

Allegiance St.]

BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION 1-28-04

JK

HLS

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

DOCUMENT

**DIRECT TESTIMONY OF
RICHARD ANDERSON
ON BEHALF OF**

**DOCKETED
FEB 12 2004**

ALLEGIANCE TELECOM OF PENNSYLVANIA, INC.

Dated: January 9, 2004

**RECEIVED
2004 JAN 30 AM 10:10
SECRETARY'S BUREAU**

****PUBLIC VERSION****

1 **Q1. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A1. My name is Richard Anderson. I am Senior Vice President, Network Planning,
3 Engineering and Operations for Allegiance Telecom, Inc. (“Allegiance”), the
4 parent company of Allegiance Telecom of Pennsylvania, Inc. My business
5 address is 700 East Butterfield, Road, Lombard, IL 60148.

6

7 **Q2. WHAT ARE YOUR JOB RESPONSIBILITIES AT ALLEGIANCE?**

8 A2. I am responsible for the planning, administration, engineering and operations of
9 Allegiance’s network infrastructure. These responsibilities include network and
10 transport planning, traffic and capacity management, and network administration
11 including 911, operator services and number administration. In addition, I
12 oversee all engineering functions including switch, transport, central office and
13 data. Finally, I am in charge of network operations which includes, among other
14 things, the network operations control center, the installation, repair and
15 maintenance force. internal communications and data operations.

16

17 **Q3. BRIEFLY DESCRIBE YOUR PRIOR BUSINESS EXPERIENCE AND**
18 **EDUCATIONAL BACKGROUND.**

19 A3. I was one of the original founders of Allegiance in 1997. Prior to that, I was with
20 Metropolitan Fiber Systems (MFS), planning and supervising that carrier's rollout
21 of several new markets. Prior to MFS, I held various planning, engineering and
22 operations positions with Ameritech Services and Wisconsin Telephone Co. My

1 experience spans 39 years in the telecommunications industry with both
2 incumbent and competitive carriers. I earned a Bachelor of Arts degree in liberal
3 arts from DePaul University in Chicago.

4 **Q4. HAVE YOU TESTIFIED PREVIOUSLY IN A REGULATORY**
5 **PROCEEDING?**

6 A4. Yes. I testified in an arbitration case between Allegiance and SBC Ohio before
7 the Public Utilities Commission of Ohio, Case No. 01-724-TP-ARB and I am an
8 Allegiance witness in Michigan's Triennial Review Implementation Case No.
9 13796.

10 **Q5. PLEASE DESCRIBE ALLEGIANCE TELECOM.**

11 A5. Allegiance is a national, facilities-based, integrated communications provider that
12 offers a competitive, one-stop-shopping package of telecommunications services,
13 including local, long distance and Internet services, to business, government and
14 other institutional users in 36 metropolitan areas across the United States. In
15 Pennsylvania, Allegiance provides service in the Philadelphia and Pittsburgh
16 areas through its local operating subsidiary, Allegiance Telecom of Pennsylvania,
17 Inc.

18
19 **Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A6. The purpose of my testimony is to rebut a number of the findings made by
21 Verizon Pennsylvania, with regard to Allegiance Telecom's transport facilities, in
22 the Direct Testimony of Debra M. Berry and Carlo Michael Peduto, II filed on
23 behalf of Verizon Pennsylvania on October 31, 2003 and supplemented on

1 December 19, 2003 with testimony by Harold E. West. III and Carlo Michael
2 Peduto, II. Additionally, I also propose that this Commission needs to establish a
3 process to verify data provided by Verizon and the CLECs before any transport
4 routes are found to be non-impaired. Finally, I propose that the Commission
5 needs to develop a transition plan should the Commission find no impairment on
6 specific dedicated transport routes.

7
8 **Q7. PLEASE DESCRIBE THE ALLEGIANCE NETWORK IN**
9 **PENNSYLVANIA.**

10 A7. Allegiance has installed two Class 5, 5ESS switches in Pennsylvania, one in
11 Philadelphia and one in Pittsburgh, and has built **REDACTED** Philadelphia
12 collocations and **REDACTED** Pittsburgh collocations in Verizon Pennsylvania wire
13 centers. Connecting the switch and collocations is a distribution network.
14 Attachment RA-1 depicts a typical design for the Allegiance distribution network.
15 We generally use DS3 or OCn transmission facilities to carry traffic between
16 Allegiance collocation sites and our switching center. We lease loop facilities, as
17 UNEs from Verizon Pennsylvania, to connect end user customers to the various
18 collocations.

19
20 **Q8. PLEASE DESCRIBE THE DEDICATED TRANSPORT ALLEGIANCE**
21 **HAS DEPLOYED IN ITS NETWORK IN PENNSYLVANIA.**

22 A8. Allegiance generally uses dedicated interoffice DS3 and OCn transmission
23 facilities to carry traffic between Allegiance's switch and collocation sites.

1 There are two sources of dedicated transport available to Allegiance: 1) DS3 or
2 dark fiber UNEs or special access provided by Verizon Pennsylvania; or 2) DS3s
3 or dark fiber leased from a third party provider. Attachment RA-1 shows the
4 typical dedicated transport configurations that would be found in the Allegiance
5 network in Pennsylvania. The illustration shows a fiber ring connecting two
6 collocation sites to the Allegiance switch. The underlying dark fiber facilities can
7 be either leased from the incumbent carrier as UNEs or, where available, can be
8 procured from another provider. In either situation, we light the fiber with our
9 own optronics to provide the desired transmission level. In addition to fiber,
10 Allegiance typically leases DS3s to interconnect additional collocation sites,
11 again, either as UNEs from Verizon Pennsylvania or from a third party where
12 alternative providers offer these services.

13
14 **Q9. HOW DOES ALLEGIANCE DECIDE ON THE TYPE OF TRANSPORT TO**
15 **DEPLOY?**

16 A9. Allegiance employs several criteria in making the decision between purchasing
17 dark fiber or leasing a transport circuit. First and foremost is whether we have a
18 choice of providers on particular routes. In many cases, we do not have any
19 option other than to use Verizon Pennsylvania. Where we do have a choice of
20 providers, the relative cost of the options is obviously a prime consideration.
21 However, availability and ease of deployment are also significant factors.
22 Generally, a competitive carrier like Allegiance manages its facilities to ensure
23 that there is capacity available to serve existing and future demand. Therefore,

1 we are continually optimizing the distribution network as demand grows to take
2 advantage of higher bandwidth and less costly transport. For example, when
3 Allegiance first built its network in Pennsylvania, each collocation was served by
4 a single DS3 circuit running from the wire center back to our switch. As the
5 business grew, we investigated and ultimately purchased dark fiber from a third
6 party provider to connect several of our collocations because dark fiber provided
7 the best economic solution for our current and estimated future capacity needs in
8 those locations.

9
10 **Q10. DOES ALLEGIANCE PURCHASE DEDICATED TRANSPORT FROM**
11 **VERIZON PENNSYLVANIA?**

12 A10. Yes. In Pennsylvania, we have connected the majority of our central office pairs
13 using Verizon Pennsylvania UNE DS3 transport.

14
15 **Q11. DOES ALLEGIANCE PROCURE DEDICATED TRANSPORT FROM**
16 **OTHER CARRIERS IN PENNSYLVANIA?**

17 A11. In Pennsylvania, Allegiance has procured DS3s from REDACTED to connect our
18 Philadelphia switch to individual collocations in Verizon wire centers.

19
20 **Q12. HAS ALLEGIANCE PROCURED DARK FIBER FROM CARRIERS IN**
21 **PENNSYLVANIA?**

22 A12. Yes, we have procured dark fiber from REDACTED and REDACTED. Once we
23 determined that dark fiber was the most economical choice for us in several of our

1 collocations, we investigated the availability of purchasing dark fiber from third
2 parties.

3

4 **Q13. HAVE YOU READ VERIZON PENNSYLVANIA'S PETITION TO**
5 **INITIATE PROCEEDINGS AND THE TESTIMONY OF DEBRA M.**
6 **BERRY AND CARLO MICHAEL PEDUTO II?**

7 A13. Yes, I have. I understand from the testimony that Verizon claims we count
8 against the self-provisioning trigger for transport for **REDACTED** routes in
9 Pennsylvania and that we count as a wholesale provider for **REDACTED** routes.

10

11 **Q14. DO YOU AGREE WITH VERIZON'S IDENTIFICATION OF**
12 **ALLEGIANCE'S SELF PROVISIONED ROUTES IN PENNSYLVANIA?**

13 A14. No, in its supplemental testimony, filed December 19th, 2003 Verizon identifies
14 Allegiance as self-provisioning **REDACTED** transport routes in Pittsburgh and
15 **REDACTED** routes in Philadelphia. We have self-provisioned fiber rings in both
16 cities that supplanted UNE and/or special access transport that we previously
17 procured from Verizon. All of Allegiance's fiber ring circuits are "home runned"
18 at the electrical level to our switch. Thus, a physical path exists between various
19 A and Z locations on the rings, but a logical point-to-point path does not exist
20 between pairs of offices. Without network modifications, including the
21 installation and provisioning of add-drop multiplexers, Allegiance does not have
22 point-to-point transport capability between any A and Z locations in
23 Pennsylvania.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Q15. WHY DOES ALLEGIANCE DISAGREE WITH CERTAIN ROUTES THAT VERIZON IDENTIFIED AS ALLEGIANCE SELF PROVISIONED?

A15. First off, Verizon has incorrectly included in its list of Allegiance self-provisioned routes a number of instances where we are still using Verizon UNE transport and have not self-provisioned the fiber. For example, Allegiance purchases UNE transport from Verizon between REDACTED and REDACTED, and REDACTED and REDACTED, yet Verizon has included these pairs on its list of Allegiance self-provisioned routes. Second, Verizon is apparently counting as a self-provisioned route any pair of central offices where we have collocations in which we have installed and lit dark fiber. Verizon assumes, without any evidence, that all such office pairs are connected together when in fact this is not the case. As already discussed, none of the nodes on our fiber rings are provisioned such that there is a defined point-to-point electrical circuit between any pair of central offices. Additionally, these rings are not interconnected with each other and do not satisfy the FCC requirement that “each counted self-provisioned facility along a route must be operationally ready to provide transport into or out of an incumbent LEC central office.” TRO ¶ 406. Of course even accepting Verizon’s assumption would only account for REDACTED of the routes in Pittsburgh, not the REDACTED Verizon claims are self-provisioned. Similarly, in Philadelphia, under the Verizon assumption, we would have REDACTED self-provisioned routes, not the REDACTED Verizon claims we have.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Q16. VERIZON HAS IDENTIFIED REDACTED PHILADELPHIA ROUTES AND REDACTED PITTSBURGH ROUTES AS BEING PROVIDED ON A WHOLESALE BASIS BY ALLEGIANCE, DO YOU AGREE?

A16. No, Allegiance has not provided any wholesale transport in Pennsylvania.

Q17. BUT HAS ALLEGIANCE FILED A TARIFF THAT LISTS A DEDICATED TRANSPORT OFFERING IN ITS PENNSYLVANIA?

A17. Yes. Our Pennsylvania Access Tariff does list dedicated transport. However, this tariff was filed in 2002 when Allegiance was just entering the Pennsylvania market and had not finalized its product offerings. Although the tariff is still on file, we have not sold any dedicated transport services to other carriers. We do not market wholesale transport services today and are not capable of providing dedicated transport on a widely available basis. In addition, as a practical matter, we are not operationally ready to provision, administer and actively maintain dedicated transport to third parties.

Q18. IS ALLEGIANCE SATISFIED WITH THE ACCURACY OF THE DATA UTILIZED BY VERIZON'S WITNESSES TO SUPPORT THEIR TESTIMONY?

A18. No. Verizon, as stated previously, has incorrectly identified Allegiance self-provisioned routes. And it has claimed Allegiance as a wholesale provider when we have in fact provided no wholesale transport to any other CLEC in

1 Pennsylvania. If our experience is representative of how Verizon has collated the
2 data for other CLECs, it is clear that Verizon has grossly overstated the facts as to
3 self-provisioned and wholesale transport in Pennsylvania. The Commission needs
4 to establish a formal verification process before it can rely on the data Verizon
5 uses in its testimony to determine routes that meet the FCC's triggers for non-
6 impairment.

7

8 **Q19. WHAT TYPE OF A DATA VERIFICATION PROCESS SHOULD THE**
9 **COMMISSION ESTABLISH?**

10 A19. Allegiance suggests that the Commission should act as a clearing house and
11 require each certified CLEC to verify the transport routes which it self provisions
12 and those which it offers up for wholesale. This verified data then should become
13 the basis for determining whether the FCC's triggers for non-impairment on any
14 given transport route have been met.

15

16 **Q20. ARE THERE TRANSITION ISSUES THAT MUST BE ADDRESSED BY**
17 **THE COMMISSION IF IT FINDS NO IMPAIRMENT ON A TRANSPORT**
18 **ROUTE?**

19 A20. Yes. Should the Commission conclude that there is no impairment on certain
20 dedicated transport routes, Allegiance will need time to identify other providers,
21 verify available capacity and groom existing services on to alternative facilities.

22

23 **Q21. WHAT TYPE OF TRANSITION PLAN WOULD BE APPROPRIATE?**

1 A21. Allegiance believes that the Commission should order that the existing month-to-
2 month TELRIC prices for the routes for which no impairment is found be
3 maintained for 12 months to give CLECs adequate time to negotiate new prices
4 with Verizon or to make arrangements with other providers. In addition, the
5 pricing in any existing longer-term contracts that are in place on the affected
6 routes should be maintained through the end of the contract period.

7

8 **Q22. PLEASE SUMMARIZE YOUR TESTIMONY.**

9 A22. As a competitive facilities-based telecommunications provider, Allegiance utilizes
10 dedicated transport and loop facilities procured from Verizon Pennsylvania and
11 other third party suppliers to provide service to customers in Pennsylvania.
12 Although we utilize alternative suppliers, their limited presence makes us very
13 dependent on Verizon Pennsylvania for dedicated transport and especially for
14 DS0 and DS1 loops in the Philadelphia and Pittsburgh areas.

15

16 **Q23. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A23. Yes.

18

19

20

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

OCA ~~Cross-Examination~~ ^{Hearing} Exhibit No. 2
Date Entered 1-28-04 465

JK

DOCUMENT

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:07
SECRETARY'S BUREAU

10-Q 1 d10q.htm CTE--FORM 10-Q

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-Q

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2003

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the transition periods from _____ to _____

Commission file number 0-11053

COMMONWEALTH TELEPHONE ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction of
incorporation or organization)

23-2093008
(IRS Employer Identification No.)

100 CTE Drive
Dallas, Pennsylvania 18612-9774
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (570) 631-2700

(Former name, former address and former fiscal year,
if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirement for the past 90 days. YES NO

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). YES NO

As of September 30, 2003 there were 23,966,085 shares of the registrant's common stock, \$1.00 par value per share, outstanding.

Table of Contents

These statements are generally accompanied by words such as “intend,” “anticipate,” “believe,” “estimate,” “expect” or similar statements. Our forward-looking statements involve risks and uncertainties that could significantly affect expected results in the future differently than expressed in any forward-looking statements we have made. These risks and uncertainties include, but are not limited to:

- uncertainties relating to our ability to further penetrate our markets and the related cost of that effort;
- economic conditions, acquisitions and divestitures;
- government and regulatory policies;
- the pricing and availability of equipment, materials and inventories;
- technological developments;
- reductions in rates or traffic that is subject to access charges;
- changes in the competitive environment in which we operate; and
- the receipt of necessary approvals.

Although we believe that the assumptions underlying our forward-looking statements are reasonable, any of the assumptions could prove inaccurate and, therefore, we cannot provide any assurance that the results contemplated in such forward-looking statements will be realized. The inclusion of this forward-looking information should not be regarded as a representation by us or any other person that the future events, plans or expectations that we contemplate will be achieved. Furthermore, past performance in operations and share price is not necessarily predictive of future performance. The following discussion should be read in conjunction with the attached Condensed Consolidated Financial Statements and notes thereto and with the Company’s audited financial statements and notes thereto included in the Company’s Form 10-K, as amended, for the fiscal year ended December 31, 2002.

Overview and Segments

Our two primary operations are Commonwealth Telephone Company, or CT, which is a rural incumbent local exchange carrier (“RLEC”), and CTSI, LLC, our RLEC edge-out operation and a competitive local exchange carrier (“CLEC”). We also have another business segment labeled “Other,” which is comprised of telecommunications-related businesses that all operate in the deregulated segments of the telecommunications industry and support the operations of our two primary operating companies. These support businesses are epix(R) Internet Services (“epix”), a rural Internet service provider; Jack Flash(R) (“Jack Flash”), a broadband data service that uses DSL technology to offer high-speed Internet access and digital connectivity solutions; Commonwealth Communications (“CC”), a provider of telecommunications equipment and facilities management services; and Commonwealth Long Distance Company (“CLD”), a long-distance reseller. Both epix and Jack Flash results included in Other represent the portion of these businesses in CT’s territory. Other also includes our corporate financing entity.

CT has been operating in various rural Pennsylvania markets since 1897. As of September 30, 2003, our RLEC served over 338,500 switched access lines. In 1997, we formally launched our facilities-based RLEC edge-out operation, CTSI. CTSI operates in three “edge-out” regional Pennsylvania markets that border CT’s markets and that, we believe, offer attractive market demographics, such as higher population density and a higher concentration of businesses.

Beginning in 1998, CTSI expanded beyond its original three “edge-out” markets into five additional expansion markets in Pennsylvania, New York, Ohio and West Virginia. At the end of 2000, we developed an exit strategy for these “expansion” markets in order to refocus our attention on our three original “edge-out” markets. This strategy has allowed us to significantly reduce our capital needs. We had completed our withdrawal from these markets by June 30, 2001.

Table of Contents

CTSI served over 137,900 switched access lines as of September 30, 2003, which were mainly business customers. Recently, CTSI announced the extension of its existing business operations into select areas of Pennsylvania's Lehigh Valley. We view this opportunity as an extension of our current activities, rather than the establishment of a fourth regional market.

Revenue

CT revenue is derived primarily from access, local service, enhanced services and intraLATA toll. IntraLATA toll revenue is derived from customers who have chosen us to provide local long-distance service. Access revenue consists primarily of charges paid by long-distance companies for access to our network in connection with the completion of long-distance telephone calls. Local service revenue consists of charges for local exchange telephone services, including monthly tariffs for basic local service. Enhanced services revenue is derived from service for special calling features, such as Caller ID and Call Waiting.

CTSI's revenue is derived primarily from access, local service, competitive access, Internet access from dial-up, dedicated and DSL, local long-distance (intraLATA toll) and long-distance service revenue. Access revenue consists primarily of charges paid by long-distance companies and other non-CLEC customers for access to our network in connection with the completion of long-distance telephone and local calls and the delivery of other services. Access revenue also includes recurring trunking revenue and reciprocal compensation. Local service revenue consists of charges for local exchange telephone services, including monthly recurring charges for basic services and special calling features. Competitive access revenue consists of charges for point-to-point connections. Internet access revenue consists of charges for dial-up and dedicated Internet access provided to CTSI customers. DSL revenue consists of charges for high-speed Internet access and digital connectivity solutions provided to CTSI customers. Long-distance revenue consists of charges for long-distance service paid by CTSI customers.

Our "Other" business segment includes a portion of the revenue from epix and Jack Flash and all of the revenues from Commonwealth Communications and Commonwealth Long Distance Company. epix revenue for this segment consists of dial-up Internet revenue charges from customers within CT's service territory and non-CTSI customers outside CT's territory. Jack Flash revenue for this segment consists of charges for DSL service from customers within CT's service territory. Commonwealth Communications generates revenue primarily from telecommunications projects including installation of PBX systems for business customers, cabling projects, and telecommunications systems design. Commonwealth Long Distance primarily derives its revenue from long-distance customers within CT's operating territory.

Costs and Expenses

Our costs and expenses excluding other operating expenses for each of our segments primarily include access charges and other direct costs of sales, payroll and related benefits, selling and advertising, software and information system services and general and administrative expenses. These costs have increased over time as we have grown our operations and revenues. We expect these costs to continue to increase as our revenue growth continues, but generally at a slower rate than revenue growth. CTSI also incurs additional costs related to leased local loop charges associated with providing last mile access, circuit rentals, engineering costs, colocation expense, terminating access for local calls and long-distance expense. Commonwealth Long Distance also incurs long-distance expense associated with purchasing long-distance minutes on a wholesale basis from third party providers. Commonwealth Communications also incurs expenses primarily related to equipment and materials used in the course of the installation and provisioning of service.

Other operating expenses include depreciation and amortization, management fees (related party), restructuring charges (reversals) and the Voluntary Retirement Program.

