

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

IN THE MATTER OF THE IMPLEMENTATION)	ORDER CLOSING DOCKET
OF THE FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	TC03-181
REGARDING UNBUNDLING OBLIGATIONS)	
)	
)	

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. 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.

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 (ROC) 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. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed 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 were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order. Pursuant to its November 26, 2003, order, the Commission issued the Protective Order and discovery requests. The Commission served the discovery requests upon the following companies: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.

On November 7, 2003, the Commission received late-filed petitions to intervene from Midstate Telecom, Inc. (Midstate), PrairieWave Communications, Inc. (PrairieWave), and Northern Valley Communications, LLC (Northern Valley). On November 10, 2003, the Commission received a late-filed petition to intervene from Black Hills FiberCom L.L.C. (FiberCom). At its December 2, 2003, meeting, the Commission granted the petitions to intervene and set the following procedural schedule:

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 6, 2004 - Initial round of testimony due. Qwest shall file its primary case addressing the issues of market definition, the DSO cut-off level, and the trigger analyses and potential deployment analyses for mass-market switching. All other parties shall file testimony regarding the issues of market definition and the DSO cut-off level. The other parties may present testimony on the trigger and potential deployment analyses at this time or wait until the second round of testimony;

February 17, 2004 - Simultaneous filing of rebuttal testimony on impasse issues regarding the batch hot cut process;

March 19, 2004 - Second round of testimony due. If not presented in the first round, parties, other than Qwest, may present their initial testimony on the trigger and potential deployment analyses. All parties may present testimony in response to testimony filed in the initial round of testimony;

April 2, 2004 - Optional rebuttal testimony due;

April 26 through April 30 and May 3 through May 7, 2004 - Hearing to begin at 1:00 p.m., on April 26, 2004, in the Kneip Room of the Governor's Inn, 700 W. Sioux Avenue, Pierre, South Dakota.

On December 11, 2003, the Commission received a Motion to Postpone Mass Market Switching Case and Close Docket from Qwest. In its Motion, Qwest requested that "the Commission permit Qwest to withdraw without prejudice its intervention for the Inquiry or, alternatively, that the Commission defer indefinitely any action in this docket, both subject to Qwest's right to refile or reinitiate the Inquiry at a future time." Qwest stated that "it is not prudent or practical at this time for it to continue to prosecute the issues associated with the Inquiry or to ask the Commission to devote its scarce resources to the Inquiry." Qwest stated that it had "decided to pursue unbundled switching cases for mass market customers in only those states where it clearly meets the triggers" and that, based on current information, "Qwest cannot verify unequivocally that the three-switch trigger is met in South Dakota." Qwest further stated that it "underestimated the resources required to prosecute 14 separate state actions simultaneously" and that Qwest is "presently resource-constrained. . . ." Qwest also asserted that "many observers believe there is a significant possibility that the FCC's rulings in the Order will be reversed and remanded to the FCC for further proceedings before that agency." Citing to section 51.319(d)(5)(ii), Qwest stated that it was reserving "its ability under the Order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching."

With respect to the batch hot cut issues, Qwest stated that "[b]y filing this motion, Qwest has decided not to seek relief at this time from its current obligation to provide unbundled switching for mass-market customers in South Dakota. Thus, there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes."

At its December 16, 2003, meeting, the Commission considered Qwest's motion. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-16, 1-26-18, 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81. No party objected to closing the docket. The Commission voted unanimously to close the docket. The Commission notes that it had required 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 to file a notice of intent. Qwest was the only entity to file a notice of intent and Qwest limited its notice of intent to the challenge of mass market switching. Thus, with Qwest's request that it be allowed to withdraw from these proceedings, there is no entity challenging the FCC's findings of impairment at this time. The Commission finds that without any entity seeking to challenge the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers, there is no need to conduct an inquiry within the initial nine month time frame as set by the FCC. The Commission further finds that there is no need to proceed with an evaluation of Qwest's batch hot cut process either. Pursuant to the FCC's rules, it is apparent that the establishment of an incumbent LEC batch cut process is to be done in conjunction with a proceeding to determine whether a requesting carrier is impaired without access to unbundled switching serving

mass market customers. See 47 C.F.R. § 51.319(d)(2)(i) and (ii). The Commission further finds that this docket will be closed without prejudice in recognition of section 53.319(d)(5)(ii) which allows a state commission to complete a review applying the triggers and other criteria, subsequent to any initial review, "within six months of the filing of a petition or other pleading to conduct such a review." Thus, Qwest is not foreclosed from requesting that the Commission conduct an impairment proceeding at a later date.

The Commission further finds that the closing of this docket means that no entity is required to respond to any outstanding discovery requests, including the discovery requests issued by the Commission which were due December 19, 2003. In addition, the Commission vacates the procedural schedule issued December 11, 2003.

It is therefore

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 17th day of December, 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: Delaine Kalbs

Date: 12/17/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

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

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner