

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-03-1265-PCO-TP

ISSUED: November 7, 2003

SECOND ORDER ON PROCEDURE

I. Case Background

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether impairment exists within the state and local markets. 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. Pursuant to the TRO, the state commission must complete such proceedings within nine months from the TRO's effective date.

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. Further, by Order No. PSC-03-1200-PCO-TP, issued October 22, 2003, the parties' requests to modify the procedural schedule were denied, and certain controlling dates were modified. On October 23, 2003, a second issue identification conference was held, and parties were afforded the opportunity to put forth, discuss, and consolidate the issues that the parties believe are necessary in these two dockets.

II. Modified Procedures

During both issue identification conferences, the parties and Commission staff discussed certain modifications to the Orders Establishing Procedure issued in both dockets. Pursuant to these discussions, it is reasonable and appropriate to make the following procedural modifications in both dockets:

DOCUMENT NUMBER-DATE

11158 NOV-7⁸

COMMISSION CLERK

A. Service of Discovery Responses

Discovery responses shall be served by e-mail, fax, hand delivery, or overnight mail within 20 calendar days of receipt of the discovery request.

B. Index of Electronic Files

If electronic files are to be served with discovery responses, parties shall provide an index that shall list and identify all electronic files included.

III. Issues

A. Docket No. 030851-TP

Attached to this order as Appendix "A" is a list of the issues identified in Docket No. 030851-TP. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A."

B. Docket No. 030852-TP

Attached to this order as Appendix "B" is a list of the issues identified in Docket No. 030852-TP. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "B."

IV. Controlling Dates

A. Docket No. 030851-TP

Controlling dates in Docket No. 030851-TP were initially established in Order No. PSC-03-1054-PCO-TP, issued September 22, 2003. The following list includes all controlling dates in Docket No. 030851-TP, including those subsequently modified by the Prehearing Officer (shown in bold):

- | | | |
|----|--|--------------------------|
| 1) | Direct Testimony and Exhibits | December 4, 2003 |
| 2) | Staff Direct Testimony and Exhibits (if any) | December 11, 2003 |
| 3) | Rebuttal Testimony and Exhibits | December 31, 2003 |

- | | | |
|-----|--|----------------------|
| 4) | Staff Rebuttal Testimony and Exhibits (if any) | January 8, 2004 |
| 5) | Prehearing Statements | January 23, 2004 |
| 6) | Surrebuttal Testimony | January 23, 2004 |
| 7) | Prehearing Conference | February 9, 2004 |
| 8) | Prehearing Order | February 13, 2004 |
| 9) | Discovery Cut-off | February 17, 2004 |
| 10) | Hearing | February 24-27, 2004 |
| 11) | Briefs | April 6, 2004 |
| 12) | Staff Recommendation | May 19, 2004 |
| 13) | Special Agenda | June 8, 2004 |
| 14) | Final Order | June 28, 2004 |

B. Docket No. 030852-TP

By Order No. PSC-03-1200-PCO-TP, issued October 22, 2003, certain controlling dates in Docket 030852-TP were modified. On October 23, 2003, at the second issue identification conference, additional controlling dates in Docket 030852-TP were modified. The following list includes all modified controlling dates in Docket 030852-TP:

- | | | |
|----|--|-------------------|
| 1) | Direct Testimony and Exhibits | December 22, 2003 |
| 2) | Staff Direct Testimony and Exhibits (if any) | December 29, 2003 |
| 3) | Rebuttal Testimony and Exhibits | January 21, 2004 |
| 4) | Prehearing Statements | February 2, 2004 |
| 5) | Surrebuttal Testimony and Exhibits | February 4, 2004 |
| 6) | Prehearing Conference | February 9, 2004 |
| 7) | Prehearing Order | February 13, 2004 |
| 8) | Discovery Cut-off | February 25, 2004 |

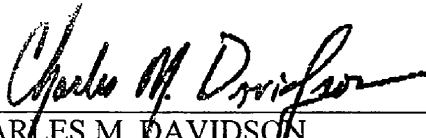
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| 9) Hearing | March 3 - 5, 2004 |
| 10) Briefs | April 6, 2004 |
| 11) Reply Briefs | April 16, 2004 |
| 12) Staff Recommendation | June 14, 2004 |
| 13) Special Agenda | June 30, 2004 |
| 14) Final Order | July 21, 2004 |

Based upon the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, Prehearing Officer, that the modified procedures outlined in the body of this Order, shall be followed unless further modified by the Commission. It is further

ORDERED that Order Nos. PSC-03-1054-PCO-TP and PSC-03-1055-PCO-TP are affirmed in all other respects.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 7th
Day of November, 2003.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

AJT

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

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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.

Docket No. 030851-TP (Mass Market Switching)
Issues

Market Definition (§51.319(d)(2)(i))

- 1) For purposes of this proceeding, what are the relevant markets for purposes of evaluating mass market impairment and how are they defined?
- 2) In defining the relevant geographic areas to include in each of the markets, how should the following factors be taken into consideration and what relative weights should they be assigned:
 - a) the locations of mass market customers actually being served by CLECs;
 - b) the variation in factors affecting CLECs' ability to serve each group of customers; and
 - c) CLECs' ability to target and serve specific markets profitably and efficiently using currently available technologies?

Batch cut process (§51.319(d)(2)(ii))

- 3)
 - (a) Does a batch cut process exist that satisfies the FCC's requirements in the Triennial Review Order? If not, in which markets should the Commission establish a batch cut process?
 - (b) For those markets where a batch cut process should be established, what volume of loops should be included in the batch?
 - (c) For those markets where a batch cut process should be established, what specific processes should be employed to perform the batch cut?
 - (d) For those markets where a batch cut process should be established, is the ILEC capable of migrating multiple lines that are served using unbundled local circuit switching to CLECs' switches in a timely manner?
 - (e) For those markets where a batch cut process should be established, should the Commission establish an average completion interval performance metric for the provision of high volumes of loops?

- (f) For those markets where a batch cut process should be established, what rates should be established for performing the batch cut processes?
- (g) Are there any markets in which a batch hot cut process need not be implemented? If so, for those markets where a batch cut process need not be established because absence of such a process is not impairing CLECs' ability to serve end users using DS0 loops to serve mass market customers without access to unbundled local circuit switching,
 - (i) what volume of unbundled loop migrations can be anticipated if CLECs no longer have access to unbundled local circuit switching;
 - (ii) how able is the ILEC to meet anticipated loop migration demand with its existing processes in a timely and efficient manner; and
 - (iii) what are the nonrecurring costs associated with the ILEC's existing hot cut process?

Actual Switch Deployment: Local Switching Triggers (§51.319(d)(2)(iii)(A))

- 4. (a) In which markets are there three or more CLECs not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, serving mass market customers with their own switches?
- (b) In which markets are there two or more CLECs not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, who have their own switches and are offering wholesale local switching to customers serving DS0 capacity loops in that market?

Potential for Self-Provisioning of Local Switching (§51.319(d)(2)(iii)(B))

- 5. (a) In which markets are there either two wholesale providers or three self-provisioners of local switching not affiliated with each other or the ILEC, serving end users using DS1 or higher capacity loops? Where there are, can these switches be used to serve DS0 capacity loops in an economic fashion?
- (b) In which markets are there any carriers with a self-provisioned switch, including an intermodal provider of service comparable in quality to that of the ILEC, serving end users using DS0 capacity loops?
- (c) In which markets do any of the following potential operational barriers render CLEC entry uneconomic absent access to unbundled local circuit switching:

1. The ILEC's performance in provisioning loops;
 2. difficulties in obtaining collocation space due to lack of space or delays in provisioning by the ILEC; or
 3. difficulties in obtaining cross-connects in the ILEC's wire centers?
- (d) In which markets do any of the following potential economic barriers render CLEC entry uneconomic absent access to unbundled local circuit switching:
1. the costs of migrating ILEC loops to CLECs' switches; or
 2. the costs of backhauling voice circuits to CLECs' switches from the end offices serving the CLECs' end users?
- (e) Taking into consideration the factors in (a) through (d), in what markets is it economic for CLECs to self-provision local switching and CLECs are thus not impaired without access to unbundled local circuit switching?
- (f) For each market, what is the appropriate cut-off for multiline DS0 customers (where it is economic to serve a multiline customer with a DS1 loop)? That is, taking into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served economically by higher capacity loops and a CLEC's own switching (and thus be considered part of the DS1 enterprise market), what is the maximum number of DS0 loops that a CLEC can serve using unbundled local switching, when serving multiline end users at a single location?

Transitional use of unbundled local switching (§51.319(d)(2)(iii)(C))

6. If the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a given ILEC market and the economic and operational analysis described in §51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market absent access to unbundled local switching, would the CLECs' impairment be cured if unbundled local switching were only made available for a transitional period of 90 days or more? If so, what should be the duration of the transitional period?

Docket No. 030852-TP (High-Capacity Loops and Transport)
Issues

DS-1 Loops (§51.319(a)(4)(ii))

1. To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-1 loops over their own facilities on a widely available basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?

DS-3 Loops (§51.319(a)(5))

2. To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, either (1) deployed their own DS-3 facilities and actually serve customers via those facilities or (2) deployed DS-3 facilities by attaching their own optronics to activate dark fiber obtained under a long-term indefeasible right of use and actually serve customers via those facilities at that location?
3. To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-3 loops over these facilities on a widely available wholesale basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?
4. If neither the self-provisioning or the wholesale triggers for DS-3 loops is satisfied at a specific customer location, using the potential deployment criteria specified in §51.319(a)(5)(ii), what evidence of non-impairment for a DS-3 loop at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?

Dark Fiber Loops (§51.319(a)(6))

5. To what specific customer locations have two or more competing providers deployed their own dark fiber facilities, including dark fiber owned by the carrier or obtained under a long-term indefeasible right of use (but excluding ILEC unbundled dark fiber)?
6. If the self-provisioning trigger for dark fiber loops is not satisfied at a specific customer location, using the potential deployment criteria specified in §51.319(a)(6)(ii), what evidence of non-impairment for dark fiber loops at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?

Dedicated DS-1 Transport (§51.319(e)(1)(ii))

7. Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are willing to provide DS-1 level transport immediately over their own facilities on a widely available basis to other carriers?
8. For any particular route where at least two competing providers will provide wholesale DS-1 dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?

Dedicated DS-3 Transport (§51.319(e)(2))

9. Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are operationally ready to use those transport facilities?
10. For any particular route where at least three competing providers have self-provisioned DS-3 level dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?

11. Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber), are operationally ready to use those transport facilities, and are willing to provide DS-3 level dedicated transport immediately over their facilities on a widely available wholesale basis to other carriers?
12. For any particular route where at least two competing providers will provide wholesale DS-3 level dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?
13. If neither the self-provisioning nor the wholesale triggers for DS-3 level dedicated transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(2)(ii), what evidence of non-impairment for DS-3 level dedicated transport on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?

Dark Fiber Transport (§51.319(e)(3))

14. Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities?
15. For any particular route where at least three competing providers have self-provisioned dark fiber dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?
16. Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities (including dark fiber obtained from an entity other than the ILEC), are operationally ready to lease or sell those transport facilities to provide transport along the route, and are willing to provide dark fiber immediately over their facilities on a widely available wholesale basis to other carriers?
17. For any particular route where at least two competing providers will provide wholesale dark fiber, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can

- requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?
18. For any particular route where at least two competing providers will provide such wholesale dark fiber, do these providers have sufficient quantities of dark fiber available to satisfy current demand along that route? If not, should the wholesale trigger for dark fiber be determined to be satisfied along that route?
 19. If neither the self-provisioning or the wholesale triggers for dark fiber transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(3)(ii), what evidence of non-impairment for dark fiber on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?
 20. If unbundling requirements for loops at customer-specific locations or dedicated transport along a specific route are eliminated, what are the appropriate transition period and requirements, if any, after which a CLEC no longer is entitled to these loops or transport under Section 251(c)(3)?