

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Local Competition
Investigation**

Case No. PU-439-03-295

**NOTICE OF INVESTIGATION, REQUEST FOR INTERVENTION, AND
REQUEST FOR INFORMATION**

June 18, 2003

The Commission issues this document to inform interested parties of an investigation, to request information, and to request that interested parties file requests to intervene in a proceeding to address issues related to the Federal Communications Commission's (FCC) Triennial Review Order.

Under section 251(c)(3) of the Telecommunications Act of 1934 as amended in 1996 (Act), incumbent local exchange carriers have the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis.

Section 251(d)(2) of the Act states that in determining what network elements should be made available, the FCC shall consider whether (a) access to such network elements as are proprietary in nature is necessary; and (b) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

In its *UNE Remand Order*,¹ the FCC held with regard to non-proprietary network elements that:

[T]he failure to provide access to a network element would "impair" the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer.²

On February 20, 2003, the FCC adopted rules in Docket No. CC 01-338 concerning incumbent local exchange carrier's (ILEC's) obligations to make elements of their networks available on an unbundled basis to new entrants. This proceeding is referred to as the FCC's first Triennial Review. The actual Triennial Review Order (Order) has not been issued. All that interested parties have available at this point is a two-page FCC Press Release with a four-page Attachment (Attachment) that describes general conclusions, some of which may change.

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766, (*UNE Remand Order*)

² *Id.* at 3725, para. 51 (emphasis added).

According to the Attachment, states will have 90 days from the effective date of the Order to rebut the FCC presumption that competitive local exchange carriers' (CLEC's) ability to compete in North Dakota is not impaired if ILECs are no longer required to provide local circuit switching as an unbundled element for business customers served by DS1 and above high-capacity loops.

We encourage any party desiring to intervene in the proceeding to file a Petition to Intervene as early as possible. However, the Commission will provide another opportunity to intervene at a later date. Also, in order to obtain the factual information necessary to make findings in the timeline provided by the FCC's Triennial Review Order, the Commission is requesting that local exchange carriers file factual information necessary to address the impairment issue(s). Written comments must be filed by **July 23, 2003**. We understand that the responses will represent the parties' best efforts to interpret the limited information available from the FCC and those responses could be subject to change based on the language of the actual Triennial Review Order.

Examples of the information requested by the Commission include:
For each switch and DSLAM (Digital Subscriber Line Access Multiplexers) for which your entity is responsible within North Dakota, please report:

- Whether the switch is owned by your entity, leased from another entity, or otherwise controlled by your entity;
- the location of each switch and the telephone exchange(s) served by the switch;
- the level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage;
- the percentage change in that value for each switch over the most recent 12-month period;
- whether that switch is providing local switching for mass market services, tandem switching for mass market services, local switching for DS1 and above services, or tandem switching for DS1 and above services;
- any other information relevant to the issues in this proceeding.

For more information concerning this investigation, contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Leo M. Reinbold
Commissioner