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BELLSOUTH

ACCEPTED
Legal 3-18-04

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POSTED
3.18.04

March 17, 2004

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2004 MAR 17 PM 4:13
SC PUBLIC SERVICE COMMISSION

The Honorable Bruce Duke
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order
(Docket No. 2003-326-C)

Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order
(Docket No. 2003-327-C)

Dear Mr. Duke:

Enclosed for filing are an original and fifteen copies of BellSouth Telecommunications Inc.'s Motion To Hold Proceedings in Abeyance in the above-referenced matters.

By copy of this letter I am serving all parties of record with a copy of this motion as indicated on the attached Certificate of Service.

Sincerely,

Patrick Turner

Patrick W. Turner

S.C. PUBLIC SERVICE COMMISSION
RECEIVED
MAR 19 2004
UTILITIES DEPARTMENT

PWT/nml
Enclosures
cc: All Parties of Record
PC Docs # 531456

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S.C. PUBLIC SERVICE COMMISSION
RECEIVED
UTILITIES DEPARTMENT

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2003-326-C AND 2003-327-C

RECEIVED
2004 MAR 17 PM 4: 13
SC PUBLIC SERVICE COMMISSION

IN RE:

Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-326-C)	)
And	)
Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-327-C)	)

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO HOLD PROCEEDINGS IN ABEYANCE

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Public Service Commission of South Carolina ("the Commission") for an order holding these proceedings in abeyance. As explained below, the D.C. Circuit Court of Appeals recently issued an opinion that negates the fundamental underpinnings of the Federal Communications Commission's ("FCC's") *Triennial Review Order*,[1] particularly with

[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; and Deployment of Wireline Service*

regard to the sub-delegation of the FCC's authority to the State commissions. BellSouth, therefore, believes that holding these proceedings in abeyance until some clearer and legally sufficient direction is given is the best course of action. At least two other parties to these proceedings agree with BellSouth, and several State commissions in BellSouth's region have held their *Triennial* proceedings in abeyance. Finally, the suggestion by the Competitive Carriers of the South ("CompSouth") that the Commission hold hearings in these proceedings and make unbundling determinations under state statutes should be rejected for both substantive and procedural reasons.

BellSouth, therefore, urges the Commission to hold these proceedings in abeyance and to direct the parties to communicate, on an informal basis, with each other and with the Commission Staff on a periodic basis, so that once the present uncertainties are resolved, the Commission can make an informed decision about whether to proceed or close these proceedings.

I. PROCEDURAL HISTORY

In the *Triennial Review Order*, the FCC sub-delegated to this Commission the task of applying various triggers and other analysis developed by the FCC to determine the extent to which certain loop, transport, and switching facilities will remain unbundled network elements ("UNEs") in South Carolina. *See, e.g., Triennial Review Order* at ¶¶ 339, 417, 488, 527. Applying the triggers and other analysis that the FCC developed requires the Commission to consider a great deal of carrier-specific information at a "granular" level including, without limitation: the number of competing carriers serving specific customer locations with their own loop transmission facilities at certain loop

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Offering Advanced Telecommunications Capability, 2003 WL 22175730 (F.C.C.), 30 Communications Reg. (P&F) 1 (Rel. August 21, 2003).

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capacity levels (¶329); the number of competing carriers that have deployed transmission facilities to specific customer locations and that are offering alternative loop facilities to competing carriers on a wholesale basis at the same capacity level (¶329); the number of competing carriers that have deployed non-incumbent LEC transport facilities along a specific route (¶400); the number of alternative transport providers immediately capable and willing to provide competing carriers with transport at specific capacity along a given route between incumbent LEC switches or wire centers (¶400); the number of competing carriers serving mass market customers in a particular market with the use of their own switches (¶501); and the number of competing carriers that offer wholesale switching service for a particular market using their own switches (¶504). The FCC expected this Commission to apply these various triggers and other analysis and make various findings within nine months of the effective date of the *Triennial Review Order*. *See Id.*, at ¶¶ 339, 417, 488, 527.

On March 2, 2004, however, the D.C. Circuit Court of Appeals ("D.C. Circuit") issued an opinion that did grave damage to the portions of the FCC's *Triennial Review Order* that are relevant to these proceedings. The D.C. Circuit summarized its opinion in the following language:

> We vacate the [FCC's] subdelegation to state commissions of decision-making authority over impairment determinations, which in the context of this Order applies to the subdelegation scheme established for mass market switching and certain dedicated transport elements (DS1, DS3, and dark fiber). We also vacate and remand the Commission's nationwide impairment determinations with respect to these elements.
>
> We vacate the [FCC's] decision not to take into account availability of tariffed special access services when conducting the impairment analysis, and we therefore vacate and remand the decision that wireless carriers are impaired without unbundled access to ILEC dedicated transport.

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> We vacate the [FCC's] distinction between qualifying and non-qualifying services, and remand (but do not vacate) the decision that competing carriers are not entitled to unbundled EELs for provision of long distance exchange service.
>
> * * *
>
> As to the portions of the Order that we vacate, we temporarily stay the vacatur (i.e., delay issue of the mandate) until no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from today's date. This deadline is appropriate in light of the [FCC's] failure, after eight years, to develop lawful unbundling rules, and its apparent unwillingness to adhere to prior judicial rulings.

USTA v. FCC, ___ F.3d ___, 2004 WL 374262 at *40 (D.C. Cir. March 2, 2004)(emphasis added).

II. ARGUMENT

A. Holding these proceedings in abeyance until some clearer and legally sufficient direction is given is the best course of action.

Given the damage that the DC Circuit's opinion did to the fundamental underpinnings of the FCC's *Triennial Review Order*, particularly with regard to the sub-delegation of the FCC's authority to the State commissions, it would seem to be a waste of limited time and resources for the Commission and the parties to continue with these proceedings at this point. After all, it is impossible to tell whether these proceedings, as presently structured, even address the issues that will be relevant once the smoke has cleared and the Commission and the parties receive clear direction as to what has to be done. The only thing that is clear at this point is that the discovery that has been conducted and the testimony that has been filed in these proceedings address standards that the D.C. Circuit has held to be "unlawful," "analytically insubstantial," and "based on a fundamental misreading of the relevant caselaw." *See USTA* at *3, *5, and *8.

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In fact, one of the two consultants that the Commission Staff has hired to present testimony in these proceedings, Rowland Curry, recently acknowledged that is uncertain whether the Commission or the FCC ultimately could use any of the data being gathered in these proceedings. Although Mr. Curry suggested that the State commission should continue to collect data on impairment,

> he said he was "a little unclear" how the FCC would use the data if the [D.C. Circuit's opinion] remained in effect. "States are having a tough time trying to figure the what ifs and who's going to appeal and what happens on the 61st day."

See Exhibit A, (Article in March 15, 2004 edition of *Telecommunications Reports* quoting Mr. Curry).[2] It undoubtedly will be costly for the Commission Staff to pay two consultants to continue to review the discovery and testimony in these proceedings, file surrebuttal testimony, travel to South Carolina, and testify during a 5-day hearing. Rather than incurring these costs to address matters whose continuing validity are, at best, in serious doubt, BellSouth submits that it would be more prudent for the Commission to hold these proceedings in abeyance and pay these consultants to address any matters that ultimately are determined to be lawful and relevant considerations.

The same holds true for the time and effort the Commission would have to expend to prepare for these hearings. Only three members of the Commission were in office when the parties presented extensive public briefings on the *Triennial Review Order* last year. It would seem to be more prudent for the Commission and its Staff to spend time and effort preparing for the numerous pending matters whose continuing validity are not called into question by the D.C. Circuit's opinion (such as the State USF docket, at least

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[2] Mr. Curry also stated that the *Triennial Review Order* "is not the model of clarity" and suggested that regardless of what happens, the FCC will have to provide more

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two arbitration proceedings under the federal Telecommunications Act of 1996, several energy issues, and various matters listed in the "Pending Items for Future Commission Consideration" portion of the Commission's Utility Agenda) than it would be to prepare for and conduct hearings on matters whose continuing validity are, at best, in serious doubt.

