



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 03-09-01PH01 DPUC IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER - TRIGGER ANALYSIS

DOCKET NO. 03-09-01PH02 DPUC IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER - HOT CUT

DOCKET NO. 03-09-01PH03 DPUC IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER - OPERATIONAL AND ECONOMIC ANALYSIS

July 21, 2004

By the following Commissioners:

Jack R. Goldberg
Anne C. George
John W. Betkoski, III

DECISION

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On August 21, 2003, the Federal Communications Commission (FCC or Commission) issued its Triennial Review Order (Order or TRO).¹ In the Order, the FCC revised its rules regarding the incumbent local exchange carriers' (ILEC) obligations to make elements of their networks available on an unbundled basis to their competitors. The FCC also determined that state commissions (i.e., the Department of Public Utility Control (Department)) would have a substantial role in determining whether ILEC competitors would be "impaired" by lack of access to an ILEC's network elements. Specifically, the FCC required state public utility commissions to investigate the continued availability of certain unbundled network elements (UNE), taking into account market-specific variations, including considerations of customer class, geography and service. This proceeding² was initiated by the Department to address the unbundling requirements for individual network elements discussed by the FCC in the TRO³ and whether they should continue to be offered as UNEs by the Southern New England Telephone Company d/b/a SBC Connecticut to its competitors.

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in United States Telecom Ass'n v FCC, 359 F.3d 554 (DC Cir., 2004) (USTA II). In that opinion, the court determined that the FCC's sub-delegation of authority to state regulatory authorities was unlawful.⁴ Consequently, the D.C. Circuit vacated and remanded in part, portions of the TRO to the FCC for further reexamination.⁵ As the Department's authority to initiate this proceeding resulted from the authority delegated to it by the TRO, this proceeding is no longer justifiable in light of USTA II. Accordingly, the Department hereby closes this proceeding by way of this Decision.

¹ 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.

² For administrative purposes, the Department created three phases under this docket.

³ These include, but are not limited to loops, dedicated transport and local circuit switching.

⁴ United States Telecom Ass'n v FCC, 359 F.3d 554, 564-65 (DC Cir., 2004).

⁵ USTA II, 359 F.3d at 565.

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ANALYSIS**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Anne C. George

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

July 23, 2004
Date