Sprint.

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February 17, 2004

VIA HAND DELIVERY

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

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

Dear Secretary McNulty:

Attached please find an original and nine (9) copies of the Main Brief of Sprint Communications Company, L.P. (hereinafter "Sprint") in the above-captioned proceeding.

Proprietary and public versions of Sprint's Main Brief are served upon parties listed on the attached certificate of service. The proprietary version is distributed to parties who have executed confidentiality agreements.

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

Sincerely,

Sue Benedek

DOCUMENT FOLDER

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enclosures
cc: The Honorable Susan D. Colwell *(via hand delivery and electronic mail)*
The Honorable Michael C. Schnierele *(via hand delivery and electronic mail)*
Certificate of Service *(via electronic mail and overnight mail)*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF SPRINT COMMUNICATIONS COMPANY, L.P.

PUBLIC VERSION

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Dated: February 17, 2004

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I. INTRODUCTION

This proceeding was initiated by Verizon Pennsylvania Inc. ("Verizon" or "Verizon PA") under the FCC's Triennial Review Order ("TRO").[1] Verizon petitioned the Pennsylvania Public Utility Commission ("Commission") and elected to present a "triggers only" case seeking to rebut national impairment finding concerning mass market local circuit switching, dedicated transport and high capacity loops for mass market customers. If the Commission agrees with Verizon and determines that Verizon sufficiently satisfied the FCC's TRO triggers for such switching, transport and loop elements, Verizon PA and Verizon North need not unbundle local circuit switching (including UNE-P) in the Philadelphia, Pittsburgh, Harrisburg, Allentown, Reading, Scranton, Wilkes-Barre and Lancaster Metropolitan Statistical Areas ("MSAs"), or portions thereof. Verizon has also claimed that 899 direct routes meet the FCC's wholesale trigger for DS1 and DS3 capacities and that 719 direct routes allegedly satisfy the FCC's wholesale trigger for dark fiber. Meanwhile, 66 customers locations are claimed by Verizon to satisfy one or both of the competitive triggers for high capacity local loops. Clearly, the potential ramifications of awarding Verizon the relief it requests in this proceeding remain serious and far-reaching.[2]

At the heart of this proceeding is the issue of whether Verizon, as the petitioning party, sufficiently rebutted the FCC's national impairment findings based upon the guidelines set forth in the TRO and the standards reiterated by this Commission in its October 3, 2003 Procedural Order. Verizon has failed and the Commission should so find for the reasons set forth herein.

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[1] By letter dated November 26, 2003, Verizon PA requested that the relief sought in this proceeding should also apply to Verizon PA's affiliate, Verizon North Inc. ("Verizon North"). For purposes of this Initial Brief, Verizon PA and Verizon North shall be referred to as Verizon, unless otherwise noted.

[2] Verizon's stated request for relief was taken from testimony submitted by Verizon. Verizon has indicated that it intends to "update" the relief it seeks to reflect information allegedly made available at evidentiary hearings.

II. BURDEN OF PROOF

The FCC in the TRO made national impairment findings relative to unbundled local circuit switching, dedicated transport and high capacity local loops relative to the mass market.[3] The FCC then authorized the state commissions "to play a fact-finding role . . . to identify where competing carriers are not impaired" without access to such network elements.[4] Thus, an entity can seek to rebut the FCC's national findings in state TRO proceedings.

The FCC in the TRO did not specify a burden of proof standard and did not mandate whether the burden should be placed "on either incumbent LECs or competitors to prove or disprove the need for unbundling."[5] However, in rendering national impairment findings, the FCC itself examined the record evidence "in light of the Act's goals to make the best determination regarding the need for unbundling."[6]

On October 3, 2003, approximately two and half months prior toVerizon's filing of its Petition to Initiate the instant proceeding, the Commission issued a Procedural Order establishing processes and standards applicable in a request for relief under the TRO. In its Procedural Order, the Commission discussed the FCC's impairment standard and explained as follows:

> According to the FCC, a requesting carrier is impaired when lack of access to an ILEC network element poses barriers to entry, including operation and economic barriers that are likely to make entry into a market uneconomic. Such barriers include scale economics, sunk costs, first-mover advantages, and barriers within the control of an ILEC. The FCC further notes that this unbundling analysis is to consider market-specific variations, including customer class, geography, and service. As per the directions of the FCC, these are the standards that the Commission will use to make its determination.[7]

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[3] *See, e.g.*, TRO at ¶419 (circuit switching), ¶359 (dedicated transport), ¶235 (local loops).
[4] *See, e.g.*, TRO at ¶¶493.
[5] *See, e.g.*, TRO at ¶92 (local circuit switching).
[6] *Id.*
[7] Order entered October 3, 2003 at 11-12 (emphasis added). *See also*, TRO at ¶118 ("[W]e will apply several types of granularity in our unbundling analysis, including considerations of customer class, geography, and service.").

The Commission tentatively adopted the FCC's national finding that impairment exists in Pennsylvania for mass market switching, dedicated transport and high capacity loops.[8] The Pennsylvania Commission then assigned the burden of proof to the petitioning ILEC, which in this proceeding is Verizon. As to the burden of proof, the Commission explicitly determined that the petitioning ILEC had the burden of proof:

> Given the national findings of impairment, we tentatively conclude there is impairment in Pennsylvania. Therefore, any ILEC desiring to contest the presumption of impairment must bear the burden of proving non-impairment.[9]

In pleadings, Verizon provided a glimpse of its disavowal of the Commission's assignment of the burden of proof. As Verizon stated: "Under the *TRO*, Verizon does not by itself bear either the burden of production **or** the burden of persuasion with respect to the trigger analysis."[10]

In sum, Verizon presented a TRO case built upon assumptions, which Verizon asserts are "facts." Verizon then argues that parties (and presumably non-parties) have the burden of presenting information to rebut Verizon's "facts."

Verizon builds a case on assumptions and then seeks to establish unreasonable standards for relief it requests under the TRO.[11] Whether by virtue of the TRO,[12] the Commission's October 3, 2003 Procedural Order, state statute[13] or common sense, it is well-settled that the party moving for specific relief retains the burden of proof. In this proceeding,

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[8] *Id.*

[9] *Id.*, Order at 12 (emphasis added).

[10] *See, e.g., Opposition of Verizon Pennsylvania Inc. and Verizon North Inc. to the Loop/Transport Carrier Coalition's Motion to Strike*, dated January 20, 2004, at page 4.

[11] Sprint does not suggest that Verizon should have presented an operational and economic barriers case. Rather, Verizon takes the risk of an unfavorable finding associated with the quality of its case if Verizon elects to proceed upon assumptions and supposition.

[12] The FCC in the TRO did not mandate a specific burden of proof for state commissions to follow. TRO at ¶92 (local circuit switching). Hence, Sprint submits the Commission has the discretion to assign the burden of proof to the Petitioning ILEC, as undertaken in the Commission's October 3, 2003, Procedural Order.

[13] 66 Pa.C.S. ¶332(a) ("...[T]he proponent of a rule or order has the burden of proof.").

the FCC has already rendered national findings of impairment that Verizon, as the petitioning ILEC, seeks to overturn. If no party intervened in this proceeding, the Commission would nonetheless have obligations under the TRO to make findings consistent with the TRO guidelines and the Act. [14] Verizon is wrong to suggest that it presented an initial case of credible facts such that the burden of producing evidence shifted to all other parties and non-parties to disprove Verizon's claims. As the party petitioning to rebut the FCC's national impairment findings, Verizon has the most to gain from any such Commission finding and recommendation of non-impairment. The Commission should reject Verizon's attempt to disavow or dilute Verizon's burden of proof in this proceeding.

This case is a potential precedent-setting proceeding relative to the quantum of proof that will be required of a petitioning ILEC seeking relief under the TRO. Under the TRO, the FCC did not limit the incumbent LEC's ability to petition and re-petition the state commission for relief from the Act's unbundling obligations. Verizon is not without a remedy should the Commission deny Verizon's instant request based upon this record.

The record demonstrates one thing: Verizon presented a case riddled with assumptions and generalizations regarding the competitive posture of both parties and non-parties. As addressed below, the record reveals the many inadequacies of Verizon's case. Based upon the record, this Commission cannot render a finding that Verizon has sufficiently rebutted any of the FCC's national impairment findings.

[14] TRO at¶92. (In rendering national impairment findings concerning circuit switching, the FCC itself examined the record evidence "in light of the Act's goals to make the best determination regarding the need for unbundling.").

III. SWITCHING

A. Introduction

The FCC rendered a national impairment finding and this Commission made a preliminary finding of impairment for local circuit switching for the mass market. If a petitioning ILEC seeks relief from the TRO's national impairment finding for local circuit switching for the mass market, a state commission must first define the market in terms of a geographic area.[15] The state commission is also directed to define what constitutes a mass market customer, *i.e.*, determine a cut-off for multi-line DS0 customers.[16]

Sprint recommends MSAs as the most logical geographic market definition for evaluating impairment for the unbundling of local circuit switching. As addressed below, the TRO triggers must be applied throughout each MSA.

Sprint, through the testimony of Mr. James Appleby, calculated a crossover of 15 DS0s as the point at which "it makes economic sense for a multi-line customer to be served via a DS-1 loop."[17] A mass market customer should be defined as any entity served with up to (and including) 15 DS0s at a customer's location.[18]

Verizon seeks relief under the TRO's self-provisioning switching trigger only.[19] Once the geographic market and mass market customer have been defined, the Commission in reviewing a "triggers only" petition for relief under the TRO must decide whether the self provisioning trigger has been satisfied. Specifically, to rebut the national impairment finding for local circuit switching, Verizon must demonstrate that three or more unaffiliated competing

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[15] TRO at ¶¶495-497.
[16] TRO at ¶497.
[17] *Id.*
[18] Sprint St. 2.0 at 21 and 24. Therefore, 16 and greater DS0s defines an enterprise customer, whereas 15 and less DS0s constitutes a mass market customer.
[19] Verizon St. 1.0 at 8. *See also*, Sprint St. 1.0 at 30.

carriers each is serving mass market customers in a particular market with the use of their own switches.[20]

While parties may disagree as to the appropriate geographic definition and as to what constitutes a mass market customer, Sprint and all parties submitting testimony on the switching trigger agree – with the exception of Verizon – that Verizon's switching case must fail. The record adduced in this proceeding simply does not support the relief requested by Verizon.

No artless attempt at reassigning the burden of producing evidence to other parties and non-parties can cure the upfront deficiencies and resulting unreliability of Verizon's approach of counting any DS0. As addressed below, Verizon never ascertained whether such Verizon-counted DS0s serve the enterprise market, serve only a select portion of the geographic market, or serve only a portion of the mass market (*i.e.*, business customers). As a result, Verizon has over-included CLEC line "counts" in Verizon's case. Verizon also counted cable providers based merely upon the *assumption* that such entities provide comparable services to the voice-grade services provided by Verizon. Verizon never demonstrated the comparability of service offerings. As the record also demonstrates, Verizon also counted ILECs that have CLEC affiliates. Clearly, Verizon's assumption-based switching case is antithetical to a granular analysis required of state commissions when reviewing a request for relief under the TRO.

Furthermore, at no point in Verizon's case has it acknowledged this Commission's October 3, 2003 Order and the requirement for "market specific variations." Verizon should not be permitted to succeed on the merits of a filing based upon generalized assumptions and

[20] TRO at ¶¶501. *See also*, 47 C.F.R. SS51.319(d)(2)(iii)(A)(1) ("[T]here or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each are serving mass market customers in the particular market with use of their own local circuit switches.").

such a flagrant disregard of regulatory requirements. The stakes are too high. As Sprint witness Sywenki testified, the "failure to consider market specific variations – and therefore summarily removing unbundled switching – would harm competition to the detriment of consumers."[21]

Accordingly, Verizon's switching case should be dismissed for the reasons set forth immediately below.

B. Geographic Market Definition

In this proceeding, the recommendations for a geographic definition of the mass market ranged from a discrete market definition (such as wire centers) to an expansive geographic market definition (such as LATAs) to a geographic market definition somewhere in between (such as Metropolitan Statistical Area ("MSA")). In testimony, Verizon proposed MSAs, but suggested that the Commission "may choose" density cells within MSAs.[22] During cross-examination of Mr. West, on behalf of Verizon, described Verizon's position on the geographic market definition as an "alternative" proposal.[23] However, the next day, Mr. West testified that Verizon's "proposal is to show that we meet the triggers in the MSA, but then to apply it to Density Cells 1, 2, and 3."[24]

It is Sprint's position that the Commission should define the geographic market as the entire MSA and then apply the TRO's self-provisioning trigger throughout each of the MSAs identified by Verizon for all customer classes/segments.[25] The Commission should correctly and broadly define the market.

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[21] Sprint St. 1.0 at 6.
[22] Verizon St. 1.0 at 13.
[23] Tr. at 212-13.
[24] Tr. at 295.
[25] *See*, Sprint St. 1.0 at 8-9.

MSAs are a subset of the entire state of Pennsylvania. Therefore, utilizing MSAs complies with the requirement that the geographic market should not encompass the entire state.[26] Using the MSA to define the market also complies with the FCC's requirement that the market definition should be considered from the point of view of the entrant.[27]

The MSA represents an economic community of interest.[28] An MSA generally reflects the geographic reach of mass-market advertising media such as newspapers, radio, and television – all of which are important to a new entrant. An MSA is broad enough such that it allows a competitor serving an MSA alone the ability to take advantage of the scale and scope economies available from serving a wider market.[29] This is because MSAs are closer to the scale and scope economies enjoyed by the incumbent.[30] MSAs thereby naturally take into consideration a new entrant's ability to serve customers economically and efficiently.

Some parties have recommended density cells within MSAs or smaller geographic definitions of the market (*e.g.*, wire centers).[31] For example, those suggesting density cells within MSA contend that MSAs can lead to inconsistent results because an entrant can be impaired in one of the cells but not the others.[32]

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[26] Sprint St. 1.0 at 8-9. In pertinent part, TRO paragraph 495 provides:

> Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation 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. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.

[27] Sprint St. 1.1 at 2-3.
[28] Sprint St. 1.0 at 9; Sprint St. 1.1 at 2-3.
[29] *Id.*, at 9.
[30] *Id.*
[31] *See*, OCA witness Dr. Robert Loube, OCA St. 1.0 at 15-21.
[32] OCA St. 1.1 at 16.

If the Commission defines the market in terms of a geography smaller than MSAs, the Commission should not assume that carriers will enter new areas surrounding the geographic market. To the extent that competitive carriers are in the market, a small geography definition does not ensure that those competitive carriers will continue to stay and provide service to the mass market.

By correctly defining the geographic market as a broad area (*i.e.*, MSAs) and by properly applying the TRO's competitive triggers throughout the MSAs to all customer segments, the Commission will only remove unbundled elements pursuant to the TRO when genuine competitive options (totaling three or more under the TRO's self-provisioning trigger) exist throughout the market.

Moreover, the ability to serve the entire MSA will enable the entrant to spread costs across a greater customer base.[33] Thus, every incentive exists for new entrants to market and to provide service in all density cells within the MSA. Conversely, if the Commission adopts a small geographic area density cells within MSAs (*i.e.*, Density Cells 1-3), the regulatory signal fails to encourage new entrants to serve the excluded density cell (*i.e.*, Density Cell 4) with a business plan other than UNE-P. By defining the geographic market correctly upfront as the entire MSA and by explicitly requiring that the triggers apply throughout the MSAs at issue, the Commission sends the appropriate policy signal to the regulated community that every part of the MSA matters when determining to unbundle local circuit switching under the requirements of the TRO.

If the Commission makes impairment findings on the basis of a geography smaller than MSAs, the Commission should not assume that carriers will either enter or stay in the areas surrounding the smaller geographic market. If a competitor loses the opportunity to

[33] Sprint St. 1.1 at 2-3.

serve customers in a portion of the MSA, particularly the most densely populated portion of the MSA, the competitor loses the scope and scale economies that make it possible to serve the outlying and less densely populated areas and thereby is forced to exit the market altogether. In the end, making a finding of non-impairment on a market area that is defined too narrowly could have the unintended consequence of causing impairment throughout a broader geographical area. The narrowing of the number of customers a competitor can serve using mass market unbundled switching would eliminate the scale and scope economies that the competitor needs to be able to compete with the incumbent Verizon.

As Mr. Sywenki testified on behalf of Sprint, such smaller geographic definitions remain "ILEC-centric" areas of distinction. New entrants typically seek to approach the market on a broader scale.[34] As Mr. Sywenki explained, new entrants can incur significant administrative and operational costs for back-office functions (*e.g.*, ordering, billing). If the market is defined too narrowly, the new entrant cannot take advantage of the scale and scope of economies associated with advertising, billing and ordering.[35]

Finally, the absence of unbundled switching in certain specific wire centers or density cells will require the CLEC to adopt disparate competitive entry modes for each smaller area.[36] Or, CLECs may decide to exit the broader market altogether, deciding that serving the broader market would be uneconomic.[37] In addition, local number portability ("LNP") introduces difficulty – particularly if markets are defined on a wire center basis. As Mr. Sywenki testified:

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[34] Indeed, as a new entrant, Sprint serve mass market customers using UNE-P in numerous wire centers spread throughout Pennsylvania. *Id.*, at 2, n.1.
[35] *Id.*, at 2-3.
[36] *Id.*.
[37] *Id.*

> With the advent of LNP, customers can move between wire centers within a rate center. If UNE local switching availability differs between wire centers, this makes it difficult for parties to distinguish the customers who can be served with UNE-P from those customer who cannot be served with UNE-P.[38]

The competitive triggers were designed by the FCC to garner evidence of "the technical and economic feasibility of an entrant *serving the mass market* with its own switch."[39] The FCC found that on a national basis, the amount of residential lines being served via competitive LEC switches was less than three percent of the residential voice lines served by the incumbent LECs. Impairment for mass market switching was found by the FCC due to the lack of significant actual competition.[40] Clearly, the FCC did not intend for states to apply the self provisioning trigger in a manner that demonstrates that CLECs are serving only a select portion of the geographic market.[41] Moreover, this Commission in its Procedural Order of October 3, 2003 required consideration of market specific variations, thereby further supporting the position that a granular analysis must examine impairment throughout the defined geographic market.[42] Real competitive choices to the ILEC must exist throughout the geographic market for all customer segments, which Sprint submits should be defined as MSAs.[43]

In sum, the Commission should adopt the MSA as the geographic market definition to evaluate impairment for mass market switching. The Commission should define the geographic market on the same terms as it applies the trigger analysis to that geographic market. Accordingly, the Commission should reject Verizon's proposal for relief based on

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[38] *Id.*
[39] TRO at ¶ 501 (emphasis added).
[40] Sprint St. 1.0 at 7.
[41] *Id.*, at 11.
[42] *Id.*, at 9.
[43] *Id.* Therefore, even if three or more competitive alternatives exist throughout the MSA, but those alternatives exist only for the business market, the FCC's self provisioning trigger has not been satisfied given the lack of actual competitive options for the residential mass market segment/class. The issue of Verizon's lack of demonstrating trigger applicability by customer class is addressed below.

density cells. The Commission should apply the TRO's trigger analysis throughout each MSA for all customer segments.

C. Mass Market Customer Definition

In addition to defining the market in terms of a geographic area, the Commission must define what constitutes a mass market customer.[44] The FCC defined mass market customers as residential and small business customers.[45] However, state commissions are directed to "determine the appropriate cut-off for multi-line DS0 customers" at "the point where it makes economic sense for a multi-line customer to be served via a DS1 loop."[46]

Verizon proposed that the Commission make a finding on the multi-line DS0 cut-off. Verizon specifically proposed that the Commission not place an upper limit on the number of DS0s that can be provisioned in order for a customer to be considered a mass market customer under the TRO.[47] By placing no upper limit on the number of DS0s a customer can have, Verizon systematically expands the candidates eligible for satisfying the local circuit switching trigger, as viewed and undertaken by Verizon.[48] Verizon thereby injected the cut-off issue into its "triggers-only" filing.

Sprint developed a model for calculating the point at which it is economical to serve a multi-line customer with a DS-1 loop.[49] Sprint presented a specific economic analysis given the cut-off requirements of the TRO and this Commission's October 3, 2003 Procedural Order and in light of Verizon's proposal of a "no upper limit" crossover point.

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[44] TRO at ¶497. *See also*, §51.319(d)(2)(iii)(B)(4). *See also*, Sprint St. 1.0 at 10. Verizon St. 1.0 at 16-17 ("However, the FCC left it to the states to determine where the cutoff point should be between mass market and enterprise customers, which 'may be the point where it makes economic sense for a multi-line customer to be served via a DS1 loop.'".)
[45] TRO at ¶127.
[46] *Id.*, *citing* TRO at ¶497. *See also*, §51.319(d)(2)(iii)(B)(4).
[47] *See, e.g.*, Verizon St. 1.0 at 17.
[48] Sprint St. 1.0 at 10.
[49] *See generally*, Sprint St. 2.0 at 21-24.

Sprint's crossover model demonstrates that it is more cost effective to purchase up to 15 DS0s at a customer's location rather than to purchase a single DS-1.[50] The 15 line cut-off is a statewide average crossover.[51] Sprint's multi-line DS0 cut-off is consistent in result to the range of 14 to 16 DS0s alternatively offered by AT&T in this proceeding should the Commission not accept Verizon's limitless cross over proposal.[52] It is Sprint's position that a definite, easily-administered multi-line DS0 cutoff is advisable[53]

Verizon in Rebuttal Testimony merely contended – without support or authority – that the Commission should ignore a "fixed per line cutoff point" and let CLECs decide that economic crossover point for themselves.[54] As Verizon admitted during cross examination, Verizon's proposal requests that the CLEC make the economic determination required under the TRO.[55]

A state commission – delegated with the responsibility to determine what is an economic cut-off point that makes sense – cannot abrogate its duty to make a cut-off determination by delegating that duty to those it regulates (*i.e.*, CLECs), as Verizon proposes. Clearly, if the FCC in the TRO intended to limit state commission authority, it would have done so.

