



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

November 6, 2003

In Re: I-00030100

(See letter dated 10/27/2003)

**Incumbent Local Exchange Carriers**

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

**Hearing Cancellation Notice**

This is to inform you that the Initial Hearing on the above-captioned case now scheduled to be held on Friday, November 7, 2003 at 9:00 a.m. has been canceled.

Presiding: Administrative Law Judge Michael C. Schnierle  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Telephone: (717) 783-5452  
Fax: (717) 787-0481

DOCUMENT  
FOLDER

Please mark your records accordingly.

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

DOCKETED  
NOV 20 2003

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

ORIGINAL

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

November 10, 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 RECEIVED

NOV 10 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 for filing please find a Joint Procedural Stipulation signed by Verizon Pennsylvania, Inc., Verizon North, Inc., the Pennsylvania Carriers Coalition, ARC Networks, Inc. d/b/a Infohighway, Metropolitan Telecommunications Corporation of Pennsylvania, the Office of Consumer Advocate, the Office of Trial Staff and the Office of Small Business Advocate in the above referenced matter.

Attached to the Stipulation are the documents which the parties agree should be considered as the record in this proceeding. For purposes of clarification, a complete set of public documents and a separate set of documents, which include proprietary versions where applicable, is attached.

Thank you for your attention to this matter.

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw

cc: The Honorable Michael C. Schnierle

DSH:38621.1/FUL022-216383

ORIGINAL

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 10 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

DOCKETED

NOV 17 2003

**JOINT PROCEDURAL STIPULATION**

AND NOW come Full Service Computing Corporation t/a Full Service Network ("FSN"), Remi Retail Communications, LLC ("Remi"), ATX Licensing, Inc. ("ATX") and Line Systems, Inc. ("LSI") (collectively the "Pennsylvania Carriers' Coalition" or "PCC"); Arc Networks, Inc. d/b/a InfoHighway ("InfoHighway"); Metropolitan Telecommunications Corporation of PA ("MetTel"); Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon"); the Office of Consumer Advocate ("OCA"); the Office of Trial Staff ("OTS") and the Office of Small Business Advocate ("OSBA") (collectively the "Stipulating Parties"), by their respective attorneys, and submit this

DOCUMENT

Stipulation in connection with the above-captioned proceeding:

1. The Stipulating Parties agree that the following pieces of written, pre-filed testimony shall be admitted into the record of this proceeding:

- a. InfoHighway and MetTel Statement 1.0: Initial Joint Declaration of Peter Karoczkai and David Aronow (Highly Confidential and Public versions).
- b. InfoHighway Statement 2.0: Rebuttal Declaration of Peter Karoczkai.
- c. PCC Statement 1.0: Direct Testimony of David Schwencke, David Malfara and Scott Dulin.
- d. PCC Statement 1.1: Rebuttal Testimony of David Schwencke, David Malfara and Scott Dulin (Proprietary and Public versions).
- e. Verizon Statement 1.0: Direct Testimony of Debra M. Berry (Highly Confidential and Public versions)

2. The Stipulating Parties agree that the following Exhibits shall be admitted into the record of this proceeding:

- a. OTS Exhibit 1: PCC Response to OTS-4
- b. OTS Exhibit 2: InfoHighway Response to OTS-5
- c. OTS Exhibit 3: InfoHighway Response to OTS-6

3. Copies of the foregoing Testimony or Exhibits (including Highly Confidential or Proprietary versions) are attached to this Stipulation.

4. The Stipulating Parties agree to waive cross examination on all of the witnesses whose testimony is being admitted into the record pursuant to this Stipulation.

5. The Stipulating Parties agree that, in light of the foregoing agreements, no hearing is necessary in this proceeding.

Dated: November 7, 2003



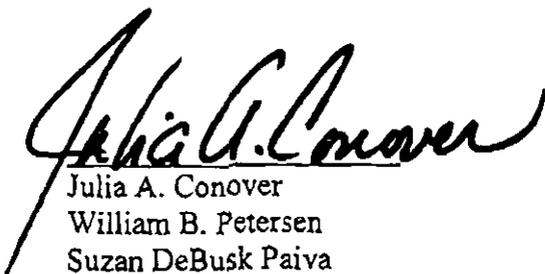
Alan Kohler  
Mark Stewart  
WOLF, BLOCK, SCHORR and SOLIS-  
COHEN, LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7160

Counsel for Full Service Computing  
Corporation t/a Full Service Network  
("FSN"), Remi Retail Communications,  
LLC ("Remi"), ATX Licensing, Inc.  
("ATX") and Line Systems, Inc. ("LSI").



Genevieve Morelli  
Ross A. Buntrock  
Kelley Drye & Warren, LLP  
1200 Nineteenth St., N.W., Suite 500  
Washington, DC 20036  
(202)-955-9600

Counsel for Arc Networks, Inc. d/b/a  
InfoHighway ("InfoHighway") and  
Metropolitan Telecommunications  
Corporation of PA ("MetTel").



Julia A. Conover  
William B. Petersen  
Suzan DeBusk Paiva  
1717 Arch Street, 32N  
Philadelphia, PA 19103  
(215) 963-6001

Counsel for Verizon Pennsylvania Inc.  
and Verizon North Inc.

---

Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett Sheridan  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

---

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

---

Kandace F. Meillo  
Prosecutor  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

---

Julia A. Conover  
 William B. Petersen  
 Suzan DeBusk Paiva  
 1717 Arch Street, 32N  
 Philadelphia, PA 19103  
 (215) 963-6001

Counsel for Verizon Pennsylvania Inc.  
 and Verizon North Inc.




---

Philip F. McClelland  
 Senior Assistant Consumer Advocate  
 Barrett Sheridan  
 Assistant Consumer Advocate  
 Office of Consumer Advocate  
 555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
 Harrisburg, Pennsylvania 17101-1923  
 (717) 783-5048

---

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

---

Kandace F. Melillo  
 Prosecutor  
 Office of Trial Staff  
 Pa. Public Utility Commission  
 P.O. Box 3265  
 Harrisburg, PA 17105-3265

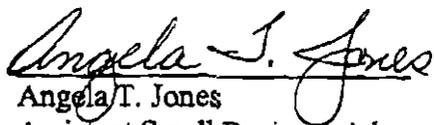
---

Julia A. Conover  
William B. Petersen  
Suzan DeBusk Paiva  
1717 Arch Street, 32N  
Philadelphia, PA 19103  
(215) 963-6001

Counsel for Verizon Pennsylvania Inc.  
and Verizon North Inc.

---

Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett Sheridan  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

  
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

---

Kandace F. Melillo  
Prosecutor  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

\_\_\_\_\_  
Julia A. Conover  
William B. Petersen  
Suzan DeBusk Paiva  
1717 Arch Street, 32N  
Philadelphia, PA. 19103  
(215) 963-6001

Counsel for Verizon Pennsylvania Inc.  
and Verizon North Inc.

\_\_\_\_\_  
Philip F. McClelland  
Senior Assistant Consumer Advocate  
Barrett Sheridan  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

\_\_\_\_\_  
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

*Kandace F. Melillo*  
\_\_\_\_\_  
Kandace F. Melillo  
Prosecutor  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

# PUBLIC VERSION

RECEIVED

NOV 10 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

DOCKETED

NOV 17 2003

DOCUMENT

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 10 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

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

Docket No. I-00030100  
Docket No. I-00031754  
Docket No. M-00030099

18  
19  
20  
21  
22  
25  
26  
27  
28  
29

**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**

- 1. My name is Peter Karoczkai. I am Senior Vice President of ARC Networks, Inc. d/b/a InfoHighway ("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 Metropolitan Telecommunications Corporation of PA ("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  

---

<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.

---

<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

---

<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

---

<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>

---

<sup>10</sup> *Id.*, ¶ 451.

<sup>11</sup> *Id.*, ¶ 454.

<sup>12</sup> *Id.*, ¶ 455.

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

3. 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 uneconomic.”<sup>14</sup> Regarding economic criteria, the FCC requires states to “consider all relevant factors in determining whether entry is uneconomic in the absence of” ULS.<sup>15</sup>

19. 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>16</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.

20. The FCC has required the Commission, and every other state commission, to do the impossible in a 90-day proceeding: state commissions have 90 days to complete a significant number of complex and integrally-related tasks associated with rebutting the national impairment finding regarding the DSI market. A number of the determinations that the Commission will be required to make in the 9-month mass market switching proceeding are equally essential to resolve the inquiries required in the 90-day enterprise market proceeding.

---

<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

---

<sup>17</sup> *Id.*, ¶¶ 508-10.

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

- 3
- 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
- 14 process for enterprise customers generally involves the initiation of service to the
- 15 competitor’s new digital loop while the incumbent’s service remains in place” rather than
- 16 using a hot cut process, CLECs avoid the outages, costs, and service degradation
- 17 associated with hot cuts.<sup>20</sup> The FCC concluded that “competitive LECs generally face
- 18 the same opportunities and challenges as incumbents on connecting such facilities to their
- 19 switches.”<sup>21</sup>
- 20 27. The FCC’s ‘logic’ is deficient. The FCC, in effect, reasons that there is no impairment
- 21 caused by the process used to migrate customers because *no such process exists*. The
- FCC failed to acknowledge that the lack of any process for migrating customers’ loops

---

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.

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

3  
4 32. The FCC concluded in the TRO that there is no hot cut process available for converting  
5 enterprise DS-1 customers from an ILEC's switch to CLEC switching. Rather, CLECs  
6 today provision DS-1 service using what is referred to as a "parallel service delivery"  
7 process which is a costly, labor intensive process that is extremely prone to failure and  
8 typically causes disruption to the end-user customer. In the TRO the FCC described the  
9 parallel service delivery process:

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

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

24 34. The parallel service delivery process requires competitors to undertake a series of steps  
25 that are extremely complex and which must be executed flawlessly in order to get the  
26 circuit up and running. The process is even more complicated when it involves the  
27 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

---

<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:

<b>Steps Required of CLEC to Keep Customer</b>	<b>Steps for Customer to Go to Verizon</b>
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  
 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.

---

<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

---

<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

---

<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

NOV 10 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

1  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

Docket No. I-00030100

**REBUTTAL DECLARATION OF  
PETER KAROCZKAI, SENIOR VICE PRESIDENT  
OF ARC NETWORKS, INC. D/B/A INFOHIGHWAY COMMUNICATIONS CORP.**

**I. INTRODUCTION AND PURPOSE OF TESTIMONY**

1. I am Peter Karoczkai, the Senior Vice President of Sales and Marketing for InfoHighway Communications Corporation ("InfoHighway"). I am the same Peter Karoczkai who provided the "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" ("Initial Joint Declaration").

2. The purpose of my rebuttal declaration is to respond to the Direct Testimony of Debra M. Berry, who provided testimony in this proceeding on behalf of Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon") on October 24, 2003. I address Ms. Berry's testimony as it relates to DS1 loop migration in Pennsylvania and the hot cut process.

1 **II. VERIZON DOES NOT DISPUTE THAT THE PARALLEL SERVICE DELIVERY**  
2 **PROCESS CREATES OPERATIONAL IMPAIRMENT**

3 3. Ms. Berry makes a number of unsupported claims in her testimony and either fails to address,  
4 or implicitly acknowledges the veracity of the facts set forth in my Initial Joint Declaration  
5 regarding the operational impairment created by the lack of a hot cut process for converting  
6 enterprise DS1 customers from an ILEC switch to a CLEC switch and the operational  
7 impairment created by the fact that CLECs are forced to utilize the “parallel service delivery”  
8 process in order to provision DS1 service.

9 4. Ms. Berry fails to respond to the detailed factual findings set forth in my Initial Joint  
10 Declaration regarding the complex and tenuous process of provisioning a DS1 customer  
11 using the parallel service delivery process. Instead, Ms. Berry merely concludes, without  
12 explanation, that the DS1 migration process utilized by Verizon in Pennsylvania is consistent  
13 with the FCC's decision in the Triennial Review Order (“TRO”). Upon further examination,  
14 however, Ms. Berry's testimony regarding the parallel provisioning process in Pennsylvania  
15 indicates that the parallel delivery process used by Verizon Pennsylvania does not, in fact,  
16 comply with the “accepted standard” for provisioning DS1 and higher loops.<sup>1</sup>

17 5. As was explained in the Initial Joint Declaration, in the TRO the FCC based its finding of ‘no  
18 impairment’ on the fact that CLECs provisioning DS1 or higher loops does not use the hot  
19 cut process, which the FCC found results in impairment in the mass market. As described by  
20 the FCC:

---

<sup>1</sup> Berry Direct at 7, lines 2-3.

1 [T]he conversion process for enterprise customers generally  
2 involves the initiation of service to the competitor's new digital  
3 loop while the incumbent's service remains in place. During the  
4 migration of an enterprise customer from analog services to a new  
5 digital loop, the enterprise customers remain on the incumbent's  
6 analog facilities while the new digital loop is installed and service  
7 initiated. Similarly, where enterprise customers are being  
8 converted from the digital facilities, the competing carrier installs  
9 and initiates service on a new digital loop in parallel with the  
10 customer's existing service.<sup>2</sup>

11 6. The FCC assumed that use of the parallel delivery process, rather than the hot cut process,  
12 would mean that a new line is activated *before* the existing service is terminated. Therefore,  
13 the FCC concluded that "enterprise customers avoid potentially lengthy disruption of service  
14 due to physical hot cuts, occasionally experiencing an outage of only 10 to 30 seconds for  
15 incoming calls as their numbers are updated in the industry database used to route calls."<sup>3</sup>  
16 But as was explained in the Initial Joint Declaration, even under ideal circumstances, the  
17 parallel service delivery process is extremely complex and can lead to substantial customer  
18 disruption. In addition, because Verizon fails to maintain circuit configuration information,  
19 InfoHighway is forced to configure the parallel circuit "blindly" and hope that we have  
20 configured the end user's service appropriately.

---

<sup>2</sup> TRO, ¶ 451 (notes omitted) (emphasis added).

<sup>3</sup> *Id.*

1 7. Moreover, Ms. Berry testified that the Verizon Pennsylvania parallel service delivery process  
occurs in the following manner: "the new facility is turned up only after the old one is  
3 disconnected and the equipment is not running two systems at once."<sup>4</sup> This process  
4 guarantees customer disruption. Ms. Berry fails to address my testimony that this service  
5 disruption, and the accompanying complex provisioning tasks necessitated by the parallel  
6 delivery process, result in operational impairment.

7 **III. VERIZON IMPLICITLY ADMITS THAT THE LACK OF A HOT CUT PROCESS**  
8 **CREATES OPERATIONAL IMPAIRMENT**

9 8. Ms. Berry also testifies that it is technically infeasible to utilize the traditional hot cut process  
10 for DS1 and higher loops because of the complexity of the equipment involved.<sup>5</sup> However,  
11 Mrs. Berry fails to testify that a hot cut-like process for provisioning DS1 loops cannot be  
12 developed.

13 9. Ms. Berry's admissions regarding the lack of a hot cut process for DS1 loops and her failure  
14 to provide any evidence regarding why a hot cut process for DS1 loop provisioning cannot be  
15 implemented demonstrates operational impairment exists for CLECs in the DS1 enterprise  
16 market in Pennsylvania.

17 10. This concludes my rebuttal declaration.

18

---

<sup>4</sup> Berry Direct at 7, lines 9-11.

<sup>5</sup> Berry Direct at 7, lines 19-21.

**CERTIFICATE OF SERVICE**

I, Heather T. Hendrickson, hereby certify that I have this day served a copy of the foregoing "Rebuttal Declaration of Peter Karoczkai, Senior Vice President of ARC Networks, Inc., d/b/a InfoHighway Communications Corp." in Docket No. I-00030100, 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 Washington, D.C., this 31st day of October, 2003.

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

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

Julia A. Conover, Esquire  
William Petersen, Esquire  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32NW  
Philadelphia, PA 19103

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

Angela Jones, Esquire  
Office of Small Business Advocate  
Commerce Building – Suite 1102  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101

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

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

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

Via e-mail only to OCA Consultants:

Rowland Curry  
Melanie Lloyd  
Bob Loube

Kandace Melillo, Esquire  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Zsuzsanna E. Benedek, Esquire  
Sprint Communications Company, L.P.  
240 North Third Street, Suite 201  
Harrisburg, PA 17101

Robert C. Barber, Esquire  
AT&T Communications of PA, Inc.  
3033 Chain Bridge Road  
Oakton, VA 22185

Maryanne Martin, Esquire  
Pennsylvania Public Utility Commission  
Law Bureau  
400 North Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120

Michael C. Schnierle, ALJ  
Office of Administrative Law Judge  
400 North Street  
Two West Keystone Building  
Harrisburg, PA 17120



Heather T. Hendrickson  
Kelley Drye & Warren, LLP  
1200 – 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
(202) 955-9600  
Fax: (202) 955-9792  
Email: [hhendrickson@kelleydrye.com](mailto:hhendrickson@kelleydrye.com)



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 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  
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

---

<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

---

<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

---

4 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

---

<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)."

---

6 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  
5 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

---

<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

---

<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 must 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.

---

<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  
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  
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 LEC 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  
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
9. Provision LNP Trigger in both losing and gaining LEC Class 5 switches at least 24  
 1 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

---

<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  
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?**

---

13 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.

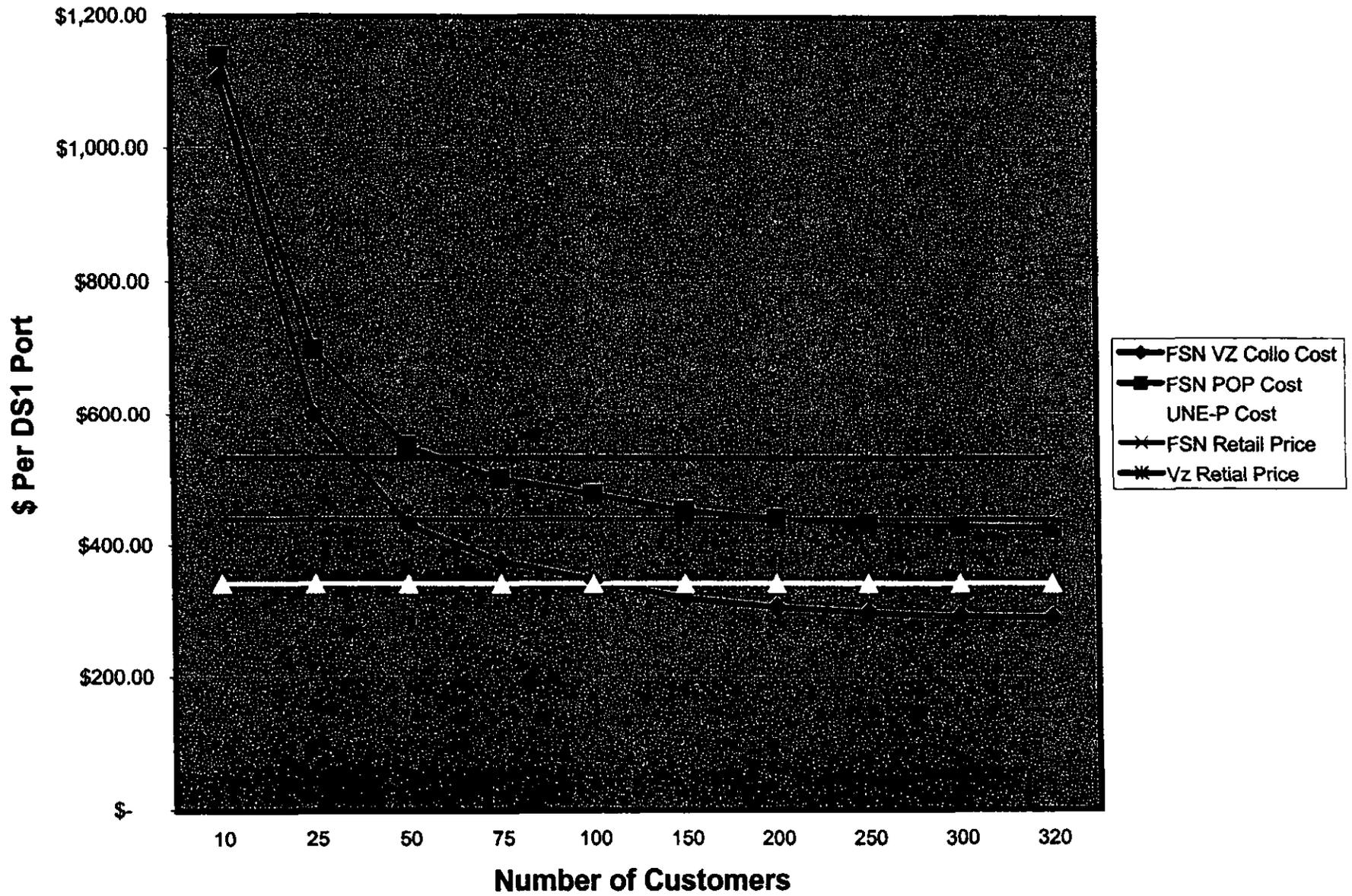
7 If the DS1 Platform is eliminated, existing customers will likely be forced (or  
8 slammed) back to Verizon against the customers will and will lose the advantage they  
9 chose under their existing service arrangement. Potential customers will be denied an  
10 opportunity for lower rates and advanced 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      Call      Miles**

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	<u>4</u>	Cust Loop	<u>\$191.17</u>	<u>\$150.06</u>	<u>\$133.49</u>
Miles	<u>37.00</u>	IOF Mileage	\$22.20	\$137.27	\$130.98
		IOF Fixed	<u>\$35.22</u>	<u>\$52.95</u>	<u>\$50.67</u>
		<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	<u>4</u>	Cust Loop	<u>\$191.17</u>	<u>\$150.06</u>	<u>\$133.49</u>
Miles	<u>37.00</u>	IOF Mileage	\$22.20	\$137.27	\$130.98
		IOF Fixed	<u>\$35.22</u>	<u>\$52.95</u>	<u>\$50.67</u>
		<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	<u>4</u>	Cust Loop	<u>\$191.17</u>	<u>\$150.06</u>	<u>\$133.49</u>
Miles	<u>Not Applicable</u>	Cust Port	\$92.70	\$86.04	\$47.36
Minutes	<u>32400</u>	Port Usage	<u>\$58.38</u>	<u>\$33.02</u>	<u>\$52.03</u>
		<b>Cost</b>	<b>\$342.25</b>	<b>\$269.12</b>	<b>\$232.88</b>

**RECEIVED**

NOV 10 2003

PCC - 1.1 (Rebuttal)

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**PUBLIC VERSION**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REBUTTAL 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 31, 2003**

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. DID THE MEMBERS OF THE PANEL PREVIOUSLY SUBMIT TESTIMONY IN**  
14 **THIS PROCEEDING?**

15 A. Yes we did. The panel submitted direct testimony on October 17, 2003. That testimony  
16 has been marked as PCC-1.

17 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

18 A. The purpose of our rebuttal testimony is to respond to the direct testimony of Verizon  
19 Pennsylvania, Inc. and Verizon North, Inc. witness Debra M. Berry who submitted her  
20 testimony on October 24, 2003 (Verizon St. No. 1.0).

21 **Q. CAN YOU SUMMARIZE YOUR TESTIMONY?**

22 A. Yes. It is first important to note that Ms. Berry has chosen not to respond at all to most of  
23 the issues and factual assertions addressed in our Direct Testimony. Instead, Ms. Berry  
24 chooses to completely ignore these important issues under the misguided belief that the  
25 facts presented in our testimony are not relevant to this proceeding. Of course, we

1 believe all of our Direct Testimony is highly relevant to this proceeding and that Ms.  
2 Berry's (or more likely Verizon's) view of relevance is based on an incorrect and distorted  
3 view of the *Triennial Review Order* ("TRO"), the Commission's role and responsibility in  
4 this matter and the interrelationship between state and federal law. However, we will  
5 leave these legal issues to be argued by our respective attorneys in the legal pleadings and  
6 briefs in this case.

7 With this said, Ms. Berry essentially responds to our testimony with four  
8 averments which she apparently believes should control this case. The first is that  
9 competitive switch deployment is widespread in Pennsylvania. The second is that  
10 competitors have voluntarily chosen to use their own switching to provide high capacity  
11 services to enterprise customers. The third is that the DS1 migration process in  
12 Pennsylvania is consistent with the FCC's decision. The fourth is that Verizon's  
13 performance metrics and standards demonstrate that good service is being provided to  
14 competitive local exchange carriers ("CLECs").

15 Not only are these averments by Ms. Berry misleading and generally untrue, but  
16 none of these factors raised by Ms. Berry directly or adequately respond to the variety of  
17 circumstances and conditions which underlie the economic and operational impairment  
18 encountered by CLECs, including PCC members, in serving DS1 (or higher capacity)  
19 customers. In fact, when the data used by Ms. Berry is corrected or placed in proper  
20 context, it does not even support Ms. Berry's conclusion.

21 Overall, as we testified in our Direct Testimony, while there has been some  
22 switch deployment in Pennsylvania, that switch deployment has been focused in the  
23 metropolitan areas and has been stagnant in recent years. Furthermore, while certainly

1 some CLECs are serving DS1 customers with their own switches, even if Verizon is  
2 accurate in suggesting that CLEC switch deployment is widespread (which we dispute),  
3 using Verizon's own numbers, that switch deployment has not been very effective as  
4 CLEC penetration into Verizon's DS1 market is less than 8% (as compared to 16%  
5 penetration statewide for access lines in general) and is predominately in the metropolitan  
6 areas where CLEC switches are located. Ms. Berry's assertion that CLECs have  
7 voluntarily used their own switching facilities 99% of the time is ludicrous considering  
8 that Verizon made no commercially reasonable alternative available to CLECs for the  
9 vast majority of DS1 customers in Pennsylvania until mid-September of 2003. It is like  
10 arguing that the fact that customers in the 20% of zip codes in Pennsylvania that have no  
11 local telecommunications competition select the monopoly provider 100% of the time  
12 demonstrates that they prefer the monopoly incumbent to other non-existent options. In  
13 addition, Ms. Berry's claim that our testimony regarding the DS1 migration process is  
14 flawed is not supportable, since her testimony contradicts itself and the FCC's discussions  
15 in the *TRO*. Finally, reliance on the particular performance standards selected by Verizon  
16 does not address the operational impairment issues raised in our Direct Testimony

17 Review of Verizon's testimony reveals an insistence on "this is our story and  
18 we're stickin' to it." No matter what evidence of impairment it is faced with, Verizon will  
19 choose to ignore the facts and recite the national company line. Here, that Company line  
20 does not hold up, and, as Pennsylvania carriers, we request the Commission to review the  
21 entirety of this case under which we believe a finding of impairment is unavoidable.

22 **Q. AS TO THE FIRST ISSUE ADDRESSED BY MS. BERRY PERTAINING TO**  
23 **CLEC SWITCH DEPLOYMENT, CAN YOU RESPOND TO HER CLAIMS?**

1 A. Yes we can. First, Ms. Berry claims that it is our position that CLECs have not deployed  
2 any switches in Pennsylvania.<sup>1</sup> Ms. Berry has either misread or is mischaracterizing our  
3 testimony. What we said is that the installation of CLEC switches which serve or could  
4 serve DS1 customers has decreased dramatically over the past three years, and that while  
5 new switches which serve DS1 customers may have been deployed over the last three  
6 years, any such activity was relatively minimal.<sup>2</sup>

7 **Q. MS. BERRY CLAIMS THAT APPROXIMATELY 24 CLECS ARE OPERATING**  
8 **54 LOCAL CIRCUIT SWITCHES IN PENNSYLVANIA. DO YOU AGREE?**

9 A. No, we do not. Ms. Berry identifies the source for her information as the Local Exchange  
10 Routing Guide ("LERG").<sup>3</sup> While we all utilize the LERG for one purpose or another,  
11 the LERG does not contain either accurate or up-to-date information pertaining to CLEC  
12 switch deployment. For example, the LERG includes multiple entries for single  
13 switches, switches which are no longer in operation, switches owned by carriers that are  
14 no longer in business, switches that do not serve any customers and switches that do not  
15 serve any DS1s.<sup>4</sup> Furthermore, there is no indication in the LERG whether the CLEC  
16 switches identified are used for voice traffic at all (and certainly many are not) in which  
17 case the switch would have no relevance to this case addressing local circuit switching.  
18 Finally, many of the CLEC switches listed in the LERG are operated by ILEC-affiliated

---

<sup>1</sup> Verizon St. 1.0 at 3, ll. 6-10.

<sup>2</sup> PCC St. 1 at 17, ll. 9-15.

<sup>3</sup> Verizon St. 1.0 at 3, ll. 12-18.

<sup>4</sup> For example, the LERG indicates that ATX is operating 500% more local switches than are actually in operation by the company. If Verizon had wanted to accurately identify the number of switches in service, it could have identified the number of switches with which it exchanges traffic for reciprocal compensation purposes (even this figure would not identify the switches which do not serve DS1s).

1 CLECs within the service territory of the ILEC and are essentially ILEC switches  
2 operated by an affiliate to serve a customer when, for whatever reason, the ILEC wants to  
3 avoid the ILEC's tariff.

4 **Q. ARE YOU SAYING THAT THERE ARE NO CLEC SWITCHES THAT**  
5 **ACTUALLY SERVE DS1 CUSTOMERS?**

6 A. No. Certainly there is some number of CLEC switches serving DS1 customers in  
7 Pennsylvania, (albeit substantially less than Ms. Berry claims) and we never claimed  
8 otherwise. What we are saying is that whatever CLEC switches are actually serving DS1  
9 customers are switches which, for the most part, were installed years ago and are  
10 clustered in Pennsylvania's two major metropolitan areas.<sup>5</sup>

11 **Q. MS. BERRY CHARACTERIZES YOUR TESTIMONY AS CONCLUDING THAT**  
12 **A LOCAL SWITCH CANNOT BE EXTENDED TO SERVE LARGER AREAS.<sup>6</sup>**  
13 **IS YOUR TESTIMONY BEING CHARACTERIZED ACCURATELY?**

14 A. No, it is being completely mischaracterized. What we said in our Direct Testimony is  
15 that a switch can serve only a finite surrounding area unless the service area is expanded  
16 either through the use of collocation or EELs.<sup>7</sup> What this really means is that a switch  
17 can not serve any DS1 customers without collocation or EELs (or without building out its  
18 own local loop). These arrangements to enable and expand switch coverage involve very

---

<sup>5</sup> As Ms. Berry indicates, the location of the CLEC switches (whether operational or not) is included in the LERG, review of which documents these clustered locations.

<sup>6</sup> Verizon St. 1.0 at 4, ll. 2-10.

<sup>7</sup> PCC St. 1 at 24-25, 27-28. On page 4, footnote 5 of her testimony, Ms. Berry cites to Panel Testimony sponsored by AT&T Communications of NJ, LP in an interconnection arbitration with Verizon New Jersey, Inc. before the New Jersey Board of Public Utilities. AT&T is not a party to this case and the referred testimony is hearsay and should be stricken. In any case, the reference to the testimony is completely off point and has no relevance to this proceeding.

1 significant recurring and non-recurring costs which must be recoverable when incurred  
2 to be economically viable.

3 From a purely technical perspective, Ms. Berry may be right that a CLEC switch  
4 can be connected to a loop on the other side of a state or even in another state or on the  
5 Moon for that matter. However, Ms. Berry's conclusions are completely misleading and  
6 overlook a variety of technical and economic factors which govern the realities of switch  
7 deployment and coverage.

8 By way of example, a CLEC's switch coverage can be expanded through either  
9 EELs or collocation. However, in both cases, the wholesale rates which must be paid to  
10 Verizon (or another ILEC) to backhaul traffic to the CLEC's switch are distance sensitive  
11 -- the further away the customer is located from the CLEC switch, the higher the  
12 wholesale cost to serve the customer.<sup>8</sup> As addressed in our Direct Testimony, the  
13 wholesale rate structure that Verizon actually makes available to CLECs in Pennsylvania  
14 (in direct contrast to the rate structure which has been ordered by the Commission and is  
15 included in Verizon's tariff) imposes severe economic restrictions on a CLEC's ability to  
16 extend its switch coverage to serve DS1 customers.<sup>9</sup> Furthermore, while Ms. Berry

---

<sup>8</sup> See PCC St. 1, Exhibit "A."

<sup>9</sup> This is true whether or not the business analysis includes only local revenues or other revenues in addition to local. It is noteworthy that providing service through a DS1 Platform enables a CLEC to only provide voice services, not data services and, for this reason alone, a CLEC would invest in a switch for the additional revenue opportunities per customer if it was economically viable to do so. Furthermore, while Exhibit "A" to our Direct Testimony does not include possible revenues from services other than voice services, it also does not include the wholesale costs associated with any additional services, retail costs and other CLEC specific costs incurred by a CLEC in providing switch-based DS1 service. Accordingly, adding in revenue from other services will not help the economics, because the additional net revenues will do no more than offset the additional CLEC specific costs.

1 claims that CLEC switches in Philadelphia and Pittsburgh are [technologically] capable  
2 of serving the entire state, she not only completely overlooks the impact of backhaul  
3 costs, but fails to mention that EELs are not available to cross a LATA boundary and that  
4 the backhaul costs in a collocation scenario are priced even higher if the collocation is in  
5 a different LATA than the actual switch. In fact, the cost to a CLEC of using interLATA  
6 backhaul as a strategy, based on our own experience, is completely prohibitive because  
7 the resulting wholesale cost to the CLEC would require the CLEC to charge rates which  
8 exceed, by a significant margin, the rates charged by Verizon to its customers no matter  
9 how many lines are served by the backhaul and no matter whether the CLEC uses its own  
10 facilities or collocation to provide the service.

11 Overall, Ms. Berry's testimony on this point is misleading and is not useful to the  
12 Commission.<sup>10</sup> In fact, her conclusions that a single CLEC switch can serve anyone  
13 anywhere are analogous to a travel agent who tells a client that they have won a free stay  
14 in Hawaii, but neglects to tell the client that they have to bear the costs of getting there.

15 **Q. THE SECOND AREA ADDRESSED BY MS. BERRY IS THE USE OF CLEC**  
16 **SWITCHING IN PENNSYLVANIA TO SERVE DS1 CUSTOMERS. CAN YOU**  
17 **RESPOND?**

18 **A.** Certainly. Ms. Berry first develops and then relies on analogies under which she  
19 compares the number of DS1 (or higher capacity) loops being served without Verizon  
20 switching with the number of active DS1 Platforms being utilized by the specific parties  
21 to this proceeding. She then concludes that "CLECs" are not impaired in serving this

---

<sup>10</sup> Ms. Berry again backs up her conclusion by reference to the testimony of Global Naps, which is not a party to this proceeding, in a unrelated case pertaining to virtual NXX codes -- which case addresses the transmission of Internet traffic, not local circuit traffic as is at issue here. The reference to testimony in another case is inadmissible hearsay and should be stricken. In any case, it has no relevance to this proceeding.

1 market without Verizon switching.”<sup>11</sup> This analysis is misleading for a number of  
2 reasons.

3 First, as we described in detail in our Direct Testimony, a comparison which  
4 relies on the relatively small number of DS1 Platforms currently being utilized in  
5 Verizon’s service territory is completely misleading, because for the vast majority of DS1  
6 customers (and in violation of this Commission’s requirements), a DS1 Platform  
7 wholesale product was not made commercially available to CLECs until mid-September  
8 of this year – approximately one month ago.<sup>12</sup> So, of course, there are not many DS1  
9 Platforms being utilized by CLECs in Pennsylvania in comparison to self provisioned  
10 DS1s. This does not mean that CLECs are not impaired without a DS1 Platform as  
11 Ms. Berry concludes, but instead means one thing and one thing only -- that Verizon did  
12 not comply with the Commission's directive pertaining to availability of the DS1  
13 Platform for almost four years until one month ago.

14 **Q. MS. BERRY CITES TO CLEC MARKET PENETRATION NUMBERS IN**  
15 **SUPPORT OF HER CONCLUSION THAT CLECS ARE NOT IMPAIRED. DO**  
16 **YOU AGREE WITH HER ASSESSMENT?**

17 **A.** Absolutely not. Ms. Berry claims that internal Verizon records indicate that Verizon PA  
18 and Verizon North have provided competitors, **BEGIN PROPRIETARY** ██████████  
19 ██████████ **END PROPRIETARY** which are being used by CLECs to serve customers  
20 without utilizing Verizon's switching. First, we do not know where Ms. Berry's figures  
21 came from and have no way to check their validity. Furthermore, considering our every  
22 day experience in running our business, this figure seems far too high and likely

---

<sup>11</sup> Verizon St. 1.0 at 5-6.

<sup>12</sup> See PCC St. 1 at 20-23.

1 significantly overstates CLEC DS1 market penetration. Nevertheless, put in perspective,  
2 Ms. Berry's figures support our contentions of impairment in the DS1 market not the  
3 contrary.

4 **Q. PLEASE EXPLAIN.**

5 A. Review of ARMIS data filed with the Federal Communications Commission ("FCC")  
6 reveals that in 2002 Verizon terminated 106,790 DS1 loops at the customer premises and  
7 5252 DS3 or higher loops for its own retail service.<sup>13</sup> Accordingly, the CLEC market  
8 penetration cited by Ms. Berry represents 7.8% of the DS1 (or higher) market in  
9 Verizon's overall service territory -- a market penetration substantially less than the  
10 average CLEC market penetration cited by the most recent FCC report for all of  
11 Pennsylvania at 16% and (most likely) the CLEC penetration level for residential  
12 customers in Pennsylvania -- a very noteworthy factor given the fact that the FCC made a  
13 national finding of impairment for local circuit switching serving the mass market.  
14 Accordingly, a proper comparison of the figures cited by Verizon demonstrates that  
15 CLECs have made only minor inroads to the DS1 market on a switch-based basis,  
16 because of the economic and operational impairment existing in that market.

17 **Q. THE THIRD ISSUE RAISED BY MS. BERRY PERTAINS TO THE DS1 (AND**  
18 **HIGHER) LOOP MIGRATION ISSUE. DO YOU AGREE WITH HER**  
19 **TESTIMONY?**

20 A. We could not disagree more. On one hand, Ms. Berry's testimony on this point is  
21 internally contradictory. On the other hand, Ms. Berry admits (apparently without

---

<sup>13</sup> FCC Report 43-07, ARMIS Infrastructure Report, Verizon Communications, Pennsylvania Area, Table II - Transmission Facilities, Rows 482 and 484. This percentage is actually understated because it only includes the DS1 or higher loops served by Verizon PA and does not include those served by the Verizon North operating companies.

1 knowing it) that the migration process used in Pennsylvania is completely inconsistent  
2 with the assumptions about the availability of a parallel process relied on by the FCC in  
3 making its national non-impairment finding.

4 **Q. PLEASE EXPLAIN.**

5 **A. Sure. In our Direct Testimony, we focused on the fact that the parallel migration process**  
6 **described by the FCC and heavily relied on in making its national non-impairment**  
7 **finding was not available in Pennsylvania. This is because Pennsylvania DS1 customers**  
8 **do not have the excess capacity on their customer premise equipment to enable the**  
9 **parallel process described by the FCC under which the existing line in service is not**  
10 **disconnected until after the new spare line is activated.<sup>14</sup>**

11 In her testimony, Ms. Berry responds to this testimony as follows:

12 Petitioners complain that even if spare facilities are  
13 available, end users do not have the capacity on their  
14 customer premises equipment to handle the existence of  
15 two facilities. This claim is unfounded. First, this is not a  
16 real problem because generally the new facility is turned up  
17 only after the old one is disconnected and the equipment is  
18 not running two systems at once. Second, there is no  
19 reason to believe that end users in Pennsylvania would be  
20 any different in this regard than end users anywhere else.

21 Verizon at St. 1.0 at 7, ll. 1-7.

22 As one can see, Ms. Berry fully admits that under the DS1 migration process in  
23 Pennsylvania "the new facility is turned up only after the old line is disconnected."<sup>15</sup> In  
24 direct contrast, under the parallel migration process discussed by the FCC, "in each case  
25 [both analog to digital and digital to digital] the incumbent's service (i.e. the old service)

---

14 PCC St. 1 at 30-31.

15 Emphasis added.

1 is disconnected only after the competitor's service over a new loop has been initiated."<sup>16</sup>  
2 Accordingly, the FCC has made it clear that under the parallel process they assumed  
3 existed, the existing (i.e. old) service is not terminated until after the new service is  
4 activated. Ms. Berry, meanwhile, acknowledges that for Verizon migrations within  
5 Pennsylvania, it is the exact opposite: the existing service is terminated before the new  
6 service is activated -- resulting in an unavoidable and risk-laden service interruption.

7 **Q. WHY IS THIS SO IMPORTANT?**

8 A. Notwithstanding Ms. Berry's technically flawed and idealistic testimony to the contrary,  
9 the migration process Ms. Berry describes in her testimony cannot be executed without a  
10 significant and risk-laden customer outage **for most DS1 migrations in the**  
11 **Commonwealth of Pennsylvania** that results in severe impairment to CLECs. In the  
12 *TRO*, the FCC looked to the states to make a granular determination of the operational  
13 problems associated with migration within the respective state, when the federal agency  
14 specifically identified "specific operational evidence regarding loop, collocation and  
15 transport provisioning" problems as mandatory criteria of any state specific operational  
16 impairment analysis.<sup>17</sup>

17 The FCC's reliance on a truly parallel migration process (in direct contrast to the  
18 migration process described by Ms. Berry for Verizon) and the resulting national finding  
19 of non impairment implicitly recognized, for example, that for enterprise customers in

---

<sup>16</sup> *TRO* at ¶ 451 (emphasis added). Based on this conclusion, that under the parallel migration process the new line is activated before the existing service is terminated, the FCC concluded "Thus, enterprise customers avoid potential lengthy disruption of service due to physical hot cuts, occasionally experiencing an outage of only 10 to 30 seconds for incoming calls as their numbers are updated in the industry database used to route calls."

<sup>17</sup> *TRO* at ¶ 456.

1 some major US cities, such as New York, Chicago and Los Angeles, the very nature of  
2 DS1 customers may result in the majority of DS1 customers having sufficient customer  
3 premise equipment capacity to operate both the facilities providing the existing service  
4 and the facilities providing the new service at the same time without the risk-laden delays  
5 that are inherent in the migrations that Ms. Berry describes as existing in Pennsylvania.

6 In fact, it is probable that Verizon has never migrated a DS1 loop in Pennsylvania  
7 consistent with the specific parallel process relied on by the FCC to make their rebuttable  
8 national finding of "no-impairment." Furthermore, it is equally probable that under  
9 Verizon's existing processes, it has never completed a DS1 migration that has not resulted  
10 in a costly requirement of redundant customer premise equipment or in an outage of  
11 significant length to negatively impact the relationship of the acquiring CLEC and the  
12 new end user customer. Placed in context, Ms. Berry's statement that "this is not a real  
13 problem because generally the new facility is turned up only after the old one is  
14 disconnected and the equipment is not running two systems at once," demonstrates a  
15 cavalier attitude towards the impact of the DS1 migration process on CLECs and a  
16 misunderstanding or disregard of the FCC's decision in the *TRO*.

17 **Q. ON PAGES 6-7 OF HER TESTIMONY, MS. BERRY CLAIMS THAT IT IS**  
18 **TECHNOLOGICALLY IMPOSSIBLE FOR VERIZON TO DEVELOP A HOT**  
19 **CUT PROCESS AT THE CENTRAL OFFICE. DO YOU AGREE?**

20 **A.** We agree in part in the description, but not at all with the conclusion. Ms. Berry seems to  
21 be focusing on the situation where a CLEC requests the installation of a new DS1 loop  
22 facility for migration of an existing DS1 customer and no facilities are available –  
23 essentially shutting the CLEC out from providing local service to that customer. In any  
24 case, it is clearly technologically possible for Verizon to develop a hot cut process at the  
25 central office. Verizon has chosen not to do so, choosing simply to shift the burden and

1 cost of the hot cut process to the CLEC at the customers' premises where standard  
2 processes would be impossible to develop because of the varied quality and composition  
3 of physical and environmental conditions existing in each customer premise.

4 Where we do agree with Ms. Berry is that Verizon's development of a hot cut  
5 process for DS1 migrations at the central office (analogous to the existing analog line hot  
6 cut process) would do nothing to remove the operational impairment (as the FCC has  
7 noted in its mass-market finding) and would merely shift the existing operational  
8 problems caused by these hot cuts to the central office. This just emphasizes our point  
9 that as long as hot cuts remain a part of the migration process either at the central office  
10 or the customer premise, a fact which Verizon has not rebutted, and there is not a truly  
11 parallel migration process as specifically identified and described by the FCC,  
12 operational impairment will continue to exist.

13 **Q. MOVING ON TO THE FOURTH ISSUE, CAN YOU RESPOND TO MS.**  
14 **BERRY'S TESTIMONY PERTAINING TO VERIZON'S PERFORMANCE**  
15 **STANDARDS?**

16 A. Yes. Ms. Berry's self-congratulatory testimony on Verizon's performance with regard to  
17 measurements OR-1-06, PR-4-01 and PR-6-01 does not address the operational  
18 impairment outlined in our testimony and is immaterial to this issue. These performance  
19 measurements scrutinize Verizon's performance in the areas of order confirmation  
20 timeliness (similar to the automated process by which you can determine if an e-mail has  
21 been read), missed appointments (which are like airline "on-time" records) and  
22 installation quality (which is not a direct indicator of migration problems because it is not  
23 measured until after migration is complete) which were designed to address the  
24 standardized processes which are used, for example, to migrate mass market UNE-P  
25 customers. However, these standards simply do not address the measurement of

1 Verizon's performance relative to the ad hoc processes described by Ms. Berry. For  
2 example, there is no performance metric measuring the downtime experienced by the  
3 customer as a result of the hot cut process. Under the **normal** steps of that process, the  
4 affected customer is OUT OF SERVICE from the time the old service is disconnected  
5 from the customer premise equipment; the new service is connected; the new service is  
6 tested for proper link-level operation; the new service is tested for proper routing and  
7 translations operation and the numbers are ultimately ported. Furthermore, as explained  
8 in our testimony, if the porting process is not perfectly executed the customer is OUT OF  
9 SERVICE for periods which may easily span hours in the event that a technician is  
10 required to be dispatched in order to reconnect the customer premise equipment to the old  
11 facility. In our experience, if events escalate to this point, the customer will hardly ever  
12 risk the process again (and will subsequently decide to remain with the incumbent).  
13 Therefore, the CLEC ultimately loses a hard-won customer because of an ad hoc process  
14 engaged in by Verizon in Pennsylvania, with no risk of violating a performance metric  
15 and suffering the subsequent consequences of its actions. Furthermore, the performance  
16 standards do not measure the service delays which frequently result during the processes  
17 leading up to the actual migration of lines -- service delays which are frequently as  
18 damaging to CLEC customer relations as service outages. Essentially, the performance  
19 standards measure activities which are not the cause of the operational impairment we  
20 have identified in our testimony.

21 **Q. IN ITS ANSWER TO THE PCC PETITION, VERIZON INDICATES THAT THE**  
22 **ATTENTION GIVEN TO THE CLAIMS YOU HAVE RAISED IN THIS CASE**  
23 **SHOULD BE MINIMIZED BECAUSE OF THE NUMBER OF CLECS**  
24 **PARTICIPATING. CAN YOU RESPOND?**

1 A. Yes. First of all, from our viewpoint, the participation of six CLECs in this proceeding,  
2 including four Pennsylvania carriers, given the procedural difficulties, costs and timing of  
3 this 90 day docket forced on this Commission by the FCC, demonstrates the importance  
4 of this issue, particularly to CLECs serving Pennsylvania customers which are not  
5 international corporate conglomerates. Furthermore, the claims we make in our  
6 testimony are not specific to PCC members, but reflect factors which affect all CLECs  
7 operating in Pennsylvania. For example, the hot cut process in Pennsylvania is the same  
8 for all CLECs, not just PCC members. Furthermore, the business analysis, included in  
9 Exhibit "A" to our Direct Testimony, is not specific to Full Service Network, which  
10 prepared the Exhibit, but applies to all CLECs since it is based entirely on Verizon's  
11 tariffed rates for EELs and collocation. In our opinion and based upon our extensive  
12 experience in this market, the facts we presented in our direct and rebuttal testimony  
13 apply generally throughout Pennsylvania.

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

15 A. Yes.