

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of The Commission,) Application No. C-3025
on its own motion, seeking to)
conduct a 90-day proceeding as)
contemplated by the Federal Com-) ORDER CLOSING DOCKET
munications Commission in its)
Triennial Review order adopting)
new rules for network unbundling)
obligations.) Entered: July 7, 2004

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On October 7, 2003, the Nebraska Public Service Commission (Commission) opened the above captioned docket pursuant to a Federal Communications Commission (FCC) order¹ granting state commissions 90 days to rebut the presumption of "no impairment" as it affects enterprise market switching in an individual state.

The rebuttable national presumption, as provided by the FCC, was that local circuit switching for business customers served by high-capacity loops would no longer be required to be made available as a unbundled network element (UNE.) The FCC described this as an "enterprise market" and found that competition in these enterprise markets would not be impaired if the local switching UNE were unavailable.

The Commission, under this docket, indicated it would only proceed with a review if a competitive local exchange carrier (CLEC) filed a petition and evidence indicating that Commission consideration is required. No petitions were filed.

In light of the decision by the Court of Appeals of the District of Columbia² which vacated the FCC delegation of authority to state commissions over impairment determinations for mass market switching, such review is now moot.

¹ *Review of the Section 251 Unbundling obligation of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunication Capability*, 68 Fed. Reg. 52,276 (Sept. 2, 2003) (codified in 47 C.F.R pt. 51).

² *US Tele. Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), stay denied, No. 00-1012 (D.C. Cir. June 4, 2004)

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that in consideration thereof, Application No. C-3025 should be, and is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of July, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director