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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligation :
of Incumbent Local Exchange : I-00030099
Carriers to Unbundle Network Elements :

SECRETARY'S BUREAU

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ORDER CONCERNING MCI WORLDCOM NETWORK SERVICES, INC.'S MOTION TO COMPEL RESPONSES FROM VERIZON PENNSYLVANIA, INC.

BACKGROUND

This proceeding is an outgrowth of the Federal Communication Commission's *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order (rel. Aug. 21, 2003)(FCC 03-36), as corrected by errata, FCC 03-227 issued on September 17, 2003. (hereinafter "Triennial Review Order" or "TRO"). In reaction to that order, on October 2, 2003, the Commission adopted an order that established the procedural framework for this proceeding ("*Procedural Order*"). The purpose of this order is to dispose of a discovery dispute that has arisen between MCI WorldCom Network Services, Inc. and Verizon Pennsylvania, Inc..

On November 24, 2003, MCI served its First Set of Interrogatories and Requests for Production of Documents on Verizon. On December 5, 2003, Verizon filed objections to many of MCI's discovery requests. On December 11, 2003, MCI filed a Motion to Compel Responses from Verizon Pennsylvania, Inc. On or about December 18, 2003, Verizon filed a response MCI's Motion to Compel.

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DISCUSSION

Interrogatory Nos. 2, 3 and 8 read as follows:

No. 2

With respect to MCI-2, please state whether Verizon is considering changing the type(s) of document that controls collocation rates, terms and conditions (e.g. using interconnection agreements instead of tariffs). If Verizon is considering such change, please provide all documents that address such change.

No. 3

If a CLEC orders collocation from Verizon in Pennsylvania, please list all recurring and non-recurring rates that Verizon will charge the CLEC for each type of collocation (Note – do not merely refer to the tariff – break out the charges individually).

No. 8

For each CLEC or other carrier collocation arrangement in each Verizon wire center in Pennsylvania, please provide the following information, reported by CLLI code, street address and zip code:

- (a) name of CLEC or other carrier;
- (b) type of collocation arrangement (e.g. caged, cageless, virtual, etc.);
- (c) size of collocation arrangement;
- (d) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
- (e) number of 2-wire cross connects currently provisioned from the MDF to the collocation arrangement;
- (f) number of 4-wire cross connects currently provisioned from the MDF to the collocation arrangement;
- (g) all equipment installed in the collocation arrangement, including make, model, and total installed capacity for each piece of equipment;

(h) type(s) of Verizon transport connected to the collocation arrangement (e.g., special access, UNE transport, etc.);

(i) capacity(ies) of Verizon transport connected to the collocation arrangement (e.g., DS-1, DS-3, OC-3, etc.), and number of circuits at each level of capacity.

MCI argues that this material is relevant for the following reasons:

With regard to relevance, collocation is the primary means by which CLECs access UNE loops and transport. These requests seek information about rates, terms, and conditions of collocation. The availability of collocation directly relates to trigger analysis because it determines whether a CLEC can pick up and aggregate traffic from UNE loops terminating at the central office for transport to its own switch. Collocation also is the means by which CLECs access transport UNEs. The TRO makes clear that the rates, terms and conditions of collocation are directly relevant to trigger analysis for mass market switching. TRO, ¶¶371, 462, 476, and 480.

(MCI Motion to Compel at 10).

Verizon responds as follows:

MCI claims that “the rates, terms and conditions of collocation are directly relevant to [the] trigger analysis for mass market switching.” But MCI fails to provide any convincing reason why this is so. This proceeding is not a pricing docket in which MCI gets to reargue the rates that this Commission has already set. Contrary to MCI’s claims, the triggers do not call for an evaluation of the “rates, terms, and conditions” of collocation in Pennsylvania. Instead, collocation is relevant only to a *subsequent* “exceptional circumstances” evaluation and/or a potential deployment review.

The FCC was explicit in stating that “we require the states to apply triggers that look only at actual deployment as the principal mechanism for evaluating impairment in a particular market. If the deployment triggers are met, the states must find no impairment.” Therefore, exceptional circumstances evaluations and/or potential deployment reviews will occur only – if at all –

after the Commission has completed its trigger reviews. Moreover, the Commission's exceptional circumstances review will occur *only if* the Commission concludes that Verizon has satisfied the self-provisioning trigger, and *only if* a carrier comes forward with evidence of "some significant barrier to entry" to those carriers that already self-provision switching.

Furthermore, even *if* the Commission decides to consider such exceptional circumstances, the TRO does not require that this review be completed in nine months, nor can the Commission use these exceptional circumstances to overturn a satisfied self-provisioning trigger. Instead, the Commission can only petition the FCC "for a waiver of the application of the trigger."

In addition, even if the "exceptional circumstances" review were part of the Commission's trigger analysis – which it is not – the relevance of collocation to this review would be limited to whether "there is *no* collocation space available" in "a particular market." This review has nothing to do with the information MCI seeks in its requests: for example, "whether Verizon is considering changing the type(s) of documents that controls [sic] collocation rates, terms and conditions" (MCI Request 2); and "all recurring rates that Verizon will charge the CLEC for each type of collocation" (MCI Request 3). In fact, these are exactly the types of considerations that the FCC said could only be examined as part of a potential deployment case. Verizon has already indicated that it does not plan on making a potential deployment showing in this proceeding, so this type of review will not be part of this case.

In the same vein, it is worth noting that although Verizon answered MCI Request No. 8 by stating that it would provide responsive information for the carriers identified in its initial testimony as meeting the FCC's triggers, MCI claims that Verizon should not be able to limit its production to this information. However, since Verizon is *solely* relying on a triggers case, any further information regarding "all collocation arrangements" would clearly be irrelevant – and burdensome – because it would not be related to a triggers case. (Emphasis in original; footnotes omitted).

(Verizon Response at 4-6).

We do not agree with either party's interpretation of the *TRO* regarding this issue. Those portions of the *TRO* cited by MCI do not authorize a wide-ranging inquiry into the rates, terms, and conditions of collocation in a "triggers" case such as this. Nor do they permit opposing parties to force an ILEC to put on a "potential deployment" case over the ILEC's objection. On the other hand, nothing in the *TRO* requires a state commission to first complete a "triggers" case before opening an "exceptional circumstances" evaluation. The operative paragraph of the *TRO*, ¶462, reads as follows:

462. Framework of Analysis. The analysis we prescribe with regard to mass market switching is as follows. First, where a state determines that there are three or more carriers, unaffiliated with either the incumbent LEC or each other, that are serving mass market customers in a particular market using self-provisioned switches, the state must find "no impairment" in that market. As described below, we recognize that there may be some markets where three or more carriers are serving mass market customers with self-provisioned switches, but where some significant barrier to entry exists such that additional carriers with self-provisioned switches are foreclosed from serving mass market customers. For example, if there is no collocation space available for additional competitive LEC equipment, further competitive entry may be impossible, irrespective of other economic or operational circumstances. Where the self provisioning trigger has been satisfied and the state commission identifies an exceptional barrier to entry that prevents further entry, the state commission may petition the Commission for a waiver of the application of the trigger, to last until the impairment to deployment identified by the state no longer exists.

The point of this is simply that there is no need to reach a conclusion regarding unavailability of collocation, or other "exceptional circumstances," unless the triggers are met. This does not mean that lack of collocation is the only "exceptional circumstances," or that the issues have to be considered in separate cases. Verizon's other citations to the *TRO* are taken out of context and do not change this result.

