

**Attachments**  
**to**  
**AT&T's Opposition to Verizon's Motion to Stay**



# NEWS

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**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, D. C. 20554**

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FOR IMMEDIATE RELEASE:  
March 3, 2004

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**STATEMENT OF FCC COMMISSIONERS MICHAEL 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 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.

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National Association of Regulatory Utility Commissioners  
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## P R E S S   R E L E A S E

FOR IMMEDIATE RELEASE  
March 2, 2003

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### **NARUC EXPECTS TO SEEK CERTIORARI, CALLS FOR FCC TO FILE ITS OWN APPEAL**

Washington, D.C. -- Today, the District of Columbia Circuit released its decision vacating several significant aspects of the FCC's Triennial Review Order. The Opinion, among other things, finds that the FCC unlawfully delegated authority to the States - focusing on two points: its effective finding that the FCC's findings were "provisional" and thus did not comport with its statutory duty to act; and its subsequent discussion of the "purported delegation of the Commission's own authority." The decision also vacates the FCC's finding of impairment with respect to mass market switching.

NARUC President Stan Wise said: "Of course we are still reviewing the Order, but, if for no other reason, the rationale presented for vacating the State delegation, certainly suggests the FCC should immediately seek certiorari of this decision. Assuming the FCC's national findings meet the requirements of the Act, the FCC's delegation is permissible but not required, to allow further State action under a plain reading of the Act. While we are still digesting the decision, at this point, NARUC expects to seek review of this decision."

Commissioner Robert Nelson of the Michigan PSC and Chair of the NARUC Telecommunications Committee indicated that "The state commissions throughout this country have spent considerable time and effort conducting hearings, reviewing documents and analyzing records because the D.C. Circuit two years ago called for a granular analysis of the state of local competition in each telephone market. We believe we have fulfilled the original mandate of the Court and are dismayed that that this opinion concludes that the States should not undertake this role. If appropriate, we will assist the FCC in the determinations they will have to make pursuant to today's ruling."

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*The National Association of Regulatory Utility Commissioners is a non-profit organization founded in 1889. Its members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate telecommunications, energy, and water utilities. NARUC represents the interests of State public utility commissions before the three branches of the Federal government and the Independent Federal agencies.*

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**MPSC Supports Appeal of Local Phone Competition Court Ruling**

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**March 3, 2004**

The Michigan Public Service Commission (MPSC) today issued a statement in support of the majority of the Federal Communications Commission's (FCC) decision to instruct their General Counsel to seek a stay and to appeal to the Supreme Court a recent D.C. Circuit decision. The decision vacated the rules the FCC promulgated last year. The vacated FCC rules allowed states to determine when local telephone competition is sufficient in a given market to remove requirements on SBC and Verizon to make elements of their network available to competitors at certain prices.

"These requirements have allowed Michigan ratepayers to experience the benefits of one of the most competitive local telephone markets in the United States," said MPSC Chair J. Peter Lark. "We believe it is imperative that the states and the FCC seek a ruling from the highest court of the land on this important issue," said Chair Lark.

The MPSC will be working with the National Association of Regulatory Utility Commissioners (NARUC) on the appeal of the ruling.

NARUC is a non-profit organization founded in 1889 and its members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate the activities of telecommunications, energy, and water utilities.

The MPSC is an agency within the Department of Labor & Economic Growth.

**###**

Today the United States Court of Appeals, District of Columbia Circuit, overturned the Federal Communications Commission (FCC) decision known as the Triennial Review Order. The following statement on the decision can be attributed to Timothy Hay, President of the National Association of State Utility Consumer Advocates (NASUCA) and Consumer Advocate for the State of Nevada:

“Given the D.C. Circuit’s 2002 ruling in *USTA v. FCC*, it comes as no surprise that the Court has overturned the FCC’s controversial Triennial Review Order. The Court’s decision, however, once again throws consumers, the industry and regulators into a morass of uncertainty, and puts at risk the meager competitive gains in local telephone service seen by residential and small business consumers in the last two years. NASUCA strongly urges the FCC to appeal the Circuit Court decision to the United States Supreme Court for a final word on these crucial issues.”

“The Circuit Court also found that NASUCA lacks standing to represent consumer interests in federal court. The grounds cited by the Court were not raised by any party to the appeal, contradict the very purpose for which NASUCA was created, and would deny consumers representation in federal court. NASUCA is reviewing its options on this specific issue crucial to consumers.”

For more information or additional comment from NASUCA, please contact Charles Acquard, Executive Director of NASUCA at (301) 589-6313 or David Bergmann, Chair of the NASUCA Telecommunications Committee at (614) 466-8574.

**About the National Association of State Utility Consumer Advocates (NASUCA):**

The National Association of State Utility Consumer Advocates (NASUCA) is a non-profit, national association organized in 1979, whose members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA members operate independently from state utility commissions, primarily as advocates for residential ratepayers, although some members also represent small business ratepayers.

STATE OF NEW YORK

# Public Service Commission

William M. Flynn, Chairman

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FOR RELEASE: IMMEDIATELY

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March 3, 2004

## Statement from NYPSC Chairman William M. Flynn

"Competition in New York's telecommunications market has delivered important benefits to millions of consumers, and this Commission has played a crucial role in promoting the goals of the Telecommunications Act of 1996.

"Yesterday's decision by the U.S. Court of Appeals for the District of Columbia reversed the decision-making authority of states delegated to them by the FCC in the Triennial Review Order (TRO). However, the Court recognized that the FCC may turn to states for factual information, advice and policy recommendations. The New York State Department of Public Service, industry representatives and other interested parties have already made significant progress in developing the underlying factual record that will be needed to analyze the issues set forth in the TRO and left standing by the Court.

"Therefore, we will continue to be actively engaged in gathering relevant data and factual information as part of our analysis of the state of the competitive market in New York. At the end of the day, no matter who makes the ultimate decision – whether it is the FCC or the states – this factual data and analysis will be a critical component of our efforts to advance the competitive market within the framework articulated by the FCC and the Court."