STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5713

Investigation into New England Telephone and Telegraph Company's (NET's) tariff filing re: re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks in re: Phase II, Module One	Hearings at Montpelier, VT May 12-16, 1997

Order entered: 08/20/97

ORDER RE: INTRALATA PRESUBSCRIPTION

PRESENT: Frederick W. Weston, III
Hearing Officer

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I. INTRODUCTION

Today's proposal for decision recommends that the Public Service Board approve a stipulated plan for the implementation of intraLATA presubscription ("ILP") for toll service in

Vermont.[1] ILP denotes the capability of a caller to make in-state long distance toll calls by dialing one plus the ten-digit number (area code and number) of the party with whom the caller wishes to speak, irrespective of the carrier providing the toll service. Currently, only New England Telephone and Telegraph Company ("NYNEX" or "Company") and the ten other independent local exchange companies operating in Vermont are able to provide this dialing capability; callers who wish to purchase their in-state toll service from competitive carriers other than their local exchange companies ("LECs") must also dial a five-digit provider code or make special access arrangements. ILP, also referred to as dialing parity, will greatly improve the functioning of the competitive market for in-state toll services (particularly residential), since it will eliminate significant barriers to alternative provision of long-distance services: among them, customer inconvenience caused by the dialing of additional digits.

A. Background and Procedural History

IntraLATA presubscription was initially slated for review in the first module of Phase II of this docket. Order of 3/1/95 at 4. In the intervening months, the structure of the docket changed somewhat but, in response to several filings of the parties and to the Board's Order in Docket 5900 (*In Re: NYNEX/Bell Atlantic merger*), the original procedural organization was for the most part re-adopted. Order of 3/3/97 at 1-5. In Docket 5900, the Board had ordered NYNEX, as a condition of approval of the Company's acquisition by the Bell Atlantic Corporation, to make ILP available to its customers before the end of the year. Specifically, the Board stated:

> We recognize that NET cannot implement ILP overnight and, therefore, direct that ILP take effect on December 1, 1997, or as soon thereafter as possible. There are numerous technical and financial issues in implementing

1. LATA is an acronym for "local access and transport area." Vermont is a single-LATA state, served in its entirety by the area code 802. Thus, "intraLATA" and "in-state" are synonymous in the case of Vermont.

> ILP. These include:
> - Whether to use the "2-PIC" methodology that allows customers to select different carriers for intra-LATA and inter-LATA calling.
> - Whether any calls, (such as 411, 611, 911, 976 and DACC) should be excluded.
> - Telephones that should be excluded from ILP.
> - When other local exchange carriers should implement ILP.
> - Coordination with other local exchange carriers.
> - Whether customers who make no election should be assigned to a carrier.
> - Procedures by which customers are assigned or may select their carrier.
> - Business policies and procedures, including billing practices and charges for changing presubscribed carriers.
> - Cost recovery by NET.
> - Consumer education.
> - Consumer protection.
>
> In order to resolve these issues, we direct NET to make a filing within 60 days containing a plan describing how NET will implement ILP in Vermont by December 1, 1997. The filing shall be made in this Docket and in Docket 5713. The Hearing Officer in Docket No. 5713 shall have jurisdiction to supervise the acceptance, rejection or modification of that plan as well as jurisdiction over related disputes and implementation issues. If the Hearing Officer determines that serious legitimate barriers exist to implementation by December 1, 1997, he may issue an order establishing a later date.

Docket 5900, Order of 2/26/97 at 36-37 (footnote omitted). In order to assure the parties and the Board sufficient time to review NYNEX's ILP plan, I directed NYNEX to file it on April 8th, before the sixty days had passed. Also on that day, NYNEX and the other parties filed their witnesses' direct testimony and exhibits. Supplemental testimony followed on May 2nd, and rebuttal testimony was filed five days later.

Hearings on ILP and other (unrelated) issues were held on May 12-16, 1997. During the hearing of May 15th, several of the parties informed me that they had reached agreement in principle on the terms of an ILP implementation plan. Those parties were NYNEX, AT&T Communications of New England, Inc. ("AT&T"), and MCI Telecommunications Corporation ("MCI").[2] Witnesses for the stipulating parties then presented testimony on the agreement, and were cross-examined.

This proposed decision addresses only the issue of ILP implementation. The remaining issues litigated in Phase II, Module One, will be taken up in a later proposal for decision.

<u>B. Legal Issues</u>

The Department of Public Service ("DPS" or "Department") is not a signatory to the Stipulation. The DPS generally supports approval of much of the stipulated ILP implementation

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2. An agreement ("Stipulation") was formally executed by these parties and Atlantic Cellular Company ("Atlantic Cellular"), and was filed with the Board on June 12, 1997.

plan, but urges the Board to modify it in five particular ways (discussed in detail in Section III, below). DPS Memorandum at 1-2. The DPS argues that (insofar as the record allows) the Board can direct NYNEX to implement ILP in Vermont according to a plan that contains elements of the April 8th plan, of the stipulated plan, and of the various recommendations of the parties. The Department contends that the Board can do so because the parties were given the opportunity to fully litigate all issues associated with ILP and, therefore, no party's right will have been compromised. *Id*. at 22; DPS Reply Memorandum at 12.

NYNEX disagrees with the Department, noting first that, by its terms, the Stipulation:

> is a unified settlement of all issues relating to NYNEX's implementation of ILP in Vermont. Unless approved in substantially the same form as set forth in this document, the parties reserve the right to submit a revised stipulation. If agreement on a revised stipulation cannot then be reached, the stipulation shall be null and void.

Stipulation at § 6; NYNEX Reply Memorandum at 29. NYNEX next argues that, in fact, all parties have not had a full and fair opportunity to litigate the issues. NYNEX points out that, upon reaching verbal agreement on May 15, 1997, the stipulating parties discontinued their cross-examination of witnesses on ILP, but reserved the right to resume cross-examination if the Board were to reject the Stipulation. NYNEX Reply Memorandum at 30.

Atlantic Cellular and Hyperion Telecommunications of Vermont, Inc. ("Hyperion") filed a joint brief in support of the Stipulation. They argued that it has been the Board's practice not to allow selective challenges to particular components of a settlement "unless the `combined effect' of the challenge would be to lower costs, a showing not made here." Atlantic Cellular/Hyperion Brief at 2-3 (citations omitted).

The dispute appears to be a minor one. The Stipulation acknowledges the possibility that the Board will not accept it in its entirety, and sets out a procedure for dealing with that eventuality. The stipulating parties' reservation of their rights to further examination of witnesses is consistent with that provision. The question of whether additional examination of witnesses is needed will depend upon the factual findings and conclusions with respect to those few remaining issues that are in dispute. For the reasons that follow, I conclude that the record is sufficient to justify approval of the Stipulation, with only minor modifications.

II. Findings of Fact

Based on the testimony and evidence presented in this docket, I hereby report, pursuant to 30 V.S.A. § 8, the following findings of fact.

A. General

1. Dialing parity is essential to the development of competition in the in-state toll market. Hogarth pf. at 6-7.

2. The "Stipulated ILP Implementation Plan for the State of Vermont" sets out a reasonable approach for making intraLATA presubscription available to all of NYNEX's customers in the state. Stipulation, generally[3]; findings 3-30, below.

B. NYNEX's April 8th ILP-Implementation Plan

3. NYNEX filed an ILP-implementation plan on April 8, 1997 ("April 8th Plan"). See generally Ross pf.; exh. NET-II-3.

4. The April 8th Plan set out the details associated with implementing ILP in Vermont by December 1, 1997, in accordance with the Board's Order of 2/26/97 in Docket 5900 (*In Re: NYNEX/Bell Atlantic merger*). Exh. NET-II-3.

5. The April 8th Plan called for the "2-PIC method" of presubscribing toll carriers. The 2-PIC approach enables customers to choose an intraLATA toll carrier that is the same as or different from their interLATA carrier.[4] *Id.*

6. Major components of the April 8th Plan included the following:

- For customers with optional calling plans ("OCPs"), the plan required all telecommunications providers to disclose to customers the possibility that OCPs will be removed from the customer's line upon changing the customer's PIC to another carrier. However, NYNEX also proposed *not* to remove certain multi-line, business OCPs where the PIC change applies only to a portion of the lines. Exh. NET-II-3 at 12-13.
- NYNEX's plan also required providers to ask whether there are existing contractual arrangements between the customer and the existing intraLATA toll carrier, and to invite the customer to contact his or her present toll provider to discuss the obligations before placing an ILP PIC order. *Id.*
- NYNEX's plan required it to provide customers with bill inserts describing ILP one month prior to implementation, as well as to make available for an interim period an "800" number so that customers could call to obtain additional ILP information and a list of participating carriers. *Id.* at 5.
- The plan required telecommunications providers to ask new customers to select an ILP carrier when they subscribe for local-telephone service. *Id.* at 5, 21-22.
- It required customers to contact their carrier of choice to process ILP requests, but provided that NYNEX would process the customer's selection if asked. *Id.* at 5.

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3. Although testimony on the agreement was given during the May 15, 1997, hearing, the final Stipulation was not filed until after the close of the evidentiary record, as expected. Tr. 5/15/97 at 142. In order to make complete findings on ILP implementation, I have treated the Stipulation as part of the record in this docket. If any party objects to its inclusion in the record, that party should notify the Board of its objection at the same time that it files its comments on this proposal for decision.

4. "PIC" stands for "presubscribed intraLATA carrier" (or *inter*LATA, as the case may be).

- NYNEX proposed a $5.00 charge for each PIC change. However, NYNEX would waive the charge for one PIC change during the initial 90-day implementation period, or for a new customer's initial subscription to local-exchange service. *Id.*
- To recover ILP-implementation costs, NYNEX proposed to assess a per-access-line charge assessed to all carriers based on their number of presubscribed lines. *Id.*

C. The Stipulated ILP Plan: Key Differences With the April 8th Plan

7. Under the Stipulation, NYNEX has agreed to certain changes to its ILP-implementation plan. Tr. 5/15/97 at 4-11; Stipulation (included in its entirety as Appendix 1 to this Order).

8. NYNEX will implement ILP on November 6, 1997. Stipulation at § 2.N.

9. The terms of the Stipulation are based in most respects on those of stipulations signed by carriers in Rhode Island and Maine, and of the ILP plan approved in New Hampshire. Stipulation at § 1.

10. The Stipulation eliminates the requirement for carriers to warn customers about potential contractual obligations under existing OCPs if the customer changes its PIC. Tr. 5/15/97 at 5.

11. NYNEX agreed to notify customers of the ILP implementation through two bill inserts (rather than only one)—one before the ILP implementation date and the other during the initial implementation period. *Id.* at 6-7; Stipulation at § 2.J.

12. Beginning with the effective date of the Stipulation and continuing until the ninetieth (90th) day following the date of ILP implementation, NYNEX will not actively market "PIC-freezes," that is, actively encourage customers to expressly direct NYNEX (their LEC) not to process any PIC-change requests from other carriers.[5] NYNEX may, however, "offer the PIC freeze option to customers on an individual case basis, in response to the expressed needs of the customer which can be satisfied by a PIC freeze." Stipulation at § 2.L.4.; tr. 5/15/97 at 8-11.

13. NYNEX will process PIC-change requests, but will also encourage customers to request their new intraLATA carrier to process the PIC-change, since the carrier will be able to answer questions about services and rates. During the 30 days prior to ILP implementation, NYNEX will not have to process PIC-changes. Stipulation at § 2.M.1.; tr. 5/15/97 at 8-9.

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5. PIC-freezes provide additional protection against "slamming," the unacceptable practice by which a competitive carrier submits a mechanized request to change a customer's PIC (intra- or interLATA) directly to the customer's LEC without obtaining the customer's permission to do so. Stipulation at § 2.L.4. Competitive toll providers see a LEC's ability to encourage PIC-freezes as an unfair competitive advantage, particularly at the start of ILP, since PIC-freezes constitute an additional barrier to competitors' access to customers. Tr. 5/15/97 at 9.

14. To ensure expeditious processing of PIC-changes at the beginning of the ILP-implementation period, NYNEX agrees to begin processing changes on November 3, 1997, three days before the ILP implementation date. Stipulation at § 2.N.; tr. 5/15/97 at 10-11.

15. Under the Stipulation, costs of ILP implementation to be recovered from competitive carriers will be allocated according to their pro-rata shares of intraLATA minutes, not access lines. Stipulation at § 5.; tr. 5/15/97 at 137; see finding 21, below.

16. NYNEX currently implements Board-approved tariffs for municipal-calling services or "MCS"—that is, calls within a single municipality must be charged as local calls even if routed as toll calls. Friar supp. pf. at 3.

17. Under MCS, however, an interexchange carrier that resells NYNEX's service pays an access charge because the call is still routed as a toll call. *Id.* at 3-4.

18. In the second phase of Docket 5670, the Board is expected to issue an order resolving MCS, eliminating the few remaining situations where intra-municipality calls are toll-routed. *Id.*

19. Under the Stipulation, the parties may request that the Board conduct expedited hearings in this docket to resolve any outstanding ILP issues associated with MCS, if the Board does not issue an order eliminating MCS in Docket 5670 by July 1, 1997. The ILP implementation date of November 6, 1997, assumes a four-month period for the implementation of the revised extended area service ("EAS") routes. A delay of ILP implementation, for any reason, will require Board approval. Stipulation at § 1. (fn. 3), § 2.I, and § 2.N. (fn 16); tr. 5/15/97 at 58.

D. Other Issues

20. Under the Stipulation, NYNEX's estimated costs to implement ILP total $1,009,714. This includes $85,886 of lost revenues resulting from the waiver of PIC-change charges during the first ninety (90) days of ILP.[6] Stipulation at § 4.

21. NYNEX will establish a new rate element called the Equal Access Cost Recovery Charge ("EACRC") at $0.002247 per minute of use. It is designed to recover the ILP implementation costs, amortized over a two-year period at a compound rate of 11 percent. NYNEX will also identify any over- or under-recovery of these costs, and will propose a "true-up" mechanism on the first anniversary of ILP implementation. The parties will hold a technical session to determine appropriate charges for ILP implementation, and will file those proposed charges with the Board within 90 days after the Board issues a final order on ILP implementation. *Id.* § 5.

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6. Note that these cost estimates are unchanged from those in the April 8th Plan. Exh. NET-II-3.

