



Public Service Commission

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DATE: AUGUST 25, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (DOWDS) OFFICE OF THE GENERAL COUNSEL (FORDHAM) *[Handwritten initials]*
RE: DOCKET NO. 030850-TP - IMPLEMENTATION OF REQUIREMENTS ARISING FROM THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL UNE REVIEW: LOCAL CIRCUIT SWITCHING FOR DS1 ENTERPRISE CUSTOMERS
AGENDA: 09/02/2003 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\CMP\WP\030850.RCM

CASE BACKGROUND

On February 20, 2003, the Federal Communications Commission (FCC) adopted new rules pertaining to incumbent local exchange companies' (ILECs) obligations to unbundle certain elements of their networks and make these unbundled elements available to competitive local exchange telecommunications companies (CLECs) at prices based on the ILEC's Total Element Long-Run Incremental Cost (TELRIC). Although the FCC's order memorializing its decisions (FCC 03-36) was not released until August 21, 2003, key findings were made known in a press release on the day of the FCC's vote. Among other matters, the FCC found that ". . . switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding." (Attachment to Triennial Review Press Release, page 1) The treatment of such

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enterprise customers is detailed at ¶¶451 through 458 of the FCC's Order. Staff would note that the 90 days referred to above is from the effective date of the FCC's order, not the order's release date. At this time, the effective date is not known; it will be 30 days after publication in the Federal Register, which event has not yet occurred.

This is staff's recommendation on what actions the Commission should take with respect to the FCC's presumption of no impairment absent access to unbundled local switching for business customers who obtain access via high-capacity loops.

DISCUSSION OF ISSUES

ISSUE 1: What actions should the Commission take regarding the FCC's presumption of no impairment absent access to unbundled local switching for business customers who obtain network access via high-capacity loops?

RECOMMENDATION: Staff recommends that the Commission take no actions to rebut the FCC's presumption of no impairment absent access to unbundled local switching for business customers who obtain network access via high-capacity loops. (DOWDS)

STAFF ANALYSIS: In order to determine whether or not the FCC's no impairment presumption regarding access to unbundled local switching (ULS) to business customers with high-capacity loops (also referred to as enterprise customers) was reasonable, staff made inquiries of Florida's largest ILECs. Specifically, we asked them how many UNE combinations consisting of a DS1 loop with unbundled local switching they are currently providing to CLECs in Florida. Staff's assumption was that if relatively few of this type of UNE combination were being ordered, it was highly unlikely that a showing of impairment could be sustained.

As suspected, very few DS1 loop with ULS combinations are being provided in Florida. Verizon and Sprint indicated that they have provisioned no such UNE combinations in their service territories. BellSouth has informed staff that they are providing around 70 combinations of high-capacity loops with unbundled local switching to 6 CLECs in Florida. To put the BellSouth data in perspective, BellSouth provides over 7,000 DS1 unbundled loops in Florida to 27 CLECs. Based on the very limited demand that exists for the combination of DS1 loops with unbundled local switching, staff believes that CLECs are not impaired absent access to unbundled local switching for business customers served via high-capacity loops, as presumed by the FCC. Accordingly, we recommend that the Commission should not initiate a proceeding to investigate whether to challenge the FCC's presumption, and that no further actions on this matter are necessary.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order should become final upon the issuance of a Consummating Order. If the Order is protested, the procedures enumerated in the Staff Analysis should govern subsequent actions in this docket. (FORDHAM, DOWDS)

STAFF ANALYSIS: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order should become final upon the issuance of a Consummating Order. However, if a party protests the PAA order, such protest triggers commencement of the 90-day proceeding to attempt to rebut the FCC's presumption of no impairment. In order for the Commission to render a decision within the FCC-mandated period, an expedited schedule will be required. Accordingly, the following schedule should control the 90-day proceeding: (1) an order establishing procedure containing firm dates should be issued as soon after the protest as is feasible; (2) the party protesting the Commission's PAA order should be required to prefile its testimony and exhibits, including all data on which it bases its claim of impairment, within seven days after the FCC's Triennial Review Order (TRO) becomes effective; (3) any intervenor testimony and exhibits should be due 21 days after the effective date of the TRO; (4) the hearing in this matter should be scheduled for approximately 28 days after the TRO is effective; (5) briefs and a staff recommendation should be due 35 and 60 days, respectively, after the TRO's effective date; and (6) a Commission vote should occur about 70 days after the TRO effective date, with a final order to be issued by day 90. All filings in this proceeding are to be made in hard copy and electronically, and all filings should be simultaneously served on Commission staff.

SCHEDULE

	TRO EFFECTIVE DATE
Protester's Filing	+ 7 days
Intervenor Testimony	+ 21 days
Hearing	+ 28 days
Briefs	+ 35 days
Staff Recommendation	+ 60 days
Commission vote	+ 70 days
Final Order	+ 90 days

To accommodate this expedited proceeding, all discovery requests should be served via hand-delivery, electronic mail, facsimile, or overnight courier. Further, within 10 days of service of a discovery request, the respondent should serve its responses to the requesting party via hand-delivery, electronic mail, facsimile, or overnight courier. When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification should be made within five days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes. All discovery should be completed five days prior to the hearing.