

September 30, 2003

**NOTICE OF DEADLINE TO FILE PETITIONS  
CONCERNING IMPAIRMENT WITHOUT UNBUNDLED  
ACCESS TO DS1, DS3, AND DARK FIBER LOOPS, TRANSPORT,  
AND MASS-MARKET SWITCHING  
(Due October 10, 2003)**

**NOTICE OF PREHEARING CONFERENCE  
(To be held at 1:30 p.m. on Monday, October 13, 2003)**

RE: In the Matter of the Implementation of the Federal Communications  
Commission's Triennial Review Order, Docket No. UT-033025.

On August 21, 2003, the Federal Communications Commission (FCC) released its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, also known as the Triennial Review Order (Order), in CC Docket Nos. 01-338, 96-98, and 98-147. This Order adopts new rules concerning unbundled network elements. The Order also imposes certain requirements on state commissions to make determinations concerning whether incumbent local exchange carriers (ILECs) must provide on an unbundled basis certain network elements requested by competitive local exchange carriers (CLECs) pursuant to 47 U.S.C. § 251(c)(3).

In the Order, the FCC makes a national finding that competitors are impaired on a customer-location basis without access to unbundled DS1, DS3, and dark fiber loops, and on a route-by-route basis without access to unbundled DS1, DS3, and dark fiber dedicated transport. The FCC delegates to state commissions the authority to consider evidence on a more granular basis, i.e., by customer location and by route, to determine whether competitors are not impaired without unbundled access.

The FCC also makes a national finding that competitors are impaired without access to unbundled local circuit switching when serving mass-market customers. Similar to the issues of unbundled loops and transport, the FCC delegates to state commissions the

authority to rebut the FCC's finding by conducting a granular market-by-market analysis concerning impairment in the mass-market switching market.<sup>1</sup>

States must conduct reviews of the FCC's findings concerning unbundled access to loops, transport, and mass-market switching within nine months of the effective date of the Order. The Order and rules will become effective on October 2, 2003, thirty days after the publication of the Order in the Federal Register on September 2, 2003.

On August 22, 2003, the Commission issued a notice inviting comments by September 4, 2003, concerning the Commission's process for implementing the Triennial Review Order. By notice dated September 3, 2003, the Commission extended until September 11, 2003, the deadline for comments.

Nearly all of the interested parties that filed comments indicated that the Commission should not initiate a proceeding to consider the FCC's findings concerning loops, transport, or mass-market switching. Those filing comments stated that the Commission should require parties who request state commission review of the FCC's impairment findings to file a petition with the Commission.

In view of these comments, any person requesting that the Commission review the FCC's national findings of impairment for DS1, DS3, and dark fiber loops and dedicated transport or mass-market switching must file a petition with the Commission by **5.p.m. PST, Friday, October 10, 2003.**

The Commission does not require that the petitioner present a prima facie case of no impairment for unbundled access to loops, transport and mass-market switching, or require a petitioner to file pre-filed testimony and supporting evidence. However, any petition filed with the Commission must identify the specific customer locations, routes, or markets in which the petitioner asserts that competitors would not be impaired without unbundled access to loops, transport or mass-market switching. The petition should also address the issue of how the Commission should define the market for mass-market switching, following the guidelines set forth in paragraph 495 of the Triennial Review Order. For each market, the petition should identify the number of "competing providers not affiliated with each other or the incumbent LEC" serving

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<sup>1</sup> The Order also appears to require state commissions to approve and implement within nine months of the effective date of the Order a "batch hot-cut process" for ILECs operating in the state. An ILEC could efficiently transfer large volumes of mass market customers to a competitor using such a batch hot cut process. *See Order at ¶ 423.* By separate notice, the Commission will request comments concerning the proper process for implementing the Order's provisions concerning implementation of a batch hot-cut process.

mass-market customers in the market or “offering wholesale local circuit switching service to customers serving DS0 capacity loops in that market using their own switches.” See 47 C.F.R. § 51.319(d)(2)(iii)(A)(1) and (2).

**NOTICE IS HEREBY GIVEN That a prehearing conference will be held on Monday, October 13, 2003, at 1:30 p.m., in Room 206, the main hearing room of the Chandler Plaza Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington.** The purpose of the prehearing conference is to take appearances of parties and consider petitions to intervene, in the event that a petition is filed on October 10, 2003, requesting that the Commission review the FCC’s findings concerning loops, transport and mass-market switching. The Commission will also discuss procedural and scheduling issues, including establishing a deadline for responding to a petition filed on October 10, 2003, and any other matters arising from the filing of such a petition.<sup>2</sup>

Persons who cannot attend in person may participate via the Commission’s teleconference bridge line, **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations, by calling Kippi Walker at 360-664-1139, no later than Friday, October 10, 2003.

Sincerely,

ANN E. RENDAHL  
Administrative Law Judge

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<sup>2</sup> During a prehearing conference in this docket held on September 26, 2003, the Commission scheduled hearings for the weeks of March 1 and 15, 2003, to address the issues of DS1, DS3, and dark fiber loops and transport, and mass-market switching should any person file a petition with the Commission. A prehearing conference order will be entered shortly setting forth the hearing dates agreed to during the conference.