22. ILP implementation costs are directly related to the number of presubscribed access lines served. Weiss pf. at 15; Ross pf. at 20; tr. 5/15/97 at 137.

23. Under the original NYNEX proposal, InterLATA presubscription implementation costs were recovered according to carriers' shares of access lines. Tr. 5/15/97 at 137.

24. ILP implementation costs do not vary with minutes of use. Although there is not a direct linkage between minutes of use and ILP implementation costs, there is often a loose, positive relationship between carriers' shares of minutes of use and their shares of access lines in a given area. Consequently, allocating ILP implementation costs according to minutes of use is within the range of reasonableness. *Id*. at 137-138.

25. Because NYNEX is recovering its ILP implementation costs on a minutes-of-use basis in the other states in which it operates, it has already developed a system for doing so that can be transferred to Vermont.[7] *Id*. at 138.

26. The Stipulation calls for a $5.00 charge per PIC-change. This is the same as the charge for PIC-changes of interLATA carriers. NYNEX has not conducted a study to determine the actual costs of performing intraLATA PIC-changes. Stipulation at § 2.L.1.; Ross reb. pf. at 6; tr. 5/14/97 at 239.

27. A PIC-change cost study would be relatively inexpensive to undertake, and could probably be completed before the date of ILP implementation. Tr. 5/15/97 at 209.

28. It would be inappropriate to allow NYNEX to recover net revenues lost as a consequence of the waiver of the PIC-change charge during the 90-day initial period. It is, however, proper to allow NYNEX to recover the actual costs of the PIC-changes during that period, since there will be no revenues received to cover those costs. Weiss pf. at 14; Hogarth pf. at 20.

29. Business customers who purchase NYNEX intraLATA toll service under the term toll agreements (*i.e.*, certain special contracts and its Custom Netsaver program) may be liable for early termination charges or penalties. No early termination charges or penalties are associated with residential intraLATA toll services or optional calling plans (with the exception of the first month's minimum purchase requirement). Tr. 5/15/97 at 123.

30. The market for intraLATA business toll service is marked by a high degree of competition. Docket 5900, Order of 2/26/97 at 25.

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7. This is an inference drawn from NYNEX witness Ross's statement that "from an operational perspective it makes it easier for NYNEX to implement the per minute of use since we already have the system set up to do that." Tr. 5/15/97 at 138.

E. The Independent LECs

31. The FCC has ordered independent local exchange companies ("ILECs") to implement ILP no later than February 8, 1999. Fox pf. at 6.

32. There may be technical matters that will prevent some of Vermont's ILECs from implementing ILP by December 1, 1997. Weiss reb. pf. at 3-4; tr. 5/15/97 at 197-198, 239-241.

III. Discussion

A. The Stipulated ILP Implementation Plan

All parties who participated in this module of the docket agree that intraLATA presubscription is necessary to the improved functioning of the competitive market for telecommunications services in Vermont. They also agree that ILP should be implemented as soon as is reasonably possible. There were a number of technical details in NYNEX's April 8th plan to which several of the other parties took exception; but, with the filing of the Stipulation, many of these objections were eliminated. NYNEX, MCI, AT&T, and Atlantic Cellular, parties to the Stipulation, urge the Board to approve it in its entirety. Hyperion did not sign the agreement, but recommends its approval.

The Department also is not a signatory to the Stipulation. The DPS generally supports the stipulated ILP plan, but advises the Board to approve it only if it is modified in five ways to satisfy Department concerns. Those areas of concern are:

- "Fresh look;"
- Implementation date;
- The charge for PIC-changes;
- ILP implementation costs to be recovered; and
- The basis and method for recovering ILP implementation costs.

DPS Memorandum at 2-5. Each point is taken up in the following sub-sections.

1. "Fresh Look"

The Department points out that the Stipulation does not provide NYNEX customers "who recently agreed to term toll commitments with an opportunity to withdraw from those commitments without penalty or liability now that ILP will allow customers to choose their . . . carrier from among numerous carriers." *Id*. at 2. Arguing that customers who entered into term toll agreements after February 8, 1996, (the date that the federal Telecommunications Act of 1996 was signed into law) were not "fully informed" about impending changes in the competitive market for in-state toll services, the DPS recommends that the Board should require NYNEX to permit all such customers whose agreements extend beyond the date of ILP implementation to withdraw from those agreements without incurring any termination liabilities. *Id*.

The Department argues that, because these customers did not have the benefit of full disclosure at the time that they entered into their term toll agreements, it is only fair to give them the chance to avoid termination liabilities if, with the implementation of ILP, they wish to switch to an alternative in-state toll provider. *Id*. at 6. The DPS's logic turns on two critical points. The first is that NYNEX should have known that ILP implementation in the near future was reasonably foreseeable and, therefore, NYNEX had an obligation to disclose that fact to the customers before they entered into the agreements. *Id*. Related to this point are the factual questions of whether ILP implementation was "reasonably foreseeable" and whether NYNEX failed to disclose it to its potential term toll customers. The second point is that, at the time these customers entered into the agreements, the market for intraLATA toll service was not sufficiently competitive to make alternative providers realistically available to those customers. *Id*. at 7; DPS Reply Memorandum at 9. The DPS then argues that ordering "fresh look" is both within the Board's authority and consistent with its long-standing policies. DPS Memorandum at 7-10.

In response, NYNEX begins by asserting that, because "fresh look" was not specifically identified in the DPS's letter of January 22, 1997, listing issues to be litigated in Phase II of this docket, the issue is not properly before the Board at this time. NYNEX Reply Memorandum at 3. The Company then addresses the issue on its merits. It contends that its customers who may face early termination liabilities under term toll agreements are sophisticated, well-informed business people. As such, they were surely aware of the Act's implications on competition in Vermont, and in that knowledge still entered into agreements with NYNEX. *Id*. at 6. Furthermore, NYNEX argues that in the past five years, the market for in-state toll services, particularly in the business sector, has become very competitive and that sophisticated users are quite aware of their alternatives. *Id*. at 6-7. NYNEX then cites a number of decisions by the FCC and other state regulatory commissions denying "fresh look," generally on the grounds that the market, at the time customers entered into term toll agreements and the like, was sufficiently competitive to protect them against the potential abuses of the dominant provider and, therefore, that there were no compelling reasons to excuse these customers from abiding by the terms of their agreements. *Id*. at 7-10. NYNEX then asserts that there is no evidence in the record on "the nature of the termination clauses. . . that [the DPS] seeks to void, nor does the DPS explain why (or if) affected customers can opt out of NYNEX contracts without penalty or, if a penalty exists, the severity of the alleged penalty." *Id*. at 10.

NYNEX also argues that the DPS's "fresh look" proposal is not supported by the FCC's 1993 expanded interconnection order. The Company contends that, moreover, "fresh look" would be confiscatory, would interfere with contractual relations in violation of the state and federal constitutions, and would constitute an unconstitutional taking of private property. *Id*. at

11-16. Finally, NYNEX argues that making "fresh look" available to all customers who entered into term toll agreements since February 8, 1997, is not supported by the record. *Id*. at 18.

With respect to NYNEX's procedural objections to the Department's proposal, I conclude that the Board does have the authority to order "fresh look." I also conclude that "fresh look" is properly before the Board at this time. Because ILP was set for resolution in this module and "fresh look" (like the many other technical details associated with ILP) is a legitimate aspect of ILP implementation, I am unpersuaded by NYNEX's argument that, because it was not specifically identified in the DPS' January 22nd letter, it cannot now be taken up by the Board.[8] And, lastly, the evidentiary record is sufficient to reach a decision on the question.

As for the merits of the Department's proposal, I conclude that NYNEX should not be required to give its customers a "fresh look." The record in this case does not support a finding that those customers who might benefit from "fresh look" were unaware of the potential consequences of their decisions to enter into term toll agreements. Nor does it support a finding that NYNEX failed to fully inform potential customers of possible changes in the in-state toll market. If there were some residential customers who faced termination liabilities and who lacked meaningful access to alternative providers, "fresh look" might afford them a needed protection; but, in this instance, the affected customers are sophisticated business users of the telephony system *for whom competitive alternatives have been long available*. This is the essential point: the market, though perhaps not competitive to the fullest extent, was nevertheless sufficiently competitive to offer them the protections that "fresh look" would otherwise provide. Finding 30. Had these customers lacked meaningful alternatives to the services of the incumbent LEC at the time they entered into their agreements, "fresh look" might very well be justified.[9] As it is, however, I can see no reason to free these customers from the obligations that they knowingly took on. In light of this conclusion, it is not necessary to decide the question of whether the DPS's "fresh look" proposal would violate either the Vermont or United States Constitution.

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8. The lack of basis for the Company's contention is made clear by the recognition that many elements of the stipulated ILP plan were not specifically mentioned in the Department's letter or, for that matter, in either my March 3, 1995, procedural order or the Board's final Order in Docket 5900. No party is arguing that those other aspects of the Stipulation cannot now be considered by the Board.

9. It is this that differentiates "fresh look" in the intraLATA toll market from a requirement by an electric utility that, in return for specified services under a special contract, a customer must remain an "all-requirements" purchaser of electric service from that utility for a defined period after the expiration of the special contract. See Approvals of Special Contract #255, 5/28/97, and Special Contract #243, 1/31/97. In the cases of these two special contracts, the customers had no alternative suppliers of electric (or energy) services to whom they could turn for competitive offerings. Business purchasers of in-state toll service are not so constrained.

2. ILP Implementation Date

Footnote 1 of the Stipulation describes the stipulating parties' assumption that a Phase II order in Docket 5670 (*In Re: Extended Area Service*) will resolve all outstanding issues associated with municipal calling services. Indeed, the parties anticipate that that order will eliminate MCS altogether and, consequently, no special ILP arrangements for MCS routes will need to be made. In the event that Phase II EAS implementation is delayed, ILP may be similarly put off, if the Board so approves. Tr. 5/15/97 at 59-61; findings 16-19.

The Department argues that the evidentiary record does not support a condition that links ILP implementation to EAS implementation. The DPS asserts that the testimony on this point—specifically, that EAS changes would take three months to set up, followed by a one-month period of permissive dialing—was unreliable and based on hearsay. Therefore, argues the Department, the Board should not countenance any delay after November 6th, "unless NYNEX can show by compelling non-hearsay evidence that ILP implementation by November 6 is impossible." DPS Memorandum at 13. "[D]elay beyond that date would be unconscionable." *Id*. at 24.

NYNEX opposes the Department's recommendation, arguing that in fact the record "amply supports" a finding that EAS implementation will require a minimum of four months. NYNEX Reply Memorandum at 19-20. Nevertheless, NYNEX asserts that it "is willing and able to implement ILP on November 6, 1997, as set forth in the Stipulation, but ILP should not be rushed into simply to satisfy an artificial deadline at the expense of proper EAS implementation." *Id*. at 21.

I conclude that the Stipulation's provision that ILP be implemented on November 6, 1997, giving the parties an opportunity to seek an extension, is reasonable. Contrary to the DPS's assertions, the record more than adequately supports this provision.[10] Findings 8, 16-19. The proposed implementation schedule is intended to bring ILP to Vermont's consumers quickly *and* with a minimum of confusion.

3. PIC-Change Charges

The Department argues that the proposed $5.00 PIC-change charge cannot be found to be cost-based. It is not, asserts the DPS, justified by any cost study and (citing cost analyses conducted in other states) is, very likely, in excess of the actual costs of making the change. DPS Memorandum at 14-15, fn. 9. The Department argues that the Board should not deviate from its long-standing policy of basing prices on costs by adopting the $5.00 fee "without better

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10. I do not concur with the Department's contention that NYNEX witness Ross's testimony on the need for a four-month implementation period for EAS was inappropriately based on hearsay. It is clear from the context of her remarks that she was testifying to information that, as an expert, she reasonably relied upon in the course of her work. Tr. 5/15/97 at 58-61. Such testimony is permissable under Vermont Rule of Evidence 703.

understanding its potential impact on competition and consumers." *Id*. at 15. The Department recommends that the Board direct NYNEX to perform a study of PIC-change costs (according to the approved total service long-run costing methodology, "TSLRIC"), and file it prior to the implementation of ILP. *Id*. at 15, 21.

NYNEX counters that the $5.00 fee is reasonable, that it mirrors the FCC-approved charge for interLATA PIC-changes, and that it has not been shown to impede competition. NYNEX Reply Memorandum at 24. The Company also contends that uniform charges reduce consumer confusion and that, in any event, "the $5.00 fee is at best *de minimus*." *Id*. at 24-25. Lastly, NYNEX argues that the provision represents one of several compromises necessary to the achievement of the overall settlement, and that "the Board should not discount the significance of the unified stance that the industry is putting forward here. Taken on balance, the Stipulation is good for the development of competition in Vermont." *Id*. at 26-27. NYNEX warns that the $5.00 PIC-change fee "is an integral part of the Stipulation" and would cause the Company "to withdraw from [it]." *Id*. at 27.

The record does not support a conclusion that the $5.00 charge is cost-based. Finding 26. I cannot say at this time what the appropriate fee is. I note that, since the parties whose customers will be most affected by the charge have agreed to it, an inference that they (AT&T, MCI, and Atlantic Cellular) do not see it as a significant barrier to competition can reasonably be drawn. Consequently, I recommend that the Board allow the fee to go into effect on an interim basis, pending the filing and review of a PIC-change TSLRIC study and pricing proposal. Finding 27. I am confident that interim approval will impose little or no adverse impacts upon customers or competition generally, in light of both the fact that the fee will be waived during the initial 90-day ILP period and the fact that I also recommend that net lost revenues associated with the waived fees should not be recoverable by NYNEX (see the following sub-section).

NYNEX should be directed to submit that filing on or before October 15, 1997.

4. Recoverable Implementation Costs

The Stipulation sets out estimated ILP implementation costs, totalling $1,009,714, that NYNEX should be entitled to recover. Included among them is $85,886 for expected revenues from PIC-change charges that will be foregone during the waiver period. Finding 20. The Department argues that, in this instance, it would be inappropriate to allow NYNEX to recover any revenues in excess of costs. Doing so, the DPS asserts, would be inconsistent with the Board's rejection of the efficient component pricing rule ("ECPR") in Phase I of this docket. DPS Memorandum at 21; Order of 5/29/96 at 43-47 ("Phase I Order").

