to Intervene.

Respectfully submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
e-mail: sue.e.benedek@mail.sprint.com

**On behalf of Sprint Communications
Company, L.P.**

DATED: October 29, 2003

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of October, 2003, served a true copy of the foregoing Petition to Intervene upon the persons below via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

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

Kandace Melillo, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street
Harrisburg, PA 17120

Maryanne Martin, Esquire
Pennsylvania Public Utility Commission
Law Bureau
400 North Street, 3rd Floor
Harrisburg, PA 17120

Norm Kennard, Esquire
Hawke, McKeon, Sniscak and Kennard, LLP
100 North Tenth Street
Harrisburg, PA 17101

Ross A. Buntrock, Esquire
Kelley, Drye and Warren, LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong and Neisen
212 Locust Street, Suite 500
Harrisburg, PA 17101

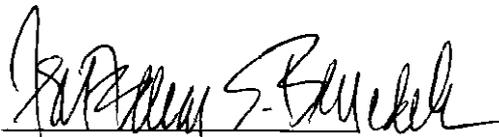
Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101

Michelle Painter, Esquire
MCI WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Barrett Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
E-Mail: sue.e.benedek@mail.sprint.com

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ORIGINAL



Zsuzsanna E. Benedek
Senior Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Voice 717 236 1385
Fax 717 238 7844
sue.e.benedek@mail.sprint.com

DOCUMENT

October 29, 2003

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OCT 29 2003

VIA HAND DELIVERY

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I-00030099

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

~~1254~~

Dear Secretary McNulty:

Attached please find an original and three (3) copies of the executed Confidentiality Agreements signed by Sprint Communications Company, L.P (hereinafter "Sprint") personnel in the above-captioned proceeding.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sue Benedek

ZEB/jh
Enclosures

cc: Certificate of Service (via electronic and first-class mail)
Julia A. Conover (via Federal Express)

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-00031754
0099

CONFIDENTIALITY AGREEMENT

DOCKETED
NOV 03 2003

TO WHOM IT MAY CONCERN:

The undersigned is the ATTORNEY of SPRINT (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: 10/29/03

[Signature]
Signature

Suzsanna Benedek
Print Name

EMPLOYEE
Status relative to Retaining Party

SPRINT
Employer

240 NORTH THIRD STREET
Address
SUITE 201
Harrisburg, PA 17101

RECEIVED

OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED

NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the SENIOR REGULATORY AFFAIRS MANAGER of SPRINT (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: 10/29/03

Russell Gutshall
Signature

RUSSELL GUTSHALL
Print Name

EMPLOYEE
Status relative to Retaining Party

SPRINT
Employer

240 NORTH THIRD STREET, SUITE 201
Address

HARRISBURG, PA 17101

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED

NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Vice President of External Affairs of SPRINT (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: 10/29/03

Richard A. Hrip
Signature
RICHARD A. HRIP

Print Name
EMPLOYEE

Status relative to Retaining Party
SPRINT

Employer
240 NORTH THIRD STREET, SUITE 201

Address HARRISBURG, PA
17101

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED

NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Director - St. Regulatory of Sprint (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 (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: 10-23-03

Emily E. Binder
Signature

Emily Binder
Print Name

Employee
Status relative to Retaining Party

Sprint
Employer

6450 Sprint Parkway
Address

Overland Park, KS

66251

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED
NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Senior Manager - St. Regulatory of Sprint (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 (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: 10/23/03

RECEIVED

OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Gerald Flurer DOCUMENT
Signature
Gerald Flurer
Print Name
Employee
Status relative to Retaining Party
Sprint
Employer
6450 Sprint Pkwy
Address
Overland Park, KS
66251

APPENDIX A-2

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED
NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Director - Cost Support of Sprint (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 (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: 10/24/04

Kent W. Dickerson
Signature
Kent W. Dickerson
Print Name
Director - Cost Support
Status relative to Retaining Party
Sprint
Employer
Ord. PK, Ks.
Address

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OCT 29 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

APPENDIX A-2

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

DOCKETED
NOV 03 2003

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Manager Network Costing of Sprint (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 (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).

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DATE: Oct 24, 2003

Michael A. Fuller
Signature
Michael A. Fuller
Print Name
Employee
Status relative to Retaining Party
Sprint
Employer
6450 Sprint Parkway O.P. KS-66251
Address

RECEIVED

OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

APPENDIX A-2

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

CONFIDENTIALITY AGREEMENT

DOCKETED

NOV 03 2003

TO WHOM IT MAY CONCERN:

The undersigned is the SENIOR MANAGER - NETWORK COSTS of SPRINT (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 (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).

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DATE: 10/24/03

Randy G. Ferrar
Signature

KANDY G. FARRAR
Print Name

EMPLOYEE
Status relative to Retaining Party

SPRINT
Employer

6450 SPRINT Pkwy
Address
OVERLAND PARK, KS ~~66203~~
66251

RECEIVED

OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
6099

CONFIDENTIALITY AGREEMENT

DOCKETED
NOV 03 2003

TO WHOM IT MAY CONCERN:

The undersigned is the Senior Manager Network Cost of Sprint (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 (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).

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DATE: 10/27/03

RECEIVED

OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Talmage D. Cox, III
Signature
Talmage D. Cox, III
Print Name
Senior Manager Network Cost
Status relative to Retaining Party
Sprint
Employer
6450 Sprint Parkway Overland Park KS
Address
66251

DOCUMENT

APPENDIX A-2
PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

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

Docket No. I-0003 ~~1754~~
0099

CONFIDENTIALITY AGREEMENT

DOCKETED

NOV 03 2003

TO WHOM IT MAY CONCERN:

The undersigned is the JUNIOR MANAGER - NETWORK COSTING of SPRINT (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 (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).

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DATE: 10/27/03

James D. Dunbar, Jr.
Signature
JAMES D DUNBAR, JR.
Print Name

EMPLOYEE
Status relative to Retaining Party

SPRINT
Employer
6450 SPRINT PKWY, OVERLAND PARK,
Address KS, 66251

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. ~~11-00030099~~

I - 00030099

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of October, 2003, served a true copy of the foregoing Confidentiality Agreements upon the persons below via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

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

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong and Neisen
212 Locust Street, Suite 500
Harrisburg, PA 17101

Kandace Melillo, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street
Harrisburg, PA 17120

Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101

Maryanne Martin, Esquire
Pennsylvania Public Utility Commission
Law Bureau
400 North Street, 3rd Floor
Harrisburg, PA 17120

Michelle Painter, Esquire
MCI WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Norm Kennard, Esquire
Hawke, McKeon, Sniscak and Kennard, LLP
100 North Tenth Street
Harrisburg, PA 17101

Barrett Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Ross A. Buntrock, Esquire
Kelley, Drye and Warren, LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

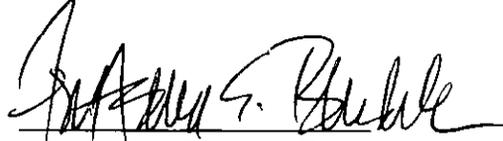
RECEIVED

OCT 29 2003

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
E-Mail: sue.e.benedek@mail.sprint.com

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OCT 29 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Zsuzsanna E. Benedek
Senior Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Voice 717 236 1385
Fax 717 238 7844
sue.e.benedek@mail.sprint.com

ORIGINAL

October 30, 2003

DOCKETED

NOV 03 2003

VIA HAND DELIVERY

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

DOCUMENT

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

Dear Secretary McNulty:

On October 29, 2003, Sprint Communications Company, L.P. (hereinafter "Sprint") filed two pleadings: (1) Petition to Intervene; and (2) Executed Confidentiality Agreements. It has come to Sprint's attention that those pleadings had the incorrect docket number of M-00030099. The docket number should be Docket No. I-00030099.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sue Benedek

ZEB/jh
Enclosures

cc: Certificate of Service (via electronic mail)

RECEIVED

OCT 30 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of October, 2003, served a true copy of the foregoing correspondence upon the persons below via electronic mail, in accordance with the requirements of 52 Pa. Code §1.54:

Julia A. Conover, Esquire
Verizon Pennsylvania, Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Ross A. Buntrock, Esquire
Kelley, Drye and Warren, LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

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

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong and Neisen
212 Locust Street, Suite 500
Harrisburg, PA 17101

Kandace Melillo, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street
Harrisburg, PA 17120

Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101

Maryanne Martin, Esquire
Pennsylvania Public Utility Commission
Law Bureau
400 North Street, 3rd Floor
Harrisburg, PA 17120

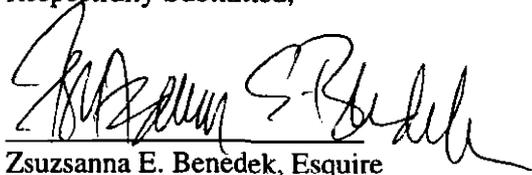
Michelle Painter, Esquire
MCI WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Norm Kennard, Esquire
Hawke, McKeon, Sniscak and Kennard, LLP
100 North Tenth Street
Harrisburg, PA 17101

Barrett Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
E-Mail: sue.e.benedek@mail.sprint.com

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OCT 30 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500

www.ttanlaw.com

FIRM (717) 255-7600

FAX (717) 236-8278

PATRICIA ARMSTRONG

Direct Dial: (717) 255-7627

E-Mail: parmstrong@ttanlaw.com

ORIGINAL

CHARLES E. THOMAS
(1913 - 1998)

October 31, 2003

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OCT 31 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Docket No. I-00030099
Investigation into the Obligation of Incumbent
Local Exchange Carriers to Unbundle Network Elements

DOCKETED

NOV 06 2003

Dear Secretary McNulty:

The Pennsylvania Public Utility Commission ("Commission"), on October 3, 2003, entered a Procedural Order ("*Procedural Order*"), pursuant to the FCC's Triennial Review Order¹ noting:

In the *Triennial Review Order*, the FCC also provides that within 9 months of the effective date of the order (i.e., by June 2, 2004), state commissions may conduct a granular analysis to determine whether ILECs in that state must continue to provide access to certain network elements. To this end, the Commission must determine whether ILECs in Pennsylvania must continue to provide competing carriers with access to: (1) mass market high-capacity loops; (2) mass market switching; and (3) dedicated transport. (emphasis added)

DOCUMENT

¹The Federal Communications Commission's ("FCC") August 21, 2003 Order, which has come to be known as the "*Triennial Review Order*" or "*TRO*." *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposal Rulemaking*, CC Docket No. 01-338 (rel. August 21, 2003).

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The Rural Company Coalition ("RCC"),² (individually "Company" and collectively "Companies"), all small incumbent local exchange carriers serving *rural* portions of Pennsylvania and each designated a *rural* telephone company as defined in Section 3 of the Communications Act of 1934, as amended ("TCA-96"), hereby submits this letter confirming their position that the RCC members are currently outside the scope of and thus not subject to this proceeding.

The Commission in the *Procedural Order* states its direction from the *TRO* is to "determine whether ILECs in [Pennsylvania] must *continue* to provide access to certain network elements." *Procedural Order* at 11 (emphasis added). Thus, the *Procedural Order* established procedures to determine the impact of the FCC's *TRO* only on those companies currently providing UNEs, with emphasis on Verizon and in particular what UNEs should continue to be provided. Accordingly, the RCC respectfully submits that the *Procedural Order* was intended, and must be interpreted, to apply only to those ILECs *currently* providing UNEs, i.e. Verizon Pennsylvania, Inc. ("Verizon"), Verizon-North, Inc. ("Verizon North"), and possibly Sprint.

The *Procedural Order* does not apply to those ILECs that have been found by the Commission to be rural as that term is defined in Section 3 of TCA-96, i.e. RCC Companies. The RCC Companies do not at present have Section 251(c) unbundling obligations because of their rural telephone company exemptions under Section 251(f)(1) of TCA-96. In this regard, the Commission did not, and the RCC submits could not, in this proceeding intend in any way to impact these RCC Companies' exemptions under Section 251(f)(1), or otherwise make findings about, or impose upon the RCC Companies, unbundling and interconnection obligations they do not currently have.

The fact that the FCC in its *TRO* did not intend to address UNEs for companies such as RCC Companies with statutory exemptions from unbundling requirements is clear on the face of the FCC's order. In the *TRO*, the FCC concluded as follows: "However, many rural LECs still retain the exemption for Section 251(c)(3) of the Act as required by Section 251(f) and as such, will not be subject to those particular unbundling requirements *until such time as the exemption is lifted.*" *TRO* at ¶119 (emphasis added).

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

²RCC Companies participating herein are ALLTEL Pennsylvania, Inc., Armstrong Telephone Company - North, Armstrong Telephone Company - Pennsylvania, Bentleyville Telephone Company, Buffalo Valley Telephone Company, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, D&E Telephone Company, Hickory Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Marianna & Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Venus Telephone Corporation, and Yukon-Waltz Telephone Company. The RCC files this Answer collectively in an effort to minimize administrative and procedural burdens. To the extent necessary, however, each Company reserves the right to address individually any company-specific matter raised during the pendency of this matter.

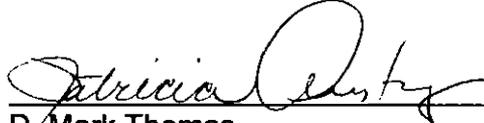
James J. McNulty, Secretary
October 31, 2003
Page 3

In any specific proceeding seeking to terminate the companies statutory rural exemption, the Commission is required to address the specific request for UNEs within the context of the Section 251(f)(1) requirements.³

Given the state of the law on the rural exemption, it is abundantly clear, as recognized by the FCC in paragraph 119 of the *TRO*, that the unbundling requirement for RCC Companies is not at issue until such time as the exemption is removed. The issue of impairment in the service territories of the RCC Companies is not properly placed before the Commission in this proceeding, and is not ripe for consideration until after the RCC Companies' Section 251(f) issues are raised and resolved.