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[50] Therefore, 16 and greater DS0s defines an enterprise customer, whereas 15 and less DS0s constitutes a mass market customer.

[51] Sprint's cut-off model is calculated on Sprint Exhibit JDD-1, as attached to Sprint St. 2.0. Sprint's model includes the monthly recurring charges of the unbundled network element DS-1 loops, the unbundled network element non-recurring charges for DS-1 loops, and the monthly costs of a channel bank installed at the customer's premises that is used to multiplex multiple DS-0 equivalent voice channels onto a DS-1 loop facility. Sprint St. 2.0 at 21. Prices for Verizon North are based on Sprint's current interconnection agreement with Verizon North. Prices for Verizon Pennsylvania are based on rates from Tariff PA-PUC-No.216. Sprint's rates are taken from its most current cost studies. *Id.*, at 22.

[52] AT&T St.1.0 at 67.

[53] For this reason, Sprint does not support a cutoff that employs anticipated revenues and customer premises equipment ("CPE") qualifiers, as proposed by PCC. *See generally*, Sprint St. 2.1 at 2-4.

[54] Verizon St. 1.2 at 12.

[55] Tr. at 215.

The FCC directed state commissions to define what constitutes a mass market customer in terms of a definite cutoff point. Sprint has calculated and provided such a cutoff point in this record. Should this Commission adopt a limitless DS0/DS1 cutoff point, as recommended by Verizon, Sprint requests that the Commission explicitly require Verizon to honor its recommendation to provide unbundled switching for unlimited DS0s to competitive providers.

D. Verizon Has Not Rebutted The FCC's National Impairment Finding Concerning Local Circuit Switching.

i. Introduction

The FCC made a national determination in the TRO that CLECs are impaired without unbundled access to local switching for mass market customers. Based on a voluminous record, the FCC concluded that there has been "minimal deployment of competitive LEC-owned switches to serve mass-market customers" and that "the characteristics of the mass market give rise to significant barriers to competitive LECs' use of self-provisioned switching to serve mass market customers."[56]

More specifically, the FCC found that on a national basis, the amount of residential lines being served via competitive LEC switches "represents only a small percentage of the residential voice market . . . less than three percent of the residential voice lines served by reporting incumbent LECs."[57] Accordingly, the FCC determined that impairment exists for mass market switching based on the lack of significant actual competition from CLECs using their own switches to serve mass market customers, small business and residential customers in

[56] TRO at ¶422.
[57] TRO at ¶438 (emphasis added). Indeed, the FCC's finding relied upon data submitted by the Bell Operating Companies ("BOCs") that many parties argued was inflated. Sprint St. 1.0 at 7.

particular, as well as the significant barriers CLECs face in serving mass market customers using self-provisioned switching.[58]

However, the FCC provided states with the role of conducting a granular analysis based on the FCC's determination that states are better situated to determine the detailed circumstances that exist in the markets in their states. As Sprint's witness, Mr. Peter N. Sywenki, further explained:

> The FCC could have conducted a rote CLEC switch counting exercise and made final determinations based on broad assumptions of market characteristics. Instead, the FCC gave states authority to make determinations based on the extent of competition and as to the operational and economic entry barriers in specific geographic areas, for serving specific customer-classes, and for the provision of specific services in the states.[59]

In this proceeding, Verizon has tried to downplay any aspect of the TRO that does not equate to such a rote application of the "competitive triggers." In Verizon's view, apparently any DS0 could render a CLEC a trigger candidate – regardless of the market-specific variations. Verizon's analysis does not take into consideration the quality or size of the customer served by the CLECs identified as trigger candidates. Verizon's application of the competitive triggers simply ignores whether the claimed trigger qualifying CLEC provides service throughout the geographic market to all customer segments.

Fortunately, market specific variables matter to this Commission. Specifically, the Pennsylvania Commission discussed the FCC's impairment standard relative to this 9-month TRO proceeding and determined to apply the following standards:

> According to the FCC, a requesting carrier is impaired when lack of access to an ILEC network element poses barriers to entry, including operation and economic barriers that are likely to make entry into a

[58] *Id.*, at at 11.
[59] Sprint St. 1.0 at 5, *citing* TRO at ¶495.

> market uneconomic. Such barriers include scale economics, sunk costs, first-mover advantages, and barriers within the control of an ILEC. The FCC further notes that this unbundling analysis is to consider market-specific variations, including customer class, geography, and service. As per the directions of the FCC, these are the standards that the Commission will use to make its determination.[60]

Verizon's approach of counting alleged CLEC provisioned switches – without regard for market specific variables – does not pass muster for a qualitative granular analysis required under the TRO and this Commission's Procedural Order. The granular analysis demanded by the FCC in the TRO and this Commission's Procedural Order requires Verizon to prove impairment does not exist throughout each geographic market area, for all relevant customer-classes in the market (*i.e*, residential and business customers), and for the provision of local voice service only.

ii. Customer class is a market specific variable that was ignored by Verizon.

The FCC established a "competitive trigger" analysis that requires state commissions to look at the state of facilities-based competition in the market. In a competitive triggers case (such as the one presented by Verizon), the FCC specifically stated that the competitive triggers are intended to provide evidence of "the technical and economic feasibility of an entrant serving the mass market with its own switch."[61] In this regard, the TRO is very clear in that the mass market, as to be determined by the state commissions, is made up of both residential and small business customers.[62]

Verizon's switching case, however, ignores the customer class variable. That is, Verizon simply counted as a trigger candidate the CLECs identified in Attachment 4 of Verizon's Direct Testimony, but Verizon did not verify whether each such CLEC actually

[60] *See*, PA PUC Order entered October 3, 2003 at 11-12 (emphasis added).
[61] TRO at ¶501.
[62] TRO at ¶127.

serves both the residential and the small business markets. Verizon has not demonstrated that its identified trigger candidates possess the technical and economic feasibility" of serving both segments of the mass market.[63]

Similarly, Verizon includes switches serving the enterprise market. The TRO makes a clear distinction between "deployment of switches by competitive providers to serve the enterprise market" and "deployment of competitive LEC circuit switches to serve the mass market."[64] The TRO states that "switches serving the enterprise market do not qualify for the triggers..."[65] Moreover, the FCC acknowledged in the TRO that mass market customers are in fact served off of enterprise switches.[66] Yet, this fact by itself was not enough to negate the national finding of impairment.

Yet, Verizon included **[BEGIN PROPRIETARY] [END PROPRIETARY]** as a self-provisioning trigger candidate.[67] However, **[BEGIN PROPRIETARY]**

[END PROPRIETARY]. The switches identified by Verizon attributable to this CLEC should not count.[68]

The record also shows that Verizon has improperly counted a number of carriers that entirely or primarily service business customers. Specifically, Verizon has identified as trigger candidates **[BEGIN PROPRIETARY]**

[63] TRO at ¶501.
[64] TRO at ¶435 and footnote 1354.
[65] TRO at ¶508. *See also*, TRO at footnotes 1300 and 1561.
[66] TRO at ¶441.
[67] Sprint St. 1.0 at 15-16.
[68] Sprint St. 1.0 at 15-16.

[END PROPRIETARY], yet these entities state that they serve no residential customers with self-provisioned switches.[69]

Indeed, based upon a review of data request responses, Sprint witness Mr. Sywenki demonstrated that no more than 2.1% of all residential customers situated in the Verizon-contested MSAs (Density Cells 1 through 4) are served by CLECs using self-deployed switches.[70] Data provided in this proceeding shows that no more than 2.1% of mass market residential customers thinly scattered across less than 40% of the wire centers in the MSAs Verizon is contesting are served by CLECs with self-provisioned switching. As Mr. Sywenki testified, "This is not persuasive enough evidence upon which the Pennsylvania Commission could fee confident in making a finding that CLECs are not impaired without access to unbundled switching."[71]

Moreover, the Pennsylvania-specific percentage of residential customers served by CLECs in the MSAs identified by Verizon is significantly lower in light of information that was made available at the evidentiary hearing.[72] Specifically, when **[BEGIN PROPRIETARY] [END PROPRIETARY]** is removed from Sprint's 2.1% figure and when the three ILEC-affiliated CLECs are removed,[73] then the percentage of residential customers drops to only 0.4%.[74] Mr. Sywenki commented:

> If the Commission ignores the number of mass market customers actually served by these CLECs in this market, the result would allow

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[69] *See*, Sprint St. 1.0 at 13.
[70] Sprint St. 1.0, Exh. PNS-1 (Proprietary). To compute the 2.1%, Mr. Sywenki excluded, from Verizon-provided DS0 customers totals, all lines that were served by enterprise switches, lines that were served by carriers that specifically indicated that they do not serve residential customers, and lines associated with service provided by cable companies. Sprint St. 1.0 at 14, fn. 2. *See also*, Tr. at 560.
[71] Sprint St. 1.0 at 29. *See also*, TRO at ¶¶ 438, 441.
[72] Tr. at 563 and ALJ Exhibit 1. *See also*, Tr. at 564-5 (CLECs affiliated with ILECs).
[73] Namely, the ILEC entities are listed as **[BEGIN PROPRIETARY] [END PROPRIETARY]**. Tr. at 565.
[74] Tr. at 565. As a result of this change, CLECs are providing service to mass market residential customers in under 20% of the wire centers identified in the MSAs contested by Verizon. Tr. at 571.

> the mere existence of some self-provisioning CLECs, each serving and each *intending* to serve a small percentage of the residential and small business customers, to remove unbundled mass market local switching from the entire MSA. This is exactly the type of situation that the FCC sought to avoid when it made its finding of impairment nationally. More importantly, such an outcome would leave mass market customers without a competitive alternative.[75]

The FCC based its finding of impairment, in part, on the small percentage (3%) of residential lines being served by competitors using self-provisioned switching. Verizon in this proceeding has failed to demonstrate that the percentage of residential customers served by CLEC self-deployed switches in the market areas it contests differs from the national percentage (*i.e.*, less than 3%) that the FCC cited in the TRO.[76] The Commission cannot conclude whether Verizon's circumstances in the contested markets vary from the FCC's national findings.

The Commission can conclude that Verizon-identified CLEC switches are serving a *de minimis* number of residential mass market customers – *i.e.*, less than 2.1% of the mass market. Based on this record, the Commission can conclude that Verizon has not demonstrated facts to rebut that national finding.[77]

iii. Verizon's list of CLEC trigger candidates selectively serve portions of the mass market, rather than serving (or capable of serving) throughout the mass market.

The competitive triggers are intended to provide evidence of the economic and technical feasibility of an entrant "serving the mass market."[78] In order to demonstrate

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[75] Sprint St. 1.0 at 18.
[76] *Id.*, at 13.
[77] Sprint St. 1.0 at 17. As Mr. Sywenki noted, the FCC when rendering its national findings it discussed CLEC inroads into the mass market and made reference to "only a small percentage of the residential voice market" and "extremely few mass market customers." The FCC's finding of only a *de minimis* number of CLEC mass market customers lead the FCC to reject a finding of non-impairment. *Id. See also*, TRO at ¶¶ 438, 441.
[78] TRO at ¶501. The TRO also provides that CLECs allegedly meeting the trigger must be "actively" serving mass market customers, and should be "likely to continue to do so." TRO at ¶¶ 499, 500.

non-impairment based upon the self-provisioning trigger, therefore, it is not enough for Verizon to show that CLECs are serving select portions of the mass market.[79] As Sprint's witness Mr. Sywenki testified:

> From an economic and competitive standpoint, the importance of this criterion cannot be overstated. If a CLEC is not serving or even *capable* of serving large portions of a market, there is no way that the CLEC demonstrates 'the technical and economic feasibility of serving the mass market' as stated in the TRO. Allowing that CLEC to 'count' toward meeting the trigger would result in the removal of local switching (and UNE-P) from areas in which a significant number of customers in the market truly may have no other competitive alternative.[80]

Verizon has argued that the FCC's Errata removes the requirement of serving (or capable of serving) throughout the mass market from this Commission's application of the self-provisioning switching trigger.[81] Verizon misunderstands.

On this issue, the FCC's September 17th Errata removed the requirement that the CLEC trigger candidates' switches (either individually or in total) be capable of serving *every* mass market customer. Thus, under the FCC's errata, the petitioning ILEC need not demonstrate that the CLEC(s) are operationally ready or willing to provide service to all customers in the market or are economically capable of serving the entire market. As Mr. Sywenki testified, the FCC's Errata made clear that "[f]rom an economic point of view such a requirement does not make sense; it would result in wasteful excess capacity."[82] As Mr. Sywenki further explained:

> But there is a significant difference between 1) being capable of serving *every* mass market customer, and 2) being capable of offering service *throughout* the market. The first – serving every customer – would require the CLEC to duplicate the ILEC's capacity, and is clearly undesirable and unnecessary. But the second – serving throughout the market – allows the CLEC to limit itself to an efficient capacity (based

[79] Sprint St. 1.0 at 19-22.
[80] *Id.*, at 21.
[81] Verizon St. 1.2 at 20.
[82] Sprint St. 1.0 at 19.

on its overall market share), but it prevents the CLEC from ignoring large portions of the market.[83]

When viewing Verizon's case and exhibits in the best possible light, CLECs are providing service to mass market residential customers under 40% of the wire centers in the MSAs that Verizon contests (Density Cells 1 through 4).[84] In other words, as Sprint witness Sywenki explained, in over 60% of the wire centers in the Verizon-identified MSAs there is not a single CLEC providing service to residential customer using its own switch. When viewed in light of the record adduced in this proceeding, the dearth of CLEC-provisioned switches to serving residential customers is even more apparent – less than 20%. Clearly, Verizon has not demonstrated that CLECs are serving, or are capable of serving, mass market customers throughout the markets it is contesting.

iv. Verizon erroneously counted cable providers in its trigger analysis.

Verizon relies heavily on cable companies that are providing or are planning to provide telephony services. Specifically, 48% of Verizon's CLEC counts on Exhibit 1 of Statement 1.1 are attributable to cable providers **[BEGIN PROPRIETARY]**.[85] **[END PROPRIETARY]**

This Commission is not required to count intermodal carriers in an impairment analysis. The FCC itself was hesitant to include cable companies given that the lack of "probative evidence" as to the ability to access the incumbent LEC's wireline voice grade local loop and thereby self-deploy local circuit switching.[86] However, the decision to include intermodal providers in an impairment analysis rests within the

[83] *Id.*,at 20.
[84] *Id.*,at 21.
[85] Sprint St. 1.0 at 24.
[86] TRO at ¶446.

discretion of the Commission.[87] State commissions exercising such discretion must "consider to what extent services provided over these intermodal alternatives are comparable in cost, quality, and maturity to incumbent LEC services."[88]

Verizon's use of cable carrier counts to satisfy the self-provisioning trigger must be rejected. Verizon has not demonstrated with credible, convincing evidence that the carriers it has identified provide services that "are comparable in cost, quality, and maturity" to Verizon's own offerings.

Furthermore, Sprint submits that the Commission should nonetheless find, on policy grounds, that it will not include intermodal providers in a triggers analysis for local circuit switching. As Sprint's witness, Mr. Sywenki testified, cable companies operate under unique circumstances that cannot be replicated by CLEC entrants.[89] A cable company can leverage significant existing assets and can take advantage of scope and scale derived from their traditional cable business. As Mr. Sywenki further explained:

> For cable companies, voice service is primarily an add-on to a bundle that includes traditional cable television service. In stark contrast, CLECs do not have the benefit of an established cable television business to bolster their voice service offerings. Cable companies also tend to primarily limit their voice service offerings ...to their significant, established customer base. . . . Quite simply, a logical impairment analysis could not conclude that CLECs in general are somehow not impaired just because a cable company, and entity with which CLECs bear no resemblance, is beginning to enter the mass market for voice services.[90]

If the Commission made a non-impairment determination based upon the entry of cable companies into the voice market, that finding would direct new entrants to adopt the cable

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[87] TRO at footnote 1549 ("In deciding *whether to include* intermodal alternatives for purposes of these triggers...") (emphasis added).
[88] *Id.*
[89] Sprint St. 1.0 at 25.
[90] *Id.*, at 26.

television business model for entry. The regulatory signal sent would say that only cable companies should be given the opportunity to compete with incumbent LECs.[91] The result "creates a policy that unfortunately favors duopoly over more widespread competition."[92] The Commission should reject Verizon's counting of certain cable companies in this impairment analysis.

IV. TRANSPORT

A. Introduction

The FCC made a national finding that competitive carriers were impaired without access to DS1, DS3 and dark fiber dedicated transport.[93] Separate competitive triggers were established by the FCC for self-provisioned providers and for wholesale providers of transport services.

The self provisioning trigger for dedicated transport applies to dark fiber and DS3 services. In its December 19, 2003 Supplemental Testimony, Verizon claimed that 245 direct routes met the FCC's self-provisioning trigger for dark fiber and that 498 direct routes met the FCC's self-provisioning trigger for DS3-level capacity.[94]

The self provisioning trigger is satisfied only when the entity seeking relief from unbundling obligations pursuant to the TRO demonstrates that three or more competing providers not affiliated with each other or the incumbent LEC, *including intermodal providers of service comparable in quality to that of the incumbent LEC,*[95] have each deployed their own transport facilities, are operationally ready to use those facilities to provide dedicated transport

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[91] *Id.*
[92] *Id.*
[93] TRO at ¶359.
[94] Verizon St. 1.1 at 3. *See also*, Sprint St. 2.0 at 7-8. Verizon has indicated that it may be updating its case for information that allegedly became available at evidentiary hearings.
[95] Text in italics does not apply to dark fiber triggers.

along that specific route, and have terminated their facilities either at a collocation arrangement or at a similar arrangement.[96]

The wholesale trigger applies to dark fiber, DS-1 and DS-3 services. In Supplemental Testimony submitted on December 19, 2003, Verizon claimed that 899 direct routes allegedly met the FCC's wholesale trigger for DS1 and DS3 capacities and 719 direct routes allegedly met the FCC's wholesale trigger for dark fiber.[97]

As set forth in the testimony of Sprint witness Mr. Appleby, the wholesale trigger for dedicated transport is satisfied only if the entity seeking relief from unbundling obligations pursuant to the TRO demonstrates that two or more competing providers not affiliated with each other or the incumbent LEC, *including intermodal providers of service comparable in quality to that of the incumbent LEC*[98] each satisfy four conditions:

1) Such alleged trigger candidates have deployed their own transport facilities, including "dark fiber" facilities obtained through an indefeasible right to use arrangement;

2) Such alleged trigger candidates are willing to "immediately provision", on a "widely available" basis, dedicated transport along the route;[99]

3) Such alleged trigger candidates' facilities terminate in a collocation or similar arrangement, as appropriate; and

4) Any requesting carriers may obtain reasonable and nondiscriminatory access from such alleged trigger candidates' facilities through a cross-connect.[100]

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[96] Sprint St. 2.0 at 6-7 (emphasis added). *See also*, TRO at ¶406 ("operationally ready to provide transport into or out of an incumbent ILEC central office.").
[97] Verizon St. 1.1 at 3. *See also*, Sprint St. 2.0 at 7-8.
[98] Text in italics does not apply to dark fiber triggers.
[99] TRO at ¶414. *See also*, 47 C.F.R. §51.319(e)(1)(ii).

Verizon has failed to demonstrate that the dedicated transport routes it seeks to have removed from unbundling obligations satisfy the foregoing competitive trigger requirements. As Sprint witness Appleby succinctly summarized:

> Verizon's dedicated transport case is flawed and unreliable because Verizon has not properly substantiated on a route-specific basis if a route actually exists, is operationally ready, and the trigger services are being offered. Verizon has applied a series of assumptions that simply have not been validated. The inspections claimed by Verizon only measure that active fiber reaches beyond the central office cable vault. This Commission must ensure that Verizon correctly and fully supports each individual route with actual route-specific facts – something that Verizon has not done. Verizon's resultant lists of routes and claims concerning the applicable triggers are based on assumptions and not verified facts. [101]

Verizon has failed to factually meet the FCC's triggering requirements. Due to the flaws and assumptions embedded in Verizon's transport trigger case, the Commission should reject Verizon's request.

B. Verizon's transport triggers case.

For the self-provisioning trigger, Verizon included any transport route in its analysis: (1) if one end of the route was located in Pennsylvania; and (2) there were at least three unaffiliated competitive carriers with operational, fiber-based collocation facilities in the wirecenters at both ends of the "route."[102] For the wholesale trigger, Verizon included all of the pairs of wire centers that have two or more carriers that offer transport services to other carriers.

Verizon claims that the routes it has identified under both triggers are operationally ready. Verizon's support for this assertion is its alleged "inspections" of collocation

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[100] *See*, Sprint St. 2.0 at 7. The FCC's Part 51 Rules employ virtually the same four requirements for all three levels of dedicated transport, DS1, DS3 and dark fiber. *See*, 47 C.F.R. §51.319(e)(1)(ii) (relative to DS1); 47 C.F.R. §51.319(e)(2)(B) (relative to DS3 transport); and 47 C.F.R. §51.319(e)(3)(B) (relative to dark fiber).
[101] Sprint St. 2.0 at 25.
[102] *Id.*, at 8; Tr. at 587.

arrangements which ascertained: (1) whether the equipment was powered; and (2) whether the collocating carrier has terminated non-Verizon fiber optic cable that both terminated at its collocation facility and left the wire center.[103]

Sprint submits, Verizon's process of reviewing carrier collocations and wire center pairs is far from an automatic indicator of competitive facilities between wire centers. Mr. Appleby offered several illustrative examples of how Verizon's "inspections" overstate the number transport routes sought to be removed from unbundling requirements.

