

March 2, 2004

**AT&T RESPONSE TO D.C. CIRCUIT  
TRIENNIAL REVIEW ORDER DECISION**

*(Background: Today the D.C. Circuit handed down its decision on the FCC's Triennial Review Order. The following may be attributed to Jim Cicconi, AT&T general counsel.)*

At a time when consumers and small business owners are just beginning to realize the benefits of competition, the D.C. Circuit today held up a stop sign and halted eight years of progress. This decision is not in the public interest, but is instead in the interest of four Bell monopolies.

After arduous months of compiling a full and detailed record, the FCC issued a decision that it felt complied fully with the requirements of the D.C. Circuit's earlier opinion. However, in just weeks this activist panel has come back with a decision that substitutes its judgment for that of the expert agency, and indeed for that of the Congress when it adopted the Telecom Act.

It should be remembered that the Supreme Court issued a very strong opinion in May 2002 in support of competition. At that time the Supreme Court rightly noted that telecom competition was spurring investment and it called the Bell arguments about below-cost wholesale rates "patently misstated."

The right of all Americans to choose their local telephone service provider is at stake, and the advancement of competitive broadband services is at risk. Consumers across the nation should be outraged at the prospect of being unplugged and underserved if the D.C. Circuit decision is left unchallenged. This is especially true for those 19 million consumers and small business owners who have already chosen an alternative provider, and who could find their choice taken away from them by today's decision.

We wholeheartedly support the decision of the FCC majority to seek a stay of this decision and to ask for a review by the Supreme Court. It's now time for the highest Court in the land to decide this issue once and for all.

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## P R E S S   R E L E A S E

FOR IMMEDIATE RELEASE  
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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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## NEWS RELEASE

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### **Statement of IBEW President Edwin D. Hill On D.C. Circuit Court Decision on FCC Policy**

The decision by the D.C. Circuit court to undercut the Federal Communications Commission's policy on open markets in the telecommunications industry is a blow for working people.

If there is one thing that we learned from the last eight years, it is that allowing more companies to compete for local as well as long distance phone service not only saves consumers billions of dollars, but also spurs investment in telecom infrastructure and creates badly needed growth and job opportunities.

The decision by the court to step into the shoes of the FCC and literally re-write a bipartisan federal telecom policy is only likely to hamper recovery in the industry and hurt the cause of job creation at a time when we need it most.