

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of a Proceeding to Address)
Actions Necessary to Respond to the)
Federal Communications Commission)
Triennial Review Order Released August)
21, 2003)
)

DOCKET NO. 03-999-04

REVISED PROCEDURAL ORDER

ISSUED: February 23, 2004

By The Commission:

On February 12, 2004, Qwest Corporation ("Qwest") and the Division of Public Utilities ("Division") filed a letter with the Commission requesting, on an expedited basis, that the Commission establish a telephone scheduling conference to discuss whether it is appropriate for the Commission to suspend the schedule in this proceeding for a period of up to 60 days, including a temporary stay of testimony and discovery. The request for a scheduling conference was based on the pending decision of the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") from the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO")⁽¹⁾ that is expected in the near future and which could have a significant impact on this proceeding, including potentially requiring this proceeding to be abandoned, appreciably altered, or restarted.

In light of the fact that two major sets of testimony were due within the next few days, the Commission set a scheduling conference on less than usual notice so that the Commission could determine if there was any opposition to considering this request. The scheduling conference was held on February 13, 2004. Counsel appearing in person and by telephone were Ted D. Smith, Gregory B. Monson, and Robert C. Brown for Qwest; Michael Ginsberg and Patricia Schmid for the Division; Mary Tribby and Richard S. Wolters for AT&T Communications of the Mountain States, Inc. and TCG Utah ("AT&T"); William Evans for WorldCom, Inc. ("MCI"); Stephen F. Mecham for the Utah Rural Telecom Association ("URTA") and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"); Reed T. Warnick for the Committee of Consumer Services ("CCS"); Gregory J. Kopta for Eschelon Telecom of Utah, Inc. ("Eschelon") and McLeod Local Services, Inc. ("McLeod"). Though not represented by counsel, Curt Huttshell appeared on behalf of Electric Lightwave, Inc. ("ELI"). No party expressed an objection to holding the scheduling conference on less than customary notice.

During the conference, the Commission and parties informally discussed the potential implications of the pending decision of the D.C. Circuit on certain aspects of the TRO. While it is impossible to determine what precise action the D.C. Circuit will ultimately take on the appeal, it does appear clear--given the expedited briefing and oral argument schedule in the appeal--that a decision is likely to issued in the near future. Based on reports of the oral argument of January 28, 2004 published in the trade press and elsewhere, it is appears that the Court has reservations about specific aspects of the TRO and that its decision could have a significant impact on TRO dockets like the current docket that are now proceeding before state commissions. At the same time, the parties and the Commission are committing extensive resources to this case.

At the scheduling conference, the Commission asked for input from the participating parties in addition to the positions expressed by Qwest and the Division in their February 12, 2004 letter. MCI, Eschelon, McLeod, Covad, URTA, and ELI all stated that they take no position on a 60-day suspension, but would not oppose the Commission taking that action. Likewise, AT&T expressed the same position, but requested that the Commission preserve, to the extent possible, the same general time frames for filings and hearings that exist in the current schedule.

Having considered the February 12 letter and the input of the parties during the conference, the Commission concludes

that there is a distinct possibility that the pending decision of the D.C. Circuit could have a significant impact on this proceeding, including potentially requiring it to be abandoned, appreciably altered, or restarted. It is also clear that considerable resources of the parties and the Commission have been and will continue to be expended on this case in the next few months if the schedule is not suspended. Given the clear possibility that the D.C. Circuit decision could dramatically change this case, if not require it to be abandoned, it does not appear prudent to require the expenditure of these valuable resources. Finally, Qwest committed in the February 12 letter that "if the Commission were to suspend the docket for a 60-day period, it would not claim a 'failure to act' under paragraph 527 of the TRO." (Letter at 2)

In light of the foregoing, the Commission concludes that it is in the public interest to suspend the schedule in this matter for up to 60-days pending the decision of the D.C. Circuit. At the same, the Commission believes it is prudent to establish new dates for future filings in this docket in the event it proceeds after the 60-day suspension period. The Commission acknowledges that it may need to revisit the schedule based upon good cause shown in the future.

Based upon the foregoing and good cause appearing, the Commission makes the following procedural order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The procedural schedule--including testimony filings, the issuance of new discovery requests, and the obligation to respond to outstanding discovery requests--in this docket is hereby suspended until April 12, 2004 and a new schedule is hereby established as set forth hereafter.
2. The Procedural Order of October 22, 2003 is hereby amended as set forth hereafter. The following schedule shall govern future proceedings in this docket, unless otherwise ordered by the Commission:

April 12, 2004	Discovery resumes
April 16, 2004	Deadline for all parties (except the Division and CCS) to file rebuttal testimony on batch hot cut issues.
April 23, 2004	Deadline for the Division and the CCS to file their direct testimony and exhibits on issues other than batch hot cut.
May 7, 2004	Deadline for the Division and the CCS to file their rebuttal testimony and exhibits on batch hot cut issues.
May 21, 2004	Deadline for all parties (except the Division and CCS) to file rebuttal testimony and exhibits in response to the direct testimony previously filed.
May 28, 2004	Deadline for the Division and CCS to file rebuttal testimony and exhibits responding to the rebuttal testimony filed by other parties on other than batch hot cut issues.
June 10, 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.

June 21-25, 2004 and
June 28 to July 2, 2004 Hearings. (Live surrebuttal testimony may be provided by witnesses in the hearings).

July 23, 2004 Deadline for filing Opening Briefs

August 6, 2004 Deadline for filing Reply Briefs

3. The portions of the Procedural Order of October 22, 2004 not inconsistent with this Revised Procedural Order shall remain in effect.

4. 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 23rd day of February, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#37189

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 (rel. August 21, 2003) ("TRO").