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December 4, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Docket No. 030851-TP & 030852-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida and Sprint Communications Company Limited Partnership are the original and 15 copies of Sprint's Testimonies of 1. Brian K. Staihr, 2. Kent W. Dickerson, and 3. Terry L. Alleman.

12450-03 12451-03 12452-03

Copies are being served on the parties in this docket via electronic and U.S. mail pursuant to the attached certificate of service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/847-0244.

Sincerely,

Susan S. Masterton

Susan S. Masterton

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail on this 4th day of December, 2003 to the following:

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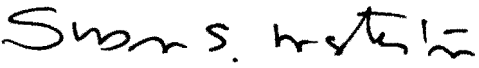
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Susan S. Masterton

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **DR. BRIAN K. STAIHR**

5
6 **BACKGROUND/PURPOSE**

7
8 **Q. Please state your name, title, and business address.**

9 A. My name is Brian K. Staihr. I am employed by Sprint Corporation as Senior
10 Regulatory Economist in the Department of Law and External Affairs. My
11 business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

12
13 **Q. Please briefly describe your educational background and work experience.**

14 A. I hold a B.A. in Economics from the University of Missouri-Kansas City, and an
15 M.A. and Ph.D. in Economics from Washington University in St. Louis. My field
16 of specialization is Industrial Organization, including Regulation.

17
18 I began working with Sprint's Regulatory Policy Group in 1996. In my current
19 position I am responsible for the development of state and federal regulatory and
20 legislative policy for all divisions of Sprint Corporation. I am also responsible for
21 the coordination of policy across business units. My particular responsibilities
22 include 1) ensuring that Sprint's policies are based on sound economic reasoning,
23 2) undertaking or directing economic/quantitative analysis to provide support for
24 Sprint's policies, and 3) conducting original research. The specific policy issues
25 that I address include universal service, pricing, costing (including cost of

1 capital), access reform, reciprocal compensation and interconnection, local
2 competition, and more.

3

4 In my position I have testified before Congress on telecommunications issues, and
5 my research has also been used in congressional oversight hearings. I have
6 appeared before the Florida Public Service Commission, the Kansas Corporation
7 Commission, the New Jersey Board of Public Utilities, the Pennsylvania Public
8 Utility Commission, the North Carolina Utilities Commission, the Public Service
9 Commission of South Carolina, the Public Service Commission of Nevada, the
10 Texas Public Utilities Commission, the Illinois Commerce Commission, the
11 Oregon Public Utility Commission, and the Missouri Public Service Commission.
12 I have also worked extensively with the Federal Communication Commission's
13 staff and presented original research to the FCC.

14

15 In January 2000 I left Sprint temporarily to serve as Senior Economist for the
16 Federal Reserve Bank of Kansas City. There I was an active participant in the
17 Federal Open Market Committee process, the process by which the Federal
18 Reserve sets interest rates. In addition, I conducted original research on
19 telecommunication issues and the effects of deregulation. I returned to Sprint in
20 December 2000.

21

22 For the past eight years I have also served as Adjunct Professor of Economics at
23 Avila University in Kansas City, Missouri. There I teach both graduate and
24 undergraduate level courses.

25

1 Prior to my work in Sprint's Regulatory Policy Group I served as Manager-
2 Consumer Demand Forecasting in the marketing department of Sprint's Local
3 Telecom Division. There I was responsible for forecasting the demand for
4 services in the local market, including basic local service, and producing elasticity
5 studies and economic and quantitative analysis for business cases and opportunity
6 analyses.

7
8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to put forth Sprint's positions regarding specific
10 issues dealing with market definition, analysis of impairment based on actual
11 switch deployment ("competitive triggers") and analysis of impairment based on
12 potential for self-provisioning of local switching ("economic analysis of potential
13 deployment") listed in the Issues List of Docket No. 030851-TP (Mass Market
14 Local Switching) dated November 7, 2003. These include, but are not limited to,
15 Issues 1, 2a, 2b, 2c, 4a, 4b, 5e, and 5f. In this proceeding Sprint is also
16 sponsoring the testimony of Mr. Kent Dickerson, whose testimony will
17 supplement my own on Issue 5f (the calculation of appropriate cutoff for multi-
18 line DS-0 customers), and the testimony of Ms. Terry Alleman who will address
19 issues regarding batch cut processes (Issue 3).

20
21 **Q. Does Sprint bring a unique perspective to this proceeding?**

22 A. Yes it does. Sprint is one of the major incumbent local exchange carriers
23 ("ILEC") providing basic telephone service in Florida, but Sprint is also a
24 competitive local exchange carrier ("CLEC") in Florida and in many other states
25 throughout the country, providing basic local service to hundreds of thousands of

1 residential and business customers nationwide. Therefore Sprint is uniquely
2 situated to understand the needs of both *providers* and *purchasers* of unbundled
3 network elements, and to understand the competitive impacts of the availability—
4 or lack of availability—of unbundled elements on both providers and purchasers.
5 In the process of arriving at the policy positions that form the basis of its
6 testimony Sprint is required to balance, internally, the same competing interests
7 that policymakers must balance in proceedings such as this one.

8
9 **Q. With regard to local switching, as an ILEC, is Sprint challenging the FCC's**
10 **national finding of impairment for its Florida serving territory?**

11 A. No. With regard to mass market local switching Sprint is not challenging the
12 FCC's national finding of impairment for any market in its ILEC serving territory
13 in Florida during this initial nine month proceeding. However, Sprint reserves the
14 right to challenge the FCC's national finding of impairment at some point in the
15 future.

16
17 **MARKET DEFINITION—MASS MARKET LOCAL SWITCHING (Issues 1, 2)**

18
19 **Q. What unit of geography does Sprint propose for analyzing impairment with**
20 **regard to mass market local switching?**

21 A. Based on the understanding (discussed below) of *how* the geographic unit must be
22 used in subsequent impairment analysis, Sprint recommends that the Metropolitan
23 Statistical Area ("MSA" as defined by the U.S. Census Bureau) be used as the
24 basic geographic unit for evaluating impairment.

25

1 **Q. How must the market—defined as an MSA—be used when evaluating**
2 **impairment?**

3 A. When identifying the appropriate unit of geography to use as a basis for
4 evaluating impairment it is important to keep in mind that this unit represents the
5 geographic area *throughout which* the concept of impairment will be evaluated.
6 In other words, when investigating an actual or potential competitor serving “the
7 mass market” it must be acknowledged that the mass market is found throughout
8 the entire MSA, not merely in portions of the MSA. This concept is consistent
9 with the FCC’s statements regarding both actual deployment and potential
10 deployment. For example, the TRO states that the competitive triggers are
11 intended to provide evidence of “the technical and economic feasibility of an
12 entrant serving the mass market with its own switch.”¹ And the TRO states that
13 an analysis of potential deployment is intended to provide evidence of how an
14 entrant could “economically serve the market without access to the incumbent’s
15 switch.”² Note that both references refer to evidence of serving “the market” (or
16 “the mass market”) as a whole. As the Florida Commission conducts its
17 impairment analysis it is not looking for evidence of serving *portions* or *segments*
18 of the market. Rather, it should examine whether the defined market area is being
19 served by competitors such that mass market customers *throughout* the market
20 have real competitive choices to the ILEC. Therefore the market—the MSA—
21 should be considered a unit-as-a-whole for purposes of analyzing impairment.
22 This is discussed in more detail below.

23
24 **Q. What direction does the FCC’s Triennial Review Order give in terms of**

¹ TRO paragraph 501.

² TRO paragraph 517.

1 **defining the market?**

2 A. Paragraph 495 of the FCC’s Triennial Review Order (“TRO”) provides direction
3 for defining the geographic market to be used, and Sprint’s proposal for using
4 MSAs is consistent with this direction. Paragraph 495 states:

5 ...State commissions have discretion to determine the contours of each
6 market, but they may not define the market as encompassing the entire
7 state. Rather, state commissions must define each market on a granular
8 level, and in doing so they must take into consideration the locations of
9 customers actually being served (if any) by competitors, the variation in
10 factors affecting competitors’ ability to serve each group of customers,
11 and competitors’ ability to target and serve specific markets economically
12 and efficiently using currently available technologies. While a more
13 granular analysis is generally preferable, states should not define the
14 market so narrowly that a competitor serving that market alone would not
15 be able to take advantage of available scale and scope economies from
16 serving a wider market....

17
18 **Q. Please explain how the use of MSAs is consistent with the direction for**
19 **defining the market found in TRO paragraph 495.**

20 A. First, paragraph 495 requires that the relevant geographic area cannot include the
21 entire state. MSAs obviously represent subsets of the entire state and therefore
22 meet this requirement.

23

24 Second, the TRO states that the market definition should be considered from the
25 point of view of the entrant—either actual or potential—

1 rather than the incumbent. In paragraph 495 the TRO says that the appropriate
2 market definition must take into consideration the *competitor's* ability to serve
3 customers economically and efficiently. MSAs tend to reflect the market from an
4 entrant's point of view because they represent an economic community of interest
5 and they generally reflect the geographic reach of newspapers, radio, and
6 television advertising, thereby affecting a competitors' ability to target customers
7 in the proposed market (MSA) from a mass marketing and advertising
8 perspective.

9
10 Third, in the past the FCC has stated that MSAs are generally defined "narrowly
11 enough so that competitive conditions within each area are reasonably similar"
12 which supports the concept of an economic community of interest.³ From an
13 economic point of view this characteristic is particularly relevant because
14 economists tend to define markets (geographically) based on the region within
15 which market forces operate. Stated another way, in any market there are forces
16 such as supply and demand that affect the pricing decisions, entry and exit
17 decisions that firms make. If the pricing/entry/exit decisions of firms in one area
18 are not affected by the forces of supply and demand in another area, the two areas
19 are not in the same market.⁴ This is also the approach used by the U.S. Justice
20 Department when defining and analyzing geographic markets for purposes of
21 evaluating competitive activity.⁵

22

³ Fifth Report and Order and Further Notice of Proposed Rulemaking, Access Reform Docket, CC 96-262, "Pricing Flexibility Order", released August 27, 1999, paragraph 71.

⁴ Carleton and Perloff, *Modern Industrial Organization*, Second Edition, Harper Collins, 1994.

⁵ See U.S. Department of Justice Horizontal Merger Guidelines, available at www.usdoj.gov.

1 Fourth, the MSA is large enough for the entrant to take advantage of scale
2 economies as described in paragraph 495 of the TRO, but not so large as to
3 potentially lead to diseconomies of scale.⁶ A larger market, such as some LATAs,
4 could exhibit diseconomies of scale which would clearly not reflect the *efficient*
5 market from the point of view of the entrant.

6

7 **Q. Doesn't the TRO also state that the actual locations of customers being**
8 **served should play a role in defining the market?**

9 A. Yes, paragraph 495 of the TRO indicates that state commissions must define the
10 market taking into consideration the locations of customers actually being served
11 by competitors. However the TRO also suggests that this data cannot be accepted
12 at face value when used for evaluating impairment in the mass market. For
13 example, the TRO clearly indicates that there are a *de minimus* number of mass
14 market customers currently being served with UNE-L off of CLEC enterprise
15 switches.⁷ And the TRO states that these switches do not meet the necessary
16 criteria for the "trigger" analysis that will often follow the defining of markets.⁸
17 (This is addressed in more detail below.) So in many cases it is likely that the
18 actual locations of customers being served are merely a remnant or by-product of
19 CLECs serving the enterprise market. This makes it highly questionable whether
20 the locations of such customers are particularly useful for defining the market
21 because the reason the market is being defined in the first place is to analyze
22 actual (or potential) competitors serving the *mass* market, not the enterprise
23 market.

⁶ In simple terms, a firm exhibits economies of scale when the cost per unit decreases as the number of units that the firm produces increases. Diseconomies of scale exist when the firm goes on to produce even more units and this has the effect of increasing the cost per unit.

⁷ TRO paragraph 441.

⁸ TRO paragraph 508.

1 Furthermore, the concept of where customers are “actually being served” is itself
2 problematic for defining a market. If a few mass market customers happen to be
3 served in a very small geographic area, those customers are *actually being served*
4 in all of the following areas: 1) a single wire center, 2) a single census block
5 group, 3) a single census tract, 4) a single MSA, 5) a single UNE zone, 6) a single
6 local calling area, 7) a single LATA and 8) a single ILEC study area. Therefore it
7 is important to choose among these possibilities—all of which represent where
8 customers are *actually being served*—a unit of geography that best represents
9 market realities from the point of view of an entrant. Sprint believes this is the
10 MSA.

11
12 **Q. Why would the appropriate geographic unit not be something smaller, such**
13 **as an individual wire center?**

14 **A.** The TRO explicitly requires that the defined market should be large enough for
15 the entrant to take advantage of scale economies. In many cases wire centers are
16 situated such that an entrant could, for example, co-locate in one wire center and
17 use extended, enhanced loops (EELs) to serve another wire center at an overall
18 lower per-unit cost than if the two were served separately. This is precisely the
19 type of scale economies that are available when the market is defined as
20 something larger than a wire center. The same can be said for many other costs of
21 entering a market aside from network costs (for example, advertising, collection
22 systems, billing, etc.). Furthermore, because wire center distinctions are
23 essentially meaningless to end-users it is doubtful that a single wire center—
24 particularly in an urban area—represents anything close to a unique economic
25 community of interest all by itself.

1 **Q. What about a geographic area that is often larger than an MSA, such as a**
2 **LATA?**

3 A. In some cases LATA boundaries track MSA boundaries rather closely, and in
4 those cases LATAs offer many of the same benefits as MSAs. But in other cases
5 LATA boundaries are simply artificial creations that emerged from a history of
6 regulation and have no relationship whatsoever to a *market* in the common sense
7 of the term. For example, the Fort Myers LATA includes both Sprint's
8 Okeechobee wire center and Sprint's Everglades wire center, despite the fact that
9 Everglades is a part of the Naples MSA and Okeechobee is not a part of any
10 MSA, and despite the fact that these two wire centers are over one hundred miles
11 apart. There is no reason to believe that any single entrant that was planning to
12 serve "the mass market" with its own switches would consider the residential and
13 small business customers in these two wire centers to be the same market. If
14 nothing else, geographic distance tends to separate Okeechobee and Everglades
15 into two distinct communities of interest, so it is extremely unlikely that the Fort
16 Myers LATA represents a single community of interest. But it is extremely *likely*
17 that the diseconomies of scale that I mentioned above would exist if a single
18 entrant attempted to serve the entire LATA, particularly using UNE-L. For these
19 reasons, the MSA is preferred as a market because the MSA represents a
20 geographic unit that consistently exhibits both the community of interest
21 characteristics and the economies of scale to function as a single market.

22

23 **ANALYSIS OF ACTUAL SWITCH DEPLOYMENT—COMPETITIVE**
24 **TRIGGERS (ISSUE 4A)**

25

1 **Q. Issue 4a seeks to identify markets in which three or more CLECs, not**
2 **affiliated with each other OR with the ILEC, are serving mass market**
3 **customers with their own switches. When analyzing impairment based on**
4 **evidence of actual deployment (competitive triggers) what exactly must the**
5 **Florida Commission evaluate?**

6 A. It is important for the Commission to keep in mind that the TRO indicates that the
7 identification process described in Issue 4a extends well beyond a mere “counting
8 exercise.” As stated above, paragraph 501 indicates that the triggers are intended
9 to “...demonstrate[s] adequately the technical and economic feasibility of an
10 entrant serving the mass market with its own switch...” Or, alternately, a trigger
11 analysis may be viewed as a counting exercise as long as it is clear that there are
12 specific and explicit criteria laid out in the TRO—consistent with the quotation
13 above—that must be met before any CLEC can be “counted” toward meeting the
14 trigger.

15

16 **Q. What are these criteria that must be met before a CLEC can “count” toward**
17 **meeting the trigger?**

18 A. First, enterprise switches do not count toward meeting the triggers.

19

20 Second, CLEC switches must be serving a *non de minimus* number of mass
21 market customers in the market.

22

23 Third, the CLEC must be serving, or holding itself out to serve, or capable of
24 serving *throughout* the market, not just in highly-select portions of the market.

25

1 Fourth, the CLEC must be actively serving the mass market and likely to continue
2 to do so. Each of these is addressed in detail below.

