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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1110

In the Matter of	)	
	)	
OREGON TELECOM, INC., and UNITED	)	
COMMUNICATIONS, INC., dba UNICOM	)	ORDER
	)	
Petition Regarding Access to Unbundled Local	)	
Switching to Serve Enterprise Market Customers.	)	

DISPOSITION: DISMISSED WITHOUT PREJUDICE; DOCKET CLOSED

On August 21, 2003, the Federal Communications Commission (FCC) issued Order FCC 03-36, commonly referred to as the Triennial Review Order (TRO).<sup>1</sup> This FCC Order, 485 pages in length exclusive of attachments and separate opinions, set forth numerous findings with respect to the competitive telecommunications marketplace. The TRO also provided certain mechanisms and mandates to the state public utility commissions with respect to applying or challenging these nationwide findings at the state level.

Among the TRO’s specific findings was that “there are few barriers to deploying competitive switches to serve customers in the enterprise market at the DS1 capacity and above, and thus no operational or economic impairment on a national basis.”<sup>2</sup> As a result, the FCC mandated that, unless state commissions sought a waiver from the FCC within 90 days of the date the TRO was published in the *Federal Register*, the switching unbundled network element (UNE), which competitive local exchange carriers (CLECs) have been purchasing from incumbent local exchange carriers (ILECs), would no longer be required to be made available to them by ILECs. Therefore, if a state commission wished to investigate whether the national “no impairment” finding did not apply on the state level, it must be by “undertaking a more granular analysis utilizing the economic and operational criteria contained herein.”<sup>3</sup>

At its regular public meeting held on the morning of September 23, 2003, the Public Utility Commission of Oregon (Commission) granted the Petition of Oregon Telecom, Inc., and United Communications, Inc., dba Unicom (Petitioners), to open an investigation as to whether CLECs’ ability to compete in serving enterprise customers in Oregon markets is impaired without access to unbundled switching provisioned by ILECs.

<sup>1</sup> *In the Matter of 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 and 98-147.

<sup>2</sup> TRO, p. 280, ¶451.

<sup>3</sup> *Id.*, pp. 283-4, ¶455.

Prehearing conferences were held in order to establish the procedures and schedule for the investigation of the issues raised, including the gathering of data with respect to the nature and extent of local exchange telecommunications competition in Oregon. Numerous parties, including both ILECs and CLECs, participated in the prehearing phases of this case.

On March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit issued its Opinion in *USTA v. FCC* (Order), invalidating many of the underpinnings of the TRO on which this docket was based. The Court stayed the effective date of its Order to allow parties time to seek rehearing or review of the Court's opinion.

On June 18, 2004, Petitioners filed a letter with the Commission seeking to withdraw their Petition without prejudice and to close the docket. No party has objected to the Petitioners' request.

**ORDER**

IT IS ORDERED that:

1. The Petition of Oregon Telecom, Inc., and United Communications, Inc., dba Unicom, is hereby DISMISSED WITHOUT PREJUDICE; and
2. 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.