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

OCA ^{Hearing} ~~Cross Examination~~ Exhibit No. 3
Date Entered 1/28/04

1/28/04
jk

DOCUMENT

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:07
SECRETARY'S BUREAU

MM
5/6/03

RECEIVED

RECEIVED

03 MAY 2003

APR 29 2003

TELECOMMUNICATIONS SERVICE PROVIDERS
COMPETITIVE LOCAL EXCHANGE CARRIERS (CLEC)

BUREAU OF
FIXED UTILITY SERVICES

CLASS C ANNUAL REPORT

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

OF
FiberNet of Pennsylvania, LLC

Exact legal name of reporting telephone corporation
(If name was changed during year, show also the previous name and date of change)

211 Leon Sullivan Way
Charleston, WV 25301

(Address of principal business office at end of year)

FOR THE
YEAR ENDED DECEMBER 31, 2002
TO THE
COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Name, title, address and telephone number (including the area code), E-Mail Address,
and Web Site Address of the person to be contacted concerning this report:

Thomas J. Juracek

1873 South Bellaire Street, Suite 1550

Denver, CO 80222

303-756-5600

tjuracek@cablecomm.com

8. BALANCE SHEET					
Assets and Other Debits					
Provide total company amounts on the basis of the Pennsylvania System of Accounts.					
Any jurisdictional differences between the FCC and PAPUC should be distributed to each account.					
Line No.	Accounts (a)	Sch. No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)	Increase or (Decrease) (e)
CURRENT ASSETS					
1	1130	-	25,425	118,783	93,358
2	1140	-			
3	1150	-			
4	1160	-			
5	1180	15	14,049	60,558	46,509
6	1181	-			
7	1190.1	16			
8	1190.2	-			
9	1191	-			
10	1200.1	17			
11	1200.2	-			
12	1201	-			
13	1210	-			
14	1220	-			
15	1290	-			
16	1300	18			
17	1310	-			
18	1320	-			
19	1330	-			
20	1350	-			
21	1360	-			
22			39,474	179,341	139,867
NONCURRENT ASSETS					
23	1401.1	-			
24	1401.2	-			
25	1402	-			
26	1406	-			
27	1407	-			
28	1408	-			
29	1410	-			
30	1438	-			
31	1439	-			
32	1500	-			
33	1510	-			
34			-	-	-
TELECOMMUNICATIONS PLANT					
35	2001	12	3,363,501	3,591,161	227,660
36	2002	12			
37	2003	12			
38	2004	12			
39	2005	12			
40	2006	12			
41	2007	-			
42		-	3,363,501	3,591,161	227,660
43	3100-3300	-	154,696	371,791	217,095
44	3410-3600	-			
45			3,208,805	3,219,371	10,565
46			3,248,279	3,398,712	150,432

For Notes to Balance Sheet see Page 12

* If there is activity in this account, provide details on a separate sheet.

8. BALANCE SHEET (continued)					
Liabilities and Other Credits					
Provide total company amounts on the basis of the Pennsylvania System of Accounts.					
Any jurisdictional differences between the FCC and PAPUC should be distributed to each account.					
Line No.	Accounts (a)	Sch. No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)	Increase or (Decrease) (e)
	CURRENT LIABILITIES				
1	4010.1	19	73,932	823,932	750,000
2	4010.2	-	432,181	402,315	(29,866)
3	4020.1	20			
4	4020.2	-			
5	4030	-			
6	4040	21			
7	4050	-			
8	4060	-			
9	4070	18			
10	4080	18			
11	4100	-			
12	4110	-			
13	4120	-	45,483	63,297	17,814
14	4130	-			
15	Total Current Liabilities		551,596	1,289,544	737,948
	LONG-TERM DEBT				
16	4210	-			
17	4220	-			
18	4230	-			
19	4240	-			
20	4250	-			
21	4260	-			
22	4270	-		20,030	20,030
23	Total Long-Term Debt		-	20,030	20,030
	OTHER LIABILITIES & DFD. CREDITS				
24	4310	-			
25	4320	-			
26	4330	-			
27	4340	-			
28	4350	-			
29	4360	-			
30	4370	-			
31	Total Other Liabilities & Dfd. Credits		-	-	-
	STOCKHOLDERS' EQUITY				
32	4510.1	-			
33	4510.2	-			
34	4520	-			
35	4530	-			
36	4540	-	2,974,493	3,187,094	212,601
37	4550.1	-			
38	4550.2	-			
39	4550.3	-	(277,811)	(1,097,958)	(820,147)
40	Total Stockholders' Equity		2,696,682	2,089,137	(607,546)
41	Total Liabilities and Other Credits		3,248,278	3,398,712	150,432

For Notes to Balance Sheet see Page 12.

9. NOTES TO BALANCE SHEET

1. The space below is provided for notes regarding the balance sheet. These notes shall correspond to those accounts and reports using Generally Accepted Accounting Principles (GAAP).

NOTES:

10. INCOME AND RETAINED EARNINGS STATEMENT				
Provide total company amount on the basis of the Pennsylvania Uniform System of Accounts.				
Jurisdictional differences between the FCC and the PAPUC should be distributed to each account.				
Line No.	Item (a)	Sch. No. (b)	Total	
			Current Year (c)	Increase or Decrease from Preceding Year (d)
	INCOME			
	TELEPHONE OPERATING INCOME			
1	Operating Revenues	23	124,669	75,789
2	Operating Expenses	24	(944,816)	(706,630)
3	Net Operating Revenues		(820,147)	(630,841)
	OTHER OPERATING INCOME AND EXPENSE			
4	7110 Income From Custom Work	-	-	-
5	7130 Return From Nonregulated Use of Regulated Facilities	-	-	-
6	7140 Gains/Losses From Foreign Exchange	-	-	-
7	7150 Gains/Losses From Disposition of Land & Artworks	-	-	-
8	7160 Other Operating Gains and Losses	-	-	-
9	Total Other Operating Income and Expenses		-	-
	OPERATING TAXES			
10	7210 Operating Investment Tax Credits-Net	-	-	-
11	7220 Operating Federal Income Taxes	-	-	-
12	7230 Operating State and Local Income Taxes	-	-	-
13	7240 Operating Other Taxes	-	-	-
14	7250 Provision for Deferred Operating Income Tax-Net	-	-	-
15	Total Operating Taxes		-	-
16	Net Operating Income		(820,147)	(630,841)
	NONOPERATING INCOME AND EXPENSES			
17	7310 Dividend Income	-	-	-
18	7320 Interest Income	-	-	-
19	7330 Income From Sinking and Other Funds	-	-	-
20	7340 Allowance For Funds Used During Construction (AFUDC)	-	-	-
21	7350 Gains/Losses From the Disposition of Property	-	-	-
22	7355 Equity in Earnings of Affiliated Companies	-	-	-
23	7360 Other Nonoperating Income	-	-	-
24	7370 Special Charges	-	-	-
25	Subtotal Nonoperating Income and Expense		-	-
	NONOPERATING TAXES			
26	7410 Nonoperating Investment Tax Credits-Net	-	-	-
27	7420 Nonoperating Federal Income Taxes	-	-	-
28	7430 Nonoperating State and Local Income Taxes	-	-	-
29	7440 Nonoperating Other Taxes	-	-	-
30	7450 Provision for Deferred Nonoperating Income Tax-Net	-	-	-
31	Subtotal Nonoperating Taxes		-	-
32	Total Nonoperating Income			
33	Income Available for Fixed Charges			
	INTEREST AND RELATED ITEMS			
34	7510 Interest on Funded Debt	-	-	-
35	7520 Interest Expense-Capital Leases	-	-	-
36	7530 Amortization of Debt Issuance Expense	-	-	-
37	7540 Other Interest Deductions	-	-	-
38	Total Interest and Related Items		-	-
39	Income Before Extraordinary Items		(820,147)	(630,841)

10. INCOME AND RETAINED EARNINGS STATEMENT (Continued)

Line No.	Item (a)	Sch. No. (b)	Total	
			Current Year (c)	Increase or Decrease from Preceding Year (d)
EXTRAORDINARY ITEMS				
40	7610 Extraordinary Income Credits	-		
41	7620 Extraordinary Income Charges	-		
42	7630 Current Income Tax Effect of Extraordinary Items-Net	-		
43	7640 Provision for Deferred Income Tax Effect of Items-Net	-		
44	Total Extraordinary Items			
JURISDICTIONAL DIFFERENCES AND NONREGULATED INCOME ITEMS				
45	7910 Income Effect of Jurisdictional Ratemaking Differences-Net	-		
46	7990 Nonregulated Net Income	-		
47	Total Jurisdictional Differences and Extraordinary Items	-		
48	Net Income			
RETAINED EARNINGS				
49	4550.3 Unappropriated Retained Earnings (Beginning of Period)	-	(277,811)	(190,671)
50	4550.4 Balance Transferred from Income	-	(820,147)	(629,476)
51	4550.5 Appropriations of Retained Earnings	-		
52	4550.6 Dividends Declared- Preferred Stock	22		
53	4550.7 Dividends Declared- Common Stock	22		
54	4550.8 Adjustments to Retained Earnings	-		
55	Net Change to Unappropriated Retained Earnings		(820,147)	(629,476)
56	4550.3 Unappropriated Retained Earnings (End of Period)	-	(1,097,958)	(820,147)
57	4550.1 Appropriated Retained Earnings (End of Period)	-		
58	Total Retained Earnings		(1,097,958)	(820,147)
UNAPPROP. UNDISTRIBUTED AFFILIATE EARNINGS				
59	4550.2 Unapprop. Undistributed Affiliate Earnings (Beg. of Period)			
60	Equity in Earnings for Period	-		
61	Dividends Received	-		
62	Other Changes (Explain)	-		
63	4550.2 Unapprop. Undistributed Affiliate Earnings (End of Period)			

NOTES TO INCOME AND RETAINED EARNINGS STATEMENT

Note 1. Refunds to subscribers, in the event of an adverse decision in pending rate proceedings, would reduce the amount of "Operating Revenues" for the current year by approximately.....

11. STATEMENT OF CASH FLOWS					
Line No.	Description (a)	Current Year Amount (b)	Current Year Amount (c)	Prior Year Amount (d)	Prior Year Amount (e)
	<u>INCREASE/DECREASE IN CASH & CASH EQUIVALENTS:</u>				
	<u>Cash Flows From Operating Activities:</u>				
1	Net Income/Loss		(820,147)		(190,671)
	<u>Adjustments to Reconcile Net Income to Net Cash Provided by Operating Activities:</u>				
2	Depreciation and Amortization	217,094		108,121	
3	Provision for Losses for Accounts Receivables				
4	Deferred Income Taxes - Net				
5	Allowance for Funds Used During Construction				
6	Net Change in Operating Receivables	(46,510)		60,443	
7	Net Change in Materials, Supplies & Inventories				
8	Net Change in Operating Payables & Accrued Liabilities	737,948		395,376	
9	Net Change in Other Assets and Deferred Charges				
10	Net Change in Other Liabilities and Deferred Credits				
11	Other				
12	Total Adjustments	908,532	908,532	563,940	563,940
13	Net Cash Provided by/Used in Operating Activities		88,386		373,269
	<u>Cash Inflows/Outflows from Investing Activities:</u>				
14	Construction/Acquisition of Property, Plant and Equipment	(227,660)		(2,049,017)	
15	Proceeds from Disposals of Property, Plant and Equipment				
16	Investments in & Advances to Affiliates				
17	Proceeds from Repayment of Advances				
18	Other Investing Activities				
19	Net Cash Provided by/Used in Investment Activities	(227,660)	(227,660)	(2,049,017)	(2,049,017)
	<u>Cash Flows from Financing Activities:</u>				
20	Net Increase/Decrease in Short-Term Debt				
21	Advances from Affiliates				
22	Repayment of Advances from Affiliates				
23	Proceeds from Long-Term Debt				
24	Repayment of Long-Term Debt				
25	Payment of Capital Lease Obligations				
26	Proceeds from Issue of Common Stock/Equity Investment from Parent	232,632		1,699,724	
27	Repurchase of Treasury Shares				
28	Dividends Paid				
29	Other Financing Activities				
30	Net Cash Provided by Financing Activities	232,632	232,632	1,699,724	1,699,724
31	Effect of Exchange Rate Changes on Cash				
32	Net Increase/Decrease in Cash and Cash Equivalents		93,358		23,976
33	Cash & Cash Equivalents - Beginning of Period		25,425		1,449
34	Cash & Cash Equivalents - End of Period		118,783		25,425

23. INTRASTATE OPERATING REVENUES

Intrastate Revenues to be reported below are applicable to only those revenues accrued within the Commonwealth of Pennsylvania.

Line No.	Item (a)	Incumbent ILEC Operations (b)	Resale CLEC Operations (c)	Facilities Based CLEC Operations (d)	Total For the Year (e)
	Local Network Services Revenues				
1	Basic Area Revenue			59,423	59,423
2	Optional Extended Area Revenue				-
3	Public Telephone Revenue				-
4	Customer Premises Revenue				-
5	Other Local Exchange Revenue				-
6	Other Local Exchange Revenue Settlements			7,000	7,000
7	Total Local Network Services Revenues	0	0	66,423	66,423
	Network Access Services Revenues				
8	End User Revenue				
9	Switched Access Revenue (Interstate)				
10	Special Access Revenue				
11	State Access Revenue				
12	ITORP				
13	Carrier				
14	Total Network Access Services Revenues	0	0	0	0
15	Private Line Revenue (CAP)			46,206	46,206
	Long Distance Toll Revenues				
16	LD Message Revenue				
17	LD Inward-Only Revenue				
18	LD Outward-Only Revenue				
19	Subvoice Grade LD Private Network Revenue				
20	Voice Grade LD Private Network Revenue				
21	Audio Program Grade LD Private Network Revenue				
22	Video Program Grade LD Private Network Revenue				
23	Digital Transmission LD Private Network Revenue				
24	LD Private Network Switching Revenue				
25	Other LD Private Network Revenue				
26	Other LD Private Network Revenue Settlements				
27	Other Long Distance Revenue			5,148	5,148
28	Other Long Distance Revenue Settlements				
29	Total Long Distance Network Services Rev.	0	0	5,148	5,148
	Interexchange Reseller Revenues				
30	MTS				
31	800 Service				
32	Other				
33	Total Interexchange Reseller Revenues	0	0	0	0
	Miscellaneous Revenues				
34	Directory Revenue				
35	Rent Revenue				
36	Corporate Operations Revenue				
37	Special Billing Arrangements Revenue				
38	Customer Operations Revenue				
39	Plant Operations Revenue				
40	Other Incidental Regulated Revenue				
41	Other Revenue Settlements				
42	Interstate Billing and Collection Revenue				
43	Intrastate Billing and Collection Revenue				
44	Nonregulated Revenue			6,892	6,892
45	Total Miscellaneous Revenues	0	0	6,892	6,892
	Uncollectible Revenues				
46	Uncollectible Revenue-Telecommunications				
47	Uncollectible Revenue-Other				
48	Total Uncollectible Revenues	0	0	0	0
49	Total Operating Revenues	0	0	124,669	124,669

24. OPERATING EXPENSES BY CATEGORY

Intrastate Expenses to be reported below are applicable to only those expenses accrued within the Commonwealth of Pennsylvania.

Line No.	Item (a)	Total (b)
	Plant Specific Operations	
	Network Support Expenses	
1	6112 Motor Vehicle	
2	Clearance	
3	Net Balance	
4	6113	
5	Clearance	
6	Net Balance	
7	6114 Special Purpose Vehicles	
8	Clearance	
9	Net Balance	
10	6115 Garage Work Equipment	
11	6116 Other Work Equipment	
12	Clearance	
13	Net Balance	
14	6110 Total Network Support Exp.	
	General Support Expenses	
15	6121 Land and Building	
16	6122 Furniture and Artworks	
17	6123 Office Equipment	
18	6124 General Purpose Computers	
19	6120 Total General Support Exp.	-
	Central Office Switching Expenses	
20	6211 Analog Electronic	623,752
21	6212 Digital Electronic	
22	6215 Electro-Mechanical	
23	6210 Ttl. Central Off. Switching Exp.	623,752
24	6220 Operator Systems Expense	
	Central Office Transmission Expenses	
25	6231 Radio Systems	
26	6232 Circuit Equipment	
27	6230 Total Central Off. Trans. Exp.	
	Information Origination/Termination Exp.	
28	6311 Station Apparatus	
29	6321 Customer Premises Wiring	
30	6341 Large Private Branch Exchange	
31	6351 Public Telephone Terminal Eq.	
32	6362 Other Terminal Equipment	
33	6310 Total Inf-Origin./Termin. Exp.	

24. OPERATING EXPENSES BY CATEGORY (continued)		
Line No.	Item (a)	Total (b)
	Plant Specific Operations (contd.)	
	Cable and Wire Facilities Expenses	
34	6411 Poles	74,378
35	6421 Aerial Cable	
36	6422 Underground Cable	
37	6423	
38	6424 Submarine Cable	
39	6425 Deep Sea Cable	
40	6426 Intra-building Network Cable	
41	6431 Aerial Wire	
42	6441 Conduit Systems	
43	6410 Total Cable and Wire Fac. Exp.	74,378
44	Total Plant Specific Operations	698,130
	Plant Nonspecific Operations	
	Other Property, Plant & Equipment Exp.	
45	6511 Prop. Held for Fut. Tele. Use	
46	6512 Provisioning	
47	Clearance	
48	Net Balance	
49	6510 Ttl. Oth. Prop., Plant & Eq. Exp.	
	Network Operations Expenses	
50	6531 Power	
51	6532 Network Administration	
52	6533 Testing	
53	6534 Plant Operations Administration	
54	Clearance	
55	Net Balance	
56	6535 Engineering	
57	Clearance	
58	Net Balance	
59	6530 Total Network Operations Exp.	
60	6540 Access	
	Depreciation & Amortization Expense	
61	6561 Depreciation-TPIS	217,094
62	6562 Depr.-Prop. Held for Fut. Tel Use	
63	6563 Amortization-Tangible	
64	6564 Amortization-Intangible	
65	6565 Amortization-Other	
66	6560 Total Deprec. & Amort. Exp.	217,094
67	Ttl. Plant Nonspec. Oper. Exp.	217,094

24. OPERATING EXPENSES BY CATEGORY (continued)

Line No.	Item (a)	Total (b)
	Customer Operations	
	Marketing Expenses	
68	6611 Product Management	3,623
69	6612 Sales	
70	6613 Product Advertising	366
71	6610	3,989
	Services Expenses	
72	6621 Call Completion Services	
73	6622.1 Number Svcs-Directory Assist.	
74	6622.2 Number Svcs-Directory Publish.	
75	6623.1 Customer Svcs-Order Proc&Instr	
76	6623.2 Customer Svcs-Billing & Coll.	8,022
77	6623.3 Customer Svcs-Public Tele.	
78	6620 Total Services Expenses	8,022
79	Total Customer Oper. Exp.	12,011
	Corporate Operations	
	Executive and Planning Expenses	
80	6711 Executive	
81	6712 Planning	
82	6710 Total Exec. and Planning Exp.	-
	General & Administrative Expenses	
83	6721 Accounting & Finance	3,740
84	6722 External Relations	
85	6723 Human Resources	
86	6724 Information Management	
87	6725 Legal	
88	6726 Procurement	
89	6727 Research and Development	
90	6728 Other General & Administrative	13,841
91	6720 Total General & Admin. Exp.	17,581
92	6790 Prov. for Uncollectible Notes Rec	-
93	Total Corporate Oper. Exp.	17,581
94	Total Operating Expenses	944,816

25. NUMBER OF EMPLOYEES		
Report the requested information concerning the number of employees on respondent's payrolls.		
Line No.	Classification According to Occupation (a)	Number (b)
1	Total Officials and Senior Manager Employees	0
2	Total Professional and Semiprofessional Employees	0
3	Total Business Office, Sales And Professional Employees	0
4	Total Clerical Employees	0
5	Total Operators	0
6	Total Construction, Installation and Maintenance Employees	0
7	Total Building, Supplies and Motor Vehicle Employees	0
8	All Other Employees Not Elsewhere Classified	0
9	Total All Employees	0

26. ANNUAL ACCESS LINE SUMMARY REPORT*

Line No.	END-USER ¹ ACCESS LINES AS OF 12/31/___**	FACILITIES BASED (ON NET) ²	RESOLD LINES ³	WHOLESALE LOOPS ⁴	TRS Surcharge Applied ⁵
<p>PUC 326</p> <p>TELEPHONE COMPANY: _____ CONTACT: _____</p> <p>E-MAIL ADDRESS: _____ PHONE #: _____</p>					
1	Business Customer Lines⁶:				
4	Access Line Type				
5	POTS.....	398	3	398	401
6	ISDN - BRI.....				
7	ISDN - PRI.....	115		10	
8	xDSL (all subtypes).....	1			
9	PAY TELEPHONE LINES ⁷				
10	CENTREX ACCESS LINES.....	63		63	63
11	CENTREX EQUIVALENT TRUNKS ⁸				
12	PBX TRUNKS.....				
13	OTHER ANALOG***.....				
14	OTHER DIGITAL***.....				
15	Residence Customer Lines⁹:				
16	Access Line Type				
17	POTS.....				
18	ISDN - BRI.....				
19	xDSL (all subtypes).....				
20	OTHER ANALOG***.....				
	OTHER DIGITAL***.....				
21	Official Access Lines⁹				
22	Access Line Type				
23	POTS.....				
24	ISDN - BRI.....				
25	ISDN - PRI.....				
26	xDSL (all subtypes).....				
27	PAY TELEPHONE LINES ⁷				
28	CENTREX ACCESS LINES.....				
29	CENTREX EQUIVALENT TRUNKS ⁸				
30	PBX TRUNKS.....				
31	OTHER ANALOG***.....				
32	OTHER DIGITAL***.....				

26. ANNUAL ACCESS LINE SUMMARY REPORT (continued)

Line No.

