

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	<b>)</b>	<b>ORDER REQUESTING</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	<b>)</b>	<b>COMMENTS</b>
<b>COMMISSION'S TRIENNIAL REVIEW ORDER--</b>	<b>)</b>	
<b>90 DAY PROCEEDING</b>	<b>)</b>	<b>TC03-178</b>

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. The FCC based this finding on the following:

The evidence in our record establishes that, in most areas, competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities). The facilities used to provide DS1 capacity or above services to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with "hot cuts" -- the manual process by which customer lines are migrated to competitor switches. Enterprise customers also generally offer increased revenue opportunities and are more willing to enter long-term contracts, allowing competitive LECs a greater ability to recover the nonrecurring costs associated with providing service using their own switches.

*Order* at ¶ 421.

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) is requesting written comments from any interested person or entity regarding how the Commission should proceed with this issue. The Commission would

like comments from each person or entity 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.

All written comments must be received by the Commission on or before September 29, 2003. Based on the written comments the Commission shall determine how to proceed. It is therefore

ORDERED, that any interested person or entity shall file written comments on or before September 29, 2003, regarding the issues listed above.

Dated at Pierre, South Dakota, this 17th day of September, 2003.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>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.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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ROBERT K. SAHR, Chairman

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GARY HANSON, Commissioner

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JAMES A. BURG, Commissioner