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SENT VIA U.S. MAIL AND E-MAIL

MEMORANDUM

TO: Service List, Bell Atlantic Tariffs M.D.T.E. Nos. 14 and 17, D.T.E. 98-57

FROM: Tina W. Chin, Hearing Officer
Karlen J. Reed, Hearing Officer

DATE: November 5, 1999

RE: Hearing Officer Ruling on Petition to Intervene by
Conversent Communications of Massachusetts, LLC

CC: Mary Cottrell, Secretary
Commission

Please find attached a copy of the Hearing Officer Ruling granting the late-filed petition to intervene filed on behalf of Conversent Communications of Massachusetts, LLC. Please revise your service lists to reflect Conversent's addition:

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to)
the propriety of the rates and charges set forth in the)
following tariffs: M.D.T.E. Nos. 14 and 17, filed with the) D.T.E. 98-57
Department on August 27, 1999, to become effective)
September 27, 1999, by New England Telephone)
Telegraph Company d/b/a Bell Atlantic-Massachusetts.)
_____)

HEARING OFFICER RULING ON CONVERSENT COMMUNICATIONS'

LATE-FILED PETITION TO INTERVENE

I. BACKGROUND

On April 15, 1999, the Department issued a notice of public hearing and procedural conference in this docket which set a May 10, 1999 deadline for the filing of petitions to intervene. On October 5, 1999, the Department issued its latest revised procedural schedule in this docket. On October 27, 1999, Conversent Communications of Massachusetts, LLC(1) ("Conversent") filed an untimely petition to intervene

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("Petition") as a party in this docket. The Department received no responses to this Petition.

II. LATE-FILED PETITION TO INTERVENE

A. Standard of Review

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 216 (1983); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also *Robinson v. Department of Public Utilities*, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Boston Edison*, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings (i.d.).

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See *Bay State Gas Company*,

D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient and orderly fashion. When balancing, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 5 (1993); *NYNEX*, D.P.U. 94-50 at 3 (1994).

B. Positions of the Parties

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Conversent states that it is a competitive local exchange carrier ("CLEC") with its principal place of business at 313 Boston Post Road West, Suite 140, Marlboro, Massachusetts, and that it is a facilities-based CLEC focused on delivering a full array of voice and data services to business customers in Massachusetts (Petition at 1). Conversent indicates that it is actively ordering unbundled dark fiber from Bell Atlantic in order to install a SONET ring network in Massachusetts that will enable it to serve customers in small cities and surrounding suburban areas (id.). To accomplish this, Conversant asserts that it is purchasing and installing switches, aggressively collocating in a number of Bell Atlantic central offices, connecting such central offices by leasing unbundled dark fiber, and energizing such unbundled dark fiber with Conversent electronics (id.). Conversent argues that as a facilities-based telecommunications provider in Massachusetts, it will be substantially and specifically affected by the rates, terms, and conditions of Bell Atlantic's tariffs, including the rates, terms and conditions pertaining to dark fiber (id. at 2).

Conversent indicates that it is a participant in D.T.E. 99-271 and that it only recently learned of the present docket through a Bell Atlantic reply to a Conversent data request issued in D.T.E. 99-271 that the rates, terms, and conditions that Bell Atlantic will provide dark fiber were contained in Tariff 17 (id.). Conversent states that it took immediate action to intervene upon learning that Bell Atlantic had proposed terms and conditions for dark fiber in M.D.T.E. Tariff No. 17.

Furthermore, Conversent claims that its intervention would not require any change to the procedural schedule and that no party will be prejudiced by the granting of this late-filed petition (id.). The Department received no comment on this Petition.

C. Analysis and Findings

First, M.D.T.E. Tariff 17 "sets forth the terms, conditions, and pricing which the Telephone Company offers to provide any requesting CLEC . . . interconnection, access to network elements, and ancillary telecommunications services available within each LATA in which such CLECs operate in the Commonwealth of Massachusetts." See M.D.T.E. Tariff 17, Miscellaneous Network Services, Part A, Section 1, Page 13. Conversent will be purchasing collocation in Bell Atlantic central offices and leasing unbundled dark fiber out of M.D.T.E. Tariff No. 17, the Hearing Officer finds that Conversent is substantially and specifically affected by this proceeding.

Second, Conversent indicates that it did not become aware of the present docket until after receipt of Bell Atlantic's information request responses in D.T.E. 99-271. A review of the docket sheet in D.T.E. 99-271 reveals that on or about July 13, 1999, Conversent, formerly known as NEVD, filed a letter of intent to participate in D.T.E. 99-271; that, on or about September 17, 1999, Conversent issued data requests to Bell Atlantic; and, that Bell Atlantic's responses to data requests were filed on October 18, 1999 through November 1, 1999. Since Conversent filed its late-filed petition to intervene on October 26, 1999, the Hearing Officer finds that Conversent has made a convincing showing of good cause for the late-filed Petition in this docket.

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Last, in balancing the competing interests of Conversent's need to participate against the Department's need to conduct a proceeding in a complete, efficient and orderly fashion, the Hearing Officer finds that Conversent's delay in filing the petition to intervene will not cause undue prejudice to the other parties or delay this proceeding so long as Conversent adheres to the procedural schedule. Accordingly, the Hearing Officer grants the Petition filed by Conversent Communications as an intervenor with full participation rights. Conversent shall abide by the procedural schedules set forth and any subsequent revisions and shall not delay these proceedings.

III. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants the Late-Filed Petition to Intervene filed by Conversent Communications of Massachusetts, LLC.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by November 10, 1999, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by November 16, 1999, at 5:00 p.m.

Date Tina W. Chin, Hearing Officer

1. Formerly known as New England Voice and Data ("NEVD") Communications of Massachusetts, LLC.