TELEPHONE COMPANY: _____

	END-USER FACILITIES BASED LINES (ON NET)	END-USER RESOLD DIAL TONE LINES	END-USER WHOLESALE LOOPS
1			
2			
3			
4	CUSTOMER COUNT		
5	NUMBER OF BUSINESS CUSTOMERS..... 122	1	471
6	NUMBER OF RESIDENCE CUSTOMERS.....		
7			
8	TOTAL CUSTOMERS..... 122	1	471
9			
10	LOOPS AND LINES SOLD TO OTHER CARRIERS AS OF 12/31/ _____		
11	<u>WHOLESALE LOCAL LOOPS LEASED TO UNE PURCHASERS</u>		
12	POTS.....	_____	
13	ISDN-BRI.....	_____	
14	ISDN-PRI.....	_____	
	xDSL (all subtypes).....	_____	
15	CENTREX ACCESS LINES.....	_____	
16	CENTREX EQUIVALENT TRUNKS.....	_____	
17	PBX TRUNKS.....	_____	
18	PAY TELEPHONE LINES.....	_____	
19	OTHER ANALOG***.....	_____	
20	OTHER DIGITAL***.....	_____	
21	<u>WHOLESALE RESOLD DIAL TONE LINES</u>		
22	POTS.....	_____	
23	ISDN-BRI.....	_____	
24	ISDN-PRI.....	_____	
25	xDSL (all subtypes).....	_____	
26	CENTREX ACCESS LINES.....	_____	
27	CENTREX EQUIVALENT TRUNKS.....	_____	
28	PBX TRUNKS.....	_____	
29	PAY TELEPHONE LINES.....	_____	
30	OTHER ANALOG***.....	_____	
31	OTHER DIGITAL***.....	_____	

26. ANNUAL ACCESS LINE SUMMARY REPORT (continued)

Page 3 of 3

Line
No.**NOTES:**

- 1 * Access line count as required by M-00900239 for Telecommunications Relay Service Surcharge calculation
- 2 ** Enter N/A where service is not provided. Include seasonal/suspended service access lines for all Grades of Service on this Report.
- 3 *** Any other type of service offered but not listed. (List details separately on back of Report.)

DEFINITIONS:

- 4 1. END-USER - Retail Customer.
- 5 2. END-USER FACILITIES BASED LINES (ON NET) - Access Lines being served using facilities owned and operated by reporting telephone company.
- 6 3. END-USER RESOLD DIAL TONE LINES - Access Lines being served by reporting telephone company using resold lines of another telephone company.
- 7 4. END-USER WHOLESALE LOOPS - Access Lines being served by reporting telephone company using wholesale loops of another telephone company.
- 8 (ie, une loops; UNE-Ps, DS1; DS3; extended loops; EELs; etc.)
- 9 5. TRS SURCHARGE APPLIED - Number of Access Lines in each category/type that the company applied the TRS Surcharge.
- 10 6. BUSINESS AND RESIDENCE - OutWATS, Dedicated Toll-Free, and FX are to be included in appropriate business & residence service categories.
- 11 7. PAY TELEPHONE LINES - Includes all types of pay telephones: public, semi-public, and COCOTS.
- 12 8. CENTREX EQUIVALENT TRUNKS - Adjustment of Centrex line counts for TRS Surcharge collection purposes. Use the attached conversion table.
- 13 (Conversion table contained in Order at Docket No. M-00900239 (2000) to convert Centrex Trunks.)
- 14 9. OFFICIAL - Telephone company lines used exclusively for telephone company business. Include Official Lines for all Grades of Service here.

INSTRUCTIONS:

- 15 a. Provide access line data for the most recent year ending December 31.
- 16 b. This Report is to be filed with the Secretary of the PA PUC BY APRIL 30 of each year.
- 17

VERIFICATION

State of : Colorado
County of : Denver

Thomas J. Juracek makes oath and
says: I am the Vice President, Finance of Fibernet Telecommunications of PA, LLC
(Insert the official title of the deponent) (Insert the name of reporting company)

I am familiar with the preparation of the foregoing report and know generally the content thereof.
The said report which consists of:

Cover Page, Index and Pages 1 through 40
(Insert exact identification of the pages comprising this report)

is true and correct to the best of my knowledge and belief. As to matters not actually stated
upon my knowledge, the sources of my information and the bases for my belief are as follows:

Subscribed and sworn to before me a

THOMAS J. JURACEK

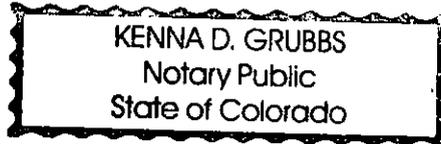
Thomas J. Juracek
Signature

this 29th day of APRIL 2003

(Use an
L.S.

Impression Seal)

Kenna D. Grubbs
(Signature of Officer Auth. to Administer Oaths)



My Commission Expires 4/20/2004

THIS SPACE RESERVED FOR USE BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Computed: _____
Examined: _____
Reviewed: _____

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030099

DOCUMENT

PENN TELECOM INC.
STATEMENT NO 1.0
WITNESS WAYNE MEYERS

1-00030099
Abj TX
1/28/04

DOCKETED

FEB 12 2004

SECRETARY'S BUREAU

2004 JAN 30 AM 10:08

RECEIVED

Dated: January 20, 2004

PUBLIC VERSION

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. MR. MYERS, PLEASE STATE YOUR FULL NAME AND BUSINESS
2 ADDRESS.

3
4 A. Wayne C. Myers, 2710 Rochester Road, Cranberry Township, Pennsylvania
5 16066.

6
7 Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?

8
9 A. I am employed by Penn Telecom, Inc as the Operations Manager.
10

11 Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT POSITION?

12
13 A. As Operations Manager, I am responsible for all field operations associated with
14 the installation and repair of our products and services.

15
16 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
17 EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

18
19 A. I retired in 2000, after thirty-four (34) years, from United Telephone Company of
20 Pennsylvania, also know as Sprint. During that time, I served in a variety of craft
21 and management positions mainly in the Operations and Engineering areas. The
22 first seventeen years of my employment were spent in the Butler, Pennsylvania
23 area. This was followed by thirteen (13) years in Carlisle, Pennsylvania, and then
24 finishing my career in Butler as the District Customer Service Manager. I joined
25 Penn Telecom in 2000 in a Staff position focusing on training. In 2002, I became
26 responsible for the Operations Area.

1 I have a Bachelors Degree in Business and Economics from Wilson College in
2 Chambersburg, Pennsylvania.

3
4 Q. HAVE YOU TESTIFIED BEFORE THE PENNSYLVANIA PUBLIC UTILITY
5 COMMISSION?

6
7 A. No.

8
9 Q. MR. MYERS, WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
10 PROCEEDING?

11
12 A. The purpose of my testimony is to provide the Commission with information,
13 from Penn Telecom's perspective as a regional Competitive Local Exchange
14 Carrier ("CLEC"), as it relates to the FCC's establishment of a two-step process
15 in the TRO for demonstrating a finding of "no impairment". I will also present
16 the Commission with testimony disputing several generalities Verizon made in
17 their testimony that basically treats all CLECs as a single industry without
18 consideration of size, market areas, or business strategy.

19
20 Q. PLEASE PROVIDE SOME INFORMATION ON PENN TELECOM FOR
21 THOSE NOT FAMILIAR WITH THE COMPANY.

22
23 A. Penn Telecom is a subsidiary of North Pittsburgh Systems Incorporated and was
24 founded in 1979. Its original business plan was focused on the sales and service
25 of Business Telephone Systems following the deregulation of premise equipment.

1 Since that time, Penn Telecom has expanded its business plan and now offers a
2 full array of telephone products and services including local and long distance.

3
4 Q. IS PENN TELECOM CERTIFIED TO PROVIDE TELECOMMUNICATIONS
5 SERVICES IN PENNSYLVANIA?

6
7 A. Yes, we have been certified by the Pennsylvania Public Utility Commission
8 ("Commission") to provide local exchange telecommunications services, as both a
9 reseller and a facilities-based provider, in Verizon and Sprint local exchange
10 territories within the Commonwealth of Pennsylvania. However, for purposes of
11 my testimony, I am focusing on our experiences in the Verizon territories only as
12 Verizon and not Sprint filed the petition to initiate this proceeding.

13 We are also certificated as an interexchange carrier and competitive access
14 provider.

15
16 Q. PLEASE EXPLAIN WHAT YOU MEAN WHEN YOU DESCRIBE PENN
17 TELECOM AS A FACILITIES-BASED TELECOMMUNICATIONS
18 PROVIDER.

19
20 A. Although we are a small regional provider of telecommunications services, we
21 operate a SONET network with over 300 route miles of fiber optic facilities in the
22 Greater Pittsburgh area. **[HIGHLY CONFIDENTIAL INFORMATION]**
23 Although we continue to move forward to serve all of our customers from our

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 network, we still have a requirement to purchase switching capacity from the
2 Incumbent Local Exchange Carrier (“ILEC”).

3
4 Q. DEFINE WHAT YOU MEAN BY A SMALL REGIONAL PROVIDER OF
5 TELECOMMUNICATIONS SERVICES.

6
7 A. Penn Telecom only operates in the Greater Pittsburgh area. Neither our network
8 or customer base extends beyond the Greater Pittsburgh area. Specifically, as of
9 September 30, 2003, we serviced approximately 25,000 access lines. As a
10 comparison, Verizon served approximately 5,000,000 access lines in
11 Pennsylvania for the period ending September 30, 2003¹. Although this figure
12 encompasses the entire state, it is still apparent that the number of access lines
13 served by Verizon dwarfs the number served by Penn Telecom.

14
15 Q. IS PENN TELECOM LOCATED IN ANY WIRE CENTERS OUTSIDE OF
16 THE GREATER PITTSBURGH AREA?

17
18 A. No.

19
20 Q. IS PENN TELECOM ABLE TO PROVIDE DIAL TONE VIA UNE-LOOPS
21 FROM ALL OF THE WIRE CENTERS IN THE GREATER PITTSBURGH
22 AREA?

23
24 A. **HIGHLY CONFIDENTIAL INFORMATION**

¹ See Verizon Investor Relations for Business Segments, Domestic Telecom, *Verizon Summary (Restated for 2002 Access Line Sales: Switched Access Lines In-Service (end of period))*, http://investor.verizon.com/business/xls/access_lines-3q-03.xls.

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. ARE YOU AWARE THAT THE FEDERAL COMMUNICATIONS
2 COMMISSION ("FCC") ISSUED THE TRIENNIAL REVIEW ORDER²
3 ("TRO") THAT SET FORTH NEW RULES AND REGULATIONS RELATING
4 TO THE ISSUE OF IMPAIRMENT AND THAT THE COMMISSION ISSUED
5 AN ORDER ADOPTING THE TRO?
6

7 A. Yes.
8

9 Q. ARE YOU AWARE THAT VERIZON FILED A PETITION TO INITIATE A
10 PROCEEDING ON THE ISSUE OF IMPAIRMENT?
11

12 A. Yes:
13

14 Q. ARE YOU CONVINCED THAT THE EVIDENCE PROVIDED BY VERIZON
15 REGARDING PENN TELECOM IS ACCURATE?
16

17 A. No, and I will provide testimony in support of my answer.
18

19 Q. ARE YOU FAMILIAR WITH THE FCC'S METHODOLOGY IN ARRIVING
20 AT TRIGGERS THAT IDENTIFY WHETHER IMPAIRMENT EXISTS?
21

22 A. Yes.
23

24 Q. WHAT IS YOUR UNDERSTANDING OF THE FCC'S TRIGGER ANALYSIS
25 FOR MASS MARKET SWITCHING?
26

27 A. My understanding is the FCC established several scenarios to guide state
28 commissions in their determination of whether an impairment to market entry
29 exists. First, if a state commission determines there are three or more non-
30 affiliated carriers serving mass market customers with their own self-provisioned
31 switches, the commission may determine there is no impairment for that particular

² See, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, and 98-147, released on August 21, 2003.

1 market. However, if there is a finding that three (3) or more carriers have self-
2 provisioned and operational switches, there may also be other exceptional barriers
3 to entry such as lack of collocation space that could result in the commission
4 making a finding that an impairment does exist. The second scenario is the
5 Competitive Wholesale Facilities Trigger. Under this analysis, the commission
6 must determine whether two (2) or more unaffiliated CLECs offer wholesale
7 switching services in a particular market. Again, if there are, the commission may
8 determine that there is no impairment.

9
10 Q. IN THE MARKETS WHERE THREE OR MORE PROVIDERS HAVE SELF-
11 PROVISIONED SWITCHES, DO YOU BELIEVE THAT THERE IS
12 IMPAIRMENT TO ENTRY TO THE MARKET?

13
14 A. Yes.

15
16 Q. PLEASE EXPLAIN.

17
18 A. Let me provide you with an example to illustrate my thoughts on this issue. Just
19 because there are three (3) or more providers with self-provisioned switches does
20 not guarantee they would provide wholesale switching services. Should the
21 Commission rule no impairment exists, any CLEC requiring wholesale switching
22 would suffer severe, if not irreparable, injury to their business if the ILEC was no
23 longer required to be a wholesale provider.

24

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. DOES HAVING A SELF-PROVISIONED SWITCH GUARANTEE SUCCESS
2 FOR A PROVIDER?
3
4 A. No. All you have to do is read the newspaper to realize that is not the case. In the
5 Commonwealth of Pennsylvania, many CLECs have gone out of business or have
6 received Commission approval to abandon their certificate of public convenience
7 and necessity. For instance, BroadStreet Communications, a CLEC with a self-
8 provisioned switch, no longer provides services to customers in Pennsylvania.³
9 Further, the Commission has granted several Applications for Abandonment or
10 Discontinuance of Telecommunications Services for companies with self-
11 provisioned switches. In February 2002, the Commission approved the
12 Application for Approval of Abandonment or Discontinuance of Reseller and
13 Competitive Local Exchange Carrier Services within Pennsylvania of e.spire.⁴
14 Likewise, in February 2002, the Commission approved a similar application for
15 Net2000.⁵ Interestingly enough, Verizon has listed these providers as actively
16 utilizing self-provisioned switches. This is just one of the discrepancies contained
17 in Verizon's testimony. Furthermore, Verizon has produced no evidence that any

³ See S. Franken, *BroadStreet Communications Expansion Goes Bust*, Pittsburgh Post-Gazette (Dec. 8, 2001), <http://www.post-gazette.com/businessnews/20011208broad1208p5.asp>.

⁴ See Application for Approval of Abandonment or Discontinuance of Reseller and Competitive Local Exchange Carrier Services in Pennsylvania of e.spire, PA PUC Docket Number A-310607F2000, Order entered November 7, 2002.

⁵ See Application for Approval of Abandonment or Discontinuance of Reseller and Competitive Local Exchange Carrier Services in Pennsylvania of Net2000, PA PUC Docket Number A-310626F2000, Order entered February 7, 2002.

1 CLEC with a self-provisioned switch offers wholesale switch capacity to
2 competitors.

3
4 Q. DOES PENN TELECOM OWN A SWITCH OR DOES IT LEASE SWITCH
5 CAPACITY FROM ANOTHER PROVIDER?

6
7 A. **PROPRIETARY INFORMATION**

8
9 Q. IN VERIZON'S RESPONSE TO AT&T COMMUNICATIONS OF
10 PENNSYLVANIA, LLC INTERROGATORY NUMBER 14, VERIZON
11 ALLEGES THAT PENN TELECOM DID NOT CONFIRM A CIRCUIT
12 SWITCH TYPE D12 SERVING A VERIZON RATE CENTER. PLEASE
13 RESPOND.

14
15 A. **[PROPRIETARY INFORMATION]** Penn Telecom has provided this
16 information to the Commission in its timely filing of Answers to the
17 Commission's First Set of Interrogatories. Additionally, this information may be
18 accessed through a review of the Local Exchange Routing Guide, also known as
19 the LERG. Verizon's Answer to AT&T's interrogatory, as it relates to Penn
20 Telecom, is wholly inaccurate. **[PROPRIETARY INFORMATION]**
21 Furthermore, it is unclear to Penn Telecom what Verizon is referencing when it
22 lists the circuit switch as a "Type D12". Since Verizon has chosen not to provide
23 a legend on the spreadsheet explaining its abbreviations, Penn Telecom is unable
24 to respond accordingly. This clearly demonstrates the less than credible

1 information Verizon is providing to the Commission and asking them to accept
2 without reservation.

3
4 Q. IN DIRECT TESTIMONY, VERIZON IDENTIFIES CLECs THAT HAVE
5 DEPLOYED LOCAL CIRCUIT SWITCHES IN PENNSYLVANIA. ARE YOU
6 FAMILIAR WITH THIS LIST?

7
8 A. Yes.

9
10 Q. TO THE BEST OF YOUR KNOWLEDGE, ARE ALL THE CLECs
11 IDENTIFIED CURRENTLY PROVIDING TELECOMMUNICATIONS
12 SERVICES IN PENNSYLVANIA?

13
14 A. As I previously stated, not all of the providers currently provide service in
15 Pennsylvania.

16
17 Q. UNDER WHAT CIRCUMSTANCES WOULD PENN TELECOM PURCHASE
18 SWITCH CAPACITY FROM A WHOLESALE PROVIDER?

19
20 A. **PROPRIETARY INFORMATION**

21
22 Q. OTHER THAN VERIZON, ARE YOU AWARE OF ANY WHOLESALE
23 PROVIDER OF SWITCH CAPACITY IN THE GREATER PITTSBURGH
24 AREA?

25
26 A. No.

27
28 Q. DOES PENN TELECOM PURCHASE SWITCH CAPACITY FROM
29 VERIZON?

30
31 A. **PROPRIETARY INFORMATION**

32

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. IS IT PENN TELECOM'S INTENTION TO DEVELOP ITS MARKET
2 THROUGH THE USE OF RESALE?

3
4 A. **PROPRIETARY INFORMATION**

5
6 Q. DOES PENN TELECOM CURRENTLY PROVIDE SERVICE TO
7 CUSTOMERS USING RESALE?

8
9 A. **[PROPRIETARY INFORMATION]**

10
11 Q. IN WHAT INSTANCES DOES PENN TELECOM **[PROPRIETARY**
12 **INFORMATION]**?

13
14 A. **PROPRIETARY INFORMATION**

15
16 Q. IS IT PENN TELECOM'S INTENTION TO DEVELOP ITS MARKET
17 THROUGH THE USE OF UNE-P?

18
19 A. **PROPRIETARY INFORMATION**

20
21 Q. PLEASE DESCRIBE THE CIRCUMSTANCES FOR WHICH PENN
22 TELECOM **[PROPRIETARY INFORMATION]** CUSTOMERS.

23
24 A. **PROPRIETARY INFORMATION**

25 Q. MR. MYERS, YOU MENTIONED THAT PENN TELECOM HAS
26 EXPERIENCED OPERATIONAL BARRIERS BECAUSE OF VERIZON'S
27 ORDERING PROCESSING SYSTEM, COULD YOU BE MORE SPECIFIC?

28
29 A. Yes, I can provide an example to give an idea of what I mean. There have been
30 numerous UNE-P orders in which calling features we had clearly and correctly
31 listed on the order are dropped. This situation occurs when Verizon personnel

1 incorrectly enter the order into Verizon's system. The result is that our customer
2 has a bad impression of Penn Telecom and its ability to provide service. We have
3 also experienced numerous problems in obtaining Billing Completion Notices
4 ("BCN"). This normally would not be a problem, but in instances where a
5 customer wants features added or removed, we are not able to place another order
6 until the BCN is received. In the majority of cases, Verizon has told us that there
7 was a Verizon internal error that needed to be resolved that was delaying the
8 BCN. Again, this type of problem portrays Penn Telecom in an unfavorable light
9 for a problem that it did not create or is able to repair without Verizon's
10 intervention.

11
12 Q. IS IT THE INTENTION OF PENN TELECOM TO [PROPRIETARY
13 INFORMATION]

14
15 A. **PROPRIETARY INFORMATION**

16
17 Q. HAS PENN TELECOM EXPERIENCED ANY OPERATIONAL BARRIERS
18 FROM VERIZON'S PERFORMANCE OR LACK THEREOF, IN
19 PROVISIONING LOOPS?

20
21 A. Yes. I would like to provide some specific examples to support my response.
22 Penn Telecom has been denied loops in an area served by a remote switching
23 device. [PROPRIETARY INFORMATION] Also, to provision loops behind a
24 remote, Verizon frequently performs "Integrated SLC Conversions." In this

1 situation, an existing Verizon "remote facility" is changed to a copper UNE that,
2 at times, is of inferior quality. This results in Penn Telecom being depicted in a
3 negative light to our customers. Also, many new loops seem to receive a high
4 rate of initial trouble. As a result, we have instituted a standard operating
5 procedure of testing all new loops prior to scheduling number portability in an
6 attempt to prevent the problems we have experienced. This step, while important
7 to us, further delays the customer's conversion.

8
9 Q DO YOU AGREE WITH VERIZON'S POSITION ON HOW THE
10 COMMISSION SHOULD DEFINE THE RELEVANT GEOGRAPHIC
11 MARKET IN PENNSYLVANIA?

12
13 A. No.

14
15 Q. HOW DO YOU THINK THE COMMISSION SHOULD DEFINE THE
16 RELEVANT GEOGRAPHIC MARKET IN PENNSYLVANIA?

17
18 A. This is one significant area where Penn Telecom disputes the position established
19 through Verizon's testimony. **[PROPRIETARY INFORMATION]** Verizon's
20 generalizations regarding how CLECs develop a business plan is patently
21 incorrect and reflects Verizon's unwillingness and total disregard for the realities
22 faced by smaller competitors.

23
24 Q. MR. MYERS, PLEASE EXPLAIN HOW PENN TELECOM MAKES A
25 DETERMINATION CONCERNING ITS NETWORK DEPLOYMENT?

26

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 A. As a small regional CLEC, we consider network deployment on a very micro
2 basis. There are several triggers that may initiate that process.