Respectfully submitted,

THOMAS, THOMAS, ARMSTRONG & NIESEN



D. Mark Thomas
Patricia Armstrong
Regina L. Matz

Attorneys for the
Rural Company Coalition

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³Before a rural telephone company exemption is removed and a rural company required to provide UNEs, the Commission must determine whether there is a bona fide request for interconnection and whether a requesting CLEC has proven that such request is not unduly burdensome, is technically feasible, and is consistent with universal service. See *Iowa Utilities Board et al. v. Federal Communications Commission*, 219 F.3d 744, 761 (8th Cir. 2000) ("*Iowa Utilities Board II*"), *aff'd* in part, *rev'd* in part, and *remanded on other grounds* in *Verizon Communications Inc. v. FCC*, 152 L.Ed. 2d 701, 122 S. Ct. 1646 (U.S. 2002).

DATE: October 30, 2003
SUBJECT: I-00030100;I-00030099;M-00031754
TO: Office of Administrative Law Judge
FROM: James J. McNulty, Secretary

DOCKETED
NOV 03 2003
DOCUMENT

Investigation into Obligations of Incumbent Local Exchange
Carriers et al

Attached is a copy of an Amended Petition to Initiate Proceedings, filed by ARC Networks, Inc. d/b/a Infohighway and Metropolitan Telecommunications Corporation of Pa, in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS
LAW

was

KELLEY DRYE & WARREN LLP

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DOCUMENT

October 31, 2003

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OCT 31 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17105

**Re: Petition to Intervene and Response to Requests for Information of
Broadview Networks, Inc., Bullseye Telecom, Inc., ARC Networks,
Inc. d/b/a InfoHighway Communications Corp., McGraw
Communications, Inc., Metropolitan Telecommunications
Corporation of PA, and Talk America Inc.: Docket No. M-00030099**

Dear Mr. McNulty:

Please find attached an original and three (3) copies of the Petition to Intervene and Response to Requests for Information of Broadview Networks, Inc., Bullseye Telecom, Inc., ARC Networks, Inc. d/b/a InfoHighway Communications Corp., McGraw Communications, Inc., Metropolitan Telecommunications Corporation of PA, and Talk America Inc. in the Pennsylvania Public Utility Commission's proceeding to develop an efficient loop migration process in Docket No. M-00030099.

KELLEY DRYE & WARREN LLP

Pennsylvania Public Utility Commission
October 31, 2003
Page Two

Please date-stamp the duplicate copy of this filing and return it in the enclosed self-addressed, postage-paid envelope. If you have any questions regarding this filing, please contact the undersigned counsel at (202) 887-1248.

Respectfully submitted,

A handwritten signature in black ink that reads "Ross Buntrock" with a stylized flourish at the end.

Ross A. Buntrock

Enc.

cc: Janet Tuzinski – FUS Telecom Manager
Service List (via electronic and first class mail)

CERTIFICATE OF SERVICE

I, Heather T. Hendrickson, hereby certify that I have this day served a copy of the foregoing "Petition to Intervene and Response to Requests for Information of Broadview Networks, Inc., Bullseye Telecom, Inc., ARC Networks, Inc. d/b/a InfoHighway Communications Corp., McGraw Communications, Inc., Metropolitan Telecommunications Corporation of PA, and Talk America Inc." in Docket No. ~~M~~-00030099, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Washington, D.C., this 31st day of October, 2003.

VIA E-MAIL AND/OR UPS OVERNIGHT DELIVERY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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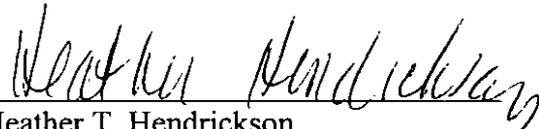
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Development of an Efficient Loop
Migration Process

)
)
)

Docket No. ~~VI~~-00030099

**PETITION TO INTERVENE AND RESPONSE TO REQUESTS FOR
INFORMATION OF BROADVIEW NETWORKS, INC., BULLSEYE TELECOM,
INC., ARC NETWORKS, INC. D/B/A INFOHIGHWAY COMMUNICATIONS
CORP., MCGRAW COMMUNICATIONS, INC., METROPOLITAN
TELECOMMUNICATIONS CORPORATION OF PA, AND TALK AMERICA
INC.**

Genevieve Morelli
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Counsel to the Petitioners

Date: October 31, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Development of an Efficient Loop
Migration Process

) Docket No. M-00030099
)
)

DOCKETED
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PETITION TO INTERVENE AND RESPONSE TO REQUESTS FOR
INFORMATION OF BROADVIEW NETWORKS, INC., BULLSEYE TELECOM,
INC., ARC NETWORKS, INC. D/B/A INFOHIGHWAY COMMUNICATIONS
CORP., MCGRAW COMMUNICATIONS, INC., METROPOLITAN
TELECOMMUNICATIONS CORPORATION OF PA, AND TALK AMERICA
INC.

I. INTRODUCTION

DOCUMENT

Broadview Networks, Inc., Bullseye Telecom, Inc. ("Bullseye"), ARC Networks, Inc. d/b/a InfoHighway Communications Corp. ("InfoHighway"), McGraw Communications, Inc. ("McGraw"), Metropolitan Telecommunications Corporation of PA ("MetTel"), and Talk America Inc. ("Talk") (collectively the "Petitioners"), by their undersigned counsel and pursuant to the Pennsylvania Public Utility Commission's ("Commission's") October 2, 2003 Procedural Order in the above referenced docket,¹ respectfully petition the Commission to intervene in the Commission's proceeding to develop an efficient loop migration process in Docket No. M-00030099. The Petitioners also respectfully submit their responses to the Commission's Requests for Information.²

¹ Procedural Order, Docket Nos. I-00030100, I-00031754, M-00030099 (Oct. 2, 2003) ("Procedural Order").

² *Id.*, Appendix B, p. 7.

II. SUPPORT FOR PETITION TO INTERVENE

The Petitioners provide competitive local exchange services in the state of Pennsylvania. As stated in the Commission's Procedural Order, the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO") directed state commissions to develop a batch cut process for efficient migration of mass market local exchange customers from one carrier to another.³ The Petitioners' participation in the Commission's proceeding to develop an efficient batch cut process is essential as the Petitioners are subject to the operational and economic impairments that are inherent in the current hot cut process. The Petitioners have a fundamental business interest in any discussion or deliberation that could result in processes that address the scalability, reliability, timeliness, and cost problems associated with the current loop migration processes.

Pursuant to the Procedural Order, the following representatives for the Petitioners should be served on all official Commission documents regarding this proceeding:

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Ross A. Buntrock
Heather T. Hendrickson
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III. RESPONSE TO COMMISSION INFORMATION REQUESTS

The Commission, in its Procedural Order, directed all entities interested in participating in this proceeding to respond to certain information requests regarding current and

³ Procedural Order at 21.

proposed hot cut and batch migration processes.⁴ In responding to these information requests, it should be noted that the Petitioners are primarily UNE-P providers in Pennsylvania with the exception of Broadview and, therefore, have somewhat limited experience with the current hot cut process. Broadview has extensive experience with Verizon's process to transfer lines from Verizon's switches to its facilities from both a single line perspective as well as today's bulk process. Particularly in light of the possible outcome of the Commission's mass-market local switching impairment proceeding, the Petitioners have significant interests in the development of a more efficient and cost-based loop migration process in Pennsylvania.

In response to the Questions B.1, B.2, and B.3, the Petitioners refer the Commission to the responses being filed today by AT&T Communications of PA. The Petitioners endorse those responses. In response to Questions B.4 and B.5, the Petitioners maintain that it is too early in the proceeding to determine what the appropriate batch cut process should be to meet the FCC's mandate in the TRO. Specifically, the Commission and interested parties must develop a record based on information provided by incumbent and competitive providers in Pennsylvania. Only with a fully-developed record will the Commission be able to identify a batch cut process that satisfies the requirements of competitive carriers and enables them to effectively compete in Pennsylvania. To that end, the Petitioners support the Commission's decision to conduct a technical conference to address this issue.

⁴ *Id.* at 25 and Appendix B.

IV. CONCLUSION

For the reasons stated above, the Commission should grant the Petitioners' request to intervene in this proceeding and accept the Petitioners' responses to the Commission's Requests for Information.

Respectfully submitted,



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Counsel to the Petitioners

October 31, 2003

DATE: October 31, 2003

SUBJECT: I-00030099

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary *J.J.M.*

DOCKETED

NOV 03 2003

DOCUMENT

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

Attached is a copy of a Petition to Intervene filed by Sprint Communications Company, L.P., in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS
LAW

was