

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Local Circuit Switching for Mass Market Customers.

DOCKET NO. 030851-TP

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

DOCKET NO. 030852-TP

ORDER NO. PSC-03-1200-PCO-TP

ISSUED: October 22, 2003

ORDER DENYING REQUESTS TO MODIFY PROCEDURAL SCHEDULE AND
MODIFYING CONTROLLING DATES

On February 20, 2003, the Federal Communications Commission (FCC) adopted new rules and reevaluated old rules regarding incumbent local exchange companies' (ILECs) obligations to unbundle certain network elements, so that these elements are made available to requesting competitive local exchange telecommunications companies (CLECs) at a price based on the ILEC's Total Element Long-Run Incremental Cost (TELRIC). On August 21, 2003, the FCC released the newly adopted rules in its Triennial Review Order ("TRO") with the intent of opening local exchange markets to competition, fostering the deployment of advanced services, and reducing regulation. Pursuant to the TRO, the state commission's role is a fact finding role designed to ascertain whether impairment exists within the state and local markets. The state commission must complete such proceedings within nine months from the TRO's effective date.

Two dockets were opened by this Commission to address the requirements set forth in the TRO. Docket No. 030851-TP was initiated to address local circuit switching for mass market customers, and Docket No. 030852-TP was initiated to address the location-specific review for DS1, DS3, and dark fiber loops and route-specific review for DS1, DS3, and dark fiber transport. By Order Nos. PSC-03-1054-PCO-TP and PSC-03-1055-PCO-TP, issued September 22, 2003, the procedural schedules and hearing dates for both dockets were established. On October 6, 2003, an issue identification conference was held in which all parties were permitted to discuss the merits of their respective motions and responses requesting modification of the procedural schedule. Those motions and responses are the subject of this Order.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ANALYSIS

BellSouth and FCCA's Joint Emergency Motions to Amend Procedural Schedules

On September 24, 2003, BellSouth Telecommunications, Inc. (BellSouth) and the Florida Competitive Carriers Association (FCCA) filed Joint Emergency Motions to Amend Procedural Schedules (Joint Motions) in both dockets. BellSouth and FCCA request in both Joint Motions that the procedural schedules be modified to allow both parties to continue working together towards developing mutually agreeable procedures for each docket. BellSouth and FCCA state they have been conducting discussions to develop agreeable procedures that will allow the parties to conduct joint discovery that will limit and narrowly define the issues for hearing and allow a coordinated approach through the Southeastern region. BellSouth and FCCA argue that the current procedural schedule envisions the establishment of issues early in the proceeding, which may frustrate, rather than facilitate, the parties' ability to conduct a focused and streamlined proceeding before this Commission. Accordingly, BellSouth and FCCA propose modifications to certain controlling dates in their Joint Motion.

Verizon's Response to Orders Establishing Procedure

On September 24, 2003, Verizon Florida Inc. filed its Response to Orders Establishing Procedure requesting the Commission allow for an initial, expedited review of the FCC's mandated triggers set forth in the TRO Order and requesting that a separate proceeding be established to review the ILECs' batch hot cut processes. Although not styled as a motion, I find it appropriate to address Verizon's requested modifications to the procedural schedule in this Order.

Verizon asserts that the triggers are objective, bright-line tests that were created by the FCC to provide state commissions with a simplified and accelerated method to determine non-impairment. Verizon further argues the triggers have the potential to ease administrative burdens and to curtail the length and scope of these proceedings. Verizon proposes the ILECs be afforded the option of filing initial testimony in which they demonstrate that, for each network element they contest, the triggers have been satisfied in the relevant markets. Under Verizon's proposed procedural schedule, CLECs could then attempt to refute these showings in their respective rebuttal testimony. Thereafter, the Commission would make a final determination of whether the relevant trigger has been satisfied for a particular network element. Verizon asserts its proposed approach allows the Commission and parties to quickly determine whether additional proceedings are necessary, while allowing the Commission to devote resources to aspects of the proceeding that prove to be necessary and relevant.

Additionally, Verizon proposes a separate but parallel proceeding to address an ILEC's batch hot cut process. Verizon asserts any review of the batch hot cut process will be highly technical and specific for each ILEC challenging the FCC's impairment presumption.

FCCA's Opposition to Verizon Florida's Request for an Expedited "Trigger" Proceeding

On October 2, 2003, FCCA filed its Opposition to Verizon Florida's Request for an Expedited "Trigger" Proceeding. Therein, FCCA contends Verizon's proposal would have the parties presenting evidence prematurely, without the benefit of the discovery necessary to obtain information required to prepare and present a full evidentiary record. Furthermore, FCCA argues Verizon's proposed schedule is impractical and would also result in a hastily and ill-prepared evidentiary record. In addition, FCCA stresses that Verizon's proposal was submitted without the benefit of any other party's input and appears to ignore the fact that different parties will be participating in both dockets.

Sprint's Response to Verizon Florida, Inc.'s Response to Orders Establishing Procedure

On October 3, 2003, Sprint Communications Company Limited Partnership (Sprint) filed its Response to Verizon Florida, Inc.'s Response to Orders Establishing Procedure. Sprint states in its response that it does not disagree that administrative efficiency may result from an evaluation of the triggers before considering the operational and economic bases for a finding of no impairment; however, Sprint disagrees that the existence of triggers can be properly evaluated in the time frames proposed by Verizon. Sprint asserts that a determination of whether the triggers are met will require significant and time consuming discovery.

Sprint contends that with regards to the loop and transport impairment analysis, whether the triggers have been met in a given customer location or for a specific route would be fairly straightforward. Therefore, Sprint asserts that the schedule for a determination regarding the triggers could be expedited, to be followed by consideration of the applicable operational and economic analyses. However, Sprint argues that for the mass market switching impairment analysis, a determination of the appropriate geographical market is not governed by the same "bright line tests" that apply to location-specific and route-specific analyses applicable to high capacity loops and transport. Accordingly, Sprint contends, with regard to mass market switching, a trigger impairment analysis could not be completed in an expedited time frame.

DECISION

Having fully considered the arguments put forth, BellSouth and FCCA's Joint Emergency Motions to Amend Procedural Schedules and Verizon's request to modify the procedural schedule are denied. As noted by all parties in their motions and responses, the TRO requires that we must complete these proceedings within nine months from the TRO's effective date. The schedules set forth in the Orders Establishing Procedure were set in a manner to recognize the delicate balance of all parties' interests, including those of this Commission, under such expedited circumstances. I find that each of the proposals put forth by the parties fails to achieve this same delicate balance of weighing all parties' interests.

Upon consideration of the parties' arguments in their respective motions and responses, including those comments made at the issue identification conference held on October, 6, 2003, I do, however, find it reasonable and appropriate to modify the following controlling dates in Docket 030852-TP while maintaining the same procedural framework set forth in Order No. PSC-03-1055-PCO-TP, the Order Establishing Procedure in that docket:

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|--|-------------------|
| 1) Second Issue Identification Proceeding | October 24, 2003 |
| 2) Order Establishing Procedure | October 28, 2003 |
| 3) Direct testimony and exhibits | December 22, 2003 |
| 4) Staff Direct testimony and exhibits (if needed) | December 29, 2003 |
| 5) Rebuttal testimony and exhibits | January 21, 2004 |
| 6) Surrebuttal testimony and exhibits | February 4, 2004 |
| 7) Prehearing Statements | February 2, 2004 |
| 8) Prehearing | February 9, 2004 |
| 9) Prehearing Order | February 13, 2004 |
| 10) Discovery Cut-off | February 25, 2004 |
| 11) Hearing | March 3 - 5, 2004 |

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that BellSouth Telecommunications, Inc. and Florida Competitive Carriers Association Joint Emergency Motions to Amend Procedural Schedules are denied. It is further

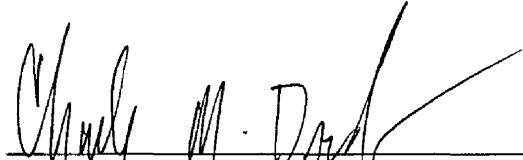
ORDERED that Verizon Florida, Inc.'s request to modify the procedural schedule as stated in its Response to Orders Establishing Procedure is denied. It is further

ORDERED that the modified controlling dates, as outlined in the body of this order, shall be followed unless further modified by the Commission. It is further

ORDERED that all other aspects of Order Nos. PSC-03-1054-PCO-TP and PSC-03-1055-PCO-TP are reaffirmed.

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 22nd
Day of October, 2003.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.