

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)
COMMISSION'S TRIENNIAL REVIEW ORDER) CASE NO.
REGARDING LOCAL CIRCUIT SWITCHING) 2003-00347
FOR DS1 ENTERPRISE CUSTOMERS)

O R D E R

In an Order which will become effective October 2, 2003, the Federal Communications Commission ("FCC") released its Triennial Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers¹ ("Triennial Review Order"). Those matters pertaining to the FCC's delegation of authority to this Commission to address unbundling obligations with regard to local circuit switching for DS1, or "enterprise," customers will be addressed in this proceeding.

The FCC determined that, on a national basis, competitors are not impaired without access to unbundled local circuit switching for enterprise customers.² The FCC, however, concluded that "a geographic specific analysis could possibly demonstrate the competitive carriers are impaired without access to incumbent LEC local circuit switching."³ According to the FCC, "state commissions are uniquely positioned to

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003.

² Triennial Review Order, ¶¶ 421, 451.

³ Id. at ¶ 454.

evaluate local market conditions and determine whether DS1 enterprise customers should be granted access to unbundled incumbent LEC circuit switching.”⁴ The FCC’s specific instructions to the states are as follows:

We permit state commissions to rebut the national finding of no impairment by undertaking a more granular analysis utilizing the economic and operational criteria contained herein. State Commissions will have ninety days from the effective date of this Order to petition the Commission [FCC] to waive the finding of no impairment. State commissions wishing to do so must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.⁵

IT IS THEREFORE ORDERED that:

1. All incumbent LECs, all competitive LECs, and the Attorney General of the Commonwealth of Kentucky are hereby provided notice of this proceeding by service of this Order. Persons served with this Order who wish to become parties shall send written notice of intervention to the Commission within 10 days of the date of this Order.

2. Any person desiring the Commission to consider whether it should petition the FCC for waiver of the “no impairment finding” with regard to local circuit switching for enterprise customers within the 90-day timeframe required by the FCC shall file a request for such consideration no later than 15 days from the date of this Order. Any such party shall (i) identify the particular geographic areas for which it is requesting that the Commission petition for waiver, (ii) be prepared to present actual market⁶ evidence, and (iii) be prepared to testify at hearing.

⁴ Id. at ¶ 455.


⁵ Id.

⁶ Id. at ¶ 93.

Done at Frankfort, Kentucky, this 17th day of September, 2003.

By the Commission

ATTEST:


Deputy Executive Director

Case No. 2003-00347