PCC St. 1.0

1/29/04 Hbg DC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DIRECT TESTIMONY

OF

DAVID SCHWENCKE,

DAVID MALFARA

AND

SCOTT DULIN

ON BEHALF OF

THE PENNSYLVANIA CARRIERS' COALITION

(Full Service Computing Corporation t/a Full Service Network, Remi Retail Communications, L.L.C., ATX Licensing, Inc., and Line Systems, Inc.)

JANUARY 9, 2004

I. INTRODUCTION AND BACKGROUND

Q. PLEASE IDENTIFY THE MEMBERS OF THE PANEL AND IDENTIFY ON WHOSE BEHALF THIS TESTIMONY IS BEING SUBMITTED.

A. The three members of this panel are David Schwencke, President and CEO of Full Service Computing Corporation t/a Full Service Network ("FSN"), David Malfara, Sr., President and CEO of Remi Retail Communications, LLC ("Remi") and Scott Dulin, Senior Vice-President of ATX Licensing, Inc. ("ATX"). Mr. Schwencke, Mr. Malfara and Mr. Dulin are submitting testimony on behalf of their individual companies and on behalf of the Pennsylvania Carriers' Coalition ("PCC"), an informal group of competitive local exchange carriers ("CLECs") comprised of FSN, Remi, ATX and Line Systems, Inc. ("LSI"), which carriers' sole business in the case of FSN and Remi, and primary business, in the case of ATX and LSI, is in Pennsylvania. Each of the PCC members are headquartered in Pennsylvania and employ Pennsylvanians in providing local exchange and other telecommunications services to their Pennsylvania customers.

Q. WHAT ROLE DID EACH MEMBER OF THE PANEL PLAY IN PREPARATION OF THIS TESTIMONY?

A. Each member of the panel has reviewed and fully supports the testimony, and the testimony was prepared under the direct supervision of the witnesses. However, as one might expect, Mr. Schwencke has primary responsibility for the portions of the testimony which relate most directly to FSN's business and business plans. The same goes for Mr. Malfara and Mr. Dulin as the testimony pertains to Remi's and ATX's business and business plans respectively. The general panel testimony is on behalf of all of the members of the Coalition, including LSI.

Q. HAS THE PANEL PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS COMMISSION?

A. Yes. We submitted testimony on behalf of the PCC in the Commission's *Investigation into Obligations of Local Exchange Carriers to Provide Local Circuit Switching to the Enterprise Market*, I-00030100, the first case conducted by this Commission under the Federal Communications Commission's ("FCC") *Triennial Review Order*[1] ("*TRO*") -- the proceeding which has come to be known as the "*90 Day Proceeding*." The proceeding examined whether local circuit switching should continue to be unbundled and made available to CLECs to serve enterprise customers or those customers which are served by a local loop at DS1 capacity or higher.

Q. DID THE PCC ACHIEVE A SUCCESSFUL RESULT IN THAT PROCEEDING?

A. Yes. Although it may be too early to tell, we believe we did. Although the Commission found that the PCC had not met its evidentiary burden to rebut the FCC's national finding that CLECs are not impaired without access to an Unbundled Network Element Platform ("UNE-P") to serve DS1 or higher capacity customers, the Commission did determine that: (1) local circuit switching must continue to be unbundled by Verizon Pennsylvania, Inc. ("Verizon PA") under Section 271 of the Telecommunications Act of 1996;[2] (2) that in addition to its federal law obligations, UNE-P must continue to be offered by Verizon to CLECs to serve all customers with annual Total Billed Revenue ("TBR") at or under $80,000 under state law; and (3) that under both state and federal law Verizon must continue to offer UNE-P to CLECs at the current just and reasonable rates contained in Verizon's Tariff No. 216. Since this was the outcome we were seeking, we are certainly

[1] *Review of Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 01-338 (August 21, 2003).

[2] 47 U.S.C. § 271.

satisfied with the result of the proceeding. However, it is critical that the Commission aggressively maintain and defend this outcome and then carry it through to this proceeding if local competition it to survive and flourish in this Commonwealth.

Q. IS THIS PROCEEDING EVEN MORE CRITICAL TO YOUR RESPECTIVE BUSINESSES THAN THE 90 DAY PROCEEDING?

A. Absolutely. While the *90 Day Proceeding* was certainly important, this proceeding will dictate in large part whether our businesses survive or whether Verizon's local exchange monopoly will be reinstated, resulting in hundreds of thousands of customers being forced back to Verizon against their will. This is not only true for the residential market but, also for the small business market since as the record demonstrates, the proportion of these customers served by switch-based CLECs is relatively small and is close to non-existent in many parts of the state.[3] This should not be surprising given FCC Chairman Powell's conclusion at the time of the FCC's *TRO* vote that there may be few markets, if any, around the country that justify elimination of UNE-P to serve the mass market under the *TRO* standard.[4] Nevertheless, Verizon is now claiming that it has met the *TRO* standard for eliminating local switching to serve the majority of customers in its service territory.

---

3 Although Mr. Schwencke and Mr. Malfara, as officers of their respective companies, are not permitted by the Commission's Protective Order to view company specific proprietary information, they were permitted to review aggregate data which is not carrier specific. Mr. Dulin, on the other hand, has executed a Confidentiality Agreement and is permitted to view all the proprietary data introduced into testimony and produced in discovery.

4 Separate Statement of Michael K. Powell Approving in Part and Dissenting in Part, FCC 03-36 at 6. ("The Majority purports to constrain state discretion by removing unbundled switching where 3 self-provisioned switches or 2 wholesalers are present in a given market. This is no limitation at all. Indeed there may be few markets, if any, that include three competitors using self-provisioned switching to serve the mass market." (footnote omitted.))

The bottom line is that if the Commission wants to effectively eliminate the mass market competition which has developed over the past 7 ½ years with one fell swoop, it should grant Verizon's request and eliminate local circuit switching as a UNE in a large portion of the Commonwealth. However, the PCC is confident that the Commission's objective is not only to maintain residential and small business competition, but to continue to create an environment in which it will flourish. If this is the case, the Commission only has one course available to it in this proceeding -- to maintain local circuit switching as a UNE to serve the mass market throughout Verizon's service territory.

Equally important is the maintenance of transport routes as UNEs throughout Verizon's service territory. Verizon's transport routes are critical to carriers like ATX which serve thousands of enterprise customers through its own switches. Elimination of necessary Verizon transport routes will do nothing but eliminate, degrade or increase the costs of serving switch-based customers -- all anti-competitive results -- which are, even more importantly, at odds with the interests of customers which the Commission is dedicated to protecting. Furthermore, eliminating UNE transport routes causes the collateral damage of eliminating EELs over the associated routes -- a devastating development for CLEC switch-based competition.

II. PCC MEMBERS

Q. MR. SCHWENCKE, PLEASE IDENTIFY YOURSELF AND PROVIDE A SUMMARY OF YOUR PROFESSIONAL BACKGROUND AND FSN'S BUSINESS WHICH IS RELEVANT TO THIS PROCEEDING.

A. My name is David Schwencke. I am President and CEO of FSN. My business address is 1420 Centre Avenue, Pittsburgh, PA 15219.

I founded Full Service Network in 1988 as my only financial means to attend college at the University of Pittsburgh. Because my original background was in computer programming, FSN was initially involved in developing software solutions, but quickly transitioned to a business that aggregated demand for interexchange service and provided ongoing consultation, support and customer care for its clients/customers. During these days, we developed a nationwide calling card platform that includes a "home call hotline service" as well as a national and international calling card platform for business travelers and kids away at school, for which we wrote the switch software and which is still in use today.

FSN is a relatively small CLEC which provides a variety of telecommunication services, including local exchange services, to both residential and business customers located in Verizon PA's service territory. Recently, FSN entered into an interconnection agreement with Verizon North and has now initiated service offerings in that service territory.

FSN's headquarters are located in Pittsburgh and the Company recently opened an office in Philadelphia. FSN is a Pennsylvania company and its entire customer base is located in Pennsylvania. In this regard, FSN presently employs approximately 60 Pennsylvanians in its two offices. While currently the core of FSN's business is in the Pittsburgh area, expansion of FSN's business requires the Company to move outward to serve both businesses and residential customers in surrounding suburban and rural areas, including into Verizon North's service territory. However, FSN will only be able to achieve this necessary expansion if the terms and conditions of the incumbent local exchange carrier's wholesale service permit such an expansion from a business perspective. Furthermore, dependent on the outcome of this proceeding, FSN's existing customer base will be threatened. This threat to FSN's business is particularly acute, because Verizon is attempting to not only eliminate UNE-P, but also to eliminate the ability to compete effectively through switch-based services by eliminating transport routes and associated EELs, crippling the only cost effective way for FSN to extend its switch coverage in an attempt to migrate customers to switch-based service.

FSN owns and operates one local switch in downtown Pittsburgh, but does not serve mass market customers from the switch for the simple reason that it is not economic to do so. FSN is continuously considering whether investment in additional local switches is economically prudent and whether it can broaden the range of customers served by its existing switching facilities. However, FSN can not broaden its switch-based customer base unless market conditions and the resulting economics permit, including the maintenance of UNE-P as a building block and EELs to expand switch coverage. Otherwise, it will not recover its costs of, much less realize a return on, its investment.

Q. DOES FSN CURRENTLY USE UNE-P TO SERVE ITS CUSTOMERS?

A. Yes it does. FSN uses UNE-P to serve all of its mass market customers (no matter how the cutover between mass market and enterprise is ultimately established) and also to serve many of its enterprise customers served by DS1 facilities. UNE-P is the only wholesale product that allows my company to develop a profitable customer base in a given wire center to a level that the customer base can be served through EELs and collocation.

Q. HOW WILL THE RESULT OF THIS PROCEEDING AFFECT FSN'S BUSINESS?

A. It literally will determine the survival of FSN's business. If the Commission does not maintain UNE-P, either through the exercise of state or federal law, throughout the metropolitan Pittsburgh and the surrounding area, the vast majority of FSN's customers, and all of its residential and mass market customers, will be forced back to Verizon against their will through what I call "regulatory slamming."

Q. CAN'T FSN JUST TRANSFER THE CUSTOMERS ONTO ITS SWITCH OR CONTINUE TO SERVE THEM THROUGH A RESALE ARRANGEMENT?

A. Not profitably. Having built the business myself from one customer to many thousands and from a few thousand dollars to millions--all without a single investment dollar from anyone, I am keenly aware of the economics which constrain switch expansion. I am constantly reviewing the economics of broadening my switch coverage to serve smaller business and residential customers, however, under current market conditions, the economics simply to not work and are not even close to a break even scenario. As to resale, although I use resale to serve certain customers lines in very specific situations, usually only hand-in hand with UNE-P, the existing wholesale discount (which Verizon is currently challenging) is not deep enough to profitably serve my existing UNE-P customer base. Accordingly, if the Commission were to eliminate UNE-P to serve mass market customers, particularly in the Pittsburgh metropolitan area and the surrounding area, it likely that FSN would not survive.

Q. WHAT ABOUT THE MAINTENANCE OF UNBUNDLED TRANSPORT AS A UNE, DOES THAT AFFECT YOUR BUSINESS?

A. Yes it does. Dedicated transport is the one UNE that facilitates the extension of FSN's switch coverage through EELs. While, in Pennsylvania, due to the lack of concentration and rate design issues, EELs are presently only useful to FSN in very limited instances, there are cases pending before the Commission which hopefully will fix these problems.

Of course, fixing these problems will not be helpful if the Commission then turns around and eliminates a transport route upon which the EEL is dependant as we cannot combine our switch port with another provider's (other than Verizon's) transport and then with Verizon's loops in an EEL combination. This simply does not work.

Q. MR. MALFARA, PLEASE IDENTIFY YOURSELF AND PROVIDE A SUMMARY OF YOUR PROFESSIONAL BACKGROUND AND REMI'S BUSINESS WHICH IS RELEVANT TO THIS PROCEEDING.

A. My name is David Malfara. I am a Director and President and CEO of Remi. My business address is 138 South Main Street, Greensburg, Pennsylvania 15601. I am also a founding director of Boathouse Communications Partners LLC, a Philadelphia-based investment and management firm which is the majority shareholder of Remi.

Prior to this, I was President and co-founder of Z-Tel Network Services, Inc. the CLEC subsidiary of Z-Tel Technologies. Under my direction, Z-Tel Network Services became the largest consumer-based CLEC in the U.S., achieving annual revenue of nearly $300 million, with more than 340,000 subscribers at the time of my departure in January of 2001.

I have been active in the telecommunications industry for more than 27 years. In 1983, I formed Pennsylvania Alternative Communications, Inc., and its subsidiary, Pace Long Distance, which grew to operate nationally and was later sold to LCI International. In 1995, I co-founded Pace Network Services ("PNS"), which provided traffic and signaling network oriented services to telecom carriers. PNS became the largest supplier of SS7 connectivity to the interexchange carrier market with over 100 carrier-customers prior to its sale to ICG Telecom Group, Inc. in 1996. In 1979 I co-founded Vector Communications, Inc. – one of the first third-tier long distance carriers, and I've served in senior management positions at National Computer Corporation, Honeywell

Information Systems, and GTE Telenet. I currently serve as a Director and Executive Committee member of CompTel, the leading competitive telecommunications industry association, and as Chairman of CompTel's Technology Task Force.

Remi is a relatively small CLEC which entered Pennsylvania as a local service provider in mid-2002. Remi is headquartered in Greensburg, PA in a rural part of the Commonwealth. Remi's business market is Pennsylvania. Remi employs a growing work force of approximately 20 Pennsylvanians and its distribution channel consists of 21 entrepreneurial companies that represent Remi's products and services throughout the Commonwealth through a network of hundreds of Pennsylvania-based sales people and support staff who make part of their living by selling Remi products.

Remi is a "smart communications" company that combines the best local, long-distance, toll free, and unified messaging solutions in simple yet cost-efficient bundles by leveraging the UNE-P. Remi supplements the UNEs leased from Verizon with proprietary technology that allows innovations from Remi that uniquely configure and optimize the integration of necessary network elements, ensuring both least cost status as compared to other competitive local providers and product delivery innovations that are unavailable from other local telecommunications providers. At this time, Remi does not own or operate any local switches in Pennsylvania, however, like all other CLECs, Remi will invest and deploy switches as soon as economies and market conditions permit.

Remi's fundamental goal is to be the simplified, low cost, low risk alternative provider that was the vision and promise of the Telecommunications Act of 1996. Remi's flagship product is the "RemiPack," which is a voice service offering that comes in 2, 3, 5, and 24 line packages. RemiPack includes analog or digital telephone lines, thousands of local and long-distance minutes and a variety of optional services. RemiPack 2, 3 and 5 are designed for small business and can be expanded with incremental lines, and RemiPack 24 is a DS1-based product designed for businesses that must sustain unexpected surges in call volumes, allowing a peak capacity of a full 24 lines of digital service.

Remi's Intelligent Bundle and its *ALERT ("Allow Least Expensive RaTe")* rating feature **automatically** provide businesses with cost-optimized local and long distance calling minutes. Remi's Intelligent Bundle also optimizes the local and long distance minutes used by a business with multiple locations as it pools total plan minutes across all customer locations, including home offices, and dramatically reduces the time for bill review making its customers more efficient. Finally, with the Intelligent Bundle's Facility Independence feature, multi-location customers can use pooled minutes purchased at low, DS1 dedicated rates at the headquarters location to lower the cost of calling in their smaller offices in rural locations. With the Intelligent Bundle, even if the calling patterns of a business' locations change dramatically from month to month, the business is still assured of the most efficient use of its plan minutes, thereby maximizing the value of communications dollars spent. In short, Remi's proprietary software ensures that businesses are billed the lowest possible rate for service, based on how the consumer uses telephone service, rather than based on the plan a consumer happens to enroll in. By guaranteeing least-cost billing and reducing multiple bills into a single bill, businesses no longer need to administer or analyze a confusing array of bills. This type of consumer-friendly functionality is not offered by incumbents, such as Verizon.

Remi also offers its customers a variety of enhanced messaging services, including voicemail and faxmail. RemiMessenger can deliver voicemails to standard voicemail boxes, convert the message to ".wav" format and simultaneously email the message to the subscriber. RemiMessenger also can receive faxes, convert them into ".pdf" files and automatically email them to a designated address. Moreover, Remi Messenger produces a true ".pdf" electronic file format that can be attached to any customer record, and added to any of the currently available database programs.

Finally, Remi offers its customers a smooth operating environment for mixed technologies, supporting newer customer premise equipment based upon voice-over-packet technology with an intelligent interface to the legacy public switched network through High-Capacity Primary Rate Interface ("PRI") interconnections. Businesses making telephone system buying decisions increasingly are considering the formidable benefits of purchasing Internet Protocol-based PBX systems because of their efficiency in using IP transport, where available, and conventional transport for interaction with subscribers on the Public Switched Telephone Network ("PSTN").

Although it is certainly possible for the incumbents to support these advanced systems, they have no incentive to do so because there is insufficient competition to drive them to spend the capital required to create more consumer-friendly products. Of course, these very incumbent-provided retail services are beyond the reach of many small businesses, and Remi's ability to obtain UNE-P is vital to Remi's ability to bring innovative services to small and medium-sized businesses that would otherwise be unable to obtain these advanced communications functionalities.

Q. ARE YOU SAYING THAT REMI CAN OFFER ALL OF THESE ENHANCED SERVICES THROUGH A UNE-P ARRANGEMENT?

A. That's exactly right. The general belief that UNE-P restricts a CLEC to offering the ILEC's services is simply wrong and is what distinguishes UNE-P from resale. Because UNE-P allows the CLEC to act in the shoes of the ILEC, the CLEC is then free to create service enhancements that the ILEC could or would have made if it felt the competitive pressure to provide better services to its customers. In fact, UNE-P is an ideal platform for designing service enhancements to meet a customer's specific needs.

Q. DOES REMI OFFER ITS RETAIL SERVICES TO MASS MARKET CUSTOMERS?

A. Yes it does. While Remi does not currently serve residential customers, it serves many small business customers through DS0 or analog facilities. All of those small business customers are served through a UNE-P arrangement.

Q. HOW DOES THIS PROCEEDING IMPACT REMI'S BUSINESS?

A. If the Commission does not maintain UNE-P throughout Pennsylvania under either state or federal law, the outcome of this proceeding could wipe out Remi's business. Essentially, all of our existing customers would be forced back to Verizon against their will and would, of course, lose the benefits that Remi provides.

Q. WHY COULDN'T YOU INSTALL A SWITCH DURING THE TRANSITION PERIOD?

A. No prudent businessman would consider such a business strategy. I have conducted many economic analyses of serving customers from Class 5 switches and there is no way that any CLEC can serve mass market customers economically from these switches. Any CLEC that may be attempting to do so can not be sustained for the simple reason that, in the long run, such businesses will not be able to recover their investment. The only possible exceptions are for intermodal carriers and ILEC affiliates which are essentially subsidizing their voice grade service through Cable TV services or monopoly ratepayer funding.

Accordingly, if UNE-P is eliminated in a certain area of Pennsylvania, this Commission will not only eliminate residential competition, but will also see all small and medium size business competition vanish over a period of a couple of years. If this is what the Commission wants, it should grant Verizon its wishes, however, I suspect and hope it is not.

Q. IN CONTRAST, IF THE COMMISSION MAINTAINS UNE-P THROUGHOUT PENNSYLVANIA, WILL REMI'S BUSINESS BE ABLE TO EXPAND?

A. We certainly believe so. Remi currently plans to offer service throughout the Commonwealth using the UNE-P as a critical facilitator of our market penetration strategy. Important decisions regarding capital expenditures will be made based upon the speed and degree to which we are able to capture market share. The UNE-P is an integral part of that strategy.

Remi has only been providing service in Pennsylvania for a little more than 1 ½ years. Since Remi is privately funded, and since our majority stockholder, BCP, is constantly evaluating numerous investment opportunities, we must be certain that our plans for Remi's expansion are based upon a stable foundation. This includes the legislative/regulatory framework in the areas in which we operate, the technology available to us and the critical timing of our capital purchases which will ensure that we are building an infrastructure that will support our operation for many years to come and finally, the willingness of capital markets to support our expansion. Our business plan is one of evolution. It is vital to Remi's development that we emerge from our early development period as quickly as possible. Because our business case is focused on businesses with locations in all areas of the Commonwealth, it is critical that we are able to compete on equal footing with the ILEC. Barring the complete replication of ILEC's network as a prerequisite to market entry, Remi needs access to the unbundled network elements, including UNE-P, in order to capture sufficient market share to support our plans for investment and expansion.

Q. IF THIS OCCURS, WILL THE ELIMINATION OF UNE-P HAVE ANY IMPACT ON THE MODERNIZATION OF PENNSYLVANIA'S TELECOMMUNICATIONS NETWORK?

You bet it will. The so-called next-generation network ("NGN"), including Voice over Internet Protocol ("VoIP"), is quickly evolving into a technology that will not only serve to eliminate the economic and operational impairment being experienced by our CLEC industry, but holds virtually unlimited promise for consumers as well as the Commonwealth's network modernization objectives, industrial development and new job growth within the Commonwealth. Once the remaining technological problems are addressed, CLECs will be able to invest in widespread deployment of this network. Thus, NGN will quickly eliminate the economic and operational impairment issues associated with legacy systems that clearly exist today for CLECs attempting to provide switch-based service.

NGN will not only eliminate hot cuts, the primary source of operational impairment, but will introduce a level of economic efficiency to the telecommunications industry, including the CLEC industry, that has never been seen before. In fact, putting aside the economic and operational impairment issues which we continue to encounter with the use of the current network, the anticipated development and deployment of an NGN makes continued CLEC investment in legacy technology impossible to finance, thereby creating a separate basis for concluding that CLECs will be impaired if UNE-P becomes unavailable.

This evidence clearly demonstrates that UNE-P provides the necessary transitional mechanism to migrate customers to NGN technology, after which UNE-P can and should be eliminated. To the extent UNE-P is no longer available at the time of transition to NGN, the CLEC industry will be severely disadvantaged in this migration to the detriment of Pennsylvania consumers and businesses and the Pennsylvania economy generally.

To the extent that UNE-P remains available throughout the Commonwealth, I have no doubt that it will serve as an important catalyst to robust NGN deployment from the center of the big cities, deep into the rural areas of Pennsylvania, and Remi looks forward to the day (not so long from now) when our company and the other PCC members can participate in that important effort.

Q. MR. DULIN, PLEASE IDENTIFY YOURSELF AND PROVIDE A SUMMARY OF YOUR PROFESSIONAL BACKGROUND AND ATX'S BUSINESS WHICH IS RELEVANT TO THIS PROCEEDING.

A. My name is Scott Dulin. My business address is 50 Monument Road, Bala Cynwyd, PA 19004. I have worked for ATX since 1988 and have been responsible for operational, technical and business issues relating to the planning, development and implementation of ATX's local product offering. To that end, I have also participated in the various regulatory and legislative initiatives promoting fair competition in Pennsylvania's local markets.

Founded in 1985, ATX maintains its headquarters in Bala Cynwyd, Pennsylvania and provides a broad range of services including local, long distance, and data communications. ATX employs a staff of more than 600 employees in Pennsylvania, most of which are Pennsylvania residents, and an additional 600 throughout the Mid-Atlantic and Midwestern United States. ATX generates $300 million in annual revenue and operates multiple local and long distance switches in Pennsylvania. In order to gain access to the end user, ATX utilizes the public switched network, an infrastructure operated and maintained by Verizon for most of Pennsylvania.

Q. MR. DULIN, ISN'T ATX A SWITCH BASED PROVIDER?

A. Yes it is. However, that does not mean that UNE-P is not critical to our business. In fact, UNE-P is the vehicle which enables switch-based CLECs, including ATX, to develop a customer base with sufficient concentration and scale to justify the investment in new transport and switching facilities and to expand the switch coverage of existing facilities.

A local switch primarily serves the immediately surrounding geographical area from its physical location. For ATX in Pennsylvania, this area is the Philadelphia metropolitan area. Since the geographic coverage or reach of a local switch is economically restricted by the cost elements of loop/collocation/transport distance, ATX cannot expand its customer base outward from a given market without the availability of a product that limits the substantial costs resulting from transporting traffic over great distances from switch to end user.

Furthermore, not having benefited from guaranteed ratepayer funding of switching and transport network on a LATA wide basis, UNE-P is the only economic means for ATX to serve the mass market. Accordingly, if UNE-P is eliminated in parts of Pennsylvania, ATX's mass market customers will be forced to return to Verizon against their will. This will have an extremely adverse impact on ATX's business.

Q. CAN A SWITCH BASED PROVIDER ECONOMICALLY SERVE RESIDENTIAL CUSTOMERS?

A. Absolutely not, unless of course, the provider is receiving contribution from some other source like Cable TV or an affiliated ILEC. ATX has learned from experience, given the flurry of CLEC bankruptcies and business failures, the dangers of serving customers off of our switches where the economics are not justified. As to mass market customers generally, the economics are nowhere near present for ATX to justify serving residential customers from its switches.

Q. WHAT ABOUT FOR NON-RESIDENTIAL MASS MARKET CUSTOMERS?

A. Generally speaking, the economics do not work for any mass market customers and definitely do not even come close to working for smaller mass market customers, for example, those customers with less then four lines. It is possible that the usage characteristics of certain larger mass market customers can justify serving those customers on a switch-based basis. This is why ATX carefully evaluates each potential customer to determine if the customer can be migrated to ATX's switch in a manner that makes economic sense. For this reason, the vast majority of customers served by ATX from its switches are served by DS1 or higher facilities. With minor exception, if mass market customers cannot be served by UNE-P, ATX cannot serve them at all. This is because ATX fully understands that it cannot provide service to any customer or group of customers unless it can recover its costs, including a reasonable return. Our lenders and investors will stand for nothing less.

Q. IS THE MAINTENANCE OF TRANSPORT ROUTES AS UNES AN ISSUE FOR ATX?

A. Very much so. ATX actively utilizes many of the transport routes in the Philadelphia LATA and other LATAs which Verizon is claiming should be eliminated as UNEs under its version of implementation of the *TRO*. If Verizon gets its wish, the elimination of these transport routes will impose significantly increased costs and operational constraints on ATX, and ultimately ATX's customers. For example, if the transport routes upon which ATX depends are taken away, ATX will be forced to conduct a large network reconfiguration, involving hundreds, if not thousands, of transport equivalents of a loop hot cut to continue to serve its customers, assuming the resulting economics permit ATX to continue to conduct business. Furthermore, in many cases, forcing ATX off of Verizon's dedicated transport may require ATX to utilize inferior transport technology with the result being a degradation of service quality to ATX's customers. Of course, these results are not good for anyone except Verizon in its quest to win back customers and ultimately force ATX and other switch-based CLECs out of business.

III. <u>PURPOSE AND SUMMARY OF TESTIMONY</u>

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of our testimony is to propose to and provide the Commission with record evidence to support the various decision points, as to local switching and transport, which must be made in this proceeding. For example, we propose and support defining the geographic market for evaluation of impairment using a combination of Metropolitan Statistical Areas ("MSAs") and wire centers, based on a variety of factors as set forth below. Furthermore, the mass market/enterprise customer cutoff or cutover should be established at two levels -- a cutover established at a $10,000 in TBR as the cutover where a DS0 customer could be economically served through a DS1 loop and where customer premises equipment ("CPE") upgrades are not necessary, and a $25,000 TBR cutover in instances in which CPE upgrades are required for the customer to be served by a digital DS1 loop.[5] We will also provide evidence supporting the parameters of the trigger analysis which should be conducted by the Commission, including parameters which require that each qualifying trigger carrier provide service to both the small business and residential segments of each geographic market and that as a trigger carrier, the carrier must be actively subscribing customers to its switch based service with a propensity to continue such service. We will also provide support for the parameters which should govern the Commission's analysis of impairment as applicable to transport routes.

However, because members of our panel do not qualify to examine proprietary information under the Commission's Protective Order, this piece of testimony, which is marked as PCC St. No. 1.0, will not conduct an actual trigger analysis for either switching or transport under our proposed parameters. However, such analysis will be sponsored through a separate piece of PCC testimony marked as PCC St. No. 2.0.

Q. CAN YOU PROVIDE A SUMMARY OF YOUR TESTIMONY?

A. Yes. It's important to emphasize that the FCC has established a national finding that CLECs are impaired without access to ILEC loops, mass market local switching and dedicated transport. It is our understanding that under this finding it is Verizon which must prove that CLECs are not impaired without access to a given UNE in a given market or over a specific route.

---

5 Notwithstanding the foregoing, we believe in general, that the cutover and geographic determinations presuppose their application to large, pre-established carriers and that their existence will stifle new investments in start-up competitors in Pennsylvania under most if not all regiments developed during this proceeding, if unrestricted access to the UNE-P is not preserved without regard to cutover or geographic market for small, start-up competitors. Therefore, we suggest a competitor-centric analysis as a first step in determining when cutovers and geographic limitations are enforced.

Accordingly, it is not necessary for us to prove anything. Instead, we will rebut Verizon's attempts at proof and provide the Commission with a framework for evaluating Verizon's testimony and data, as rebutted. Properly conducted, the result will be a determination that loops, mass market local switching and dedicated transport must be maintained as UNEs throughout Verizon's service territory.[6]

The following represents a summary of the critical points we make in our testimony:

- The relevant geographic market for conduct of the mass market switching analysis should be defined as a combination of MSAs and wire centers.

- The cutover between mass market and enterprise customers should be defined as $10,000 in annual TBR (local and intraLATA toll) for scenarios in which a CPE upgrade is not necessary and $25,000 in annual TBR for scenarios in which a CPE upgrade is necessary.

- In determining whether a competing provider is a trigger carrier in a particular geographic market, the following eight criteria must be met:

    1) The CLEC must be serving both residential customers and small business customers in each market.

    2) The CLEC must be providing ubiquitous service to mass market customers throughout the entire geographic market.

    3) The CLEC must be providing service to the mass market in a manner that is sustainable.

    4) The CLEC must be providing the service through a mass market switch, not an enterprise switch.

    5) Intermodal carriers should not qualify as trigger carriers.

    6) A trigger carrier cannot be an affiliate of an ILEC.

[6] Our testimony does not specifically address loops, because the loops which Verizon has identified as trigger compliant do not affect the business activity of any PCC member.

7) *De minimus* competitive activity cannot qualify a trigger carrier.

8) The CLEC must be serving the mass market through switches owned by the CLEC.

- In conducting the trigger analysis on specific transport routes, Verizon's entire approach should be rejected because it is based on presumptions, speculation and theory, not facts.

In the following testimony, we provide evidentiary support for each of these points. If, as it should, the Commission adopts these points, the only possible conclusion is that mass market switching and transport must be maintained as UNEs throughout Verizon's service territory.

Putting aside the *TRO*, we also provide evidentiary support for the Commission to continue to require UNE-P to serve all mass market customers at Verizon's current Tariff 216 rates under state law. There is little doubt that under state law standards originally established in the *Global Order,*[7] the availability of UNE-P at existing wholesale rates remains vital to enabling and maintaining meaningful competition in the residential and small business markets. Furthermore, the continued availability of UNE-P and other network elements at their existing just and reasonable levels in Verizon PA's service territory is bolstered by the requirements of Section 271 of the Telecommunications Act which requires such continued unbundling as a condition of providing in-region, interLATA service.

IV. SECTION 251 *TRO* ISSUES

Q. DID THE FCC REACH ANY NATIONAL FINDINGS REGARDING THE UNES AT ISSUE IN THIS PROCEEDING?

---

[7] *Joint Petition of Nextlink, Pennsylvania, Inc. et al*, R-00991648, P-00991649 (September 30, 1999).

A. Yes. Unlike for local circuit switching for enterprise customers, as encountered by the Commission in the *90 Day Proceeding*, the FCC has established national findings that CLECs are impaired without access to loops,[8] mass market local circuit switching,[9] and dedicated transport.[10] While the FCC has delegated authority to the states, including this Commission, to conduct a granular analysis of the competitive conditions in each respective state, all of the network elements must remain as UNEs unless Verizon provides adequate proof that all or parts of Pennsylvania are different than the rest of the Nation. Because in the *TRO*, the FCC establishes specific and different standards for a state's evaluation of state-specific conditions for each network element, we will address each network element separately in our testimony.

A. MASS MARKET LOCAL CIRCUIT SWITCHING

Q. CAN YOU SUMMARIZE THE FCC'S FINDING REGARDING MASS MARKET SWITCHING?

A. Yes. In paragraph 459 of the *TRO*, the FCC reached its national finding of impairment based primarily on the shortcomings of the hot cut process for migrating customers from the ILEC to the CLEC. The FCC found that on a national basis the hot cut process caused both economic and operational barriers to entry by imposing burdensome non-recurring costs on CLECs, by causing the potential for disruption of service to the customer during the migration process, and by the inability of ILECs to handle the necessary volume of migrations to support competitive switching migrations in the

8 *TRO* at ¶ 202. The FCC's national finding applies to all loops with the exception of OCn loops which are optical loops and are the highest capacity of all loop facilities.

9 *TRO* at ¶ 459.

10 *TRO* at ¶¶ 381, 386, 390. The FCC's national finding applies to all types of transport with the exception of optical transport.

absence of unbundled ILEC switching.[11] While the FCC relied primarily on the inadequacies of the hot cut process for its mass market finding, it recognized that there may be other sources of operational and economic impairment in a given state.[12]

Q. CAN YOU DESCRIBE THE GRANULAR REVIEW THAT THE FCC HAS ASKED THE STATES TO CONDUCT?

A. Yes. The FCC has asked the states to conduct an "actual competition" or trigger analysis which measures the number of CLECs which are serving mass market customers through their own switches or through the switches of another CLEC in each geographic market in a given state. If it is determined that one or more carriers qualify as trigger carriers in a specific market under the FCC's trigger parameters, then the state commission must determine if any geographic markets meet the trigger benchmarks of three or more trigger carriers providing retail service (self-provisioning trigger) or two or more trigger carriers providing wholesale service (competitive wholesale facilities trigger). Because Verizon has not made or supported a claim that any part of its service territory meets the competitive wholesale facilities trigger, the Commission need only concern itself with the self provisioning trigger in this proceeding.

Q. WHAT HAPPENS IF A MARKET DOES NOT MEET THE APPLICABLE TRIGGER BENCHMARKS?

A. As relevant to this Commission's inquiry, the Commission must find that impairment exists in that market. Although the *TRO* permits an ILEC to attempt to overcome the "actual deployment" or trigger test through evidence of "potential deployment," Verizon

---

[11] As the FCC stated in paragraph 475, "Accordingly, we conclude that the operational and economic barriers arising from the hot cut process create an insurmountable disadvantage to carriers seeking to serve the mass market demonstrating that competitive carriers are impaired without local circuit switching as a UNE."

[12] *TRO* at ¶¶ 447-485.

has chosen not to seek relief under a "potential deployment" analysis for any market in its service territory.[13] Accordingly, once the Commission determines that the trigger benchmarks have not been met, no further review is appropriate.

Q. WHAT HAPPENS IF ONE OF THE TRIGGER BENCHMARKS IS MET IN A GIVEN GEOGRAPHIC MARKET IN VERIZON'S SERVICE TERRITORY?

A. We do not think this scenario will occur in Pennsylvania, however, if it does, it will almost certainly occur as a result of a geographic market meeting the self-provisioning trigger under which three or more CLECs qualify as trigger carriers by serving mass market customers on a retail basis. If this scenario occurs, the Commission must then consider evidence of whether exceptional circumstances exist in that market which are the cause of impairment. Only if no exceptional circumstances are found can a finding of non-impairment for a given geographic market be justified.

Q. DOES THE COMMISSION HAVE DISCRETION TO DETERMINE WHETHER A CLEC QUALIFIES AS A TRIGGER CARRIER?

A. Yes and the Commission should exercise that discretion in a pro-competitive manner, in a manner that considers whether there is "actual competition" and not merely plausible competition, and in a manner consistent with the interests of Pennsylvania's consumers and businesses. In fact, the FCC has identified criteria in the *TRO* which should be considered in evaluating trigger carrier qualifications. While Verizon would have the Commission completely ignore these criteria and conduct a robotic exercise of counting to three and including any carrier which is serving a single customer through analog loops with its own switch (no matter how large the customer), such an approach is not

---

[13] Verizon's Petition to Initiate Proceedings at p. 3. ("Verizon is not at this time attempting to demonstrate a 'potential deployment' case for geographic markets or transport routes in which the FCC's triggers are not satisfied.")

supportable under the *TRO* as it is devoid of analyzing "actual competition" and would be disastrous to local competition. We will comprehensively address each of the criteria for trigger carrier qualification below after addressing other determinations that the Commission must reach in establishing the foundation for the trigger analysis.

Q. WHAT OTHER DETERMINATIONS MUST THE COMMISSION REACH IN ORDER TO CONDUCT A GRANULAR EVALUATION OF VERIZON'S GEOGRAPHIC MARKETS?

A. Before conducting a trigger analysis, the Commission must define the markets to which the trigger analysis will apply. The exercise of defining the markets is divided into two components: (1) defining the geographic areas to which the trigger analysis will apply; and (2) establishing the cutoff or cutover point between the mass market and the enterprise market.

Q. ARE THERE ANY OTHER ISSUES THAT YOU FEEL THE COMMISSION SHOULD CONSIDER BEFORE YOU EXPLAIN MARKET DEFINITION AND THE TRIGGER ANALYSIS THAT PERTAINS TO THOSE MARKETS?

A. Yes. We believe that the intent of creating the cutover and geographic determinations and, ultimately, triggers, is generally to balance competitive costs in providing services to mass market customers among large and established carriers because they represent the vast majority of switch deployment and total billed revenue within the Commonwealth. Unfortunately, in attempting to create a consistent standard for analysis, we believe that whatever result is reached will set the stage for competition among existing competitors and effectively close the state to the formation of new innovative start-up businesses.

Q. ARE YOU SUGGESTING THAT A COMPETITOR-FOCUSED ANALYSIS SHOULD BE APPLIED AT THE STATE LEVEL BEFORE RESTRICTIONS ON UNE-P AVAILABILITY AND PRICING ARE MADE UNDER THE "ACTUAL COMPETITION" ANALYSIS?

A. Yes. If the intent is to create fair and actual competition, a competitor-centric focus is a necessary starting point. If the Commission wants to encourage new investment in innovative start-up companies in Pennsylvania, start-up companies should be excluded from the geographic and customer-based restrictions that will be created pursuant to this proceeding and allowed to continue to purchase UNEs as needed to build their business, including in combinations specified by them, in conjunction with the UNE-P and at just and reasonable prices.

Q. HOW WOULD YOU PROPOSE THAT START-UP BUSINESSES BE DEFINED?

A. Regulatory uncertainty over time is one of the greatest threats to new investment in start-up businesses. We therefore believe that a fixed period of time following the time that the first customer is billed would be an appropriate way to define start-up business. We propose that start-ups should be given a window of 36 months where they are assured of a stable and supportive regulatory environment. We would further suggest that any company as of the date of the Commission ruling on this matter that has annual local revenue below $20,000,000 should be treated as a start-up for purposes of the definition.[14] If the Commission eliminates UNE-P in a given area, it will essentially foreclose entry by start-up companies in that area for all time.

Q. WHY SHOULD THE COMMISSION SPEND TIME WORRYING ABOUT START-UP BUSINESS?

A. Investment in new small businesses is and has historically been the engine for job growth and technological advancement in Pennsylvania. To ignore encouraging start-up

---

14 The Commission should also consider establishing a benchmark for each Verizon wire center which would allow carriers to initially build up economies of scope and scale in a wire center through unrestricted UNE-P.

A. ventures in the telecommunications industry in Pennsylvania would be to close the door on an industry that holds substantial future promise for technical innovation and job growth within the Commonwealth. Encouraging new investment in competition is a fundamental principle of the Telecommunications Act and is not prohibited or restricted in any way by the *TRO*.

1. <u>Defining the Geographic Market</u>.

Q. PLEASE EXPLAIN HOW THE DEFINITION OF GEOGRAPHIC MARKETS PLAYS A ROLE IN THIS PROCEEDING.

A. Sure. The geographic markets define the scope of the trigger analysis in measuring actual deployment under the *TRO*. The FCC has requested state commissions to conduct a granular evaluation of the actual competition in various parts of a state. At the same time, the FCC has left it up to each state to define the markets within the state -- the result being that a trigger analysis is to be conducted in each relevant geographic market.

Q. HAS THE FCC ESTABLISHED CRITERIA FOR HOW THE GEOGRAPHIC MARKETS SHOULD BE DEFINED?

A. Yes, but the criteria are very broad and the Commission has been provided significant discretion in determining how the geographic markets should be defined. In paragraph 495 of the *TRO*, the FCC lists the following criteria which must be taken into consideration in defining the geographic markets:

> (1) the locations of customers actually being served, if any by competitors;
>
> (2) the variation in factors affecting a competitor's ability to serve each group of customers; and
>
> (3) competitors' ability to target and serve specific markets economically and efficiently using currently available technologies.

While the FCC has required that these factors be considered, the only restrictions placed on the state commission's determination is that the entire state can not be considered a single market and that the market can not be so narrowly defined that necessary economies of scale and scope are precluded. With these broad restrictions, the FCC has indicated that ". . . a more granular analysis is generally preferable . . ."[15]

Q. HOW SHOULD THE COMMISSION DEFINE THE RELEVANT GEOGRAPHIC MARKETS FOR PURPOSES OF THIS PROCEEDING?

A. Notably, Verizon has chosen a combination of MSAs and density cells to define the geographic markets in its service territory. We agree with the "combinations" approach utilized by Verizon. However, review of Pennsylvania's telecommunications markets in the context of the FCC's standards reveals that the geographic markets in Verizon's service territory should be defined as a combination of MSAs and wire centers, not MSAs and density cells.

Q. HOW IS THIS COMBINATION APPROACH SUPPORTED BY THE TRO?

A. In paragraph 499, fn. 1552, the FCC states that, "In circumstances where switch providers (or the resellers that rely on them) are identified as currently serving, or capable of serving, only part of the market, the commission may choose to consider defining that portion of the market as a separate market for purposes of its analysis."[16] Accordingly, like Verizon, we support an approach under which the Commission examines MSAs in

---

15 *TRO* at ¶ 495.

16 While Verizon will likely claim that this footnote only pertains to wholesale providers under the *TRO*, as corrected by the Errata, this claim is not supportable since the FCC has made it clear in paragraph 495 that "the state commission must use the same market definitions for all of its analyses" and can not use a different market definition for the self-provisioning and wholesale triggers.

the context of a more granular wire center approach to determine what portions of the MSA are experiencing any significant amount of actual competition..

Q. WHAT ARE THE SPECIFICS OF YOUR PROPOSAL?

A. As with Verizon, we start with MSAs as the initial geographic market. The MSAs in Pennsylvania essentially divide the state into relatively large geographic sectors, however, at the same time the MSAs are a useful tool for identifying the general markets where CLECs will focus their business. This is true not only of switch-based providers, but also of UNE-P providers. For example, Remi focuses its UNE-P business in the Pittsburgh MSA. FSN also focuses its switch-based and UNE-P business in the Pittsburgh MSA. ATX focuses its switch-based and UNE-P business in the Philadelphia MSA as does LSI for its UNE-P business. However, this is only a part of the story, since for each PCC member and for CLECs generally, economic market conditions vary significantly within the MSA on a wire center by wire center basis. This is particularly true for switch-based providers.

Q. CAN YOU EXPLAIN FURTHER?

A. From a switch-based provider's perspective, each wire center is an economically significant portion of a geographic market. When a CLEC installs a switch it must collocate in the ILEC's central office (or extend its network through EELs)[17] to reach and provide local service to potential customers. A collocation arrangement only enables the CLEC to serve the wire center in which the collocation facility is located. So, for example, the CLEC will likely first collocate in the central office in close proximity to

[17] Enhanced extended links or "EELs" are not relevant to this analysis because this wholesale service arrangement, with possible minor exception, is not utilized to serve analog, mass market customers.

the CLEC's switch – commonly referred to as zero mileage band collocation. This will only enable the CLEC to serve customers in the native wire center in which the CLEC switch is located – and essentially is the CLEC switch's initial market.

In order to extend its switch coverage, a switch-based provider (and, in particular one who may be attempting to serve the mass market) must collocate in central offices moving outward from the native wire center. Each of these potential collocations involves the expenditure of significant non-recurring and recurring costs. Under Verizon's collocation tariff, Tariff 218, these costs include an application fee, cross connect fees, charges for power and space in the central office on a square footage basis.

Furthermore, as a CLEC considers whether to move its switch coverage out from the native wire center, it must account for the additional transport costs it will incur to backhaul traffic to its switch. Because those backhaul costs are distance sensitive, the costs, on a per customer basis, increase as the switch coverage is extended outwards.

Q. WHY IS ALL OF THIS SIGNIFICANT TO DEFINING THE RELEVANT GEOGRAPHIC MARKET?

A. Because the cost structure faced by a CLEC determines where the economics justify (or do not justify) serving customers (particularly mass market customers). Each wire center presents a different economic picture and therefore each wire center is frequently viewed as a distinct market by a switch based CLEC. Assuming prudent business behavior, a CLEC will not collocate and serve a given wire center unless it can recover its costs and produce an adequate return in that wire center. Accordingly, given the significant variations in cost of service (not to mention revenue opportunity), each wire center is must be considered in the trigger analysis. While economies of scope and scale are important, a switch based CLEC cannot sustain entry into a market to serve mass market customers unless the economics works for that particular market or market segment. As the old adage goes, you can't make up for losses by increasing volumes of a money losing product or service.

Q. IS THERE ANY OTHER REASON WHY MARKETS SHOULD BE DEFINED UTILIZING THE WIRE CENTER COMBINED WITH MSAS?

A. Yes, because that is how Verizon's markets are defined. Because of its historic role as a government recognized monopoly, Verizon's markets are limited by its designated wire center which, with some exception related to local calling areas, represent the extent of its switch coverage and is the driving force for where a customer can call exclusively on Verizon's facilities.

Of course, these limitations are far more pronounced for a switch based CLEC. Because of its monopoly status, and guaranteed ratepayer funding, Verizon has installed over 150 switches in the Philadelphia LATA alone to optimally reach its customers. In installing these switches, Verizon did not have to concern itself with whether the investment was economically justified since the company was guaranteed recovery of its costs.

Switch based CLECs face a much different scenario and must engage in a daily struggle to overcome the operational deficiencies and market power of a huge competitor, who unfortunately we are completely dependent on as our defacto wholesale provider. Within this struggle, a CLEC cannot sustain local service to the mass market or any market unless the economics of providing service work in each individual wire center, and, therefore, CLEC investment decisions are frequently made at the wire center level. It is these factors which support our proposal that the

Commission define the relevant geographic markets through consideration of a combination of MSAs and wire centers.

Q. VERIZON WITNESSES PEDUTO AND WEST ENDORSE A COMBINATION OF METROPOLITAN STATISTICAL AREAS AND DENSITY CELLS AS THE RELEVANT GEOGRAPHIC MARKETS. DO YOU AGREE?

A. No we do not. As indicated, the use of MSAs provides an appropriate general framework because MSAs have relevance to how a CLEC views the geographic areas where it will focus its business. For example, the Verizon witnesses support their use of MSAs because ". . . MSAs are often used to define local markets for purposes of telecommunications regulation."[18] We agree that these factors support the use of MSAs as the general market areas.

Q. WHAT ABOUT UTILIZING DENSITY CELLS AS A BASIS FOR DEFINING GEOGRAPHIC MARKETS?

A. Density cells cannot be used, because they only present half the story. Density cells are a factor in both the revenue opportunity in a certain area and the wholesale costs in that area since Verizon's retail rates and wholesale loop rates vary by density cell. Density cells portray only part of the economic picture for a switch-based CLEC. As we indicted previously, a critical part of the economic picture is the cost structure of serving customers from a CLEC switch, because the cost structure varies based on wire center and the wire center's proximity to the switch.[19] It is also important to recognize that wire centers also capture the retail and wholesale rate differentials between density cells.

---

[18] Verizon St. No. 1.0 at 11.

[19] The importance of the economic factors at the wire center level are supported by the FCC's discussion in ¶ 476 of the *TRO* where the FCC found that "the significant cost disadvantages competitive carriers face in obtaining access to the loop and backhauling the circuit to their own switches . . .," both of which are costs incurred at the wire center level, ". . . may give rise to impairment in a given market."

Accordingly, only wire centers capture all of the economic factors that a switch-based CLEC considers in determining whether to serve a particular geographic market within MSAs which may affect the impairment analysis.[20]

2. The Cutoff Between Mass Market and Enterprise

Q. CAN YOU DESCRIBE THE DISTINCTION BETWEEN MASS MARKET CUSTOMERS AND ENTERPRISE CUSTOMERS?

A. Yes. The enterprise market is the FCC's term for what the Commission has traditionally called the business market. On the flip side, the mass market is the FCC's term for what this Commission has traditionally referred to as the residential market. However, the lines are not as clear as they are at the state level since the FCC groups smaller businesses, which it believes more closely resemble residential customers than larger business customers, as mass market customers, not enterprise customers.

Q. HOW DOES THIS DISTINCTION BETWEEN CUSTOMER CATEGORIES AFFECT THIS PROCEEDING?

A. The FCC has requested the state commissions to identify the cutoff point between mass market customers and enterprise customers on a state specific basis. The FCC has made it clear that customers being served by loops with DS1 capacity or higher are enterprise customers and the availability of wholesale service options to CLECs to serve these customers was addressed separately through the *90 Day Proceeding*. The open question is where the cutoff or cutover point is for customers served by multiple loops at DS0 or analog voice grade capacity.

Q. HAS THE FCC ESTABLISHED ANY PARAMETERS GOVERNING THE COMMISSION'S DETERMINATION ON THE CUTOVER ISSUE?

---

[20] Furthermore, the conduct of a trigger analysis in consideration of wire centers is the only way to identify the specific areas where switch-based CLECs are not serving the mass market.

A. Yes. In paragraph 497 of the *TRO*, the FCC defines mass market customers as "analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops." Essentially, the FCC has requested state commissions to determine the cutover point where a customer served by DS0 analog loops could be economically served by a DS1 digital loop in that respective state.

Q. HAS THE FCC ESTABLISHED ANY PREFERENCE FOR THE CUTOVER POINT?

A. Yes, but only in density zone 1 of the top 50 MSAs. As applied to Pennsylvania, the FCC preference only applies to Density Cell 1 in Verizon's service territory – a portion of downtown Philadelphia and downtown Pittsburgh comprised of 12 rate centers as set forth in Verizon's tariff.[21]

In these 12 rate centers, the FCC has identified a preference that the cutoff be established at four lines "absent significant evidence to the contrary."[22] In the rest of Verizon's service territory, Density Cells 2, 3, and 4, the FCC has not identified any preference and the Commission has been requested to determine the cutover where customers served by DS0 loops could be economically served by DS1s.

Q. IS THE FCC'S PREFERENCE FOR DENSITY CELL 1 REALISTIC?

A. No, it is not. This is because there is no possible way that a switch-based provider could economically serve a customer through a DS1 with four lines in Density Cell 1 (or any other Density Cell) in Pennsylvania. As the attached Pennsylvania UNE Rate Diagram,

---

21 *See* Verizon Pa. P.U.C. – No. 216, Section 3, 1st Revised Sheet 5E and 5F. The 12 wire centers are Evergreen, Locust, Market, Pennypacker, Dewey, King of Prussia, Paoli, Wayne, West Chester, Downingtown, Wilkinsburg and Perrysville.

22 *TRO* at ¶ 497.

marked as PCC Exhibit 1 indicates, a switch-based CLEC attempting to serve a four line business customer in Density Cell 1 would incur wholesale costs well above both the cost of serving the customer through multiple DS0s and Verizon's retail price for a four line, multi-line business – a completely uneconomic scenario.[23] Accordingly, the FCC's preference for the cutoff in the largest MSAs is completely unrealistic in Pennsylvania.

Q. WHAT IS THE APPROPRIATE CUTOFF?

A. From a business perspective, the cutoff can only be accurately measured on a customer by customer basis. This is how a CLEC determines what facilities should be utilized to serve a given customer. There are two sides to this equation – revenue opportunity and cost. Both of these factors can vary fairly dramatically between customers, even customers with the same number of lines, depending on transport costs, the customer's usage volumes and other factors. Furthermore, the cutoff is much different in instances in which a CPE upgrade is necessary as compared to instances in which a CPE upgrade is not necessary to transition to digital facilities. This is because the cutoff for instances in which a CPE upgrade is not necessary is driven entirely by the CLEC's economics. In contrast, the cutoff in instances in which a CPE upgrade is necessary is driven entirely by the customer's economics.

Q. CAN YOU ADDRESS THE CUTOFF IN INSTANCES IN WHICH A CPE UPGRADE IS NOT NECESSARY?

A. Yes. This scenario would pertain to instances in which the customer's existing CPE can support a digital DS1 loop without an upgrade. While again the actual economic cutover varies between customers, our analysis reveals that the cutover, based on averaging,

23 The Exhibit presumes the end user serving wire center is located ten miles from the serving wire center in which the CLEC switch is located and that the CLEC is using DS1 transport for that DS1 loop.

A. should be set at $10,000 in annual TBR.[24] Such a cutover is supported by a variety of factors. First, as explained above, the CLEC's revenue opportunity is a driving factor in the analysis of whether a customer served by DS0s can economically be served by a DS1. Second, a customer which provides a local and intraLATA toll revenue opportunity of $10,000 per year is likely a customer being served by 10 to 18 lines depending on the customer's revenue per line. Such a revenue opportunity realistically provides an economic scenario under which the customer could be served by a DS1. Third, the $10,000 TBR benchmark is the benchmark currently recognized by the Commission as the point at which Verizon's services are subject to rate regulation. Indeed, the Commission recently affirmed the $10,000 benchmark based on findings that, because of continuing barriers to entry and other factors, customers at or below the TBR benchmark were not privy to meaningful competitive alternatives.[25] In a sense, the Commission's $10,000 TBR benchmark is analogous to the distinction between the mass market and the enterprise market and is an accepted regulatory standard in Pennsylvania which makes it appropriate for use as the cutover for customers in which no CPE upgrade is necessary. This is true not only in Density Zone 1, but not throughout Verizon's service territory.

Q. WHAT ABOUT THE SCENARIO IN WHICH A CPE UPGRADE IS NECESSARY?

A. As we indicated previously, many customers and potential customers only have CPE which will support analog DS0 loops. In these instances, in order to serve the customer

24 Originating in the *Global Order*, TBR has been this Commission's term for a customer's total billed local and intraLATA toll revenue.

25 *Petition of Verizon Pennsylvania, Inc. for a Determination that its Provision of Business Telecommunications Services to Customers Generating Less Than $10,000 in Annual Total Billed Revenue Under Chapter 30 of the Public Utility Code*, P-00021973 (August 12, 2003).

through a DS1 loop, the customer must decide to upgrade its CPE to support digital facilities. The costs associated with these CPE upgrades are not insignificant. Frequently, the upgrades will involve a cost of $10,000 to $20,000. While many customers will not incur these costs no matter what the benefit, no customer will absorb the cost unless the resulting cost savings and service improvements are substantial.

Q. WHAT IS THE APPROPRIATE CUTOFF FOR THESE CUSTOMERS?

A. While again the appropriate cutoff varies between customers, our analysis reveals that, on average, a cutoff of $25,000 in TBR is appropriate. Presuming a CPE investment of $15,000, such a cutoff would allow the customer to recover the CPE investment through the reduced usage rates resulting from the analog to digital conversion within a reasonable period of time.

Q. VERIZON WITNESSES PEDUTO AND WEST ENDORSE A CUTOFF WHICH DESIGNATES ALL CUSTOMERS SERVED BY DS0 LOOPS, REGARDLESS OF SIZE, AS MASS MARKET CUSTOMERS, DO YOU AGREE WITH THIS APPROACH?

A. Certainly not. This approach is inconsistent with the *TRO* and represents no cutoff at all. The FCC has requested the state commission to identify the crossover point "where it makes economic sense for a multi-line [DS0] customer to be served via a DS1 loop."[26] This, of course, presumes that there are many DS0 customers who could economically be served by DS1 loops, as evidenced by the FCC's four line preference for density zone 1 of the 50 top MSAs.[27] Accordingly, the position endorsed by the Verizon witnesses completely ignores the required FCC parameters and instead represents nothing more than an attempt to distort the trigger analysis to its advantage. As discussed in PCC St.

---

[26] *TRO* at ¶ 497.

[27] As the FCC is aware, multi-line DS0 customers frequently exceed 24 lines and, in many instances, by very significant amount.

2.0, this position is fatal to Verizon's trigger analysis, since its trigger analysis measures service to customers which are not mass market customers under any *TRO* compliant approach.

Q. HOW DO YOU RESPOND TO VERIZON'S ASSERTION THAT IF A DS0 CUSTOMER COULD BE SERVED BY A DS1, THE CUSTOMER WOULD BE SERVED BY A DS1?

A. While this might be true in a perfect world, it certainly is not true in the real world. Customers make decisions whether to switch to digital facilities based on a wide variety of factors including level of sophistication, access to cash and personal preferences. There are many DS0 customers who will not convert to digital facilities no matter what economics are present. This is presumably why the FCC requested that the cutoff be established at a level where it makes economic sense for the customer to be served by one or more DS1s.

3. <u>Criteria Applicable to Trigger Carriers</u>

Q. WHAT ARE THE CRITERIA THAT THE COMMISSION MUST EXAMINE IN DETERMINING WHETHER A SWITCH-BASED CLEC QUALIFIES AS A TRIGGER CARRIER?

A. We will answer this question within the context of what the FCC has branded the "self-provisioning trigger" or the trigger which measures actual competition of CLECs providing retail service to mass market customers from their switches – the only relevant consideration since Verizon has not raised a claim pertaining to the competitive wholesale facilities trigger in this proceeding.

CLEC's providing switch-based retail service to mass market customers must meet the following criteria:

1) The CLEC must be serving both residential customers <u>and</u> small business customers in each market.

2) The CLEC must be providing ubiquitous service to mass market customers throughout the entire geographic market.

3) The CLEC must be providing service to the mass market in a manner that is sustainable.

4) The CLEC must be providing the service through a mass market switch, not an enterprise switch.

5) Intermodal carriers should not qualify as trigger carriers.

6) A trigger carrier cannot be an affiliate of an ILEC.

7) *De minimus* competitive activity cannot qualify a trigger carrier.

8) The CLEC must be serving the mass market through switches owned by the CLEC.

In order to qualify as a trigger carrier, a switch-based CLEC must satisfy each of these criteria. We will address the support and underlying rational for each criterion below.

a. The CLEC Must Be Serving Both Residential and Small Business Customers in Each Market.

Q. WHAT IS THE FIRST CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The first criterion is that each trigger carrier must serve both residential and business customers through its switches in each geographic market.

Q. WHAT IS THE BASIS IN THE *TRO* FOR THIS CRITERION?

A. The basis appears several places in the *TRO*. When the FCC speaks of the mass market, it identifies two distinct segments of the mass market – residential and small business customers. For example, in paragraph 127 of the *TRO*, the FCC indicated that, "Mass

Market Customers consist of residential customers and very small business customers,"[28] and later in the *TRO* that "Mass Market Customers are residential and very small business customers . . . ."[29]

Furthermore, in reaching its national finding of impairment for mass market local circuit switching, the FCC relied heavily on the fact that "less than three percent of the 112 million residential voice lines" in the Nation are served through CLEC switches, and that less than one percent are served through CLEC switching and ILEC loops – the remainder being served through intermodal carriers who do not have to contend with the Verizon hot cut process.[30] Based on this data pertaining exclusively to service to residential customers, the FCC concluded that " . . . the record indicates that competitive LECs have self-deployed few local circuit switches to serve the mass market."

Finally, the original *TRO* Order released on August 21, 2003 made it abundantly clear that a trigger carrier must serve both the residential and small business segments of the mass market. As paragraph 499 of the *TRO* released by the FCC reads:

> 499. The triggers we set forth rely on the number of carriers that self-provision switches or the number of competitive wholesalers offering independent switching capacity in a given market. In both cases, the competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other. In addition, they should be using or offering their own separate switches. This requirement avoids counting as a true alternative a provider that uses the switching facilities of the incumbent LEC or *another* alternative provider that has already been counted. Moreover, the identified competitive switch providers should be actively providing voice service to mass market customers in the market. They should be capable of economically serving the entire

[28] Emphasis added.

[29] *TRO* at n. 1402.

[30] *TRO* at ¶¶ 438-440.

> market, as that market is defined by the state commission. This prevents counting switch providers that provide services that are desirable only to a particular segment of the market. Identified carriers providing *wholesale* service should be actively providing voice service used to serve the mass market, and providing it at a cost and quality and geographic scope that allow resellers to serve the entire market. However, the competing carriers' wholesale offerings need not include the full panoply of services offered by incumbent LECs.

This paragraph, as released, makes it unequivocally clear that all trigger carriers must not only be actively serving mass market customers from their switches, but must "be operationally ready and willing to provide service to all customers in the designated market" and must "be capable of economically serving the entire market, as that market is defined by the state commissions" so that CLECs are not counted as trigger carriers unless they are serving all segments of the market and not just "a particular segment of the market." Accordingly, the *TRO*, as released, made it expressly clear that a switch-based CLEC could not be counted as trigger carrier unless the CLEC is actively serving both the residential segment and the small business segment of a particular geographic market.

As Verizon will undoubtedly point out, the FCC's Errata to the *TRO* released on September 17, 2003 made some modifications to paragraph 499 and removed the sentences in the paragraph we have referenced above. However, we are advised that the FCC cannot legally change the substance of their orders unless the agency specifically identifies the substantive changes.[31] Here there is no indication that the FCC intended to change the substance of Paragraph 499, and therefore the clear requirement that a trigger

[31] We are also advised that while FCC regulations permit the agency to reconsider its rulings within thirty days of release that a reconsideration order is the procedural mechanism addressed by the regulation to accomplish reconsideration and is the procedural mechanism normally used by the FCC for that purpose.

CLEC serve both the residential and business segments of a market is retained. At a minimum, this commission has the discretion to apply its trigger analysis in this manner and should exercise that discretion accordingly.

Q. MR. DULIN, SINCE YOU HAVE REVIEWED THE PROPRIETARY DATA, HOW DO YOU RESPOND TO VERIZON'S ARGUMENT THAT THE COMMISSION DOES NOT HAVE THE DISCRETION TO DO ANYTHING BUT COUNT TO THREE IN EACH MARKET?

A. Verizon's view of the robotic nature of the trigger analysis can only be correct if the FCC's intent was to wipe out residential competition in the majority of the Commonwealth and, indeed, the Nation. Under Verizon's approach, the Commission would eliminate the over 200,000 residential customers currently served by UNE-P in Density Cells 1, 2 and 3 which are spread out over everyone of the Density Cells 1, 2 and 3 wire centers in Verizon PA's service territory. This is despite the fact that, even by Verizon's own data, there is either 0 or *de minimus* (less than 10) residential customers being served by switch-based providers in 82 of the 140 wire centers in Verizon's three densest cells.[32] Another 11 wire centers have less than 50 residential customers being served by CLEC switches. Furthermore, there are 0 wire centers with more than 50 residential customers served through a UNE-L arrangement, since over 95% of the residential customers served by CLEC switches are served by cable companies.

Clearly, the FCC did not intend to wipe out competition in the majority of any state and did not intend to restrict residential competition to cable companies. In fact, as indicated above, one of the primary reasons that the FCC reached a national finding of

---

[32] 59 of these 82 wire centers have 0 residential customers being served by switched-based providers. These figures on the level of residential competition are based on Verizon's EO11 data because it is the only comprehensive data available. While the E911 data may be of questionable accuracy, if anything, it overstates the number of residential customers.

impairment is because of the lack of residential competition on a nationwide basis through CLEC switches generally, and through UNE-L or the use of ILEC loops, specifically. Accordingly, the only reasonable approach to the trigger analysis requested by the FCC is to require that a trigger carrier serve both the residential and business segments of each geographic market.

b. The CLEC Must Be Providing Ubiquitous Service to Mass Market Customers Throughout the Entire Geographic Market.

Q. WHAT IS THE SECOND CRITERION WHICH TRIGGER CARRIERS MUST MEET?

A. The second criterion is that a trigger carrier must be providing ubiquitous service throughout the geographic market.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. The FCC rejected categories of service as replacements for UNEs and categories of carriers as trigger carriers because the service was not ubiquitous or because the carriers did not provide ubiquitous service. For example, in paragraph 397 of the *TRO*, the FCC rejected using special access as part of the trigger analysis (pricing flexibility trigger) for transport because ". . . the pricing flexibility trigger based on alternative transport-based collocation requires no consideration of ubiquity of the competitive transport facilities throughout an MSA." Likewise the FCC rejected Verizon's arguments that CMRS providers qualify as trigger carriers, in part, because CMRS providers do not provide ubiquitous service throughout geographic markets.[33]

Q. WHY IS THIS IMPORTANT?

A. The ubiquity criterion provides further support for the requirement that trigger carriers must serve both the residential and business segments of the geographic market.

33 *TRO* at n. 1549.

Otherwise, the CLEC's service to the mass market is not ubiquitous. Furthermore, in Verizon's MSA markets, the ubiquity criterion is critical because from our knowledge of the business, and as Mr. Dulin can confirm the data reflects, there is no CLEC which provides ubiquitous service throughout any individual MSA. Stated differently, unless a switch-based CLEC serves each wire center in a MSA, the carrier is not providing ubiquitous service within the MSA and can not qualify as a trigger carrier in that MSA.

This is a critical factor since the wholesale service arrangement at issue here, UNE-P, are being used by CLECs to provide both business and residential service to every single wire center in Verizon PA's service territory and is spread, throughout each MSA on a ubiquitous basis.[34] Accordingly, to ignore the ubiquity criterion would result in CLECs qualifying as trigger carriers which are actually only serving a small portion of the geographic market -- undermining the FCC's safeguard against impairment of three CLEC switch based alternative to all customers in a geographic market.

c. The CLEC Must Be Providing Service to the Mass Market in a Manner That is Sustainable.

Q. WHAT IS THE THIRD CRITERION APPLICABLE TO TRIGGER CLECS?

A. The third criterion is that a trigger CLEC must be offering and able to provide service to the mass market on a continuing basis in a manner that is sustainable.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. In paragraph 499 of the *TRO*, the FCC determined that a trigger CLEC "must be actually providing voice service to mass market customers in the market." In paragraph 500 of the *TRO*, the FCC clarified this requirement by indicating that "The key consideration to be examined by state commissions is whether the providers are currently offering and

[34] *See* Verizon St. No. 1.0, Appendix A, Part B.

able to provide service, and are likely to continue to do so." Furthermore, as discussed above, in paragraph 476 of the *TRO*, the FCC made it clear that the states were to consider sources of impairment other than the hot cut process in conducting their granular analysis.[35]

Q. WHY IS THIS CRITERION IMPORTANT?

A. For obvious reasons, it would make no sense to rely on switch-based competitive alternatives that are no longer active or that will not be around for very long. In fact, the data produced in this proceeding demonstrates that the competitive activity by switch-based CLECs is steadily declining and that, based on current trends, it appears likely there is no switch-based CLEC in Pennsylvania that provides service through Verizon's loops which will continue to offer service to mass market customers for any significant period of time.

Q. WHAT DATA ARE YOU REFERRING TO AND WHAT DOES IT SHOW?

A. Data provided by Verizon is response to PCC interrogatories. This data demonstrates that wholesale orders for stand alone loops have on average decreased by 33% over the last 20 months. A graph detailing the data in aggregate rather than on a carrier specific

---

35 As the FCC stated, "Commenters have alleged that these barriers – which include poor incumbent LEC performance in fulfilling unbundling, collocation, and other statutory obligations, difficulties in performing customer migrations between competitive LECs, difficulties in performing collocation cross-connects between competing carriers, and the significant cost disadvantages competitive carriers face in obtaining access to the loop and backhauling the circuit to their own switches – can be sufficient to hinder or prevent entry even if impairment caused by hot cuts were fully resolved. Although these factors *do not* form the basis of our national impairment finding, we recognize that the record evidence indicated that these factors may give rise to impairment in a given market, even setting aside the problems associated with hot cuts, and that **they therefore will be relevant to state commissions' determinations with respect to unbundled local circuit switching**." (Footnotes omitted, emphasis added.)

basis is attached as PCC Exhibit 2 and vividly makes our point.[36] In late 2001, Verizon was receiving, on average, approximately 3,000 orders a month for stand alone loops. Only 20 short months later, as of June 2003, Verizon is only receiving, on average, slightly more than 2,000 orders per month (and in some months less than 2,000 orders). If this trend continues, the volumes of new subscribers to CLEC switch-based mass market service will be *de minimus* within two years demonstrating that Pennsylvania CLECs actively offering and providing mass market service to small business customers can not be counted on to continue to do so for any significant period of time. Accordingly, these carriers should not be included in the Commission's trigger analysis.

Q. IS THIS CONSISTENT WITH YOUR KNOWLEDGE OF THE INDUSTRY AND COMPETITIVE DEVELOPMENT IN PENNSYLVANIA?

A. Yes it is. The fact of the matter is that the vast majority of small business customers served by CLEC switches are leftovers from the switch deployment boon of the mid to late nineties. During that period, CLECs and their investors had unrealistic expectations of the potential profitability of providing switch-based service. Carriers invested large amounts of resources in switch deployment and collocation installations with no reasonable expectation of recovering their costs. At the time, these CLECs just wanted to fill switch ports and were actively subscribing small business customers on their switches.

Most of these companies, upon realizing they had engaged in an uneconomic strategy, went bankrupt or otherwise sold off their assets, frequently at pennies on the dollar, as compared to the original investment. These transactions not only involved the

[36] The data was produced by Verizon on a carrier specific basis, which data is proprietary in nature, however the aggregate summary of this data is subject to public inspection and review.

sale of switches, collocations and other facilities, but associated customer bases. The CLEC buyers in these transactions are utilizing the facilities in a more economically sensible manner, however, many have inherited relatively large small business customer bases on the switches which were purchased. Some of these carriers have abandoned serving small business customers from their switches and are instead utilizing UNE-P to serve small business customers, if they are actually offering service to small business customers at all. This is what is responsible for the decrease in stand alone loops.

This trend can be expected to continue and, accordingly, it is likely that there will not be a single switch-based CLEC actively offering service to mass market customers through Verizon loops anywhere in Verizon's service territory over a horizon of two to five years. Because a requirement of a trigger carrier under the *TRO* is that "the providers are currently offering and able to provide service, and are likely to continue to do so," none of these carriers should qualify as trigger carriers in this Commission's trigger analysis.

Q. IS THERE ANY OTHER ASPECT OF THIS CRITERION WHICH THE COMMISSION SHOULD CONSIDER?

A. Yes. Even if the Commission does not agree that no switch-based service to the mass market is sustainable, it should take into account the dependency of any trigger carrier required by the Commission on Verizon transport rates which may be threatened by this proceeding. In other words if a switch-based CLEC relies on a transport route in providing mass market service to a given wire center that the Commission is inclined to eliminate as a UNE, the Commission should consider that the mass market service to that wire center as not sustainable since the service is dependent on Verizon transport which may be no longer available.

d. The CLEC Must Be Providing Service Through a Mass Market Switch, Not An Enterprise Switch.

Q. WHAT IS THE FOURTH CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The fourth criterion is that the CLEC must be providing service through a mass market switch, not an enterprise switch.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. The FCC established this criterion in the *TRO* by expressly finding that "switches serving the enterprise market do not qualify for the [mass market] triggers, described above . . . ."[37] Accordingly, only mass market switches, and specifically not enterprise switches, can be included in the Commission's trigger analysis.

Q. DOES THE FCC PROVIDE ANY GUIDANCE AS TO HOW ENTERPRISE SWITCHES SHOULD BE DISTINGUISHED FROM MASS MARKET SWITCHES?

A. Yes it does, but ultimately discretion is left with the states to apply this criterion. However, the FCC did make it clear that just because a switch was serving some mass market lines did not necessarily make the switch a mass market switch and that specifically enterprise switches may serve some mass market customers.[38]

Q. HOW SHOULD THE COMMISSION APPLY THIS CRITERION TO ITS TRIGGER ANALYSIS?

A. The Commission must draw a bright line that identifies when the number of mass market loops being served by a CLEC switch is minimal causing the switch to be categorized as

---

[37] *TRO* at ¶ 508.

[38] *TRO* at ¶ 441. ("Thus, while we agree that deployment of an enterprise switch is one piece of evidence relevant to the possibility of serving mass market customers – and indeed, our impairment analysis takes such deployment into account, as discussed below – **the fact remains that competitors using their own switches are currently serving extremely few mass market customers, through enterprise switches or otherwise.**") (Footnotes omitted, emphasis added.)

an enterprise switch and disqualifying the CLEC as being recognized as a trigger carrier for any mass market lines being served by the switch.

Q. WHAT IS YOUR PROPOSAL FOR COMMISSION CONSIDERATION?

A. The Commission should establish an enterprise/mass market ratio of 5:1 applicable to each CLEC switch. In other words, if over 80% of the voice grade equivalents being served by a CLEC switch are serving enterprise customers, the switch is obviously designed to provide service to enterprise customers and any service to mass market customers should be considered incidental.

e. <u>Intermodal Carriers Should Not Qualify for the Trigger Analysis</u>.

Q. WHAT IS THE FIFTH CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The fifth criterion is that intermodal carriers should not qualify as trigger carriers in the Commission's trigger analysis.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. The FCC clearly provided state commissions discretion in determining whether to qualify intermodal carriers as trigger carriers in the state commission's trigger analysis. As the FCC stated in paragraph 455, fn 1549 of the *TRO*, "In deciding whether to include intermodal alternatives for purposes of these triggers, states should consider to what extent services provided over these intermodal alternatives are comparable in cost, quality and maturity to incumbent LEC services."

Q. WHAT ARE THE INTERMODAL CARRIERS THAT THE FCC IS REFERRING TO?

A. They fall into two categories – CMRS providers or wireless companies and cable TV companies. In both cases, while these carriers may provide service to mass market customers through their own switches, they do not provide service using the ILEC's loops.

Q. SHOULD THE COMMISSION CONSIDER INCLUDING CMRS PROVIDERS IN ITS TRIGGER ANALYSIS?

A. No, it should not. As the FCC determined in reaching its national finding that CLECs were impaired without mass market switching, CMRS providers do not generally provide service which replaces landline phone service and the service is not of comparable quality given that "wireless CMRS connections in general do not equal traditional landline facilities in their quality and their ability to handle data traffic." As indicated previously, the FCC also disqualified CMRS providers because they did not meet the ubiquity criterion.

Q. SHOULD THE COMMISSION CONSIDER CABLE TV COMPANIES PROVIDING TELEPHONE SERVICE IN ITS TRIGGER ANALYSIS?

A. No, it should not for a variety of reasons. First, cable telephony services have only been actively offered in Pennsylvania by Comcast and RCN for a few years – a relatively short period of time – and certainly the technology does not have the maturity of telephone service provided over Verizon's network. For this reason alone, cable TV companies should not be considered in the Commission's trigger analysis under the *TRO*'s standard.

Second, as the FCC recognized, because cable TV companies do not utilize the ILEC's loops, mass market service provided by cable companies does nothing to rebut the FCC's national finding that the hot cut process is a source of impairment for mass market switching.[39] It was for this reason that the FCC determined that for purposes of the trigger analysis, "when one or more of the three competitive providers is also self-

[39] *TRO* ¶¶ 429, 439 and 446 all emphasizing that CMRS and cable providers are distinguishable from other CLECs because they do not have to access the ILEC's local loop. Of course, the hot cut process is only necessary to migrate customers for CLECs other than intermodal carriers which do have to access the ILEC's local loop.

deploying its own local loops, this evidence may bear less heavily on the ability to use a self-deployed switch as a means of accessing the incumbent's loops.

Finally, cable companies should not be included as trigger carriers, because the service to their customers is based on a cable TV platform and, in the context of the overall revenues received form their customers, the cable companies receive large contributions from their cable TV services. For example, RCN, a cable TV provider and CLEC in Pennsylvania, bundles its cable TV services with its cable telephone services[40] -- a strategy which potentially allows it to overcome the operational and economic impairment incurred in serving mass market customers from its own facilities. This is particularly true since virtually all cable TV customers are mass market customers.

f. A Trigger Carrier May Not Be An Affiliate of an ILEC.

Q. WHAT IS THE SIXTH CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The sixth criterion is that the trigger carriers may not be affiliates of a Pennsylvania ILEC.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. In paragraph 499 of the *TRO*, the FCC restricts the state commission trigger analysis by declaring that the "competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other."

Q. SHOULD THIS RESTRICTION APPLY TO THE AFFILIATES OF ALL PENNSYLVANIA ILECS?

---

40 A page from RCN's website advertising its cable TV/telephony bundle is attached as PCC Exhibit 3.

A. Yes, it should. The basis for the restriction is that an affiliated CLEC would have an unfair advantage over other CLECs because of the ILEC affiliation. For example, in some cases, ILECs bifurcate their incumbent switches and make switching capacity available to the affiliated CLEC to serve customers in Verizon's service territory. In other cases, the contribution from monopoly ratepayers to the CLEC's switch-based operations may be more subtle, but is still present. In either case, it is the affiliation with the ILEC that enables or at least contributes to the affiliated CLEC's attempt to overcome the severe economic impairment faced by other unaffiliated CLECs.

g. *De Minimus* Competitive Activity Can Not Qualify as Trigger Carrier.

Q. WHAT IS THE SEVENTH CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The seventh criterion is that *de minimus* competitive activity can not qualify a trigger carrier.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. The FCC rejected ILEC attempts to have it conclude that impairment had been overcome where there is only a relatively low level of competitive penetration. Specifically, the FCC rejected BOC arguments that CLECs were not impaired in the mass market by noting the low relative number of residential lines served by CLEC-deployed switches.[41] The FCC expressly dismissed the BOCs' argument finding that, at best, "less than three percent of the . . . residential voice lines" were being served by CLEC switches. The FCC thus understood -- and applied -- the common sense notion that a *de minimus* level of competition is simply not a rational basis upon which to find that impairment has been overcome. To recognize *de minimus* competitive activity would assure that any

41 *TRO* at ¶ 501.

elimination of UNE-P would not be subject to a meaningful competitive replacement -- a scenario the *TRO* was attempting to preclude, not promote.

h) <u>The CLEC Must Be Serving The Mass Market Through Switches Owned By The CLEC.</u>

Q. WHAT IS THE EIGHTH CRITERION APPLICABLE TO TRIGGER CARRIERS?

A. The eighth criterion is that the self provisioning CLEC must own the switch it is using to provision mass market service.

Q. WHAT IS THE BASIS FOR THIS CRITERION IN THE *TRO*?

A. The requirement that the CLEC owns the switch that it is using to provision mass market service is fundamental to the "self-provisioning" trigger. As Paragraph ¶ 499 states "in addition, competitive switch providers should be using or offering their own separate switches." It is beyond reasonable dispute that this criteria must be met for a competing carrier to qualify as a trigger carrier.

Q. DOES THIS COMPLETE YOUR ANALYSIS OF THE CRITERIA APPLICABLE TO TRIGGER CARRIERS?

A. Yes it does. Only if all eight criteria are met should the Commission count a given CLEC as a trigger carrier for purposes of the self-provisioning trigger. As indicated previously, the application of these criteria to the data on actual competition in this case will be presented and endorsed by PCC witnesses Dulin and Honeywill in PCC St. No. 2.

4. <u>Exceptional Sources Of Impairment</u>

Q. WHAT HAPPENS IF THE COMMISSION FINDS THAT THE SELF-PROVISIONING TRIGGER HAS BEEN MET IN ONE OR MORE MARKETS?

A. While we do not believe that is a supportable result given a proper application of the trigger analysis, if it occurs, the Commission must examine whether there are exceptional sources of impairment present in those particular markets.[42] Other than providing for a state commission examination of exceptional circumstances, the FCC has provided little guidance to the states as to what constitutes exceptional circumstances. However, the Commission should be aware that a finding of impairment in the form of exceptional circumstances is not a cure for allowing trigger compliance in a given market, because upon a finding of exceptional circumstances impairment, the Commission must file a petition with the FCC to have the exceptional circumstances approved by the federal agency.

Q. ARE YOU SUPPORTING ANY EXCEPTIONAL CIRCUMSTANCES FOR VERIZON'S MARKETS AT THIS TIME?

A. No we are not, because if the trigger analyses is applied appropriately there will be no need for a special circumstances review. However, if the Commission finds that any of the foregoing criteria or factors which we are supporting in this testimony are not appropriate as part of the trigger analysis, then those issues should be considered in the agency's exceptional circumstances examination.

B. TRANSPORT

Q. WHAT IS DEDICATED TRANSPORT AS ADDRESSED BY THE TRO?

A. Dedicated transport is the transmission links connecting ILEC switches or wire centers. In the *TRO*, the FCC established a more limited definition of transport under Section 251 of the Telecommunications Act which encompassed only those " 'features, functions and capabilities' of equipment and facilities that coincide with the incumbent LEC's transport network." and does not include CLEC facilities designed to backhaul traffic between the

---

[42] *TRO* at ¶ 503.

ILEC and CLEC networks.[43] Accordingly, the relevant issues in this proceeding are restricted to interoffice transport, the purpose of which facilities is to transmit telecommunications traffic between Verizon's wire centers and not any other facilities which may be installed in the integrated telecommunications network.

Q. CAN YOU SUMMARIZE THE FCC'S FINDING REGARDING DEDICATED TRANSPORT?

A. Yes. The FCC conducted three separate analyses pertaining to dedicated interoffice transport -- one for dark fiber, one for DS3 transport and one for DS1 transport. In each case, the FCC reached a national finding of impairment for each specific type of transport, based essentially on the large fixed and sunk costs required to install and operate transport facilities.[44]

Q. CAN YOU DESCRIBE THE GRANULAR REVIEW THAT THE FCC HAS REQUESTED THE STATES TO CONDUCT?

A. Yes. The FCC has requested the states to conduct a granular review based on both a capacity basis and a route specific basis. Like mass market local switching, this analysis is designed to measure actual competition through the utilization of a trigger analysis. However, unlike mass market switching, the granular analysis does not focus on distinctions between customers or geographic markets, but instead focuses on competitive alternatives to each ILEC transport route at each type of transport (i.e. dark fiber, DS3 and DS1).

It is noteworthy that in its October 3, 2003 Procedural Order, the Commission properly described the three distinct granular inquiries to be conducted for each of the three types of transport. This is important since Verizon is now attempting to ignore both

---

43 *TRO* at ¶ 365-366.

44 *TRO* at ¶¶ 381, 384 (dark fiber), 386 (DS3) and 390-392 (DS1).

the requirements of the *TRO* and the Procedural Order and improperly blend together the three separate inquiries into one inquiry.

Q. WHAT IS THE NATURE OF THE TRIGGER ANALYSIS FOR EACH TYPE OF TRANSPORT?

A. It is similar to the mass market switching trigger analysis in that there is a self-provisioning trigger which looks to whether there are three or more self providers of each type of transport over a given route and a wholesale provider trigger which looks to whether there are two or more wholesale providers of each type of transport over a given route. As in the mass market switching area, if a route does not meet the trigger for actual deployment, the ILEC may seek to prove that no impairment exists through a potential deployment analysis. However, also like mass market switching, Verizon is not making a claim for transport based on potential deployment and accordingly, if a route fails the trigger test, a finding of impairment for that route is required.

Q. WHAT ARE THE CRITERIA APPLICABLE TO WHETHER A TRANSPORT PROVIDER QUALIFIES AS A TRIGGER?

A. The criteria are set forth in the Commission's Procedural Order which reflects the parameters of the *TRO* and FCC Rule 319(e). We generally endorse these criteria which are different for each type of transport and each type of transport must be analyzed separately. Generally speaking, to meet the self-provisioning trigger, a transport provider must have deployed its own transport facilities and is operationally ready to use the facilities to provide dedicated transport at a given capacity along the particular route and that the facilities terminate at a collocation arrangement at each end of the route. As to the wholesale trigger, a trigger provider must have deployed its own transport facilities at a given capacity along a particular route on a widely available basis.

Although, expressed in the Procedural Order, it is noteworthy that under paragraph 409, the self-provisioning trigger does not apply to DS1 transport since the FCC has determined that "competing carriers generally can not self-provide DS1 transport." Furthermore, under paragraph 416 of the *TRO*, "unbundled dark fiber from the incumbent LEC is not to be considered a wholesale alternative for dark fiber."

Q. HAS VERIZON ADVANCED A CLAIM THAT TRANSPORT ROUTES SHOULD BE DETERMINED TO BE UNIMPAIRED?

A. Yes. Verizon witnesses West and Peduto claim that hundreds of routes for dark fiber, DS1 and DS3 transport spread over the Capital, Philadelphia and Pittsburgh LATAs qualify for a non-impairment finding under their version of the trigger analysis. However, as we will explain, and without viewing the proprietary data, Verizon's version of the trigger analysis is based entirely on presumptions speculation and theory, rather than facts of actual competition which are hearsay to rebut the FCC's national impairment findings.

Q. CAN YOU EXPLAIN?

A. Yes. First, the Verizon witnesses base their claim on an unsupportable presumption that for competing providers, "one size fits all," and then attempt to switch the burden to CLECs to prove otherwise. This approach does nothing more than attempt to turn the FCC's national impairment finding for each type of transport on its head. Essentially, Mr. West and Mr. Peduto make sweeping presumptions based on what they believe to be general characteristics for all transport providers regardless of their actual size, the nature and specifics of their network and their respective business plans.

Q. HOW DOES VERIZON DETERMINE WHETHER A TRANSPORT PROVIDER IS OPERATIONALLY READY TO TRANSPORT BETWEEN TWO WIRE CENTERS?

A. The Verizon witnesses essentially follow an approach that was rejected by the FCC in the *TRO*.[45] They opine that a provider is operationally ready to provide service if the provider has a collocation arrangement and has pulled fiber into the collocation arrangement.[46] Accordingly, based on facility inspection of its central office collocation sites, without any actual knowledge of how the facilities are actually being used, Verizon concludes that the collocation sites are connected and that the routes are used for interoffice transport for DS1 and DS3 and dark fiber, without exception.[47]

Q. IS THIS A REASONABLE APPROACH?

A. No, it is not. A provider is not operationally ready unless the transport facilities are in use to transmit traffic between two specific Verizon central offices. To presume that any facilities that are in place are operationally ready for the specific purpose of interoffice transport is a conclusion based on speculation and should not form the basis for rebutting the FCC's national finding on a route specific basis.

Essentially, Verizon has reached this presumption through another presumption explained on pages 37-38 of the testimony of witnesses Peduto and West of how they believe a CLEC network configuration would look in installing facilities to provide interoffice transport between its wire centers. The Verizon witnesses provide further explanation for this presumed network configuration on pages 47-48 of their testimony.

Q. IT THIS PRESUMPTION UPON WHICH THE FIRST PRESUMPTION IS BASED SUPPORTABLE?

---

45 In paragraph ¶ 401 of the *TRO*, the FCC rejected RBOC arguments that non-impairment should be found based solely on the existence of fiber fed collocations in ILEC wire centers.

46 Verizon St. No. 1.0 at 36-37.

47 Verizon St. No. 1.0 at 46.

A. No, it is not. To say this presumption is based on pure speculation is an understatement. Indeed, the Verizon witnesses seem to fully admit the speculative nature of what is supposed to be an "actual competition" analysis when they state on pages 47-48 of their testimony:

> Yes. <u>In our experience</u>, when carriers in Verizon's territories deploy their own fiber transport facilities they typically deploy fiber optic rings that connect to their points-of-presence (or "POPs") in the LATA and various customer premises, in addition to connecting to Verizon's wire centers. Therefore, if the same carrier has fiber-based facilities in two Verizon wire centers in a LATA, <u>it is very reasonable to assume</u> that those fiber facilities are part of a CLEC-operated ring and that traffic can be routed from one Verizon wire center to the other. <u>It is also reasonable to assume</u> that these CLEC-operated fiber rings connect to the CLEC's POP, and that traffic can flow to and from all parts of the carrier's network through the POP. (emphasis added)

While such presumptive statements may be appropriate for the "potential deployment" analysis which Verizon is not pursuing in this case, it should be given no consideration as evidence of actual deployment.

Q. WHY NOT?

A. One thing for certain among the CLEC community is that there is no uniform manner in which business is conducted. In fact, there are as many business plans as there are CLECs. Assuming that because terminating facilities are in place, that traffic is being actively or is operationally ready to be transmitted between all terminating points is not supportable in our industry. CLECs have constants on financial resources (cash and credit availability) and technical resources (switch and collocation capacity) which confine their ability to provide service as Verizon thinks they should. Even assuming for the moment that Verizon's presumed CLEC network configuration makes business and engineering sense, it can not be presumed (nor is it the case) that CLECs are able to deploy their networks in an operational manner, as Verizon has been able to do with guaranteed ratepayer funding. From our knowledge of the industry, if Verizon conducted a real "actual deployment" analysis, it would find that the exceptions to the rule outnumber the rule. Certainly, the Commission can not seriously consider eliminating the use of facilities upon which CLECs depend in serving their customers based on such speculation.

Q. DO THE PRESUMPTIONS STOP HERE?

A. No, these presumptions are based on yet another series of presumptions which result in an attempt by Verizon to blend together the FCC's requirements that a separate trigger analysis be conducted for DS1, DS3 and dark fiber transport. On pages 48-52 of their testimony, witnesses Peduto and West identify the following series of additional presumptions:

1) Competing carriers will generally build out OCn level transport facilities;

2) These OCn transport facilities are capable of being channelized as DS1 or DS3 capacity;

3) These OCn facilities are in fact channelized to provide DS1 and DS3 capacity;

4) However, because the OCn facilities are only partially lit (at least for self-provisioned facilities), there is dark fiber within the facility.

5) Therefore, each OCn facility (least ones which are self-provisioned), according to Verizon's witnesses, must provide DS1 transport, DS3 transport and dark fiber transport.

Based on these presumptions, the Verizon witnesses amazingly pull three triggers out of each OCn facility and then declare victory for literally hundreds of transport routes. Obviously, this entire so-called "actual competition" analysis is grounded in theory not facts and should be given no weight.

Q. IS THE THEORY SOUND FOR PENNSYLVANIA CLECS?

A. No, it is not. For example, one would think from reading Verizon's testimony that once OCn facilities are installed, the competing carrier can provide various types of transport through the blink of an eye. Of course, as Verizon is well aware, installing the electronics and associated switch capacity to provide DS1 and DS3 transport either on a self-provisioned or wholesale basis can involve hundreds of thousands of dollars in cost which may or may not be within the CLEC's reach. Verizon backs up its theories on pages 49-50 of its testimony citing to general service offerings by certain CLECs and then draws yet another presumption that each route where Verizon thinks the carrier has interoffice transport facilities is offering or is operationally ready to offer the total range of services over that route. This hardly represents the granular, route specific, type of capacity approach that the FCC directed.

Q. THAT MUST BE IT FOR THE PRESUMPTIONS IN VERIZON'S "ACTUAL COMPETITION" ANALYSIS, ISN'T IT?

A. No, unfortunately not. The Verizon witnesses on pages 52-55 identify who they believe is offering wholesale service over the routes in question based on a presumption. Basically, if the carrier is identified as providing wholesale transport service in any form through one of four sources -- its website, the use of Universal Access, Inc. as a broker, the existence of a CATT arrangement in any of the carrier's collocation sites and a CLEC planning report prepared by New Paradigm -- it is presumed that the carrier is providing wholesale service over the routes where Verizon thinks it has connecting, operationally ready facilities. The breadth of this perception is somewhat astounding. By mere reference to one or more sources of questionable credibility (for the purpose that the information is being used) to general identification of wholesale interoffice transport activity, Verizon has attempted to fabricate wholesale service on both a DS1 and DS3 basis on a route specific basis over hundreds of routes. This approach, of course, completely ignores the FCC's requirement that the competing carrier provide wholesale transport along each route on a "widely available basis."[48] As to DS1 transport, this is despite of and flies in the face of the FCC's conclusion in paragraph 392 of the *TRO* that "DS1 transport is not generally made available on a wholesale basis."

Q. HAS VERIZON PROVIDED ANY FURTHER SUPPORT FOR ITS VARIOUS PRESUMPTIONS IN ITS SUPPLEMENTAL DIRECT TESTIMONY?

A. Not really. From the public version of that testimony, it appears that its only corroboration is to confirm the existence of collocation sites (which should come as no surprise since it identified them through careful, verified inspections) and to confirm that various competing providers have installed OCn facilities. However, other than this cursory support which does little to justify most of its perceptions, Verizon's evidence remains grounded on theory rather than the facts of actual deployment. Also, according to Mr. Dulin, the proprietary versions of the Supplemental Direct Testimony do little more than criticize CLECs, like AT&T and MCI, for not confirming Verizon's various theories.

Q. WHAT IS VERIZON'S ANSWER FOR THE THEORETICAL NATURE OF ITS TRANSPORT ANALYSIS?

A. Its answer is to claim it has made its case and that it is the job of other parties to rebut its claims. This is somewhat astounding given the fact that in the recently concluded *90 Day Proceeding*, Verizon's entire defense was that CLECs had not proven their case to rebut

[48] *TRO* at ¶ 499. In fact, the FCC directed that if relevant evidence is not presented for a specific route's trigger compliance, the state commission should not even review the route. Given the speculative and theoretical nature of Verizon's case on transport, and particularly for the wholesale facilities trigger, this Commission should not even conduct a transport analysis.

the FCC's national finding of non-impairment for enterprise switching.[49] We think now that the national rule is in our favor, that it is time for Verizon to eat its words and for the Commission to follow the national rule in finding impairment for all dedicated transport.

Q. HAS THE PCC CONDUCTED ITS OWN TRIGGER ANALYSIS FOR SPECIFIC TRANSPORT ROUTES?

A. Only in part. In PCC St. 2.0 PCC witnesses Dulin and Honeywill will sponsor a trigger analysis of the specific transport routes for which PCC members have a current business interest. However, the Commission's analysis should not be restricted to these routes, or any other CLEC's routes, since all switch-based CLECs will have a need for additional routes in the future.

V. <u>SECTION 271 AND STATE LAW ISSUES</u>

Q. ARE STATE LAW AND SECTION 271 ISSUES RELEVANT TO THIS MATTER?

A. Yes they are. While this case was certainly prompted by the *TRO*, it is a general investigation into the continuing obligations of ILECs, specifically Verizon, to unbundle network elements. Like in the *90 Day proceeding*, if non-impairment for any element, route or geographic area is found, the Commission should address Verizon's continuing unbundling obligations under state law in conjunction with Section 271 of the Telecommunications Act which establishes the continuing obligations of Verizon as a condition of the provision of in-region, interLATA service.

Q. WHAT HAPPENED ON THESE ISSUES IN THE *90 DAY PROCEEDING*?

---

[49] As Verizon emphatically stated in its October 24, 2003, Motion to Dismiss PCC's Petition in the *90 Day Proceeding*, "These petitions are filled with theories, opinions, and fist-shaking at the FCC. But they are devoid of the detailed and specific facts this Commission sought as part of its Procedural Order -- the same specific facts that the FCC will require if *this Commission* attempts before the FCC to make an 'affirmative finding' of impairment for enterprise switching." Motion to Dismiss at 2.

A. After following the FCC's national non-impairment rule and eliminating local circuit switching for the enterprise market as a Section 251 UNE, the Commission, over Verizon's adamant objection, addressed Verizon-PA's obligation to continue to unbundled enterprise local circuit switching, in combinations, and at forward-looking cost pricing.[50]

Q. WHAT DID THE COMMISSION DECIDE?

A. It decided that Verizon PA had continuing obligations under the *Global Order*, and under Section 271, to continue to offer UNE-P to serve customers at or under $80,000 in TBR and that under both state and federal law, Verizon must continue to offer the wholesale service arrangement at its current Tariff 216 rates, unless and until this Commission makes a decision that such wholesale services or rates are no longer appropriate and in the public interest.

Q. IS THE PCC REQUESTING THE COMMISSION TO REVIEW WHETHER UNE-P SHOULD BE CONTINUED TO BE OFFERED TO MASS MARKET CUSTOMERS UNDER THE *GLOBAL ORDER'S* STANDARDS?

A. No we are not. The Commission made it clear in the *90 Day Proceeding* that it would not conduct a review unless and until Verizon submitted a petition for relief under the *Global Order's* standards. To date, Verizon has not submitted such a petition to the Commission. Accordingly, in addition to confirming that loops, transport and mass market switching remain UNEs under Section 251, the Commission should re-assert its view that Verizon PA has a duplicate obligation under state law and Section 271 to continue to provide the UNE-P wholesale arrangement at tariff 216 rates.[51]

---

[50] See December 18, 2003 Order at 14-17.

[51] Based on the plain language of Section 271 and the interplay between Sections 271 and 251, the FCC determined in paragraphs 653 through 655 of the *TRO* that "the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to

With this said, the Commission's words in the *Global Order* regarding the need for UNE-P to advance local competition deserve to be repeated:

> The importance of a CLEC's ability to obtain UNEs as a 'platform' cannot be overemphasized. Indeed, UNE-P is the only effective way for CLECs to begin immediately offering competitive local exchange services to a broad range of customers, and particularly residential and small business customers. As AT&T witness Nurse explained, the platform provides a critical transitional mechanism for reaching smaller customers sooner, especially in the rural areas of the state. Without it, those customers will see local exchange competition much later, if at all. In short, the platform permits CLECs to compete with BA-PA, with at least some of the advantages that BA-PA possesses as the incumbent local exchange provider, on a more level playing field.
>
> In addition, BA-PA proposes to cancel the availability of UNE-P on December 31, 2003. If this restriction were implemented, BA-PA would have an incentive to restrict use of UNE-P as much as it could until it could abolish it completely. Rather than stimulate competition, the end date could be used to thwart it. It is therefore prudent, and in the public interest, for us to reject this anti-competitive proposal.
>
> *Global Order* at 87-88. [footnotes omitted.]

Little has changed since late 1999 when the Commission expressed these words. Indeed, as will be reflected in the record of this proceeding, UNE-P remains the only effective way for CLECs to begin to offer competitive local service to a broad range of customers immediately -- particularly residential and small business customers and especially in the rural areas. UNE-P remains a critical transition mechanism to facilities-based service and without it many customers in many parts of the state will have their competitive options eliminated and will never see local competition again. It remains true that UNE-P allows CLECs to compete with some of the advantages of Verizon on a

---

provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251."

more level playing field. The Commission's decision that to automatically eliminate UNE-P on December 31, 2003 is nothing more than an unjustified, anti-competitive proposal is particularly relevant today.

Given the overwhelming pressure that Verizon and other RBOCs continue to apply at both the state and federal level to re-create their monopolies, we believe the Commission's words four years ago not only continue to be relevant, but are particularly wise today. While witnesses and lawyers can argue all day about what constitutes a market or a trigger or an operationally ready facility or a cutover, we believe there can be no reasonable argument as to what is best for competition, for Pennsylvania's consumers for Pennsylvania's economy and for the public-interest.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Density Cell #1 Customer

Customer Voice Grade Equivalents (Lines) Provided = 4

UNE Charges Serving Customer through DS-1 Facilities**				
	CLEC Cost			
		Per Unit		Total
Local Loop	$	117.90	$	117.90
Entrance Facility (Colocation)*	$	45.00	$	45.00
Inter-Office Transport (End Office to SWC of CLEC POP - 0 miles)	$	35.22	$	35.22
DS-1 Cross-connect	$	72.10	$	72.10
Entrance Facility (CLEC Point of Presence)*	$	45.00	$	45.00
Total	**$**	**315.22**	**$**	**315.22**
*Assumed DS3 Entrance and 77% Fill Factor				
CLEC Cost for UNEs Per Line	$	78.81		

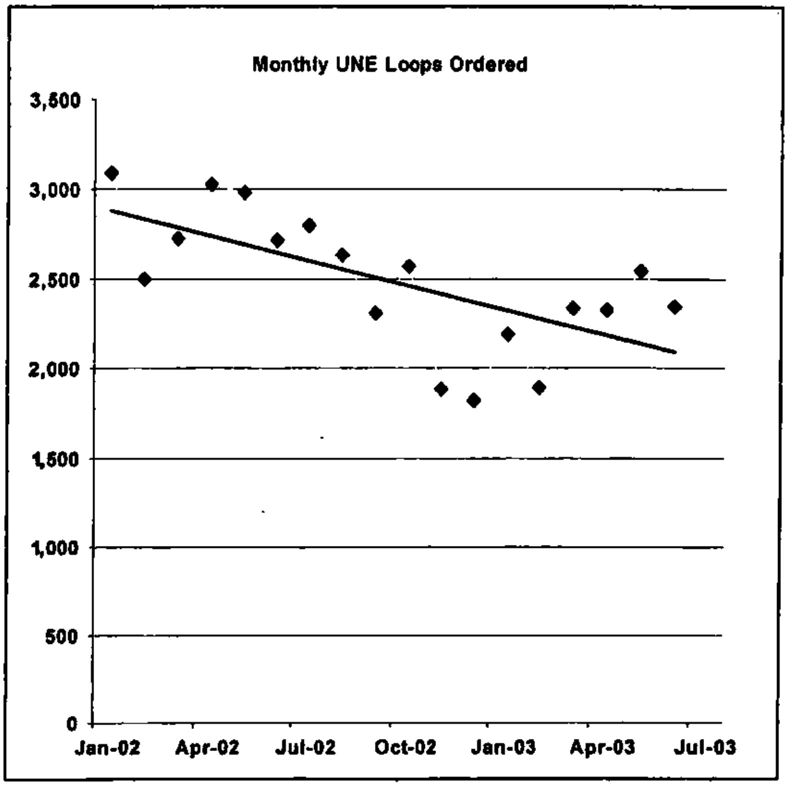
UNE Charges Serving Customer through DS-0 Facilities**				
	CLEC Cost			
		Per Unit		Total
Local Loop	$	10.25	$	41.00
Entrance Facility (Colocation)	$	14.04	$	56.16
Inter-Office Transport (End Office to SWC of CLEC POP - 0 miles)	$	9.75	$	39.00
DS-1 Cross-connect	$	20.55	$	82.20
Entrance Facility (CLEC Point of Presence)	$	14.04	$	56.16
Total	**$**	**68.63**	**$**	**274.52**
CLEC Cost for UNEs Per Line	$	68.63		

Assumption: CLEC Class 5 Switch located 0 miles from Customer

****These UNE charges do not include CLEC costs for Entrance Facility Termination Equipment or Class 5 Switching - both critical components of a complete dial-tone line service**

Verizon Retail Pricing for Dial-Tone Line Service				
	Customer Cost			
		Per Unit		Total
Density Cell 1 - Dial Tone Line	$	8.13	$	32.52
Total	**$**	**8.13**	**$**	**32.52**
Verizon Retail Price Per Line	$	8.13		

PCC Exhibit 2



PCC Exhibit 3

THE LIVE WIRE.

THE NATION'S LARGEST SINGLE SOURCE PROVIDER OF BUNDLED TELECOMMUNICATIONS SERVICES

BUNDLED SERVICES

YOU DON'T HAVE TO BE RICH TO BE LOADED.

- Platinum
- Gold
- Silver
- Bronze
- Mercury
- More Information

Order a bundle. Save a bundle.

Resilink[sm] is three great services Cable TV, Phone and Internet in one convenient package. When you order a Resilink bundle from RCN, you get the advantage of savings and the convenience of one bill and one company to call with questions. Below are a variety of packages to choose from.

Resilink Platinum · · · CABLE TV / PHONE / INTERNET

Resilink Platinum is a fully loaded package for people who watch, talk and surf a lot. Get Digital Cable TV, all the premium movie channels, lightning fast Internet, two phone lines, 4 phone features, unlimited calling and more. All at a great package price. Find out more. Click here

Resilink Gold · · · CABLE TV / PHONE / INTERNET

Click Here to Save!

Go for the gold and save some green. With resilink Gold, our most popular package, you'll enjoy Digital Cable TV with HBO and Cinemax, unlimited calling with 3 phone features and High Speed Internet service. And a great deal more. Click here

Resilink Silver · · · CABLE TV / PHONE

Top

This package really shines. Get cable TV with multiple HBO channels and unlimited phone service with 2 phone features. Find out more. Click here

Resilink Bronze · · · PHONE / INTERNET

Top

No cable TV for you? Become a player with unlimited phone service with 2 phone features and High Speed Internet service at a down-to-earth price. Can't believe it? Find out more. Click here

Resilink Mercury · · · CABLE TV / INTERNET

Top

Get your temperature rising with Digital Cable TV, with multiple HBO channels, plus High Speed Internet service. A hot deal for you. Find out more. Click here

Resilink customers also have access to:

- Additional unlimited local and regional calling plans
- Reduced long distance and international calling rates
- Dial-up Internet access (for checking e-mail while traveling) just $9.95
- Bundled Wire Maintenance Plan

Enter your address to
what RCN services ar
your home.

Address:*

City:*

Zipcode:*

Go

*Indicates required fi

PCC St. 1S

1-29-04

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

SURREBUTTAL TESTIMONY

OF

DAVID SCHWENCKE,

DAVID MALFARA

AND

SCOTT DULIN

ON BEHALF OF

THE PENNSYLVANIA CARRIERS' COALITION

(Full Service Computing Corporation t/a Full Service Network, Remi Retail Communications, L.L.C., ATX Licensing, Inc., and Line Systems, Inc.)

Q. MR. MALFARA, ON PAGE 16 OF DR. TAYLOR'S REBUTTAL TESTIMONY HE POINTS OUT THAT CLECS HAVE DEPLOYED THEIR OWN SWITCHES TO SERVE THE PHILADELPHIA , PITTSBURGH, HARRISBURG AND SEVERAL OTHER MSAS AND THAT "[T]HESE SWITCHES HAVE WIDE GEOGRAPHIC REACH (AS WIDE AS AN ENTIRE MSA) AND REPRESENT A SUNK INVESTMENT. CAN YOU RESPOND TO DR. TAYLOR'S STATEMENT?

A. Yes. the clear conclusion that Dr. Taylor would like the reader to draw is that because a CLEC switch exists in an MSA, the CLEC is always operationally and economically capable of serving customers throughout the entire MSA. There are numerous points upon which I disagree with Dr. Taylor's testimony but, as a long-time CEO of a telecom company and as a person who has conducted countless break-even financial analyses regarding switch deployment over the past 30 years, I take special exception to this assertion. Simply put, switches don't have reach – networks do. A CLEC switch, in fact, cannot reach across a room without transport facilities, and, conversely, a switch could serve customers on the Moon if the supporting transport and other facilities could somehow be put in place. It is the cost and availability of these transport facilities, normally available only from the ILEC, along with the intermediate equipment necessary to connect them to the switch, that form the most formidable challenge to a trigger-candidate CLECs' likelihood that it will continue to offer and provide local exchange service in a particular area. Considerations such as collocation space and availability of backhaul facilities all have to be considered before a CLEC can begin to offer service in a new area. Most importantly, and absent from Dr. Taylor's testimony is the fact that the UNE costs of these facilities can vary by a factor of more than 50% across an MSA and can easily erase a CLEC's entire gross margin, let alone net profit making it economically infeasible to serve a wire center in an MSA that a CLEC is not presently serving. As demonstrated in PCC Exhibit #1, there is serious question as to whether or not a CLEC can continue to offer a price point that is competitive with the ILEC for any length of time, given these additional transport/backhaul costs to provide basic service. The costs outlined in PCC Exhibit #1 are taken directly from Verizon tariff PUC #216 and accurately reflect CLECs' costs of providing dial tone service to a customer in Density Cell 1 at a distance of 0 miles from the customer – the most economically attractive scenario available to a CLEC - in the absence of a UNE-P alternative. As the exhibit indicates, the costs depicted are only the UNE rate costs and do not include any of the CLECs' incremental cost of entrance facility termination equipment or CLASS 5 switching equipment. Looking only at the cost of UNEs necessary to support the customer requirement in this example, the cost is higher (by a factor of more than 9 times) than the retail price Verizon would offer to the customer. No CLEC rationally would incur these costs in order to try to expand its network to try to serve a new area, or to serve a customer previously served using a UNE-P arrangement. As many assertions of fact as I find troubling in Dr. Taylor's rebuttal testimony, this point is most contentious because it would seek to remove a critical factor from consideration as the Commission attempts to determine whether or not each switch-trigger CLEC candidate meets the FCC's requirement that they are likely to continue to provide local exchange services. It can be demonstrated that the answer to that question can vary 100% within a single MSA.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes.