

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of
requirements arising from
Federal Communications
Commission triennial UNE review:
Local Circuit Switching for DS1
Enterprise Customers.

DOCKET NO. 030850-TP
ORDER NO. PSC-03-0988-PAA-TP
ISSUED: September 3, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER FINDING THAT NO FURTHER
ACTIONS ARE NECESSARY TO CHALLENGE THE FCC'S
PRESUMPTION OF NO IMPAIRMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On February 20, 2003, the Federal Communications Commission
(FCC) adopted new rules pertaining to incumbent local exchange
companies' (ILECs) obligations to unbundle certain elements of
their networks and make these unbundled elements available to
competitive local exchange telecommunications companies (CLECs) at
prices based on the ILEC's Total Element Long-Run Incremental Cost
(TELRIC). Although the FCC's order memorializing its decisions
(FCC 03-36) was not released until August 21, 2003, key findings

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were made known in a press release on the day of the FCC's vote. Among other matters, the FCC found that ". . . switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding." The treatment of such enterprise customers is detailed at ¶¶451 through 458 of the FCC's Order. We note that the 90 days referred to above is from the effective date of the FCC's order, not the order's release date.

This Order addresses the FCC's presumption of no impairment absent access to unbundled local switching for business customers who obtain access via high-capacity loops.

DECISION:

In order to determine whether or not the FCC's no impairment presumption regarding access to unbundled local switching (ULS) to business customers with high-capacity loops (also referred to as enterprise customers) was reasonable, our staff made inquiries of Florida's largest ILECs. Specifically, they asked them how many UNE combinations consisting of a DS1 loop with unbundled local switching they are currently providing to CLECs in Florida. Our assumption was that if relatively few of this type of UNE combination were being ordered, it was highly unlikely that a showing of impairment could be sustained.

As suspected, very few DS1 loop with ULS combinations are being provided in Florida. Verizon and Sprint indicated that they have provisioned no such UNE combinations in their service territories. BellSouth has informed us that they are providing around 70 combinations of high-capacity loops with unbundled local switching to 6 CLECs in Florida. To put the BellSouth data in perspective, BellSouth provides over 7,000 DS1 unbundled loops in Florida to 27 CLECs. Based on the very limited demand that exists for the combination of DS1 loops with unbundled local switching, we believe that CLECs are not impaired absent access to unbundled local switching for business customers served via high-capacity loops, as presumed by the FCC. Accordingly, we shall not initiate a proceeding to investigate whether to challenge the FCC's

presumption. Thus, no further actions on this matter are necessary.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this Commission will not initiate a proceeding to investigate whether to challenge the FCC's presumption of no impairment, and that no further actions on this matter are necessary. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 3rd Day of September, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LF

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 24, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.