

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

ORIGINAL

FACSIMILE

(202) 955-9792

www.kelleydrye.com

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

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA

DIRECT LINE: (202) 955-9766
EMAIL: eemott@kelleydrye.com

January 16, 2004

VIA UPS

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

DOCUMENT

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

Dear Secretary McNulty:

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

Respectfully submitted,

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

Enclosures

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

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Into The Obligation
Of Incumbent Local Exchange Carriers
To Unbundle Network Elements.

:
:
:

1-00030099

2004
COMMISSION

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

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

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

DOCKETED
FEB 05 2004

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

² *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline*

PUBLIC VERSION

DOCUMENT

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

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

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

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

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

PUBLIC VERSION

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

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

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

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

PUBLIC VERSION

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

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

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

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

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

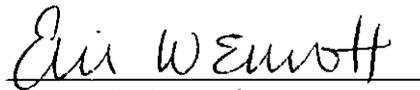
The specific information requested in the deposition is attached as Attachment 1. A proposed subpoena is attached as Attachment 2 hereto.

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

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

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

Respectfully submitted,



Steven A. Augustino

Erin W. Emmott

KELLEY DRYE & WARREN LLP

1200 19th Street, NW

Washington, D.C. 20036

Tel: (202) 955-9600

Fax: (202) 955-9792

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

Dated: January 16, 2004

PUBLIC VERSION

APPENDIX 2

PUC-291



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Docket No. I-00030099

SUBPOENA

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

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

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

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

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

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

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

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

BY THE COMMISSION

Date _____

Administrative Law Judge

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

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

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

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

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

Dated this _____ day of January, 2004. _____

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

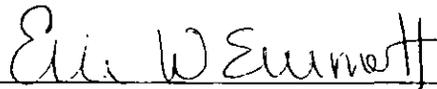
RENARDO L HICKS
ANDERSON GULOTTA & HICKES PC
1110 N MOUNTAIN ROAD
HARRISBURG PA 17112
(PENN TELECOM)
rhicks@aghweb.com

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

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

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

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



Erin W. Emmott

Date: January 16, 2004

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

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

January 16, 2004

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

DOCUMENT

SECRETARY'S BUREAU
04 JAN 20 AM 9:53

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

Dear Ms. Paiva:

Enclosed please find responses of ATX Licensing, Inc., Full Service Network, Line Systems, Inc., and Remi Communication to Verizons Third Set of Interrogatories directed to all Parties in the above referenced case. Please note that these responses contain proprietary information.

Thank you for your attention to this matter.

Sincerely,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw

cc: Secretary James J. McNulty (cover letter and certificate only)
Parties of Record

DSH:39078.2/CEN043-150157

CERTIFICATE OF SERVICE

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

VIA E-MAIL and OVERNIGHT DELIVERY

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

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

Michelle Painter, Esq.
MCI WorldCom
1133 19th St., NW
Washington, DC 20036

Robert C. Barber, Esq.
AT&T Communications of Pennsylvania, Inc.
3033 Chain Bridge Rd., Rm. 3-D
Oakton, VA 22185

Robin F. Cohn, Esq.
Russell M. Blau, Esq.
Swidler Berlin Sheriff Friedman LLP
3000 K Street N.W.
Washington, DC 20007

Enrico C. Soriano
Steven A. Augustino
Darius B. Withers
Kelley, Drye & Warren, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Zsuzsanna E. Benedek, Esq.
Sprint PCS
240 N. Third St. Suite 201
Harrisburg, PA 17101

Carol Pennington, Esq.
Angela Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

Barrett Sheridan, Esq.
Philip F. McClelland, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, PC
1110 North Mountain Road
Harrisburg, PA 17112

Genevieve Morelli
Ross A. Buntrock
Heather Hendrickson
Kelley Drye & Warren, LP
12 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Richard U. Stubbs
Conrad Counsel
Cavalier Telephone Mid Atlantic LLC
965 Thomas Drive
Warminster, PA 18974

Rogelio E. Pena
1375 Walnut Street, Suite 220
Boulder, CO 80302

William E. Ward
CTC Communications Corporation
115 Second Avenue
Waltham, MA 02451

Jeffrey J. Heins
Aldelphia Business Solutions of PA Inc.,
d/b/a Telcove
712 North Main Street
Coudersport, PA 16915

Jeanne Price
Marvin Hendrix
CEI Networks
PO Box 458
130 East Main Street
Ephrata, PA 17522

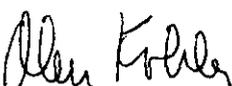
Philip J. Macres
Swidler Berlin Shereff Friedman LLP
3000 K Street NW
Suite 300
Washington DC 20007-5116

Thomas Koutsky
1200 19th Street NW
Suite 500
Washington DC 20036

Charles V. Gerkin, Jr.
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, TX 75231

Deb Kriete, Esquire
Rhoads & Sinon LLP
12th Floor
One South Market Street
P O Box 1146
Harrisburg Pa 17108-1116

Date: January 16, 2004



Alan Kohler, Esq.



RECEIVED

JAN 16 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

January 16, 2004

Via E-mail and Overnight Delivery

Julia Conover, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street, 32nd Fl
Philadelphia, Pennsylvania 19103

DOCUMENT

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

Dear Julie:

Please find enclosed MCI WorldCom Network Services, Inc.'s responses to Verizon's Third Set of Interrogatories and Document Requests in the above-referenced matter. Please note that the attachments contain MCI Proprietary data and should be treated accordingly.

Please contact me if you have any questions or concerns with this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Michelle Painter".
Michelle Painter

cc: James McNulty (Cover letter and Certificate of Service only)
Certificate of Service

Enclosures

SERVICE LIST

I hereby certify that I have this day caused a true copy of MCI's Set III Responses to be served upon the parties of record in Docket Nos. I-00030099 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Washington, DC on January 16, 2004

VIA E-MAIL AND FIRST CLASS MAIL OR OVERNIGHT DELIVERY

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

Charles Gerkin
Allegiance Telecom
9201 North Central Expressway
Dallas, TX 75231
469-259-4051

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

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

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

RECEIVED
JAN 16 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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

Robin Cohn
Swidler Berlin Sheriff Friedman LLP
3000 K St, NW
Washington, DC 20007
Phone – 202-945-6915

Philip Macres
Swidler Berlin Shereff Friedmann
3000 K Street, NW
Washington, DC 20007
202-945-6915

Richard Stubbs
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974
(267)803-4002

Ross Buntrock
Kelley Drye & Warren
1200 19th Street, NW, Suite 500
Washington, DC 20036
202-887-1248

Rick Hicks
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd
Harrisburg, PA 17112
717-541-1194

Jeffrey Heins
Adelphia d/b/a Telcove
712 North Main St
Coudersport, PA 16915
*First Class Mail

Thomas Koutsky
Z-Tel
1200 19th St, NW, Suite 500
Washington, DC 20036
*First Class Mail

Sue Benedek
Sprint/United
204 North Third St, Suite 201
Harrisburg, PA 17101
Phone – 717-236-1385

Darius Withers
Kelley Drye & Warren
1200 19th St, NW, Suite 500
Washington, DC 20036
202-955-9774

William Ward
CTC Communications Corp.
115 Second Avenue
Waltham, MA 02451
* First Class Mail

Jeanne Price
CEI Networks
130 East Main St
Ephrata, PA 17522
*First Class Mail

Stacy Wilson Rineer
D&E Communications
124 East Main St
Ephrata, PA 17522
717-738-8574


Michelle Painter



Zsuzsanna E. Benedek
Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Telephone (717) 236-1385
Fax (717) 238-7844

January 16, 2004

VIA ELECTRONIC AND OVERNIGHT MAIL

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

DOCUMENT

SECRETARY'S BUREAU

2004 JAN 16 PM 1:00

RECEIVED

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

Dear Counsel:

On behalf of Sprint Communications Company, L.P. ("Sprint"), enclosed please find an original and two (2) copies of Sprint's Responses to Set III Interrogatories propounded by Verizon Pennsylvania Inc. ("Verizon").

If you have any questions, please do not hesitate to call.

Sincerely,

Sue Benedek

ZEB/jh

cc: James J. McNulty, Secretary (*cover letter and certificate only*)(*via hand delivery*)
Certificate of Service (*via first-class mail and electronic mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of January, 2004, served a true copy, via electronic and first-class mail, of the foregoing Responses, in accordance with the requirements of 52 Pa. Code §1.54:

Julia A. Conover, Esquire*
Suzan D. Paiva, Esquire*
William B. Peterson, Esquire*
Verizon Pennsylvania, Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Angela Jones, Esquire*
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 1102
Harrisburg, PA 17101

Kandace Melillo, Esquire*
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street
Harrisburg, PA 17120

Norman Kennard, Esquire*
Hawke, McKeon, Sniscak and Kennard, LLP
100 North Tenth Street
Harrisburg, PA 17101

Ross A. Buntrock, Esquire*
Genevive Morelli, Esquire*
Heather T. Hendrickson, Esquire*
Kelley, Drye and Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

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

Michelle Painter, Esquire*
MCI WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Phillip McClelland, Esquire*
Barrett Sheridan, Esquire*
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

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

Phillip J. Macres, Esquire*
Swidler, Berlin, Shereff and Friedman, LLP
3000 K Street, NW
Washington, DC 20007-5116

*** Proprietary Version**

Enrico C. Soriano, Esquire*
Steven A. Augustino, Esquire*
Darius B. Withers, Esquire*
Kelley, Drye and Warren, LLP
1200 19th Street, NW
Washington, DC 20036

Debra M. Kriete, Esquire*
Rhoads and Sinon, LLP
One South Market Street
12th Floor
Harrisburg, PA 17101

Renardo L. Hicks, Esquire*
Anderson, Gulotta and Hicks, PC
1110 North Mountain Road
Harrisburg, PA 17112

Jeanne Price
Marvin Hendrix
CEI Networks
PO Box 458
130 East Main Street
Ephrata, PA 17522

Jeffrey J. Heins*
Telecove Communications, Inc.
712 North Main Street
Coudersport, PA 16915

Thomas Koutsky, Vice President*
Law and Public Safety
Z-Tel Communications, Inc.
1200 19th Street, NW, Suite 500
Washington, DC 20036

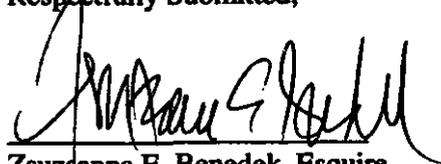
Peggy Rubino
Z-Tel Communications, Inc.
601 South Harbour Island Boulevard
Suite 220
Tampa, FL 33602

Richard U. Stubbs, Esquire*
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974

Rogelio E. Pena, Esquire*
1375 Walnut Street
Suite 220
Boulder, CO 80302
(via electronic mail only)

William E. Ward
CTC Communications Corporation
115 Second Avenue
Waltham, MA 02451

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
E-Mail: sue.e.benedek@mail.sprint.com

* Proprietary Version

SECRETARY'S BUREAU

2004 JAN 16 PM 4:00

RECEIVED

RECEIVED

2004 JAN 22 AM 11:29



Robert C. Barber
Senior Attorney

SECRETARY'S BUREAU

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rcbarber@att.com

January 16, 2004

VIA ELECTRONIC AND OVERNIGHT MAIL

Suzan D. Paiva, Esq.
Verizon Pennsylvania Inc.
1717 Arch Street, 32N
Philadelphia, PA 19103

DOCUMENT

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

Dear Suzan:

Please find enclosed AT&T Communications of Pennsylvania, LLC.'s Responses to Verizon Pennsylvania Inc.'s Third Set of Data Requests in the above-captioned matter. **Please note that these responses include information proprietary to AT&T.**

Please do not hesitate to contact me with any questions regarding these requests.

Very truly yours,

A handwritten signature in black ink that reads "Robert C. Barber".

Robert C. Barber

Enclosures

cc: The Honorable Michael Schnierle (w/o enclosures)
The Honorable Susan Colwell (w/o enclosures)
Secretary McNulty (w/o enclosures)
Service List (w/ enclosures)

Certificate of Service
Docket No. I-00030099

The undersigned hereby certifies that true and correct copies of the AT&T Communications of Pennsylvania, LLC.'s Responses to Verizon's Third Set of Interrogatories and Requests for Production were caused to be served on the persons named below by electronic and overnight or first class mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
PO Box 9500
Harrisburg, PA 17108

Michelle Painter, Esq.
MCI
1133 19th Street, NW
Washington, DC 20036

Philip F. McClelland, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Zsuzsanna E. Benedek, Esq.
Sprint
240 North Third St., Suite 201
Harrisburg, PA 17101

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

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

Julia A. Conover, Esq.*
Suzan Paiva, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103

Kandace Melillo, Esq.
Office of Trial Staff
Pennsylvania PUC
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Steven A. Augustino, Esq.
Kelley Drye & Warren LLP
1200 19th Street N.W.
Suite 500
Washington, DC 20036

Richard U. Stubbs, Esq.
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Road
Harrisburg, PA 17112

Philip Macres, Esq.
Swidler Berlin Shereff & Friedmann
3000 K Street, NW
Washington, DC 20007

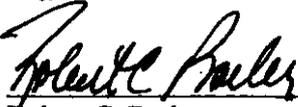
Ross A. Buntrock, Esq.
Kelley Drye & Warren LLP
1200 19th Street N.W.
Suite 500
Washington, DC 20036

Debra M. Kriete, Esq.
Rhoads & Sinon LLP
1 South Market Square, 12th Fl.
Harrisburg, PA 17101

RECEIVED
2004 JAN 22 AM 11:29
SECRETARY'S BUREAU

Thomas Koutsky, Esq.
Z-Tel
1200 19th Street, NW
Suite 500
Washington, DC 20036

Robin Cohn,
Russell Blau, Esq.
Swidler Berlin Shereff Friedman
3000 K St., NW
Washington, DC 20007


Robert C. Barber

Dated: January 16, 2004

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

2004 JAN 23 PM 12:46

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

PA P.O.C.
SECRETARY'S BUREAU

January 16, 2004

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

DOCUMENT

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

Dear Ms. Paiva:

Enclosed please find responses of ATX Licensing, Inc., Full Service Network, Line Systems, Inc., and Remi Communication to Verizons Third Set of Interrogatories directed to all Parties in the above referenced case. Please note that these responses contain proprietary information.

Thank you for your attention to this matter.

Sincerely,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw

cc: Secretary James J. McNulty (cover letter and certificate only)
Parties of Record

DSH:39078.2/CEN043-150157

CERTIFICATE OF SERVICE

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

VIA E-MAIL and OVERNIGHT DELIVERY

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

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

Michelle Painter, Esq.
MCI WorldCom
1133 19th St., NW
Washington, DC 20036

Robert C. Barber, Esq.
AT&T Communications of Pennsylvania, Inc.
3033 Chain Bridge Rd., Rm. 3-D
Oakton, VA 22185

Robin F. Cohn, Esq.
Russell M. Blau, Esq.
Swidler Berlin Sheriff Friedman LLP
3000 K Street N.W.
Washington, DC 20007

Enrico C. Soriano
Steven A. Augustino
Darius B. Withers
Kelley, Drye & Warren, LLP
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Zsuzsanna E. Benedek, Esq.
Sprint PCS
240 N. Third St. Suite 201
Harrisburg, PA 17101

Carol Pennington, Esq.
Angela Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

Barrett Sheridan, Esq.
Philip F. McClelland, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, PC
1110 North Mountain Road
Harrisburg, PA 17112

Genevieve Morelli
Ross A. Buntrock
Heather Hendrickson
Kelley Drye & Warren, LP
12 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Richard U. Stubbs
Conrad Counsel
Cavalier Telephone Mid Atlantic LLC
965 Thomas Drive
Warminster, PA 18974

RECEIVED
2009 JAN 23 PM 12:16
SECRETARY'S BUREAU

Rogelio E. Pena
1375 Walnut Street, Suite 220
Boulder, CO 80302

William E. Ward
CTC Communications Corporation
115 Second Avenue
Waltham, MA 02451

Jeffrey J. Heins
Aldelphia Business Solutions of PA Inc.,
d/b/a Telcove
712 North Main Street
Coudersport, PA 16915

Jeanne Price
Marvin Hendrix
CEI Networks
PO Box 458
130 East Main Street
Ephrata, PA 17522

Philip J. Macres
Swidler Berlin Shereff Friedman LLP
3000 K Street NW
Suite 300
Washington DC 20007-5116

Thomas Koutsky
1200 19th Street NW
Suite 500
Washington DC 20036

Charles V. Gerkin, Jr.
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, TX 75231

Deb Kriete, Esquire
Rhoads & Sinon LLP
12th Floor
One South Market Street
P O Box 1146
Harrisburg Pa 17108-1116

Date: January 16, 2004



Alan Kohler, Esq.

Suzan DeBusk Paiva
Assistant General Counsel
Law Department



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

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

ORIGINAL

January 20, 2004

RECEIVED

JAN 20 2004

VIA UPS OVERNIGHT DELIVERY

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

DOCUMENT PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

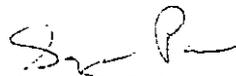
Re: *Investigation into the Obligation of Incumbent Local Exchange Carriers to
Unbundle Network Elements, Docket No. I-00030099*

Dear Secretary McNulty:

I enclose for filing the original and three copies of the Opposition of Verizon
Pennsylvania Inc. and Verizon North Inc. to the Loop/Transport Carrier Coalition's Motion to
Strike in the above named matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Suzan D. Paiva

SDP/meb

Enclosure

cc: Via E-Mail and UPS Overnight Delivery
Honorable Michael Schnierle
Honorable Susan Colwell
Attached Certificate of Service

120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

DOCKETED
FEB 05 2004

**OPPOSITION OF VERIZON PENNSYLVANIA INC. AND
VERIZON NORTH INC. TO THE LOOP/TRANSPORT
CARRIER COALITION'S MOTION TO STRIKE**

Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") oppose the motion to strike portions of Verizon's direct and supplemental testimony filed by Choice One Communications of Pennsylvania, Inc., Focal Communications Corporation of Pennsylvania, SNiP LiNK LLC and XO Pennsylvania, Inc. (collectively the "Loop/Transport Carrier Coalition" or "LTCC").¹

DOCUMENT

The LTCC seeks to strike all parts of Verizon's testimony and attached evidentiary exhibits that go to satisfaction of the "wholesale" triggers for dedicated transport or loops. The wholesale triggers require the PUC to find non-impairment if two or more CLECs along a transport route are willing to provide DS1, DS3 or dark fiber transport at wholesale, or two or more CLECs are willing to make loop facilities available at wholesale to a particular customer location.

Under an absurd conception of the term "irrelevant," the LTCC asks the Commission to ignore all of the highly probative evidence in the record regarding wholesale provision of transport and loops because, they assert, Verizon's direct and supplemental direct testimony viewed in isolation (that is, without any of the materials

¹ The CLEC "coalitions" in this case appear to shift. The original "Loop/Transport Coalition" that answered Verizon's petition on November 14, 2003 included Broadview Networks, Inc. and excluded Choice One. Also, this LTCC is not one of the two "coalitions" that filed joint testimony on January 9, 2004.

the testimony cites or attaches) is not sufficient to fully prove Verizon's case. This position ignores, of course, that the very testimony the LTCC seeks to strike depends upon and incorporates substantial probative evidence that carriers are providing wholesale service in Pennsylvania and holding themselves out to provide more. This evidence includes statements by the carriers themselves – on their marketing websites, in their tariffs, in their statements to industry analysts, in their relationships with wholesale facilities brokers, in the services they buy to facilitate wholesale arrangements, and in their responses to discovery by the Commission and by Verizon in this case – that they are willing to sell access to their transport and loop facilities at wholesale to other carriers. In essence, the LTCC asks the Commission to ignore the FCC's express directives in the *Triennial Review Order* (“TRO”) requiring this Commission to consider all relevant evidence regarding the wholesale triggers, and instead to refuse even to consider the issue of the wholesale triggers at all. The LTCC's motion to strike is baseless and improper and must be denied.

Unquestionably, any evidence that CLECs are offering transport or loops at wholesale in Pennsylvania is “relevant” to this proceeding. According to the *TRO*, with regard to the wholesale trigger for dedicated transport, “we delegate to state commissions the fact-finding role of identifying on which routes requesting carriers are not impaired without access to unbundled transport at a specific capacity when there is evidence that two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale transport service completing that route.”² With regard to the wholesale

² *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline*

trigger for loops, “where the relevant state commission determines that two or more unaffiliated alternative providers, including alternative transmission technology providers that offer an equivalent wholesale loop product at a comparable level of capacity, quality and reliability, have access to the entire multiunit customer premises, and offer the specific type of high-capacity loop over their own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location, then incumbent LEC loops at the same loop capacity level serving that particular building will no longer be unbundled.”³

Notwithstanding the terminology used in its motion to strike, what the LTCC is claiming is *not* that the proffered evidence is “irrelevant,” but rather that Verizon is the only party with any burden to produce evidence in this proceeding and that the Commission should make a determination on the merits based only on Verizon’s direct testimony viewed in isolation. This premise is directly contrary to the *TRO* and to longstanding Pennsylvania law regarding who must come forward with evidence. It also ignores the very substantial evidence that Verizon’s witnesses include in their analysis – evidence that comes primarily from the CLECs themselves.

In an effort to prevent the Commission from considering the substantial evidence that Verizon (and other competing carriers) have provided regarding wholesale provision of transport and loops, the LTCC claims that Verizon is the only party in this proceeding with a burden to produce evidence, and that Verizon bears the entire burden of persuasion with respect to such evidence. The LTCC fails to cite the *TRO* or anything else in

Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2003) (“*TRO*”) ¶ 412.

³ *TRO* ¶ 337.

support of this claim, and no such support exists. Under the *TRO*, Verizon does not by itself bear either the burden of production *or* the burden of persuasion with respect to the trigger analysis.

As the *TRO* makes clear, it is the obligation of each state commission to determine whether the dedicated transport triggers are satisfied, and to gather the factual evidence to make this determination.⁴ Each state commission is required to assume a “fact-finding role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers.”⁵ The FCC gave the states this role based on its expectation that states were better suited to conduct the “highly granular” impairment analysis that the FCC claims the D.C. Circuit has required.⁶

Under this framework, no one party bears the burden of producing evidence or the ultimate burden of proof. Rather, the *TRO* contemplates that states will gather all relevant evidence, from all relevant parties, and weigh the reliability of that evidence on its merits. This is the only interpretation that gives meaning to the state commission’s role as fact finder, and to its responsibility to identify “specific point-to-point routes where carriers have the ability to use alternatives to the incumbent’s LEC networks.”⁷ It is also the only interpretation consistent with the fact that the FCC’s own factual record consisted of evidence from incumbents and competing carriers alike.⁸ Indeed, the FCC

⁴ See, e.g., *TRO* ¶ 385 (“[W]e delegate to the states the authority to collect and analyze more specific evidence of transport deployment”).

⁵ *TRO* ¶ 394.

⁶ *TRO* ¶¶ 360, 398 (finding that “the nature of transport facilities requires a “highly granular impairment analysis” and concluding that the record was “insufficiently detailed to make more precise findings regarding impairment”).

⁷ *TRO* ¶ 360.

⁸ See, e.g., *TRO* ¶¶ 378-379, 387.

specifically held that in conducting its own unbundling analysis for specific UNEs in the *TRO*, “[w]e do not adopt a ‘burden of proof’ approach that places the onus on either the incumbent LECs or competitors.”⁹

Even if this were a traditional state law case in which the petitioner bears the ultimate burden of proof, however – which it is not -- the LTCC’s motion to strike is still contrary to longstanding Pennsylvania law regarding the burden of coming forward with evidence and incorrectly presumes that this burden remains solely with Verizon. As this Commission has explained, “while the burden of proof never shift[s]” from the proponent of a claim, “the burden of going forward with the evidence, sometimes called the burden of persuasion, can properly shift to that party . . . best able to meet the burden after Complainants establish a prima facie case.” *Shaffer v. Commonwealth Telephone Company*, No. C-00924648, 1995 Pa. PUC LEXIS 14 (Opinion and Order entered January 24, 1995) (also noting “the importance of properly placing the burden of persuasion on the party best able to prove the existence or nonexistence of a fact under Pennsylvania law.”)

On the burden of proof, Pennsylvania has long made a distinction between the burden of proof and the burden of persuasion or coming forward with evidence. However, “burden of proof” and the “weight of the evidence” are not one and the same; the former remains on the party upon whom is imposed the duty of producing a certain amount of evidence in order that he may not lose summarily while the latter involves the credibility of persuasive quality of the evidence produced and, during a trial, may shift from side to side as the trial proceeds. . . . The secondary burden, or the weight of the evidence burden, is a burden requiring a party to present evidence sufficient to establish a prima facie case. In Pennsylvania, an established prima facie case “shifts” the secondary burden to the opponent.¹⁰

⁹ *TRO* ¶ 92.

¹⁰ *Shaffer* at *21-22 (citations omitted). See also *Henes v. McGovern*, 317 Pa. 302, 305 176 A. 503 (1935); *Pfordt v. Educators Beneficial Association*, 140 Pa. Superior Ct.

Verizon's direct and supplemental testimony regarding the wholesale triggers is more than sufficient to set out a prima facie case. Under the *TRO*, all parties have the "burden" of coming forward with all relevant evidence in their possession. Even in an ordinary state law case, however, at this point the burden of coming forward would have shifted to the CLEC parties to produce evidence demonstrating that the wholesale trigger is not satisfied on a particular route or customer location identified by Verizon.

Contrary to the LTCC's portrayal, moreover, Verizon's evidence alone is significant and persuasive. As described in its testimony, Verizon verified all dedicated transport routes included in its triggers case through detailed physical inspections of the CLEC collocation arrangements forming the route end points, checking to verify that there was powered equipment in place (*i.e.*, it is operational), and that the collocating carrier had non-Verizon fiber optic cable that both terminated at its collocation facility and left the wire center. A collocation arrangement (*i.e.*, one end of a route) was included in Verizon's triggers case *only* if, through this rigorous process of inspection and verification, it was found to be operational and to have non-Verizon fiber. Verizon then identified the carriers providing wholesale service over these transport routes with objective evidence, such as the carrier holding itself out as a wholesale provider on its website without limitation to particular routes, the carrier supplying transport facilities to Universal Access, Inc. (a broker of transport services), the carrier having a CATT arrangement in any of Verizon's wire centers (an arrangement specifically designed for wholesale providers), and the carrier being listed in the New Paradigm CLEC Report

170, 14 A.2d 170, 174 (1940); *Morrissey v. Commonwealth Dept. of Highways*, 424 Pa. 87, 225 A.2d 895, 898 (1967).

2003 as offering dedicated access transport. Similarly, Verizon's identification of the customer locations satisfying the loop wholesale trigger was based on objective evidence of the carrier holding itself out as a wholesale provider on its website without limitation to particular customer locations and CLEC admissions of specific facilities obtained at wholesale from other CLECs in discovery, and Verizon made similar reasonable assumptions about which carriers were providing loops at wholesale. All of this evidence is detailed in Verizon's testimony and exhibits.¹¹

Additionally, it is already clear that there will be other evidence in the record that will demonstrate satisfaction of the wholesale triggers, and this Commission is bound by law to consider the numerous admissions by the CLECs that carriers *are* providing wholesale service in Pennsylvania – evidence which is notably missing from the LTCC's motion. **[BEGIN CLEC PROPRIETARY]** For example, in response to the Commission's discovery Cavalier listed many different locations where it leases transport facilities from "City Signal Communications."¹² Cavalier in its testimony states that "City Signal does business with Cavalier. City Signal has provided me with maps of its network to encourage Cavalier to consider leasing transport services from it."¹³ Choice One has disclosed in response to Commission discovery that it leases transport "on an unaffiliated carrier's network" at a number of locations.¹⁴ Allegiance has disclosed in response to Commission discovery that it leases dark fiber from MFS (Abovenet) and

¹¹ See VZ. St 1.0 and VZ St. 1.1.

¹² Cavalier Appendix A Responses, Transport Exhibits. The presiding officers have already ruled that these admissions made in response to the Commission's discovery will be made a part of the record. See Order Concerning Service Of Responses To Commission Data Requests.

¹³ Cavalier Direct Testimony of Jim Vermeulen at 6, lines 16-18.

¹⁴ Choice One Responses to Appendix A, Transport.

leases DS3s from MCI.¹⁵ MCI admitted in its discovery responses that all of its transport services are available at retail or wholesale.¹⁶ Penn Telecom's testimony contains extensive discussion of the fact that it leases transport facilities from DQE and Fiber Tech Networks, and actually goes to these providers first before seeking transport from Verizon as a last resort.¹⁷ **[END CLEC PROPRIETARY]**

Verizon has served discovery on the CLEC parties going specifically to wholesale provision of dedicated transport, and answers were due on January 16. Particularly, Verizon has asked the CLECs various questions regarding wholesale activity, both in making transport available to others and in leasing it from other carriers.¹⁸ Verizon has the right to use these responses in its rebuttal testimony (to the extent it has time to do so) and more importantly in cross examination at the hearings.

The LTCC would have the presiding officers "strike" Verizon's testimony and declare the whole issue of wholesale provision to be "irrelevant" before the Commission even has the chance to consider the information produced in response to these requests. Based on the admissions that have already been made regarding wholesale activity, it is likely that additional relevant evidence will be developed from these responses.

