

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IMPLEMENTATION OF THE REQUIREMENTS)	
OF THE FEDERAL COMMUNICATIONS)	Docket No. 3550
COMMISSION'S TRIENNIAL REVIEW ORDER)	
)	

EXPEDITED MOTION OF VERIZON RHODE ISLAND TO STAY THIS PROCEEDING IMPLEMENTING THE FCC'S TRIENNIAL REVIEW ORDER

Verizon Rhode Island ("Verizon RI") hereby moves that the Commission immediately stay further proceedings pursuant to the Federal Communication Commission ("FCC") *Triennial Review Order* ("TRO") delegation of UNE impairment decision-making authority, in light of yesterday's ruling by the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*, No. 00-1012 (decided March 2, 2004) ("Opinion"). Because the Opinion invalidates both the FCC's delegation of authority to determine whether CLECs are impaired without access to unbundled elements and the substantive tests that the FCC promulgated for making such determinations, continuing these proceedings is inefficient for both the parties and the Commission. Given the volume of pending activity, Verizon RI brings this motion so that all parties can be expeditiously apprised of the schedule going forward in this docket.

The Court of Appeals found that the FCC's delegation of authority to this Commission to "determine whether CLECs are impaired without access to network elements" was unlawful.¹

¹ Opinion at 18.

This ruling applies to *all* elements of the “granular” impairment cases presently before this Commission – dedicated transport and mass market switching.² Moreover, the Opinion also vacated the FCC’s underlying nationwide impairment standards for mass market switching and the dedicated transport elements (DS1, DS3 and dark fiber), and remanded those standards to the FCC for further examination and revision in conformance with the Opinion.³ Therefore, even if the states’ delegated authority to act were not vacated, the standards upon which the state cases were predicated have been invalidated.⁴

Finally, the Court temporarily stayed its vacatur (delaying issuance of its mandate) until the *later* of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from March 2, 2004. While this gives the FCC 60 days to revise both its process and its standards, it would be feckless to continue *these* proceedings, which exist under an unlawful delegation and are aimed at the wrong substantive tests. Given the tremendous amount of work which remains to be accomplished, the Commission should immediately stay further proceedings in this docket for a minimum of 60 days, or at least until such time as it is clear whether there will be any continuing role for the states following a determination on remand by the FCC.

This stay should extend to all currently scheduled dates, including the dates for submitting further testimony and evidentiary hearings. Because these dates are rapidly

² The Court vacated “in particular” the FCC’s subdelegation schemes for mass market switching and dedicated transport elements, Opinion at 18, but its rationale clearly extended to the entire range of authority delegated to the states under the so-called “nine month case.”

³ Opinion at 22, 28 and 61.

⁴ The Commission should move forward with its consideration of the proposed batch hot cuts process. The Opinion nowhere suggests that state commissions may not proceed on this issue. Likewise, on the closely related issue of rates for “individual” hot cuts, the Commission should proceed with its investigation in Docket No. 2861 as scheduled.

approaching, Verizon asks the Commission to shorten the time for filing objections to this motion to Friday, March 5, pursuant to Rule 1.15(c) of the Commission's Rules of Practice and Procedure, and for an expedited ruling on this motion.

Respectfully submitted,

VERIZON RHODE ISLAND

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