

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03M-417T

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RE: IN THE MATTER OF THE IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER  
ADOPTING NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS.

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**COMMISSION ORDER REGARDING  
90-DAY PROCEEDING: OPENING DOCKET  
AND SETTING PROCEDURAL SCHEDULE**

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Mailed Date: September 30, 2003  
Adopted Date: September 24, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. At its open meeting of February 20, 2003, the Federal Communications Commission (FCC) adopted rules concerning the obligations of incumbent local exchange carriers to make elements of their networks available on an unbundled basis. Although the FCC's written order memorializing its decisions (FCC 03-36, Triennial Review Order, or FCC Order<sup>1</sup>) was not released until August 21, 2003, key findings were announced in a press release on February 20, 2003. Among other matters, the FCC made a presumptive, default finding that local circuit switching for business customers served by high-capacity loops (DS1 capacity and above (*i.e.*, enterprise market)) will no longer be required to be made available as an unbundled network element (UNE). The FCC found that competition in these enterprise markets would not be impaired if the local switching UNE is unavailable.

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<sup>1</sup> *Review of the Section 251 Unbundling obligation of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

2. The text of the FCC Order was released on August 21, 2003, and was published in the *Federal Register* on September 2, 2003 to be effective on October 2, 2003. The FCC made a national finding of no impairment regarding local switching UNE for enterprise markets. *See* ¶¶ 421 and 451 through 458 of the FCC's written order, adopted as Rule 47 C.F.R. § 51.319(d)(3).

3. In its Triennial Review Order the FCC provided that a state commission would have 90 days from the effective date of its order to file a petition with the FCC to challenge the national finding of "no impairment" based upon the characteristics of enterprise markets in any individual state.

#### **B. Discussion**

4. At its Weekly Meeting of September 24, 2003, the Commission discussed the rationale and arguments enumerated in the FCC's Triennial Review Order regarding the national finding of non-impairment in the enterprise market. This Commission is preliminarily persuaded that such arguments and rationale are applicable to the characteristics of enterprise markets in the State of Colorado.

5. Therefore, the Commission decided that it will not on its own motion file a petition with the FCC seeking a waiver of Rule 51.319(d)(3).

6. However, if a Competitive Local Exchange Carrier (CLEC) files a petition with this Commission to conduct a proceeding to address the FCC's national default presumption of non-impairment in Rule 51.319(d)(3), and if the CLEC makes a *prima facie* showing that the CLEC would likely be competitively impaired without access to the local switching UNE in the enterprise market, the Commission will conduct such a proceeding.

7. In order for the Commission to timely complete a 90-day proceeding in response to a CLEC petition to rebut the national presumption, the Commission will establish CLEC petition filing requirements, but will defer adopting any further procedural schedule pending a Commission decision on whether the CLEC petition has made an adequate showing justifying conducting such 90-day proceeding.

8. Any CLEC petition seeking to rebut the national presumption of non-impairment shall be filed with the Commission on or before October 9, 2003. Such petition shall contain all evidence available or in the possession of the CLEC and shall be filed in the form of prefiled, written question-and-answer testimony and exhibits, and shall include sworn affidavits by the witnesses. In addition, the petition shall contain a clear definition of the particular geographic market as defined in Rule 51.319(d)(2)(i). Such petitions may contain, if applicable, a request that the Commission designate additional telecommunications service providers as indispensable parties. Finally, such petition shall contain suggestions for a procedural schedule for any Commission investigation to be conducted in this matter.

9. The Commission shall give notice of the filing of a petition by the posting of a notice on the Commission's web site.

10. The CLEC petition shall be made with the Commission in accordance with the Commission's Rules of Practice and Procedure, and, in addition, an electronic copy shall be filed suitable for posting upon the Commission's web site.

11. The Commission's established rules regarding the treatment of confidential material (4 *Code of Colorado Regulations* 723-16) shall apply unless supplemented by further order of the Commission.

12. The Commission will timely conduct deliberations upon the petition to determine whether to conduct further proceedings on local switching UNE in the enterprise market.

## **II. ORDER**

### **A. The Commission Orders That:**

1. Any petition requesting that the Commission seek to rebut the Federal Communications Commission's national finding of no impairment regarding the local switching unbundled network element for enterprise markets as set forth in the Federal Communications Commission's Triennial Review Order must be filed on or before October 9, 2003, and must comply with all requirements established in the Federal Communications Commission Order and in the above discussion.

2. The consideration of any filed petition will be conducted according to the schedule established in the above discussion.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
September 24, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners