

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of a Proceeding to Address	)	<u>DOCKET NO. 03-999-04</u>
Actions Necessary to Respond to the Federal	)	
Communications Commission Triennial	)	<u>ORDER GRANTING STAY</u>
Review Order Released August 21, 2003	)	

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ISSUED: April 20, 2004

By The Commission:

On April 7, 2004, Qwest Corporation (Qwest) filed a Motion to suspend our previously issued Procedural Order and to revise our Procedural Order. Qwest's motion and argument is based on the March 2, 2004, decision of the Eighth Circuit Court of Appeals entered in *United States Telecom Associations vs. Federal Communications Commission*, No. 00-1012. In that decision, the court ruled that the Federal Communications Commission (FCC) erred in its interpretation of the impairment standard, by which one determines which incumbent's unbundled network elements (UNEs) should be made available to other telecommunications carriers under obligations imposed by the 1996 Federal Telecommunications Act. The court also determined that the FCC had erred in concluding that the FCC could delegate to state utility commissions the tasks of determining whether certain UNEs should be made available in specific markets (tasks which are the object/purpose of this docket). The court ruled that such tasks must be performed by the FCC; allowing, however, that the FCC could seek input from the states in the FCC's determinations.

Based on the Eighth Circuit Court's rulings, Qwest proposes that we stay these proceedings and revise our procedural order to set a scheduling conference on or about July 12, 2004. We would then review the situation and determine whether a revised schedule should be pursued to resolve what issues may remain for us, in state proceedings, to address. Qwest represents that a 90 day stay is not opposed by the Division of Public Utilities, the Committee of Consumer Service, and Covad. Qwest's proposal is opposed by AT&T Communications of the Mountain States and TCG Utah (AT&T), filing April 13, 2004, and WorldCom Inc., filing April 14, 2004. Each argues that, although the court rulings overturn the process envisioned by the FCC and contemplated in these proceedings, the court stayed its

decision for a period of 60 days. Hence, they argue, proceedings for states to make the contemplated determinations may proceed. Both AT&T and WorldCom argue that the court's stay may be extended beyond the 60 day period and that FCC Commissioners have expressed an intent to seek appellate review of the Eighth Circuit Court's decision to the US Supreme Court.

We conclude that it is appropriate to grant the requested stay and review the matter at a later date. This will permit us and interested parties to better assess the appellate process being pursued and its affect on our future proceedings. We can set an appropriate schedule for our proceedings as the impact of the court's decision is better understood and clarified relative to the actions which state utility commissions may take and what information and determinations we ought to pursue. We do not agree with AT&T and WorldCom that we should expend our and others' resources in blind pursuit of resolutions which the federal court of appeals has already concluded would be in error. We believe it appropriate to stay our proceedings until we can have greater certainty that the court's rulings would have no impact through the completion of the tasks and implementation of our determinations contemplated in these proceedings. We also hold a different view, from that of AT&T and WorldCom, as to the usefulness of proceeding with these proceedings in anticipation of the Eighth Circuit Court's decision surviving appeal. If the court's decision is upheld on further appeal, we believe our role and the type of information that we could provide to the FCC, in its determination of what UNEs should be made available, could be significantly different from the original objectives contemplated in these proceedings.

Wherefore, we enter this ORDER staying these proceedings for 90 days from the date of this order or until further, earlier, order of the Commission. We will send a future notice of a scheduling conference after there is greater clarity on the appellate process and what stays may be in effect.

DATED at Salt Lake City, Utah, this 20<sup>th</sup> day of April, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

#<sub>GW</sub> 37940