3

4 **CLECS MEETING COMPETITIVE TRIGGERS MUST NOT BE USING**
5 **ENTERPRISE SWITCHES**

6 **Q. What is one example of the criteria laid out in the TRO that CLECs must**
7 **meet before the competitive triggers are satisfied?**

8 A. First, for a CLEC to count toward meeting the competitive trigger it must be clear
9 that the switch being evaluated is not used primarily to serve enterprise
10 customers. The TRO makes a clear distinction between “deployment of switches
11 by competitive providers to serve the enterprise market” and “deployment of
12 competitive LEC circuit switches to serve the mass market.”⁹ Switches that fall
13 into the first category—enterprise switches—do not count toward meeting the
14 competitive triggers.¹⁰

15

16 **Q. If a CLEC switch was deployed primarily to serve enterprise customers, and**
17 **is currently used primarily to serve enterprise customers, but also manages**
18 **to serve some mass market customers, would such a switch count toward**
19 **meeting the competitive trigger?**

20 A. No. The FCC acknowledged in the TRO that mass market customers are in fact
21 served off of enterprise switches.¹¹ Yet this fact by itself was not enough to
22 negate a national finding of impairment by the FCC.

23

⁹ TRO paragraph 435. Also, footnote 1354, “The dissents assertion that enterprise switches should be considered in our mass market triggers ignores the substantial differences between the switches serving the different markets.”

¹⁰ “...switches serving the enterprise market do not qualify for the triggers...” TRO paragraph 508. Also, footnote 1354 cited above.

¹¹ TRO paragraph 441.

1 **Q. Does the TRO provide some specific method for identifying whether a CLEC**
2 **switch is an enterprise switch—and therefore ineligible for meeting the**
3 **trigger criteria—or a mass market switch?**

4 A. No it does not. It appears that the FCC left that task to the state commissions as
5 part of the states' charge to "assess impairment in the mass market on a market-
6 by-market basis."¹² However, it would clearly be reasonable to use some
7 measurable standard—such as switch capacity—as an initial test. For example,
8 assume that three self-deployed CLEC switches are identified in a given market.
9 To the extent that it was shown that the vast majority of the utilized capacity of
10 those switches was actually being used to provide service to *enterprise* customers,
11 the ILEC would be hard-pressed to prove that the switches represented
12 "deployment of competitive LEC circuit switches to serve the mass market"¹³ as
13 discussed in the TRO.

14

15 **Q. How difficult would it be to obtain such information on capacity?**

16 A. It should not be difficult at all. The TRO defines the mass market as consisting of
17 customers that "can only economically be served via analog DS-0 loops."¹⁴ If we
18 assume that CLECs attempt to serve their customers economically (a reasonable
19 assumption and one well-grounded in economic theory) then it is simply a matter
20 of identifying the portion of the utilized capacity of a switch that is used to
21 provide DS-0-level service versus greater-than-DS-0-level service. If the vast
22 majority of a switch's utilized capacity is used to provide service at a greater-
23 than-DS-0-level, that switch is an enterprise switch, and does not count toward
24 meeting the competitive triggers.

¹² TRO paragraph 493.

¹³ TRO paragraph 435.

¹⁴ TRO paragraph 459.

1 **CLECS MEETING COMPETITIVE TRIGGERS MUST BE SERVING A NON**
2 **DE MINIMUS PORTION OF THE MASS MARKET**

3
4 **Q. What is another example of the criteria laid out in the TRO that CLECs**
5 **must meet before the competitive triggers are satisfied?**

6 A. When evaluating evidence of impairment/non-impairment the FCC noted that the
7 *quantity* of CLEC mass market customers mattered. In paragraph 438 and in
8 paragraph 441 the TRO discusses CLEC inroads into the mass market and makes
9 reference to, respectively, “only a small percentage of the residential voice
10 market” and “extremely few mass market customers.” In both cases the finding
11 of only a *de minimus* number of CLEC mass market customers was associated
12 with rejecting the notion of non-impairment. Therefore, in order to demonstrate
13 non-impairment ILECs must show that CLEC switches are serving a *non de*
14 *minimus* number of mass market customers in any given market. Not only is this
15 consistent with the FCC’s findings, but it goes hand-in-hand with the first
16 criterion discussed above. That is, a handful of token mass market customers
17 served off of an enterprise switch is not demonstrative of “the technical and
18 economic feasibility of an entrant serving the mass market with its own switch.”¹⁵
19 Furthermore, it is appealing from a common-sense perspective when one
20 considers the alternative.

21
22 **Q. What would be the alternative?**

23 A. Assume the market is defined, as suggested above, as an MSA. The lack of a *non*
24 *de minimus* requirement would allow the existence of three self-provisioning
25 CLECs, each serving only a handful of mass market customers and each *intending*

¹⁵ TRO paragraph 501.

1 to serve only a handful of mass market customers, to remove unbundled mass
2 market local switching from the entire MSA. This is exactly the type of situation
3 that the FCC sought to avoid when it made its finding of impairment nationally.
4

5 **Q. Is it reasonable that each trigger-meeting CLEC should be required to serve**
6 **a non de minimus number of mass market customers, or that the trigger-**
7 **meeting CLECs combined must serve a non de minimus number of mass**
8 **market customers?**

9 A. In the TRO it is clear that the FCC was addressing the combined CLEC market
10 share. If there was concern regarding individual CLEC market shares it does not
11 appear in the discussions contained in the TRO. Therefore it is reasonable that,
12 when attempting to demonstrate non-impairment based on actual deployment, the
13 combined number of mass market customers served by self-provisioning CLECs
14 in a given market must be *non de minimus*. (The actual identification of a specific
15 quantity or percentage that represents a *non de minimus* number is left to the
16 states as part of their impairment assessment.)
17

18 **CLECS MEETING THE TRIGGERS MUST BE SERVING (OR CAPABLE OF**
19 **SERVING) THROUGHOUT THE MARKET, RATHER THAN CHERRY-**
20 **PICKING**

21
22 **Q. Are there additional criteria laid out in the TRO that CLECs must meet**
23 **before the competitive triggers are satisfied?**

24 A. Yes. As mentioned above, the triggers are intended to provide evidence of the
25 economic and technical feasibility of an entrant serving “the mass market.” They

1 are not intended to provide evidence that an entrant could selectively cherry-pick
2 portions of the mass market and ignore other portions. Therefore in order to
3 demonstrate non-impairment based on actual deployment it is not enough to show
4 that CLECs are serving *select portions* of the mass market. Rather, CLECs must
5 be serving, or holding themselves out to serve, or at a minimum be capable of
6 serving mass market customers *throughout* the market as it is defined.

7
8 **Q. But didn't the FCC's September 17th Errata remove the requirement that**
9 **trigger-meeting CLECs be capable of serving the entire market?**

10 A. Yes it did, and that reveals an important distinction. Prior to the issuance of the
11 September 17th Errata the trigger criteria included the requirements of operational
12 readiness and willingness to provide service to *all* customers in the market, and
13 the economic capability of serving the *entire* market. To do that would require
14 the CLEC switches (either individually or in total) to be capable of serving *every*
15 mass market customer. From an economic point of view such a requirement is
16 ridiculous; it would result in wasteful excess capacity and it belies common sense.
17 But there is a significant difference between 1) being capable of serving *every*
18 mass market customer, and 2) being capable of offering service *throughout* the
19 market. The first—serving every customer—would require the CLEC to
20 duplicate the ILEC's capacity, and is clearly undesirable and unnecessary. But
21 the second—serving throughout the market—allows the CLEC to limit itself to an
22 efficient capacity (based on its overall market share) but it prevents the CLEC
23 from ignoring large portions of the market.

24
25 For example, assume a hypothetical MSA is made up of six wire centers. Two of

1 the wire centers are centrally situated with fairly dense populations (i.e.
2 downtown) and the remaining four are located on the perimeter and are more
3 suburban. If a CLEC is collocated in the two central wire centers and serving
4 mass market customers in the two central wire centers—but not in the suburban
5 four—is the CLEC serving the mass market? Or is the CLEC merely serving a
6 select subset of the mass market? Has the CLEC demonstrated, as described in
7 TRO paragraph 501, the “technical and economic feasibility of serving the mass
8 market”? Or simply the technical and economic feasibility of serving the high-
9 density, low-cost portion of the mass market?

10
11 The TRO explicitly mentions situations where a CLEC is only serving, or only
12 capable of serving, a portion of the market.¹⁶ In those cases it is clear that the
13 TRO does not conclude that serving a portion of the market constitutes serving
14 the market. On the contrary, the TRO states that in such cases the Commission is
15 permitted to consider re-defining the market.

16
17 **Q. In a situation such as the one you’ve described above would it be Sprint’s**
18 **position that re-defining the market is the right thing to do?**

19 **A.** Not in most cases, particularly if the market was defined according to the FCC’s
20 criteria to begin with. For example, in my hypothetical because the market is
21 defined as an MSA the market represents a granular approach (smaller than an
22 entire state), it represents an economic community of interest, it represents the
23 point of view of an entrant in terms of advertising, etc., and it is broad enough not
24 to limit economies of scale. The market is already defined correctly. So

¹⁶ TRO footnotes 1537 and 1552.

1 redefining the market is not the correct action for the Commission to take. The
2 correct action for the Commission to take is simply to not count that particular
3 CLEC toward meeting the trigger. Because in truth the CLEC is not “serving the
4 mass market”, the CLEC is simply cherry-picking.

5

6 **Q. Does the TRO make a specific reference to how much of a market a CLEC**
7 **must serve, or be capable of serving, if it is to be considered doing more than**
8 **just cherry-picking?**

9 A. In discussing the wholesale triggers the TRO states that a carrier acquiring the use
10 of non-ILEC switching actually counts as a separate, unaffiliated, self-
11 provisioning provider—that is, counts toward meeting the self-provisioning
12 triggers—only if it has the ability “to serve a substantial portion of the market.”¹⁷
13 This suggests that self-provisioning carriers should be capable of serving “a
14 substantial portion” of the market. Obviously the term “substantial portion” is
15 open to a large amount of interpretation, but the intent is plain: serving a
16 “substantial portion” of a market is clearly the opposite of cherry-picking.

17

18 **Q. How do the concepts of serving throughout the market, and being capable of**
19 **servicing a substantial portion of the market, relate to serving a non de**
20 **minimus number of mass market customers?**

21 A. They go hand in hand. For example, assume the market is defined as an MSA. If
22 the Commission decides that the *non de minimus* portion of the mass market that
23 CLECs must serve is 5%, ILECs cannot claim that the trigger is met if the CLECs
24 have acquired the entire 5% in one wire center and ignored all of the other wire
25 centers in the MSA. But if the ILEC shows that a 5% CLEC market share has

¹⁷ TRO footnote 1551

1 been obtained by offering service throughout the market, and the ILEC shows that
2 the CLEC is capable of providing service throughout the market or, at a
3 minimum, a “substantial portion” of the market, then the CLEC is legitimately
4 “serving the mass market” and meets the trigger.

5
6 From an economic and competitive standpoint the importance of this criterion
7 cannot be overstated. If a CLEC is not even *capable* of serving large portions of a
8 market there is no way that the CLEC demonstrates “the technical and economic
9 feasibility of serving the mass market” as stated in the TRO. Allowing that CLEC
10 to count toward meeting the trigger would result in the removal of local switching
11 (and UNE-P) from areas in which a significant number of customers in the market
12 truly have no other competitive alternative.

13
14 **Q. How can the Commission determine the portion of a market that a CLEC is**
15 **capable of serving?**

16 A. Obviously if a CLEC is currently collocated in a wire center it is reasonable to
17 believe that the CLEC is capable of serving the customers in that wire center.
18 And if a CLEC is currently using EELs to actively serve customers in another
19 wire center the CLEC is capable of serving customers in the other wire center.
20 Beyond those specific wire centers, there would be no clear evidence that the
21 CLEC is currently capable of serving other portions of the market. Evidence
22 could be provided that a CLEC is *potentially* capable of serving more of the
23 market, but that moves the discussion into the area of economic analysis of
24 potential deployment, rather than competitive triggers measuring actual
25 deployment.

1 **CLECS MEETING THE TRIGGERS MUST BE ACTIVELY SERVING MASS**
2 **MARKET CUSTOMERS AND LIKELY TO CONTINUE TO DO SO**

3 **Q. Are there any additional criteria contained in the TRO that CLECs must**
4 **meet before the competitive triggers are satisfied?**

5 A. Yes. Paragraphs 499 and 500, respectively, of the TRO require that the CLECs
6 meeting the triggers must be “actively” serving mass market customers, and
7 should be “likely to continue to do so.” As stated in my discussion of market
8 definition above, in many cases the mass market customers that a CLEC might
9 currently serve are essentially by-products or residuals of serving the enterprise
10 market. In other cases it is possible that they are by-products or residuals of now-
11 discarded business plans: the CLEC entered the market at one point in time,
12 encountered difficulty of some kind and then stopped actively pursuing mass
13 market customers but has simply chosen not to cut off service to a few customers.
14 In either case such customers are not evidence that the CLEC is actively serving
15 the mass market and likely to continue to do so. In fact, such residual customers
16 actually demonstrate the antithesis of what the triggers are intended to show.
17 Returning to TRO paragraph 501, the triggers are intended to provide evidence of
18 “the technical and economic feasibility of an entrant serving the mass market with
19 its own switch...” Residual customers such as these are much more clearly
20 evidence of the *infeasibility* of serving the mass market.

21

22 **Q. So how can the Commission determine whether CLECs are actively serving**
23 **the mass market and likely to continue to do so?**

24 A. The Commission must look for evidence of *current* activities regarding the mass
25 market: current marketing efforts, current advertising campaigns, current (or

1 recent) additions of new customers, and/or recent conversion of UNE-P customers
2 to UNE-L.

3 **Q. At this point could you please summarize the criteria contained in the TRO**
4 **that CLECs must meet before competitive triggers are satisfied, as discussed**
5 **in Issue 4a?**

6 A. First, there is a difference between enterprise switches and mass market switches,
7 and enterprise switches do not count toward meeting the triggers. Any CLEC
8 switch in which the vast majority of the utilized capacity is dedicated to serving
9 enterprise customers is an enterprise switch and cannot be included in a trigger
10 analysis.

11
12 Second, the CLEC switches must be serving a *non de minimus* number of mass
13 market customers in the market. This goes hand in hand with the criterion above.

14
15 Third, the CLEC must be serving, or holding itself out to serve, or capable of
16 serving *throughout* the market, not just in highly-select portions of the market. If
17 a CLEC is not serving a “substantial portion” of the market it is simply cherry-
18 picking. And cherry-picking is not evidence of “the technical and economic
19 feasibility of an entrant serving the mass market with its own switch” as stated in
20 the TRO.

21
22 Fourth, the CLEC must be actively serving the mass market customers and likely
23 to continue to do so. The CLEC cannot simply be serving the residuals of failed
24 business plans or by-products of serving the enterprise market. The Commission
25 must find evidence of current activity—marketing efforts, customer additions—to

1 know that the CLEC is *actively* serving and likely to continue.

2

3 **WHOLESALE TRIGGERS (ISSUE 4B)**

4

5 **Q. Are there different criteria to be applied when analyzing impairment based**
6 **on actual deployment in the case of wholesale local switching?**

7 **A.** Yes. Similar to the situation with Issue 4A, for Issue 4B it is also crucial that the
8 Commission understand that the identification process described in Issue 4B is no
9 mere “counting exercise.”

10

11 For example, before any wholesale provider can be counted toward meeting the
12 trigger the TRO states that it must be “operationally ready and willing to provide
13 wholesale service to all competitive providers in the designated market.”¹⁸
14 Because the FCC specifically chose the words “all competitive providers” as
15 opposed to “any” or “some” competitive providers, the situation is created where
16 the *capacity* of the wholesale provider will be a critical issue and must be
17 carefully considered before the provider can be counted toward meeting a
18 trigger.¹⁹

19

20 In addition, the TRO requires that wholesale provider must actively be providing
21 voice service “used to serve the mass market.” Therefore a wholesale provider
22 would not (and does not) meet the trigger if the voice service it provides is used
23 primarily to serve the enterprise market.

¹⁸ TRO paragraph 499 as amended by September 17th Errata

¹⁹ We are assured that the choice of the words “all competitive providers” was a conscious decision on the part of the FCC because the same Errata that eliminated the need for self-provisioning triggers to be capable of serving “every” customer could have easily eliminated the need for wholesale providers to be operationally ready to serve “all” competitive providers, and it did not.

