

*to be published 10-18-03*



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 7, 2003

*I-00030100*

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

**DOCKETED**  
OCT 14 2003

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

**DOCUMENT**

Dear Ms. Phelps:

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

Very truly yours,

Veronica A. Smith  
Executive Director

Enclosure

cc: Regulatory Coordinator DelBiondo  
Docketing ✓



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

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October 7, 2003

*I-00030100*

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

**DOCKETED**

OCT 14 2003

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

**DOCUMENT**

Dear Ms. Phelps:

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

Very truly yours,

Veronica A. Smith  
Executive Director

Enclosure

cc: Regulatory Coordinator DelBiondo  
Docketing ✓



OFFICE OF SMALL BUSINESS ADVOCATE

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

Carol F. Pennington  
Acting Small Business Advocate

October 17, 2003

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

**HAND DELIVERED**

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

DOCUMENT  
FOLDER

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

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

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

Dear Secretary McNulty:

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

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

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

Sincerely,

Angela T. Jones  
Assistant Small Business Advocate

Enclosures

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

Parties of Record

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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

Carol F. Pennington  
Acting Small Business Advocate

October 17, 2003

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

TO: ALL PARTIES OF RECORD:

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

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

DOCUMENT  
FOLDER

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

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

DOCKETED  
OCT 22 2003

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

Sincerely,

Angela T. Jones  
Assistant Small Business Advocate

cc: Mr. Allen Buckalew

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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

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

DOCUMENT  
FOLDER

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

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

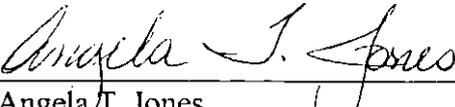
Angela T. Jones  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
E-mail: [anjones@state.pa.us](mailto:anjones@state.pa.us)

DOCKETED  
OCT 22 2003

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

RECEIVED

  
Angela T. Jones  
Assistant Small Business Advocate

Dated: October 17, 2003

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

---

DOCUMENT  
FOLDER

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

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

Dated: October 17, 2003

**DOCKETED**  
OCT 22 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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

**CERTIFICATE OF SERVICE**

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

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

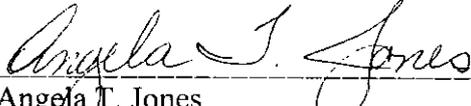
Philip F. McClelland, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)

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

SECRETARY'S BUREAU

2003 OCT 17 PM 1:16

RECEIVED

  
-----  
Angela T. Jones  
Assistant Small Business Advocate

Date: October 17, 2003

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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

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

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

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

October 17, 2003

**VIA OVERNIGHT DELIVERY**

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

DOCUMENT

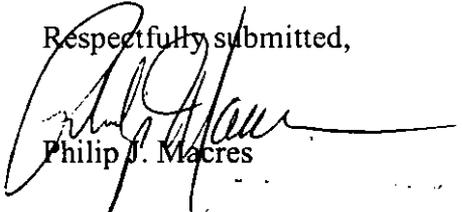
**Re:** Docket No. I-00030100, Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market

Dear Secretary McNulty:

Enclosed for filing in the above referenced proceeding is "Lightship Telecom, LLC's Petition to Intervene" in the above-referenced proceeding and the "Verification of Lightship Telecom, LLC."<sup>1</sup> In addition, attached are the Motions for Admission Pro Hac Vice of Russ M. Blau and Philip J. Macres along with proposed orders.

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

Respectfully submitted,

  
Philip J. Macres

Enclosures

cc: Attached Service List

OCT 17 2003

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

101

**DOCKETED**  
OCT 27 2003  
**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

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

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

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

2. On October 2, 2003, the Commission issued a Procedural Order that initiated this proceeding to conduct the necessary investigation of certain issues raised in the FCC's Triennial Review Order.

3. Lightship requests that it be permitted to intervene as participant in this proceeding so that it may represent and protect its interests during it. Lightship will be substantially and specifically affected by the Commission's review and decision in this docket because Lightship plans to be a customer and competitor of Verizon. At this time, Lightship's business plan is centered on using UNEs to serve small, medium, and large businesses. Any changes to the availability of UNEs or the rates, terms and conditions for using them may directly affect Lightship's ability to compete with Verizon. In this proceeding, Lightship seeks the opportunity to submit comments and possibly offer evidence that supports keeping available UNEs that serve

**DOCUMENT**

small, medium, and large businesses. Because UNEs are critical to Lightship's business plan, Lightship's interests cannot be adequately represented without the Commission granting this petition.

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

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

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

Respectfully submitted,

  
Russell M. Blau  
Philip J. Macres  
Tamar E. Finn (PA Bar No. 73896)  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7645  
E-mail: [rmbrau@swidlaw.com](mailto:rmbrau@swidlaw.com)  
E-mail: [pjmacres@swidlaw.com](mailto:pjmacres@swidlaw.com)  
E-mail: [tefinn@swidlaw.com](mailto:tefinn@swidlaw.com)

Counsel for Lightship Telecom, LLC

Dated: October 17, 2003

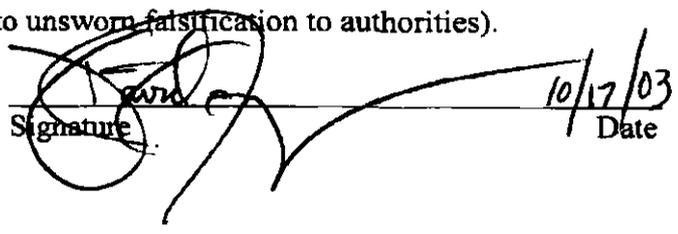
**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

**VERIFICATION OF LIGHTSHIP TELECOM, LLC**

I, David Jorgensen, Senior Vice President of Finance of Lightship Telecom, LLC hereby state that the facts set forth in Lightship Telecom, LLC's Petition to Intervene dated October 17, 2003 that is being filed in the above-referenced proceeding are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

  
Signature \_\_\_\_\_ Date 10/17/03

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

**MOTION FOR ADMISSION PRO HAC VICE**

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

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

**DOCKETED**  
OCT 27 2003

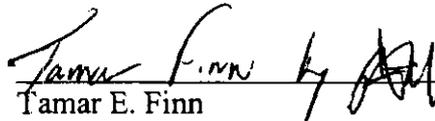
In support thereof, movant states:

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

**DOCUMENT**

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

Respectfully submitted,

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

Dated: October 17, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

**ORDER**

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

---

Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

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

Philip J. Macres, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Washington, D.C. 20007

**DOCKETED**  
OCT 27 2003

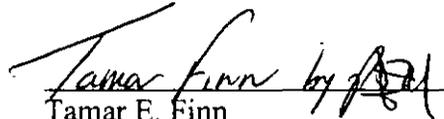
In support thereof, movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 73896) and practicing at Swidler Berlin Shereff Friedman, LLP, 3000 K St. NW, Washington, D.C., 20007.
2. Philip J. Macres is a member in good standing of the District of Columbia (since 1999) bar.

**DOCUMENT**

WHEREFORE, I move that Philip J. Macres, Esq., be admitted to practice pro hac vice on behalf of Lightship Telecom, LLC, in the above-captioned proceeding.

Respectfully submitted,

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

Dated: October 17, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-00030100

**ORDER**

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

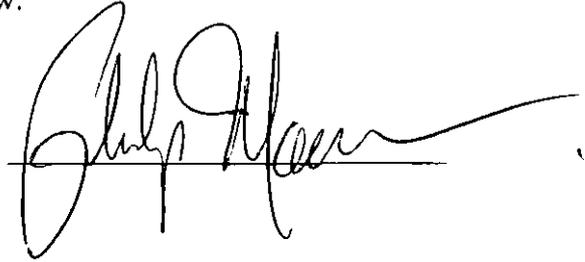
---

Administrative Law Judge

ORIGINAL

**CERTIFICATE OF SERVICE**

I, Philip J. Macres, hereby certify that I have on this day, October 17, 2003 served a true and correct copy of Lightship Telecom, LLC's Petition to Intervene and the Motions for Admission Pro Hac Vice of Russell M. Blau and Philip J. Macres along with proposed orders by United States First Class mail to the individuals listed below.



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

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

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

Suzan DeBusk. Paiva, Esquire  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32<sup>nd</sup> NW  
Philadelphia, PA 19103  
Phone: (215) 963-6001  
Fax: (215) 563-2658  
[Suzan.d.Paiva@verizon.com](mailto:Suzan.d.Paiva@verizon.com)  
(Counsel for Verizon Pennsylvania, Inc.)

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9800

FACSIMILE

(202) 955-8792

www.kelleydrye.com

ROSS A. BUNTROCK

DIRECT LINE: (202) 887-1248

EMAIL: rbuntrock@kelleydrye.com

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

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

ORIGINAL

October 17, 2003

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

DOCUMENT

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

Re: Dockets I-00030100, <sup>M-</sup>~~I-~~00031754, <sup>I-</sup>~~M-~~00030099

Dear Mr. McNulty:

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

RECEIVED

OCT 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

KELLEY DRYE & WARREN LLP

Pennsylvania Public Utility Commission  
October 17, 2003  
Page Two

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

Respectfully submitted,

  
Ross A. Buntrock

Enc.

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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030100

~~Docket No. I-00031754~~

I-00030099

~~Docket No. M-00030000~~

M-00031754

**DOCKETED**

OCT 23 2003

PETITION TO INITIATE PROCEEDINGS OF  
INFOHIGHWAY COMMUNICATIONS AND MANHATTAN  
TELECOMMUNICATIONS CORPORATION

**DOCUMENT**

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

Counsel to the Petitioners

**RECEIVED**

OCT 17 2003

October 17, 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030100

~~Docket No. I-00031754~~

*I-00030099*

~~Docket No. M-00030099~~

*M-00031754*

PETITION TO INITIATE PROCEEDINGS OF  
INFOHIGHWAY COMMUNICATIONS AND MANHATTAN  
TELECOMMUNICATIONS CORPORATION

I. INTRODUCTION

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

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

Order in an abundance of caution, despite the fact that the U.S. Court of Appeals for the Second Circuit has granted the respective motions of the Petitioners, and temporarily stayed the effectiveness of those portions of the FCC's Triennial Review Order<sup>2</sup> ("TRO") which provide the basis for the Commission to conduct this proceeding.<sup>3</sup>

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

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<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Aug. 21, 2003).*

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

<sup>4</sup> BLACK'S LAW DICTIONARY 983 (6th ed. 1991).

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

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

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

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

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

## II. CONCLUSION

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

Respectfully submitted,



Genevieve Morelli

Ross A. Buntrock

Heather T. Hendrickson

KELLEY DRYE & WARREN, LLP

1200 Nineteenth Street, NW, Suite 500

Washington, DC 20036

(202) 955-9600 (telephone)

(202) 955-9792 (facsimile)

Counsel to the Petitioners

October 17, 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

OCT 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. I-00030100

Docket No. I-00031754

Docket No. M-00030099

DOCKETED

OCT 23 2003

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

DOCUMENT

INTRODUCTION AND PURPOSE

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

<sup>1</sup> InfoHighway and MetTel will collectively be referred to as the “Petitioners.”

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

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

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

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

19

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<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Aug. 21, 2003).*

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

1 **REQUIREMENTS OF THE TRO**

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

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

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

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<sup>4</sup> TRO, ¶454.

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

<sup>6</sup> *Id.*, ¶¶454-458.

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

5 11. Given the unfortunate time constraints imposed by the FCC, we ask the Commission to  
6 seek a waiver of the FCC’s national finding as it pertains to the installed base of DS1  
7 UNE-P customer lines served by CLECs. The Petitioners respectfully request, however,  
8 that the Commission exercise its authority to require Verizon to retain its current rates for  
9 local circuit switching until the Commission has determined the lawfulness of any  
10 replacement rates for local circuit switching no longer required to be made available as an  
11 unbundled network element pursuant to section 251(c)(3) of the federal  
12 Telecommunications Act of 1996.<sup>8</sup> In addition, we request that the Commission take  
13 note that the 90-day timeframe established by the FCC does not afford UNE-P carriers a  
14 meaningful time or opportunity to be heard on whether they are impaired without access  
15 to local switching to serve enterprise customers and that evidence of operational and  
16 economic impairment may be presented at a later date.

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

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

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

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

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

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

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

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

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<sup>9</sup> *Id.*, ¶ 453.

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

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

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

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<sup>10</sup> *Id.*, ¶ 451.

<sup>11</sup> *Id.*, ¶ 454.

<sup>12</sup> *Id.*, ¶ 455.

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

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

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<sup>14</sup> *Id.*, ¶ 456.

<sup>15</sup> *Id.*, ¶ 458.

<sup>16</sup> *Id.*, ¶ 457.

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

21

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<sup>17</sup> *Id.*, ¶¶ 508-10.

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

- 4 25. In reaching its national finding that competitors are not impaired without access to ULS  
 5 for DS1 enterprise customers, the FCC noted that enterprise DS1 customers are not  
 6 susceptible to the operational pit-falls associated with the hot cut process, because no hot  
 7 cut process is used to provision DS1 circuits.<sup>18</sup> The FCC reasoned that while the hot cut  
 8 process is “a significant source of impairment,” it does not affect the migration of  
 9 enterprise DS1 circuits because for DS1 customers it is economically feasible to “digitize  
 10 the traffic and aggregate the customer’s voice loops at the customer’s premises”<sup>19</sup>
- 11 26. The FCC significantly relied upon the absence of a hot cut process in reaching its finding  
 12 of no impairment for the DS1 enterprise market, reasoning that because “the conversion  
 13 process for enterprise customers generally involves the initiation of service to the  
 14 competitor’s new digital loop while the incumbent’s service remains in place” rather than  
 15 using a hot cut process, CLECs avoid the outages, costs, and service degradation  
 16 associated with hot cuts.<sup>20</sup> The FCC concluded that “competitive LECs generally face  
 17 the same opportunities and challenges as incumbents on connecting such facilities to their  
 18 switches.”<sup>21</sup>
- 19 27. The FCC’s ‘logic’ is deficient. The FCC, in effect, reasons that there is no impairment  
 20 caused by the process used to migrate customers because *no such process exists*. The  
 21 FCC failed to acknowledge that the lack of any process for migrating customers’ loops

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18 TRO, ¶ 451.

19 *Id.*

20 *Id.*

21 *Id.*

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

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

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

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

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

23

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

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

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

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

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

<sup>22</sup> TRO, ¶ 452 (notes omitted).

1 35. The table, set forth below in paragraph 39, contrasts the basic steps that must be executed  
 2 in migrating DS1 facilities from an ILEC to a CLEC: (1) the CLEC must order and  
 3 install the DS1 loop and IOF facilities; (2) transmission facilities must be made  
 4 operational and tested for basic transmission capability; and (3) the equivalent switch  
 5 operations must be established in the CLEC network that were being utilized by Verizon  
 6 to serve the end-user both physical switch operations and software applications for PRI  
 7 circuits.

8 36. Switching over a PRI customer involves the following steps: (1) determining Verizon's  
 9 PRI settings;<sup>23</sup> (2) new CLEC settings must be mapped for transparent operation by the  
 10 customer; (3) the vendor must set PBX settings at the end user's premises; (4) testing  
 11 must be conducted to confirm that the circuit is up and running; and (5) LNP must be  
 12 performed with the cutover CLEC.

13 37. Each of these steps are labor intensive and time consuming. If the Commission fails to  
 14 obtain a waiver from the FCC to require Verizon to continue to provide ULS to the  
 15 installed DS1 customer base of UNE-P CLECs, InfoHighway and MetTel will, in all  
 16 likelihood, lose their installed customer base for good, because the steps that must be  
 17 taken in order to migrate these customers to competitive switching facilities put  
 18 InfoHighway and MetTel at a significant disadvantage vis-a-vis Verizon. Verizon simply  
 19 has to make a billing change in order to take a customer back from the UNE-P CLEC

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

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

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

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

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

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

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

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

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

10 42. Specifically, the FCC held in the TRO that section 271(c)(2)(b) establishes an  
11 independent obligation for BOCs to provide access to loops, switching, transport and  
12 signaling regardless of any unbundling required under section 251.<sup>24</sup> The FCC held that  
13 the applicable pricing standard for elements required to be provided pursuant to section  
14 271 is “whether they are priced on a just, reasonable and not unreasonably discriminatory  
15 basis,” the standards set forth in sections 201(b) and 202(a) of the Act.<sup>25</sup>

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

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<sup>24</sup> TRO, ¶ 653.

<sup>25</sup> *Id.*, ¶ 656.

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

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

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

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

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

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<sup>26</sup> *Id.*, ¶¶451-58.

<sup>27</sup> *Id.*, ¶528.

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

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

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

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

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

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

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<sup>28</sup> *Id.*, ¶¶455-58.

<sup>29</sup> *Id.*, ¶451 n.1376.

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

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

9 **CONCLUSION**

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

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

22 56. This concludes our Declaration.

23

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101  
Tel: (717) 237-7160 □ Fax: (717) 237-7161 □ www.WolfBlock.com

Alan C. Kohler  
Direct Dial: (717) 237-7172  
Direct Fax: (717) 237-2752  
E-mail: akohler@wolfblock.com

ORIGINAL

October 17, 2003

**VIA FEDERAL EXPRESS**

James McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg., 2nd  
Floor, 400 North Street P.O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT

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OCT 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Investigation into the Obligation Incumbent of Local  
Exchange Carriers to Unbundle Local Circuit Switching  
for the Enterprise Market; I-00030100

Dear Secretary McNulty:

Enclosed please find the original and three copies each of the Pennsylvania Carriers' Coalition's ("PCC") Petition to Initiate Proceedings and the Direct Testimony of David Schwencke, David Malfara and Scott Dulin, both Public and Highly Confidential versions, for filing in the above referenced matter. Pursuant to the Commission's October 3, 2003 Procedural Order, please note the electronic mail, phone number and address information listed above for purposes of contact during this procedure.

While PCC is complying with the Commission's directives regarding the conduct of these proceedings, it is the PCC's position that the Commission is conducting this proceeding in violation of the attached October 8, 2003 Order issued by the Honorable Guido Calabresi, Circuit Judge of the United States Court of Appeals for the Second Circuit. The October 8,

DSH:38456.1/FUL022-148147

James McNulty  
October 17, 2003  
Page 2

2003 Order, which remains in full force and effect, places a stay on DS1 90 day proceedings conducted by state commissions, including this Commission. It is the position of the PCC, that the Commission is conducting these proceedings in violation of that stay.

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw

cc: Julia Conover (via electronic mail and Federal Express)  
William Peterson (via electronic mail and Federal Express)  
Ross A. Buntrock (via electronic mail and Federal Express)  
Norman Kennard (via electronic mail and Federal Express)  
Patricia Armstrong (via electronic mail and hand delivery)

PUBLIC VERSION

ORIGINAL

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DOCKETED**

OCT 23 2003

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

**RECEIVED**

OCT 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**DOCUMENT**

**PENNSYLVANIA CARRIERS' COALITION'S  
PETITION TO INITIATE PROCEEDINGS**

The Pennsylvania Carriers' Coalition ("PCC"), an informal coalition comprised of Full Service Computing Corporation t/a Full Service Network ("FSN"), Remi Retail Communications, LLC. ("Remi"), ATX Licensing, Inc. ("ATX") and Line Systems, Inc. ("LSI"), submits this Petition pursuant to the Commission's October 3, 2003 Procedural Order and its October 7, 2003 Secretarial Letter requesting the Commission to provide the Coalition with the opportunity to rebut the national finding of non-impairment for DS1 local circuit switching for the enterprise market in the Commonwealth of Pennsylvania.<sup>1</sup> The PCC is a group of Pennsylvania competitive local exchange carriers ("CLECs") which either operate entirely in Pennsylvania or conduct their main business in Pennsylvania,<sup>2</sup> have their offices in Pennsylvania and employ Pennsylvanians in providing local exchange and other telecommunications services to their Pennsylvania customers.

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<sup>1</sup> The national finding on DS1 switching for enterprise customers is one of many elements of the Federal Communications Commission's ("FCC") August 21, 2003 Order which has come to be known as the Triennial Review Order or "TRO". *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposal Rulemaking*, CC Docket No. 01-338 (August 21, 2003).

<sup>2</sup> FSN and Remi conduct their business entirely within the Commonwealth.

It is with this Pennsylvania focus in mind that the PCC requests the Commission to conduct a granular evaluation of whether Pennsylvania carriers are impaired without the availability of unbundled local circuit switching for DS1 enterprise customers in Pennsylvania. Upon completion of such an evaluation, the Commission will find that not only are carriers serving the Pennsylvania enterprise market impaired without access to unbundled local circuit switching for customers served with DS1 loops, but that absent a Pennsylvania finding of impairment, carriers serving Pennsylvania enterprise customers will face an imminent threat to the enterprise portion of their business which may force customers back to incumbent local exchange carriers ("ILECs") and, in particular, Verizon Pennsylvania, Inc. ("Verizon"). Furthermore, absent an impairment finding, a CLEC's opportunities to attract further enterprise customers will be severely limited, if not completely eliminated. Based on such findings of significant operational and economic impairment throughout the Commonwealth of Pennsylvania, the PCC requests the Commission to timely petition the FCC for a waiver or exclusion from the FCC's national non-impairment rule that requesting telecommunications carriers are not impaired without access to local circuit switching to serve end users using DS1 capacity and above loops.

The effect of allowing the national non-impairment finding to stand in Pennsylvania is to eliminate the Unbundled Network Element Platform wholesale service arrangement ("UNE-P") as a means of serving any Pennsylvania DS1 enterprise customers.<sup>3</sup> This will not only have an

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<sup>3</sup> In the *Global Order*, the Commission required Verizon to offer CLECs a UNE-P wholesale service arrangement for all customers at or below \$80,000 in total billed revenue ("TBR"). See *Joint Petition of Nextlink Pennsylvania, Inc. et. al.* P-000991648, P-000991649 (September 30, 1999) at 90. This standard, by definition, required Verizon to make UNE-P available to CLECs to serve DS1 enterprise customers. At the same time the current federal rule requires circuit switching for all customers except those customers with four or more lines in the top 50 Metropolitan Statistical Areas ("MSAs")

extremely detrimental impact on CLECs, like PCC members, but will have a detrimental impact on the customers they serve or would have served in the future. As demonstrated in the Direct Testimony attached to this Petition,<sup>4</sup> PCC members offer DS1 customers significant savings over the retail rates offered by Verizon along with certain advanced services that simply aren't available from Verizon.<sup>5</sup> Accordingly, these customers will lose those savings and efficiency enhancing services if they are forced back to Verizon against their will as a result of the outcome of this proceeding.

Furthermore, by taking away competitive options, future customers will lose the potential for the future savings, including leverage in the negotiations process, and advanced services which could and would be offered by CLECs in the future. As to advanced services in particular, the wrong outcome in this proceeding could impede the introduction of next

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subject to the availability of Enhanced Extended Links ("EELs"). *See, Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, ("*UNE Remand Order*"), 15 FCC Rcd 3696, 3707, 3804-32 (1999) at ¶¶ 241-299. Under the combined standard, as reflected in Verizon's tariff, Verizon is currently required to provide UNE-P to CLECs in Pennsylvania to serve all customers except those with more than \$80,000 in TBR served by 12 wire centers in the cities of Philadelphia and Pittsburgh and the nearby vicinity. *See, Pa.P.U.C.- No, 216, Section 3, 1st Revised Sheet 5E and 5F. However, it is critical to understand, as explained below and as demonstrated in the attached Direct Testimony, that although Verizon tariffed DS1 UNE-P shortly after the Global Order, from a practical perspective, DS1 UNE-P was not made available to CLECs in Pennsylvania on an unrestricted basis to serve all eligible customers until the 3rd week of September, 2003 -- less than a month ago.*

<sup>4</sup> Attached to this Petition is the Direct Testimony of David Schwencke, President and CEO of FSN, David Malfara, President and CEO of Remi and Scott Dulin, Vice President of ATX. (PCC-1 (Direct))

<sup>5</sup> Although this Commission investigation is designed to evaluate impairment throughout the Commonwealth, PCC members only currently serve DS1 enterprise customers in Verizon's service territory, however some have business plans to serve DS1 customers in the service territory of Verizon North, Inc. ("Verizon North").

generation switching technology and related advanced services in Pennsylvania, which technology represents the logical evolution of the competitive market for consumers.

The damage does not stop there. As discussed below, removal of the competitive pressure on Verizon may eliminate the only rate controls which currently protect the retail rates of certain DS1 enterprise customers' service, if the customer generates more than \$10,000 in TBR, since Verizon's local service to those customers has been designated as "competitive," and their rates have been completely deregulated.<sup>6</sup> The outcome is the worst of all outcomes for consumers -- an unregulated monopoly.

The evidence in this proceeding will show that the three factual findings which formed the entire basis for the FCC's national non-impairment conclusion are demonstrably untrue under a Pennsylvania specific, granular approach. FCC finding No. 1 is that ". . . in most areas, competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities)."<sup>7</sup> The evidence will show that the FCC's finding for "most areas" does not include Pennsylvania, under a granular approach. Indeed, review of the historic deployment, scope of deployment, recent history of deployment and likely future deployment shows that Pennsylvania CLECs, even if they deploy their own switches, can not overcome economic barriers to entry for DS1 enterprise customers around the state.

Relatively few CLEC switches have been installed and activated in Pennsylvania over the past three years. Verizon's refusal or inability to provide a useable DS1 Platform in Pennsylvania that would enable CLECs to serve the vast majority of DS1 customers has

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<sup>6</sup> See *Global Order* at 248-49.

<sup>7</sup> TRO at ¶ 421.

precluded CLECs from developing the economies necessary to support switch investment and deployment to serve DS1 customers.<sup>8</sup> Furthermore, Verizon's own anti-competitive actions have substantially hindered the usefulness of the limited CLEC switches which are in service because it has refused to comply with this Commission's requirements (and the requirements of its own tariff) to provide EELs with concentration.<sup>9</sup> Accordingly, while there is economic impairment throughout the entirety of Pennsylvania,<sup>10</sup> the impairment is overwhelming as one moves out of the major metropolitan area into the more rural areas of Verizon's service territory and the state itself.<sup>11</sup>

As to future deployment, in evaluating the impairment issue, the Commission should not overlook the importance of the availability of DS1 unbundled local circuit switching as a critical facilitator in the transition to next generation switching technology, commonly referred to as

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<sup>8</sup> As the evidence will show, only a small proportion of the total number of DS1 customers in Pennsylvania -- those customers with Primary Rate Interface capability at the customer service premise -- could be served through Verizon's DS1 Platform product until very recently and, even putting aside migration issues, there are significant questions as to whether that wholesale product is reliable enough today to serve non-PRI customers.

<sup>9</sup> *See Global Order* at 91-92.

<sup>10</sup> One of the illogical parts of the TRO is that the FCC has indicated that under a state's granular review, the definition and identification of geographic and product markets for purposes of the review should be concluded within nine months. TRO at ¶¶ 508-10. At the same time, the FCC directed that the DS1 switching granular analysis be completed within 90 days -- obviously long before the markets necessary for the analysis are identified by the state commission. Given this completely unreasonable scenario, the Commission, upon finding impairment in Pennsylvania, should presume that there is impairment throughout the state at least until the geographic markets are properly defined in the nine month proceeding.

<sup>11</sup> As the Commission knows, in some large areas of Pennsylvania served by non-Verizon companies, there has been no facilities-based entry by any CLEC because of the extended application of rural exemptions/suspensions. Although these areas are not the focus of the PCC's case, this factor demonstrates the outright absurdity of accepting the FCC's findings for the entirety of Pennsylvania.

"soft switching," as well as in deployment of voice over Internet Protocol ("VoIP") and other voice-over-packet transport technologies that will use and, in fact, drive the development of a robust broadband infrastructure throughout the Commonwealth. Properly understood, maintenance of the unbundled DS1 local circuit switching will substantially accelerate the transition to facilities-based competition, not deter it as Verizon frequently argues to regulators. Equally as important, the resulting accelerated demand for a more robust broadband infrastructure in order to support VoIP transport could help fuel its very deployment in areas of the Commonwealth where demand for data services alone may be insufficient to justify build-out.

FCC Finding No. 2 is that, "The facilities used to provide DS1 capacity or above services to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with 'hot cuts' -- the manual process by which customer lines are migrated to competitor's switches."<sup>12</sup> This finding is also not supportable under a Pennsylvania specific granular approach. All existing DS1 enterprise customer loops in Pennsylvania in Verizon's (and other ILEC) network are pre-wired to the switch or the switch's distribution frame. In either case, in order to migrate service to a Pennsylvania CLEC switching facility, a "hot cut" is unavoidable. As noted by the FCC on a nationwide basis, the evidence in this proceeding will demonstrate that cost imposition and service problems with "hot cuts" in Pennsylvania, and specifically in Verizon's service territory are severe and create unavoidable costs and impose service delays, service interruptions or service degradation that impair the CLECs' ability to attract the customer and keep the customer through the migration process. This severe operational impairment in Pennsylvania is of the

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<sup>12</sup> TRO at ¶ 421.

same magnitude that convinced the FCC to issue a national impairment rule for mass market switching.

It is important to understand that in Pennsylvania when a switch-based CLEC is provided a service commitment from an existing Verizon DS1 customer and places an order with Verizon to migrate service, the first question is whether there is an available parallel DS1 loop from Verizon's central office to the customer's premises. If there is not, Verizon will respond to the migration order with an indication that no facilities are available to serve the customer. In these frequent cases, the CLEC's acquisition of the customer is, in essence, terminated against the customer's will, **because there is not a hot cut process or any other migration process established by Verizon to move that customer's existing DS1 loop to the CLEC's switching facilities.** As a result of this complete lack of a hot cut or other process to migrate the loop at the central office, CLECs are completely frozen out of this sector of the DS1 market unless the DS1 Platform continues to be available -- absolute impairment.<sup>13</sup>

Even if there is a spare loop facility available, the migration process results in impairment in Pennsylvania because of the service delays, service interruptions or service degradation all too frequently caused by the hot cut process. While still involving a manual "hot cut" process, the parallel service delivery process relied on by the FCC to alleviate service disruptions to enterprise customers in the migration process is generally not available in Pennsylvania.<sup>14</sup> The

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<sup>13</sup> The CLEC's only remaining option would be to install, if possible, a self-provisioned DS1 loop to serve the customer, however this does not alleviate the impairment since the FCC has determined that CLECs are impaired without access to the ILEC's DS1 loops. This impairment will continue until an efficient migration process (which avoids lengthy service interruptions and service degradation) is developed for this sector of DS1 customers or until Verizon voluntarily agrees to and establishes processes to build out DS1 loops for CLECs -- an option it has emphatically refused in the past.

<sup>14</sup> As the FCC described it, "Specifically, the conversion process for enterprise customers generally involves the initiation of service to the competitor's new digital loop while the

record will show that the so-called parallel process is only available if the customer has, on its customer premise equipment, installed double the capacity necessary to handle its current traffic load so that the spare loop can be connected to the customer's PBX equipment at the same time as the operational loop allowing both loops to become operational at the same time (or in parallel to each other).<sup>15</sup> Even on the rare occasion that such capacity is available, the migration is not parallel and requires perfect coordination of customer equipment programming, configuration and traffic management in order to avoid significant service disruptions.<sup>16</sup> Furthermore, even in these cases, physical facility replacement and local number porting of the customer's telephone numbers - themselves, major steps of the hot cut process - are still necessary. Accordingly, the migration of Pennsylvania DS1 enterprise customers is labor intensive and costly, can result in serious service delays, service disruptions or service degradation which, in many cases, are intolerable to the customer and stand in stark contrast to the seamless migration process available to Verizon and other ILECs.<sup>17</sup> At the end of the day, the hot cuts necessary to migrate existing

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incumbent's service remains in place. During migration of an enterprise customer from analog service to a new digital loop, the enterprise customers remain on the incumbent's analog facilities while the new digital loop is installed and service initiated." After describing a similar parallel process for migration from an incumbent's digital facilities, the FCC concluded, "Thus, enterprise customers avoid potentially lengthy disruption of service due to hot cuts, occasionally experiencing an outage of only 10 to 30 seconds." TRO at ¶ 451.

- <sup>15</sup> Few, if any, Pennsylvania DS1 enterprise customers build this level of excess capacity into the customer's PBX equipment.
- <sup>16</sup> The hot cut process in Pennsylvania is a multi-step process which includes ordering and provisioning of the spare facility, coordination of customer equipment programming, configuration and traffic management, physical facility replacement, testing and local number porting. The actual manual transfer of the loop facilities is only one of many steps in the process.
- <sup>17</sup> In order to avoid lengthy service interruptions in the DS1 hot cut process, CLECs are required to expend substantial time and money and take extraordinary steps to minimize

DS1 customers to CLEC switching facilities impose impairment to the same degree as in the mass market.

FCC Finding No. 3 is that "Enterprise customers also generally offer increased revenue opportunities and are more willing to enter long-term contracts, allowing competitive LECs a greater ability to recover these nonrecurring costs associated with providing services using their own switches."<sup>18</sup> While the PCC can not argue with the premise of the FCC's finding, -- that enterprise customers are associated with higher revenues than mass market customers and are more willing to enter into long-terms contracts -- the agency's conclusion is not supportable under a granular Pennsylvania approach, particularly in most areas of the Commonwealth where the DS1 enterprise market itself is not of sufficient size and scope to warrant switch deployment using today's technology.<sup>19</sup> In fact, as explained in the attached Direct Testimony, a CLEC business case demonstrates the degree of economic impairment which will result if unbundling requirements for DS1 switching are eliminated.<sup>20</sup>

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the inherent operational deficiencies in the hot cut process in order to protect the customer's service.

<sup>18</sup> TRO at ¶ 421.

<sup>19</sup> In fact, the FCC cited to evidence by Regional Bell Operating Companies ("RBOCs") which indicated that economic entry using the CLEC's own switching could be economically problematic in exchanges with more than 5,000 access lines. TRO at ¶472. While not endorsing such a benchmark, it appears that such a presumption, if adopted by this Commission, would exclude many, if not most, of Pennsylvania's exchanges from a non-impairment finding under a Pennsylvania specific granular approach.

<sup>20</sup> Indeed, the FCC has indicated that in state reviews of economic impairment, ". . . states must weigh competitive LECs' potential revenues from service enterprise customers in a particular geographic market against the cost of entry into the market." TRO at ¶ 457. While the FCC has indicated the state does not necessarily have to include review of an "individual business plan," it is clear that such a review is the most reliable kind of evidence available.

As outlined in the foregoing, the evidence in this case will convincingly demonstrate both operational and economic impairment for DS1 switching under a Pennsylvania specific granular analysis. Any other result will ignore and deny the realities of the Pennsylvania marketplace and will put at risk the limited competitive gains which have been made by competitors in Pennsylvania's enterprise market.

State law also supports the continued availability of DS1 switching on an unbundled basis throughout Pennsylvania. First, under the *Global Order*, the Commission determined, based on the largest evidentiary record in the agency's history, that UNE-P must be made available for CLEC business customers which generate TBR of \$80,000 or less per year.<sup>21</sup> While the Commission indicated that it would maintain this benchmark through December 31, 2003, it also established the analysis which would be applied to future reviews of UNE-P availability. Specifically, the Commission stated:

Thereafter, UNE-P and EELs will continue to be offered to CLECs, except where BA-PA can demonstrate to the Commission, by a preponderance of evidence that collocation space is available[,] that it can be provisioned in a timely manner, and that consideration of the number of customers, and revenues from the customers served by the CLEC from a collocation in that central office represents a valid reasonable economic alternative to the provision of UNE-P and or EELs to that CLEC. By meeting this evidentiary burden, BA-PA will establish that UNE-P or EELs would not be necessary at that office and that the provision of service is not impaired under this circumstance.

*Global Order* at 90.

The Commission should be congratulated for its foresight in addressing a post December 31, 2003 environment in 1999, because that day has come. Indeed, the Commission's standard has several repercussions for this proceeding, primary of which are the burden of proof and the

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<sup>21</sup> This standard clearly includes all DS1 enterprise customers.

degree of granularity. The Commission's assignment of burden of proof to Verizon is appropriate since it is the one that is seeking to eliminate unbundling requirements. Furthermore, Verizon is the party with comprehensive access to the data pertaining to its operational performance on a central office by central office basis.

While not conclusive, the Commission's October 3, 2003 Procedural Order and October 7, 2003 Secretarial Letter seem to assign the burden of proof to CLECs. The PCC will address this issue before the Administrative Law Judge to assure that this proceeding is conducted consistent with the *Global Order's* prior directives.

Another state law issue critical to this proceeding pertains to the impact of 66 Pa. C.S. §3005(e), which provides as follows in relevant part:

(e) Additional determinations.--The commission shall determine whether local exchange telecommunications companies are complying with the following provisions:

(1) The local exchange telecommunications company shall unbundle each basic service function on which the competitive service depends and shall make the basic service functions separately available to any customer under nondiscriminatory tariffed terms and conditions, including price, that are identical to those used by the local exchange telecommunications company and its affiliates in providing its competitive service.

This provision establishes an unbundling requirement under state law for services which have been designated as "competitive" by the Commission. While the Pennsylvania defined term for network components is "basic service functions" rather than "unbundled network elements," it is clear from the definition in 66 Pa. C.S. § 3002 that DS1 switching is a basic service function which requires unbundling under Section 3005(e) for all competitive services.<sup>22</sup>

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<sup>22</sup> Under 66 Pa. C.S. § 3002, a "basic service functions" is defined as follows:

"Basic service functions." Those basic components of the local exchange carrier network which are necessary to provide a

Of particular relevance is the fact that the Commission has already interpreted Section 3005 within the context of the TRO. On August 13, 2003, the Commission entered an Order denying Verizon's Petition to designate as "competitive" all of its business telecommunications services for customers generating less than \$10,000 in TBR per year.<sup>23</sup> In this critical decision, the Commission first rejected Verizon's attempt at "competitive" classification of these services concluding that Verizon had failed to meet its burden of demonstrating the presence and continued viability of competitors (of any kind -- facilities based or non-facilities based), and that to the extent there was competition, ". . . Verizon PA's claim that competition will continue to thrive despite economic and financial difficulties by CLECs in Pennsylvania are equally unpersuasive."<sup>24</sup>

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telecommunications service and which represent the smallest feasible level of unbundling capable of being tariffed and offered as a service.

<sup>23</sup> *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 is a Competitive Service Under Chapter 30 of the Public Utility Code*, P-00021973 (August 12, 2003). As indicated previously, under the *Global Order's* scheme, Verizon's business services for customers generating over \$10,000 in TBR have already been designated by the Commission as "competitive." It is noteworthy that the Commission determined that the record in that proceeding only justified competitive designation for customers above an \$80,000 TBR benchmark, but that, based on mere projection and a structural separation requirement which never occurred, the Commission develop a sliding scale over time under which the TBR benchmark was directed to automatically drop first to \$40,000 and then subsequently to \$10,000. However, this sliding scale was not base on a granular analysis or any other factual analysis, but instead was based on speculation as to how the Commission thought competition might develop in business markets. Certainly this speculative sliding scale has no relationship to whether or not there is impairment for any customer, geographic or product market in Pennsylvania, since even the Commission's speculative analysis presumed the continued availability of UNE-P **and** other forms of both facilities based and non-facilities based competition. Indeed, as the record in this proceeding will reflect, if the DS1 Platform is eliminated in Pennsylvania, Verizon's retail service to customers with over \$10,000 in TBR should immediately be reclassified to noncompetitive service.

<sup>24</sup> August 12, 2003 Order, P-00021973 at 22-23.

Second, and even more directly related to this proceeding, the Commission outright rejected Verizon's argument that the requirements of Section 3005(e)(1) would be avoided (and that Verizon could discontinue offering unbundled network elements) if the FCC rules abolish the federal requirements to provide UNEs to competitors, because the unbundling requirements of Section 3005 were independent state law requirements.<sup>25</sup> As the Commission stated in its ruling on this matter:<sup>26</sup>

Consistent with these parameters, we emphasize that for any telecommunications service for which Verizon PA obtains competitive designation under Chapter 30, Verizon PA is required, independent of other federal requirements, to unbundle BSFs used to provide that local service. If Verizon PA chooses to once again seek a Commission determination that a telecommunications

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<sup>25</sup> On September 5, 2003, Verizon filed a Petition for Reconsideration of this Commission determination. The Commission is presently considering the merits of that petition.

<sup>26</sup> In reaching its decision the Commission relied on the following passage from the *Global Order*:

Chapter 30 provides another source of state law for requiring the unbundling of network elements. BA-PA has obtained competitive classification of several of its local services in accordance with Chapter 30 requirements. Chapter 30 also requires BA-PA to “unbundle each basic service function on which those competitive services depend ...” Thus, to the extent that BA-PA receives and accepts competitive classification of its business services as part of this proceeding, it must unbundle the “basic service functions” on which the “competitive” local service depends. Chapter 30 defines “basic service functions” as “those basic components of the local exchange carrier network which are necessary to provide a telecommunications service and which represent the smallest feasible level of unbundling capable of being tariffed and offered as a service.” Currently, BA-PA’s Centrex, Paging, Repeat Dialing, Speed Dialing and High Capacity Special Access services have been declared competitive in Pennsylvania. Therefore, any “basic service functions” used to provide these services must be unbundled. Clearly, loops, switching and transport are part of any Centrex offering. Repeat Dialing and Speed Dialing are features built upon the switching basic service function. Also, loops and transport are part of special access offering.

service is a competitive service under Chapter 30, it bears the burden of proof. Specifically, Verizon PA is required to provide in support of its request detailed evidence indicating it has unbundled the BSF for any telecommunications service for which it seeks Commission competitive declaration.

The Commission's determination is far reaching and raises factual issues in this proceeding which only Verizon can answer. Whether or not a DS1 customer or DS1 customers generally would generate over \$10,000 of TBR annually for Verizon PA under Verizon-PA's tariff is far from clear.

The outcome of this inquiry, as it relates to state law issues depends on the outcome of this factual inquiry.<sup>27</sup> For DS1 customers which are below the \$10,000 TBR benchmark, the Commission has recently found that there is no proof of viable, sustainable competition in this market and the debate over whether there is operational or economic impairment should end here -- since clearly impairment is an unavoidable conclusion from the Commission's recent granular analysis in that case.

In the alternative, for DS1 customers which exceed \$10,000 in TBR, Section 3005(e)(1)'s unbundling obligation is imposed on Verizon. This would also end the debate as to whether DS1 switching should be subject to continued unbundling.<sup>28</sup>

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<sup>27</sup> Such a factual inquiry may be dependent on whether a DS1 customer's intraLATA toll service is or would be provided by Verizon Long Distance, Inc. ("VLD"). It may be that some DS1 customers exceed the \$10,000 benchmark and others do not. Regardless of how the burden of proof issue is resolved, the ALJ and or the Commission should require Verizon to provide comprehensive information to the parties and on the record so that this issue can be addressed in this proceeding.

<sup>28</sup> At a minimum, Verizon would be required to forfeit "competitive" classification to avoid a violation of Section 3005(e)(1). Such a reclassification is specifically permitted under Section 3005(d), but only after notice and hearing, and only if "sufficient competition is no longer present, that the local exchange company has engaged in unfair competition with respect to the service or that the local exchange company has failed to provide nondiscriminatory access to the provision of the service."

Overall, because of unique provisions of Pennsylvania law as interpreted by this Commission, state law considerations will play an important role in this proceeding. The members of PCC, as Pennsylvania carriers, request this Commission to conduct its granular approach in a manner which fully protects Pennsylvania carriers and Pennsylvania customers.

While the PCC believes that the evidence will unequivocally demonstrate impairment for all DS1 switching in Pennsylvania, it also emphasizes that a granular analysis must distinguish the differences in deployment and availability as one moves out from Pennsylvania's two big cities, and, in particular, in the rural areas of the Commonwealth.<sup>29</sup> Here, the evidence will be even more overwhelming that severe operational and economic impairment exists.

It can not be overstated that the debate which starts with this 90 day proceeding is critical to the survival of local competition. As the Consumer Federation of America ("CFA") recently concluded in a report issued just last week in a section entitled "Debunking the ILECs Claims:"

The recent progress toward more open and competitive local telecom markets is important but fragile. Although competition has made significant gains, the Bells are working hard to undermine UNE-based competition and force weakened competitive local exchange carriers (CLECs) to build redundant telecommunications networks. A successful result for the RBOCs on this would put a swift end to local competition.

This paper examines three arguments that have been advanced by the Bell companies in support of these anti-competitive aims. In the past RBOCs have employed these arguments to delay opening their local markets to competition. They are reviving them now in an attempt to reduce the availability of UNEs, or to raise UNE pricing to such exorbitant rates that competitors would be forced from the marketplace. This paper examines the current state of competition in 39 of the largest states where public data is available regarding residential competition. Our research shows that, in each case, the Bell's arguments are both misleading and unfounded.

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<sup>29</sup> As the FCC recognized, "In particular, the record suggests that such factors make impairment more likely in rural areas." TRO at ¶ 454.

*Competition at the Crossroads: Can Public Utility Commissions Save Local Phone Competition?* Consumer Federation of America, October, 2003 at 2.

It will be up to this and other state commissions to assure that the RBOC sponsored movement to put a swift end to local competition does not come to pass.

In support of the PCC's petition the PCC states as follows:

**A. THE PENNSYLVANIA CARRIERS' COALITION**

1. The PCC is comprised of Full Service Network, Remi, ATX and LSI, four CLECs which provide local service to both residential and business customers in competition with each other and with Verizon and Verizon North, Inc. whose sole business, in the case of FSN and Remi, and primary business, in the case of ATX and LSI, is in Pennsylvania.

2. FSN's principal place of business is 1420 Centre Avenue, Pittsburgh, PA 15219. FSN's president and CEO, David Schwencke, will provide testimony in this proceeding and is the company contact for this proceeding. Mr. Schwencke's offices are at FSN's principal place of business. His business phone number is (412) 745-9000 and his electronic mail address is david@fullservicenetwork.net.

3. Remi's principal place of business is 138 South Main Street, Greensburg, PA 15601. Remi's president and CEO, David Malfara, will provide testimony in this proceeding and is the company contact for this proceeding. Mr. Malfara's office is located at Remi's principal place of business. His business phone number is (724) 836-5800 and his electronic mail address is dmalfara@remicomcommunications.com.

4. ATX's principal place of business is 50 Monument Road, Bala Cynwyd, PA 19004. ATX's Vice President, Scott Dulin, will provide testimony in this proceeding and is the company contact for this proceeding. Mr. Dulin's offices are located at ATX's principal place of

business. His business phone number is (610) 668-3000 and his electronic mail address is scott.dulin@atx.com.

5. LSI's principal place of business is 520 Abbott Drive, Blvd. E., Broomall, PA 19008. LSI's president and CEO, Michael Miller, is the company contact for this proceeding. Mr. Millers' office is at LSI's principal place of business. His business phone number is (610) 543-6900 and his electronic mail address is mike@linesystems.com.

6. FSN, Remi, ATX and LSI are represented in this proceeding by the undersigned counsel. Counsel will be the point person for all discovery requests, although counsel requests that the company point persons be provided electronic copies of all discovery requests at the time of service. The PCC does not plan to present the testimony of an outside expert at this time.

**B. PROCEDURAL AND FACTUAL BACKGROUND**

6. On September 30, 1999, the Commission entered its *Global Order* which required Verizon to make UNE-P available to CLECs for all customers generating TBR at or below an \$80,000 annual benchmark. Because DS1 customers are all below the \$80,000 TBR benchmark, the *Global Order* required that DS1 Platforms be tariffed and offered by Verizon. As explained below, combined with the current federal standard, Verizon is currently obliged to offer UNE-P in Pennsylvania to CLECs to serve any customer except for those customers which exceed \$80,000 in TBR **and** which are located within the serving area of 12 specific wire centers in Philadelphia and Pittsburgh.

7. Verizon tariffed the DS1 Platform shortly after the *Global Order* in its Tariff 216. The availability of the DS1 Platform was also made available through various interconnection agreements.

8. While the DS1 Platform should have been available since the *Global Order*, the DS1 Platform was not made available by Verizon to CLECs on an unrestricted basis until very recently. In fact, Verizon did not make the necessary software modifications to billing systems and CLASS 5 switches to support the DS1 Platform and provide CLECs with the necessary call detail records ("CDRs") for DS1 Platform traffic until the third week of September, 2003 -- less than one month ago.<sup>30</sup> During the period from the *Global Order* to the third week in September, 2003, the only way to utilize a DS1 Platform was through a Primary Rate Interface ("PRI"). However, the vast majority of DS1 customers have not justified the tens of thousands of dollars necessary to upgrade their equipment in order to interface through PRI facilities. As a result of the foregoing, and because of operational and economic impairment issues, the volumes of DS1 Platforms ordered by CLECs has not been very substantial. Indeed, more than four years after the *Global Order* required Verizon to offer a DS1 Platform, Verizon has not yet even formalized or published a standard provisioning or ordering process by which a CLEC can order a DS1 Platform. The lack of such standard processes introduces manual interactions into the migration process substantially increasing the potential for human error and substandard service which can result in service delays, service interruptions or service degradation. Now that the DS1 Platform has some semblance of reasonable availability, Verizon, in its typical anti-competitive form, is attempting to terminate its availability.

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<sup>30</sup> As fully explained in the attached Direct Testimony, Remi was the first CLEC to successfully provision a two-way DS1 Platform under a "First Office Application" from Verizon in Pennsylvania. However, the process was nothing less than a complete nightmare and no less than six months passed between initial ordering and actual provisioning. Furthermore, Remi did not begin receiving CDRs, an absolute necessity to issue retail bills to its customers, until approximately two weeks ago. Remi has not yet verified whether all CDRs are being properly collected by Verizon and received by Remi.

9. On August 21, 2003, the FCC issued the TRO.<sup>31</sup> In the TRO, the FCC reached a national finding of impairment for DS1 switching or, in other words, local switching used in combination with a DS1 loop for an enterprise customer.<sup>32</sup>

10. However, the TRO also recognized that "while the record of the [TRO] proceedings does not contain evidence identifying any particular markets where competitive carriers would be impaired without unbundled access to local circuit switching to serve enterprise customers, state commissions are uniquely positioned to evaluate local market conditions and determine whether DS1 enterprise customers should be granted access to unbundled incumbent LEC circuit switching."<sup>33</sup> In order to rebut the FCC's national finding of no impairment in the DS1 enterprise market, the FCC directed state commissions, within 90 days of the effective date of the TRO, to make "an affirmative finding of impairment showing that carriers providing service at the DS 1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market" and directed the state commissions to "define the relevant markets" using the criteria set forth in the TRO, even though under the TRO the relevant markets were not to be defined until six months after completion of the state's 90 day proceeding.

11. In examining whether operational impairment exists, the FCC ordered states to "consider whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross connects in an incumbents wire center, are making entry

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<sup>31</sup> The TRO became effective on October 2, 2003.

<sup>32</sup> TRO at ¶ 451.

<sup>33</sup> TRO at ¶ 455.

uneconomic."<sup>34</sup> Regarding economic criteria, the FCC requires states to "consider all relevant factors in determining whether entry is uneconomic in the absence of DS1 switching."<sup>35</sup> Specifically, the FCC held that states "must find that entry into a particular market is uneconomic in the absence of unbundled local circuit switching" and in doing so, must "weigh competitive LECs' potential revenues from serving enterprise customers in a particular geographic market against the cost of entry into that market."<sup>36</sup> In evaluating "potential revenues" the states must consider all likely revenues to be gained from entering the enterprise market, as well as the prices that CLECs are likely to be able to charge, after considering the retail rates that ILECs charge.

12. On October 3, 2003, the Commission entered a Procedural Order addressing the Commission proceedings resulting from the TRO generally, as well as a Protective Order. Pages 6 through 12 of the Procedural Order describe the procedures which will be utilized by the Commission to administer the 90 day proceeding evaluating the DS1 switching issue. The Order requires CLECs which seek to participate in the 90 day proceeding to submit a Petition to Initiate Proceedings which includes contact information, as well as relevant matters of law, policy, facts and the basis for standing. On October 7, 2003, the Commission issued a Secretarial Letter that clarified that Petitions submitted by CLECs should include the CLEC's *prima facie* case.<sup>37</sup>

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<sup>34</sup> TRO at ¶ 456.

<sup>35</sup> TRO at ¶ 458.

<sup>36</sup> TRO at ¶ 457.

<sup>37</sup> The schedule of the proceeding has been modified slightly through Commission notice.

13. On October 8, 2003, the United States Court of Appeals issued a stay of this and other DS1 90 day proceedings around the country.<sup>38</sup>

14. This Petition and the attached Direct Testimony fulfill all of the initial procedural requirements established by the Commission.

**C. STANDING**

14. FSN, Remi, ATX and LSI each have standing to participate in this proceeding. Each party's business will be impaired if the Commission does not make the necessary determination and take the necessary actions to maintain the unbundling requirements for DS1 switching. In some cases, the impairment relates to existing customers. In other cases, the impairment relates to the ability to attract future customers. In every case the impairment constitutes a threat to the Company's business and the associated interest in the outcome of this proceeding is both direct and immediate.

15. With this said, the number of DS1 Platforms currently utilized by FSN, Remi, ATX and LSI are as follows:

**[BEGIN HIGHLY CONFIDENTIAL]**

<u>DS1 Platforms:</u>	<u>In Service</u>	<u>In Various Stages of Proposal</u>
FSN -		
REMI -		
LSI -		

**[END HIGHLY CONFIDENTIAL ]**

ATX	0	0
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16. However, as explained above, the number of DS1 Platforms currently utilized to serve existing customers is not reflective of the magnitude of the PCC members' direct interest in

<sup>38</sup> *Infohighway Communications Corp. v. Federal Communications Commission*, Docket Number FCC 03-08 (October 8, 2003).

these proceedings. Up until very recently, Verizon has not made the necessary modifications to its billing system and CLASS 5 switches which enable CLECs to bill customers for retail service provided through a DS1 Platform.

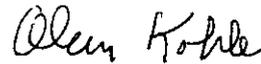
17. In ATX's case, ATX has a strong desire to offer products utilizing a DS1 Platform, but does not currently due to operational issues with Verizon's wholesale product. After the DS1 Platform was ordered by the Commission and tariffed by Verizon, ATX performed marketability and profitability analyses, concluding that the product was viable as an offering. ATX then conducted an installation simulation to test the operability of Verizon's DS1 Platform, which revealed far-reaching problems with the wholesale product. Based on this outcome, ATX determined this wholesale product to be operationally unviable. Within the last few weeks, however, Verizon has made the DS1 Platform available in a manner which may be usable by CLECs to serve enterprise customers. Due to this recent development, ATX has decided to reinitiate product development and design activity pending a favorable outcome in this proceeding.

18. Accordingly, to assign any weight or, worse yet, to deny standing based on the low volumes of DS1 Platforms currently in use would be to reward Verizon for erecting operational barriers to entry (and associated impairment). In other words, such a distorted viewpoint would base the elimination of availability of a UNE on the fact that because CLECs were not provided timely access to the UNEs resulting in low volumes at the time of measurement, that the UNE was somehow not important to the CLEC or is no longer necessary. If the Commission surrenders to anything resembling such an upside down approach, it will represent an endorsement of the path to elimination of local competition in Pennsylvania.

19. Not only do the PCC members have standing, they will demonstrate that in Pennsylvania, CLECs will be severely impaired if DS1 switching for enterprise customers is eliminated as a UNE.

WHEREFORE, for all of the foregoing reasons, FSN, Remi, ATX and LSI request that the Commission grant this Petition, recognize standing and conduct proceedings which build a record which results in a petition to the FCC which includes a finding of impairment of requesting telecommunications carriers without access to local circuit switching to serve end users using DS1 capacity and above loops throughout the Commonwealth of Pennsylvania because of the operational and economic barriers demonstrated in this proceeding.

Respectfully submitted,



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Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
WOLF, BLOCK, SCHORR and SOLIS-  
COHEN, LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
akohler@wolfblock.com  
dclearfield@wolfblock.com  
(717) 237-7160

Attorneys for the Pennsylvania Carriers'  
Coalition

Dated: October 17, 2003

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**DOCKETED**  
OCT 23 2003

**DOCUMENT**

**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.)**

**OCTOBER 17, 2003**

**RECEIVED**

OCT 17 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

1 **I. INTRODUCTION.**

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

4 A. The three members of this panel are David Schwencke, President and CEO of Full  
5 Service Computing Corporation t/a Full Service Network ("FSN"), David Malfara,  
6 President and CEO of Remi Retail Communications, LLC ("Remi") and Scott Dulin,  
7 Senior Vice President of ATX Licensing, Inc. ("ATX"). Mr. Schwencke, Mr. Malfara  
8 and Mr. Dulin are submitting testimony on behalf of their individual companies and on  
9 behalf of the Pennsylvania Carriers' Coalition, an informal group of competitive local  
10 exchange carriers ("CLECs") comprised of FSN, Remi, ATX and Line Systems, Inc.  
11 ("LSI") which carriers' sole business, as in the case of FSN and Remi, or primary  
12 business, as in the case of ATX and LSI, is in Pennsylvania.

13 **Q. WHAT ROLE DID EACH MEMBER OF THIS PANEL PLAY IN THE**  
14 **PREPARATION OF THIS TESTIMONY AND ASSOCIATED EXHIBITS?**

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

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

25 A. My name is David Schwencke. I am President and CEO of FSN. My business address is  
26 1420 Centre Avenue, Pittsburgh, PA 15219.

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

9 FSN is a relatively small CLEC which provides a variety of telecommunication  
10 services, including local exchange services, to both residential and business customers  
11 located in Verizon Pennsylvania, Inc.'s ("Verizon PA") service territory. Recently, FSN  
12 entered into an interconnection agreement with Verizon North, Inc. ("Verizon North")  
13 and has now initiated service offerings in that service territory. FSN also has a business  
14 interest in serving customers in non-Verizon areas, and in particular in the service  
15 territory of North Pittsburgh Telephone Company ("NPTC"), however, FSN has been  
16 precluded from doing so either through access to unbundled network elements ("UNEs")  
17 or through its own facilities, because of rural exemption/suspension issues as well as  
18 other barriers to entry erected by those companies.

19 FSN's headquarters are located in Pittsburgh and the Company recently opened an  
20 office in Philadelphia. FSN is a Pennsylvania company and its entire customer base is  
21 located in Pennsylvania. In this regard, FSN presently employs approximately 50  
22 Pennsylvanians in its two offices. While currently the core of FSN's business is in the  
23 Pittsburgh area, expansion of FSN's business requires the Company to move outward to

1 serve both businesses and residential customers in surrounding suburban and rural areas,  
2 including into Verizon North's and NPTC's service territories. However, FSN will only  
3 be able to achieve this necessary expansion if the terms and conditions of the incumbent  
4 local exchange carrier's wholesale service permit such as an expansion from a business  
5 perspective. Furthermore, dependent on the outcome of this proceeding, FSN's existing  
6 enterprise business could be threatened.

7 FSN owns and operates one local switch in downtown Pittsburgh from which it  
8 serves DS1 customers within the coverage of the switch. FSN is continuously  
9 considering whether investment in additional local switches is justified. However, FSN  
10 can not invest in such deployment unless market conditions permit. Otherwise, it will not  
11 recover its costs of, much less realize a return, on its investment.

12 **Q. DOES FSN CURRENTLY SERVE CUSTOMERS THROUGH DS1 LOOP IN**  
13 **COMBINATION WITH LOCAL CIRCUIT SWITCHING?**

14 A. Yes, but only for customers with PRI capability. For this limited portion of the DS1  
15 market, FSN has been able to offer customers a savings of approximately 20% as  
16 compared to Verizon's retail rates.

17 **Q. DOES FSN HAVE FUTURE BUSINESS PLANS TO SERVE CUSTOMERS**  
18 **THROUGH THIS WHOLESALE ARRANGEMENT?**

19 A. Yes, now that the DS1 Platform appears to be a commercially viable wholesale product  
20 for all DS1 customers (and assuming its continued availability), FSN intends to  
21 significantly expand its plans to serve DS1 customers through this wholesale  
22 arrangement.

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

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

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

10 I have been active in the telecommunications industry for more than 27 years. In  
11 1983, I formed Pennsylvania Alternative Communications, Inc., and its subsidiary, Pace  
12 Long Distance, which grew to operate nationally and was later sold to LCI International.  
13 In 1995, I co-founded Pace Network Services ("PNS"), which provided traffic and  
14 signaling network oriented services to telecom carriers. PNS became the largest supplier  
15 of SS7 connectivity to the interexchange carrier market with over 100 carrier-customers  
16 prior to its sale to ICG Telecom Group, Inc. in 1996. In 1979 I co-founded Vector  
17 Communications, Inc. – one of the first third-tier long distance carriers, and I've served  
18 in senior management positions at National Computer Corporation, Honeywell  
19 Information Systems, and GTE Telenet. I currently serve as a Director and Executive  
20 Committee member of CompTel, the leading competitive telecommunications industry  
21 association, and as Chairman of CompTel's Technology Task Force.

22 Remi is a relatively small CLEC which entered Pennsylvania as a local service  
23 provider in mid-2002. Remi is headquartered in western Pennsylvania in a rural part of

1 the Commonwealth. Remi's business market is Pennsylvania. Remi employs a growing  
2 work force of approximately 20 Pennsylvanians and its distribution channel consists of  
3 21 entrepreneurial companies that represent Remi's products and services throughout the  
4 Commonwealth through a network of hundreds of Pennsylvania-based sales people and  
5 support staff who make part of their living by selling Remi products.

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

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

1 must sustain unexpected surges in call volumes, allowing a peak capacity of a full 24  
2 lines of digital service.

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

20 Remi also offers its customers a variety of enhanced messaging services,  
21 including voicemail and faxmail. RemiMessenger can deliver voicemails to standard  
22 voicemail boxes, convert the message to ".wav" format and simultaneously email the  
23 message to the subscriber. RemiMessenger also can receive faxes, convert them into

1       “.pdf” files and automatically email them to a designated address. Moreover, Remi  
2       Messenger produces a true “.pdf” electronic file format that can be attached to any  
3       customer record, and added to any of the currently available database programs.

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

12              Although it is certainly possible for the incumbents to support these advanced  
13      systems, they have no incentive to do so for fear of “cannibalizing” existing high-cost  
14      enterprise services. Of course, these very incumbent-provided retail services are beyond  
15      the reach of many small businesses, and Remi’s ability to obtain unbundled local  
16      switching DS1 and PRI ports is vital to Remi’s ability to bring innovative services to  
17      small and medium-sized businesses that would otherwise be unable to obtain these  
18      advanced communications functionalities.

19      **Q. DOES REMI CURRENTLY SERVE CUSTOMERS THROUGH A**  
20      **COMBINATION OF A DS1 LOOP AND LOCAL CIRCUIT SWITCHING?**

21      A. Yes. The DS1 Platform forms the foundation of our RemiPack24 service. The  
22      RemiPack24 provides the customer with a high-capacity facility and a bundle of 5000  
23      local minutes and 20,000 Anytime/Anywhere minutes. Because of Remi’s Intelligent  
24      Bundle and the Facility Independence feature customers can use these minutes from

1 analog lines at outlying office locations. In other words, once the minutes are purchased,  
2 they may be used by any facility at any customer location. It is very popular for  
3 customers to purchase a RemiPack24 at the main office location and use the included  
4 minutes at their higher-cost rural locations. This results in dramatic savings and  
5 efficiency enhancements for the customer which remove significant operational cost  
6 barriers to conducting business in more rural areas of the Commonwealth. The product is  
7 enjoying strong visibility in the banking, healthcare, real estate and insurance sectors.

8 **Q. DOES REMI HAVE BUSINESS PLANS TO EXPAND ITS USE OF THIS**  
9 **WHOLESALE SERVICE ARRANGEMENT TO OTHER ENTERPRISE**  
10 **CUSTOMERS?**

11 A. Yes. Remi currently plans to offer service throughout the Commonwealth using the DS1  
12 Platform as a critical facilitator of our market penetration strategy. Important decisions  
13 regarding capital expenditures will be made based upon the speed and degree to which  
14 we are able to capture market share. The DS1 Platform is an integral part of that strategy.

15 Remi has only been providing service in Pennsylvania for a little more than 1 ½  
16 years. Since Remi is privately funded, and since our majority stockholder, BCP, is  
17 constantly evaluating numerous investment opportunities, we must be certain that our  
18 plans for Remi's expansion are based upon a stable foundation. This includes the  
19 legislative/regulatory framework in the areas in which we operate, the technology  
20 available to us and the critical timing of our capital purchases which will ensure that we  
21 are building an infrastructure that will support our operation for many years to come and  
22 finally, the willingness of capital markets to support our expansion. Our business plan is  
23 one of evolution. It is vital to Remi's development that we emerge from our early  
24 development period as quickly as possible. Because our business case is focused on  
25 businesses with locations in all areas of the Commonwealth, it is critical that we are able

1 to compete on equal footing with the Incumbent LEC. Barring the complete replication  
2 of the incumbent local exchange carrier's ("ILEC") network as a prerequisite to market  
3 entry, Remi needs access to the unbundled network elements, including DS1 Platform, in  
4 order to capture sufficient market share to support our plans for investment and  
5 expansion.

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

9 A. My name is Scott Dulin. My business address is 50 Monument Road, Bala Cynwyd, PA  
10 19004. I have worked for ATX since 1988 and have been responsible for operational,  
11 technical and business issues relating to the planning, development and implementation  
12 of ATX's local product offering. To that end, I have also participated in the various  
13 regulatory and legislative initiatives promoting fair competition in the local market and  
14 ILEC compliance.

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

23 **Q. DOES ATX CURRENTLY SERVE CUSTOMERS THROUGH A DS1 LOOP IN**  
24 **COMBINATION WITH LOCAL CIRCUIT SWITCHING?**

1 A. No. ATX has a strong desire to offer products utilizing a DS1 Platform, but does not due  
2 to operational impairment issues. After the wholesale product was ordered by the  
3 Commission and tariffed by Verizon, ATX performed marketability and profitability  
4 analyses, concluding that the product was viable as an offering. ATX then conducted an  
5 installation simulation to test the operability of Verizon's DS1 Platform, which revealed  
6 far-reaching problems with the wholesale product. Based on this outcome, ATX  
7 determined this wholesale product to be operationally unviable. Within the last few  
8 weeks, however, Verizon appears to have made the DS1 Platform available in a manner  
9 which may be usable by CLECs to serve DS1 enterprise customers. Due to this recent  
10 development, ATX has decided to reinitiate product development and design activity  
11 pending a favorable outcome in this proceeding.

12 **Q. WILL A DS1 PLATFORM BE VALUABLE TO ATX IN EXPANDING ITS**  
13 **NETWORK OUTWARD FROM THE PHILADELPHIA METROPOLITAN**  
14 **AREA IN THE FUTURE?**

15 A. Absolutely. As with other customers, UNE-P provides a vehicle for CLECs to develop  
16 an enterprise or mass market customer base, including for DS1 customers, with sufficient  
17 concentration and scale to justify the investment in new transport and switching facilities.

18 A local switch primarily serves the immediately surrounding geographical area  
19 from its physical location. For ATX in Pennsylvania, this area is the Philadelphia  
20 metropolitan area. Since the geographic coverage or reach of a local switch is  
21 economically restricted by the cost elements of loop/collocation/transport distance, ATX  
22 cannot expand its DS1 customer base outward from a given market without the  
23 availability of a product that limits the substantial costs resulting from transporting traffic  
24 over great distances from switch to end user DS1 Platform is the only product that

1 accommodates this problem for DS1 customers outside the optimal range of a  
2 competitive LEC switch as well as in more rural geographic regions.

3 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

4 A. Our testimony is designed to rebut the national finding that the Federal Communications  
5 Commission (“FCC”) reached in its “Triennial Review Order” (“TRO”) – that being that  
6 CLECs would not be impaired without access to local circuit switching as an unbundled  
7 network element (“UNE”) to serve enterprise customers.<sup>1</sup> It is our understanding that  
8 evaluation of whether CLECs are impaired without access to local circuit switching is  
9 legally required because of a certain provision of the Telecommunications Act of 1996 –  
10 namely Section 251(d)(2) of that federal law. Although the FCC made a national finding  
11 of non-impairment for local circuit switching, the FCC recognized that the states are  
12 “uniquely positioned to evaluate local market conditions and determine whether DSI  
13 enterprise customers should be granted access to unbundled incumbent LEC circuit  
14 switching.”<sup>2</sup>

15 Throughout the TRO, the FCC refers to a state commission review of whether  
16 impairment exists for a wholesale product throughout a specific state or within areas of a  
17 specific state as a “granular” review – in that it is more locally focused than the FCC’s  
18 national review. As to local circuit switching for enterprise customers, the FCC  
19 established a 90 day window starting on the effective date of the TRO within which states  
20 could conduct a state specific granular review. This Commission has decided to conduct

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposal Rulemaking*, CC Docket No. 01-338 (August 21, 2003) at ¶ 451.

<sup>2</sup> TRO at ¶ 455.

1 just such a review. The PCC thanks the Commission for dedicating the time and the  
2 resources to a matter which is critical to our respective businesses.

3 The Commission has required that we submit the PCC's prima facie case in our  
4 original submission. Our testimony is intended to leave no doubt that there is both  
5 operational and economic impairment to CLECs if DS1 local circuit switching is  
6 eliminated as a UNE. Our testimony will show that while there is impairment throughout  
7 this Commonwealth, the impairment becomes overwhelming as one moves out from  
8 Pennsylvania's two big cities.

9 We will show this through testimony describing that substantial imposition of  
10 costs, service delays, service interruptions or service degradation all too often occur in  
11 the migration process for a DS1 customer to a CLEC's switch. We will show through a  
12 business model that switch and collocation investment to serve DS1 customers can not be  
13 reasonably recovered except possibly in Philadelphia and Pittsburgh. We will show that  
14 Verizon PA, in particular, has assured continuing impairment by its refusal or inability to  
15 comply with the *Global Order*<sup>3</sup> which was issued over four years ago, as well as its own  
16 wholesale tariff. We will show this impairment through evidence of the critical nature of  
17 the availability of DS1 unbundled circuit switching to the transition of our customers to  
18 next generation technology.

19 This testimony will demonstrate impairment within the analytical structure  
20 established by the FCC in the TRO. This should not be taken to mean that we agree with  
21 any aspect of the FCC's analysis of the impairment issue -- we do not. However, even  
22 within the constraints of the FCC's distorted analysis, it is clear that both operational and

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<sup>3</sup> *Join Petition of Nextlink Pennsylvania, Inc. et. al.*, P-000991648, P-000991649  
(September 30, 1999).

1 economic impairment continues for unbundled DS1 circuit switching under a granular  
2 Pennsylvania analysis.

3 **II. BACKGROUND.**

4 **Q. BECAUSE NOT EVERYONE SPENDS THEIR PROFESSIONAL LIFE IN THIS**  
5 **COMPLICATED BUSINESS, I WANT TO ASK THE PANEL SOME**  
6 **PRELIMINARY QUESTIONS SO THAT YOUR EVIDENTIARY**  
7 **PRESENTATION IS UNDERSTANDABLE. YOU HAVE INDICATED THAT**  
8 **THIS CASE IS ABOUT THE AVAILABILITY OF UNBUNDLED LOCAL**  
9 **CIRCUIT SWITCHING FOR DS1 ENTERPRISE CUSTOMERS. CAN YOU**  
10 **EXPLAIN WHAT THIS IS?**

11 **A.** Yes. It is easiest to understand if this question is answered in parts. Local circuit  
12 switching is the capability of a switching facility to establish a dedicated transmission  
13 path between originating and terminating points and hold that path open for the duration  
14 of a local call. From a facilities perspective, local circuit switching includes the line-side  
15 and trunk-side facilities, plus the features, functions and capabilities of the switch.

16 The enterprise market is the FCC's term for what the Commission has  
17 traditionally called the business market.<sup>4</sup> However, the lines are not as clear as they are  
18 at the state level since the FCC groups smaller businesses which it believes more closely  
19 resemble residential customers as mass market customers, not enterprise customers.

20 A DS1 customer is a customer which is served by a local loop with DS1 capacity.  
21 DS1 capacity is a 1.544 megabits per second digital signal comprised of 24 digital  
22 channels at 64 kilobit per second capacity, typically carried over what is called a T-1  
23 facility. While as explained above, the delineation between mass market and enterprise  
24 customers in Pennsylvania is not completely clear and will be addressed by the

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<sup>4</sup> On the flip side, the FCC typically refers to the residential market as the "mass market."

1 Commission in the nine month TRO proceeding, it is clear that all DS1 customers are  
2 enterprise customers under the FCC's terminology.

3 Taken together, this proceeding addresses whether the capability and functionality  
4 of the incumbent local exchange carrier's switch should be continued to be made  
5 available as a UNE to enterprise customers served by a local loop with DS1 capacity or  
6 above. If not, CLECs would be required to provide their own switching capacity, either  
7 through installation of their own local switches or through collocation arrangements at  
8 the ILEC's switching facilities to serve every single DS1 customer since the ILEC's  
9 switching capacity would no longer be available for that purpose.

10 **Q. YOU SPOKE EARLIER OF IMPAIRMENT. CAN YOU EXPLAIN WHAT**  
11 **IMPAIRMENT IS AND WHY IT IS IMPORTANT TO THIS PROCEEDING?**

12 **A.** Sure. Impairment is both a legal term and a factual term. Impairment, as a legal term  
13 originates in Section 251(d)(2) of the Telecommunications Act and, has been defined by  
14 the FCC as follows: "A requesting carrier is impaired when lack of access to an ILEC's  
15 network element poses a barrier or barriers to entry, including operational and economic  
16 barriers, that are likely to make entry into a market uneconomic."<sup>5</sup>

17 While impairment is a legal standard, whether there is impairment is immersed in  
18 a myriad of often complicated facts. Accordingly, it is our understanding that the  
19 purpose of the record in this proceeding is to determine specifically whether CLECs are  
20 impaired in Pennsylvania without access to the ILEC's unbundled local circuit switching

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<sup>5</sup> TRO at 9. While the statutory test under the Telecommunications Act is "necessary or impair," it is our understanding that because the FCC has determined that the impair standard is less demanding than the necessary standard, the FCC and the state commissions are only required to examine whether impairment exists.

1 to serve enterprise customers served by local loops at DS1 capacity or above. Hopefully,  
2 when broken down, its not as complicated as it seems at first glance.

3 **Q. CAN YOU EXPLAIN HOW A CLEC WOULD SERVE A DS1 ENTERPRISE**  
4 **CUSTOMER THROUGH THE USE OF LOCAL CIRCUIT SWITCHING FROM**  
5 **THE ILEC?**

6 A. Yes. A CLEC would typically serve a DS1 enterprise customer through a combination of  
7 local circuit switching, a DS1 (or higher capacity) local loop and transport facilities,  
8 which together would allow the CLEC to serve the customer. When a CLEC serves a  
9 customer without using its own switching capacity, loop or transport, the wholesale  
10 service arrangement is commonly referred to as the Unbundled Network Element  
11 Platform or "UNE-P."<sup>6</sup> Because this proceeding addresses UNE-P in the content of DS1  
12 or higher loops, we will refer to this specific wholesale arrangement as a "DS1 Platform."

13 With this background, we hope our testimony is understandable to readers who  
14 are not immersed in the business world that we live in on a daily basis.

15 **III. THE FCC'S FINDINGS.**

16 **Q. HAS THE FCC BASED ITS NATIONAL NON-IMPAIRMENT RULE ON**  
17 **NATIONAL FACTUAL FINDINGS?**

18 A. Yes. In fact the FCC based its national determination entirely on three specific factual  
19 findings as follows; all of which are found in paragraph 421 of the TRO:

20 Finding No. 1 -- "The evidence in our record establishes that, in  
21 most areas, competitive LECs can overcome barriers to serving  
22 enterprise customers economically using their own switching  
23 facilities in combination with unbundled loops (or loop facilities)."

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<sup>6</sup> When the CLEC provides its own switching capacity and leases a local loop from the ILEC, the wholesale service arrangement is commonly referred to as "UNE-L." For new customers, it is also possible that a CLEC would install its own DS1 or higher loop and utilize the switching capacity of the ILEC on an unbundled basis to provide service to that loop.

1 Finding No. 2 -- "The facilities used to provide DS1 capacity or  
 2 above services to enterprise customers typically are not pre-wired  
 3 to incumbent LEC switches, allowing competing carriers to avoid  
 4 the costs and service disruptions associated with "hot cuts" – the  
 5 manual process by which customer lines are migrated to  
 6 competitor switches."

7 Finding No. 3 -- "Enterprise customers also generally offer  
 8 increased revenue opportunities and are more willing to enter long-  
 9 term contracts, allowing competitive LECs a greater ability to  
 10 recover the nonrecurring costs associated with providing service  
 11 using their own switches."

12 The first and the third findings pertain to whether there is economic impairment.

13 The second finding pertains to whether there is operational impairment. It is our  
 14 understanding that if either type of impairment is found either throughout Pennsylvania  
 15 or in a portion of Pennsylvania, this Commission will seek an exception to the national  
 16 non-impairment rule for DS1 switching from the FCC on or before December 31, 2003,  
 17 or by a date subsequently established by the FCC.

18 **Q. ARE THE FCC'S FACTUAL FINDINGS SUPPORTABLE UNDER A**  
 19 **PENNSYLVANIA SPECIFIC GRANULAR APPROACH?**

20 A. No, they are not. A factual review of the Pennsylvania market and geographic sectors of  
 21 the Pennsylvania market reveals that a Pennsylvania analysis supports much different  
 22 findings, ultimately resulting in a clear picture of impairment in this case.

23 1. **FCC FINDING NO. 1 -- "The evidence in our record establishes that, in**  
 24 **most areas, competitive LECs can overcome barriers to serving enterprise**  
 25 **customers economically using their own switching facilities in combination**  
 26 **with unbundled loops (or loop facilities)."**

27 **Q. IS THE FCC'S FINDING NO. 1 TRUE UNDER A PENNSYLVANIA SPECIFIC**  
 28 **GRANULAR EVALUATION?**

29 A. No. Review of the historic deployment, scope of deployment, recent history of  
 30 deployment and likely future deployment shows that Pennsylvania CLECs, even if they

1 deploy their own switches, can not overcome economic barriers to entry for DS1  
2 enterprise customers around the state.

3 **Q. AREN'T CLECS USING SWITCHES TO SERVE DS1 CUSTOMERS IN**  
4 **PENNSYLVANIA?**

5 A. Yes they are. However, given the long trail of business failures and bankruptcies in the  
6 CLEC industry, there is a serious question as to whether the provision of service through  
7 self provisioned switching is profitable and generating a return over some reasonable  
8 period of time as demanded by investors.

9 With that said, although we are not privy to the facility inventories of other  
10 CLECs, it is clear to us from our day-to-day operations that the deployment of switches  
11 which serve or could serve DS1 customers has decreased dramatically over the past five  
12 years. In fact, we are not aware of any substantial new switch deployment in  
13 Pennsylvania over the last three years. This does not mean that no new switches which  
14 serve DS1 customers have been deployed, only that any such activity has been relatively  
15 minimal.

16 **Q. WHAT DO YOU ATTRIBUTE THIS TO?**

17 A. We attribute this to factors which represent the core of this proceeding. Investment  
18 decisions in switches are driven almost entirely by market conditions. As in any other  
19 business, a CLEC can only invest in switch deployment if it can satisfy its lenders and  
20 investors that it will not only recover its costs over a reasonable period of time, but  
21 generate an acceptable return. Of course, following deployment of a switch, the CLEC  
22 must operate the switch, as well as provide service by any other available means, in a  
23 manner which satisfies its obligations to these lenders and investors. While at one time it  
24 appeared that the market conditions in Pennsylvania justified such investment in

1 switches, those market conditions have deteriorated and are not currently supporting  
2 relatively substantial switch investment.

3 **Q. IS IT TRUE THAT CLECS WILL NOT RISK VALUABLE CAPITAL IN**  
4 **SWITCHES IF OTHER LESS CAPITAL INTENSIVE ALTERNATIVES ARE**  
5 **AVAILABLE?**

6 A. Absolutely not, although we hear this rhetoric routinely from ILECs. This claim simply  
7 ignores business reality. The deployment of switches provides potential far-reaching  
8 benefits for our companies and other CLECs, which benefits are necessary to our ultimate  
9 survival as an industry. Those benefits include the ability to deploy new products, greater  
10 flexibility in the ordering, provisioning and billing processes, greater potential  
11 profitability and more direct control of the product. We all understand first hand the  
12 immense difficulties caused by our dependence on ILECs which are also the dominant  
13 retail competitor in our business. The business contradiction of relying on a monopoly  
14 wholesaler will never result in the cost and quality of wholesale service which is  
15 necessary for a healthy CLEC industry. Elimination of dependency on the ILEC switch  
16 is a critical goal for each and everyone of us – a goal we all must ultimately achieve.  
17 However, in the near term, that dependency is an unfortunate business necessity and to  
18 prematurely eliminate unbundled switching runs the risk of eliminating CLEC switch  
19 deployment, because CLECs will not be around to invest in switches or anything else.

20 **Q. CAN THE PANEL EXPLAIN HOW THE AVAILABILITY OF A PLATFORM**  
21 **GENERATES THE ECONOMIES WHICH WOULD JUSTIFY SWITCH**  
22 **INVESTMENT?**

23 A. Yes. Like any other business investment, the investment in a switch must result in a  
24 product which attracts enough customers and generates enough revenues to justify the  
25 original expenditure over a reasonable investment cycle. Deploying a switch when the

1 CLEC has no customers can not be justified in today's business environment in  
2 Pennsylvania. This equation is equally true for DS1 customers.

3 The availability of a DS1 Platform enables CLECs to build a DS1 customer base,  
4 creating economies that will then justify switch investment over time. How quickly this  
5 occurs is dependent on the density of the areas in which the CLEC is considering  
6 deployment, since a local switch can only reach the customers in a limited geographic  
7 area, and advancements in switch technology. While expanding the coverage of the  
8 switch through Enhanced Extended Links ("EELs") or through collocation is certainly an  
9 option theoretically, these options are only available from a business perspective if the  
10 additional costs associated with EELs and collocation, as those wholesale products are  
11 offered in Pennsylvania by Verizon, can be justified and recovered from a business  
12 perspective.

13 **Q. WHAT DO YOU MEAN WHEN YOU SAY THAT ADVANCEMENTS IN**  
14 **SWITCH TECHNOLOGY WILL IMPACT INVESTMENT DECISIONS?**

15 A. Historic decisions made by CLECs to deploy switches in Pennsylvania have been made  
16 based on whether economies of scale justified building completely redundant switching  
17 environments that were and are in most regards similar to that of the Incumbent LEC. In  
18 most instances, those economies were and are only attainable in densely populated areas  
19 of the Commonwealth. Geographic location of a customer base has therefore been a  
20 primary focus to facilities-based CLECs and has limited switch deployment in non-urban  
21 areas thereby denying the benefits of competition to non-urban customers.

22 As switch technology advances to next generation networks, we believe that not  
23 only will the geographic location of a customer base matter less, but the economies of  
24 scale required to make switch deployment economically attractive will also be reduced.

1 In such an environment, CLECs would be seeking to justify investment in new  
2 technologies and improved services for customers instead of in building redundant  
3 technologies.

4 Without an available DS1 Platform with which to build statewide customer bases,  
5 CLECs will be part of the development of next generation network investment and will  
6 be compelled to justify new investments in redundant legacy networks that may be  
7 outdated long before the costs associated with their deployment are recovered, to the  
8 detriment of Pennsylvania's network modernization efforts.

9 **Q. IS THIS PREMISE REGARDING PLATFORM APPLICABLE FOR**  
10 **ENTERPRISE CUSTOMERS OR ONLY FOR MASS MARKET CUSTOMERS?**

11 A. It is true for all customers. While DS1 customers certainly provide more revenue per  
12 customer than mass market customers it does not change the fact that a CLEC can not  
13 economically support switch deployment unless it can first reach and then attract enough  
14 customers and generate enough revenues to justify the original investment. As in the  
15 mass market, the unrestricted availability of the DS1 Platform is a critical, necessary first  
16 step for widespread switch deployment by CLECs, in particular outside of major  
17 metropolitan areas. This is exactly why both this Commission and the FCC required  
18 Verizon to offer a DS1 Platform to enable CLECs to serve DS1 customers in the first  
19 place.

20 **Q. HAS VERIZON MADE A DS1 PLATFORM AVAILABLE TO CLECS IN**  
21 **PENNSYLVANIA?**

22 A. Although the PUC required Verizon to make the DS1 Platform available more than four  
23 years ago, the wholesale product it offered to CLECs was only usable if the customer was  
24 willing to spend tens of thousands of dollars to install PRI capability in its customer  
25 premises equipment. Although not impossible, it is difficult to convince a customer to

1 expend this amount of money to change service providers even when the upgrade enables  
2 service with greatly enhanced capabilities, like those available through PRI. Verizon's  
3 DS1 Platform product was only usable for PRI customers because only through PRI  
4 capability could the product provide the CLEC with the call detail records ("CDR")  
5 which would allow the CLEC to bill its customer for the CLEC's retail services. This  
6 restriction on availability of Verizon's DS1 platform was far from minor since the vast  
7 majority of DS1 customers do not have PRI at their customer service premises. As a  
8 result, up until recently, Verizon's DS1 Platform was, in fact, only available to serve a  
9 relatively small sector of the DS1 market.

10 **Q. MR. MALFARA, CAN YOU SPEAK DIRECTLY TO REMI'S EXPERIENCES**  
11 **WITH DS1 PLATFORM AVAILABILITY?**

12 Yes. Verizon's tariff has committed Verizon to an unrestricted DS1 Platform, as  
13 required by the Commission in its *Global Order*, since December 1, 1999, the effective  
14 date of Section 3, 2<sup>nd</sup> Revised Sheet 8 of the Verizon Tariff PA – PUC No. 216.

15 Notwithstanding this apparent availability, it was not until late January 2003 that Remi  
16 became the first carrier in the Commonwealth to successfully provision a two-way DS1  
17 Platform (performed under a Verizon process known as a "First Office Application") in  
18 its native state to a non-PRI DS1 customer. Remi's attempt to order and provision a DS1  
19 Platform began almost 8 months prior to the actual provisioning in June of 2002. While  
20 the DS1 Platform was fully furnished in January of 2003, the fiasco did not end there.  
21 After delay upon delay in responding to Remi's repeated attempts to resolve the issue,  
22 Remi was finally informed by Verizon that it had no mechanism under which Verizon  
23 could collect and transmit CDRs, which as explained previously was a necessity for Remi  
24 to issue retail bills.

1           In fact, Verizon had not thought through the provision of DS1 Platform service  
2 and had to subsequently create software to accommodate the provisioning and billing of  
3 this offering. After provisioning this customer in January of 2003 (after an 8 month  
4 delay), Remi did not begin receiving CDRs until approximately two weeks ago. During  
5 this lengthy delay the customer was unable to receive call detail records vital to its  
6 accounting practices as a law firm. Remi has not yet verified whether all CDRs are being  
7 properly collected by Verizon and received by Remi. As a result of this lack of foresight  
8 by Verizon and in the interest of protecting prospective customers, Remi was forced to  
9 suspend sales of this critical component of our product matrix for more than one year of  
10 our one and one half year existence.<sup>7</sup>

11           In the full year spent developing Remi's business plan throughout 2001, we  
12 incorporated several capabilities into our product matrix that were dependent upon the  
13 offerings outlined in Tariff 216 and in our interconnection agreement with Verizon PA.  
14 The DS1 Platform was and is a critical component of our approach to multi-location  
15 businesses and was branded by Remi as RemiPack24 service.

16           This lack of availability has severely curtailed our ability to compete for these  
17 business customers in Pennsylvania. A year of planning with a very carefully constructed  
18 product matrix should have been supported by UNEs purported to be available in  
19 Verizon's tariff and Remi's interconnection agreement. Unfortunately, Remi found that  
20 the DS1 Platform simply was not available. The result was that Remi could not attract  
21 the customer base that was the very focus of its business plan because of Verizon's

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<sup>7</sup> Remi was beyond persistent in its attempts to require Verizon to provide a DS1 Platform to serve non-PRI customers. Other less persistent CLECs, including the other three PCC CLECs, simply gave up on the process when it became clear that the DS1 Platform was generally unusable from an operational perspective.

1 failure to provide the unrestricted DS1 Platform it was ordered to provide by both the  
2 FCC and this Commission.

3 If these operational issues are really behind us, and we are somewhat skeptical  
4 that they are, Remi now looks forward to incorporating unrestricted DS1 Platform, as we  
5 originally intended, into our overall strategy to service multi-location customers  
6 throughout Pennsylvania (assuming it continues to be available). It is well to keep in  
7 mind that our ability to do so will be hampered by the fact that Verizon still has no  
8 standard process for ordering DS1 Platform and that each order is processed by hand,  
9 dramatically increasing the chances of error in the migration process. Maybe this story  
10 explains why this proceeding, which threatens the availability of the DS1 Platform just  
11 when it is finally becoming a usable wholesale product, is of such dire importance to our  
12 business.

13 **Q. HAS THE UNAVAILABILITY OF A DS1 PLATFORM FOR NON-PRI**  
14 **CUSTOMERS AFFECTED CLEC SWITCH DEPLOYMENT IN**  
15 **PENNSYLVANIA, IN PARTICULAR OUTSIDE OF THE TWO MAJOR**  
16 **METROPOLITAN AREAS?**

17 A. It certainly has for the PCC members. If we, as a group, had been provided the  
18 opportunity to build-up our DS1 customer bases through a usable DS1 Platform, that  
19 revenue opportunity would have undoubtedly justified additional investment decisions,  
20 whether those decisions involved installation of a new switch or expansion of the  
21 coverage of an existing switch through EELs or collocation. This additional investment  
22 did not take place.

23 **Q. ARE CLECS DEPLOYING SWITCHES WHICH CAN ECONOMICALLY**  
24 **SERVE DS1 CUSTOMERS OUTSIDE OF MAJOR METROPOLITAN AREAS?**

25 A. Not that we are aware of. Furthermore, as explained below, because of the terms and  
26 conditions of wholesale service in Pennsylvania associated with expanding the coverage

1 of existing switches to serve customers outside of the metropolitan areas, there are  
2 relatively few DS1 customers being served by CLEC switches as one moves away from  
3 the cities and into the rural parts of Pennsylvania.

4 **Q. WHAT FACTORS LIMIT CLECS IN UTILIZING CLEC SWITCHES TO**  
5 **EXTEND SERVICE OUT TO DS1 CUSTOMERS IN OTHER AREAS?**

6 A. One of the major factors is another area in which Verizon is in violation of this  
7 Commission's four year old *Global Order* requirements -- the unavailability of a DS1  
8 EEL with concentration.<sup>8</sup> EELs are critical to CLEC network expansion for the simple  
9 reason that they permit the CLECs to spread the recovery of its switch investment over a  
10 greater number of customers, central offices and remote terminals without incurring  
11 collocations costs which would otherwise be necessary -- collocations costs which are  
12 themselves prohibitive without the availability of a DS1 Platform to build up a customer  
13 base in a certain area. EELs have the potential to substantially reduce the CLECs average  
14 switching cost per customer and allows efficiencies that Verizon already enjoys as the  
15 owner of a network that was built and engineered (with guaranteed ratepayer funding) to  
16 accommodate 100% of the network. However, EELs are of very limited use without  
17 concentration, since otherwise the CLEC will incur exorbitant transport costs on a per  
18 customer basis in backhauling traffic to the CLEC's switch.

19 Like the DS1 Platform, DS1 EELs with concentration were specifically ordered  
20 by the Commission to be offered by Verizon<sup>9</sup> and are included in Verizon's wholesale

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<sup>8</sup> An EEL is the combination of an unbundled loop, the potential for multiplexing an unbundled interoffice transport. Concentration is the function of increasing the ratio between loops and transport, thereby reducing both transport costs and wasted transport capacity by 75% to 90%.

<sup>9</sup> *Global Order* at 91-92.

1 tariff. However, they simply were never provided. In fact, recently, Administrative Law  
 2 Judge Gesoff expressly recognized that this four year old requirement remained  
 3 unfulfilled by Verizon.<sup>10</sup>

4 Instead, when a CLEC attempts to order a DS1 EEL with concentration, the  
 5 CLEC will be informed that it is the CLEC which most provide the concentration.<sup>11</sup> This  
 6 requirement by Verizon, in violation of Commission and tariff requirements, significantly  
 7 limits the usefulness of EELs to extend out the CLECs network..

8 A. Yes. Even aside from the lack of concentration, the pricing of EELs needed to expand  
 9 switch coverage without incurring collocation costs are exorbitant. In order to provision  
 10 an EEL to extend a CLEC's switch coverage outward into other exchanges, the CLEC  
 11 must pay a substantial entrance facility charge which, particularly in combination with  
 12 concentration costs, makes use of EELs prohibitively expensive for areas where an EEL  
 13 is the only efficient means to serve DS1 customer from the CLEC's switch.

14 **Q. CAN'T A CLEC USE COLLOCATION TO SERVE CUSTOMERS OUTSIDE OF**  
 15 **THE REACH OF THE CLEC'S LOCAL SWITCHES?**

16 A. Sure. But again, only if the economics are justified. However, collocations involve  
 17 significant costs which are in part distance sensitive in nature. Accordingly, the ability to  
 18 use collocations to extend a CLECs network outside of the major metropolitan areas is  
 19 very limited as is reflected in Exhibit PCC-1.

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<sup>10</sup> *Verizon Pennsylvania, Inc.; Petition and Plan for Alternative Regulation Under Chapter 30; 2000 Biennial Update to Network Modernization Plan; R-00930715F002. (March 24, 2003. Rec. Dec.) at 83 ("Verizon is required to provide concentrated EELs in Pennsylvania and includes such an offering in Verizon Pa. P.U.C. - No. 216, Section 3.")*

<sup>11</sup> This is despite the fact that the Commission, in the *Global Order* could not have been clearer as to who had to provide the concentration. "BA-PA will provide all necessary multiplying as well as any necessary concentration to provide these combinations as part of the interoffice transport function." *Global Order* at 92.

1 **Q. MR. DULIN, AS A SWITCH BASED DS1 PROVIDER, WHAT IS YOUR**  
2 **PERSPECTIVE ON THE AVAILABILITY OF THE DS1 PLATFORM?**

3 A. First of all, as indicated earlier in this testimony, the only reason ATX serves its DS1  
4 customers exclusively through its own switches is because, from our perspective, the DS1  
5 Platform offered by Verizon in Pennsylvania was not a usable wholesale product because  
6 of operational deficiencies -- at least until very recently. From ATX's perspective, which  
7 I realize may be slightly different than other CLECs, ATX had no commercial choice but  
8 to serve DS1 customers, including PRI customers, through its own switches.

9 With that said, even with our switches, we are very restricted in our ability to  
10 serve this customer base by pure geography. Because of economies of scope and scale, at  
11 the time ATX was installing and purchasing its switches some time ago, ATX could only  
12 justify switch investment in the metropolitan Philadelphia area. As a result, without  
13 additional arrangements, ATX's switches are only capable of serving DS1 customers in  
14 the coverage area which covers the most urban area of the Commonwealth.

15 It is easy to say that if ATX wants to serve other DS1 customers it should merely  
16 go out and install more switches around the state. This simplistic view overlooks the fact  
17 that switches are a multi-million dollar investment. Furthermore, the economies simply  
18 can not support this notion and neither our lenders nor our investors would allow such a  
19 misguided business plan.

20 In the Philadelphia LATA (228) alone, for example, this presumption ultimately  
21 leads to the absurd outcome of CLECs installing more than 150 switches to optimally  
22 serve the Verizon territory in the same LATA. Verizon relied on its monopoly customer  
23 base, acquired prior to the Telecommunications Act of 1996, in order to deploy its more  
24 than 150 switches. To presume that a CLEC, bearing a proportionately trivial percent of

1 the market share, can and should install enough switches to optimally serve this market  
2 rejects business reality in favor of regulatory imagination.

3 A company like ATX will only deploy a switch where it is profitable to do so. Its  
4 fiduciary duty to its shareholders mandates this. The removal of viable wholesale access  
5 will not yield the result of forced-deployment, but rather fundamental market exclusion.  
6 ATX will be excluded from offering service in markets incapable of economically  
7 justifying the deployment of multiple switches, and customers in those markets will be  
8 denied competitive alternatives. Given the disparate population distribution of  
9 Pennsylvania, most geographic markets will be excluded on this basis.

10 Even as to operation of our own switches, to serve DS1 customers we must  
11 engage in a daily struggle to overcome the operational deficiencies and market power of a  
12 huge competitor, who unfortunately we are completely dependent on as a wholesale  
13 provider. The availability of a commercially usable DS1 Platform would significantly  
14 enhance our ability to expand our DS1 customer base, not only in the vast majority of  
15 Pennsylvania that we cannot reach with our switches, but also within our switch coverage  
16 area. From a businessman's perspective, to suggest that we have not been economically  
17 impaired without a useable DS1 Platform and that we will not continue to be  
18 economically impaired without the DS1 Platform is absurd.

19 **Q. CAN'T YOU EXTEND THE EXISTING COVERAGE OF YOUR SWITCHES**  
20 **THROUGH COLLOCATION OR EELS?**

21 A. These options are available, but they are very limited because of circumstances unique to  
22 Pennsylvania as described in the panel testimony above and as exemplified in the  
23 business case exhibit sponsored by Mr. Schwencke (Exhibit PCC-1). There are  
24 substantial costs associated with both EELs and collocation. Furthermore, both EELs and

1 collocation (coupled with transport) cause CLECs to incur wholesale costs which are  
2 distance sensitive. Accordingly, the further a prospective customer is from a DS1 switch,  
3 the less likely that either alternative will be economically viable. While we use these  
4 options when they make economic sense, it remains economically unviable for ATX to  
5 extend its switch coverage to serve DS1 customers outside of the Philadelphia  
6 metropolitan area.

7 **Q. FOR THE PANEL, CAN YOU DESCRIBE THE SITUATION PERTAINING TO**  
8 **THE ABILITY OF CLECS TO SERVE DS1 CUSTOMERS IN VERIZON**  
9 **NORTH'S SERVICE TERRITORY?**

10 A. While there are some CLEC switches serving DS1 customers in isolated parts of Verizon  
11 North service territory, generally speaking such opportunities are extremely limited and  
12 the presence of operational and economic impairment is even more apparent than in  
13 Verizon PA's service territory. Furthermore, Verizon North's DS1 Platform offering has  
14 never been tested because it is so prohibitively expensive that a CLEC could not  
15 conceivably use it to provide retail service in a manner that would attract any customers.

16 **Q. IS THERE ANY ABILITY FOR CLECS TO SERVE DS1 CUSTOMERS IN NON-**  
17 **VERIZON TERRITORIES?**

18 A. No there is not. These companies continue to be protected by rural  
19 exemption/suspensions. While we are aware that some limited facilities based  
20 competition has been permitted by the Commission in these territories, as far as we are  
21 aware, these companies do not offer and have never offered unbundled switching to serve  
22 any customer, much less a DS1 customer. Nor are we aware of any CLEC switch serving  
23 these areas since this would likely not be legally permitted. This, in and of itself,  
24 demonstrates the absurdity of the application of the FCC's national non-impairment rule  
25 to all of Pennsylvania.

1 Q. ARE THE PCC MEMBERS INTERESTED IN SERVING DS1 CUSTOMERS IN  
2 THESE AREAS?

3 A. Yes. In particular, FSN would like to take advantage of business opportunities in the  
4 service territory of North Pittsburgh Telephone Company ("NPTC"). In fact, if a  
5 reasonably priced EEL product was available, FSN could serve DS1 customers in  
6 NPTC's service territory through its existing switch..

7

8 2. **FCC FINDING NO. 2** -- "The facilities used to provide DS1  
9 capacity or above services to enterprise customers typically are  
10 not pre-wired to incumbent ILEC switches, allowing competing  
11 carriers to avoid the costs and service disruptions associated  
12 with "hot cuts" – the manual process by which customer lines  
13 are migrated to competitor switches."

14 Q. IS THE FCC'S FINDING NO. 2 TRUE IN PENNSYLVANIA?

15 A. No, nothing about the FCC's second factual finding is supportable in Pennsylvania.

16 Q. IN PENNSYLVANIA, ARE ALL EXISTING ILEC DS1 OR ABOVE LOOPS PRE-  
17 WIRED TO THE ILEC SWITCH OR THE SWITCH'S DISTRIBUTION FRAME?

18 A. Yes, this would be the case for all existing DS1 customers served by an ILEC in  
19 Pennsylvania.

20 Q. CAN A PENNSYLVANIA ILEC CUSTOMER SERVED BY A DS1 LOOP  
21 MIGRATE TO A CLEC SWITCH WITHOUT THE NEED FOR A MANUAL  
22 HOT CUT?

23 A. No. Our experience in Pennsylvania is quite different from the basic assumption upon  
24 which the FCC based its national finding -- that CLECs can migrate service without  
25 utilizing a manual hot cut. Each of our companies have substantial experience with DS1  
26 customer migration as they occur in Verizon's service territory and it is this actual  
27 Pennsylvania experience which should form the basis for a Pennsylvania specific finding.

1           When a CLEC acquires a commitment from an existing Verizon DS1 customer in  
2           Pennsylvania, and places an order to migrate that customer, the first question is whether  
3           there are spare loop facilities available from Verizon's central office to the customer  
4           premises. If there is no spare facility available, Verizon has no established process (hot  
5           cut or otherwise) to migrate the customer to the CLEC's switch-based service. Absent a  
6           DS1 Platform, our companies and other CLECs will not be able to provide switch-based  
7           local service to the DS1 customer at all unless Verizon, at some point in the future,  
8           develops a migration process or agrees to build out loops to these customers for CLECs.  
9           From a business perspective, this is an intolerable result which occurs frequently in  
10          Pennsylvania and which was not even addressed by the FCC. If CLECs can not  
11          technically provide switched-based local service to an entire sector of the DS1 market  
12          without access to the DS1 Platform, it is hard to imagine how we are not impaired if this  
13          option were eliminated.

14          Moving on, however, if a facility (spare loop) is available, a manual hot cut  
15          process is still required between the ILEC and CLEC facilities, contrary to the FCC's  
16          finding, the only difference being that the hot cut occurs at the customer premises rather  
17          than at the central office. As described below, the fact that the manual hot cut process is  
18          at the customer's location does not alleviate the problems identified by the FCC with hot  
19          cuts generally. Only the development of a process like electronic loop provisioning or  
20          the transition to next generation switching technology can address this problem.

21   **Q.    IS THE PARALLEL DELIVERY PROCESS DESCRIBED BY THE FCC IN**  
22   **PARAGRAPH 452 OF THE TRO AVAILABLE TO PENNSYLVANIA CLECS**  
23   **GENERALLY IN THE DS1 MIGRATION PROCESS?**

24   **A.    No, it is not. The reality of these migrations is that customers very rarely have excess**  
25   **capacity on their PBX equipment that would allow CLECs to test the operation of its**

1 facilities with respect to the customer's unique PBX programming prior to the actual  
2 cutover of those facilities. In fact, because these customers normally have complex  
3 routing and translation configurations resident in the PBX, the cutover process is much  
4 more involved than the hot cut process for analog lines. Though the physical link  
5 configuration parameters such as line coding, framing and protocol can be tested prior to  
6 cutover, configurations of logical parameters that involve definitions of trunk groups,  
7 directional capabilities, Direct Inward Dialing parameters, Direct Outward Dialing  
8 parameters, operational settings (PRI 23B+D, 23B+B, 24B, voice, data, call-by-call  
9 configuration, etc.) cannot be tested without duplicate customer premise equipment  
10 capacity that would, of course, only be needed during the actual migration process.  
11 Finally, the number porting activities are exactly the same as those necessary in the mass  
12 market hot cut process with the exception that DS1 customers typically have complex  
13 routing schemes involving the requirement to support near simultaneous porting of  
14 numbers and where a single telephone number may support huge amounts of traffic. The  
15 subsequent damage, therefore, that occurs as a result of a badly coordinated number port  
16 on the new relationship between customer and carrier is something that the relationship  
17 between the CLEC and the customer may not survive.

18 As a group, we have not migrated any Pennsylvania DS1 customers that  
19 possessed the requisite excess capacity necessary to use the parallel process described by  
20 the FCC to avoid the risk of this live cutover and we do not believe it reasonable to think  
21 we will in the future. Essentially, the FCC heavily relies on a scenario with DS1  
22 customers which likely does not exist in Pennsylvania and, if it does, is the rare exception  
23 rather than the rule.

1 **Q. EVEN IF THE SO CALLED PARALLEL PROCESS WERE AVAILABLE,**  
 2 **WOULD IT ALLEVIATE THE NEED FOR MANUAL HOT CUTS IN THE DS1**  
 3 **MIGRATION PROCESS IN PENNSYLVANIA?**

4 No, the hot cut would just take place at the customer premises, but would have  
 5 essentially the same manual process and the same interaction between the parties. In fact,  
 6 often, we find that the problems associated with the hot cut process at the central office  
 7 are simply aggravated and more egregious when the hot cut moves to the customer  
 8 location, as is the case with a DS1 migration. The fact that, as indicated above, there is no  
 9 formal hot cut process for DS1 loops at the ILEC central office under this scenario does  
 10 not remove the technical necessity that both a physical and logical facility replacement  
 11 must occur in a tightly coordinated process involving many participants, including the  
 12 ILEC. In these types of migrations, the required coordination between the customer, the  
 13 CLEC, the interconnect company who supports the software and hardware of the  
 14 customer premise equipment, the Numbering Plan Administration Center and the ILEC  
 15 must be perfect and, even then, the customer may be out of service for significant lengths  
 16 of time.

17 **Q. CAN YOU DESCRIBE THE STEPS IN THE HOT CUT PROCESS WHICH**  
 18 **OCCURS IN A DS1 MIGRATION?**

19 **A. Yes. the hot process is a multiple step process which includes the following steps:**

- 20 1. Verify and define individual case processes and required additional capacity with
- 21 customer and customer's phone system vendor
- 22 2. Notify LEC of migration and obtain CSR
- 23 3. Order facilities through VZ (if available)
- 24 4. Arrange hot cut migration time with LEC, customer and phone system vendor
- 25 5. Design and arrange PBX routing and translations reconfiguration with phone
- 26 system vendor
- 27 6. VZ provisions new facilities
- 28 7. Phone system vendor installs/verifies in-house wiring for new facility
- 29 8. Level 1 and Level 2 testing of new facility with Verizon and phone system vendor
- 30 9. Provision LNP Trigger in both losing and gaining LEC Class 5 switches at least 24
- 31 hours in advance

1 10. Activate the numbers in the NPAC at the assigned time and test each  
2

3 **Q. DOES THE UNAVOIDABILITY OF THE HOT CUT PROCESS IN**  
4 **PENNSYLVANIA CREATE ANY ISSUES WITH SERVICE DELAYS, SERVICE**  
5 **INTERRUPTIONS OR SERVICE DEGRADATION?**

6 A. Yes, in fact as indicated previously, the potential for service delays, service interruption  
7 or service degradation is of the same magnitude as it is with mass market migrations.

8 **Q. DO YOU ENCOUNTER OPERATIONAL IMPAIRMENT ISSUES IN THE HOT**  
9 **CUT PROCESS AS A RESULT OF STEPS IN THE PROCESS OTHER THAN**  
10 **THE ACTUAL TRANSFER OF WIRES?**

11 A. Yes we do. Because there are operational deficiencies in the process used by Verizon  
12 for ordering DS1 migrations, which are particularly problematic if that migration to the  
13 CLEC switch involves an EEL, the manual processes utilized by Verizon are all too  
14 frequently affected by multiple human or system errors which can cause service delays,  
15 interruptions or degradation. In many instances, the adverse impact on the CLEC and the  
16 CLEC's customer are even worse than the problems caused by the actual transfer of  
17 wires. For example, when CLECs make service commitments to customers and those  
18 service commitments are not met because of Verizon errors, sometimes by a magnitude  
19 of days, the CLEC's business relationship with the customer is seriously threatened, if not  
20 destroyed.

21 **Q. DOES THIS DEMONSTRATE THAT THE ADVERSE IMPACT OF THE**  
22 **HOTCUT PROCESS ON PENNSYLVANIA DS1 CUSTOMERS SPECIFICALLY**  
23 **IS SUBSTANTIALLY THE SAME AS FOR MASS MARKET CUSTOMERS?**

24 A. Yes it does.

25 **Q. FOR THE PANEL, DO SERVICE DELAYS, SERVICE INTERRUPTIONS AND**  
26 **SERVICE DEGRADATION ISSUES RESULTING FROM THE HOT CUT**  
27 **PROCESS TO CLEC SWITCHING HAVE AN AFFECT ON YOUR ABILITY TO**  
28 **ATTRACT AND RETAIN CUSTOMERS?**

1 A. Of course. No matter who is at fault in the hot cut process, it is the new carrier, the  
 2 CLEC, which the customer blames for any resulting problems. While in some  
 3 circumstances sophisticated enterprise customers may be more tolerant of minor service  
 4 interruptions than residential customers, each of our companies has lost customers we  
 5 could have acquired as a result of the hot cut process.

6 **Q. DOES THE HOT CUT PROCESS IMPOSE ANY ADDITIONAL COSTS ON**  
 7 **CLECS?**

8 A. Yes, very substantial costs. Because of the operational deficiencies in Verizon's DS1 hot  
 9 cut process, CLECs must take extraordinary steps to avoid lengthy service disruptions  
 10 and service degradation. The costs imposed on the CLEC to insert these safeguards into  
 11 the process are very substantial. In fact, the CLEC costs imposed by this process are  
 12 significant enough to affect the decision as to whether the CLEC can economically serve  
 13 the customer.

14 **3. FCC FINDING NO. 3 -- "Enterprise customers also generally offer increased**  
 15 **revenue opportunities and are more willing to enter long-term contracts,**  
 16 **allowing competitive LECs a greater ability to recover the nonrecurring costs**  
 17 **associated with providing service using their own switches."**

18 **Q. IS THE FCC'S THIRD FACTUAL FINDING IN PENNSYLVANIA?**

19 A. No, it is not.

20 **Q. DO YOU AGREE WITH THE FCC'S PREMISES THAT ENTERPRISE**  
 21 **CUSTOMERS GENERALLY OFFER INCREASED REVENUE**  
 22 **OPPORTUNITIES AND ARE MORE WILLING TO ENTER INTO LONG-**  
 23 **TERM CONTRACTS?**

24 A. Yes, we do. In fact, this is stating the obvious.

25 **Q. DOES THIS MEAN THAT THE ECONOMIES OF THE MARKET WILL**  
 26 **JUSTIFY SWITCH DEPLOYMENT INVESTMENT FOR YOUR**  
 27 **COMPANIES?**

1 A. No, and as we have explained in detail above, the decision as to whether to deploy a  
2 switch or to invest in the expanded coverage of existing switches is far more complicated  
3 than is reflected in the FCC's finding. Both strategies involve significant recurring and  
4 nonrecurring expenditures. The lack of a DS1 Platform for most DS1 customers and the  
5 lack of unbundled concentrated DS1 EELs, as ordered by this Commission, have  
6 significantly impaired switch deployment and expanded switch coverage in Pennsylvania.  
7 Until both of these wholesale arrangements have been offered on an unrestricted basis for  
8 a significant period of time, the economics of scope and scale are not present in  
9 Pennsylvania to seriously consider elimination of the unbundling requirement.

10 **Q. HOW DO THE ECONOMIES DIFFER BETWEEN PENNSYLVANIA'S TWO**  
11 **BIG CITIES AND AREAS OUTSIDE OF THOSE METROPOLITAN AREAS?**

12 A. The economics vary dramatically. In the absence of the foregoing operational  
13 impairment issues, in Philadelphia and Pittsburgh, the high density of DS1 customers  
14 may justify the deployment of a switch to serve those customers, particularly if a CLEC  
15 has been provided an opportunity to develop a DS1 customer base through a DS1  
16 Platform Arrangement (which of course, has not occurred in Pennsylvania). Indeed,  
17 CLECs have self-provisioned many switches -- albeit most of the switches were deployed  
18 years ago -- which serve DS1 customers in the two major metropolitan areas.

19 This may also be true, although to a far lesser extent, in secondary markets in  
20 Verizon's service territory, like Harrisburg and Wilkes Barre, which have relatively high  
21 DS1 customer density in a particular exchange or area, again, absent the foregoing  
22 operational impairment. However, it is certainly not true in the vast rural areas of the  
23 Commonwealth. In these areas, which represent the majority of the Commonwealth and

1 Verizon's service territory, the low density of DS1 customers results in economies of  
2 scope and scale which simply do not support switched based service by a CLEC.

3 **Q. DO LESS DENSE EXCHANGE AREAS AFFECT THE ECONOMIES OF**  
4 **SWITCH DEPLOYMENT AND COLLOCATION ACTIVITIES?**

5 A. Absolutely, and this does not mean that CLECs do not want to serve these areas, we do.  
6 However, without DS1 Platforms and reasonably priced concentrated EELs, service to  
7 DS1 customers in these areas by CLECs is unlikely. Like so many other instances, it  
8 seems as if the rural part of Pennsylvania gets left behind.

9 Clearly, the FCC recognized the large disparity of economies of scope and scale  
10 between urban and rural areas for the nation as a whole. For example, in discussing the  
11 mass market, the FCC cited to Regional Bell Operating Company evidence that because  
12 of density issues, switch-based entry in wire centers with more than 5,000 access lines  
13 was more feasible than for smaller, less dense wire centers.<sup>12</sup> Like the mass market, the  
14 viability of CLEC switch-based service for DS1 customers is highly dependent on the  
15 density of the exchange, since DS1 customers are clustered in large, dense wire centers.  
16 While we have not studied which Verizon wire centers in Pennsylvania exceed 5,000  
17 access lines or whether the 5,000 access lines per wire center is an appropriate density  
18 benchmark, we agree with the FCC that this type of factor deserves serious consideration  
19 by the Commission.

20 **Q. MR. SCHWENCKE, CAN YOU PROVIDE SPECIFIC BUSINESS CASES**  
21 **WHICH SUPPORT AND DEMONSTRATE THE TESTIMONY OF THE PANEL?**

22 A. Yes. We have prepared an exhibit (Exhibit PCC-1) which provides a Wholesale  
23 Cost/Retail Price Comparison. This analysis demonstrates the significant economies of

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<sup>12</sup> TRO at 472. While the FCC did not adopt this finding as its own, it did specifically ask the states to consider this and other factors in the states granular impairment analysis.

1 scope and scale which are required to recover the costs which a CLEC must pay to extend  
2 its network to serve DS1 customers. It is important to understand that the analysis only  
3 takes into account wholesale costs which are based on publicly available information and  
4 does not account for recovery of FSN's (or any other CLEC's ) own retail costs. Of  
5 course, FSN must recover its retail costs as well in the prices it charges its DS1 customers  
6 for service.

7 **Q. THROUGHOUT YOUR TESTIMONY, YOU HAVE TALKED ABOUT THE**  
8 **ECONOMIC AND OPERATIONAL IMPAIRMENT THAT YOUR COMPANIES**  
9 **AND OTHER CLECS WILL ENCOUNTER IF UNBUNDLED DS1 SWITCHING**  
10 **IS ELIMINATED. WHEN DO YOU SEE THIS IMPAIRMENT ENDING?**

11 A. There has been an ongoing debate at the national level, and to a lesser extent within the  
12 states, as to how to address the economic impairment issue, particularly in non-urban  
13 areas, as well as the operational impairment issue caused by the necessary hot cuts  
14 involved in Verizon's legacy system migration processes. Ultimately, the fix for both of  
15 these types of impairments is quickly approaching but is not here yet.

16 The so-called next-generation network ("NGN"), including Voice over Internet  
17 Protocol ("VoIP"), is quickly evolving into a technology that will not only serve to  
18 eliminate the economic and operational impairment being experienced by our CLEC  
19 industry, and, in particular, in the DS1 market, but holds virtually unlimited promise for  
20 consumers as well as the Commonwealth's network modernization objectives. Once the  
21 remaining technological problems are addressed, CLECs will be able to invest in  
22 widespread deployment of this network. Thus, NGN will quickly eliminate the economic  
23 and operational impairment issues associated with legacy systems that clearly exist today  
24 for CLECs attempting to serve DS1 customers.

1 NGN will not only eliminate hot cuts, the primary source of operational  
2 impairment, but will introduce a level of economic efficiency to the telecommunications  
3 industry, including the CLEC industry, that has never been seen before. In fact, putting  
4 aside the economic and operational impairment issues which we continue to encounter  
5 with the use of the current network, the anticipated development and deployment of an  
6 NGN makes continued CLEC investment in legacy technology impossible to finance,  
7 thereby creating a separate basis for concluding that CLECs will be impaired if the DS1  
8 platform becomes unavailable.

9 **Q. IS IT APPROPRIATE TO CONCLUDE THEREFORE THAT CLECS WILL BE**  
10 **DISADVANTAGED OR IMPAIRED IF A DS1 PLATFORM IS NOT**  
11 **AVAILABLE DURING THE TRANSITION TO NGN?**

12 A. Severely impaired. This evidence clearly demonstrates that, the DS1 Platform provides  
13 the necessary transitional mechanism to migrate customers to NGN technology, after  
14 which the DS1 Platform can and should be eliminated. To the extent DS1 Platform is no  
15 longer available at the time of transition to NGN, the CLEC industry will be severely  
16 disadvantaged in this migration to the detriment of Pennsylvania consumers and  
17 businesses and the Pennsylvania economic generally.

18 **Q. WILL THE CONTINUED AVAILABILITY OF THE DS1 PLATFORM UNTIL**  
19 **THIS TRANSITION OCCURS HAVE POSITIVE IMPLICATIONS FOR**  
20 **NETWORK MODERNIZATION IN PENNSYLVANIA?**

21 A. Yes it will. To the extent that DS1 Platform remains available throughout the  
22 Commonwealth, we have no doubt that it will serve as an important catalyst to robust  
23 NGN deployment from the center of the big cities, deep into the rural areas of  
24 Pennsylvania, and the PCC looks forward to the day (not so long from now) when we can  
25 participate in that important effort.  
26

1           **IV.    STATE LAW ISSUES.**

2   **Q.    CAN THE PANEL DETERMINE WHETHER DS1 CUSTOMERS ARE BELOW**  
3   **OR ABOVE THE COMMISSION'S \$10,000 TBR BENCHMARK FOR**  
4   **COMPETITION DESIGNATION OF SERVICE TO BUSINESS CUSTOMERS?**

5   A.    No we can not, although as we understand it in the delineation is important to the  
6        application of Pennsylvania law to DS1 switching. If the DS1 customer falls below the  
7        \$10,000 benchmark, the Commission has determined that barriers to CLEC switching  
8        remain in serving that customer by any means. If the DS1 customer falls above the  
9        \$10,000 benchmark, we have been informed by counsel that continued unbundling of  
10       local circuit switching is required under state law.<sup>13</sup> It also appears that the TRO  
11       benchmark is to be measured using Verizon's rates and services. In any case, it is likely  
12       that some DS1 customers fall below the benchmark, while others exceed it.

13   **Q.    IS THE PENNSYLVANIA MARKET FOR CUSTOMERS WITH MORE THAN**  
14   **\$10,000 IN TBR FULLY COMPETITIVE?**

15   A.    No it is not, since as we testified above, an unrestricted DS1 Platform was not available  
16        until recently and because we are economically and operationally impaired in providing  
17        switched based services to DS1 customers. The designation of customers with TBR  
18        between \$10,000 and \$80,000 as competitive in the 1999 *Global Order* was not based on  
19        a factual review of that market, but instead was based on a sliding scale which reduced  
20        the benchmark over time without any further review. Accordingly, the competitive  
21        designation of these customers was based completely on speculation and as we have  
22        described in this testimony, does not reflect actual market conditions.

23   **Q.    WILL EXISTING AND POTENTIAL FUTURE CUSTOMERS BE AFFECTED IF**  
24   **IMPAIRMENT IS NOT FOUND IN THIS PROCEEDING?**

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<sup>13</sup> See 66 Pa. C.S. § 3005(e)(1)

1 A. Very much affected. As described in this testimony, the PCC companies offer existing  
2 customers savings and advanced services which are not available from Verizon through  
3 the DS1 Platform. Furthermore, now that the DS1 Platform may be available for all DS1  
4 customers, there are many additional DS1 customers who can take advantage of the  
5 savings and advanced services which our companies, and other CLECs, can offer through  
6 this wholesale service arrangement.

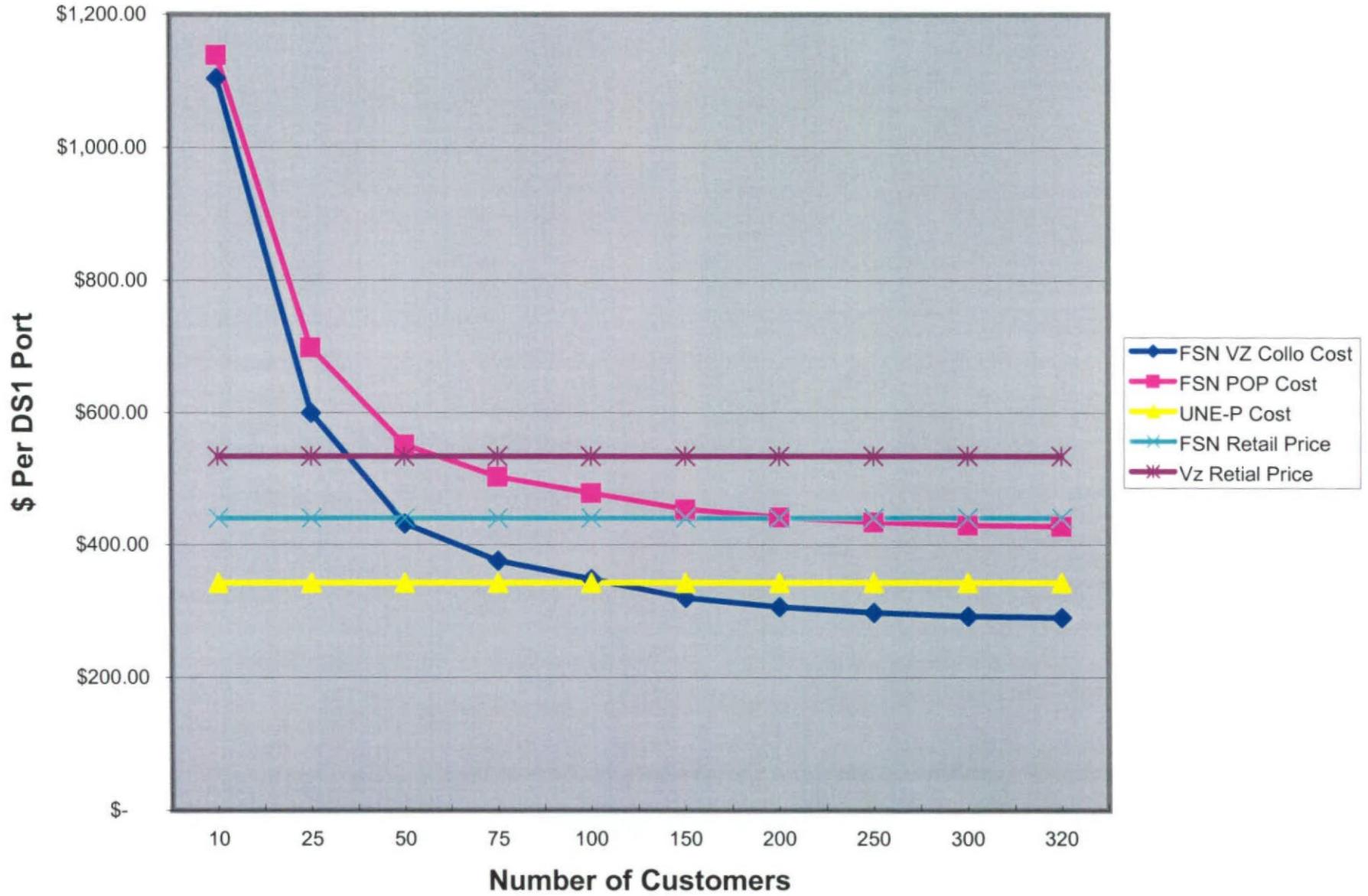
7 If the DS1 Platform is eliminated, existing customers will likely be forced (or  
8 slammed) back to Verizon against the customers will and will lose the advantage they  
9 chose under their existing service arrangement. Potential customers will be denied an  
10 opportunity for lower rates and advanced services which would provide the potential for  
11 significant value to the customers' respective businesses.

12 **Q. DOES THIS CONCLUDE THE PANEL'S TESTIMONY?**

13 A. Yes.

**EXHIBIT PCC-1**

### WHOLESALE COST/RETAIL PRICE COMPARISON



	Collo	FSN	UNE	Sell	Verizon Sell
10	\$ 1,103.76	\$ 1,138.64	\$ 342.25	\$ 440.00	533.83
25	\$ 599.52	\$ 698.14	\$ 342.25	\$ 440.00	533.83
50	\$ 431.44	\$ 551.30	\$ 342.25	\$ 440.00	533.83
75	\$ 375.41	\$ 502.36	\$ 342.25	\$ 440.00	533.83
100	\$ 347.40	\$ 477.89	\$ 342.25	\$ 440.00	533.83
150	\$ 319.39	\$ 453.41	\$ 342.25	\$ 440.00	533.83
200	\$ 305.38	\$ 441.18	\$ 342.25	\$ 440.00	533.83
250	\$ 296.98	\$ 433.84	\$ 342.25	\$ 440.00	533.83
300	\$ 291.37	\$ 428.94	\$ 342.25	\$ 440.00	533.83
320	\$ 289.62	\$ 427.41	\$ 342.25	\$ 440.00	533.83

Location	Exchange	Density Cell	Miles from Pittsburgh
Carnegie	412-494	3	10.4
Hopewell	724-378	4	19.6
Burgettstov	724-947	4	21.4
Washingto	724-229	4	24.4
Ligonier	724-238	4	39.3
Uniontown	724-437	4	39.4
Marion Cer	724-397	4	47.4
Farmingtor	724-329	4	49.0
Grove City	724-458	4	49.3
Greenville	724-588	4	69.5

37.0 Average Miles

### Verizon Central Office Collocation Charges

# of DS1's	10
Months	60

	Price	Quantity	Total Cost	Per DS1	
Application Fee	\$5,000.00	\$1.00	\$5,000.00	\$8.33	*
DS1 Cross Connect	\$14.77	\$10.00	\$147.70	\$14.77	
Power per Amp	\$14.27	\$100.00	\$1,427.00	\$142.70	
Square Foot Floor Space	\$2.27	\$100.00	\$227.00	\$22.70	
Telephone Switch	\$400,000.00	\$1.00	\$400,000.00	<u>\$666.67</u>	*
				\$855.17	Total

### FSN Site Charges

# of DS1's	10
Months	60

	Price	Quantity	Total Cost	Per DS1	
Application Fee	\$0.00	\$1.00	\$0.00	\$0.00	*
DS1 Cross Connect	\$0.00	\$10.00	\$0.00	\$0.00	
Power per Month	\$150.00	\$0.00	\$0.00	\$0.00	
Square Foot Floor Space	\$2.25	\$300.00	\$675.00	\$67.50	
Telephone Switch	\$400,000.00	\$1.00	\$400,000.00	<u>\$666.67</u>	*
				\$734.17	

### Verizon Wholesale Pricing

	Now	ALJ's	Tentative
Entrance Facility	\$155.88	\$112.66	\$99.77
DS1 Port	\$92.70	\$86.04	\$47.36
Port Usage	\$0.001802	\$0.001019	\$0.001606
Customer Loop:			
Density Cell 1	\$117.90	\$76.02	\$87.81
Density Cell 2	\$120.62	\$105.76	\$93.80
Density Cell 3	\$146.42	\$116.02	\$102.36
Density Cell 4	\$191.17	\$150.06	\$133.49
Inter Office Mileage:			
Fixed Cost	\$35.22	\$52.95	\$50.67
Per Mile	\$0.60	\$3.71	\$3.54

<b>Cost Calculator</b>					
<b>FSN Provides DS1 Port From Collocation</b>					
		<u>Now</u>	<u>ALJ's</u>	<u>Tentative</u>	
		Verizon CO Costs	\$855.17	\$855.17	\$855.17
		E. Facility	\$0.00	\$0.00	\$0.00
D Cell	4	Cust Loop	\$191.17	\$150.06	\$133.49
Miles	37.00	IOF Mileage	\$22.20	\$137.27	\$130.98
		IOF Fixed	\$35.22	\$52.95	\$50.67
		<b>Cost</b>	<b>\$1,103.76</b>	<b>\$1,195.45</b>	<b>\$1,170.31</b>

<b>Cost Calculator</b>					
<b>FSN Provides DS1 Port From FSN Site</b>					
		<u>Now</u>	<u>ALJ's</u>	<u>Tentative</u>	
		FSN Site Costs	\$734.17	\$734.17	\$734.17
		E. Facility	\$155.88	\$112.66	\$99.77
D Cell	4	Cust Loop	\$191.17	\$150.06	\$133.49
Miles	37.00	IOF Mileage	\$22.20	\$137.27	\$130.98
		IOF Fixed	\$35.22	\$52.95	\$50.67
		<b>Cost</b>	<b>\$1,138.64</b>	<b>\$1,187.11</b>	<b>\$1,149.08</b>

<b>Cost Calculator</b>					
<b>Verizon UNE-P</b>					
		<u>Now</u>	<u>ALJ's</u>	<u>Tentative</u>	
D Cell	4	Cust Loop	\$191.17	\$150.06	\$133.49
Miles	Not Applicable	Cust Port	\$92.70	\$86.04	\$47.36
Minutes	32400	Port Usage	\$58.38	\$33.02	\$52.03
		<b>Cost</b>	<b>\$342.25</b>	<b>\$269.12</b>	<b>\$232.88</b>

CONFIDENTIAL

**CERTIFICATE OF SERVICE**

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

**VIA E-MAIL AND FEDERAL EXPRESS**

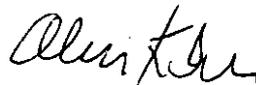
Julia A. Conover, Esq.  
William Peterson, Esq.  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32N  
Philadelphia, PA 19103

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

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

**VIA E-MAIL AND HAND DELIVERY**

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



\_\_\_\_\_  
Alan Kohler, Esq.

Date: October 17, 2003

03-40606 L

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

MOTION INFORMATION STATEMENT

03-40606/co

Caption (use short title)

Docket Number(s): FCC 03-38

InfoHighway Communications Corporation,

Motion for: Stay Pending Judicial Review

v.

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

Federal Communications Commission and United States of America

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

MOVING PARTY: InfoHighway Communications Corp.

OPPOSING PARTY: Federal Communications Commission

- Plaintiff  Defendant
- Appellant/Petitioner  Appellee/Respondent

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

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

Kelley Drye & Warren LLP  
1200 18th Street, N.W., Suite 500, Washington, DC 20036  
(202) 955-9800  
raamoith@kelleydrye.com

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

Court/Judge/Agency appealed from: Federal Communications Commission

Please check appropriate boxes:

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

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

Has request for relief been made below?  Yes  No

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

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

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

Requested return date and explanation of emergency:  
\_\_\_\_\_  
\_\_\_\_\_

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

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

ORDER

Before: Hon. Guido Calabresi, Circuit Judge.

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

*Courtesy copy*

FOR THE COURT:  
ROSEANN B. MACKECHNIE, CLERK

By: Laura Kasson



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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

IRWINA. POPOWSKY  
Consumer Advocate

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

October 21, 2003

DOCUMENT

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

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2003 OCT 21 PM 4:11  
SECRETARY'S BUREAU

Re: Investigation into the Obligation of Incumbent  
Local Exchange Carriers to Unbundle Local  
Circuit Switching for The Enterprise Market  
Docket No. I-00030100  
Pennsylvania Carriers' Coalition's Petition to  
Initiate Proceedings  
Docket No. ~~I-00030100~~

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Notice of Intervention and Public Statement in the above-captioned proceeding.

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

Sincerely,

Barrett C. Sheridan  
Assistant Consumer Advocate

Enclosures

cc: All parties of record

\*76611

61

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Pennsylvania Carriers' Coalition's :  
Petition to Initiate Proceedings : Docket No. P-\_\_\_\_\_

NOTICE OF INTERVENTION

DOCKETED

OCT 27 2003

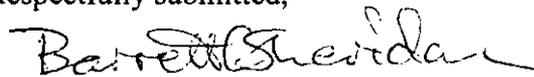
Pursuant to 52 Pa. Code Sections 5.71-74, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. A copy of all correspondence and notices, documents, orders or other communications with respect to the above-captioned proceeding should be addressed to the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

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

DOCUMENT

[bsheridan@paoca.org](mailto:bsheridan@paoca.org)

Respectfully submitted,



Barrett C. Sheridan  
Assistant Consumer Advocate

DATED: October 21, 2003  
00076606.doc

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SECRETARY'S BUREAU

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

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and participate in proceedings before the Commission involving the ability of Competitive Local Exchange Carriers (CLECs) to utilize portions of the telephone network of incumbent Local Exchange Carriers (ILECs) such as Verizon Pennsylvania Inc.

In August 2003, the Federal Communications Commission ("FCC") revised its regulations which address the obligation of ILECs to offer such access to their network as unbundled network elements ("UNEs"). In response to the FCC's directive, the PUC initiated a 90-day proceeding to allow CLECs serving the enterprise or large business market the opportunity to petition for continued access to such ILEC UNEs. On October 17, 2003, Full Service Computing Corporation t/a Full Service Network, Remi Retail Communications, LLC., ATX Licensing, Inc. and Line Systems, Inc., collectively the Pennsylvania Carriers' Coalition, filed such a petition.

The OCA has intervened to assure that the interests of residential consumers who may be served by such CLECs are protected. For example, a CLEC contracted to serve an entire apartment complex may face difficulties in continuing to provide service if access to the ILEC's network is diminished or eliminated. The OCA will participate at any hearings and file briefs as necessary to advance the interests of residential consumers.

CERTIFICATE OF SERVICE

Re: Investigation into the Obligation of Incumbent Local Exchange Carriers to Unbundle Local  
Circuit Switching for The Enterprise Market  
Docket No. I-00030100  
Pennsylvania Carriers' Coalition's Petition to Initiate Proceedings  
~~Docket No. P-~~

I hereby certify that I have this day served a true copy of the foregoing document,  
Office of Consumer Advocate's Notice of Intervention, upon parties of record in this proceeding in  
accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the  
manner and upon the persons listed below:

Dated this 21st day of October, 2003.

SERVICE BY INTER-OFFICE MAIL

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

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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

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

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

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

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

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

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

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



Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett C. Sheridan  
Assistant Consumer Advocate  
Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
\*76603

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ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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

IRWINA. POPOWSKY  
Consumer Advocate

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

October 21, 2003

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

DOCUMENT

SECRETARY'S BUREAU

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Re: Investigation into the Obligation of Incumbent  
Local Exchange Carriers to Unbundle Local  
Circuit Switching for The Enterprise Market  
Docket No. I-00030100  
Petition to Initiate Proceedings of  
InfoHighway Communications and Manhattan  
Telecommunications Corp.  
Docket No: P- ~~I-00030097~~

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Notice of Intervention and Public Statement in the above-captioned proceeding.

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

Sincerely,

Barrett C. Sheridan  
Assistant Consumer Advocate

Enclosures

cc: All parties of record  
\*76613

62

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition to Initiate Proceedings of :  
InfoHighway Communications and : Docket No. P-\_\_\_\_\_  
Manhattan Telecommunications Corp. :

NOTICE OF INTERVENTION

DOCKETED

OCT 27 2003

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

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

DOCUMENT

[bsheridan@paoca.org](mailto:bsheridan@paoca.org)

Respectfully submitted,



Barrett C. Sheridan  
Assistant Consumer Advocate

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SECRETARY'S BUREAU

DATED: October 21, 2003  
00076605.doc

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

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and participate in proceedings before the Commission involving the ability of Competitive Local Exchange Carriers (CLECs) to utilize portions of the telephone network of incumbent Local Exchange Carriers (ILECs) such as Verizon Pennsylvania Inc.

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The OCA has intervened to assure that the interests of residential consumers who may be served by such CLECs are protected. For example, a CLEC contracted to serve an entire apartment complex may face difficulties in continuing to provide service if access to the ILEC's network is diminished or eliminated. The OCA will participate at any hearings and file briefs as necessary to advance the interests of residential consumers.

CERTIFICATE OF SERVICE

Re: Investigation into the Obligation of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for The Enterprise Market  
Docket No. I-00030100  
Petition to Initiate Proceedings of InfoHighway Communications and Manhattan Telecommunications Corp.  
Docket No. P-

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Notice of Intervention, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of October, 2003.

SERVICE BY INTER-OFFICE MAIL

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

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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

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

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Kelley, Drye & Warren, LLP  
1200 Nineteenth Street, NW, Suite 500  
Washington, DC 20036

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Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett C. Sheridan  
Assistant Consumer Advocate  
Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
\*76610

SECRETARY'S BUREAU

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1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

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(202) 955-9792

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BRUSSELS, BELGIUM

(202) 955-9600

ORIGINAL

ROSS A. BUNTROCK

DIRECT LINE: (202) 887-1248

EMAIL: rbuntrock@kelleydrye.com

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

October 21, 2003

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

DOCUMENT

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

Re: **Amended Joint Petition and Joint Declaration: Dockets I-00030100,**  
**I-00031754, M-00030099**  
0099 1754

Dear Mr. McNulty:

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

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OCT 21 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

74

Pennsylvania Public Utility Commission  
October 21, 2003  
Page Two

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

Respectfully submitted,

  
Ross A. Buntrock

Enc.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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

Counsel to the Petitioners

October 17, 2003

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OCT 21 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY & BOARD

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030100

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

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

**DOCKETED**  
NOV 03 2003

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

**DOCUMENT**

**I. INTRODUCTION**

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

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

Order in an abundance of caution, despite the fact that the U.S. Court of Appeals for the Second Circuit has granted the respective motions of the Petitioners, and temporarily stayed the effectiveness of those portions of the FCC's Triennial Review Order<sup>2</sup> ("TRO") which provide the basis for the Commission to conduct this proceeding.<sup>3</sup>

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

---

<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Aug. 21, 2003).*

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

<sup>4</sup> BLACK'S LAW DICTIONARY 983 (6th ed. 1991).

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

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

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

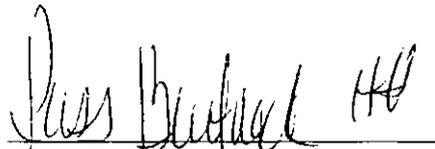
Pursuant to the procedural rules established by the Commission in the Procedural Order, the Petitioners hereby set forth their representatives in this proceeding who shall receive all official Commission documents and whom all discovery requests in this proceeding shall be served on behalf of the Petitioners:

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

## II. CONCLUSION

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

Respectfully submitted,



Genevieve Morelli

Ross A. Buntrock

Heather T. Hendrickson

KELLEY DRYE & WARREN, LLP

1200 Nineteenth Street, NW, Suite 500

Washington, DC 20036

(202) 955-9600 (telephone)

(202) 955-9792 (facsimile)

Counsel to the Petitioners

October 17, 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

- 1
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- 4
- 5 Investigation into the Obligations of )
- 6 Incumbent Local Exchange Carriers )
- 7 Unbundle Local Circuit Switching for )
- 8 The Enterprise Market )
- 9 )
- 10 Investigation into the Obligations of )
- 11 Incumbent Local Exchange Carriers to )
- 12 To Unbundle Network Elements )
- 13 )
- 14 Development of an Efficient Loop )
- 15 Migration Process )
- 16 )
- 17 )

Docket No. I-00030100

Docket No. I-0003~~1754~~

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Docket No. M-0003~~0099~~

RECEIVED

OCT 9 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY GENERAL

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

**INTRODUCTION AND PURPOSE**

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

<sup>1</sup> InfoHighway and MetTel will collectively be referred to as the "Petitioners."

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

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

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

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

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<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Aug. 21, 2003).*

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

1 **REQUIREMENTS OF THE TRO**

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

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

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

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<sup>4</sup> TRO, ¶454.

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

<sup>6</sup> *Id.*, ¶¶454-458.

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

5 11. Given the unfortunate time constraints imposed by the FCC, we ask the Commission to  
 6 seek a waiver of the FCC’s national finding as it pertains to the installed base of DS1  
 7 UNE-P customer lines served by CLECs. The Petitioners respectfully request, however,  
 8 that the Commission exercise its authority to require Verizon to retain its current rates for  
 9 local circuit switching until the Commission has determined the lawfulness of any  
 10 replacement rates for local circuit switching no longer required to be made available as an  
 11 unbundled network element pursuant to section 251(c)(3) of the federal  
 12 Telecommunications Act of 1996.<sup>8</sup> In addition, we request that the Commission take  
 13 note that the 90-day timeframe established by the FCC does not afford UNE-P carriers a  
 14 meaningful time or opportunity to be heard on whether they are impaired without access  
 15 to local switching to serve enterprise customers and that evidence of operational and  
 16 economic impairment may be presented at a later date.

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

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

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

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

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

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

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

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

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<sup>9</sup> *Id.*, ¶ 453.

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

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

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

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<sup>10</sup> *Id.*, ¶ 451.

<sup>11</sup> *Id.*, ¶ 454.

<sup>12</sup> *Id.*, ¶ 455.

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

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

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<sup>14</sup> *Id.*, ¶ 456.

<sup>15</sup> *Id.*, ¶ 458.

<sup>16</sup> *Id.*, ¶ 457.

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

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

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

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

21

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<sup>17</sup> *Id.*, ¶¶ 508-10.

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

- 4 25. In reaching its national finding that competitors are not impaired without access to ULS  
 5 for DS1 enterprise customers, the FCC noted that enterprise DS1 customers are not  
 6 susceptible to the operational pit-falls associated with the hot cut process, because no hot  
 7 cut process is used to provision DS1 circuits.<sup>18</sup> The FCC reasoned that while the hot cut  
 8 process is “a significant source of impairment,” it does not affect the migration of  
 9 enterprise DS1 circuits because for DS1 customers it is economically feasible to “digitize  
 10 the traffic and aggregate the customer’s voice loops at the customer’s premises.”<sup>19</sup>
- 11 26. The FCC significantly relied upon the absence of a hot cut process in reaching its finding  
 12 of no impairment for the DS1 enterprise market, reasoning that because “the conversion  
 13 process for enterprise customers generally involves the initiation of service to the  
 14 competitor’s new digital loop while the incumbent’s service remains in place” rather than  
 15 using a hot cut process, CLECs avoid the outages, costs, and service degradation  
 16 associated with hot cuts.<sup>20</sup> The FCC concluded that “competitive LECs generally face  
 17 the same opportunities and challenges as incumbents on connecting such facilities to their  
 18 switches.”<sup>21</sup>
- 19 27. The FCC’s ‘logic’ is deficient. The FCC, in effect, reasons that there is no impairment  
 20 caused by the process used to migrate customers because *no such process exists*. The  
 21 FCC failed to acknowledge that the lack of any process for migrating customers’ loops

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18 TRO, ¶ 451.  
 19 *Id.*  
 20 *Id.*  
 21 *Id.*

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

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

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

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

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

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

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

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

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

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

<sup>22</sup> TRO, ¶ 452 (notes omitted).

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

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

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

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

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

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

10  
 11 40. Given the harm that the Petitioners will suffer if they are forced to move their installed  
 12 DS1customer base to alternate facilities, the Petitioners hereby request that the  
 13 Commission seek a waiver from the FCC to allow CLECs in the state of Pennsylvania to

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

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

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

10 42. Specifically, the FCC held in the TRO that section 271(c)(2)(b) establishes an  
 11 independent obligation for BOCs to provide access to loops, switching, transport and  
 12 signaling regardless of any unbundling required under section 251.<sup>24</sup> The FCC held that  
 13 the applicable pricing standard for elements required to be provided pursuant to section  
 14 271 is “whether they are priced on a just, reasonable and not unreasonably discriminatory  
 15 basis,” the standards set forth in sections 201(b) and 202(a) of the Act.<sup>25</sup>

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

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<sup>24</sup> TRO, ¶ 653.

<sup>25</sup> *Id.*, ¶ 656.

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

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

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

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

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

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<sup>26</sup> *Id.*, ¶¶451-58.

<sup>27</sup> *Id.*, ¶528.

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

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

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

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

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

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

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<sup>28</sup> *Id.*, ¶¶455-58.

<sup>29</sup> *Id.*, ¶451 n.1376.

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

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

9 **CONCLUSION**

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

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

22 56. This concludes our Declaration.

23

Suzan DeBusk Paiva  
Assistant General Counsel  
Law Department



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

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

October 21, 2003

**VIA E-MAIL AND UPS OVERNIGHT DELIVERY**

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

**DOCKETED**

OCT 27 2003

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

Dear Mr. Buntrock:

**DOCUMENT**

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

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

Very truly yours,

  
Suzan DeBusk Paiva

SDP/slb

Via UPS Overnight Delivery  
cc: Secretary James J. McNulty

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

RECEIVED  
OCT 27 2003  
SECRETARY OF STATE

CERTIFICATE OF SERVICE

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

Dated at Philadelphia, Pennsylvania, this 21<sup>st</sup> day of October, 2003.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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

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

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

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

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

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OCT 21 2003  
MISSION  
10

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

Suzan DeBusk Paiva  
Assistant General Counsel  
Law Department



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

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

October 21, 2003

**VIA E-MAIL AND UPS OVERNIGHT DELIVERY**

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

**DOCKETED**  
OCT 27 2003

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

Dear Mr. Kohler:

Verizon Pennsylvania Inc. has received the public version of the Pennsylvania Carrier Coalition's Petition to Intervene and Testimony in the above-captioned matter. As provided in ordering Paragraph 5b of the Commission's October 3, 2003 Protective Order, as counsel of record for Verizon Pennsylvania Inc. I request a copy of the Petition to Intervene including the Highly Confidential portion. This request only is for counsel of record as defined in Paragraph 5 of the Order; the information will not be disclosed to any Verizon experts without your prior agreement or a ruling changing the proprietary designation of the material.

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

Very truly yours,

Suzan DeBusk Paiva

**DOCUMENT**

SDP/slb  
Enc.

Via UPS Overnight Delivery  
cc: Secretary James J. McNulty

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

RECEIVED  
OCT 21 2003  
COMMUNICATIONS SECTION

CERTIFICATE OF SERVICE

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

Dated at Philadelphia, Pennsylvania, this 21<sup>st</sup> day of October, 2003.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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

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

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

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

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

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

OCT 21 2003  
COMMUNICATIONS COMMISSION  
HARRISBURG BUREAU



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge  
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

October 22, 2003

(See attached list)

DOCUMENT  
FOLDER

In Re: I-00030100

**Incumbent Local Exchange Carriers**

Investigation into the obligations of incumbent local exchange carriers to unbundled local circuit switching for the enterprise market.

**NOTICE**

This is to inform you that Conference by Telephone on the above-captioned case will be held as follows:

**Type:** Initial Prehearing Telephone Conference  
**Date:** Friday, October 24, 2003  
**Time:** 2:00 p.m.  
**Presiding:** Administrative Law Judge Michael C. Schnierle  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Telephone: (717) 783-5452  
Fax: (717) 787-0481

All Harrisburg Parties may participate in-person in Hearing Room Number 2, Plaza Level, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania.

DOCKETED

OCT 28 2003

RJP

At the above date and time, the Administrative Law Judge will contact the parties as follows:

Kandace F. Melillo, Esquire	(717) 783-6155
Angela T. Jones, Esquire	(717) 783-2525
Julia A. Conover, Esquire	(215) 963-6001
William B. Petersen, Esquire	" " "
Suzan Debusk Paiva, Esquire	" " "
Ross A. Buntrock, Esquire	(202) 887-1248
Genevieve Morelli, Esquire	" " "
Alan C. Kohler, Esquire	(717) 237-7172
Philip F McClelland, Esquire	(717) 783-5048
Maryanne Martin, Esquire	(717) 787-4518
Kimberly A. Joyce, Esquire	" " "
Patricia Armstrong, Esquire	(717) 255-7627
Regina L. Matz, Esquire	" " "
Norman Kennard, Esquire	(717) 236-1300
Philip J. Macres, Esquire	(202) 424-7770

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Schnierle  
Steve Springer, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

**DATE:** October 22, 2003  
**SUBJECT:** I-00030100  
**TO:** Office of Administrative Law Judge  
**FROM:** James J. McNulty, Secretary *J.J.*

**DOCKETED**  
OCT 23 2003

**DOCUMENT**

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

---

Attached is a copy of a Petition to Initiate Proceedings and the Direct Testimony of David Schwencke, David Malfara and Scott Dulin, filed by Pennsylvania Carriers' Coalition, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS  
LAW

was

**DATE:** October 22, 2003

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

**TO:** Office of Administrative Law Judge

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

**DOCKETED**  
OCT 23 2003

**DOCUMENT**

Investigation into Obligations of Incumbent Local Exchange  
Carriers et al

---

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

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS  
LAW

was

**DATE:** October 22, 2003  
**SUBJECT:** I-00030100  
**TO:** Office of Administrative Law Judge  
**FROM:** James J. McNulty, Secretary *J.J.*

**DOCKETED**  
OCT 27 2003

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

---

Attached is a copy of a Petition to Intervene filed by Lightship Telecom, LLC, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS  
LAW

was

**DOCUMENT**



ORIGINAL

October 23, 2003

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*Via Overnight Delivery*

OCT 28 2003

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

DOCKETED  
OCT 27 2003

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

DOCUMENT

MCI WorldCom Network Services, Inc. ("MCI") files this letter in lieu of an Answer regarding the Petitions to Initiate Proceeding filed in the above-referenced matter. Although MCI does not intend to present evidence in this case, MCI intends to actively monitor the case and may file Briefs if necessary based on the evidence and arguments presented.

MCI requests that the parties add MCI to the service list for the purpose of receiving all pleadings filed in this case.

Please contact me at 1-866-679-9154 if you have any questions or concerns regarding this matter.

Very truly yours,

*Michelle Painter*  
Michelle Painter

Enclosure

cc: Certificate of Service  
ALJ Michael Schnierle

88

**SERVICE LIST**

I hereby certify that I have this day caused a true copy of MCI's Reply Brief on Impact of Triennial Review Order to be served upon the parties of record in Docket No. P-00930715 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Washington, DC on October 23, 2003

**VIA OVERNIGHT DELIVERY**

Renardo L. Hicks  
Anderson, Gulotta & Hicks, PC  
4229 Elmerton Avenue  
Harrisburg, PA 17109  
Phone – 717-541-1194

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

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

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

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

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

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

Sue Benedek  
United Telephone  
240 North Third Street, Suite 201  
Harrisburg, PA 17101  
Phone – 717-236-1385

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

**RECEIVED**

OCT 23 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Linda Smith  
Dilworth Paxson LLP  
305 North Front St, Suite 403  
Harrisburg, PA 17101  
Phone – 717-236-4812

Richard Rindler  
Swidler Berlin Shereff Friedmann  
3000 K Street, NW  
Washington, DC 20007  
202-424-7500



---

Michelle Painter

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

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

PATRICIA ARMSTRONG

Direct Dial: (717) 255-7627  
E-Mail: parmstrong@ttanlaw.com

www.ttanlaw.com

FIRM (717) 255-7600

FAX (717) 236-8278

October 24, 2003

CHARLES E. THOMAS  
(1913 - 1998)

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OCT 24 2003

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
3<sup>rd</sup> Floor West, Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

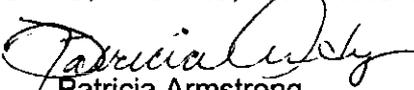
Enclosed please find the original and three copies of the Answer of Rural Company Coalition to Pennsylvania Carriers' Coalition's Petition to Initiate Proceedings for filing in the above referenced matter. Pursuant to the Commission's October 3, 2003 Procedural Order, we submit the information listed below for purposes of contact during this proceeding.

D. Mark Thomas, Esquire (dmthomas@ttanlaw.com)  
Patricia Armstrong, Esquire (parmstrong@ttanlaw.com)  
Regina L. Matz, Esquire (rmatz@ttanlaw.com)  
THOMAS, THOMAS, ARMSTRONG & NIESEN  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
Telephone: 717-255-7600  
Fax: 717-236-8278

Copies of the Answer have been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By   
Patricia Armstrong

Enclosures

cc: Certificate of Service

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

OCT 24 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ANSWER OF RURAL COMPANY COALITION TO  
PENNSYLVANIA CARRIERS' COALITION'S  
PETITION TO INITIATE PROCEEDINGS

DOCKETED

OCT 27 2003

On October 17, 2003, the Pennsylvania Carriers' Coalition ("PCC"), an informal coalition comprising Full Service Computing Corporation t/a Full Service Network ("FSN"), Remi Retail Communications, LLC. ("Remi"), ATX Licensing, Inc. ("ATX") and Line Systems, Inc. ("LSI"), filed a Petition pursuant to the Pennsylvania Public Utility Commission's ("Commission") October 3, 2003 Procedural Order ("*Procedural Order*") and its October 7, 2003 Secretarial Letter requesting an "opportunity to rebut the national finding of non-impairment for DS1 local circuit switching for the enterprise market in the Commonwealth of Pennsylvania." The national finding on DS1 switching for enterprise customers is one of many elements of the Federal Communications Commission's ("FCC") August 21, 2003 Order, which has come to be known as the "*Triennial Review Order*" or "*TRO*."<sup>1</sup>

DOCUMENT

---

<sup>1</sup>*Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposal Rulemaking*, CC Docket No. 01-338 (rel. August 21, 2003).

The Rural Company Coalition ("RCC"),<sup>2</sup> (individually "Company" and collectively "Companies"), all small incumbent local exchange carriers serving *rural* portions of Pennsylvania and each designated a *rural* telephone company as defined in Section 3 of the Communications Act of 1934, as amended ("TCA-96"), hereby responds to PCC's Petition and submits as follows:

#### I. TRO AND PROCEDURAL ORDER

On August 21, 2003, the FCC entered its *Triennial Review Order*, which it had adopted six months earlier on February 20, 2003, adopting new rules to address an ILEC's obligation to continue to make unbundled network elements ("UNEs") available to competing carriers.<sup>3</sup> In the *Triennial Review Order*, the FCC adopted rules establishing a new standard for determining the existence of impairment under Section 251(d)(2) of the TCA-96 and set forth a new list of UNEs.

---

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

<sup>3</sup>On September 4, 2002, the D.C. Circuit Court granted a partial stay of the mandate, thereby staying the vacation of the *Line Sharing Order* in light of the pending completion of the FCC's triennial review decision. *United States Telecom Ass'n v. Fed. Communications Comm'n*, 2002 U.S. App. LEXIS 18823 (2002). On September 30, 2003 the Second Circuit Court granted a stay.

On October 3, 2003, the Commission entered its *Procedural Order* providing direction as to the process and procedure to be used to implement the FCC's *Triennial Review Order*. The time frame in the *Procedural Order* was slightly modified by the Secretarial Letter of October 7, 2003.

The Commission in the *Procedural Order* states its direction from the *TRO* is to "determine whether ILECs in [Pennsylvania] must *continue* to provide access to certain network elements." *Procedural Order* at 11 (emphasis added). With respect to the impairment finding, the Commission specifically noted that CLECs believed they could demonstrate impairment "if they do not have access to Verizon's local circuit switching for DS 1 capacity and above[.]" and discussed that "a 'one size fits all' approach is not appropriate when evaluating Verizon PA's service territory given the geographic differences that exist." *Id.* at 7, and note 8. Thus, the *Procedural Order* established procedures to determine the impact of the FCC's *TRO* only on those companies currently providing UNEs, with emphasis on Verizon and in particular what UNEs should continue to be provided. Accordingly, the RCC respectfully submits that the *Procedural Order* was intended, and must be interpreted, to apply only to those ILECs *currently* providing UNEs, i.e. Verizon Pennsylvania, Inc. ("Verizon"), Verizon-North, Inc. ("Verizon North"), and possibly Sprint.

The *Procedural Order* does not apply to those ILECs that have been found by the Commission to be rural as that term is defined in Section 3 of TCA-96, i.e. RCC Companies. The RCC Companies do not at present have Section 251(c) unbundling obligations because of their rural telephone company exemptions under Section 251(f)(1) of TCA-96. In this regard, the Commission did not, and the RCC

submits could not, in this proceeding intend in any way to impact these RCC Companies' exemptions under Section 251(f)(1), or otherwise make findings about, or impose upon the RCC Companies, unbundling and interconnection obligations they do not currently have. Further, in the *Procedural Order* the Commission certainly did not intend to undertake some theoretical analysis of impairment in the RCC Companies' rural service territories when there currently is *no* unbundled DS 1 local circuit switching being offered by the RCC Companies in their service territories, and thus there is no operational or economic impact to analyze. The only conclusion is that the only UNE impact to be addressed in this proceeding pursuant to the *Procedural Order* is with respect to Verizon, Verizon-North and possibly Sprint.<sup>4</sup>

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

---

<sup>4</sup>On October 17, 2003, ARC Networks, Inc. d/b/a Infohighway and Metropolitan Telecommunications Corporation of Pa filed a Petition to Initiate Proceedings ("ARC Petition") at the instant docket. However, in conformance with the *Procedural Order* and the RCC's contentions herein, the ARC Petition specifically and exclusively refers to impairment without access to unbundled local switching to serve their *existing* enterprise market customers and seeks Commission review of any post-UNE prices for local switching proposed by *Verizon*. ARC Petition at 4. The RCC agrees with the procedural and substantive posture set forth in the ARC Petition, as it deals exclusively with Verizon and Verizon's existing UNE obligations. Consequently, the RCC finds it unnecessary to file an answer to that petition. Should the ARC Petition be interpreted to request any action involving UNEs in the service areas of RCC Companies, however, the RCC requests that this Answer be deemed applicable to the ARC Petition as well.

subject to those particular unbundling requirements *until such time as the exemption is lifted.*" *TRO* at ¶119 (emphasis added).

As set forth more fully in Section III below, RCC Companies are exempt from providing UNEs. In any specific proceeding seeking to terminate that statutory rural exemption, the Commission is required to address the specific request for UNEs within the context of the Section 251(f)(1) requirements.<sup>5</sup> This process has not been undertaken. Since UNE obligations do not exist state-wide, PCC is under no obligation and indeed has no authority under which to address impairment state-wide at this time and the issue is not properly before Your Honor.

Pursuant to the terms of the *TRO*, PCC is not precluded from addressing the issue of impairment in the RCC Companies' rural service territories if and when the issue of the provision of UNEs in the rural service territories of the RCC Companies is ripe. In the *TRO*, the FCC provided state commissions the right to address the impairment issue upon changes in the specified operational and economic criteria. *TRO* at ¶ 455. Such a change in operational and economic criteria would include the removal of an RCC Company's rural exemption. At that time, and only at that time, would this Commission properly have before it the issue whether the requesting CLEC is impaired without access to unbundled DS 1 local circuit switching for the purpose of serving enterprise customers in RCC Companies' service territories.

---

<sup>5</sup>Before a rural telephone company exemption is removed and a rural company required to provide UNEs, the Commission must determine whether there is a bona fide request for interconnection and whether a requesting CLEC has proven that such request is not unduly burdensome, is technically feasible, and is consistent with universal service. See Section III, *infra*.

Accordingly, it is inappropriate and improper for the PCC to seek and for Your Honor to address in this proceeding state-wide impairment to the extent it encompasses the service territories of the RCC Companies, and the RCC requests Your Honor to so hold.

## II. PCC PETITION

In addressing the *TRO*, the *Procedural Order*, and the availability of local circuit switching for the enterprise market, the PCC in its Petition repeatedly vacillates between specific allegations about Verizon and general statements about the Commonwealth of Pennsylvania. However, when addressing specifically the impact of the *TRO* and the *continued availability* of the DS 1 platform, the PCC focuses exclusively on Verizon. See e.g., “removal of the competitive pressure on Verizon may eliminate the only rate controls[.]” (PCC Petition at 4); Verizon’s refusal or inability to provide a useable DS 1 Platform[.]” (*Id.*); “Properly understood, maintenance of the unbundled DS 1 local circuit switching will substantially accelerate the transition to facilities-based competition, not deter it as Verizon frequently argues to regulators.” (*Id.* at 6); “The Commission’s assignment of burden of proof to Verizon is appropriate since it is the one that is seeking to eliminate unbundling requirements. Furthermore, Verizon is the party with comprehensive access to the data pertaining to its operational performance on a central office by central office basis” (*Id.* at 11); “The Commission’s determination is far reaching and raises factual issues in this proceeding which only Verizon can answer.” (*Id.* at 14); “Now that the DS 1 Platform has some semblance of reasonable availability, Verizon, in its typical anti-competitive form, is attempting to terminate its availability.” (*Id.* at 18); “take the necessary actions to *maintain* the

unbundling requirements for DS 1 switching" (*Id.* at 21, emphasis added); "Verizon has not made the necessary modifications to its billing system . . . due to operational issues with Verizon's wholesale product . . . would be to reward Verizon for erecting operational barriers to entry[.]" (*Id.* at 22).

Further, in the attached testimony, the PCC witnesses present qualitative evidence only with respect to the availability of the DS 1 Platform in the service areas of Verizon and Verizon-North. PCC witnesses even recognize that "this proceeding addresses whether the capability and functionality of the incumbent local exchange carrier's switch should be *continued* to be made available as a UNE to enterprise customers served by a local loop with DS 1 capacity or above." PCC -1 at 14 (emphasis added). As noted herein, no RCC Company currently provides UNEs. Thus, there is nothing to analyze herein, nothing to continue to be made available, and only speculation about the desire for an unbundled DS-1 Platform in the service territory of any RCC Company.

PCC's scattered and vague references in its Petition to "state-wide" impairment must be ruled in the first instance as irrelevant to and outside the scope of this proceeding, and in the second instance as inadequate to support any finding herein applicable to the service territories of the RCC Companies. As PCC itself acknowledges, the areas served by companies possessing rural exemptions "are not the focus of the PCC's case." PCC Petition at 5, note 11.

As discussed below, the RCC Companies have a rural exemption which precludes the applicability of Section 251(c)(3) unbundled network elements to RCC Companies at this time. PCC has neither sought removal of the individual rural exemptions nor satisfied the Section 251(f)(1) requirements applicable to the

termination of those exemptions. PCC and any other CLEC will have the opportunity to address any impairment issue which arises as it relates to the RCC Companies consistent with the terms of paragraph 455 of the *TRO* in any subsequent proceeding in which that issue is properly placed before the Commission.

The RCC Companies respectfully submit that administrative time and resources should not be committed to this already condensed proceeding to unnecessarily and prematurely address impairment in the RCC Companies' service territories when the limited time assuredly will be necessary to address the impact of the *TRO* on Verizon's obligations. Given the RCC Companies' existing rural exemption, and the specific terms of the *TRO* and *Procedural Order*, the scope of this proceeding must be construed as relevant only to the service territories of Verizon, Verizon-North and possibly Sprint.

**III. THE ISSUE OF IMPAIRMENT IN THE SERVICE TERRITORIES OF THE RURAL COMPANY COALITION IS NOT YET RIPE FOR CONSIDERATION**

**A. The Telecommunications Act of 1996 and RCC Companies**

In enacting TCA-96, Congress carefully noted distinctions between, and imposed different obligations upon, Verizon, other RBOCs and large companies on one hand, and rural companies that serve predominantly fewer access lines on the other. TCA-96's rural protections have been soundly and unequivocally interpreted as allowing for the removal of a rural telephone company exemption *only under specific and limited circumstances on consideration of precise evidence for which a requesting CLEC has the burden of proof*. In the case of *Iowa Utilities Board et*

*al. v. Federal Communications Commission*,<sup>6</sup> the court vacated the FCC's rules interpreting the Section 251(f) rural protections, reviewing not only the plain meaning of the standards Congress included in TCA-96 specifically addressing non-facilities based competition in rural ILECs' territories, but also the congressional debate behind those standards. With respect to non-facilities based competition in the service territories of RCC Companies, the Court stated as follows:

In the Act, Congress sought *both to promote competition and to protect rural telephone companies* as evidenced by the congressional debates. It is clear that Congress intended that all Americans, including those in sparsely settled areas served by small telephone companies, should share the benefit of the lower cost of competitive telephone service and the benefits of new telephone technologies, which the Act was designed to provide. It is also clear that *Congress exempted the rural ILECs from the interconnection, unbundled access to network elements, and resale obligations imposed by §251(c), unless and until a state commission found that a request by a new entrant that the ILEC furnish it any of §251(c)'s methods to compete in the rural ILEC's market is (1) not unduly economically burdensome, (2) technically feasible, and (3) consistent with §254.* Likewise, Congress provided for the granting of a petition for suspension or modification of the application of the requirements of §251(b) or (c) if a state commission determined that such suspension or modification is necessary to avoid (1) a significant adverse economic impact, (2) imposing a requirement that is unduly economically burdensome, and (3) imposing a requirement that is technically infeasible; and is consistent with the public interest, convenience, and necessity.

There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) and § 251(c). Because the *small and rural ILECs*, while they may be entrenched in their markets, *have less of a financial capacity than larger and more urban ILECs to meet such a request*, the Congress declared that their statutorily-granted

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<sup>6</sup>*Iowa Utilities Board et al. v. Federal Communications Commission*, 219 F.3d 744, 761 (8<sup>th</sup> Cir. 2000) ("*Iowa Utilities Board II*"), *aff'd* in part, *rev'd* in part, and *remanded on other grounds* in *Verizon Communications Inc. v. FCC*, 152 L.Ed. 2d 701, 122 S. Ct. 1646 (U.S. 2002). The United States Supreme Court's review of *Iowa Utilities Board II* affected limited pricing issues and did *not* impact the 8<sup>th</sup> Circuit's ruling regarding Section 251(f) rural protections, which was left undisturbed.

exemption from doing so should continue unless the state commission found *all three prerequisites* for terminating the exemption, or determined that all prerequisites for suspension or modification were met in order to grant an ILEC affirmative relief. It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission. The FCC's elimination from that assessment of the "economic burden that is typically associated with efficient competitive entry" substantially alters the requirement Congress established. By limiting the phrase "unduly economically burdensome" to exclude economic burdens ordinarily associated with competitive entry, *the FCC has impermissibly weakened the broad protection Congress granted to small and rural telephone companies. We have found no indication that Congress intended such a cramped reading of the phrase.* If Congress had wanted the state commissions to consider only that economic burden which is in excess of the burden ordinarily imposed on a small or rural ILEC by a competitor's requested efficient entry, it could easily have said so. Instead, its chosen language looks to the whole of the economic burden the request imposes, not just a discrete part.

\* \* \*

We agree . . . that [the FCC's] rule impermissibly places the burden of proof on the ILECs. . . . The language of the statute uses the word "terminate" not "grant." The plain meaning of the statute *requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption.*

*Iowa Utilities Board II*, 219 F.3d at 761-62 (emphasis added) (citations omitted).

Accordingly, it would be patently unlawful to allow a few CLECs, through theoretical musings about the lack of an unbundled DS 1 Platform in all of Pennsylvania, to shortcut or attempt to supplant the Section 251(f) process and address the provision of an unbundled DS 1 Platform in RCC Companies' service territories while these Companies maintain their rural exemption. Rather, the scope of this proceeding, and the focus of the PCC's evidence and argument in this proceeding, must be properly restricted to the *continued* availability of the DS 1 Platform, thus in those service areas where UNEs are currently available (e.g.

Verizon and possibly Sprint), as set forth in the Commission's *Procedural Order*. Given the state of the law on the rural exemption, it is abundantly clear, as recognized by the FCC in paragraph 119 of the *TRO*, that the unbundling requirement for RCC Companies is not at issue until such time as the exemption is removed. None of this is addressed in PCC's Petition nor should be addressed in the proceeding convened pursuant to the *Procedural Order*. The issue of impairment in the service territories of the RCC Companies is not properly placed before the Commission in this proceeding, and is not ripe for consideration until after the RCC Companies' Section 251(f) issues are raised and resolved.

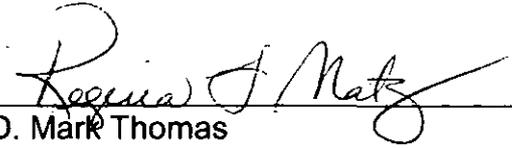
#### **IV. CONCLUSION**

The Rural Company Coalition respectfully submits that, as demonstrated above, Your Honor must exclude from consideration in this proceeding the issue of impairment in the service territories of the RCC Companies, and deny any attempt by the PCC, through vague references to state-wide impairment intermittently placed in its Petition, to place that issue before the Commission in this proceeding.

WHEREFORE, the Rural Company Coalition respectfully prays that Your Honor find that the issue of impairment in the service territories of the RCC Companies is outside the scope of this proceeding, that any vague references by the PCC regarding a finding of impairment in the service territories of the RCC Companies are premature and unsupported, and that the relief sought by the PCC must be construed to apply only to those service territories of Verizon, Verizon-North and possibly Sprint.

Respectfully submitted,

THOMAS, THOMAS, ARMSTRONG & NIESEN

  
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D. Mark Thomas  
Patricia Armstrong  
Regina L. Matz

Attorneys for the  
Rural Company Coalition

THOMAS, THOMAS, ARMSTRONG & NIESEN  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7600

Dated: October 24, 2003

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Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

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CERTIFICATE OF SERVICE

I hereby certify that I have this 24<sup>th</sup> day of October, 2003, served a true and correct copy of the foregoing Answer of Rural Company Coalition to Pennsylvania Carriers' Coalition's Petition to Initiate Proceedings upon the persons and in the manner listed below:

**VIA E-MAIL AND FIRST CLASS MAIL**

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

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

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

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

Kandace F. Melillo, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
2<sup>nd</sup> Floor West  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

**VIA E-MAIL AND HAND DELIVERY**

Honorable Michael C. Schnierle  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
2<sup>nd</sup> Floor West  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

  
\_\_\_\_\_  
Patricia Armstrong

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# OALJ Hearing Report

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Docket No.:	I-00030100		YES	NO
		Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Case Name:	Incombent Local Exchange Carriers	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Location:	HBG	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	1 day	
Date:	October 24, 2003	RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Michael C. Schnierle	DATE:		
Reporting Firm:	Commonwealth Reporting	Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		DATE:	11/17/03	
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <p style="font-size: 24px; margin: 0;">RECEIVED</p> <p style="margin: 0;">NOV 04 2003</p> <p style="font-size: 12px; margin: 0;">PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU</p> </div>		REMARKS: Set for hearing on 11/17/03 at 9am in Hbg.		

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Name and Telephone Number	Address	Who are you representing?
ALAN KOHLER WLF BLOCK, SCHERK & SOLTES-COITEN	212 LOCUST ST., SUITE 300 City: HBG State: PA Zip: 17101	PENNSYLVANIA CARRIERS COALITION, FULL SERVICE NETWORK, RENE COMMUNITAS ATX WIRELESS, LINE SYSTEMS
Telephone:	E-mail Address: AKOHLER@WLFBLOCK.COM	Fax Number: 717-237-7161
Philip McClelland Bennett Shouiday	555 Walnut St. City: Hbg State: Pa. Zip: 17101	Office of Consumer Advocate
Telephone:	E-mail Address: pmcclelland@pauc.org	Fax Number: 783-7152
D. Mark Thomas Patricia Armstrong Regina Maty Thomas Thomas Armstrong & Nie	P.O. Box 9500 City: Harrisburg State: PA Zip: 17108	Rural Company Coalition
Telephone: 717-255-7600	E-mail Address: patarmstrong@ttanlaw.com	Fax Number: 717-236-8278

Check this box if additional parties or attendees appear on back of form.

  
 Reporter's Signature

**Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.**

Name and Telephone Number	Address	Who are you representing?
Kandace F. Melillo	Pa PUC PO Box 3265	Pa PUC Office of Travel Staff
	City: Hlg State: PA Zip: 17105-3265	
Telephone: 717/783 6155 <del>722-7677</del>	E-mail Address: k.melillo@state.pa.us	Fax Number: 717 772 2677
ANGELA T. JONES	1102 COMMERCE BLDG. 300 N. 2ND ST.	OFFICE OF SMALL BUSINESS ADVOCATE
	City: HBG. State: PA Zip: 17101	
Telephone: 717-783-2525	E-mail Address: anjones@state.pa.us	Fax Number: 717-783-2831
Julia A. Canover Susan D. Riva William B. Petersen	1717 Arch Street 32 NW	Verizon Pennsylvania
	City: Philadelphia State: PA Zip: 19103	
Telephone: (215) 963-6001	E-mail Address:	Fax Number:
Ross A. Buntrock Genevieve Morelli	1200 Nineteenth St. NW Suite 500	Metropolitan Telecomm. Corp. of PA ARC Networks d/b/a InfoHighway
	City: Washington State: DC Zip: 20036	
Telephone: (202) 887-1248	E-mail Address:	Fax Number:
	City State Zip	
Telephone:	E-mail Address:	Fax Number:
	City State Zip	
Telephone:	E-mail Address:	Fax Number:
	City State Zip	
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