

recommend that the Commission enter an order giving these ILECs<sup>4</sup> 15 days within which to file petitions to initiate a proceeding to rebut the FCC's impairment determinations. Failure to file such petitions by this deadline would result in a further Commission order adopting the FCC's presumption that CLECs are impaired without access to mass market local circuit switching, enterprise high capacity loops and certain dedicated transport facilities.

Subsequently, the WV Independent Group<sup>5</sup> submitted a letter advising the TRIC: (1) that none of these ILECs provide competitors with access to unbundled network elements ("UNEs"), and (2) that none of these ILECs is obligated to provide such access unless and until a finding is made, pursuant to 47 U.S.C. § 251(f)(1), because each of these ILECs is a "Rural Telephone Company" as that term is defined in 47 U.S.C. § 153(37). See October 17, 2003, email from Tom Moorman to Patrick Pearlman (copy attached as Appendix B). These ILECs note that the *Triennial Review Order* specifically provides:

[M]any rural LECs still retain the exemption from section 251(c)(3) of the Act as required by section 251(f), and as such, will not be subject to those particular unbundling requirements until such time as the exemption is lifted.

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<sup>4</sup>Armstrong Telephone Company - West Virginia; Armstrong Telephone Company - Northern Division; Hardy Telecommunications, Inc.; Spruce Knob Seneca Rocks Telephone Company; War Telephone Company; and West Side Telecommunications.

<sup>5</sup>Representing all the ILECs listed in footnote four, except War Telephone Company. War Telephone was the only ILEC not present at the October 8, 2003, meeting, not represented by the WV Independent Group, and not expressing a position on the FCC's impairment determinations. TRIC members believe that the other rural LECs' positions apply with equal vigor to War Telephone Company's situation, however. Moreover, War Telephone Company can file objections to this aspect of the TRIC's initial report if it disagrees with the other rural LECs' position, or can file a petition for reconsideration of any Commission order adopting the other rural LECs' petition.

*Triennial Review Order*, at ¶ 119. Accordingly, the rural ILECs requested that the TRIC reconsider its decision to recommend that the Commission give those ILECs not present at the October 8, 2003, meeting 15 days to file petitions to initiate proceedings to rebut the FCC's impairment determinations.

At the October 8, 2003, meeting, Verizon-WV and Frontier-WV stated that neither company intends, at this time, to challenge the FCC's impairment determinations for mass market local circuit switching, enterprise high capacity loops and certain dedicated transport facilities. In light of the rural ILECs' October 17, 2003, statement, a majority of TRIC members<sup>6</sup> agreed to recommend that the Commission enter an order adopting the FCC's impairment determinations for mass market local circuit switching, enterprise high capacity loops and certain dedicated transport facilities in areas served by Verizon-WV and Frontier-WV. The Commission's order should make it clear that it does not affect the Section 251(f)(1) exemptions applicable to other rural ILECs. Verizon-WV and AT&T dissented, and would have instead recommended that the Commission "may find that it need not act at this time" rather making any specific findings of fact regarding impairment.<sup>7</sup>

All members of the TRIC agreed that procedural issues related to such nine-month proceedings did not need to be addressed at this time.

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<sup>6</sup> CAD, Staff, MCI, Sprint, FiberNet, NTELOS, and Frontier-WV.

<sup>7</sup> AT&T recommended that the RTCs should be given fifteen days to file petitions to rebut the FCC's "impairment" determinations and that failure to file such petitions would result in a further Commission order finding that no ILEC is seeking to challenge the FCC's impairment presumption at this time.

### **3. Batch Hot Cut Requirements.**

The TRIC then discussed the FCC's directive that state commissions adopt a "batch" hot cut process. TRIC members expressed different viewpoints regarding the batch hot cut requirements of the *Triennial Review Order* and suggested that issues relating to this aspect of the FCC's order be addressed at the TRIC's next meeting. In addition, TRIC members noted that other state commissions where competition is more widespread have "batch" hot cut inquiries underway. There was general agreement that the Commission should allow proceedings in other states to go forward, monitor those proceedings and ultimately, if action is needed, take action built upon the decisions in those other states. TRIC members discussed the possibility of recommending that the Commission seek an extension of the nine-month deadline from the FCC, in order to allow time for other states to conclude their batch hot cut proceedings and allow the Commission time to implement a process based upon other states' experience.

Accordingly, TRIC members agreed to submit position papers and comments regarding the batch hot cut aspects of the *Triennial Review Order* to the TRIC chairperson, who would then distribute such comments to all members of the TRIC. A further meeting would then be scheduled. Members will submit their positions and comments to the TRIC's chair by November 7, 2003.

### **4. Proceedings Relating to the FCC's Network Modifications Decision.**

As part of its *Triennial Review Order*, the FCC concluded that ILECs should be required to make routine network modifications to unbundled transmission facilities used by CLECs where the

transmission facility is already built, invalidating the so-called, “no facilities, no build” policies of some ILECs. This aspect of the FCC’s order affects Verizon-WV, which had previously adopted such a policy. TRIC members discussed what actions should be recommended to the Commission to implement this particular aspect of the *Triennial Review Order*. Members noted that, unlike the unbundling determinations delegated to state commissions by the FCC, no particular deadline was established with respect to implementing this aspect of the FCC’s order. TRIC members noted that there are a number of issues that are impacted by the FCC’s decision and indicated that they were not prepared to address such issues.

Accordingly, the TRIC agreed that – as with mass market local circuit switching – position papers and comments regarding the network modifications portions of the *Triennial Review Order* should be submitted to the TRIC chairperson, who would then distribute such comments to all other members. Members will submit their positions and comments to the TRIC’s chair by November 7, 2003. A further meeting would then be scheduled.

#### **5. Summary.**

For the reasons set forth above, the TRIC recommends (with dissenting views noted in the footnotes below) that the Commission enter an order:

- (1) Adopting the FCC’s determination that CLECs are not impaired if they do not have access to ILECs’ enterprise local circuit switching for DS-1 and higher capacity facilities.<sup>8</sup>

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<sup>8</sup> Of the TRIC members, Verizon-WV believes that such an adoption is inappropriate without findings of fact that cannot be made without a record, and that the Commission need only conclude that it need not take an action at this time.

- (2) Adopting the FCC's determination that CLECs are impaired if they do not have access to ILECs' mass market local circuit switching, enterprise high capacity loops and certain dedicated transport facilities in Verizon-WV's and Frontier-WV's service areas,<sup>9</sup> and making clear that such determination does not affect the Section 251(f)(1) exemptions applicable to other rural ILECs.
- (3) Directing the TRIC to continue meeting to address remaining issues outlined in its initial report and recommendations and to file a further report with the Commission by December 1, 2003.

Respectfully submitted this 29th day of October, 2003.

On behalf of the Triennial  
Review Order Implementation  
Collaborative



PATRICK W. PEARLMAN  
Consumer Advocate Division  
Public Service Commission  
of West Virginia  
7th Floor, Union Building  
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Charleston, WV 25301  
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WV Bar No. 5755

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<sup>9</sup> Verizon-WV and AT&T dissented, and would have instead recommended that the Commission "may find that it need not act at this time" rather making any specific findings of fact regarding impairment.

## **APPENDIX A**

**TRO COLLABORATIVE MEETING  
CASE NO. 03-1507-T-GI**

**October 8, 2003**

**AGENDA**

- I. Overview.**
  - A. BRIEF Summary of the FCC's TRO.**
  - B. BRIEF Summary of the WVPSC's September 24, 2003 Order.**
- II. Goals and Mission of the TRO Collaborative.**
  - A. Purpose of initial meeting.**
- III. 90-Day Proceeding to Rebut FCC's "No Impairment" Findings.**
- IV. 9-Month Proceeding to Rebut FCC's "Impairment" Findings.**
  - A. Establishing a date certain for filing petition/notice of intent to rebut.**
  - B. Establishing contents of the petition/notice to rebut.**
    - 1. Local Loops.**
      - a. Mass market loops.**



**B. Assuming no rebuttal filing, initiating proceeding to establish and implement a "batch" hot cut process.**

**1. Discussion of other state commission proceedings.**

**2. Discussion with NY DPS staff regarding ongoing hot cut proceeding. (Note: This is tentative; still awaiting DPS response)**

**VI. FCC Invalidation of the "No Facilities, No Build" Policy.**

**A. Establishing costs for network modifications consistent with the FCC's determination.**

**1. Equipment and electronics typically involved.**

**2. Cost studies.**

**3. Monthly recurring costs v. Non-recurring costs.**

**B. Developing C2C metrics relating to provisioning facilities.**

**C. PAP issues.**

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## **APPENDIX B**

**Patrick Pearlman**

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**From:** Tom Moorman [tmoorman@klctele.com]  
**Sent:** Friday, October 17, 2003 3:55 PM  
**To:** ppearlman@cad.state.wv.us  
**Subject:** Draft TRIC Report – Triennial Review Proceeding

10/17/03

Pat:

Armstrong Telephone Company - Northern Division, Armstrong Telephone Company - West Virginia, Hardy Telecommunications, Inc., Spruce Knob Seneca Rocks Telephone, Inc. and West Side Telecommunications (the "Independent Group") provides the following initial response to above-referenced recommendation made by the Triennial Review Implementation Collaborative ("TRIC"). While the TRIC discussion is apparently applicable to incumbent local exchange carriers ("ILECs") that are not Rural Telephone Companies ("RTCs")(47 U.S.C. §153(37)), the recommendation at page 3 cannot rationally be applied to the Independent Group members, each of which is an RTC.

As RTCs, the Independent Group members are not required to provide and do not provide unbundled network elements ("UNEs") until and unless a request is made for such elements and the requesting entity follows the specific procedures required by the Communications Act of 1934, as amended (the "Federal Act") and applicable implementation rules. The Independent Group member have no request for UNEs. The FCC's analysis is not relevant to the Independent Group members given the fact that the section 251(f) (1) exemption continues to apply.

Therefore, to suggest that the FCC's nationwide impairment analysis is somehow applicable to the Independent Group members would confuse and/or improperly negate the specific statutory directives of Section 251(f)(1). The FCC's triennial review decision does not anticipate this result. The FCC states that "many rural LECs still retain the exemption from section 251(c)(3) of the Act as required by section 251(f), and as such, will not be subject to those particular unbundling requirements until such time as the exemption is lifted." Triennial Review Order at para. 119.

Finally, rational public policy supports this conclusion. Placing a needless burden upon the Commission, the RTCs, and other interested parties, any analysis would, at best, be speculative given that the companies are not required to provide, and do not provide, UNEs.

Accordingly, the Independent Group members request that the TRIC reconsider its position, and adopt the analysis contained herein.

Thank you.

TJM

10/29/2003

## CERTIFICATE OF SERVICE

I, Patrick W. Pearlman, counsel for the Consumer Advocate Division of the Public Service Commission of West Virginia, (CAD), hereby certify that I have served a copy of the foregoing *"Initial Report and Recommendations of the Triennial Review Order Implementation Collaborative"* upon all parties of record by First Class, U.S. Mail, postage pre-paid.

  
\_\_\_\_\_  
PATRICK W. PEARLMAN  
WV State Bar No. 5575

Dated: October 29, 2003

US DEC 16 AM 9:31

LEGAL DIVISION  
**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 15<sup>th</sup> day of December, 2003.

CASE NO. 03-1507-T-GI

GENERAL INVESTIGATION REGARDING  
IMPLEMENTATION OF FCC UNBUNDLING  
REQUIREMENTS IN TRIENNIAL REVIEW ORDER

**COMMISSION ORDER**

By Order issued September 24, 2003, the Commission instituted this general investigation and required certain actions of a task force known as the triennial review order implementation collaborative (TRIC). Now before the Commission are the TRIC's initial recommendations.

By this Order, the Commission acknowledges the TRIC's first report; provides fifteen days for the filing by any rural incumbent local exchange carrier (rural ILEC) of an intent to challenge one of the FCC impairment findings; and requires a further TRIC report on remaining issues, including mass market switching, batch hot-cut process, and "no facilities, no build."

**Background**

On August 21, 2003, pursuant to the Communications Act of 1934, 47 USC § 251 *et seq.* the Federal Communications Commission (FCC) released its *Triennial Review Order* refining the rules that determine what telecommunications network elements must be unbundled by incumbent local exchange carriers (ILECs) and the rules regarding how this analysis must be framed. The ultimate question to be determined is whether a competitor's market entry will be "impaired" if it does not have access to a particular unbundled network element (UNE).

By Order issued September 24, 2003, the Commission instituted this proceeding and established the TRIC.

The roman numerals below identify the issues for Commission determination required by the FCC. Under each issue is a statement of the current status of that issue, and/or the TRIC recommendations for Commission action.

I. No impairment re: enterprise local switching for DS-1 and higher capacity facilities.

The Commission ordered that each facilities-based competitive local exchange carrier (CLEC) operating in West Virginia file a notice with the Commission, within ten days following issuance of its September 24, 2003, Order, advising whether the carrier intended to challenge the FCC's no impairment determination with respect to enterprise local circuit switching for DS-1 and higher capacity facilities. *See Comm'n Order, September 24, 2003.* No facilities-based CLECs filed a notice as contemplated above.

In its October 29, 2003, report, the TRIC stated that the CLEC members of TRIC do not intend to file a petition as contemplated above. *See Initial TRIC Report, October 29, 2003.* The majority of the TRIC members agreed to recommend that the Commission enter an order adopting the FCC's no impairment finding when CLECs do not have access to incumbent local exchange carrier's (ILECs') enterprise local circuit switching for DS-1 and higher capacity facilities. Verizon objected to this recommendation, instead asserting that the TRIC should recommend that the Commission need take no action at this time.

The Commission finds that it is not necessary to formally adopt this FCC no impairment finding at this time.

II. FCC impairment finding as to mass market local circuit switching; enterprise high capacity loops; and dedicated transport for certain facilities.

The Commission ordered that the TRIC make recommendations regarding the procedure whereby ILECs may challenge the FCC's impairment decisions that were delegated to state commissions, as well as a procedural schedule for addressing the issues relevant to such impairment analyses (e.g., definition of relevant market, identification of specific routes under challenge). *See Comm'n Order, September 24, 2003.*

In its October 29, 2003, report, the TRIC advised that neither Verizon nor Frontier intend to challenge the FCC's national impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities). TRIC further noted that to date, rural ILECs are exempt from the requirement to unbundle these elements. *See Initial TRIC Report, October 29, 2003.*

The majority of the TRIC agreed to recommend that the Commission enter an order adopting the FCC's impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier. The order should make clear that it does not affect rural ILECs exempt pursuant to Section 251(f)(1) of the Communications Act of 1934, 47 USC 251 *et seq.* Verizon and AT&T would instead recommend that the Commission find it need not act regarding this impairment decision at this time.

No procedural schedule is needed on these matters at this time.

Upon review of this issue, the Commission finds that it is appropriate to clarify that the FCC's finding of impairment does not affect rural ILECs. The Commission agrees with Verizon and AT&T that no other action on these issues is necessary at this time.

### III. Batch hot-cut process for mass market local circuit switching.

The Commission ordered the TRIC to make recommendations regarding the procedure the Commission should adopt in addressing the batch hot-cut process for mass market local circuit switching contemplated by the FCC. *See Comm'n Order, September 24, 2003.*

In its October 29, 2003, report, the TRIC stated that it will address these issues at its next meeting. Other states with more widespread competition are proceeding regarding batch hot-cut, and this Commission should await development of those cases, and model its decision on other states at a later date. The TRIC chairman will collect the various TRIC members comments on this issue by November 7, 2003. *See Initial TRIC Report, October 29, 2003.*

No Commission action on this issue is needed at this time. The deadline for Commission determination on this issue is July 2, 2004.

### IV. "No facilities, no build."

The Commission ordered the TRIC to establish recommendations regarding the procedure the Commission should adopt in addressing the FCC's decision invalidating the "no facilities, no build" policy employed by Verizon-WV (addressed in Verizon-WV's Section 271 proceeding) and similar policies employed by any other ILECs in the state. *See Comm'n Order, September 24, 2003.*

As of the October 29, 2003, report, TRIC members were not ready to make recommendations on this issue. Members were to submit position papers to the TRIC chairman by November 7, 2003. *See Initial TRIC Report, October 29, 2003.*

No Commission action is necessary on this issue at this time. The deadline for Commission determination on this issue is July 2, 2004.

#### V. Other issues.

The Commission ordered the TRIC to identify any other issues that should be addressed in conjunction with the duties delegated to the Commission by the FCC, and propose a procedural schedule for addressing such issues. *See Comm'n Order, September 24, 2003.*

No other issues were identified in the October 29, 2003, TRIC report.

