

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Request for Stay of Order for the July 2, 2004 |) | |
| Deadline for State Commission Determinations of |) | CC Docket No. 01-338 |
| Impairment Pursuant to the <i>Triennial Review</i> |) | |
| <i>Order</i> |) | |
| |) | |

ORDER

Adopted: July 7, 2004

Released: July 8, 2004

By the Chief, Competition Policy Division:

1. On August 21, 2003 the Commission released its *Triennial Review Order* implementing the unbundling requirements in section 251 of the Communications Act of 1934, as amended (the Act), including a delegation of authority to state commissions to perform certain analyses.¹ On March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision vacating the Commission's delegation of authority to state commissions.² On March 16, 2004, Alaska Communications Systems Group, Inc. (ACS) filed a request regarding state implementation of the *Triennial Review Order*.³ ACS requested that the Commission stay the July 2, 2004 deadline for state commission determinations regarding impairment, pursuant to the *Triennial Review Order*. Because the D.C. Circuit found this delegation of authority to be unlawful and vacated this delegation (its mandate issuing on June 16, 2004),⁴ state commissions no longer retain the authority delegated to them by the Commission to make impairment decisions, pursuant to section 251(d)(2) of the Act. Therefore, we find the ACS request regarding state commission determinations of impairment to be moot.

2. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 5(c) of the Communications Act

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *aff'd in part, remanded in part, vacated in part*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

² *See USTA II*, 359 F.3d 554.

³ Alaska Communications Systems Group, Inc., Request for Stay of Order, CC Docket No. 01-338 (filed March 16, 2004).

⁴ *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (April 13, 2004) (order granting stay of mandate through June 15, 2004); *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (June 4, 2004) (order denying further stay of mandate). A group of competitive local exchange carriers and a number of state commissions then filed applications with the Supreme Court to stay the mandate. Chief Justice Rehnquist denied those applications on June 14, 2004.

of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request for stay of order for the July 2, 2004 deadline for state commission determinations of impairment, filed by Alaska Communications Systems Group, Inc. on March 16, 2004, is DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division