

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE IMPLEMENTATION)	ORDER GRANTING
OF THE FEDERAL COMMUNICATIONS)	INTERVENTIONS AND
COMMISSION'S TRIENNIAL REVIEW ORDER)	JOINT MOTION; ORDER
REGARDING UNBUNDLING OBLIGATIONS)	APPROVING ISSUANCE OF
)	DISCOVERY AND
)	PROTECTIVE ORDER;
)	ORDER REQUESTING
)	COMMENTS
)	TC03-181

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCImetro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. All discussions would be transcribed and made part of the record in each state's triennial review proceeding. Impasse issues remaining at the conclusion of the forum process would be documented and then litigated before each state commission. Given the strict timelines set forth by the FCC for the development of a batch hot cut process, the following schedule was proposed:

November 5, 2003 - Commission notice to all CLECs within the state regarding a batch hot cut forum;

November 11, 2003 - Qwest submits a detailed batch hot cut proposal;

November 18, 2003 - CLECs submit comments/counter proposals to Qwest's batch hot cut proposal;

December 1-3, 2003 - Initial Forum held in Denver, Colorado;

December 4, 2003 through January 15, 2004 - Weekly conference calls if useful and meetings, if necessary, in Seattle, Washington and Phoenix, Arizona;

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 15, 2004 - Simultaneous filing of rebuttal testimony;

Hearings and Commission decision will be as determined in each state's procedural order.

In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum. The Commission will slightly modify the notice requirement by sending this order on November 6, 2003, to all telecommunications carriers in the state who have requested to receive

notice of Commission proceedings. With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to. The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission will take any additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments shall be filed on or before November 12, 2003.

It is therefore

ORDERED, that the petitions to intervene filed by Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA are granted; and it is

FURTHER ORDERED, that the Joint Motion for Adoption of Batch Hot Cut Forum is granted; and it is

FURTHER ORDERED, that the Commission will issue a Protective Order; and it is

FURTHER ORDERED, that the Commission will issue bench discovery requests; and it is

FURTHER ORDERED, that any interested person may file comments on the issues listed above on or before November 12, 2003.

Dated at Pierre, South Dakota, this 6th day of November, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melaine Koller</u>
Date:	<u>11/6/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *RS*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner