

## DISTRICT APPEALS COURT TRO DECISION ORDER

The Court vacated the Commission's subdelegation to state commissions of decision-making authority over impairment determinations, which in the context of this Order applies to the subdelegation scheme established for mass market switching and certain dedicated transport elements (DS1, DS3, and dark fiber). The Court also vacated and remanded the Commission's nationwide impairment determinations with respect to these elements.

The Court vacated the Commission's decision not to take into account availability of tariffed special access services when conducting the impairment analysis, and therefore vacated and remanded the decision that wireless carriers are impaired without unbundled access to ILEC dedicated transport.

The Court vacated the Commission's distinction between qualifying and non-qualifying services, and remanded (but did not vacate) the decision that competing carriers are not entitled to unbundled EELs for provision of long distance exchange service.

The Court remanded the Commission's decision to exclude entrance facilities from the definition of "network element" for further development of the record to allow proper judicial review.

The Court also stayed its own mandate until the later of 60 days [May 1, 2004] or the denial of any petitions for rehearing.

### STATEMENT OF FCC COMMISSIONERS MICHEAL J. COPPS, KEVIN J. MARTIN, AND JONATHAN S. ADELSTEIN ON THE D.C. CIRCUIT'S DECISION TO ELIMINATE THE FCC'S RULES

We are disappointed in the Court's decision to eliminate the Commission's rules requiring incumbent carriers to open their legacy voice networks to competition.

We believe that the rules preserve competition in a manner that is lawful, and recognize the important role that states have historically played. Today over 50 million Americans benefit from the new local and

EXHIBIT <u>6</u>	Telecommunications	Document consists of <u>3</u> pages
<input checked="" type="checkbox"/>	Entire document provided.	
<input type="checkbox"/>	Due to size limitations, pages ____ through ____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).		
Meeting Date <u>4-2-04</u>		

**long distance one-rate plans offered by both incumbents and competitors that are a result of our rules.**

**In the past, the Supreme Court has made clear that the FCC has significant discretion in ensuring that the local telephone markets are open to competition.**

**\*\*\*\*\*We have instructed our General Counsel to seek a stay and to appeal the D.C. Circuit decision to the Supreme Court so that we can clarify tension with the Supreme Court's past decisions.**

**STATEMENT OF FCC CHAIRMAN MICHAEL K. POWELL  
REGARDING THE D.C. CIRCUIT DECISION ON TRIENNIAL  
REVIEW**

**Today's court ruling upheld the Commission's decision to spur the development and deployment of vital broadband services to all Americans.**

**As a result, our citizens will enjoy the increased capabilities, innovation, and lower prices of advanced wireline broadband services for decades to come.**

**I dissented from the majority's decision on local telephone competition because it was inconsistent with the law and would result in years of regulatory uncertainty and unrealized consumer promise.**

**Today, the court agreed and restored the opportunity to bring about new advanced services and true competition that will bring consumers choice and innovation.**

**\*\*\*\*\*My fellow Commissioners and I need to expeditiously get to work to produce a set of judicially sound rules, once and for all. I have already directed the staff to begin preparing new rules that will provide the sorely needed clarity and guidance essential to bringing consumers the benefits they were promised and deserve.**

## **NOW, HOW DOES THIS AFFECT NEVADA?**

### **Sprint mass market switching**

**As a result of the District Court's Order the commission vacated the proceeding. Since the District Court's Order vacated and remanded the FCC's national impairment determinations.**

**Verizon is the only company to file a petition with the commission**

**To bring its interconnection agreements in compliance with the FCC's TRO order. Basically to remove those unbundled network elements that the FCC found no impairment, if not provided by the ILECs. However, the District Court's Order vacated and/or remanded much of the FCC's Order.**

**If the courts decision remains, CLECs will need to enter into negotiations with the ILECs to reach fair commercial agreements for determining acceptable terms for UNEs.**

**CLECs also have the option of providing service using their own facilities.**