

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE IMPLEMENTATION OF)
 THE FEDERAL COMMUNICATIONS) DOCKET NO. 90002-TF-03-2
 COMMISSION'S TRIENNIAL REVIEW ORDER) (RECORD NO. 8636)
 ADOPTING NEW RULES FOR NETWORK)
 UNBUNDLING OBLIGATIONS AS THEY RELATE)
 TO MASS MARKET CUSTOMERS)
(NINE MONTH REVIEW PROCEEDING))
)

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ORDER CLOSING DOCKET
(Issued February 23, 2004)

1. The Federal Communications Commission (FCC) released on August 21, 2003, 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. (The Triennial Review Order or TRO).

2. The FCC in the TRO set forth a national presumption that competing carriers are impaired on a customer-location basis without access to unbundled DS1, DS3, and dark fiber loops; on a route-by-route basis without access to unbundled DS1, DS3, and dark fiber dedicated transport; and unbundled local circuit switching when serving mass-market customers. The FCC delegated authority to the state commissions to conduct additional fact finding and make alternative impairment findings, within a nine month period, based on a more granular impairment analysis in accordance with FCC-established guidelines, set forth in the TRO, consisting of actual deployment and specific economic and operational criteria.

3. Based upon the provisions contained in the TRO, the Wyoming Public Service Commission (the Commission) issued on October 22, 2003, its Notice and Order Opening Docket and Request for Petitions and Comments, and Setting Prehearing Conference, (Notice and Order) in this matter. In its Notice and Order, the Commission opened this captioned docket and set a Prehearing Conference to be held on November 20, 2003, in its offices in Cheyenne, Wyoming, for the purpose of taking appearances of parties, considering any petitions requesting a review of the FCC's presumption of impairment, discussing and ruling on procedural and scheduling issues, discovery issues, "market" definitions, confidentiality considerations, and any other issues raised by parties, in this matter. The Notice and Order further provided that any interested incumbent local exchange carriers (ILECs) or interested persons seeking to rebut the national presumption of impairment would be required to file their respective petitions with this Commission on or before November 4, 2003. The Commission, in its Notice and Order, further solicited the filing of written comments, on or before November 4, 2003, by any competitive local exchange carriers (CLECs), ILECs or other interested persons, regarding the Nine-Month Proceeding.

4. On October 31, 2003, Qwest Corporation (Qwest), AT&T Communications of the Mountain States, Inc. (AT&T), and WorldCom, Inc., on behalf of its regulated subsidiaries (MCI), (collectively referred to as the Parties), filed their Joint Motion for Adoption of Batch Hot Cut Forum, in which the Parties proposed that a multi-state forum approach was an

appropriate mechanism to utilize in attempting to reach agreement on a single, uniform batch hot cut process for all states within Qwest's region. The Parties stated that such a single uniform process would provide the most efficient and effective operating environment for both Qwest and competitive local exchange carriers (CLECs). The Parties proposed that industry participants, as well as State Commission personnel and other interested persons, attempt to reach agreement on a batch hot cut process, to the extent possible, prior to submitting a process to the individual State Commissions for review and possible approval.

5. The Commission received petitions to intervene from the Office of Consumer Advocate (OCA), Contact Communications (Contact), AT&T, Qwest, and MCImetro Access Transmission Services LLC (MCImetro). The interventions were granted pursuant to orders issued by the Commission. The Commission received comments from AT&T, MCImetro, MCI WorldCom Communications, Inc., (MCIWCOM), (hereinafter collectively, MCI), Qwest, and United Telephone Company of the West, d/b/a Sprint, and Sprint Communications Company L.P. In addition, legal counsel representing Range Telephone Cooperative, RT Communications, Dubois Telephone Exchange, and Union Telephone Company, submitted a letter of notification, with the Commission, to reserve its clients' rights to participate in the proceeding and represent their respective positions. Further, Qwest, AT&T and MCI submitted their proposed Protective Orders for Commission consideration. The Wyoming Telecommunications Council notified the Commission of its intent to monitor these proceedings.

6. Qwest in its November 4, 2003, comments stated its desire to present evidence rebutting the FCC's national presumption of impairment, but only with respect to local circuit switching serving mass-market customers. Qwest requested unbundling relief for mass-market switching in the State of Wyoming. Qwest further indicated that it did not at this time seek to challenge the FCC's national presumptions of impairment regarding DS1, DS3 and dark fiber loops or dedicated transport, but might seek review of the FCC's presumption regarding high-capacity loops and transport in a separate proceeding, following the conclusion of this docket.

7. On November 6, 2003, the Commission issued its Notice and Order Adopting Multi-State Forum and Procedural Schedule Regarding Batch Hot Cut Requirements which provided for a procedural schedule for the multi-state forum to ensure the integration of the efforts and outcomes from the forum into the 9-month proceedings in each state as proposed by the Parties in their October 31, 2003, joint motion.

8. On November 12, 2003, Qwest filed its Region-Wide Batch Hot Cut Process in which Qwest proposed its batch loop conversion process to be used in all fourteen of its states.

9. Pursuant to the Commission's October 22, 2003, Notice and Order, the Prehearing Conference was held on November 20, 2003, at which time the Commission considered various pleadings and oral arguments presented by the parties to this proceeding. The parties presented several proposed schedules for the Commission's consideration. As a result of discussions and compromise as between the parties and other interested participants, the Commission adopted the compromise position of the parties regarding an appropriate procedural schedule. The Commission further adopted a modified version of Qwest, AT&T, and MCI's Protective Orders. The parties further discussed the need for Commission-initiated discovery to be served on Wyoming telecommunications providers. Prior to its issuance of its Procedural Order setting forth a procedural schedule for this proceeding, including the setting

of public hearing dates which would allow for the completion of this docket within the nine-month period provided for in the TRO, and Commission-initiated discovery, Qwest filed its Motion to Postpone the Mass Market Switching Case and Close Docket.

10. The Commission received comments on Qwest's Region-Wide Batch Hot Cut Process on November 18, 2003, from AT&T and MCI.

11. On December 10, 2003, the Commission received Qwest's Motion to Postpone Mass Market Switching Case and Close Docket. In its motion, Qwest requested that the Commission allow it to withdraw without prejudice its intervention, or, alternatively, defer indefinitely, any action regarding this docket, both subject to Qwest's right to refile or reinstate the inquiry at a future time. Qwest further requested that the procedural schedule, hearing dates, discovery, all pending motions and other procedural requirements be vacated. In support of its motion, Qwest stated, *inter alia*, that it had underestimated the resources required to prosecute 14 separate state actions simultaneously, and that it was presently resource constrained. Therefore, Qwest claimed that it would be imprudent and impractical at this time for Qwest to proceed. Qwest stated that it had "decided to pursue unbundled switching cases for mass-market customers in only those states where it clearly meets the triggers" and that "Qwest cannot verify unequivocally that the three switch trigger is met in Wyoming, as of this date." In addition, Qwest asserted, "many observers believe there is a significant possibility that the FCC's rulings in the Order will be reversed and remanded to the FCC for further proceedings before that agency." Because of the degree of competition in Wyoming, Qwest reserved its "ability under the order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching."

12. With regard to the batch hot cut issues, Qwest stated that it was not, at this time, seeking relief from its current obligation to provide unbundled switching for mass-market customers in Wyoming. Therefore, Qwest stated that, "there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes."

13. At its December 18, 2003, open meeting, the Commission considered Qwest's motion. Qwest, Contact, AT&T, MCImetro and the OCA appeared and did not oppose the motion of Qwest to close the docket and vacate the proceeding. The Commission finds that the parties to this proceeding do not object to Qwest's motion to close the docket, nor did any other party indicate its intent to rebut the FCC's findings of impairment for mass-market customers. The Commission voted to close the docket, inasmuch, as Qwest was the only party to file its comments indicating its intent to challenge the FCC's national findings of impairment regarding mass market switching, which it subsequently withdrew. Thus, with Qwest's request to close the docket, and no other party objecting to Qwest's motion, the Commission concludes that there is no need to actively conduct an inquiry within the initial nine-month time frame as set by the FCC. Given these circumstances, the Commission notes that the FCC's national findings of impairment regarding mass-market customers, as set forth in the Triennial Review Order, remain in effect. In addition, the Commission also finds that there is no need to proceed with an evaluation of Qwest's batch hot cut process, at this time. The Commission concludes that this docket will be closed without prejudice, and that the established procedural, hearing and discovery schedules should be vacated.

IT IS THEREFORE ORDERED THAT:

1. Docket No. 90002-TF-03-2 is hereby closed.
2. The Procedural Order issued on November 6, 2003, regarding the multi-state batch hot cut process is hereby vacated.
3. This Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 23rd day of February 2004.

PUBLIC SERVICE COMMISSION OF WYOMING

STEVE ELLENBECKER, Chairman

KRISTIN H. LEE, Deputy Chair

STEVE FURTNEY, Commissioner

(SEAL)
ATTEST:

DAVID J. LUCERO, Assistant Secretary