capacity loops (dark fiber, DS-3 and DS-1); and dedicated transport for certain facilities (dark fiber, DS-3 and DS-1 facilities) in non-exempt areas shall file a notice to that effect with the Commission within five (5) days of the date of this Order. This extends the fifteen-day period provided in the Commission's December 15, 2003, Order.

IT IS FURTHER ORDERED that except as modified herein, the December 15, 2003, Order remains in full force and effect.

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.

A True Copy, Teste:

Sandra Squire
Executive Secretary

ARC
JML/ljm/lfg
031507cb.wpd

CONSUMER ADVOCATE DIVISION
STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
700 Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 558-0526

January 16, 2004

RECEIVED
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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 "*Second Report and Recommendations of the Triennial Review Order Implementation Collaborative*" for filing in this matter.

Very truly yours,

PATRICK W. PEARLMAN
WV State Bar No. 5755

PWP/s
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*

SECOND REPORT AND RECOMMENDATIONS OF THE *TRIENNIAL REVIEW ORDER* IMPLEMENTATION COLLABORATIVE

By order entered September 24, 2003, the Commission granted a petition filed by the Consumer Advocate Division ("CAD"), establishing a general investigation regarding implementation of the Federal Communications Commission's ("FCC") unbundling requirements set forth in its "Report and Order," *I/M/O Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, FCC 03-36 (Rel. Aug. 21, 2003) ("*Triennial Review Order*"). Among other things, the Commission adopted CAD's recommendations regarding the establishment of a Triennial Review Order implementation collaborative ("TRIC") to assist the Commission in implementing the *Triennial Review Order*'s requirements.

The TRIC previously filed its initial report and recommendations with the Commission on October 29, 2003. By order entered December 15, 2003, the Commission adopted, with some changes, the TRIC's initial report and, in accordance with the TRIC's recommendations, directed that a second report be filed regarding remaining issues, including: mass market local circuit switching, batch hot cut processes, and network modifications. The Commission directed the TRIC to file its

second report within 30 days of the order's entry date (*i.e.*, by January 16, 2004).[1]

Pursuant to the Commission's December 15, 2003, order, the TRIC hereby submits its second report and recommendations regarding remaining issues.

PROCEDURAL MATTERS

Pursuant to electronic notice to members, the TRIC's second meeting was held on December 18, 2003. The following parties, and their representatives, attended the meeting either in person or by teleconference: AT&T Communications of West Virginia, Inc. ("AT&T") – Robert Kirchberger, Danny Long, Ivars V. Mellups, and Christopher Nurse; Commission Staff ("Staff") – Dannie L. Walker and Christopher Howard; CAD – Patrick W. Pearlman; FiberNet, LLC ("FiberNet") – Steve Hamula; MCImetro Access Transmission Services, LLC ("MCI") – Kimberly Wild; NTELOS – Steve Goodman; Sprint Communications Company, L.P. ("Sprint") – Jennifer A. Duane; Verizon West Virginia Inc. ("Verizon-WV") – Kathy L. Buckley and David B. Frost. Patrick Pearlman chaired the meeting. Notes of the TRIC's December 18, 2003, meeting, with members' comments or changes thereto, are attached as Appendix A.

[1] By order entered January 2, 2004, the Commission responded to a December 19, 2003, motion, filed on behalf of the TRIC, by correcting a minor error in the December 15, 2003, order. The Commission also clarified and reiterated its directive that incumbent local exchange carriers ("ILECs") serving rural areas had 15 days within which to challenge impairment determinations for areas served by Verizon West Virginia Inc. ("Verizon-WV") and Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia ("Frontier-WV").

RECOMMENDATIONS.

1. "Lock Out" Period for Challenging FCC Impairment Determinations.

In the TRIC's October 29, 2003, initial report to the Commission, the TRIC advised that neither Verizon-WV nor Frontier-WV, the two largest ILECs in West Virginia, intended to challenge the FCC's "impairment" determination for the following facilities: 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 Initial Report*, at 3. Based on those representations, as well as comments from the remaining ILECs who are also rural telephone companies ("RTCs"), the majority of TRIC members recommended that the Commission simply adopt the FCC's determination for West Virginia. However, in its December 15, 2003, order, the Commission concluded that it was not necessary to formally adopt the FCC's determination at this time. In addition, the Commission gave the incumbent RTCs an additional 15 days to file notice whether they intended to challenge the FCC's impairment determinations for facilities in areas served by Verizon-WV and Frontier-WV.[2]

At the December 18, 2003, meeting, TRIC members discussed whether there is any need to recommend that the Commission establish a "lock-out" period for challenging the FCC's impairment determinations. The discussion was prompted by CAD's concern that state commissions are given until July 2, 2004, to conclude proceedings challenging the FCC's impairment determinations. *See, e.g., Triennial Review Order*, at

[2] The 15-day period expired on December 30, 2003. To-date, no rural ILEC has filed such a notice.

¶¶ 339, 417 & 527. However, the FCC's order did not specifically address ILEC challenges that are made after the order's effective date (*i.e.*, October 2, 2003), and before the July 2, 2004, deadline. During the TRIC's discussions on December 18, 2003, Verizon-WV indicated that it had no objection to the Commission allotting itself 9-months to resolve future challenges to the FCC's impairment determinations. Other TRIC members generally supported this concept and a recommendation that the Commission adopt such a procedural schedule for any future filings challenging an FCC impairment determination.

2. Batch Hot Cuts.

As discussed in the initial October 29, 2003, report to the Commission, several TRIC members submitted written comments setting forth their positions regarding whether the Commission is obliged to undertake a batch hot cut proceeding pursuant to the *Triennial Review Order*.[3] A summary of the members' written comments is attached as Appendix B. The written comments reflected a significant difference of opinion among TRIC members.

On the one hand, CAD, FiberNet, MCI and Staff expressed the opinion that the Commission must implement a batch hot cut process regardless of whether an ILEC challenges the FCC impairment determination for mass market local circuit switching. Verizon-WV and Sprint, on the other hand, expressed the view that no inquiry is necessary unless an ILEC challenges the FCC's impairment determination for this switching element. These positions did not change at the December 18, 2003, meeting, although Sprint clarified that its

[3] The following TRIC members submitted written comments on this issue: CAD, FiberNet, MCI, Sprint, Staff and Verizon-WV.

position was driven by practical considerations rather than a legal interpretation of the relevant provisions of the FCC's *Triennial Review Order.*

Although TRIC members continue to have a difference of opinion regarding whether the Commission is obliged to implement a batch hot cut process in the absence of an ILEC challenge to the FCC's impairment determination, all members agreed that a proceeding regarding such a process need not be undertaken at present. Instead, TRIC members agreed that the Commission should defer to other jurisdictions in the Verizon region that have batch hot cut inquiries underway (*e.g.*, New Jersey, New York, Pennsylvania) and, at such time as those jurisdictions' proceedings have concluded, establish a separate proceeding to determine whether the process implemented in those jurisdictions should be implemented in West Virginia, with or without modifications. TRIC members agreed that, as part of that proceeding, state-specific pricing issues and performance metrics and remedies should be established.[4]

3. Network Modifications.

Finally, TRIC members addressed the last issue raised in the October 29, 2003, initial report to the Commission, namely how to implement the FCC's decision regarding routine network modifications

[4] In its comments, FiberNet suggested that the Commission should initiate a proceeding now to look at pricing for hot cuts, specifically the non-recurring charges ("NRCs") associated with hot cuts. FiberNet noted that, in its decision arbitrating an interconnection dispute in Virginia, the FCC established an NRC of $5 per hot cut. *See* "Memorandum, Opinion and Order," *I/M/O Petition of WorldCom, Inc., et al.*, CC Docket Nos. 00-218 and 00-251, DA 03-2738 (Rel. Aug. 29, 2003) ("*Virginia Arbitration Order*"). During the December 18, 2003, meeting, AT&T, MCI and Verizon-WV noted that pricing is a major issue in the batch hot-cut proceedings underway in New York and elsewhere and that West Virginia-specific prices should be set once there is a clearer picture of the process that will be implemented in the Verizon region.

and its impact on Verizon's "no facilities, no build" policy. This issue was initially discussed in written comments submitted by TRIC members and, as with batch hot cuts, produced sharp differences of opinion.[5]

In its comments, Verizon-WV noted that the company had revised its "no facilities, no build" policy to be consistent with the FCC's new rules. Verizon-WV noted that it had posted a model interconnection agreement amendment implementing the FCC's rules to its website and that it had sent an industry letter announcing the amendment's availability with October 2, 2003, deemed the request date for purposes of any arbitration requests.

In contrast, AT&T, FiberNet and NTELOS asserted that Verizon-WV's actions in response to the Triennial Review Order do not comply with the FCC's decision. These CLECs claimed that Verizon-WV is seeking to impose a $1000 NRC for any network modification required to provision a DS-1 or higher facility. The CLECs asserted that there is no cost basis for the NRC Verizon-WV is seeking to charge, that the costs of any routine network modifications are already built into the TELRIC rates for unbundled network elements ("UNEs") previously established by the Commission, and that the NRC Verizon-WV is imposing is anticompetitive in that it makes obtaining a DS-1 loop more costly than it was under Verizon-WV's old policy.[6] For its part, Staff noted concerns regarding implementation of the FCC's network modifications decision

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[5] The following TRIC members submitted written comments on this issue: AT&T, FiberNet, NTELOS, Staff and Verizon-WV.

[6] Under Verizon-WV's former policy, CLECs could not obtain DS-1 and higher loops if any modifications were required to provision such facilities. Instead, CLECs could order the loops as "special access" circuits, at rates much higher than UNE rates for similar facilities, and after the minimum service period expired, convert the loops to UNE loops. This process was described in detail in Verizon-WV's § 271 proceeding. *See* "Commission Order," *Verizon-WV*, Case No. 02-0809-T-P, at 56-65 (Jan. 9, 2003).

and opined that CLECs should bear the financial responsibility for the ILEC's unrecovered costs of making routine network modifications.

TRIC members' positions did not change at the December 18, 2003, meeting, and discussion identified 3 major areas that the Commission must address in connection with the FCC's network modifications decision. First, what activities constitute routine network modifications? Second, what is the appropriate price that CLECs should pay for routine network modifications made by the ILEC? Third, what is the appropriate proceeding for Commission consideration of these issues?

With respect to the first issue, there was broad consensus among TRIC members that the FCC description of those activities that it considers routine network modifications, while not exhaustive, sufficiently describes the majority of situations carriers are likely to face. The TRIC members agreed to recommend that the Commission adopt the FCC's definition of the activities that constitute (or do not constitute) routine network modifications, set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order.* Further, TRIC members agreed to recommend that the Commission note that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate Commission proceeding, such as arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

With regard to pricing for routine network modifications, TRIC members agreed that such issues should be addressed in a proceeding separate from this general investigation. However, there was a split of

opinion as to the proper proceeding in which such pricing issues could be raised.

Staff suggested that the TRIC recommend that the Commission initiate a general investigation regarding such issues. Verizon-WV suggested that the FCC made it clear that pricing of routine network modifications should be brought only in the context of interconnection agreement arbitration proceedings under 47 U.S.C. § 252, citing ¶¶ 700-701 of the *Triennial Review Order*. AT&T noted that Verizon-WV's current NRC for routine network modifications is a problem because CLECs cannot obtain the desired facility unless they agree to Verizon-WV's price, which AT&T believes is exorbitant. CAD suggested that interconnection proceedings under 47 U.S.C. § 252 should not be the exclusive avenue for addressing pricing for routine network modifications. CAD noted that Verizon-WV itself had petitioned the Commission to establish rates for so-called "gap/merger/remand" UNEs in the context of a generic proceeding (Verizon-WV, Case No. 01-1696-T-PC).

As previously stated, however, the TRIC members unanimously agreed that the instant proceeding is not appropriate for determining pricing issues related to routine network modifications. The Commission can determine the appropriate forum for addressing this issue in response to a filing from any carrier or other proper party.

4. Summary.

For the foregoing reasons, the TRIC recommends that the Commission enter an order:

(1) Providing that any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after

October 2, 2003, shall be resolved by the date that is 9 months from the date of filing of such challenge.

(2) Deferring consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, until such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

(3) Adopting the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*. For the Commission's convenience, the FCC's definitions are set forth in Appendix C.

(4) Providing that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate Commission proceeding, such as arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

(5) Providing that issues related to pricing of routine network modifications shall be addressed in an appropriate, separate proceeding.

(6) Continuing the TRIC, on an informal basis, to assist the Commission in complying with the requirements of the *Triennial Review Order*, including:

> (a) Directing that the TRIC continue to monitor developments related to implementation of batch hot cut processes in other jurisdictions and communicate such developments informally among TRIC membership.
>
> (b) Directing that the TRIC submit such further filings as are necessary in order to commence a proceeding regarding implementation of a batch hot cut process in West Virginia at an appropriate time.

(7) Dismissing, as resolved, this general investigation.

Respectfully submitted this 16th day of January, 2004.

On behalf of the Triennial Review Order Implementation Collaborative

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WV Bar No. 5755

APPENDIX A

SECOND MEETING OF THE *TRO* IMPLEMENTATION COLLABORATIVE
WVPSC CASE NO. 03-1507-T-GI
DECEMBER 18, 2003

Attendees:

Robert Kirchberger	}	
Chris Nurse	}	
Dan Long	}	
I.V. Mellups	}	AT&T
David Frost	}	
Kathy Buckley	}	Verizon West Virginia Inc.
Jennifer Duane		Sprint Communications Co.
Kimberly Wild		MCI
Steve Goodman		NTELOS
Steve Hamula		FiberNet
Chris Howard	}	
Dannie Walker	}	Staff
Patrick Pearlman		CAD

Mr. Pearlman welcomed attendees and called the meeting to order at 9:40 a.m. and distributed copies of a summary of the parties' comments that had been submitted to him in November.

I. The Commission's 12/15/03 Procedural Order.

Mr. Pearlman initiated discussion by addressing the Commission's Dec. 15, 2003, order, which generally accepted the TRIC's October 29, 2003, report but rejected the TRIC majority's suggestion that the Commission adopt the FCC's "no impairment" and "impairment determinations" for certain UNEs. Mr. Pearlman noted that the order appeared to contain two errors: (1) a reference to a July 2, 2004, deadline for implementing the "network modifications" portions of the *TRO*; and (2) a directive that incumbent rural telephone companies ("RTCs") file notices whether they intend to challenge the FCC's "impairment" determinations in areas served by Verizon-WV or Frontier-WV [not the RTCs].

Mr. Pearlman noted that he had contacted the Commission's law clerk regarding these errors and proposed to file a petition requesting issuance of a corrective order to address both aspects of the Commission's Dec. 15, 2003, order. Mr. Pearlman proposed to circulate an electronic draft for all TRIC members' review. There was no objection.

II. Lock-Out Period for Challenging FCC Impairment Determinations.

Next, Mr. Pearlman raised the issue of a "lock-out" period for challenging the FCC's impairment determinations, noting that language was proposed in a draft of the TRIC's initial report precluding ILECs from challenging the impairment determinations until after July 2, 2004, but was withdrawn in response to Verizon-WV's objections. Mr. Pearlman explained that the purpose of a "lock-out" period was to avoid the possibility that an ILEC could refrain from challenging the impairment initially but subsequently petition the Commission for a no impairment determination and assert that the Commission must make such a determination by July 2, 2004 – a very compressed time frame for decision. After providing this background, Mr. Pearlman solicited comments from TRIC members.

Mr. Frost stated that Verizon-WV could not agree to inclusion of a recommendation that Verizon-WV, or any ILEC, should be precluded from challenging the FCC's impairment determinations between now and July 2, 2004. That said, Mr. Frost indicated that he does not expect Verizon-WV will be filing such a petition anytime soon. Mr. Frost stated that, tentatively, Verizon-WV would consent to the Commission taking nine months to process such a petition. However, he would need to double check within Verizon-WV and would quickly advise if this representation was incorrect.

AT&T (Nurse?) asked how to implement Verizon-WV's representation to the Commission. Mr. Pearlman suggested that the TRIC should include a recommendation regarding this issue in its second report. There was no objection to this suggestion.

III. Batch Hot Cut Process/Rolling Access.

Mr. Pearlman began the discussion of this topic by briefly reviewing and summarizing the parties' comments regarding this issue that were submitted in November 2003. As noted in the December 8, 2003, email setting the TRIC meeting, there were significant differences of opinion among the parties regarding this issue. Mr. Pearlman asked that each party briefly sum up its position.

AT&T: Mr. Kirchberger indicated that AT&T does not have comments regarding this issue at this time but that it may have a position on the issue.

CAD: According to Mr. Pearlman, CAD believes that the establishment and implementation of a batch hot cut process is an affirmative obligation upon state commissions, regardless of whether an ILEC in that jurisdiction files a petition seeking to challenge the FCC's impairment determination for mass market, local

circuit switching. Mr. Pearlman also noted that "rolling access" is also an issue that the Commission may need to review.

FiberNet: For FiberNet, Mr. Hamula stated that the company is willing to defer consideration of a batch hot cut process to other jurisdictions, though FiberNet would like the Commission to begin a proceeding now to look at the non-recurring charges (NRCs) that are associated with batch hot cuts. Mr. Hamula noted that the FCC's *Virginia Arbitration Order* dealt with NRCs for hot cuts. In addition, FiberNet believes that there may be need to test the batch hot cut process to determine that it in fact works. Discussion regarding testing ensued. Mr. Nurse/AT&T indicated that he's unsure what testing will accomplish since § 271 proceedings had some testing component though AT&T believes such testing was flawed because it was based on low volumes. The two big issues relating to batch hot cuts, Mr. Nurse stated, are: (1) price (the NRC was set at $5 in the Virginia Arbitration Order), and (2) performance metrics/PAP remedies. Mr. Nurse noted that in New York, AT&T has asked for very high performance metrics and very large PAP remedies.

MCI: Ms. Wild stated that MCI generally agrees with CAD and FiberNet (i.e., state commissioners have an affirmative obligation to undertake the batch hot cut inquiry) but is similarly willing to defer to New York or other jurisdictions. In New York, the big issues are price and automation. According to Ms. Wild, the automated system ("Wholesale Tracking and Provisioning System" or WTPS) under review in New York should apply to West Virginia. Mr. Frost concurred with this statement and suggested that the metrics adopted in New York will apply throughout Verizon footprint as well. Mr. Nurse noted that the New York metrics do not apply to batch hot cuts.

NTELOS: Mr. Goodman indicated that the company has no comments at this time.

Sprint: For Sprint, Ms. Duane indicated that the company does not object to deferring consideration of the batch hot cut process until resolved by another jurisdiction. She expressed general agreement with Verizon-WV's comments that, if the ILECs are not challenging impairment, there's no need to get involved. Ms. Duane also stated that Sprint's non-participation on the issue is driven by practical considerations rather than a legal determination that the Commission need not act. Mr. Frost generally concurred, noting that it simply will not happen that on July 2, 2004, Verizon will roll out a batch hot cut process but the process will be region wide. Mr. Kirchberger stated that although Verizon may roll out a region-wide process, there may still be state-specific issues for the Commission to address, namely (1) price and (2) performance metrics/PAP remedies. Mr. Frost

concurred with Mr. Kirchberger's comment.

Verizon: Mr. Frost did not have any comments to offer in addition to Verizon's written comments.

Consensus Recommendation: Based on the parties' comments, Mr. Pearlman suggested that the TRIC include a recommendation in its second report to the Commission, recommending that the Commission defer to New York's batch hot cut proceeding and, at such time as that proceeding is concluded, the Commission should open its own proceeding regarding pricing and performance metrics/remedies associated with batch hot cuts. Mr. Kirchberger suggested modifying the recommendation to include other states, noting that Pennsylvania or New Jersey may drive some of the considerations relating to batch hot cuts. Mr. Frost concurred with the recommendation and asked whether any states have a batch hot cut proceeding underway where no ILEC has sought to challenge the FCC's impairment determination. In response, Ms. Wild advised that such an inquiry is underway in Maine despite the lack of any ILEC challenge to the FCC's finding. Mr. Howard advised that Maine's inquiry is informal at this time. CAD indicated that it would undertake to survey NASUCA members regarding such proceedings and provide any additional information received to TRIC members.

IV. Network Modifications.

Mr. Pearlman asked whether the parties had anything to add to their written comments on this issue. Based on the parties' discussions, this topic was broken down into three areas.

A. Activities that constitute "routine network modifications."

Mr. Mellups stated that there were two principal questions: first, what activities constitute "routine network modifications," and second, what are the costs associated with such activities. With regard to activities, Mr. Mellups indicated that the FCC has pretty well defined them in ¶ 632 of the *TRO* and Verizon has accepted that definition. Mr. Pearlman asked whether there is any additional activity that should be looked at. Mr. Nurse noted that the FCC did not intend its list of activities to be exhaustive, but the Commission does not need to deal with this question now.

Consensus Recommendation: In its second report to the Commission, the TRIC should cite ¶¶ 632, 634 and 636-38 of the *TRO* and recommend that the Commission adopt the activities identified in that portion of the *TRO* and direct Verizon-WV to perform the same routine network modifications that it provides to

its own retail customers. Further, the TRIC will recommend that the Commission note that additions or changes to the FCC's list of activities can be sought through either Section 252 arbitrations or complaint proceedings.

B. Pricing.

On this issue, Mr. Mellups claimed that the price for routine network modifications made by Verizon-WV are already covered by its TELRIC-based DS1 UNE rates, citing the conclusions of the Virginia SCC staff. According to Mr. Mellups, the Virginia SCC proceeding is awaiting decision by that commission, though a number of the issues involved were mooted by the FCC's *TRO*. Mr. Frost agreed that price is the critical issue relating to routine network modifications. Mr. Pearlman asked TRIC members involved in the Virginia SCC proceeding to provide electronic copies to him of briefs/transcripts, etc., as well as the Virginia staff report, addressing the prices for network modifications and he would forward those materials to the TRIC membership.

C. Procedural Matters.

Mr. Pearlman next asked TRIC members for input regarding the proper procedure for addressing cost recovery for routine network modifications in West Virginia. Mr. Walker suggested that the TRIC recommend a general investigation rather than leaving the issue of prices for routine network modifications to the Section 252 arbitration process. In response, Mr. Frost stated that the FCC indicated that it wanted prices for routine network modifications established through the interconnection agreement negotiation/arbitration process, citing ¶¶ 700-01 of the *TRO*. Mr. Pearlman suggested that it ought to be permissible to establish such UNE rates in a general investigation proceeding, noting that Verizon-WV itself had established rates for its "gap/merger/remand UNEs" in a general petition proceeding (Case No. 01-1696-T-PC). Mr. Nurse indicated that it's a problem for CLECs because they cannot obtain routine network modifications without agreeing to a price, which AT&T believes is exorbitant. Both AT&T and NTELOS referred to Verizon's NRCs for such modifications as a fixed $1000 rate. None of the other TRIC members had corroborating information.

Consensus recommendation: NRCs for routine network modifications should be established in a separate proceeding, though there was no consensus whether this proceeding must be brought under Section 252 exclusively.

121803 meeting notes.wpd

APPENDIX B

SUMMARY OF PARTIES' COMMENTS
GI Re: Implementation of the FCC's Triennial Review Order
WVPSC Case No. 03-1507-T-GI

I. Batch-Hot Cut Inquiry.

A. AT&T.

AT&T did not submit comments regarding the batch hot cut process inquiry under the *TRO*.

B. CAD.

The WVPSC is obligated to either: (1) implement a "batch hot cut" process to mitigate impairment for the mass market, local circuit switching element; or (2) make a detailed determination that the process is not necessary (i.e., rebutting the FCC's impairment determination in a particular market). *TRO*, at ¶¶ 487-90. The FCC also requires states to consider the use of "rolling access" to unbundled local circuit switching to address impairment in a particular market. TRO, at ¶521. Thus, the WVPSC must move forward to address both batch hot cuts and rolling access in order to mitigate the impairment finding that no carrier intends to rebut at this time.

C. FiberNet.

The WVPSC is obligated to approve an implement a batch hot cut process that will make hot cuts more efficient and reduce per line hot cut costs in response to its determination that there is national impairment in the mass market for switching. *TRO*, at ¶¶ 460, 473. Alternatively, state commissions may determine that current hot cut processes do not cause impairment in a particular, geographic market and render the batch hot cut process unnecessary. The batch hot cut process should address all types of loop transfers among carriers, including ILEC-CLEC, CLEC-ILEC, and CLEC-CLEC loop migrations, including scenarios involving shared use of a loop for voice and data. *TRO*, at ¶ 478. Ultimately, CLEC loop migrations should be as prompt and efficient as an ILEC's transfer of customers under UNE-P. Specific items to focus on in batch hot cut process inquiry. *TRO*, at ¶¶ 489, 512.

Though FiberNet is not opposed to deferring batch hot cut inquiry until after another state has concluded its process, the WVPSC should take up issue of NRCs for hot cuts. Finally, the WVPSC should pursue 2-step process in this inquiry:

first, to establish a process and second, to perform real-world testing.

D. MCI.

State commissions must approve and implement a batch cut process rendering hot cuts more efficient and reducing per line hot cut costs. TRO, at ¶¶ 460, 487. Concurs with collaborative members' suggestions to defer proceeding with development of a batch hot cut process in favor of other states' efforts (e.g., New York). However, each state must have its own proceeding to develop TELRIC rates associated with the batch hot cut process. In addition, parties must have an opportunity to comment on the New York, other state process that serves as the template for West Virginia. MCI supports seeking extension of the 9-mo. deadline to accommodate NY decisions, conditioned on Verizon not seeking to challenge FCC's national, "impairment" determination during the interim.

E. NTELOS.

Did not comment on batch hot cuts process.

F. Sprint.

Given Verizon's and Frontier's decision not to challenged the FCC's impairment determinations for mass market local circuit switching, the WVPSC need not undertake an investigation into the batch hot cut process if there will not be a challenge to the ILEC's obligation to continue unbundling mass market local circuit switching. However, Sprint is not opposed to the approach discussed during the TRIC's first meeting - namely to allow batch hot cut proceedings underway in several other states to conclude before undertaking a similar batch hot cut proceeding in West Virginia.

G. Staff.

Concurs with MCI's comments.

H. Verizon.

Contrary to the TRIC's initial report's suggestion, the FCC did not contain a directive that state commissions adopt a batch hot cut process. On the contrary, the FCC's makes clear that such an inquiry be undertaken only when a state commission has been asked to evaluate impairment. 47 C.F.R. § 51.319(d)(2)(ii). If an ILEC elects not to challenge impairment determinations, there is no need for a state commission to implement a batch hot cut proceeding for that ILEC (cites

Ohio PUC decision). *See TRO*, at ¶¶ 468 & n. 1435, 475. The WVPSC ought to defer any proceeding to other state commissions' efforts.

II. Network Modifications ("No facilities, no build").

A. AT&T.

Verizon is not complying with the FCC's rules regarding network modifications for DS-1 UNE loop provisioning because it is attempting to impose on CLECs extra charges for "routine network modifications." The cost of such "routine network modifications" is already included in its UNE loop charges. While the FCC left questions regarding the costs of routine network modifications up to states, the FCC noted that such costs are typically recovered in the recurring rates established for loops and that double recovery of such costs is precluded. TRO, at ¶ 640. Verizon's claim that its existing loop rates do not recover its routine network modifications costs is nonsense. The FCC's ruling in the TRO does not establish "new rules," as Verizon claims, but merely clarifies existing rules. Moreover, Verizon's existing TELRIC rates already recover its costs of routine network modifications, as demonstrated by the Virginia staff's report in the "No Facilities" proceeding in that state. Moreover, the FCC's decision in the Virginia Arbitration Order supports the conclusion that such costs are already included in Verizon's TELRIC rates. Verizon's witnesses in the Virginia Arbitration Proceeding testified that the company's TELRIC rates include costs associated with activities that fall under "routine network modifications." Verizon's proposed $1000 NRC for DS-1/DS-3 modifications has no cost basis, and indeed imposes higher costs on CLECs than those imposed under the prior "no facilities" policy.

B. CAD.

Did not submit comments.

C. FiberNet.

The FCC deferred to states whether ILECs' cost recovery for routine network modifications should be through recurring or non-recurring costs. TRO, at ¶ 640. It's necessary to establish appropriate TELRIC-based rates for these modifications in this proceeding, at a minimum. The WVPSC should also make corresponding modifications to Verizon's C2C Guidelines and Performance Assurance Plan. Finally, the WVPSC should review Verizon's existing, NRCs associated with the hot cut process in accordance with the FCC's Virginia arbitration order..

D. MCI.

Did not comment on this issue.

E. NTELOS.

Pursuant to the FCC's TRO, CLECs are entitled to the same DS-1 provisioning activities as Verizon's retail customers. Verizon is proposing a one-time, NRC of $1000 for each DS-1 UNE for "network modifications." Verizon's TELRIC rates already include the operations in question and no additional charge should be allowed. The $1000 charge proposed by Verizon makes ordering DS-1s even more costly than was the case in the prior situation (when such circuits had to be ordered via special access & then converted to UNE rates after the special access minimum period elapsed).

F. Sprint.

Did not comment on this issue.

G. Staff.

The TRO Collaborative should conduct an additional session to address the following concerns that Staff has regarding network modifications, as well as NTELOS' concerns: (1) what is the proper definition of no facilities; (2) if modifications are made to already existing facilities, does that constitute a no facilities situation; and (3) who sets the standard for determining whether there are no facilities available. In addition, the financial responsibility associated with the unrecovered costs of making routine network modifications should be the CLEC's.

H. Verizon.

Verizon is now required under the FCC's new rules to make routine network modifications to loop facilities ordered by CLECs. The FCC concluded that implementation of the new rules should be accomplished through the Section 252 interconnection agreement process rather than regulatory fiat. TRO, at ¶¶ 700-01. Verizon revised its "no facilities" policy to be consistent with the FCC's new rules in the wake of the FCC's press release (2/26/03) announcing the TRO. Verizon posted a model interconnection agreement amendment and sent an industry letter announcing the amendment's availability, with October 2, 2003, being deemed the request date for purposes of arbitrations. Verizon notes that its current DS-1 loop rates do not recover the cost of routine network modifications under the FCC's new rules and that it is allowed to recover its cost of such

activities. TRO, at ¶ 640.

APPENDIX C

DEFINITION OF ROUTINE NETWORK MODIFICATIONS[1]

I. General Rule.

Incumbent LECs must make the following routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed. By "routine network modifications" we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers.

Triennial Review Order, at ¶ 632.

II. Activities That Are Routine Network Modifications.

By way of illustration, we find that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include but are not limited to:

- Rearranging or splicing of cable;
- Adding a doubler or repeater;
- Adding an equipment case;
- Adding a smart jack;
- Installing a repeater shelf;
- Deploying a new multiplexer or reconfiguring an existing multiplexer;
- Accessing manholes;
- Splicing into existing cable;
- Deploying bucket trucks to reach aerial cable; and
- Installing equipment casings.

The foregoing routine modifications apply to all transmission facilities, including copper loops, as well as dark fiber loops and transport.

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[1] Source: "Report and Order," *I/M/O Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, FCC 03-36, ¶¶ 632, 634 & 636-37 (Rel. Aug. 21, 2003) ("*Triennial Review Order*").

Triennial Review Order, at ¶¶ 634, 637-38.

III. Activities That Are Not Routine Network Modifications.

- Construction of new wires (*i.e.,* installation of new aerial or buried cable); and

- Requests for altogether new transmission facilities, whether serving an existing customers or along a new route.

Triennial Review Order, at ¶ 636.

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 "*Second Report and Recommendations of the Triennial Review Order Implementation Collaborative*" on all parties of record by First Class, U.S. Mail, postage pre-paid.

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Dated: January 16, 2004

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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 1st day of March, 2004.

CASE NO. 03-1507-T-GI

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

COMMISSION ORDER

Currently pending before the Commission in this proceeding is the Triennial Review Order Implementation Collaborative's (TRIC's) second report recommending that the Commission enter an order:

(1) Providing that any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after October 2, 2003, will be resolved by a date that is 9 months from the date such challenge is filed.

(2) Deferring consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, until such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

(3) Adopting the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*. The TRIC provided the FCC's definitions and they are attached hereto as Appendix A.

(4) Providing that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate Commission proceeding, such as arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

(5) Providing that issues related to pricing of routine network modifications will be addressed in an appropriate, separate proceeding.

(6) Continuing the TRIC, on an informal basis, to assist the Commission in complying with the requirements of the *Triennial Review Order*, including:

(a) Directing that TRIC continue to monitor developments related to implementation of batch hot cut processes in other jurisdictions and communicate such developments informally among TRIC membership.

(b) Directing that TRIC submit such further filings as are necessary in order to commence a proceeding regarding implementation of a batch hot cut process in West Virginia at an appropriate time; and

(7) Dismissing, as resolved, this general investigation.

Background

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).

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

By Order issued December 15, 2003, the Commission acknowledged TRIC's first report, 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.

A corrective order was issued on January 2, 2004.

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On January 16, 2004, the TRIC filed its Second Report and Recommendations. The second report included the following discussions.

1. "Lock Out" Period for Challenging FCC Impairment Determinations.

In the TRIC's October 29, 2003, initial report to the Commission, the TRIC advised that neither Verizon-WV nor Frontier-WV, the two largest ILECs in West Virginia, intended to challenge the FCC's "impairment" determination for the following facilities: 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 Initial Report*, at 3. Based on those representations, as well as comments from the remaining ILECs who are also rural telephone companies, the majority of TRIC members recommended that the Commission simply adopt the FCC's determination for West Virginia.

In the December 15, 2003, Order, the Commission concluded that it was not necessary to formally adopt the FCC's determination at this time. In addition, the Commission gave the rural ILECs an additional 15 days to file notice whether they intended to challenge the FCC's impairment determinations for facilities in areas served by Verizon-WV and Frontier-WV.[1]

In TRIC's second report, it stated that at TRIC's December 18, 2003, meeting, members discussed whether there is any need to recommend that the Commission establish a "lock-out" period for challenging the FCC's impairment determinations. The discussion was prompted by CAD's concern that state commissions are given until July 2, 2004, to conclude proceedings challenging the FCC's impairment determinations. *See, e.g.*, *Triennial Review Order*, at ¶¶ 339, 417 & 527. However, the FCC's order did not specifically address ILEC challenges that are made after the order's effective date (*i.e.*, October 2, 2003), and before the July 2, 2004, deadline. TRIC member Verizon-WV indicated that it had no objection to the Commission allotting itself 9 months to resolve future challenges to the FCC's impairment determinations. Other TRIC members generally supported this concept and decided to recommend to the Commission that it adopt such a procedural schedule for any future filings challenging an FCC impairment determination.

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[1] The 15-day period expired on December 30, 2003. To-date, no rural ILEC has filed such a notice.

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2. Batch Hot Cuts.

Several TRIC members submitted written comments as to whether the Commission is obliged to undertake a batch hot cut proceeding pursuant to the *Triennial Review Order*. The written comments reflected a significant difference of opinion among TRIC members.

On the one hand, CAD, FiberNet, MCI and Staff expressed the opinion that the Commission must implement a batch hot cut process regardless of whether an ILEC challenges the FCC impairment determination for mass market local circuit switching. Verizon-WV and Sprint, on the other hand, expressed the view that no inquiry is necessary unless an ILEC challenges the FCC's impairment determination for this switching element. TRIC's second report stated that these positions did not change at TRIC's December 18, 2003, meeting, although Sprint clarified that its position was driven by practical considerations rather than a legal interpretation of the relevant provisions of the FCC's *Triennial Review Order*.

TRIC's second report stated that while TRIC members continue to have differences of opinion regarding whether the Commission is obliged to implement a batch hot cut process in the absence of an ILEC challenge to the FCC's impairment determination, all members agreed that a proceeding regarding such a process need not be undertaken at present. Instead, TRIC members recommend that the Commission defer to other jurisdictions in the Verizon region that have batch hot cut inquiries underway (*e.g.*, New Jersey, New York, Pennsylvania) and, at such time as those jurisdictions' proceedings have concluded, establish a separate proceeding to determine whether the process implemented in those jurisdictions should be implemented in West Virginia, with or without modifications. TRIC members agreed that, as part of that proceeding, state-specific pricing issues and performance metrics and remedies should be established.

3. Network Modifications.

Finally, the second TRIC report addressed how to implement the FCC's decision regarding routine network modifications and its impact on Verizon's "no facilities, no build" policy. TRIC reported that its members' written comments produced sharp differences of opinion on this issue.

TRIC reported that Verizon-WV's comments stated that the company had revised its "no facilities, no build" policy to be consistent with the FCC's new rules. Verizon-WV noted that it had posted a model interconnection agreement amendment implementing the FCC's rules to its website and that it had sent an industry letter announcing the

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amendment's availability with October 2, 2003, deemed the request date for purposes of any arbitration requests.

In contrast, TRIC reported that AT&T, FiberNet and NTELOS argued that Verizon-WV's actions in response to the Triennial Review Order do not comply with the FCC's decision. These CLECs claimed that Verizon-WV is seeking to impose a $1000 NRC for any network modification required to provision a DS-1 or higher facility. The CLECs asserted that there is no cost basis for the NRC Verizon-WV is seeking to charge, that the costs of any routine network modifications are already built into the TELRIC rates for unbundled network elements ("UNEs") previously established by the Commission, and that the NRC Verizon-WV is imposing is anticompetitive in that it makes obtaining a DS-1 loop more costly than it was under Verizon-WV's old policy.[2] For its part, Staff noted concerns regarding implementation of the FCC's network modifications decision and opined that CLECs should bear the financial responsibility for the ILEC's unrecovered costs of making routine network modifications.

TRIC reported that its members' positions did not change at the December 18, 2003, meeting, but the group identified 3 major areas that the Commission must address in connection with the FCC's network modifications decision. First, what activities constitute routine network modifications? Second, what is the appropriate price that CLECs should pay for routine network modifications made by the ILEC? Third, what is the appropriate proceeding for Commission consideration of these issues?

With respect to the first issue, TRIC reported broad consensus among members that the FCC description of those activities that it considers routine network modifications, while not exhaustive, sufficiently describes the majority of situations carriers are likely to face. The TRIC members agreed to recommend that the Commission adopt the FCC's definition of the activities that constitute (or do not constitute) routine network modifications, set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*. Further, TRIC members agreed to recommend that the Commission note that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate Commission proceeding, such as arbitration proceedings brought pursuant

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[2] Under Verizon-WV's former policy, CLECs could not obtain DS-1 and higher loops if any modifications were required to provision such facilities. Instead, CLECs could order the loops as "special access" circuits, at rates much higher than UNE rates for similar facilities, and after the minimum service period expired, convert the loops to UNE loops. This process was described in detail in Verizon-WV's § 271 proceeding. *See* "Commission Order," *Verizon-WV*, Case No. 02-0809-T-P, at 56-65 (Jan. 9, 2003).

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to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

With regard to pricing for routine network modifications, TRIC members recommended that such issues be addressed in a proceeding separate from this general investigation. However, there was a split of opinion as to the proper proceeding in which such pricing issues could be raised.

Staff suggested that the TRIC recommend that the Commission initiate a general investigation regarding such issues. Verizon-WV suggested that the FCC made it clear that pricing of routine network modifications should be brought only in the context of interconnection agreement arbitration proceedings under 47 U.S.C. § 252, citing ¶¶ 700-701 of the *Triennial Review Order*. AT&T noted that Verizon-WV's current NRC for routine network modifications is a problem because CLECs cannot obtain the desired facility unless they agree to Verizon-WV's price, which AT&T believes is exorbitant. CAD suggested that interconnection proceedings under 47 U.S.C. § 252 should not be the exclusive avenue for addressing pricing for routine network modifications. CAD noted that Verizon-WV itself had petitioned the Commission to establish rates for so-called "gap/merger/remand" UNEs in the context of a generic proceeding (Verizon-WV, Case No. 01-1696-T-PC).

The second TRIC report reflected members' unanimous agreement, however, that the instant proceeding is not appropriate for determining pricing issues related to routine network modifications. TRIC stated that the Commission can determine the appropriate forum for addressing this issue in response to a filing from any carrier or other proper party.

DISCUSSION

Upon review of all of the foregoing, the Commission finds that it is reasonable and appropriate to act on the TRIC's recommendations (summarized on page 1-2, above). This case shall be dismissed as resolved.

Accordingly, any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after October 2, 2003, will be resolved by a date that is 9 months from the date such challenge is filed.

The Commission hereby defers consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, until

such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

We hereby adopt the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*, and attached hereto as Appendix A.

The parties may seek changes or additions to the FCC's list of routine network modifications through arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

Upon receipt of filings seeking Commission determination of issues related to pricing of routine network modifications, the Commission will determine the appropriate proceeding or forum for addressing the issues.

The TRIC shall continue to assist the Commission on an informal basis in complying with the requirements of the *Triennial Review Order*. The TRIC shall continue to monitor developments related to implementation of batch hot cut processes in other jurisdictions and communicate such developments informally among TRIC membership. At an appropriate time, the TRIC shall submit necessary filings to commence a proceeding regarding implementation of a batch hot cut process in West Virginia.

FINDINGS OF FACT

1. Currently pending before the Commission in this proceeding is the Triennial Review Order Implementation Collaborative's (TRIC's) second report recommending that the Commission enter an order:

> (1) Providing that any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after October 2, 2003, will be resolved by a date that is 9 months from the date such challenge is filed.
>
> (2) Deferring consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, until such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

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(3) Adopting the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*. The TRIC provided the FCC's definitions and they are attached hereto as Appendix A.

(4) Providing that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate Commission proceeding, such as arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

(5) Providing that issues related to pricing of routine network modifications will be addressed in an appropriate, separate proceeding.

(6) Continuing the TRIC, on an informal basis, to assist the Commission in complying with the requirements of the *Triennial Review Order*, including:

(a) Directing that TRIC continue to monitor developments related to implementation of batch hot cut processes in other jurisdictions and communicate such developments informally among TRIC membership.

(b) Directing that TRIC submit such further filings as are necessary in order to commence a proceeding regarding implementation of a batch hot cut process in West Virginia at an appropriate time; and

(7) Dismissing, as resolved, this general investigation.

2. By Orders issued December 15, 2003, and January 2, 2004, the Commission acknowledged TRIC's first report, 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.

3. On January 16, 2004, the TRIC filed its Second Report and Recommendations.

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4. In TRIC's second report, it stated that at TRIC's December 18, 2003, meeting, members discussed whether there is any need to recommend that the Commission establish a "lock-out" period for challenging the FCC's impairment determinations. The discussion was prompted by CAD's concern that state commissions are given until July 2, 2004, to conclude proceedings challenging the FCC's impairment determinations. *See, e.g.*, *Triennial Review Order*, at ¶¶ 339, 417 & 527. However, the FCC's order did not specifically address ILEC challenges that are made after the order's effective date (*i.e.*, October 2, 2003), and before the July 2, 2004, deadline. TRIC member Verizon-WV indicated that it had no objection to the Commission allotting itself 9 months to resolve future challenges to the FCC's impairment determinations. Other TRIC members generally supported this concept and decided to recommend to the Commission that it adopt such a procedural schedule for any future filings challenging an FCC impairment determination.

5. TRIC's second report stated that while TRIC members continue to have differences of opinion regarding whether the Commission is obliged to implement a batch hot cut process in the absence of an ILEC challenge to the FCC's impairment determination, all members agreed that a proceeding regarding such a process need not be undertaken at present. Instead, TRIC members recommend that the Commission defer to other jurisdictions in the Verizon region that have batch hot cut inquiries underway (*e.g.*, New Jersey, New York, Pennsylvania) and, at such time as those jurisdictions' proceedings have concluded, establish a separate proceeding to determine whether the process implemented in those jurisdictions should be implemented in West Virginia, with or without modifications. TRIC members agreed that, as part of that proceeding, state-specific pricing issues and performance metrics and remedies should be established.

6. The second TRIC report addressed how to implement the FCC's decision regarding routine network modifications and its impact on Verizon's "no facilities, no build" policy. TRIC reported that its members' written comments produced sharp differences of opinion on this issue. TRIC identified 3 major areas that the Commission must address in connection with the FCC's network modifications decision. First, what activities constitute routine network modifications? Second, what is the appropriate price that CLECs should pay for routine network modifications made by the ILEC? Third, what is the appropriate proceeding for Commission consideration of these issues?

7. The TRIC members agreed to recommend that the Commission adopt the FCC's definition of the activities that constitute (or do not constitute) routine network modifications, set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*. Further, TRIC members agreed to recommend that the Commission note that additions or changes to the FCC's list of routine network modifications can be sought through any appropriate

Commission proceeding, such as arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

8. TRIC members recommended that pricing for routine network modifications be addressed in a proceeding separate from this general investigation. However, there was a split of opinion as to the proper proceeding in which such pricing issues could be raised. TRIC members stated that the Commission can determine the appropriate forum for addressing this issue in response to a filing from any carrier or other proper party.

CONCLUSIONS OF LAW

1. It is reasonable and appropriate to act on the TRIC's recommendations and to dismiss this case as resolved.

2. Any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after October 2, 2003, will be resolved by a date that is 9 months from the date such challenge is filed.

3. The Commission shall defer consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, until such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

4. The Commission will adopt the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*, and attached hereto as Appendix A.

5. The parties may seek changes or additions to the FCC's list of routine network modifications through arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

6. Upon receipt of filings seeking Commission determination of issues related to pricing of routine network modifications, the Commission shall determine the appropriate proceeding or forum for addressing the issues.

7. The Commission shall require the TRIC to continue to assist the Commission on an informal basis in complying with the requirements of the *Triennial Review Order*. The TRIC shall continue to monitor developments related to implementation of batch hot

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cut processes in other jurisdictions and communicate such developments informally among TRIC membership. At an appropriate time, the TRIC shall submit necessary filings to commence a proceeding regarding implementation of a batch hot cut process in West Virginia.

ORDER

IT IS THEREFORE ORDERED that any challenge to the FCC's impairment determinations in the *Triennial Review Order* filed after October 2, 2003, will be resolved by a date that is 9 months from the date such challenge is filed

IT IS FURTHER ORDERED that consideration of issues related to implementation of a batch hot cut process, including pricing and performance metrics and remedies, is hereby deferred until such time as other jurisdictions in Verizon's operating area or elsewhere have concluded similar proceedings.

IT IS FURTHER ORDERED that the FCC's definition of the activities that constitute routine network modifications, as set forth in ¶¶ 632, 634 & 636-37 of the *Triennial Review Order*, and attached hereto as Appendix A, is hereby adopted.

IT IS FURTHER ORDERED that the parties may seek changes or additions to the FCC's list of routine network modifications through arbitration proceedings brought pursuant to 47 U.S.C. § 252, formal complaint proceedings under *W. Va. Code* § 24-2-7, or proceedings in which declaratory relief is sought.

IT IS FURTHER ORDERED that upon receipt of filings seeking Commission determination of issues related to pricing of routine network modifications, the Commission will determine the appropriate proceeding or forum for addressing the issues.

IT IS FURTHER ORDERED that the TRIC continue to assist the Commission on an informal basis in complying with the requirements of the *Triennial Review Order*. The TRIC shall monitor developments related to implementation of batch hot cut processes in other jurisdictions and communicate such developments informally among TRIC membership. At an appropriate time, the TRIC shall submit necessary filings to commence a proceeding regarding implementation of a batch hot cut process in West Virginia.

IT IS FURTHER ORDERED that upon entry hereof, this case is dismissed as resolved.

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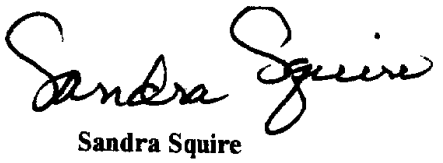
Charleston

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order on all parties of record by First Class United States Mail, and upon Commission Staff by hand delivery.

JML/ljm
031507cc.wpd

A True Copy, Teste:



Sandra Squire
Executive Secretary

DEFINITION OF ROUTINE NETWORK MODIFICATIONS[1]

I. General Rule.

Incumbent LECs must make the following routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed. By "routine network modifications" we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers.

Triennial Review Order, at ¶ 632.

II. Activities That Are Routine Network Modifications.

By way of illustration, we find that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include but are not limited to:

- Rearranging or splicing of cable;
- Adding a doubler or repeater;
- Adding an equipment case;
- Adding a smart jack;
- Installing a repeater shelf;
- Deploying a new multiplexer or reconfiguring an existing multiplexer;
- Accessing manholes;
- Splicing into existing cable;
- Deploying bucket trucks to reach aerial cable; and
- Installing equipment casings.

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[1]Source: "Report and Order," *I/M/O Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket 01-338, FCC 03-36. Paragraphs 632, 634 & 636-37 (Rel. Aug. 21, 2003) ("*Triennial Review Order*").

The foregoing routine modifications apply to all transmission facilities, including copper loops, as well as dark fiber loops and transport.

Triennial Review Order, at ¶¶ 634, 637-38.

III. Activities That Are Not Routine Network Modifications.

- Construction of new wires (*i.e.*, installation of new aerial or buried cable); and

- Requests for altogether new transmission facilities, whether serving an existing customers or along a new route.

Triennial Review Order, at ¶ 636.