¹⁵ Allegiance Responses to Appendix A, Transport. Indeed, the LTCC just requested a subpoena to be issued to Abovetnet regarding its wholesale activity.

¹⁶ In fact, MCI has admitted in PA – as it has nationwide – that it does not keep track of how customers use services; a customer is a customer.

¹⁷ Penn Telecom Direct Testimony of Wayne C. Myers at 28-30.

¹⁸ These questions included asking CLECs to "identify all transport facilities in Pennsylvania that you *offer* to make available to other carriers" and to "provide all documents that discuss or describe the dedicated transport in Pennsylvania that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LECs."

The LTCC's improper attempt to exclude the entire issue and preclude the finder of fact from considering the relevant evidence is directly contrary to the directions given this Commission by the FCC in *TRO*. The FCC specifically directed that "a state commission . . . has an affirmative obligation to review the relevant evidence associated with any route submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence." *TRO* ¶ 417, note 1289. *See also* ¶ 339, note 991.

Peremptorily excluding the entire issue of the wholesale triggers without allowing Verizon to develop a full record, particularly where much of the evidence on this issue is in the possession of the CLECs, would also violate Verizon's due process rights.

Fundamental to Verizon's right to due process is the opportunity to prove its case not only through its own testimony, but also through discovery of and cross-examination of the CLEC parties.¹⁹ To refuse to consider Verizon's evidence on the wholesale triggers even before Verizon has had a chance to complete the record and cross-examine the CLECs on their own discovery responses would violate Verizon's Constitutional rights.

In sum, if the LTCC wishes to argue in its briefs that the totality of the evidence before this Commission does not prove satisfaction of the wholesale triggers, either generally or with regard to some routes or customer locations, it is free to do so. However, this attempt to preclude the finder of fact from even considering the wholesale triggers issue – without considering the CLECs' own admissions or giving Verizon the chance to cross-examine – is a blatant misuse of the Commission's rules and would

¹⁹ *See, e.g., Chester Water Auth. v. Pa. PUC*, 822 A.2d 146, 153 (Commonwealth Court 2003) ("Where issues of material fact are raised . . . due process concerns require a hearing.")

amount to a violation of Verizon's due process rights. It is also directly contrary to the FCC's admonition that this Commission "has an affirmative obligation to review the relevant evidence."

Therefore, the LTCC's motion to strike should be denied.



Julia A. Conover
Suzan DeBusk Paiva
1717 Arch Street, 32N
Philadelphia, PA 19103
(215) 963-6001
fax (215) 563-2658
e-mail: Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com

Counsel for Verizon Pennsylvania Inc. and
Verizon North Inc.

January 20, 2004

CERTIFICATE OF SERVICE

ORIGINAL

I, Suzan DeBusk Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.'s and Verizon North Inc.'s Opposition to the Loop/Transport Carrier Coalition's Motion to Strike, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 20th day of January, 2004.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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

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

Genevieve Morelli, Esquire
Ross Buntrock, Esquire
Heather Hendrickson, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Counsel for Broadview, BullsEye,
ARC/InfoHighway, McGraw, Met Tel
and Talk America

Alan Kohler, Esquire
Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236
Counsel for ATX, Full Service Network,
Line Systems Inc., Remi Retail and
Comcast

Enrico Soriano, Esquire
Steven A. Augustino, Esquire
Darius Withers, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Counsel for Choice One, Broadview,
Focal, SNiP LiNK and XO

Russell Blau, Esquire
Robin F. Cohn, Esquire
Tamar Finn, Esquire
Philip J. Macres, Esquire
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
Counsel for RCN, Lightship and CTS

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Philip McClelland, Esquire
Barrett Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street
Frum Place – 5th Floor
Harrisburg, PA 17101-1923
Via e-mail only to OCA Consultants:
Rowland Curry
Melanie Lloyd
Bob Loube

Michelle Painter, Esquire
MCI WorldCom Communications, Inc.
1133 19th Street, NW
Washington, DC 20036
Counsel for MCI

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

Sue Benedek, Esquire
Sprint Communications Co. LP
240 North Third Street
Suite 201
Harrisburg, PA 17101
Counsel for Sprint

Richard U. Stubbs, Esquire
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974
Counsel for Cavalier

Charles V. Gerkin, Jr., Esquire
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, TX 75231
Counsel for Allegiance

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

Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, P.C.
1110 N. Mountain Road
Harrisburg, PA 17112
Counsel for Penn Telecom

Thomas Koutsky, Esquire
Z-Tel Communications, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036


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



ORIGINAL

Robert C. Barber
Senior Attorney

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rcbarber@att.com

January 20, 2004

RECEIVED

BY OVERNIGHT MAIL

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

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

Re: Investigation Into Obligations Of Incumbent
Local Exchange Carriers To Unbundle Network Elements
Docket No. I-00030099

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned proceeding the original and three (3) copies of AT&T Communications of Pennsylvania, LLC.'s Objections to Verizon's Fifth Set of Interrogatories.

Please do not hesitate to contact me with any questions regarding the enclosures.

Very truly yours,

Robert C. Barber

Enclosures

cc: (w/ encl)
The Honorable Michael Schnierle
The Honorable Susan Colwell
Service List (w/ encl)

122

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. I-00030099

**AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC'S
OBJECTIONS TO VERIZON'S
FIFTH SET OF INTERROGATORIES**

DOCKETED
FEB 05 2004

Pursuant to 52 Pa. Code §5.342 and §5.349, AT&T Communications of Pennsylvania, LLC. ("AT&T") objects to Verizon Pennsylvania Inc. and Verizon North Inc.'s Fifth Set of Interrogatories as follows:

GENERAL OBJECTIONS

AT&T objects to Verizon Pennsylvania Inc.'s Fifth Set of Interrogatories on the following grounds, which are incorporated by reference without waiver into each answer to Interrogatory and the corresponding response to request for production of documents:

1. AT&T objects to the Interrogatories and request for production of documents to the extent they seek information or documents that are protected by the attorney/client privilege, the work product immunity or any other applicable privilege.

2. AT&T objects to the Interrogatories to the extent they seek to obtain confidential or proprietary information concerning AT&T's business plans, technology, trade secrets and other sensitive commercial information.

DOCUMENT

3. AT&T objects to the definitions and instructions included in the Interrogatories and request for production of documents to the extent they purport to require responses or impose obligations beyond those that are required by the Public Utility Code.

4. AT&T objects to the Interrogatories and request for production of documents to the extent they are overly broad, unduly burdensome and oppressive.

5. AT&T objects to the Interrogatories and request for production of documents to the extent they are vague, ambiguous or based upon imprecise terms.

SPECIFIC OBJECTIONS TO INTERROGATORIES

Subject to and without waiving the foregoing General Objections, which are incorporated by reference into each answer to Interrogatory and response to document request, AT&T objects as follows to the specific Interrogatories and requests for production of documents:

VZ V-1 For MCI, AT&T, XO and RCN only, for each customer location identified in response to Set 1 Interrogatories of Verizon Pennsylvania, Inc. Interrogatory No. 1, please provide the following information:

- a. Indicate whether or not the Responding Party's fiber is terminated in that location's Minimum Point of Entry (MPOE).
- b. Explain how the Responding Party has terminated its fiber to serve the customer at that location.
- c. Indicate whether the Responding Party is using the high capacity loop deployed to provide service to an end user customer and the capacity at which the Responding Party is serving the customer.

- d. List the number of high capacity circuits delivered to customers at each location and the speed/capacity (i.e., DS1, DS3, OC3, etc.) of each such circuit.
- e. Indicate whether the Responding Party has deployed the loop facility by attaching its own optronics to activate dark fiber obtained under a long-term indefeasible right or use.
- f. To the extent you have not already done so, indicate whether the DS-1 facilities identified are copper or fiber facilities.

Objection: AT&T's response to VZ-PA I-1, referenced in this request, identified over 500 different customer locations. AT&T thus objects to this request in that it is unduly burdensome, and would require AT&T to engage in a special study and/or undertake an unreasonable investigation.

Respectfully submitted,

**AT&T COMMUNICATIONS
OF PENNSYLVANIA, LLC.**

By its Attorneys,



Robert C. Barber
3033 Chain Bridge Road
Oakton, VA 22185
(703) 691-6061

Of Counsel:
Mark Keffer

Dated: January 20, 2004

The undersigned hereby certifies that true and correct copies of the AT&T Communications of Pennsylvania, LLC.'s Objections to Verizon's Fifth Set of Interrogatories and Requests for Production were caused to be served on the persons named below by electronic and overnight or first class mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
PO Box 9500
Harrisburg, PA 17108

Michelle Painter, Esq.
MCI
1133 19th Street, NW
Washington, DC 20036

Philip F. McClelland, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Zsuzsanna E. Benedek, Esq.
Sprint
240 North Third St., Suite 201
Harrisburg, PA 17101

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

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

Julia A. Conover, Esq.*
Suzan Paiva, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Kandace Melillo, Esq.
Office of Trial Staff
Pennsylvania PUC
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Steven A. Augustino, Esq.
Kelley Drye & Warren LLP
1200 19th Street N.W.
Suite 500
Washington, DC 20036

Richard U. Stubbs, Esq.
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Road
Harrisburg, PA 17112

Philip Macres, Esq.
Swidler Berlin Shereff & Friedmann
3000 K Street, NW
Washington, DC 20007

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

Debra M. Kriete, Esq.
Rhoads & Sinon LLP
1 South Market Square, 12th Fl.
Harrisburg, PA 17101

Thomas Koutsky, Esq.
Z-Tel
1200 19th Street, NW
Suite 500
Washington, DC 20036

Robin Cohn, Esq.
Russell Blau, Esq.
Swidler Berlin Shereff Friedman
3000 K St., NW
Washington, DC 20007


Robert C. Barber

Dated: January 20, 2004



Robert C. Barber
Senior Attorney

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rbarber@att.com

January 20, 2004

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BY OVERNIGHT MAIL

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

Re: Investigation Into Obligations Of Incumbent
Local Exchange Carriers To Unbundle Network Elements
Docket No. I-00030099

DOCUMENT

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned proceeding the original and three (3) copies of the Motion for Admission *Pro Hac Vice* of Mark A. Keffer.

