Exhibit F

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

February 10, 2003
In reply, please refer to:
Docket No. 03-01-02:ADJ:smb
Motion Nos. 2 and 5

Peggy Garber, Esquire
General Counsel
The Southern New England Telephone Company
310 Orange Street
New Haven, CT 06510

Jennifer D. Janelle, Esquire
Murtha Cullina LLP
City Place 1
185 Asylum Street
Hartford, CT 06103-3469

Re: Docket No. 03-01-02, Petition of Gemini Networks CT, Inc. for a Declaratory Ruling Regarding The Southern New England Telephone Company's Unbundled Network Elements

Dear Mmes. Garber and Janelle:

The Department of Public Utility Control (Department) acknowledges receipt of The Southern New England Telephone Company's (Telco or Company) letter dated January 10, 2003, requesting that the issues in the January 2, 2003 Gemini Networks CT, Inc. (Gemini)[1] Petition for Declaratory Ruling (Petition) be bifurcated. Specifically, the Telco requests that the first phase of this proceeding be directed to the legal issues of the Petition. The Telco states that should the Department find in Gemini's favor on the legal issues in the first phase of the proceeding, then a second phase would be initiated to address Gemini's other requested relief.[2] Accordingly, the Telco requests a

[1] Gemini was awarded its Certificate of Public Convenience and Necessity (CPCN) to offer wholesale Internet Access service to three Connecticut towns by the Department's Decision dated September 1, 1999 in Docket No. 99-03-12, Application of Gemini Networks, Inc. for a Certificate of Public Convenience and Necessity. In the Decision dated January 17, 2001 in Docket No. 00-10-20, Application of Gemini Networks, Inc. to Expand its Certificate of Public Convenience and Necessity, Gemini was granted facilities-based authority to provide wholesale telecommunications service throughout Connecticut. By Decision dated September 28, 2001 in Docket No. 01-06-22, Application of Gemini Networks, CT, Inc. To Expand its Certificate of Public Convenience and Necessity, Gemini's request to provide retail facilities-based and resold local exchange telecommunications services throughout Connecticut was granted.

[2] Gemini requests that the Department declare that certain hybrid fiber coaxial (HFC) facilities owned by the Telco, formerly leased to SNET Personal Vision, Inc. (SPV), constitute unbundled network elements (UNE) and as such, must be tariffed and offered on an element by element basis for lease to Gemini at total service long run incremental cost (TSLRIC) pricing. Should the Department determine that those facilities are UNEs subject to appropriate unbundling and pricing in accordance with this request, Gemini also requests that the Department immediately initiate a cost of service proceeding to determine the appropriate pricing structure, based on TSLRIC for those UNEs. Gemini further requests that the Department direct the Telco to file an inventory of all plant formerly leased to SPV including the condition of all such plant and the disposition of any plant no longer in place. Petition, p. 1.

procedural order that bifurcates this proceeding and limits the scope of discovery and hearings.[3] Telco January 10, 2003 Letter, p. 1.

The Department is also in receipt of the Telco's January 21, 2003 motion to dismiss the Petition, or in the alternative, stay and/or bifurcate issues and request for procedural order (Telco Motion). In particular, the Telco argues that the Petition should be dismissed because: (1) it is an untimely request for arbitration pursuant to §252 of the Telecommunications Act of 1996 (Telcom Act) and does not comply with the requirements of §252 of the Telcom Act; (2) it is inadequate on its face to apprise the Telco and the Department of the relief it is seeking in that Gemini fails to identify the specific features or functions of the HFC network that it seeks to unbundle; (3) it is moot as it relates to the HFC fiber, as spare fiber is already available to Gemini as the dark fiber UNE; (4) it is moot to the extent that Gemini is seeking transport similar to that provided to SPV of the HFC network because Gemini can obtain the same transport under the same terms and conditions provided to SPV pursuant to the Telco's interstate tariff; and (5) the Department has no jurisdiction over the HFC network distribution facilities as they were not and are not used to provide telecommunications services and, therefore, are not subject to unbundling pursuant to §251(c)(3) of the Telcom Act, §16-247b(a) of the General Statutes of Connecticut (Conn. Gen. Stat.), or any other federal or state law. Telco Motion, pp. 1 and 2.

The Telco also proposes as an alternative, that the Petition be stayed pending the Federal Communications Commission's (FCC) decision in its Triennial Review Proceeding.[4] However, to the extent that the Petition is not dismissed or stayed, the Telco recommends that the Department issue a procedural order to: (1) require Gemini to amend the Petition to identify (a) the features and/or functions of the HFC network that it seeks to unbundle, (b) how the requested UNE will be used for interconnection and/or access to the local telecommunications network, and (c) why the existing UNEs offered by the Telco do not satisfy Gemini's needs; (2) bifurcate the proceeding into two phases with only the legal issues addressed in phase one and Gemini's request for a cost study and inventory addressed in phase two; (3) order that phase one does not require any discovery or hearings, but will be resolved based on briefs submitted by the parties; (4) if any discovery is permitted in phase one, limit discovery to information

---

[3] The Telco states that it has been authorized by Gemini to represent that Gemini agrees that any discovery or hearings relating to the cost of service proceeding will be held in abeyance until the second phase of the proceeding. Telco January 10, 2003 Letter, p. 1.

[4] See CC Docket No. 01-339, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; CC Docket No. 96-98; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability (Triennial Review Proceeding).

specifically required to resolve the legal issues; and (5) deny Gemini's request for any inventory in phase one, deferring such discovery until phase two. Id., p. 2.

Further, the Department acknowledges receipt of Gemini's January 30, 2003 response to the Telco Motion (Gemini Response). Gemini objects to the Telco Motion because the Telco mischaracterizes the Petition as an untimely request under the Telcom Act for arbitration concerning interconnection costs and other conditions relative to its UNEs. Gemini argues that the Petition was filed pursuant to relevant Connecticut state law provisions, including but not limited to Conn. Gen. Stat. §16-247b(a) for the purpose of determining whether the Telco's HFC network is subject to unbundling. Gemini also asserts that a filing under the arbitration provisions of 47 U.S.C. § 252 will become appropriate, if ever, only after that determination has been made. According to Gemini, to date, the Telco continues to claim that its HFC network is not subject to unbundling. Gemini Response, pp. 1 and 2.

Moreover, Gemini disagrees with the Telco's recommendation that the Petition be dismissed because Gemini has failed to specify the portions of the Telco's HFC network that should be unbundled. Gemini maintains that it has provided the Telco on a confidential basis, information concerning the portions of the network that it desires to use. Gemini also disagrees with the Telco's assertion that the Department lacks the authority to address the applicability of UNE requirements to the HFC network because the Telcom Act preempts state statutes on the subject. Gemini states that the Telco's assertion is without merit because the Telcom Act specifically provides that states will continue to play a critical role in this issue. Id., p. 2.

Gemini also disagrees with that portion of the Telco Motion which argues that because the HFC network is not currently used for telecommunications services, it is not subject to unbundling. In the opinion of Gemini, the Telco ignored a number of court decisions confirming that it is not the use, but the capability of a network that determines whether it is subject to treatment as a UNE. Therefore, Gemini urges the Department to move forward promptly with this proceeding and not to allow any of the Telco's claims to further impede or delay making the Company's abandoned HFC network available to competing telecommunications providers in Connecticut. Id.

Lastly, the Department is in receipt of the Telco's February 5, 2003 reply to the Gemini Response and the Office of Consumer Counsel's (OCC) February 5, 2003 objection to the Telco Motion (OCC Objection). The Department is also in receipt of the Telco's response to the OCC Objection, dated February 7, 2003.

Section 251(c)(3) of the Telcom Act requires in part, that incumbent local exchange carriers:

> provide to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

In addition, Conn. Gen. Stat. § 16-247b(a) requires the Department on petition or its own motion, to:

> initiate a proceeding to unbundle a telephone company's network, services and functions that are used to provide telecommunications services and which the department determines, after notice and hearing, are in the public interest, are consistent with federal law and are technically feasible of being tariffed and offered separately or in combinations.

In the opinion of the Department, the Petition acknowledges the requirements of §251(c)(3) of the Telcom Act and the Department's ability to require, pursuant to Conn. Gen. Stat. §16-247b(a), the unbundling of telephone company networks when conditions warrant. The Department believes that the Petition first seeks a determination as to whether the HFC network is subject to unbundling pursuant to Conn. Gen. Stat. §16-247b(a). As such, the Department is not persuaded by the Telco's argument that this is an arbitration proceeding. Rather, it is an unbundling proceeding established to permit the Department to investigate Gemini's request that certain elements of the HFC network be unbundled. Petition, p. 1. The Department also believes that before these network facilities can be subject to arbitration (as provided for by §252 of the Telcom Act), a determination must first be made that the HFC facilities may be unbundled pursuant to Conn. Gen. Stat. §16-247b(a). Accordingly, the Telco's request to dismiss the Petition is hereby denied.

The Department also disagrees with the Telco's request to stay the Petition pending the FCC's ruling in its Triennial Review Proceeding. As noted above, Conn. Gen. Stat. §16-247b(a) provides the Department with the authority to investigate and if warranted, unbundle telephone company network services and functions. In the opinion of the Department, the Telco has not presented sufficient evidence nor justification which indicates that the FCC will cause a wholesale revision to its unbundling rules and regulations in its Triennial Review Proceeding thereby annulling

Conn. Gen. Stat. §247b(a) and the Department's authority to unbundle telephone company network functions and elements.

Finally, the Department believes the Telco's proposal to bifurcate the instant proceeding into two phases with only the legal issues being addressed in phase one and addressing Gemini's request for a cost study and inventory in phase two, to be of merit. The Department has developed a procedural schedule that examines the Petition in two phases.[5] The Department also agrees with the Telco that Gemini should identify those facilities that it seeks to have unbundled. The Department will require Gemini to provide this information to the Telco and the Department no later than February 18, 2003, so that discovery of these facilities may be undertaken pursuant to the attached procedural schedule. Furthermore, the Department believes that the Telco's other suggestions (e.g., require Gemini to amend the Petition; the Department order that phase one does not require any discovery or hearings; or that discovery be limited to information that is required to resolve legal issues) are too constraining and would limit the Department's investigation. While the first phase of this proceeding would address the legal issues of the Petition, the nature of the underlying facts of the issues of this proceeding require greater discovery. Nevertheless, the parties will have the ability to request the Department rule that certain data requests, etc. are outside of those issues being addressed during phase one. Accordingly, the Department hereby rejects the Telco's proposals to limit phase one of this proceeding.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Louise E. Rickard

Louise E. Rickard
Acting Executive Secretary

Attachment

cc: Service List

[5] The procedural schedule is appended hereto as Attachment 1.

DOCKET NO. 03-01-02

PETITION OF GEMINI NETWORKS CT, INC. FOR A DECLARATORY RULING REGARDING THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY'S UNBUNDLED NETWORK ELEMENTS

Events \Location	Date	Time
Gemini Identification of Proposed UNEs	02/18/2003	04:00:00 PM
Interrogatories Sent	02/20/2003	04:00:00 PM
Interrogatories Responses Due	03/04/2003	04:00:00 PM
Written Comments	03/25/2003	04:00:00 PM
Reply Comments Due	04/08/2003	10:00:00 AM
Hearing*	04/23/2003	04:00:00 PM
Late Filed Exhibits Due*	04/30/2003	10:00:00 AM
LFE Hearing*	05/08/2003	04:00:00 PM
Briefs Due*	05/16/2003	04:00:00 PM
Reply Briefs Due*	05/23/2003	04:00:00 PM
Distribution of Draft Decision	06/11/2003	04:00:00 PM
Written Exceptions Due	06/18/2003	10:00:00 AM
Oral Arguments	06/25/2003	09:30:00 AM
Regular Meeting	07/02/2003	04:00:00 PM

*EVENTS ONLY IF NEEDED