

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)
COMMISSION'S TRIENNIAL REVIEW ORDER) CASE NO.
REGARDING UNBUNDLING REQUIREMENTS) 2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)

O R D E R

The Commission established this proceeding on October 2, 2003, the effective date of the Triennial Review Order of the Federal Communications Commission ("FCC").¹ In that Order, the FCC delegated authority to state commissions to address unbundling obligations for the mass market, and to determine whether competitors are impaired without access to incumbent-provided switching within specified areas in Kentucky.

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its decision on various Triennial Review Order appeals in United States Telecom Association v. Federal Communications Commission, Slip Op., Docket No. 00-1012 (D.C. Cir., March 2, 2004). The D. C. Circuit vacated the FCC's requirement that the states conduct proceedings to determine whether switching and trunking unbundled network elements should be available to competitors for mass market customers. (Slip Op. at 12 and 18). In addition, the D.C. Circuit vacated the national finding of competitor "impairment" in the absence of incumbent-provided

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.

switching for mass market customers. (Slip Op. at 18 and 19). However, the Court temporarily stayed the vacatur until the later of (1) the denial of any petition for rehearing or rehearing on en banc or (2) 60 days from the date of the issuance of the court's opinion. (Slip Op. at 62).

The ruling by the D. C. Circuit has called into question the continuation of this proceeding. However, because of the stay, as well as additional uncertainties raised by the probability of appeal, the procedural schedule entered February 9, 2004 should remain in effect. Prefiled rebuttal testimony is due March 31, 2004 and prefiled surrebuttal testimony is due by April 13, 2004, as previously directed. We believe it is necessary to continue to compile a full and complete record upon which we may determine issues of impairment should the requirement to do so still exist.

Given the uncertainties of litigation regarding the Triennial Review Order, the Commission finds it appropriate at this time to cancel the public hearing scheduled to begin April 26, 2004. Once this Commission's role has been clarified or it is otherwise appropriate, the public hearing will be rescheduled.

IT IS THEREFORE ORDERED that:

1. The procedural schedule in effect for this proceeding remains in effect in all respects except for the public hearing.
2. The public hearing scheduled for April 26, 2004 is hereby cancelled.
3. This proceeding shall be held in abeyance effective April 14, 2004, pending further Order of this Commission.

Done at Frankfort, Kentucky, this 16th day of March, 2004.

By the Commission

ATTEST:


Executive Director

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