As a matter of practicality, if the Commission were to follow the procedure suggested by Verizon, the result could be anti-competitive in the extreme. For example, assume that there are switches that meet the trigger in hypothetical Area A, but there is no collocation space in Area A to be used to provide facilities to take Verizon loops to CLEC switches. Verizon would have the Commission first find no impairment, at which point Verizon would immediately unplug all UNE-P arrangements in Area A. Since there is no collocation space, there would be no "facilities based" competition. By the time that the Commission got around to finishing the subsequent "exceptional circumstances" evaluation, competition would be long dead.

Interrogatory No. 2 appears to be in furtherance of an argument that if something changes in the future, collocation might not be available, or might be too expensive. The *TRO* is asking state commissions to make an impairment determination based on the situation as it exists today, not on how it might exist in the future. Frankly, the Commission's task here will be sufficiently difficult without trying to predict the future. Accordingly, we will not compel an answer to Interrogatory No. 2.

Interrogatory No. 3 asks Verizon to list all of its charges for collocation. Verizon, besides objecting on the basis of relevance, also notes that its collocation rates are publicly available. Without ruling on the relevance of this inquiry (collocation at excessive rates might arguably be no different than no collocation at all), we will sustain Verizon's objection to this interrogatory. Because the information sought is publicly available and of a type that MCI, as a large telecommunications company, might be expected to use on a routine basis, we see no reason to require Verizon to provide it.

Interrogatory No. 8 asks for considerable information about every CLEC or other carrier collocation arrangement in Pennsylvania. In our view, the interrogatory seeks information well beyond what might be useful to establish "exceptional circumstances" if it is found that a trigger has been met in one or more wire centers. Among other problems, the interrogatory seeks

information about wire centers which are not at issue in this case. It appears from the pleadings that Verizon has answered MCI Interrogatories 9 and 10, which seek information more directly related to the availability or lack of collocation space, and provided a partial answer to 8 (limited to fiber-based collocation arrangements in those wire centers where Verizon claims the triggers have been met). For these reasons, we will not compel an answer to Interrogatory No. 8.

Interrogatory 11 reads as follows:

With regard to all CLEC to CLEC cross connections you have provisioned, please identify the following, reported by wire center:

- (a) number of such cross connections that you have provisioned;
- (b) the identity of both CLECs for whom you provisioned the cross connect
- (c) the type of collocation arrangement of both CLECs;
- (d) the minimum, maximum and average provisioning time for CLEC to CLEC cross connections;
- (e) the identity of the entity or personnel who performs the cross connect (e.g. ILEC central office technician, certified CLEC technician, etc.)

MCI argues, as follows, that this interrogatory is appropriate:

With regard to relevance, this question is seeking details about CLECs' existing collocation cross connection arrangements to determine alternatives to transport in the event UNE transport is lost and whether the possibility exists to partner with another CLEC to provide bundled services (e.g., voice and DSL.) Further, the TRO states that the ILEC's failure to timely provide such cross connections could result in impairment if competitors lose access to unbundled switching. This question is supported by the following paragraphs in the *Triennial Review Order*: ¶462, 477, 478, 480.

(MCI Motion to Compel at 11).

Verizon responds that:

MCI attempts to distinguish this request from its collocation questions by listing it separately under the parenthetical “Cross Connection.” However, this request is simply another collocation-related request, as MCI admits further down in its discussion (“[T]his question is seeking details about CLECs’ existing *collocation* cross connection arrangements to determine alternatives to transport in the event that UNE transport is lost . . .”). Indeed, MCI’s admission that this request seeks information concerning what *may* happen “*in the event UNE transport is lost*” clearly shows that this request has nothing to do with the Commission’s triggers analysis. For this reason, and the reasons stated above, MCI’s request to compel an answer to this interrogatory should be denied. (Emphasis in original; footnotes omitted.)

(Verizon Response at 6).

This interrogatory is clearly relevant under ¶478 of the *TRO*:

478. Incumbent LEC Provisioning of Competitive LEC-to-Competitive LEC Cross –Connects. We further find that an incumbent LEC’s failure to provide cross-connections between the facilities of two competitive LECs on a timely basis can also result in impairment. Competition in the absence of unbundled local circuit switching requires seamless and timely migration not only to and from the incumbent’s facilities, but also to and from the facilities of other competitive carriers. Such interconnection requires that the incumbent LEC place cross connections between the competitive carriers’ facilities in its central office on a timely basis. The incumbent’s failure to do so will tend to delay competitors’ entry, and thus to increase competitors’ costs. We conclude that in some cases, such failure can give rise to impairment in the absence of unbundled local circuit switching. (Footnotes omitted.)

However, it is too broad, as it is not limited to those wire centers where Verizon claims the triggers have been met for unbundled switching. Accordingly, we will grant the motion to compel, limited to those wire centers where Verizon claims the triggers have been met for unbundled switching.

Interrogatory No. 13 reads as follows:

For each Verizon central office or wire center at which loops and transport are connected to form EELs *without* using collocation, please provide the following information:

- (a) the CLLI code, street address, zip code, and V&H coordinates of the Verizon central office or wire center where such EELs are created;
- (b) the CLLI code, street address, zip code, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
- (c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
- (d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
- (e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
- (g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
- (i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
- (j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

MCI argues, as follows, that this interrogatory is appropriate:

With regard to relevance, this question MCI-13 is part of a two-part set, MCI-12 and MCI-13, in which MCI seeks information about Verizon central offices where loops and transports are connected at collocation arrangements (MCI-12) and without collocation arrangements (MCI-13) to form EELs. Verizon stated it would provide an answer to MCI-12 but refused to answer MCI-13. Because MCI-12 and MCI-13 seek information regarding the same topic, Verizon has conceded the relevance of this question. The requested data is necessary in order for the Commission to conduct the analysis directed by the *Triennial Review Order*. EELs are an alternative means to collocation for CLECs to pick up traffic for transport to the CLECs' switch. EELs may be configured with and without collocation at the end-user's serving wire center, so both questions are relevant. The ability of CLECs to pick up and transport customer traffic to their own switches is an important factor to be considered by the Commission in analyzing Verizon's claims that the Commission should withdraw UNE switching in any particular wire center. TRO, ¶ 462-463, 477, 480, and 503.

(MCI Motion to Compel at 12).

Verizon initially objects to this interrogatory because, when read in conjunction with the definitional section of MCI's interrogatories, the request involves all Verizon companies whether situated in Pennsylvania or elsewhere. Verizon also objects on the basis of relevance as follows:

It is also irrelevant, because the question of whether Verizon has satisfied the applicable trigger is the only impairment determination that is at issue in this proceeding. Moreover, the Commission should not be misled by MCI's claim that this request must be relevant because it "is part of a two-part set" of questions the first of which Verizon answered. Verizon's answer to MCI request 12 stated – without waiving Verizon's objections of burdensomeness and relevance – that:

The Company is unable to determine which EELs are formed *with or without* Collocations and the Company is unable to tell which Wire Center the EEL is created or which Wire Center was where the EEL was connected without a special Stud[y].

Also, the Company is unable to provide information on what the EELs are connected to.

(emphasis added). In other words, Verizon responded that the information that MCI requested is not available.