### **DISCUSSION**

Upon review of all of the foregoing, the Commission hereby (1) acknowledges the FCC's no impairment finding when CLECs do not have access to ILECs' enterprise local circuit switching for DS-1 and higher capacity facilities; (2) acknowledges the FCC's impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier; (3) clarifies that the foregoing FCC finding does not affect rural ILECs exempt pursuant to Section 251(f)(1); (4) provides fifteen days for the filing by any rural ILEC of an intent to challenge the FCC's impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier; and (5) directs the TRIC to continue meeting to address the remaining issues, including batch hot-cut process for mass market local circuit switching, and invalidation of the "no facilities, no build" policy, and to file a further report within thirty days of the date of this Order.

### **FINDINGS OF FACT**

1. On August 21, 2003, the FCC released its *Triennial Review Order* refining the rules that determine what telecommunications network elements must be unbundled by incumbent local exchange carriers (ILECs) and the rules regarding how this analysis must be framed. The ultimate question to be determined is whether a competitor's market entry

will be “impaired” if it does not have access to a particular unbundled network element (UNE).

2. By Order issued September 24, 2003, the Commission instituted this proceeding.

3. No facilities-based CLECs filed a notice of intent to challenge the FCC’s no impairment finding regarding enterprise local switching for DS-1 and higher capacity facilities.

4. The majority of the TRIC members recommend that the Commission enter an order adopting the FCC’s no impairment finding when CLECs do not have access to ILECs’ enterprise local circuit switching for DS-1 and higher capacity facilities. Verizon objected to this recommendation, instead asserting that the TRIC should recommend that the Commission need take no action at this time.

5. In its October 29, 2003, report, the TRIC advised that neither Verizon nor Frontier intend to challenge the FCC’s national impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities). TRIC further noted that to date, rural ILECs are exempt from the requirement to unbundle these elements.

6. The majority of the TRIC recommended that the Commission enter an order adopting the FCC’s impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier. The order should make clear that it does not affect rural ILECs exempt pursuant to Section 251(f)(1). Verizon and AT&T would instead recommend that the Commission find it need not act regarding this impairment decision at this time.

7. In its October 29, 2003, report, the TRIC stated that it will address the batch hot-cut process for mass market local circuit switching contemplated by the FCC in a further report. TRIC suggested that the Commission await development of other states’ cases, and model its decision on other states at a later date.

8. As of the October 29, 2003, report, TRIC members were not ready to make recommendations regarding the procedure the Commission should adopt in addressing the FCC’s decision invalidating the “no facilities, no build” policy employed by Verizon-

WV (addressed in Verizon-WV's Section 271 proceeding) and similar policies employed by any other ILECs in the state.

### **CONCLUSIONS OF LAW**

1. It is not necessary, at this time, to formally adopt the FCC's no impairment finding regarding enterprise local switching for DS-1 and higher capacity facilities.

2. It is appropriate to clarify that the FCC's finding of impairment for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities), does not affect rural ILECs exempt pursuant to Section 251(f)(1) of the Communications Act of 1934, 47 USC 251 *et seq.*

3. It is reasonable to provide rural ILECs' with fifteen days to file any intent to challenge the FCC's no impairment finding regarding mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities).

4. The TRIC should continue to meet to address the remaining issues and to file a further report within thirty days of the date of this Order.

### **ORDER**

IT IS THEREFORE ORDERED that the FCC's impairment finding for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier, does not affect rural ILECs exempt pursuant to Section 251(f)(1) of the Communications Act of 1934, 47 USC 251 *et seq.*

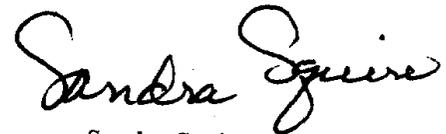
IT IS FURTHER ORDERED that any rural ILEC intending to challenge the FCC's impairment determination for mass market local circuit switching; enterprise high capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in areas served by Verizon and Frontier shall file a notice to that effect with the Commission within fifteen days of the date of this Order.

IT IS FURTHER ORDERED that the TRIC shall continue meeting to address the remaining issues, including batch hot-cut process for mass market local circuit switching, and invalidation of the "no facilities, no build" policy, and the TRIC shall file a further report with the Commission within thirty days of the date of this Order.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order on all ILECs and each facilities-based CLEC operating in West Virginia and upon all parties of record by First Class United States Mail, and upon Commission Staff by hand delivery.

JML/ljm  
031507ca.wpd

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary



03 DEC 22 AM 9:56

WEST VIRGINIA PUBLIC SERVICE COMMISSION  
LEGAL DIVISION

CONSUMER ADVOCATE DIVISION  
STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
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723 Kanawha Boulevard, East  
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December 19, 2003

RECEIVED  
2003 DEC 19 PM 4:53  
W. VA. PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Sandra Squire  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

RE: CASE NO. 03-1507-T-PC, GENERAL INVESTIGATION REGARDING  
IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS  
COMMISSION'S UNBUNDLING REQUIREMENTS IN ITS *TRIENNIAL  
REVIEW ORDER*

Dear Ms. Squire:

Enclosed is an original and 12 copies of the "*Petition of the Triennial Review Order Implementation Collaborative for Corrections to the Commission's December 15, 2003, Order*" for filing in this matter.

Very truly yours,

PATRICK W. PEARLMAN  
WV State Bar No. 5755

PWP/cs  
Enclosure  
cc: All parties

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

CASE NO. 03-1507-T-GI

GENERAL INVESTIGATION REGARDING  
IMPLEMENTATION OF FCC UNBUNDLING  
REQUIREMENTS IN *TRIENNIAL REVIEW ORDER*

**PETITION OF THE TRIENNIAL REVIEW ORDER IMPLEMENTATION  
COLLABORATIVE FOR CORRECTIONS TO THE COMMISSION'S  
DECEMBER 15, 2003, ORDER**

By order entered December 15, 2003, the Commission acknowledged the first report filed with it by the Triennial Review Order Implementation Collaborative ("TRIC") on September 24, 2003. On behalf of the TRIC, the undersigned counsel, hereby petitions the Commission to enter an order correcting aspects of its December 15, 2003, order.

Specifically, the Commission's December 15, 2003, order contains two errors that need to be corrected. First, in Section IV, page 4 of the order, the Commission identifies a July 2, 2004, deadline for action on the Federal Communications Commission's ("FCC") "network modifications" rulings. There is, however, no such deadline for state commissions to act in implementing these aspects of the FCC's *Triennial Review Order*. The TRIC recommends that the Commission simply delete the sentence referring to a July 2, 2004, deadline for action on the FCC's network modifications rulings.

Second, in the Discussion portion on page 4 of the December 15, 2003,

order, the Commission gives rural incumbent local exchange carriers (“ILECs”<sup>1</sup>) fifteen days to file any notice of intent to challenge the FCC’s impairment determinations for various network elements “in areas served by Verizon and Frontier.” This directive appears unnecessary in light of the Commission’s preceding determination that “the foregoing FCC finding does not affect rural ILECs exempt pursuant to Section 251(f)(1).”

Accordingly, the TRIC respectfully recommends that item 4 in the Discussion and the corresponding Conclusion of Law No. 3 and Second Ordering Paragraph be deleted entirely. Such action in the TRIC’s view would not undermine the integrity of the remainder of the Commission’s order. Alternatively, because the rural ILECs do not provide service in areas served by Verizon or Frontier, nor do they offer network elements to competitors in such areas, the Commission should revise item 4 in the Discussion to read “in areas served by such carriers.” Should the Commission retain the filing requirement for rural ILECs, the TRIC recommends that the deadline for such filing run from the date of the Commission’s corrective order.

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<sup>1</sup>These carriers are: Armstrong Telephone Company - West Virginia; Armstrong Telephone Company - Northern Division; Hardy Telecommunications, Inc.; Spruce Knob Seneca Rocks Telephone Company; War Telephone Company; and West Side Telecommunications.

Respectfully submitted this 19th day of December, 2003.

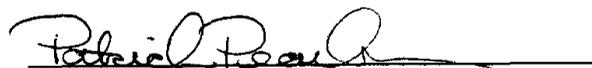
On behalf of the Triennial Review  
Order Implementation Collaborative



PATRICK W. PEARLMAN  
Consumer Advocate Division  
Public Service Commission  
of West Virginia  
7th Floor, Union Building  
723 Kanawha Boulevard, East  
Charleston, WV 25301  
304/558-0526; fax 558-3610  
WV Bar No. 5755

## CERTIFICATE OF SERVICE

I, Patrick W. Pearlman, counsel for the Consumer Advocate Division of the Public Service Commission of West Virginia, (CAD), hereby certify that I have served a copy of the foregoing "*Petition of the Triennial Review Order Implementation Collaborative for Corrections to the Commission's December 15, 2003, Order*" on all parties of record by First Class, U.S. Mail, postage pre-paid.



PATRICK W. PEARLMAN

WV State Bar No. 5755

Dated: December 19, 2003

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 2nd day of January, 2004.

CASE NO. 03-1507-T-GI

GENERAL INVESTIGATION REGARDING  
IMPLEMENTATION OF FCC UNBUNDLING  
REQUIREMENTS IN TRIENNIAL REVIEW ORDER

**COMMISSION CORRECTIVE ORDER**

By Order issued December 15, 2003, the Commission acknowledged the first report filed by the Triennial Review Order Implementation Collaborative (TRIC), confirmed the exemption of rural incumbent local exchange carriers (rural ILECs) from the Federal Communications Commission's (FCC's) impairment findings regarding certain network elements, and provided rural ILECS with a fifteen-day period for the filing of any challenges to those impairment findings in areas served by non-rural ILECs.

On December 19, 2003, the TRIC filed a petition for corrections to the December 15, 2003, Order. First TRIC correctly points out that the Commission included an incorrect reference to an FCC decision deadline. That error will be corrected herein. Second, the TRIC asserts that the Commission's provision of a fifteen-day challenge period for rural ILECs with respect to the FCC's impairment findings as they affect areas served by non rural ILECS was unnecessary.

As to the first correction, the Commission will hereby delete the sentence set forth in Section IV, page 4 of its December 15, 2003, Order identifying a July 2, 2004, deadline for action of the FCC's network modifications rulings. There is no such deadline in effect.

As to the second petition for correction, the provision of the fifteen-day period for rural ILECs was not made in error. It is not inconceivable that rural ILECs, as parties to this proceeding, might have challenges or comments regarding impairment in areas that they do not serve. The rural ILECs may have previously refrained from making challenges because the areas they serve are exempt pursuant to Section 251(f)(1) of the Communications Act of 1934, 47 U.S.C. 251 *et seq.* The Commission intended to offer

the rural ILECs the opportunity to challenge the impairment findings as to areas that are not exempt. If the rural ILECs have no such challenge, they may remain silent.

### **FINDINGS OF FACT**

1. By Order issued December 15, 2003, the Commission acknowledged the first report filed by the TRIC, confirmed the exemption of rural ILECs from the FCC's impairment findings regarding certain network elements, and provided rural ILECs with a fifteen-day period for the filing of any challenges to those impairment findings in areas served by non-rural ILECs.

2. On December 19, 2003, the TRIC filed a petition for corrections to the December 15, 2003, Order.

3. First TRIC correctly points out that the Commission included an incorrect reference to an FCC decision deadline. That error will be corrected herein. Second, the TRIC asserts that the Commission's provision of a fifteen-day challenge period for rural ILECs with respect to the FCC's impairment findings as they affect areas served by non-rural ILECS was unnecessary.

### **CONCLUSIONS OF LAW**

1. The Commission agrees with the TRIC's first request for correction and will delete the sentence set forth in Section IV, page 4 of its December 15, 2003, Order identifying a July 2, 2004, deadline for action of the FCC's network modifications rulings. There is no such deadline in effect.

2. The provision of the fifteen-day period for rural ILECs was not made in error.

3. If rural ILECs have no challenge to the FCC's network elements impairment findings, as to areas they do not serve, they may remain silent.

### **ORDER**

IT IS THEREFORE ORDERED that the sentence set forth in Section IV, page 4 of its December 15, 2003, Order identifying a July 2, 2004, deadline for action of the FCC's network modifications rulings, is hereby deleted.

IT IS FURTHER ORDERED that any rural ILEC intending to challenge the FCC's impairment determination for mass market local circuit switching; enterprise high