

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

IN THE MATTER OF THE IMPLEMENTATION)	ORDER FOR AND NOTICE
OF THE FEDERAL COMMUNICATIONS)	OF DEADLINE FOR FILING
COMMISSION'S TRIENNIAL REVIEW ORDER)	PETITIONS TO INTERVENE;
REGARDING UNBUNDLING OBLIGATIONS)	ORDER FOR AND NOTICE
)	OF HEARING DATES;
)	ORDER FOR DETAILED
)	STATEMENT; AND 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.

With respect to loops, the FCC found that, on a national level, "requesting carriers are impaired at most customer locations without access to dark fiber loops." *Order* at ¶ 311. The FCC also found that "requesting carriers are impaired on a customer-location-specific basis without access to unbundled DS3 loops." *Order* at ¶ 320. The FCC further found that "requesting carriers generally are impaired without access to unbundled DS1 loops." *Order* at ¶ 325. The FCC then stated the following:

In making affirmative impairment findings on a nationwide basis for dark fiber loops, DS3 loops, and DS1 loops, we recognize that limited alternative deployment has occurred at particular customer locations not specified in our record for certain of these high-capacity loop types which could lead to a finding of no impairment for that loop type at that location. Thus, for these loop types, a more granular impairment analysis should be applied on a customer-by-customer location basis. To that end, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled high-capacity loops pursuant to two triggers. If a state commission finds that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high-capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at that location according to the transition schedule adopted by the state commission. *Order* at ¶ 328.

With respect to dedicated transport, the FCC found that, on a national level,

With respect to dedicated transport, the FCC found that, on a national level, "competing carriers are impaired without access to unbundled dark fiber transport." *Order* at ¶ 381. Similarly, the FCC concluded that "requesting carriers are impaired on a route-specific basis without access to unbundled DS3 transport." *Order* at ¶ 386. The FCC further found that "requesting carriers generally are impaired without access to DS1 capacity transport." *Order* at ¶ 390. The FCC then delegated to the states "a fact-finding role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers." *Order* at ¶ 394.

With respect to local circuit switching, the FCC found that, on a national level, "requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets." *Order* at ¶ 419. The FCC further found as follows:

Because we find that operational and economic factors associated with the current hot cut process used to transfer a loop from one carrier's switch to another's serve as barriers to competitive entry in the absence of unbundled switching, state commissions must, within nine months from the effective date of this Order, approve and implement a batch cut process that will render the hot cut process more efficient and reduce per-line hot cut costs. In the alternative, if appropriate for any particular geographic market, state commissions must issue detailed findings supporting a conclusion that current hot cut processes do not give rise to impairment in a market and that a batch cut process is therefore unnecessary. *Order* at ¶ 460.

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

docket. Based on the comments, the Commission shall conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. Any interested person or entity shall file a petition to intervene on or before October 31, 2003. A hearing shall be held on April 26 through April 30 and May 3 through May 7, 2004. A more detailed procedural schedule shall be issued at a later date.

In order to further define the scope of this proceeding, the Commission is requesting that Qwest provide a more detailed statement of how it intends to challenge the impairment finding regarding mass-market switching. Qwest shall identify the geographical areas in South Dakota where Qwest intends to challenge the national findings of impairment, the bases for the challenge, and, to the extent known, the competitive local exchanges carrier switches that form the bases for Qwest's contention of no impairment.

The Commission is also requesting comments from any person that files a petition to intervene on what procedure the Commission should use to determine the relevant geographical area to include in each market. In addition, any interested person may submit proposed discovery questions along with a proposal on how discovery should be conducted and who discovery should be served on. Further, any interested person may submit a proposed protective order. Finally, the Commission would like updated comments on whether the Commission should proceed with the batch cut issues using a multi-state process.

It is therefore

ORDERED, that petitions to intervene shall be filed on or before October 31, 2003; and it is

FURTHER ORDERED, that a hearing shall be held on April 26 through April 30 and May 3 through May 7, 2004; and it is

FURTHER ORDERED, that Qwest shall file a more detailed statement regarding the scope of the docket on or before October 31, 2003; and it is

FURTHER ORDERED, that any interested person that files a petition to intervene may file comments on the issues listed above on or before October 31, 2003.

Dated at Pierre, South Dakota, this 21st day of October, 2003.

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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 Kalbo*

Date: 10/21/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner