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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

November 4, 2003

**VIA HAND DELIVERY**

**DOCKETED**  
NOV 06 2003

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 Executed Confidentiality Agreements and a Petition to Intervene in what should have been Docket No. I-00030099. It has come to Sprint's attention that the docket number on the Executed Confidentiality Agreements referenced an incorrect docket number of I-00031754. The Executed Confidentiality Agreements should have referenced Docket No. I-00030099, consistent with Sprint's Petition to Intervene in the Pennsylvania Public Utility Commission's 9-Month TRO Proceeding. Sprint will not re-execute the Confidentiality Agreements and considers the executed agreements filed on October 29, 2003 apply to 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 first-class and electronic mail)

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NOV 04 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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 4<sup>th</sup> day of November, 2003, served a true copy of the foregoing correspondence upon the persons below via first-class and electronic mail, in accordance with the requirements of 52 Pa. Code §1.54:

Julia A. Conover, Esquire  
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, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120

Michelle Painter, Esquire  
MCI WorldCom, Inc.  
1133 19<sup>th</sup> 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, 5<sup>th</sup> 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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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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**Robert C. Barber**  
Senior Attorney

Room 3D  
3033 Chain Bridge Road  
Oakton, VA 22185  
703 691-6061  
FAX 703 691-6093  
EMAIL rbarber@att.com

November 4, 2003

**BY OVERNIGHT MAIL**

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

DOCUMENT  
FOLDER

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

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned proceeding the original and three (3) copies of the Petition to Intervene of AT&T Communications of Pennsylvania, LLC.

Very truly yours,

Robert C. Barber

Enclosures

cc: Service List (w/ encl)

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030099

NOV 04 2003

PETITION TO INTERVENE OF  
AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.74 and the Pennsylvania Public Utility Commission ("Commission") Procedural Order entered on October 3, 2003 at Docket Nos. I-00030100, M-00031754 and I-00030099, AT&T Communications of Pennsylvania, LLC ("AT&T") files this Petition to Intervene in the matter at Docket No. I-00030099. In support thereof, AT&T states as follows:

1. AT&T is authorized to operate as a competitive local exchange carrier in portions of the Commonwealth of Pennsylvania, including the service territory of Verizon Pennsylvania Inc. ("Verizon" or "VZ-PA"). AT&T currently purchases unbundled network elements on a wholesale basis from Verizon in order to provide competitive local exchange services.

2. AT&T is identified in the Commission's October 3, 2003 Opinion and Order as an entity that must be served with any incumbent local exchange carrier Petition to Initiate.<sup>1</sup> According to the Commission's Procedural Order in this matter, Petitions to Initiate were due to be filed on October 31, 2003. On November 3, 2003, AT&T received, by overnight mail, a public version of VZ-PA's Petition to Initiate Proceedings, which was filed on October 31.

<sup>1</sup> Procedural Order at 19, fn. 14 and Ordering Paras. 3(b) and 4.

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3. According to Paragraph 3(c) of the Commission's Procedural Order, Petitions to Intervene or Answers to VZ-PA's petition are not required to be filed until November 14, 2003.<sup>2</sup> Because AT&T intends to be an active party in the investigation docketed at Docket No. I-00030099 concerning 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, and intends to file response, it planned on filing an Answer to Verizon's Petition on the date specified in the Procedural Order. However, Verizon has so far refused to provide AT&T with a proprietary version of its October 31 filing unless and until AT&T files a formal petition to intervene in this proceeding. That position has necessitated this filing.

4. AT&T will be represented in this proceeding by the following counsel, upon whom copies of all documents should be served:

Robert C. Barber, Esq.  
Mark A. Keffer, Esq.  
AT&T Communications of Pennsylvania, LLC  
3033 Chain Bridge Road, Room 3-D  
Oakton, VA 22185  
Phone: (703) 691-6061  
Fax: (703) 691-6093  
e-mail: rbarber@att.com

5. As a purchaser of unbundled network elements from Verizon, AT&T possesses a direct, substantial and immediate interest in this proceeding that cannot be adequately protected by any other party, and that warrants AT&T's participation as a full party to this proceeding.

---

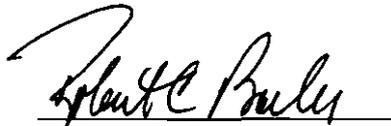
<sup>2</sup> Procedural Order, Ordering Para. 3(c).

WHEREFORE, AT&T respectfully requests that the Commission grant this  
Petition to Intervene.

Respectfully submitted,

**AT&T COMMUNICATIONS  
OF PENNSYLVANIA, LLC**

By its Attorneys,



Robert C. Barber  
3033 Chain Bridge Road  
Oakton, VA 22185  
(703) 691-6061

Of Counsel:  
Mark A. Keffer

Dated: November 4, 2003

Certificate of Service  
Docket No. I-00030099

The undersigned hereby certifies that true and correct copies of the Petition to Intervene of AT&T Communications of Pennsylvania, LLC. were caused to be served on the persons named below by electronic and first class or overnight mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Patricia Armstrong  
PO Box 9500  
Harrisburg, PA 17108  
Fax – 717-236-8278  
Phone – 717-255-7600  
e-mail – [parmstrong@titanlaw.com](mailto:parmstrong@titanlaw.com)  
(for Rural Telephone Company Coalition)

Michelle Painter  
MCI WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Fax – 202-736-6242  
Phone – 202-736-6204  
e-mail – [Michelle.Painter@wcom.com](mailto:Michelle.Painter@wcom.com)  
(for MCI WorldCom, Inc.)

Philip F. McClelland  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Fax – 717-783-7152  
Phone – 717-783-5048  
e-mail – [pmcclelland@paoca.org](mailto:pmcclelland@paoca.org)  
(for Office of Consumer Advocate)

Zsuzsanna E. Benedek  
1201 Walnut Bottom Road  
Carlisle, PA 17013-0905  
Fax – 717-245-6213  
Phone – 717-245-6346  
e-mail – [sue.e.benedek@mail.sprint.com](mailto:sue.e.benedek@mail.sprint.com)  
(for Sprint Communications Company, L.P. and  
The United Telephone Company of  
Pennsylvania)

Alan Kohler  
Daniel Clearfield  
Wolf Block Schorr & Solis-Cohen  
Locust Court, Suite 300  
212 Locust Street  
Harrisburg, PA 17101  
Fax – 717-237-7161  
Phone – 717-237-7160

Angela Jones, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
Fax – 717-783-2831  
Phone – 717-783-2525

Jualia A. Conover, Esq.\*  
Suzan Paiva, Esq.  
Verizon Pennsylvania, Inc.  
1717 Arch Street 32 NW  
Philadelphia, PA 19103  
Fax – 215-563-2658  
Phone – 215-963-6001

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NOV 04 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
Robert C. Barber

Dated: November 4, 2003

\*By Overnight Mail

DATE: November 4, 2003  
SUBJECT: I-00030099  
TO: Office of Administrative Law Judge  
FROM: James J. McNulty, Secretary *KB*

DOCKETED  
NOV 06 2003

DOCUMENT

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

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Attached is a copy of a Petition filed by 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 connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Fus  
Law

ksb

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DOCUMENT  
FOLDER

November 6, 2003

*Via Overnight Delivery*

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NOV 06 2003

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Please find enclosed an original and four (4) copies of MCI WorldCom Network Services, Inc.'s Petition to Intervene in the above-referenced case.

Please contact me if you have any questions or concerns with this filing.

Very truly yours,

A handwritten signature in cursive script that reads "Michelle Painter".

Michelle Painter

cc: Certificate of Service  
Office of Administrative Law Judge

Enclosure

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030099

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FOLDER

NOV 06 2003

PETITION TO INTERVENE OF  
MCI WORLDCOM NETWORK SERVICES, INC. PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.74 and the Pennsylvania Public Utility Commission ("Commission") Procedural Order entered on October 3, 2003 at Docket Nos. I-00030100, M-00031754 and I-00030099, MCI WorldCom Network Services, Inc. files this Petition to Intervene in the matter at Docket No. I-00030099. In support thereof, MCI states as follows:

1. MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. are the two MCI entities in Pennsylvania authorized to provide local service throughout the Verizon Pennsylvania, Inc. ("VZ-PA") operating territory.<sup>1</sup> Both entities are wholly owned subsidiaries of MCI WorldCom Network Services, Inc.

2. MCI launched its residential local service to customers throughout Verizon Pennsylvania, Inc.'s territory in August of 2000.

3. According to the Pennsylvania Public Utility Commission's 2002 Utility Consumer Activities Report and Evaluation, MCI is the largest competitive local exchange carrier ("CLEC") in Pennsylvania.

4. MCI currently purchases unbundled network elements on a wholesale basis from VZ-PA in order to provide competitive local exchange services to its customers.

<sup>1</sup> Within the next couple of weeks, MCI intends to file an application with the Pennsylvania Public Utility Commission to extend its certification to provide local service in Verizon North, Inc.'s territory.

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5. MCI is identified in the Commission's October 3, 2003 Opinion and Order as an entity that must be served with any incumbent local exchange carrier Petition to Initiate.<sup>2</sup>

According to the Commission's Procedural Order in this matter, Petitions to Initiate were due to be filed on October 31, 2003. On November 3, 2003, MCI received, by overnight mail, a public version of VZ-PA's Petition to Initiate Proceedings, which was filed on October 31.

6. According to Paragraph 3(c) of the Commission's Procedural Order, Petitions to Intervene or Answers to VZ-PA's petition are not required to be filed until November 14, 2003.<sup>3</sup> MCI intends to be an active party in the investigation docketed at Docket No. I-00030099 concerning whether any incumbent 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. Further, MCI intends to file a response to Verizon's Petition on November 14, 2003. However, Verizon has thus far refused to provide MCI with a proprietary version of its October 31 filing unless and until MCI files a formal petition to intervene in this proceeding. Verizon's position has necessitated this filing. MCI will file all additional pleadings as required on November 14, 2003.

7. MCI will be represented in this proceeding by the following counsel, upon whom copies of all documents should be served:

Michelle Painter, Esq.  
MCI  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Phone: (202) 736-6204  
Fax: (202) 736-6242  
e-mail: Michelle.Painter@mci.com

---

<sup>2</sup> Procedural Order at 19, fn. 14 and Ordering Paras. 3(b) and 4.

<sup>3</sup> Procedural Order, Ordering Para. 3(c).

8. As a purchaser of unbundled network elements from VZ-PA, and the largest CLEC in Pennsylvania, MCI possesses a direct, substantial and immediate interest in this proceeding that cannot be adequately protected by any other party, and that warrants MCI's participation as a full party to this proceeding.

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

Respectfully submitted,



Michelle Painter, Esq.

MCI

1133 19<sup>th</sup> Street, NW

Washington, DC 20036

(202) 736-6204

Facsimile: (202) 736-6242

Email: [Michelle.Painter@mci.com](mailto:Michelle.Painter@mci.com)

Dated: November 6, 2003

**SERVICE LIST**

I hereby certify that I have this day caused a true copy of MCI's Petition to Intervene to be served upon the parties of record in Docket No. I-00030099 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Washington, DC on November 6, 2003

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**VIA OVERNIGHT DELIVERY**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Patricia Armstrong  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
Harrisburg, PA 17108  
Phone – 717-255-7600

Julia Conover  
Verizon  
1717 Arch Street, 32N  
Philadelphia, PA 19103  
Phone – 717-963-6001

Kandace F. Melillo  
Pennsylvania Public Utility Commission  
Office of Trial Staff – 2<sup>nd</sup> Floor  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Phone – 717-783-6155

Angela Jones  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
Phone – 717-783-2525

Alan Kohler  
Wolf Block Schorr and Solis-Cohen  
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Harrisburg, PA 17108  
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AT&T  
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Phil McClelland  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
Phone – 717-783-5048

John F. Povilaitis  
Ryan, Russell, Ogden & Seltzer  
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Harrisburg, PA 17102  
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Linda Smith  
Dilworth Paxson LLP  
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Richard U. Stubbs  
Cavalier Telephone Mid-Atlantic, LLC  
965 Thomas Drive  
Warminster, PA 18974  
(267)803-4002

Charis Burak  
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100 Pine Street  
Harrisburg, PA 17108  
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Philip Macres  
Swidler Berlin Shereff Friedmann  
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Washington, DC 20007  
202-945-6915

Sue Benedek  
Sprint/United  
204 North Third St, Suite 201  
Harrisburg, PA 17101  
Phone – 717-245-6346

Ross Buntrock  
Kelley Dye & Warren  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036

  
Michelle Painter  
Michelle Painter

*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](http://www.ttanlaw.com)

FIRM (717) 255-7600

FAX (717) 236-8278

PATRICIA ARMSTRONG

Direct Dial: (717) 255-7627

E-Mail: [parmstrong@ttanlaw.com](mailto:parmstrong@ttanlaw.com)

ORIGINAL

CHARLES E. THOMAS  
(1913 - 1998)

November 6, 2003

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NOV - 6 2003

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

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On October 31, 2003, the Rural Company Coalition ("RCC") filed a letter in the above referenced docket. Footnote 2 of that letter inadvertently omitted the name of The Hancock Telephone Company. Enclosed herewith is a substitute Page 2 correctly including The Hancock Telephone Company in the list of Companies.

If you have any questions, please contact the undersigned.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

*Patricia Armstrong*  
Patricia Armstrong

Enclosure

cc: Maryanne Martin, Esquire (w/encl.)

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

The Rural Company Coalition ("RCC"),<sup>2</sup> (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).

DOCUMENT

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<sup>2</sup>RCC 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, The Hancock 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.

# ECKERT SEAMANS CHERIN & MELLOTT, LLC

213 Market Street  
Eighth Floor  
Harrisburg, PA 17101

Address correspondence to:  
Post Office Box 1248  
Harrisburg, PA 17108-1248

Telephone: 717.237.6000  
Facsimile: 717.237.6019  
www.escm.com

Boston

Haddonfield, NJ

Harrisburg

Morgantown, WV

Philadelphia

Pittsburgh

Washington, D.C.

November 6, 2003

*Via Hand Delivery*

The Honorable James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2nd Floor North  
Harrisburg, Pennsylvania 17101

ORIGINAL

DOCUMENT

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

Dear Secretary McNulty:

Please find enclosed for filing an original and four (4) copies of MCI  
WorldCom Network Services, Inc.'s Application for Admission Pro Hac  
Vice of Attorney Painter in the above-referenced matter.

As noted on the attached Certificate of Service, all parties of record have  
been served. Please call should you have any questions regarding this filing.  
Thank you for your professional courtesy.

Very truly yours,



Kathleen Misturak-Gingrich

KMG:smb  
Enclosures

cc: Office of Administrative Law Judge  
Certificate of Service (as noted)  
Michelle Painter, Esquire

*Via Hand Delivery*

*Via E-mail and U.S. Mail*

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NOV - 6 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

MOTION FOR ADMISSION PRO HAC VICE

DOCKETED

NOV 17 2003

NOW COMES, Kathleen Misturak-Gingrich, Esquire ("Movant"), a member in good standing, of the bar of this Commonwealth and respectfully moves for the admission of the following individual to appear as an attorney on behalf of MCI WorldCom Network Services, Inc. ("MCI") in the above-captioned proceeding.

Michelle Painter, Esquire  
MCI WorldCom Communications, Inc.  
1133 19th Street, NW  
Washington, DC 20036  
Telephone: 202.736.6204

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

In support thereof, Movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 41682) and practicing at Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, Pennsylvania, 17101.
2. Michelle Painter, Esquire, is a member in good standing of the bar of the Commonwealth of Virginia, having been admitted to practice in 1995.
3. On July 29, 2003, Michelle Painter submitted her application to become a member of the Pennsylvania Bar pursuant to Pa.B.A.R. 204.
4. Michelle Painter has been in-house counsel for MCI and its predecessor and affiliates for over seven (7) years. Because of her employment by MCI, she is uniquely qualified

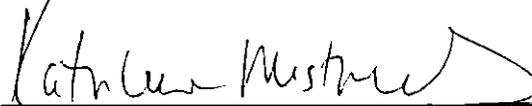
DOCUMENT

to represent and identify the interests of the company. Michelle Painter has appeared in many proceedings before the Commission Pro Hac Vice, including the Global Order at Docket Nos. P-00991648 and P-00991649, and the Generic Investigation re: Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates at Docket No. R-00016683.

WHEREFORE, I move that Michelle Painter, Esquire, be admitted to practice Pro Hac Vice on behalf of MCI WorldCom Network Services, Inc. in the above-captioned proceeding.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC



---

Kathleen Misturak-Gingrich, Esquire  
Attorney I.D. No. 41682  
213 Market Street, 8th Floor  
Harrisburg, Pennsylvania 17101  
Telephone: 717.237.6067

Date: November 6, 2003

Attorney for MCI WorldCom Network Services, Inc.

RECEIVED

NOV - 6 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**SERVICE LIST**

I hereby certify that I have this day caused a true copy of MCI's Motion Pro Hac Vice to be served upon the parties of record in Docket No. I-00030099 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Harrisburg, Pennsylvania on November 6, 2003

**VIA U.S. MAIL**

Patricia Armstrong  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
Harrisburg, PA 17108  
Phone – 717-255-7600

Julia Conover  
Verizon  
1717 Arch Street, 32N  
Philadelphia, PA 19103  
Phone – 717-963-6001

Kandace F. Melillo  
Pennsylvania Public Utility Commission  
Office of Trial Staff – 2<sup>nd</sup> Floor  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Phone – 717-783-6155

Angela Jones  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
Phone – 717-783-2525

Alan Kohler  
Wolf Block Schorr and Solis-Cohen  
212 Locust Street, Suite 300  
Harrisburg, PA 17108  
Phone – 717-237-7172

Robert C. Barber  
AT&T  
3033 Chain Bridge Road  
Oakton, VA 22185  
Phone – 703-691-6061

Phil McClelland  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
Phone – 717-783-5048

John F. Povilaitis  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
Phone – 717-236-7714

Linda Smith  
Dilworth Paxson LLP  
305 North Front St, Suite 403  
Harrisburg, PA 17101  
Phone – 717-236-6248

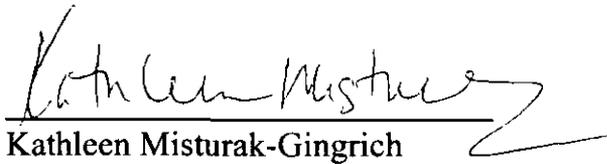
Richard U. Stubbs  
Cavalier Telephone Mid-Atlantic, LLC  
965 Thomas Drive  
Warminster, PA 18974  
(267)803-4002

Charis Burak  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
Phone – 717 237 5437

Philip Macres  
Swidler Berlin Shereff Friedmann  
3000 K Street, NW  
Washington, DC 20007  
202-945-6915

Sue Benedek  
Sprint/United  
204 North Third St, Suite 201  
Harrisburg, PA 17101  
Phone – 717-245-6346

Ross Buntrock  
Kelley Drye & Warren  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036

  
Kathleen Misturak-Gingrich

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NOV - 6 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

November 10, 2003

**VIA HAND DELIVERY**

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

RECEIVED

NOV - 6 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

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

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

DOCUMENT  
FOLDER

Sincerely,

Sue Benedek

ZEB/jh  
enclosures

cc: Certificate of Service (via first-class and electronic mail)

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. 1-00030099

CONFIDENTIALITY AGREEMENT

TO WHOM IT MAY CONCERN:

The undersigned is the Director - Regulatory Policy 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: 11-7-03

  
Signature  
Peter N. Sywenki  
Print Name  
Full Time Employee  
Status relative to Retaining Party  
Sprint  
Employer  
6450 Sprint Parkway  
Address  
Overland Park, KS 66215

DOCKETED

NOV 13 2003

DOCUMENT  
FOLDER

CONFIDENTIALITY SECTION  
CONFIDENTIALITY BUREAU

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-00030099

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).

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: 11/7/03

[Signature]  
Signature

Neal E. Wolahan  
Print Name

Employee  
Status relative to Retaining Party

Sprint  
Employer

6450 Sprint Pkwy, Overland Park, KS 66251  
Address

DOCKETED

NOV 13 2003

DOCUMENT  
FOLDER

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that I have this 10<sup>th</sup> day of November, 2003, served a true copy of the foregoing Executed Confidentiality Agreements upon the persons below via first-class and electronic mail, in accordance with the requirements of 52 Pa. Code §1.54:

Julia A. Conover, Esquire  
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, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120

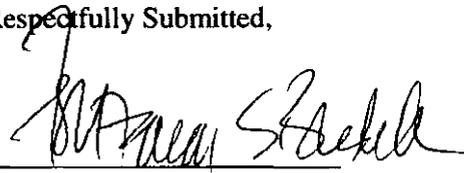
Michelle Painter, Esquire  
MCI WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036

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, 5<sup>th</sup> 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

RECEIVED

NOV 20 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

**DATE:** November 10, 2003  
**SUBJECT:** I-00030099  
**TO:** Office of Administrative Law Judge  
**FROM:** James J. McNulty, Secretary *JJ*

**DOCKETED**  
NOV 12 2003

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

---

Attached is a copy of a Petition to Intervene, filed by AT&T Communications of Pennsylvania, LLC, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS  
LAW

was

**DOCUMENT  
FOLDER**

COMMONWEALTH OF PENNSYLVANIA

DATE: November 4, 2003  
SUBJECT: I-00030099  
TO: Office of Administrative Law Judge  
FROM: James J. McNulty, Secretary *KB*

DOCKETED  
NOV 06 2003

DOCUMENT

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

---

Attached is a copy of a Petition filed by Verizon  
Pennsylvania Inc., in connection with the above  
docketed proceeding.

This matter is assigned to your Office for  
appropriate action.

Attachment

cc: Fus  
Law

ksb

DOCUMENT  
FOLDER

COMMONWEALTH OF PENNSYLVANIA

DOCKETED  
NOV 12 2003

**DATE:** November 10, 2003

**SUBJECT:** I-00030099

**TO:** Office of Administrative Law Judge

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

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

---

Attached is a copy of a Petition to Intervene, filed by MCI WorldCom Network Services, Inc., in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS  
LAW

was

ORIGINAL

CONFIDENTIAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7643  
WWW.SWIDLAW.COM

Philip J. Macres  
(202) 424-7770  
pjmacres@swidlaw.com

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174

November 13, 2003

**VIA OVERNIGHT DELIVERY**

RECEIVED

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

DOCUMENT

NOV 13 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

# I-00030099

**Re:** Docket No. ~~I-00031754~~, Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements

Dear Secretary McNulty:

Enclosed for filing in the above referenced proceeding is Lightship Telecom, LLC's ("Lightship's") Petition to Intervene in the above-referenced proceeding and its associated verification.<sup>1</sup>

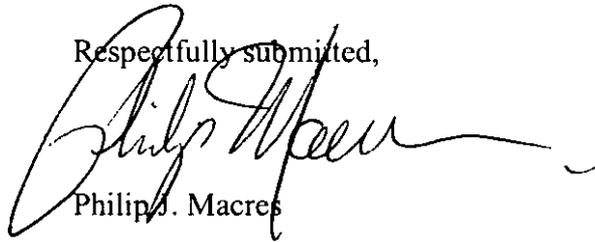
In addition, in response to the Pennsylvania Public Utility Commission's ("Commission's") Requests for Information ("RFIs") set forth in Appendix A to the Commission's October 2, 2003 order in Case No. I-00031754, Lightship hereby informs the Commission that in the Commonwealth of Pennsylvania, Lightship does not own or control switching or transmission facilities and does not purchase unbundled network elements from Incumbent Local Exchange Carriers ("ILECs"). Therefore, none of the RFIs are applicable to Lightship. The individual responsible for Lightship's response is Nego Pile, Manager of Rates and Tariffs for Lightship Telecom, LLC. Please contact the undersigned if you have any questions regarding this response or if the Commission would like Lightship to provide separate responses indicating the lack of applicability of the requests to the Lightship.

An original and three (3) copies of this filing are enclosed. Also enclosed is an extra copy of the filing that we request be date-stamped and returned in the self-addressed, stamped envelope provided.

<sup>1</sup> The attached verification is a faxed copy. The original will be filed with the Commission under separate cover.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip J. Macres", written in a cursive style.

Philip J. Macres

Counsel for Lightship Telecom, LLC

Enclosures

cc: Attached Service List

**DOCKETED**  
NOV 20 2003

**RECEIVED**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NOV 18 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

# I-00030099  
Docket No. ~~00031754~~

**LIGHTSHIP TELECOM, LLC'S PETITION TO INTERVENE**

**DOCUMENT**

Pursuant to the October 2, 2003 Procedural Order in the above-referenced proceeding and 52 Pa. Code Section 5.71 *et seq.*, Lightship Telecom, LLC ("Lightship"), by its counsel, hereby petitions the Pennsylvania Public Utility Commission ("Commission") for leave to intervene in the above-referenced proceeding, stating in support thereof the following:

1. Lightship is a Competitive Local Exchange Carrier ("CLEC") that seeks to provide local exchange, exchange access, and interexchange telecommunications services to small, medium, and large businesses throughout the Commonwealth of Pennsylvania. In provisioning its services, Lightship plans to utilize Unbundled Network Elements ("UNEs") offered by Verizon-Pennsylvania ("Verizon") that are currently available to Lightship as UNEs pursuant to 47 U.S.C. § 251(c)(3).

3. In its October 2, 2003 Procedural Order that was issued in the above-captioned proceeding, the Commission established the process and procedure to implement the FCC's Triennial Review Order. In the Order, the Commission held, among other things, that any ILEC seeking review of its unbundling obligations with respect to loops, transport and mass market switching must file a Petition to Initiate Proceeding with the Commission by October 31, 2003. On October 31, 2003, Verizon Pennsylvania filed such a Petition. Consistent with the FCC's Triennial Review Order, it is expected that the Commission will investigate the assertions made in Verizon's October 31, 2003 Petition and whether switching to certain mass market customers and certain DS1, DS3 and dark fiber loops and transport routes must continue to be made available to CLECs as UNEs.

4. Lightship requests that it be permitted to intervene as participant in this proceeding so that it may represent and protect its interests during it. Lightship will be substantially and

specifically affected by the Commission's review and decision in this docket because Lightship plans to be a customer and competitor of Verizon. At this time, Lightship's business plan is centered on using UNEs to serve small, medium, and large businesses. Any changes to the availability of UNEs or the rates, terms and conditions for using them may directly affect Lightship's ability to compete with Verizon. In this proceeding, Lightship seeks the opportunity to submit comments and possibly offer evidence that supports keeping available UNEs that serve small, medium, and large businesses. Because UNEs are critical to Lightship's business plan, Lightship's interests cannot be adequately represented without the Commission granting this petition.

5. Lightship's intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

6. In making this request, Lightship asks that all communications and correspondence for this proceeding be directed to the undersigned counsel and the following individual at Lightship:

Nego Pile  
Lightship Telecom, LLC  
1301 Virginia Drive  
Suite 440  
Fort Washington, PA 19034  
Tel: (215) 641-0894  
Fax: (215) 641-0531  
Email: [npile@lightship.net](mailto:npile@lightship.net)

**WHEREFORE**, Lightship respectfully requests that the Commission permit it to intervene in this proceeding.

Respectfully submitted,

Handwritten signature of Tamar E. Finn in cursive, followed by a horizontal line and a smaller signature.

Russell M. Blau

Robin F. Cohn

Tamar E. Finn (PA Bar No. 73896)

Swidler Berlin Shereff Friedman, LLP

3000 K Street, N.W., Suite 300

Washington, D.C. 20007

Tel: (202) 424-7500

Fax: (202) 424-7645

E-mail: [rnbblau@swidlaw.com](mailto:rnbblau@swidlaw.com)

E-mail: [rfohn@swidlaw.com](mailto:rfohn@swidlaw.com)

E-mail: [tefinn@swidlaw.com](mailto:tefinn@swidlaw.com)

Counsel for Lightship Telecom, LLC

Dated: November 13, 2003

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NOV 13 2003

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

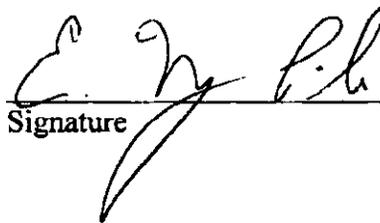
PAPUNING...  
SECRETARY...

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

Docket No. X-00031754

**VERIFICATION OF LIGHTSHIP TELECOM, LLC**

I, Nego Pile of Lightship Telecom, LLC, hereby state that the facts set forth in Lightship Telecom, LLC's Petition to Intervene dated November 13, 2003 that is being filed in the above-referenced proceeding are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

 11/13/03  
Signature Date

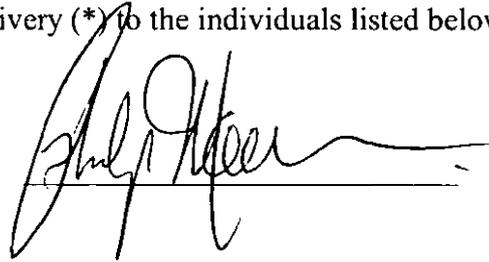
RECORDED

NOV 13 2003

**CERTIFICATE OF SERVICE**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BOARD

I, Philip Macres, hereby certify that I have on this day, November 13, 2003 served a true and correct copy of Lightship Telecom, LLC's Petition to Intervene and associated Verification by United States First Class mail or Overnight Delivery (\*) to the individuals listed below.



Irwin A Popowsky  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101

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

Charles F. Hoffman, Director  
Office of Trial Staff  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Julia A. Conover (\*)  
William B. Petersen(\*)  
Suzan DeBusk Paiva (\*)  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32<sup>nd</sup> NW  
Philadelphia, PA 19103

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116

Philip J. Macres  
(202) 424-7770  
pjm@swidl.com

TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7643  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174

November 13, 2003

**VIA OVERNIGHT DELIVERY**

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

DOCUMENT

RECEIVED

NOV 13 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

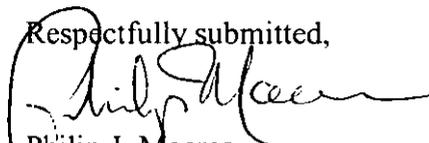
I - 00030099

**Re:** Docket No. ~~00031754~~<sup>A</sup>, Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements

Dear Secretary McNulty:

Enclosed for filing in the above referenced proceeding are the Motions for Admission Pro Hac Vice of Russ M. Blau and Robin F. Cohn along with proposed orders.

An original and three (3) copies of this filing are enclosed. Also enclosed is an extra copy of the filing that we request be date-stamped and returned in the self-addressed, stamped envelope provided. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,  
  
Philip J. Macres

Enclosures

cc: Attached Service List

RECEIVED

NOV 18 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 Network Elements

I-00030099

Docket No. ~~X~~-00031754

**MOTION FOR ADMISSION PRO HAC VICE**

NOW COMES, Tamar E. Finn, a member of the bar of this Commonwealth and respectfully moves for the admission of the following individual to appear as an attorney on behalf of Lightship Telecom, LLC and RCN Telecom Services, Inc., in the above-captioned proceeding:

Robin F. Cohn, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Washington, D.C. 20007

DOCKETED  
NOV 19 2003  
DOCUMENT

In support thereof, movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 73896) and practicing at Swidler Berlin Shereff Friedman, LLP, 3000 K St. NW, Washington, D.C., 20007.
2. Robin F. Cohn is a member in good standing of the Maryland (since 1985) and District of Columbia (since 1991) bars.

WHEREFORE, I move that Robin F. Cohn, Esq., be admitted to practice pro hac vice on behalf of Lightship Telecom, LLC and RCN Telecom Services, Inc., in the above-captioned proceeding.

Respectfully submitted,

  
\_\_\_\_\_  
Tamar E. Finn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Voice)  
(202) 295-8478 (Facsimile)

Dated: November 13, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. <sup>11</sup>00031754

**ORDER**

NOW, November \_\_\_\_\_, 2003, upon consideration of foregoing motion to grant admission pro hac vice for Robin F. Cohn, Esq., for the limited purpose of representing Lightship Telecom, LLC, in the above-captioned proceeding, the motion is granted.

---

Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

I-00030699  
Docket No. ~~1~~-00031754

**DOCKETED**  
NOV 19 2003

**MOTION FOR ADMISSION PRO HAC VICE**

NOW COMES, Tamar E. Finn, a member of the bar of this Commonwealth and respectfully moves for the admission of the following individual to appear as an attorney on behalf of Lightship Telecom, LLC and RCN Telecom Services, Inc., in the above-captioned proceeding:

Russell M. Blau, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Washington, D.C. 20007

**DOCUMENT**

In support thereof, movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 73896) and practicing at Swidler Berlin Shereff Friedman, LLP, 3000 K St. NW, Washington, D.C., 20007.
2. Russell M. Blau is a member in good standing of the District of Columbia (since 1982) and Maryland (since 1983) bars.

WHEREFORE, I move that Russell M. Blau, Esq., be admitted to practice pro hac vice on behalf of Lightship Telecom, LLC and RCN Telecom Services, Inc., in the above-captioned proceeding.

Respectfully submitted,

  
\_\_\_\_\_  
Tamar E. Finn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Voice)  
(202) 295-8478 (Facsimile)

Dated: November 13, 2003

RECEIVED

NOV 18 2003

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
GENERAL COUNSEL'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. <sup>m</sup> J-00031754

**ORDER**

NOW, November \_\_\_\_\_, 2003, upon consideration of foregoing motion to grant admission pro hac vice for Russell M. Blau, Esq., for the limited purpose of representing Lightship Telecom, LLC and RCN Telecom Services, Inc., in the above-captioned proceeding, the motion is granted.

---

Administrative Law Judge

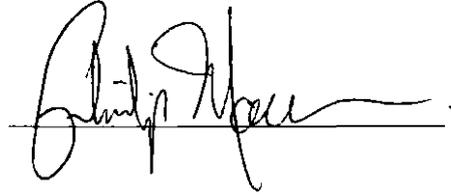
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NOV 13 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

CERTIFICATE OF SERVICE

I, Philip Macres, hereby certify that I have on this day, November 13, 2003 served a true and correct copy of the attached Motions for Admission Pro Hac Vice of Russell M. Blau and Robin F. Cohn along with proposed orders by United States First Class mail or Overnight Delivery (\*) to the individuals listed below.



Irwin A Popowsky  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101

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

Charles F. Hoffman, Director  
Office of Trial Staff  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Julia A. Conover (\*)  
William B. Petersen(\*)  
Suzan DeBusk Paiva (\*)  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32<sup>nd</sup> NW  
Philadelphia, PA 19103



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

IN REPLY PLEASE  
REFER TO OUR FILE

November 13, 2003

ORIGINAL

JAMES J. MC NULTY, SECRETARY  
PA PUBLIC UTILITY COMMISSION  
P O BOX 3265  
HARRISBURG PA 17105-3265

DOCUMENT

Re: Investigation Into The Obligation Of Incumbent  
Local Exchange Carriers To Unbundle Network  
Elements

Docket No. I-00030099

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of the Office of Trial Staff for filing in the above-captioned proceeding.

Copies are being served upon all active parties of record.

Very truly yours,

*Kandace F. Melillo*

Kandace F. Melillo  
Prosecutor  
Office of Trial Staff  
Pa. Public Utility Commission

KFM:pae  
c: Parties of Record  
Enclosures

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: INVESTIGATION INTO THE  
OBLIGATION OF INCUMBENT  
LOCAL EXCHANGE CARRIERS TO  
UNBUNDLE NETWORK ELEMENTS

:  
:  
Docket No.  
:  
I-00030099

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ANSWER OF THE  
OFFICE OF TRIAL STAFF  
TO VERIZON PENNSYLVANIA INC.'S  
PETITION TO INITIATE PROCEEDINGS

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission") files the following Answer to the Petition of Verizon Pennsylvania, Inc. ("Verizon") to Initiate Proceedings pursuant to the Federal Communication Commission's ("FCC") *Triennial Review Order*<sup>1</sup>:

1. On October 3, 2003, the Commission entered a Procedural Order at this docket, which sets forth process and procedures to be used to implement the TRO with respect to, *inter alia*, the nine-month proceeding. In the TRO, the FCC provided that within nine months of the effective date of the TRO (i.e., by June 2, 2004), state commissions are to conduct a granular analysis to determine whether incumbent local exchange carriers (ILECs) in Pennsylvania must continue to provide competitive local exchange carriers (CLECs) with access

<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order (released August 21, 2003)(FCC 03-36), as corrected by errata, FCC 03-227 issued on September 17, 2003 (hereinafter "TRO").

DOCUMENT

to : (1) high-capacity loops; (2) mass market<sup>2</sup> switching; and (3) dedicated transport.

2. The FCC previously made national findings, in the TRO, that CLECs are impaired without access to the above-listed network elements.

3. Given this national finding of impairment, the Commission tentatively concluded, in its Procedural Order, that there is impairment in Pennsylvania. ILECs were given the opportunity to challenge the presumption of impairment, but were notified that they would bear the burden of proof. Any ILEC seeking review of its unbundling obligations was instructed to file a Petition to Initiate Proceeding with the Commission, at Docket No. I-00030099, on or before October 31, 2003.

4. The FCC has set forth specific criteria (“triggers”) for findings of non-impairment with respect to the above-listed network elements, which include, *inter alia*, consideration of the number of CLECs that have deployed their own facilities to serve customers at a specific customer location, in a particular market, or along a particular route. See, Procedural Order, pp. 11-16. These criteria must be met for findings of non-impairment to be made.

5. In addition to the required criteria, the Commission has requested parties to the nine-month proceeding to propose how the Commission

---

<sup>2</sup> The FCC has described mass market customers as residential and very small business customers—customers that do not require high-bandwidth connectivity at DS1 capacity and above. See, TRO footnote 1402. For purposes of the nine-month analysis, mass market customers are analog voice customers that purchase only a limited amount of POTS lines, and can be very economically served via DS0 loops. TRO ¶497.

should define “specific customer location”, “relevant geographic area to include in each market”, and “particular route.”

6. OTS filed a Notice of Appearance herein, in accordance with the Commission directive that this office participate in the nine-month proceeding.

7. On October 31, 2003, Verizon filed a Petition to Initiate Proceedings with the Commission, requesting commencement of the granular analysis provided for in the TRO with respect to certain of its unbundling obligations. Specifically, Verizon alleges that it has met the required FCC criteria for non-impairment with respect to unbundled switching and dedicated transport in the relevant areas. Verizon Petition, pp. 2-3. Verizon also reserved its right to make a showing of non-impairment for high capacity loops, depending upon the responses provided by the CLECs to information requested by the Commission in the Procedural Order.

8. Verizon states that it is relying upon the FCC objective triggers to demonstrate non-impairment, and is not making a case at this case concerning potential deployment.

9. Based upon these FCC triggers, Verizon contends that it should not be required to provide unbundled mass market switching in the Density Cell 1, 2, and 3 areas of Philadelphia, Pittsburgh, Harrisburg, Allentown, Reading, Scranton/Wilkes Barre, and Lancaster Metropolitan Statistical Areas (“MSAs”).

10. With respect to dedicated transport, Verizon contends that it has met the FCC triggers for 644 direct routes (or pairs of Verizon wire centers), as described in Verizon's testimony provided with its Petition.

11. OTS will actively participate in this nine-month proceeding and will, after analyzing all the evidence, take a position on whether Verizon has met its burden of proof. OTS may make use of the current Local Exchange Routing Guide (LERG), as referenced in the Procedural Order, if that information is determined to be helpful in this analysis.

12. It is obviously premature to decide whether Verizon has met the FCC triggers, as, for example, determinations have not yet been made, for purposes of this proceeding, on the "relevant geographic area to include in each market" and the "particular routes" that are relevant to the impairment analysis. Furthermore, other potential parties have not yet presented their testimony with respect to the issues. OTS requests that all parties be given an opportunity to present relevant evidence at hearings, within the time constraints of this proceeding, and that a decision be reached on or before June 2, 2004, based upon a complete record.

Respectfully submitted,

Kandace F. Melillo  
Kandace F. Melillo  
Prosecutor

Office of Trial Staff  
Pa. Public Utility Commission

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SECRETARY'S BUREAU

Address and Contact Information for OTS counsel:

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-6155  
e-mail: [kmelillo@state.pa.us](mailto:kmelillo@state.pa.us)  
fax: (717) 772-2677

Dated : November 14, 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Answer of the Office of Trial Staff to Verizon Pennsylvania Inc.'s Petition To Initiate Initial Proceedings**, dated November 13, 2003 either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

Barrett C. Sheridan, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Carol F. Pennington, Esquire  
Office of Small Business Advocate  
Commerce Building - Suite 1102  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101

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

Mr. Allen Buckalew  
J. W. Wilson & Associates, Inc.  
Rosslyn Plaza - C-Suite 1104  
1601 Kent Street  
Arlington, VA 22209

R.A. Buntrock, Esquire  
G. Morelli, Esquire  
H. T. Hendrickson, Esquire  
Kelley, Drye & Warren LLP  
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Washington, D.C. 20036

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Suzan Debusk Pavia, Esquire  
William B. Peterson, Esquire  
Verizon Communications  
1717 Arch Street, 32 NW  
Philadelphia, Pa 19103

Mr. Roland L. Curry  
1509 Mearns Meadow Boulevard  
Austin, TX 78758

Mr. Robert Loube  
10601 Cavalier Drive  
Silver Spring, MD 20901

Ms. Lelanie Lloyd  
7501 Callbram Lance  
Austin, TX 78736

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Sprint Communications  
240 North Street - Suite 201  
Harrisburg, Pa 17101

D. Mark Thomas, Esquire  
Patricia Armstrong, Esquire  
Regina L. Matz, Esquire  
Thomas, Thomas, Armstrong  
& Niesen  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Robert C. Barber, Esquire  
Mark A. Keffer, Esquire  
AT&T Communications  
3033 Chain Bridge Road  
Room 3-D  
Oakton, VA 22185

Michelle Painter, Esquire  
MCI WorldCom Network Services  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036

Robert A. Rosenthal, Director  
Pa. Public Utility Commission  
Bureau of Fixed Utility Services  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Janet Tuzinski, Telecom Manager  
Pa. Public Utility Commission  
Bureau of Fixed Utility Services  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Maryanne Martin, Esquire  
Pa. Public Utility Commission  
Law Bureau  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Kandace F. Melillo  
Kandace F. Melillo  
Prosecutor  
Office of Trial Staff  
Pa. Public Utility Commission

Dated: November 13, 2003  
Docket No. I-00030099

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ORIGINAL

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THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
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November 13, 2003

**VIA OVERNIGHT DELIVERY**

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

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

I-00030099

**Re:** Docket No. ~~0001754~~ Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements

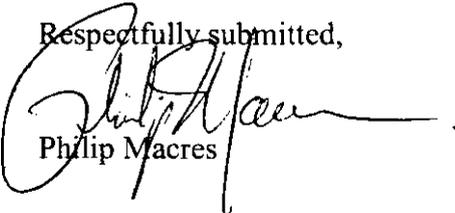
Dear Secretary McNulty:

By its attorneys, RCN Telecom Services, Inc., along with RCN Telecom of Philadelphia, Inc. (both referred to as "RCN") hereby files, in the above-referenced proceeding, its Non-Proprietary Responses to the Commission's Appendix A Requests for Information ("RFIs") that were issued with the Commission's October 2, 2003 Procedural Order in the above-referenced proceeding. RCN's Proprietary Responses to the RFIs are being filed under separate cover. In addition, attached is RCN Telecom Services, Inc.'s Petition to Intervene in this proceeding.

An original and three (3) copies of this filing are enclosed. Also enclosed is an extra copy of the filing that we request be date-stamped and returned in the self-addressed, stamped envelope provided.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

  
Philip Macres

Enclosures

cc: Attached Service List

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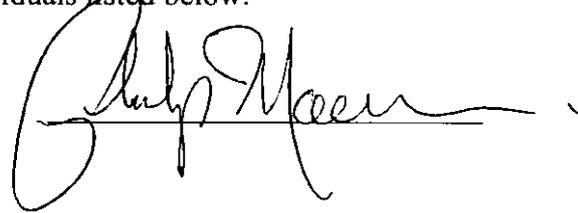
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**CERTIFICATE OF SERVICE**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

I, Philip Macres, hereby certify that on this day, November 13, 2003, I served a true and correct copy of RCN Telecom Services, Inc. and RCN Telecom of Philadelphia, Inc.'s Non-Proprietary Responses to the Commission's Appendix A Requests for Information that were issued with the Commission's October 2, 2003 Procedural Order in Docket No. I-00031754; and RCN Telecom Services, Inc.'s Petition to Intervene in Docket I-00031754 by United States First Class mail or Overnight Delivery (\*) to the individuals listed below.



Irwin A Popowsky  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101

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

Charles F. Hoffman, Director  
Office of Trial Staff  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Julia A. Conover (\*)  
William B. Petersen(\*)  
Suzan DeBusk Paiva (\*)  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32<sup>nd</sup> NW  
Philadelphia, PA 19103

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. <sup>#</sup> 00031734 I-00036099

**RCN TELECOM SERVICES, INC.'S PETITION TO INTERVENE**

Pursuant to the October 2, 2003 Procedural Order in the above-referenced proceeding and 52 Pa. Code Section 5.71 *et seq.*, RCN Telecom Services, Inc. ("RCN"), by its counsel, hereby petitions the Pennsylvania Public Utility Commission ("Commission") for leave to intervene in the above-referenced proceeding, stating in support thereof the following:

1. RCN is a facilities-based telecommunications carrier in Pennsylvania that provides telecommunications services as a Competitive Local Exchange Carrier ("CLEC") and interexchange carrier. In provisioning its services, RCN utilizes Verizon's facilities that are currently made available to RCN as unbundled network elements ("UNEs") pursuant to 47 U.S.C. § 251(c)(3).

2. In its October 2, 2003 Procedural Order that was issued in the above-captioned proceeding, the Commission established the process and procedure to implement the FCC's Triennial Review Order. In the Order, the Commission held, among other things, that any ILEC seeking review of its unbundling obligations with respect to loops, transport and mass market switching must file a Petition to Initiate Proceeding with the Commission by October 31, 2003. On October 31, 2003, Verizon Pennsylvania filed such a Petition. Consistent with the FCC's Triennial Review Order, it is expected that the Commission will investigate the assertions made in Verizon's October 31, 2003 Petition and whether switching to certain mass market customers and certain DS1, DS3 and dark fiber loops and transport routes must be continued to be made available to CLECs as UNEs.

3. RCN requests leave to intervene as participant in this proceeding so that it may represent and protect its interests during it. RCN will be substantially and specifically affected by the Commission's review and decision in this docket because it is a customer and competitor

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of Verizon. Any changes to the availability of UNEs or the rates, terms and conditions in using them directly affect RCN's ability to compete with Verizon. In this proceeding, RCN seeks the opportunity to respond and possibly submit supporting evidence regarding any proposed changes that limit the availability various UNEs that are critical to its business plan. Therefore, RCN's interests cannot be adequately represented without the Commission granting this petition.

4. RCN's intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

5. In making this request, RCN asks that all communications and correspondence for this proceeding be directed to the undersigned counsel and the following individuals at RCN:

Joseph O. Kahl  
Patrick McGuire  
RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, NJ 08540  
Tel: (609) 734-3827  
Fax: (609) 734-6167  
Email: [joseph.kahl@rcn.net](mailto:joseph.kahl@rcn.net)  
Email: [patrick.mcguire@rcn.net](mailto:patrick.mcguire@rcn.net)

**WHEREFORE**, RCN respectfully requests that the Commission grant it the right to intervene in this proceeding.

Respectfully submitted,

  
Russell M. Blau

Robin F. Cohn  
Tamar E. Finn (PA Bar No. 73896)  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
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Email: [rfohn@swidlaw.com](mailto:rfohn@swidlaw.com)  
Email: [tefinn@swidlaw.com](mailto:tefinn@swidlaw.com)  
Counsel for RCN Telecom Services, Inc.

Dated: November 13, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of Incumbent Local  
Exchange Carriers to Unbundle Network Elements  
(9-month proceeding)

Docket No. ~~X-00031754~~

*I-00030099*

**VERIFICATION OF RCN**

I, Patrick McGuire of RCN Telecom Services, Inc. and RCN Telecom of Philadelphia, Inc. (both referred to as "RCN"), hereby state that the facts set forth in RCN's Petition to Intervene dated November 13, 2003 that is being filed in the above-referenced proceeding are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

*Patrick McGuire*  
Signature

*11/11/2003*  
Date

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. ~~X-00031754~~<sup>m</sup> I-00030099

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

**DOCKETED**

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ITEM: Provide a list of all switches that you currently use to provide a  
PA PUC-RCN 1- qualifying service (as defined in 47 C.F.R. § 51.5, as that section  
SWITCHING -1 will be amended by the Final Rules issued by the FCC pursuant  
to the *Triennial Review Order*) anywhere in Pennsylvania,  
regardless of whether the switch itself is located in  
Pennsylvania. Do not include ILEC switches utilized by you on  
an unbundled basis in the ILEC's service territory or through the  
resale of the incumbent's services at wholesale rates.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

**DOCUMENT**

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. ~~1-00031754~~

I-00030099

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: Identify each ILEC wire center district (*i.e.*, the territory served  
PA PUC-RCN 1- by a wire center of the ILEC) in which you provide qualifying  
SWITCHING -2 service to any end user customers utilizing any of the switches  
identified in your response to Question 1. Wire centers should  
be identified by providing their name, address, and CLLI code.

---

RCN RESPONSE: See attachment A. This information is being provided subject to  
confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. ~~X-00031754~~

I-00030099

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: For each ILEC wire center identified in response to Question 2,  
PA PUC-RCN 1- identify the total number of voice-grade equivalent lines you are  
SWITCHING -3 providing to customers in that wire center from your switch(es)  
identified in response to Question 1. For purposes of this  
question, "voice-grade equivalent lines" should be defined  
consistent with the FCC's use of the term. *See, e.g. FCC Form  
477, Instructions for the Local Competition and Broadband  
Reporting Form.*

---

RCN RESPONSE: See PA PUC-RCN 1-SWITCHING -2.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. ~~X-0003T754~~

*I-00030099*

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: For each switch identified in response Question 1, identify the  
PA PUC-RCN 1- approximate capacity of the switch – that is, the maximum  
SWITCHING -4 number of voice-grade equivalent lines it is capable of serving –  
based on that switch's existing configuration and component  
parts.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>m</sup>00-00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: With respect to the voice-grade equivalent lines identified in  
PA PUC-RCN 1- response to Question 3, separately indicate the number being  
SWITCHING -5 provided to (a) residential customers; (b) business customers to  
whom you provide only voice-grade or DS0 lines; and (c)  
business customers to whom you provide DS1, ISDN-PRI, or  
other high capacity lines. For purposes of this question, "high  
capacity" means DS1 or equivalent or higher capacity lines,  
including, but not limited to DS1, ISDN-PRI, DS3, OCn.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>M</sup>03-00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: For each of the switches identified in your response to Question  
PA PUC-RCN 1- 1, state whether the switch is owned by you, or whether you  
SWITCHING -6 have leased the switching capacity or otherwise obtained the  
right to use the switch on some non-ownership basis. If the  
facility is not owned by you, identify the entity owning the  
switch and (if different) the entity with which you entered into  
the lease or other arrangement, identify the nature of the  
arrangement, and state whether such entity or entities are  
affiliates of yours, in the sense defined in ¶ 408, footnote 1263  
of the *Triennial Review Order*.

---

RCN RESPONSE: The switches are owned by RCN.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

in  
PA PUC Docket No. J-00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Switching

ITEM: Provide a list of all switches from which you offer or provide  
PA PUC-RCN 1- switching capacity to another local service provider for use in  
SWITCHING -7 providing qualifying service anywhere in Pennsylvania.

---

RCN RESPONSE: Not applicable.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>m</sup>1-00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: For each ILEC, Identify, by name, address, and CLLI code, each  
PA PUC-RCN 1- ILEC wire center (by the name, address, and CLLI code of that  
TRANSPORT -1 wire center) in which you have established a collocation  
arrangement or in which such arrangements have been ordered.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>M</sup>00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: For each wire center identified in your response to Question 1,  
PA PUC-RCN 1- provide the number of arrangements by wire center, identify the  
TRANSPORT -2 transport facilities that currently serve such collocation  
arrangement (or that will serve such arrangement and that you  
are currently in the process of constructing, ordering,  
purchasing, or arranging for the use of). For purposes of this  
Question, "transport facilities" (a) does not include unbundled  
facilities obtained from the petitioning ILEC, and (b) does  
include dark fiber.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>n</sup>00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: For each transport facility identified in the response to Question  
PA PUC-RCN 1- 2, identify the transport technology utilized (e.g., fiber optic  
TRANSPORT -3 (specify whether dark or lit), microwave, radio, or coaxial  
cable), and the quantity/capacity of the facility deployed

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>m</sup>00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: For each wire center and transport technology identified in the  
PA PUC-RCN 1- responses to Questions 1-3, identify the type of termination  
TRANSPORT -4 equipment utilized in the collocation arrangement.

---

RCN RESPONSE: See Attachment A. This information is being provided subject  
to confidential treatment in accordance with the terms of the  
Protective Order.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>m</sup>F-00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: For each transport facility identified in your response to  
PA PUC-RCN 1- Question 2, state whether the facility is owned by you or  
TRANSPORT -5 whether you acquired rights to utilize it under a lease or other  
some other form of non-ownership arrangement. (If the facility  
was provisioned through the use of dark fiber that you acquired  
and subsequently "lit," answer separately for the fiber and the  
optronics utilized.) If the facility is not owned by you, identify  
the entity that owns the facility and (if different) the entity with  
which you entered into the lease or other arrangement, identify  
the nature of the arrangement, and state whether such entity or  
entities are affiliates of yours, in the sense defined in ¶ 408,  
footnote 1263 of the *Triennial Review Order*.

---

RCN RESPONSE: The facilities are owned by RCN.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>n</sup>00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: Identify and describe any arrangements into which you have  
PA PUC-RCN 1- entered with another entity for such other entity's use of  
TRANSPORT -6 transport facilities in Pennsylvania that you own or control, on a  
lease or other basis.

---

RCN RESPONSE: Not applicable.

RCN Telecom Services, Inc. and  
RCN Telecom of Philadelphia, Inc.

Commonwealth of Pennsylvania

PA PUC Docket No. <sup>m</sup>00031754

REQUEST: Appendix A to PA PUC's Oct. 2, 2003 Procedural Order,  
Requests for Information Submitted to CLECs in Response to  
Petitioning ILEC

DATED: October 2, 2003

SUBJECT: Transport

ITEM: Provide a list of all recurring and non-recurring rate elements  
PA PUC-RCN 1- and rates when a CLEC purchases UNE-Loop and special  
TRANSPORT -7 access, EEL, DS1, or DS3 transport from the ILEC rate center to  
the CLEC rate center.

---

RCN RESPONSE: RCN objects to this request on numerous grounds. First, the information requested is either publicly available or is already in the possession of the Commission. Second, Verizon is in the best position to know this information and the application of its recurring and non-recurring rates, therefore, the Commission should ask Verizon for this information. Third, the request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Fourth, the request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) the Commission can obtain the data through publicly available information. Indeed, the request is objectionable because RCN does not maintain the information of the form requested, and would require the preparation of a special report or study. Fifth, the request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding. Sixth, the request is also vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested, i.e.,

there are many different types of rates and rate applications associated with the question, and, because of this, RCN cannot reasonably determine the intended meaning, scope or limits of this request.

Without waiving the foregoing objections, RCN does not maintain an updated comprehensive list of the information requested.



CEI NETWORKS, INC.  
130 East Main Street • PO Box 458  
Ephrata, PA 17522

November 14, 2003

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

**DUPLICATE-STAMP RECEIPT**

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

Dear Secretary McNulty,

Enclosed for filing with the Commission are an original and three (3) copies  
[Proprietary and Public Versions] of CEI Networks, Inc.'s responses to questions  
found in Appendix A in the above-referenced proceeding.

Kindly acknowledge receipt of this filing by stamping the enclosed duplicate of  
this letter. A postage paid envelope is provided for your convenience.

Should you have any questions, please do not hesitate to contact me. As  
evidenced by the attached Certificate of Service, all parties have been duly  
served.

Sincerely,

/s/

Joseph J. Laffey  
Vice President Regulatory  
717-738-8606  
717-733-2364

**RECEIVED**  
DEC - 8 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

cc: Attached Service List  
Patricia Armstrong, Esq., TTAN

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SECRETARY'S BUREAU

# DILWORTH PAXSON LLP

LAW OFFICES

DIRECT DIAL NUMBER:  
(717) 236-4812

Linda Carroll  
Lcarroll@DILWORTHLAW.COM

November 14, 2003

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

ORIGINAL

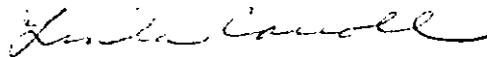
Re: Investigation into the Obligations of Incumbent Local Exchange Carriers to  
Unbundle Network Elements; Docket No. I-00030099

Dear Secretary McNulty:

Enclosed please find the original and nine copies of the intervention CTSI LLC in the  
above captioned proceeding.

Please call me with any questions.

Very truly yours,



Linda Carroll

DOCUMENT

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NOV 14 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

112 MARKET STREET • 8TH FLOOR • HARRISBURG PA 17101  
(717) 236-4812 • FAX (717) 236-7811 • www.dilworthlaw.com

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**ORIGINAL**  
BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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NOV 14 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

:  
:  
: **Docket No. I-00030099**  
:

**DOCKETED**

NOV 20 2003

**PETITION TO INTERVENE OF CTSI, INC.**

NOW COMES, CTSI, LLC ("CTSI") through its counsel Dilworth Paxson, LLP, and petitions the Pennsylvania Public Utility Commission pursuant to 52 Pa. Code § 5.71 et seq. to grant its intervention in the above-captioned case. In support of its petition, CTSI, Inc. states the following:

**DOCUMENT**

- 1) CTSI is a competitive local exchange company with a certificate of public convenience to serve Pennsylvania..
- 2) CTSI's main office is located at 100 CTE drive Dallas, PA, 18690-0001 and a Harrisburg office is located at 3950 Chambers Hill Road.
- 3) CTSI was required by Commission order to provide answers to Appendix A in this proceeding.
- 5) CTSI, files this intervention because it will be affected by any ruling the Commission makes in this docket and cannot determine at this point how necessary its full participation might be required. It is CTSI's intention to participate in this proceeding as far as is necessary to preserve its interests.

WHEREFORE, CTSI respectfully requests that its petition to intervene be granted.

Respectfully submitted,



Linda Carroll  
Dilworth Paxson, LLP  
112 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717)- 236 4812

Dated: November 14, 2003

ORIGINAL



Robert C. Barber  
Senior Attorney

Room 3D  
3033 Chain Bridge Road  
Oakton, VA 22185  
703 691-6061  
FAX 703 691-6093  
EMAIL rcbarber@att.com

DOCUMENT

November 14, 2003

BY OVERNIGHT MAIL

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NOV 14 2003

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned proceeding the original and three (3) copies of the public version of AT&T Communications of Pennsylvania, LLC.'s responses to the questions set forth in Appendix A to the Commission's Procedural Order of October 3, 2003. A copy of the proprietary version of those responses is enclosed under seal. **Please note that certain information provided in the proprietary version of the responses to Appendix A is confidential to AT&T, and should be protected in accordance with the terms of the Protective Order entered by the Commission in this proceeding on October 3, 2003.**

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

Very truly yours,

Robert C. Barber

Enclosures

cc: Service List (w/ encl)

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**ORIGINAL**

**Switching**

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

**Response:**

The following switches are currently used to provide mass market local exchange service to small business customers in Pennsylvania:

Switch	Switch CLLI	Switch Address
--------	-------------	----------------

[RESPONSE CONTINUED ON NEXT PAGE:]

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**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

In the interest of providing a complete response to this request, AT&T also notes that the switches that appear in the table below are located in Pennsylvania, but, for the reasons discussed in the following notes, are not used (nor are capable of being used) to provide mass-market local exchange service.

CLLI	City	State	Tech	SVC
------	------	-------	------	-----

- \* SVC: Indicates "service" provided by the switch, as follows: IOS - Internet off-load switch; LD - Long Distance; OS - Operator Service
- \*\* Tech: Indicates the kind of switch, as follows: SMX: Siemens SMX-2100; 4ESS: Lucent 4ESS Toll Switch; 5ESS Lucent 5ESS Switch Equipped for the Provision of Toll Service or Operator Service.

Additional information regarding the Siemens SMX-2100 switch: This switch is an Internet Off-Load Switch (IOS) and only handles trunk-side inbound ISP (e.g., Worldnet and AOL) traffic from the 5ESS local switches. It allows service providers and carriers to offload data traffic from expensive Class 5 digital switches directly to the Internet. It does *not* have the capability to be reconfigured to handle voice traffic as a typical Local Switch, such as Lucent 5ESS, does today.

Additional information regarding the Lucent 4ESS switches: The #4ESS Class 4 Toll Switches support Domestic and International Telecommunications, their most important function, although they also may be used to provide local exchange service to enterprise level customers. They are large toll switches that do not function as end offices. It is not technically feasible to route a call through the toll switch in the same manner as a typical end office local switch. The #4ESS switches do not (and cannot) support the same type of vertical features as a Class 5 Switch, nor do they originate or terminate customer calls.

Additional information regarding the Lucent 5ESS switches marked as "LD": The switches serve exclusively as Class 4 toll switches. In order to provide local services, these switches would require extensive hardware and software modifications and E911 connectivity, as well as supporting OSS modifications and connectivity. Necessary modifications would include, but not be limited to, the following:

- OSS modifications (including loading of databases) and Connectivity to support Fault, Configuration, Account, Performance, and Security (FCAPS) Management, and other Operations, Administration, Maintenance, and Provisioning (OAM&P) processes (e.g., LIDB and ISCP);
- Software and Switch Memory Upgrades (and additional RTU Licenses) to support the Vertical Features required to support local service;
- Line Side Peripheral Hardware Upgrades to support local services;
- E911 Connectivity and Support;
- AIN support (software and connectivity) to support IN Triggers;
- Announcement System (Hardware, Software, and Transport Facilities);
- 105 Test Line Responder Units (Hardware & Software);
- Test Buss Control Unit (TBCU) to support MLT type loop testing functions (Hardware);
- Additional Facilities and Interfaces (Hardware) required for DCS and SONET Connectivity to the Network;
- Building of ODD (Office Dependent Data) which is unique to each switch and relates to translations (lines) and parameters (equipment) which consists of information related to switch owner (line, trunk, routing, charging, equal access, BRCS) and/or the office equipment (quantity, configuration, equipage);
- Addition of switch information to LERG routing guide, if rebuilt as specified above.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

Additional information regarding the Lucent 5ESS switches :  
These are Operator Services Position Switches. They are equipped and configured to provide operator services and cannot be readily converted to the provision of local service. All Operator Services provisioning hardware and software would have to be removed and the modifications listed immediately above undertaken before they could provide local service in Pennsylvania.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Switching**

2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term. *See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.*

**Response:**

AT&T is providing voice grade mass market service to small business customers in the following volumes from the following collocation arrangements:

<b>Collocation CLLI</b>	<b>Address</b>	<b>DS0 Lines Served</b>
-------------------------	----------------	-------------------------

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

<b>Collocation CLLI</b>	<b>Address</b>	<b>DSO Lines Served</b>
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**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Switching**

4. For each switch identified in response Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch’s existing configuration and component parts.

**Response:**

AT&T’s switches are not provisioned according to their capacity to serve DS0 lines. They are provisioned with T1 Ports. In general, T1 lines are capable of being divided into 24 voice-grade circuits. Thus, the Commission can infer the approximate capacity of AT&T’s switches in voice-grade equivalents by multiplying the “Installed T1 Capacity” numbers listed below by 24.

Switch	Switch CLLI	Switch Address	Installed T1 Capacity

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Switching**

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

**Response:**

None of the lines identified in response to Question 3 are provided to residential customers. All of them are provided to business customers to whom AT&T provides only DS0 lines at the location where service is provided. None are provided to customers that are also receiving local service over high-capacity lines at the same location.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Switching**

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

**Response:**

All of the switches identified in response to Question 1 are owned by AT&T.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Switching**

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

**Response:**

AT&T does not offer wholesale unbundled switching to other carriers. **[BEGIN AT&T PROPRIETARY]**

**PROPRIETARY]**

**[END AT&T**

**AT&T PROPRIETARY INFORMATION REDACTED**

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

*See response to Switching Questions 2 and 3.*

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

The response to Transport Question 1 involves all collocation arrangements AT&T has established in Verizon wire centers, including those served through transport facilities obtained from Verizon. The following lists the more limited set of collocations served by one or more OCn circuits owned by AT&T. Those facilities transport traffic from the collocation to AT&T's switch, and do not transport traffic directly from a collocation in one Verizon central office to a collocation in another Verizon central office.

Collocation CLLI		Address			

**AT&T PROPRIETARY INFORMATION REDACTED**

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

*See answer to Question 2.*

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

The collocation arrangements identified in response to Transport Question 1 use digital loop carrier. The specific make and model of the equipment utilized is not currently available.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

*See answer to Transport Question 2.*

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

None.

**RESPONSES OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC  
TO PRELIMINARY DISCOVERY REQUESTS  
PaPUC Docket No. I-00030099**

**Transport**

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

**Response:**

The rates for Verizon's unbundled network elements can be found in Verizon Pennsylvania Inc.'s Tariff 216. Rates for special access services are set forth in Verizon's interstate special access tariff.

Certificate of Service  
Docket No. I-00030099

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

Patricia Armstrong  
PO Box 9500  
Harrisburg, PA 17108  
Fax – 717-236-8278  
Phone – 717-255-7600  
e-mail – [parmstrong@ltanlaw.com](mailto:parmstrong@ltanlaw.com)  
(for Rural Telephone Company Coalition)

Michelle Painter  
MCI WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Fax – 202-736-6242  
Phone – 202-736-6204  
e-mail – [Michelle.Painter@wcom.com](mailto:Michelle.Painter@wcom.com)  
(for MCI WorldCom, Inc.)

Philip F. McClelland  
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555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
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(for Office of Consumer Advocate)

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The United Telephone Company of  
Pennsylvania)

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Harrisburg, PA 17101  
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Angela Jones, Esq.  
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Julia A. Conover, Esq.  
Suzan Paiva, Esq.  
Verizon Pennsylvania, Inc.  
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Philadelphia, PA 19103  
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Phone – 215-963-6001

Kandace Melillo, Esq.  
Office of Trial Staff  
Pennsylvania PUC  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dated: November 14, 2003



ORIGINAL

November 14, 2003

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

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PA P.U.C.  
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

On behalf of Cavalier Telephone Mid-Atlantic, LLC, enclosed for filing are an original and three (3) copies each of Cavalier's Petition to Intervene and Answer to Verizon Pennsylvania, Inc.'s Petition to Initiate Proceedings in the referenced matter.

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

Very truly yours,

Richard U. Stubbs  
267.803.4002  
rstubbs@cavtel.com

cc: Certificate of Service

Enclosure

111

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-000300099

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PETITION TO INTERVENE OF  
CAVALIER TELEPHONE MID-ATLANTIC, LLC

Pursuant to 52 Pa. Code §5.74 and the Pennsylvania Public Utility Commission ("Commission") Procedural Order entered on October 3, 2003 at Docket Nos. I-00030100, M-00031754 and I-00030099, Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") files this Petition to Intervene in the matter at Docket I-00031754. In support thereof, Cavalier states as follows:

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1. Cavalier is a privately held, facilities-based, certificated competitive local exchange carrier ("CLEC"), offering local phone and other telecommunications services to residential and business customers in Pennsylvania.
2. Cavalier is a competitor as well as a customer of Verizon Pennsylvania, Inc. ("Verizon") for unbundled network elements.
3. Cavalier is identified in Ordering Paragraphs 3.b and 4 of the Commission's October 3, 2003 Opinion and Order ("Procedural Order") as a company that must be served with any incumbent local exchange carrier's Petition to Initiate Proceedings and that must respond to the Commission's questions to CLECs found at Appendix A to such Order.
4. Cavalier has a keen interest, and intends to participate, in the Commission's investigation of Verizon's October 31, 2003 Petition to Initiate Proceedings.
5. The Commission's decision in this matter will have a direct impact upon Cavalier's continued ability to serve customers in the Commonwealth of Pennsylvania and

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therefore, Cavalier has a direct, substantial and immediate interest in the outcome of this proceeding.

6. Cavalier's interest in this matter cannot be not adequately represented by any other party.

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

Respectfully submitted,



Richard U. Stubbs  
General Counsel  
Cavalier Telephone Mid-Atlantic, LLC  
965 Thomas Drive  
Warminster, PA 18974  
267.803.4002  
[rstubbs@cavtel.com](mailto:rstubbs@cavtel.com)

Dated: November 14, 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. I-00030099

DOCKETED

NOV 20 2003

ANSWER OF CAVALIER TELEPHONE MID-ATLANTIC, LLC TO  
VERIZON PENNSYLVANIA, INC.'S PETITION TO INITIATE PROCEEDINGS

Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") hereby submits its Answer to Verizon Pennsylvania, Inc.'s ("Verizon") Petition to Initiate Proceedings, filed October 31, 2003 ("Petition"), pursuant to the Federal Communications Commission's ("FCC") *Triennial Review Order*<sup>1</sup> ("TRO") and the Commission's *Procedural Order*.<sup>2</sup> Based both on the FCC's *TRO* standards and on the basic equitable grounds of "unclean hands", the Commission should deny Verizon's Petition.

Unless Verizon can set forth and prove a compelling case -- UNE-by-UNE, route-by-route, market-by-market -- the FCC's presumption remains intact that Pennsylvania CLECs are impaired<sup>3</sup> by their lack of access to unbundled network elements such as dark fiber, DS1 and DS3 transport facilities.<sup>4</sup> As the Commission has declared in its Procedural Order, "any ILEC desiring to contest the presumption of impairment must bear the burden of proving non-impairment."<sup>5</sup> The Petition and its accompanying

DOCUMENT

<sup>1</sup> *Review of 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, FCC 03-36 (rel. August 21, 2003).

<sup>2</sup> *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements*, Dkt. I-00031754 (Procedural Order entered October 3, 2003).

<sup>3</sup> See Procedural Order at 12 (Commission "tentatively conclude[s] there is impairment in Pennsylvania").

<sup>4</sup> Verizon is expressly *not* contesting the presumption that CLECs, including Cavalier, are impaired without access to dark fiber, DS1 and DS3 enterprise market loops. See Petition at 2.

<sup>5</sup> *Id.*

documentation show Verizon has failed to make its case and, accordingly, the Commission should deny the Petition.<sup>6</sup>

Equally important and more inexcusable, Verizon attempts on the one hand to invoke the protections of the *TRO* while, on the other hand, refusing to comply with *TRO* mandates **unless and until CLECs agree to Verizon's onerous interconnection agreement amendment demands**. Nowhere does the FCC say that, for instance, the *TRO*'s strong rebuke of Verizon's "no facilities" policy is simply an advisory opinion. Nowhere does the *TRO* suggest that its "no facilities" directives are optional, with ILECs free to decide from a business case whether to comply and, if so, at what rate of tribute. Yet as evidenced in Verizon's October 2, 2003 industry letter, Verizon has stated it will not comply with such *TRO* obligations unless and until CLECs, including Cavalier, agree to pay at great cost for the privilege. It is both arrogant and unseemly for Verizon to refuse *TRO* compliance in brazen fashion, and yet to appear before this Commission to reap *TRO* booty.

**A. VERIZON'S PETITION FAILS TO OVERCOME THE PRESUMPTION OF IMPAIRMENT.**

Verizon's submission of vague and self-serving pre-filed testimony,<sup>7</sup> with no attempt to make the granular showing required by the *TRO*, should doom Verizon's Petition. With respect to transport facilities, for example, Verizon has failed to set forth and prove that, for each of the subject 644 routes, the "wholesale" trigger has been met for dark fiber, DS3s and DS1s or the "self-provisioning" trigger has been met for dark fiber and DS3s. Accordingly, the Commission should deny Verizon's Petition.

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<sup>6</sup> While the paucity of Verizon's filing shows the Petition should be denied in its entirety, Cavalier's Answer focuses on UNE dedicated transport facilities.

<sup>7</sup>Statement No. 1.0 (Direct Testimony) of Debra M. Berry and Carlo Michael Peduto, II, dated October 31, 2003 ("Testimony").

As the Commission noted in its Procedural Order, the FCC has determined that a requesting carrier is impaired when lack of access to an ILEC network element poses barriers to entry, including operation and economic barriers that are likely to make entry into a market uneconomic. Such barriers include scale economics, sunk costs, first-mover advantages, and barriers within the control of an ILEC. The Commission's unbundling analysis must consider market-specific variations, including customer class, geography, and service.<sup>8</sup>

Under the *TRO*, the ILEC must continue to provide unbundled dark fiber transport facilities unless the ILEC can prove non-impairment on a route-specific basis.<sup>9</sup> An ILEC must also continue to unbundle DS3 transport unless the ILEC can prove non-impairment thereof on a route-specific basis.<sup>10</sup> Likewise, the ILEC must continue to provide unbundled access to DS1 dedicated transport unless and until the ILEC can prove CLECs are not impaired without access thereto.<sup>11</sup> The FCC defines a "route, for purposes of these tests, as a connection between wire center or switch 'A' and wire center or switch 'Z'."<sup>12</sup> The FCC thus rejected the ILECs' "fiber-based collocation proposals . . . based solely on the presence of alternative transport at one end of a route such that when one end of a route is competitive (a central office with fiber-based collocation), no unbundled transport will be available in our out of that competitive central office."<sup>13</sup> CLECs are

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<sup>8</sup> Procedural Order at 11-12.

<sup>9</sup> *TRO*, ¶381.

<sup>10</sup> *TRO*, ¶386.

<sup>11</sup> *TRO*, ¶¶391-392 (noting that DS1 dedicated transport "is not generally made available on a wholesale basis").

<sup>12</sup> *Id.* ¶401.

<sup>13</sup> *Id.*

also not required to cobble together multiple vendor circuits through intermediate points in order to connect the A and Z points.<sup>14</sup>

The FCC requires additional granularity to its impairment analysis by adopting, on a route-by-route basis, triggers for the Commission to use in determining when CLECs cease to be impaired without unbundled transport. In applying these triggers, dark fiber is not to be considered a wholesale alternative for lit fiber. For the “self-provisioning” trigger for DS3s and for dark fiber, the ILEC must prove that three carriers, in addition to the ILEC, have deployed transport facilities along one route.<sup>15</sup> Such facilities must terminate in a collocation arrangement.<sup>16</sup> This trigger does not apply to DS-1 transport, as “competing carriers generally cannot self-provide DS1 transport.”<sup>17</sup> Contrary to Verizon’s insistence that this is a “black and white” inquiry, the Commission may employ its own “analytical flexibility” to determine, subject to FCC waiver, that impairment exists even where the three-carrier self-provisioning trigger has been met.<sup>18</sup>

Verizon may also show non-impairment by proving that two non-ILEC wholesale carriers sell transport facilities along each route at issue.<sup>19</sup> The non-ILEC carriers “must be operationally ready and willing” to sell capacity to fellow carriers on a reasonable and non-discriminatory basis.<sup>20</sup> The FCC emphasized that CLECs must be able to connect to the alternative facilities within the ILEC’s end office using cross connects between their

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<sup>14</sup> *Id.*

<sup>15</sup> *TRO*, ¶405.

<sup>16</sup> *Id.* ¶406.

<sup>17</sup> *Id.* ¶ 409

<sup>18</sup> *Id.* ¶411.

<sup>19</sup> *TRO* ¶412.

<sup>20</sup> *TRO* ¶414.

collocations and the collocation or fiber termination panel of a competitive provider.<sup>21</sup> Lit fiber transport that a CLEC leases from an ILEC or another carrier does not count toward satisfaction of this trigger.<sup>22</sup>

Verizon has failed under these standards to prove CLECs are not impaired over the unbundled transport routes in Pennsylvania. Verizon produces CLECs' tariffs as proof of its product offerings, as if by providing lit fiber on one route means the CLEC is providing that same facility on some other route. Verizon's Testimony lacks specificity and is prone to conclusory overstatement, so Verizon's argument is difficult to discern. But Verizon muddies the water further by basing its argument upon the bootstrapping of one transport facility trigger off of another -- a fundamental misreading of the *TRO*. That is, if Verizon were to show that one type of transport facilities (say, DS1) is provided to carriers by two or more wholesale providers along a particular route (the wholesale trigger), then Verizon claims the triggers have been met ***for all other UNE transport facilities along that route*** (i.e., in the example, dark fiber and DS3s).

Verizon makes clear this intent where its Testimony claims that if multiplexed (lit) services exist, then dark fiber must exist<sup>23</sup>, and if dark fiber exists then spare dark fiber must exist.<sup>24</sup> Even in its Testimony example<sup>25</sup>, Verizon indicates that the arrangement meets the FCC's wholesale trigger for dark fiber, yet nowhere does it indicate there were multiple sources for the dark fiber. Taking Verizon's own example, from page 38 of the Testimony, if the CLECs all purchased their fiber as an IRU from a

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<sup>21</sup> *Id.*

<sup>22</sup> *TRO* ¶414

<sup>23</sup> Testimony at 51.

<sup>24</sup> Testimony at 51.

<sup>25</sup> Testimony at 38.

single dark fiber provider, then the lit services (DS1s, DS3s) market would be competitive – but, of course, the dark fiber market trigger would not be met. In fact, in that example, all fiber would in reality be single-sourced. Further, where Verizon testifies that “dark fiber obtained as an unbundled network element from Verizon counts as the buying carrier’s own fiber”<sup>26</sup>, Verizon is potentially suggesting that its provision of dark fiber to two wholesale providers would result in satisfaction of a trigger, which would in itself mean it could thereafter stop providing UNE dark fiber altogether, even to the two wholesalers. That interpretation would be the most circular of logic and would set the industry back to 1995.

Moreover, in all of the map attachments provided with the Petition, Verizon fails to provide a breakdown for the different types of transport facilities it claims should no longer be unbundled. Verizon fails to separate out routes with DS3s from those with DS1s from those with dark fiber. While a CLEC might theoretically be able to disprove Verizon’s assertions, route by route, by sending an RFQ to all available providers for each noted segment to identify if one or another facility can be obtained competitively, that is hardly the burden of the CLECs. This is Verizon’s case to make and it has not made it.

By Verizon’s own admission, Verizon has simply piled assumption upon assumption<sup>27</sup> and does not have any “particularized, route-specific evidence”<sup>28</sup> to back up its claim of fiber availability. Further, notwithstanding that the ILEC bears the burden of overcoming the presumption of impairment, Verizon goes so far as to try to shift the

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<sup>26</sup> Testimony at 36.

<sup>27</sup> See, e.g. Testimony at 52-54.

<sup>28</sup> Testimony at 53.

burden of disproving Verizon's case to the CLECs!<sup>29</sup> Clearly the Commission should deny Verizon's Petition for its failure to overcome the presumption of impairment on a route by route and UNE by UNE basis.

**B. THE COMMISSION SHOULD DENY THE PETITION DUE TO VERIZON'S NON-COMPLIANCE WITH ITS SUBSTANTIVE OBLIGATIONS UNDER THE *TRO*.**

While Verizon seeks to take advantage of the unbundling possibilities allowed by the *TRO*, Verizon comes before the Commission with unclean hands, continuing to engage in anticompetitive activity rejected by the *TRO*. The Commission should thus deny Verizon the opportunity to profit by the same FCC Order it continues to undermine.

For many CLECs, one of the most important features of the *TRO* was its determination that Verizon's and other ILECs' policy of refusing to provision loops on the basis of "no facilities" violated the unbundling obligations of Section 251(c) the Telecommunications Act of 1996.<sup>30</sup> The FCC emphasized that, contrary to Verizon's loop provisioning policy, ILECs must perform the same network modifications necessary to allow CLECs to access those loops as would be routinely performed for ILECs' retail customers.<sup>31</sup> The *TRO* makes clear, for example, that ILECs must perform for CLECs routine modifications where, for instance, only "slick pairs" are available.<sup>32</sup> Yet months after issuance of the *TRO*, Verizon continues to reject Cavalier orders on the same "no

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<sup>29</sup> Testimony at 52 (claiming burden now upon CLECs to disprove Verizon's case).

<sup>30</sup> 47 U.S.C. §251(c).

<sup>31</sup> *TRO* ¶¶ 633-636.

<sup>32</sup> See *TRO* ¶297 n. 855. As the FCC has also stated, "We reject Verizon's argument that the Commission lacks authority to compel incumbent LECs to deploy new equipment to meet the demands of a competitive carrier. . . . [W]ith the exception of constructing an altogether new local loop, we find that requiring an incumbent LEC to modify an existing transmission facility in the same manner it does so for its own customers provides competitors access only to a functionally equivalent network, rather than one of superior quality. Indeed, incumbent LECs routinely add a drop for a second line without objection. *We conclude with the exception of building a loop from scratch by trenching or pulling cable, because incumbent LECs are able to provide routine modifications to their customers with relatively low expense and minimal delays, requesting carriers are entitled to the same attachment of electronics.*" *TRO* ¶639 (emphasis added).

facilities” grounds as before – grounds whose validity was expressly rejected by the FCC.<sup>33</sup>

Moreover, Verizon’s intent to flout compliance with the *TRO* comes into sharper focus in light of its October 2, 2003 industry letter to Pennsylvania CLECs (“Letter”).<sup>34</sup> As the Commission declared in its Procedural Order, “the Commission emphasizes that as this order is implemented, the terms of an interconnection agreement may prohibit an ILEC from unilaterally discontinuing the provision of service on the ground that there is a change of law.”<sup>35</sup> Yet Verizon’s Letter stated that Verizon will only comply with the *TRO* upon each CLEC’s agreeing to a Verizon-drafted amendment to their respective interconnection agreement (“ICA”).<sup>36</sup> Verizon further indicated that, as to each such CLEC, Verizon refuses to comply with the *TRO* during its ICA negotiation period.<sup>37</sup> By logical extension, in the event a CLEC refuses to submit to this Hobson’s Choice and insists on its right to Section 252 arbitration, a process that can take many months, Verizon refuses to comply with the *TRO* during the entire ICA arbitration process. Of course, with every such “no facilities” response to Cavalier in violation of the *TRO*, Verizon keeps its customer – who wants to leave Verizon for Cavalier – and erodes competition.

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<sup>33</sup> See Affidavit of Kevin Backe, attached as Attachment 1 hereto.

<sup>34</sup> See Letter attached as Attachment 2 hereto.

<sup>35</sup> See *In the Matter of the Petition of MCI Telecommunications Corp. for Emergency Declaratory Ruling and Enforcement of Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310236F0002, Order entered December 11, 2001 (Verizon required to submit to contractual dispute resolution procedures prior to modifying or terminating the provision of UNE-P based on a change in applicable law)(emphasis added).

<sup>36</sup> Letter, at 2, first paragraph.

<sup>37</sup> *Id.*

While this is offensive enough on principle alone, it is all the more disturbing in light of Verizon's proposed ICA amendment pricing. According to Verizon's new "Exhibit A" pricing document, which the Letter directed CLECs to access via Verizon's website, Verizon will only perform the "routine modifications" ordered by the FCC for **\$1,000** per routine modification, plus another **\$677** for the associated Engineering Query and Engineering Work Order, for a staggering total of **\$1,677**.<sup>38</sup> Thus, Verizon's two-pronged strategy has become clear -- initial non-compliance with the pro-CLEC features of the *TRO*, followed by anti-competitive ICA amendment pricing to accomplish the same result.

The Commission should not tolerate this. While Verizon's non-compliance with its "no facilities" obligations may be better investigated in a separate proceeding, the Commission is nonetheless charged in the instant proceeding with carrying out the mandates of the *TRO*. It is inequitable for Verizon to seek to eliminate unbundled network elements under the auspices of the *TRO* while systematically contravening the *TRO* in order to choke off competition. On the basis of Verizon's "unclean hands", the Commission should therefore deny Verizon's Petition.

### **CONCLUSION**

For the foregoing reasons, Cavalier respectfully urges the Commission to deny and dismiss Verizon's Petition, to maintain intact for CLECs all available unbundled network elements, to direct Verizon to rescind its October 2, 2003 industry Letter and to order such other just and equitable relief as the Commission shall see fit.

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<sup>38</sup> Verizon's "Exhibit A-Pennsylvania East", attached as Attachment 3.

Respectfully submitted,



Richard U. Stubbs

General Counsel

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Dated: November 14, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of )  
Incumbent Local Exchange Carriers to ) Docket Nos. I-00030099  
Unbundle Network Elements )

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**AFFIDAVIT OF KEVIN BACKE**

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I, Kevin Backe, depose and state the following:

1. I am a Sales Manager for Cavalier Telephone Mid-Atlantic, LLC (“Cavalier”) for the Philadelphia Metropolitan region.
2. I have an industrial supply company client in Warminster, Pennsylvania, whose owner also wanted to be a residential customer of Cavalier.
3. This customer was expecting an installation of service at his home.
4. This installation of Cavalier service has not occurred, however, due to Verizon’s rejection of Cavalier’s order.
5. In October 2003, Verizon’s RCCC told Cavalier that there are only subscriber loop carrier pairs (a/k/a “SLC pairs” or “slick pairs”) available at this customer’s residence and that therefore the order’s status is “no facilities ever”.
6. Cavalier re-submitted the order to Verizon and again Verizon rejected it on the basis of “no facilities ever”.
7. Despite our explaining to the business owner that it is Verizon making the “no facilities ever” decision to Cavalier’s detriment, this gentleman has told me he is

unhappy with Cavalier because he had entered our business relationship based on the prospect of obtaining both business and residential service from Cavalier.

8. Due to our inability to provide service to the owner's home, this customer's business account with Cavalier is now at risk.

Signed under the pain and penalty  
of perjury on November 14, 2003.



Kevin Backe

Jeffrey A. Masoner  
Vice President Interconnection Services



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11th Floor  
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**VIA AIRBORNE EXPRESS**

October 2, 2003

Stephen T. Perkins  
General Counsel  
Cavalier Telephone Mid-Atlantic LLC  
2134 West Laburnum Avenue  
Richmond, VA 23227

**Subject: NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND  
NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Pennsylvania Inc., f/k/a Bell Atlantic - Pennsylvania, Inc. and Cavalier Telephone Mid-Atlantic LLC for the Commonwealth of Pennsylvania.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Cavalier Telephone Mid-Atlantic LLC of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Cavalier Telephone Mid-Atlantic LLC Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT

October 2, 2003

Page 2

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.

**To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.**

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to [contract.management@verizon.com](mailto:contract.management@verizon.com) or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135<sup>th</sup> day to the 160<sup>th</sup> day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.



Vice President Interconnection Services

JAM:kar

**EXHIBIT A\***

<b>PENNSYLVANIA</b>	
<b>DESCRIPTION</b>	
<b>DS-0 Network Modifications</b>	<b>Non-Recurring Charges</b>
Engineering Query <sup>1</sup>	\$ 123.24
Engineering Work Order <sup>2</sup>	\$ 553.76
Expedite Engineering Query <sup>1</sup>	\$ 242.46
Expedite Engineering Work Order <sup>2</sup>	\$ 1,029.03
Removal of load coils (21K FT)	\$ 880.92
Removal of load coils (21K FT) subsequent	\$ 198.20
Expedite removal of load coils (21K FT) initial	\$ 2,023.26
Expedite Removal of Load Coils (21K FT) subsequent	\$ 277.47
Removal of load coils (27K FT)	\$ 1,171.62
Removal of Load Coils (27K FT) subsequent	\$ 263.88
Expedite removal of load coils (27K FT) initial	\$ 2,692.38
Expedite Removal of Load Coils (27K FT) subsequent	\$ 369.43
Removal of single bridged tap	\$ 192.56
Removal of multiple bridged taps	\$ 468.44
Expedite removal of single bridged tap	\$ 469.97
Expedite removal of multiple bridged taps	\$ 1,151.56
Line and Station transfers	\$ 140.52
Copper to a Digital Loop Carrier (DLC) arrangement	\$ 281.04
Installation of repeater	\$ 968.77
Installation of Range extenders	\$ 968.77
Clear defective pair (where feasible)	\$ 225.00
Binder group facility rearrangement	\$ 140.52
Rearrangement IDLC to copper cable	\$ 140.52
Rearrangement IDLC to UDLC	\$ 140.52
Dispatch to place a channel unit in an existing Universal/Cotted DLC system	\$ 64.65
Serving terminal installation (existing facilities)	Time & Materials
Upgrade an existing serving terminal (existing facilities)	Time & Materials
Activate dead copper cable pair	\$ 140.52
Reassignment of an existing non-working cable pair	\$ 75.00
Will perform a copper rearrangement	\$ 140.52
Other Required Modifications	Time & Materials
<b>DS-1 &amp; DS-3 Network Modifications</b>	<b>Non-Recurring Charges</b>
Engineering Query <sup>1</sup>	\$ 123.24
Engineering Work Order <sup>2</sup>	\$ 553.76
Expedite Engineering Query <sup>1</sup>	\$ 242.46
Expedite Engineering Work Order <sup>2</sup>	\$ 1,029.03
DS-1 / DS-3 Network Modification	\$ 1,000.00
Other Required Modifications	Time & Materials
DS-1 / DS-3 Network Modifications Include the following: Installation of new apparatus case, multiplexer reconfiguration, installation of new multiplexer, removal/installation of required electronics, copper rearrangement (DS-1 only), removal of load coils, installation of double card, cross-connection to existing fiber facility, installation of line card, removal of bridge taps, clear defective pair (where feasible).	
Notes:	
1 Engineering Query Charges apply or Expedite Engineering Query Charges apply in addition to other listed rates.	
2 Engineering Work Order Charges apply or Expedite Engineering Work Order Charges apply in addition to other listed rates.	
When Routine Network Modifications are performed on a Loop and Transport that are combined, charges apply to both loop and transport.	
Other	
Commingled Arrangements- per circuit NRC	\$ 50.00
Conversion Service Order per request	\$ 15.00

\* The rate schedules shown are subject to unilateral change by Verizon, unless and until finalized in connection with an executed interconnection agreement amendment.

Conversion NRC per circuit	\$	5.00
Circuit Retag per circuit	\$	20.00
Access To Splice Point Sub-Loop Unbundling		Time and Material
Unbundled Fiber To The Home Loop Narrowband	NRC -- TBD	MRC -- TBD
<b>Dark Fiber</b>		
Dark Fiber Routine Network Modifications		Time & Materials

**SERVICE LIST**

SECRETARY'S OFFICE  
PA PUBLIC UTILITY COMMISSION  
03 NOV 17 AM 11:08

I hereby certify that I have this day served a true copy of Cavalier Telephone Mid-Atlantic, LLC's Petition to Intervene and Answer to Verizon Pennsylvania, Inc.'s Petition to Initiate Proceedings upon the participants listed below in accordance with 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated in Warminster, Pennsylvania on November 14, 2003.

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Richard U. Stubbs

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November 14, 2003

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

**DOCUMENT**

*I-00030099*

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

Re: Answer of the Loop/Transport Coalition

Dear Mr. McNulty:

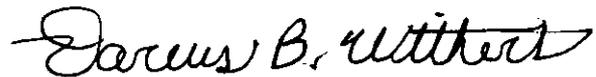
In accordance with the Commission's October 2, 2003 Procedural Order in the above-captioned docket, enclosed for filing with the Commission is the Answer of the Loop/Transport Carrier Coalition. The members of the Coalition are Broadview Networks, Inc., Focal Communications Corporation of Pennsylvania, SNiP LiNK LLC, and XO Pennsylvania, Inc. Notices of intervention and, where applicable, responses to the Commission's discovery questions are being filed under separate cover.

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

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

Respectfully submitted,



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

SAA:pab

Enclosures

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the )  
Obligation of Incumbent )  
Local Exchange Carriers )  
To Unbundle Network Elements )

Docket No.  
I-000300099

SECRETARY'S BUREAU

03 NOV 17 AM 11:22

ANSWER OF THE  
LOOP/TRANSPORT CARRIER COALITION

Broadview Networks, Inc., Focal Communications Corporation of Pennsylvania, SNiP LiNK LLC, and XO Pennsylvania, Inc. (collectively, the "Loop/Transport Carrier Coalition" or "Coalition"), by their undersigned counsel, submit the following Answer to Verizon Pennsylvania Inc.'s Petition to Initiate Proceedings ("Verizon Petition") filed in this docket. The Coalition submits this Answer in accordance with the Commission's Procedural Order dated October 2, 2003.<sup>1</sup> Coalition members understand that, after receiving Verizon's Petition and the parties' Answers, an Administrative Law Judge will develop a record sufficient for the Commission to perform the impairment analyses described in the Federal Communications Commission's *Triennial Review Order*.<sup>2</sup> The Coalition thus does not file its complete case in this Answer and expects that it will be given an opportunity at a later date to present additional evidence and testimony in support of its position. In addition, this Answer is

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<sup>1</sup> *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements*, Procedural Order, Docket No. I-000300099 (October 2, 2003).

<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (*Triennial Review Order* or *TRO*).

DOCUMENT

limited to the issues surrounding the availability and pricing of unbundled loops and transport.<sup>3</sup>

The Coalition does not take a position with respect to the switching trigger evidence presented by Verizon.

In addition, the Coalition notes that it has not received access to any proprietary information submitted by Verizon. The Coalition has not been able to review any evidence identifying the specific carriers on which Verizon relies. The Coalition's Answer is based solely on the public version of the Petition and supporting testimony. We reserve the right to supplement this Answer at a later date after review of the proprietary attachments.

As will be shown below, Verizon's Petition falls far below the standard necessary to rebut the FCC's nationwide finding of impairment regarding DS1, DS3 and dark fiber transport UNEs. Verizon has not performed the granular analysis required under the FCC's impairment triggers. Verizon's Petition is deficient in at least three respects. First, Verizon improperly seeks to avoid its burden of proof to challenge the nationwide finding of impairment. Second, Verizon has erroneously defined operational readiness and thus does not present any evidence demonstrating qualifying self-provisioned facilities. Third, Verizon does not present any evidence that the purported wholesale carriers are "willing immediately to provide, on a widely available basis" wholesale service to other carriers. As a result, Verizon has not put forth a prima facie case on the competitive wholesale facilities trigger. Verizon's Petition should be denied, and Verizon should be instructed to present a more rigorous analysis if it intends to proceed further with its challenge to certain transport routes in Pennsylvania.

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<sup>3</sup> Because Verizon has chosen not to present a case with respect to unbundled loops, the Coalition will not address unbundled loops in detail. The Coalition reserves the right to participate in any investigation of unbundled loops, should Verizon decide to present a triggers case at a later date.

**I. THE FCC'S TRIGGER ANALYSIS**

Loops and transport are the lifeblood of facilities-based local competition. All members of the Loop/Transport Carrier Coalition have deployed one or more switches to provide services to the enterprise market. Some members also have deployed at least some fiber optic network facilities. But all of the members rely upon unbundled loops and unbundled transport from the incumbent LEC in order to provide local exchange services.

For a small carrier like SNIp LiNK, its network does not reach any end users. It has deployed facilities solely in order to connect its switch with the networks of the ILEC and other carriers. Notably, this function is not “transport” under the FCC’s new rules.<sup>4</sup> SNIp LiNK relies on unbundled loops and unbundled transport – typically in an EEL combination – to reach all of its customers.

Other carriers, like XO, have deployed one or more fiber rings in selected metropolitan areas. These fiber rings typically reach very few end user customer locations. Instead, like small carriers, much of this network deployment is used for the purpose of backhauling traffic from the ILEC network to the carrier’s own switch – again, a function that is not defined as transport under the FCC’s new rules. The fiber ring extends the carrier’s backhaul capabilities further into the ILEC footprint, minimizing the extent to which it must obtain services from the ILEC and making available limited “on net” services. Unbundled loops and transport are used to extend the reach of these fiber rings and to enable the efficient aggregation of traffic along deployed facilities.

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<sup>4</sup> See, *TRO*, ¶ 366 (defining transport to exclude connections between the ILEC network and a CLEC’s network).

The *Triennial Review Order* recognized the critical importance of UNE loops and transport to facilities-based competition. Based on the evidence presented in the Triennial proceeding (much of it similar to the evidence Verizon presented in its Petition), the FCC made a nationwide finding of impairment for DS1, DS3 and dark fiber loops and transport.<sup>5</sup> With respect to transport facilities in particular, the FCC found that “deploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs.”<sup>6</sup> The Commission cited collocation costs, the cost of fiber and associated optronics, the cost of deploying the fiber and difficulties in obtaining rights-of-way as barriers creating impairment on a nationwide basis.<sup>7</sup> As a result, the FCC rules require access to unbundled loops and transport everywhere unless a specific route has been found to lack impairment.

The FCC recognized that successful deployment of alternative facilities may signal the availability of viable wholesale alternatives or may demonstrate that similarly situated carriers would not be impaired if they decided to deploy facilities on the route. The FCC therefore delegated to this Commission the task of conducting a granular impairment analysis on specific routes that may be challenged by an ILEC. State Commissions are “to determine on a route-specific basis where alternatives to the incumbent LECs’ networks exist such that competing carriers are no longer impaired.”<sup>8</sup> The FCC adopted two “triggers” to guide the route-specific impairment analysis contemplated under the Order, but acknowledged that its selection

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<sup>5</sup> *TRO*, ¶¶ 311 (dark fiber loops), 320 (DS3 loops), 325 (DS1 loops), 381 (dark fiber transport), 386 (DS3 transport) and 390 (DS1 transport).

<sup>6</sup> *TRO*, ¶ 371.

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

<sup>8</sup> *TRO*, ¶ 398.

of thresholds for the triggers “is not an exact science.”<sup>9</sup> The two triggers are “based on the two primary ways carriers can overcome impairment.”<sup>10</sup>

The first trigger, as it applies to transport, asks whether a sufficient number of facilities-based carriers have deployed their own transport facilities and are using those facilities to route traffic into and out of the ILEC central offices on the route. This “self-provisioned deployment” trigger requires evidence that:

- Three or more competing providers not affiliated with each other or with the incumbent LEC are present on the route;
- Each provider has deployed its own transport facilities and “is operationally ready to use those transport facilities to provided dedicated ... transport along the particular route;” and
- The competing provider’s facilities terminate in a collocation arrangement at each end of the transport route.<sup>11</sup>

The self-provisioned deployment trigger is designed to identify routes “along which the ability to self-provide transport facilities is evident” based on the existence of several competitive transport facilities.<sup>12</sup>

The second trigger is the “competitive wholesale facilities” trigger. This test asks whether at least two facilities-based carriers offer a bona fide wholesale product on the route in question. The trigger requires evidence that:

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<sup>9</sup> TRO, ¶ 403.

<sup>10</sup> TRO, ¶ 399.

<sup>11</sup> 47 CFR § 51.319(e)(2)(i)(A). The self provisioning trigger does not apply to DS1 transport, however. TRO, ¶ 409.

<sup>12</sup> TRO, ¶ 400. The Commission expressed concern that the self-provisioned deployment trigger must not be satisfied by “unusual circumstances unique to [a] single provider that may not reflect the ability of other competitors to similarly deploy.” *Id.* at ¶ 329 n.974.

- Two or more competing providers not affiliated with each other or with the incumbent LEC are present on the route;
- Each provider has deployed its own transport facilities “and is operationally ready to use those facilities to provide dedicated ... transport along the particular route;”
- Each provider “is willing immediately to provide, on a widely available basis,” dedicated transport to other carriers on the route;
- Each provider’s facilities terminate in a collocation arrangement at each end of the transport route; and
- Requesting telecommunications carriers “are able to obtain reasonable and nondiscriminatory access to the competing provider’s facilities through a cross-connect to the competing provider’s collocation arrangement.”<sup>13</sup>

The competitive wholesale facilities trigger “safeguards against counting alternative fiber providers that may offer service, but ... are otherwise unable immediately to provision service along the route” and “avoid[s] counting alternative transport facilities owned by competing carriers not willing to offer capacity to their network on a wholesale basis.”<sup>14</sup> In short, the test “ensures that transport can readily be obtained from a firm using facilities that are not provided by the incumbent LEC.”<sup>15</sup>

Therefore, it is clear that the triggers are more than a ministerial counting exercise. The triggers are fact-based mechanisms for the state commissions to perform the granular impairment analysis required by the statute and the *Triennial Review Order*. The triggers do not substitute for impairment; rather they are designed to be satisfied only when non-impairment is demonstrable. Either the incumbent LEC’s network elements will be made

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<sup>13</sup> 47 CFR § 51.319(e)(1)(ii).

<sup>14</sup> *TRO*, ¶ 414.

<sup>15</sup> *TRO*, ¶ 412.

available pursuant to Section 251(c)(3) or the requesting carrier is not impaired without the network element because it has two or more viable wholesale alternatives or because successful deployment and use of “multiple competing networks” demonstrates that self-deployment is feasible on the route. In short, if the triggers are properly applied, a requesting carrier always will have a viable alternative for each particular route. The Commission must require sufficient evidence from Verizon to ensure this result.

**II. VERIZON’S PETITION IMPROPERLY SHIFTS THE BURDEN OF PROOF TO CLECS**

In its Petition and supporting testimony, Verizon offers very little evidence of actual deployment and use of transport facilities by competitive carriers. Instead, it offers cursory evidence of carrier collocations, makes a sweeping assertion based on the scant evidence and attempts to shift the burden on competitive carriers to rebut Verizon’s “proof.” For example, with respect to the presence of competitive facilities on a route, Verizon claims that carriers “typically” deploy fiber optic rings that connect their points of presence in the LATA and various customer premises.<sup>16</sup> Verizon then asserts that “it is very reasonable to assume” from the presence of multiple fiber based collocations “that those fiber facilities are part of a CLEC-operated ring and that traffic can be routed from one Verizon wire center to another.”<sup>17</sup> Verizon further “assumes” that “traffic can flow to and from all parts of the carrier’s network through the POP,” and thus all locations are interconnected with each other.<sup>18</sup> If these sweeping assumptions are incorrect – and it is notable that Verizon does not make any attempt to determine whether the

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<sup>16</sup> Direct Testimony of Debra M. Berry and Carlo Michael Peduto, II, October 31, 2003, at 47 (hereinafter, “Berry/Peduto Testimony”).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 47-48.

carrier is using its own transport from the wire center—then “the burden is now properly put on competing carriers if they wish to attempt to show that a specific route cannot in fact be connected within their network.”<sup>19</sup> Verizon makes similar statements declaring that CLECs are obligated to refute Verizon’s “evidence” of self-provisioned DS3s,<sup>20</sup> of dark fiber deployment,<sup>21</sup> of wholesale service offerings<sup>22</sup> and that DS1 circuits are offered at wholesale.<sup>23</sup>

Verizon’s attempt to shift the burden to the CLECs is fundamentally at odds with the *Triennial Review Order*. The FCC made a nationwide finding of impairment with respect to DS1, DS3 and dark fiber loops and transport.<sup>24</sup> This finding was based on “general characteristics of transport routes on a national level sufficient to make nationwide determinations of impairment and non-impairment.”<sup>25</sup> As a result, unless evidence is presented to rebut the impairment finding, the FCC’s determination of impairment on transport routes is controlling.

It is the burden of the party challenging the FCC’s nationwide finding – in this case Verizon – to demonstrate satisfaction of the triggers. Indeed, the *Triennial Review Order* only requires states to consider routes for which “there is relevant evidence in the proceeding

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<sup>19</sup> *Id.* at 48.

<sup>20</sup> *Id.* at 50.

<sup>21</sup> *Id.* at 51-52.

<sup>22</sup> *Id.* at 54.

<sup>23</sup> *Id.* at 55. Notably, the FCC found “scant evidence of wholesale alternatives” for DS1 transport. *TRO*, ¶ 325.

<sup>24</sup> *See, supra*, pp. 4-5.

<sup>25</sup> *TRO*, ¶ 376.

that the route satisfies one of the triggers.”<sup>26</sup> Verizon must come forward with “relevant evidence” demonstrating non-impairment; it is not the responsibility of CLECs to demonstrate impairment on any particular routes. Verizon’s attempt to shift the burden to CLECs to refute its assumptions is simply incorrect.

**III. VERIZON DOES NOT PRESENT EVIDENCE THAT THE CARRIERS IT RELIES UPON ARE “OPERATIONALLY READY”**

As shown above, both the self-provisioned deployment trigger and the competitive wholesale facilities trigger require, *inter alia*, that the facilities in question be “operationally ready” to provide transport between the Verizon wire centers in question. Verizon asserts, however, that operational readiness is satisfied merely by a completed collocation arrangement in each wire center.<sup>27</sup> Verizon relies solely on unannounced inspections of collocation space as evidence that the carriers are operationally ready. Verizon’s evidence is insufficient to demonstrate that the carriers are operationally ready within the meaning of the triggers. As discussed above, the *Triennial Review Order’s* triggers are designed to demonstrate actual competitive wholesale availability or actual deployment and use of self-provided facilities. The mere fact that equipment is in place in a collocation arrangement does not indicate that the facilities are being used to carry traffic between the wire centers.<sup>28</sup> Indeed, Verizon’s showing of

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<sup>26</sup> See *TRO*, ¶ 417; see also *id.*, ¶ 329 (triggers are tailored to respond to “*specific record evidence* demonstrating that self-deployment is economically feasible or competitive alternatives are available”) (emphasis added).

<sup>27</sup> Berry/Peduto Testimony at 36-37 (stating that operational readiness requires an “operational collocation arrangement” and that fiber has been pulled into the collocation).

<sup>28</sup> See *TRO*, ¶ 332 (requiring that self-provisioning carriers for loop analysis “have existing facilities in place serving customers at that location”); 47 CFR 51.319(a)(5)(i)(A) (requiring that the self-provisioner has deployed its own loop facilities and “is serving customers via those facilities”).

operational readiness based solely on the presence of collocations is a variation on the “fiber-based collocation proposals” rejected in the *Triennial Review Order* as “falsely identifying as competitive a route between two offices.”<sup>29</sup>

Coalition members intend to show that, for purposes of the self-provisioning trigger, operational readiness at a minimum requires that the carrier actually be using the facilities to provide qualifying telecommunications services. Moreover, for purposes of the competitive wholesale facilities trigger, Coalition members intend to show that operational readiness addresses issues such as the wholesale provider’s availability of network capacity, availability of terminations in its collocation site, applicable power sizing in its collocation and its ability operationally to cross-connect to other CLECs.<sup>30</sup> None of these issues are captured in Verizon’s definition of operational readiness. The Coalition thus disputes Verizon’s definition of operational readiness and contends that Verizon has not presented evidence sufficient to demonstrate that the providers on which it relies are in fact operationally ready.

**IV. VERIZON DOES NOT PRESENT EVIDENCE THAT THE CARRIERS IT RELIES UPON ARE WHOLESALE CARRIERS**

Verizon’s showing with respect to wholesale carriers is deficient in several respects. First, Verizon does not make any attempt to present route-specific evidence of wholesale service. Second, Verizon does not make any attempt to differentiate between DS1, DS3 and OCn capacities for wholesale service. Third, Verizon does not present any evidence of

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<sup>29</sup> *TRO*, ¶ 401 (discussing proposals based on the presence of collocated carriers in a given central office).

<sup>30</sup> Operational readiness also addresses barriers the ILEC may impose on use of a wholesale provider’s services, such as any system or OSS impediments to CLEC A ordering UNEs into a wholesale transport arrangement provided by Wholesaler B.

carrier's actual provisioning of wholesale service, and thus does not offer any basis on which to conclude that the specific wholesale requirements of the transport trigger is met.

The first two deficiencies are outgrowths of Verizon's improper burden-shifting discussed above. Although Verizon claims that the purported wholesale providers offer wholesale transport service, it does not identify any specific routes on which such service is available. It also assumes that all wholesale providers will offer DS1 transport, despite the FCC's finding that "DS1 transport is not generally made available on a wholesale basis."<sup>31</sup> Verizon simply assumes that all of the providers it identifies offer wholesale service on all of the routes it identifies, and that all of the providers offer DS1 capacity transport on all of those routes as well. Not only does this improperly shift the burden to CLECs to demonstrate impairment, but it also fails the route-specific nature of the competitive wholesale trigger.

Most importantly, Verizon's evidence of actual wholesale service fails to address the criteria in the FCC triggers. Verizon bases its contention that a carrier satisfies the wholesale service portion of the trigger based on satisfaction of one of four criteria listed on page 52-53 of the testimony.<sup>32</sup> The criteria are: (1) the carrier "holds itself out as a wholesale provider on its website – and does not limit its representation to particular routes"; (2) the carrier supplies transport facilities to Universal Access, Inc.; (3) the carrier "has a CATT arrangement in any of Verizon's wire centers"; or (4) the carrier is listed in the New Paradigm CLEC Report 2003 as offering "dedicated access transport."

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<sup>31</sup> *TRO*, ¶ 392; *see id.* at n. 1216 (noting the "very limited evidence of carriers using alternative DS1 transport").

<sup>32</sup> Berry/Peduto Testimony at 52-53.

These criteria fail for numerous reasons, including:

- “Holding oneself out” (criterion 1) – Verizon offers no evidence that the carrier uses its own facilities to provision transport; it could be reselling special access services of the ILEC. Verizon offers no evidence that the carrier is able “immediately to provide” transport on the particular route. Verizon offers no evidence that the service is “widely available.”
- Universal Access (criterion 2) – Verizon offers no evidence that the facilities provided to Universal Access “terminate in a collocation arrangement at each end of the transport route.” Verizon offers no evidence that service is “widely available,” or even that it is made available to any entity other than Universal Access. Verizon offers no evidence that the carriers allegedly selling service to Universal Access are able to provide service on the routes identified.
- CATT arrangement (criterion 3) – Verizon counts a provider as a wholesale carrier on all routes if it has a CATT arrangement “in *any* of Verizon’s wire centers.” Verizon’s evidence thus does not show that the carrier is providing wholesale service on the routes it identifies.
- New Paradigm Report (criterion 4) – Verizon essentially relies on hearsay testimony from a publisher without any verification of the assertion made therein. NPRG does not report on any of the criteria set forth in the competitive wholesale trigger, including the ability “immediately to provide” service, the willingness to make service “widely available” and the use of the carrier’s own facilities to provide wholesale service. Verizon also does not define “dedicated access transport” as used for this purpose.

The Commission may not rely on such superficial evidence of wholesale availability. Instead, it can and must demand that Verizon produce evidence sufficient to demonstrate that all of the criteria of the trigger, including the “operationally ready,” “widely available” and “immediately able to provision” criteria, are satisfied. The wholesale trigger “counts only wholesale offerings that are readily available.”<sup>33</sup> The Commission may accept no less in Verizon’s evidence.

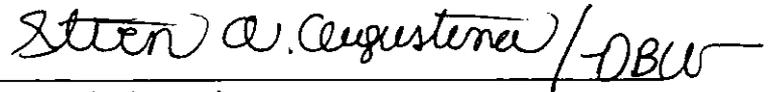
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<sup>33</sup> TRO, ¶ 414 n. 1279.

**CONCLUSION**

Like a street magician performing for bystanders, Verizon offers a polished presentation and superficially appealing explanations to lead its audience to a desired conclusion. Ultimately, however, those explanations do not hold water and the supposed result proves to be just an illusion. For the reasons explained above, Verizon's Petition fails to meet the standards necessary to satisfy the FCC triggers for transport impairment. The Commission should either dismiss this inquiry for Verizon's failure to meet its burden or require Verizon to re-submit a route identification filing with the supporting evidence required by the triggers.

Respectfully submitted,



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Darius B. Withers  
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1200 19<sup>th</sup> Street, NW  
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Counsel to Broadview Networks, Inc., Focal  
Communications Corporation of Pennsylvania,  
SNiP LiNK LLC, and XO Pennsylvania, Inc.

Dated: November 14, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CERTIFICATE OF SERVICE**

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

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

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

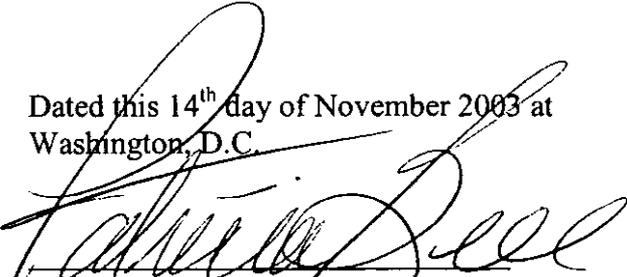
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Julia A. Conover  
Vice-President and General Counsel  
Verizon Pennsylvania, Inc.  
1717 Arch Street, 32N  
Philadelphia, Pennsylvania 19103

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

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

  
Patricia Bell, Secretary  
KELLEY DRYE & WARREN LLP



Communications

CEI NETWORKS, INC.  
130 East Main Street • PO Box 458  
Ephrata, PA 17522

November 14, 2003

ORIGINAL

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

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

DOCUMENT

Dear Secretary McNulty,

Enclosed for filing with the Commission are an original and three (3) copies  
[Proprietary and Public Versions] of CEI Networks, Inc.'s responses to questions  
found in Appendix A in the above-referenced proceeding.

Kindly acknowledge receipt of this filing by stamping the enclosed duplicate of  
this letter. A postage paid envelope is provided for your convenience.

Should you have any questions, please do not hesitate to contact me. As  
evidenced by the attached Certificate of Service, all parties have been duly  
served.

Sincerely,

Joseph J. Laffey  
Vice President Regulatory  
717-738-8606  
717-733-2364

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cc: Attached Service List  
Patricia Armstrong, Esq., TTAN

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

Docket: No. I-00030099

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APPENDIX A

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

PRELIMINARY DISCOVERY REQUESTS

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

A. Requests for Information submitted to CLECs in Response to Petitioning ILEC

DOCKETED

NOV 25 2003

Switching

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

DOCUMENT

Table with 7 columns: SWITCH, EQR TYPE, LATA, SW STREET, SW CITY, SW STATE, SW ZIP. Rows include BRDSPAXBDS0, FGTPPA01DS0, and LWBGPAXLDS0.

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

**Docket: No. I-00030099**

2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

<u>Name</u>	<u>Address</u>	<u>CLLI</u>
Williamsport	404 W. 4 <sup>th</sup> St., Williamsport, PA	WLPTPAWIHPF
State College	250 S. Allen St., State College, PA	STCGPAESHPA
Altoona	1119 16 <sup>th</sup> St., Altoona, PA	ALNAPAALHPH
Bellefonte	217 N. Allegheny St., Bellefonte, PA	BLLFPABEHPC
Sinking Spring	571 Penn Ave, Sinking Spring, PA	SNSPPASSHPK
Reading	419 Washington St., Reading, PA	RDNGPAREHPG
St. Lawrence	3004 Oley Turnpike Rd., St. Lawrence, PA	SLWBPASLHPK
Shillington	216 W. Walnut St., Shillington, PA	SHLNPASHHPG
Laureldale	828 Bellvue Ave., Laureldale, PA	LRDLPALBHPF
Pottstown	235 King St., Pottstown, PA	PTTWPAPTHPE
Kutztown	45 Railroad Street, Kutztown, PA	KZTNPAKZ

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

**Docket: No. I-00030099**

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

Proprietary Information Redacted

4. For each switch identified in response Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch’s existing configuration and component parts.

Proprietary Information Redacted

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

**Docket: No. I-00030099**

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

Proprietary Information Redacted

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

Please see the following information for switches being used by CEI networks:

FGTPPAO1DSO

State College, PA Switch – This switch is owned by CEI Networks.

BRDSPAXBDSO

Lewisburg, PA Switch – CEI Networks is leasing ports on this switch from Buffalo Valley Telephone Company. CEI Networks is affiliated with Buffalo Valley Telephone Company.

LWBGPAXLDSO

Birdsboro, PA Switch - CEI Networks is leasing ports on this switch from Conestoga Telephone Company. CEI Networks is affiliated with Conestoga Telephone Company.

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

**Docket: No. I-00030099**

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

None

**Transport**

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

<u>Name</u>	<u>Address</u>	<u>CLLI</u>
Williamsport	404 W. 4 <sup>th</sup> St., Williamsport, PA	WLPTPAWIHPF
State College	250 S. Allen St., State College, PA	STCGPAESHPA
Altoona	1119 16 <sup>th</sup> St., Altoona, PA	ALNAPAALHPH
Bellefonte	217 N. Allegheny St., Bellefonte, PA	BLLFPABEHPC
Sinking Spring	571 Penn Ave, Sinking Spring, PA	SNSPPASSHPK
Reading	419 Washington St., Reading, PA	RDNGPAREHPG
St. Lawrence	3004 Oley Turnpike Rd., St. Lawrence, PA	SLWBPASLHPK
Shillington	216 W. Walnut St., Shillington, PA	SHLNPASHHPG
Laureldale	828 Bellvue Ave., Laureldale, PA	LRDLPALBHPF
Pottstown	235 King St., Pottstown, PA	PTTWPAPTHPE
Kutztown	45 Railroad Street, Kutztown, PA	KZTNPAKZ

**CEI Networks, Inc.**

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

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

Proprietary Information Redacted

**CEI Networks, Inc.**

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

Proprietary Information Redacted

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

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

<b>WIRE CENTER</b>	<b>VENDOR</b>	<b>EQUIP. TYPE</b>
WILLIAMSPORT	CISCO	OC-48
STATE COLLEGE	CISCO	OC-48
BELLEFONTE	CISCO	OC-48
ALTOONA	CISCO	OC-48
SINKING SPRINGS	CISCO	OC-48
READING	CISCO	OC-48
ST. LAWRENCE	CISCO	OC-48
SHILLINGTON	CISCO	OC-48
LAURELDALE	CISCO	OC-48
POTTSTOWN	CISCO	OC-12
KUTZTOWN	NORTEL	OC-3

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

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

Proprietary Information Redacted

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

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

None

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

The vast majority of Transport Facilities referenced in this question are leased from Verizon-Pennsylvania. The rates CEI Networks pays to Verizon-Pennsylvania are those that appear in the Pennsylvania PUC 216 Tariff.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF  
MCI WORLDCOM NETWORK SERVICES, INC.  
TO PETITION TO INITIATE PROCEEDINGS**

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**DOCKETED**  
NOV 19 2003

Pursuant to the Pennsylvania Public Utility Commission's ("Commission")  
Procedural Order entered on October 3, 2003 at Docket Nos. I-00030100, M-00031754 and  
I-00030099, MCI WorldCom Network Services, Inc. ("MCI") files this Answer to Verizon  
Pennsylvania, Inc.'s ("Verizon") Petition to Initiate Proceedings in the above-referenced  
docket. MCI filed a Petition to Intervene in the matter on November 6, 2003.

**DOCUMENT**

The Federal Communications Commission ("FCC") made a national finding in the  
Triennial Review Order ("TRO") that competitors are impaired without access to unbundled  
switching, unbundled dedicated transport and unbundled high capacity loops. Verizon has  
the burden of proving that competitors are not impaired in Pennsylvania by providing  
detailed evidence at a more granular level.

Verizon submitted a Petition generally describing its position on the TRO's  
requirements. In support of that Petition, Verizon submitted panel testimony of two  
witnesses and attachments related to Verizon's allegations that competitors are not impaired  
in Pennsylvania without access to unbundled switching and dedicated transport. Verizon  
stated that it is not currently challenging the finding of impairment for high capacity loops.

Verizon's Petition requests that the Commission eliminate unbundled switching in Density Cells 1, 2 and 3 throughout seven different Metropolitan Serving Areas ("MSAs") in Verizon Pennsylvania, Inc.'s territory.<sup>1</sup> Verizon also requests that the Commission eliminate unbundled dedicated transport on 644 different "routes" as that term is defined by the FCC.

The FCC has "ask[ed] the states to assess impairment in the mass market on a market-by-market basis." *TRO* at ¶493. For unbundled transport, the FCC specifically defined the market. That market is defined as "route specific," which is a connection between two of the incumbent local exchange company's ("ILEC") wire centers. *Id.* at ¶401. For unbundled switching, the FCC left it up to the state Commissions to determine the definition of the market. Once the Commission has defined the relevant markets, it must then "identify where competing carriers are not impaired without access to unbundled switching, pursuant to the triggers and analysis of competitors' potential to deploy." *Id.* at ¶473.

In determining impairment, the FCC decided that incumbents may prove that carriers are not impaired without access to certain unbundled elements by showing that, in a particular market, a given number of carriers are either using their own self-deployed transport<sup>2</sup> or switches to serve mass market customers, or that there are wholesale providers other than the ILEC offering such elements. In the absence of clear evidence of no impairment in the form of actual self-provisioning by competitive local exchange carriers ("CLECs") or competitive wholesale providers that satisfies the FCC's prescribed trigger analysis, the Commission would proceed to the question of the market's "suitability for

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<sup>1</sup> It is not clear from Verizon's filing whether it is including any territory served by Verizon North, Inc. MCI assumes that Verizon's Petition is only intended for Verizon Pennsylvania, Inc.'s serving territory and not the former GTE areas of the Commonwealth.

<sup>2</sup> The self-provisioning trigger does not apply at the DS1 level for dedicated transport. *TRO* at ¶409.

multiple, competitive supply” or a potential deployment analysis. *TRO* at ¶506. This analysis is addressed in ¶84: “We find a requesting carrier to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic.”

### **THE FCC TRIGGERS ANALYSIS**

In its Petition to Initiate Proceedings, Verizon made clear that it is presenting a “triggers only” case to this Commission, and that it does not intend to present evidence regarding a carrier’s ability to potentially deploy network elements. In other words, if the Commission finds that Verizon has not met its burden of proof in showing that the triggers are met, then the Commission will be required to uphold the FCC’s findings of impairment with respect to high capacity loops, transport and unbundled switching for mass markets customers. With respect to the switching triggers case, Verizon is only relying on the self-provisioning trigger, and does not intend to show that the competitive wholesale facilities trigger has been met. MCI submits that Verizon’s Petition is not sufficient to meet its burden of proof in showing that the triggers have been met for either unbundled transport or switching.

For both mass market switching and transport, the FCC established two “triggers” that could lead to a result of no impairment in a particular market: one relating to the number of carriers that self-deploy switches or transport, and the other relating to the number of carriers that provide wholesale switching or transport to other carriers. The trigger is reached in a particular market if there are at least three carriers self-deploying switching or transport or two carriers providing wholesale switching or transport. *Id.* at ¶¶ 400, 501, 504.

However, as discussed in more detail below, these companies must meet certain criteria in order to qualify as triggering companies.

When considering evidence as to whether the triggers are satisfied in a particular market, particularly with respect to mass market switching, the Commission should bear in mind the consequences of the two alternative outcomes. If the Commission finds three qualifying self-provisioning CLECs in a market, suitably defined, and finds that the CLECs serve a sufficient number of customers in the market, a finding of no impairment is required, and UNE-P competition is terminated. In areas within the market in which self-provisioning CLECs are competing, existing UNE-P customers will then have the choice of migrating to one of these CLECs (or another CLEC that enters) or migrating back to the ILEC.

Customers in other areas within the market may end up with no alternative. If existing self-provisioning CLECs do not already serve the entire market, as defined, they may be unable, for whatever reason, to expand, and other CLECs may not share the Commission's conclusion that they can self-provision facilities to compete with the ILEC without access to the ILEC's local switching UNE. In this case, UNE-P competition will have made a false start, and customers will have to return to the ILEC.

In contrast, if the Commission's trigger investigation fails to reach a finding of no impairment, the consequence is simply that the investigation must proceed to the more detailed analysis of potential deployment, as called for in the *TRO*. This more detailed analysis affords the Commission a better chance of being certain that a finding of no impairment will truly be in the interest of Pennsylvania consumers, while at the same time providing ample opportunity to find no impairment if none truly exists. Hence, there is little

downside—and a substantial upside—to a decision that the triggers do not justify a finding of no impairment.

The Commission must therefore conduct any trigger analyses, and especially the mass market trigger analysis, in a manner that errs on the side of caution in protecting the interests of Pennsylvania consumers. Any decision to overturn the national finding of impairment should rest on incontrovertible evidence that competitive carriers will indeed be able to offer Pennsylvania's residential and small business customers with competitive choices, even without access to unbundled network elements.

The triggers analysis is not a simple counting exercise, as Verizon would have this Commission believe. If it were, the FCC would have conducted the analysis itself. Instead, the FCC found it necessary to delegate the issue to the states so that the data can be examined on a granular level to ensure that the triggers are really being met. This granular and complete analysis is critical given the consequences of removing unbundled elements in a particular market, as discussed above. States must thoroughly screen and analyze the potential triggering companies to ensure that they actually fit the criteria enumerated by the FCC.

Verizon's filing in this case is insufficient to demonstrate that the triggers have been satisfied. For transport, Verizon provided some evidence to support its claim that the triggers have been met for 644 different routes. For mass markets switching, Verizon provided some evidence in support of its claim that the triggers have been met in several large areas throughout Pennsylvania. It is critical that the Commission dig deeply into this evidence. Verizon failed to provide the most critical evidence to MCI, thereby precluding MCI from fully evaluating whether the trigger analysis has been met. Specifically, in order to fully

evaluate whether a provider identified by Verizon actually satisfies the trigger analysis, full information must be disclosed and evaluated about the carriers Verizon uses to claim the trigger has been met. Because Verizon did not provide this information, MCI is hindered in evaluating the evidence that purportedly supports Verizon's position. The Commission should immediately require Verizon to provide MCI with all of the evidence used to support its position in this case. All carriers are protected by the Commission's Protective Order and there is thus no reason to refuse to provide other carriers' information to MCI.

### **SWITCHING**

The first step in determining whether the switching triggers have been met is to define the markets in which the Commission will consider evidence of impairment on a "market-by-market" basis. For the trigger analysis to correctly serve its function, markets must be defined so that "[i]f the triggers are satisfied, the states need not undertake any further inquiry, because no impairment should exist in that market." *TRO* at ¶494. That is, markets must be defined so that if the triggers are satisfied and the Commission reaches a finding of no impairment for a market, customers in the market have real choice, and competitive carriers are not impaired in their ability to reach the customers in the defined market. Otherwise, the triggers could be satisfied when customers have no alternative choice of providers and indeed where competitors are impaired. The FCC made clear the importance of firms serving as actual alternatives when it explained that existing firms can only be counted toward satisfaction of a trigger if they are "currently offering and able to provide service, and likely to continue to do so." *Id.* at ¶ 500.

The trigger analysis only makes sense in a rationally defined market. If a market is defined too large, the commission will find no impairment even where many customers have no current choice of alternative providers and where it is not certain new competitors can enter. If, for example, a market is defined to include both Indiantown Gap and Harrisburg, the presence of CLEC collocations in Harrisburg could lead to a finding of non-impairment in Indiantown Gap even though customers in Indiantown Gap currently have no choice among different providers.

Similarly, if Verizon's data shows that carriers are using their switches solely to provide services to small business customers, this Commission must carefully determine whether the trigger analysis is actually satisfied such that unbundled switching for all residential customers should be eliminated. In general, these sorts of questions are the subject matter of the economics of market definition, and the FCC delegated the task of market definition for the state of Pennsylvania to this Commission. *Id.* at ¶ 495.

Market definition is integral to the outcome of the Commission's trigger analysis; if the market is not defined correctly, the trigger analysis is likely to produce an incorrect result. The role of market definition in the trigger analysis should be to identify the scope of telecommunications services and locations for which a market participant's switching capacity clearly shows the absence of impairment because customers already have real facilities-based alternatives to Verizon. Market definition should ensure that a qualifying market participant provides an acceptable alternative to qualifying service provided at a geographic location that actually serves the customers in the market. The new entrant's service must be an acceptable substitute, and the location at which service is offered must encompass the areas in which the customers require service. Successful entry into a different

market, where the entrant's offering is not a close substitute for service provided with the incumbent's local switching or where the entrant is unable to provide service to the customers, offers no such evidence of non-impairment. Only if the qualifying participant has succeeded in overcoming operational and economic barriers to entry into a properly defined market, which recognizes buyers' product and location substitution possibilities, can the Commission be confident that the new entrant offers evidence of no impairment in provision of the specified service at the specified location.

Verizon claims that the Commission should not evaluate economic and operational criteria in a triggers case, as such factors are not to be considered in an analysis of the proper market definition.<sup>3</sup> This position is directly contrary to the FCC's Order. In order to determine the appropriate definition of the market, Commissions must consider numerous factors. Those factors include: "the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies." TRO at ¶495. The Order also presents examples of the factors that may vary geographically, such as "how the cost of serving customers varies according to the size of the wire center and the location of the wire center, and the variations in the capabilities of wire centers to provide adequate collocation space and handle large number of hot cuts." *Id.* at ¶496. These factors clearly include both operational issues and economic issues associated with serving customers.

The Commission has never had to define a "market" for this type of inquiry. Thus, prior determinations about the manner in which retail rates or wholesale rates should

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<sup>3</sup> Verizon Petition at pg. 9.

be set were based primarily on monopoly regimes that are not appropriate for an inquiry about the characteristics of a market from a competitive provider's perspective.

MCI recommends that the Commission analyze markets at least at the wire center level. From a supply side perspective, each individual customer could be a "market." That being said, wire centers are the natural geographic boundaries for purposes of defining markets for several reasons. First, the costs of providing service vary widely from one wire center to another and it is not possible to draw conclusions about one wire center from an analysis of another wire center.<sup>4</sup> Second, once a CLEC is serving some customers in a wire center, it will face relatively lower cost of serving other customers in the same wire center, compared to the cost of entering a new wire center market. Third, it is administratively feasible to administer the requirements of the *TRO* on a wire center basis, because data on CLEC activity, including collocation, and other cost information is available on this basis.

The problem with Verizon's use of density cells within a MSA as the market definition is that all wire centers within a density cell are not created equal. There will be significant differences in the characteristics of wire centers, which will affect the cost incurred by a CLEC to serve customers within the wire centers using its own switch. Among those differences are: the size of the wire centers, the mix of customers (enterprise vs. small business vs. residential); and the economies of scope available to a CLEC that collocates in the wire center. For example, a wire center may dedicate a large portion of its switching capacity to a large Centrex customer on a long term contract, which would foreclose the competitor from serving a substantial share of the lines there.

Once the Commission defines the market, it must determine whether any companies meet the definition of a triggering company within that market. As noted previously, it is

absolutely imperative that this Commission look behind the data provided by Verizon to determine whether a company actually qualifies as a triggering company for purposes of eliminating unbundled switching. The reason that such information is so critical is because the companies identified by Verizon may in fact not qualify as triggering companies. For example, it is MCI's understanding that Verizon identified MCI as one of the triggering companies in Philadelphia and Pittsburgh for switching. However, MCI should not be considered a triggering company.

The FCC specifically found that "the identified competitive providers should be actively providing voice service to mass market customers in the market." *TRO at ¶499*. The entire point of the triggers analysis for switching is to demonstrate that carriers are serving mass markets customers using their own switches, thus indicating that existing economic and operational barriers to entry (such as hot cuts) are not insurmountable. *Id. at ¶501*. MCI's use of its switches can not be used to show that such economic and operational barriers have been overcome because MCI does not use its switches to actively provide voice service to mass markets customers in Pennsylvania. Thus, to the extent that Verizon included MCI or companies like MCI in its evidence to support its claim that the triggers have been met, Verizon has given this Commission a false impression and has not met its burden of proof.

### **DEFINITION OF MASS MARKETS CUSTOMERS**

Verizon proposes a deceptively simple solution to the issue of the cross over point between mass markets and enterprise. Their proposal is to base the cross over point on the actual practices of the CLECs, and to consider any customer served on DS0 UNE loops to be

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<sup>4</sup> In fact, it may be possible that CLECs cannot serve all customers even within a given wire center.

a mass markets customer. Their reasoning is that if it made ‘economic sense’ to serve the customer over a DS1, then the CLEC would, in fact, be doing so.” (Berry-Peduto Testimony, at 17). There are several flaws in this argument, especially the fact that the “actual” behavior of the CLECs is only “economic” within the context of the prices set by the ILEC for use of the different types of loops, as well as the availability of the loops under certain tariffs. But the prices and availability of UNEs are subject to change, and in fact are in the middle of changing in Pennsylvania, so it is not possible to draw conclusions about future behavior based on a single one-time snapshot of existing serving arrangements. This issue will require careful analysis by the Commission during the course of this proceeding.

## **TRANSPORT**

Verizon claims in its Petition that there are 644 direct routes where the FCC’s triggers are met for purposes of unbundled dedicated transport. As noted above, the evidence presented by Verizon in an effort to support its case must be scrutinized carefully. As the FCC noted, “[e]ach counted self-provisioned facility along a route must be operationally ready to provide transport into or out of an incumbent LEC central office.” *TRO at ¶406*. It is not at all clear that Verizon provided evidence to support this standard.

In addition to a self-provisioning trigger, there is the competitive wholesale facilities trigger. In order to qualify as a competitive wholesale facilities triggering company, “[t]he competitive transport providers must be operationally ready and willing to provide the particular capacity transport on a wholesale basis along the specific route.” *TRO at ¶414*. Again, it is not at all clear that Verizon’s Petition proves that the transport routes it has identified meet this standard.

It is essential that the Commission does not merely “count” providers or routes as identified by Verizon. As noted previously, the Commission must look more deeply into the evidence to determine whether the companies and routes identified by Verizon constitute actual deployment pursuant to the standards set by the FCC.<sup>5</sup>

### **AFTER THE TRIGGERS**

Even if the evidence shows in this case that impairment still exists, that should not be the end of the inquiry. Although Verizon conveniently attempts to avoid the in-depth analysis of economic and operational barriers caused when elements are removed from unbundling requirements, such barriers do exist in Pennsylvania, in particular with respect to unbundled switching. The Commission should ensure that it opens a separate process to address those barriers. The hot cut/electronic loop provisioning collaborative is a start.

The bottom line is that MCI wants to use its switches that it has in Pennsylvania to serve mass markets customers. However, until the operational and economic issues preventing such use are addressed, the use of such switches to serve mass markets customers is not feasible. As MCI noted in its responses to the Appendix B discovery responses in the batch hot cut case at Docket M-00031754, if unbundled switching were to be eliminated today, Verizon would have to provision roughly 51,000 unbundled loops on a monthly basis through an entirely manual process.<sup>6</sup> That is simply not workable.

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<sup>5</sup> It appears from Verizon’s Attachment 5, Map 2 that Verizon included interstate transport routes, or routes that cross into Delaware from Pennsylvania. It is not at all certain that such routes should qualify as dedicated transport routes pursuant to the FCC’s definition because it is unclear that Verizon offers interstate dedicated transport at UNE rates along those routes.

<sup>6</sup> This number is based on only 56 switches in Pennsylvania. It entails 39,000 new installs per month and 19,200 migrations per month in order to convert all existing UNE-P customers to unbundled loops within a year.

WHEREFORE, MCI respectfully requests that the Commission initiate further proceedings in order to receive detailed testimony and evidence regarding the issues raised by Verizon's Petition.

Respectfully submitted,



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Dated: November 14, 2003



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November 14, 2003

**VIA HAND DELIVERY**

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NOV 14 2003

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

DOCUMENT

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On behalf of Sprint Communications Company, L.P. (hereinafter "Sprint"), enclosed for filing, please find an original and three (3) copies of Sprint's Answer to Verizon Pennsylvania Inc.'s Petition to Initiate Proceedings in the above-referenced matter.

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 and first-class mail)

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PA PUBLIC UTILITY COMMISSION  
SECURITY'S BUREAU

ANSWER OF SPRINT COMMUNICATIONS COMPANY, L.P.  
TO VERIZON PENNSYLVANIA INC.'S PETITION  
TO INITIATE PROCEEDINGS

On October 31, 2003, Verizon Pennsylvania, Inc. ("Verizon") filed its Petition to Initiate Proceedings ("Verizon Petition"), along with accompanying testimony, concerning the Federal Communication Commission's ("FCC") recent Triennial Review Order.<sup>1</sup> Pursuant to the Procedural Order entered October 3, 2003 by the Pennsylvania Public Utility Commission ("Commission") in the above-captioned matter, Sprint Communications Company, L.P. (hereinafter "Sprint") submits this Answer to Verizon's Petition. In support thereof, Sprint avers as follows:

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INTRODUCTION

Not surprisingly, Verizon's Petition sets forth a wide-ranging unbundling wish list. If granted as proposed, mass market switching would be unavailable as an Unbundled Network Element ("UNE") in Density Cells 1, 2 and 3 in the Philadelphia, Pittsburgh, Harrisburg, Allentown, Reading, Scranton/Wilkes-Barre, and Lancaster Metropolitan Statistical Areas ("MSAs").<sup>2</sup> Likewise, if granted as proposed, 647 direct transport routes in

<sup>1</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 03-36, *Report And Order And Order On Remand And Further Notice Of Proposed Rulemaking*, released August 21, 2003 ("TRO").

<sup>2</sup> Verizon Petition at ¶ 7; Verizon St. 1.0 at 27.

DOCUMENT

the Capital, Philadelphia and Pittsburgh LATAs would be unavailable on an unbundled basis.<sup>3</sup> Finally, Verizon does not present information concerning high capacity loops, claiming not to have such information.<sup>4</sup>

According to Verizon, the filing represents its “most conservative case” as to where allegedly “evidence is plain and undisputable” for network elements and markets in Pennsylvania that are allegedly “free from impairment.” Verizon has elected to rely solely upon the FCC’s competitive triggers, ostensibly foregoing a potential deployment case that addresses economic or operational impairment.<sup>5</sup>

While addressing these various proposals, the one overriding agenda of Verizon’s filing is to minimize state regulatory review by relegating this Commission’s role to counting competitors and facilities and speculating as to the markets served. This type of mundane, illogical counting exercise espoused by Verizon as a “targeted, granular analysis”<sup>6</sup> runs contrary to the responsibilities delegated to the Commission in the TRO.

- If the issue of competitive triggers was merely a counting exercise – that is, if all that was needed to overturn a national finding of impairment was a simple count of switches or interoffice transport routes – one would have to question why the FCC would feel the need to delegate such a straightforward exercise to the states.

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<sup>3</sup> See also, Verizon St. 1.0 at 40. Verizon Petition at ¶ 24 (“644 direct routes”).

<sup>4</sup> See also, Verizon St. 1.0 at 56 (“Verizon may submit evidence on buildings meeting the high capacity loop triggers....”). In any event, the FCC’s TRO determinations provide insight as to the hurdle that must be overcome in order to relieve Verizon of its UNE loop obligations. See, e.g., TRO at ¶ 325 (DS1 loops); TRO at ¶ 320 (DS3 loops); and TRO at ¶ 311 (dark fiber loops).

<sup>5</sup> Verizon Petition at 3; Verizon Petition at ¶ 16 (“Verizon . . . will instead rest its case solely on the relevant trigger.”). See also, Commission TRO Order at 16 (“If the impairment triggers set forth by the FCC are not satisfied and an incumbent wishes to pursue relief under a ‘potential deployment analysis,’ the Commission suggests that such party file for appropriate relief upon the conclusion of our 9 month investigation. If the incumbent is unwilling to take this course, then the incumbent should propose to the ALJ a feasible way of accomplishing the potential deployment analysis within the 9-month proceeding.”)

- If the issue of competitive triggers was merely a counting exercise – without regard to the *quantity* or *portion* of the mass market being served, it would be possible to identify a situation where three providers, using their own switches in some geographic area, manage to serve only one or two mass market customers each – yet, each contend that the trigger has been met and unbundled switching should no longer be available throughout the market.
- If the issue of competitive triggers was reduced to nothing more than a scavenger hunt for any switches serving any mass market customers, for example, any self-provisioned *enterprise* switches that manage to provide service to a token number of mass market customers could arguably be claimed to have satisfied the triggers.

Clearly, if the granular analysis required of this Commission was simply concerned with counting self-provisioned switches or direct transport routes, the FCC could have accomplished this simple task in the TRO. The granular analysis required of the Commission must entail more than what Verizon suggests. As required by the TRO, a trigger analysis for mass market switching must, at a minimum, demonstrate the feasibility of serving “the mass market” – as opposed to serving a *de minimus* portion of the mass market, or serving a *niche* of the mass market (*e.g.*, non residential customer).

As to mass market switching, the granular analysis required of this Commission must include how much of the mass market is *actively* being served by a competitor and how much of the mass market is *capable* of being served by the competitor. As the TRO explicitly states, the area *capable* of being served by competitors is a key component of this granular

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<sup>6</sup> Verizon TRO Petition at 1, citing TRO ¶187.

analysis. TRO at ¶ 499, fn 1552. Furthermore, the TRO requires that they must be *actively* pursuing customers (TRO at ¶ 499) and “likely to continue to do so.” (TRO at ¶ 500). The Commission must determine whether such claimed self-provisioning providers are using their own switches to provide service to a non-*de minimus* percentage of the mass market, including the residential market.

Similarly, high capacity loops, dedicated transport, and dark fiber are critical network components necessary for competition. The FCC made national findings that CLECs are impaired without unbundled access to these key network elements. The FCC provided specific guidance for the state commissions to follow in order to overcome the national finding of impairment for these elements. However, the bottom line remains that a state commission must be absolutely certain that a CLEC has a real, practical, economic alternative to the ILEC before any loop to a customer location or a route between ILEC wire centers is removed from the TRO’s national list. For example, the Commission must look at specific conditions that exist at each customer location or on each route. Factors include a competitor’s ability to obtain economic collocation, rights-of-way, building access, necessary equipment. Clearly, the granular inquiry required of the Commission must extend beyond taking a snapshot of competitive facilities.

These are but few of the glaring problems with Verizon’s proposal that the Commission simply engage in a “count-the-number-of-CLECs” exercise, rather than conduct a meaningful granular analysis as envisioned by the TRO.

Sprint welcomes this opportunity to provide this initial response to Verizon’s Petition. However, because a complete response to Verizon’s filing will require examination of discovery responses, and because that data will not be available until after submission of this

Answer, Sprint respectfully reserves the right to supplement this Answer through the submission of rebuttal testimony or other format as to be determined by the presiding ALJ. Sprint also reserves the right to test the allegations and assertions made by Verizon in its Petition and accompanying testimony through cross examination undertaken in the context of an on-the-record evidentiary hearing.

## **THE FCC'S MANDATORY REVIEW PROCESS**

### **Triggers: The First Step in an Impairment Review**

1. The FCC charged the individual state commissions with the responsibility for undertaking – in a 9-month timeframe – a granular impairment analysis concerning certain network elements. In its TRO and its subsequent September 17, 2003 Errata, the FCC established the specific criteria to be followed by the states in discharging the obligation to undertake such a granular impairment analysis for relevant geographic markets. In this context, Sprint admits, the FCC set forth a two-step process for state commissions to follow in determining in a 9-month timeframe whether CLECs are “not impaired” in a particular market.

2. Verizon claims that the FCC, through the use of “triggers,” requires the Commission to first examine the existence of actual competition as an indicator of whether or not CLECs are impaired without access to a particular element. However, Sprint notes that the TRO states unambiguously that the triggers are intended to provide evidence of “the technical and economic feasibility of an entrant serving the mass market with its own switch...” TRO at ¶ 501. Thus, Verizon’s reference to the TRO and the competitive triggers

as “objective data” “bright-line rules” should be read in context with the remaining portions of the TRO.

The analysis required of the Commission is different from simply reviewing whether an entrant is managing to serve a *niche* of the mass market, or a *highly-select portion* of the mass market. The analysis is also different from an entrant managing to serve a few mass market customers off of what is otherwise an enterprise switch.

In this regard, paragraph 441 of the TRO is particularly relevant. The FCC specifically rejected the suggestion of the RBOCs that the required analysis “should treat switches deployed to serve large enterprise customers exactly the same as those deployed to serve mass market customers.” TRO at ¶ 441. The FCC found that the RBOCs’ suggestion “ignores the substantial modifications, and attendant costs, necessary to serve mass market customers with an enterprise switch.” *Id.* As the FCC noted, “the fact remains that competitors using their own switches are currently serving extremely few mass market customers, through enterprise switches or otherwise.” *Id.* In these statements it is clear that the FCC acknowledges that a few mass market customers may be served by enterprise switches, but a token number of customers is not sufficient to negate a national finding of impairment. This is the type of issue that must be addressed in any analysis and standard to be applied by the Commission to complete a trigger analysis.

3. Verizon cites to a portion of the TRO for the position that CLEC deployment is the “best indicator” of impairment and that theories of potential deployment are to be considered only if the triggers are not satisfied. The FCC also stated that, as it examines evidence of facilities deployed by CLECs, it will give “substantial weight” to such evidence,

but would “not agree that we must find it conclusive or presumptive of a particular outcome without additional information or analysis.” TRO at ¶ 94.

Simply counting the number of switches deployed or dedicated transport routes utilized by CLECs can not satisfactorily or properly discharge a state commission’s obligation to conduct a granular analysis under the FCC’s TRO. This Commission will not only need to adduce a record that counts, for example, how many switches exist in a market, but will also need to determine how much of the market that switch is serving and whether that level satisfies the trigger at issue. TRO at ¶ 462.

4. Verizon claims, and Sprint denies, that the FCC’s triggers are a “summary device” so that state commissions can avoid delays and protracted proceedings. The existence and application of these competitive triggers do not authorize this Commission to compromise the integrity of, or to take short cuts as to, the granular analysis required of the Commission.

5. It is admitted that the competitive triggers apply to both the mass market switching element and dedicated transport. It is denied that Verizon’s proposed application of those triggers and Verizon’s interpretation of the TRO relative to these two network elements are appropriate or lawful. It is denied that Verizon’s Petition presents “evidence” that satisfies the competitive triggers or the granular analysis required of the Commission is as limited and confining as Verizon argues.

## **SWITCHING TRIGGERS**

### **Switching Triggers**

6. While the FCC has set forth the self-provisioning trigger and the competitive wholesale facilities trigger, Sprint denies that these two competitive triggers for mass market

switching are to be applied as Verizon claims. Sprint strongly denies that the competitive triggers, as applied by Verizon, constitute the “granular analysis” required of the Commission.

As required by the TRO, a trigger analysis for mass market switching must, at a minimum, demonstrate the feasibility of serving “the mass market” – as opposed to serving a *de minimus* portion of the mass market, or serving a niche of the mass market (*e.g.*, non residential customer). The granular analysis required of this Commission must include how much of the mass market is *actively* being served by a competitor and how much of the mass market is *capable* of being served by the competitor. As the TRO explicitly states, the area *capable* of being served by competitors is a key component of this granular analysis. TRO at ¶ 499, fn 1552. Similarly, if a market were defined as an MSA, as Verizon suggests, yet competitors were only collocated in one or two select wire centers – and absent from the remainder of the market’s wire centers – these highly-select collocations would not necessarily demonstrate the “economic and technical feasibility of serving the mass market” as it is defined. TRO at ¶ 501.

7. Verizon relies only on the self-provisioning trigger for its mass market switching case, but reserves the ability “to supplement its filing” if additional CLEC information regarding the wholesale facilities trigger becomes available. Sprint does not oppose Verizon’s ability to supplement its initial filing, so long as limited to include the information that becomes available and so long as parties are given ample opportunity to respond.

8. Sprint denies that Verizon's initial testimony and supporting documentation demonstrates that Verizon meets the FCC's mass market switching triggers in the MSAs (and/or Density Cells) listed by Verizon.

**Defining the Relevant Market**

9.-14. In its filing, Verizon suggests that either MSAs or Density Cells are the appropriate geographic area to serve as the basis for Verizon's triggers-only impairment analysis. Sprint at this time raises a few initial responses. However, Sprint reserves the right to submit additional testimony and evidence on this issue once Verizon's MSA/Density Cell proposal is fully analyzed.

Sprint also disagrees with Verizon's stated interpretation of the TRO regarding the scope of issues underlying the market definition issue and the role of the Commission. However, Sprint generally agrees with some of the rationale offered by Verizon in its testimony in support of using MSAs.

However, Sprint disagrees with Verizon's view as to the use of Density Cells for market definition purposes. When using MSAs for a market definition, it is important to keep in mind that this unit of geography represents the area *throughout which* the concept of impairment will be evaluated. In other words, the "mass market" is found throughout the entire MSA, not merely in portions of the MSA, as Verizon seems to suggest. (Otherwise, it could not reasonably be considered the "mass" market.) The self-provisioning carriers evaluated in a trigger analysis are intended to provide evidence of the feasibility of serving "the mass market," which is found in all parts of the MSA. If Verizon believes that MSAs represent the proper unit of geography from an economic point of view – that is, with regard to market entry and how the market is viewed by an entrant – then it must be willing to

define “serving the mass market” as serving the *entire* MSA, not merely serving portions of the MSA through the use of Density Cells.

15.-18. Sprint does not at this time have a response to Verizon’s chosen litigation strategy of not bringing “a potential deployment case in this proceeding.”<sup>7</sup> Sprint reserves the right to address this issue at a later time during this proceeding.

### **The “Cross Over” Point**

19.-20. As part of an economic and operational analysis, state commissions are required to determine the appropriate cut-off for multi-line DS0 customers. TRO at ¶ 497. The state commissions, however, are already aided by FCC guidance on this issue in that the TRO found a four line cut-off point to be reasonable, sensible and economic. Ultimately, the FCC “authorize[d] the states ... to determine the appropriate cross over point.” TRO at ¶ 499.

Verizon proposes no standard for a cross over point and rejects the TRO’s four line cut-off limit for DS0 customers.

Verizon appears to propose cross over points that vary by CLEC. Without a specific upper cut-off limit, Verizon thereby is able to include more CLECs in its simplistic counting exercise when arguing no impairment relative to mass market switching.<sup>8</sup>

The TRO already determined the “point at which it makes economic sense for a multi-line customer to be served via a DS1 loop.” TRO at ¶¶ 497, 525. The FCC already set forth a workable and sensible standard for an appropriate, economic-based cross over point. Verizon has failed to satisfy its burden of demonstrating that this Commission: (1) should

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<sup>7</sup> Verizon Petition at ¶16.

<sup>8</sup> Verizon St. 1.0 at 18 (“If the CLEC has made the economic decision to treat the customer as a mass market customer and to serve the customer location using voice-grade loops, then the DS0 lines at that customer location should be counted as such for the purposes of the switching impairment analysis.”)

reject the FCC's standard;<sup>9</sup> and (2) should adopt Verizon's open-ended, self-serving cross over proposal. Sprint supports the establishment of the crossover between the mass market and enterprise market using a state-wide average economic crossover analysis consistent with the TRO.

### **The Batch Hot Cut Process**

21. Sprint admits that the Commission is already addressing the issue of batch hot cuts for Verizon in a separate technical conference at docket number M-00031754.

## **DEDICATED TRANSPORT**

### **Dedicated Transport Triggers**

22.-23. As with mass market switching, Verizon again relegates the Commission's obligation to undertake a granular analysis concerning dedicated transport to a simple exercise of counting interoffice transport routes. Verizon's Petition sets forth the components of the actual competitive triggers, but ignores the TRO in all other respects. *See*, response to paragraph 24, immediately below, which is incorporated herein.

24. Verizon's Petition fails to demonstrate satisfaction of either of the TRO's dedicated transport triggers. The FCC recognized two fundamental findings when addressing the impairment findings: (1) It is uneconomic for CLECs to self-deploy; and (2) The evidence showed that CLECs do not have alternatives to incumbent LEC network elements. As a result, the TRO placed a high burden on overcoming these findings.

Under Verizon's view of the granular analysis required by the TRO, the Commission is charged with the task of simply identifying impairment at specific customer-locations (as to loops) or routes that facially satisfy the self-provisioning trigger. Under Sprint's view of

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<sup>9</sup> TRO at ¶¶ 497 ("We expect . . . the appropriate cutoff will be four line absent significant evidence to the contrary.").

the granular analysis required by the TRO, this Commission must assess the conditions existing for each customer-location (concerning DS1, DS3 and dark fiber loops) and each route to determine whether CLECs have realistic, economic alternatives before a customer-location or route is removed from the national impairment list. Thus, it is Sprint's position that the Commission's granular analysis for this trigger must include an examination of the existence of competitive supply and a determination as to the existence of significant barriers to entry such that carriers are foreclosed from deploying additional facilities.

Support for Sprint's position can be found in the TRO itself. For example, concerning transport routes, the FCC recognized that "despite the facial satisfaction of this trigger," the existence of municipal rights-of-way restrictions may mean that competing carriers are unable to deploy new facilities. TRO at ¶ 411. Similarly, with respect to competitive wholesale facility providers, in order to "count" the wholesale provider, that provider must: (a) not be affiliated with the ILEC or another competitive provider at the customer location or on the route; (b) be operationally ready and willing to provide the particular capacity on a wholesale basis on the route or at the customer location; (c) have facilities terminated or collocated in the incumbent LEC central office; (d) make the specific capacity widely available in order to avoid counting alternative facilities where the competitor is not willing to offer capacity to other carriers. TRO at ¶ 414.

Additional support in the TRO exists demonstrating that the granular analysis envisioned in a triggers analysis consists of more than an exercise in counting facilities. For example, while the Commission is not required to evaluate the financial stability or well-being of an alternative provider, the Commission must determine whether the alternative carrier is currently offering and able to provide service. For example, the FCC directed state

commissions to review whether “a competitive transport provider has filed a notice to terminate service along the route in question.” TRO at ¶ 415, fn. 1284.

In addition to determining impairment, in the event that a particular route actually meets the rigorous standards for overcoming the strong presumption of impairment, the Commission is required to adopt a transition schedule. TRO at ¶ 417. It is Sprint’s position that this transition must be sufficiently long to allow the CLECs to, in fact, make arrangements with any alternative providers, if they indeed exist, or to build an alternative facility themselves. Unless or until the CLEC completes either of these activities, Verizon must continue providing the UNE.

In summary, the Commission is required to do more than “count CLECs” or transport facilities. The Commission must make sure that requesting carriers truly have alternatives available. If a proper granular analysis is undertaken and the triggers for dedicated transport are satisfied, the Commission must nonetheless determine an appropriate transition period.

25.<sup>10</sup> Sprint will provide documents and information submitted in this proceeding to the Verizon contacts listed in Paragraph 25.

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<sup>10</sup> Paragraph 24 appears twice in Verizon’s Petition.

## CONCLUSION

**WHEREFORE**, for the reasons set forth above, Sprint submits that the Commission should deny Verizon's request for a finding of "no impairment" concerning mass market switching and dedicated transport (DS1, DS3 and dark fiber), as requested by Verizon, and concerning unbundled high capacity loops (DS1, DS3 and dark fiber loops), as suggested by Verizon.

Respectfully submitted,



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**On behalf of Sprint Communications  
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DATED: November 14, 2003

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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                            )

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**CERTIFICATE OF SERVICE**

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

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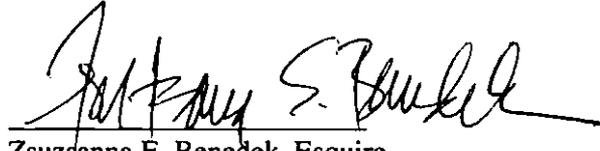
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