



# STATE OF CONNECTICUT

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

DOCKET NO. 97-01-23 APPLICATION OF NEW YORK TELEPHONE COMPANY  
PURSUANT TO SECTION 271 OF THE  
TELECOMMUNICATIONS REFORM ACT OF 1996

October 25, 2000

By the following Commissioners:

Jack R. Goldberg  
John W. Betkoski, III  
Linda Kelly Arnold

## INTERIM DECISION

### I. INTRODUCTION

#### A. SUMMARY

This docket addresses Verizon New York Inc.'s request that the Department of Public Utility Control certify that Verizon New York meets the requirements to proceed under the Track B alternative of Section 271 of the Telecommunications Act of 1996. In this Interim Decision, the Department concludes that it lacks the authority to provide the certification requested by Verizon.

#### B. BACKGROUND OF THE PROCEEDING

On July 31, 2000, the Department of Public Utility Control (Department) received a request from Verizon New York, Inc. (Verizon or Company) that the Department certify that Verizon meets the requisite requirements to proceed under the Track B alternative of Section 271 of the Telecommunications Act of 1996 (Act). According to Verizon, as a prerequisite to the Company's application for long distance authorization

at the Federal Communications Commission (FCC) under Section 271, the Department must certify that Verizon may proceed under Track B.

### **C. CONDUCT OF THE PROCEEDING**

By Notice of Request for Written Comments dated August 8, 2000, the Department solicited written comment from Competitive Local Exchange Carriers (CLEC) regarding the applicability of the exceptions contained in 47 U.S.C. 271(c)(1)(B). By Notice of Hearing dated August 16, 2000, a public hearing on this matter was held on August 28, 2000, at the Department's offices, Ten Franklin Square, New Britain, Connecticut 06051.

### **D. PARTIES AND INTERVENORS**

The Department recognized as Parties to this proceeding Verizon New York, Inc., 1095 Avenue of the Americas, New York, NY 10036; the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051; Cablevision Lightpath, Inc., 1111 Stewart Avenue, Bethpage, NY 11714; AT&T Communications of New England, 32 Avenue of the Americas, New York, NY 10013; Worldcom, Inc., 200 Park Avenue, New York, NY 10166. The Department recognized Sprint Communications Company L.P., 401 9<sup>th</sup> Street NW Suite 400, Washington, DC 20004 as an intervenor to this proceeding.

## **II. DEPARTMENT ANALYSIS**

According to Verizon, as it is a Regional Bell Operating Company (RBOC) which provides local exchange service to the communities of Greenwich and Byram, the Department must certify that the Company may proceed under Track B as a prerequisite to its application for long distance authorization under Section 271 of the Act. Because no CLEC is providing residential service more than four years after the passage of the Act, Verizon argues that the requirements for Track B are satisfied, and that the Department should therefore provide the requisite certification.<sup>1</sup>

Verizon states that competitors have not implemented their agreements in a way that satisfies Track A, as no providers are providing facilities-based local service to residential subscribers in Greenwich and Byram,<sup>2</sup> and no evidence exists demonstrating that these providers intend to do so. Application, pp. 6-8. Verizon also argues that all

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<sup>1</sup> 47 U.S.C. 271(c)(1)(B) - FAILURE TO REQUEST ACCESS- A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

<sup>2</sup> No carrier has challenged this statement,

of the carriers with approved interconnection agreements with the Company are business- or DLS-only service providers. Application, Appendix B, pp. 1-7. Consequently, no existing interconnection requests are qualifying requests under Track A. Verizon further states that even if qualifying requests have been made, the underlying interconnection agreements have not been implemented within a reasonable period of time as required by the implicit terms of their agreements. Verizon states that while its interconnection agreements do not contain explicit implementation schedules specifying a time frame for competitors to serve residential customers, the agreements should be read to contain an implicit reasonableness requirement. Application, p. 10.

AT&T Communications of New England, Worldcom, Inc. and Cablevision Lightpath, Inc. (collectively, the CLECs) argue that Verizon has requested a certification that the Department is not authorized to provide under the Act. According to the CLECs, the Department is authorized to certify that an otherwise qualified request under Track A should be disqualified because the requesting carrier either failed to negotiate in good faith or violated the terms of an interconnection agreement by its failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement. The CLECs argue that neither exception is available. Consequently, according to the CLECs, there is nothing to certify.

The Department agrees with the statutory interpretation proffered by the CLECs. Specifically, the Department sees no authority for the Department to certify that Track B is available to Verizon. Instead, the Department views its responsibility in this regard as certifying that an otherwise qualified request should be disqualified for the reasons set forth in 47 U.S.C. 271(c)(1)(B). The Department does not find grounds to provide such certification.

Verizon has not alleged that any provider has failed to negotiate in good faith. Verizon does argue that providers have violated their interconnection agreements by not complying with implicit implementation schedules contained in their agreements. However, finding implicit implementation schedules in interconnection agreements would directly contradict FCC pronouncements on this issue. The FCC has held that RBOCs and state commissions are in no position to assert failure to act on the part of competitors when an implementation schedule was not obtained or required in the interconnection agreement. Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, released Dec. 24, 1997, at ¶ 64, n. 171. The Department is not free to ignore directly relevant FCC interpretations and read in implicit implementation schedules. Consequently, the Department does not find grounds to certify that any qualified request under Track A should be disqualified pursuant to 47 U.S.C. 271(c)(1)(B).

### **III. FINDINGS OF FACT**

1. Verizon's interconnection agreements do not contain explicit implementation schedules specifying a time frame for competitors to serve residential customers.

2. No carrier with approved interconnection agreements are providing local exchange service to residential customers on a facilities or resale basis in Greenwich or Byram.
3. No carrier has challenged Verizon's assertion that local service is not being offered on a facilities or resale basis to residential customers in Byram and Greenwich by alternative local service providers.
4. All carriers with approved interconnection agreements with Verizon are business- or DSL-only providers in Byram and Greenwich.

#### **IV. CONCLUSION**

The Department concludes that it lacks the authority to provide the certification requested by Verizon. Further, the Department does not provide certification that any qualified request under Track A should be disqualified pursuant to 47 U.S.C. 271(c)(1)(B).

**DOCKET NO. 97-01-23 APPLICATION OF NEW YORK TELEPHONE COMPANY  
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This Decision is adopted by the following Commissioners:

Jack R. Goldberg

John W. Betkoski, III

Linda Kelly Arnold

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.

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

10/25/2000

Date