Finally, in the TRO, the FCC rejected MCI's proposal to establish rules that CLECs may obtain concentrated EELs at the DS0 level, and any attempt to resurrect this request in this proceeding cannot be heard. (Footnote omitted.)

(Verizon Response at 7-8).

We have reviewed the *TRO* paragraphs cited by MCI in its Motion to Compel (¶¶ 462-463, 477, 480, and 503) and do not find support for this interrogatory. None of those paragraphs stand for the proposition that the availability (or lack thereof) of EELs is a factor in determining whether the triggers have been met for local switching. Accordingly, we will not compel an answer to Interrogatory No. 13.

Interrogatory Nos. 14, 16 and 17 read as follows:

No. 14

Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of analog loop facilities vs. DS-1s, or any other basis you use to distinguish these terms. Provide any documentation to support your answer.

No. 16

Please provide your calculation, estimate, or view of the economic crossover point, in terms of number of DS-0/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

No. 17

With respect to each of the two customer categories identified in response to 014, please provide the following information and all supporting documentation:

- (a) the number of customers in each category, reported by central office/wire center for each month since July 1, 2001;
- (b) the percentage of your total customer base in the District of Columbia in each of the two categories;
- (c) whether you target your business plans or marketing to particular sub-sets of customers within each of the two categories identified in response to MCI-14.

MCI argues, as follows, that these interrogatories are appropriate:

With regard to relevance, this request seeks information (about enterprise/mass market customer numbers and sub-class target markets) that is directly relevant, and critical to the Commission's ability to determine the proper enterprise/mass market crossover point and the proper market definition for its impairment analysis, as mandated in the TRO at ¶421, fn. 1296; ¶497, fn.1546;, and ¶525, as well as 47 CFR §51.319(d)(2)(iii)(B)(4) ("state commission shall establish a maximum number of DS0 loops...."). Further, these questions seek information on the crossover point to demonstrate that the four-line top 50 MSA "carve-out" is not mandatory as a crossover point despite the *Triennial Review Order* suggesting it, and that the "carve-out" has no apparent economic or operational basis. TRO, ¶¶ 497, fn.1546). To the extent that Verizon intends to present information about a crossover point, or rebut other parties' positions about crossover points, information about Verizon's own experience in the market is indeed relevant. Additionally, Verizon is a provider of retail services in the market, and therefore the manner in which it conducts business is relevant to the definition of the market.

(MCI Motion to Compel at 13).

Verizon responds as follows:

MCI claims that it needs responses to these requests so the Commission can “determine the proper enterprise/mass market crossover point . . .” There are several fundamental problems with these requests.

First, MCI request 17, which refers back to MCI request 14, seeks information regarding Verizon’s operations in the District of Columbia. These requests are, therefore, irrelevant on their face. Indeed, if MCI cannot be bothered with editing its boilerplate discovery to focus it on Pennsylvania, it is more than reasonable for the Commission to conclude that these requests were not crafted to obtain information within the proper scope of this proceeding.

Second, some of these requests do not seek *facts*, but rather “definitions” and “views” (MCI Requests 14 & 16), and such requests are inappropriate. Third, and more problematic, is the fact that these requests seek information regarding Verizon’s retail operations. Verizon’s retail operations have no bearing on determining the “crossover point,” because it is “requesting carriers” of unbundled switching (such as MCI) about whom this determination must be made, based on information provided by these carriers. Any information that Verizon could provide regarding its own retail operations would have absolutely no bearing on the Commission’s “crossover point” determination. Therefore, these requests are irrelevant and improper as directed to Verizon. Indeed, MCI should direct these questions to other CLECs, and should be prepared to provide this information itself. (Emphasis in original; footnote omitted.)

(Verizon Response at 8-9).

A state commission is expected to determine the "crossover point" between "mass market" and "enterprise" customers. The regulation reads as follows:

(4) Multi-line DS0 end users. As part of the economic analysis set forth in paragraph (d)(2)(iii)(B)(3) of this section, the state commission shall establish a maximum number of DS0 loops for each geographic market that requesting telecommunications carriers can serve through unbundled switching when serving multiline end users at a single location. Specifically, in

establishing this “cutoff,” the state commission shall take into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served in an economic fashion by higher capacity loops and a carrier’s own switching and thus be considered part of the DS1 enterprise market.

47 CFR §51.319(d)(2)(iii)(B)(4). The FCC has tentatively set this number at 4 DS0 lines (i.e., 4 voice grade lines). *TRO* ¶525. While the focus is whether the CLECs can economically serve a certain number of DS0 lines with a DS1 (and no unbundled switching), Verizon's experience in this area may be relevant to impeaching claims that Verizon makes in its case here. Bearing that in mind, we find that Interrogatories 14 and 16 are appropriate. On the other hand, the relevance of the information sought by Interrogatory 17 eludes us. The actual number of customers in each category in each of Verizon's wire centers (apparently not limited to Pennsylvania) and the manner in which Verizon markets to each class of customer have nothing to do with the economic crossover point for CLECs. Thus, we will order Verizon to answer Interrogatories 14 and 16, but not 17.

Interrogatory Nos. 18, 19 and 20 read as follows:

No. 18

Please state the technical characteristics and capabilities of all loops that you consider to be a DS-0 and/or voice grade loop, and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.

No. 19

Please state the technical characteristics and capabilities of a DSL-capable loop, and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.

No. 20

Please state the technical characteristics and capabilities of loops capable of supporting 1) line sharing and 2) line splitting (*i.e.* voice

service and DSL service carried on a single wire pair entering the customer's premises), and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.

MCI argues, as follows, that these interrogatories are appropriate:

These questions are not burdensome because they merely ask for Verizon to disclose the technical specifications that Verizon has already established in its own internal technical publications regarding the required technical characteristics of a loop to support various services. Thus, Verizon's objections on all of these grounds should be rejected.

With regard to relevance, the data sought in these questions are directly relevant to this proceeding. The *Triennial Review Order* repeatedly uses the term "voice grade" and "DS-0" throughout, thus MCI-18 seeks to understand the technical characteristics that Verizon associates with voice grade and/or DS-0 loops so that MCI may properly evaluate Verizon's assertions in its testimony and at hearing regarding voice grade/DS-0 loops.

MCI-19 and MCI-20 seek information on the technical characteristics of loops to support DSL. This information is relevant to the definition of markets and trigger analysis mandated in the *Triennial Review Order*. Because all carriers, including Verizon, are marketing bundled services that include DSL, an accurate assessment of which portion of Verizon's loop plant that can support DSL is relevant to determine whether CLECs can provide the same set of bundled services. If not, then CLECs are impaired with regard to that portion of the service area served by the ILEC switch, and thus the switching trigger is not met for that service area or customer base. The FCC recognized that different classes of customers are served by different loop types and "resulting in different economic considerations for competitive carriers seeking to self-deploy." TRO, ¶ 197.

(MCI Motion to Compel at 14-15).

Verizon responds as follows:

MCI claims these requests are proper because “[t]he FCC recognized that different classes of customers are served by different loop types and ‘resulting [sic] in different economic considerations for competitive carriers seeking to self-deploy.’” But “different economic considerations” for “competitive carriers” have absolutely nothing to do with the FCC’s triggers. Instead, these questions address issues that might be relevant in a potential deployment case, which Verizon has declined to bring in this proceeding.

Moreover, these requests seek information regarding loops, not the switching triggers. Although MCI claims that it needs this information “to understand the technical characteristics that Verizon associates with voice grade and/or DS-0 loops so that MCI may properly evaluate Verizon’s assertions in its testimony and at hearing,” it is difficult to understand how MCI’s justification is related to Verizon’s triggers case for unbundled switching. Nor is it appropriate to seek to require Verizon to “provide any relevant public and/or confidential technical publications and any other documents that describe” the “characteristics and capabilities” of a “DSL-capable loop.” (MCI Request 20). This request, for example, would require Verizon to somehow provide all public documents from equipment manufacturers on this product.

Simply stated, these requests have nothing to do with the switching trigger, and certainly do not support a massive search and production for technical publications which MCI could obtain publicly through its own efforts. (Footnotes omitted.)

(Verizon Response at 9-10).

These interrogatories appear to be intended to support an argument that unless MCI can bundle DSL with voice grade service on the same line, it will be unable to compete with Verizon, and therefore the Commission should require Verizon to continue to provide unbundled switching. While this may be a logical argument, we can find no support in the *TRO* for the proposition that the ability (or inability) of a CLEC to bundle DSL service with voice service is a factor in determining whether the FCC’s switching triggers have been met. The *TRO* paragraph (§197) cited by MCI does not provide such support. Paragraphs 286-297 of the *TRO* suggest that this issue was litigated extensively before the FCC; nevertheless, nothing in the *TRO* suggests

that this should be a consideration in determining whether the switching triggers have been met. Accordingly, we conclude that these interrogatories do not seek relevant information. Thus, we will not compel answers to Interrogatory Nos. 18, 19, and 20.

Interrogatories 22-25 read as follows:

No. 22

Please provide, a) on a statewide basis, and b) on a CLLI-code-specific basis, broken out on a monthly basis for each month since July 1, 2001, the number of loops carrying standalone DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.

No. 23

Please provide, a) on a statewide basis, and b) on a CLLI-code-specific basis, broken out on a monthly basis for each month since July 1, 2001, the number of loops carrying line shared Verizon voice plus CLEC DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.

No. 24

Please provide, a) on a statewide basis, and b) on a CLLI-code-specific basis, broken out on a monthly basis for each month since July 1, 2001, the number of loops carrying line split voice plus DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.

No. 25

Please provide, a) on a statewide basis, and b) on a CLLI-code-specific basis, broken out on a monthly basis for each month since

July 1, 2001, the number of loops carrying Verizon voice plus Verizon/Verizon affiliate DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises.

MCI argues, as follows, that these interrogatories are appropriate:

With regard to relevance, these requests for monthly line counts by wire center seek information relevant to a variety of issues mandated by the TRO for state commission review. The size of an ILEC wire center, in terms of number of loops in service and counts of various types of services, provides a baseline for estimating churn quantities. (*Triennial Review Order*, ¶ 471.) Moreover, the specific line counts per customer are relevant to the determination of a crossover point between mass market and enterprise customers by examining actual marketplace behavior, as well as to the estimation of market potential on a wire center specific basis. TRO ¶421, fn. 1296; ¶485; ¶497, fn.1546;, and ¶525) CLECs make entry decisions on an ILEC wire center specific basis. Variations in overall line counts, business/residence customer proportions, and take rates for bundles of voice and DSL services occur on a wire center level basis. The information requested is also basic data at a wire center level, necessary for fundamental decision-making. These questions are seeking data on the number of in-service loops carrying various services on statewide and CLLI basis.

(MCI Motion to Compel at 15-16).

Verizon responds as follows:

MCI broadly attempts to justify these requests by claiming that they are “relevant to a variety of issues mandated by the TRO for state commission review.” But these requests do not seek information about Verizon’s triggers case; to the contrary, in MCI’s own words they allegedly seek information which may “provide[] a baseline for estimating churn” and “market potential.” As a threshold matter, churn rates, which have nothing to do with whether the FCC’s triggers are satisfied, are an issue in a potential deployment case and perhaps as part of the Commission’s review of the hot cut process. But even in these situations, it is the churn

rate of CLECs, not ILECs, that is relevant – a fact that MCI implicitly conceded before the FCC when it put into the record its own churn rate. Therefore, these requests are improper as directed to Verizon, since Verizon’s retail churn rate is completely irrelevant to this proceeding.

MCI also asserts that this information is relevant to the crossover determination, but as explained above, the information needed for the crossover analysis is in the hands of “requesting carriers” such as MCI itself. Indeed, MCI and other CLECs make this crossover determination every day in the marketplace, and they do not review Verizon’s churn rates before deciding whether to serve a multi-line customer with a DS0 or DS1 loop. The data that MCI seeks in these requests has no relevance to a trigger analysis, which is by definition focused on and limited to “actual *competitive* deployment.”

Furthermore, these requests seek information regarding line sharing and line splitting (*see, e.g.*, MCI requests 23 and 24). However, any suggestion that the Commission must evaluate these topics as part of its impairment analysis is clearly incorrect. Instead, as the FCC stated in the TRO, it expects the carriers “to commence negotiations” to establish a “long-term arrangement” to replace line sharing. In fact, the FCC imposed a three-year transition period for new line sharing arrangements to provide CLECs with the time “to implement new internal processes and procedures, design new product offerings, and negotiate new arrangements with incumbent LECs to replace line sharing.” With regard to line splitting, the FCC encouraged “incumbent LECs and competitors to use existing state commission collaboratives” to address issues related to line splitting.

Finally, it is worth noting that MCI fails to disclose in its Motion that these requests seek historical data going back more than *two years*. MCI does not even attempt to justify this portion of the requests, nor can it. MCI also fails to acknowledge that the requests are not limited to “Verizon Pennsylvania,” but instead are directed to “Verizon,” and seek information “on a statewide basis” for Verizon’s entire national footprint. MCI cannot justify such a broad and unfocused geographic scope and has not attempted to do so. Accordingly, MCI’s request to compel answers to these requests should also be denied. (Emphasis in original; footnotes omitted.)

By way of background, DSL service is supported not by local circuit switches (which are the focus of the unbundled switching investigation here) but by Digital Subscriber Line Access Multiplexers (DSLAMs). While these interrogatories might provide some information about "churn" in DSL service, they would provide indirect information, at best, about churn in voice service, which is the primary focus of this proceeding. For these reasons and the reasons set forth in the discussion of Interrogatory Nos. 18-20, we conclude that the information sought by Interrogatory Nos. 22-25 is irrelevant in this proceeding. Thus we will not compel answers to Interrogatory Nos. 22-25.

Interrogatory Nos. 28-31 read as follows:

No. 28

Please provide, on a CLLI-code-specific basis, any and all documentation that shows copper feeder plant that 1) has been retired since January 1, 2000 or 2) Verizon plans to or is considering retiring in the next three years.

No. 29

Please provide, on a CLLI-code-specific basis, any and all documents showing Verizon's plans over the next three years to use copper feeder plant that has been replaced with fiber-feeder plant, for reinforcement to meet growth needs on shorter all-copper feeder routes.

No. 30

Please provide a detailed description of Verizon's current policy regarding maintenance of copper outside plant facilities once those facilities have been retired. Please provide a copy of all documents, including Methods and Procedures, guidelines, bulletins, business rules and/or business analysis on which you relied, or that are relevant to this Request. Also please state whether Verizon is considering revising this policy, and if so, when such revision is anticipated.

No. 31

Please provide any and all documents regarding Verizon's plans, incentives, justification, benefits and/or analysis of upgrading its loop plant in Pennsylvania by installing additional 1) hybrid copper/fiber loops; 2) all-fiber loops.

MCI argues, as follows, that these interrogatories are appropriate:

This series of questions seeks basic information about the ILEC's loop plant. This information is relevant to market definition and trigger analysis, including but not limited to, possible difficulties using UNE loops to customer premises served by IDLC, while still providing UNE-P to CLECs using those same loops at those same premises. *TRO*, ¶ 495. The questions about copper loop plant are relevant to whether CLECs have access today, and will have access in the future, to loops on which they can provision voice plus DSL, given that the *Triennial Review Order* denies them access to the "packet" portion of ILEC hybrid fiber/copper loops. *TRO*, ¶¶286, 296. Further, the *TRO* identifies issues, such as variations in loop plant that affect a CLEC's ability to serve customers, as relevant to the market definition analysis. Specifically, the *TRO* states that factors relevant to market definition include "the variations in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies." *TRO*, ¶495.

(MCI Motion to Compel at 16-17),

Verizon responds as follows:

As MCI admits, "[t]his series of questions seek basic information about the ILEC's loop plant" and "possible difficulties using UNE loops to customer premises served by IDLC . . ." Again, this information is totally irrelevant to the triggers determination at issue in this proceeding. These requests, as reflected by MCI's own words, seek details regarding operational factors and possible "future" issues which the FCC specifically stated could not be part of a triggers analysis. "[S]tates must *first* employ triggers that examine actual deployment[.]" "[A]ctual deployment is the best evidence of impairment [and] [operational

and economic factors] come into play *only* if [the FCC's] deployment triggers are not met." MCI's request that Verizon be compelled to provide answers to these requests should be denied. (Emphasis in original; footnotes omitted.)

(Verizon Response at 12).

MCI's primary purpose in pursuing these interrogatories appears to be set forth in the following sentence:

The questions about copper loop plant are relevant to whether CLECs have access today, and will have access in the future, to loops on which they can provision voice plus DSL, given that the *Triennial Review Order* denies them access to the "packet" portion of ILEC hybrid fiber/copper loops. TRO, ¶¶286, 296.

We have previously ruled that the ability or inability of a CLEC to render DSL is not a factor that a state commission is supposed to take into account in determining whether the switching triggers have been met. Thus we will not compel answers to Interrogatory Nos. 28-31.

Interrogatory No. 32 reads as follows:

Please provide all documentation showing where dark fiber in the loop plant is currently available in each wire center in Verizon's territory for use by CLECs.

MCI argues, as follows, that this interrogatory is appropriate:

The question is seeking information from Verizon regarding the amount of dark fiber in its loop plant, including the locations and capacity. The question is not overly broad or burdensome. Verizon must keep an inventory of the facilities in its loop plant available for assignment, and even if facilities are not available for assignment, ILECs keep inventory of facilities in Continuing Property Records. This question merely asks Verizon to disclose the information it already maintains.

Finally, this question is directly relevant to this proceeding. MCI, other parties and the Commission will need to analyze dark fiber that is available for CLEC use as part of the mass market switching trigger analysis (transport available or that could be available to CLECs to pick up traffic at the wire center and

transport it to the CLEC's own switch), and analysis of loop and transport UNEs.

(MCI Motion to Compel at 17-18).

Verizon responds as follows:

This request asks that Verizon provide "all documentation showing where dark fiber in the loop plant is currently available in each wire center in Verizon's territory for use by CLECs." This request is not limited to Pennsylvania, nor is it even limited to the entire Verizon Pennsylvania or Verizon North footprint. Therefore, it is clearly overbroad and overly burdensome. Moreover, MCI cannot justify this request as relevant to the mass market switching trigger analysis because, as noted above, this analysis must look at whether the switching triggers are met by actual deployment. MCI's request is seeking information regarding potential deployment (*i.e.*, transport "that could be available to CLECs") and, thus, is beyond the scope of the impairment analysis at issue in the Commission's review of Verizon's case. (Footnote omitted.)

(Verizon Response at 12).

To the extent that this interrogatory seeks information concerning dark fiber outside of Pennsylvania, it is too broad. On the other hand, information about dark fiber in Pennsylvania may be arguably relevant to an "exceptional circumstances" analysis (*i.e.*, lack of available transport may be an exceptional circumstance that precludes a finding of no impairment even if the switch triggers are met). Therefore, we will require Verizon to answer this interrogatory, limited to dark fiber in Pennsylvania.

Interrogatory No. 33 reads as follows:

On a statewide and CLLI-code-specific basis in Pennsylvania, please state the percentage of working loops used or available to support Verizon retail services that are configured as "connect through"/"warm line" (*i.e.*, loops that have electrical continuity between the customer premises and the Verizon switch, and over

which a person at the customer premises can call 911 and Verizon repair service).

MCI argues, as follows, that this interrogatory is appropriate:

The data sought in this request are directly relevant, and within the scope of this proceeding. This request, seeking information on “connect through” or “warm line” status of otherwise “disconnected” lines, provides data that will enable the Commission to evaluate Verizon’s current claimed ability to quickly provision volumes of loops. Including loops that are still in service via warmline in provisioning performance skews results because such loops require no wiring work on the frame in the wire center. Further, the volumes of these lines affect both lines that are available to be placed in service to a CLEC and lines a CLEC may be disconnecting. (See, e.g., *Triennial Review Order*, ¶465). The information is available only from Verizon and will be most valuable in a suitably granular form. Beyond the request for granular detail, no specific “format” such as a table or spreadsheet is requested, so MCI fails to understand Verizon’s “format” objection.

(MCI Motion to Compel at 18).

Verizon responds as follows:

This request seeks “the percentage of working loops used or available to support Verizon *retail* services that are configured as ‘connect through’/‘warm line’” (emphasis added). As noted above, Verizon’s retail operations are not at issue in this triggers proceeding. Indeed, MCI’s suggestion that this information will be “valuable” to the Commission is refuted by the TRO. To the contrary, the FCC stated that triggers determinations should look to “granular evidence that new entrants are providing retail services in the relevant market using *non-incumbent LEC facilities*.” That is because “this kind of evidence demonstrates better than any other kind what business decisions actual market participants have made regarding whether it is feasible to provide service without relying on the incumbent LEC.” Accordingly, this request is not relevant to this triggers proceeding and the Commission should deny MCI’s request to compel a response to it. (Emphasis in original; footnotes omitted.)

(Verizon Response at 13).

Verizon's answer here is a *non sequitur*. The "non-incumbent LEC facilities" referenced in the *TRO* in regard to unbundled switches are the switches, not the ILEC's loops, which are required in some settings for the CLECs to use their own switches. "Operational barriers" faced by CLECs, including the ILEC's performance, or lack thereof, in provisioning loops is a legitimate issue in this proceeding. 47 CFR §51.319(d)(2)(iii)(B)(2) . Accordingly, MCI's motion will be granted with respect to this interrogatory.

Interrogatory Nos. 40, 41 and 42 read as follows:

No. 40

On a CLLI-code-specific basis in Pennsylvania, please provide Verizon's demand growth or decline for each of the last three years for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local exchange service, e) resold ILEC business local exchange service and f) resold ILEC residential local exchange service.