3 **[PROPRIETARY INFORMATION]**

4
5 Q. IS IT THE BUSINESS PRACTICE OF PENN TELECOM TO ENTER A
6 MARKET AT THE WIRE CENTER LEVEL?

7
8 A. As I stated earlier, as a small regional CLEC, Penn Telecom operates at a very
9 micro level. **[PROPRIETARY INFORMATION]**

10
11 Q. WHAT WOULD YOU CONSIDER THE MAJOR BARRIER TO ENTRY INTO
12 OTHER WIRE CENTERS?

13
14 A. Collocation costs are a significant barrier.

15
16 Q. WHAT IS YOUR UNDERSTANDING OF THE TYPES OF COSTS
17 ASSOCIATED WITH PENN TELECOM FILING A COLLOCATION
18 APPLICATION WITH VERIZON?

19
20 A. This is a complex process. Let me try to simplify it for you. The charges are
21 broken down in two classifications, Non-recurring Costs ("NRC") and Recurring
22 Costs. Within those classifications there are a number of sub-categories such as
23 application fees, engineering and implementation fees, cable fees, power fees,
24 space and facility charges, cross-connect fees, and the list goes on and on. Then,
25 within those sub-categories we are required to order specific increments such as
26 cross-connect charges for fiber that must be ordered in increments of twelve (12)
27 fibers. The current cost to establish a collocation site is in excess of \$62,000

1 NRC per location with an associated monthly Recurring Cost in excess of
2 \$1,800.⁶ As you can see it is not only complex, but also expensive to collocate at
3 a wire center.

4 **[PROPRIETARY INFORMATION]**

5

6 Q. HOW DOES PENN TELECOM DETERMINE **[PROPRIETARY**
7 **INFORMATION]**?

8

9 A. **PROPRIETARY INFORMATION**

10

11 Q. ARE YOU AWARE THAT THE COMMISSION IS ALSO IDENTIFYING
12 CUSTOMER LOCATIONS WHERE THERE IS NO IMPAIRMENT TO
13 COMPETING CARRIERS FOR UNBUNDLED HIGH-CAPACITY LOOPS?

14

15 A. Yes. Where the Commission makes a finding of no impairment, as I understand
16 it, the ILEC would be relieved of its unbundling obligation for that specific
17 location.

18

19 Q. ARE YOU FAMILIAR WITH THE TRO TRIGGER ANALYSIS THAT THE
20 COMMISSION MUST UTILIZE IN ITS FACT-FINDING ROLE?

21

22 A. Yes. There are two (2) different trigger schemes for the identification of the
23 specific customer locations where there may be no impairment for high-capacity
24 loops. The first trigger will be met when a specific customer location is served by
25 two (2) or more unaffiliated CLECs with their own loop transmission facilities at

⁶ See Verizon Pennsylvania Tariff Number 218, Sections 2J.1(a-g) dealing with Physical Collocation.

1 the relevant loop capacity level. The second trigger is satisfied when two (2) or
2 more unaffiliated competitive providers have deployed transmission facilities to a
3 specific customer location and are offering alternative loop facilities to CLECs on
4 a wholesale basis at the same capacity level.

5
6 Q. IN ITS SUPPLEMENTAL TESTIMONY, VERIZON STATES, "IT
7 REASONABLY CAN BE ASSUMED THAT ALL SELF-PROVISIONED
8 LOOP FACILITIES HAVE DARK FIBER."⁷ IN REALITY, IS THIS
9 POSITION CORRECT?

10
11 A. No, Verizon again disproves its own assumption through its rejection of Penn
12 Telecom's Dark Fiber Inquiry Request forms ("Inquiries") in which
13 **[PROPRIETARY INFORMATION]** We agree with the FCC's summary on
14 the cost of additional fiber counts being inexpensive⁸ however, the existence of
15 spare fiber in Verizon's network has only occurred for **[PROPRIETARY**
16 **INFORMATION]**. I will elaborate further on this particular issue later in my
17 testimony. Based on this, I doubt that any other fiber provider would have more
18 fiber available.

19 Once a fiber build is complete, the owner must be careful to manage the leasing of
20 fibers in a way that will not strand any of this exhaustible asset. Our experience
21 has been that wholesaler providers of fiber will require a lessee to lease a

⁷ See Verizon Pennsylvania Inc. Proprietary Supplemental Direct Testimony of Harold E. West, II and Carlo Michael Peduto, II, December 19, 2003, Page 24, Lines 21-22.

⁸ See, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, and 98-147, released on August 21, 2003, Paragraph 312.

1 minimum number of fibers along an entire ring, when the user only needs a
2 certain segment of the ring, between two (2) locations.

3
4 Q. IN ITS SUPPLEMENTAL DIRECT TESTIMONY, VERIZON STATES,
5 “FIBER FACILITIES ARE ALWAYS INSTALLED WITH EXTRA FIBER TO
6 MEET PROJECTED DEMAND GROWTH.”⁹ IN REALITY, DOES THIS
7 ALWAYS OCCUR?

8
9 A. No. Again, Verizon itself disproves this assumption through its rejection of Penn
10 Telecom’s Inquiries. I will elaborate further on this particular issue later in my
11 testimony.

12
13 Q. IN VERIZON’S SUPPLEMENTAL TESTIMONY, THEY STATE THAT IT IS
14 REASONABLE TO ASSUME THAT CLECs OBTAIN ACCESS TO THE
15 ENTIRE PREMISES WHEN THEY ARE DEPLOYING FACILITIES IN A
16 BUILDING. HAVE YOU FOUND THIS TO BE TRUE?

17
18 A. No. We have had several occasions where building managers/owners have
19 resisted the request of Penn Telecom to provide service to a tenant. In most
20 situations, our customer has had to intercede on our behalf and persuade the
21 building manager/owner to permit us to obtain access to the building wiring. The
22 building manager/owner in instances as this has restricted our access in the
23 building and has made it difficult for us to perform work in the building.

24

⁹ Verizon Pennsylvania Inc. Proprietary Supplemental Direct Testimony of Harold E. West, II and Carlo Michael Peduto, II, December 19, 2003, Page 25, Lines 25-26.

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. IN ITS SUPPLEMENTAL DIRECT TESTIMONY, VERIZON MAKES THE
2 ASSUMPTION THAT IF A WHOLESALE PROVIDER OFFERS LOOPS IN
3 ONE LOCATION, IT WILL BE WILLING TO DO SO IN ALL LOCATIONS.
4 IS THIS A CORRECT ASSUMPTION?¹⁰
5

6 A. No. **[PROPRIETARY INFORMATION]**. I have no idea how Verizon could
7 draw such a general conclusion.

8
9 Q. HAS PENN TELECOM BEEN ABLE TO OBTAIN HIGH CAPACITY LOOP
10 FACILITIES ON A WHOLESALE BASIS, AT THE SAME CAPACITY
11 LEVEL, FROM A COMPETITIVE PROVIDER THAT HAS DEPLOYED
12 TRANSMISSION FACILITIES TO SPECIFIC CUSTOMER LOCATIONS?
13

14 A. **[PROPRIETARY INFORMATION]** Furthermore, Verizon makes the overly
15 broad generalization that CLECs who offer wholesale telecommunications
16 services do not limit it to particular locations or exclude loops. Verizon is
17 attempting to shift the burden to the CLEC community to present evidence for
18 Verizon to support its position.

19
20 Q. DOES PENN TELECOM SERVE ANY CUSTOMER PREMISE WITH ITS
21 OWN SELF-PROVISIONED LOOP TRANSMISSION FACILITIES?
22

23 A. **[HIGHLY CONFIDENTIAL INFORMATION]**

24
25 Q. DOES PENN TELECOM CURRENTLY UTILIZE ANY DARK FIBER
26 LEASED FROM VERIZON?
27

28 A. **[PROPRIETARY INFORMATION]**

¹⁰ See Verizon Pennsylvania Inc. Proprietary Supplemental Direct Testimony of Harold E. West, II and Carlo Michael Peduto, II, December 19, 2003, Page 26 Lines 10-12.

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. PLEASE DESCRIBE THE PROCESS FOR REQUESTING DARK FIBER
2 FROM VERIZON.

3
4 A. We are required to complete Inquiries and submit them electronically to Verizon.

5 Per its Business Rules, Verizon has three (3) weeks within which to respond to
6 the Inquiries. If Verizon responds that there is a direct route, we would then have

7 to place an Access Service Request ("ASR") for the route. However, if we have
8 no fiber at our existing collocation site, we would have to file a collocation

9 augment. This takes approximately 90 to 120 days to complete. Once completed,

10 we would then file the ASR. However, between the time that Verizon's response
11 was received and the time the ASR is sent to Verizon, another provider can send

12 an ASR and obtain the fiber we requested. We may also receive a response from
13 Verizon stating that there is no direct route, but an indirect route may exist. In

14 that instance, we would guess what indirect routes might exist. We would then
15 have to submit another Inquiry for verification that the route was available.

16 Lastly, Verizon could respond that no spare fiber is available. Penn Telecom is
17 charged \$116.16 for each Inquiry submitted to Verizon.¹¹

18
19 Q. HAS PENN TELECOM REQUESTED DARK FIBER FOR A PARTICULAR
20 ROUTE THAT VERIZON WAS UNABLE TO PROVIDE? IF SO, PLEASE
21 DESCRIBE?
22

¹¹ See Verizon Pennsylvania Tariff Number 216, Sections 3.C.13 dealing with Dark Fiber.

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 A. **[PROPRIETARY INFORMATION]** If the fiber is not spliced, Verizon is not
2 required to provide it to CLECs as an unbundled product.

3
4 Q. WHEN AN INQUIRY IS REJECTED BY VERIZON DUE TO NO SPARE
5 FIBER OR NO DIRECT ROUTE, DOES VERIZON PROVIDE YOU WITH
6 THE CLOSEST EXISTING SPLICE POINT WHERE SPARE FIBER EXISTS?
7

8 A. Contrary to this Commission's holding in the Yipes¹² case, Verizon has not
9 provided this information to us. We have attempted to obtain proposals from
10 Verizon that contain information regarding the nearest existing splice point to
11 spare Dark Fiber along Verizon's backbone, and the cost to Verizon for this
12 construction. However, Verizon refuses to provide this information. If Penn
13 Telecom were able to obtain this type of information, we could possibly expand
14 our network.

15
16 Q. WHEN WAS THE MOST RECENT INQUIRY SUBMITTED TO VERIZON?
17

18 A. **[PROPRIETARY INFORMATION]**

19
20 Q. DID VERIZON HAVE SPARE FIBER AVAILABLE?
21

22 A. I do not know.
23

24 Q. PLEASE EXPLAIN YOUR RESPONSE.
25

26 A. Gladly. **[PROPRIETARY INFORMATION]**

¹² See *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Pennsylvania, Inc.*, PA Docket Number A-310964. Order entered June 18, 2002.

Direct Testimony of Wayne C. Myers
on behalf of Penn Telecom, Inc.
PA PUC Docket No. I-00030099
January 9, 2004

1 Q. DOES PENN TELECOM AGREE WITH VERIZON'S POSITION ON THIS
2 ISSUE?

3
4 A. No. In October 2003, Penn Telecom received correspondence from Verizon
5 stating its intention to discontinue providing certain unbundled network elements
6 pursuant to the TRO. I have attached this letter to my testimony as Exhibit "B".
7 We responded to this notice by sending a letter to Verizon. It is our belief that
8 Verizon's position is in direct contradiction to the TRO. It is our opinion that the
9 TRO specifically found that on a national basis that competing carriers are
10 impaired without access to unbundled dark fiber transport.¹³ I have attached to
11 my testimony a copy Penn Telecom's letter to Verizon and marked it as Exhibit
12 "C".

13
14 Q. HAS PENN TELECOM OBTAINED AN INDIRECT DARK FIBER ROUTE
15 FROM VERIZON?

16
17 A. **[HIGHLY CONFIDENTIAL INFORMATION]** Verizon has proposed an
18 amendment to our interconnection agreement that would alleviate this situation,
19 however **[PROPRIETARY INFORMATION]**. Although we would be able to
20 obtain access to Dark Fiber without having to collocate, the amendment is
21 extremely restrictive. Under the terms of the amendment, Verizon has the ability
22 to remove the Dark Fiber after thirty (30) days notice to the CLEC. This type of

¹³ See, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, and 98-147, released on August 21, 2003, Paragraph 381 at page 236.

1 provision is not contained within our interconnection agreement with Verizon. It
2 is difficult to build a business case when your Dark Fiber can be removed with
3 only a thirty (30) day notice.

4
5 Q. ARE THERE PROVIDERS OTHER THAN VERIZON FROM WHOM PENN
6 TELECOM CAN LEASE DARK FIBER IN THE GREATER PITTSBURGH
7 AREA?

8
9 A. Yes, there are two providers, DQE Communications and FiberTech Networks.

10
11 Q. DOES PENN TELECOM CURRENTLY OBTAIN DARK FIBER FROM
12 THESE ALTERNATIVE PROVIDERS?

13
14 A. **PROPRIETARY INFORMATION**

15
16 Q. DO DQE COMMUNICATIONS OR FIBERTECH NETWORKS HAVE FIBER
17 AVAILABLE TO ALL WIRE CENTERS IN THE GREATER PITTSBURGH
18 AREA?

19
20 A. **PROPRIETARY INFORMATION**

21
22 Q. HAS PENN TELECOM EXPERIENCED ANY DIFFICULTY IN OBTAINING
23 DARK FIBER FOR A SPECIFIC ROUTE FROM AN ALTERNATIVE
24 WHOLESALE PROVIDER?

25
26 A. **PROPRIETARY INFORMATION**

27
28 Q. FOR INTEROFFICE FACILITY ROUTES, HAS PENN TELECOM EVER
29 BEEN UNABLE TO OBTAIN DARK FIBER FROM VERIZON OR AN
30 ALTERNATIVE WHOLESALE PROVIDER?

31
32 A. **HIGHLY CONFIDENTIAL INFORMATION**

DOCUMENT

DOCKETED

FEB 12 2004

1/28/04
Abg

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. I-00030099

**CHOICE ONE COMMUNICATIONS
OF PENNSYLVANIA INC.**

DIRECT TESTIMONY

WITNESS: ROBERT O. BAILEY

JANUARY 9, 2004

SECRETARY'S BUREAU
2004 JAN 30 AM 10:09
RECEIVED

PUBLIC VERSION-WITH PUBLIC EXHIBITS

Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004

1 **Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.**

2 A. My name is Robert O. Bailey. My business address is 100 Chestnut Street, Suite 600,
3 Rochester, New York, 14604.

4 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

5 A. I am employed by Choice One Communications Inc., the parent company of Choice One
6 Communications of Pennsylvania Inc. ("Choice One"). My position is Senior Vice
7 President, Technology.

8 **Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT**
9 **POSITION?**

10 A. I am responsible for engineering and network operations at Choice One. In addition, I am
11 responsible for the selection of technology to be deployed by Choice One in its network.
12 Further, I am involved in various regulatory activities such as the review of certain filings
13 in proceedings before various regulatory commissions including the Federal
14 Communications Commission ("FCC"), the Pennsylvania Public Utility Commission
15 ("Commission") and other state commissions.

16 **Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE**
17 **TELECOMMUNICATIONS INDUSTRY.**

18 A. Just prior to joining Choice One, I was Vice President and Chief Technology Officer for
19 the Upstate Cellular Network (Frontier Cellular), a joint venture of Verizon Mobile and
20 Frontier Corporation where I was responsible for engineering and operations of a cellular
21 network that covered 5.5 million population units in upstate New York.

1 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
2 **PROCEEDING?**

3 A. The purpose of my testimony is to present a summary of Choice One's services and a
4 description of its facilities located in Pennsylvania.

5 Q. **PLEASE DESCRIBE CHOICE ONE.**

6 A. Choice One has provided facilities-based local exchange and interexchange
7 telecommunications services in the Commonwealth of Pennsylvania since 1999. Choice
8 One currently offers service in several Pennsylvania markets, including a full array of
9 local, long distance, high-speed data (including DSL), web hosting, design and
10 development services to small and medium sized companies in the Commonwealth.

11 Q. **IS CHOICE ONE A WHOLESALE PROVIDER OF DEDICATED**
12 **TRANSPORT IN PENNSYLVANIA?**

13 A. *****BEGIN PROPRIETARY*****

14

15

16

17

18

19

20 *****END PROPRIETARY*****

21 Q. **IS CHOICE ONE A WHOLESALE PROVIDER OF LOOP FACILITIES**
22 **IN PENNSYLVANIA?**

23 A. *****BEGIN PROPRIETARY***** *****END PROPRIETARY*****

1 **Q. HAS CHOICE ONE PROVIDED INFORMATION ABOUT ITS SERVICES**
2 **AND FACILITIES IN DISCOVERY IN THIS CASE?**

3 A. Throughout this proceeding, Choice One has been served various discovery requests,
4 including interrogatories and requests for production of documents, by numerous parties
5 to the proceeding. Attached to my testimony, I am including Choice One's responses to
6 (1) the Commission data requests to "footnote 14 CLECs"; Choice One's responses to the
7 discovery requests submitted by (2) Verizon Pennsylvania, Inc. and Verizon North, Inc.
8 (collectively, "Verizon"); (3) the Office of Consumer Advocate ("OCA"); and (4) the
9 Pennsylvania Carrier's Coalition ("PCC"). Choice One's responses to the discovery
10 requests submitted by the Joint Parties is not currently available but will be provided
11 under separate cover. These proprietary responses are labeled Exhibit A, Exhibit B,
12 Exhibit C, Exhibit D and Exhibit E (to be provided) respectfully and provide a summary
13 of the services provided and a description of the facilities located in Pennsylvania.

14 **Q. DO THE RESPONSES TO THE COMMISSION'S DATA REQUESTS**
15 **ACCURATELY DEPICT WHERE CHOICE ONE HAS DEPLOYED**
16 **TRANSPORT FACILITIES IN PENNSYLVANIA?**

17 A. Yes, Choice One's responses accurately depict where Choice One has self-provisioned its
18 own facilities on transport routes as defined in the FCC's triggers. The responses also
19 accurately report where Choice One has provided wholesale transport under the triggers.

20 **Q. ARE CHOICE ONE'S RESPONSES TO PARTY DISCOVERY**
21 **ACCURATE?**

22 A. Yes, these responses are accurate to the best of my knowledge.

23 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

24 A. Yes it does.

**Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT A

PUBLIC VERSION

Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004

EXHIBIT B

PUBLIC VERSION

**Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT C

PUBLIC VERSION

**Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT D

PUBLIC VERSION

**Direct Testimony of Robert O. Bailey
on behalf of Choice One Communications
of Pennsylvania Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT E

PUBLIC VERSION

Choice One Ex 1

STIPULATION OF CHOICE ONE OF PENNSYLVANIA INC.

1-800-700-99

1/28/04
Hbj

The number of DS0s provided by Choice One Communications of Pennsylvania Inc. ("Choice One") to customers in Pennsylvania is identified in its response to switching questions 3 of the Pennsylvania Public Utility Commission's Appendix A discovery requests. The response provided to switching question 5 of the Commission's Appendix A discovery requests identifies, as the question indicates, the number of customers to whom Choice One provides the services identified in the question.

DOCUMENT

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:09
SECRETARY'S BUREAU

DOCUMENT

DOCKETED

FEB 12 2004

1/28/04
Hog

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. I-00030099

XO PENNSYLVANIA, INC.

DIRECT TESTIMONY

WITNESS: KRISTEN HUDSON

JANUARY 9, 2004

SECRETARY'S BUREAU

2004 JAN 30 AM 10: 07

RECEIVED

PUBLIC VERSION-WITH PUBLIC EXHIBITS

1 **Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.**

2 A. My name is Kristen Hudson. My business address is 105 Molloy Street, Nashville,
3 Tennessee, 37201.

4 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

5 A. I am employed by XO Communications, Inc., the parent company of XO Pennsylvania,
6 Inc. ("XO"). My position is Senior Manager, Network Operations (Project/Program
7 Management VI).

8 **Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT**
9 **POSITION?**

10 A. My responsibilities include oversight of project management teams responsible for
11 project support with the objective of optimizing XO's network and reducing overall
12 operating costs. In addition, I am involved in various regulatory activities such as
13 preparing filings participating in proceedings before various regulatory commissions
14 including the Federal Communications Commission ("FCC"), the Pennsylvania Public
15 Utility Commission ("Commission") and other state commissions.

16 **Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE**
17 **TELECOMMUNICATIONS INDUSTRY.**

18 A. I have been involved in the telecommunications industry in various capacities for
19 almost 8 years. During this time, I have been responsible for provisioning, switch
20 translations and circuit design. On the managerial side, I have been responsible for
21 conducting training, managing and overseeing teams responsible for provisioning and
22 circuit design, and most recently, managing a team of personnel who are responsible for
23 optimizing XO's network in order to reduce overall costs.

1 Q. MS HUDSON, WHAT IS THE PURPOSE OF YOUR TESTIMONY IN
2 THIS PROCEEDING?

3 A. The purpose of my testimony is to present a summary of XO's services and a description
4 of its facilities located in Pennsylvania.

5 Q. PLEASE DESCRIBE XO

6 A. XO (previously known as NEXTLINK PA) has provided facilities-based competitive
7 local exchange and competitive access provider in the Commonwealth of Pennsylvania
8 since 1998. XO is an active provider of telecommunications and data services in the
9 Commonwealth, offering bundled local service as well as dedicated voice and data
10 telecommunications services primarily to Pennsylvania business customers.

