

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-04-0305-PCO-TP
ISSUED: March 18, 2004

ORDER HOLDING DOCKET IN ABEYANCE

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.

A hearing was held in this docket and concluded on February 27, 2004. Shortly thereafter, on March 2, 2004, the D.C. Circuit Court of Appeals released its decision¹ on the appeal of the TRO, which decision vacated several aspects of the FCC's Triennial Review Order.

Our staff informed me that all parties were contacted by e-mail to discuss how this docket should proceed in light of the D.C. Circuit Court of Appeals' decision. In this e-mail, our staff recommended that the proceeding be held in abeyance; however, the parties could not reach agreement. In particular, some parties felt it necessary to file briefs on April 6, 2004, while others did not.

II. Decision

In light of the recent D.C. Circuit Court of Appeals decision, I find it appropriate to hold this docket in abeyance indefinitely until further action is deemed appropriate. Further, I find no need for parties to file briefs on April 6, 2004. Parties will be updated on any new developments affecting this docket by way of an informal status conference call with our staff to be held on April 5, 2004, at 10:00 a.m. The number to take part in this conference call is 850-921-2470.

While the proceedings are being held in abeyance, to the extent that the protective orders apply, parties should continue to treat information in their possession in the manner provided by those orders. However, it should be clear that if information was entered into the record at hearing, and a formal request for confidential treatment has not yet been filed, the owner of that information must still comply with Rule 25-22.006(8), F.A.C., and file a request for confidential

¹ See United States Telecom Association v. Federal Communications Commission, LEXIS 3960 (U.S. App 2004)

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treatment within 21 days of the conclusion of the hearing to maintain confidential treatment. Furthermore, to the extent this case continues in abeyance beyond the 18-month confidentiality period provided in the Orders Granting Confidential Classification, requests for extension of that period will still need to be sought prior to the expiration of the 18-month period.

It is therefore,

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that this docket shall be held in abeyance indefinitely until further action is deemed appropriate. It is further

ORDERED that in the event this case continues in abeyance beyond the 18-month confidentiality period provided in the Orders Granting Confidential Classification, requests for extension of that period will still need to be sought prior to the expiration of the 18-month period.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 18th day of March, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

JLS

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.