No. 41

On a CLLI-code-specific basis in Pennsylvania, please provide Verizon's current in-service quantities for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local exchange service, e) resold ILEC business local exchange service and f) resold ILEC residential local exchange service.

No. 42

On a CLLI-code-specific basis in Pennsylvania, please provide the Verizon's expected, estimated or forecasted demand growth or decline for each of the next three years for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local

exchange service, e) resold ILEC business local exchange service and f) resold ILEC residential local exchange service.

MCI argues, as follows, that these interrogatories are appropriate:

The data sought in these requests are directly relevant, and within the scope of this proceeding. These requests seek information on demand growth or decline for specific services. Such information is necessary for MCI, other parties and the Commission to determine the proper market definition for purposes of conducting a trigger analysis on mass market switching UNEs. TRO, ¶496). Both market definition and trigger issues must be on a more granular basis than “statewide”, TRO ¶495 and 47 CFR § 51.319(d)(2)(i)). Accordingly, detailed information about Verizon’s past and current line counts by wire center, in various service categories will provide the Commission necessary information concerning the various factors affecting competitors’ ability to target, serve and compete, and thereby, necessary data from which it can properly define the market on a granular level. Such factors are expressly identified as relevant for the market definition analysis in the TRO at ¶ 495.

(MCI Motion to Compel at 19-20).

Verizon responds as follows:

MCI Requests 40 and 42 seek Verizon’s demand growth or decline for each of the last three years, and each of the next three years, for various UNE loops, UNE-P local exchange service and resold ILEC business and residential services.⁴⁰ MCI claims it needs this information to show “the various factors affecting competitors’ ability to target, serve and compete. . .”⁴¹ This information is not relevant to a triggers case. Instead, it is part of the economic and operational factors that would only relate to a potential deployment case. Since Verizon is not presenting a potential deployment case in this proceeding, requesting this information for each the last three years, and for each of the next three years, is irrelevant and overly burdensome.

⁴⁰ Verizon provided a response to MCI Request 41, with the exception of part (b), which asks for line split configurations for UNE loops used for DSL services. This information is irrelevant

for the reasons discussed above concerning MCI's other line splitting and line sharing requests.

⁴¹ MCI's Motion at 19-20.

(Verizon Response at 13-14).

We agree with MCI that these figures (with the exception of subpart (b), UNE loops used for DSL service (including line split configurations)) are relevant to defining the market. Accordingly, we will direct Verizon to answer these interrogatories, with the exception of Subpart (b).

Interrogatory No. 44 reads as follows:

Please describe in detail the approach and manner in which Verizon segments its sales and marketing efforts and personnel on the basis of customer size, type (e.g., residential, small business, medium business, large business), monthly level of revenues, and/or service(s) taken by customer (individually or as part of a bundle), and provide the basis on which such segmentation is made.

MCI argues, as follows, that this interrogatory is appropriate:

These requests seek information directed at Verizon's ability to geographically segment its customer base and direct its marketing accordingly. This series of requests seeks information necessary for the Commission to acquire the appropriate level of granularity for analysis for market definition. MCI's requests are carefully tailored to obtain the data that the Commission must have to issue a determination consistent with the *Triennial Review Order*. TRO ¶ 485, 495, 496, 497, fn. 1579.) Moreover, this information is relevant because it determines Verizon's ability to target competitive pricing responses following entry by competitors. TRO ¶ 80, 83, 88, fn. 298, 539).

(MCI Motion to Compel at 20).

Verizon responds as follows:

This request asks Verizon to describe “in detail the approach and manner in which Verizon segments its sales and marketing efforts and personnel on the basis of customer size, type [and revenue].” MCI claims that this request is “carefully tailored to obtain the data that the Commission must have to issue a determination consistent with the [TRO].” This claim is ludicrous because this request plainly seeks economic information wholly unrelated to a triggers determination. Verizon does not concede that these economic factors would even be relevant in a potential deployment case. Nonetheless, they clearly are not relevant here, because Verizon is not presenting a potential deployment case. (Footnote omitted.)

(Verizon Response at 14).

MCI's argument here is a *non sequitur*. It begins: "These requests seek information directed at Verizon's ability to geographically segment its customer base and direct its marketing accordingly." (Emphasis added.) The interrogatory, however, asks how Verizon segments its marketing efforts by customer size, not by geographic region. Accordingly, we will not compel an answer to Interrogatory No. 44.

Interrogatory Nos. 51, 54, 57, 60, and 63 each concern the same issue. For example, in Interrogatory 51, MCI asked a series of questions, including:

For each route listed in your response to MCI-49, please provide the following information:

- (a) The type of terminating facility (e.g., collocation) used at each end of the route and a copy of the authority by which that facility is governed (i.e., tariff pages, collocation contract, or interconnection agreement.)
- (b) The exact route of each claimed alternative facility, including the owner of each facility segment, its date of installation and date of initial operation, the nature of the alternative competitive provider's ownership/occupancy rights (i.e., “fee simple ownership”, “IRU”, etc.), and the identity of any underlying owners or interest holders in the facility.

(c) Any and all documents you have that state that each claimed alternative competitive provider is willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route.

(d) The terms, including copies of any governing documents, by which requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access through cross connection to the facilities of the alternative competitive provider.

In Interrogatory 49, MCI asked:

Please list each and every transport route which you contend should be removed from the list of available DS-1 UNEs pursuant to FCC Rules §51.319(e)(1)(ii). For each listed route, please list: a) the CLLI code identifications of the endpoints; b) the identities of each claimed alternative competitive provider.

Similarly, Interrogatory Nos. 52 and 54 and Interrogatory Nos. 55 and 57 concern DS-3 UNE transport routes, and Interrogatory Nos. 58 and 60 and Interrogatory Nos. 61 and 63 concern dark fiber transport routes. According to MCI, Verizon has answered these interrogatories except for subsection (c) which, in each interrogatory, asks for:

Any and all documents you have that state that each claimed alternative competitive provider is willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route.

Verizon's objections to these interrogatories were identical:

See Specific Objections 1 and 6. Subject to and without waiving the foregoing General and Specific objections, Verizon will provide relevant, non-privileged information, if any, responsive to subpart (c) of this request.

"Specific Objections 1 and 6 read as follows:

1. Verizon objects to the discovery request to the extent that it requires disclosure of information protected from discovery by the attorney-client privilege and/or the attorney work product doctrine.

....

6. Verizon objects to the discovery request to the extent that it is overbroad, unduly burdensome, and/or seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

In its motion to compel, MCI argues as follows:

The data sought in these requests are directly relevant, and within the scope of this proceeding. Each of these questions is part of a series of questions (MCI-49-51 and MCI 52-54, MCI-55-57, MCI-58-60 and MCI-61-63) in which MCI seeks information about what transport routes should be removed from the list of available DS-1 UNEs pursuant to specific FCC Rules. Subsection (c) of each of these questions requests that Verizon provide all documents that it has stating that state each of the alternative providers that Verizon claims is available are actually willing to provide the transport route on widely available basis. This request seeks information necessary to determine the validity of the claimed alternative wholesale provider. It is necessary to know the exact route, as well as whether there are actual providers of such routes. Further, the information concerning availability of wholesale services is necessary to ensure that the provider is actually a wholesale provider. Accordingly, Verizon should be directed to respond to MCI-51, 54, 57, 60 and 63 in full.