11 Q. IN GENERAL, DOES XO PROVIDE DEDICATED TRANSPORT ON A
12 WHOLESALE BASIS TO THIRD PARTIES IN PENNSYLVANIA?

13 A. ***BEGIN PROPRIETARY***

14

15

16

17

18 ***END PROPRIETARY***

19 Q. HAS XO PROVIDED INFORMATION ABOUT ITS SERVICES AND
20 FACILITIES IN DISCOVERY IN THIS CASE?

21 A. Throughout this proceeding, XO has been served various discovery requests, including
22 interrogatories and requests for production of documents, by numerous parties to the
23 proceeding. Attached to my testimony, I am including XO's responses to (1) the
24 Commission data requests to "footnote 14 CLECs"; XO's responses to the discovery

1 requests submitted by (2) Verizon Pennsylvania, Inc. and Verizon North, Inc.
2 (collectively, "Verizon"); (3) the Office of Consumer Advocate ("OCA"); (4) the
3 Pennsylvania Carrier's Coalition ("PCC"); and (5) the Joint Parties. These proprietary
4 responses are labeled Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E
5 respectfully and provide a summary of the services provided and a description of the
6 facilities located in Pennsylvania.

7 **Q. DO THE RESPONSES TO THE COMMISSION'S DATA REQUESTS**
8 **ACCURATELY DEPICT WHERE XO HAS DEPLOYED TRANSPORT**
9 **FACILITIES IN PENNSYLVANIA?**

10 A. Yes, XO's responses accurately depict where XO has self-provisioned its own facilities
11 on transport routes as defined in the FCC's triggers. The responses also accurately report
12 where XO has provided wholesale transport under the triggers.

13 **Q. ARE XO'S RESPONSES TO PARTY DISCOVERY ACCURATE?**

14 A. Yes, these responses are accurate to the best of my knowledge.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes it does.

**Direct Testimony of Kristen Hudson
on behalf of XO Pennsylvania, Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT A

PUBLIC VERSION

**Direct Testimony of Kristen Hudson
on behalf of XO Pennsylvania, Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT B

PUBLIC VERSION

**Direct Testimony of Kristen Hudson
on behalf of XO Pennsylvania, Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT C

PUBLIC VERSION

**Direct Testimony of Kristen Hudson
on behalf of XO Pennsylvania, Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT D

PUBLIC VERSION

**Direct Testimony of Kristen Hudson
on behalf of XO Pennsylvania, Inc.
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT E

PUBLIC VERSION

XO Exhibit 1
1-00030099
Hbg
(1/28/04)

STIPULATION OF XO PENNSYLVANIA, INC.

XO Pennsylvania, Inc. ("XO") provides local exchange service to business customers in Pennsylvania using analog voice-grade loops via the switches identified in its response to switching question 1 of the Pennsylvania Public Utility Commission's Appendix A discovery requests. The number of DS0s provided to business customers to whom XO provides only voice-grade or DS0 lines using its own switches are those appearing under the "DS 0 Only" column in XO's response to switching question 5 of the Commission's Appendix A discovery requests, however, some of the DS0s reported in switching question 5 are served using T1s.

DOCUMENT

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:00
SECRETARY'S BUREAU

DOCUMENT

SNIP LINK LLC *Sheet 1.0*
DIRECT TESTIMONY
1/28/04
Hbg PR

DOCKETED

FEB 12 2004

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. I-00030099

SNIP LINK LLC

DIRECT TESTIMONY

WITNESS: ANTHONY ABATE

JANUARY 9, 2004

PUBLIC VERSION-WITH PUBLIC EXHIBITS

RECEIVED
2004 JAN 30 AM 10:07
SECRETARY'S BUREAU

TABLE OF CONTENTS

	Page
I. THE FCC'S IMPAIRMENT ANALYSIS.....	3
II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT	9
III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT	17
IV. TRANSITIONAL ISSUES.....	24

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is Anthony Abate. I am President and CTO of SNiP LiNK LLC. My business
3 address is 100-A Twinbridge Drive, Pennsauken, New Jersey 08110.

4
5 **Q. PLEASE DESCRIBE SNIP LINK LLC.**

6 A. SNiP LiNK LLC is a privately-held competitive local exchange carrier ("CLEC") which
7 has been certificated in the Commonwealth of Pennsylvania since 1999. SNiP LiNK, and
8 its sister company, SNiP Inc., offer a full range of facilities-based Internet and telephony
9 products to consumers and small businesses in Pennsylvania and New Jersey. SNiP
10 LiNK's service territory in Pennsylvania encompasses all of the Philadelphia LATA and
11 portions of Northeastern Pennsylvania. SNiP LiNK plans to expand to Central and
12 Western Pennsylvania in 2004.

13
14 SNiP Inc. is the largest regional ISP in the Philadelphia market, offering dedicated and
15 dial up Internet access to its customers. SNiP LiNK provides presubscribed long distance
16 services as well as local telephony. Our fastest growing product is a converged local
17 voice and dedicated Internet access product using T-1 lines. This product allows
18 customers to receive always-available dedicated Internet access and full-featured Centrex
19 services over a single high speed line, often at rates at or below the ILEC's current
20 Centrex price. *****BEGIN PROPRIETARY*****

21 *****END**

22 **PROPRIETARY*****

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In its Triennial Review Order (“TRO”), the FCC determined that CLECs are impaired without access to high capacity loops and dedicated transport at the national level. As a result, incumbent local exchange carriers (“ILECs”) must continue to provide CLECs with access to unbundled loops and dedicated transport at the DS1, DS3, and dark fiber capacity levels on a widespread basis. Recognizing that a more granular analysis would be necessary to identify exceptions to the national finding, the FCC developed a route-specific procedure known as the trigger analysis (“triggers”). The triggers are designed to give ILECs an opportunity to rebut the national finding at specific customer locations or on specific transport routes where actual deployment demonstrates non-impairment at that location or route.

The purpose of my testimony is to describe the framework for evaluating ILEC claims of non-impairment. As I will demonstrate, Verizon faces a significant burden in satisfying the rigorous granular analysis of the triggers, and the Commission should cast a suspicious view upon Verizon’s claims that the triggers have been satisfied on a large scale. The record shows that CLECs like SNiP LiNK are impaired without access to unbundled loops and transport, at the DS1, DS3 and dark fiber levels, throughout Pennsylvania. Verizon has not put forth sufficient evidence for the Commission to find non-impairment under the triggers at on any transport route or at any customer location at this time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is divided into several parts. First, I will discuss the FCC’s impairment analysis for loop and transport network elements, explaining the role that network elements play for a facilities-based CLEC competing with the ILECs. Next, I will separately discuss the self-provisioning triggers that the FCC devised for high capacity loops and dedicated transport (which apply to DS3 and dark fiber only; not to DS1 UNEs), and the wholesale triggers applicable to DS1, DS3 and dark fiber loops and transport. For each trigger, I will provide a framework for interpreting the FCC triggers and analyzing Verizon’s claim that the triggers have been met for particular routes. Lastly, I will describe the transitional issues this Commission should consider upon a finding of non-impairment, in order to protect CLECs and their customers from unanticipated disruption to their services and rates if the Commission delists any loops or transport routes.

I. THE FCC’S IMPAIRMENT ANALYSIS

Q. PLEASE DESCRIBE THE FCC’S POLICY OBJECTIVES THAT PROVIDE THE FRAMEWORK FOR THE TRIENNIAL REVIEW IMPLEMENTATION.

A. When conducting the granular analysis required by the triggers, it is imperative that the Commission keep the TRO’s three policy objectives at the forefront. First, the TRO continues the Commission’s implementation and enforcement of the federal Act’s market-opening requirements. This objective is critical because it recognizes the importance of providing a regulatory environment that is conducive to competition,

1 particularly competition from facilities-based CLECs using unbundled loops and
2 transport. Second, the TRO strives to apply unbundling as Congress intended: with a
3 recognition of the market barriers faced by new entrants as well as the societal benefits
4 and costs of unbundling. This again is critical because it recognizes the balance that is
5 required to ensure that all consumers are able to obtain services from multiple suppliers
6 competing for their business. This objective further recognizes the role that sharing of
7 the network must play in delivering better services and lower costs to consumers through
8 competition. Finally, the TRO establishes a regulatory foundation that seeks to ensure
9 that investment in telecommunications infrastructure will generate substantial, long-term
10 benefits for all consumers. The trigger analysis is intended to allow competitors to build
11 the revenues necessary to support that infrastructure in a rational and sustainable manner.

12
13 **Q. PLEASE DESCRIBE THE FCC'S APPROACH TO DETERMINING**
14 **IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS.**

15 A. The FCC applied the following standard to determine impairment: “[a] requesting carrier
16 is impaired when lack of access to an incumbent LEC network element poses a barrier or
17 barriers to entry, including operational and economic barriers, that are likely to make
18 entry into a market uneconomic.” TRO ¶ 7. The FCC found that “[a]ctual marketplace
19 evidence is the most persuasive and useful evidence to determine whether impairment
20 exists.” The FCC elaborated that it is particularly “interested in the relevant market using
21 non incumbent LEC facilities.” *Id.*

1 Q. **WHAT DID THE FCC CONCLUDE WITH REGARD TO HIGH CAPACITY**
2 **LOOPS AND DEDICATED TRANSPORT?**

3 A. Based on the record before it, the FCC made a nationwide finding of impairment for high
4 capacity loops (DS1, DS3, and dark fiber) and transport (DS1, DS3, and dark fiber). *See*
5 *TRO* ¶ 202 (stating that “requesting carriers are impaired on a location-by-location basis
6 without access to incumbent LEC loops nationwide.”); *see also TRO* ¶ 359 (stating that it
7 finds “on a national level that requesting carriers are impaired without access to
8 unbundled dark fiber transport facilities ... [DS3 transport and DS1 transport]).” As a
9 result, the FCC rules require that competing carriers have access to unbundled loops and
10 transport everywhere unless a specific route has been found to lack impairment under the
11 trigger analysis.

12

13 Q. **WHAT WAS THE FCC’S BASIS FOR FINDING THAT COMPETING**
14 **CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY**
15 **LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?**

16 A. The FCC’s loop impairment analysis places substantial emphasis on two factors: whether
17 carriers can economically self-provision high capacity loops and if competitive
18 alternatives exist. The FCC based its finding that competing carriers are impaired
19 without high capacity loops at the dark fiber, DS3, and DS1 capacity levels in large part
20 on the fact that the costs to construct loops and transport are fixed and sunk. The FCC
21 stated that “[b]ecause the distribution portion of the loop serves a specific location, and
22 installing and rewiring that loop is very expensive, most of the costs of constructing loops
23 are sunk costs.” *TRO* ¶ 205. The FCC concluded that it would be extremely difficult to
24 recover these construction costs and be a viable competitor in the marketplace.

1
2 The FCC found that there are substantial economic and operational barriers to deploying
3 loops. For example, the FCC found that “the cost to self-deploy local loops at any
4 capacity is great . . . and that a competitive LEC that plans to self-deploy its facilities
5 must target customer locations where there is sufficient demand from a potential
6 customer base, usually a multi-tenant premises location, to generate a revenue stream that
7 could recover sunk construction costs of the underlying loop transmission facility”
8 *TRO* ¶ 303. The FCC emphasized, however, that other obstacles to deploying high
9 capacity loops exist even if the carrier can overcome the cost issues. For example,
10 carriers encounter barriers in obtaining reasonable and timely access to the customer’s
11 premises and in “convincing customers to accept the delays and uncertainty associated
12 with deployment of alternative loop facilities.” *TRO* ¶ 303 (citations omitted).

13

14 **Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING**
15 **CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED**
16 **DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY**
17 **LEVELS?**

18 A. The FCC stated that its impairment findings with respect to DS1, DS3, and dark fiber
19 transport facilities “recognize that competing carriers face substantial sunk costs and
20 other barriers to self-deploy facilities and that competitive facilities are not available in a
21 majority of locations, especially non-urban areas.” *TRO* ¶ 360 (citations omitted). The
22 FCC concluded that it would be extremely difficult to recover these costs and to be a
23 viable competitor in the marketplace. Indeed, the FCC concluded that “[d]eploying
24 transport facilities is an expensive and time-consuming process for competitors, requiring

1 substantial fixed and sunk costs." *Id.* ¶ 371 (citations omitted). The FCC elaborated that
2 the costs of self-deployment include collocation costs, fiber costs, costs to trench and lay
3 fiber, and costs to light the fiber. *Id.* CLECs also encounter delays in constructing
4 dedicated transport due to having to obtain rights-of-way and other permits. *Id.*

5
6 **Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-**
7 **IMPAIRMENT FOR HIGH CAPACITY LOOPS OR DEDICATED TRANSPORT**
8 **AT THE DARK FIBER, DS3, AND DS1 LEVELS?**

9 A. In making a national finding of impairment for loops and transport, the FCC found that
10 evidence of non-impairment was isolated and exceptional. As the FCC explained, it
11 made "affirmative national findings of impairment and non-impairment for transport at
12 the national level, as supported by the record." TRO, ¶ 394. The FCC found, however,
13 that the evidence in the record was not sufficiently detailed for it to identify any specific
14 routes "where carriers likely are not impaired without access to unbundled transport in
15 some particular instances." *Id.* Therefore, it delegated to the states, "the fact-finding role
16 *of identifying on which routes requesting carriers are not impaired ...* when there is
17 evidence that two or more competing carriers, not affiliated with each other or the
18 incumbent LEC, offer wholesale transport service completing that route." TRO, ¶ 412
19 (emphasis added).

20
21 Evidence of non-impairment will be particularized and will vary from route to route or
22 from location to location. For example, for loops, the FCC found virtually no evidence of
23 self-deployment of DS1 loops, TRO ¶ 298, and found "scant evidence of wholesale

1 alternatives" for DS1 loops. *TRO* ¶ 325. For transport, the FCC found that "alternative
2 facilities are not available to competing carriers in a majority of areas." *TRO* ¶ 387.
3 Therefore, one would expect that a very small number of transport routes will require
4 close analysis in this proceeding.

5
6 Critically, the FCC required the trigger-based impairment analysis to be conducted
7 separately for DS1, DS3 and dark fiber capacities. Separate analysis is necessary because
8 actual deployment will vary by capacity levels, particularly for DS1 level UNEs that a
9 carrier like SNiP LiNK uses. One of the most significant deficiencies in Verizon's
10 trigger evidence is its failure to apply the triggers separately to DS1, DS3 and dark fiber.

11
12 **Q. ARE THE FCC'S IMPAIRMENT FINDINGS CONSISTENT WITH SNIP LINK'S**
13 **EXPERIENCES?**

14 **A.** Yes. As explained previously, SNiP LiNK provides local services exclusively using DS1
15 and above facilities. Although SNiP LiNK has purchased its own local switch and is a
16 facilities-based Internet provider, SNiP LiNK does not have the resources to deploy loops
17 or interoffice transport to serve its customers. The barriers to entry that the FCC found
18 applicable to loops and transport on a national basis prevent SNiP LiNK from deploying
19 its own facilities to customers.

20
21 *****BEGIN PROPRIETARY*****

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

END PROPRIETARY

II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT

Q. WHAT ARE THE PURPOSES OF THE FCC'S SELF-PROVISIONING TRIGGER FOR UNBUNDLED LOOPS AND TRANSPORT?

A. The self-provisioning triggers are intended to identify those customer locations and transport routes where sufficient deployment of competitively owned facilities is present to demonstrate that *other competitors* (not the competitors that have deployed facilities) are not impaired without access to unbundled loops or transport. The self-provisioning triggers rely on *indirect* evidence -- based on a proven past deployment -- in order to demonstrate this non-impairment. The FCC's theory is that actual deployment by similarly situated CLECs provides evidence that a CLEC without its own facilities does not face impairment.

1
2 It is important to realize that the self-provisioning triggers assume a world where the
3 competitors that own the existing facilities that have been deployed do *not* make them
4 available to other competitive providers. Thus, in instances where the self-provisioning
5 triggers are applicable, a carrier like SNiP LiNK would not be able to purchase facilities
6 from any supplier other than the ILEC. As a result, the evidence that a self-provisioning
7 carrier has deployed facilities must be sufficient to demonstrate that the economic and
8 technical barriers to entry have been overcome as a general matter on the route. Indeed,
9 the FCC specifically cautioned that the self-provisioning triggers must exclude “unusual
10 circumstances unique to [a] single provider that may not reflect the ability of other
11 competitors to similarly deploy.” *TRO* ¶ 329 at n.974.

12
13 **Q WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING**
14 **TRIGGERS?**

15 A. The self-provisioning triggers only apply to DS3 and Dark Fiber Loops and Transport.
16 *TRO* ¶¶ 334, 409. DS1 Loops and Transport are not included under these triggers. In
17 other words, regardless of how much self-provisioned deployment may exist at a
18 customer location or on a route, a DS1 UNE will continue to be available to a requesting
19 CLEC. A summary of the FCC’s triggers – and the capacities to which they apply – is
20 attached as Exhibit 1.

21

1 Q. **FOR THE SELF-PROVISIONING TRIGGERS TO BE SATISFIED, MUST A**
2 **CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?**

3 A. Yes. The *Triennial Review Order* requires that the self-provisioning triggers be applied
4 separately to each capacity level. Verizon has failed to do this in its testimony. Instead,
5 Verizon assumes that all OCn facilities necessarily are channelized into DS1 and DS3
6 circuits. See West/Peduto October 31 Testimony at 48-49. This assumption is incorrect.
7 A CLEC that self-provisions at the OCn capacity level will not be capable of providing
8 service at lower capacity levels in a given wire center if it has not deployed the
9 appropriate electronics to demultiplex the traffic at that wire center. For example, many
10 of the carriers SNiP LiNK has contacted concerning wholesale facilities have responded
11 that they do not provide DS1 circuits because they have not deployed multiplexing
12 equipment for DS1s. Evidence that the carrier has deployed at an OCn level is not
13 adequate to demonstrate that the carrier satisfies the self-deployment triggers for DS3s.

14
15 Q. **HOW ARE CUSTOMER LOCATIONS DEFINED, FOR PURPOSES OF THE**
16 **LOOP TRIGGERS?**

17 A. For loops, the FCC's definition is "the connection between the relevant service central
18 office and the network interface device ("NID") or equivalent point of demarcation at a
19 specific customer premises." In addition, the loop must permit the CLEC to access all
20 units within a customer location, such as all tenants in a multi-tenant building or all
21 buildings in a campus environment.

22

1 Q. HAS VERIZON CORRECTLY APPLIED THIS DEFINITION FOR THE SELF-
2 PROVISIONING TRIGGER?

3 A. Verizon has not provided evidence that is particularized enough to tell. Verizon
4 does not present evidence that the CLECs it counts have access to the entire building.
5 Instead, in the West/Peduto December 19 Testimony (at 28), Verizon asserts that “it is
6 reasonable to assume” this access for a “large commercial building.” This assumption is
7 not reasonable. SNiP LiNK has evaluated several alternative facilities providers,
8 including most of the major competitive access providers serving its markets. These
9 carriers frequently provide confidential “lit buildings” lists to prospective buyers
10 identifying where the carrier can offer service. A substantial portion of the “lit buildings”
11 on those lists identify a specific floor or, in some cases a specific suite number, to which
12 the carrier provides service. The carrier does not provide access to the remaining units
13 within the building. Thus, the fact that a carrier has deployed facilities to a building does
14 not, in and of itself, indicate that the carrier has access to the entire location.

15

16 Q. HOW IS A TRANSPORT ROUTE DEFINED FOR PURPOSES OF THE
17 TRANSPORT TRIGGERS?

18 A. The FCC defined a transport route as “a connection between wire center or switch ‘A’
19 and wire center or switch ‘Z’.” The FCC elaborated that “even if, on the incumbent
20 LEC’s network, a transport circuit from ‘A’ to ‘Z’ passes through an intermediate wire
21 center ‘X,’ the competing providers must *offer service* connecting wire centers ‘A’ and
22 ‘Z,’ but do not have to mirror the network path of the incumbent LEC through wire

1 center 'X.'" TRO, ¶ 401 (emphasis added). Thus, the FCC requires that transport service
2 must be offered between the two wire centers in question.

3
4 **Q. IS VERIZON'S IDENTIFICATION OF TRANSPORT ROUTES CONSISTENT**
5 **WITH THE SELF-PROVISIONING TRIGGER?**

6 A. No. Verizon performed a rudimentary counting exercise, in which it simply identifies all
7 of the collocation arrangements for a given CLEC, confirms that fiber optic facilities are
8 present in the collocation arrangement, then declares that transport routes exist between
9 each collocation arrangement. This approach is deficient, in that it presents no evidence
10 that the CLEC in question is providing transport service *between* the two ILEC wire
11 centers, which is the FCC requirement. For example, CLECs generally use collocation
12 arrangements to aggregate unbundled loops that are destined for the CLEC's switch.
13 There is a high probability that the equipment and fiber optics installed in a collocation
14 arrangement are not being used to provide transport between two ILEC wire centers, but
15 instead are being used to carry traffic from a wire center to a CLEC switch. This latter
16 use is not "transport" within the meaning of the trigger. The FCC specifically limited
17 transport to routes between two ILEC wire centers (or an ILEC wire center and an ILEC
18 switch).

19
20 To count as a transport route for purposes of the triggers, each collocation arrangement in
21 question must be used as an endpoint for the transport of traffic between the two ILEC
22 wire centers. The FCC made this clear when it rejected ILEC proposals to use the
23 existence of special access pricing flexibility to identify non-impairment. The FCC

1 explained that the special access pricing flexibility standard relied on the existence of
2 alternative carrier collocations, and that, “the measure may only indicate that numerous
3 carriers have provisioned fiber from their switch to a single collocation rather than
4 indicating that transport has been provisioned to transport traffic between incumbent LEC
5 central offices.” TRO, ¶ 397. Unless traffic is being routed between the two central
6 offices, the facilities do not constitute a transport route for purposes of the triggers.

7
8 As a result of Verizon’s overbroad route definition, it substantially overstates the number
9 of transport facilities deployed by competitive carriers. Generally, the CLECs that
10 responded to the Commission’s mandatory data requests reported far fewer transport
11 routes than Verizon’s collocation-based test yields. The Commission should rely on the
12 CLEC data to identify the routes on which competitive carriers have deployed transport
13 facilities.

14
15 **Q. WHAT EVIDENCE MUST VERIZON SUBMIT TO MEET THE FCC’S**
16 **REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-**
17 **PROVISIONING TRIGGER?**

18 **A.** While the existence of CLEC facilities obviously is a prerequisite to the provision of
19 service, that alone does not reflect whether the equipment can be used to provide the
20 service to satisfy the trigger, whether the CLEC can provide service at the requisite
21 capacity level, or whether CLEC has performed the necessary engineering, provisioning,
22 and administrative tasks to ensure that service can be provided. The only reliable way of
23 demonstrating that a CLEC is operationally ready under the self-provisioning trigger is to

1 produce evidence that the CLEC is actually providing service at the customer location or
2 on the given transport route. If the CLEC facilities are in use providing the requisite
3 capacity of service and if the CLEC is able to provision additional circuits using existing
4 equipment and facilities, then it is operationally ready to provide the service. This is
5 consistent with the FCC's requirement that evidence be provided that CLECs are *servicing*
6 customers using self-provisioned loop facilities, and that CLECs *offer service* between
7 two wire centers on a given transport route. *See, e.g.*, 47 C.F.R. §§ 51.319(a)(5)(1)(A),
8 51.319(e)(2)(i)(A).

9
10 **Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES**
11 **COUNT AS "OWNED FACILITIES"?**

12 A. In order for facilities to qualify for purposes of the triggers, the carrier must have
13 deployed its "own facilities" on the entire loop. There are two ways that a carrier can
14 have ownership over the facilities: the carrier can have legal title to the facilities or, the
15 carrier can have a "long-term" (*i.e.*, 10 years or more) dark fiber IRU, if the fiber is lit by
16 the qualifying carrier by attaching its own optonics to the facilities. If the carrier does
17 not use its own facilities, then the carrier cannot count for purposes of the self-
18 provisioning trigger.

19
20 **Q. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?**

21 A. Facilities obtained from other sources such as through special access arrangements,
22 UNEs, capacity leases (unless they are long term IRUs), and all third-party provided
23 facilities fail to qualify as "owned facilities." The FCC specifically emphasized that a

1 CLEC "using the special access facilities of the incumbent LEC or the transmission
2 facilities of the other competitive provider ... would *not* satisfy the definition of a self-
3 provisioning competitor for purposes of the trigger." *TRO* ¶ 333.

4
5 In addition, the triggers are designed to prevent double counting of facilities. Therefore,
6 for purposes of the self-provisioning test, a carrier may not be using "facilities owned or
7 controlled by one of the other two providers" *TRO* ¶ 333. For example, if Carrier A
8 has deployed facilities to a building or on a transport route and Carrier B purchases
9 service from Carrier A, only one self-provisioner is present on the route. Carrier B does
10 not own the facilities it uses to provide service to its customers.

11
12 **Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL IT**
13 **AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE**
14 **COMPETITIVE WHOLESALE FACILITIES TRIGGER OR VICE VERSA?**

15 **A.** No. The FCC emphasized that the triggers are separate and distinct. The purpose of the
16 self-provisioning trigger is to determine through actual experience whether similarly
17 situated CLECs can deploy their own facilities in order to serve its own customers. In
18 contrast, the wholesale facilities trigger examines whether the provider makes its
19 facilities available to other carriers on a widely available basis. Self-provisioners that do
20 not provide service to other carriers do not qualify under the wholesale trigger. *See TRO*
21 ¶ 414 (wholesale test does not count facilities owned by a competitor unwilling to offer
22 capacity on a whole basis). Similarly, although some wholesale carriers also may self-
23 provide facilities to serve their own customers, others may not provide any end user

1 service and thus cannot be self-provisioners under the triggers. *See TRO ¶ 406 & n.1256*
2 (self-provisioner must be operationally ready to provide transport; carrier must “remain
3 in operation” on the route). For example, an entity that operates only as a “carrier’s
4 carrier” does not qualify as a self-provisioner under the FCC’s triggers.

5
6 **III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT**

7 **Q. WHAT IS THE PURPOSE OF THE FCC’S WHOLESALE TRIGGERS FOR**
8 **HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?**

9 A. The wholesale triggers provide the ILECs an opportunity to demonstrate that there is no
10 impairment for a specific customer location or route by identifying locations for which
11 there are a sufficient number of alternative providers offering wholesale loop and
12 transport services using their own facilities. The underlying premise of the wholesale
13 triggers is that when a working wholesale market with multiple alternative sources of
14 supply exists for loops or transport, then CLECs would not be reliant on receiving the
15 element from the ILEC as a UNE.

16
17 **Q. WOULD A WORKING WHOLESALE MARKET BE BENEFICIAL TO SNIP**
18 **LINK?**

19 A. Yes, if the alternative facilities were available as more than a theoretical possibility. For
20 a viable competitive wholesale market to exist, not only must competitive facilities be
21 deployed, but also the requesting carrier must be able to use these facilities to replace
22 ILEC UNEs in ordinary applications. It is for this reason that the FCC emphasized in the
23 context of loops that alternative providers must “offer an equivalent wholesale loop

1 product at a comparable level of capacity, quality and reliability.” *TRO* ¶ 337. Equally
2 important, the alternative facilities must work seamlessly with other components of a
3 CLEC network, including ILEC-supplied UNEs. For example, it is conceivable that as a
4 result of application of the triggers, a CLEC will purchase a UNE loop from the ILEC
5 and competitive transport from an alternative vendor, or will purchase a competitively
6 supplied loop in conjunction with UNE transport. Moreover, CLECs may even face
7 situations where DS1 loops and transport are ordered as UNEs, but DS3 loops or
8 transport to the same location or along the same route are ordered through competitive
9 suppliers. These permutations make it imperative that *all barriers* to a competitive
10 wholesale market be eliminated, including any barriers created by Verizon’s ordering
11 processes for UNEs.

12
13 **Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE**
14 **TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?**

15 A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the wholesale
16 triggers. Dark Fiber loops are not subject to the wholesale trigger, but Dark Fiber
17 transport is. See Exhibit 1.

18
19 **Q. WHAT MUST VERIZON DEMONSTRATE TO SATISFY THE WHOLESALE**
20 **PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND**
21 **DEDICATED TRANSPORT?**

22 A. The wholesale facilities trigger examines whether there are competing providers offering
23 a bona fide product on the specific route. To satisfy the wholesale facilities trigger, the
24 Commission must find that there are *two or more* competing providers that have

1 deployed their own high capacity loop or dedicated transport facilities, that are
2 operationally ready to use those transport facilities and are willing to provide transport
3 over those facilities on a “widely available wholesale basis” to other carriers.
4

5 In addition to producing the evidence discussed in connection with the self-provisioning
6 trigger, Verizon also must demonstrate that the alternative provider is actually offering
7 wholesale service for the specific route or location at the requisite capacity level, has
8 equipped its network to facilitate numerous wholesale customers, and has developed the
9 appropriate systems and procedures to manage a wholesale business.
10

11 **Q. HOW DOES THE REQUIREMENT OF OPERATIONAL READINESS APPLY**
12 **TO THE WHOLESALE TRIGGERS?**

13 A. In addition to the requirements of the self-provisioning triggers, Verizon must
14 demonstrate that the wholesale provider is operationally ready and willing to provide
15 transport to other carriers at each capacity level. At a minimum, Verizon must show that
16 each wholesale carrier:

- 17 • Has sufficient systems, methods and procedures for pre-ordering, ordering,
18 provisioning, maintenance and repair, and billing;
- 19 • Possesses the ability immediately to provision wholesale high capacity loops to
20 each specific customer location identified or dedicated transport along the
21 identified route;
- 22 • For loops, has access to an entire multi-unit customer premises;
- 23 • Is capable of providing transport at a comparable level of capacity, quality, and
24 reliability as that provided by the ILEC;

- 1 • For transport, is collocated in each central office at the end point of each transport
2 route;
- 3 • Has the ability to provide wholesale high capacity loops and transport in
4 reasonably foreseeable quantities, including having reasonable quantities of
5 additional, currently installed capacity; and
- 6 • Reasonably can be expected to provide wholesale loop and transport capacity on a
7 going-forward basis.

8
9 **Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE**
10 **FACILITIES TRIGGER?**

11 A. To be widely available, service must be made available on a common carrier basis, for
12 example, through a tariff or standard contract. The fact that a carrier may have provided
13 service to only one or a few other carriers on a route is not sufficient, unless the carrier
14 also is willing to provide comparable service to other carriers. *See TRO ¶ 414* (trigger
15 does not count competing carriers that are not willing to offer capacity on their network
16 on a wholesale basis). Moreover, an offer to negotiate an individualized private carriage
17 contract does not constitute service being widely available. In addition, each carrier
18 identified as a wholesale provider must be able "immediately to provide" wholesale
19 service. 47 C.F.R. § 51.319(e). If the carrier is required to construct facilities in order
20 for the service to be made available, then the service is not widely available. Similarly, a
21 service is not widely available if the carrier is unable to interconnect with its wholesale
22 customers because sufficient facilities have not been terminated in the relevant central
23 office or if insufficient collocation space is present to accommodate new CLECs in the
24 central office.

25

1 Q. **WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE**
2 **WHOLESALE PROVIDER?**

3 A. Requesting carriers must be able to access cross-connects at nondiscriminatory rates,
4 terms, and conditions in accordance with FCC and state commission rules. In addition,
5 ILECs must provide requesting carriers with adequate cross-connect terminations at cost-
6 based rates, and must enable sufficient capacity expansion. If carriers are not able to
7 cross connect at the ILEC central office, then they cannot obtain access to the wholesale
8 providers' facilities.

9
10 As I stated above, for a competitive wholesale market to be in place, there must be proper
11 systems and processes for ordering and provisioning. In addition, carriers must be able to
12 obtain the service at nondiscriminatory rates and on nondiscriminatory intervals.
13 Requesting carriers also must be able to order circuits to terminate in all qualified
14 wholesale providers' collocation space. The Commission should inquire whether the
15 ILEC's OSS is capable of handling LSRs that are provisioned to a wholesale provider's
16 facilities.

17
18 Q. **DOES VERIZON PROVIDE ANY EVIDENCE ON THESE POINTS?**

19 A. No. Verizon does not address whether the wholesale providers it identifies are
20 operationally ready to provide wholesale services. No evidence has been introduced to
21 show that these carriers have systems, methods and procedures in place to order and
22 provision wholesale service, nor has Verizon introduced any evidence to show that the
23 carrier has a reasonable amount of capacity to offer wholesale facilities to other carriers.

1 Similarly, Verizon does not address whether a carrier's wholesale offerings are "widely
2 available" or whether it has the capability to "immediately provide" service if requested
3 by a competitive carrier. Finally, Verizon does not address the availability of cross-
4 connects to access wholesale providers or how a requesting carrier would be able to use a
5 competitive carrier's wholesale facilities in conjunction with Verizon UNEs. Because
6 Verizon carries the burden of proof to demonstrate satisfaction of the triggers, its failure
7 to produce evidence on these issues is fatal to Verizon's challenge to the nationwide
8 impairment findings.

9
10 **Q. HAS VERIZON PRESENTED SUFFICIENT EVIDENCE THAT COMPETITIVE**
11 **FACILITIES ARE AVAILABLE AT WHOLESALE?**

12 A. No. A key element of this Commission's fact-finding function is to properly identify the
13 relevant wholesale providers of loops and transport, and to ensure that the ILECs are not
14 overly broad in their identification of wholesale providers. Verizon has not presented
15 route-specific evidence that any of the wholesale providers offer service on the routes
16 that it identifies. SNiP LiNK, through the Loop/Transport Carrier Coalition, has filed a
17 Motion to Strike Verizon's wholesale evidence because it does not present route-specific
18 evidence that wholesale services are available. See Motion to Strike, Docket No. I-
19 000300099, filed January 7, 2004. For the reasons explained in that Motion, Verizon's
20 evidence should be stricken from the record.

21
22 In addition, the FCC triggers require that evidence of wholesale availability be presented
23 for each level of capacity. This, too, Verizon failed to present. As I explained in the

1 context of the self-provisioning triggers, it is not reasonable to assume that all OCn
2 facilities have the proper multiplexing equipment installed to provide DS3 and DS1
3 services. This is particularly true with respect to wholesale services, where carriers
4 frequently offer only certain capacities at wholesale.

5
6 As discussed below, several of the carriers that Verizon identifies as wholesale carriers
7 refused to provide some or all capacities of service to SNIp LiNK.

8
9 Telcove (formerly Adelphia): SNIp LiNK explored using Adelphia for transport in the
10 Philadelphia LATA in 2001. SNIp LiNK asked whether Adelphia would provide
11 transport at a DS1 level, but Adelphia reported that it did not offer DS1 transport. The
12 sales representative explained that Adelphia had not deployed multiplexing equipment to
13 provide DS1 service at wholesale, and therefore did not offer DS1 transport. Adelphia
14 would only offer transport to SNIp LiNK at a DS3 and higher level. Even then, Adelphia
15 offered wholesale service through its own facilities on only a few routes, and resold
16 Verizon special access in other instances. Adelphia did not have its own facilities on
17 most of the routes where SNIp LiNK needed transport.

18
19 AboveNet (formerly MFN): MFN only offered SNIp LiNK dark fiber. MFN did not
20 offer DS3 or DS1 lit circuits at wholesale.

1 MCI (WorldCom): SNiP LiNK also explored purchasing transport at wholesale from
2 MCI. MCI, however, only offered to provide lit circuits to SNiP LiNK. SNiP LiNK
3 asked MCI if it made dark fiber available, and MCI stated that it did not offer dark fiber
4 at wholesale.

5
6 City Signal: At the time SNiP LiNK explored obtaining transport from Adelphia, it also
7 contacted City Signal Communications concerning transport in the Philadelphia LATA.
8 Much of City Signal's transport route map overlapped with another major carrier's map.
9 It appeared from our discussions that City Signal in large part was reselling facilities
10 obtained from that other carrier, or was reselling special access it obtained from Verizon.
11 Because we could not determine whether City Signal was providing facilities-based
12 service, SNiP LiNK did not pursue the purchase of transport from the provider any
13 further.

14
15 **IV. TRANSITIONAL ISSUES**

16 **Q. IF A STATE COMMISSION FINDS THAT A TRIGGER IS SATISFIED, WHAT**
17 **HAPPENS NEXT?**

18 **A.** If the Commission finds that requesting carriers are not impaired without access to
19 unbundled transport and/or loops on any particular route or at any customer location, then
20 the Commission must establish an "appropriate period for competitive LECs to transition
21 from any unbundled [loops or transport] that the state finds should no longer be
22 unbundled." *TRO ¶¶ 339, 417.*

1 Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN APPROPRIATE
2 TRANSITION PERIOD?

3 A. A transition period is required for two reasons. First, CLECs made specific business
4 decisions to serve or not serve customers in reliance on the availability of UNE loops or
5 UNE transport to the customer location or on the relevant transport route. CLECs must
6 be able to continue to offer service to these customers after a finding of non-impairment.
7 This consideration is essential because services to enterprise customers are contract-based
8 and generally do not allow the provider to terminate or modify the contract due to sudden
9 cost increases. Without a transition period, CLECs and their customers would face
10 significant disruptions to their services if access to unbundled loops were disconnected or
11 migrated to higher priced services. A transition is needed to prevent rate shock to
12 customers receiving service using UNE arrangements.

13
14 Second, a CLEC cannot modify its network overnight. A litany of business arrangements
15 will have to be negotiated, modified and implemented if a state commission determines
16 that one of the triggers has been satisfied. For example, if the Commission were to
17 determine that the self-provisioning trigger were satisfied, SNiP LiNK would have to
18 deploy its own facilities on the transport route in question. Deployment of fiber is a time-
19 consuming experience. *****BEGIN PROPRIETARY*****

20
21
22
23

1
2 *****END PROPRIETARY***** Any transition period should build in sufficient time to
3 enable the CLEC to make use of the alternatives that underlie the finding of non-
4 impairment.

5
6 **Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE COMMISSION**
7 **SHOULD CONSIDER?**

8 A. Yes. The Commission should ensure that Verizon maintains an adequate process for
9 ordering combinations of loops and transport, in situations where one or both network
10 elements of the combination have been delisted. In the *TRO*, over ILEC objections, the
11 FCC specifically stated that competing carriers are permitted to continue to have access
12 to combinations of loops and transport regardless of whether one of the items has been
13 delisted. *See TRO* ¶ 584. Similarly, the Commission should ensure that Verizon has
14 adequate billing processes and procedures in place for CLECs to purchase delisted
15 network elements, whether individually or in combination.

16
17 **Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?**

18 A. Establishing an appropriate transition period is a complex task. Ideally, these issues
19 should be addressed in a phase of this proceeding that immediately follows the finding of
20 non-impairment. If the Commission follows such a procedure, Verizon should be
21 prohibited from billing special access rates to CLECs while the Commission receives
22 evidence on the elements necessary to protect customers from rate shock and to enable
23 CLECs to build replacement facilities and/or to migrate to the network facilities of non-

1 ILEC providers. In the event an interim transition is desired, I recommend the minimum
2 components described below.

3
4 The Commission could develop a multi-tiered transition process such as the one
5 applicable to mass-market switching. First, there should be a transition period during
6 which CLECs may order new UNEs for locations and routes where the Commission finds
7 a trigger is met. This period should be a minimum of nine months in order to enable a
8 CLEC to continue to offer competitive service to new customers while it pursues
9 alternatives available to it. Second, CLECs should have a transition period for existing
10 customers served by UNE arrangements where non-impairment subsequently is found.
11 The three year transition process established for customers served by line sharing
12 arrangements may provide a useful model for this purpose. All loop and transport UNEs
13 made available during these transition periods should continue to be made available at
14 TELRIC rates until migrated.

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 **A.** Yes, it does.

18

**Direct Testimony of Anthony Abate
on behalf of SNIPLINK LLC
Pa. PUC Docket No. I-00030099
January 9, 2004**

EXHIBIT A

PUBLIC VERSION

FCC Loop and Transport Triggers				
Capacity	Loop Triggers		Transport Triggers	
	Self-provisioned deployment	Competitive wholesale facilities	Self-provisioned deployment	Competitive wholesale facilities
DS1	Does not apply	Two or more unaffiliated providers have deployed their own loops to a customer location and offer DS1 loops over its own facilities on a widely available basis. Each wholesale provider must have access to the entire customer location, including each individual unit within that location. §51.319(a)(4)(ii).	Does not apply	Two or more unaffiliated providers (A) have deployed their own DS1 facilities along the route and are operationally ready to use those facilities to provide DS1 transport on the route; (B) are willing immediately to provide on a widely available basis, dedicated DS1 transport along the route; (C) have facilities that terminate in a collocation arrangement at each end of the route; and (D) requesting telecommunications carriers have reasonable and non-discriminatory access to the unaffiliated provider's facilities through a cross-connect to the competing provider's collocation arrangement. §51.319(e)(1)(ii).

FCC Loop and Transport Triggers				
Capacity	Loop Triggers		Transport Triggers	
	Self-provisioned deployment	Competitive wholesale facilities	Self-provisioned deployment	Competitive wholesale facilities
DS3	<p>Two or more unaffiliated providers have deployed their own loops to a customer location and are serving customers at a DS3 level via those facilities. §51.319(a)(5)(i)(A).</p>	<p>Two or more unaffiliated providers have deployed their own loops to a customer location and offer DS3 loops over its own facilities on a widely available basis. Each wholesale provider must have access to the entire customer location, including each individual unit within that location. §51.319(a)(5)(i)(B).</p>	<p>Three or more unaffiliated providers have deployed their own DS3 facilities along the route, are collocated on both ends of the route and are operationally ready to use those facilities to provide DS3 transport between the collocation facilities on the route. §51.319(e)(2)(i)(A).</p>	<p>Two or more unaffiliated providers (A) have deployed their own DS3 facilities along the route and are operationally ready to use those facilities to provide DS3 transport on the route; (B) are willing immediately to provide on a widely available basis, dedicated DS3 transport along the route; (C) have facilities that terminate in a collocation arrangement at each end of the route; and (D) requesting telecommunications carriers have reasonable and non-discriminatory access to the unaffiliated provider's facilities through a cross-connect to the competing provider's collocation arrangement. §51.319(e)(2)(i)(B).</p>

FCC Loop and Transport Triggers				
Capacity	Loop Triggers		Transport Triggers	
	Self-provisioned deployment	Competitive wholesale facilities	Self-provisioned deployment	Competitive wholesale facilities
Dark fiber	Two or more unaffiliated providers have deployed their own dark fiber loops to a customer location. §51.319(a)(6)(i).	Does not apply	Three or more unaffiliated providers have deployed their own dark fiber facilities and the facilities terminate in a collocation arrangement at each end of the transport route. §51.319(e)(3)(i)(A).	Two or more unaffiliated providers (A) have deployed their own dark fiber along the route and are operationally ready to lease or sell those facilities for the provision of fiber-based transport on the route; (B) are willing immediately to provide on a widely available basis, dark fiber along the route; (C) have facilities that terminate in a collocation arrangement at each end of the route; and (D) requesting telecommunications carriers have reasonable and non-discriminatory access to the unaffiliated provider's dark fiber through a cross-connect to the competing provider's collocation arrangement. §51.319(e)(3)(i)(B)

SNIP LINK LLC *Start 1.1*
REBUTTAL TESTIMONY
1/28/04 Hwy DK

DOCUMENT

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. 1-00030099

SNIP LINK LLC

REBUTTAL TESTIMONY

WITNESS: ANTHONY ABATE

JANUARY 20, 2004

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:07
SECRETARY'S BUREAU

PUBLIC VERSION-WITH PUBLIC EXHIBITS

1 Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

2 A. My name is Anthony Abate. I am President and CTO of SNiP LiNK LLC. My business
3 address is 100-A Twinbridge Drive, Pennsauken, New Jersey 08110.

4 Q. ON WHOSE BEHALF IS THIS REBUTTAL TESTIMONY BEING
5 SUBMITTED?

6 A. SNiP LiNK LLC ("SNiP LiNK").

7 Q. ARE YOU THE SAME MR. ABATE THAT SUBMITTED DIRECT TESTIMONY
8 ON JANUARY 9, 2004 ON BEHALF OF SNIP LINK IN THIS PROCEEDING?

9 A. Yes I am.

10 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

11 A. This rebuttal testimony is being filed in response to the initial testimony submitted by
12 competitive local exchange carrier ("CLEC") parties in this docket on January 9, 2004.
13 Although SNiP LiNK generally is in concurrence with the criticisms of Verizon's *prima*
14 *facie* case, the purpose of my testimony is to note SNiP LiNK's disagreement with the
15 proposal offered by Allegiance Telecom of Pennsylvania, Inc. ("Allegiance") that the
16 Commission act a clearinghouse for a new round of data collection. I believe that while
17 verification by the CLECs alleged to be trigger candidates is important prior to any
18 determination whether a trigger is satisfied, a new round of discovery and verification is
19 inappropriate at this juncture of this proceeding.

20 Q. WHAT DID ALLEGIANCE PROPOSE?

21 A. In Mr. Anderson's testimony, Allegiance proposed that the Commission act a
22 clearinghouse to verify the data provided by Verizon by requiring each CLEC to report
23 the routes it self-provisions and those that it offers at wholesale to other carriers. *See*

1 Direct Testimony of Richard Anderson on behalf of Allegiance Telecom of Pennsylvania,
2 Inc., Docket No. I-00030099 (Jan. 12, 2004) at 9, ln. 8-14 (“Anderson Testimony”).

3 **Q. DO YOU AGREE, AS SUGGESTED BY ALLEGIANCE, THAT THE**
4 **COMMISSION SHOULD ACT AS A CLEARING HOUSE AND REQUIRE EACH**
5 **CERTIFIED CLEC TO VERIFY THE TRANSPORT ROUTES AND CUSTOMER**
6 **LOCATIONS ALLEGED BY VERIZON?**

7 A. To the extent that Allegiance’s proposal requires a new round of discovery to verify this
8 information, I disagree with Allegiance’s proposal. As explained herein, most of the
9 information that Allegiance suggests should be collected is already available in this
10 proceeding.

11 **Q. PLEASE EXPLAIN YOUR DISAGREEMENT WITH THE ALLEGIANCE**
12 **PROPOSAL.**

13 A. Essentially, it appears that in order to complete the verification process, Allegiance’s
14 proposal would require an additional round of discovery. It is not appropriate at this
15 stage of the 9-month proceeding to burden CLECs with another round of discovery and,
16 in effect, give Verizon a “second bite at the apple” to present its *prima facie* case of non-
17 impairment. As stated above, the information that Allegiance suggests the Commission
18 should collect largely has already been provided in this proceeding. See Anderson
19 Testimony at 9, ln. 11-12. In fact, the Commission already asked the “footnote 14”
20 CLECs to identify their transport routes in response to the Commission’s October 3, 2003
21 information requests opening this proceeding. In addition, Verizon has had ample
22 opportunity to ask parties and non-parties to provide information in discovery relevant to
23 Verizon’s claims. CLECs should not be subjected to yet another round of discovery
24 simply because Verizon has not presented the Commission with enough evidence to

1 apply the triggers. This is especially true for a proceeding like this one where Verizon
2 has the burden of demonstrating that the fact-specific triggers have been met and that
3 CLECs are not impaired without access to UNEs on specific transport routes or to
4 specific customer locations.

5 **Q. DO YOU HAVE AN ALTERNATIVE PROPOSAL?**

6 A. Yes. As I explained in my initial testimony (p. 14), the best evidence of facilities
7 deployment is the information provided by CLECs in response to the Commission's and
8 the parties' information requests. If one were to closely analyze that information, it
9 would demonstrate that, contrary to Verizon's assertions in its Direct and Supplemental
10 Testimony, there are so few transport routes and customers locations in Pennsylvania that
11 even potentially could satisfy all of the required elements of the triggers to justify a
12 finding of non-impairment on any route or location at this time. This assertion is
13 supported in attachments A and B to my rebuttal testimony. Attachment A compiles
14 discovery information on the transport routes reported by CLECs and attachment B
15 compiles discovery information on the customer locations reported by CLECs. The
16 Commission should use this information in the docket to deny Verizon's claims at this
17 time. Verizon would be free to come back with additional evidence in subsequent
18 proceedings authorized by the Commission, but should not further burden the 9-month
19 docket with its loop and transport claims.

20 **Q. PLEASE EXPLAIN HOW ATTACHMENTS A AND B WERE CREATED.**

21 A. Attachment A was generated from the responses provided by the footnote 14 CLECs to
22 the Commission's information requests regarding the deployment of dedicated transport

1 facilities, and the relevant responses provided to discovery requests submitted by
2 Verizon, the Office of Consumer Advocate, the Pennsylvania Carrier's Coalition and the
3 Joint Parties. Attachment B was generated from the same sources, where applicable,
4 regarding the deployment of facilities to specific customer locations. In addition, these
5 attachments also consider statements made by a party in its initial testimony concerning
6 its own deployment or use of facilities, as well as the responses provided by any non-
7 party to this proceeding identified as a trigger candidate by Verizon in its Direct and
8 Supplemental Testimony, where available. Specifically, Attachment A compiles
9 responses from the following entities: *****BEGIN PROPRIETARY*****

10
11 *****END PROPRIETARY***** Attachment B compiles information
12 from the four carriers that Verizon alleges have deployed loops: *****BEGIN**
13 **PROPRIETARY***** *****END PROPRIETARY*****

14 **Q. DID ALL NON-PARTIES WHO WERE IDENTIFIED BY VERIZON AS**
15 **TRIGGER CANDIDATES PROVIDE INFORMATION?**

16 **A. No.** Verizon identified several non-parties, including *****BEGIN PROPRIETARY*****

17
18 *****END PROPRIETARY***** as satisfying
19 the specific triggers outlined by the FCC in the TRO; however, none of these entities
20 were required to respond to the Commission's information requests and Verizon never
21 sought to obtain discovery from these entities. In fact, while Verizon identified these
22 carriers as satisfying either the self-provisioning trigger or the wholesale provisioning
23 trigger, Verizon provided no evidence from the carriers themselves verifying its claim.

1 Furthermore, Verizon opted not to use the procedures available to it to obtain information
2 from a non-party, such as requesting the issuance of a subpoena from this Commission,
3 even though Verizon sought subpoenas directed to two other non-party entities in this
4 case. Absent any affirmative action on Verizon's part to obtain the information to
5 support its claim, the reliability and accuracy of Verizon's purported evidence is called
6 into question.

7 **Q. DID YOU REQUEST ANY INFORMATION FROM A NON-PARTY?**

8 A. Yes, the Loop/Transport Carrier Coalition ("LTCC") did. While CLECs do not have the
9 burden under the requirements set forth by the FCC in the TRO to prove that a carrier is
10 not present at specific customer location or on a specific dedicated transport route, the
11 LTCC requested that the ALJ issue a subpoena directed to AboveNet. AboveNet has
12 agreed to provide information regarding its dedicated transport facilities in Pennsylvania
13 and this information will be provided as a supplemental attachment to my rebuttal
14 testimony as soon as it is available.

15 **Q. PLEASE BRIEFLY EXPLAIN ATTACHMENT A.**

16 A. The CLECs' own data provides a starting point for conducting the fact-based inquiry
17 required under the triggers. As I explained in my initial testimony (p. 12-13), dedicated
18 transport under the FCC triggers has a specific meaning that is narrower than casual
19 usage of the term transport: Transport under the TRO must be used to carry dedicated
20 traffic between two incumbent local exchange carrier ("ILEC") wire centers. No carriers
21 reported transport routes that satisfy this definition of transport. In addition, no carriers
22 reported that they offer at wholesale dedicated transport between two ILEC wire centers.

1 Thus, the discovery responses unequivocally refute Verizon's claims that either the self-
2 provisioning or wholesale triggers are satisfied on any transport route (or at any capacity
3 level).

4
5 Nevertheless, simply for illustrative purposes, in Attachment A I have compiled
6 discovery responses using Verizon's erroneous "connect the dots" approach to
7 identifying transport. In this approach, Verizon assumes that any two fiber-based
8 collocations in a LATA constitute a "transport route" on which facilities have been
9 deployed. Several witnesses in this docket, including myself, have explained why this
10 assumption is not correct. However, in order to demonstrate that additional verification
11 of Verizon's claims is not necessary, I have compiled transport routes using Verizon's
12 erroneous definition. Even under this approach, there would be *****BEGIN**
13 **PROPRIETARY*****

14 *****END PROPRIETARY***** that could merit closer consideration
15 under the rigorous requirements set out by the FCC for finding non-impairment on a
16 route. *****BEGIN PROPRIETARY*****

17
18
19
20
21
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

*****END PROPRIETARY*****

Notably, the discovery responses show a commendable amount of facilities-based competition in Pennsylvania. Carriers are deploying facilities and are moving closer to the goal of real competition in Pennsylvania. *****BEGIN PROPRIETARY*****

*****END**

PROPRIETARY*** To be clear, I do not agree that transport routes are defined the way Verizon defines them. I offer this analysis only to illustrate that even if Verizon were correct (which it is not), it still failed to carry its burden of proof. A subsequent verification process is not needed to deny Verizon's claims.

Q. PLEASE BRIEFLY EXPLAIN ATTACHMENT B.

A. As with dedicated transport, the discovery responses regarding loops deployed to customer locations undermine Verizon's claims. In its Supplemental Testimony, Verizon alleges loop deployment in Pennsylvania by four carriers. These carriers are *****BEGIN PROPRIETARY***** *****END PROPRIETARY***** I compiled these CLECs' responses to Verizon's First Set of Interrogatories. Using this information, *****BEGIN PROPRIETARY**

1 ***END PROPRIETARY could

2 possibly satisfy the standards set out by the FCC in the TRO for a finding of non-
3 impairment for high capacity loops. Attachment B demonstrates these findings.

4 **Q. DO ATTACHMENTS A AND B DEMONSTRATE THAT ANY ROUTES OR**
5 **LOCATIONS SATISFY THE FCC'S TRIGGERS?**

6 A. No. As I explained in my initial testimony, determining which carriers have deployed
7 facilities is only one step in the trigger analysis. Additional information is necessary for
8 any routes or customer locations that contain the minimum threshold number of carriers
9 in order to determine if the trigger's requirements have been met. Thus, even where two
10 or three carriers are present on the same route or to the same customer location in
11 Attachment A or B, one could not conclude that the triggers are satisfied.

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A. Yes, it does.

ATTACHMENT A

Analysis of Dedicated Transport Routes

ATTACHMENT B

Analysis of High Capacity Loops

PUBLIC VERSION

DOCUMENT

DOCKETED

FEB 12 2004

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. I-00030099

SNIP LINK LLC

st mt 1.2

**REBUTTAL TESTIMONY
(SUPPLEMENTAL)**

*1/28/04
Hbg TX*

WITNESS: ANTHONY ABATE

JANUARY 21, 2004

SECRETARY'S BUREAU

2004 JAN 30 AM 10:07

RECEIVED

PUBLIC VERSION – WITH PUBLIC EXHIBITS

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is Anthony Abate. I am President and CTO of SNIp LiNK LLC. My business
3 address is 100-A Twinbridge Drive, Pennsauken, New Jersey 08110.

4 **Q. ON WHOSE BEHALF IS THIS SUPPLEMENTAL REBUTTAL TESTIMONY**
5 **BEING SUBMITTED?**

6 A. SNIp LiNK LLC ("SNIp LiNK").

7 **Q. ARE YOU THE SAME MR. ABATE THAT SUBMITTED DIRECT TESTIMONY**
8 **ON JANUARY 9, 2004 AND REBUTTAL TESTIMONY ON JANUARY 20, 2004**
9 **ON BEHALF OF SNIp LiNK IN THIS PROCEEDING?**

10 A. Yes I am.

11 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**
12 **TESTIMONY?**

13 A. This supplemental rebuttal testimony is being filed in order to provide revised
14 attachments to my rebuttal testimony to the parties in this docket. As indicated in my
15 rebuttal testimony (p. 5), the Loop/Transport Carrier Coalition ("LTCC") of which SNIp
16 LiNK is a member, requested that the ALJ issue a subpoena directed to AboveNet
17 Communications, Inc. ("AboveNet"), formerly known as Metromedia Fiber Network
18 Services, Inc., a non-party in this proceeding. AboveNet agreed to provide information
19 regarding its dedicated transport facilities in Pennsylvania, but at the time Attachment A
20 was created, the information from AboveNet was not available. AboveNet has provided
21 its information and this has been incorporated into revised Attachment A.

1 **Q. DOES THIS NEW INFORMATION CHANGE THE CONCLUSIONS IN YOUR**
2 **REBUTTAL TESTIMONY REGARDING DEDICATED TRANSPORT?**

3 A. No, the information provided by AboveNet does not impact the conclusions in my
4 rebuttal testimony regarding dedicated transport in Pennsylvania.

5 **Q. PLEASE BRIEFLY EXPLAIN REVISED ATTACHMENT A.**

6 A. Revised Attachment A takes the same compilation of responses from the same entities
7 indicated in my rebuttal testimony (p. 4) and adds the information provided by
8 AboveNet. As a result, using the “connect the dots” approach described in my rebuttal
9 testimony (p. 5-6), *****BEGIN PROPRIETARY*****

10

11

12

13

14

*****END PROPRIETARY*****

15 **Q. PLEASE BRIEFLY EXPLAIN REVISED ATTACHMENT B.**

16 A. Revised Attachment B is the same information provided in the original Attachment B,
17 however, for ease of review, it has been resorted by street address within a specific wire
18 center. This format clearly illustrates the conclusion in my rebuttal testimony that (p.7-8)

19 *****BEGIN PROPRIETARY*****

20 *****END PROPRIETARY***** could possibly satisfy the standards set out by the FCC
21 in the TRO for a finding of non-impairment for high capacity loops.

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A. Yes, it does.

SUPPLEMENTAL ATTACHMENT A
Analysis of Dedicated Transport Routes

SUPPLEMENTAL ATTACHMENT B

Analysis of High Capacity Loops

SUPPLEMENTAL ATTACHMENT C

**Response of AboveNet Communications, Inc. to the
Loop/Transport Carrier Coalition's Subpoena Request**

PUBLIC VERSION

**INVESTIGATION INTO THE
OBLIGATION OF INCUMBENT LOCAL
EXCHANGE CARRIERS TO UNBUNDLED
NETWORK ELEMENTS**

DOCKET NO. I-00030099

SNIP LINK LLC

**REBUTTAL TESTIMONY
(SUPPLEMENTAL)**

WITNESS: ANTHONY ABATE

JANUARY 21, 2004

PUBLIC VERSION – WITH PUBLIC EXHIBITS

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is Anthony Abate. I am President and CTO of SNiP LiNK LLC. My business
3 address is 100-A Twinbridge Drive, Pennsauken, New Jersey 08110.

4 **Q. ON WHOSE BEHALF IS THIS SUPPLEMENTAL REBUTTAL TESTIMONY**
5 **BEING SUBMITTED?**

6 A. SNiP LiNK LLC ("SNiP LiNK").

7 **Q. ARE YOU THE SAME MR. ABATE THAT SUBMITTED DIRECT TESTIMONY**
8 **ON JANUARY 9, 2004 AND REBUTTAL TESTIMONY ON JANUARY 20, 2004**
9 **ON BEHALF OF SNIP LINK IN THIS PROCEEDING?**

10 A. Yes I am.

11 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**
12 **TESTIMONY?**

13 A. This supplemental rebuttal testimony is being filed in order to provide revised
14 attachments to my rebuttal testimony to the parties in this docket. As indicated in my
15 rebuttal testimony (p. 5), the Loop/Transport Carrier Coalition ("LTCC") of which SNiP
16 LiNK is a member, requested that the ALJ issue a subpoena directed to AboveNet
17 Communications, Inc. ("AboveNet"), formerly known as Metromedia Fiber Network
18 Services, Inc., a non-party in this proceeding. AboveNet agreed to provide information
19 regarding its dedicated transport facilities in Pennsylvania, but at the time Attachment A
20 was created, the information from AboveNet was not available. AboveNet has provided
21 its information and this has been incorporated into revised Attachment A.

1 Q. DOES THIS NEW INFORMATION CHANGE THE CONCLUSIONS IN YOUR
2 REBUTTAL TESTIMONY REGARDING DEDICATED TRANSPORT?

3 A. No, the information provided by AboveNet does not impact the conclusions in my
4 rebuttal testimony regarding dedicated transport in Pennsylvania.

5 Q. PLEASE BRIEFLY EXPLAIN REVISED ATTACHMENT A.

6 A. Revised Attachment A takes the same compilation of responses from the same entities
7 indicated in my rebuttal testimony (p. 4) and adds the information provided by
8 AboveNet. As a result, using the "connect the dots" approach described in my rebuttal
9 testimony (p. 5-6), *****BEGIN PROPRIETARY*****

10

11

12

13

14

*****END PROPRIETARY*****

15 Q. PLEASE BRIEFLY EXPLAIN REVISED ATTACHMENT B.

16 A. Revised Attachment B is the same information provided in the original Attachment B,
17 however, for ease of review, it has been resorted by street address within a specific wire
18 center. This format clearly illustrates the conclusion in my rebuttal testimony that (p.7-8)

19 *****BEGIN PROPRIETARY*****

20 *****END PROPRIETARY***** could possibly satisfy the standards set out by the FCC
21 in the TRO for a finding of non-impairment for high capacity loops.

22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23 A. Yes, it does.

SUPPLEMENTAL ATTACHMENT A
Analysis of Dedicated Transport Routes

SUPPLEMENTAL ATTACHMENT B

Analysis of High Capacity Loops

SUPPLEMENTAL ATTACHMENT C

**Response of AboveNet Communications, Inc. to the
Loop/Transport Carrier Coalition's Subpoena Request**

DOCUMENT

DOCKETED
FEB 12 2004

SNIP LINK LLC HEARING EXHIBIT 1

PUBLIC VERSION

I-00030099
1-28-04
Hbj
JAK

RECEIVED
2004 JAN 30 AM 10:09
SECRETARY'S BUREAU

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA

FACSIMILE
(202) 955-9792
www.kelleydrye.com

DIRECT LINE: (202) 955-9786
EMAIL: eemmott@kelleydrye.com

January 16, 2004

VIA UPS

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

**Re: Investigation into the Obligations of Incumbent Local Exchange
Carriers to Unbundle Network Elements; Docket No. I-00030099
Consent Motion of the Loop/Transport Carrier Coalition for Issuance
of a Subpoena to Depose a Non-Party**

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission, please find an original and three (3) copies of the public version of the Loop/Transport Carrier Coalition's¹ Consent Motion for Issuance of a Subpoena to Depose a Non-Party in the above captioned docket. The proprietary version of this filing is also included in the enclosed sealed envelope. Please date stamp the duplicate and return it in the provided envelope. Please feel free to contact undersigned counsel at (202) 955-9600 if you have any questions.

Respectfully submitted,



Steven A. Augustino (*admitted pro hac vice*)
Erin W. Emmott (*admitted pro hac vice*)

Enclosures

cc: Service List (proprietary and public version via first class and electronic mail)
Chief ALJ Robert A. Christianson, ALJ Michael C. Schnierle and ALJ Susan D. Colwell
(proprietary and public version via UPS and electronic mail)

¹ The Loop/Transport Carrier Coalition is comprised of Choice One Communications of Pennsylvania Inc., Focal Communications Corporation of Pennsylvania, SNiP LiNK LLC, and XO Pennsylvania, Inc.

CERTIFICATE OF SERVICE

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

KANDACE F MELILLO ESQUIRE
PA PUBLIC UTILITY COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265
(OTS)
kmelillo@state.pa.us

BARRETT C SHERIDAN ESQUIRE
PHILIP F MCCLELLAND ESQUIRE
OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
5th FLOOR FORUM PLACE
HARRISBURG PA 17101-1923
(OSA)
bsheridan@paoca.org
pmcclelland@paoca.org

CAROL PENNINGTON ESQUIRE
ANGELA T JONES ESQUIRE
OFFICE OF SMALL BUSINESS ADVOCATE
COMMERCE BUILDING SUITE 1102
300 NORTH 2ND STREET
HARRISBURG PA 17101
(OSBA)
anjones@state.pa.us

ROSS A BUNTROCK ESQUIRE
GENEVIEVE MORELLI ESQUIRE
HEATHER T HENDRICKSON ESQUIRE
KELLEY DRYE & WARREN LLP
1200 19TH STREET NW SUITE 500
WASHINGTON DC 20036
(BROADVIEW, INFO HIGHWAY, METTEL,
MCGRAW, TALK AMERICA, BULLSEYE
TELECOM)
rbuntrock@ekllydrye.com

ZSUZSANNA E BENEDEK ESQUIRE
SPRINT COMMUNICATIONS
COMPANY LP
240 NORTH THIRD STREET
SUITE 201
HARRISBURG PA 17101
(SPRINT)
sue.e.benedek@mail.sprint.com

ALAN C KOHLER ESQUIRE
WOLF BLOCK SCHORR & SOLIS-COHEN
SUITE 300
LOCUST COURT BUILDING
212 LOCUST STREET
HARRISBURG PA 17101
(FSN,REMI, ATX, LSI, COMCAST)
akohler@wolfblock.com

PHILIP J MACRES ESQUIRE
SWIDLER BERLIN SHEREFF FRIEDMAN LLP
3000 K STREET NW
SUITE 300
WASHINGTON DC 20007-5116
(LIGHTSHIP TELECOM, RCN)
pjmacres@swidlaw.com

JULIA A CONOVER ESQUIRE
WILLIAM B PETERSEN ESQUIRE
SUZAN DEBUSK PAIVA ESQUIRE
VERIZON COMMUNICATIONS
1717 ARCH STREET 32 NW
PHILADELPHIA PA 19103
(Verizon)
julia.a.conover@verizon.com

ROBERT C BARBER ESQUIRE
AT&T COMMUNICATIONS OF PA
3033 CHAIN BRIDGE ROAD
OAKTON VA 22185
(AT&T & TCG)
rbarber@att.com

MICHELLE PAINTER ESQUIRE
MCI WORLDCOM NETWORK
SERVICES INC
1133 19TH STREET NW
WASHINGTON DC 20036
(MCI)
Michelle.painter@mci.com

ENRICO C SORIANO ESQUIRE
STEVEN A AUGUSTINO ESQUIRE
DARIUS B WITHERS ESQUIRE
KELLEY DRYE & WARREN LLP
1200 19TH STREET NW
WASHINGTON DC 22182
(SNIPLINK, CHOICE ONE, XO, FOCAL
dwithers@kelleydrye.com
saugustino@kelleydrye.com

DEBRA M. KRIETE
RHOADS & SINAN LLP
12TH FLOOR
ONE SOUTH MARKET STREET
HARRISBURG PA 17108-1116
(ALLEGIANCE TELECOM INC)
dkriete@rroads.sinon.com

LINDA CARROLL
8TH FLOOR
112 MARKET STREET
HARRISBURG PA 17101
(CTSI)
Lcarroll@dilworthlaw.com

PEGGY RUBINO ESQUIRE
Z-TEL COMMUNICATIONS INC
601 S HARBOUR ISLAND BLVD
SUITE 220
TEMPA FL 33602
(Z-TEL)
PRubino@Z-tel.com

ROGELIO E PENA ESQUIRE
1375 WALNUT STREET, SUITE 220
BOULDER CO 80302
(LEVEL 3)
repena@boulderattys.com

JEFFREY J HEINS
ALDELPHIA BUSINESS SOLUTIONS
OF PA INC D/B/A TELCOVE
712 NORTH MAIN STREET
COUDERSPORT PA 16915
Jeffrey.heins@telcove.com

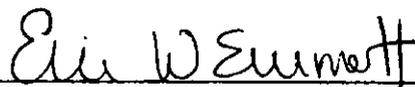
RENARDO L HICKS
ANDERSON GULOTTA & HICKES PC
1110 N MOUNTAIN ROAD
HARRISBURG PA 17112
(PENN TELECOM)
rhicks@aghweb.com

RICHARD U STUBBS
CONRAD COUNSEL
CAVALIER TELEPHONE MID ATLANTIC LLC
965 THOMAS DRIVE
WARMINSTER PA 18974
rstubbs@cavtel.com

WILLIAM E WARD
CTC COMMUNICATIONS CORPORATION
115 SECOND AVENUE
WALTHAM MA 02451
wward@ctcnet.com

JEANNE PRICE
MARVIN HENDRIX
CEI NETWORKS
130 EAST MAIN STREET
EPHRATA PA 17522
mhendrix@decommunications.com
jprice@decommunications.com

JILL SANDFORD, SENIOR ATTORNEY
ABOVENET COMMUNICATIONS, INC.
360 HAMILTON AVENUE
WHITE PLAINS, NY 10601
jsandford@above.net



Erin W. Emmott

Date: January 16, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Into The Obligation :
Of Incumbent Local Exchange Carriers : I-00030099
To Unbundle Network Elements. :

**MOTION OF THE LOOP/TRANSPORT CARRIER COALITION
FOR ISSUANCE OF A SUBPOENA TO DEPOSE A NON-PARTY**

Choice One Communications of Pennsylvania Inc., Focal Communications Corporation of Pennsylvania, Inc., SNiP LiNK LLC and XO Pennsylvania, Inc. (collectively the "Loop/Transport Carrier Coalition," "LTCC" or "Coalition") pursuant to 52 Pa. Code § 5.421, hereby requests from the Pennsylvania Public Utility Commission ("Commission") the issuance of a subpoena in order to depose such individual as designated by AboveNet Communications, Inc. ("AboveNet"), who can testify to the matters known or reasonably available to AboveNet on which examination is requested.¹ In support hereof, LTCC represents as follows:

1. The Commission, in the above-captioned matter, was petitioned by Verizon Pennsylvania, Inc. and Verizon North, Inc. (collectively, "Verizon") to undertake the "targeted, granular unbundling analysis" assigned to it by the Federal Communications Commission's ("FCC's") Triennial Review Order.²

¹ The name change of AboveNet Communications, Inc. from Metromedia Fiber Network Services, Inc. was approved by this Commission on November 19, 2003, Docket No. A-310673 F0003.

² *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*

PUBLIC VERSION

2. On October 2, 2003, the Commission issued its first Procedural Order, requiring that certain competitive local exchange carriers (“CLECs”), commonly known as the “footnote 14 CLECs,” to respond to specific information requests issued by the Commission, in response to Verizon’s Petition to Initiate Proceedings filed with the Commission. All members of the LTCC, with the exception of SNiP LiNK LLC, were included in the list of CLECs. AboveNet was not included in the “footnote 14 CLEC” list.

3. On October 31, 2003, Verizon filed its initial Direct Testimony in the above captioned proceeding supporting its position that the Commission should make impairment determinations for those network elements that the FCC has asked state commissions to review. In its testimony, Verizon identified AboveNet as both a self-provider and wholesale provider trigger candidate on specific routes in Pennsylvania.

4. On November 14, 2003, all of the members of the LTCC filed with the Commission a Petition to Intervene, an Answer to Verizon’s Petition to Initiate Proceedings as well as their responses to the Commission’s information requests. AboveNet did not intervene in the proceeding.

5. On December 19, 2003, Verizon filed its Supplemental Direct Testimony with the Commission. In its Supplemental Direct Testimony, Verizon again identified AboveNet as a trigger candidate for both the self-provider and wholesale provider triggers on specific routes in Pennsylvania. All together, Verizon identified AboveNet as qualifying as a candidate under

Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2003) (“TRO”), at ¶ 187.

PUBLIC VERSION

either the self-provider trigger, wholesale provider trigger or both on approximately *****BEGIN PROPRIETARY***** *****END PROPRIETARY***** transport routes in Pennsylvania.

6. Since the LTCC does not maintain information regarding whether or not AboveNet does offer dedicated transport on a wholesale basis or self-provisions dedicated transport on the identified routes, the LTCC has requested this information from AboveNet. Without the information, the LTCC will not be able to analyze Verizon's assertions in its Direct and Supplemental Testimony in this proceeding that AboveNet qualifies as a trigger candidate for either the self-provider or wholesale provider trigger or both on the identified routes.

7. AboveNet holds a certificate of public convenience from this Commission authorizing the provision of local exchange service in Pennsylvania, and is not a party in the above-captioned matter. Though a non-party, AboveNet has agreed to waive the 10 day notice period provided by 52 Pa. Code. 5.421(b) and has consented to the LTCC's Motion for a Subpoena in order to provide a response to the LTCC's requests. However, absent the issuance of a subpoena, AboveNet will not voluntarily respond. In consideration for the time constraints of this proceeding, LTCC has agreed to accept a sworn statement in lieu of taking a deposition.

8. Pursuant to 52 Pa. Code 5.423, the requested information will be treated in accordance with the Protective Order entered in this matter. The LTCC has agreed to accept the responses of AboveNet electronically by close of business on January 20, 2004. In addition, the LTCC has agreed to provide service of such responses to the individuals in this proceeding who have agreed to be bound by the terms of the protective order.

PUBLIC VERSION

9. As indicated in the attached Certificate of Service, this Motion for a Subpoena was served on Ms. Jill Sandford, Senior Attorney for AboveNet by UPS and electronic mail.

10. LTCC submits that the information which it is seeking from AboveNet in the deposition and for which the subpoena is being sought by this Motion is necessary in order for the LTCC to review and analyze the allegations set forth by Verizon in its Direct and Supplemental Testimony in the above captioned proceeding. LTCC offers that the Commission has already concluded that the information sought from the deposition is both relevant and material to the issues in this proceeding, particularly regarding the deployment of Dedicated DS1, DS3 and Dark Fiber Transport.³ Therefore, the standards for issuance of a subpoena have been met.

11. The scope of the information sought in the deposition is narrowly-tailored to the subject matter of the Order. The information requested is:

For each transport route listed [by Verizon], please state:

- (a) whether your company currently self-provisions dedicated transport along that route,
- (b) identify the capacity level(s) (e.g., DS3, dark fiber) at which your company self-provisions such dedicated transport along that route.
- (c) whether your company currently provides dedicated transport on a wholesale basis along that route, and, if so,
- (d) identify the capacity level(s) at which your company provides such wholesale transport along that route.

The specific information requested in the deposition is attached as Attachment 1. A proposed subpoena is attached as Attachment 2 hereto.

³ October 3, 2003 Procedural Order at 15-16.

12. LTCC also requests that the subpoena be issued as soon as possible in order to include AboveNet's responses with the rebuttal testimony, due to the Commission on January 20, 2004. Assuming timely issuance of the subpoena, AboveNet has agreed to produce responsive information by close of business on January 20, 2004.

WHEREFORE, LTCC requests that the Presiding Officers grant this Motion and issue the attached subpoena to AboveNet Communications, Inc.

Respectfully submitted,



Steven A. Augustino

Erin W. Emmott

KELLEY DRYE & WARREN LLP

1200 19th Street, NW

Washington, D.C. 20036

Tel: (202) 955-9600

Fax: (202) 955-9792

Counsel to Choice One Communications of Pennsylvania, Inc., Focal Communications Corporation of Pennsylvania, SNiP LiNK LLC, and XO Pennsylvania, Inc.

Dated: January 16, 2004

PUBLIC VERSION

APPENDIX 2

PUC-291



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Docket No. I-00030099

SUBPOENA

To: Jill Sandford, AboveNet Communications, Inc., 360 Hamilton Avenue White Plains, NY 10601
(Name and Address)

Pursuant to the authority of this Commission under §§309, 331(d)(2) and 333(j) of the Public Utility Code:

1. YOU ARE ORDERED by the Commission to come to Pennsylvania Public
(place)
Utility Commission, 400 North Street, 2nd Floor, Harrisburg, PA 17120, or such other mutually
agreeable place on January 20, 2004, at 5 o'clock, pm, in the above case, to
(date)

testify on behalf of AboveNet Communications, Inc. and to remain until excused;

2. And bring with you and produce the following: _____

Response to the information request issued by the Loop/Transport Carrier

Coalition ("LTCC") in the above captioned docket.

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance, notice, service and witness fees).

BY THE COMMISSION

Date _____

Administrative Law Judge

Pursuant to 52 Pa. Code §5.421(b), LTCC also gives notice to AboveNet that an answer or objection to this subpoena shall be filed within ten (10) days of service of this Motion, as follows:

NOTICE: Pursuant to 52 Pa. Code §5.421, any answer or objection to this Application for Subpoena should be directed to the Secretary of the Pennsylvania Public Utility Commission and to the Presiding Officer within ten (10) days of service of this application. Their names and addresses are as follows:

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

The Honorable Michael Schnierle
The Honorable Susan Colwell
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

AboveNet Communications, Inc., hereby waives its notice rights under 52 Pa. Code §5.421(b).

Dated this _____ day of January, 2004.

PUC-291



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

Docket No. I-00030099

UNE Investigation

SUBPOENA

To: AboveNet

(Name and Address)

Pursuant to the authority of this Commission under §309, 331(d)(2) and 333(j) of the Public Utility Code:

1. YOU ARE ORDERED by the Commission to come to

See attached

(place)

, at

Pennsylvania, on

(date)

, at

o' clock a.m., in the above

case, to testify on behalf of the

and to remain until excused;

2. And bring with you and produce the following:

See attached

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance, notice and service) and 52 Pa. Code §5.412 (with regard to witness fees).

BY THE COMMISSION

Date

1/16/04

Robert A. Christianson

Robert A. Christianson

Chief Administrative Law Judge

Commonwealth of Pennsylvania)
) SS:
County of)

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared _____
who, being duly sworn according to law, deposes and says that he/she served a true and correct
copy of the within SUBPOENA upon _____
by handing the same to him/her at _____ on the
_____ day of _____, _____ at _____ m.

Signature

Sworn to and subscribed before me
this _____ day of _____, _____

Notary Public

APPENDIX 2

PUC-291



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Docket No. I-00030099

SUBPOENA

To: Jill Sandford, AboveNet Communications, Inc., 360 Hamilton Avenue White Plains, NY 10601
(Name and Address)

Pursuant to the authority of this Commission under §§309, 331(d)(2) and 333(j) of the Public Utility Code:

1. YOU ARE ORDERED by the Commission to come to Pennsylvania Public
(place)
Utility Commission, 400 North Street, 2nd Floor, Harrisburg, PA 17120, or such other mutually
agreeable place on January 20, 2004, at 5 o'clock, pm, in the above case, to
(date)

testify on behalf of AboveNet Communications, Inc. and to remain until excused;

2. And bring with you and produce the following: _____

Response to the information request issued by the Loop/Transport Carrier

Coalition ("LTCC") in the above captioned docket.

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance, notice, service and witness fees).

BY THE COMMISSION

Date _____

Administrative Law Judge

Pursuant to 52 Pa. Code §5.421(b), LTCC also gives notice to AboveNet that an answer or objection to this subpoena shall be filed within ten (10) days of service of this Motion, as follows:

NOTICE: Pursuant to 52 Pa. Code §5.421, any answer or objection to this Application for Subpoena should be directed to the Secretary of the Pennsylvania Public Utility Commission and to the Presiding Officer within ten (10) days of service of this application. Their names and addresses are as follows:

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

The Honorable Michael Schnierle
The Honorable Susan Colwell
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

AboveNet Communications, Inc., hereby waives its notice rights under 52 Pa. Code §5.421(b).

Dated this _____ day of January, 2004.

Jill Sandford.

Augustino, Steven A.

From: Sandford, Jill [JSandford@above.net]
Sent: Tuesday, January 20, 2004 4:21 PM
To: Emmott, Erin W; cbarber@att.com; Morelli, Genevieve; Buntrock, Ross A.; Hendrickson, Heather T.; rstubbs@cavtel.com; Soriano, Enrico C.; Augustino, Steven A.; Withers, Darius B.; rmbiau@swidlaw.com; RFCohn@swidlaw.com; tefinn@swidlaw.com; michelle.painter@mci.com; dclearfield@wolfblock.com; akohler@wolfblock.com; rhicks@aghweb.com; pjmacres@swidlaw.com; sue.e.benedek@mail.sprint.com; kmelillo@state.pa.us; anjones@state.pa.us; pmccllland@paoca.org; BSheridan@paoca.org; ssparks@paoca.org; jcheskis@paoca.org; julia.a.conover@verizon.com; william.b.petersen@verizon.com; Lcarroll@dilworthlaw.com; tkoutsky@Z-tel.com; Charles.Gerkin@allegiancetelecom.com; suzan.d.paiva@verizon.com; Hendrickson, Heather T.
Cc: Schnierle, Michael; Colwell, Susan; rchristian@state.pa.us
Subject: RE: Docket No. I-00030099: LTCC Consent Motion for Issuance of a Subpoena to a Non-Party

Please find attached for service the response of AboveNet Communications, Inc. to the below referenced Subpoena to a Non-Party.

Jill Sandford
Senior Attorney
AboveNet, Inc
360 Hamilton Avenue
White Plains, New York 10601
Phone: (914) 421-7585
Fax: (914) 421-6793
e-mail: jsandford@above.net

This message may contain information that is protected by attorney-client privilege, attorney work product, or other legal doctrines. If you have received this message in error, please contact me immediately. Thank you.

-----Original Message-----

From: Emmott, Erin W [mailto:EE Emmott@KelleyDrye.com]
Sent: Friday, January 16, 2004 12:03 PM
To: Emmott, Erin W; cbarber@att.com; Morelli, Genevieve; Buntrock, Ross A.; Hendrickson, Heather T.; rstubbs@cavtel.com; Soriano, Enrico C.; Augustino, Steven A.; Withers, Darius B.; rmbiau@swidlaw.com; RFCohn@swidlaw.com; tefinn@swidlaw.com; michelle.painter@mci.com; dclearfield@wolfblock.com; akohler@wolfblock.com; rhicks@aghweb.com; pjmacres@swidlaw.com; sue.e.benedek@mail.sprint.com; kmelillo@state.pa.us; anjones@state.pa.us; pmccllland@paoca.org; BSheridan@paoca.org; ssparks@paoca.org; jcheskis@paoca.org; julia.a.conover@verizon.com; william.b.petersen@verizon.com; Lcarroll@dilworthlaw.com; tkoutsky@Z-tel.com; Charles.Gerkin@allegiancetelecom.com; suzan.d.paiva@verizon.com; Hendrickson, Heather T.
Cc: Schnierle, Michael; Colwell, Susan; rchristian@state.pa.us; Sandford, Jill
Subject: RE: Docket No. I-00030099: LTCC Consent Motion for Issuance of a Subpoena to a Non-Party

Attached please find the public and proprietary versions of the Loop/Transport Carrier Coalition's Consent Motion of Issuance of a Subpoena to a Non-Party. The public, redacted version is being sent to the PUC today via UPS with the proprietary version in a sealed envelope. Hard copies of both the public and the proprietary version will be provided via US Mail to the service list, via

UPS to the ALJs and the PUC.

Please contact me if you have any questions.

Erin Emmott

Kelley Drye & Warren, LLP

1200 19th Street, NW Suite 500

Washington, DC 20036

(202) 955-9766 (direct)

(202) 955-9792 (fax)

eemmott@kelleydrye.com

<<LTCC_proprietary.pdf>> <<LTCC_public.pdf>> <<LTCCPA_Letter.pdf>>

V2 H; Ex #2
1/28/04 Hby rx

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 1, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of business voice-grade equivalent lines that you directly serve.

RESPONSE:

Attached is the proprietary response detailing Verizon retail business access lines on a voice-grade equivalent basis as of June 2003.

DOCUMENT

DOCKETED
FEB 12 2004

RECEIVED
2004 JAN 30 AM 10:10
SECRETARY'S BUREAU

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 2, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.

RESPONSE:

Attached is the proprietary response detailing CLEC resale business access lines on a voice-grade equivalent basis as of June 2003.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 3, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.

RESPONSE:

Attached is the proprietary response detailing CLEC UNE-P business access lines on a voice-grade equivalent basis as of June 2003.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 4, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of business voice grade equivalent lines that CLECs are serving through own facilities.

RESPONSE:

Attached is the proprietary response detailing CLEC facilities based business access listings as of June 2003. The source of this data was the E911 database. Assuming the CLEC's have accurately entered their E911 listings, these listings should include the UNE Loops included in Appendix B. Section A - Question 2. Unbundled Loops were not broken out by Business and Residential in Appendix B A-2.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 5, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of residential voice-grade equivalent lines that you directly serve.

RESPONSE:

Attached is the proprietary response detailing Verizon retail residential access lines on a voice-grade equivalent basis as of June 2003.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 6, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.

RESPONSE:

Attached is the proprietary response detailing CLEC resale residential access lines on a voice-grade equivalent basis as of June 2003.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 7, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.

RESPONSE:

Attached is the proprietary response detailing CLEC UNE-P residential access lines on a voice-grade equivalent basis as of June 2003.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 8, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).

RESPONSE:

Attached is the proprietary response detailing CLEC facilities based residential access listings as of June 2003. The source of this data was the E911 database. Assuming the CLEC's have accurately entered their E911 listings, these listings should include the UNE Loops included in Appendix B. Section A - Question 2. Unbundled Loops were not broken out by Business and Residential in Appendix B A-2.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 9, DATED OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of in-service collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.

RESPONSE:

See attached the Proprietary response.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 10, DATED
OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC
(OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.

RESPONSE:

See attached the Proprietary response.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA REQUEST NO. 11, DATED
OCTOBER 2, 2003, SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC
(OBLIGATIONS OF ILECS TO UNBUNDLE NETWORK ELEMENTS) (APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.

RESPONSE:

See attached the Proprietary response.