

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to facilitate the implementation of the Federal	)	
Communications Commission's Triennial Review	)	Case No. U-13796
determinations in Michigan.	)	
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At the May 28, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**ORDER AND NOTICE OF OPPORTUNITY TO COMMENT**

On February 20, 2003, the Federal Communications Commission (FCC) announced that it was adopting rules in its Triennial Review proceeding<sup>1</sup> that will affect how incumbent local exchange carriers (ILEC) meet their statutory obligations to make unbundled network elements (UNEs) available to new entrants.

In order to facilitate the implementation of the FCC's anticipated Triennial Review order (the text of which has yet to be released), the Commission has determined that it would be helpful to solicit input from stakeholders. The Commission seeks comments on the following specific issues:

<sup>1</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-388, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

1. The FCC has made a nation-wide presumptive finding that local circuit switching need not be made available as a UNE by ILECs to competitive local exchange carriers (CLECs) that provide service to business customers with high-capacity loops (described as the “enterprise market”). The basis for the FCC’s presumptive finding is that competition in enterprise markets would not be impaired if the local switching UNE were unavailable. However, the FCC further indicated that each state would have 90 days from the effective date of the Triennial Review order to rebut the presumption of “no impairment” as it affects that state. The Commission seeks general comments on a procedural mechanism that can be completed within the 90-day period. Comments should address the following related issues:

(a) Should the Commission make its impairment determinations in a single, generic proceeding that affects all ILECs, CLECs, and regions of the state? Or should it make individualized determinations for different carriers (or classifications of carriers) in different regions? If so, what would be the relevant geographic region? If some proceeding other than a generic case is envisioned, please describe. Should the determinations be made on the basis of a record created through evidentiary hearings or on written comments?

(b) What other issues should be addressed as part of the 90-day proceeding?

(c) To what extent should the Commission’s 90-day proceeding be coordinated or combined with similar investigations in other states in SBC’s region?

(d) What other regulatory changes would become necessary if the Commission were to decide to retain the tariff requirement to make local switching available as a UNE for the enterprise market?

(e) Provide any other comments regarding issues that should be considered by the Commission in implementing the FCC’s Triennial Review determinations.

2. The FCC’s February 20, 2003 announcement indicates that the rule changes will discontinue the requirement to offer local switching as a UNE for purposes of serving the “mass market.” However, the FCC further indicates that state commissions will have nine months to make individual findings as to whether the mass market would be impaired by such discontinuation. The Commission seeks general comments in regard to this rule change:

(a) To what extent should the Commission’s nine-month proceeding be coordinated or combined with similar investigations in other states in SBC’s region? If other state commissions in SBC’s region develop evidentiary records in comparable proceedings, should those records be adopted by reference or otherwise incorporated into the Commission’s record? If so, to what extent?

(b) To what extent should the Commission's investigation be expanded to include, beyond the question of impairment, the other rule changes noted in the FCC's February 20, 2003 announcement?

(c) What other regulatory changes would become necessary if the Commission were to make impairment findings that support retaining the tariff requirement to make local switching available as a UNE for the mass market?

(d) Should the Commission set a deadline for filing petitions for leave to intervene in advance of the initial hearing date or the issuance of any procedural schedule?

(e) Provide any other comments regarding issues that should be considered by the Commission in implementing the FCC's Triennial Review determinations.

3. The FCC's February 20, 2003 announcement highlights other significant rule changes. For example, the FCC has indicated that the Triennial Review order will: 1) clarify total element long-run incremental cost rules for purposes of UNE pricing; 2) make transitional provisions to allow for the conversion of UNEs to special access; 3) require shared transport; and 4) permit the commingling of UNEs and other wholesale services such as special access. To facilitate the orderly implementation of these significant rule changes, what procedures should the Commission institute?

Any interested person may file written public comments no later than June 13, 2003.<sup>2</sup> This docket is being opened for the purpose of seeking comment on the Triennial Review issues and procedures only.

The Commission has selected this case for participation in its Electronic Filings Program. Documents filed in this case must be submitted in both paper and electronic versions. An original and four paper copies and an electronic copy in the portable document format (PDF) should be filed with the Commission. Requirements for filing electronic documents can be found in the Electronic Filings Users Manual at: <http://efile.mpsc.cis.state.mi.us/efile/usersmanual.pdf>. You

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<sup>2</sup> If the FCC's Triennial Review order is issued prior to June 13, 2003, the Commission may extend the comment period.

may contact the Commission Staff at 517.241.6170 or by e-mail at [mpscefilecases@michigan.gov](mailto:mpscefilecases@michigan.gov) with any questions and to obtain access privileges prior to filing.<sup>3</sup>

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. A proceeding should be commenced to consider issues and procedures related to the implementation of the FCC's Triennial Review order in Michigan.

THEREFORE, IT IS ORDERED that comments on the issues identified by this order shall be filed on or before June 13, 2003.

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<sup>3</sup> If any residential customers seek to participate, but lack access to the computer equipment necessary to make electronic filings, they should contact the Executive Secretary to make alternative arrangements for filing comments.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of May 28, 2003.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of May 28, 2003.

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Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated May 28, 2003 commencing a proceeding to consider issues and procedures related to the implementation of the Federal Communications Commission's Triennial Review order in Michigan, as set forth in the order.”