

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of a Proceeding to)	<u>DOCKET NO. 03-999-04</u>
Address Actions Necessary to Respond)	
to the Federal Communications)	<u>PROCEDURAL ORDER</u>
Commission Triennial Review Order)	
Released August 21, 2003)	

ISSUED: October 22, 2003

By The Commission:

A combination scheduling and technical conference was held before the Commission pursuant to notice on October 2, 2003. Counsel appearing in person were Ted D. Smith and Gregory B. Monson of Stoel Rives LLP for Qwest Corporation ("Qwest"); David W. McGann for Qwest; Michael Ginsberg, Assistant Attorney General, and Patricia Schmid, Assistant Attorney General, for the Division of Public Utilities ("Division"); Richard S. Wolters for AT&T Communications of the Mountain States, Inc. and TCG Utah ("AT&T"); Thomas F. Dixon for WorldCom, Inc. ("MCI"); Stephen F. Mecham of Callister, Nebeker and McCullough for the Utah Rural Telecom Association ("URTA"); and Reed T. Warnick, Assistant Attorney General, for the Committee of Consumer Services ("CCS"). Appearing by telephone were Gregory J. Kopta of Davis Wright Tremaine LLP for XO of Utah, Inc. ("XO"), Eschelon Telecom of Utah, Inc. ("Eschelon") and McLeod Local Services, Inc. ("McLeod"), and Eric S. Heath for Sprint Communications Company L.P. ("Sprint"). Though not represented by counsel, Curt Huttsell attended the conference on behalf of Electric Lightwave, Inc. ("ELI").

The conference was convened to address issues related to the Triennial Review Order issued by the Federal Communications Commission on August 21, 2003 and which became effective on October 2, 2003.⁽¹⁾ The Commission previously established a separate docket (Docket No. 03-999-05) to consider issues related to impairment for unbundled switching provided to DS1 loops and above (the 90-day proceeding). Nonetheless, the Commission asked if any party present intended to seek a proceeding in Docket No. 03-999-05. No party indicated that it did. The Commission reminded those present of the October 6, 2003 deadline in that docket to request a proceeding. We note that no interested party filed a request for the Commission to open a 90-day proceeding by the October 6, 2003 deadline-- therefore, the Commission will not go forward with a 90-day proceeding.

The purpose of the conference was to address procedural and scheduling issues with regard to the matters that must be resolved within nine months of the effective date of the order, including issues related to impairment for (1) switching for mass market loops (including the batch hot cut process), (2) high capacity loops, and (3) dedicated transport.

Qwest stated that it intends to seek the elimination of its obligation to provide unbundled switching for loops serving mass market customers in areas served by Qwest in Utah. Qwest stated that it is unable at this point to specifically define the Utah market areas in which it will seek such relief as much of the data required to make such a determination is in the possession of other providers. Qwest also stated that it is currently analyzing whether to seek the elimination of its obligation to provide unbundled high capacity loops and dedicated transport on specific routes in Utah. Qwest noted that timely and complete responses to discovery from other telecommunications providers in Utah is critical to its decisions whether to seek relief from unbundling obligations and in assisting it in defining the market areas in which it may seek such relief.

A proposed schedule and procedures for the proceeding were informally discussed. Based upon the foregoing and good cause appearing, the Commission makes the following procedural order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This proceeding is for the purpose of addressing issues that must be resolved by the Commission under the Triennial Review Order within nine months of the October 2, 2003 effective date (i.e., by July 2, 2004). The specific issues within this docket potentially include unbundled switching for loops serving mass market customers, Qwest's batch hot cut process, unbundled high capacity loops, unbundled dedicated transport, and other issues relevant to inquiries the Commission must resolve within nine months of the effective date of the Triennial Review Order.

2. The following schedule shall govern future proceedings in this docket. unless otherwise ordered by the Commission:

October 20, 2003 Deadline by which the Division shall make its best effort to serve consolidated discovery requests upon competitive local exchange carriers ("CLECs"), including CLECs serving Utah customers via cable telephony facilities, incumbent local exchange carriers ("ILECs"), wireless carriers, and other providers of telecommunications services in Utah. If possible, the Division shall serve these requests prior to October 20, 2003.