(MCI Motion to Compel at 21).

Verizon in its response argues as follows:

Verizon responded to these requests, subject to its objections.⁴³ Therefore, MCI's Motion to Compel as to these requests should be denied as moot.

⁴³ See Attachment "B" hereto.

(Verizon Response at 14). According to attachment B to Verizon's response, Verizon's response to Subsection (c) of Interrogatories 51, 54, 57, 60 and 63 was: "This information was provided as part of Verizon's filing."

We will not grant the Motion to Compel with respect to these interrogatories, but we will not sustain Verizon's objections. The request is not overly broad as claimed by Verizon.

Moreover, although one can read the request as including documents produced by Verizon's attorneys in the course of this litigation, a common-sense reading would limit the request to documents obtained by Verizon from outside sources. It is unlikely that a privilege claim would be sufficient to avoid producing such documents. Consequently, Verizon's objections should not be sustained. On the other hand, Verizon claims that it included these documents in its original filing, and MCI has not explained what, if anything, is deficient about the documents included with Verizon's filing. Without more specificity on MCI's part, it is not possible to fashion an appropriately limited order. Accordingly, we will not compel answers to Interrogatory Nos. 51, 54, 57, 60, and 63.

Interrogatory 64 reads as follows:

For each route identified in your responses to MCI-49 through MCI-63, please provide the following information:

- (a) All forecasts of Verizon expected, estimated, anticipated, or forecasted demand growth or decline for all classes of transport service. To the extent you have information disaggregated by type of customer or demand (e.g., "business", "data", "UNE", "special access", or other categories) please provide such disaggregated figures. To the extent different documents may provide differing figures, estimates, or forecasts based upon the impact or implementation of any regulatory or judicial action (including, but not limited to, the *Triennial Review Order* and related proceedings) provide all such figures, estimates, and forecasts, identifying which relate to which different regulatory or judicial outcomes;
- (b) Verizon's current transport capacity utilization, including total number and type of fibers or copper cabling
- (c) number of "unlit" or "dark" fibers;
- (d) number of "lit" fibers with the current operational level implemented for each (i.e., which CO level);
- (e) current utilization of copper wire, if any, including identification and capacity of implemented digital and analog transmission capability

(f) identification of unused copper facilities, if any.

MCI argues as follows that this interrogatory is appropriate:

The data sought in this request are directly relevant, and within the scope of this proceeding. In MCI-64, MCI seeks additional information about the routes identified in the series of questions in the immediately preceding response. Specifically, MCI seeks information related to forecasts and Verizon current transport utilization, among other matters. This information is relevant to the time and resources required to transition services off of ILEC UNEs which are to be withdrawn, because the growth and the facilities available to handle that growth affect the resources available to execute the cross-connects and other work necessary to transition off UNEs. The Commission should require Verizon to provide the requested information.

(MCI Motion to Compel at 22).

Verizon responds as follows:

MCI claims that this requests relates to “the time and resources required to transition services off of ILEC UNEs which are to be withdrawn . . .” The Commission should note that MCI does not even attempt to link these questions to the trigger analysis. That is because it cannot do so. These requests are not about the FCC’s mandatory triggers. Indeed, paragraph 417 of the TRO states that the FCC expects “states will require an appropriate period for competitive LECs to transition from any unbundled transport that the state finds should no longer be unbundled.” Therefore, these topics are all inappropriate avenues for discovery. MCI’s request that Verizon be compelled to answer these data requests should be denied. (Footnote omitted.)

(Verizon Response at 14-15).

While it appears that the Commission may have to set an appropriate period for transitioning off UNE transport, we do not agree that the information sought by this interrogatory is relevant to that determination, in the absence of a claim by Verizon that any transition period should be short because it is expecting to need the facilities in the immediate future. We can find

no such claim by Verizon in its testimony filed to date. Thus, we will not compel an answer to Interrogatory No. 64. If Verizon later makes such a claim, we will reconsider this ruling.

Interrogatory Nos. 65 and 66 read as follows:

No. 65

Please provide the following information for each fiber or conduit deployment project by Verizon in Pennsylvania since January 1, 2000:

- (a) type, size, and capacity of conduit installed along all or any separate portion of the route;
- (b) type and number of fibers initially installed along all or any separate portion of the route,
- (c) type and number of fibers for each and every subsequent installation along all or any portion of the route;
- (d) all available budgetary and actual cost data for both initial and any subsequent installations, including all costs for permits, authority, ROW, lobbying, public policy, excavation, trenching, boring, backfill, surface repair, remediation, vault construction, termination, payments-in-kind, related usage rights, materials (including conduit and cabling), and any other expenses necessary to the project.

No. 66

Please provide the following information for each planned fiber or conduit deployment project by Verizon in Pennsylvania for the next 3 years: (Include in this response any current projects not included in MCI-65, as well as future projects.)

- (a) type, size, and capacity of conduit to be installed along all or any separate portion of the route;
- (b) type and number of fibers to be initially installed along all or any separate portion of the route,
- (c) type and number of fibers for each and every planned subsequent installation along all or any portion of the route;

(d) all available budgetary cost data and estimates for both initial and any subsequent installations, including all costs and estimates for permits, authority, ROW, lobbying, public policy, excavation, trenching, boring, backfill, surface repair, remediation, vault construction, termination, payments-in-kind, related usage rights, materials (including conduit and cabling), and any other expenses necessary to the project.

MCI argues, as follows, that these interrogatories are appropriate:

The data sought in these requests are directly relevant, and within the scope of this proceeding. It is hard to imagine better indications of the cost of installing fiber and conduit than the costs actually recently experienced and expected soon by a major player in the marketplace. TRO, ¶¶410, 411. Additionally, this information may provide valuable data concerning any “shared” (i.e., non-independent and therefore non-triggering) facilities. TRO¶400, 405, 408, 412, and 414.

(MCI Motion to Compel at 22-23).

Verizon responds as follows:

MCI claims that these requests for historical and future cost data for installing fiber and conduit “are directly relevant, and within the scope of this proceeding.” However, this claim is directly refuted by one of the very TRO paragraphs MCI cites for support. Paragraph 411 of the TRO clearly states that:

In applying the self-provisioning trigger, we find that actual competitive deployment is the best indicator that requesting carriers are not impaired and, therefore, emphasize that this quantitative trigger is the primary vehicle through which no-impairment findings will be made. However, we recognize that this trigger identifies only the existence of *actual* competitive facilities and does not address the *potential* ability of competitive LECs to deploy transport facilities along a particular route. Therefore, when conducting its analysis, a state must also consider and may also find no impairment on a particular route that it finds is suitable for “multiple, competitive supply,” but

along which this trigger is not facially satisfied. States must expressly base any such decision on the following economic characteristics . . . [which include] the cost of underground or aerial laying of fiber . . .

(Emphasis in original).

Simply put, the information MCI requests here relates to a potential deployment case that could only arise if the triggers are not met. Verizon is not presenting a potential deployment case, as such, MCI's Requests 65 and 66 are irrelevant. (Footnote omitted.)

(Verizon Response at 22-23).

We agree with Verizon's argument concerning these interrogatories, and, thus, we will not compel answers to Interrogatory Nos. 65-66..

Interrogatory No. 67 reads as follows:

Please provide copies of contracts, agreements, tariffs, or other governing documents by which Verizon:

- (a) sells, rents, leases, or otherwise provides telecommunications transport services between its switches and/or wire centers to others in the District of Columbia;
- (b) buys, rents, leases, or otherwise acquires telecommunications transport services between its switches and/or wire centers from others in the District of Columbia.

MCI argues, as follows, that this interrogatory is appropriate:

Verizon failed to identify any specific portion of the data requests that it believes is overly broad, burdensome or oppressive. Verizon's "burdensome" objection is disingenuous—these are Verizon's own documents. It should be a simple, straightforward process for Verizon to produce them. If they are needlessly complex, widely varying, and different for every vendor or customer, then they are very relevant to questions concerning the current levels of competition for these services. With regard to the

information being available in the public domain, only Verizon can provide a complete set of responsive documents, especially in the time frame permitted by this proceeding. Verizon should be compelled to produce the requested documents.

Verizon failed to indicate which part of the data request could be answered from public sources, or which public sources it was aware of. Verizon's objections are without merit and should be rejected.

The data sought in these requests are directly relevant, and within the scope of this proceeding. This information is important to the economic factors (costs and revenue) for purposes of identifying situations where ILEC facilities and CLEC facilities are the same and for properly defining the market for trigger analysis as required in the TRO. This information serves as a check on (1) self-provisioning claims by ILECs for a route (it's not CLEC self-provisioning if the ILEC is selling the "triggering" CLEC a DS-3), and (2) CLEC information about their own routes. TRO, ¶¶400, 405, 408, 410, 412, and 414.

(MCI Motion to Compel at 23-24).

Verizon responds as follows:

This request seeks "copies of contracts, agreements, tariffs, or other governing documents by which Verizon sells, rents, leases or otherwise provides [or acquires] transport services . . . *in the District of Columbia.*" Thus, on its face, it is irrelevant to this proceeding.

Moreover, even if this request was properly tailored to Pennsylvania, which it is not, it is clearly burdensome. In addition, MCI states that its purpose is to, among other things, "check on . . . CLEC information about their own routes." That information should be obtained from the CLEC parties, not Verizon. (Emphasis in original; footnote omitted.)

(Verizon Response at 16).

We agree with Verizon concerning this interrogatory. This case concerns Pennsylvania, not the District of Columbia. Moreover, whether a trigger is met for transport

depends on transport available from parties other than Verizon. Consequently, documents pertaining to Verizon's provision of transport are not relevant. Accordingly, we will not compel an answer to Interrogatory No. 67.

Interrogatory Nos. 69-73 read as follows:

No. 69

For this and the immediately following four questions, the phrase "lit enterprise circuit(s)" means one or more circuits at the DS-1, DS-3, or OC-x capacity levels. Please describe all your current procedures for moving portions of lit enterprise circuits from your own network to a CLEC or IXC network. Include all procedures for circuits which serve multiple end-users by virtue of connection to multiple Verizon "tail circuits" or "loops" via Verizon provided MUX or DACS equipment.

No. 70

When a lit enterprise circuit provided by Verizon under UNE procedures or Special Access tariffs serves multiple end-user customers through Verizon provided MUX or DACS equipment, will Verizon perform a "hot cut" of all or part of the lit enterprise circuit portion to non-Verizon provided transport?

- (a) If no, why not?
- (b) If yes, will Verizon perform this function based on a single Access Service Request ("ASR") submission by the carrier customer or does Verizon require multiple ASRs? If the answer is that a single ASR is acceptable, please identify any prior periods when multiple ASRs were required.

No. 71

As part of any required transition from UNE enterprise circuit transport to non-Verizon transport, will Verizon perform a "hot cut" of all or part of any lit enterprise circuit portion to non-Verizon provided transport?

- (a) If no, why not?

(b) If yes, will Verizon perform this function based on a single service request, or will Verizon require separate requests for each end-user circuit?

No. 72

Has Verizon ever imposed restrictions on the number of lit enterprise circuits it would transition from the Verizon network to the networks of others? If yes, state all such restrictions imposed and all terms of such restrictions (i.e., any specifics as to numbers of such transitions within a specific time and/or region; conditions as to time “out of service”; any required impositions of unfavorable customer conditions; any mandatory classification of any such transition as “project work” [or other non-standard undertaking] thereby changing or avoiding any otherwise applicable service guarantees, performance standards, or terms ensuring quality of service, etc.). Provide all supporting documentation.

No. 73

Please produce all internal methods & procedures, business rules, memoranda, communications, e-mail, reports, etc. which describe in any way issues related to the migration of lit enterprise circuits or circuit portions from the Verizon network to any non-Verizon network. In addition, if not already encompassed in the prior sentence, include all such documents which discuss any potential means of discouraging such moves, or any complaints or comments received relating to procedures used to undertake such moves, or any refusals of such moves.

MCI argues, as follows, that these interrogatories are appropriate:

Verizon objects to these requests on the grounds that they are 1) vague and ambiguous; and 2) overbroad, unduly burdensome and oppressive and/or seeks information not relevant to this proceeding. Additionally, Verizon objects to MCI-73 on the grounds that responsive documents are subject to attorney-client privilege.

As with other data requests, Verizon failed to identify any specific portion of the data requests that it believes is vague and ambiguous, overly broad, burdensome or oppressive, or privileged.

Thus, Verizon's objections are without merit and should be rejected.

Verizon does not object on the grounds of relevance. These questions are clearly relevant because they all pertain to the difficulties involved in transitioning enterprise circuits. These are very important in order to ensure that an adequate time and procedure is in place to transition these circuits to alternative facilities in the event any UNE transport is withdrawn. The TRO identifies issues for which these data are sought in paragraph 417, relative to transition procedures and timing, and paragraph 411, relative to potential barriers to entry not otherwise considered. Thus, all of these questions are proper, and Verizon should be directed to respond.

(MCI Motion to Compel at 24-25).

Verizon responds as follows:

This is another variant of MCI's prior cutover and transitioning requests. For the reasons stated above, they are irrelevant to this proceeding. (Contrary to MCI's claims, Verizon did object to these requests on the grounds of relevance.).

(Verizon Response at 16).

We agree with MCI concerning these interrogatories. This information clearly is relevant to determining an appropriate transition period for any transport UNEs that Verizon is permitted to cease offering. We do not find these interrogatories to be either vague or overbroad. Considering the generality of Verizon's attorney-client/work product objection to Interrogatory No. 73, we will dismiss that objection as well.

ORDER

THEREFORE, IT IS ORDERED:

1. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory No. 11, limited to those wire centers where Verizon claims the triggers have been met for unbundled switching.

2. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory Nos. 14 and 16.

3. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory No. 32, limited to dark fiber residing in Pennsylvania.

4. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory No. 33.

4. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory Nos. 40-42, with (with the exception of subpart (b), UNE loops used for DSL service (including line split configurations)).

5. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is GRANTED as to Set I, Interrogatory Nos. 69-73.

6. That Verizon shall serve on MCI answers to the interrogatories specified in ordering paragraphs 1 through 5 above no later than seven (7) days from the date of this order.

7. That the Motion to Compel Responses from Verizon Pennsylvania, Inc. filed on December 11, 2003, by MCI WorldCom Network Services, Inc. is DENIED in all other respects.

Date: December 30, 2003


MICHAEL C. SCHNIERLE
Administrative Law Judge