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ORIGINAL

November 3, 2003

VIA HAND DELIVERY

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

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NOV - 3 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On behalf of the Pennsylvania Carrier's Coalition, enclosed for filing please find an original and three copies of its Answer to Verizon's Motion to Dismiss the PCC Petition Or In The Alternative to Strike Portions of Testimony with regard to the above referenced matter. All Parties of Record have been served with a copy.

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/lww

Enclosure

cc: Parties of Record w/enc.

DSH:38618.1/FUL022-216383

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

DOCKETED

NOV 05 2003

**PENNSYLVANIA CARRIER'S COALITION'S ANSWER TO  
VERIZON'S MOTION TO DISMISS THE PCC PETITION OR IN  
THE ALTERNATIVE TO STRIKE PORTIONS OF TESTIMONY**

The Pennsylvania Carrier's Coalition ("PCC")<sup>1</sup> hereby submits this Answer to the Motion of Verizon Pennsylvania, Inc. and Verizon North, Inc. ("Verizon") to dismiss the PCC's Petition to Initiate a 90 Day Proceeding, pursuant to the Federal Communications Commission's ("FCC's") *TRO*,<sup>2</sup> or in the Alternative, to Strike Portions of the Testimony.

Verizon's claim that the Commission should dismiss the PCC's Petition and the extensive evidence that CLECs in Pennsylvania will be impaired without access to unbundled DS1 circuit switching is based upon an obvious mischaracterization of the *TRO*. The FCC made an overarching, national preliminary determination of non-impairment based on three factual findings which the FCC believed were generally true across the country but may not be true in "particular markets."<sup>3</sup> The FCC then invited the states to rebut these national presumptions

<sup>1</sup> PCC is an informal coalition comprised of Full Service Computing Corporation t/a Full Service Network ("FSN"), Remi Retail Communications, LLC. ("Remi"), ATX Licensing, Inc. ("ATX") and Line Systems, Inc. ("LSI"),

<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposal Rulemaking*, CC Docket No. 01-338 (August 21, 2003) (hereinafter "*TRO*").

<sup>3</sup> *TRO* ¶ 421. The FCC's three factual findings upon which it based its national presumption are as follows: 1) "... in most areas, competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities

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through a state specific, “granular” analysis based upon “specific operational...and...economic evidence.”<sup>4</sup> The PCC’s filing specifically and granularly demonstrates that none of the three of the FCC’s national presumptions hold true in Pennsylvania.

Moreover, Verizon’s claim that PCC’s evidence of operational and economic impairment does not show impairment in the manner that Verizon suggests is required in the FCC’s Order also plainly mischaracterizes the *TRO*. The FCC did indeed list specific examples of items that should be addressed in the state’s impairment analysis, however, it did so within the context of its directive that “[t]he states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching,”<sup>5</sup> not merely a list of required factors that Verizon falsely suggests are the only relevant factors. In fact, the FCC specifically listed as examples of such factors “untimely and unreliable provisioning of loops... and significant costs to purchase equipment and backhaul the local traffic to the competitor’s switch”<sup>6</sup> This is precisely what the PCC testimony shows. Accordingly, rather than justifying dismissal prior to full hearing, the PCC’s submission actually makes out a *prima facie* case of impairment, plainly warranting a Commission waiver petition to the FCC securing the continued

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in combination with unbundled loops (or loop facilities);” 2) “The facilities used to provide DS1 capacity or above service to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with ‘hot cuts’ – the manual process by which customer lines are migrated to competitor’s switches;” and 3) “Enterprise customers also generally offer increased revenue opportunities and are more willing to enter long-term contracts, allowing competitive LECs a greater ability to recover the nonrecurring costs associated with providing service using their own switches.”

<sup>4</sup> *TRO* at ¶ 421.

<sup>5</sup> *TRO* at ¶ 458.

<sup>6</sup> *TRO* at ¶ 458.

availability of unbundled circuit switching for customers served with DS1 (or higher capacity) loops as a UNE under federal law.

Verizon's "motion to strike" portions of the PCC testimony discussing the independent and continuing state-law obligation of Verizon to make unbundled switching available – really another motion to dismiss – is equally meritless. The PUC has consistently held that Pennsylvania state law imposes unbundling requirements on Verizon. This is because Verizon has voluntarily requested and received favorable regulatory and pricing treatment for competitive services under the Chapter 30 and has voluntarily agreed to such unbundling in return for such favorable treatment. There is nothing in the *TRO* that preempts a state imposition of unbundling requirements in such a *quid pro quo* situation. At the very least, this issue deserves careful consideration in the context of the whole record – not premature removal from the case. In further support of this Answer, PCC responds as follows:

### **MOTION TO DISMISS**

1. Verizon claims that the PCC Petition should be summarily dismissed because the FCC has already "concluded" that CLECs were not impaired by the removal of circuit switching to enterprise customers as a UNE and that the PCC Petition has not raised any basis for a contrary conclusion that the FCC has not already considered.<sup>7</sup> It further alleges that the PCC submission is "devoid of any 'relevant' state-specific facts and also fails to make a *prima facie* case."<sup>8</sup>

2. The Commission has held that a motion to dismiss is akin to a civil demurrer or motion to dismiss for failure to state a claim on which relief can be granted. As such, when

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<sup>7</sup> Answer/Motion at 3.

<sup>8</sup> Answer/Motion at 10.

considering such a motion, the Commission accepts as true all facts alleged by the party against whom the motion is filed and grants the relief only “in cases that clearly and without a doubt fail to state a claim for which relief can be granted.”<sup>9</sup> Verizon’s claims clearly fail to even come close to satisfying these onerous standards.

3. PCC submitted 40 pages of direct testimony together with a 5 page exhibit which plainly presents the Pennsylvania specific operational and economic evidence demonstrating that CLECs will be impaired if DS1 and above circuit switching was no longer made available from Verizon. On its face this evidence is extensive and persuasive and clearly makes out the necessary *prima facie* case sufficient to support a Pennsylvania-specific finding of impairment by the FCC. The testimony sets forth specific information from the three witnesses testifying from their own knowledge about circumstances in Pennsylvania.

4. Furthermore, the PCC testimony provides extensive evidence rebutting each of the FCC’s three material factual presumptions under a granular Pennsylvania analysis. Taking the facts as true, as required in deciding a motion to dismiss, the testimony provides far-reaching

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<sup>9</sup> The Commission has held that a motion to dismiss a complaint which challenges the sufficiency of the complaint is similar to a preliminary objection in the nature of a demurrer. *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984). In ruling on such a motion the judge may grant the motion only if the complaint is clearly insufficient to establish the complainant’s right to relief. For testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts. The pleader’s conclusions or averments of law are not considered to be admitted as true by a demurrer. *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985); *Rok and Flaherty*, 106 Pa. Commonwealth Ct. 570, 577, 527 A.2d 211 (1987); *Jamieson*, 83 Pa. Commonwealth Ct. at 5457, 548; *Keyser v. Blanchette*, 50 Pa. PUC 79, 81 (1976). Since the sustaining of a demurrer results in the dismissal of the complaint, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Count of Allegheny*, 507 Pa. at 372. See, *York RBR, Inc. t/a Best Western Conference Center v. UGI Utilities Inc.*, 1995 Pa. PUC Lexis 84 (1985).

evidence of both operational and economic impairment which becomes more overwhelming in areas outside of the downtown Pittsburgh and Philadelphia where most CLEC switches reside.

5. Verizon uses a multiple set of mischaracterizations of the FCC Order and the PCC submission to attempt to circumvent the obvious sufficiency of the PCC's *prima facie* case. First, Verizon makes the extraordinary claim that the PCC submission is insufficient because the operational impediments that the PCC describes are no different than those existing in other states, characterizing the PCC testimony as raising "generalities that could apply anywhere" and constituting "second guessing" of the FCC "findings."<sup>10</sup> Apparently, Verizon didn't read the entire *TRO* because, if it had, it would have found numerous statements throughout the Opinion indicating that the FCC's findings were general conclusions on the basis of a national analysis<sup>11</sup> which it presumed reflected the "typical" situation.<sup>12</sup> It specifically offered each state the opportunity to file a petition showing that the "general" and "typical" findings made by the FCC are not accurate in that state.

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<sup>10</sup> Verizon Answer/Petition at 10-11.

<sup>11</sup> *TRO* at ¶ 419 ("We find on a national level that requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. The states may rebut this finding by petitioning this Commission based on a granular review... .") *TRO* at ¶ 419, fn 1293 ("[This finding creates an] overarching national framework while at the same time developing precisely the type of granularity test called for by the [USTA decision], our switching approach allows for the Commission to take advantage of, and build on, the wealth of knowledge and expertise within a national regime for local telephone competition consistent with the federal-state partnership envisioned by the Congress in the Act.")

<sup>12</sup> *TRO* at ¶ 421 ("The evidence in our record establishes that, in most areas [emphasis added], competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities). The facilities used to provide DS1 capacity or above services to enterprise customers typically [emphasis added] are not pre-wired to incumbent LEC switches allowing carriers to avoid the costs and service disruptions associated with "hot

6. No evidence of what circumstances exist outside of Pennsylvania has been submitted in this proceeding – nor would the introduction of such evidence be within the scope of this case, which is to conduct a Pennsylvania-specific granular analysis. Furthermore, the FCC never suggested that the state commission had the additional burden of doing some sort of comparative analysis or explaining why the circumstances of impairment that it finds in its jurisdiction are different than those found in other states. The only relevant issue is whether, on the basis of a state-specific analysis, competitors will suffer operational and/or economic impairment in its state. Indeed, the FCC consistently described the exercise as “granular,” the common definition of which is very specific to a particular location and focusing on specific facts. By its very nature, such an analysis is designed to determine whether some general conclusions are true in a specific location or instance. This is exactly what the PCC’s testimony achieves. Most importantly, there is not a single suggestion in the *TRO* which supports Verizon’s assertion. Indeed, the whole purpose of the 90-day proceeding is to permit individual states to determine whether its “general” findings apply in its jurisdiction – no more, no less.

7. With respect to operational impairment, Verizon dismisses the PCC evidence as providing no specifics regarding Verizon’s performance in provisioning DS1 loops or difficulties in obtaining collocation space or cross connects in an incumbent’s wire center. Apparently Verizon has paid little attention to the PCC’s testimony in making its arguments. In fact, the PCC has focused its operational evidence on loop provisioning, and has provided pages of

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cuts”. . . Enterprise customers also generally [emphasis added] offer increased revenue opportunities and are more willing to enter into long-term contracts. . .”)

testimony on the problems typically encountered in the migration process for loop provisioning.<sup>13</sup>

8. The PCC presentation meets this requirement with substantial evidence showing enormous operational barriers when migrating existing Verizon DS1 customers to CLEC service using a hot cut process which is equally as problematic as the hot cut process which formed the basis for an FCC finding of impairment for mass market local circuit switching. This evidence includes service delays, service interruptions and service degradation. In fact, in many instances, the lack of Verizon spare loop facilities make it impossible to migrate the customer to CLEC facilities at all, a situation characterized quite justifiably by the PCC witnesses, as “maximum impairment.”<sup>14</sup> Furthermore, the testimony also reflects that Verizon’s migration process for DS1 customers imposes very substantial costs on CLECs attributable directly to poorly defined and malformed Pennsylvania hot cut process and the significant costs which must be incurred by CLECs in order to keep service delays and interruptions to a minimum – an important factor since the FCC presumes that no such costs are incurred.<sup>15</sup>

9. These operational impairments are enormously harmful to CLECs seeking to serve DS1 customers, providing irrefutable (and unrebutted) evidence of operational impairment,

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<sup>13</sup> PCC St. 1 at 29-34. As outlined above, the state specific granular analysis is not nearly as restricted as Verizon would have the Commission think and any evidence of operational impairment is relevant to this proceeding. However, even within Verizon’s unsupportable constraints, the PCC’s evidence of operational impairment focusing on loop provisioning is entirely within Verizon’s own fabricated analysis.

<sup>14</sup> PCC St. 1 at 29-30.

<sup>15</sup> “The facilities used to provide DS1 capacity on above services to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to **avoid the costs** and service disruptions associated with ‘hot cuts’ – the manual process by which customer lines are migrated to competitor switches.” *TRO* at ¶ 421 (emphasis added). Clearly, the PCC testimony rebuts every aspect of the FCC finding under a Pennsylvania specific granular analysis.



material which is clearly within the scope of evidence that the FCC has indicated it wished to see in considering state-specific impairment. Clearly, Verizon's allegation that all of this evidence of serious competitive harm is outside the scope of the FCC-established parameters is incorrect at best, and simply reflects another attempt by the monopoly incumbent to avoid the reality of the market place.

10. Finally, Verizon claims that PCC's Petition should be dismissed because "they make no real effort to demonstrate economic impairment claiming that the only relevant facts are "revenue opportunities for customers or their willingness to enter into long term contracts"<sup>16</sup> But the Verizon characterization of the evidence of the economic impairment that the FCC will accept is simply not accurate. As the FCC expressly stated, "The states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching."<sup>17</sup>

11. The PCC testimony rebuts the FCC finding by focusing on the significant Pennsylvania specific wholesale costs for a CLEC to initially build and then continue to extend its switch coverage, through collocation and/or EELs, to reach DS1 customers – an important

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<sup>16</sup> Verizon Answer/Motion at 11.

<sup>17</sup> TRO at ¶ 458. The TRO actually characterizes the criteria it is seeking in very broad terms:

To make [the determination of economic impairment] states must weigh competitive LECs' potential revenues from serving enterprise customers in a particular geographic market against the cost of entry into that market. In evaluating competitive LEC's potential revenues the states should consider all likely revenues to be gained from entering the enterprise market (not necessarily any carrier's individual business plan), including revenues derived from local exchange and data services. ... In determining the cost of entry into a particular geographic market, the states should consider the costs imposed by both operational and economic barriers to entry. TRO at 457.

factor since it is un rebutted that the vast majority of CLEC switches are in the downtown Pittsburgh and Philadelphia.<sup>18</sup> Furthermore, the PCC evidence includes a business case reflecting the general conditions facing CLECs in Pennsylvania at the present time and deals specifically with the revenues and costs of providing DS 1 service to enterprise customers. Given the breadth of the PCC's testimony, it is unfathomable how Verizon reaches the conclusion that this evidence fails to address the specific criteria set out by the FCC. At any rate, Verizon's contentions, even if true, simply constitute a disagreement with the contrary evidence submitted by PCC. Such a disagreement should be resolved after a full airing of the issues and a full record, and not on the basis of a preliminary dismissal.

12. Verizon also complains that PCC's economic evidence is insufficient because it constitutes "merely" the business plan of an individual CLEC, which the FCC claims would be insufficient under the FCC order.<sup>19</sup> First, the FCC said no such thing. The FCC, in fact, made a general statement that, in considering economic impairment, "[t]he states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to switching local circuit."<sup>20</sup> Moreover, the FCC's Order never said that individual business plans could not be considered. In fact, while indicating that the evidence submitted did "not necessarily [include] any carrier's business plans," it is equally clear that individual business

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<sup>18</sup> PCC St. 1 at 23-25, 26-29, 34-36.

<sup>19</sup> Verizon Answer/Motion at 12. On October 30, 2003, Verizon submitted a letter to the Commission which purported to supplement its claim pertaining to the business model. (PCC St. No. 1, Exhibit "A.") PCC believes it has adequately addressed any additional issues which were properly raised by the letter, but will respond to the legal argument in the letter directly in its brief submitted in this matter.

<sup>20</sup> *TRO* at ¶ 458.

plans or analyses are not only relevant but may constitute the most reliable kind of evidence.<sup>21</sup> Indeed, and as indicated above, the specific FCC rule directs the state commission to consider a variety of economic characteristics, all of which are reflected in the generic business case, submitted by the PCC. Far from being “one carrier’s individual business plan,” the testimony submitted by the PCC witnesses is based entirely on Verizon’s tariffed rates which are available to all CLECs throughout the Commonwealth. Even in the unlikely event of a Commission determination to reject the PCC’s factual representations, they cannot be said to be outside the scope of evidence deemed relevant by the FCC for consideration by state commissions in the 90 day proceeding, and Verizon’s argument to the contrary must be rejected.

**“MOTION TO STRIKE”**

13. Verizon has also moved to strike all references to a state law basis for justifying a continuation of the availability of UNE switching to DS1 enterprise customers, claiming both that state law is “irrelevant” to determining impairment and that, in any event, the FCC had preempted state’s authority with respect to unbundling obligations. Verizon’s motion in this regard is more properly characterized as a motion to dismiss because Verizon’s argument – that the Commission is preempted from considering state law in determining whether circuit switching for enterprise customers should continue to be made available on an unbundled basis – is in effect a claim that PCC’s legal argument in this regard does not constitute a basis on which relief can be granted.<sup>22</sup> Again, such a motion to dismiss may only be granted when it is absolutely clear and free from doubt that eliminating this claim at this preliminary stage is appropriate. But in fact, quite the opposite is true; there is ample basis for concluding that

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<sup>21</sup> *TRO* at ¶ 457.

<sup>22</sup> If the motion were granted then the PCC testimony summarizing this legal view would also be barred.

Pennsylvania law requires that Verizon continue to offer enterprise circuit switching on an unbundled basis regardless of whether the FCC makes a similar determination on the basis of federal law.

14. First, Verizon is clearly wrong when it claims that the FCC has preempted all types of state rules regarding items covered by the *TRO*. In fact, the Order states that

[w]e do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. ...[the Telecommunications Act]. section 251(d)(3) preserves states' authority to impose unbundling obligations but only if their action is consistent with the Act and does not substantially prevent the implementation our federal regime.<sup>23</sup>

15. Consistent with these general guidelines, and contrary to Verizon's broad representation, the FCC found that "states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations."<sup>24</sup> But the state law obligation that, PCC submits, continues to require Verizon to offer unbundled switching was a voluntary obligation, willingly entered into by Verizon and not a mandatory order creat[ing] [or] modify[ing] an unbundling obligation. Verizon's state-based unbundling obligations can be traced to the Company's own voluntary decision to subject itself to the unbundling requirements of Chapter 30. It did this by voluntarily accepting the Alternative Regulation Plan offered by the PUC in 1994, in response to the Company's initial Petition and, as part of that filing and in subsequent filings, requesting – and obtaining – competitive designation for certain retail services.<sup>25</sup> Such

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<sup>23</sup> *TRO* at ¶¶ 192, 193 (emphasis added).

<sup>24</sup> *TRO* at ¶ 187.

<sup>25</sup> 66 Pa.C.S. § 3004(b). Under Section 3004(b), Verizon is provided an opportunity to accept or reject the alternative regulation plan adopted by the Commission. By accepting its alternative regulation plan, Verizon voluntarily accepted the unbundling requirements of 66 Pa. C.S. § 3005.

voluntary acceptance of state unbundling requirements would appear perfectly consistent with the FCC's admonition that a state commission could not "create, modify or eliminate" unbundling obligations, leaving open voluntary actions by carriers.<sup>26</sup> Moreover, since this unbundling obligation is in furtherance of a competitive pricing and ratemaking scheme voluntarily adopted by Verizon, it would appear to be impossible to characterize this unbundling requirement as "substantially preventing the implementation of the federal regime." Nowhere does the *TRO* indicate that an ILEC is prohibited from voluntarily agreeing to exceed the national standard if the ILEC voluntarily does so for competitive or other reasons. This is exactly what occurred when Verizon made a voluntary choice to accept its alternative regulation plan. In addition, the terms of the individual interconnect agreements which make use of this unbundling may then prohibit Verizon from unilaterally discontinuing the provision of service on the ground there is a change of [federal] law.<sup>27</sup> To decide otherwise would be to allow Verizon to continue to reap the benefits of competitive service designation without the corresponding requirements agreed to by Verizon and applicable to such a designation – in essence the "quid" without the "quo."

16. It is for this reason, presumably, that the Commission just recently reaffirmed its view that these state obligations will continue notwithstanding any FCC determination regarding federal requirements to the contrary. The Commission, after the *TRO* was voted on by the FCC, stated its view of the unbundling requirements imposed by Chapter 30 as follows:

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<sup>26</sup> TRO ¶¶ 187 & 194.

<sup>27</sup> In addition, the terms of the individual interconnect agreements which make use of this unbundling may prohibit Verizon from immediately discontinuing the provision of service on the ground there is a change of [federal] law. *Petition of MCI for Emergency Declaratory Ruling and Enforcement of Interconnect Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310236F0002, (December 11, 2001).

While Verizon PA implies in its Petition that it may determine to discontinue offering unbundled network elements if the FCC rules abolish the federal requirement to provide UNEs to competitors, we refer the company to the plain language of our *Global Order* wherein we stated, in pertinent part, that:

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

Consistent with these parameters, we emphasize that for any telecommunications service for which Verizon PA obtains competitive designation under Chapter 30, Verizon PA is required, independent of other federal requirements, to unbundle BSFs used to provide that local service.<sup>28</sup>

In light of these significant issues raised by the PUC’s acknowledged independent state required unbundling, the PCC contentions, at the very least, require consideration by the full Commission and are completely inappropriate for a motion to strike.

