

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

IN THE MATTER OF THE IMPLEMENTATION)	ORDER GRANTING
OF THE FEDERAL COMMUNICATIONS)	INTERVENTIONS; ORDER
COMMISSION'S TRIENNIAL REVIEW ORDER)	FOR AND NOTICE OF
REGARDING UNBUNDLING OBLIGATIONS)	PROCEDURAL SCHEDULE
)	AND HEARING
)	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), MCI metro 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. 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 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 considered this matter. Qwest did not object to the granting of the interventions. Pursuant to ARSD 20:10:01:15.02, the Commission found denial of the late-filed petitions to intervention would be detrimental to the public interest and voted to grant the petitions filed by Midstate, PrairieWave, Northern Valley, and FiberCom. The Commission also voted to 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.

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. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing will be held on the application beginning on April 26, 2004. One of the issues at the hearing is whether requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. The second issue is whether the Commission shall approve and implement a batch cut process that would make the hot cut process more efficient and reduce per-line hot cut costs, or, in the alternative, whether, for any particular geographic market, the current hot cut processes do not give rise to impairment in the market.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence, if any, presented during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties and the public, will make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may determine whether requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers and may approve and implement a batch cut process, or, in the alternative, find, for any particular geographic market, that the current hot cut processes do not give rise to impairment in the market. The Final Decision made by the Commission may be appealed by any party to the Circuit Court and the South Dakota Supreme Court as provided by law.

It is therefore

ORDERED, that the late-filed petitions to intervene are granted for Midstate, PrairieWave, Northern Valley, and FiberCom; and it is

FURTHER ORDERED, that the parties shall comply with the procedural schedule as set forth above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 11th day of December, 2003.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u><i>Hilaine Kelso</i></u></p> <p>Date: <u>12/11/03</u></p> <p align="center">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

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

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner