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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR

ON BEHALF OF VERIZON FLORIDA INC.

Docket No. 030851-TP

January 7, 2004

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DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

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1 **I. INTRODUCTION**

2 **A. Background**

3 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
4 **ADDRESS.**

5 **A. My name is William E. Taylor. I am Senior Vice President of National**
6 **Economic Research Associates, Inc. (“NERA”), head of its**
7 **telecommunications economics practice, and head of its Cambridge office.**
8 **My business address is One Main Street, Cambridge, Massachusetts**
9 **02142.**

10

11 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS**
12 **PROCEEDING?**

13 **A. Yes, I filed direct testimony regarding hot cut scalability issues on behalf of**
14 **Verizon Florida Inc. (“Verizon”) on December 4, 2003.**

15

16 **B. Purpose & Summary of the Testimony**

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 **A. I have been asked by Verizon Florida Inc. (“Verizon”) to assess the economic**
19 **issues raised in the direct testimonies of Mr. Joseph Gillan on behalf of the**
20 **Florida Competitive Carriers Association and Dr. Mark T. Bryant on behalf of**
21 **MCI WorldCom Communications, Inc and MCI Metro Access Transmission**
22 **Services LLC.**

23

24 **Verizon is asking the Commission to relieve it of the requirement to unbundle**
25 **mass market switching in Density Zones 1 and 2 of the Tampa-St. Petersburg-**

1 Clearwater MSA in accordance with the provisions and criteria in the Federal
2 Triennial Review Order. Report and Order and Order on Remand and Further
3 Notice of Proposed Rulemaking, In the Matter of Review of the Section 251
4 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket
5 No. 01-338); Implementation of the Local Competition Provisions of the
6 Telecommunications Act of 1996 (CC Docket No. 96-989); Deployment of
7 Wireline Services Offering Advanced Telecommunications Capability (CC
8 Docket No. 98-147), FCC No. 03-36, (rel. Aug. 21, 2003) (hereinafter,
9 “TRO”). In accordance with sound economic principles, and consistent with
10 prior FCC policy statements, Verizon has correctly chosen the relevant
11 geographic market to be an area larger than an individual wire center, namely
12 the MSA. Intervenor testimonies in this proceeding disagree with that notion
13 and propose that the relevant geographic market be something smaller, such as
14 the individual wire center. In this rebuttal testimony, I present the economic
15 arguments for why the MSA is the appropriate geographic market.

16

17 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

18 A. Based on sound economic principles, and consistent with prior FCC policy,
19 the relevant geographic market the Commission should adopt for purposes of
20 this proceeding is the MSA and not the individual wire center as some of the
21 interveners in this proceeding erroneously suggest. As the FCC stated: “states
22 should not define the market so narrowly that a competitor serving that market
23 alone would not be able to take advantage of available scale and scope
24 economies from serving a wider market.” TRO ¶ 495.

25 The FCC has recognized the primacy of “actual marketplace evidence” in

1 determining impairment. *TRO* ¶ 7 at 10. Thus, the most significant factor for
2 determining the relevant geographic market is where CLECs have chosen to
3 enter and compete for mass market customers using their own switches and
4 the areas that they currently serve and could serve using those switches. The
5 FCC places heavy emphasis on actual marketplace evidence throughout the
6 *TRO*.

7
8 In Florida, CLECs have deployed a significant number of their own switches
9 in the Tampa-St. Petersburg-Clearwater MSA. Those switches have wide
10 geographic reach (as wide as an entire MSA) and represent a sunk investment.
11 Using that investment, CLECs serve mass market and other customers across
12 the MSA. Given the MSA-wide coverage of major media outlets and the
13 CLECs' strong incentives to use fixed investment to full capacity, this
14 geographic scope of entry is exactly what one would expect, and CLECs can
15 be expected to continue expanding the scope and extent of their facilities-
16 based services throughout the MSA.

17
18 In general, we would expect carriers to try to serve at least the MSA because
19 the high degree of social and economic integration present in such areas
20 implies that firms would generally market services throughout this geographic
21 area. While these incentives clearly apply to new entrants, there may be
22 circumstances where a CLEC's existing facilities or customer base may
23 dictate serving, at least initially, a geographic area different from an MSA.
24 Examples might include cable companies that choose to provide telephone
25 service to their video footprint or CLECs that expand across an MSA

1 boundary into an area contiguous with their existing facilities. However, of
2 all the existing, pre-defined geographic areas, the MSA comes closest to
3 encompassing the area in which local exchange competition takes place.
4 Mass-market entry is often associated with media advertising aimed at a
5 geographic area at least as large as the MSA; thus, we would expect the
6 carrier to serve the entire MSA because advertising throughout the MSA, but
7 not serving the entire area, raises the carrier's costs and harms its reputation.
8 Service offerings, including offerings of discounted bundled services, are
9 frequently rolled out by individual MSA since that is the geographic area
10 covered by newspapers and local radio, television and cable media. (In fact,
11 in its discussion of the metropolitan area to be used in the Bell
12 Atlantic/NYNEX merger, the FCC observed that television and radio
13 advertising markets generally encompassed the geographic area it had
14 designated. *Bell Atlantic-NYNEX Order* at ¶ 55-56). Thus, all potential
15 customers in the MSA are exposed to the same mass-market advertising
16 messages.

17
18 A focus on potential customers is consistent with recent FCC guidance to the
19 states on how to determine the relevant market. Recently in its *Brief for*
20 *Respondents* before the United States Court of Appeals for the District of
21 Columbia Circuit, the FCC explained the guidance it gave to the states as it
22 pertains to market definition. *See Brief for Respondents*, On Petition for
23 Review of an Order of the Federal Communications Commission, *United*
24 *States Telecom Ass'n v. FCC*, No. 00-1012 (D.C. Cir.)(filed December 31,
25 2003) ("*Brief for Respondents*"). On page 40 the FCC stated: "Under this

1 standard, the self-provisioning trigger would be met, at a minimum, not only
2 at locations in which three competitive providers are *actually serving* mass
3 market customers with non-ILEC switching, but also at locations where three
4 competitive providers are “*holding out*” the availability of such service to
5 mass market customers.”

6

7 Similarly, in its October 9, 2003 filing in the D.C. Circuit Court opposing the
8 USTA Writ of Mandamus, the FCC explained that

9 The corrected paragraph [¶ 499] does *not* require that, for
10 purposes of the switching triggers, self-provisioning competitors
11 must be ready and willing to serve all retail customers in the
12 market. The Commission made similar corrections in the
13 *Order’s* discussion of how states should analyze impairment in
14 areas where the triggers are not met...These deletions eliminate
15 any suggestion in the *Order* that a state’s finding of no
16 impairment is contingent on a determination that a facilities-
17 based competitor could economically serve all customers in the
18 market.

19 *Opposition of Respondents to Petitions for a Writ of Mandamus,*
20 *United States Telecom Ass’n v. FCC*, No. 00-1012 (D.C. Cir.) (filed
21 October 9, 2003), at 23.

22 **II. GEOGRAPHIC MARKET DEFINITIONS FOR MASS-**
23 **MARKET LOCAL EXCHANGE SERVICE**

24 **A. TRO Triggers**

25 **Q. PLEASE EXPLAIN THE CRITERIA THAT VERIZON MUST MEET**

1 **IN ORDER TO OBTAIN THE RELIEF THAT IT IS SEEKING.**

2 A. The Federal Communications Commission (“FCC”) has set forth the criteria
3 that incumbent local exchange carriers (“ILECs) must meet in order to be
4 relieved of the unbundling obligations in the Telecommunications Act of 1996
5 (“TA96”). In the *TRO*, the FCC establishes certain “triggers” that state
6 commissions are required to use to determine whether ILECs should be
7 relieved of certain unbundling obligations.

8

9 **Q. MR. GILLAN (AT 33-49) AND DR. BRYANT (AT 10-14) DISCUSS**
10 **THEIR VIEWS OF THE TRIGGERS. WHAT ARE TRIGGERS AND**
11 **WHY DID THE FCC DECIDE TO USE A TRIGGERS APPROACH TO**
12 **DETERMINE WHETHER ILECS SHOULD BE RELIEVED OF**
13 **CERTAIN UNBUNDLING OBLIGATIONS?**

14 A. The FCC describes triggers as “a principal mechanism for use by states in
15 evaluating whether requesting carriers are in fact not impaired in a particular
16 market,” and has emphasized that they are “keyed to objective criteria” and
17 “provide bright-line rules.” *TRO* at ¶ 498. The FCC has also highlighted that
18 the use of objective triggers can expedite proceedings, noting that the triggers
19 allow state commissions to “avoid the delays caused by protracted
20 proceedings and can minimize administrative burden.” *TRO* at ¶ 498.

21

22 Triggers are objective measures of CLEC competitive activity, which are to be
23 used by state commissions for determining the degree of competition in a
24 particular market and, therefore, whether ILECs should be relieved of certain
25 unbundling obligations. In this proceeding, the trigger that determines

1 whether Verizon must continue to offer switching for CLECs serving the mass
2 market is whether there are at least three unaffiliated CLECs serving mass
3 market customers in a particular market with the use of their own switches.

4
5 Because determining the degree of competitive activity in a particular market
6 can be a complicated undertaking, subject to considerable debate and
7 disagreement among economists and policymakers, the use of objective
8 triggers is a way to minimize such debates, preserve the resources that would
9 otherwise be consumed in such debates, and provide for expedited decision
10 making on the part of state commissions. It is relatively straightforward to
11 determine whether an ILEC has or has not met a particular objective trigger.

12
13 Moreover, because there can be several different geographic markets in every
14 ILEC territory—as I discuss below, I believe the relevant geographic market
15 is the MSA—the use of objective triggers substantially reduces the amount of
16 resources and time that state commissions must devote to the issue. Without
17 the use of objective triggers, the state commission would need to conduct
18 more resource intense proceedings that apply to the different geographic
19 markets, thus prolonging the time required to reach a decision. The desire to
20 minimize regulatory debate and provide a straightforward and expedited
21 approach to relieving ILECs of unbundling obligations is the reason for the
22 use of objective triggers even though there is the possibility that economic
23 precision is sacrificed through the use of objective triggers—because, for
24 example, the triggers may be overly conservative and may relieve ILECs of
25 unbundling obligations only after the time when sound economic principles

1 would call for relief.

2 **Q. IS IT APPROPRIATE TO CONSIDER CRITERIA NOT INCLUDED**
3 **IN THE TRIGGERS—SUCH AS MARKET SHARE TESTS,**
4 **PROFITABILITY, ETC.—WHEN EVALUATING VERIZON’S**
5 **REQUEST?**

6 A. No. The value of the triggers is their simplicity and objective nature. That
7 value is lost if the triggers become a complex, far-ranging – and lengthy –
8 inquiry into the economics of the local exchange market. Similarly, the value
9 of the trigger process is undermined if the determination of the proper
10 geographic market is allowed to depend upon such an inquiry. Under the self-
11 provisioning trigger, a state “must find ‘no impairment’ when three or more
12 unaffiliated competing carriers are serving mass market customers in a
13 particular market with the use of their own switches.” *TRO* at ¶ 501. The
14 self-provisioning trigger is an objective test that simply requires the counting
15 of unaffiliated competing carriers in a particular geographic market providing
16 service to mass market customers. Once the market has been defined—and I
17 discuss below that the geographic market is the MSA—other criteria, such as
18 market share tests, profitability analyses, etc., are not to be taken into account.
19 It is only if a state commission determines that an ILEC has not met the self-
20 provisioning triggers that the commission can conduct an analysis of the
21 potential for CLECs to deploy their own switches to serve mass market
22 customers in the relevant geographic market, given economic and operational
23 conditions in that market. *TRO* at ¶ 506. But that is not the case in this
24 instance because Verizon has provided evidence that it has met the self-
25 provisioning triggers in certain geographic regions in its Florida territory.

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Once a geographic market is defined, determining whether an ILEC has met the trigger in that market is straightforward. In the remainder of my testimony I present the economic arguments that lead me to conclude that the relevant geographic market is an area that is larger than an individual wire center, namely the MSA.

B. The Concept of a Geographic Market

Q. DR. BRYANT (37-51) ARGUES THAT THE RELEVANT GEOGRAPHIC MARKET IS, AT A MAXIMUM, THE WIRE CENTER. MR. GILLAN (27-29), WHILE NOT PROVIDING A RECOMMENDATION IN HIS DIRECT TESTIMONY, STATES THAT IT IS IMPORTANT THAT THE COMMISSION DEFINE A GEOGRAPHIC MARKET “IN A MANNER THAT PERMITS IT TO RECOGNIZE THE UNIQUE COMPETITIVE SIGNATURE OF UNE- P...” DO YOU AGREE WITH THESE POSITIONS?

A. No. Based on sound economic principles and a number of FCC policy statements I conclude—contrary to the position of interveners—that the relevant geographic market is the MSA, not the individual wire center nor the undefined geographic area implied by Mr. Gillan’s incorrect and novel notion. In this section I provide the basis for my conclusion.

Q. HOW DO ECONOMISTS DEFINE A GEOGRAPHIC MARKET?

A. A geographic market area is one in which sellers provide products or services that customers treat as substitutes for one another and thus which compete

1 against one another. As a leading text describes the concept:

2 The geographic limit of a market is determined by answering the
3 question of whether an increase in price in one location
4 substantially affects the price in another. If so, then both
5 locations are in the same market.

6 D.W. Carlton and J.M. Perloff, *Modern Industrial Organization*,
7 Second edition, (1994), New York: Harper Collins, at 807.
8 (Similarly, the *Horizontal Merger Guidelines* (Section 1.2.1)
9 consider firms at different locations to be in the same market when
10 a potential price increase by one firm (assuming other firms
11 maintain their current prices) would be unprofitable, because
12 customers would shift to the products of firms at other locations in
13 the same geographic market.)

14
15 For mass-market local telephone service, carriers offering mass-market local
16 telephone service in the core of an urban area would compete in the same
17 geographic market as carriers offering local service in a close suburb because
18 reductions in local exchange prices in the suburb would lead to lower prices in
19 the core area. This would happen because carriers advertise and promote
20 mass-market services on a metropolitan-wide basis, and customers in the core
21 area would consequently expect to pay the same prices advertised for services
22 in the suburb. Conversely, if a firm attempted to raise rates in the suburb, a
23 competitor in the core area would quickly expand its business in the suburb
24 using the same switch and the same mass-marketing tools, placing downward
25 pressure on the prices in the suburb.

1

2 **Q. DOES THE ANALYSIS OF THE GEOGRAPHIC SCOPE OF THE**
3 **RELEVANT MARKET IN THE CASE OF TELECOMMUNICATIONS**
4 **DIFFER IN DETAIL FROM THE TYPICAL DELINEATION OF THE**
5 **GEOGRAPHIC DIMENSIONS OF A PRODUCT?**

6 A. To some extent. The typical case, (e.g., a merger analysis), starts with the
7 products of the firm(s) in question and then poses the question of whether
8 customers would shift to the products of firms *at other locations* in the event
9 of a price increase by the reference firm(s). That is, firms are viewed as
10 having precise locations; consequently, considerations such as transportation
11 costs come into play when determining whether customers would shift their
12 purchases to the competing firms. In contrast, telecommunications carriers
13 have switches that can reach major portions of the geographic market area and
14 market their services throughout the geographic market. Indeed, CLECs
15 frequently offer service (using resale or UNE-P) in geographic areas where
16 they have no facilities, so the notion of identifying a firm with a location at
17 which it provides service makes less sense for telecommunications carriers
18 than (for example) cement manufacturers.

19

20 **Q. IN ASSESSING WHETHER THE ABSENCE OF THE UNBUNDLED**
21 **LOCAL SWITCHING WOULD IMPAIR ENTRY INTO MASS-**
22 **MARKET LOCAL EXCHANGE SERVICES, HOW WOULD AN**
23 **ECONOMIST DETERMINE THE GEOGRAPHIC SCOPE OF THE**
24 **MARKET?**

25 A. The obvious touchstone is the FCC's market-definition rule, which specifies

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that:

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

47 CFR § 51.319(d)(2)(i).

In addition to the specific requirements of the rule, paragraphs 495-496 of the *TRO* refer to other factors that a state commission may consider in defining the geographic market. For example, in paragraph 495, the FCC stated: "states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market."

All in all, however, the most significant factor is where CLECs have chosen to enter and compete for mass market customers through their own switches and the areas that they do serve and could serve using those switches. The FCC places heavy emphasis on actual marketplace evidence throughout the *TRO*. At paragraph 93, for example, the FCC states, "As we anticipated in the

1 *Triennial Review NPRM*, we agree with commentators that argue that actual
2 marketplace evidence is the most persuasive and useful kind of evidence
3 submitted. In particular, we are most interested in granular evidence that new
4 entrants are providing retail services in the relevant market using non-
5 incumbent LEC facilities...” The market-entry evidence presented by Mr.
6 Fulp in his direct testimony on behalf of Verizon shows where CLECs are
7 providing mass market switching services and implicitly reflects the CLECs’
8 own economic and business evaluation of all the other potentially relevant
9 factors listed in paragraphs 495-96. Direct Testimony of Orville D. Fulp, on
10 behalf of Verizon Florida Inc., December 4, 2003, Docket No. 030851-TP
11 (*“Fulp Testimony”*).

12

13 **Q. IS THE ANALYSIS UNDER THE FCC’S RULE IN REASONABLY**
14 **CLOSE ALIGNMENT WITH THE TRADITIONAL ECONOMIC**
15 **APPROACH TO GEOGRAPHIC MARKET DETERMINATION?**

16 A. Yes. The competing firm can be thought to be located at the location of its
17 switch and to offer the local exchange service product at that location. In
18 order to reach customers throughout the market, the firm incurs
19 “transportation costs” in the form of outlays for unbundled loops, transport of
20 traffic between its switch and ILEC end-offices, certain non-recurring
21 charges, and the like.

22

23 Specifically, from the perspective of the CLEC, two related considerations
24 come into play, which together determine the geographic area in which the
25 CLEC chooses to compete for mass-market services. First, the CLEC incurs

1 fixed costs (costs insensitive to the number of customers) when it chooses to
2 locate its switch and market its services following the contours of the media
3 markets. That is, when a CLEC enters using mass-market advertising, it has
4 implicitly chosen to reach all potential customers in the geographic area
5 served by the media. Thus, to serve mass-market customers, CLECs
6 implicitly offer service to a geographic area consisting of the intersection of
7 the areas (i) served by a switch and (ii) corresponding to media market
8 geographic reach. Second, the CLEC must decide how to serve customers in
9 particular ILEC wire centers to which it has already offered service: whether
10 to incur fixed costs of collocation or to serve the customers through EELs or
11 resold ILEC services. Putting these two types of costs together, the CLEC
12 entrant determines that it is likely to be profitable to serve this area—*i.e.*, the
13 intersection of the reach of a switch and the reach of mass media—given the
14 most efficient way to connect customers in different ILEC wire centers to its
15 switch.

16
17 Economic analysis, of course, also takes into account actual market activity to
18 date, because that indicates how competitors themselves have balanced the
19 various considerations that go into entering a market. In Florida, CLECs have
20 deployed a significant number of their own switches in the Tampa-St.
21 Petersburg-Clearwater MSA. These switches have wide geographic reach (as
22 wide as an entire MSA) and represent a sunk investment. In using that
23 investment, CLECs have served mass market and other customers across
24 much of the MSA. Given the MSA-wide coverage of major media outlets and
25 the CLECs' incentives to use fixed investment to full capacity, this geographic

1 scope of entry is exactly what one would expect, and CLECs can be expected
2 to continue expanding the scope and extent of their facilities-based services
3 throughout the MSA.

4

5 **Q. WHAT GEOGRAPHIC AREA WILL THIS ANALYSIS PRODUCE AS**
6 **A MARKET DEFINITION?**

7 A. This analysis of how CLECs enter local exchange markets, together with the
8 economic definition of a relevant geographic market discussed above, shows
9 that the MSA is the best readily-available geographic area that corresponds to
10 the concept of the geographic market. In individual circumstances, media
11 geographic contours may not align perfectly with MSA boundaries, and
12 switches can certainly serve larger areas than individual MSAs.
13 Circumstances of individual CLECs may favor entry into different geographic
14 areas: *e.g.*, cable companies may initially serve telephone customers in their
15 cable footprint, or some CLECs may offer service in contiguous areas in a
16 neighboring MSA. Nonetheless, because the MSA approximates how mass-
17 market services are sold (through mass-market advertising) and how services
18 are provided (with a switch that serves a large geographic area), the MSA is
19 the best available answer to the question: In what geographic areas are CLEC
20 and ILEC services likely to compete?

21

22 **Q. WHAT ARE METROPOLITAN STATISTICAL AREAS?**

23 A. In concept, a MSA is a county or group of counties having a large clustered
24 population, including adjacent areas having a high degree of community of
25 interest with the core population center. Specifically, the Office of

1 Management and Budget (OMB) defines MSAs as a county or group of
2 counties with (1) a city of population 50,000 or more or (2) an urbanized area
3 (as defined by the Census Bureau) of population of at least 50,000 consisting
4 of one or more counties. According to the OMB:

5 The general concept of a Metropolitan Statistical Area or a
6 Micropolitan Statistical Area is that of an area containing a
7 recognized population nucleus and adjacent communities that
8 have a high degree of integration with that nucleus. Metropolitan
9 Statistical Area.—A Core Based Statistical Area associated with
10 at least one urbanized area that has a population of at least
11 50,000.

12 The Metropolitan Statistical Area comprises the central county
13 or counties containing the core, plus adjacent outlying counties
14 having a high degree of social and economic integration with the
15 central county as measured through commuting.

16 (Currently defined metropolitan and micropolitan statistical areas are based on
17 application of the 2000 standards (which appeared in the Federal Register on
18 December 27, 2000) to Census 2000 data and were announced by OMB
19 effective June 6, 2003.)

20
21 Specifically, MSAs are carefully developed to reflect demographic and
22 commercial reality based on the application of OMB standards to census data
23 (including commuting patterns). MSAs have a “high degree of integration”
24 with a recognized population nucleus and recognize “economic linkages
25 between urban cores and outlying, integrated areas.” 65 Fed. Reg. 82228

1 (2000).

2

3 **Q. WHY DO THESE AREAS DETERMINE REASONABLE**
4 **BOUNDARIES FOR THE GEOGRAPHIC SCOPE OF LOCAL**
5 **EXCHANGE MARKETS?**

6 A. In general, we would expect carriers to try to serve at least the MSA because
7 the high degree of social and economic integration present in such areas
8 implies that firms would generally market services throughout this geographic
9 area. While these incentives clearly apply to new entrants, there may be
10 circumstances where a CLEC's existing facilities or customer base may
11 dictate serving, at least initially, a geographic area different from an MSA.
12 (Examples might include cable companies that choose to provide telephone
13 service to their video footprint or CLECs that expand across an MSA
14 boundary into an area contiguous with their existing facilities.) However, of
15 all the existing, pre-defined geographic areas, the MSA comes closest to
16 encompassing the area in which local exchange competition takes place.)
17 Mass-market entry is associated with media advertising aimed at a geographic
18 area at least as large as the MSA; thus, we would expect the carrier to serve
19 the entire MSA because, if a carrier advertised throughout the MSA, but did
20 not serve the entire area, that would raise its costs and potentially harm its
21 reputation. Service offerings, including offerings of discounted bundled
22 services, are frequently rolled out by individual MSA since that is the
23 geographic area covered by newspapers and local radio, television and cable
24 media. (In fact, in its discussion of the metropolitan area to be used in the
25 Bell Atlantic/NYNEX merger, the FCC observed that television and radio

1 advertising markets generally encompassed the geographic area it had
2 designated. *Bell Atlantic-NYNEX Order* at ¶ 55-56.) Thus, all potential
3 customers in the MSA are exposed to the same mass-market advertising
4 messages.

5
6 By the same token, entry into local exchange markets from outside the MSA
7 (e.g., in response to a price increase) may be more difficult because potential
8 new entrants have no existing customer base and little brand awareness,
9 except that engendered by the provision of other related services (e.g., AT&T
10 or MCI's long distance services) or by national marketing plans (e.g., MCI's
11 The Neighborhood). Furthermore, potential customers served by ILEC
12 central offices too small or too sparsely populated to justify the CLEC's cost
13 of collocation or backhaul transport to the switch are still exposed to the same
14 marketing messages and can be served through resale of the ILEC's retail
15 local exchange service.

16
17 In this sense, mass-market consumers in any two central offices in the same
18 MSA generally face similar competitive conditions and have access to similar
19 competitive alternatives. In addition, as the FCC observed in its *Pricing*
20 *Flexibility Order*, at ¶ 72, the MSA reflects the primary geographic scope of
21 competitive entry from the CLEC's perspective, because the entry decision is
22 generally undertaken first at the level of the MSA. *In the Matter of Access*
23 *Charge Reform, Price Cap Performance Review for Local Exchange Carriers,*
24 *Interexchange Carrier Purchases of Switched Access Services Offered by*
25 *Competitive Local Exchange Carriers, Petition of U S West Communications,*

1 *Inc. for Forbearance from Regulation as a dominant Carrier in the Phoenix,*
2 *Arizona MSA*, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63 and
3 CC Docket No. 98-157. Fifth Report and Order and Further Notice of
4 Proposed Rulemaking, Released August 27, 1999 (“*Pricing Flexibility*
5 *Order*”). Consistent with the geographic market definitions favored by recent
6 FCC decisions (discussed below) and the geographic market analysis
7 generally used in the antitrust and economic context, such customers are thus
8 part of the same geographic market.

9
10 **C. Previous FCC Determinations of Geographic Markets**

11 **Q. HAS THE FCC RECENTLY PROVIDED GUIDANCE ON HOW TO**
12 **DEFINE THE RELEVANT GEOGRAPHIC MARKET IN**
13 **ACCORDANCE WITH THE TRO?**

14 A. Yes. Recently in its *Brief for Respondents* before the United States Court of
15 Appeals for the District of Columbia Circuit, the FCC explained the guidance
16 it gave to the states as it pertains to market definition. *See Brief for*
17 *Respondents*, On Petition for Review of an Order of the Federal
18 Communications Commission, *United States Telecom Ass’n v. FCC*, No. 00-
19 1012 (D.C. Cir.)(filed December 31, 2003) (“*Brief for Respondents*”). On
20 page 40 the FCC stated:

21 Under this standard, the self-provisioning trigger would be met,
22 at a minimum, not only at locations in which three competitive
23 providers are *actually serving* mass market customers with non-
24 ILEC switching, but also at locations where three competitive
25 providers are “*holding out*” the availability of such service to

1 mass market customers.

2 Footnote: “This focus on the locations in which customers face
3 similar competitive choices is consistent with Commission
4 precedent analyzing geographic markets in the merger context.
5 *See e.g., Application of NYNEX Corp. and Bell Atlantic Corp.*
6 *for Consent to Transfer of NYNEX Corp. and Its Subsidiaries*, 12
7 FCC Rcd 19985 (¶54) (1997); *Application of EchoStar*
8 *Communications Corp.* 17 FCC Rcd 20559 (¶¶119-120)(2002).

9
10 As I described above, mass-market entry is often associated with media
11 advertising aimed at a geographic area at least as large as the MSA. That is,
12 CLEC advertising is conducted at least at the MSA level, which means that
13 CLECs are “holding” themselves out to offer service at the MSA.

14
15 **Q. HAS THE FCC PREVIOUSLY DETERMINED THAT MSAS ARE**
16 **THE CORRECT GEOGRAPHIC SCOPE OF LOCAL EXCHANGE**
17 **MARKETS?**

18 A. Yes, in at least three contexts. In its just-released order that allows customers
19 to port their wireline telephone numbers to wireless carriers, the FCC
20 implemented this requirement on a MSA basis. *In the Matter of Telephone*
21 *Number Portability and CTIA Petitions for Declaratory Ruling on Wireline-*
22 *Wireless Porting Issues* (CC Docket No. 95-116) Memorandum Opinion and
23 Order and Further Notice of Proposed Rulemaking, FCC 03-284 (released
24 November 10, 2003) at ¶ 29-30. This order is especially germane to this
25 proceeding, because, as four of the five FCC Commissioners explicitly

1 observed in their separate statements, one of the major implications of the
2 order is to substantially increase the intermodal competition between wireline
3 services (including ILEC offerings) and wireless services.

4
5 Second, in its assessment of how the merger of formerly independent
6 incumbent local exchange carriers would affect local exchange competition in
7 the merged territories, the FCC identified specific metropolitan areas as the
8 markets subject to a competitive assessment. See, e.g., *Bell Atlantic-NYNEX*
9 *Order* at ¶ 43. The FCC identified the metropolitan scope of advertising
10 markets as a relevant factor in defining the market. *Ibid.* at ¶ 55.

11
12 Third, in its order granting ILECs price flexibility for certain interstate
13 services, the FCC concluded:

14 We will grant pricing flexibility relief for both Phase I and Phase
15 II on an MSA basis. We agree with those commenters that
16 maintain that MSAs best reflect the scope of competitive entry,
17 and therefore are a logical basis for measuring the extent of
18 competition.

19 *Pricing Flexibility Order* at ¶ 72.

20
21 When properly interpreted, the FCC’s market definition rule in the *TRO* is
22 entirely consistent with its prior emphasis on the “scope of competitive entry”
23 used to define geographic markets in its price flexibility order.

24
25 In addition to defining geographic markets for local competition, the FCC has

1 used MSAs in numerous other proceedings, such as in its Biennial Review of
2 spectrum aggregation limits for wireless carriers (*In re 1998 Biennial*
3 *Regulatory Review Spectrum Aggregation Limits for Wireless*
4 *Telecommunications Carriers*, 15 FCC Rcd. 22072 at ¶16 (October 17,
5 2000)), in defining the geographic markets for programming distributors (*In*
6 *re Implementation of Section 304 of the Telecommunications Act of 1996*, 13
7 FCC Rcd. 14775 at ¶ 108 (June 11, 1998)) and in conducting lotteries and
8 granting the right to acquire cellular telephone licenses. (The Federal Trade
9 Commission has also noted that MSAs can serve as “close proxies” for
10 detailed geographic analysis and has frequently used MSAs to define
11 geographic markets in the number of cases involving retail sales to consumers.
12 *See In the Matter of CVS Corporation*, File No. 971-0060, Analysis to
13 Proposed Consent Order to Aid Public Comment (June 1997)). It also used the
14 MSA as the geographic basis for its switching exemption in the *UNE Remand*
15 *Order* for CLECs serving enterprise (4-plus line) customers. *Implementation*
16 *of the Local Competition Provisions of the Telecommunications Act of 1996*,
17 CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of
18 Proposed Rulemaking, 15 FCC Rcd 3696, 3699, (“*UNE Remand Order*”), ¶¶
19 276-298. Specifically, ILECs are exempted from having to provide
20 unbundled switching to CLECs serving customers with four or more lines in
21 density zone one of the top 50 MSAs.

22

- 23 **D. Verizon’s geographic market definition is correct**
- 24 **Q. HOW DOES VERIZON DEFINE THE RELEVANT GEOGRAPHIC**
- 25 **MARKET?**

1 A. Verizon appropriately recognizes that the MSAs are the relevant geographic
2 market. *Fulp Testimony* at 8. Verizon’s support for using the MSA as the
3 relevant geographic market is based upon some of the arguments I mentioned
4 above, such as the fact that mass market media advertising is usually
5 conducted on an MSA basis.

6
7 Nevertheless, the evidence presented by Verizon to obtain relief consistent
8 with the “self-provisioning trigger” is also based on a narrower geographic
9 market, namely the UNE pricing Density Zones within MSAs. Specifically,
10 based on the evidence of CLECs using their own switches to serve customers
11 in the Tampa-St. Petersburg-Clearwater MSA, Verizon is asking for relief in
12 Density Zones 1 and 2.

13
14 While Verizon’s position is that the MSA is the correct geographic market, it
15 presented evidence on a Density Zone basis so as to provide the Commission
16 with an alternative to MSA if the Commission were not inclined to accept the
17 entire MSA as the relevant geographic market. It follows that if Verizon
18 passes the self-provisioning trigger test based on a Density Zone definition of
19 the geographic market—as it does as described in Mr. Fulp’s direct
20 testimony—then it must also pass the trigger test based on an MSA definition
21 of the geographic market. Therefore, even though Verizon submitted
22 evidence on a Density Zone basis, the Commission can and should still decide
23 that the entire Tampa-St. Petersburg-Clearwater MSA should be entitled to
24 relief.

25

1 **Q. WHAT EVIDENCE DID VERIZON PRESENT TO SUPPORT ITS**
2 **CLAIM THAT IT HAS MET THE SELF-PROVISIONING TRIGGERS**
3 **IN DENSITY ZONES 1 AND 2 OF THE TAMPA-ST. PETERSBURG-**
4 **CLEARWATER MSA?**

5 A. Verizon examined data at the wire center level to determine the number of
6 CLECs that lease stand-alone UNE loops in the Tampa-St. Petersburg-
7 Clearwater MSA. Verizon correctly believes that CLECs providing POTS
8 service that lease stand-alone UNE loops from Verizon, without also leasing
9 switching, are necessarily using their own switches to provide service to the
10 customers connected to those loops. According to Verizon's data analysis, in
11 Density Zones 1 and 2 of the Tampa-St. Petersburg-Clearwater MSA there
12 were 8 and 4, respectively, unaffiliated CLECs serving mass market
13 customers with their own switches. This is more than sufficient to satisfy the
14 self-provisioning trigger in these markets.

15

16 **III. INTERVENOR'S TESTIMONIES DEFINE THE**
17 **GEOGRAPHIC MARKET TOO NARROWLY**

18 A. **Mr. Gillan's theory (at 31) of "similar competitive profile" is**
19 **inconsistent with sound economic principles and is contrary to FCC**
20 **policy**

21 **Q. PLEASE DESCRIBE MR. GILLAN'S POSITION AS IT PERTAINS TO**
22 **WHAT THE RELEVANT GEOGRAPHIC MARKET SHOULD BE IN**
23 **THIS PROCEEDING?**

24 A. Mr. Gillan (at 23) states that he does not provide a recommendation at this
25 time regarding what is the relevant geographic market that the Commission

1 should use in this proceeding. Rather he provides “guidance” to the
2 Commission pending his review of the ILECs’ initial testimony.
3 Nevertheless, Mr. Gillan (at 27) asserts that the *TRO* “lays out a relatively
4 simple (yet reasonably useful) approach—look at the areas being served by a
5 particular network element and determine whether an alternative could
6 reasonably produce the same result.”

7
8 He continues (28-29) by stating, “My review of what information is currently
9 available, however, demonstrates that UNE-P exhibits a very distinct
10 competitive profile—that is, UNE-P (and only UNE-P) brings competitive
11 choice throughout the serving territory of the ILEC. As the Commission
12 approaches its impairment analysis, it is important that it define ‘geographic
13 areas’ in a manner that permits it to recognize the unique competitive
14 signature of UNE-P, so that it may test other entry strategies to see whether
15 they could produce the same level of competitive choice.” He continues (at
16 31) “[the Commission] should not restrict the availability of unbundled
17 local switching and UNE-P unless it can conclude that an alternative will
18 produce a similar competitive profile.”

19
20 **Q. IS THERE ANY MERIT TO MR. GILLAN’S POSITION AND DOES**
21 **IT PROVIDE “GUIDANCE” TO THE COMMISSION AS TO HOW TO**
22 **DEFINE A GEOGRAPHIC MARKET?**

23 A. No. Rather than using sound economic principles to define the relevant
24 geographic market, Mr. Gillan’s suggestion to the Commission is tautological.
25 That is, he defines a geographic market based upon whether that definition

1 would lead to policies that result in the *same* level of competition that is
2 currently being provided through the use of UNE-P. Not only is this contrary
3 to a fair reading of the *TRO* and to sound economic principles, it is almost
4 impossible to achieve. The removal of switching as an unbundled network
5 element for the mass market—and by implication the removal of UNE-P—
6 would result, by definition, in a different competitive landscape than before
7 the removal. But that does not mean it would result in any less competition.

8

9 **Q. PLEASE EXPLAIN.**

10 A. Verizon is asking for relief only in those geographic areas where it believes it
11 has met the self-provisioning triggers. In the other geographic areas of
12 Verizon's territory, UNE-P will remain and CLECs would be permitted to
13 continue to offer their customers service through UNE-P, if they so choose.
14 In the geographic area where Verizon is relieved of the obligation to provide
15 switching, passing the trigger means that the economic conditions are such
16 that CLECs can successfully compete against the ILECs without the right to
17 purchase unbundled local switching. While the means by which CLECs
18 provide their services may change, the outcome is the same—consumers will
19 have similar competitive alternatives to what they had before UNE switching
20 was eliminated in certain areas. And no where in the state is there less
21 competition because of the elimination of switching in any particular
22 geographic market.

23

24 **Q. BUT DOESN'T MR. GILLAN (AT 27) HAVE A POINT WHEN HE**
25 **STATES THAT THE OBLIGATION FOR UNBUNDLING SHOULD**

1 **BE REMOVED ONLY IF AN “ALTERNATIVE COULD**
2 **REASONABLY PRODUCE THE SAME RESULT.”**

3 A. No. He misapplies this basic premise by implying that only when a
4 competitive alternative would be able to produce the same result *on a*
5 *statewide basis* should switching be removed in any geographic area. That is,
6 he seems to be saying that until CLECs have the incentive to economically
7 deploy switching in *every* part of the state, the Commission should not remove
8 the switching obligation in *any* part of the state.

9

10 **Q. SHOULD THE COMMISSION ADOPT SUCH A POSITION?**

11 A. Absolutely not. Such an approach is devoid of economic support and does not
12 serve as a sound basis for defining the relevant geographic market. In my
13 discussion above on geographic markets, I discussed the different factors that
14 determine the relevant geographic market, factors such as the advertising
15 reach of CLECs and where CLECs have chosen to enter and compete for mass
16 market customers using their own switches and the areas that they do serve
17 and could serve with those switches. Mr. Gillan’s recommendation is devoid
18 of such analysis and seems to be intended to expand the scope of the *TRO* by
19 adding additional policy variables that are not to be found in the *TRO*. For
20 example, in discussing the potential relevant geographic market, while the
21 FCC does not tell the states what the proper geographic market is, it does limit
22 acceptable market size: “...state commission shall not define the relevant
23 geographic area as the entire state,” (47CFR § 51.319(d)(2)(i)) and, “states
24 should not define the market so narrowly that a competitor serving that market
25 alone would not be able to take advantage of available scale and scope

1 economies from serving a wider market.” *TRO* ¶ 495. There is no support for
2 Mr. Gillan’s notion of the relevant geographic market in the *TRO* or in sound
3 economics.

4 **B. Dr. Bryant’s claim that the relevant geographic market is, at a
5 maximum, the wire center is unsupportable.**

6 **Q. WOULD YOU PLEASE SUMMARIZE DR. BRYANT’S POSITION ON
7 WHAT THE COMMISSION SHOULD CONSIDER AS THE
8 RELEVANT GEOGRAPHIC MARKET?**

9 A. Dr. Bryant begins (at 40) with the observation that, “the ‘most accurate’ level
10 of granularity must address switching capability for particular customer
11 premises.” He then goes on to state, “[f]ortunately, certain aggregations of
12 consumers can be accomplished to achieve ‘administrative practicability,’”
13 Based on a discussion of “administrative practicability” Dr. Bryant concludes
14 (at 43), “...it is reasonable to aggregate customers and consider impairment
15 issues at the wire center level.”

16
17 **Q. SHOULD THE COMMISSION ADOPT THE INDIVIDUAL WIRE
18 CENTER AS THE RELEVANT GEOGRAPHIC MARKET FOR
19 PURPOSES OF IMPAIRMENT ANALYSES?**

20 A. No, the Commission should adopt the MSA, and not the individual wire center
21 as the relevant geographic market for purposes of impairment analyses. As I
22 described above, such an approach is consistent with prior FCC policy on this
23 issue. Moreover, from an economic perspective, the wire center cannot be a
24 properly-defined geographic market in Verizon’s serving territory in Florida.
25 No CLEC holds itself out as providing service in individual ILEC wire

1 centers; indeed, from the end user's perspective, ILEC wire centers are
2 features of the ILEC's legacy network that have no relevance for the CLEC's
3 marketing of its services. Rather, for mass-market services, the geographic
4 areas to which CLECs market using television, radio and newspapers
5 comprise areas much larger than a wire center that can be roughly equated
6 with the community-of-interest characteristics defining an MSA. While the
7 geographic contours of local mass-media advertising in which CLECs offer
8 service may not coincide perfectly with those of an MSA, they certainly
9 exceed those of an individual wire center. On the network side, individual
10 wire centers are typically too small to exhaust the capacity of an efficient
11 CLEC's switch—particularly for CLECs that expect to start business with a
12 small share of the markets in which they offer service—and we see that
13 CLECs' switches in the Tampa-St. Petersburg-Clearwater MSA actually do
14 serve multiple wire centers. Thus, CLECs would generally not purchase a
15 switch to enter a single wire center because such a business plan would not
16 take advantage of the economies of scale—sharing the fixed costs of
17 switching and marketing—available from serving a wider geographic market.

18

19 **Q. WHAT ARE THE REASONS THAT DR. BRYANT PROVIDES TO**
20 **SUPPORT HIS POSITION THAT THE WIRE CENTER IS THE MOST**
21 **APPROPRIATE GEOGRAPHIC AREA?**

22 A. There are several reasons. First, Dr. Bryant (at 45) states, "CLEC self-
23 provisioning of local switching will require collocation at each wire center the
24 CLEC intends to serve." He continues (at 45) that "because a portion of the
25 costs of establishing service in a previously unserved wire center will be sunk

1 costs, CLEC entry decisions will have to be justified at the wire center level.”
2 He further states (at 46) by stating, “Further, various costs and revenues vary,
3 sometimes dramatically, between wire centers.” Finally, he concludes (at 46)
4 that “it is most practical to conduct impairment analyses at the wire-center
5 level.”

6 **Q. HOW DO YOU RESPOND TO DR. BRYANT’S ARGUMENTS?**

7 A. While it is true that CLECs collocate at the ILEC wire center level—and these
8 costs may be sunk—and that costs and revenues may vary by wire center,
9 none of these factors lead to the conclusion that the wire center is a
10 geographic market. For example, while it is certainly conceivable that costs
11 could differ within different parts of the overall market, the fact that the
12 variation in some cases may coincide with wire center areas has no particular
13 significance. Indeed, costs often vary with more traditional geographic
14 markets (e.g., because of differences in the costs of transporting goods). For
15 example, in illustrating their geographic market definition presented earlier in
16 this testimony, Carlton and Perloff use the example of oranges shipped to an
17 urban area. Clearly, the prices would reflect the costs of shipping the product.
18 What matters for the economic definition of a geographic market is whether
19 prices and services in one area are constrained by prices and services in
20 another.

21
22 Of even greater significance is the fact that using ILEC wire centers as
23 geographic “markets” is entirely inconsistent with the geographic areas in
24 which competitors enter and compete for customers, and this fact is reflected
25 in the *TRO*’s directives for determining the geographic scope of markets.

1 (The reasons why it would be incorrect to consider discrete parts of the proper
2 geographic market (i.e., the MSA) as markets in their own right apply not only
3 to wire centers, but also to any subdivision of an MSA, e.g., counties and/or
4 individual cities.) In particular, the *TRO*'s primary considerations of "the
5 locations of customers actually being served by competitors" and "not
6 defin[ing] the market so narrowly that a competitor serving that market alone
7 would not be able to take advantage of available scale and scope economies"
8 (*TRO* at ¶ 495) renders wire center "markets" much too narrow and
9 consequently unreasonable.

10

11 The evidence presented by Verizon demonstrates that competitors' switches
12 serve mass-market customers in multiple wire centers, because to do so allows
13 them to take advantage of the scale and scope economies available from
14 deploying switches. In the *Fulp Testimony*, Verizon presented evidence that
15 there are 8 and 4 CLECs, respectively, providing service in Density Zones 1
16 and 2 of the Tampa-St. Petersburg-Clearwater MSA and these density zones
17 have many individual wire centers. In response to AT&T's Second Request
18 for Production of Documents, No. 32, Verizon provided the detailed backup
19 information that identifies on a wire center basis where CLECs are serving
20 customers using their own switches. Verizon's evidence that these carriers are
21 each serving multiple wire centers—as many as 29 for a single carrier—
22 confirms that CLECs do not see the market as individual wire centers. In its
23 own study of local exchange competition in Florida, the Florida Public
24 Service Commission found that 21 CLEC switches were located in the Tampa
25 area on June 30, 2003, providing service to 36 wire centers. *See Florida*

1 Public Service Commission, *Annual Report on Competition:*
2 *Telecommunications Markets in Florida as of June 30, 2003.*

3 In its *Brief For Respondents*, (cited above) the FCC stated "...the self-
4 provisioning trigger would be met, at a minimum, not only at locations in
5 which three competitive providers are *actually serving* mass market customers
6 with non-ILEC switching, but also at locations where three competitive
7 providers are '*holding out*' the availability of such services to mass market
8 customers." [footnote omitted]. CLECs certainly "hold themselves out" to
9 provide service to areas larger than individual wire centers when they file
10 press releases regarding service and when they advertise in media such as
11 radio, television and newspapers that have a large reach, usually at least as
12 large as the MSA. (Footnote 1537 suggests that states could define the market
13 for analyzing local switch impairment as being the geography over which
14 competitors are actually serving customers. The fact that a CLEC chooses to
15 serve some customers with resale or UNE-P and others with its own switch
16 should not be used to incorrectly exclude some customers from the relevant
17 geographic market.)

18
19 From an implementation viewpoint, in its Pricing Flexibility Order, the FCC
20 rejected the use of wire center areas for the geographic scope of a market,
21 partly on the grounds of administrative cost (§ 74).

22 Conversely, the FCC's suggestion that the existence of possibly
23 "uneconomical" pockets in a larger area (e.g., a LATA) may call for smaller
24 geographic markets would be meaningless if markets were already defined at
25 the extreme level of granularity that a wire center represents. *See, e.g. TRO* at

1 ¶ 495.

2

3 **Q. DO CLECS CONSISTENTLY ADVOCATE THE USE OF**
4 **INDIVIDUAL WIRE CENTERS AS THE RELEVANT GEOGRAPHIC**
5 **MARKET FOR APPLYING THE FCC'S TRIGGER ANALYSIS?**

6 A. No. In California, AT&T's economic expert, Dr. Economides, recognized
7 that the application of the FCC's rule would likely produce geographic areas
8 wider than single wire centers:

9 In a full-scale "potential deployment" analysis, the contours of
10 which must be considered as part of defining the geographic
11 market, state commissions are asked to conduct "a business case
12 analysis for an efficient entrant." [ftnt] In that context, the
13 boundaries of the impairment study area may then reasonably
14 correspond to the assumed entry area of the hypothetical,
15 efficient CLEC that will serve mass market customers using its
16 own switch. This approach is consistent with FCC guidance that
17 the geographic area should be sized to allow the CLEC "to take
18 advantage of available scale and scope economies from serving a
19 wider market." [ftnt]

20 Under that view, it is unlikely that the "efficient CLEC" would
21 enter a state intending to serve only a single wire center. Rather,
22 the model CLEC would likely map out a footprint that is large
23 enough to permit it to realize necessary economies of scale and
24 to market to a broad range of potential customers. In most cases,
25 this will approximate an MSA, LATA, or similarly broad area,

1 while in some very dense areas it may be only a portion of such
2 an area, depending on the local demographics.

3 Opening Testimony of Professor Nicholas S. Economides on
4 Behalf of AT&T Communications of California, Inc. (U 5002 C),
5 Nine Month Phase, (Rulemaking 95-04-043, Investigation 95-04-
6 044), filed December 12, 2003, at.40 (emphasis added).

7

8 **Q. DR. BRYANT STATES THAT WHERE THE CLEC IS UNABLE TO**
9 **OFFER THE SAME PACKAGE OF SERVICES AS THE ILEC, NOT**
10 **ALL CUSTOMERS IN THE WIRE CENTER NECESSARILY FALL**
11 **INTO THE SAME MARKET. HE USES THE EXAMPLE OF ILECS'**
12 **ALLEGED REFUSAL TO PROVIDE DSL SERVICE AS A REASON**
13 **WHY CLECS WOULD NOT BE ABLE TO OFFER THE SAME**
14 **PACKAGE OF SERVICE. HOW DO YOU RESPOND?**

15 **A.** There is no merit to this argument. Competition, in economics, does not
16 require that firms provide the same packages of goods and services; rather,
17 firms compete by tailoring their offerings to the particular quantities and
18 combinations of products their customers most want to purchase. Moreover,
19 high-speed Internet services and local telecommunications services are
20 separate products. High-speed Internet services are unregulated competitive
21 products and have no bearing on the geographic market definition for mass
22 market switching. Finally, ILECs have no special advantage over other
23 providers of high-speed Internet access, and, in fact, trail cable broadband
24 operators in the high-speed Internet market. According to the most recent FCC
25 data, broadband high-speed access lines in Florida in June 2003 were

1 comprised of slightly less than 39 percent DSL, compared with 52 percent for
2 cable and 9 percent for other wireline, optical fiber, satellite, and fixed
3 wireless systems. FCC, *High-Speed Services for Internet Access: Status as of*
4 *June 30, 2003*, released December 2003, Table 7.

5
6 **Q. HOW DOES DR. BRYANT DEAL WITH THE TRO ADMONITION**
7 **THAT GEOGRAPHIC MARKETS NOT BE DEFINED SO**
8 **NARROWLY AS TO PRECLUDE THE REALIZATION OF**
9 **ECONOMIES OF SCALE AND SCOPE?**

10 A. He states (40-41) that “the Commission can respond to the FCC’s concern that
11 markets not be defined so narrowly as to preclude the realization of economies
12 of scale and scope by requiring that each aggregation of customer locations
13 must be economically and operationally ‘includable’ in a serving area large
14 enough to afford economies necessary to compete.” However, Dr. Bryant
15 nowhere defines what exactly he means by the term “includable” and it is
16 certainly not an economic term that is generally used. Dr. Bryant does not
17 address the FCC’s guidance on this point, even though he advocates a
18 geographic definition – the wire center – that is almost certainly too small to
19 take advantage of the scale economies available in a CLEC switch.

20
21 **IV. DR. BRYANT’S PRODUCT MARKET DEFINITIONS ARE**
22 **INCORRECT**

23 **Q. HOW DOES DR. BRYANT DEFINE THE PRODUCT MARKET FOR**
24 **THE PURPOSE OF APPLYING THE FCC’S TRIGGER ANALYSIS?**

25 A. Dr. Bryant states [at 38] that the Commission should base its product market

1 definition on the *TRO*'s list of qualifying services, which he describes as
2 "those services that have been traditionally the exclusive or primary domain
3 of the incumbent LECs," citing ¶ 135 of the *TRO*. To this definition, he
4 makes two substantive changes. First, he claims it is necessary to place
5 residential and business services in separate markets because they are charged
6 different prices [at 38]. Second, he states that the Commission should include
7 "any alternative to the ILEC's local switching UNE that affords access to the
8 incumbent's loops to provide local voice service, including vertical features
9 an access services." [at 38]. On this latter basis, he appears to exclude CMRS,
10 fixed wireless and cable telephony substitutes for ILEC local exchange
11 service.

12
13 **Q. SHOULD RESIDENTIAL AND BUSINESS SERVICES MASS-**
14 **MARKET SERVICES BE TREATED AS IF THEY WERE IN**
15 **SEPARATE PRODUCT MARKETS FOR THE PURPOSE OF**
16 **APPLYING THE FCC'S TRIGGER ANALYSIS?**

17 A. No. In the first place, the *TRO* makes it clear that the product market the FCC
18 considers relevant for applying its triggers is mass-market local exchange
19 service, irrespective of whether the customers are business or residential:

20 The record demonstrates that customers for mass market
21 services are different from customers in the enterprise market.
22 [fnt: Mass market customers are residential and very small
23 business customers — customers that do not, unlike larger
24 businesses, require high-bandwidth connectivity at DS1 capacity
25 and above....Mass market customers' accounts tend to be

1 smaller, lower revenue accounts and are often serviced on a
2 month-to-month basis and not pursuant to annual contracts. The
3 record shows that consumers of DS1 capacity and above
4 telecommunications are more willing to sign annual or term
5 commitments....] The mass market for local services consists
6 primarily of consumers of analog “plain old telephone service”
7 or “POTS” that purchase only a limited number of POTS lines
8 and can only economically be served via analog DS0
9 loops...[TRO ¶ 459, emphasis added]

10 ...

11 We determine that — subject only to the limited exception set
12 forth below — a state must find “no impairment” when three or
13 more unaffiliated competing carriers each is serving mass
14 market customers in a particular market with the use of their
15 own switches. [TRO ¶ 504]

16

17 Thus, the FCC’s trigger test explicitly applies to suppliers of local telephone
18 services to all mass-market customers, residential and business alike.

19

20 Second, from an economic perspective, the fact that residential and business
21 customers pay different prices for basic service does not imply that those
22 customers purchase services in different markets. The *Horizontal Merger*
23 *Guidelines* observe that when price discrimination between two sets of
24 customers would be profitable for a hypothetical monopolist, the Agency will
25 consider whether those customers fall into different product markets.

1 Department of Justice and Federal Trade Commission, *Horizontal Merger*
2 *Guidelines*, April 1992, at § 1.12 “Product Market Definition in the Presence
3 of Price Discrimination.” However, the fact that from time immemorial,
4 regulated residential basic service prices have been held below the prices of
5 comparable business services for public policy reasons in no way implies that
6 a profit-maximizing firm would find it profitable or feasible to impose such
7 price differences. In fact, the treatment of regulated prices on the industry
8 was cited by the D.C. Circuit Court of Appeals as a deficiency of the previous
9 FCC unbundling requirements:

10 One reason for such market-specific variations in competitive
11 impairment is the cross-subsidization often ordered by state
12 regulatory commissions, typically in the name of universal
13 service. This usually brings about undercharges for some
14 subscribers (usually rural and/or residential) and overcharges for
15 the others (usually urban and/or business)...Competitors will
16 presumably not be drawn to markets where customers are
17 already charged below cost, unless either (1) the availability of
18 UNEs priced well below the ILECs' historic cost makes such a
19 strategy promising, or (2) provision of service may, by virtue of
20 economies of scale and scope, enable a CLEC to sell
21 complementary services (such as long distance or enhanced
22 services) at prices high enough to cover incomplete recovery of
23 costs in basic service. The Commission never explicitly
24 addresses by what criteria want of unbundling can be said to
25 impair competition in such markets, where, given the ILECs'

1 regulatory hobbling, any competition will be wholly artificial.
2 *United States Telecom Ass'n. v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002),
3 *cert. denied*, 123 S.Ct. 1571 (2003).
4 In other words, Dr. Bryant overlooks the fact that the price differences
5 between residential and business services are the result of public policy and
6 not private profit-maximization, and thus those price differences, by
7 themselves, do not imply that residential and business customers occupy
8 different product markets under the *Merger Guidelines*' standard.
9
10 Third, the *TRO*, itself, outlines some of the economic reasons why all mass-
11 market customers, business and residence alike, belong in the same product
12 market for the purpose of its trigger analysis. In ¶ 459, the FCC spells out the
13 characteristics of these customers that place them in a distinct product market:
14 they are served by DS0 technology, they have small accounts, and they
15 purchase service month-to-month rather than using a term discount. In
16 addition, such customers are served through customer service centers rather
17 than individual customer representatives, their services are marketed using
18 mass-market media rather than individual, customer-specific marketing, and
19 they buy simple tariffed services rather than packages of network services
20 solicited by formal Requests for Proposals. Residential and business mass-
21 market customers are served using the same technologies (circuit switches and
22 DS0 loops), and thus any supplier of mass-market business services offers and
23 can supply mass-market residential services if a profitable opportunity arises.
24
25 **Q. SHOULD THE PRODUCT MARKET BE LIMITED TO THOSE**

1 **SERVICES THAT CAN BE USED TO ACCESS THE ILEC'S**
2 **UNBUNDLED LOOPS?**

3 A. No. While the *TRO* acknowledges that full facilities-based CLECs, such as
4 cable telephony providers, do not provide access to the ILEC's loops (§§ 439-
5 440, as cited by Dr. Bryant at 39), the *TRO* explicitly authorizes state
6 commissions to "consider some of this competitive development...in
7 determining whether the triggers discussed below have been satisfied in
8 specific markets." [*TRO* §400, footnote 1352.] From an economic
9 perspective, if mass-market local exchange markets became effectively
10 competitive due to facilities-based entry of new competitors, the goals of the
11 Telecommunications Act of 1996 would be achieved. Certainly, neither the
12 Act nor economics gives preference to unbundled elements as a mechanism
13 for entry, and if sufficient entry can be achieved without incurring the
14 efficiency costs of requiring ILECs to unbundle their networks, customers will
15 be the beneficiaries.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes.

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