Please do not hesitate to contact me with any questions regarding the enclosures.

Very truly yours,

Robert C. Barber

Enclosures

cc: (w/ encl)
The Honorable Michael Schnierle
The Honorable Susan Colwell
Service List (w/ encl)

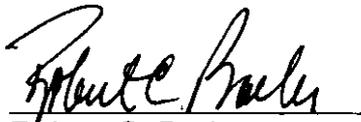
12/2

WHEREFORE, I move that Mark A. Keffer be admitted to practice *pro hac vice* on behalf of AT&T in the above-captioned proceeding.

Respectfully submitted,

**AT&T COMMUNICATIONS
OF PENNSYLVANIA, LLC.**

By its Attorneys,



Robert C. Barber
3033 Chain Bridge Road
Oakton, VA 22185
(703) 691-6061

Dated: January 20, 2004

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-00030099

**MOTION FOR ADMISSION *PRO HAC VICE*
OF MARK A. KEFFER**

Pursuant to 52 Pa. Code §1.22(b) and Pa.B.A.R. 301, Robert C. Barber, a member of the bar of the Commonwealth of Pennsylvania, respectfully moves for the admission of the following individual to appear as an attorney on behalf of AT&T Communications of Pennsylvania, LLC., in the above-captioned proceeding.

Mark A. Keffer, Esq.
AT&T Corp.
3033 Chain Bridge Road, Room 3-D
Oakton, VA 22185

E-mail: mkeffer@att.com
Phone: 703-691-6046
Fax: 703-691-6093

DOCKETED
FEB 05 2004

DOCUMENT

In support of this motion, movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 43619) and counsel on behalf of AT&T.
2. Mark A. Keffer is a member in good standing of the bars of West Virginia, Virginia and the District of Columbia.
3. Mr. Keffer has been actively involved in regulatory proceedings in Pennsylvania and other jurisdictions.

Certificate of Service
Docket No. I-00030099

The undersigned hereby certifies that true and correct copies of the Motion for Admission Pro Hac Vice of Mark A. Keffer were caused to be served on the persons named below by electronic and overnight or first class mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
PO Box 9500
Harrisburg, PA 17108

Philip F. McClelland, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

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

Julia A. Conover, Esq.*
Suzan Paiva, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103

Steven A. Augustino, Esq.
Kelley Drye & Warren LLP
1200 19th Street N.W.
Suite 500
Washington, DC 20036

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Road
Harrisburg, PA 17112

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

Michelle Painter, Esq.
MCI
1133 19th Street, NW
Washington, DC 20036

Zsuzsanna E. Benedek, Esq.
Sprint
240 North Third St., Suite 201
Harrisburg, PA 17101

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

Kandace Melillo, Esq.
Office of Trial Staff
Pennsylvania PUC
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Richard U. Stubbs, Esq.
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974

Philip Macres, Esq.
Swidler Berlin Shereff & Friedmann
3000 K Street, NW
Washington, DC 20007

Debra M. Kriete, Esq.
Rhoads & Sinon LLP
1 South Market Square, 12th Fl.
Harrisburg, PA 17101

Thomas Koutsky, Esq.
Z-Tel
1200 19th Street, NW
Suite 500
Washington, DC 20036

Robin Cohn, Esq.
Russell Blau, Esq.
Swidler Berlin Shereff Friedman
3000 K St., NW
Washington, DC 20007



Robert C. Barber

Dated: January 20, 2004

* overnight mail

Julia A. Conover
Vice President and General Counsel
Pennsylvania



ORIGINAL

1717 Arch Street, 32N
Philadelphia, PA 19103

Tel: (215) 963-6001
Fax: (215) 563-2658
Julia.A.Conover@Verizon.com

January 20, 2004

RECEIVED

JAN 20 2004

VIA UPS OVERNIGHT DELIVERY

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

DOCUMENT PA-PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

I enclose for filing the original and three copies of Verizon Pennsylvania Inc.'s and Verizon North Inc.'s Motion to Strike Irrelevant Portions of Intervenor Testimony in the above named matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Julia A. Conover

JAC/meb

Enclosure

cc: Via E-Mail and UPS Overnight Delivery
Honorable Michael Schnierle
Honorable Susan Colwell
Attached Certificate of Service

121

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. I-00030099

DOCKETED
FEB 6 5 2004

**VERIZON PENNSYLVANIA INC.'S
AND VERIZON NORTH INC.'S MOTION TO STRIKE
IRRELEVANT PORTIONS OF INTERVENOR TESTIMONY**

INTRODUCTION

Verizon Pennsylvania Inc. and Verizon North ("Verizon") move to strike irrelevant and immaterial testimony that has been filed by some intervenors in this proceeding. See 52 Pa. Code §§ 5.103 & 5.401. In support of its Motion, Verizon states the following:

As the Presiding Officers are aware, the Federal Communications Commission ("FCC") has adopted certain objective "triggers" as "a principal mechanism for use by states in evaluating whether requesting carriers are in fact not impaired in a particular market."¹ These mandatory triggers are based solely on evidence of "actual competitive deployment," which the FCC has concluded is the "best indicator that requesting carriers are not impaired." TRO ¶ 506.

The FCC requires state commissions to apply these triggers first, and only if these triggers are not satisfied should a state commission go further and undertake the more complex "potential deployment" review provided by the FCC as a second, alternative means of evaluating impairment. See TRO ¶ 425, n. 1300 ("states must first employ triggers that examine actual

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147 (Released August 21, 2003) ¶ 498 ("TRO").

DOCUMENT

deployment; only if the triggers are not met must states apply criteria to assess whether entry is uneconomic; *id.* ¶ 494 (“If the [switching] triggers are not satisfied, the state commission shall proceed to the second step of the analysis, in which it must evaluate certain operational and economic criteria to determine whether conditions in the market are actually conducive to competitive entry . . .”).

Verizon has previously indicated that it is not bringing a potential deployment case, but is instead relying solely on the FCC’s triggers to demonstrate non-impairment. Verizon’s decision to demonstrate no impairment solely on the basis of the FCC’s objective triggers has a tangible benefit for the Commission, since, in the words of the FCC, such a “triggers only” proceeding “avoid[s] delays caused by protracted proceedings and can minimize administrative burdens.” *TRO* ¶ 403. But for the triggers to realize their promise of efficiency and a lessening of the burden on this Commission, the Presiding Officers must obviously limit the scope of this proceeding to these triggers.

While all intervenors pay lip service to the FCC’s triggers, some intervenors have nevertheless filed testimony that has nothing to do with these triggers. Such immaterial and irrelevant testimony should be stricken: Consideration of this testimony will not only unnecessarily prolong and expand the proceedings, thereby wasting the Commission’s resources, but such testimony introduces the risk of a distortion of the FCC’s “bright-line” and “objective” triggers (*TRO* ¶ 498) into vague and malleable standards that can be rendered meaningless and inapplicable. That may even be the objective of the parties proposing this extraneous testimony.

The improper testimony that Verizon is moving to strike generally fails into one of three categories: (1) testimony that justifies, praises and defends UNE-P, and (2) testimony that discusses so-called operational and economic “barriers.” Both of these topics are irrelevant to a

switching triggers proceeding. In addition, Verizon is moving to strike testimony that (3) addresses the batch hot cut process and/or electronic loop provisioning, since the Commission has indicated it will consider these topics in a separate proceeding.

I. Evidence Citing Alleged “Benefits” of UNE-P Are Irrelevant And Should Be Stricken From This Case.

Several CLECs offer extensive testimony about the alleged importance of UNE-P; they claim that its availability in Pennsylvania provides “meaningful competitive alternatives,” and that its elimination would “spell the end of local phone competition.”² Other witnesses go to great lengths to defend the UNE-P against claims that it reduces investment incentives.³ But this proceeding is most assuredly not a referendum on UNE-P, and all of this testimony is irrelevant and should be stricken. As the United States Supreme Court has determined, the 1996 Act “does not authorize the . . . [FCC] to create isolated exemptions from some underlying duty to make all network elements available. It requires the . . . [FCC] to determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the ‘necessary and ‘impair’ requirements.”⁴ In the *TRO*, the FCC said that it was following “Congress’s direction for us [the FCC] to make specific, affirmative findings that *elements* should or should not be unbundled.” *TRO* ¶ 71 (*emphasis added*). In fact, the FCC claimed that it was focused on not on preserving UNE-P, but “on opening . . . bottleneck markets.” *Id.* ¶ 141. And in making these determinations, the FCC acknowledged that “unbundling is one of the most intrusive forms of economic regulation – and one of the most

² *Nurse-Kirchberger Testimony* at 64.

³ *E.g.*, *Mayo Testimony* at 39-51. Dr. Mayo virtually acknowledges that this testimony is not really rebutting anything that Verizon has actually asserted in this case. *See id.* at 39.

⁴ *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 389 (1999).

difficult to administer,” and therefore concluded that “it is unlikely that Congress intended to apply unbundling more generally absent an unambiguous mandate.” *Id.*

For this reason, all hymns of praise to UNE-P, all defenses against the conclusion that it discourages investment, and all “Chicken Little” scenarios that these carriers claim will follow the elimination of UNE-P must be stricken as immaterial and irrelevant. The FCC does not expect this Commission to conduct a policy review on the wisdom of UNE-P; instead, this Commission has been assigned the task of making “carefully targeted impairment determinations” by applying “federal guidelines.” *Id.* ¶¶ 187 & 189. And in the case of the FCC’s triggers, which Verizon is invoking in this proceeding, the federal test to be applied is *mandatory, objective, and exhaustive*. *E.g., id.* ¶¶ 428 n.1315, 498-500, 510. Nowhere does the *TRO* include in the mandatory, objective and exhaustive triggers test an assessment of the value or dangers of UNE-P

For these reasons, Verizon respectfully requests that the following testimony, that defends and/or praises UNE-P, be stricken:

1. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, p. 57, line 57 through p. 64, line 11 (alleged benefits of UNE-P to competition in Pennsylvania).
2. AT&T St. No. 2, Direct Testimony of John Mayo, p. 39, line 4 through p. 51 (“rebutting” claims that UNE-P has discouraged investment)
3. Direct Testimony of Joseph Gillan, p. 3 line 11 through p. 6, line 2, and p. 7 line 8 through p. 17 (generally discussing “benefits” of UNE-P to competition in Pennsylvania).
4. Direct Testimony of Karoczkai and Michael Hou, entire testimony (addressing the argument that the UNE discourages facilities based competition)
5. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 5, line 5 through p. 6, line 6, and p. 9, line 1 through p. 12, line 4 (alleged benefits of UNE-P in the United States)
6. Testimony of Loube and Curry, p. 4 through p. 9, line 10 (alleged impact of UNE-P elimination on residential customers).
7. Pennsylvania Carrier Coalition St. No. 1.0, Testimony of Schwenke, Malfara, and Dulin, p. 6 lines 6 through p. 7 lines 19; p.11 line 23 through p. 15 line 13.

II. Evidence of Operational or Economic Barriers to CLEC Entry Should Be Stricken From This Case.

A number of intervenors have raised a variety of alleged economic and operational impediments to competitive entry into the mass market, such as operational issues associated with the cutting over of loops to a CLEC's switch, the alleged cost advantages of Verizon's network design, the functionality of Verizon's Operations Support Systems ("OSS"), the deployment of Integrated Digital Loop Carrier ("IDLC") technology, and costs to CLECs of deploying their own switches. While this testimony may have some relevance in a "potential competition" case, it is plainly irrelevant to the "triggers" case that is the subject of this proceeding. It should therefore be excluded.

The purpose of the FCC's triggers is to "give substantial weight to actual commercial deployment of particular network elements by competing carriers." *Id.* These triggers do not allow for the consideration of the kinds of operational and economic impairment "barriers" raised by certain intervenors. Instead, the satisfaction of a particular trigger renders moot the consideration of these operational and economic "barriers" factors, since actual commercial deployment demonstrates that these "barriers" do not exist, since they have not prevented the actual deployment of competing facilities. *See, e.g., TRO* ¶ 425, n. 1300 ("states must first employ triggers that examine actual deployment; only if the triggers are not met must the states apply criteria to assess whether entry is uneconomic."); *id.* ¶ 501 ("the existence of three self-provisioners of switching demonstrates adequately the technical and economic feasibility of an entrant serving the mass market with its own switch, and indicates that existing barriers to entry are not insurmountable."); *Id.* ¶ 494 ("if the [switching] triggers are satisfied, the states need not

undertake any further inquiry, because no impairment should exist in the market. If the triggers are not satisfied, the state commission shall proceed to the second step of the analysis, in which it must evaluate certain operational and economic criteria to determine whether conditions in the market are actually conducive to competitive entry . . . “).

Intervenors that offer testimony on these various operational and economic “barriers” are attempting to convert the FCC’s objective trigger analysis into a subjective potential deployment review. Their attempts to do so through their testimony is precisely one of the problems about which Chairman Powell warned when he suggested that what he called the “laundry list” of factors that make up a potential deployment case would spill over into the trigger analysis. *Id. Chairman Powell Statement at 7*. But the FCC majority forcefully asserted that Chairman Powell’s concern “fundamentally misunderstands the impairment inquiry,” in large part because these factors “come into play only if . . . [the FCC’s] deployment triggers are not met.” *Id.* ¶ 459, n. 1405. Therefore, if the Commission is to conduct a review that is consistent with the FCC’s mandatory “federal guidelines,” the Presiding Officers cannot allow into evidence these operational and economic factors that do not apply to the FCC’s triggers.⁵

⁵ The irrelevance of operational and economic “barriers” to a trigger analysis is not altered by the existence of the FCC’s exceptional circumstances waiver process. *See TRO* ¶ 503. The FCC has concluded that if a trigger is satisfied but a state commission believes that there are “exceptional circumstances” that justify a petition to the FCC for a waiver from the application of the applicable trigger, the FCC will consider such a petition. *Id.* But these exceptional circumstances, which do not allow a state commission to override a finding of no impairment based on a satisfied trigger, are just that – *exceptional* circumstances that render competitive entry “*impossible, irrespective of other economic or operational circumstances*” – such as if there is *no* collocation space available at all, anywhere, in a relevant market. *Id. (emphasis added)*. These circumstances are not to be confused with the operational and economic “barriers” raised by carriers here, and which are appropriately considered, if at all, only as part of a potential deployment case. Likewise, defining the market for trigger purposes does not require or even allow a sweeping review of the economic and operational factors that are considered as part of a potential deployment case. In defining the market, the FCC expects state commissions to consider whether “already-defined markets would be appropriate to use” in the context of a

Any confusion on this point, even as to the self-provisioning switching trigger, was clarified by the FCC's September 17, 2003 *Errata*, in which the FCC removed any doubt about whether subjective factors such as whether a provider is "operationally ready," "willing to provide service to all customers in the designated market," and "capable of economically serving the entire market," are part of a trigger consideration. *Errata* at 21. They are not. Instead, the self-provisioning switching trigger is every bit as straightforward as are all of the FCC's other triggers: the Commission *must* find "no impairment" for unbundled switching where there or more unaffiliated competing carriers are serving mass market customers in a particular market." *TRO* ¶ 501.

There can be no legitimate basis for disagreement on the FCC's intentions on this point, a fact vividly demonstrated by assertions made by the FCC and CLECs in their pleading before the United States Court of Appeals for the District of Columbia. *See, e.g.*, FCC Br. At 45 (citing *TRO* ¶¶ 498, 501) (the FCC "reasonably concluded that satisfaction of the trigger would show that multiple, competitive supply is possible and that there likely is no entry barrier reaching the level of impairment from any source."); Opening CLEC Br. at 35⁶¹ (citations omitted) (emphasis

trigger analysis. *Id.* ¶ 496. And in determining whether such pre-existing markets are appropriate, the Commission can consider such factors as "how UNE loop rates vary across the state, how retail rates vary geographically, how the number of high-revenue customers varies geographically, how the cost of customers varies according to the size of the wire centers to provide alternative collocation space and handle large volumes of hot cuts." *Id.* But this analysis also does not permit, much less require, the consideration of the operational and economic "barriers" that go into a potential deployment analysis. Finally, and contrary to the suggestions found in some testimony, in evaluating the FCC's triggers, "states may not examine any other factors, such as the financial status or well-being of the competitive switching providers." *TRO* at ¶ 500. Instead, "financial evidence relating to the difficulty in serving the mass market by existing competitive switch providers" may be considered only in a "potential deployment analysis." *Id.* ¶ 500, n. 1554.

⁶¹ Opening Brief of CLEC Petitioners and Intervenors in Support, *United States Telecom Association v. Federal Communications Commission*, No. 00-1012 (D.C. Cir. filed Dec. 1, 2003)

added) (“Although the FCC correctly found that new entrants are impaired on a national basis without access to unbundled switching for mass market customers, it nonetheless *required switching to be automatically removed from the mandatory UNE list when states find that certain ‘triggers’ are met in individual markets*—on the ground that the satisfaction of the triggers establishes a lack of impairment in that area.” If “the deployment triggers are met, the states must find no impairment.” *TRO* ¶ 502, n. 1561.

For these reasons, Verizon respectfully requests that the following testimony, that raises operational and economic “barriers” immaterial to a trigger analysis, be stricken:

1. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, p. 8, line 20 through p. 9, line 14; and p. 70 line 12 through p. 88 (discussion of alleged economic, operational and cost barriers).
2. Testimony of Rebecca Sommi on behalf of CLEC Coalition, p.11 through p. 15 (discussing how Broadview would be “impaired” without unbundled switching even though it serves customers through its own switch).
3. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 27, line 17 through p. 40, line 19 (impact of IDLC on unbundling); and p. 43 to the end (alleged operational problems relating to transport).
4. MCI St. No. 3.0, Direct Testimony of Mindy Chapman for MCI, entire testimony (discusses “operational challenges” and other technical and operational issues).

III. Evidence On Batch Hot Cuts and “Electronic Loop Provisioning” Is Irrelevant to The Issues In This Proceeding.

Several parties have also filed evidence about the batch hot cut process, as well as the alleged need for Electronic Loop Provisioning (ELP), as reasons for a finding of impairment.

This testimony should also be stricken. As a procedural matter, in its October 3, 2003

Procedural Order, the Commission directed staff to “convene a technical conference to evaluate

(“Opening CLEC Br.”). Several parties in this proceeding, including AT&T&T, MCI, InfoHighway Communications Corp., were part of the coalition sponsoring this brief.

the feasibility of ELP” and “to develop a batch cut process in Pennsylvania.”⁷ The Commission has therefore made it perfectly plain that these issues are to be addressed in the Commission’s separate technical conference and not in this proceeding, and for this reason alone testimony in this proceeding on these issues is improper and should be stricken.

Moreover, as a substantive matter, the FCC has already determined that ELP is not currently feasible and declined to impose it. *TRO ¶¶ 487, n. 1517 & 491*. There is thus no reason to consider ELP at this time, even if such a consideration were appropriate in this proceeding, which it is not.

For these reasons, and Verizon respectfully requests that the following testimony, that addresses batch hot cut and ELP issues, be stricken:

1. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 6 line 5 –24; p 15 through p. 27, line 15.
2. MCI St. No. 3.0, Direct Testimony of Mindy Chapman, p. 10 line 4 through p. 16 line 17.
3. Testimony of Loube and Curry, p. 41 line 10 though p. 50.
4. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, P. 85 line 4 through p. 88.

