

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of The Commission,) Application No. C-3026
on its own motion, seeking to)
conduct a 9-month proceeding as)
contemplated by the Federal Com-) ORDER SUSPENDING 9-MONTH
munications Commission in its) PROCEEDING
Triennial Review order adopting)
new rules for network unbundling)
obligations.) Entered: March 23, 2004

BY THE COMMISSION:

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

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) released its decision in *United States Telecom Association v. Federal Communications Commission*, Decision 00-1012, regarding appeals of the Federal Communications Commission's (FCC) Triennial Review Order (TRO). Among other things, the D.C. Circuit vacated as unlawful the FCC's subdelegation of authority to state commissions to determine impairment for mass market switching and certain transport elements. The D.C. Circuit also vacated and remanded as unlawful the FCC's nationwide impairment determinations with respect to these elements. For those portions of the TRO to be vacated, the D.C. Circuit stayed the vacatur until "no later than the later of: (1) denial of any petition for rehearing en banc, or (2) 60 days from March 2, 2004."

On March 17, 2004, Qwest Corporation (Qwest) filed a Motion requesting the Nebraska Public Service Commission (Commission) to indefinitely suspend the current TRO proceedings in Nebraska. On March 18, Alltel Communications filed a letter indicating its support for granting a stay. Both Qwest and Alltel indicated that if a stay were to be granted by the Commission, neither party would file a petition with the FCC claiming "failure to act" by this Commission.

On March 22, 2004, MCI metro Access Transmission Services LLC (MCI metro) and MCI WorldCom Communications, Inc. (MCIWCOM), (collectively, MCI) filed its resistance to Qwest's Motion for Stay. Finally, on March 22, 2004, AT&T Communications of the Midwest filed its Opposition to Qwest's Motion to Stay Procedural Schedule and Discovery.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-3026

PAGE 2

Based upon our review of the pleadings and the unsettled legal environment regarding this matter, we find that the procedural schedule in this proceeding should be suspended indefinitely. Therefore, all previously set forth procedural deadlines and other requirements, including discovery, are hereby postponed until further order of this Commission.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the 9-month proceeding should be suspended until further order.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of March, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson
Anne C. Boyle
Tom Johnson

Chairman

Gerald L. Vap

ATTEST:

Ad S. Pollack
Executive Director

//s//Gerald L. Vap