

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE IMPLEMENTATION	)	ORDER CLOSING DOCKET
OF THE FEDERAL COMMUNICATIONS	)	
COMMISSION'S TRIENNIAL REVIEW ORDER--	)	TC03-178
90 DAY PROCEEDING	)	

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC found that, on a national level, "requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers." *Order* at ¶ 419.

However, the FCC went on to find that "special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets." *Id.* Based on this finding, the FCC stated that it will allow state commissions "90 days to petition the [FCC] to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers." *Id.* In addition, the FCC found that "[a]fter the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECS are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria." *Order* at ¶ 455.

Based on these provisions of the FCC Order, the Public Utilities Commission (Commission) requested written comments from any interested person or entity regarding how the Commission should proceed with this issue. The Commission requested comments, to be filed on or before September 29, 2003, on the following issues:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.
2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?
3. If a proceeding is held, do you intend to participate?
4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

5. Please provide any additional comments the Commission should consider regarding this issue.

The Commission received comments from Qwest Corporation, AT&T Communications of the Midwest, Inc., Midcontinent Communications, and the South Dakota Telecommunications Association. No company indicated that it intended to challenge the presumption and no company requested that the Commission hold proceedings in the event no one challenged the presumption. Based on these comments, the Commission set a deadline of October 14, 2003, for any person or entity to file a petition with the Commission rebutting the FCC's finding of non-impairment. If no such petition was filed, the Commission stated that it may choose to not hold any proceedings regarding this issue at this time. No petitions were filed.

At its October 16, 2003, meeting, the Commission considered how to proceed with this docket. No one objected to the Commission closing this docket. Based on the lack of objections and the lack of any person seeking to rebut the FCC's finding of non-impairment, the Commission voted to not hold any proceedings at this time regarding whether to petition the FCC to rebut the national finding in individual markets. It is therefore

ORDERED, that no proceedings shall be held at this time regarding whether to petition the FCC to rebut the national finding of non-impairment for unbundled local circuit switching serving enterprise customers; and it is

FURTHER ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 28th day of October, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melaine Koller</u>
Date:	<u>10/29/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner