

ORDER NO. 04-351

ENTERED JUN 23 2004

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1100

|                                         |   |       |
|-----------------------------------------|---|-------|
| In the Matter of the Investigation to   | ) |       |
| Determine, Pursuant to Order of the     | ) |       |
| Federal Communications Commission,      | ) |       |
| Whether Impairment Exists in Particular | ) | ORDER |
| Markets if Local Circuit Switching for  | ) |       |
| Mass Market Customers is No Longer      | ) |       |
| Available as an Unbundled Network       | ) |       |
| Element.                                | ) |       |

**DISPOSITION: DOCKET CLOSED**

On June 17, 2004, a telephone conference was held in this matter. At the conference, the parties discussed whether this proceeding should be continued in light of the decision by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) to allow its mandate in *United States Telecom Ass'n v. FCC (USTA II)* to take effect on June 15, 2004.<sup>1</sup> In that decision, the Court vacated and remanded certain rules adopted by the Federal Communications Commission (FCC) in its Triennial Review Order (*TRO*) regarding the obligations of incumbent local exchange carriers to provide unbundled network elements to competitive carriers. More importantly, for purposes of this docket, the Court also invalidated that portion of the *TRO* which delegates to the States the responsibility to determine if impairment exists in particular markets if local circuit switching for mass market customers is not available as an unbundled network element.

None of the parties participating in the conference indicated that they will be prejudiced if this docket is closed. Those parties who commented on the issue indicated that they were primarily concerned with the ability of the Commission to initiate a new docket without delay if the FCC issues revised unbundling rules or other circumstances arise requiring Commission action.

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<sup>1</sup>*United States Telecom Ass'n v. FCC*, No. 00-1012, 2004 WL 374262 (D.C. Cir. March 2, 2004) (*USTA II*).

Given that the *USTA II* mandate has taken effect, there is no reason to continue this proceeding. If events arise requiring Commission action, a party may request that a new docket be opened.

**ORDER**

IT IS THEREFORE ORDERED that this docket is closed.

Made, entered, and effective \_\_\_\_\_.

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**Lee Beyer**  
Chairman

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**John Savage**  
Commissioner

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**Ray Baum**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.