

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
ORDER NO. PSC-04-0177-PCO-TP
ISSUED: February 20, 2004

ORDER GRANTING REQUEST TO BE EXCUSED FROM HEARING

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 a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

At the prehearing conference in this matter, Charles Gerkin, counsel for Allegiance Telecom of Florida, Inc., indicated that Allegiance may wish to be excused from the hearing without prejudice to its ability to file a post-hearing brief in this matter. Thereafter, on February 20, 2004, Allegiance filed a Motion formally seeking leave to be absent from the hearing, but with permission to still file a post-hearing brief in the case. In support of its request, Allegiance states that it has participated fully in the discovery process for this case, but through that process, it has come to the conclusion that its interests will be adequately represented through the participation of other parties in the proceeding, even though Allegiance is not clearly aligned with either side in the case. Allegiance notes that it will work with other counsel to ensure that, through cross-examination, its interests are covered. Furthermore, Allegiance states that its attorneys are based in Dallas, Texas, and that they may be required to appear in the California TRO proceedings during this period. Thus, for all these reasons, Allegiance asks that it be excused from the hearing in this matter without prejudice to its right to submit a post-hearing brief.

Upon consideration, the request appears reasonable. It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Allegiance is excused from this hearing without prejudice to its right to file a post-hearing brief.


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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 20th
day of February, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(S E A L)

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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.