



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
October 3, 2003

REFER TO OUR FILE

I-00030100  
I-00030099  
M-00031754

TO ALL PARTIES

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

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

Development of an Efficient Loop Migration Process

**DOCKETED**  
OCT 14 2003

To Whom It May Concern:

This is to advise you that a Protective Order has been adopted by the Commission in Public Meeting on October 2, 2003 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

**DOCUMENT**

Enclosure  
Certified Mail  
JEP  
SEE ATTACHED LIST FOR  
ADDITIONAL PARTIES

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg PA 17105-3265**

Public Meeting held October 2, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman  
Robert K. Bloom, Vice Chairman  
Glen R. Thomas  
Kim Pizzingrilli  
Wendell F. Holland, Abstaining

**DOCKETED**  
OCT 14 2003

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

Docket No. I-00030100

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

Docket No. I-00030099

Development of an Efficient Loop  
Migration Process

Docket No. M-00031754

**PROTECTIVE ORDER**

**BY THE COMMISSION:**

**DOCUMENT**

In accordance with the Commission's Procedural Order, adopted this same date in the above-captioned proceedings, and in recognition that documents, information and other materials submitted to the Commission and provided to the parties in the course of the investigations into the obligations of incumbent local exchange carriers to unbundle network elements and the development of an efficient loop migration process may represent or contain proprietary or highly confidential information, the Commission hereby enters this Protective Order. As part of this Protective Order, we also adopt the attached Confidentiality Agreement to ensure that such proprietary or confidential

information is afforded protection from unwarranted disclosure, while permitting parties appropriate access to such proprietary or confidential information, **THEREFORE:**

**IT IS ORDERED:**

1. That this Protective Order is entered with respect to all materials and information identified at Ordering Paragraph No. 2, below, that are filed with the Commission, produced in discovery, or otherwise presented during any proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraph No. 5, below, shall use and disclose such information only in accordance with this Protective Order.

2. That the materials subject to this Protective Order include all correspondence, documents, data, information, studies, methodologies and other materials that a party (or an affiliate of a party) furnishes in the above-captioned proceedings pursuant to Commission rules, regulations, discovery procedures, or cross-examination or provides as a courtesy to a party to this proceeding, which materials are claimed to be of a proprietary or confidential nature and that are designated “PROPRIETARY INFORMATION.”

3. The parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL” and secure additional protections as set forth in this Protective Order pertaining to such material. Such Highly Confidential Information shall be only such subset of Proprietary Information as constitutes or describes the producing party’s marketing plans, competitive strategies, market share projections, marketing materials that have not yet been used, customer-identifying information, or customer prospects for services that are subject to competition.

4. That Proprietary Information and Highly Confidential Proprietary Information shall be made available to the Commission and any retained Commission experts, as well as the statutory advocates, for use in this proceeding. For purposes of filing, to the extent that Proprietary Information or Highly Confidential Proprietary Information is placed in the Commission's report folders, such information shall be marked and handled in accordance with routine Commission procedures inasmuch the report folders are not subject to public disclosure. To the extent the Proprietary Information or Highly Confidential Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information and Highly Confidential Proprietary Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Proprietary Information shall be made available to counsel of record in this proceeding (including secretaries, legal assistants, or other such employees of counsel) pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, counsel for a party (retaining party) may have access to Proprietary Information made available by another party (producing party) to the retaining party's expert(s), subject to the following restrictions.

i. Such expert may not hold any of the following positions with any actual or potential competitor of the producing party: (a) an officer, board member, stockholder, partner, owner other than stock of the producing party, or an employee of any competitor of the producing party; or (b) an officer, board member, stockholder, partner, owner other than stock of any affiliate of a competitor of the producing party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the competitor's business creates a significant potential for violations of the limitations of permissible use of the

Proprietary Information. For purposes of this Protective Order, stocks, partnership, or other ownership interest valued at less than \$100,000 and/or constituting less than a 2% interest in a business does not, in itself, establish a significant potential for violation.

ii. If a retaining party's independent expert, another member of the independent expert's firm, or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the producing party, said independent expert must: (1) advise the producing party of the competitor's or affiliate's names(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

b. Highly Confidential Proprietary Information. Highly Confidential Proprietary Information shall be produced only for inspection by the retaining party's counsel of record. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to other persons, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge (ALJ).

c. No other persons may have access to the Proprietary Information or Highly Confidential Proprietary Information except as authorized by order of the Commission or the presiding ALJ.

6. That persons obtaining access to Proprietary Information or Highly Confidential Proprietary Information under this Protective Order shall use the information only in the conduct of this proceeding and any administrative or judicial proceeding arising from this proceeding, and shall not use such information for any other

purpose, including business, governmental, commercial or other administrative or judicial proceedings. No person who may be entitled to receive, or who is afforded access to, any Proprietary Information or Highly Confidential Proprietary Information shall use or disclose such information for any other purpose, including business, governmental, commercial or other administrative or judicial proceedings.

7. That prior to making Proprietary Information or Highly Confidential Proprietary Information available to any person as provided in Ordering Paragraph No.5, above, counsel shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the applicable form attached at Appendix A to this Protective Order and designated as the Confidentiality Agreement. Counsel shall promptly deliver to the producing party a copy of the executed Confidentiality Agreement. A copy of any executed Confidentiality Agreement must be filed with the Secretary's Bureau.

8. That a producing party shall designate the data or documents as constituting or containing Proprietary Information or Highly Confidential Proprietary Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of the data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Proprietary Information, the producing party shall so designate only the specific data or pages which constitute or contain Proprietary Information or Highly Confidential Proprietary Information.

9. That any public reference to Proprietary Information or Highly Confidential Proprietary Information by counsel or persons afforded access thereto shall only be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Proprietary Information to fully understand the reference and not more.

10. That the Proprietary Information or Highly Confidential Proprietary Information shall remain a part of the record, to the extent admitted into the record, for all purposes of administrative or judicial review. The part of the record in this proceeding containing Proprietary Information or Highly Confidential Proprietary Information, including but not limited to all exhibits, writings, testimony, cross-examination, argument, and responses to discovery, and including reference thereto as mentioned in ordering Ordering Paragraph No. 9, above, shall be sealed for all purposes, except as provided herein, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of an ALJ or the Commission.

11. That the parties affected by the terms of this Protective Order shall retain the right to: (1) question or challenge the alleged proprietary or confidential nature of Proprietary Information or Highly Confidential Proprietary Information; (2) question or challenge the admissibility of Proprietary Information or Highly Confidential Proprietary Information; (3) refuse or object to the production of Proprietary Information or Highly Confidential Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality, or undue burden; (4) seek an order permitting disclosure of Proprietary Information or Highly Confidential Proprietary Information beyond that allowed in this Protective Order; (5) and to seek additional measures or protection of Proprietary Information or Highly Confidential Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information or Highly Confidential Proprietary Information, the party claiming that the information is Proprietary Information or Highly Confidential Proprietary Information bears the burden of demonstrating that the designation is necessary and appropriate. Unresolved challenges shall be decided on motion or petition by the presiding ALJ or the Commission as provided by 52 Pa. Code

§5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

12. That upon completion of this proceeding and any FCC, administrative, or judicial proceeding arising from this proceeding, all copies (except as have been filed with the Commission or used or created by the Commission or its experts using same) of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Proprietary Information, shall be immediately returned upon request to the providing party

13. The Secretary's Bureau is directed to serve this Order upon all jurisdictional telecommunication carriers, as well as the Pennsylvania Telephone Association, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff.

14. The Secretary's Bureau is directed to publish this Order in the Pennsylvania Bulletin.

BY THE COMMISSION



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 2, 2003

ORDER ENTERED: **OCT 03 2003**

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

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

Docket No. I-00030100

**CONFIDENTIALITY AGREEMENT**

TO WHOM IT MAY CONCERN:

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

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

DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Status relative to Retaining Party

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

APPENDIX A-2

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg PA 17105-3265

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

Docket No. I-00031754

**CONFIDENTIALITY AGREEMENT**

TO WHOM IT MAY CONCERN:

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

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

DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Status relative to Retaining Party

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

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

Development of an Efficient Loop  
Migration Process

Docket No. M-00030099

**CONFIDENTIALITY AGREEMENT**

TO WHOM IT MAY CONCERN:

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

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DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Status relative to Retaining Party

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address