STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5903

Investigation into Service Quality Standards,)
Privacy Protections, and other Consumer Safeguards)
for Retail Telecommunications Service)

Order entered: 1/30/97

ORDER RE: SCOPE AND OTHER ISSUES

This Order addresses a number of outstanding procedural matters. Primary among these is a delineation of the scope of this proceeding. I also rule on a Motion to Withdraw filed by Atlantic Cellular Company, L.P. ("Atlantic").

I. SCOPE OF PROCEEDING

As I explained in the Prehearing Conference Memorandum issued August 29, 1996, parties to this Docket requested clarification of the scope of this proceeding. Specific concerns raised by parties included to which providers the service quality standards developed in this docket would apply and even whether it was necessary to adopt such standards in the present telecommunications environment with competitive entry now occurring. To that end, I requested parties to file comments on the appropriate range of issues to be addressed. The Department of Public Service (the "Department"), New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX"), the Independent Telephone companies (the "Independents"),[1] Vermont Telephone Company, Atlantic, and Hyperion Telecommunications of Vermont, Inc. ("Hyperion") filed comments. Subsequently, at a Status Conference, the parties discussed the scope of this proceeding, at which time I outlined the anticipated scope. This Order memorializes the previous statements.

Before addressing specific issues related to scope, I want to make clear that at this point, the Board has not determined, nor have I recommended, that the outcome of this docket will be a set of service standards.[2] The Board initiated this proceeding to examine whether such standards were necessary and appropriate to ensure that local exchange customers receive high quality

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1. Nine of the ten independent telephone companies in Vermont are participating jointly. These companies are Northfield Telephone Company, Perkinsville Telephone Company, Ludlow Telephone Company, Shoreham Telephone Company, Franklin Telephone Company, Topsham Telephone Company, Waitsfield-Fayston Telephone Company d/b/a Waitsfield Telecom, Champlain Valley Telecom, and STE/NE Acquisition Corp. d/b/a Northland Telephone Company.

2. For the most part, the scoping papers submitted by the parties set forth arguments as to why the Board should or should not establish standards, rather than upon the range of issues for consideration. Obviously, the question of whether to adopt standards is an issue for this proceeding, but not a scoping issue.

telecommunications services and, if so, to establish those standards. At this time, I am not prepared to answer the question of whether the Board should adopt standards. That is an issue for this proceeding.

In reaching a decision on the initial question of whether we need to set in place service quality standards, Hyperion and Atlantic have pointed out that the benefits of competition will be postponed if we adopt burdensome service quality requirements, particularly if those standards apply to new market entrants. Atlantic and Hyperion Comments at 2. These companies raise a legitimate concern. At the same time, consumers correctly expect service providers to offer high quality telecommunications services.[3] To ensure quality for Vermont ratepayers, it may be appropriate to establish objective standards by which we can measure success in attaining that goal. This Docket will attempt to balance these considerations; I expect that parties will present evidence on these issues.

The fundamental issue raised by parties pertained to the range of services to be covered during the investigation. Atlantic, in supplemental comments, argued that the "focus of the proceeding should be retail <u>basic exchange service</u>, . . ." (emphasis in original). Atlantic states that this limitation should apply to all issues considered in this proceeding, including service quality, consumer protection, and privacy. As to what constitutes basic exchange services, Atlantic points to Docket 5713, which set out a definition of basic service.

In response, the Department advocates examination of service quality issues for all retail telecommunications services.[4] The Department also seeks to have the Board examine, although not necessarily establish, privacy standards and consumer protection safeguards for all retail services.

Based upon the Board's Order initiating this investigation and the 5/29/96 Order in Docket 5713 that recommended a generic investigation into service quality issues, I conclude that the principal focus of this proceeding is the establishment of service quality standards for those retail intrastate telecommunications services that have heretofore been provided by local exchange carriers either exclusively or on a competitive basis. Practically, this means that the docket will examine primarily basic exchange service. But the Board and parties also may seek to encompass services that depend upon the basic exchange, such as toll, directory assistance, and operator services or that have been in the past provided by the monopoly service provider.

The Board initiated this proceeding to establish service quality standards, consumer protection criteria, and privacy safeguards in order to ensure that as competition in all areas of

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3. See *Vermont Telecommunications Plan*, December 1996, at 1-15.

4. The Department does not further define what it means by this term. Presumably, the Department would apply the standards to all telecommunications services subject to the Board's jurisdiction, although this is not clear.

the telecommunications environment, particularly those in which competition had not previously occurred, begins, consumers are assured of high quality services. At the time of the opening Order, the principle component of telecommunications services within the Board's jurisdiction in which competition did not exist was the service to which virtually all Vermont customers subscribe and the one subject to emerging competition: basic exchange service. Thus, as Atlantic argues, this Docket focuses on the basic exchange services.[5]

However, by concluding that this investigation will focus on basic exchange services, I do not limit it to only those service components just enumerated. The intent of examining service quality, consumer, and privacy issues at the early stages of competition was to ensure that customers continue to receive high quality service notwithstanding the pressures competition may place upon existing carriers. The incumbent local exchange carriers, particularly NYNEX, provide not merely basic service, but also ancillary services and toll services. The pressures of local exchange competition could affect the service quality consumers experience in those areas, as well as quality of basic service. This docket should examine whether, in order to ensure high quality services, the Board should establish standards for the toll and ancillary services.[6]

In concluding that the scope of this investigation extends beyond basic service, I also am guided by the fact that basic exchange service makes possible the sale of many ancillary services that are presently only available to basic customers. Some of these services, such as caller ID

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5. Basic exchange service, as defined by the Board in Docket 5713, includes the following components:

1. single-party service, consisting of:
   a. switched voice-grade communications;
   b. access to toll service;
   c. installation and repair service;
   d. white pages (or equivalent); and
   e. directory assistance.
2. the ability to transmit switching instructions through tones in customer-owned equipment;
3. the ability to transmit and receive computer-generated data;
4. the ability to communicate with emergency response personnel;
5. telecommunications relay service which meets required Americans with Disabilities Act standards;
6. continuous emergency access; and
7. availability of extended area service.

Docket 5713, Order of 5/29/96 at 62-65. To this list, I add access to operator services, which customers now have as part of the basic exchange service and will be continued in the future.

6. I note that intraLATA toll competition has existed within the state for a decade, during which time the Board has not established retail service quality standards. This experience may indicate the absence of a need for such standards, although I do not preclude parties from proposing criteria.

and other custom-calling services, have effects on customer's privacy expectations. The Board's Order initiating this proceeding makes clear that the docket would consider the privacy implications of such services, even though they extend beyond the basic service. Quite obviously, the Board intended to encompass more than simply the basic exchange service. Similarly, consumer protection standards do not necessarily apply only to basic services. To the extent this proceeding establishes consumer protections, it may be appropriate to have the standards apply to other services now provided by the LECs.

I do not intend, however, to recommend service quality standards for wireless carriers. Cellular service providers do not actively compete for local exchange service, although there are doubtless a limited number of cellular customers that do not also possess landlines. As the intent of this investigation is to establish standards to ensure quality service as local exchange competition develops, the continued provision of cellular service as a high-end service does not need to be included. This conclusion is consistent with the Board's examination of cellular service providers several years ago in Docket 5454, *Generic Investigation into the Regulation of Cellular Telecommunications Services*, Order of 1/8/92. In that proceeding, the Board adopted a relaxed regulatory structure, deciding not to subject cellular providers to the full range of regulatory requirements that apply to landline providers.[7]

I expect that at some point cellular and other wireless carriers will seek to enter the local exchange market. Atlantic itself has requested negotiations with NYNEX under Section 252 of the Telecommunications Act of 1996 (the "Act") to arrive at terms and conditions for interconnection that will allow direct competition. Once wireless carriers begin offering local service, those carriers will be subject to the service quality standards that apply in this proceeding. As they do not presently offer such competition, it is unnecessary to address the question now; the Board will examine in Docket 5713 what constitutes entry into the local exchange by wireless carriers that will subject them to the standards adopted in this docket and other requirements enunciated by the Board.

Atlantic also argues that cellular radio service is exempt from the definition of "local exchange carrier" and that the Board cannot apply the service quality standards to cellular. Having concluded that the Board did not intend to encompass service quality standards for current cellular operations within the scope of this proceeding, it is unnecessary to reach the questions raised by Atlantic. I note, however, that much of Atlantic's argument pertains to rate

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7. My conclusion that service quality standards for wireless carriers are not part of this Docket does not mean that it may not be appropriate to establish some standards, particularly in the area of consumer protection, governing wireless carriers. In an increasingly competitive marketplace, such consumer protections may be appropriate. However, I find that such standards are beyond the Board's intended scope of this proceeding.

regulation, not regulation of the terms and conditions of service. Nor is service quality regulation the same as entry regulation. *See e.g.*, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-128 and 91-35, 11/8/96 Order on Reconsideration at ¶ 140. In fact, it is possible that failure to apply the same service quality standards to all providers of local exchange service (wireline and wireless) would run afoul of the Act's requirements for non-discrimination. 47 U.S.C.A. § 253(b).

NYNEX commented on the interrelationship between this proceeding and potential alternative forms of regulation under 30 V.S.A. § 226b. In particular, NYNEX requests that the Board clarify that service quality measures adopted as part of an alternative form of regulation take precedence over the standards the Board establishes here.

NYNEX raises a valid question concerning the relationship of these standards to alternative regulation plans, but one that is better answered in the context of an alternative regulation plan. At the present time, however, no telecommunications provider operates under or is proposing an alternative form of regulation, so the Board does not have before it any concrete alternative regulation plan containing service quality measurements that may supplant the outcome of this proceeding.[8] Lacking a specific plan, it is impossible for the Board and parties to make a meaningful assessment of whether consumers will be ensured of adequate service quality if alternative regulation plan service quality standards take precedence over standards set here. I note, however, that the purpose of this proceeding is to examine the need for and establish (if necessary) standards to ensure high quality service for consumers. It is not clear why these standards would not form the foundation for the service quality component of an alternative regulation plan. *See* 30 V.S.A. § 226b(c)(4). The Board should fully examine this question for each proposed alternative regulation plan.

Prior to the submission of evidence, it is impossible to delineate more specifically the particular service quality criteria that may be appropriate. However, based upon the Board's Orders in Docket 5713 and opening this investigation, it is fair to say that the basic goal of this proceeding is to develop standards that accurately reflect the customers' perspectives and ensure that all companies meet reasonable customer service quality and privacy expectations.

In the following sections, I address briefly some of the major issues that I expect this proceeding to examine. I also outline some of the key issues that will help determine the outcome.

A. Service Quality

8. It is, however, possible, if not likely, that one or more carriers will begin operating under an alternative regulation plan within the next few years.

Several parties have put forth specific service quality standards that the Board should adopt. It is premature to specify the standards that will be examined. I expect to examine several aspects of service quality, including service ordering,[9] service provisioning, service reliability, and maintenance and repair. The docket will examine prospective service quality standards. Equally important, the parties should consider how any standards adopted will be monitored and enforced.

Specific Issues:

1. Are service quality standards needed at all?[10]
2. Will service quality guarantees from new and existing LECs provide an adequate assurance of service quality and serve as a substitute for service quality standards?
3. Are there technical differences between providers? If so, should these lead to different service quality standards?
4. Should different service quality standards apply to incumbent LECs and new market entrants? If so, will such standards ensure high quality service for all customers?
5. Should service quality standards vary with the size of the provider?
6. Should the service quality standards vary by the degree to which particular services are competitive?
7. Should monitoring be required of some or all providers? If so, what is the form of that monitoring?
8. Should monitoring frequency and content vary by the size or nature of the service provider?
9. What enforcement mechanisms beyond monitoring are appropriate? Specific performance? Penalties? Customer rebates?

B. Consumer Protection

As with the consideration of prospective service quality criteria, the goal is to examine consumer expectations and then determine whether it is appropriate to establish specific

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9. NYNEX proposes "service ordering" as a criterion of service quality. The Department deals with some of the same issues as consumer protection matters. Whichever categorization we ultimately adopt, this proceeding will consider the basic question of consumer information. Any truly competitive environment depends upon accurate information for consumers.

10. Hyperion and Atlantic note that Vermont has operated to date without any service quality standards for the independent LECs. The only service quality standards applied to NYNEX were those incorporated in the Vermont Telecommunications Agreement that were in effect during 1988-1993.

protections. The Department has proposed several aspects of consumer protection that it seeks to have this investigation consider, including marketing practices, consumer education, complaint and dispute resolution, and service disconnections. I agree that all of these, and others identified by the Department, are appropriate for review in this docket. There are two exceptions.

First, the Department requests examination of public safety and public pay telephones. Under the recent FCC rules regarding pay telephones, the Board will need to evaluate the standards for public interest payphones by October of 1998. I expect that examination to occur in a separate, focussed proceeding, and not in this docket.

Second, the Department includes prepaid cards on its list of issues. As the Department and other parties are aware, the Board has initiated a rulemaking to address debit card issues. Specific issues related to debit cards should be raised in that proceeding.

Some of the issues I expect this aspect of the docket to address are the following:

1. Are the existing deposit, disconnection, and tariff rules adequate consumer protections?
2. To what degree should disconnection of local service be allowed for failure to pay ancillary services, toll charges, or "900"-type calls?
3. Is it appropriate to establish a "Consumer Bill of Rights"? If so, what consumer protection measures are appropriate for inclusion in such a statement?
4. Is the current information provided to consumers regarding rates, terms, and conditions adequate? If not, what additional information should be made available to consumers?
5. Assuming adoption of a "Consumer Bill of Rights," how should it be enforced? Should the Board adopt specific standards to ensure that customers' expectations are met?
6. Should telecommunications company tariffs that limit liability to gross negligence be revised to reflect the increasingly competitive environment?

C. Privacy

The privacy component of the proceeding will examine the need to establish protections to ensure that customers' privacy expectations can be attained. In the modern telecommunications environment, privacy encompasses the ability of customers to limit unwanted intrusions upon their personal privacy, as well as the disclosure of information about the customer. Customer disclosure itself can occur in multiple ways: automatically, through services such as Caller ID, and through company use of customer-specific information, also known as Customer Proprietary Network Information ("CPNI"). This docket will examine all of these facets of privacy.

I should clarify that in examining CPNI, the investigation is limited to the customer privacy aspects, not carrier-to-carrier issues. The Board recently ruled on the latter in the context of the AT&T/NYNEX Arbitration, Docket 5906, Order of 12/4/96. Further review of company use of CPNI obtained from a competitor will occur in Docket 5713. This proceeding will be limited to whether steps are needed to protect the customer's privacy interests.

Specific privacy issues to be examined in this docket include the following:

1. What are reasonable customer privacy expectations?
2. Should the Board establish specific procedures with respect to new services that may implicate customer privacy? Or will the marketplace ensure that new services will have appropriate protections?
3. Do customers receive adequate information to protect their privacy interests?

II. ATLANTIC'S MOTION TO WITHDRAW

On October 30, 1996, Atlantic filed a Motion requesting the Board to permit the company to withdraw from this proceeding. No party opposed the Motion and I hereby grant the request.

SO ORDERED.

DATED at Montpelier, Vermont, this 30th day of January, 1997.

s/George E. Young
George E. Young
Hearing Officer

OFFICE OF THE CLERK

FILED: January 30, 1997

ATTEST: s/Susan M. Hudson
Clerk of the Board

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