B. Other parties support holding these proceedings in abeyance.

Earlier this month, the Commission's Staff conducted an informal poll of the parties' views of whether these proceedings should be held in abeyance. Composite Exhibit B to this Motion is a copy of the responses that were submitted. As set forth in Composite Exhibit B, the Consumer Advocate and counsel for certain small local exchange carriers in South Carolina agree that holding these proceedings in abeyance seems to be the most prudent course of action. CompSouth, a coalition of competitive local exchange companies ("CLECs"), disagrees and urges the commission to hold hearings in these proceedings as scheduled. *See* Composite Exhibit B, CompSouth's Comments. At least one of the CLECs that is a member of CompSouth, however, recently took the opposite position in a similar proceeding before this Commission.

Docket No. 2004-0049-C addresses a Petition for Arbitration that was filed by Verizon South, Inc., and it presents many issues involving the interpretation and application of the *Triennial Review Order*. Less than two weeks after the D.C. Circuit issued its opinion, ITC^DeltaCom Telecommunications, Inc. ("DeltaCom") – which is a member of CompSouth – filed a letter asking this Commission to "continue [the Verizon arbitration] proceeding indefinitely pending further order and clarification concerning the

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guidance to the states on how to assess impairment beyond the language of the *Triennial Review Order*. *Id.*

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Federal Communications Commission's rules concerning the Triennial Review Order." *See* Exhibit C. In support of its request, DeltaCom noted that the North Carolina Commission had issued an order in a similar proceeding holding that "it made no sense to begin arbitration where the underlying FCC rules are in a state of flux." *Id.* (emphasis added). DeltaCom's logic applies equally to these proceedings, and it fully supports BellSouth's Motion to hold these proceedings in abeyance.

C. Several State commissions in BellSouth's region have held their *Triennial* proceedings in abeyance.

Other State commissions in BellSouth's region have taken the following actions in their *Triennial* proceedings:

> The Florida Commission had already concluded the hearing in its switching docket when the D.C. Circuit issued its opinion, and the Commission has not yet decided whether the parties will be required to file post-hearing briefs in that docket. The Florida Commission has entered an order staying its transport docket. *See* Composite Exhibit D, Florida Order.
>
> The Georgia Commission's hearing in its switching docket was in progress when the DC Circuit issued its opinion. The parties are still required to file post-hearing briefs in that docket, but the Georgia Commission has held its transport docket in abeyance. *See Id.,* Georgia Order.
>
> The Kentucky Commission has issued an order in its *Triennial* proceedings requiring the parties to file testimony as originally scheduled, but the Commission found it "appropriate at this time to cancel the public hearing scheduled to begin April 26, 2004." The Commission stated that "once [its] role has been clarified or it is otherwise appropriate, the public hearing will be rescheduled." *See Id.,* Kentucky Order at p. 2.
>
> The Louisiana Commission has issued an order holding its *Triennial* proceedings in abeyance and requesting all parties to inform the Commission "in writing at least every thirty days as to the status of the FCC's [*Triennial Review Order*] in light of the D.C. Circuit Court's Order of March 2, 2004." *See Id.,* Louisiana Order at p.1.
>
> The Mississippi Commission has issued an order that: holds its *Triennial* proceedings in abeyance; suspends the filing of further testimony, the taking of discovery, and the submission of briefs; and requests the parties to inform the

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> Commission in writing at least every thirty days as to the status of the *Triennial Review Order* in light of the D.C. Circuit's opinion. *See Id.,* Mississippi Order.
>
> The North Carolina Commission has issued an Order providing that no witness for any party is required to attend the hearings in its *Triennial Review Docket.* Instead, pre-filed testimony will be entered into the record and counsel for the parties will present their positions on certain substantive and procedural issues and respond to questions from the Commission. *See Id.,* North Carolina Order.

The Alabama and Tennessee Commissions have sought comments from the parties on whether to proceed with their *Triennial* proceedings, but neither of these Commission has yet reached a decision.

D. CompSouth's suggestion that the Commission hold hearings in these proceedings and make unbundling determinations under state statutes should be rejected for both substantive and procedural reasons.

CompSouth has suggested that the Commission should hold hearings in these proceedings because the Commission can "consider and order unbundling" under state law. *See* Composite Exhibit B, CompSouth's Comments, at p. 4. The Commission should reject this suggestion for both substantive and procedural reasons.

Substantively, it is true that Section 58-9-280(C) of the South Carolina Code allows the Commission to develop "requirements" that are "applicable to all local telephone service providers" and that

> provide for the reasonable unbundling network elements upon a request from a LEC where technically feasible and priced in a manner that recovers the providing LEC's cost . . . ."[3]

This statute, however, also plainly states that any such unbundling requirements "<u>shall be consistent with federal law</u>,"[4] and the federal Telecommunications Act of 1996 ("the

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[3] *Id.,* §58-9-280(C)(3).

[4] S.C. Code Ann. §58-9-280(C)(emphasis added).

federal Act") was in effect when this state statute became law.[5] To order unbundling under this statue, therefore, the Commission must first find "impairment" as required by the federal Act.[6] It is difficult to understand how the Commission could make an "impairment" determination that is "consistent with federal law" before the FCC adopts lawful impairment rules. If the Commission were to attempt to do so and the FCC were to subsequently adopt lawful unbundling requirements that are inconsistent with the requirements adopted by the Commission, the time, effort, and expense of the hearings in these proceedings would be for naught. BellSouth, therefore, believes the more prudent course is not to explore unbundling under the state statute at this time.

Procedurally, these dockets were established to implement the *Triennial Review Order,* not state statutes.[7] The discovery and testimony in these proceedings has focused on federal law, not state law.[8] CompSouth's suggestion that the Commission, at the eleventh hour, convert these proceedings from ones addressing federal law to ones addressing state law would impermissibly deny BellSouth, and possibly other parties, their due process rights.

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[5] The federal Act went into effect on February 8, 1996. The bill that is codified by this state statute was introduced in the House on February 29, 1996, introduced in the Senate on April 23, 1996, and signed into law on May 29, 1996.

[6] *See* 47 U.S.C. §251(d)(2).

[7] *See, e.g.,* Order Setting Hearing Dates and Opening Dockets, Order No. 2003-667 in Dockets No. 2003-326 and 2003-327-C at p. 3 (November 7, 2003) ("The hearings in the nine (9) month proceedings required by the FCC's [*Triennial Review Order*] will be held during the week of April 12-16, 2004.").

[8] Specifically, the discovery and testimony in these proceedings address various FCC impairment determinations that have been vacated because they are inconsistent with federal law.

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CONCLUSION

BellSouth is, of course, ready to do what the Commission thinks best in these circumstances, including trying these cases. For all of the reasons set forth above, however, BellSouth respectfully requests that the Commission enter an order holding these proceedings in abeyance and directing the parties to communicate, on an informal basis, with each other and with the Commission Staff on a periodic basis, so that once the present uncertainties are resolved, the Commission can make an informed decision about whether to proceed or close these proceedings.

Respectfully submitted, this 17 th day of March 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

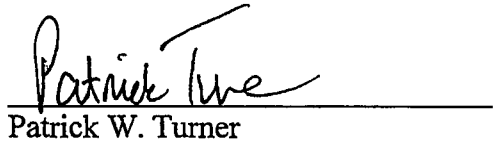

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EXHIBIT A

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Around the States

State Commissions Debate How to Proceed In Wake of 'Triennial Review' Rejection

As state regulatory commissions push for an appeal of the federal appeals court decision rejecting key provisions of the FCC's "triennial review" order, regulators also are trying to figure out how — or if — to continue moving forward with unbundling proceedings that they have launched under a regime found by the court to be unlawful. While federal regulators and competitive local exchange carrier (CLEC) representatives urged the states to continue their "fact-finding" efforts, some state commissioners wondered how they could continue proceedings without underlying standards.

At its winter meetings in Washington last week, the National Association of Regulatory Utility Commissioners urged the White House and congressional leaders to support an appeal by the FCC of a decision by the U.S. Court of Appeals in Washington. Among the triennial provisions struck down by the court were those governing the states' role in determining the degree to which local telecom competition exists in their areas.

Stan Wise, NARUC's president and a member of the Georgia Public Service Commission, asked President Bush in a March 8 letter to "support immediate Supreme Court review of this faulty and destabilizing opinion."

The appeals court's March 2 ruling in ***U.S. Telecom Association v. FCC*** threatens "the foundation of local telecommunications competition and the key role Congress assigned to the states to ensure competition develops and is maintained," Mr. Wise declared. The court's opinion, among other items, struck down the FCC's directive that state regulators make their own determinations as to the condition of local competition in their jurisdictions.

"No one has a bigger stake in assuring that your constituents, the people in every U.S. state and territory, as well as each state's specific economy, benefit from the proper and rapid implementation of Congress's vision of local competition than your fellow public servants — the state public service commissioners," he said. He said the 1996 Telecommunications Act had preserved large areas of state authority, including the ability to establish additional network access obligations as long as they were consistent with the federal law.

"The consequences of the D.C. Circuit's ruling are severe, not only for the future of local telephone service, but for the ability of state agencies to cooperate with federal agencies to accomplish national goals," added **Robert Nelson,** a member of the Michigan Public Service Commission and chair of NARUC's Telecommunications Committee.

During a speech at the NARUC conference, FCC Commissioner **Michael J. Copps,** who supported the overturned provisions, appealed to state commissions to "keep up the fact finding." The state commissions are the only entities in a position to collect all of the necessary data on competition, he said.

But **Marilyn Showalter,** chairwoman of the Washington Utilities and Transportation Commission, suggested that it wasn't that simple for the states to move forward with their proceedings in the wake of the court decision. "How do we proceed?" she asked Commissioner Copps. "We don't know what the law is. Any proceeding is a combination of data — objective evidence — and the law."

Mr. Copps said the states could continue moving forward as planned within the next 60 days, "going ahead and trying to amass that kind of evidence." The states perhaps could offer recommendations to the Commission based on their findings, he suggested.

Earlier at the conference, **Genevieve Morelli,** an attorney with Kelley Drye & Warren LLP, also advised state commissions to continue to pursue their individual proceedings. But at a March 6 forum, many commission staffers indicated that their states had already suspended proceedings following the decision. Half a dozen others had never gotten started.

State officials agreed that the decision put them in a tough position. The court vacated the delegation of UNE-P impairment decisions to the states, effective in 60 days, but what will happen on the 61st day remains uncertain.

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"I cannot imagine that the work is going to be for naught," said Ms. Morelli, a former attorney for Qwest Communications International, Inc., who has done considerable work on behalf of CLECs. "At a minimum, the FCC will have the opportunity for the data to be used at the FCC in the proceeding that the FCC will need to conduct in order to determine whether the impairment standard is met or not."

Ms. Morelli contended, "The bottom line is someone at some point is going to have to make the final decision on whether some of these elements should be eliminated from the UNE list or continued to be made available."

She said the final decision on the future need for UNE-P would still have to be made on a "very fact intensive, very detailed, very granular basis." The FCC will need the help of the state commissions, she said.

"Many people, if not everyone at the FCC, would agree that they are not equipped to do that fact finding themselves, nor even if they were, would they be inclined to, I think, if you all have done so already," she said. "At the absolute bare minimum, the facts you collect, the records that you build, are going to be essential to the decision that the FCC makes."

Rowland L. Curry, a consultant on telecom issues to the states, told the state regulators that regardless of what happened, the FCC was going to have to provide more guidance to the states on how to assess impairment beyond the language of the TRO. "Some of the issues that we have been running into in the states are so contested that it's almost as if they're going to require another decision by the FCC," he said. "The TRO was not the model of clarity."

"There are a lot of different assertions on both sides. 'Well, the TRO meant A. The TRO meant B.' What I felt all along was that states would have to make these decisions, and then some states on this list would have to come out with an order and it was going to be appealed to the FCC. The FCC was going to have to say, 'No, we really meant A or we really meant B.' That might, in effect, change the interpretation of the other states," he said.

He agreed that the states should collect the data on impairment they would need to make decisions about the continuation of various UNEs. But he said he was "a little unclear" how the FCC would use the data if the appeals court decision remained in effect. "States are having a tough time trying to figure the what ifs and who's going to appeal and what happens on the 61st day."

VoIP Plans Draw Mixed Reviews

Panelists expressed mixed views as to how regulators should address voice-over-Internet protocol (VoIP) issues and whether new legislation was necessary to reconcile rules regarding broadband service and the deployment of new technologies and IP-enabled services.

NARUC's Telecom Subcommittee held two panels on March 6 discussing the current state of VoIP and whether new legislation was required to properly address the emergence of VoIP and other IP-enabled services. Several of the looming questions may be answered by the FCC, which last month issued a notice of proposed rulemaking (NPRM) on VoIP issues.

Russ Hanser of the FCC's Wireline Competition Bureau strongly emphasized that the Commission had made no tentative conclusions in the NPRM and that it was addressing a "broad scope" of issues concerning VoIP. "This is a new world for all of us, and we hope the [NPRM] demonstrates that we're open to new avenues," he said. He offered little insight as to what direction the Commission was heading but said the FCC recognized that there were "critical differences" between the public switched telephone network (PSTN) and IP networks, and that traditional telephone regulation may not be applicable in certain circumstances.

Rick Cimerman, senior director with the National Cable & Telecommunications Association (NCTA), addressed an NCTA white paper, which proposed a four-prong test for determining whether an IP service should be regulated. He said a "bright line" rule should be established so that service providers wouldn't have to seek declaratory rulings from the FCC to figure out how a service might be treated.

Melia Carter, executive director of the Illinois Coalition for Competitive Telecommunications (ICCT), said the industry had been waiting for a long time for a new technology to help spur demand for broadband services, and VoIP could be that technology. VoIP is giving the industry a chance "to change the face" of telecommunications, she said, which is why regulators "need to exercise restraint."

She said VoIP networks should be viewed as two components — an end-user service and a transport facility. She said cable TV system operators had a "very good opportunity" to build a strong wholesale market in VoIP because they could offer transport to competitive carriers as an alternative to the incumbent local exchange carrier (ILEC). She said competitive carriers would be eager

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to buy transport services from an outlet other than the Bell companies.

Until competitors have such an alternative, it is imperative that unbundling obligations remain for the last mile, she said. The unbundled network element platform (UNE-P) needs to exist "to be the bridge" for competitive carriers "to transition to VoIP technology," she said.

"No regulation or 'light' regulation of IP-enabled services such as VoIP must not translate into no regulation of the choke points controlled by dominant carriers," said **Jonathan Askin,** general counsel for the Association for Local Telecommunications Services, who spoke on a panel that examined the prospect of new telecom legislation. "Regardless of what path the FCC or Congress takes to promote the deployment of VoIP and other IP-enabled services, it is essential that legislators and regulators recognize that ILECs still control the access lines needed to reach would-be consumers," he added.

While some panelists suggested that the FCC had the tools necessary to adopt rules to resolve lingering concerns over VoIP and problems relating to intercarrier compensation and universal service, others said new technologies and a statute designed for legacy networks could not accommodate emerging technologies.

Peter Bluhm, director–regulatory policy for the Vermont Public Service Board, said NARUC may want to consider advocating a new telecom law. He said the 1996 Telecommunications Act invited "creative interpretation and uncertainty" of telecom laws and "blurred jurisdiction" between federal and state regulators. As a result, states are "on the defensive" because industry and the courts seem to be taking a position that all state laws and regulations are bad, he said.

Mr. Askin, however, expressed concern about reopening the 1996 act, "particularly in a world where legislators, regulators, and competitors have less bargaining leverage" than they had in 1996. "The Bells still control most of the local customers, have been given long distance authority nationwide, and are no longer bound by the Modification of Final Judgment or much of the antitrust laws," he said.

Although federal lawmakers have said they plan to address rewriting the 1996 act in the near future, **John T. Nakahata** of Harris, Wiltshire & Grannis LLP said not to expect any changes until 2008 at the earliest.

NARUC Develops Proposals On Intercarrier Compensation

The National Association of Regulatory Utility Commissioners (NARUC) has developed proposals for revamping the intercarrier compensation regime, as well as goals for addressing any proposals that may come from industry members or the FCC.

Although details of the two proposals differ, they both call for allocating some local exchange carrier (LEC) costs to carriers and customers that seek to terminate traffic on the LEC networks. According to an outline of the proposals, "To do this, each plan proposes a division of the ILEC network into two categories. Second, to allow for simplification of a complex intercarrier system, each plan also contains a federalism proposal that would reallocate FCC and state jurisdiction."

Commissioner Elliot Smith of the Iowa Utilities Board said March 9 at NARUC's winter meeting in Washington that the association's Committee on Intercarrier Compensation has been meeting during the past few months via phone conferences to develop proposals for access charges. He added, however, that they hoped to have by now something from the industry or action from the FCC on the matter.

On a separate panel earlier in the day, John Windhausen, president of the Association for Local Telecommunications Services, urged state regulators not to assume that the proposal being developed by the intercarrier compensation forum had the entire industry's support. Mr. Windhausen noted that ALTS had not been involved in the discussions because in order to participate, carriers must be in favor of a bill-and-keep regime and higher residential subscriber line charges (SLCs).

The National Telecommunications Cooperative Association recently released a study that said rural local exchange carriers with fewer than 100,000 access lines would lose an estimated $2 billion per year in revenues if the FCC adopted a bill-and-keep intercarrier compensation regime.

COMPOSITE EXHIBIT B

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Turner, Patrick

From: Elliott Elam [Elam@dca.state.sc.us]
Sent: Monday, March 08, 2004 3:15 PM
To: Turner, Patrick; selliott1@earthlink.net; jpringle@ellislawhorne.com; PFox@mcnair.net; david.butler@psc.state.sc.us; rtyson@sowell.com; dwcothran@wchlaw.com
Cc: james.mcdaniel@psc.state.sc.us; jocelyn.boyd@psc.state.sc.us; wayne.burdett@psc.state.sc.us
Subject: Re: TRO Proceedings

I don't really have a strong opinion either way, but it would seem that if the rules have been vacated, it would be proper to delay any hearings.

>>> "Butler, David" <david.butler@psc.state.sc.us> 3/8/2004 1:06:36 PM >>>
Dear folks:
I am taking an informal opinion poll on behalf of the Commission Hearing Staff with regard to whether or not the parties believe that the TRO proceedings should be held in abeyance in light of the recent Court of Appeals decision. I would appreciate you all letting me know how you feel about this matter. Please copy all other parties with your responses as well. Your responses may be shared with the Commission at some point. (Obviously, at this point all Commission testimony prefiling dates are still in full force and effect and will be until further Order of the Commission.) Please let me have your responses by e-mail on or before 4:45 PM Wednesday, March 10, 2004. Thanks,

David Butler
General Counsel

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ACCEPTED FOR PROCESSING - 2019 November 4 11:14 AM - SCPSC - 2003-327-C - Page 18 of 57

Turner, Patrick

From: Turner, Patrick
Sent: Wednesday, March 10, 2004 4:42 PM
To: 'Butler, David'; rtyson@sowell.com; jpringle@ellislawhorne.com; dwcothran@wchlaw.com; elam@dca.state.sc.us; Fox, Peg; selliott1@earthlink.net; 'selliott@elliottlaw.us'
Cc: Boyd, Jocelyn; McDaniel, James; Burdett, Wayne
Subject: RE: TRO Proceedings

David,

Thanks for giving all of us the opportunity to address this issue.

BellSouth is, of course, ready to do what the Commission thinks best in these circumstances, including trying these cases. However, given the damage that the DC Court of Appeals' order did to the fundamental underpinnings of the FCC's Triennial Review Order, particularly with regard to the sub-delegation of the FCC's authority to the state commissions, it seems like it would be a waste of limited resources and time for both the Commission and the parties to continue on with these cases at this point. It is impossible to tell what the ultimate outcome will be, or whether the cases, as presently structured, will even address the relevant issues once the smoke has cleared and we all have some clear direction as to what has to be done. Additionally, the Commission has several other pending matters (such as the USF docket, at least 2 section 252 arbitration proceedings, and several matters listed under the "Pending Items for Future Commission Consideration" portion of the Commission's Utilities agenda) whose continuing validity is not called into question by the D.C. Circuit's opinion, and the new Commissioners and the Staff will need to spend time and resources preparing to address these proceedings. In these circumstances, suspending the current proceedings, and holding them in abeyance until some clearer and legally sufficient direction is given, seems to be the best course, and that is what BellSouth recommends that the Commission do at this time.

BellSouth would recommend that the Commission direct the parties to communicate, on an informal basis, with each other and with the Commission staff on a periodic basis, so that once the present uncertainties are resolved, the Commission can make an informed decision about whether to proceed or to close these cases.

Finally, as information, the Florida and Georgia Public Service Commissions have recently decided to suspend their TRO loop & transport proceedings. The Florida Commission had completed its switching hearing at the time the DC Circuit Court issued its Order. The Georgia Commission was approximately half way through its switching hearing when the DC Circuit Court ruled, and elected to complete the remaining portion of the hearing rather than suspend it. Finally, the Mississippi Public Service Commission has recently decided to suspend all of its TRO proceedings, and the North Carolina and Louisiana commissions have called for comments as to whether their proceedings should be suspended as well.

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From: Butler, David [mailto:david.butler@psc.state.sc.us]
Sent: Monday, March 08, 2004 1:07 PM
To: Turner, Patrick; rtyson@sowell.com; jpringle@ellislawhorne.com; dwcothran@wchlaw.com;

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elam@dca.state.sc.us; Fox, Peg; selliott1@earthlink.net
Cc: Boyd, Jocelyn; McDaniel, James; Burdett, Wayne
Subject: TRO Proceedings

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Thanks,

David Butler

General Counsel

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2003-327-C

In Re:	)
	)
Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order	)

Docket No. 2003-326-C

In Re:	)
	)
Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order	)

COMMENT OF COMPETITIVE CARRIERS OF THE SOUTH, INC.

Pursuant to the March 8, 2004 request of the General Counsel of the South Carolina Public Service Commission ("Commission") to all parties seeking an informal opinion poll on behalf of the Commission Hearing Staff with regard to whether or not the parties believe that the Triennial Review Order Dockets should be held in abeyance in light of the recent decision of the U.S. Court of Appeals for the D.C. Circuit in *U.S.T.A. v. FCC*, Case No. 00-1012, March 2, 2004, Competitive Carriers of the South, Inc. ("CompSouth")[1] respectfully urges the Commission to conduct and complete its hearings in these dockets.

[1] The members of CompSouth are: Access Integrated Networks, Inc., Access Point Inc., AT&T of the Southern States, LLC, Birch Telecom of the South, Inc., Cinergy Communications Company, CompTel/Ascent Alliance, Covad Communications Company, ITC Deltacom Communications, Inc., IDS Telecom, LLC, KMC Telecom III, KMC TelecomV, Inc., LecStar Telcom, Inc., Momentum Business Solutions, Inc., Network Telephone Corp., NewSouth Communications, Corp., Nuvox Communications, Inc., PACE Coalition, Talk America, MCImetro

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As a preliminary matter, the record in these cases is near ready for Commission review through hearing. The parties have completed several months of discovery, and as of March 12, they will have completed two rounds of pre-filed testimony in the switching case and the first round in the loop-transport case. All that will remain to complete the record in these two cases will be a last round of testimony in each case and a relatively short hearing and briefing by the parties. The switching case already has been heard twice using a novel hearing approach – by the Florida Public Service Commission in four days the Georgia Public Service Commission in three days. It is expected that a good deal of previous cross-examination can be stipulated in the record in South Carolina, thus minimizing the time needed for the switching case. Even taking into account some additional cross-examination for the loop-transport case,[2] CompSouth estimates that the hearing can be completed in no more than three days, and perhaps less than two days. Thus, little is required to complete the record so the parties can proceed with the briefs.

Moreover, by its terms, the *U.S.T.A.* decision does not prevent this Commission from going forward with these cases. To the contrary, the D.C. Circuit has stayed enforcement of its order vacating the TRO until a hearing for rehearing or rehearing en banc, or 60 days, whichever is later. Consequently, no mandate has been issued and the *TRO is still in effect.* It is likely to remain so because a majority of the FCC has announced its strong disagreement with the D.C. Circuit opinion, and has ordered the FCC's General Counsel to seek a stay and to seek review in the United States Supreme Court. The FCC's position is strongly supported by the National Association of Regulatory Utility Commissioners ("NARUC") and others, including the member companies of CompSouth. Just two days ago, FCC Commissioner Kevin Martin urged NARUC members to:

Access Transmission Services, LLC, MCI WORLDCOM Communications, Inc., Xspedius Management Co., LLC, and Z-Tel Communications, Inc.

[2] For the loop-transport proceeding, CompSouth would propose, similar to the procedure agreed upon by BellSouth and CompSouth for the Florida proceeding, that each side ("non-impairment" and "impairment," respectively) would make an hour and a half presentation of its "direct case," followed by two to three hours of cross-examination.

> ...continue this special partnership [with the FCC] and move forward with your best efforts to gather the critical factual data necessary for whatever lies ahead. Many of you have already made significant progress in developing the underlying factual record....,the relevant data and factual information you have and will gather as part of the competitive market analysis will be vital to advancing the cause of local competition in the next phase of the Federal Communication Commission's process.[3]

So long as the TRO continues to remain in effect, the only way to meet its time constraints is to proceed now with the hearings.

Even if *U.S.T.A.* were to survive the challenges from the FCC and others, it would still be critical that state commissions move forward with the state-specific investigatory and fact-finding role contemplated by the TRO. The D.C. Circuit did not make any finding of non-impairment and did not direct the FCC to make any such finding. Nothing in the D.C. Circuit's ruling suggests that evidence of actual deployment of facilities is irrelevant, or would be irrelevant under any standard to be adopted by the FCC. Thus, were the court's decision to take effect, the matter would be remanded to the FCC "for a re-examination of the issue." In that event, the FCC would need to base any further findings on granular, market-specific factual findings. For this reason, state commissions that gather the relevant facts within their jurisdictions would be able to provide important input to and thereby influence the FCC's ultimate findings. States will be able to play this critical role if and only if they have the information on market conditions within their jurisdictions. States that fail to move forward and develop an evidentiary record that they can share with the FCC will be rendered mute and irrelevant to any such FCC review.

U.S.T.A. recognizes both a fact-gathering and advisory role for state commissions. The court noted that "there is some authority for the view that a federal agency may use an outside entity, such as a state agency or a private contractor, to provide the agency with factual information," *U.S.T.A.* at 16, concluding that "a federal agency may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decision itself." *Id.* at

[3] Excerpt from speech of FCC Commissioner Kevin Martin to National Association of Regulatory Utility Commissioners ,Winter Meeting, March 8, 2004

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17. It was the decision-making role, not the fact-gathering or advisory roles of the state commissions, which the D.C. Circuit found invalid. Were the D.C. Circuit's mandate to issue, the FCC would need the states' assistance to complete this task with any degree of granular accuracy. Moreover, having the evidence already collected and analyzed in a granular fashion at such time as the FCC proceeds with § 251 impairment determinations would materially speed the FCC's completion of its massive task. There obviously is a compelling public interest in achieving a quick, clear and certain resolution to these controversies, to say nothing of the interests of the parties and their stakeholders. On the other hand, delaying fact gathering and analysis indefinitely until a final judgment is ultimately rendered in *U.S.T.A.* is not in anyone's interest, particularly not in the public's interest.

Based such considerations, the New York Public Service Commission already has decided to proceed with the hearings, notwithstanding the D.C. Circuit decision:

> We will continue to be actively engaged in gathering relevant data and factual information as part of our analysis of the state of the competitive market in New York," he said. "At the end of the day, no matter who makes the ultimate decision - whether it is the FCC or the states - this factual data and analysis will be a critical component for our efforts to advance the competitive framework articulated by the FCC and the court.

Statement of William Flynn, chairman of the New York Public Service Commission, http://www.dps.state.ny.us/fileroom/doc14477.pdf.

This Commission retains full jurisdiction and authority under both state and federal law – quite independent of the TRO – to consider and order unbundling. S.C. Code Ann. § 58-9-280(C) explicitly gives the Commission authority *under state law* by stating "shall determine the requirements applicable to all local telephone service providers to implement this subsection...(1) provide for the reasonable unbundling of network elements ...where technically feasible." Pursuant to this grant of authority, the Commission has consistently approved interconnection agreements that provide service elements on an unbundled basis required by a Competitive Local Exchange Carrier ("CLEC") to provide quality and

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affordable services. Moreover, §§ 251(d)(3) and 261(c) of the Communications Act, as amended by the Telecommunications Act of 1996 ("Act"), plainly preserves state authority to establish unbundling regulations or policies that neither conflict with, nor substantially prevent implementation of, the Act's unbundling provisions.[4] A state finding of impairment under the Act for one or more elements in markets in that state, even though the FCC has either found no impairment on a national basis or has found impairment and has declined to require unbundled access, does not circumvent or thwart the statutory requirement of unbundled access to ILEC network elements.

There also is an independent basis for unbundling authority under 47 U.S.C.A. § 271. Under § 271 of the Act, as amended, RBOCs were granted permission to enter the long distance telephone market in exchange for unbundling their network elements and making them available to CLECs.[5] These independent state and federal law bases of authority are untouched by *U.S.T.A.*, which dealt *only* with FCC regulations regarding the implementation of the federal unbundling rules under § 251 of the Act. The Commission should proceed with hearings on those independent grounds.

The Commission should go forward in any event to explore and address the problems that would ensue from the elimination of UNE-P. Major difficulties are inherent in both the individual and batch hot cut processes. Substantial evidence has been developed and filed with this Commission regarding these problems, and in particular with scaling the process to the levels that might be required were UNE-P to be eliminated. Therefore, the scalability and suitability of

[4] In addition, section 252 (g) authorizes state commissions to hold consolidated state proceedings to make the federal law determinations necessary in implementing sections 251 and 252 of the Act.

[5] See S.C.P.S.C. Docket No. 2001-209-C, *In re: Application of BellSouth Telecommunications, Inc., to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996*, Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Order No. 2002-77, February 14, 2002.

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the hot cut process and its effect on the viability of local competition is a matter requiring the urgent attention of state and federal regulators.

The factual record compiled in these hearings would shed considerable light on the nature of the wholesale market for UNE-P, UNE-L, and related network elements for the mass market, and on the adverse consequences to consumers of granting the ILECs' request to eliminate UNE-P. Of particular concern is the risk that the ILECs might seek to exploit their monopoly powers as the sole source of indispensable network elements by charging extortionate rates to CLECs. Notwithstanding the fact that there can be no "market" where only one provider of the element exists, BellSouth contends in Georgia that the "market" rate will be $7.00 over the TELRIC rate for unbundled local switching. [6] However, BellSouth has proposed to charge a $14.00 "market" rate for unbundled local switching without any cost support for the rate. If BellSouth is consistent with earlier positions, BellSouth will claim in South Carolina that "Because CLECs have alternatives [in the market] , competition will drive the market price of the network elements"...., and that BellSouth will set its rates "according to those market conditions through negotiations with the CLECs."[7] However, there are no alternatives to these network elements and there is no bargaining power for the CLEC when "negotiating" with the only supplier available. If BellSouth is allowed unfettered discretion over establishing UNE rates, CLECs will be driven out of the market and BellSouth will be restored as an unchallenged monopoly in South Carolina, to the manifest detriment of the public interest. BellSouth likewise will threaten to re-monopolize long distance service within the region, as it has already garnered a 30% share of this market even with UNE-P based competition. The same threat, and thus the same need to compile a record, would apply to high-capacity loops and transport. Thus, the Commission needs to explore the

[6] Ruscilli Georgia Rebuttal Testimony, Docket No. 17749-U, at page 11.

[7] Ruscilli North Carolina Rebuttal testimony, Docket No.P-100, SUB 133q, at page 3-4.

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factual record regarding issues such as what the "just and reasonable" rates should be for any UNEs to which BellSouth is no longer required to provide access under Section 251.

Going forward with the hearings would materially aid the Commission in performing its duties under S.C. Code Ann. § 58-9-210 and S.C. Code Ann. § 58-9-280 and carrying out the pro-competitive policies of South Carolina law and of the Act. Accordingly, CompSouth urges the Commission to move forward with the previously scheduled hearing.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____

Robert E. Tyson, Jr.
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
Telephone: (803) 929-1400
rtyson@sowell.com

Attorneys for Competitive Carriers of the South, Inc. ("CompSouth")

Columbia, South Carolina
March 10, 2004

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Turner, Patrick

From: Fox, Peg [PFox@MCNAIR.NET]
Sent: Thursday, March 11, 2004 2:45 PM
To: Butler, David
Cc: Boyd, Jocelyn; McDaniel, James; Burdett, Wayne; Turner, Patrick; elam@dca.state.sc.us; rtyson@sowell.com; jpringle@ellislawhorne.com; dwcothran@wchlaw.com; selliott1@earthlink.net; selliott@elliottlaw.us
Subject: RE: TRO Proceedings

David --

Sorry to be responding after the deadline, but wanted to let you know that we concur with BellSouth's comments on this issue.

Peg Fox

-----Original Message-----
From: Turner, Patrick [mailto:Patrick.Turner@BellSouth.com]
Sent: Wednesday, March 10, 2004 4:42 PM
To: Butler, David; rtyson@sowell.com; jpringle@ellislawhorne.com; dwcothran@wchlaw.com; elam@dca.state.sc.us; Fox, Peg; selliott1@earthlink.net; selliott@elliottlaw.us
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David Butler

General Counsel

*****

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EXHIBIT C

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3.15.04 RNG
SOWELL GRAY
SOWELL GRAY STEPP & LAFITTE, P.A.
ATTORNEYS AND COUNSELORS AT LAW
ACCEPTED
Legal 2 3-15-04
S.C. PUBLIC SERVICE COMMISSION
RECEIVED
MAR 12 2004
RECEIVED
EXECUTIVE DIRECTOR'S OFFICE

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March 12, 2004

VIA HAND DELIVERY
The Honorable Bruce Duke
Acting Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Petition of Verizon South, Inc. for Arbitration
SGS&L File No. 5665/1500

Dear Mr. Duke:

I am writing on behalf of ITC^DeltaCom Telecommunications, Inc. to request the Public Commission of South Carolina continue this proceeding indefinitely pending further order and clarification concerning the Federal Communications Commission's rules concerning the Triennial Review Order.

I also am enclosing the State of North Carolina Utilities Commission Order concerning a similar petition for arbitration filed by Verizon South, Inc. As the Order provides, the North Carolina Utilities Commission continued this proceeding indefinitely for the following reasons. First, the Commission continued the matter because Verizon's request appeared to be similar to the current Commission proceedings involving the Triennial Review dockets; therefore, it would be duplicative. Second, the North Carolina Commission held it made no sense to begin arbitration where the underlying FCC rules are in a state of flux. Third, the Commission concluded Verizon did not comply with the proper arbitration procedural rules.

ITC^DeltaCom respectfully requests that the Commission review this Order and continue indefinitely Verizon's petition . If you have any questions, please do not hesitate to contact me.

Sincerely,

Robert E. Tyson, Jr.

Robert E. Tyson, Jr.
rtyson@sowell.com

1310 Gadsden Street
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Columbia, SC 29211

803.929.1400
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S.C. PUBLIC SERVICE COMMISSION
RECEIVED
MAR 16 2004
RECEIVED
UTILITIES DEPARTMENT

SOWELL GRAY
SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

RET/alh

Enclosure

cc: F. David Butler, General Counsel
Nanette Edwards, Esquire
Aaron M. Panner, Esquire
Scott H. Angstreich, Esquire
Steven W. Hamm, Esquire
Richard A. Chapkis, Esquire

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-19, SUB 477

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Interconnection Agreements with Competitive	)	ORDER CONTINUING
Local Exchange Carriers and Commercial	)	PROCEEDING INDEFINITELY
Mobile Radio Service Providers	)	

BY THE COMMISSION: On February 20, 2004, Verizon South, Inc. filed for arbitration "of an Amendment to Interconnection Agreements with Competing Local Providers [CLPs] and Commercial Mobile Radio Service Providers [CMRS providers] in North Carolina" pursuant to Section 252 of the Telecommunications Act and the *Triennial Review Order* (TRO). As such, this consolidated arbitration petition involves nearly 70 CLPs and CMRS providers. Verizon is proposing an amendment to its interconnection agreements implementing changes in its network unbundling obligations pursuant to the TRO. More particularly, the petition was filed pursuant to the transition process that the FCC established in the TRO in Paragraphs 700 through 706. For the purposes herein, the term "CLPs" refers to both CLPs and CMRS providers.

Verizon explained that the FCC had provided that incumbent local exchange companies (ILECs) and CLPs must use the Section 252(b) "timetable for modification" of agreements; and, for the purposes of the negotiation and arbitration timetable, "negotiations [are] deemed to commence on the effective date" of the TRO, which was October 2, 2003. Verizon said the negotiations between itself and the CLPs in fact commenced on that date, because on October 2, 2003, Verizon sent a letter to each CLP initiating negotiations and proposing a draft amendment to implement the FCC's rules. This means that the window for requests for arbitration is from February 14, 2004, to March 11, 2004. A ruling would need to be made by the Commission on or about July 2, 2004.

Verizon reported that, since the October 2, 2003 notice, some CLPs have signed Verizon's draft amendment, without substantive changes; but, of the remaining CLPs in North Carolina, virtually none provided a timely response to Verizon. The majority of substantive responses have come in only lately. Some responses constitute a virtual wholesale rejection of the amendment.

Verizon, of course, noted the pendency of appeals before the D.C. Circuit and the other filings for reconsideration pending before the FCC. Verizon is filing this petition now, based on current federal law.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to continue this proceeding indefinitely pending further order and advise Verizon that it may avail itself of the provisions of Section 252(e)(5), wherein the arbitration may be referred to the FCC.

The reasons for these recommendations are several-fold:

First, the changes sought by Verizon appear to be of similar subject matter to those which are subject to the Commission's TRO proceeding. As such, this "consolidated arbitration" approximates a parallel TRO proceeding. This is a waste of everybody's time. It is especially so since Verizon informed this Commission on Halloween Day, 2003 that it would not actively participate in the TRO dockets, while reserving "its right to challenge these determinations at a later time." It also stated its belief that the FCC's TRO rules were "in direct conflict with the 1996 Telecommunications Act." This is strange considering that Verizon purports to desire the swift implementation of the FCC's rules in the context of its arbitration petition. The Commission does not have the resources or the inclination to conduct *two* TRO proceedings simultaneously.

Second, as alluded to by Verizon in its filing, the FCC rules are under challenge on many fronts. It makes no sense to begin an arbitration where the underlying rules may be changed in midstream.

Third, Verizon did not comply with the Commission's arbitration procedural rules. It did not include prefiled testimony or seek waiver of same. It included no matrix summary. The petition did not appear to be signed by North Carolina counsel as required by our rules.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of March, 2004.

NORTH CAROLINA UTILITES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

dl030104.01

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COMPOSITE EXHIBIT D

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.	DOCKET NO. 030852-TP ORDER NO. PSC-04-0252-PCO-TP ISSUED: March 8, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER HOLDING DOCKET IN ABEYANCE

BY THE COMMISSION:

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

On March 2, 2004, the D.C. Circuit Court of Appeals released its decision[1] which vacated several aspects of the FCC's Triennial Review Order. On March 3, 2004, we convened our previously scheduled hearing in this proceeding.

Upon commencement of the hearing, our staff informed us that all parties had participated in a conference call to discuss how this docket should proceed in light of the D.C. Circuit Court of Appeals decision. Our staff informed us that at the conclusion of the conference call, all parties had agreed to the following procedures:

1. All pre-filed testimony and testimony exhibits shall be moved into the record without objection. However, all parties reserve the right to conduct cross-examination of witnesses if further proceedings are convened in this docket.

[1] See United States Telecom Association v. Federal Communications Commission, LEXIS 3960 (U.S. App 2004)

DOCUMENT NUMBER-DATE
03241 MAR-8 04
FPSC-COMMISSION CLERK

2. All hearing exhibits identified in staff's hearing exhibit list shall be moved into the record without objection.

3. Upon the conclusion of moving the aforementioned items into the record, this hearing will be held in abeyance indefinitely.

4. In thirty (30) days the parties have agreed to participate in an informal status conference.

Upon consideration, the above agreement reached by all parties of record in this proceeding was approved. It is therefore ordered that this docket shall be held in abeyance indefinitely until further action is deemed appropriate.

It is therefore,

ORDERED by the Florida Public Service Commission that this docket shall be held in abeyance indefinitely until further action is deemed appropriate and the parties in this proceeding shall conduct themselves in accordance with the stipulation approved herein.

By ORDER of the Florida Public Service Commission this 8th day of March, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

AJT

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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COMMISSIONERS:
H. DOUG EVERETT, CHAIRMAN
ROBERT B. BAKER, JR.
DAVID L. BURGESS
ANGELA ELIZABETH SPEIR
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GENERAL COUNSEL

Georgia Public Service Commission

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ATLANTA, GEORGIA 30334-5701

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EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

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RECEIVED
MAR 1 1 2004
EXECUTIVE SECRETARY
G.P.S.C.

17741

71114

Docket No. 17741-U

In Re: REVIEW OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER REGARDING IMPAIRMENT FOR HIGH CAPACITY ENTERPRISE AND DEDICATED TRANSPORT LOOPS

ORDER SUSPENDING HEARINGS

On August 21, 2003 the Federal Communications Commission ("FCC") released its Triennial Review Order ("TRO") on the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, which became effective October 2, 2003. In the TRO, the FCC delegated to the states, *inter alia*, a fact finding role to identify where competing carriers are not impaired without unbundled transport pursuant to two triggers. (TRO at ¶394). The Georgia Public Service Commission ("Commission") initiated the above-styled docket for the purpose of determining when competing carriers are not impaired without unbundled capacity loops and without unbundled transport.

Pursuant to its October 21, 2003 Procedural and Scheduling Order ("PSO"), the Commission was scheduled to hold hearings in the above-styled docket on March 15, 16, and 17, 2004. On March 2, 2004, those portions of the TRO that delegate to state commissions the authority to determine whether competitive local exchange carriers ("CLECs") are impaired without access to network elements were vacated. United States Telecom Ass'n v. FCC et. al., 2004 U.S. App. LEXIS 3960 (D.C. Cir. 2004). The Court stayed the vacatur until no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from the issuance of its order. *Id.*

In light of this development, it is administratively efficient to suspend the hearings scheduled in the above-styled docket until the role of state commissions in this process is clarified. The Commission will not rule on any outstanding motions or requests until the conclusion of the suspension period.

WHEREFORE IT IS ORDERED, that the hearings scheduled in Docket No. 17741-U are hereby suspended until further order of the Commission.

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ORDERED FURTHER, that the Commission will not rule on any outstanding motions or requests until the conclusion of the suspension period.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Chairman of the Georgia Public Service Commission this 10th day of March, 2004.

Reece McAlister
Executive Secretary

Date: 3-11-04

H. Doug Everett
Chairman

Date: 03-11-04

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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.

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

By the Commission

ATTEST:

Executive Director

Case No. 2003-00379

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BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

LOUISIANA PUBLIC SERVICE COMMISSION, ex parte	*	
	*	**DOCKET NO. U-27571**
In re: Louisiana Public Service Commission Implementation of the requirements arising from The Federal Communications Commission's Triennial Review Order, Order 03-36: Unbundled Local Circuit Switching for Mass Market Customers and establishment of a batch cut migration process.	*	
LOUISIANA PUBLIC SERVICE COMMISSION, ex parte	*	
	*	**DOCKET NO. U-27572**
In re: Louisiana Public Service Commission Implementation of the requirements arising from The Federal Communications Commission's Triennial Review Order, Order 03-36: High capacity transport and unbundled high capacity loops.	*	

* *

ORDER HOLDING DOCKET IN ABEYANCE

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit entered and released its opinion in *United States Telecom Association v. FCC.* In its opinion, the Court vacated much of the FCC's Triennial Review Order issued August 21, 2003.

In response to the Court's actions, this Tribunal issued an Order requesting comments regarding whether good cause existed to continue and hold in abeyance all proceedings in these dockets until all petitions for re-hearing and all appeals have been exhausted.

Upon consideration of the comments submitted by the parties,

IT IS THERFORE ORDERED, that these dockets are hereby suspended and held in abeyance until all petitions for re-hearing and all appeals have been exhausted.

IT IS FURTHER ORDERED, that all parties are requested to inform the Tribunal in writing at least every thirty days as to the status of the FCC's TRO in light of the D.C. Circuit Court's Order of March 2, 2004.

IT IS FURTHER ORDERED, that this Order is effective upon issuance.

Baton Rouge, Louisiana, this 15th day of March 2004.

Vanessa Caston LaFleur

Vanessa Caston LaFleur
Ad Hoc Administrative Law Judge

xc: Official Service List

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Service List
Docket No. - U-27571

All Commissioners
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Edmond Jordan – LPSC Staff Attorney
Arnold Chauviere – LPSC Utilities Division
Brian McManus – LPSC Economics Division

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IP- Janet Boles, The Boles Law Firm, 7908 Wrenwood Blvd., Suite A, Baton Rouge LA 70809 (225) 924-2686 Fax (225) 926-5425 mailto:ATTBBR@aol.com on behalf to CenturyTel of Southeast Louisiana, LLC, CenturyTel of Evangeline, LLC, CenturyTel of Northwest Louisiana, Inc., CenturyTel of Central Louisiana, LLC, CenturyTel of East Louisiana, LLC, CenturyTel of Ringgold, LLC, CenturyTel of Southwest Louisiana, LLC, CenturyTel of North Louisiana, LLC.

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Service List
Docket No. - U-27572

All Commissioners
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Edmond Jordan – LPSC Staff Attorney
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IP- Janet Boles, The Boles Law Firm, 7908 Wrenwood Blvd., Suite A, Baton Rouge LA 70809 (225) 924-2686 Fax (225) 926-5425 mailto:ATTBBR@aol.com on behalf to CenturyTel of Southeast Louisiana, LLC, CenturyTel of Evangeline, LLC, CenturyTel of Northwest Louisiana, Inc., CenturyTel of Central Louisiana, LLC, CenturyTel of East Louisiana, LLC, CenturyTel of Ringgold, LLC, CenturyTel of Southwest Louisiana, LLC, CenturyTel of Chatham, LLC.

Frank Ledoux, Engineering and Power Production Manger, 1314 Walker Road, Lafayette LA 70506 P: (337) 291-5858 Email: fledoux@lus.org on behalf of Lafayette Utilities System.

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BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION

DOCKET NO. 2003-AD-714

IN RE: GENERIC PROCEEDING TO REVIEW THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER

ORDER HOLDING DOCKET IN ABEYANCE IN LIGHT OF THE MARCH 2, 2004 ORDER BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

COMES NOW the Mississippi Public Service Commission ("Commission") and enters the following order to hold the above docket in abeyance, based upon the March 2, 2004 Order by the United States Circuit Court of Appeals for the District of Columbia, until further order by the Commission.

On November 21, 2003, the Commission entered its Order Closing Phase One of Docket, Establishing Procedure and Schedule for Phase Two, in which the Commission set forth a schedule for the filing of various testimonies, conducting a hearing, and the submission of briefs and proposed orders in this docket. On February 27, 2004, the Commission entered its Order in which the Commission scheduled a "hot cut" process workshop for March 17, 2004, and established a deadline of March 10, 2004, for the submission of certain information in connection with any presentation to be made by a party to the Commission at the hot cut workshop.

Subsequent to the above mentioned orders by the Commission, the United States Court of Appeals for the District of Columbia, on March 2, 2004, entered its Order in *USTA v. FCC, et al.*, Case No. 00-1012, regarding the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO"). Since the

Court Order, unless further stayed or reversed, substantially affects our proceeding to review the FCC's TRO, we make the following changes to our prior orders in this proceeding.

The Commission cancels the March 17, 2004, "hot cut" process workshop as well as the March 10, 2004 date to receive certain information regarding any presentations that parties intended to make at the hot cut workshop. The Commission holds all proceedings in this docket in abeyance until further order by the Commission. The Commission suspends the filing of any further testimony, the taking of discovery, and the submission of briefs and proposed orders as scheduled under the November 21, 2003, Order. The Commission is taking these steps in light of the D.C. Circuit Court's March 2, 2004, Order, but intends to preserve as much of the evidence and information in the record as is possible in the event it is needed in the future.

IT IS THEREFORE ORDERED, that this docket is hereby suspended and held in abeyance until further order by the Commission.

IT IS FURTHER ORDERED, that the parties are requested to inform the Commission in writing at least every thirty days as to the status of the FCC's TRO in light of the D.C. Circuit Court's Order of March 2, 2004.

IT IS FURTHER ORDERED, that this Order is effective upon issuance.

Chairman Bo Robinson voted Aye; Vice Chairman Nielsen Cochran voted Aye; and Commissioner Michael Callahan voted Aye.

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SO ORDERED by the Commission on this the 9th day of March, 2004.

MISSISSIPPI PUBLIC SERVICE COMMISSION

BO ROBINSON, Chairman

NIELSEN COCHRAN, Vice-Chairman

MICHAEL CALLAHAN, Commissioner

Attest A True Copy

BRIAN U. RAY, Executive Secretary

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133q
DOCKET NO. P-100, SUB 133s

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-100, Sub 133q In the Matter of Triennial Review Order—UNE-P	)))	ORDER REGARDING HEARINGS
Docket No. P-100, Sub 133s In the Matter of Triennial Review Order—High Capacity Loop and Transport	))))	

BY THE CHAIR: Having reviewed the comments filed by US LEC of North Carolina (US LEC), Competitive Carriers of the Southeast, Inc. (CompSouth), the Public Staff – North Carolina Utilities Commission (Public Staff) and BellSouth Telecommunications, Inc. (BellSouth), the Chair concludes that the Commission will proceed with hearings in these dockets on Tuesday, March 23, 2004 under the revised terms described below.

In light of the March 2, 2004 opinion of the United States Court of Appeals for the District of Columbia Circuit in *United State Telecom Assoc. v. FCC* (*USTA II*), vacating and remanding portions of the Federal Communications Commission's (FCC) August 21, 2003 *Triennial Review Order* (TRO), the Commission sought advice from the parties as to the decision's effect on the scheduled hearings, which were set to begin just three weeks after the Court's opinion was issued. In *USTA II*, the Court vacated the FCC's delegation to the states of decision-making authority over impairment determinations necessary to find that Incumbent Local Exchange Carriers (ILECs) are obligated under § 251 of the federal Telecommunications Act of 1996 (the Act) to provide certain unbundled network elements to competing telecommunications carriers. The Court also vacated and remanded the FCC's nationwide impairment determinations with respect to mass market switching and certain dedicated transport elements (DS1, DS3, and dark fiber). In addition, the Court vacated the FCC's decision that the availability of tariffed special access services not be considered as part of the impairment analysis.

Predictably, the parties who responded to the Commission's request for comments had differing views. Though asserting that it is prepared to move forward with the hearings, BellSouth questions the wisdom of doing so as a matter of resource deployment for the Commission and the parties, given the current judicial uncertainty. Both the Public Staff and BellSouth urge the Commission to suspend and hold the

proceedings in abeyance in light of the Court's decision. They generally agree that the stated holdings of the Court place the legal rationale and foundation of the TRO in question and create much doubt as to whether the parties' present preparation and testimony will actually address the issues to be resolved, even if the Commission is ultimately called upon for the type of fact-finding and advisory assistance endorsed in *USTA II*. The Public Staff points out that even if the hearings are held as scheduled, there is a real likelihood that the Commission will have to revisit controversial issues in subsequent hearings following final resolution of all petitions for rehearing and appeals in *USTA II*. According to the Public Staff, such subsequent hearings will represent an additional time and resource burden on the Commission and the parties.

On the other hand, both US LEC and CompSouth request that the Commission proceed with the hearings as scheduled. Their comments note that most of the discovery has been completed in both dockets and that three rounds of pre-filed testimony in the UNE-P switching case and two rounds in the Loop and Transport case have been completed. They argue that the remaining hearing and post-hearing tasks represent a smaller portion of the total TRO work than all the work already completed prior to hearing. US LEC and CompSouth agree that proceeding with the hearings is a more efficient and effective use of time and resources for both the parties and the Commission than delaying or continuing the hearings indefinitely. US LEC points out that continuing the hearings could lead to further rounds of discovery that would increase the TRO workload. While the *USTA II* court found the FCC's delegation of decision-making authority to be unlawful, US LEC and CompSouth note that the Court validated the FCC's use of state commissions for fact-gathering and advice-giving. Based on the Court's sanctioning of fact-gathering and advice-giving roles for state commissions, US LEC and CompSouth argue that it is highly likely the FCC will ultimately call on state commissions to assist with granular, market-specific fact-gathering and to provide expert advice as a part of the FCC's decision-making process. Going forward with the scheduled proceedings may reduce the workload associated with any future FCC-imposed deadlines for fact-gathering or advice-giving with regard to the state of telecommunications competition in North Carolina and could materially shorten the time it takes the FCC to complete the granular review necessary to make impairment determinations for markets in North Carolina. Both proponents of proceeding as scheduled emphasize that fact-gathering by the Commission as to the status of competition in North Carolina will be critical to any decision on access to unbundled network elements, regardless of whether the decision is made by the Commission or the FCC. Therefore, US LEC and CompSouth contend strongly that proceeding with the scheduled hearings will not be a waste of time even if the Commission should later need to re-open the hearings to gather additional facts in light of any post-*USTA II* changes in the TRO's impairment determinations.

The arguments on both sides are nearly equally compelling. These arguments, combined with the current regulatory, judicial, and market uncertainty, render this procedural decision extraordinarily difficult. The dilemma is exacerbated by the sharp split among members of the FCC, both as to the substantive merits of the TRO itself and as to the procedural path that should be followed in the wake of the Court's

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decision. The highly-charged differences among these bright people of good will as to how the law should be interpreted in the public interest mirror the national clash of conflicting positions and signal the importance and difficulty of the underlying policy and legal issues. It is critical that regulatory commissions and markets not become further immobilized in the face of the confusion and it is incumbent on this Commission to exert all efforts to bring some clarity to the situation, even if that is measured only in incremental steps towards better understanding of the issues. Thus, the Chair is persuaded that good cause exists to proceed with the hearings under the terms announced herein. Holding such hearings will be an efficient use of time for both the Commission and the parties, who have already prepared their cases and put a great deal of time and effort in meeting the stringent deadlines imposed by the Commission's October 22, 2003 Procedural Order. The Chair also believes that:

- Regardless of whether *USTA II* stands or is modified or reversed, the FCC will need to call on the fact-gathering resources and capabilities of the Commission to determine the status of telecommunications competition in North Carolina;

- Factual evidence introduced at these hearings and at any subsequent hearings will have relevance to the decisions the FCC or this Commission will ultimately make regarding impai'ment and access to unbundled network elements; and

- There is benefit in maintaining forward movement in the fact-finding process and in having conversation about the current status of competition in North Carolina's geographic markets.

Accordingly, the sooner the Commission is more educated to the parties' views, the better the Commission can serve the interests of the parties, the Commission, and---most significantly---the public of North Carolina. This is true both in terms of efficiency and quality of effort in gathering facts and, if and when asked, in providing sound advice to the FCC. The views in which we are particularly interested include the parties' positions regarding the requirements and effects of the TRO, the practical results and ramifications of the *USTA II* opinion, future expectations related to resolution of any *USTA II* appeals, and other matters which involve TRO-related issues that may come before the Commission prior to final resolution of *USTA II* and the TRO. Finally, and of equal importance, the Chair believes that these hearings should help inform the Commission as to the current status of competition in North Carolina's geographic markets and that such information will be valuable to the Commission in exercising its authority regarding unbundling under N.C.G.S. § 62-110(f1) and § 271 of the Act.

Accordingly, the Chair concludes that:

1. The hearings in both Docket Nos. P-100, Sub 133q and P-100, Sub 133s will convene at 9:00 a.m., on Tuesday, March 23, 2004, in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina;

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2. The Commission will enter the pre-filed testimony submitted by the parties into the record and it shall be received subject to the right of cross-examination by any active party of record. Any and all cross-examination of witnesses shall occur at such later time and place as is ordered by the Commission. Witnesses need not be present at these hearings. The parties shall be responsible for identifying the pre-filed testimony to be received and for providing copies to the court reporter;

3. After the pre-filed testimony has been received, parties through their counsel will address the Commission regarding their positions as to such matters referenced hereinabove. The parties are urged to confer with a view toward determining whether those having common interests can present unified statements``` The parties shall also be prepared to discuss procedural matters in these dockets, including but not limited to the need to continue or close the discovery period, the completion of outstanding discovery, and anticipated actions and motions regarding matters, proceedings and dockets believed to be affected by TRO and *USTA II*. In addition, the parties are requested to address the Public Staff's comment directed to maintaining the status quo regarding agreements that may be affected by issues subject to appeal in *USTA II*. The parties should be prepared to inform the Commission as to their views of the current status of competition in North Carolina's geographic markets and to respond to the Commission's questions;

4. Pending the hearings on March 23, 2004, the Commission suspends its procedure for hearing motions to compel and will not hear any such motions prior to the hearing. Also pending said hearings, the parties are relieved from the requirement imposed by Commission Procedural Order dated October 22, 2003 to provide a proposed order of witnesses and approximate cross-examination times; and

5. Pending further order from the Commission, the parties shall continue to remain available for hearings or other proceedings in these dockets from Monday, May 10, 2004, at 1:00 p.m. through Friday, May 14, 2004, at the Commission Hearing Room and as previously reserved for "overflow hearings."

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of March, 2004.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

tb031204.01

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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Motion to Hold Proceedings in Abeyance in Docket Nos. 2003-326-C and 2003-327-C to be served upon the following this March 17, 2004:

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General Counsel
S. C. Public Service Commission
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(PSC Staff)
(Electronic Mail)

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