

**BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION**

In re:

Generic Proceeding to Review the Federal
Communications Commission's Triennial
Review Order

)
)
) Docket No. 2003-AD-714
)
)
)
)

ORDER ESTABLISHING DOCKET, PROCEDURE AND SCHEDULE

COMES NOW, the Mississippi Public Service Commission ("Commission"), *sua sponte*, and opens the above-referenced generic proceeding to review the Federal Communications Commission's ("FCC") Triennial Review Order, released on August 21, 2003, regarding the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers¹ ("Triennial Review Order"). The Triennial Review Order was published in the *Federal Register* on September 2, 2003 and, thus will become effective on October 2, 2003, unless otherwise stayed.

The FCC's Triennial Review Order encompasses a number of issues which this Commission and other state regulatory bodies must address. The issue which must first be addressed by the Commission relates to whether local circuit switching for enterprise customers should continue to be provided on an unbundled basis. More specifically, the FCC has established a national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to unbundled local circuit switching

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003.

for enterprise customers.² The FCC established, however, that the aforementioned national presumption can be overcome through a “geographic specific analysis” demonstrating that competitive carriers are indeed impaired without access to ILEC local circuit switching.³

With respect to overcoming the national presumption discussed above, the FCC concluded that state commissions are uniquely positioned to evaluate local market conditions and to determine whether enterprise customers should be granted access to unbundled ILEC circuit switching.⁴ In particular, the FCC noted that it would permit state commissions to rebut the national presumption of no impairment without ILEC local circuit switching by undertaking a more granular analysis utilizing the economic and operational criteria established by the FCC in the Triennial Review Order. In order to support a petition for a waiver of the national finding of no impairment, the FCC concluded that state commissions must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.⁵ The FCC established that state commissions have ninety (90) days from the effective date of its Triennial Review Order to petition the FCC to waive the finding of no impairment.

Given the October 2, 2003 effective date of the Triennial Review Order and the expedited schedule which must be adhered to for overcoming the national presumption of no impairment with respect to local circuit switching, the Commission herein establishes this Docket for purposes of fulfilling the Commission’s responsibilities under the FCC’s Triennial

² *Id.* at ¶451.

³ *Id.* at ¶454.

⁴ *Id.* at ¶455.

⁵ *Id.*

Review Order. The Commission will conduct this docket in two separate phases in order to fulfill all of its responsibilities with respect to the FCC's Triennial Review Order. The first phase of this docket will be to consider the impairment of DS1 enterprise customers within the ninety (90)-day time frame set out by the FCC, and the second phase will be to consider the balance of the matters that will need to be addressed by the Commission pursuant to the Triennial Review Order within the nine (9)-month time frame set out by the FCC. The ninety (90)-day time frame will expire on or about Tuesday, December 30, 2003, while the nine (9)-month time frame will expire on or about Friday, July 2, 2004. Parties may intervene in this docket pursuant to the Commission's rules governing intervention. Any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in this docket to actively participate herein. A procedural schedule for conducting phase one of this proceeding is set forth in this Order establishing this docket. The Commission will issue another order at a later date establishing a procedural schedule that will address phase two of this docket.

The Commission has determined through preliminary investigation conducted by the Mississippi Public Utilities Staff ("MPUS") that the number of unbundled network element ("UNE") combinations consisting of a DS1 loop and above with unbundled local circuit switching in Mississippi is *de minimis*. Accordingly, we are hereby adopting the recommendation of the MPUS that specific proceedings in phase one of this docket should not be undertaken absent a specific request from an affected party seeking to rebut the national presumption established by the FCC with regard to local circuit switching.

Based upon the foregoing, we find that any party seeking to have the Commission undertake proceedings aimed at rebutting the FCC's no impairment finding regarding local circuit switching for enterprise customers should submit a petition requesting such action by the Commission no later than October 14, 2003.⁶ Any party petitioning for such action by the Commission should identify the particular geographic area(s) for which it is requesting that the Commission to rebut the national finding and should also be prepared to actively participate in any proceedings initiated, including the presentation of "actual marketplace evidence," sworn expert testimony, and comments in support thereof.⁷ Parties opposing any such petition(s) should submit their responses, supporting evidence and comments no later than October 24, 2003. Any evidence and comments to be filed in rebuttal by a petitioning party must be filed no later than October 31, 2003. Proposed orders from all parties must be submitted no later than November 20, 2003.

IT IS, THEREFORE, ORDERED that this Docket is hereby established for purposes of fulfilling the Commission's responsibilities under the FCC's Triennial Review Order and the Commission hereby adopts the schedule set forth above in connection with phase one of this docket which concerns issues related to the FCC's finding that competitors of ILECs are not impaired without access to unbundled local circuit switching for enterprise customers. The Commission will establish a procedural schedule for conducting phase two of this docket through a subsequent order.

This Order shall be effective as of the date hereof.

⁶ As indicated in the Triennial Review Order, this does not preclude a party from filing such a petition at a later time. Such petition, however, will not be considered as part of this 90-day proceeding. Instead, such petition will be considered within the six-month deadline required by the Triennial Review Order. (See footnote 1398 of the Triennial Review Order)

⁷ Triennial Review Order at ¶93.

Chairman Michael Callahan voted aye ; Vice-Chairman Bo Robinson voted aye ;
Commissioner Nielsen Cochran voted aye .

SO ORDERED on this the 29th day of September, 2003.

MISSISSIPPI PUBLIC SERVICE COMMISSION



Michael Callahan
MICHAEL CALLAHAN, CHAIRMAN

Bo Robinson
BO ROBINSON, VICE CHAIRMAN

Nielsen Cochran
NIELSEN COCHRAN, COMMISSIONER

ATTEST: A TRUE COPY

Brian U. Ray
BRIAN U. RAY
Executive Secretary