First, a CLEC may have fiber collocations in Wire Center A and Wire Center B and, according to Verizon's simplified trigger analysis, would therefore have a route between A and B. But, that CLEC may be solely using its facilities from Wire Center A and from Wire Center B to backhaul traffic from loops it serves in A and B.[104]

Second, a competitive carrier may own or lease via an IRU only *portions* of a specific route and may have built their own facilities from the collocation site into the manhole just outside the Verizon central office. In this example, Verizon would have included the carrier as a transport candidate, yet that carrier does not own or control under an IRU lease the entire interoffice segment of the route between the manholes.[105] As Mr. Appleby explained:

> This example demonstrates the weakness of simply counting collocations and fiber going in and out of the wire center. The result is making the flawed assumption that all three CLECs have found it to be technically and economically feasible to self-provision transport, end to end, between Wire Center A and Wire Center B when, in reality, they have not. In this example, no competitive triggers have been met.[106]

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[103] *Id.* Sprint St. 2.0 at 9, 10.
[104] *Id.*, at 10-11.
[105] Similarly, carriers that lease fiber on a short-term basis from another provider collocated in the same end office would be erroneously counted under Verizon's transport trigger analysis because the "investigation" undertaken by Verizon did not include this level of detail. Sprint St. 2.0 at 12.
[106] Sprint St. 2.0 at 11-12.

Third, the competitive carrier may service its collocation arrangements in two wire centers via separate non-connected fiber rings. Verizon's method of simply "inspecting" fiber-based collocation sites would erroneously include these transport routes.

Verizon's use of such inspections is "very simplistic, makes assumptions regarding the facilities beyond their points of inspection, and shortcuts the granular route-by-route required analysis."[107] Verizon has provided no evidence that the CLEC has actually self-provisioned the facility it claims and is truly providing transport service between two Verizon wire centers. As Mr. Appleby concluded, Verizon's approach was obviously developed to include as many routes in the trigger analysis as possible so as to remove as many routes from unbundling obligations as possible.[108]

In addition to the inspections, Verizon's transport case is flawed due to the pervasive assumptions employed by Verizon in support of its claim that the identified routes are "operationally ready." For example, Verizon assumes that dark fiber will exist on any route that meets the self-provisioning trigger.[109] This assumption – namely that lit fiber automatically evidences spare dark fiber – infects both Verizon's transport case and its loop case, as addressed below in the loop section of this brief. As Mr. Appleby testified concerning the transport triggers:

> Verizon incorrectly assumes that since spare fibers are pulled into the central office cable vault and then to the collocation site, then such spare/dark fiber automatically and actually exists for the entire route in question. However, those spare fibers may not extend beyond the first fiber splice outside the central office.[110]

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[107] *Id.*, at 9.
[108] *Id.*, at 10.
[109] Verizon St. 1.0 at 51-52.
[110] Sprint St. 2.0 at 14.

Likewise, Verizon assumes that any carrier that has deployed its own fiber and attached OCn electronics to the fiber will channelize the OCn system into all lower levels of bandwidth -- such as a DS-3 and DS-1 at each location -- with lit fiber and are therefore operationally ready. In support of its assumptions, Verizon presumes that this is "consistent with standard industry practices."[111] The assumptions and presumptions of Verizon are wrong:

> There is no universal standard that is applied to the channelizing of every equipment terminal at every location in a common or standard way. For Verizon to imply the presence of such a standard is not correct. Each terminal is uniquely equipped with the amount and type of channel interface equipment necessary to serve the specific type and quantities of services that will utilize the terminal. Every route is unique, yet Verizon has applied a broad assumption rather than confirm what specific OCn system channelization has actually occurred on the routes that Verizon listed as meeting the FCC's triggers. A route can not meet the test of operational readiness if the proper channel interface equipment is not in place.[112]

As to the alleged "operational readiness" concerning wholesale facilities, Verizon also assumes incorrectly that any carrier announcing in some way that it offers wholesale facilities, but does not announce specific route(s), must be wholesaling on each and every route – regardless of verifying the purpose or use of that route. Verizon's assumptions in this regard are largely supported by a litigation strategy of excerpts from websites and other random public statements of possible intention.[113]

Finally, Verizon has identified Sprint as both self-provisioning and wholesaling dark fiber and both self-provisioning and wholesaling DS-3s for 15 transport routes in the Philadelphia area.[114] Verizon's identification of Sprint as a transport candidate is flatly disputed by Sprint.

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[111] Verizon St. 1.0, page 48.
[112] Sprint St. 2.0 at 13-14.
[113] *See, e.g.*, Verizon St. 1.0 at 45.
[114] Verizon St. 1.1, Attachment 6.

As Sprint witness Appleby testified during cross examination and as set forth in Sprint's Direct Testimony, Sprint's CLEC operating entity does not own any fiber-fed collocation or any facilities for the provision of competitive local exchange service in Pennsylvania.[115] Sprint's CLEC operating entity is a UNE-P provider of competitive local exchange services in Pennsylvania. The 15 Sprint alleged routes listed by Verizon are used solely to connect collocation sites with the Sprint national and international networks and do not offer competitive local services.[116]

Furthermore, Verizon has limited this proceeding to a triggers-only case. Transport facilities that presently have no relevancy to or bearing upon the actual climate of competitive local services and providers in Pennsylvania cannot be counted, as Verizon assumes. Under the TRO and accompanying FCC rules applicable to the competitive triggers, only the facilities and actions of "competitive providers" are relevant to a triggers only analysis under the TRO.[117] Sprint's long distance and international operating affiliates – which are not parties to this triggers-only proceeding – are not competitive providers of the quality of transport services that the wholesale and self-provisioning transport triggers are designed to measure.

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[115] TR. at 600; Sprint St. 2.0 at 16.

[116] Sprint St. 2.0 at 16.

[117] *See*, 47 C.F.R. §51.319(e)(1)(ii) (relative to DS1); 47 C.F.R. §51.319(e)(2)(B) (relative to DS3 transport); and 47 C.F.R. §51.319(e)(3)(B) (relative to dark fiber). Conversely, in the potential deployment portions of the Part 51 Rules, there is no limiting language as to "competitive providers." See, e.g., 47 C.F.R. §51.319(e)(2)(B)(ii), which provides:

> Potential deployment of dedicated DS3 transport. Where neither trigger in paragraph (e)(2)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

C. Conclusion

Verizon's triggers-only "analysis" and resultant conclusions are not reliable for purposes of concluding that the FCC's dedicated transport triggers have been satisfied. Verizon has failed to substantiate that the routes they identify on a route-by-route basis are indeed actual routes capable of meeting the criteria for the FCC's transport triggers.

V. LOOPS

The FCC in the TRO concluded on a nationwide basis that requesting carriers are impaired on a location-by-location basis without unbundled access to dark fiber, DS3 loops and DS1 loops.[118] Similar to the TRO's transport triggers, the FCC established separate location-specific competitive triggers for self-provisioned providers and for wholesale providers.[119]

Verizon has claimed that 63 customer locations satisfy one or both of the competitive triggers for loops. Specifically, in its December 19, 2003 Supplemental Testimony, Verizon identified as follows:

1) 3 customer locations that meet the DS1 wholesale trigger;

2) 61 customer locations that meet the DS-3 self-provisioning trigger;

3) 36 customer locations that meet the DS-3 wholesale trigger; and

4) 57 customer locations that meet the dark fiber self-provisioning trigger.[120]

Even if the wholesale and self-provisioning triggers are satisfied by the entity challenging the FCC's national impairment finding for loops, a state commission under the TRO has the authority to look beyond a trigger analysis for each customer location and can

[118] TRO at ¶202.
[119] Sprint St. 2.0 at 17.
[120] Verizon Statement 1.1, page 22 and Exhibit 7.

petition the FCC for a waiver even if the triggers are satisfied.[121] In this proceeding, Verizon has simply assumed away any impact of non-numerical criteria such as rights-of-way or the required access to all customers at each specific location and chose instead to present this Commission with a perspective that competitive triggers are a simple counting exercise.[122]

Sprint submits Verizon failed to demonstrate on this record the customer locations satisfy either of the FCC's loop triggers. As addressed below, Verizon's case is riddled with assumptions and generalizations concerning application of the FCC's loop triggers. All customer locations identified by Verizon fail under the rigorous requirements of the FCC's self provisioning and wholesale triggers.

A. Definition of Customer Location

Verizon has erroneously treated a customer location as a building so that Verizon can take advantage of a building's minimum point of entry ("MPOE") to support the assumption that competitors have access to all customers inside of the building.[123] Verizon cites to the FCC's references to both customer locations and individual units within that location in support of its position that customer location is a building.[124]

As Sprint witness Appleby testified, Verizon has improperly asked this Commission to make a blanket finding for all buildings identified by Verizon, rather than separate findings for each building. Verizon arrived at its convoluted interpretation of the TRO based upon the assumption that all or most of the buildings have a minimum point of entry (MPOE). Verizon thereby assumes (erroneously) that all CLECs have access to all of the customers in all of the buildings identified by Verizon in its loop case. As Mr. Appleby testified:

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[121] Sprint St. 2.0 at 20, *citing* TRO at ¶336.
[122] *Id.*, at 25.
[123] Verizon St. 1.1 at 20.
[124] *Id.*

> Verizon itself has not been able to ascertain whether each building on its list has a MPOE that provides full access to all customers or does not. The FCC TRO asks state commissions to validate triggers on a location-specific basis. What Verizon has done is generalized – or more specifically has grouped all buildings by generalizing assumptions – and then has incorrectly applied these generalizations to all locations listed.[125]

Verizon's approach not only perverts the TRO to suit Verizon's end game, but the rationale employed is simply illogical. The Pennsylvania Commission does not require regulated telecommunications companies to comply with regulations based upon the service provided to a building or via an MPOE. Regulated utilities provide service to specific customers within a building.[126]

Verizon's reaching interpretation of a customer location under the TRO is a flaw impacting both the self-provisioning trigger and the wholesale trigger components of Verizon's loop case. The Commission cannot rely upon illogical assumptions and generalizations to make unbundling findings. Accordingly, Sprint submits on this basis – *i.e.*, Verizon's over-generalized definition of customer location – the Commission should reject outright Verizon's loop case.

B. Self Provisioned Loops

The self provisioning trigger applies to dark fiber and DS-3 loops.[127] The self-provisioning trigger is satisfied only if the entity challenging the FCC's impairment finding for loops has sufficiently demonstrated with relevant evidence that at least two unaffiliated

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[125] Sprint St. 2.0 at 20. *See* also, Verizon Cross Exh. 9 (Total AT&T loop locations).

[126] For example, for reporting to the Commission, 51 Pa. Code Section 63.1 defines a "customer" as "A person, association, partnership, corporation or government agency provided with telephone service by a regulated public utility." The definition does not enable reporting on the basis of service provided to the building or unit in which such a customer is located.

[127] The self provisioning trigger does not apply to DS1 loops. TRO at ¶334.

providers have actually self-provisioned dark fiber or DS-3 loops to a specific customer location.[128]

As the FCC directed: "This determination involves a finding that there are two competitive LECs that have existing facilities in place serving customers at that location over the relevant loop capacity."[129] The FCC further clarified that the facilities these competitors must be unaffiliated and must use "their own facilities and not facilities owned or controlled by one of the other two providers to the premises."[130]

Verizon has claimed that 61 customer locations meet the DS-3 self-provisioning trigger and 57 customer locations meet the dark fiber self-provisioning trigger. Sprint submits, none of the self-provisioning triggers have been satisfied, as asserted by Verizon.

As to the 61 customer locations allegedly meeting the DS-3 self-provisioning trigger, Verizon's only support is its admitted "reasonable assumption" that carriers deploying fiber have attached OCn electronics and then channelize the OCn system into lower transport levels, including DS3s.[131] For DS3 loops allegedly meeting the self-provisioning trigger, the FCC did not say that state commissions can rely upon "reasonable assumptions" as Verizon suggests. The TRO requires that state commissions "must determine" that two or more competitive LECs provide "DS3 loops *over their own facilities* to customers at that particular customer location."[132]

The Commission cannot, based upon "reasonable assumptions", find that viable alternative providers are self provisioning DS3 loops at each of those 61 customer locations

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[128] *Id. See also*, 47 C.F.R. § 51.319(6)(ii).
[129] TRO at ¶332.
[130] TRO at 333. Relative to dark fiber, a competitor who has obtained dark fiber on a long-term indefeasible-right-of-use basis can be counted as a separate provider for self-provisioning determination purposes. *Id.*
[131] Verizon St. 1.1 at 23.
[132] TRO at footnote 979.

claimed by Verizon. Keeping in mind Verizon's flawed definition of customer location; there is no support on this record that two or more alternative providers are self-provisioning DS3 level of service to each customer within the buildings claimed by Verizon to be a customer location. Verizon failed to provide any credible or tangible evidence of support of this component of its loops case.

As to the 57 customer locations allegedly meeting the dark fiber self-provisioning trigger, Verizon has incorrectly assumed that any provider of lit fiber facilities will automatically be a provider of dark fiber.[133] Verizon's assumption is supported only by its supposition that the mere presence of lit fibers equates to a finding that spare fiber exists.

As Sprint witness, James Appleby, testified, assumed spare fiber capacity does not an ability to offer dark fiber.[134] Mr. Appleby explained:

> ILEC and CLEC fiber networks are rarely built end to end at a single point in time, but are comprised of many cable segments spliced end to end that have been placed at various points in time and for varying demand forecasts. Certain segments with little or no spare fibers in the fiber sheath may create a "bottle-neck" for any facility provisioning and preclude the offering of dark fiber along that route. If spare fibers are limited or not contiguous, the provider may also opt to restrict any fiber availability on that route due to its own facility requirements. For dark fiber to be available, it must be available for the entire route for which a carrier seeks to lease facilities. Verizon is simply incorrect in assuming that lit fiber automatically means the offering of dark fiber from the same provider.[135]

This Commission cannot make a finding that each the 57 customer locations allegedly meeting the dark fiber self-provisioning trigger have viable alternative loop

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[133] Verizon St. 1.1 at 24.
[134] Sprint St. 2.0 at 19 (emphasis in original).
[135] *Id.*, at 19-20 (emphasis added). Similarly, Fiber cable cross-section for each fiber cable segment, in any ILEC or CLEC network, will have varying amounts of spare fibers including some cross-sections with little or no spare. These spare fibers may or may not be spliced into adjoining cable segments. *Id.*, at 19.

providers such that Verizon can be relieved of its unbundling obligation. Verizon's use of erroneous suppositions in lieu of evidence must be rejected.

C. Wholesale Loops

The wholesale trigger applies to DS1 and DS3 loops.[136] The wholesale trigger is satisfied if the entity challenging the FCC's impairment finding for DS1 and DS3 loops has sufficiently demonstrated that two or more unaffiliated alternative providers "offer an equivalent wholesale loop product at a comparable level of capacity, quality, and reliability" and have "access to the entire multiunit customers premises" and offer the specific type of high-capacity loop over "their own facilities on a widely available wholesale basis."[137] Only "then will incumbent LEC loops at the same loop capacity level serving that particular building" not be required to be unbundled.[138]

Financial viability of the wholesale providers is not relevant.[139] However, the FCC directed that any state commission analysis on the wholesale loop trigger should reveal "some reasonable expectation that these providers are operationally capable of continuing to provide wholesale loop capacity to that customer location."[140]

Verizon has claimed that three customer locations allegedly meet the DS1 wholesale trigger and 36 customer locations allegedly meet the DS-3 wholesale trigger.[141] In order to accept Verizon's assertion, each specific location identified by Verizon must include demuxing electronics to all levels of service so as to come to a reasonable conclusion that the lit fiber is spare and is available.[142] Verizon has not provided any such critical support for the broad

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[136] *Id.*, at ¶¶ 328-329.
[137] TRO at ¶337.
[138] *Id.*
[139] TRO at ¶338.
[140] *Id.*
[141] Verizon St. 1.1 at 22.
[142] Sprint St. 2.0 at 25.

assumptions it makes. Again, Verizon has failed due to assumptions and generalizations in support of its unbundling request that Verizon elected to use in lieu of evidence.

For example, as with the self-provisioning trigger, Verizon has employed a definition for customer location that is illogical and erroneous. There is no support on this record that two or more alternative providers are wholesaling DS1 or DS3 loops to each customer within the buildings claimed by Verizon to be a customer location. As Sprint witness Appleby summarized:

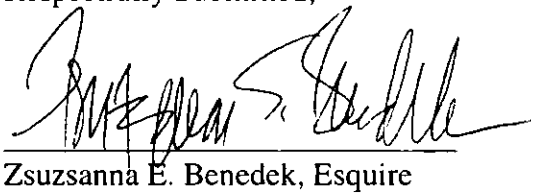
> Verizon fails to meet the FCC requirement for a fact-based showing that actual triggered services are available to all customers at each location and for each service level for which Verizon wishes to remove the selected building from unbundling. Verizon has failed to adequately support with facts any triggered building list and should have their loop filing rejected.[143]

[143] *Id.*,

VI. CONCLUSION

WHEREFORE, Sprint Communications Company, L.P. ("Sprint") respectfully requests that the Pennsylvania Public Utility Commission reject in its entirety Verizon's request for relief from unbundling obligations of the Act, as provided under the FCC's Triennial Review Order, and as requested by Verizon Pennsylvania Inc. and Verizon North Inc.

Respectfully Submitted,



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Counsel for Sprint Communications Company, L.P.

Dated: February 17, 2004

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of February, 2004, served a true copy, via electronic and overnight mail, of the foregoing Main Brief, in accordance with the requirements of 52 Pa. Code §1.54:

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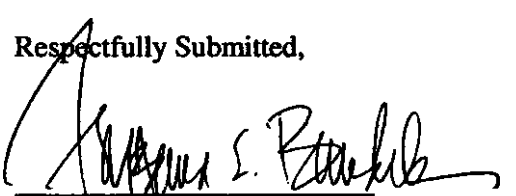

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February 17, 2004

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PA PUBLIC UTILITY COMMISSION
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VIA UPS

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DOCUMENT FOLDER

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

Main Brief of the CLEC Coalition

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission, on behalf of ARC Networks, Inc. d/b/a InfoHighway Communications Corp., Broadview Networks, Inc., BullsEye Telecom, Inc., McGraw Communications, Inc. and Metropolitan Telecommunications of PA, Inc. d/b/a MetTel ("CLEC Coalition"), please find an original and nine (9) copies of the public version of the CLEC Coalition's Main Brief in the above captioned docket. An original and nine (9) copies of the proprietary version of this filing is also included in the enclosed sealed envelope. Please date stamp the duplicate and return it in the provided envelope. Please feel free to contact Ross Buntrock at (202) 887-1248 if you have any questions.

Respectfully submitted,

Ross A. Buntrock

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

DOCUMENT FOLDER

Enclosures

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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I. INTRODUCTION

ARC Networks, Inc. d/b/a InfoHighway Communications Corp., Broadview Networks, Inc., BullsEye Telecom, Inc., McGraw Communications, Inc. and Metropolitan Telecommunications of PA, Inc. d/b/a MetTel ("CLEC Coalition") through counsel and pursuant to the *Procedural Orders*[1] in this case hereby submit their Opening Brief in the above captioned proceeding. Each member of the CLEC Coalition provides service to customers in the Commonwealth of Pennsylvania ("Commonwealth") utilizing the unbundled network element platform ("UNE-P"), and each provides the consumers of the Commonwealth with the competitive choices, savings and0 innovations that are only available as a result of access to the unbundled local switching ("ULS") element.

In its Triennial Review Order ("*TRO*"),[2] the Federal Communications Commission ("FCC") made a national finding "that requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers."[3] In making that impairment finding, the FCC expressly found that "[i]nherent difficulties arise from the incumbent LEC hot cut process for transferring DS0

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1 *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Network Elements*, Dkt. I- 00030099, Procedural Order (Oct. 3, 2003) ("*Procedural Order*"); *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements*, Dkt. I- 00030099, Second Prehearing Order (Nov. 25, 2003) ("*Second Prehearing Order*").

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

3 *Id.*, ¶ 419.

loops, typically used to serve mass market customers, to competing carriers' switches."[4] The FCC identified "increased costs due to non-recurring charges and high customer churn rates, service disruptions, and incumbent LECs' inability to handle a sufficient volume of hot cuts" as some of the primary impairments faced by competitors serving the mass market.[5] The FCC also identified a number of other economic and operational barriers that impaired the ability of competitive local exchange carriers ("CLECs") to provision switching to serve the mass market.

With those nationally-known mass market switching barriers identified, the FCC stated that its "analysis could end with [its impairment] conclusion."[6] However, the FCC recognized that in some markets the national impairments relied upon by the FCC may possibly be less acute. Accordingly, the FCC directed the state commissions to conduct "a more granular market-by-market analysis of impairment on a going forward basis."[7] The FCC enumerated two specific "triggers" to evaluate whether there is actual competition in a market: the "self provisioning" trigger and the "competitive wholesale facilities" trigger. The self provisioning trigger is met when the State Commission finds that three or more unaffiliated competing carriers are serving mass market customers in a particular market using their own switches.[8] The competitive wholesale facilities trigger is met when the State Commission finds that competing carriers are able to obtain

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4 *Id.*, ¶ 422.

5 *Id.*

6 *Id.*, ¶ 423.

7 *Id.*, ¶ 427.

8 *Id.*, ¶ 501.

switching from third parties offering access to their own switches on a wholesale basis.[9] The FCC also held that non impairment could be proven if it could be demonstrated that competitors have the "potential ability" to deploy their own switches to serve a market.[10] Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") have indicated that it is attempting to show that one of the actual competition triggers, i.e. the self-provisioning trigger, is satisfied in eight MSAs. However, as the record demonstrates, Verizon has failed to make such a showing.

II. STATEMENT OF THE CASE

In its October 2, 2003 *Procedural Order*, the Commission, pursuant to the dictates of the *TRO*, indicated that in order to rebut the national finding of impairment with respect to ULS in a particular market, Verizon would be required to demonstrate that there are: (1) two or more non-affiliated providers that have their own switches in that market and who also offer wholesale local switching to customers serving DS0 capacity loops; or (2) three or more non-affiliated competing providers serving mass market end-user customers in the particular market using their own switches.[11] That is, the Commission acknowledged the *TRO*'s burden on Verizon to prove non-impairment.[12]

On October 31, 2003, Verizon petitioned this Commission to initiate a proceeding pursuant to the *TRO* and notified the Commission that it would attempt to rebut the national finding of impairment for the local switching unbundled network element ("UNE") by

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9 *Id.*, ¶ 504.

10 *Id.*, ¶ 506.

11 *Procedural Order*, 14.

12 *Id.*, 12.

demonstrating that "the self-provisioning trigger for [mass market local] switching" has been met in a market defined as Density Cells 1-3 in the Philadelphia, Pittsburgh, Harrisburg, Allentown, Reading, Scranton/Wilkes-Barre and Lancaster Metropolitan Statistical Areas ("MSAs").[13] In a supplemental filing, Verizon clarified that under the latest Office of Management and Budget ("OMB") MSA definitions, the Harrisburg MSA (Harrisburg-Carlisle-Lebanon MSA) was now a Combined Statistical Area consisting of two separate MSAs: Harrisburg-Carlisle and Lebanon. Verizon is seeking relief for Density Cells 1-3 in all eight of these MSAs.[14] The Commission initiated a proceeding presided over by Administrative Law Judges Michael C. Schnierle and Susan D. Colwell. The Commission held a Prehearing Conference on November 25, 2003, at which time, interventions of parties were granted, and a procedural schedule was established. Pursuant to the schedule set forth in the *Second Prehearing Order*, hearings were held in Harrisburg from January 26 through January 29, 2004.

III. SUMMARY OF THE RECORD AND LEGAL ARGUMENT

The Commission must find, in evaluating the record of this proceeding, that Verizon has failed to meet its burden of proof. The record evidence in this case clearly demonstrates that the self-provisioning trigger has not been met in any of the eight MSAs where Verizon seeks relief in Pennsylvania.

The *TRO*'s self-provisioning trigger for mass market switching requires a showing that at least three CLECs in each market are actively serving both residences and businesses using their own local switches and are likely to continue to do so. Verizon contends

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13 Verizon Statement (St.) 1.0, 5-6.

14 Verizon St. 1.1, p. 6, n.1.

that the self-provisioning trigger simply requires this Commission to examine whether there are three CLECs serving at least one DS0 loop with non-Verizon switching somewhere in the MSA; if the answer is yes, Verizon's position is that the trigger is satisfied and no further examination need occur. Verizon's simplistic interpretation of the *TRO* standard is clearly incorrect as a legal matter, and in direct and irreconcilable conflict with the pro-competitive decisions rendered by this Commission.[15] Accepting Verizon's interpretation of the self-provisioning trigger standard would lead to absurd results: namely, the potential elimination of competition in roughly 80% of the mass market in Pennsylvania.[16]

As this record clearly demonstrates, merely counting switches in a market, (particularly using the inconsistent and contradictory line counts relied upon by Verizon)[17] does not provide conclusive evidence of whether the carriers who own or lease the switches are in fact actively providing competitive alternatives to residential and small business mass market customers throughout the particular geographic market, as the *TRO* requires. If a switch count were *all* that is required for trigger analysis, there would have been no need for the FCC to seek state commission fact-findings and analysis. Application of the triggers requires a detailed analysis to resolve the question of whether more than *de minimus* mass market competition by carriers utilizing non-incumbent local exchange carrier ("ILEC") switching actually exists in a given market and is likely to continue.

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15 *See, e.g.,* Joint Petition of Nextlink, et al., Docket Nos. P-00991648 and P-00991649, Opinion and Order (entered September 19, 1999) ("Global Order").

16 Tr., 262, n. 15-22.

17 *See* Section IV.A. for detail regarding inconsistencies in Verizon's data.

In the *TRO*, the FCC sought to create triggers "keyed to objective criteria,"[18] and provided insights into the judgment that the state commissions should apply. The FCC pointed out, "[t]o the extent the impairment test for switching is not simple ... it is because the facts surrounding impairment are not simple."[19] The criteria this Commission must examine are laid out by the FCC in several paragraphs in the *TRO*, as well as in Rule 51.319(d)(2)(iii)(A)(1) and (2). The *TRO* describes the self-provisioning trigger as follows:

> The triggers we set forth rely on the number of carriers that self-provision switches or the number of competitive wholesalers offering independent switching capacity in a given market. In both cases, the competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other. In addition, they should be using or offering their own separate switches. This requirement avoids counting as a true alternative a provider that uses the switching facilities of the incumbent LEC or *another* alternative provider that has already been counted. Moreover, the identified competitive switch providers should be actively providing voice service to mass market customers in the market.[20]

Additional criteria to be applied by state commissions in the switching trigger analysis are included throughout the *TRO*. For example, the FCC reiterates the importance of distinguishing between "enterprise switches" and "mass market switches."[21] At bottom, the entire framework envisioned by the FCC must be assembled from a thorough reading of all the relevant provisions of the *TRO*, and is not a mere "counting" exercise, as Verizon suggests. There are specific criteria that a carrier must meet before it can be "counted" as a self provider

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18 *TRO*, ¶ 498.

19 *Id.*,¶ 521, n.1600.

20 *Id.*,¶ 499.

21 *Id.* ¶ 441 and n. 1354, ¶ 508 (this trigger criterion is discussed in more detail below).

under the FCC's self-provisioning trigger standard. Verizon has failed to show that the trigger candidates it relies upon in this proceeding meet the criteria set forth by the *TRO*.

First, the data Verizon relies upon to demonstrate that the self-provisioning triggers are met in each MSA is hopelessly flawed and can be neither credited nor relied upon by the Commission. Indeed, even a cursory study of the Attachment 5 line count information reveals the patent flaws in Verizon's data. On this basis alone the Commission would be justified in rejecting Verizon's request for relief. The bottom line is that Verizon, the entity with the burden of proof in this case, has failed to provide credible evidence that would allow the Commission to find that the self provisioning trigger has been met in any MSA in Pennsylvania. Accordingly, the Commission should reject Verizon's petition on this basis alone.

Second, Verizon relies upon carriers utilizing self-provided switches to serve the enterprise market rather than the mass market. For example, in the Allentown, Harrisburg, Lancaster, Philadelphia, Reading, and Scranton MSAs, Verizon relies upon XO Communications ("XO") as a trigger candidate, but in XO's response to the CLEC Coalition Data Request ("Joint Parties No. 6"), XO states ***BEGIN PROPRIETARY*** ***END PROPRIETARY***.[22] It is clear that the only service that XO provides in Pennsylvania using its own switch is digital service to enterprise customers; it does not serve the mass market. The Commission may not rely on enterprise switches to satisfy the self-provisioning trigger.

Third, Verizon relies upon carriers that provide little or no stand-alone analog voice service to mass market customers in the geographic market in which Verizon claims they

[22] *See* CLEC Coalition St. 1.0, Exhibit JPG-6.

meet the trigger. The *TRO* requires that a self-provisioning trigger candidate: (a) provide stand-alone analog voice service to mass market customers;[23] (b) that it be "actively" providing such service;[24] and (c) that the self-provisioning trigger candidate is likely to continue actively providing stand-alone analog voice service to mass market customers in the future.[25] Further, the proposed switch trigger candidate must account for more than a *de minimus* level of competitive activity. However, the record in this proceeding shows that Verizon counted as meeting the mass market trigger carriers that either provide little or no analog voice service, serve no residential lines, or, in the case of Allegiance, are on the verge of exiting the market, and therefore are not likely to continue providing service. Additionally, the record shows that several of the self-provisioning trigger candidates relied upon by Verizon provide only some legacy analog loops to existing customers but no longer offer service to mass market customers generally.

Fourth, Verizon relies heavily upon proposed trigger candidates that do not rely upon ILEC loops to provide service to their end user customers. Specifically, in each of the eight MSAs where it seeks relief, Verizon asks the Commission to count as a triggering carrier at least one cable company providing telephony services. In recognition of the fact that intermodal service providers avoid use of the hot-cut process the FCC found to be a source of impairment on a national basis, the *TRO* cautions state commissions to review carefully whether and how intermodal alternatives like cable telephony satisfy the self-provisioning trigger, and invites the

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23 *TRO*. at ¶ 499.

24 *Id.*

25 *Id.* at ¶ 500.

States to give intermodal trigger candidates less weight than trigger candidates that rely upon ILEC unbundled analog loops to provide service.[26]

Finally, the *TRO* requires that self-provisioning trigger candidates may not be affiliated with either Verizon, or another incumbent.[27] However, in each of the MSAs where it seeks relief Verizon relies upon at least one carrier that is affiliated with an incumbent,[28] and in each case the CLEC affiliate relies in whole or in part upon a switch owned by the incumbent to provide analog voice service in the market in which Verizon claims it meets the self-provisioning trigger.

In conducting an overall evaluation of Verizon's case it is clear that Verizon has failed to meet the burden of proof assigned it by the *TRO*. It has failed to rebut the national finding of impairment in any of the eight MSAs where it seeks relief and the Commission therefore must reject Verizon's petition to be relieved of its obligation to provide unbundled mass market switching in any Pennsylvania market.

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26 *Id.*, ¶¶ 439, 429, 446.

27 *TRO*, ¶ 499.

28 *See* Verizon St. 1.2, Att. 5. Pt. A: In each MSA Verizon puts forth "affiliated" company triggers: Commonwealth in the Allentown-Bethlehem-Easton MSA; Commonwealth and D&E in the Harrisburg-Carlisle MSA; Commonwealth and D&E in the Lebanon MSA; Commonwealth and D&E in the Lancaster MSA; Commonwealth and D&E in the Philadelphia MSA; Commonwealth and D&E in the Reading MSA; and Commonwealth in the Scranton-Wilkes-Barre-Hazelton MSA.

IV. ARGUMENT

A. VERIZON HAS THE BURDEN OF PROOF IN THIS CASE AND IT HAS FAILED TO MEET IT

As the petitioning party seeking to rebut the national finding of impairment with respect to unbundled local switching,, Verizon has the burden of proof in this proceeding.[29] The Commission specifically acknowledged this fact in the *Procedural Order*:

> [g]iven the national findings of impairment, we tentatively conclude there is impairment in Pennsylvania. Therefore, any ILEC desiring to contest the presumption of impairment must bear the burden of proving non-impairment.[30]

Verizon, however, has failed to bear the burden of demonstrating non-impairment with respect to mass market local switching. Under Pennsylvania law, in determining whether a party has satisfied its burden of proof, "care must be exercised to ensure that the material facts underlying the Commission's decision are supported by *substantial evidence.*"[31] The term "substantial evidence" has been defined by Pennsylvania precedent as consisting of such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. It is important to note that "more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[32] The Commission may not base a finding of fact on hearsay evidence unless it is corroborated by other reliable evidence."[33]

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29 66 Pa. C.S. §332(a).

30 *See Procedural Order*, 12.

31 2 Pa. C.S. §704 (emphasis added).

32 *See Norfolk & Western R. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *see also Murphy v. Pa. Dept. of Pub. Welfare*, 480 A.2d 382 (Pa. Cmwlth. 1984).

33 *See Walker v. Unemployment Compensation Board*, 367 A.2d 366, 370 (Pa. Commw. Ct. 1976); *see also Burleson v. Pa. P.U.C.*, 501 Pa. 433, 461 A.2d 1234 (1983).

Verizon has clearly failed to meet this standard with respect to its claim that the national finding of impairment for ULS does not apply in eight MSAs in Pennsylvania because the self-provisioning trigger test has been met. As set forth below, Verizon has failed to satisfy any of the criteria necessary to demonstrate that the self-provisioning switch trigger is satisfied in any of the eight Pennsylvania MSAs.

As a threshold matter, the data Verizon relies upon to demonstrate that the self-provisioning trigger is met in each MSA is hopelessly flawed, and clearly fails to demonstrate non impairment with respect to ULS. It is clear that Verizon did nothing to validate or reconcile any of the key data upon which it would have the Commission to rely to irreparably change the competitive contours of the telecommunications market in the Commonwealth. The shoddy data provided by *Verizon* clearly does not rise to the level of "substantial evidence" which Verizon must provide, as the party with the burden of proof in this case.

Attachment 5 to Verizon Statement No. 1.2 ("Attachment 5") is, in effect, a "summary" of Verizon's trigger case. It provides a list of the MSAs where Verizon seeks relief, and identifies each of Verizon's trigger candidates in each MSA. Attachment 5 provides two different line counts for each trigger candidate listed, a "Verizon Count," which was derived from an internal Verizon "study" of E911 data, and a "CLEC Count," which was provided by the CLECs themselves in response to discovery issued by the Commission and the parties in this proceeding. Strikingly, in Part A of Attachment 5 there is not *a single instance where the Verizon Count matches up with the CLEC Count.* Indeed, in many cases the Verizon Count and the CLEC Count vary significantly, by tens of thousands of lines. In some cases, the Verizon Count shows no lines for a particular trigger candidate, while the trigger candidate itself reports a number of lines. In other instances, the situation is reversed, with the CLEC reporting serving no

lines in an MSA, but with Verizon showing a particular number of lines being served by the CLEC. In other instances, both Verizon and the CLEC reported lines in a particular Density Zone, however, the Verizon Count is significantly higher than the CLEC Count.

For example, ***BEGIN PROPRIETARY***

***END PROPRIETARY.

Questioned about these shocking disparities in line counts at hearing, Verizon provided no credible explanation. The best explanation Verizon could muster was a statement that "there are a lot of reasons why the numbers in the Verizon count and the CLEC count might differ."[34] In fact, Verizon specifically denied that the huge disparity arose as a result of Verizon counting DS-1 lines instead of only DS0 lines.[35] Verizon maintained its position that all of the XO lines it included in the Verizon Count are attributable to mass market DS0 lines, even in the face of XO's representation that it serves no DS0 lines in the MSAs where Verizon asserts that it does.[36] XO was not the only trigger candidate whose line count numbers deviated widely from Verizon's.

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34 Tr., 114.

35 *Id.*, 112.

36 *Id.*, 116-117

Verizon relies upon Adelphia in every MSA where it seeks relief. In fact, in several of the MSAs, including***BEGIN PROPRIETARY

****END PROPRIETARY*** Verizon's failure to perform any reconciliation of the data set forth in Attachment 5 leads to absurd scenarios, such as Verizon crediting Adelphia's assertion that it serves ***BEGIN PROPRIETARY***

END PROPRIETARY* Similarly, in the Lebanon MSA, Adelphia reported that it serves ***BEGIN PROPRIETARY***

END PROPRIETARY*

Asked how the Commission should reconcile the major disparities between the Verizon Counts and CLEC Counts, Verizon Witness West took the position that when there are significant variations between the Verizon and CLEC line counts, in order to determine whether a trigger candidate meets the trigger, the Commission "should rely on both" numbers.[37]

> JUDGE SCHNIERLE: So Verizon's position is if I can find a number in either column, it counts as a trigger CLEC?
>
> WITNESS WEST: If there is a number in either column, it does count as a trigger CLEC, and, typically, there is going to be a good reason why one or the other side, either the Verizon count or the CLEC count, is blank.[38]

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[37] *Id.*, 106.

[38] *Id.*, 109.

Verizon argues that it should be allowed to exercise its judgment to selectively pick and choose which CLEC data to include for the trigger candidates line counts.[39] As ALJ Schnierele noted, it appears that Verizon's position on the issue of which numbers to credit is "heads, we win; tails, you lose."[40] That is, Verizon argues that the Commission always should view the numbers in the posture most beneficial to Verizon.

At bottom, the Commission must reject Verizon's attempt to lard the record with unexamined, unverified and misrepresentative data. Verizon, the party with the burden of proof in this case, has clearly failed to provide credible evidence that would allow the Commission to find that the self-provisioning trigger has been met in any MSA in Pennsylvania. Having failed to provide the verified evidence required by law, the Commission must reject Verizon's case.

B. THE COMMISSION SHOULD ADOPT LATAS AS THE RELEVANT GEOGRAPHIC MARKET FOR PURPOSES OF CONDUCTING THE TRIGGER ANALYSIS

In making its determinations with respect to mass market switching, the FCC did not adopt a particular market definition, but instead concluded that "there was no credible record evidence" for defining "boundaries based on a national rule."[41] Accordingly, the FCC requested the States to review on a sub-State level the national finding of impairment for mass market switching by defining "each geographic market on a granular basis."[42] The FCC codified the principles a state commission must apply in defining the geographic market for mass market switching in its rules:

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39 *Id.*, 110.

40 *Id.*, 108.

41 *TRO*, n. 1536.

42 *Id.*

> Market definition. A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. A state commission shall not define the relevant geographic area as the entire state.[43]

In the text of the *TRO,* the FCC enumerated a series of "must" and "should" factors for state commissions to consider in defining markets as the undertake their impairment analysis. Paragraph 495 of the *TRO* provides as follows:

> [S]tate commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation 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. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesale to serve various groups of customers varies geographically and should attempt to distinguish among markets where different impairments are likely.[44]

The combination of the FCC's rule and paragraph 495 of the *TRO* enumerate the criteria that this Commission "must" and "should" consider in defining geographic boundaries for its mass market switching impairment analysis. As for the "must" factors, the Commission first ***must*** take into consideration the locations of customers ***actually being served*** by

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[43] 47 C.F.R. § 51.319(d)(2)(i).

[44] *TRO*, ¶ 495 (citations omitted, emphasis supplied).

competitors. This does not include customers that ***potentially*** could be served by competitors, but rather, only those actually being served. Second, the Commission ***must*** review the variation in factors affecting competitors' ability to serve each group of customers, including both small business and residential customers – the two groups of customers that together comprise the mass market. Third, the Commission ***must*** evaluate the ability of competitors to target and serve specific markets economically and efficiently using existing technologies. Without question, each of these three criteria must be satisfied in order to be consistent with the *TRO* and the FCC's implementing rules.

Beyond the economic and operational "must" factors that the Commission is obligated to consider, the FCC defined a number of additional factors that this Commission "should" consider. First, the Commission should consider how competitors' ability to use self-provisioned switches (or switches provided by a third-party wholesale carrier) to serve various groups of customers – residential and small business customers – varies geographically. Second, the Commission should distinguish among markets where different impairments are likely.

The CLEC Coalition submits that LATAs most accurately take into account the considerations of customer location, variation in the ability of competitors to serve, and ability to target markets, which the FCC requires this Commission to consider in adopting a geographic market definition. LATA boundaries have the advantage of being well understood within the industry. Further, they conform to wire center boundaries (which is the basic unit or "building block" for all analyses), and they were drawn as an approximation of the local monopoly network. Accordingly, the Commission should adopt the LATA as the relevant market for

purposes of conducting the trigger analysis in this case [45] and reject Verizon's proposal to use an "MSA, less Density Zone 4" approach, as well as MCI's proposal that the Commission adopt the "wire center" as the geographic market.

Verizon proposes defining the relevant geographic market as the MSA, but then excludes Density Zone 4 wire centers from its definition of the market wherever those wire centers are part of an MSA at issue.[46] Verizon's modified MSA approach makes no sense. As AT&T witnesses Kirchberger and Nurse noted, "MSAs were not created with regard to ILEC serving areas and often result in overlaps or gaps in coverage."[47] The CLEC Coalition submits that the LATA would be a more appropriate geographic market for purposes of this analysis. As Mr. Gillan explained in his direct testimony:

> MSA boundaries have little to nothing to do with telecommunications; they do not consider networks, calling boundaries, or any other factor that would influence an entrant's cost. The MSA construct is not made more objective because it is unrelated to telecommunications; it is merely made less useful. As a practical matter, even the most basic information that must be considered in an impairment analysis (such as UNE-L and UNE-P volumes) is collected by wire center, and any decision to modify Verizon's unbundling obligation would have to be implemented on a wire center basis. Those facts alone suggest that any area ultimately chosen by the Commission must be easily defined by its component wire centers, as opposed to census or political boundaries.

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45 CLEC Coalition St. 1.0, 26-29; CLEC Coalition Statement 1.1.

46 Verizon St. 1.0, 13; Tr. 225-226.

47 AT&T Statement 1.0, n. 11. This problem is apparently recognized by Verizon since it is asking the Commission to look at those portions of the MSA where it is the certified local exchange carrier.

AT&T's Kirchberger and Nurse agree with Mr. Gillan, and they observe that the problems with MSAs "can be avoided by using LATAs, which (1) were historically designed to reflect local calling areas and (2) are co-extensive with ILEC serving wire center boundaries."[48]

The Commission should also reject MCI's proposal that the appropriate area for purposes of evaluating impairment for mass market local switching is the wire center.[49] As Mr. Gillan testified, adopting the wire center as the geographic market would not be wise, because that definition of the market clearly ignores the defining feature of the mass market – i.e., that it requires *mass* for competition to succeed. Simply stated, wire centers do not function as independent markets individually capable of supplying the mass needed for mass market competition to develop.[50]

Furthermore, as Mr. Gillan demonstrated, it is not possible to eliminate access to ULS in one part of a market without the consequences of that decision being felt throughout the entire area. If ULS is not available in the State's largest wire centers, the effect of that limitation will be felt not only in the geographic area served by those wire centers, but in the surrounding areas as well. Dissecting the market into hundreds of small wire centers runs counter to the fact that wide availability of ULS is needed to produce mass market competition because carriers must have the ability to comprehensively offer service to thousands of small users that live and work across a broad footprint.

LATAs were first drawn to identify distinct local markets, with one of the guidelines being that no LATA should include more than one MSA. LATA boundaries conform

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48 AT&T St. 1.0, n. 11.

49 MCI St. 1.0, 28-30.

50 CLEC Coalition St. 1.1, 2-3.

to wire center boundaries. Moreover, LATAs have the advantage of associating all of Verizon's wire centers to a market, while MSA boundaries do not. This is particularly important because Verizon's proposal would have this Commission not only adopt the MSA boundaries that it recommends (and discusses), but it would also have the effect of creating a *residual market* of all those wire centers that are not in an MSA and that Verizon ignores in its testimony.

C. THE COMMISSION SHOULD NOT ESTABLISH A REGULATORY CAP ON THE MASS MARKET IN PENNSYLVANIA

The *TRO* permits States to establish a cap, or an "upper boundary," on the mass market. That is, the *TRO* gave this Commission the right to determine that a particular number of voice lines at a customer premise is the point at which "it is economically feasible for a competitive carrier to provide voice service with its own switch using a DS1 or above loop."[51] That is, the number, commonly referred to as the DS0/DS1 "cutoff" is "the point where it makes economic sense for a multi-line customer to be served via a DS1 loop."[52] The CLEC Coalition submits that there is no reason for the Commission to establish a DS0/DS-1 cutoff here.

Verizon acknowledges that the most appropriate line between the enterprise and the mass market is the line between analog voice loops (which define mass market services) and digital loops (which define the enterprise market). As explained by Verizon:

> At its simplest, this "cutoff" should be between customers actually being served with one or more voice grade DS0 circuits and customers actually being served by DS-1 loops.... This objective test is more reliable, and grounded in the realities of the marketplace, than an arbitrary "cutoff" at a particular number of lines regardless of whether customer is actually being served as a DS-1 customer.[53]

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51 *TRO*, ¶421, n.1296.

52 *Id.*,¶497.

53 Verizon St. 1.0, 17.

The CLEC Coalition agrees with Verizon that the customer is in the best position to know what type of service it needs and, therefore, that a customer's service choice should determine the dividing line between the analog mass market and the digital enterprise market. The CLEC Coalition therefore urges the Commission to adopt Verizon's position and define the mass market as comprising all analog loops. The Commission should then ensure that ULS is available to serve all analog loops throughout the Commonwealth.

D. VERIZON'S TORTURED INTERPRETATION OF THE SELF PROVISIONING TRIGGER TEST WOULD ELIMINATE ACCESS TO ULS IN MOST OF THE COMMONWEALTH

Verizon submits to this Commission a "triggers only" case, under which the Commission must analyze where qualifying CLECs are providing service using their own switches to serve both business and residential mass market customers.[54] Verizon contends that the trigger analysis is merely a counting exercise that is "deliberately objective.... assessed entirely through the application of data, rather than by the consideration of more subjective experiences, theories, estimates, opinions, and predictions."[55] Verizon's contention is, in fact, a mischaracterization of the *TRO*.

The *TRO* provides the Commission with guidance as to the type of carriers and services that can legitimately be considered "actual marketplace evidence" that "...new entrants, as a practical matter, have surmounted barriers to entry in the relevant market."[56] The FCC the directs the States to look at actual competitive activity, with the expectation that the States will apply the trigger test with judgment as well as actual data. As the FCC indicated, "We find that

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54 CLEC Coalition St. 1.0, 20.

55 Verizon St. 1.0, 9.

56 *TRO*, at ¶ 93, emphasis removed.

giving the state this role [to determine whether either trigger is met] is most appropriate where, in our judgment, the record before us does not contain sufficiently granular information and the states are better positioned than we are to gather and assess the necessary information."[57]

The FCC is relying on Commission to examine Pennsylvania markets based on its knowledge and familiarity with local conditions. The Commission's role in this context is not to merely review the data that was already provided to the FCC regarding the deployment of CLEC switches, but rather to conduct a full inquiry into whether the trigger criteria set forth in the *TRO* are satisfied. The *TRO* provides guidance as to the basic qualities a competitive LEC must exhibit in order to be considered a legitimate candidate for the "self-provisioning" trigger. At each step, these criteria are designed to conform to the entire purpose of the trigger evaluation – to determine whether there is sufficient *actual mass market competition* being offered by switch-based CLECs to justify a "no impairment" finding in a market in spite of the national finding of mass market switching impairment.

As CLEC Coalition witness Gillan testified, the self-provisioning trigger criteria can generally be organized into six categories, each of which must be satisfied before a candidate can be found to satisfy the self-provisioning trigger: (1) the trigger candidate's switches must be "mass market," not "enterprise" switches; (2) the trigger candidate must be *actively providing* voice service to mass market customers in the designated market, including residential customers, and must be *likely to continue to do so*; (3) the trigger candidate should provide services exhibiting a ubiquity comparable to UNE-P within the defined market; (4) the trigger candidate should be relying on ILEC analog loops to connect the customer to its switch or, if a claimed "intermodal" alternative, its service must be comparable to the ILEC service in cost,

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[57] *Id.* at ¶ 188.

quality, and maturity; (5) the trigger candidate may not be *affiliated* with the ILEC or other self-provisioning trigger candidates; and (6) there must be evidence of sustainable and broad-scale mass market competitive alternatives in the designated market.[58] Only if *each* of these trigger criteria is met does a candidate qualify as one of the three carriers necessary to satisfy the FCC's self-provisioning trigger standard.

Applying these criteria to the trigger candidates proposed by Verizon in Pennsylvania, there is no MSA where there are three qualifying mass market trigger candidates who are actively serving mass market customers using their own switches. Accordingly, there are no "qualifying CLECs in any MSA" and the Commission must reject Verizon's petition for relief.

1. The Commission Must Reject Verizon's Use of Enterprise Switches as Mass Market Switches

The *TRO* is filled with discussion regarding the analytical importance of the distinction between the "mass market" and "enterprise market." The FCC found that, even based on the limited record before it, there was a clear distinction between the mass market and the enterprise market, both in terms of customer profile and the state of CLEC switch deployment. The FCC made a national finding that CLECs are impaired without access to unbundled local circuit switching when serving "mass market customers."[59] *Verizon*, however, ignores the plain language of the *TRO* and makes no distinction between switches used by CLECs to serve the enterprise market versus switches used to serve the mass market.

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58 CLEC Coalition St. 1.0, 40-41.

59 *TRO*,¶ 419.

The *TRO* provides a basic definition of the "mass market customer" and contrasts it with the "enterprise customer." As the FCC explains, "mass market customers are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 lines."[60] As CLEC Coalition witness Gillan explained, "The mass market customer is (a) primarily interested in basic voice-grade POTS service; (b) widely geographically dispersed; and (c) unaccustomed to complex or disruptive provisioning schemes."[61] Unlike enterprise customers, mass market customers are not concentrated in particular geographic locations, such as central business districts; rather residential and small business customers are spread across all urban, suburban, and rural locations. Mass market customers expect that using their telephone services, as well as changing service providers, will be a seamless transaction, without a disruption to their service or their lives.[62]

The FCC found that CLEC switch deployment is significantly different in the mass market and the enterprise market:

> [W]e find that the record demonstrates significant nationwide deployment of switches by competitive providers to serve the enterprise market, but extremely limited deployment of competitive LEC circuit switches to serve the mass market.[63]

While the FCC allows deployment of an enterprise switch to be considered as a factor in the mass market "potential deployment analysis,"[64] the FCC recognized that the existence of an enterprise switch has **no weight in determining whether a mass market**

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60 *Id.*, ¶ 497.

61 CLEC Coalition St., 19.

62 *TRO*, ¶ 467 ("Most importantly, mass market customers demand reliable, easy-to-operate service and trouble-free installation.").

63 *Id.*, ¶ 435.

64 *Id.*, ¶ 508.

switching trigger has been satisfied: "[S]witches serving the enterprise market," the FCC held, "do not qualify for the triggers" applicable to mass market switching.[65] The *TRO* thus directs the Commission to consider *only* mass market switches (i.e., switches predominately used to serve mass market customers) in the mass market switching trigger analysis.

For a number of reasons, a CLEC serving the enterprise market with its own switch may provide some analog service and, therefore, obtain some analog loops as an ancillary extension of its operations. For instance, this could occur if a CLEC's enterprise customer requests one or more fax lines (which require use of an analog loop to fulfill a data need, but do not provide evidence that a mass market POTS service is being provided). Similarly, a large, multi-location enterprise customer may require a package of services from a CLEC that includes some analog lines for a particular branch office. However, it would be contrary to common sense, as well as to the FCC's trigger criteria, to declare that a switch serves the mass market when the number of analog loops provisioned to that enterprise switch is minimal compared to the number of digital loops serving enterprise customers. That, however, is precisely what Verizon proposes, as evidenced by the following exchange between Verizon Witness Harold West and Judge Schnierle:

> JUDGE SCHNIERLE: If I find a switch that's got OCNs and DS-3s attached to it and one DSO, is that a mass market switch?
>
> WITNESS WEST: It is a switch serving a mass market customer, and it would count as a trigger.
>
> JUDGE SCHNIERLE: So it's Verizon's position, if I found three of those in one market segment, the Commission should essentially cut off all residential UNE-P. If I found three switches, each with one DSO that might be serving, for all I know, the president of the company or something like that, or a fax machine, under the *TRO*,

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65 *Id.* at ¶ 508.

> the Commission should essentially cut off all UNE-P to every residential customer in that market. That's Verizon's position?
>
> WITNESS WEST: That's a very extreme hypothetical. I think that is consistent with Verizon's position...[66]

The switches relied upon by Verizon are almost exclusively enterprise switches. While the FCC understood that enterprise switches would in most cases serve some analog lines, that understanding did not change the FCC's conclusion that **enterprise switches should not be counted in a trigger analysis**.[67]

But relying on enterprise switches is what Verizon does. For example, Verizon relies upon XO as a switching trigger candidate in 6 MSAs notwithstanding the fact that XO admitted in response to discovery issued by the CLEC Coalition that ***BEGIN PROPRIETARY*** ***END PROPRIETARY*** XO is clearly and unambiguously focused on serving the enterprise market, and its switches operate as enterprise switches. It cannot be counted as meeting the mass market switch trigger.

Similarly, ***BEGIN PROPRIETARY***

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66 Tr., 94-95.

67 *TRO*, ¶ 441. For instance, the FCC specifically recognized data that showed enterprise switches serving analog lines and cited that data as evidence that simply counting switches did not address the critical distinction between the enterprise and mass markets. *See e.g., TRO*, ¶ 437.

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PROPRIETARY***

2. Mass Market Providers Must Serve Both Small Business and Residential Customers

To meet the mass market trigger standard, a potential trigger candidate must be serving the core of the mass market, the residential customer. As Verizon acknowledges, in Pennsylvania, 80% of the analog lines in Verizon's territory, or approximately 4 million lines, are residential.[68] It would defy logic to qualify a potential self-providing trigger candidate as providing "mass market" service if it does not even market its service to the overwhelming portion of the mass market, i.e., residential customers. But a number of the trigger candidates Verizon relies upon in this proceeding provide no residential mass market voice service whatsoever. The trigger carriers Verizon relies upon that have no residential voice customers include *****BEGIN PROPRIETARY*****

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In response to discovery in this proceeding, Choice One stated that it serves *****BEGIN PROPRIETARY***** *****END PROPRIETARY*****residential customers in Pennsylvania and focuses exclusively on business customers.[70] Similarly, Allegiance stated that *****BEGIN PROPRIETARY*****

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68 Tr., 263.

69 OCA Cross Examination Exhibit 1 (Cavalier Response to OCA I-1).

70 Choice One St. 1.0 (Choice One Response to PUC Preliminary Data Request #5).

*****END PROPRIETARY*****. CTSI also does not provide residential local exchange services through UNE-L arrangements in the MSAs where Verizon has indicated that it should count as a triggering carrier. CTSI indicated in response to discovery responses that it has no residential UNE-L lines in the *****BEGIN PROPRIETARY***** *****END PROPRIETARY***** In addition, CLEC Coalition member Broadview's customer base in the Philadelphia MSA consists of *****BEGIN PROPRIETARY***** *****END PROPRIETARY*****business lines.

Given the percentage of residential lines that make up the mass market, at the end of the day, the Commission must conclude, as did the FCC, that the best determinant of actual mass market competition is whether CLECs are using self-provided switching to serve both small business *and residential* customers in the geographic market.

3. Verizon Relies Upon Trigger Candidates Who Are Not Actively Providing Voice Service to Mass Market Customers

The *TRO* requires that a self-provisioning trigger candidate: (a) provide analog voice service to mass market customers;[74] (b) be "actively" providing such service;[75] and (c) be

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71 *See* AT&T St. 1.0, 47 (Allegiance Response to Joint Parties I-6(a)). That fact is unlikely to change if XO purchases Allegiance's assets as it announced it plans to do last week, since XO similarly markets only to business customers. See, e.g., "XO Wins Bid to Acquire Allegiance Telecom," Phone Plus (February 13, 2004) http://www.phoneplusmag.com/hotnews/42hl391121.html.

72 OCA Cross Examination Exhibit 1 (CTSI Response to OCA1-1).

73 CLEC Coalition Statement 3.0 (Broadview Response to OCA I-1.).

74 *TRO*, at ¶ 499.

75 *Id.*

likely to continue actively providing analog voice service to mass market customers in the future.[76]

As Mr. Gillan testified, in determining whether a trigger candidate is providing mass market voice service, the Commission must exclude potential trigger candidates who do not provide stand-alone voice service.[77] Some analog loops that have been provisioned to a CLEC switch are used for purely data purposes (e.g., DSL or fax lines), and thus do not provide voice service. Such lines should not be included in determining whether the self-provisioning trigger candidate provides voice services to the mass market.

The Commission must ensure that the voice services provided by self-provisioning trigger candidates are being provided to mass market customers rather than to enterprise customers. A customer purchasing voice and data services provisioned by a DS-1 loop is by definition an enterprise customer[78] and not a mass market customer even if a few voice lines are being provided along with the data circuit. The Commission's trigger analysis must focus on the appropriate customer market, and exclude self-provisioning trigger candidates that are not serving customers who are the focus of the mass market switching impairment analysis.

The *TRO* also requires the Commission to determine whether the self-provisioning trigger candidates put forth by Verizon are "likely to continue" offering voice POTS services to mass market customers in the future. As Mr. Gillan testified, this requires that the Commission make an informed assessment of the viability of the self-provisioning trigger candidate's mass market offerings in the future.

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76 *Id.* at ¶ 500.

77 CLEC Coalition St. 1.0, 46-47.

78 *TRO*, ¶ 451.

Under Verizon's interpretation of the "likely to continue" standard, the only evidence that would demonstrate that a carrier is *not likely to continue* is the filing of a notice of termination of service with the Commission:

> A. (Mr. West) It means two things to me. It means you need some definitive, very powerful evidence like somebody has issued a notice that they're going to terminate service, to say they're not likely to continue.
>
> Q. Well, that means they're not likely to continue. What does it mean if they're likely to continue?
>
> A. (Mr. West) Well, in the alternative, without some very powerful indication like that, we believe they're likely to continue. I mean, these carriers have held themselves out as offering services to the mass market. We have on the ground evidence that they're serving the mass market. So, without some very clear, distinct, strong evidence that they're going to discontinue their service to the mass market –
>
> Q. So even though you know from press reports or from investigation, until the day before they file that notice, you have to assume that they're likely to continue?
>
> A. (Mr. West) I mean, that's what the *TRO* says.

Under Verizon's tortured interpretation of the *TRO*, if a CLEC on the verge of exiting the mass market has yet to file a service discontinuance notice, that CLEC cannot be disqualified as a trigger candidate. This position is directly contrary to the *TRO* directive to state commissions to examine as the "key consideration...whether the providers are currently offering and able to provide service, and are likely to continue to do so."[79]

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[79] *Id.*, ¶ 500.

4. The Trigger Candidates Relied Upon by Verizon Do Not Have the Ubiquitous Reach of UNE-P

As Mr. Gillan demonstrated in his initial testimony, under the *TRO*, the purpose of the self-provisioning trigger test is to demonstrate, through actual marketplace behavior, that carriers are not impaired without access to unbundled local switching because the qualifying trigger candidates have demonstrated an ability to serve the same market without ULS. In order for the comparison to be valid, however, it is important that the trigger candidates actually serve a geographic area that is comparable to the geographic area served today by carriers utilizing ULS. Indeed, in several instances, the FCC applied this reasoning in determining that various alternatives claimed by the ILECs to demonstrate non-impairment should be rejected. For example, the FCC determined that CMRS is not an intermodal alternative to unbundled local switching, in part based on its view that CMRS is not sufficiently ubiquitous:

> [W]e note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market.[80]

Ubiquity is clearly a critical dimension in the mass market, and the Commission must consider "how extensively carriers have been able to deploy [such] alternatives, to serve what extent of the market, and how mature and stable that market its."[81] Accordingly, the Commission cannot count mass market trigger candidates with a ubiquity materially less than UNE-P. The record of this proceeding indicates that every trigger candidate proposed by Verizon fails to serve a geographic area comparable to UNE-P. The self-provisioning trigger standard, therefore, has not been satisfied.

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80 *Id.* at n. 1549 (emphasis added).

81 *Id.*, ¶ 94.

5. The Commission Must Not Give Any Weight to the "Intermodal" Trigger Candidates Proposed by Verizon Because They Do Not Rely On ILEC Loops or Offer Service of Comparable Cost, Quality and Maturity

Although the FCC stated that the Commission could "consider" intermodal alternatives in the switching trigger analysis, it directed the Commission to review them carefully before determining whether, or if, they may legitimately meet the trigger standard. The *TRO* recognized that for most entrants in a world without unbundled local switching, access to the ILEC's loops will be critical. It would make little sense, therefore, to eliminate unbundled local switching (and thereby UNE-P) if the only alternative in a market was, for example, an entity that utilizes its own loops, like cable telephony providers. The FCC emphasized this point several times in the *TRO*. For example:

> Specifically, many of the [CLEC residential] lines cited by the incumbents are served by carriers that, for one reason or another, are able to use their own loops. We have made detailed findings that competitors are impaired without access to incumbents' voice-grade local loops. Indeed, no party seriously contends that competitors should be required to self-deploy voice-grade loops. Thus, for the typical entrant, entry into the mass market will likely require access to the incumbents' loops, using the UNE-L strategy. ... Indeed, as discussed above, a crucial function of the incumbent's local circuit switch is to provide a means of accessing the local loop.[82]
>
> ***
>
> We note that an important function of the local circuit switch is as a means of accessing the local loop. Competitive LECs can use their own switches to provide services only by gaining access to customers' loop facilities, which predominantly, if not exclusively, are provided by the incumbent LEC. Although the record indicates that competitors can deploy duplicate switches capable of serving all customer classes, without the ability to combine those switches'

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[82] *Id.* at ¶ 439, emphasis supplied

> with customers' loops in an economic manner, competitors remain impaired in their ability to provide service. Accordingly, it is critical to consider competing carriers' ability to have customers' loops connected to their switches in a reasonable and timely manner.[83]

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In considering evidence regarding trigger candidates that do not rely on ILEC unbundled loops, the *TRO* instructs the Commission to give such evidence less weight in the trigger analysis than evidence regarding a self-provisioning trigger candidate that relies on ILEC unbundled analog loops (i.e., a UNE-L based provider). Specifically, the *TRO* states: "We recognize that when one or more of the three competitive providers is also self-deploying its own local loops, this evidence may bear less heavily on the ability to use a self-deployed switch as a means of accessing the incumbents' local loops."[84] Notably, a self-provisioning switch trigger candidate that does not rely on the ILEC's loops provides no evidence that problems with the hot-cut process (which formed the basis of the FCC's national finding of impairment) have been addressed.

Verizon relies heavily upon intermodal carriers, including Comcast, RCN and Adelphia. There are a number of reasons why the Commission should assign no weight to cable telephony providers as self-providing switch trigger candidates. To begin, it is important to again point out that the source of the national finding of impairment (the hot-cut process) is not rebutted by the presence of a CLEC that does not rely on access to incumbent loops. As the FCC found:

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83 *Id.* at ¶ 429, emphasis supplied.

84 *Id.* at ¶ 501, n.1560.

> ...both cable and CMRS are potential alternatives not simply for switching, but for the entire incumbent LEC telephony platform, including the local loop. We are unaware of any evidence that either technology can be used as a means of accessing the incumbents' wireline voice-grade local loops. Accordingly, neither technology provides probative evidence of an entrant's ability to access the incumbent LEC's wireline voice-grade local loop and thereby self-deploy local circuit switches. Rather, competition from cable telephony and CMRS providers only serves as evidence of entry using both a self-provisioned loop and a self-provisioned switch.[85]

Second, while the *TRO* does permit States to consider intermodal alternatives, it advises that: "In deciding whether to include intermodal alternatives for purposes of these triggers, states should consider to what extent services provided over these intermodal alternatives are comparable in cost, quality, and maturity to ILEC services."[86] Thus, any time an intermodal trigger candidate is considered, the nature of the mass market voice services it offers must be examined before declaring the company has satisfied the self-provisioning trigger. Verizon conducted no such analysis:

> Q. What kind of study did you or Verizon undertake in determining whether or not Comcast and RCN provide services of similar cost, quality and maturity? Let's start off with the cost.
>
> A. (Mr. West) We didn't.
>
> Q. You didn't?
>
> A. (Mr. West) And I don't think it's something that you need to study. It's something you need to observe. If the cable telephony product were absurdly expensive or of inferior quality, nobody would subscribe to it. The fact that people do subscribe to it is exactly the sort of evidence that we're looking for when evaluating these very bright line objective terms.

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85 *Id.* at ¶ 446, footnotes omitted.

86 *Id.* at ¶ 499, n.1549, emphasis supplied.

> Q. Okay. Then let's talk about that. First of all, how much does Verizon's baseline local voice product cost in Pennsylvania on the average say in Harrisburg?
>
> A. (Mr. West) I don't have those numbers with me.
>
> Q. Did you look at those numbers before you put your testimony together here for this case?
>
> A. (Mr. West) No, I didn't; and, again, I don't think you need to.
>
> Q. Well, the says that you need to when you're looking at intermodal alternatives, which is why I bring it up.[87]

In light of the absence of any evidence by Verizon that the intermodal cable telephony candidates it proffers provide mass market service to business and residential customers that is equal in cost, quality and maturity to the services Verizon offers, these candidates must be rejected.

6. The Commission Must Eliminate as Triggers the ILEC Affiliates Relied Upon by Verizon

The FCC held that the "competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other."[88] The FCC added that affiliated companies will be counted together as a single entity in the trigger analysis. The FCC held that this restriction is necessary to prevent the ILECs from "gaming" the trigger criteria. It also is important that "CLEC affiliates" of nearby ILECs be carefully reviewed, to assure that the CLEC affiliate is not benefiting from its affiliation with an incumbent in a manner that no unaffiliated CLEC could match.

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87 Tr., 268-269.

88 *TRO*,¶ 499.

Verizon proffers Commonwealth, D&E Systems, and Penn Telecom as trigger candidates. These three carriers, as is clear from the record of this proceeding, are adjuncts of ILECs that use their parents' switches to serve out-of-territory customers. As Verizon Witness West acknowledged in response to questioning by Mr. Barber of AT&T, each of these three carriers are affiliates of independent phone companies in Pennsylvania who lease switching capacity from their parents or affiliates.[89] Verizon's position, nonetheless, is that it is appropriate to include affiliates of independent companies as triggers, even though activity by such companies provides no evidence of competitive deployment" Of switching to serve mass market customers.

The Commission should exclude these carriers from consideration as switch triggers in this proceeding. Each of these carriers benefits from its affiliation with an ILEC in a manner that is unattainable by any other CLEC. As such, their presence as a mass market service provider does nothing to demonstrate that an unaffiliated CLEC is not impaired without access to ILEC-provided switching.

7. The Commission Must Exclude from Consideration as Switch Triggers Carriers Who Are Providing Only De Minimus Competitive Activity in Pennsylvania

A CLEC must be providing, on an active basis, voice service to both small business and residential customers in order to be considered a switch trigger. Several of Verizon's trigger candidates are providing such a de minimus amount of mass market service

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[89] Tr., 141-149. Mr. West specifically acknowledged that ***BEGIN PROPRIETARY*** ***END PROPRIETARY***See also, Tr., 313.

that they cannot legitimately be certified as meeting the trigger standard. For example, Verizon relies upon Adelphia as a trigger in the Pittsburgh MSA even though according to Verizon's count Adelphia provides only ******BEGIN PROPRIETARY*** ***END PROPRIETARY*** Similarly, Verizon relies upon ******BEGIN PROPRIETARY*** ***END PROPRIETARY***

Verizon itself readily acknowledges that the vast majority of the UNE-P lines in the Commonwealth are being used to serve residential and small business customers throughout the State.[90] Therefore, the Commission should reject Verizon's attempt to have it conclude that impairment has been overcome where there is only a *de minimus* level of switched-based competitive penetration in the mass market, as is shown by the trigger candidates proffered by Verizon. Such a de minimus level of mass market activity clearly does not demonstrate that actual switched-based mass market competition exists.[91] The Commission must conclude the obvious—that such a low level of competition is simply not a rational basis upon which to find that impairment has been overcome.

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90 Tr. 131-132.

91 *TRO*, at ¶ 438.

V. VERIZON HAS FAILED TO DEMONSTRATE THAT IT SATISFIES EACH OF THE REQUIRED TRIGGER CRITERIA AND ITS PETITION FOR RELIEF MUST BE REJECTED

Each of the criteria for the self-provisioning trigger are rooted in the *TRO* and each is tied to one of the specific rationales or findings the FCC made in establishing the trigger analysis as the "sudden death" playoff of the impairment analysis. It is up to the Commission to give effect to the trigger framework, in the form of an informed analysis of the trigger criteria established by the FCC. Only by applying judgment, experience and knowledge of local competitive conditions can the Commission implement the switching triggers as they are formulated in the *TRO*.

The Commission, as evidenced by the extensive record herein, must recognize the market reality in the trigger analysis. Today, UNE-P is responsible for the vast majority of the bundled services competition that is reshaping the voice services marketplace. Only UNE-P has enabled competition to reach broadly and deeply into both urban and rural markets throughout Pennsylvania. As Mr. Gillan indicated in his direct testimony, CLECs utilizing UNE-P to serve mass market customers have brought competition to every Verizon exchange in Pennsylvania, irrespective of the size of the exchange.[92] The largest collective purchasers of UNE-P, are the new wave of competitive entrants that rely on UNE-P to bring fresh energy and innovative ideas and services to this market segment, including each member of the CLEC Coalition. More than 40% of the UNE-P lines are purchased by non-IXC CLECs, demonstrating the importance of

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[92] CLEC Coalition St. 1.0, 15.

UNE-P to reducing entry barriers in the POTS market.[93] Indeed, in Pennsylvania, carriers using UNE-P serve 7.8% of the market, or 442,000 lines.[94]

Before determining that UNE-P availability should be diminished or eliminated based on evidence of "triggers," the Commission must have reasonable assurance from the record evidence that, in the real world, a UNE-L-only strategy would offer a comparable alternative (in terms of size and scope) to the statewide competitive choices that CLECs already offer to the mass market today using UNE-P. The record here provides no such assurances.

VI. CONCLUSION

Verizon has not satisfied its burden of proof to demonstrate that the fact-based triggers of the *TRO* have been met with respect to ULS. Verizon's claims of non-impairment are

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93 *See UNE-P Fact Report*, published by the PACE Coalition (July 2003).

94 *See PACE State Report Card*, published by the PACE Coalition (Jan. 26, 2004).

simply the result of its own counting exercise, and creative interpretations of the trigger standard contained in the *TRO*. Verizon's petition for relief therefore must be rejected.

Respectfully submitted,

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February 17, 2004

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I, Ross A. Buntrock, hereby certify that I have this 17th day of February, 2004, served a true copy of the public and proprietary versions of the "Main Brief of ARC Networks, Inc., d/b/a InfoHighway Communications Corp., Broadview Networks, Inc., BullsEye Telecom, Inc., McGraw Communications, Inc. and Metropolitan Telecommunications of PA, Inc., d/b/a MetTel ("CLEC Coalition") upon the persons below via electronic and UPS overnight, in accordance with the requirements of 52 Pa. Code §§1.4 and 5.502:

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February 17, 2004

VIA UPS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, Pennsylvania 17120

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

Main Brief of the Loop/Transport Carrier Coalition

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission, please find an original and nine (9) copies of the public version of the Loop/Transport Carrier Coalition's[1] Main Brief in the above captioned docket. An original and nine (9) copies of the proprietary version of this filing is also included in the enclosed sealed envelope. Please date stamp the duplicate and return it in the provided envelope. Please feel free to contact Erin Emmott at (202) 955-9766 if you have any questions.

DOCUMENT FOLDER

Respectfully submitted,

Erin W Emmott

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

Enclosures

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

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

Public Version

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE LOOP/TRANSPORT CARRIER COALITION

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February 17, 2004

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PUBLIC VERSION

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I. INTRODUCTION AND SUMMARY

The Loop/Transport Carrier Coalition ("LTCC" or the "Coalition")[1], through its undersigned counsel and pursuant to the schedule established at the prehearing conference on November 25, 2003,[2] submits this Main Brief to the Pennsylvania Public Utilities Commission ("Commission") in the above captioned proceeding. Each member of the LTCC is a certificated competitive local exchange carrier ("CLEC") in Pennsylvania and provides competitive choices, savings, innovations that are only available as a result of access to unbundled dedicated transport and high capacity loops.

In the *Triennial Review Order* ("*TRO*"),[3] the Federal Communications Commission ("FCC") determined that CLECs are impaired without access to dedicated transport and high capacity loops at the national level. As a result, absent a finding by this Commission establishing non-impairment, incumbent local exchange carriers ("ILECs") in Pennsylvania must continue to provide CLECs with access to unbundled loops and dedicated transport at the DS1, DS3, and dark fiber capacity levels throughout the Commonwealth.

The FCC provided specific guidance in identifying and defining the triggers to be used to determine non-impairment. These triggers are both route-specific and capacity specific.

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

2 *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Network Elements*, Docket No. I-00030099, Procedural Order (Oct. 3, 2003) ("*Procedural Order*"); *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements*, Docket No. I-00030099, Second Prehearing Order (Nov. 25, 2003) ("*Second Prehearing Order*").

3 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, FCC 03-36 (rel. Aug. 21, 2003).

Although each trigger varies slightly in its applicability and its wording, the purpose of each is the same. The triggers are about identifying real choices available in the marketplace. Or, as the FCC put it, the triggers rely on "actual competitive deployment" to determine whether a requesting carrier is impaired on a route or at a location.[4] The triggers are not a theoretical exercise or an attempt to identify what *could* be deployed in the market. Neither of these approaches provides any assurance to requesting carrier that, when the carrier needs a loop to serve Customer A or when the carrier needs transport between central office A and central office Z that viable alternatives are available to that carrier in the market. More importantly, neither of these approaches are consistent with the triggers themselves. As explained below, the triggers can and should only be satisfied when a requesting carrier has real alternatives available on a specific route or at a specific customer location to obtain the necessary dedicated transport or loop facilities to reach their customers. These alternatives can be demonstrated under the triggers either by a showing that the requisite number of wholesale providers are ready and willing to provide the service at the capacity needed or by a showing that the actual commercial deployment by a sufficient number of carriers demonstrating that the requesting CLEC could deploy its own facilities to serve its own needs. In short, the triggers must be rigorously applied so that they are satisfied only when, in fact, a requesting carrier is not impaired on that route or at that location. Without such a rigorous standard, there runs a risk of erroneous findings of "non-impairment" on a particular route or at a specific customer location, leaving carriers no option but to purchase the necessary facilities from the ILEC at high special access prices.

The Commission must find, in evaluating the record of this proceeding, that Verizon Pennsylvania and Verizon North (collectively, "Verizon") has failed to meet its burden

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[4] *Id.*, ¶ 335.

of proof. The record evidence in this case clearly demonstrates that the triggers for dedicated transport and high capacity loops have not been met. Verizon's case is a house of cards built upon generalizations and "reasonable assumptions," vague concepts of relevant services, and enough "heads I win, tails you lose" selectivity to turn the FCC's triggers on their head. This approach must be rejected. Due to their practical, fact specific nature, the triggers require granular evidence to be applied when making a determination of non-impairment. The best source of that evidence comes from the CLECs themselves. The problem with Verizon's case is not that the evidence is not in the record – it is for most of the trigger candidates and it easily could have been for the rest if Verizon had only asked. Rather, the problem is that Verizon chose to ignore that evidence because it did not support its case. If the Commission relies on the actual evidence in the record, it will be clear that while there is substantial deployment of competitive facilities throughout Pennsylvania, that deployment rises to the level of real alternatives at the granular level on only five transport routes and at most 26 customer locations throughout Pennsylvania.

This brief provides an overview of the legal standard the Commission must apply in making its determinations under the loop and transport triggers. Then, the brief discusses the failures of Verizon's case to satisfy the route-specific and capacity-specific trigger criteria. Finally, the brief provides an analysis of the CLEC-supplied record evidence, which demonstrates that at most a few routes or a few customer locations can satisfy the triggers at this time.

II. STATEMENT OF THE CASE

In its October 3, 2003 *Procedural Order* the Commission, pursuant to the dictates of the *TRO*, indicated that in order to rebut the national finding of impairment with respect to wholesale dedicated transport on a specific route, Verizon would be required to demonstrate that

there are: (1) two or more non-affiliated providers that have developed their own transport facilities that are operationally ready to provide dedicated DS1 transport, DS3 transport or dark fiber transport[5] along the particular route; (2) offer transport on a widely available basis; (3) the facilities terminate in a collocation arrangement; and (4) reasonable non-discriminatory access is obtainable through a cross-connect of the collocation arrangement at teach end of the transport route.[6]

With respect to self-provisioned dedicated transport on a specific route, Verizon would be required to demonstrate that there are: (1) three or more non-affiliated providers that each have deployed their own transport facilities; (2) the carriers are operationally ready to use those facilities to provide dedicated DS3 or dark fiber[7] transport along the particular route; and (3) the facilities terminate in a collocation arrangement at each end of the transport routes.

In addition, in the *Procedural Order* the Commission, again pursuant to the dictates of the *TRO*, indicated that in order to rebut the national finding of impairment with respect to wholesale high capacity loops to a specific customer location, Verizon would be required to demonstrate that there are: (1) two or more non-affiliated providers that have deployed their own DS1 facilities, DS3 facilities or dark fiber facilities;[8] (2) offer wholesale access to their facilities; and (3) the facilities reach the entire customer location.[9]

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5 With respect to dark fiber facilities, the Commission acknowledged that the facilities must be operationally ready for lease or sale.

6 *Procedural Order,* 15-16.

7 With respect to dark fiber facilities, the Commission acknowledged that the facilities are required to be obtained on a long-term indefeasible RTU basis.

8 With respect to dark fiber facilities, the Commission acknowledged that the facilities require a demonstration of deployment on a long-term indefeasible RTU basis.

9 *Procedural Order*, 12-13.

With respect to self-provisioned high capacity loops to a specific customer location, Verizon would be required to demonstrate that there are: (1) two or more non-affiliated providers that have deployed their own DS3 facilities; (2) each deployed its own facilities at that location and is serving customers via those facilities at that location; or (3) each deployed DS3 facilities by attaching its own optronics to activate dark fiber transmission facilities obtained on a long-term indefeasible right-to-use (TRU) basis and is service customers via those facilities at that location.[10] Again, this Commission acknowledged the *TRO's* burden on Verizon to prove non-impairment.[11]

On October 31, 2003, Verizon petitioned this Commission to initiate a proceeding pursuant to the *TRO* and notified the Commission that it would attempt to rebut the national finding of impairment for dedicated transport by demonstrating that, based on "evidence drawn largely from internal and public sources, that other carriers have deployed fiber transport routes in Philadelphia, Pittsburgh, and Harrisburg meeting one or both of the FCC's triggers."[12] Verizon's loop case was not presented until December 19, 2003, at which point Verizon notified the Commission that it would attempt to rebut the national finding of impairment for high capacity loops by demonstrating that "certain customer locations that meet the FCC's high capacity loop triggers, based on the information the CLECs have provided in discovery."[13] The Commission initiated a proceeding presided over by Administrative Law Judges Michael C. Schnierle and Susan D. Colwell. The Commission held a Prehearing Conference on November 25, 2003, at which time, interventions of parties were granted, and a procedural schedule was

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10 *Id.*, 13.

11 *Id.*, 12.

12 Verizon's Direct Testimony of Berry/Peduto (Verizon Statement 1.0) at 5.

13 Supplemental Direct Testimony of West/Peduto (Verizon Statement 1.1) at 3. Verizon Statement 1.0 originally was filed by Mr. Peduto and Ms. Berry, but Mr. West has subsequently adopted Ms. Berry's testimony in Verizon Statement 1.1.

established. Pursuant to the schedule set forth in the *Second Prehearing Order*, hearings were held in Harrisburg from January 26 through January 29, 2004.[14]

III. IMPAIRMENT STANDARD

A. THE FCC'S NATIONAL FINDING OF IMPAIRMENT FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT.

In creating the granular, fact specific triggers set forth under the *TRO*, the FCC had three policy objectives at the forefront. It is essential that this Commission keep these policy objectives in mind when performing its impairment analysis. First, the *TRO* continues the FCC's implementation and enforcement of the federal Act's market-opening requirements. This objective is critical because it recognizes the importance of providing a regulatory environment that is conducive to competition, particularly competition from facilities-based CLECs using unbundled loops and transport. Second, the *TRO* strives to apply unbundling as Congress intended: with a recognition of the market barriers faced by new entrants and the societal benefits and costs of unbundling. This is critical because it recognizes the balance that is required to ensure that all consumers are able to obtain services from multiple suppliers competing for their business. This objective further recognizes the role that sharing of the network must play in delivering better services and lower costs to consumers through competition. Put simply, access to unbundled network elements ("UNEs") is key to the ability of a small entity like SNiP LiNK to offer integrated voice and Internet data services to businesses, government entities and schools in its service territory. Finally, the *TRO* establishes a regulatory foundation that seeks to ensure that investment in telecommunications infrastructure will generate substantial, long-term benefits for all consumers. The trigger analysis is intended to

[14] All references to the official transcript from the hearings will be to "Tr."

allow competitors to build the revenues necessary to support that infrastructure in a rational and sustainable manner.

In determining whether impairment exists, the FCC applied the following standard: "[a] requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic."[15] The FCC found that "[a]ctual marketplace evidence is the most persuasive and useful evidence to determine whether impairment exists." The FCC elaborated that it is particularly "interested in the relevant market using non incumbent LEC facilities."[16]

Based on the record before it, the FCC made a nationwide finding of impairment for high capacity loops (DS1, DS3 and dark fiber) and dedicated transport (DS1, DS3, and dark fiber).[17] As a result, FCC rules require that competing carriers have access to unbundled loops and dedicated transport everywhere unless a specific route or customer location has been found to lack impairment under the trigger analysis.

In making a national finding of impairment for loops and dedicated transport, the FCC found that evidence of non-impairment was isolated and exceptional. As the FCC explained, it made "affirmative national findings of impairment and non-impairment for transport at the national level, as supported by the record."[18] The FCC, however, found that the evidence in the record was not sufficiently detailed for it to identify any specific customer locations or specific routes "where carriers likely are not impaired without access to unbundled

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15 *TRO* ¶ 7.

16 *Id.*

17 *See Id.*,¶ 202 and ¶ 359 (stating that it finds "on a national level that requesting carriers are impaired without access to unbundled dark fiber transport facilities ... [DS3 transport and DS1 transport])."

18 *Id.*, ¶ 394.

transport in some particular instances."[19] Therefore, it delegated to the states, "the fact-finding role *of identifying on which routes requesting carriers are not impaired* ... when there is evidence that two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale transport service completing that route." [20]

It is important to realize that evidence of non-impairment will be particularized and will vary from route to route or location to location. For example, for loops, the FCC found virtually no evidence of self-deployment of DS1 loops, and found "scant evidence of wholesale alternatives" for DS1 loops.[21] For transport, the FCC found that "alternative facilities are not available to competing carriers in a majority of areas."[22] The same holds true in this proceeding. As discussed in Section V. *infra*, based on the responses provided by the CLECs to the Commission's information request and various parties' discovery requests, at most approximately five transport routes and 26 customer locations could possibly satisfy the FCC's fact-based triggers, demonstrating that impairment without access to Verizon UNEs is real in Pennsylvania.

Critically, the FCC required the trigger-based impairment analysis to be conducted separately for DS1, DS3 and dark fiber capacities. Separate analysis is necessary because actual deployment will vary not only route to route or location to location but also by capacity levels, particularly for DS1 level UNEs that carriers use. One of the most significant deficiencies in Verizon's trigger evidence is its failure to apply the triggers separately to DS1, DS3, and dark fiber.

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19 *Id.*

20 *Id.*, ¶ 412 (emphasis added).

21 *Id.*,¶ 298 (for self deployment of DS1 loops), *Id.*, ¶ 325 (for wholesale deployment of DS1 loops).

22 *Id.*, ¶ 387.

B. TRANSPORT TRIGGERS

In making its determination that carriers are impaired with out access to dedicated transport at the DS1, DS3 and dark fiber capacity levels, the FCC recognized "that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas."[23] The FCC concluded that it would be extremely difficult to recover these costs and to be a viable competitor in the marketplace. Indeed, the FCC concluded that "[d]eploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs."[24] The FCC elaborated that the costs of self-deployment include collocation costs, fiber costs, costs to trench and lay fiber, and costs to light the fiber and that CLECs also encounter delays in constructing dedicated transport due to having to obtain rights-of-way and other permits.[25]

The FCC defined a transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competitive providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'."[26] This statement, made in the context of wholesale availability equally applies to self provisioned transport. In order to offer service, a carrier must have actual facilities in place between the locations; in order to self-

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23 *Id.*, ¶ 360 (citations omitted).

24 *Id.* ¶ 371 (citations omitted).

25 *Id.*

26 *Id.*,¶ 401 (emphasis added).

provisioning service, a carrier must be providing something to itself. That is, it must have *active* facilities between the A and Z points.

The triggers for wholesale dedicated transport require a finding of non-impairment only if two or more unaffiliated providers (1) have deployed their own facilities along the route and are operationally ready to use those facilities to provide transport on the route; (2) are willing immediately to provide on a widely available basis, dedicated transport along the route; (3) have facilities that terminate in a collocation arrangement at each end of the route; and (4) requesting telecommunications carriers have reasonable and non-discriminatory access to the unaffiliated provider's facilities through a cross-connect to the competing provider's collocation arrangement." The wholesale dedicated transport trigger applies at the DS1, DS3 and dark fiber capacity levels.[27]

The triggers for self-provisioning dedicated transport require a finding of non-impairment only if three or more unaffiliated providers (1) have deployed their own facilities along the route; (2) are collocated on both ends of the route; and (3) are operationally ready to use those facilities to provide transport between the collocation facilities on the route. The self-provisioning dedicated transport trigger applies at the DS3 and dark fiber capacity levels.[28]

C. LOOP TRIGGERS

In making a national finding of impairment for high capacity loops at the DS1, DS3 and dark fiber capacity levels, the FCC based its finding that competing carriers are impaired without high capacity loops at the dark fiber, DS3, and DS1 capacity levels in large part on the fact that the costs to construct loops and transport are fixed and sunk. The FCC stated that

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27 47 C.F.R. §§51.319(e)(1)(ii) (for DS1), 51.319(e)(2)(i)(B) (for DS3), and 51.319(e)(3)(i)(B) (for dark fiber).

28 47 C.F.R. §§ §51.319(e)(2)(i)(A) (for DS3) and 51.319(e)(3)(i)(A) (for dark fiber).

"[b]ecause the distribution portion of the loop serves a specific location, and installing and rewiring that loop is very expensive, most of the costs of constructing loops are sunk costs."[29] The FCC concluded that it would be extremely difficult to recover these construction costs and be a viable competitor in the marketplace.

The FCC's definition of a loop is "the connection between the relevant service central office and the network interface device ("NID") or equivalent point of demarcation at a specific customer premises." In addition, the loop must permit the CLEC to access all units within a customer location, such as all tenants in a multi-tenant building or all buildings in a campus environment.

D. BURDEN OF PROOF FOR DEMONSTRATING NON-IMPAIRMENT IS ON VERIZON.

Given the nationwide finding of impairment, Verizon properly bears the burden of proof to demonstrate that the triggers are satisfied. The FCC has found that, absent particularized, granular evidence, high capacity loops at all customer locations and dedicated transport on all routes between incumbent LEC central offices should be made available as UNEs. The burden to come forward with this information falls on the party that seeks to rebut the FCC's national finding of impairment. In fact, this Commission acknowledged as such at the commencement of this proceeding. Specifically, this Commission stated that

> [g]iven the national findings of impairment, we tentatively conclude there is impairment in Pennsylvania. Therefore, any ILEC desiring to contest the presumption of impairment must bear the burden of proving non-impairment.[30]

Verizon quotes the *TRO* out of context when it contends that neither Verizon nor CLECs bear the burden of proof. In making a national finding of impairment, the FCC did not

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29 *TRO* ¶ 205.

30 *See Procedural Order*, 12.

require either the ILECs or the CLECs "to prove or disprove the need for unbundling."[31] That statement, however, applied only to the FCC's *initial* analysis of impairment. The FCC follows a different approach after it has made its initial finding of impairment. Under the triggers, ILECs are permitted to challenge the FCC's national finding of impairment by raising evidence that the triggers have been satisfied at particular locations or on certain routes. States, however, are only required to "address routes for which there is relevant evidence in the proceeding that the route satisfies one of the triggers...."[32] Putting these two requirements together, it is clear that in order to rebut the national finding of impairment, a party challenging the FCC finding must come forward with sufficient evidence to demonstrate that the impairment triggers are satisfied. If that party fails to present evidence in the record that is sufficient to demonstrate that the triggers are satisfied, then the national finding remains valid and the ILEC is obligated to continue to provide the facility as an unbundled network element. Since Verizon indisputably is the party seeking to challenge the FCC's finding, it is the party that bears the burden of proof to demonstrate that the triggers are satisfied.

Under Pennsylvania law, in determining whether a party has satisfied its burden of proof, "care must be exercised to ensure that the material facts underlying the Commission's decision are supported by substantial evidence."[33] The term "substantial evidence" has been defined by the various Pennsylvania courts as being such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. It is important to note that "more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be

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31 *TRO* ¶ 92.

32 *Id.*,¶ 417.

33 2 Pa. C.S. §704.

established."[34] The Commission may not base a finding of fact on hearsay evidence unless it is corroborated by other reliable evidence.[35] Based on this standard, the Commission can only make a finding of non-impairment on a particular route or at a specific customer location if Verizon has put forth the necessary evidence to support its claims that impairment is not occurring on the identified routes and at the specific customer locations.

IV. VERIZON HAS FAILED TO PRODUCE FACTS TO DEMONSTRATE THE LOOP AND TRANSPORT TRIGGERS ARE SATISFIED

In this case, Verizon challenges 899 transport routes in Pennsylvania and 63 customer locations as meeting one or both of the FCC's triggers. Verizon contends that each trigger is satisfied for each applicable capacity, DS1, DS3 and dark fiber.[36] As demonstrated below, Verizon has failed to present sufficient evidence in the record for the Commission to conclude that the applicable triggers are satisfied. Consequently, the Commission may not make a finding of non-impairment based on this record for any of the routes or at the customer locations identified by Verizon.

Because Verizon's presentation melds its trigger evidence together, relying on an assumption of channelization to provide capacity-specific "evidence," it is not possible to evaluate the triggers separately for each capacity level, as the Triennial Review Order requires. Therefore, the LTCC provides the following analysis, which addresses each trigger generically, rather than by capacity.

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34 *See Norfolk & Western R. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *see also Murphy v. Pa. Dept. of Pub. Welfare*, 480 A.2d 382 (Pa. Cmwlth. 1984).

35 *See Walker v. Unemployment Compensation Board*, 367 A.2d 366, 370 (Pa. Commw. Ct. 1976).

36 *See* Verizon Statement 1.0, Verizon Statement 1.1, and Rebuttal Testimony of West/Peduto (Verizon Statement 1.2).

1. Wholesale Dedicated Transport Triggers

Section 51.319(e)(1)(ii) of the FCC's Rules require proof of the following to satisfy the wholesale DS1 trigger: For each "A" to "Z" transport route between ILEC central offices, there must be record evidence that ***two or more*** unaffiliated providers

> (1) have deployed their own DS1 facilities along the route and are operationally ready to use those facilities to provide DS1 transport on the route;
>
> (2) are willing immediately to provide on a widely available basis, dedicated DS1 transport along the route;
>
> (3) have facilities that terminate in a collocation arrangement at each end of the route; ***and***
>
> (4) that requesting telecommunications carriers have reasonable and non-discriminatory access to the unaffiliated provider's facilities through a cross-connect to the competing provider's collocation arrangement.[37]

Verizon alleges that there are 15 carriers who offer wholesale dedicated transport between two ILEC wire centers in Pennsylvania. Verizon also alleges that this Commission should assume that these carriers offer wholesale services on all routes where they have facilities in Pennsylvania. Further, Verizon alleges that this Commission should assume that these carriers offer wholesale dedicated transport at both the DS1 and DS3 capacities on all routes where they have facilities in Pennsylvania. None of these assumptions are sufficient to satisfy Verizon's burden of proof, particularly in light of the evidence provided by the carriers in this proceeding.

a. Verizon has failed to provide any reliable evidence concerning the five non-party trigger candidates.

Verizon's own witness agrees that the best evidence about a carrier's facilities comes from the carriers themselves.[38] Though this evidence was available to Verizon through

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37 *See* 47 C.F.R. §51.319(e)(1)(ii) (emphasis supplied).

38 Tr., 57.

both discovery and, if necessary, a subpoena process, there is no evidence in the record from five of the 15 wholesale trigger candidates. These five candidates are ***BEGIN PROPRIETARY*** ***END PROPRIETARY*** None of these trigger candidates are parties to this proceeding, and none were identified as mandatory respondents to the Commission's Appendix A discovery questions. Moreover, despite assertions in its Supplemental Testimony that data from these entities would support its case, Verizon did not seek evidence via subpoena from any of these parties.[39]

Because Verizon made no attempt at all to pursue the "best evidence" concerning these carrier's facilities, Verizon's own self-serving assertions concerning the extent of these carrier's facilities should be given no weight. Moreover, Verizon's claim that the burden is on the CLECs to rebut Verizon's claims is incorrect with respect to all CLECs, but rings especially hollow with respect to the non-party trigger candidates on which Verizon relies. Verizon, not any other party in this proceeding, has made the facilities of these entities an issue in this proceeding. Verizon, not any other party to this proceeding, benefited from the inclusion of these entities as trigger candidates and Verizon had adequate opportunities to obtain relevant evidence from the entities themselves. Its failure to seek out confirmation of those facilities is a sufficient basis to give no weight to Verizon's assertions about these entities' facilities.

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[39] In fact, it was the LTCC, not Verizon, that pursued responses from one of the trigger candidates in order to illustrate the inaccuracy of Verizon's assertions. Using the subpoena process provided by the Commission, the LTCC served a subpoena on ***BEGIN PROPRIETARY*** ***END PROPRIETARY*** asking it to verify the routes asserted by Verizon as satisfying the triggers. That carrier's responses were entered into the record of this proceeding as SNiP LiNK Hearing Exhibit 1 (proprietary version).

b. Verizon ignored the discovery responses of trigger candidates when the evidence contradicted its position.

Verizon's efforts to compile sufficient and reliable evidence to support its claims are deficient at best. More troubling is Verizon's blatant disregard for the evidence in the record when that evidence did not support its assertions. Several carriers, such as *****BEGIN PROPRIETARY***** *****END PROPRIETARY***** stated in their responses to the Commission's Appendix A discovery requests, that they did not provide wholesale transport services in Pennsylvania.[40] Yet Verizon chose to ignore this information, and instead, put forth its own claims of evidence of wholesale dedicated transport at the DS1 capacity, even when those claims directly contradict statements made by the carrier to this Commission. Verizon does not present any valid reasons for disregarding the CLEC-supplied evidence about its own activities, which the CLEC obviously is in the best position to know. It is particularly important to rely on the CLEC-provided evidence in the application of the wholesale triggers, because the wholesale triggers require evidence that each wholesale carrier "is willing immediately to provide on a widely available basis" the proper level of transport.[41] The *TRO* specifically notes that the wholesale trigger "avoid[s] counting alternative transport facilities owned by competing carriers *not willing to offer capacity on their network on a wholesale basis.*"[42]

For similar reasons, the statements by the one non-party that supplied information in this proceeding should be credited. Asked specifically concerning the capacity at which it offers wholesale service, *****BEGIN PROPRIETARY***** *****END**

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40 *****BEGIN PROPRIETARY*****
*****END PROPRIETARY*****

41 47 C.F.R. § 51.319(e)(1)(ii).

42 *TRO* ¶ 414 (emphasis added).

PROPRIETARY* stated that it did not offer dedicated transport at the DS1 or DS3 levels.[43] Thus, this entity cannot be counted as a trigger candidate for DS1 and DS3 dedicated transport services.

c. Verizon's evidence of general willingness to wholesale is unreliable.

Not only does Verizon ignore the evidence in the record when the alleged trigger candidates state that they do not offer wholesale transport, but the evidence Verizon puts forth in lieu of the CLEC-provided evidence is unreliable. Instead of providing evidence that the wholesale providers it identifies are operationally ready to provide wholesale services and are doing so on a widely available basis, such as by demonstrating actual wholesale provisioning on each route, Verizon waters down the impairment standard and asks the Commission to *assume* wholesaling exists from the flimsiest statements made in inapplicable contexts.

For example, Verizon's reliance on Universal Access as a criterion for classifying a carrier as a wholesale provider is wholly unreliable. This information, which is based solely on the fact that a carrier is listed on the Universal Access website as a "supplier,"[44] does not provide evidence that a carrier is a wholesale provider of dedicated transport in Pennsylvania. First, there is no indication on the website what services are being provided by the carrier to Universal Access or what capacity the service is being offered.[45] It is possible, for example, that a "supplier" may provide long haul facilities to Universal Access in Pennsylvania that is accessed via a point-of-presence ("POP"). yet Verizon apparently considers this evidence of the provision of dedicated transport sufficient to satisfy the triggers. Second, there is no indication that any of the services allegedly offered at wholesale to Universal Access are being offered by the carrier in

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43 *See* SNiP LiNK Hearing Exhibit 1 (proprietary version).

44 Tr., 79.

45 *See* LTCC Cross Examination Exhibit 6.

Pennsylvania. Verizon made no attempt to verify this point. In light of the fact that many of the carriers identified on the Universal Access website do not provide telecommunications services in Pennsylvania, the mere fact that a carrier is listed as a "supplier" on a third party's website does not provide credible evidence that any service is provided in Pennsylvania.

Similar criticism applies to the use of a carrier's website for identifying a carrier as a wholesale provider in Pennsylvania. Websites contain promotional materials, and a certain amount of puffery can be expected. In fact, Verizon's own witness, asked to explain a seemingly overbroad assertion made in one carrier's website noted that the carrier websites "seemed like promotional materials, for the most part, to me."[46] Further, websites often contain broad statements of capabilities and general descriptions of offerings which are not limited to particular routes or particular locations.[47] Finally, the particular statements themselves are too imprecise to be used for purposes of this proceeding, as is illustrated by Mr. Peduto's claim that an IP transport service qualifies as "dedicated transport."[48] Yet, the FCC's definition of dedicated transport is the only definition that matters for applying the triggers.[49] Statements that ambiguously refer to "transport" are insufficient to demonstrate that what is being offered is dedicated transport as defined by the triggers.

Verizon itself acknowledges the shortcomings of company websites. For example, in its Statement 1.0, Verizon identified ***BEGIN PROPRIETARY*** *** END PROPRIETARY*** as a wholesale provider in Pennsylvania, based on, in part, its website. But after the carrier provided its responses to the Commission's

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46 Tr., 70. *See also* Tr., 76-77 (acknowledging websites contain offerings that may not be ubiquitously available under every circumstance, such as Verizon's own DSL service.)

47 *Id.*, 75-76 (acknowledging the statement "all major metropolitan areas" does not necessary mean every major city in the U.S., let alone Pennsylvania).

48 *Id.*, 74.

49 *Id.*, 63.

Appendix A discovery requests, Verizon reevaluated the information contained on the website and determined that this carrier did not offer wholesale dedicated transport in Pennsylvania.[50] Critically, Verizon did not perform such reevaluations for all carriers it claimed were wholesale providers based on information contained on their website.

In addition, reliance on the New Paradigm CLEC 2003 Report ("New Paradigm") as evidence that a carrier is a wholesale provider of dedicated access transport in Pennsylvania is also flawed. First, dedicated access transport is not defined in the New Paradigm report.[51] As such, it is unclear what services precisely the New Paradigm report was considering dedicated access transport when it reported that a carrier offers such a service. Thus, the classification of a carrier as providing "dedicated access transport" may not have any relevance whatsoever to this proceeding, where the FCC has given a specific definition to the transport services that are relevant.

Moreover, Verizon does not even trust the result it obtains from New Paradigm. Two of the carriers identified by Verizon as wholesale providers in Pennsylvania, *****BEGIN PROPRIETARY***** *****END PROPRIETARY***** were reported as not providing dedicated transport in the New Paradigm report,[52] yet (in a familiar tactic) Verizon chose to disregard this adverse information. This disregard for evidence, when taken into consideration with the inherent flaws in Verizon's reliance on the third party sources, exposes a "heads I win, tails you lose" mentality behind Verizon's evidence of wholesale service. Verizon is not free to choose only the most favorable evidence from the sources on which it relies. The

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50 *Id.*, 71.

51 *Id.*, 66-67 (acknowledging that the term "dedicated access transport" is not a defined term in the New Paradigm report).

52 *Id.*, 64-66.

fact that New Paradigm contradicts its position in at least two instances cannot simply be brushed under the rug by Verizon.[53]

Additionally, Verizon's reliance on a carrier having a CATT arrangement in any of Verizon's wire centers, as demonstrative of wholesaling in Pennsylvania is equally flawed. Verizon identified five carriers[54] as having a CATT arrangement in any of its wire centers, *****BEGIN PROPRIETARY*****

*****END PROPRIETARY***** Clearly, this example demonstrates that Verizon's assertion that a carrier has a CATT arrangement does not provide reliable evidence that a carrier is operationally ready to provide wholesale transport on a widely available basis.

In fact, Verizon does not present evidence that the CATT arrangements are complete or that they are operationally ready. According to Verizon's tariff, a carrier must

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53 Similarly, the fact that New Paradigm omits a large number of the carriers that Verizon claims are trigger candidates also undercuts the reliability and completeness of New Paradigm as a source.

54 *See* Main Brief Exhibit 1, Response of Verizon Pennsylvania, Inc. to Set I (Transport) Interrogatory No. 11, attached hereto.

55 *****BEGIN PROPRIETARY*****
*****END PROPRIETARY*****

undertake several steps in order to make CATT operational. These include the need to request one or more Relay Rack Splice Trays (see Verizon Tariff FCC No. 14, section 17.15.1(G)(3)) and to pay for facilities connecting the carrier's fiber to the CATT arrangement. In addition, the non-fiber carrier that seeks to buy service from a carrier at a CATT arrangement must also make its own arrangements in order to render the CATT facility operationally ready. The buyer, an "EIS" customer under the tariff, must purchase at its expense Verizon-provided connections to the CATT (see Verizon Tariff FCC No. 14). Verizon supplied no evidence that the CATT arrangements were operational. When the LTCC requested this information in discovery from Verizon, Verizon refused to respond, providing only a list of wire centers where Verizon claimed CATT arrangements "appeared to operational" based on a visual inspection.[56]

In summary, each of the four criteria used by Verizon to classify a carrier as a wholesale provider are unreliable. None of the criteria individually present evidence sufficient to classify a carrier as a wholesale provider of DS1 transport (or any level of transport, for that matter). The addition of these unreliable sources together does not make the sum any greater, particularly where, as here, Verizon opted to select only the favorable elements of each criterion and disregard the rest. As Verizon's own evidence supporting its claims contradicts its position in numerous ways and on numerous levels, little, if any weight should be afforded to Verizon's evidence of the wholesale provision of dedicated transport in Pennsylvania.

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56 *See* Main Brief Exhibit 2, Response of Verizon Pennsylvania, Inc. to Set I (Transport) Interrogatory No. 19, attached hereto. Looking for "blinking lights" is not sufficient to demonstrate that an arrangement is fully operational. *See* Verizon Statement 1.0, Attachment 7.A at 4.

2. Self-Provisioning Dedicated Transport Triggers

The FCC's triggers for self-provisioning dedicated transport require that this Commission maintain the national finding of impairment unless ***three or more*** unaffiliated providers

> (1) have deployed their own DS3 facilities along the route;
>
> (2) are collocated on both ends of the route; ***and***
>
> (3) are operationally ready to use those facilities to provide DS3 and/or dark fiber transport between the collocation facilities on the route.[57]

Verizon alleges that there are 23 carriers who self-provision dedicated transport between two ILEC wire centers in Pennsylvania. Verizon also alleges that this Commission should assume that these carriers are operationally ready to use these facilities to provide dedicated transport between two ILEC wire centers. As is the case for the wholesale dedicated transport triggers, none of these assumptions are sufficient to satisfy Verizon's burden of proof, particularly in light of the evidence provided by the carriers in this proceeding.

The self-provisioning trigger is intended to identify those transport routes where sufficient deployment of competitively owned facilities is present to demonstrate that *other competitors* (not the competitors that have deployed facilities) would not be impaired it they were to deploy their own facilities to serve the customers. The self-provisioning triggers rely on *indirect* evidence -- based on proven past deployment -- to demonstrate this non-impairment. For this reason, the Commission should be careful to interpret the self provisioning trigger in a way that ensures the actual deployment by similarly situated CLECs provides evidence that a CLEC without its own facilities does not face impairment. Indeed, the FCC specifically

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[57] *See* 47 C.F.R. § §51.319(e)(2)(i)(A) (for DS3) and 51.319(e)(3)(1)(A) (for dark fiber) (emphasis added).

cautioned that the self-provisioning trigger must exclude "unusual circumstances unique to [a] single provider that may not reflect the ability of other competitors to similarly deploy."[58]

a. Verizon asserts the Self-Provisioning Trigger is satisfied based on an erroneous assumption that every collocation arrangement can be connected.

As previously stated, the FCC's definition of a route is a connection between two ILEC wire centers. Verizon bases its dedicated transport case on the assumption that a carrier counts toward the self-provisioning trigger as long as the carrier has operational fiber fed collocation arrangements within each of the wire centers in question. What Verizon performed was nothing more than a rudimentary counting exercise, in which it simply identifies all of the collocation arrangements for a given CLEC, confirms that fiber optic facilities are present in the collocation arrangement, and then declares that transport routes exist between each collocation arrangement. This approach is deficient, in that it presents no evidence that the CLEC in question is providing transport service *between* the two ILEC wire centers, which is the FCC requirement.[59] For example, CLECs generally use collocation arrangements to aggregate unbundled loops that are destined for the CLEC's switch. There is a high probability that the equipment and fiber optics installed in a collocation arrangement are not being used to provide transport between two ILEC wire centers, but instead are being used to carry traffic from a wire center to a CLEC switch. This latter use is not "transport" within the meaning of the trigger. The FCC specifically limited transport to routes between two ILEC wire centers (or an ILEC wire center and an ILEC switch). To count as a transport route for purposes of the triggers, each collocation arrangement in question must be used as an endpoint for the transport of traffic

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58 *TRO* ¶ 329 at n.974.

59 See, e.g., 47 C.F.R. § 51.319(e)(2)(i)(A). A carrier must both have deployed its own transport facilities and be operationally ready to use those facilities to provide transport between the two ILEC central offices.

between the two ILEC wire centers. The FCC made this clear when it rejected ILEC proposals to use the existence of special access pricing flexibility to identify non-impairment. The FCC explained that the special access pricing flexibility standard relied on the existence of alternative carrier collocations, and that, "the measure may only indicate that numerous carriers have provisioned fiber from their switch to a single collocation rather than indicating that transport has been provisioned to transport traffic between incumbent LEC central offices."[60] Unless traffic is being routed between the two central offices, the facilities do not constitute a transport route for purposes of the triggers.

Verizon's argument for a "connect the dots" application of the dedicated transport triggers presupposes that all a carriers are capable of quickly modifying their network to deploy the necessary facilities in order to deploy the transport facilities between the wire centers. This simply is not the case. Carriers such as ***BEGIN PROPRIETARY***

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all state that their networks, in whole or in part, are not engineered to connect ILEC wire centers with each other. In fact, ***BEGIN PROPRIETARY***

END PROPRIETARY Even Verizon's own witness acknowledged that some modifications, such as the need to augment a collocation, would render a carrier not operationally ready to provide dedicated transport.[62]

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60 *TRO* ¶ 397.

61 ***BEGIN PROPRIETARY***
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62 Tr., 536.

Fundamentally, Verizon contends that it is not necessary that a carrier actually be able to self-provide dedicated transport; Verizon contends that a carrier is operationally ready to self-provide dedicated transport, despite not presently doing so on the route, so long as it is possible for it to modify its network to connect two wire centers.[63] This argument completely ignores the triggers' reliance on "actual commercial deployment" as its basis. The fact that a carrier could modify its network – even if it were true – does not demonstrate that a carrier *has already* done so. Moreover, Verizon itself admits that there are instances where it is unable to provide dedicated transport between wire centers due the unavailability of facilities on the specific route.[64] The existence of "no facilities" responses demonstrates that there is often a wide gap between what is theoretically possible on a route and what is available as a practical matter.

Indeed, the actions of the trigger candidates on these routes undercut Verizon's theory that connecting two ILEC central offices would be a "routine" endeavor. The record demonstrates that at least one carrier alleged to be self-providing transport in Pennsylvania is, in fact, purchasing substantial amounts of dedicated transport through special access from Verizon. Clearly, if that carrier were operationally ready to provision its own transport facilities, it would be foolish for it to special access to accomplish the same purpose. Yet, AT&T demonstrated that it pays over $100,000 per LATA, per month in Philadelphia and Pittsburgh to obtain dedicated access service from Verizon on the routes that Verizon alleges AT&T is a self-provisioner.[65] It begs the question, as pointed out by AT&T's witness Kirchberger, that if AT&T were

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63 *Id.*, 538.

64 *Id.*, 88.

65 *Id.*, 550.

"operationally ready and it was really no cost to [AT&T] to put this together, why would [AT&T] go out and spend $100,000 a month in that area on access routes?"[66]

Undoubtedly, AT&T is not the only trigger candidate that is purchasing special access from Verizon on routes where the entity is alleged to be providing its own facilities. The record does not contain this information, however, because Verizon objected to a discovery request from the LTCC asking Verizon to identify those instances where a trigger candidate is purchasing special access from Verizon.

3. Self-Provisioning Loop Triggers

The FCC's triggers for self-provisioning loops require that this Commission maintain the national finding of impairment unless ***two or more*** unaffiliated providers have deployed their own loops to a customer location and are serving customers at a DS3 (or dark fiber) level via those facilities.[67] Until December, Verizon did not offer a loop case in this proceeding. In fact, Verizon admitted that it was unaware of the "specific building to which other carriers have deployed high capacity loops."[68] After discovery, Verizon now believes that there are 4 carriers who have self-provisioned high capacity loops at the DS3 capacity level at 63 customer locations in Pennsylvania.[69]

In its Statement 1.1, Verizon provided a list of addresses of buildings where it alleges two or more carriers have deployed loops at the DS3 or higher level and asserts that this Commission should make a finding of non-impairment. However, Verizon does not demonstrate that the specific fact-based triggers have been met by each carrier at each location. Critically, of

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66 *Id.*, 552.

67 *See* 47 C.F.R. § 51.319(a)(5)(i)(A).

68 Verizon Statement 1.0, at 56.

69 Verizon Statement 1.1, Exhibit 7.

all the customer locations that Verizon claims are no longer impaired, Verizon performed no independent verification to see if it had provisioned unbundled loops to the carriers at those buildings.[70] Verizon did not confirm whether or not the trigger candidates purchased special access services from Verizon to serve the specific customer location.[71] Verizon took no independent steps inspect the 63 customer locations where it alleged impairment no longer existed.[72] Significantly, Verizon was able inspect approximately 100 central offices identified in its transport case as satisfying the triggers, yet chose to ignore all the buildings where it claimed non-impairment.[73] Verizon failed to confirm that the carriers had access to the entire building and was providing service at the DS3 capacity level only. Verizon did not even seek information from the building owners to confirm if the carriers were able to serve the entire building or were restricted to a specific floor or suite.[74]

4. Wholesale Loop Triggers

The FCC's triggers for wholesale loops require that this Commission maintain the national finding of impairment unless ***two or more*** unaffiliated providers have deployed their own loops to a customer location and offer DS1 (or higher) loops over its own facilities on a widely available basis. Each wholesale provider must have access to the entire customer location, including each individual unit within that location.[75]

Verizon alleges that 3 carriers offer wholesale loops at the DS1 capacity level for 3 customer locations in Pennsylvania. However, Verizon does not demonstrate that these 3

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70 Tr., 81.

71 *Id.*

72 *Id.*, 82.

73 Verizon Statement 1.0, at 46-47.

74 Tr., 82-83.

75 *See* 47 C.F.R. §51.319(a)(4)(ii).

carriers are currently offering DS1 loops over their own facilities at the 3 identified locations. A real, actual showing that these 3 carriers are offering the service at these locations is crucial before this Commission makes a finding of non-impairment. Small carriers, such as SNiP LiNK, rely on the availability of DS1 UNE loops in order to serve customers requiring DS1 capacity. While small carriers are theoretically capable of deploying a DS1 loop, the economics of such deployment are not present.[76] In fact, the FCC acknowledged such when choosing not to apply the self-provisioning triggers to DS1 loops.[77] Even Verizon's own witness acknowledged that carriers typically do not deploy DS1 capacity only.[78]

V. THE EVIDENCE IN THE RECORD DEMONSTRATES THAT, AT MOST, FEW DEDICATED TRANSPORT ROUTES OR CUSTOMER LOCATIONS CAN MEET THE RIGOROUS FACT-BASED FCC TRIGGERS

The best evidence of facilities deployment is the information provided by CLECs in response to the Commission's and the parties' information requests. Close analysis of that information demonstrates that, contrary to Verizon's assertions in its Statement 1.0 and Statement 1.1, there are so few transport routes and customer locations in Pennsylvania that even potentially could satisfy all of the required elements of the triggers to justify a finding of non-impairment on any route or location at this time. The Commission should use the information that is in the record to deny Verizon's claims of non-impairment at this time.

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76 Tr., 86 (admitting small carriers "wouldn't provide a facility to serve only DS-1").

77 *TRO* ¶ 325 ("We find that requesting carriers generally are impaired without access to unbundled DS1 loops. The record contains little evidence of competitive LECs' ability to self deploy single DS1 capacity loop and scant evidence of wholesale alternatives for serving customers at the DS1 level. Commenters expressly state that a competitive carrier would not construct its own DS1 or lower capacity loops. Indeed, incumbent LECs recognize a distinction between provisioning DS1 level loops and other higher capacity loops. The record shows that requesting carriers seeking to serve DS1 enterprise customers face extremely high economic and operational barriers in deploying DS1 loops to serve these customers.")(footnotes omitted).

78 Tr., 86 (acknowledging that carriers do not typically deploy DS1s).

A. TRANSPORT ANALYSIS

Verizon alleges there are 245 routes where 3 or more carriers self-provision dark fiber transport, 498 routes where 3 or more carriers self-provision DS1 transport, 899 routes where 2 or more carriers wholesale transport at the DS1 and DS3 capacities and 719 routes where two or more carriers wholesale dark fiber transport.[79] Yet review of the information submitted by the carriers identified as the trigger candidates reflects significantly lower numbers of dedicated transport routes that could possibly be considered meeting the rigorous fact based triggers set out by the FCC.

First, dedicated transport under the *TRO* must be used to carry dedicated traffic between two incumbent local exchange carrier ("ILEC") wire centers. No carriers reported transport routes that satisfy this definition of transport. In addition, no carriers reported that they offer at wholesale dedicated transport between two ILEC wire centers. Thus, the discovery responses unequivocally refute Verizon's claims that either the self-provisioning or wholesale triggers are satisfied on any transport route (or at any capacity level).

Further review of the responses to the Commission's information requests provided by the largest of the footnote 14 CLECs ***BEGIN PROPRIETARY*** ***END PROPRIETARY*** and the relevant responses provided to discovery requests submitted by Verizon, the Office of Consumer Advocate, the Pennsylvania Carrier's Coalition and the Joint Parties reveals a different picture of non-impairment in Pennsylvania. For illustrative purposes, and using Verizon's erroneous "connect the dots" approach that assumes that any two fiber-based collocations in a LATA

[79] Verizon Statement 1.1 at 3.

constitute a "transport route" on which facilities have been deployed, based on the responses provided by the carriers and through the creation of a route matrix matching those responses, there would be ***BEGIN PROPRIETARY***

END PROPRIETARY that could merit closer consideration under the rigorous requirements set out by the FCC for finding non-impairment on a route. ***BEGIN PROPRIETARY***

END PROPRIETARY LTCC Main Brief Exhibit 3 demonstrates these findings.

While this result is based on a selection of carriers, it is still demonstrative of the fact that Verizon, if it had used the best evidence available to it, could not have generated such high numbers of dedicated transport routes satisfying the applicable triggers. The Commission should, at a minimum, use the carrier's responses as the starting point for any potential non-impairment findings in Pennsylvania. Once the transport routes that have the prerequisite number of carriers on it have been identified, then the granular analysis should be applied. Only at this point can the Commission truly determine whether there actual non-impairment exists on a specific dedicated transport route at a specific capacity level.

B. LOOP ANALYSIS

Verizon alleges it has evidence of 63 customer location in Pennsylvania that meet one or both of the FCC's trigger tests. Specifically, Verizon contends there are 3 locations that have two or more carriers wholesaling DS1 loops, 36 locations that have two or more carriers wholesaling dark fiber loops, 61 locations that have two or more carriers self-provisioning DS3 loops, and 57 locations that have two or more carriers self-provisioning dark fiber loops.

Review of the relevant responses provided to discovery requests submitted by Verizon, the Office of Consumer Advocate, the Pennsylvania Carrier's Coalition and the Joint Parties by ***BEGIN PROPRIETARY*** ***END PROPRIETARY*** undermines Verizon's claims of loop deployment in Pennsylvania. Using this information, and through the creation of a location matrix matching those responses (by address) ***BEGIN PROPRIETARY

***END PROPRIETARY** could possibly satisfy the standards set out by the FCC in the *TRO* for a finding of non-impairment for high capacity loops. LTCC Main Brief Exhibit 4 demonstrates these findings.

If Verizon had used the best evidence available to it, would not have generated the same numbers of customer location satisfying the applicable triggers. The Commission should, at a minimum, use the carrier's responses as the starting point for any potential non-impairment findings in Pennsylvania. Once the customer locations that have the prerequisite number of carriers on it have been identified, then the granular analysis should be applied. Only at this point can the Commission truly determine whether there actual non-impairment exists at a specific customer location at a specific capacity level.

VI. CONCLUSION

Verizon has not satisfied its burden of proof to demonstrate that the fact-based triggers of the *TRO* have been met with respect to dedicated transport and high capacity loops at the DS1, DS3 and dark fiber capacity levels, where applicable for the self-provisioning and wholesaling triggers. The fatal flaw in Verizon's case is that it failed to collect the appropriate data to demonstrate that the triggers have been met. Rebutting the national finding of impairment requires the right facts, asked in the right manner, to the right carriers. These simply were not asked by Verizon in this proceeding. Verizon's claims of non-impairment are simply the result of its own counting exercise, and creative interpretations of the triggers. And even if Verizon's claims are considered solely as a starting point, additional information is necessary for any routes or customer locations that contain the minimum threshold number of carriers in order to determine if the trigger's requirements have been met. Thus, even where two or three carriers are present on the same route or to the same customer location, it cannot be concluded that the triggers are satisfied. As such, Verizon has not satisfied its burden of proof. This Commission should not rebut the national finding of impairment.

RESPONSE OF VERIZON PENNSYLVANIA INC. TO SET I (TRANSPORT), INTERROGATORY NO. 11 OF THE LOOP/TRANSPORT CARRIER COALITION (CHOICE ONE COMMUNICATIONS OF PENNSYLVANIA INC., FOCAL COMMUNICATIONS CORPORATION OF PENNSYLVANIA, SNIP LINK LLC AND XO PENNSYLVANIA, INC.) DATED JANUARY 16, 2004 SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (UNE)

ANSWERED BY: Carlo Michael Peduto, II
POSITION: OUTSIDE CONSULTANT

REQUEST:

For each of the wholesale carriers identified in the Transport Attachments, identify which of the bases stated at 53 -54 of the Berry/Peduto Testimony (adopted by the West/Peduto Testimony) Verizon contends the wholesale carrier satisfies. Please provide your response in the following format:

Wholesale Carrier	Holds itself out as a wholesale provider	Supplies transport facilities to Universal Access, Inc.	Has a CATT arrangement in any of Verizon's wire centers	Is listed in the New Paradigm CLEC Report 2003 as offering dedicated access transport
Carrier A (check all that apply)				
Carrier B (repeat as necessary)				

RESPONSE:

See specific objection 5. Subject to and without waiving this objection, Verizon will provide a response to this interrogatory.

Verizon reserves the right to rely upon any evidence in the record in this regard and to set forth its full case at the appropriate time according to the established briefing schedule.

Wholesale Carrier	Holds itself out as a wholesale provider	Supplies transport facilities to Universal Access, Inc.	Has a CATT arrangement in any of Verizon's wire centers	Is listed in the New Paradigm CLEC Report 2003 as offering dedicated access transport
008	X			
053	X	X		X
057	X			X
003	X			X
021	X		X	
066	X		X	
060	X		X	
026	X			X
033	X			
045	X			X
014	X		X	
044	X	X	X	
007	X	X		
050	X	X		
038	X	X		

RESPONSE OF VERIZON PENNSYLVANIA INC. TO SET I (TRANSPORT), INTERROGATORY NO. 19 OF THE LOOP/TRANSPORT CARRIER COALITION (CHOICE ONE COMMUNICATIONS OF PENNSYLVANIA INC., FOCAL COMMUNICATIONS CORPORATION OF PENNSYLVANIA, SNIP LINK LLC AND XO PENNSYLVANIA, INC.) DATED JANUARY 16, 2004 SUBMITTED IN DOCKET I-00030099 BEFORE THE PA PUC (UNE)

ANSWERED BY: Carlo Michael Peduto, II
POSITION: OUTSIDE CONSULTANT

REQUEST:

For each carrier that Verizon alleges is a wholesale provider because it "has a CATT arrangement in any of Verizon's wire centers" (Berry/Peduto testimony at 53, adopted by the West/Peduto Testimony), identify all of the "A" or "Z" wire centers identified in the Transport Attachments in which the carrier has a CATT arrangement. State when the wholesale carrier pulled fiber to the CATT, the number of Relay Rack Splice Trays (see Verizon Tariff FCC No. 14, section 17.15.1(G)(3)) for which the wholesale carrier is being billed, the number of EIS customers (as defined in Verizon Tariff FCC No. 14) not affiliated with the purported wholesale carrier that are being billed for connections to the CATT (see section 17.15.1(G)(4)) and whether the arrangement has been cancelled (or notice of cancellation has been given) pursuant to section 17.15.1(D).

RESPONSE:

See specific objections 5 and 6. Subject to and without waiving these objections, Verizon will provide a response to this interrogatory.

Below is a listing of all wire centers with fiber based operational CATT arrangements based upon the visual inspection process described in Verizon's testimony. These locations may or may not have "paired" with other offices for trigger compliance and therefore not all of the locations below may be found on the transport attachments:

Transport Route Sources

Carrier	Source of Transport Info	Comments
060	Response to LTCC Subpoena	
033	Responses to PUC Appendix A discovery. Tab 7 of Allegiance spreadsheet.	Carrier was included as a trigger candidate if it reported it had an IRU in column I or J.
003	Responses to PUC Appendix A discovery. Transport Question 2.	
045	Responses to PUC Appendix A discovery.	Carrier was included as a trigger candidate only if it listed fiber as leased (assumption: IRU).
024	Responses to PUC Appendix A discovery. Question 2.	Carrier was included as a trigger candidate only if it did not indicated another carrier as the transport provider at a collocation.
PROPRIETARY	Responses to PUC Appendix A discovery. Transport Question 2.	On one route only.
044	Responses to PUC Appendix A discovery. Transport Question 1.	On one route only
026	Responses to PUC Appendix A discovery. Question 2.	Sorted routes by LATA. Routes that crossed LATA boundaries were not included as they do not qualify as a route under the FCC's definition.
012	Responses to PUC Appendix A discovery. Question 2 and Question 5.	Carrier was included as a trigger candidate only it if identified the facilities as owned by Carrier. Did not list Verizon-owned transport facilities, for example (or other carriers).
050	Response to PUC Appendix A discovery responses	
057	Responses to PUC Appendix A discovery. Transport spreadsheet	
053	Responses to PUC Appendix A discovery. Question 2.	

Transport Routes in Pennsylvania
With Three or More Carriers Self-Provisioning Dedicated Transport

LATA	*Wire Center 1*	*Wire Center 1 Name*	*Wire Center 2*	*Wire Center 2 Name*	*CLEC NO.*
228	PAOLPAPA	PAOLI	PHLAPALO	LOCUST	026 053 028
228	PHLAPALO	LOCUST	PHLAPAMK	MARKET	033 053 038
228	PHLAPAMK	MARKET	PHLAPAPE	PENNYPACKER	003 024 033 053
228	PHLAPAMK	MARKET	PHLAPAPI	PILGRIM	003 024 053
228	PHLAPAMK	MARKET	WAYNPAWY	WAYNE	003 024 053

(Source – CLEC Responses to PUC Appendix A Discovery Requests)

Customer Locations in Pennsylvania
With Two or More Carriers Offering Loops

Building CLLI	Wire Center Name	Street Address	Carrier
KGPRPAFA	***KING OF PRUSSIA***	1150 1st Ave	003 026
MLVRPAAL	***MALVERN***	101 Lindenwood Dr.	003 026
PHLAPACS	***PHILADELPHIA***	1500 Market St.	003 026 053
PHLAPAHN	***PHILADELPHIA***	1515 Market St.	003 026
PHLAPASM	***PHILADELPHIA***	1600 Market St.	003 026
PHLAPASI	***PHILADELPHIA***	1601 Market St.	003 026
PHLAPASU	***PHILADELPHIA***	1617 John F. Kennedy Blvd.	003 026
PHLBPAFD	***PHILADELPHIA***	1635 Market St.	003 053
PHLAPALP	***PHILADELPHIA***	1650 Market St.	003 026
PHLAPAIN	***PHILADELPHIA***	1700 Market St.	003 026
PHLAPAHK	***PHILADELPHIA***	1735 Market St.	003 026
PHLAPAEC	***PHILADELPHIA***	1835 Market St.	003 026
PHLAPAAT	***PHILADELPHIA***	1900 Market St.	003 026
PHLAPAAQ	***PHILADELPHIA***	2005 Market St.	003 026
PHLAPABM	***PHILADELPHIA***	401 N. Broad St.	026 007
PHLDPA09	***PHILADELPHIA***	500 S. 27th St.	026 053
PHLAPABP	***PHILADELPHIA***	601 Walnut St.	003 026
PITBPAIK	***PITTSBURGH***	120 5th Ave.	003 026
PITBPAOP	***PITTSBURGH***	210 6th Ave.	003 026
PITBPALA	***PITTSBURGH***	3126 Liberty Ave.	003 026
PITBPAKB	***PITTSBURGH***	436 7th Ave.	003 026
PITBPAMC	***PITTSBURGH***	500 Grant St.	003 026
PITBPAOL	***PITTSBURGH***	535 Smithfield St.	003 026
PITPAUS	***PITTSBURGH***	600 Grant St.	003 026
PITBPACG	***PITTSBURGH***	625 Liberty Ave.	003 026
PITBPACL	***PITTSBURGH***	717 Liberty Ave.	003 026

(Source - CLEC Responses to Verizon Discovery Requests)

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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