November 26, 2003 Deadline for Qwest to file a Notice in which it states its preliminary conclusion as to whether it intends to seek relief from unbundling obligations in this docket with regard to high capacity loops and/or dedicated transport. Qwest shall also provide a preliminary description of the market areas in which it will seek relief from unbundling obligations for switching related to mass market loops and the routes on which Qwest will seek relief from unbundling obligations for high capacity loops and for dedicated transport. Qwest shall also provide a summary of its proposal regarding implementation of a process for batch hot cuts. If, based on information that becomes available to Qwest after the filing of the original Notice, any of the information provided by Qwest in the original Notice changes, Qwest shall immediately file an amended Notice.

November 26, 2003 Deadline for other parties to file optional comments on market definition issues.

December 5, 2003 Deadline for potential parties to petition to intervene.

January 13, 2004 Deadline for all parties, with the exception of the Division and CCS, to file their direct testimony and exhibits. To the extent a party intends to sponsor a business case model or analysis that addresses whether an efficient CLEC can serve Utah markets without access to unbundled switching (see Triennial Review Order ¶¶ 517-20), it shall file its model or analysis with its direct testimony.

February 13, 2004 Deadline for the Division and the CCS (to the extent it decides to participate in this case) to file their direct testimony and exhibits.

March 12, 2004 Deadline for all parties (except the Division and CCS) to file rebuttal testimony and exhibits in response to the direct testimony previously filed.

March 26, 2004	Deadline for the Division and CCS to file rebuttal testimony and exhibits responding to the rebuttal testimony filed by other parties.
April 2, 2004	Meeting of counsel to address witness scheduling and other administrative and procedural issues related to conduct of the hearings. The meeting shall be held in Room 427, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah, commencing at 9:00 a.m. The Division shall coordinate the meeting and shall establish a conference bridge so that out-of-town counsel may participate by telephone. To the extent the parties cannot agree on the hearing issues, they shall bring those issues to the Commission for resolution.
April 12-16, 2004 April 19-23, 2004	Hearings. (Live surrebuttal testimony may be provided by witnesses in the hearings).
May 14, 2004	Deadline for filing Opening Briefs
May 28, 2004	Deadline for filing Reply Briefs
July 2, 2004	Decision

3. Hearings in the foregoing schedule shall be held in the Commission's main hearing room, Room 426, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah, and shall commence each day at 9:00 a.m., unless otherwise directed by the Commission.

4. **Discovery.**

a. Discovery in this matter shall commence on or before October 20, 2004 coincident with the Division's service of the consolidated data requests discussed above. Parties may also commence discovery of other parties and non-parties on October 20, 2004. Parties are encouraged to avoid discovery requests that are duplicative of the requests in the consolidated Division requests. Subject to restrictions with regard to confidential and highly confidential information in the Protective Order that will be issued in this case, the Division shall reasonably provide copies of the responses to the consolidated set of data requests to those parties who request a copy, by either providing them electronically or making them available to the party for copying. If the Division makes copies of responses for other parties, it may charge a reasonable rate for them. At the same time a party, or non-party that provides responses voluntarily or pursuant to subpoena, provides its responses to the Division, it shall identify those parties to whom confidential or highly confidential information may be provided by the Division. Respondents to data request are encouraged to provide non-confidential responses to data requests in electronic format so they can be made available on the "DPU List Serve" described below.

b. From October 20, 2004 until January 12, 2004, discovery will proceed on the time frames contemplated by the Utah Rules of Civil Procedure, including providing written responses within 30 days of the date discovery requests are served.

c. Written responses to discovery requests related to the direct testimony filed on January 13, 2004 shall be provided within 21 days of the date the discovery requests are served, except that if the DPU or CCS propound discovery related to the direct testimony filed on January 13, 2004, responses shall be provided within 14 days of the date their discovery requests are served. Written responses to discovery requests related to (1) the direct testimony of the DPU and CCS and to (2) the rebuttal testimony of all parties except the DPU and CCS shall be provided within 14 days of the date the discovery requests are served. Written responses to discovery requests directed to the DPU and CCS rebuttal testimony shall be provided within 7 days of the date the discovery requests are served so that responses are available to the parties

prior to the hearings.

d. To the extent a party seeks discovery independently or through the Division's consolidated discovery that requires the issuance of a subpoena, that party shall be responsible for pursuing any action to enforce the subpoena, including any necessary judicial action.

e. Qwest, AT&T, and MCI have negotiated a protective order that has been provided to the Commission, to the parties, and to potential parties. We understand that the language of the protective order is being discussed by interested parties. We encourage interested parties to attempt to reach agreement as soon as possible. That failing, we request that the issues in dispute be brought before the Commission so that it can be expeditiously resolved.

f. The Commission hereby appoints Douglas Tingey and Sandy Mooy, to serve as Hearing Officers to address discovery disputes in this matter. Discovery disputes that cannot be resolved expeditiously between the parties may be submitted to a Hearing Officer for prompt resolution.

5. Filing and Service.

a. **Service on Commission.** The parties shall serve an original and eight paper copies of all pleadings, motions, testimony and exhibits and other filings on the Commission. The parties shall also serve the Commission with an electronic copy of all pleadings, motions, testimony and exhibits and other filings, with the exception of information designated as "highly confidential" or information or documents that, because of their bulkiness or the volume of data contained therein, cannot conveniently be served by electronic mail. These documents shall be served on the Commission in paper format or, if possible, in an alternative electronic format, such as a compact disc ("CD").

b. Service on other Parties.

(i) **Service of Non-confidential Pleadings, Testimony and Other Documents.** With the exception of information designated as "confidential," "highly confidential" and information or documents that cannot conveniently be served by electronic mail, parties shall serve pleadings, motions, testimony, discovery requests, discovery responses, Exhibits A and B to protective orders, and other documents that the serving party intends to serve on other parties in this docket by serving the "DPU List Serve" that has been developed by the Division. The DPU List Serve is intended to provide the means by which all non-confidential documents may be served on the parties to this docket. All parties shall subscribe to the DPU List Serve. To subscribe to the DPU List Serve, parties and non-parties shall send an e-mail to Paul Mecham of the Division at the following e-mail address: pmecham@utah.gov. In the e-mail, the party or non-party shall provide the name, address, telephone number, and e-mail address of all individuals the party or non-party desires to subscribe to the DPU List Serve. A non-party shall also include in its e-mail to Mr. Mecham a statement of its interest in this docket. A confirmation e-mail shall be sent acknowledging the inclusion of the designated individuals as subscribers to the DPU List Serve. Parties or non-parties can amend the list of individuals subscribed to the DPU List Serve by following the same e-mail procedure. The electronic address for the DPU List Serve is: udpu-triennialreview@list.utah.gov

(ii) **Service of Pleadings, Testimony, Data Responses and Other Documents that Contain "Confidential" or "Highly Confidential" Information or that Cannot Be Conveniently Served by Electronic Mail.** Pleadings, testimony, exhibits, data responses, and other documents containing confidential or highly confidential information and documents that cannot be conveniently served via electronic mail shall be served on the parties entitled to receive them in paper form or in an alternative electronic form such as a CD. To the extent practicable, a pleading, testimony, exhibit, or any other document that is not being served via electronic mail, shall be served by hand delivery or overnight courier, at the discretion of the serving party.

6. In compliance with the Americans with Disabilities Act, individuals needing special accommodations, including auxiliary communications aids and services, during any conference or hearing in this docket should notify Julie Orchard, Commission Secretary, 160 East 300 South, Room 400, Box 45585, Salt Lake City, Utah 84145-0585, Telephone: (801) 530-6713, at least three working days in advance of a conference or hearing.

DATED at Salt Lake City, Utah this 22nd day of October, 2003.

/s/ Richard M. Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard, _____
Commission Secretary

G#35637

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of 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 Service Offering Advance Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147 (August 21, 2003) ("Triennial Review Order").