

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE IMPLEMENTATION OF)	
THE FEDERAL COMMUNICATIONS)	DOCKET NO. 90002-TF-03-1
COMMISSION'S TRIENNIAL REVIEW ORDER)	(RECORD NO. 8607)
ADOPTING NEW RULES FOR NETWORK)	
UNBUNDLING OBLIGATIONS AS THEY RELATE)	
TO ENTERPRISE MARKET CUSTOMERS)	
(NINETY-DAY REVIEW PROCESS))	
)	

**NOTICE AND ORDER OPENING DOCKET
AND REQUEST FOR PETITIONS AND COMMENTS**
(October 8, 2003)

1. Notice is hereby given that the Wyoming Public Service Commission (WPSC) hereby opens Docket No. 90002-TF-03-1 (90-day Review) in response to the issuance on August 21, 2003, by the Federal Communications Commission (FCC) of its order in the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003). (The Triennial Review Order or TRO).

2. The above captioned 90-day Review proceeding will assist the WPSC in determining whether competitive local exchange carriers' (CLECs) ability to serve enterprise market customers (business customers served by high-capacity loops, DS1 or higher) will be impaired by not having access to unbundled local circuit switching provided by incumbent local exchange carriers (ILECs). A separate notice and request for petitions and comments, and possibly other procedural requirements, will be issued in Docket No. 90002-TF-03-2, (Nine-Month Review), in the near future.

3. The FCC in the TRO set forth a national presumption that ILECs would not be required to provide local circuit switching as an unbundled network element (UNE) to CLECs serving enterprise market customers using high-capacity loops (DS1 or higher). The FCC found that competition in these enterprise markets would not be impaired if the local circuit switching UNE is no longer required to be made available by the ILEC. The FCC further provided a mechanism by which state commissions could petition the FCC for a waiver of the national presumption if the state commission found that specific markets warranted the continued provision of the local circuit switching UNE to CLECs serving enterprise market customers. State commissions seeking a waiver from the FCC would be required to conduct a detailed analysis of operational and economic issues and to file a waiver petition within 90 days of the effective date of the TRO. The TRO became effective on October 2, 2003, and therefore the 90-day period ends December 30, 2003. The FCC also delegated to the state commissions the authority to conduct ongoing reviews, to be completed within six months of the filing of a petition for such review. (47 C.F.R. § 51.319(d)(5)(ii)).

4. At this time, the WPSC does not plan to conduct its own 90-day proceeding to seek a waiver of the national presumption of non-impairment regarding access to the ILEC's local circuit switching in the enterprise market. The WPSC would, however, consider conducting a 90-day proceeding and associated public hearings only if affected CLECs make a

complete and fully supported showing, in a filed petition, that they can rebut the FCC's national presumption. Petitioning CLECs will also be required, within their petition, to propose an initial procedural and hearing schedule that would provide for the completion of the proceeding within the prescribed 90-day period. The Commission will thereafter consider the filed CLEC petition(s), and any other comments filed by CLECs and ILECS regarding the need for a 90-day proceeding to determine whether an adequate showing has been made to justify conducting a 90-day proceeding.

5. Given the restrictive time period provided by the FCC to state commissions for performing the 90-day review, any CLEC seeking to rebut the national presumption of non-impairment shall file its written petition with the WPSC on or before October 22, 2003. The petition shall contain all evidence available to the CLEC, or in its possession, and shall be submitted in the form of prefiled, written question-and-answer testimony and exhibits, and shall include sworn affidavits by the witnesses. The WPSC's rules regarding confidential treatment of information shall apply, unless otherwise addressed or supplemented by further Commission order. Other interested CLECs, ILECs, and other person(s) or groups wishing to file comments regarding the necessity and/or the benefits of conducting the 90-day proceeding must also file their comments with the Commission on or before October 22, 2003. Filed comments should also set forth proposed procedural and hearing schedules, if it is the position of the commenter that a 90-day proceeding should be undertaken.

6. Petitions and/or comments regarding this matter must be filed with the Wyoming Public Service Commission at 2515 Warren Avenue, Suite 300, Cheyenne, Wyoming, 82002. Please reference Docket No. 90002-TF-03-1 in all correspondence.

7. Absent a state commission initiated waiver petition, the TRO essentially places the burden of proof on the CLEC that is seeking to rebut the FCC's finding of non-impairment. The CLEC's filing with the WPSC must include a detailed description of the evidence the CLEC would present in this proceeding. CLECs requesting a 90-day proceeding shall address, at the minimum, the following issues and should provide the following information within their respective petitions:

- a) Provide a clear definition of the particular geographic market as defined in FCC Rule 51.319(d)(2)(i), and the specific locations where impairment is taking place.
- b) Designate the additional telecommunications service providers that would be considered as indispensable parties to this proceeding.
- c) Address the specific factors outlined by the FCC at ¶¶ 456-458 of the TRO.
- d) The total number and location(s) of high-capacity loops (DS1 or higher) currently being provided to the CLEC by Wyoming ILECs.
- e) The total number and location(s) in Wyoming of the CLEC's own high-capacity loops (DS1 or higher).
- f) The total number and location(s) of enterprise customers currently being served by the CLEC in Wyoming with ILEC-provided high-capacity loops (DS1 or higher).
- g) The total number and location(s) of enterprise customers currently being served by the CLEC in Wyoming with its own high-capacity loops (DS1 or higher).

8. Upon the WPSC's receipt of filed petitions and/or comments, the Commission will conduct timely public deliberations to determine whether or not to proceed with the 90-day

Review taking into consideration the respective written pleadings and comments, and possible scheduling and timing constraints. If the WPSC determines to proceed with the 90-day Review, further notices setting forth possible prehearing conferences and public hearing dates, and addressing other procedural matters will be issued by the Commission.

9. The Commission directs that public notice in this matter be in the following form:

PUBLIC NOTICE

Notice is hereby given that the Wyoming Public Service Commission (WPSC) hereby opens Docket No. 90002-TF-03-1 (90-day Review) in response to the issuance on August 21, 2003, by the Federal Communications Commission (FCC) of its Triennial Review Order (TRO).

The above captioned 90-day review proceeding will assist the WPSC in determining whether competitive local exchange carriers' (CLECs) ability to serve enterprise market customers (business customers served by high-capacity loops, DS1 or higher) will be impaired by not having access to unbundled local circuit switching provided by incumbent local exchange carriers (ILECs).

The FCC in the TRO set forth a national presumption that ILECs would not be required to provide local circuit switching as an unbundled network element (UNE) to CLECs serving enterprise market customers using high-capacity loops (DS1 or higher). The FCC found that competition in these enterprise markets would not be impaired if the local circuit switching UNE is no longer required to be made available by the ILEC. The FCC further provided a mechanism by which state commissions could petition the FCC for a waiver of the national presumption if the state commission found that specific markets warranted the continued provision of the local circuit switching UNE to CLECs serving enterprise market customers. State commissions seeking a waiver from the FCC would be required to conduct a detailed analysis of operational and economic issues and to file a waiver petition within 90 days of the effective date of the TRO.

Any CLEC seeking to rebut the national presumption of non-impairment shall file its written petition with the WPSC on or before October 22, 2003. The petition shall contain all evidence available to the CLEC, or in its possession, and shall be submitted in the form of prefiled, written question-and-answer testimony and exhibits, and shall include sworn affidavits by the witnesses. The CLEC's filing with the WPSC must include a detailed description of the evidence the CLEC would present in this proceeding. The Petition must also address a set of specific issue areas and provide certain information. Listings of these issue areas and required information can be obtained from the WPSC. The WPSC's rules regarding confidential treatment of information shall apply, unless otherwise addressed or supplemented by further Commission order. Other interested CLECs, ILECs, and other person(s) or groups wishing to file comments regarding the necessity and/or the benefits of conducting the 90-day proceeding must also file their comments with the Commission on or before October 22, 2003. Filed comments should also set forth proposed procedural and hearing schedules, if it is the position of the commenter that a 90-day proceeding should be undertaken.

Petitions and/or comments regarding this matter must be filed with the Wyoming Public Service Commission at 2515 Warren Avenue, Suite 300, Cheyenne, Wyoming, 82002. Please reference Docket No. 90002-TF-03-1 in all correspondence.

Dated: October 8, 2003.

10. This Notice and Order is being noticed through the use of general Wyoming telecommunications service lists as well as through newspaper publications within the state of Wyoming. Interested persons not requesting a hearing or filing comments, but wishing to remain on a service list to receive notices and orders relating to this docket must notify the WPSC, in writing, by October 22, 2003. Failure to submit notification will result in removal from the service list maintained for this docket.

11. This Notice and Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 8th day of October 2003.

PUBLIC SERVICE COMMISSION OF WYOMING

STEVE ELLENBECKER, Chairman

KRISTIN H. LEE, Deputy Chair

STEVE FURTNEY, Commissioner

(SEAL)

ATTEST:

DAVID J. LUCERO, Assistant Secretary