⁷ *Development of an Efficient Loop Migration Process*, Docket M—00031754 (Order entered October 3, 2003).

CONCLUSION

For all of the foregoing reasons, Verizon's Motion to Strike should be granted, and the following testimony should be stricken from the record:

I. Irrelevant Testimony on "benefits" of UNE-P:

1. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, p. 57, line 57 through p. 64, line 11 (alleged benefits of UNE-P to competition in Pennsylvania).
2. AT&T St. No. 2, Direct Testimony of John Mayo, p. 39, line 4 through p. 51 (rebutting claims that UNE-P has discouraged investment)
3. Direct Testimony of Joseph Gillan, p. 3 line 11 through p. 6, line 2, and p. 7 line 8 through p. 17 (generally discussing "benefits" of UNE-P to competition in Pennsylvania).
4. Direct Testimony of Peter Karoczkai and Michael Hou, entire testimony (addressing the argument that the UNE-P discourages facilities based competition)
5. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 5, line 5 through p. 6, line 6, and p. 9, line 1 through p. 12, line 4 (alleged benefits of UNE-P in the United States)
6. Testimony of Loube and Curry (OCA), p. 4 through p. 9, line 10 (alleged impact of UNE-P elimination on residential customers).
7. Pennsylvania Carrier Coalition St. 1.0, p. 6, line 16, through p. 7, line 19; p. 11, line 23 through p. 15, line 13.

II. Irrelevant Testimony on Operational or Economic Barriers:

1. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, p. 8, line 20 through p. 9, line 14; and p. 70 line 12 through p. 88 (discussion of alleged economic, operational and cost barriers).
2. Testimony of Rebecca Sommi on behalf of CLEC Coalition, p.11 through p. 15 (discussing how Broadview would be "impaired" without unbundled switching even though it serves customers through its own switch).
3. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 27, line 17 through p. 40, line 19 (impact of IDLC on unbundling); and p. 43 to the end (alleged operational problems relating to transport).
4. MCI St. No. 3.0, Direct Testimony of Mindy Chapman for MCI, entire testimony (discusses "operational challenges" and other technical and operational issues).

III. Irrelevant testimony regarding Batch Hot Cuts and ELP

1. MCI St. No. 2, Direct Testimony of Earle Jenkins; p 6 line 5 –24; p 15 through p. 27, line 15.

2. MCI St. No. 3.0, Direct Testimony of Mindy Chapman, p. 10 line 4 through p. 16 line 17.
3. Testimony of Loube and Curry, p. 41 line 10 though p. 50.
4. AT&T St. No. 1, Direct Testimony of Robert Kirchberger and Christopher Nurse, p. 85 line4 through p. 88.

Respectfully submitted.



Julia A. Conover
Suzan DeBusk Paiva
1717 Arch Street, 32N
Philadelphia, PA 19103
(215) 963-6001
fax (215) 563-2658
e-mail: Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com

Counsel for Verizon Pennsylvania Inc.
and Verizon North Inc.

January 20, 2004

CERTIFICATE OF SERVICE

ORIGINAL

I, Julia A. Conover, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.'s and Verizon North Inc.'s Motion to Strike Irrelevant Portions of Intervenor Testimony, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 20th day of January, 2004.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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

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

RECEIVED

JAN 20 2004

Genevieve Morelli, Esquire
Ross Buntrock, Esquire
Heather Hendrickson, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Counsel for Broadview, BullsEye,
ARC/InfoHighway, McGraw, Met Tel
and Talk America

Alan Kohler, Esquire
Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236
Counsel for ATX, Full Service Network,
Line Systems Inc., Remi Retail and
Comcast

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enrico Soriano, Esquire
Steven A. Augustino, Esquire
Darius Withers, Esquire
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Counsel for Choice One, Broadview,
Focal, SNIIP LiNK and XO

Russell Blau, Esquire
Robin F. Cohn, Esquire
Tamar Finn, Esquire
Philip J. Macres, Esquire
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
Counsel for RCN, Lightship and CTSI

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

Philip McClelland, Esquire
Barrett Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street
Frum Place – 5th Floor
Harrisburg, PA 17101-1923
Via e-mail only to OCA Consultants:
Rowland Curry
Melanie Lloyd
Bob Loube

Michelle Painter, Esquire
MCI WorldCom Communications, Inc.
1133 19th Street, NW
Washington, DC 20036
Counsel for MCI

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

Sue Benedek, Esquire
Sprint Communications Co. LP
240 North Third Street
Suite 201
Harrisburg, PA 17101
Counsel for Sprint

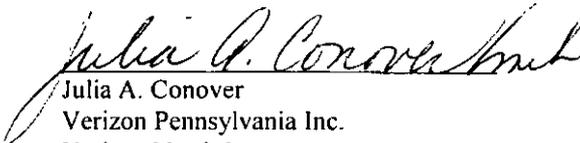
Richard U. Stubbs, Esquire
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, PA 18974
Counsel for Cavalier

Charles V. Gerkin, Jr., Esquire
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, TX 75231
Counsel for Allegiance

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

Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, P.C.
1110 N. Mountain Road
Harrisburg, PA 17112
Counsel for Penn Telecom

Thomas Koutsky, Esquire
Z-Tel Communications, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036


Julia A. Conover
Verizon Pennsylvania Inc.
Verizon North Inc.
1717 Arch Street, 32W
Philadelphia, PA 19103
(215) 963-6001

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

FACSIMILE

(202) 955-9792

www.kelleydrye.com

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

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA

ORIGINAL
(202) 955-9600

DIRECT LINE: (202) 955-9766

EMAIL: eemcott@kelleydrye.com

January 20, 2004

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA UPS

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

DOCUMENT

**Re: Investigation into the Obligations of Incumbent Local Exchange Carriers
to Unbundle Network Elements; Docket No. I-00030099
Rebuttal Testimony of SNiP LiNK LLC**

Dear Secretary McNulty:

Enclosed please find an original and a copy of this cover letter and certificate of service for the Rebuttal Testimony of SNiP LiNK LLC in the above captioned docket. The proprietary version of this filing including the attachments is being provided to the service list for this docket and Administrative Law Judges Schnierele and Colwell via overnight and electronic mail. Please note that SNiP LiNK LLC will be supplementing the attachments to its Rebuttal Testimony under separate cover. Please date stamp the enclosed duplicate and return it in the provided envelope. Please feel free to contact undersigned counsel at (202) 955-9600 if you have any questions.

Respectfully submitted,

Erin W Emmott

Steven A. Augustino (*admitted pro hac vice*)

Erin W. Emmott (*admitted pro hac vice*)

Enclosures (cover letter and certificate of service only)

cc: Service List (proprietary version and attachments via overnight and electronic mail)
ALJ Michael C. Schnierle and ALJ Susan D. Colwell (proprietary version and attachments via overnight and electronic mail)

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

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

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

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

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKETED
FEB 05 2004
DOCUMENT

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

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

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

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

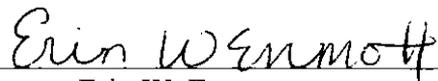
JEFFREY J HEINS
ALDELPHIA BUSINESS SOLUTIONS
OF PA INC D/B/A TELCOVE
712 NORTH MAIN STREET
COUDERSPORT PA 16915
Jeffrey.heins@telcove.com

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

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

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

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



Erin W. Emmott

Date: January 20, 2004

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

FACSIMILE

(202) 955-9792

www.kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MUMBAI, INDIA

(202) 955-9600

ORIGINAL

DIRECT LINE: (202) 955-9600

EMAIL:rbuntrock@kelleydrye.com

January 20, 2004

RECEIVED

JAN 20 2004

VIA UPS

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT

**Re: Investigation into the Obligations of Incumbent Local Exchange
Carriers to Unbundle Network Elements; Docket No. I-00030099
Rebuttal Testimony on Behalf of the CLEC Coalition**

Dear Secretary McNulty:

Enclosed please find an original and a copy of this cover letter and certificate of service for the Rebuttal Testimony of Joseph Gillan on behalf of ARC Networks, Inc. d/b/a InfoHighway Communications, Corp., Broadview Networks, Inc., BullsEye Telecom, Inc., McGraw Communications, Inc. and Metropolitan Telecommunications of PA, Inc. (collectively the "CLEC Coalition") in the above-captioned docket

The Rebuttal Testimony is being provided to the service list for this docket and Administrative Law Judges Schnierele and Colwell via overnight and electronic mail. Please

134

James J. McNulty, Secretary
January 20, 2004
Page Two

date stamp the enclosed duplicate and return it in the provided envelope. Please feel free to contact the undersigned counsel at (202) 955-9600 if you have any questions.

Respectfully submitted,



Genevieve Morelli (*admitted pro hac vice*)

Ross A. Buntrock (*admitted pro hac vice*)

Heather T. Hendrickson (*admitted pro hac vice*)

Enclosures (cover letter and certificate of service only)

cc: Service List (via overnight and electronic mail)
ALJ Michael C. Schnierle and ALJ Susan D. Colwell (via overnight and electronic mail)

RECEIVED

JAN 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

DOCKET NO. I-00030099

**ARC NETWORKS, INC., D/B/A
INFOHIGHWAY COMMUNICATIONS CORP.,
BROADVIEW NETWORKS, INC.,
BULLSEYE TELECOM, INC.
MCGRAW COMMUNICATIONS, INC. AND
METROPOLITAN TELECOMMUNICATIONS OF PA, INC.
(CLEC COALITION)**

REBUTTAL TESTIMONY OF JOSEPH GILLAN

DATED: JANUARY 20, 2004

1 * MCI's *recommendation* that the appropriate area to evaluate impairment
2 for mass market local switching is the wire center, and

3
4 * MCI's *suggestion* that it may be appropriate to divide the analog mass
5 market between business and residential customers.

6
7 As I understand MCI's testimony, each of the above is designed to address the
8 same potential concern – that is, that the Commission may mistake some *limited*
9 form of entry (either limited in terms of geography or customer class) as evidence
10 of non-impairment, by counting as a trigger a company that does not provide
11 service to the broad mass market, but may offer service in some limited area or to
12 a select group of customers. Although I share MCI's concern in this regard, I do
13 not agree with its proposed solutions. Rather, I recommend that the Commission
14 address the concern directly, by correctly defining the mass market as a broad
15 market comprised (in Pennsylvania) of millions of individually small analog
16 phone customers, and by correctly applying the trigger analysis to only count as
17 qualifying switch triggers those carriers that actually compete across that broad
18 market.

19
20 **Q. Why do you disagree with MCI's suggestion that the market be defined by**
21 **each individual wire center?**

22

1 A. I disagree with the approach because it ignores the defining feature of the mass
2 market – i.e., that it requires *mass* for competition to succeed. No individual mass
3 market customer is particularly large or exceptionally profitable to serve; as a
4 result, competitors must be able to address a large base of potential customers in
5 order to build a base of any size. Wire centers do not stand as independent
6 markets, individually capable of supplying the mass needed for mass market
7 competition to develop.

8
9 Moreover, mass market competition is interdependent – that is, it is not possible
10 to eliminate switching in one part of a market without the consequences of that
11 decision being felt throughout the entire area. If UNE-P is not available in the
12 states' largest wire centers, the effect of that limitation will be felt not only in the
13 area served by those wire centers, but in the other surrounding areas as well.

14 Dissecting the market into hundreds of small wire centers runs counter to the type
15 of wide availability needed to produce mass market competition – the ability to
16 comprehensively offer service to millions of small users that live and work across
17 a broad footprint. Mass market competition cannot coexist in a checkerboard of
18 UNE-availability, which is what is implied by the suggestion that individual wire
19 centers form independent markets.¹

20
21 **Q. Why has MCI suggested the wire center approach?**

¹ Moreover, many small business customers have multiple locations, which cannot be served where UNEs are not uniformly available.

1

2 A. One reason is that MCI is concerned that, if the Commission adopts a broader
3 area, it may mistakenly conclude that there are sufficient triggering CLECs to
4 eliminate unbundled switching. As MCI explained:

5

6 In contrast [to the wire center] a market definition based on a
7 larger geographic area, such as the Metropolitan Statistical Area
8 (“MSA”), creates a significant risk that trigger or potential
9 deployment analyses based on such a market definition will result
10 in a finding of no impairment even where multiple, competitive
11 supply does not exist today and is unlikely to occur in the
12 foreseeable future.²

13

14

15 **Q, Has MCI correctly identified the source of its concern?**

16

17 A. No, I do not think so. The risk that MCI cites – i.e., that a trigger will be satisfied
18 even though impairment remains – does *not* result from the size of the geographic
19 market, rather it is the result of a trigger (or potential deployment) analysis that
20 does not recognize the importance of assuring that any alleged self-provider
21 actually be serving the geographic area served by UNE-P before it qualifies as a
22 trigger. So long as the Commission correctly applies the trigger (or potential
23 deployment) analysis by requiring that trigger candidates offer service across the
24 market before qualifying as triggering CLECs, then the Commission can correctly
25 define the market without fear of mistakenly removing unbundled switching

² Direct Testimony of Michael D. Pelcovits on Behalf of MCI WorldCom Network Services, Inc. (Jan. 9, 2004) (hereinafter “Pelcovits”) at 5.

1 where it is needed.³ Rather than dividing the state into small areas in the hope
2 that the Commission will be less likely to make errors, it is more important to
3 directly confront the concern. After all, adopting a market definition that suggests
4 that the mass market is divisible into very small areas is just as potentially
5 harmful as defining the areas too large.

6
7 **Q. What are the potential harmful consequences that follow from using the wire**
8 **center as the geographic market?**

9
10 **A.** Dissecting the mass market into hundreds of small wire centers implies that
11 entrants can rationally compete with a checkerboard availability of the UNEs used
12 to provide service. The Commission cannot eliminate UNE-P in some wire
13 centers without affecting competitive activity in others because the mass market is
14 *not* wire-center specific. In fact, UNE-L has failed to produce mass market
15 competition, at least in part, because it necessarily represents a “one-wire-center-
16 at-a-time” entry strategy and that characteristic is an impairment corrected by
17 access to unbundled local switching. The mass market shouldn’t be defined by
18 UNE-L’s weakness; it should be defined to appreciate the strengths of UNE-P –
19 the one entry strategy that has succeeded in bringing competition to small
20 business and residential consumers throughout Pennsylvania.

³ I note that the need to make sure that the competitive footprint of potential triggering CLEC coincides with the defined market applies no matter what size market the Commission adopts. The principal difference introduced by using a larger (rather than smaller) area is not that the likelihood of an error increases, it is that the consequences of that error grow larger.

1

2

The correct approach is to define the mass market broadly because the mass market is by nature a broad market, and then to make sure that only carriers that offer service with a comparable geographic reach qualify as triggers. Punching holes in the mass market creates a checkerboard effect that inevitably dilutes the market, harming competition and customer choice. This effect will be felt not only in the areas that the Commission will have redlined and walled-off from competition, but to the market overall. The reality that wire centers are linked in this manner cannot be avoided by assuming, for purposes of UNE-availability, that each wire center is an independent island of competitive interest.

3

4

5

6

7

8

9

10

11

12

Q. Do you support MCI's suggestion that the Commission should consider dividing the analog market between residential and business customers?

13

14

15

A. No. Although I share the concern expressed by MCI, I believe that its suggested solution is in error.⁴ As I explained in my direct testimony, the mass market is correctly defined by the TRO as a single market, defined by the underlying technology (analog voice service or POTS), and not by customer labels. One of the key goals of competition is to ferret out and eliminate unjustified legacy pricing practices that are the product of the industry's monopoly past. It would be

16

17

18

19

20

⁴ As MCI states: "The Commission, therefore, must be prepared either to treat residential and small business customers as falling into two separate submarkets of the mass market or, in the alternative, to require that a competitor must serve both residential and small business customers to be considered as a potential triggering company." Pelcovits at 53.

1 inappropriate to (as MCI suggests) use UNE-availability to preserve price
2 discrimination in monopoly tariffs, when the goal of UNE-competition should be
3 to drive such distinctions from the market.

4
5 The TRO correctly defines the mass market in a more neutral and impairment-
6 related manner, by focusing on the common denominator of mass market
7 services, the analog loop at the customer premise. By defining the mass market in
8 this way, the TRO sets the stage for a competitive check on the rate structures
9 inherited from the very environment the Act seeks to replace, the era of the local
10 monopoly. Moreover, it is useful to remember that the incumbent is able to use
11 UNE-P to serve the entire mass market (both residential and business customers)
12 and CLECs must have the same ability if they are to compete.

13
14 **Q. Do you agree with MCI that an alleged self-provider must be serving**
15 **residential customers in order to be counted as a mass market trigger?**

16
17 A. Yes. The Commission should fully expect to see *some* overlap from other entry
18 strategies into the mass market, for in the real world market boundaries are not
19 perfect. The mass market served is geographically broad, but there are likely to
20 be pockets served by alternatives; the mass market contains millions of customers,
21 yet there will be some subgroups that attract more attention than others.⁵ The

⁵ For instance, as MCI notes, the fact that business customers generally pay higher rates under the ILEC's tariff may make them transitionally more attractive than residential customers

1 mass market itself cannot be defined by its exceptions, be they isolated
2 geographic areas or select customer groups. Only alternatives that compete at the
3 core of the mass market – offering service broadly to customers, including
4 residential customers – should be counted upon as evidence to support a finding
5 of non-impairment.

6
7 This is not a case where two wrongs can make a right. Subdividing the state into
8 individual wire centers is not the solution to avoid a trigger analysis that fails to
9 appreciate the importance of a competitor’s footprint nor is splitting the analog
10 mass market into business and residential classes the correct response to the fringe
11 entry by some CLECs at the edge of the mass market. The only way that a trigger
12 analysis can be relied upon to demonstrate that “no impairment exists”⁶ in the
13 mass market is for the Commission to assure that the only CLECs that count as
14 mass market switch triggers are those carriers actively serving analog mass
15 market customers (including the core of the mass market, residential customers)
16 across the broad geographic footprint that defines the mass market in
17 Pennsylvania.

18

that purchase no vertical services. On the other hand, the average revenue for MCI’s
Neighborhood service is comparable to the rates paid by small businesses. This does not mean
that Neighborhood customers should be viewed as a distinct market anymore than the
Commission should view analog small business customers differently – each is a member of the
mass market, and the Commission should conduct its trigger analysis in a manner that assures
there is competition across the entire market through alternatives to UNE-P before it concludes
that unbundled switching is no longer needed.

⁶ TRO ¶ 494 “If the triggers are satisfied, the states need not undertake any further inquiry,
because no impairment should exist in that market.”

1 **Q. Does this conclude your rebuttal testimony?**

2

3 **A. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Rebuttal Testimony and Exhibits of Joseph Gillan on Behalf of the CLEC Coalition upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant). The served testimony is filed on behalf of the CLEC Coalition in Docket No. I-00030099.

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

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

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

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

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

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

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

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

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

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

DEBRA M. KRIETE
RHOADS & SINAN LLP
12TH FLOOR
ONE SOUTH MARKET STREET
P O BOX 1146
HARRISBURG PA 17108-1116
(ALLEGIANCE TELECOM INC)
dkriete@rhoads.sinon.com

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

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

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

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

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

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

JEANNE PRICE
MARVIN HENDRIX
CEI NETWORKS
P O BOX 458
130 EAST MAIN STREET
EPHRATA PA 17522
mhendrix@decommunications.com
jprice@decommunications.com



Ross A. Buntrock

Date: January 20, 2004