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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket 98-147
and	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket 96-98

ORDER

Adopted: March 31, 2004 **Released: April 5, 2004**

By the Commission:

I. INTRODUCTION

1. The Commission has before it a petition for declaratory ruling filed by NuVox, Inc. (NuVox) regarding auditing issues stemming from the Commission's *Supplemental Order Clarification*.[1] As explained below, in light of the Commission's subsequent adoption of new unbundling rules in the *Triennial Review Order*, we dismiss NuVox's petition as moot.[2] We also conclude that the Commission's actions in the *Triennial Review Order* address the issues raised in the *Fifth Further Notice* in CC Docket 96-98, and therefore we terminate that proceeding.[3]

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) (*Supplemental Order Clarification*), *aff'd sub nom. CompTel v. FCC*, 309 F.3d 3 (D.C. Cir. 2002). On May 17, 2002, NuVox filed its Petition for Declaratory Ruling (NuVox Petition) in CC Docket 96-98.

[2] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) (*USTA*), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S. Ct. 1571 (2003 Mem.); *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, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), *corrected by* Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *petitions for review pending, United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 15 FCC Rcd 17806, 17856-62, paras. 118-33 (2000) (*Fifth Further Notice*).

II. BACKGROUND

A. *Supplemental Order Clarification*

2. In the *UNE Remand Order*, the Commission required incumbent LECs to provide unbundled access to loop-transport combinations, known as enhanced extended links (EELs), pursuant to section 51.315(b) of the Commission's rules.[4] Shortly after the release of that decision, the Commission issued the *Supplemental Order* that limited competitive LEC access to EELs to where they provide a "significant amount of local exchange service" to a particular customer.[5] Subsequently, in the June 2, 2000 *Supplemental Order Clarification*, the Commission clarified the "significant local usage" requirement by establishing three safe harbors for demonstrating that a competitive LEC was providing a significant amount of local service, and also allowed incumbent LECs limited auditing rights.[6]

3. NuVox filed its request for declaratory ruling with respect to certain issues stemming from the Commission's *Supplemental Order Clarification*. In particular, NuVox requests a declaratory ruling on the procedures that incumbent LECs must follow when auditing competitive LEC usage of EELs, including clarification of auditor independence and allocation of auditing costs.[7]

4. The *Triennial Review Order* adopted altogether new unbundling rules, including new eligibility rules for EELs. Specifically, in addition to adopting new rules regarding the eligibility requirements that competitive LECs must meet when obtaining EELs, the Commission also issued new rules governing procedures that incumbent LECs must follow when auditing whether competitive LECs are meeting the eligibility requirements.[8]

B. *Fifth Further Notice*

5. In the *Fifth Further Notice*, the Commission sought comment on whether the deployment of new network architectures, including installation of fiber deeper into the neighborhood, necessitates any modification to or clarification of the Commission's local competition rules, particularly the rules pertaining to access to unbundled transport, loops and subloops.[9] Subsequently, in the *Triennial Review Order*, the Commission addressed the deployment of new network architectures and adopted specific unbundling requirements for unbundled transport, loops and subloops.

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[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*) (prohibiting incumbent LECs from separating currently combined network elements before providing them to requesting carriers), *reversed and remanded in part sub nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S. Ct. 1571 (2003 Mem.).

[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1760 (2000) (*Supplemental Order*).

[6] *Supplemental Order Clarification*, 15 FCC Rcd at 9598-99, 9602-03, paras. 22, 28-29.

[7] NuVox Petition at 2-3.

[8] *Triennial Review Order*, 18 FCC Rcd at 17368-71, paras. 622-29.

[9] *Fifth Further Notice*, 15 FCC Rcd at 17856-62, paras. 118-33.

III. DISCUSSION

6. We find that the issues raised in the NuVox petition are now moot and accordingly we dismiss Nuvox's petition. Subsequent to the filing of NuVox's petition, the Commission adopted altogether new rules for EELs in the *Triennial Review Order*. Specifically, in addition to adopting new rules regarding the eligibility requirements that competitive LECs must meet when obtaining EELs, the Commission adopted new rules governing incumbent LEC auditing procedures that address auditor independence and cost allocation.[10] Accordingly, in light of the Commission's adoption of new EELs unbundling rules, we conclude that NuVox's request for a declaratory ruling concerning the old EELs rules has also been superceded by intervening events.

7. We also find that the Commission's actions in the *Triennial Review Order* render the issues raised in the *Fifth Further Notice* moot and obviate the need for further action in that proceeding. In the *Triennial Review Order*, the Commission resolved the issues raised in the *Fifth Further Notice* regarding deployment of new network architectures, including access to unbundled transport, loops and subloops.[11] Specifically, the *Triennial Review Order* sets forth specific unbundling requirements for each of these network elements to foster increased competition and encourage further deployment of broadband facilities.[12] Accordingly, we terminate this rulemaking proceeding.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that the Petition for Declaratory Ruling filed by NuVox, Inc. in CC Docket No. 96-98 on May 17, 2002 IS DISMISSED as moot.

9. IT IS FURTHER ORDERED that the Fifth Further Notice of Proposed Rulemaking in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets Nos. 98-147 and 96-98, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[10] *Triennial Review Order*, 18 FCC Rcd at 17337-71, paras. 569-629, *corrected by Triennial Review Order Errata*, 18 FCC Rcd at 19020, para. 7.

[11] *Id.* at 17102-05, 17184-201, paras. 197-202, 343-60, *corrected by Triennial Review Order Errata*, 18 FCC Rcd at 19020-21, paras. 7, 14.

[12] *Id.* at 17109-99, 17206-37, paras. 209-358, 370-418, *corrected by Triennial Review Order Errata*, 18 FCC Rcd at 19020-21, paras. 8-14.