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<sup>28</sup> *Re: Petition of Verizon Pennsylvania Inc. for a Determination That its Provision of Business Telecommunications Services to Customers Generating Less Than \$10,000 in Annual Total Billed Revenues is a Competitive Service Under Chapter 30 of the Public Utility Code, P00021973 (Aug. 13, 2003) at 25-26.*

WHEREFORE, the Pennsylvania Carrier's Coalition respectfully requests that the PUC reject Verizon's Motion to Dismiss and to Strike.



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Dated: November 3, 2003

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**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).

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Date: November 3, 2003

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James McNulty  
Secretary  
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DOCUMENT

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

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of a Protective Order Stipulation signed by Verizon Pennsylvania, Inc., Verizon North, Inc., the Pennsylvania Carriers Coalition, ARC Networks, Inc. d/b/a Infohighway, Metropolitan Telecommunications Corporation of Pennsylvania, the Office of Consumer Advocate, the Office of Trial Staff and the Office of Small Business Advocate in the above referenced matter.

Thank you for your attention to this matter.

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Respectfully submitted,

Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/smw  
Enclosure

cc: The Honorable Michael C. Schnierle

DSH:38621.1/FUL022-216383

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ORIGINAL

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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NOV 03 2003

**PROTECTIVE ORDER STIPULATION**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Verizon Pennsylvania, Inc., Verizon North, Inc., the Pennsylvania Carriers Coalition, ARC Networks, Inc. d/b/a Infohighway, Metropolitan Telecommunications Corporation of Pennsylvania, the Office of Consumer Advocate, the Office of Trial Staff and the Office of Small Business Advocate submit this Stipulation to the Presiding Officer, Administrative Law Judge Michael Schnierle, and the Commission to clarify issues pertaining to the dissemination of confidential information in this proceeding. The Parties stipulate as follows:

1. On October 3, 2003, the Commission entered a Protective Order governing the above captioned proceeding. Upon review and given the specific circumstances of this case, the Parties desire to clarify the application of the Protective Order to this proceeding.
2. The Protective Order governs treatment of two types of confidential information – Proprietary Information and Highly Confidential Information.
3. As to Highly Confidential Information, the language of the Protective Order will govern and the treatment of this information is not affected by this Stipulation.

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**DOCUMENT**

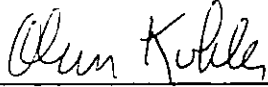
4. As to Proprietary Information, the Parties agree that for the Commission's 90-day proceeding regarding enterprise switching, in addition to the category of experts identified in the Protective Order and Attachment A thereto, information so marked may be also disseminated to each of the witnesses in this case. The witnesses in the case may review the proprietary information to defend the sponsoring party's position in this litigation. The witnesses will use the information only in the conduct of this proceeding and any administrative or judicial proceeding arising from this proceeding, and shall not use or disclose the information for any other purpose, including business, governmental, commercial or other administrative or judicial proceedings.

5. This Stipulation shall not be considered precedent for the treatment of Proprietary Information or the application of Protective Orders in any other proceeding (including, but not limited to, the Commission's nine-month review of network elements other than enterprise switching) and is agreed to give the unique circumstances of the enterprise switching case.

6. In all other aspects, the language of the Protective Order shall govern.

7. Counsel for the respective parties sponsoring witnesses in this proceeding shall be responsible for assuring that the witnesses understand and agree to the terms and conditions of this Stipulation.

WHEREFORE, the Parties request that this Stipulation be adopted by the ALJ and the Commission to govern the application of the October 3, 2003 Protective Order to this proceeding.



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Alan Kohler, Esquire  
for Pennsylvania Carriers' Coalition

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Williams B. Petersen, Esquire  
for Verizon, Pennsylvania, Inc. and  
Verizon North, Inc.

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Ross A. Buntrock, Esquire  
for ARC Networks, Inc. d/b/a Infohighway  
and Metropolitan Telecommunications  
Corporation of PA

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Barrett Sheridan, Esquire  
for the Office of Consumer Advocate

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Kandace F. Melillo, Esquire  
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Angela Jones, Esquire  
for the Office of Small Business  
Advocate


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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

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for the Office of Trial Staff

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Angela Jones, Esquire  
for the Office of Small Business  
Advocate

**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).

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Date: November 3, 2003

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

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