

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

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Re: In the Matter of the Implementation of the	)	
Federal Communications Commission’s	)	DOCKET NO. UT-033025
Triennial Review Order	)	
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**COMMENTS OF ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. (“Allegiance”), through its attorneys, respectfully submits these comments pursuant to the Commission’s Notice Inviting Comments Concerning Process for Implementing FCC’s Triennial Review Order, issued August 22, 2003 (“Notice”). In its Notice, the Commission requested that comments address procedural matters, such as the number, format, scope, and timing of the proceedings.

Allegiance is a national facilities-based integrated communications provider that offers a competitive, one-stop-shopping package of telecommunications services, including local, long distance and Internet services, to business, government and other institutional users in 36 metropolitan areas across the United States.

In Washington, Allegiance provides service in the Seattle, Kent, Puyallup, Renton, Bellevue, HallsLake, and Kirkland markets through its local operating subsidiary Allegiance Telecom of Washington, Inc. Allegiance targets the needs of small to

medium-sized businesses, who have typically been underserved by the incumbent local exchange carriers, and large businesses with multiple locations. Allegiance provisions its services by using its own switches in combination with unbundled loops and transport (“UNEs”) leased from ILECs. In Washington, Allegiance provides 25% of all CLEC lines utilizing UNE loops.<sup>1</sup> Given Allegiance’s position as one of the largest facilities-based providers in the United States and its extensive use of UNEs, the Federal Communications Commission’s (“FCC”) *Triennial Review Order*<sup>2</sup> and this Commission’s determinations pursuant to the *TRO*’s delegations to the states will significantly impact Allegiance’s business. Accordingly, Allegiance, responding to the Commission’s invitation for input in designing the Commission’s processes for implementing the *TRO*, offers these comments and suggestions.

## **90- DAY PROCEEDING**

### Scope/Ruling of Law

The 90-day proceeding presents CLECs with an opportunity to challenge the FCC’s presumption that competitors are not impaired if they are not provided unbundled switching to serve enterprise customers, defined for purposes of the 90-day proceeding as customers served by DS1 capacity and above loops. Allegiance does not intend to challenge the FCC’s finding. However, we do underscore that the FCC again affirmed that high-capacity loops at the DS1 or DS3 level must be provided on a UNE basis. In

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<sup>1</sup> Calculated by using Allegiance internal line counts as of June 2003 and the FCC Report on Local Telephone Competition as of December 31, 2002 (released June 12, 2003).

<sup>2</sup> *Report and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338 (rel. August 21, 2003 (“*Triennial Review Order*” or “*TRO*”))

that regard, Allegiance emphasizes that it has encountered problems in both Qwest and Verizon service territories. For example, Qwest recently refused to provide UNE DS1 loops on the purported ground that it has no facilities available to provide such UNE loops.<sup>3</sup> The FCC emphasized in the *TRO* that that such behavior impermissibly discriminates against CLECs and is unlawful. Accordingly, if a proceeding is opened on the 90-day issues, Allegiance requests that any finding by this Commission upholding the FCC presumption of non-impairment in the enterprise switching market is explicitly conditioned on the incumbent carriers' obeying the FCC rules limiting ILECs from refusing to provide UNE DS1 loops on the ground of unavailability.

#### Initiation

The Commission should require any CLEC seeking to challenge the presumption of no impairment to petition for a proceeding by October 2, 2003. If no petition is filed, the Commission need not review the issue.

#### Hearing Format

Generally, a full evidentiary hearing with pre-filed testimony, cross examination and post hearing briefing is necessary for the Commission to make an informed decision. Given the brief 90-day window, a full evidentiary hearing is probably not practical. Accordingly, if the Commission truncates the 90-day proceeding, it should require, minimally, that all factual submissions be under oath.

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<sup>3</sup> Qwest changed its provisioning process after the FCC issued its Public Notice of the *TRO*, but before the FCC issued the text of the *TRO*. Qwest's change increased the situations in which Qwest refused to provide facilities based on Qwest's erroneous view of not being required to make even routine modifications to its facilities when a UNE loop was requested.

### Burden of Proof/Going Forward

The burden of going forward and the burden of proof should be on the CLEC(s) seeking to overturn the presumption of no impairment.

### Generic Proceeding

Regardless of the number of petitions filed by CLECs seeking to challenge the presumption of no impairment, the Commission should conduct a single proceeding on the 90-day issues. That proceeding should bind all ILECs and CLECs certified in the state. Once a petition is filed, the Commission should notify all certificated local exchange carriers of the opening of a proceeding.

## **9-MONTH PROCEEDINGS**

### Scope

The *TRO* directs the state commissions to undertake two 9-month proceedings. The mass market local circuit switch proceeding will provide ILECs and/or CLECs an opportunity to challenge the FCC's presumption that competitors serving the mass market are impaired without unbundled switching from ILECs. The loop and transport proceeding would allow ILECs and/or CLECS to challenge the FCC's presumption that competitors are impaired without unbundled high-capacity loops and dedicated transport from ILECs. While the scope of the issues investigated should follow the FCC's general and more granular guidelines issued in the *TRO*, Allegiance further suggests that to the extent impairment is found to exist in either proceeding, the Commission order corrective

action, either in the 9-month proceedings or in prompt, follow-on proceedings, to eliminate or reduce the factors that cause impairment in particular areas.

Concerning such follow-on corrective proceedings, for example, although Allegiance is a facilities-based CLEC utilizing its own switches to serve small and medium business customers (both in the mass market and the enterprise market), our ability to serve broader geographic areas in Washington and other states is constrained by the costs of collocation, especially including the costs of power. Other constraints, such as the cost of interoffice transport, make it difficult for CLECs to expand their reach using EELs and should be investigated by the Commission in these proceedings. Finally, issues such as the time required to make minor upgrades to existing collocations, such as the addition of APOT equipment, hinder a facilities-based competitor's ability to serve the market by preventing it from addressing growing demand for its services in a timely fashion.<sup>4</sup> It is important that the Commission evaluate how these practices of the ILECs impair facilities-based CLECs from serving a larger footprint than what they serve today and order the ILECs to change their practices where appropriate in order to allow facilities-based CLECs economically to serve a larger geographic area in the state.

### Initiation

The Commission should require any ILEC or CLEC seeking to challenge the presumption of impairment to petition for a proceeding by October 2, 2003. Any petition on the loop and transport issues must both identify specifically and detail the routes for

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<sup>4</sup> In Washington, even simple changes to a CLEC's collocation arrangement require 100 days advance notice to the ILEC. The changes in most instances do not require construction and can be accomplished in less than one day. Artificial delays, such as unduly long lead times, seriously hinder a facilities-based competitor from addressing market demand.

which the petitioning party is claiming no impairment. The Commission should limit the proceeding to evaluating the specific routes identified in any petition.

#### Hearing Format

Allegiance submits that a full evidentiary hearing complete with pre-filed testimony, cross-examination and post-hearing briefing is necessary to underlie an informed Commission decision.

#### Burden of Proof/Going Forward

The burden going forward and the burden of proof should be on the party challenging the presumption of impairment.

#### Generic Proceeding

Regardless of the number of petitions filed by parties seeking to challenge the presumption of impairment, the Commission should conduct a proceeding on mass market switching and a separate proceeding on the loop/transport issues. Each proceeding should bind all ILECs and CLECs certified in the state. Once a petition is filed, the Commission should notify all certificated local exchange carriers of the opening of a proceeding.

### **OTHER PROCEDURAL ISSUES**

#### Combining Proceeding with Other States

Allegiance submits that it would be inappropriate for this Commission to combine its factual investigation with similar investigations in other states. Any finding by the Washington Commission needs to be based on the existence and level of competition in the markets in Washington. Further, the examination must focus on the granular geographical, market, operational, and economic factors outlined by the FCC. Of course, Allegiance presumes the Commission will monitor and be informed of the proceedings in other states. However, the Washington determinations must be made on a Washington-specific record.

#### Coordinating Discovery and Schedules with Other States

The *TRO* outlines specific factors and triggers that the states must consider in their impairment analyses. Given the uniformity of such standards, Allegiance strongly urges the Commission coordinate with other states in developing standard sets of data requests. Unquestionably, the nationwide proceedings pursuant to the *TRO* will create a substantial, if not unprecedented, drain on state commission and carrier resources. Everyone will benefit if data requests are standardized and minimize the need to respond to different data requests. Further, it will facilitate comparisons between states. Allegiance also strongly recommends that commissions coordinate their schedules of return of data and hearings to avoid unnecessary conflicts.

#### **Conclusion**

As a facilities-based CLEC utilizing its own switches to serve both enterprise and mass market business customers, Allegiance is well positioned to assist the Commission as it undertakes to review the presumptions of the FCC's Triennial Review Order.

Respectfully submitted,

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