

December 10, 2003

In reply, please refer to:

Docket No. 03-09-01PH01:UR&R:PAP

Motion No. 7

Diane C. Iglesias, Esquire  
Southern New England Telephone Company  
310 Orange Street  
New Haven, Connecticut 06510

Re: Docket No. 03-09-01PH01, DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Trigger Analysis

Dear Ms. Iglesias:

The Department of Public Utility Control (Department) acknowledges receipt of the Southern New England Telephone Company's (Telco or Company) October 10, 2003 Expedited Petition for Clarification and Reconsideration (Petition) filed in the above noted docket. The Department is also in receipt of the AT&T Communications of New England, Inc. (AT&T) and the WorldCom, Inc. (MCI) responses to the Petition dated October 14, 2003 and October 22, 2003, respectively.

The Telco filed the Petition in response to the October 8, 2003 Procedural Order (Procedural Order) issued in this proceeding wherein the Department determined in part, that it would consider the market definition for its granularity analysis to be the incumbent local exchange company's (ILEC) wire center.<sup>1</sup> Specifically, the Telco requested that the Department clarify, or in the alternative reconsider, that aspect of the Procedural Order dealing with the market definition, since the definition of the market was substantive and not a procedural issue. The Telco also claimed that the Department has not followed the specific directives of the Federal Communications Commission (FCC) regarding the manner in which the relevant geographic area for evaluating impairment and non-impairment issues must be determined by the states. In addition, the Telco requested that the Department clarify that it did not intend to determine the market definition but that the wire center data would be used as the basic building block to collect sufficient empirical evidence to form its judgment regarding the state of competitive presence in Connecticut and the basis for deciding the appropriate definition of the relevant geographic market. Lastly, the Telco requested clarification as to the Department's expectation in establishing a separate proceeding to investigate a batch hot cut process. Petition, pp. 2-4.

Based on the Petition, the Department requested written comments from all parties, intervenors and interested persons addressing the Telco's requests for clarification and reconsideration.<sup>2</sup> In response to the Notice, the Department received

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<sup>1</sup> Procedural Order, p. 5.

<sup>2</sup> See the October 27, 2003 Notice of Request for Written Comments (Notice).

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comments from Comcast Phone of Connecticut, LLC and the Telco. MCI also resubmitted its comments that it originally filed on October 22, 2003.

The Department has reviewed the Petition and the comments submitted subsequent to its filing. In the Procedural Order, the Department indicated its intention to use the wire center as a foundation for its analysis because it represented a “consistent point of analysis and comparison for this exercise.”<sup>3</sup> The Department also notes the comments of AT&T and MCI acknowledging the merits of having a reference point for compiling data even if that reference point does not equate directly to “the market” that would be defined by the Department.<sup>4</sup> There are distinctions between the process adopted by the Department to fulfill its responsibilities under the FCC’s Triennial Review Order<sup>5</sup> and the end-product of that process. Specifically, the Triennial Review Order requires the Department to conduct an exhaustive examination of the Connecticut local exchange services’ market before making any proposed changes to the Telco’s current unbundled network element obligations. Implicit within that examination is the need to construct an evidentiary record that illustrates the scope and scale of competitive market participation.

It is also incumbent upon the Department to establish a procedural framework that allows the development of evidence that will facilitate an impartial examination of the issues presented by the Triennial Review Order. Any effort to compile information at a level “below” the wire center level could be susceptible to inconsistencies and inaccuracies in the data sources available at that level. Similarly, any decision to limit data collection to some aggregation point “higher than” the wire center level would expose the Department to legitimate criticism that it had effectively ignored information known to be readily available and reasonably accurate. Therefore, by designating the “wire center” as the preferred point for data collection, the Department has elected to use a generally recognized and accepted documentation point for operational data.

For those reasons, the Department concludes that data collection at the wire center level is necessary to ensure a full and accurate evidentiary record. Data collection at this level is also consistent with the Triennial Review Order and does not deprive any party of its rights to a fair review of the available evidence. Accordingly, the Department hereby denies the Telco’s request to reconsider that aspect of the Procedural Order dealing with the market definition and reaffirms its intention to designate the wire center as the initial basis for its data collection effort and its

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<sup>3</sup> Procedural Order, p. 5.

<sup>4</sup> AT&T Comments, p. 1; MCI Comments, pp. 3 and 4.

<sup>5</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (Triennial Review Order).

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preliminary analysis. Nevertheless, such designation does not prevent the Department from utilizing other market measurement points if they are necessary or beneficial to its efforts in defining the extent of competitive participation in the local exchange market.

Lastly, regarding the Telco's request that the Department clarify its expectation in establishing a separate proceeding to investigate a batch hot cut process, the Department notes that it is required to either establish an ILEC batch cut process in each of the state markets that it has defined or provide detailed findings explaining why such a process is unnecessary.<sup>6</sup> The Department has every intention of meeting that requirement. The FCC has established strict deadlines under which the Department must conduct its investigation of all issues raised in the TRO. The time schedule to this proceeding reflects those deadlines. It is for this reason that the Department will begin its investigation of the batch hot cut process prior to the conclusion of Phase One of this proceeding.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Louise E. Rickard  
Acting Executive Secretary

cc: Service List

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<sup>6</sup> See for example the FCC rules, Section 51.319(d)(2)(ii).