1 Finally, the TRO is clear that the intent of the wholesale triggers is to demonstrate
2 that the market can support “multiple, competitive supply.”²⁰ This should be the
3 overriding theme used by the Florida Commission when evaluating wholesale
4 triggers.

5
6 **POTENTIAL DEPLOYMENT OF MASS MARKET LOCAL SWITCHING**
7 **(ISSUES 5E AND 5F)**

8
9 **Q. As the Commission seeks to identify the markets addressed in Issue 5E—that**
10 **is, the markets where it is (and is not) economic for CLECs to self-provision**
11 **local switching—what are the primary factors that the Florida Commission**
12 **should consider?**

13 **A.** The TRO requires that an analysis of potential deployment take the form of a
14 business case in which the potential costs of entering and serving the mass market
15 without access to the ILEC’s local switching are compared to the potential
16 revenues.²¹ In any business case the outcome is affected by a multitude of
17 variables. But the TRO provides guidance on certain aspects of the business case
18 that the Florida Commission can look to in eliminating some of the uncertainty.

19
20 For example, the TRO states that the analysis of potential entry is intended to
21 provide evidence of “whether a competing carrier could economically serve the
22 market without access to the incumbent’s switch”.²² Consistent with the
23 competitive trigger analysis, it is clear that an analysis of potential entry is not
24 asking whether it is possible to serve *portions* of the market economically, or

²⁰ TRO paragraph 505

²¹ TRO paragraph 517.

²² TRO paragraph 517.

1 *segments* of the market economically, but rather if an entrant can serve “the
2 market” economically. The TRO requires that the market must be defined in the
3 same way for both the trigger analysis and the potential deployment analysis.²³
4 This provides continuity between the two analyses and underscores the fact that,
5 just as in the case of the triggers, a potential deployment business case must not
6 be a case study in cherry-picking. Instead it must demonstrate the economic
7 feasibility of providing mass market service *throughout* the market. Just as it was
8 in the case of competitive triggers, it is not enough to only show that a select
9 portion of the market could be economically served. The economic analysis must
10 show that the market itself could be economically served.

11
12 Because of this, assumptions regarding the geographic distribution of customers
13 that are served in the business case are of vital importance. The customers must
14 be distributed *throughout* the market. For example, if the business case assumes
15 5% CLEC penetration and the market is an MSA then that 5% must be found
16 throughout the MSA, not conveniently clustered in a high-density portion of the
17 MSA. The TRO contains a very useful passage on this issue in paragraph 520:

18
19 We also note that parties to this proceeding have placed evidence in the
20 record that economic impairment may be especially likely in wire centers
21 below a specific line density. Before finding “no impairment” in a
22 particular market, therefore, the state commission must consider whether
23 entrants are likely to achieve sufficient volume of sales within each wire
24 center, and in the entire area served by the entrant’s switch, to obtain the
25 scale economies needed to compete with the incumbent.

²³ TRO footnote 1540.

1 The passage is revealing because it requires the state commissions to consider
2 each wire center within a market before finding no impairment in the market.
3 And it indicates clearly that ignoring “wire centers below a specific line density”
4 is not an acceptable path to finding “no impairment” in a market.

5

6 **Q. Are there additional key factors that the Commission should consider as it**
7 **examines analyses of potential deployment as part of Issue 5E?**

8 **A. Yes.** Perhaps the most important factor is that the process of defining the market
9 cannot be a part of the business case itself.

10

11 The reason for this is simple: If the process of defining the market is a part of the
12 business case itself, the market could theoretically be redefined and redefined
13 over and over again until some geographic unit is ultimately identified that will
14 produce a positive result: a positive NPV or EVA. For example, assume the
15 market is initially defined as a LATA. If the business case analysis fails to show
16 a positive result using LATA the market could be redefined as a local calling area.
17 If local calling area fails to show a positive result the market could be redefined as
18 MSA. If the business case fails using MSA the market could be redefined as a
19 select group of wire centers, and on and on. Ultimately some geographic area
20 would be identified as a business case “winner.”

21

22 The TRO is extremely clear that it does not envision an economic analysis based
23 on such an iterative approach. In fact, the process laid out for states in the TRO
24 logically precludes such a thing. First, there is no question that the market must
25 be defined before a competitive trigger analysis can be conducted and concluded,

1 because there is no way to conclude a trigger analysis—that is, identify three self-
2 provisioning or two wholesale CLECs “in a given market”²⁴—if one does not
3 know what the given market is! Second, the TRO states that upon concluding a
4 trigger analysis, and obviously having identified the market, if the triggers are not
5 satisfied “the state must conduct further analysis to determine whether *the market*
6 *in question* is suitable for “multiple competitive supply”²⁵ (emphasis supplied).
7 The reference to “further” analysis makes it clear that the potential deployment
8 analysis comes *after* trigger analysis. And the phrase “the market in question” is
9 obviously referring to the market that was defined and used in the trigger analysis.
10 Finally, the wording found in paragraph 495 is completely unambiguous, “State
11 commissions must first define the markets in which they will evaluate
12 impairment...” The TRO does not allow for taking a geographic area and
13 whittling it down bit by bit until a region can be found in which there is no
14 impairment. The TRO directs states to first define the appropriate area that will
15 serve as the basic unit of analysis for the subsequent impairment evaluation, then
16 to conduct that impairment evaluation (triggers and, if necessary, economic
17 analysis) using that unit of geography, and then to report the results.

18
19 **CROSS-OVER POINT FOR MULTI-LINE DS-O MASS MARKET CUSTOMERS**
20 **(ISSUE 5F)**

21 **Q. Issue 5f addresses the appropriate cut-off for multi-line DS-O customers that**
22 **is discussed in the TRO in paragraph 497. What guidance does the TRO**
23 **provide for determining the appropriate cut-off?**

24 **A. First, the TRO defined mass market customers as those customers that “are analog**

²⁴ TRO paragraph 504.

²⁵ TRO paragraph 506.

1 voice customers that purchase only a limited number of POTS lines, and can be
2 economically served via DS-0 loops.”²⁶

3

4 Second, the TRO recognized that, for certain customers, service providers are in a
5 position to make a decision as to whether they will provide service using DS-0 or
6 DS-1 facilities, based on the number of DS-0 loops needed to meet the customer’s
7 needs.²⁷ The FCC recognized that, for certain customers who require multiple
8 DS-0s, service providers are able to achieve better economics by installing
9 multiplexing equipment at the customer premise.²⁸ Identifying the quantity of
10 DS-0 loops at which these economic benefits are realized—i.e., the cross-over
11 point—will, in essence, create a line of demarcation between the mass market and
12 the enterprise market.

13

14 **Q. Does Sprint agree with the FCC’s use of an economic cross-over point as a**
15 **method for distinguishing between mass market and enterprise customers?**

16 A. Yes. Sprint has always recognized that some businesses have
17 telecommunications needs that are more similar to mass market residential
18 customers than large business customers. Indeed, most if not all
19 telecommunication providers address a segment of the business market with the
20 same marketing techniques as they use for residential.

21

22 **Q. Is there a simple example of the difference in marketing techniques between**

²⁶ TRO paragraph 497.

²⁷ TRO paragraph 497 states, “At some point, customers taking sufficient number of multiple DS-0 loops could be served in a manner similar to that described above for enterprise customers – that is, voice services provided over one or several DS-1s”

²⁸ TRO footnote 1544 “The evidence in the record indicates that it may be viable to aggregate loops at a customer location and provide service at a DS-1 capacity or higher. Specifically, if a customer has enough lines to justify the expense of purchasing multiplexing equipment and a high-capacity line, it makes sense to aggregate the customer’s loops...”

1 **those that providers use to address mass market customers and those that**
2 **providers use to address enterprise customers?**

3 A. The complexity and the volume of service required by any given customer are
4 two of the variables that determine which marketing methods have historically
5 been successful in acquiring new customers. For example, mass media
6 advertising is less effective than an extensive face-to-face sales visit would be for
7 a business with very complicated communications needs. But for a smaller
8 business with less complex needs, mass media advertising is often sufficient.

9
10 **Q. Does Sprint agree with the FCC statements that service providers must make**
11 **provisioning choices once they understand the customer's needs?**

12 A. Certainly. The service needs of a business customer at a specific physical
13 location determine the minimum facility capacity required to provide those
14 services. Based on the customer's needs, the service provider determines the
15 most efficient (i.e. least costly) facilities required to provide the services the
16 customer desires. The provider is rewarded with higher profit margins by
17 minimizing facility costs.

18
19 **Q. Is an economic cross-over analysis the best way for a service provider to**
20 **determine the most efficient, least-cost provisioning option?**

21 A. Yes. The service provider needs will determine the most efficient method of
22 serving the customer. Based on those service needs, the CLEC determines if it is
23 cost effective to serve the customer with DS-0 loops or aggregate the service
24 needs over a DS-1 loop facility at the customer premise. At some level of service
25 need,

1 the provider is better off serving the business customer with a DS-1 facility
2 instead of multiple DS-0s.

3 **Q. Has Sprint developed an analysis of this cross-over?**

4 A. Yes. The testimony of Sprint witness Mr. Kent Dickerson provides the
5 calculations of the average economic cross-over point, the point at which a multi-
6 line DS-0 customer is served more efficiently using a DS-1 capacity loop in the
7 state of Florida. As shown in the testimony of Mr. Dickerson, Sprint estimates
8 that up to 12 DS-0s at a customer's location, purchasing individual loops is more
9 cost effective than purchasing a single DS-1.

10

11 **Q. In the cross-over calculations contained in Mr. Dickerson's testimony Sprint**
12 **produces a state-wide average cross-over point. Why does Sprint calculate a**
13 **single, statewide average cross-over point, rather than a market-specific**
14 **cross-over point or even an ILEC-specific cross-over point?**

15 A. The realities of the way that marketing efforts are conducted lead Sprint to believe
16 that a single statewide average cross-over point is more efficient and more useful.
17 For example, if a telemarketer is pursuing sales opportunities among small
18 businesses in Florida the telemarketer will require a single point of distinction that
19 determines whether s/he is able to provide UNE-P based service to the customer
20 or not. The telemarketer does not know whether the customer being called resides
21 in one MSA or another, and quite possibly neither does the customer. Similarly, a
22 direct-visit salesperson making sales visits throughout the Orlando MSA is
23 unaware of the point at which s/he moves from one UNE zone to another. It is
24 more efficient to have a single cross-over point that the salesperson can apply to
25 all potential customers, rather than maintain a veritable roster of potential cross-

1 over points based on a potential customer's MSA, or market, or UNE zone, etc.
2 Because Sprint's estimate is an average, the statewide cross-over will, on average,
3 be efficient for serving customers throughout the state, even if it is slightly
4 understated or overstated for any single customer.

5

6 **Q. Does this conclude your testimony?**

7 **A. Yes it does.**