



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 04-377

February 12, 2004

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON SBC'S EMERGENCY REQUEST FOR DECLARATORY RULING AND PREEMPTION

WC Docket No. 04-30

Comments Due: March 4, 2004

Reply Comments Due: March 15, 2004

On February 10, 2004, the Southern New England Telephone Company (SBC Connecticut) filed an emergency request for a declaratory ruling and order preempting a decision by the Connecticut Department of Public Utility Control (DPUC).¹ In its Emergency Request, SBC Connecticut argues that the DPUC's decision that requires it to provide unbundled access to certain hybrid fiber-coaxial (HFC) facilities to Gemini Networks CT, Inc. (Gemini) is inconsistent with the Telecommunications Act of 1996 (the Act) and the Commission's *Triennial Review Order*. Specifically, SBC Connecticut claims that the DPUC's decision is inconsistent with the Act and the *Triennial Review Order* in at least the following respects: (1) the DPUC's decision compels SBC Connecticut to unbundle facilities that do not meet the definition of a network element; (2) the HFC facilities are not part of SBC Connecticut's local telecommunications network; (3) in the *Triennial Review Order*, the Commission concluded that incumbent LECs need not unbundle hybrid loop facilities provided that they offer either a pure copper loop running from the central office to the customer premises or a narrowband transmission path running over hybrid facilities; (4) Gemini is not providing qualifying services; and (5) the DPUC improperly focused its impairment standard on a single carrier and its business plan.²

This Public Notice establishes certain procedural requirements relating to consideration

¹ *The Southern New England Telephone Company Petition for Declaratory Ruling and Order Preempting the Connecticut Department of Public Utility Control's Decision Directing the Southern New England Telephone Company to Unbundle its Hybrid Fiber Coaxial Facilities*, WC Docket No. 04-30 (filed Feb. 10, 2004) (Emergency Request).

² See SBC Connecticut's Emergency Request at 2-3

Federal Communications Commission

of SBC Connecticut's Emergency Request. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Pursuant to Section 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on SBC Connecticut's Emergency Request on or before **March 4, 2004** and reply comments on or before **March 15, 2004**. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Two (2) courtesy copies must be delivered to Janice M. Myles, Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW, Suite 5-C327, Washington, DC 20554, or via e-mail janice.myles@fcc.gov; and one (1) copy must be sent to Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts

Federal Communications Commission

Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information regarding this proceeding, contact Pamela Arluk, Competition Policy Division, Wireline Competition Bureau, (202) 418-1580, or via e-mail pamela.arluk@fcc.gov.

- FCC -