NYNEX responds that recovery of foregone PIC-change revenues is not equivalent to adoption of the ECPR, since ECPR "would have allowed incumbent carriers to include in the price of their unbundled loops the revenues from *other* vertical services and toll lost when a customer subscribes to services offered by another carrier using an incumbent carrier's facilities." NYNEX Reply Memorandum at 28 (emphasis in original). The Company maintains that:

> In contrast, allowing NYNEX to recover foregone PIC change fees during the 90-day ILP implementation period simply recognizes that there are costs that NYNEX will incur and associated revenues that NYNEX would have realized *but for* the 90-day fee waiver period. There is no attempt under the Stipulation to recover lost revenues from other services, in contrast with the underlying principle underlying ECPR. Foregone PIC change revenues are as much a cost of ILP as are other costs.

Id. (emphasis in original).

NYNEX's reasoning is unpersuasive. While the Stipulation's PIC-change revenue recovery proposal is not as expansive as that of ECPR, it is nevertheless a net lost-revenue recovery mechanism. As the Board concluded in the Phase I Order, the question of whether and to what degree net lost revenues should be recovered depends both on the policy objectives to be served and on the particular circumstances of each case.[11] In this instance, I conclude that, because intraLATA PIC-change fees will be a new (*incremental*) revenue source whose contribution to the Company's total cost of service is not now recognized in rates, there is no reason to allow NYNEX to recover that portion of those revenues in excess of the new (*incremental*) costs of making those changes.[12] Those net lost PIC-change revenues (though expected to be small — somewhat less than $85,886) would simply constitute a windfall to NYNEX for which there is no compelling public policy justification.

For these reasons, I recommend that the Board allow NYNEX to recover only the actual costs of implementing ILP, currently estimated to be in the neighborhood of $1.0 million. Any foregone net revenues in excess of costs should not be included in the amount to be recovered. The cost study to be performed for the purpose of setting the PIC-change fee (see Section III.A.3., above) can serve the second purpose of underpinning the calculation of PIC-change costs to be recovered from all providers. See Section III.A.5., following. Under § 5 of the Stipulation, NYNEX and the parties (with the Department if it so chooses), will convene a technical session, after the Board issues this Order, "to determine the charges based on estimated cost figures submitted by NYNEX." Those calculations should be filed with the Board and parties no later than October 15, 1997.

5. Method for Recovering ILP Implementation Costs

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11. Phase I Order at 43-47.

12. I note that, were the PIC-change charge set to cover only the actual cost of PIC-changes, then foregone revenue would be equal to cost and there would be only costs — and no *net* revenues — to recover.

Under the terms of the Stipulation, NYNEX will recover its approved ILP implementation costs through a charge per originating minute of use, paid by all in-state toll carriers. Finding 21. Through the use of a "true-up" mechanism, NYNEX's total recovery will neither exceed nor fall short of the actual costs incurred. *Id*.

The Department objects to this method of cost recovery, arguing that "costs should be recovered in the same way in which they are incurred." DPS Memorandum at 22. Since ILP implementation costs vary with the number of presubscribed lines and not with minutes of toll use, the DPS recommends that the Board direct NYNEX to recover its costs through an assessment against intraLATA carriers in direct proportion to the number of access lines presubscribed to each carrier. *Id*. at 5; Weiss pf. at 15.

While NYNEX concedes that its preference would be cost recovery according to the number of presubscribed access lines, the Company notes that the Stipulation's minutes-of-use provision was one of several compromises that enabled the parties to reach a comprehensive agreement. Furthermore, the Company points out, other states in which NYNEX operates (Maine, New Hampshire, and Rhode Island) have also adopted the minutes-of-use cost recovery approach. NYNEX Reply Memorandum at 29.

As a matter of economic efficiency, prices should be set to cover the full incremental costs of production (in this case, TSLRIC). Phase I Order at 28-29. That said, it is not always necessary or appropriate that costs be recovered in precisely the way in which they are incurred. Other objectives, such as simplicity or equity, may take precedence. Consider that in competitive markets it often happens — indeed, is the norm — that the fixed costs of production are recovered through volume-sensitive charges: automobiles, for example, or (more to the point) long-distance telephone service (given that much of the network's costs are non-traffic sensitive). In reviewing the estimated ILP costs that NYNEX seeks to recover in part from other carriers, I see that much of the total is sensitive to neither numbers of access lines *or* minutes of use. The lion's share of these costs would be incurred to prepare NYNEX's network for ILP, regardless of its number of access lines, customers, or minutes of toll usage.[13] The point here is that the Department's recommendation appears to be grounded more in its notions of what is the most *equitable* allocation of costs rather than in an inviolable principle of economics.

For this reason, and in the reasonable expectation that allocation by minutes of use will produce no less an equitable result than would the alternative, I recommend that the Board approve this provision of the Stipulation as submitted. Finding 24.

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13. Obviously, some costs will vary with volume in some manner, say, with the number of switches, which is itself a function (to some degree) of the number of access lines. But the per-switch costs probably do not vary much at all with the number of access lines connected to any one switch.

6. Conclusion

For all these reasons, I recommend that the Board approve the Stipulation, with the minor modifications set out in the preceding sections.

B. The Independent Local Exchange Companies

The ILECs[14] point out that they are currently under an FCC directive to implement ILP no later than February 8, 1999. Finding 31. They acknowledge that the Board has the authority to order them to implement ILP in advance of that date, but they ask that, if the Board so intends, it determine an implementation schedule that "best meets their own technical and financial circumstances." Fox pf. at 6; finding 32.

In response to my record request made during the May 15th hearing, the nine ILECs submitted a joint letter informing the Board as to their estimated costs and timing for implementing ILP. ILEC Letter, 6/20/97. Since VTEL was not represented at the hearings, a written request for the same information was sent to that company, and it filed its response on June 23, 1997. All of the companies stated that they were capable of implementing ILP before the FCC deadline.

During the hearings, Department witness Weiss stated that, as a general matter, implementation of ILP on a statewide basis will reduce customer confusion while promoting customer choice. Tr. 5/15/97 at 198-200. Nevertheless, the Department does not urge the imposition of a state-wide implementation date, but instead recommends that the Board direct the ILECs to implement ILP according to the schedules described in their filings. DPS Letter, 7/7/97.

I concur. Therefore, I recommend that the Board direct Vermont's ten independent local exchange companies to implement ILP by the following dates:

Company	Date of Implementation
Ludlow Telephone Company	November 6, 1997[15]
Northfield Telephone Company	November 6, 1997
Perkinsville Telephone Company	November 6, 1997
Northland Telephone Company	March 31, 1998

14. Nine of Vermont's ten independent local exchange companies are participating jointly in this docket; they are Shoreham Telephone Company, Inc., Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom, Northfield Telephone Company, Ludlow Telephone Company, Perkinsville Telephone Company, Champlain Valley Telecom, Inc., Franklin Telephone Company, Topsham Telephone Company, Inc., and STE/NE Acquisition Corporation, d/b/a Northland Telephone Company of Vermont, Inc. The tenth, Vermont Telephone Company ("VTEL"), did not actively participate in this module.

15. This date corresponds to the implementation date to which NYNEX has committed. If NYNEX's implementation is delayed, then those ILECs that have also agreed to November 6th may also delay their ILP implementation until the later date (but no later).

Champlain Valley Telecom	January 15, 1998
Waitsfield Telecom	January 15, 1998[16]
Shoreham Telephone Company	September 30, 1998
Topsham Telephone Company	September 30, 1998
Franklin Telephone Company	December 31, 1998
Vermont Telephone Company	November 6, 1997

I agree also with the Department's recommendation that questions associated with the ILECs' costs of ILP implementation need not be taken up at this time. This question, as well as other technical details, can be initially addressed by the affected parties in their negotiations during the coming months. DPS Letter, 7/7/97, at 2-3. I will expect them to keep the Board informed of their progress.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 7th day of August, 1997.

s/ Frederick W. Weston
Frederick W. Weston, III
Hearing Officer

16. If, by the end of August, Waitsfield Telecom determines that it can implement ILP on November 6, 1997, then both it and its sister company, Champlain Valley Telecom, shall meet that earlier date.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.

2. The "Stipulated ILP Implementation Plan for the State of Vermont" is approved, subject to the conditions set forth in Section III of this decision.

3. NYNEX shall implement intraLATA presubscription on November 6, 1997, in accordance with the terms of the Stipulation.

4. NYNEX shall perform a study to establish the costs of effecting intraLATA PIC-changes and, based on those costs, shall also propose a charge for such changes. The study and pricing proposal shall be filed with the Board and Department of Public Service on or before October 15, 1997.

5. On or before October 15, 1997, NYNEX shall file a revised estimate of its ILP implementation costs to be recovered from all intraLATA toll carriers, calculated in accordance with the directives set out in Section III.A.4. of this decision.

6. Vermont's ten independent local exchange companies shall implement intraLATA presubscription according to the schedule set out in Section III.B. of this decision.

DATED at Montpelier, Vermont, this 20th day of August, 1997.

s/ Richard H. Cowart	PUBLIC SERVICE
s/ Suzanne D. Rude	BOARD
s/ David C. Coen	OF VERMONT

OFFICE OF THE CLERK

FILED: AUGUST 20, 1997

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

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Appendix One

STIPULATED ILP IMPLEMENTATION PLAN FOR THE STATE OF VERMONT

SECTION 1
INTRODUCTION

New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX"), MCI Communications Corporation, and AT&T Communications of New England, Inc. collectively hereinafter referred to as the "Parties", have reached a Stipulation on an implementation plan for IntraLATA Presubscription (ILP) in the State of Vermont. This Vermont Stipulated ILP Implementation Plan (the "Plan") is based on the Stipulated ILP Plans approved in Rhode Island and Maine, and also the plan that was initially filed by NYNEX in New Hampshire and subsequently modified by the New Hampshire Public Utilities Commission in an Order issued on August 16, 1996 and clarification Orders issued on October 7, 1996, January 29, 1997, and April 1, 1997. As agreed by the Parties, the Maine Stipulated ILP Plan was modified to reflect Vermont specific changes and clarifications agreed to and reported by the parties on May 15, 1997 during hearings in this docket.[1] The Parties submit for Public Service Board approval the proposed implementation plan for ILP in Vermont.[2]

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1. While described in more detail within the Plan, the changes and clarifications to the Maine Stipulation agreed to by the Parties are summarized as follows: (1) an assumption that Municipal Calling Service (MCS) issues will be rendered moot by Phase II of Docket 5670 in a timely manner (i.e., local calling areas will be defined to include all MCS routes) or that MCS issues will be addressed later in this docket (if not resolved in Docket 5670); (2) NYNEX will not pro-actively market ILP PIC freezes prior to or during the first 90 days of ILP implementation; (3) ILP will be implemented on 11/6/97, however, NYNEX will accept and process orders directly from carriers beginning 11/3/97; (4) carriers are not obligated to disclose to customers potential termination liability implications; and, (5) NYNEX will advise customers to call their carrier selection for ILP PIC changes during the period 30 days prior to ILP implementation. In addition, although not a departure from the Maine Stipulation, the Parties agreed to two customer notice mailings, one before and one during ILP implementation, according to the terms of the Maine Stipulation

2. The Plan is the result of a negotiated settlement among the parties. The stipulation shall not be construed as an agreement to any matter of fact or law and shall not serve as precedent to any matter of fact or law. MCI and AT&T, for example, do not agree that the $5 charge for a PIC change is proper because it has not been shown to be cost based. Similarly, AT&T does not agree that defaulting existing customers is proper. NYNEX, for its part, has agreed to significant restrictions on its marketing flexibility. The parties' willingness to resolve these issues by stipulation is without waiver of rights with respect to these issues in other proceedings before this Board in this state, or any other state or forum, and parties agree that nothing in this stipulation shall operate with collateral estoppel or res judicata effect in this or any other proceeding. The parties reserve any and all rights should the Board alter the Plan, rendering the agreement void. The parties further reserve their right to petition the Board in the future for an amendment to any

(continued...)

There are many technical and operational changes that the Parties and NYNEX will need to implement to introduce intraLATA presubscription and to provide further choice to Vermont telecommunications consumers. To fulfill the ILP schedule dates set forth in the Plan, the Parties respectfully request that the Board consider the months of effort that will be required to successfully introduce ILP in Vermont, and review and approve this proposal as expeditiously as possible. The industry's ability to meet those dates will depend, in significant part, on such expeditious review and approval.

(...continued)
aspect of the Stipulation based upon the passage of time or other change in circumstances.

Summary of VERMONT Stipulated ILP Implementation Plan

The major components of the Joint Parties ILP Implementation Plan are summarized below.

1. Implementation Date: November 6, 1997[3].

2. Method: A 2-PIC method which enables customers to choose an intraLATA toll carrier that is the same as or different from their interLATA carrier.

3. ILP Eligible Calls: IntraLATA toll calls are eligible for ILP. NYNEX will continue to provide local service and handle the customer's local calls. ILP ineligible calls, such as Directory Assistance, are described in Section 2-G of the plan.

4. Optional Calling Plans (OCP): Customers who switch to another long distance carrier for their intraLATA toll calls will generally have their OCP removed. This process is described in Section 2-H.

5. Customer Education:. Within 30 days of the Board's approval of this stipulation, the Parties and the Department will submit for Board review and approval a competitively neutral customer notice and the language of the 800 number telephone message discussed below. The written notice will be a stand-alone bill insert that explains the benefits of ILP and its relationship to competition, advises customers to call a toll free 800 number to obtain a list of the participating carriers and how to reach them, and identifies the date of implementation of ILP.[4] Further, NYNEX will provide for a period of one year after ILP implementation an 800 number containing brief, competitively neutral information, similar to that adopted in Maine and Rhode Island.

6. IntraLATA toll carrier for existing customers: All existing NYNEX customers will be informed that they will continue to have NYNEX as their intraLATA toll carrier until they affirmatively choose to change carriers. No balloting or allocation is planned.

7. IntraLATA toll carrier for new customers: New customers will be asked to select an ILP carrier at the time they establish local telephone service. No ILP marketing activities shall occur during a customer initiated call to establish new service. If the customer refuses to select a carrier, the FCC *Second Report and Order,* issued August 8, 1996*,* requires a new customer to dial a carrier access code (10XXX) to complete intraLATA toll calls. NYNEX has submitted a Petition for Reconsideration ("PFR") to the FCC on this issue. The Company has requested the FCC to enable NYNEX to serve as the default carrier for new customers who fail to affirmatively select a carrier. If NYNEX fails to ask for a new customer's intraLATA choice, and the

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3. This date requires a final Board order in Docket 5670, Phase 2 regarding expansion of local calling areas to be issued by July 1,1997, and that such Order include (if at all) a permissive dialing period on not more than thirty (30) days. The Parties agree to request that the Board issue a Final Order as soon as possible in Docket 5670.

4. The NHPUC and Rhode Island Division have agreed to maintain the list of ILP carriers as well as make it available on their Web site, and have also agreed to publish the list in a statewide newspaper. A similar request is made of the Vermont Public Service Board, to the extent possible.

customer affirmatively chooses NYNEX, then the customer's intraLATA toll calls shall default to the customer's interLATA carrier, where possible.

8. Taking ILP PIC Change Orders: Customers requesting an ILP PIC change will be encouraged to contact that carrier directly to process their ILP PIC request. However, if requested by the customer, NYNEX will process the customer's ILP PIC change. No ILP marketing activities shall occur during a customer initiated call requesting an ILP PIC change.

9. ILP PIC Change Charge: A $5.00 ILP PIC change charge will be assessed to either the end user or the carrier. For existing customers, a waiver period of 90 days will apply for an initial PIC change charge. Only one PIC change charge will apply when both the interLATA and intraLATA PICs are being changed at the same time.

10. Payphone Lines: The payphone service provider is the subscriber to the line that is used to provide payphone service and is responsible for notifying the Telephone Company of the ILP PIC. A location provider has control over the ultimate choice of intraLATA carriers through its choice of payphone service provider.

11. Cost Recovery of ILP Costs: The cost recovery mechanism shall be based on an equal charge per originating minute of use.

SECTION 2
POLICIES AND PRACTICES

This Section describes policies and practices agreed to by the Parties that NYNEX and the Parties will employ as operating procedures and support systems are modified to allow the implementation of intraLATA presubscription in Vermont.

The Joint Parties' ILP implementation proposal is as follows:

A. Definition of IntraLATA Presubscription: IntraLATA presubscription is an arrangement whereby local exchange customers may select and designate their local exchange company, their interLATA carrier, or another carrier as their presubscribed carrier to provide their intraLATA toll calls, without having to first dial an access code to reach that carrier.

B. The 2-PIC Method: IntraLATA presubscription will be implemented using the "2-PIC method". The 2-PIC method allows a customer to have a presubscribed interLATA carrier and to choose either the same or another carrier to handle their intraLATA toll calling. This method was successfully deployed by NYNEX in New York and Connecticut and has been adopted by the Maine, New Hampshire and Rhode Island Commissions. The 2 -PIC method is presently being implemented by most LECs around the country. In addition, it is a method approved by the FCC's August 8, 1996, Order.[5]

C. Obligations of Local Exchange Carriers: All local exchange carriers, including the incumbent local exchange carrier (ILEC) and competitive local exchange carriers (CLECs), but currently excluding commercial mobile radio service providers, are required to offer intraLATA presubscription to their customers, in accordance with the FCC Order. All parties agree that although this plan may be a model for other providers of local exchange service, this plan applies only to NYNEX.

D. Obligations of Toll Carriers: The Board must consider what the obligations of the presubscribed carriers should be. The Parties recognize that to be eligible to participate as a designated ILP PIC carrier, the carrier must be certified and have approved tariffs on file with the Board. Carriers shall be obligated to inform customers of the difference between intraLATA

5. Docket CC No. 96-98, Second Report and Order (the FCC Order), at ¶¶ 8, 49.

calls and interLATA calls, and that a customer may choose a different carrier for each. As discussed in more detail in Section 2-H, the Parties propose that competitors, including NYNEX, be required to disclose fully to customers that existing residential and business optional calling plans may be removed from the customer's line upon changing to another ILP PIC. Such full disclosure shall in no instance require that the customer be instructed to verify information with their existing toll provider.

Further, the Parties agree to provide forecasts to the local exchange companies for trunking facilities similar to that information provided in the interLATA arena to ensure there is a sufficient quantity of inter-office trunking to the end office or access tandems to minimize the possibility of service-related blockages. Since some carriers may prefer not to report intraLATA and interLATA separately, carriers may include the intraLATA information with the interLATA information.

E. Customers eligible for ILP: Residence and business lines, including CENTREX, will be eligible for intraLATA presubscription. Coin service is addressed later in this implementation plan in Section 2-O.

F. Calls eligible for ILP: Calls that originate and terminate within Vermont, which are designated as intraLATA toll calls[6], will be eligible for intraLATA presubscription. Calls described in the following section will not be eligible for ILP.

G. IntraLATA Calls ineligible for ILP:

1. Local Calls: If a NYNEX customer chooses to select another carrier as his or her presubscribed intraLATA toll carrier, NYNEX will continue providing local service and handle the customer's local calls, i.e., those calls defined as local calls in the tariff.[7]

2. Other ineligible calls: IntraLATA presubscription cannot be provided on all types of calls due to technical limitations. In some situations, while an individual subscriber line can be presubscribed to an ILP carrier of choice, the type of call being made must be provided over the underlying switch-based exchange carrier network.

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6. See VTPSB Tariff No. 20, Part A.
7. See VTPSB Tariff No. 20, Part A, Sections 5 and 6 , and Exhibit 6.1.1-1.

The following categories of calls made from a customer's line that is presubscribed to another ILP carrier will be carried over the NYNEX network, notwithstanding the ILP selection made for that line:

a. Directory Assistance calls dialed without a carrier access code;
b. Calls made using NYNEX Operator Call Completion Service and CallMover Plus™;
c. Calls to N11 Codes (e.g., 911), and 555 pre-fixed codes;
d. Calls completed by a NYNEX operator (O-) will be carried over the NYNEX network until software permitting otherwise is available. Currently, availability is anticipated by the end of 1997.
e. Cellular and Paging calls using Feature Group 2A and Feature Group 3A service with a reverse toll billing option[8].
f. Calls originating from four-party customers.

NYNEX will continue to provide, upon request and where the service is available, its PHONESMART™ features to a customer regardless of the presubscribed carrier. For example, a customer can continue to retain the Caller ID feature from NYNEX, while not having intraLATA toll calls presubscribed to NYNEX.[9]

H. Optional Calling Plans: For customers who currently have an optional calling plan (OCP) and presubscribe to another intraLATA carrier, the Company proposes the following procedures:

1. For a single line residence billing account with an OCP that changes to another ILP PIC, NYNEX proposes to remove the OCP.
2. For single and multi-line business billing accounts changing to another ILP PIC on all their lines, NYNEX proposes to remove the OCP, unless the customer has a contractual arrangement, such as subscribing to the Inward Toll Calling (ITCP) or Outward Toll Calling Plan (OTCP)[10], or subscribes to Business Package. In addition, NYNEX proposes to downgrade a Business Package Plus customer to Business Package.
3. For multi-line business accounts changing to another ILP PIC on a portion of their lines, NYNEX proposes to leave the OCP in place, with the exception of Selective Calling Service.

The Parties agree that competitors, including NYNEX, be required fullyto disclose to customers that existing residential and business optional calling plans may be removed from the customer's line upon changing to another ILP PIC, since that plan would probably no longer benefit the customer. Such full disclosure shall in no instance require that the customer be instructed to verify information with their existing toll provider. For mechanized ILP PIC changes received

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8. Landline to wireless calls that are considered ineligible for ILP include toll calls made to a wireless carrier who has subscribed to a Feature Group 2A or 3A billing option, in which the wireless carrier has requested a reverse billing arrangement which means the landline customer does not incur local or toll charges (if applicable) when calling a wireless subscriber.

9. Whether or not PHONESMART features will operate when a customer is served by another toll carrier will depend on whether that carrier utilizes SS7 technology and passes the relevant information to NYNEX.

10. These plans (OTCP and ITCP) are commonly known as Customized Netsaver.

from carriers, the OCPs satisfying the defined criteria will be automatically removed. Customers will have the option of re-subscribing to these NYNEX OCPs, if they so desire. Nothing in this Plan shall prevent any party from informing customers calling to change their ILP PIC that there may be termination liabilities resulting from contractual agreements between the customer and the customer's existing intraLATA toll carrier, provided that the carrier is able reasonably to identify the existence of potential termination liability from the customer's records and without querying the customer. The Parties recognize that there may be future OCPs that could benefit customers regardless of whether they change to another ILP PIC and different treatment may be required for these new OCPs.

I. Municipal Calling Service (MCS):
In contrast to other New England states, the expansion of the local calling areas in Phase II of Docket 5670, as currently anticipated, will eliminate the need to address MCS in Vermont. If MCS is not resolved by expanding local calling areas, then parties agree that the Board will conduct an expedited hearing to address the issue of MCS.

J. Customer Notification: Within thirty days of the Board's approval of this stipulation, the Parties and the Department will submit for Board review and approval a competitively neutral customer notice and the language of the 800 number telephone message discussed below. The stand-alone bill insert explains the benefits of ILP and its relationship to competition, the availability of a toll free 800 number containing a listing of participating carriers and reach numbers (the recording will advise customers how to access the list), and identifies the date of implementation of ILP. NYNEX will send the bill insert to all of its Vermont customers at least 30 days prior to the ILP implementation date, and a second mailing of the bill insert will be performed in the next billing cycle where available envelope space permits, but within ninety (90) days of the initial implementation date of ILP such that customers will have sufficient time within which to implement an ILP PIC change without incurring a fee.

Further, NYNEX will provide for a period of one year after ILP implementation an 800 number containing brief, competitively neutral information. NYNEX also plans to keep carriers informed of ILP through industry letters and workshops.[11]

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11. Also, as noted earlier, the New Hampshire Commission and Rhode Island Division have agreed to maintain a list of ILP carriers and to make it available on their Web site and publish the list in a statewide newspaper. A similar request is made of the Vermont Public Service Board, to the extent possible.

K. Balloting[12] and Allocation[13]

The Parties believe that it is not in the public interest to require balloting. Further, for the purpose of this stipulation, the Parties agree that neither balloting nor allocation will be done in Vermont.[14] Existing customers will be able to continue to complete intraLATA toll calls using NYNEX until they affirmatively choose otherwise. In New York, Connecticut, Maine, New Hampshire, and Rhode Island, balloting was not ordered by the Commissions. Balloting has not been required in light of the willingness of competitors to seek customers by different means and to avoid the cost and confusion balloting would entail.

L. ILP PIC Related Issues: In order for the end office switch to recognize and correctly route calls to the presubscribed toll carrier, a customer is assigned an ILP PIC. The Parties propose the following policies regarding ILP PICs:

1. ILP PIC Charges: The Parties propose to charge $5.00 per line for an ILP PIC change, which is the same charge applicable to interLATA PIC changes. The $5.00 PIC change charge has been applicable in the interLATA arena for over a decade and is a recognized and accepted charge This charge has been approved in New York, Connecticut, Maine, New Hampshire, and Rhode Island. For existing customers, the $5.00 PIC change charge will be waived for an initial PIC change made during the first 90 days following the availability of ILP. Carriers shall not levy any PIC charge for their ILP selection during a new installation of phone service. When a customer makes a PIC change to NYNEX from a competing carrier, NYNEX shall impute a $5.00 charge to itself in the event that the customer is not charged the $5.00 fee. In the event a customer is changing both an interLATA PIC and an intraLATA ILP PIC at the same time, the Parties propose to charge only one $5.00 charge, the interLATA PIC charge.

2. Reverse Billing Option: Coincident with the implementation of ILP, NYNEX will introduce the billing option of applying the ILP PIC change charge to either the IEC or the end user based on the IEC's request. This billing option is available in the federal tariffs of NYNEX

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12. Balloting is the process in which subscribers would be asked to select from a menu of intraLATA toll carriers the carrier they prefer to carry their intraLATA toll calls. The customers are mailed ballots and requested to return the ballots by a specified date.

13. Allocation is the process of assigning a carrier to customers who do not return a ballot. The carriers used for allocation would be selected based on the ballot menu and given a proportion of customers based on the percentage of the PIC changes they received from the balloting process.

14. Neither the Telecommunications Act of 1996, nor the FCC Interconnection Order requires balloting or allocation.

and the other Regional Bell Operating Companies, as well as Southern New England Telephone in Connecticut, and is widely accepted as an industry standard.

3. ILP PIC Verification Service*:* NYNEX plans to file a tariff offering under PSB 23, called Primary Interexchange Carrier Verification Service, that will allow carriers to verify their subscriber's ILP PIC selection in a NYNEX switch. The verification will indicate whether an end user's ILP PIC selection is or is not the requesting carrier's PIC.

Carriers will submit ILP PIC orders to NYNEX using the Customer Account Record Exchange (CARE) process. A CARE message indicating confirmation or rejection of the ILP PIC change is sent to the carrier in response. By matching the originating CARE record with the NYNEX CARE response, a carrier can determine the status of its subscriber's ILP PIC. The proposed ILP PIC Verification Service will supplement this process by allowing carriers to request verification of their subscriber's ILP PIC selection in a NYNEX switch. This information shall be used only for establishing and maintaining carrier service for end users who have requested the carrier's service and shall not be used for marketing purposes.

4. ILP PIC Freezes: Currently, Vermont customers have the option of having their interLATA PIC "frozen" on their account which prevents any carrier from requesting a local exchange company to change the customer's PIC without the customer's approval. The freeze option has been made available as a means of customer protection in response to the increase in the number of "slamming" incidents. Slamming refers to an unacceptable business practice in which a carrier changes a customer's PIC without the customer's prior knowledge. Slamming typically occurs when a carrier submits a mechanized request to change a customer's PIC or ILP PIC directly to the customer's local exchange service provider and does not follow the appropriate FCC guidelines to obtain the customer's permission. The Parties agree that NYNEX will not pro-actively market PIC freezes to its customers prior to or during the first ninety days of ILP implementation. The Parties agree that all LECs shall provide customers with the option of freezing their ILP PIC similar to the option available today for the interLATA PIC. From the effective date of this stipulation until the completion of the 90 day ILP implementation period, LECs may offer the PIC freeze option to customers on an individual case basis in response to expressed needs of the customer which can be satisfied by a PIC freeze. The Parties also agree that all LECs shall follow the FCC guidelines for obtaining the appropriate authorization for ILP PIC changes in Vermont until the Board issues its own rules and regulations on changing ILP PICs. NYNEX will remove a customer's ILP PIC freeze upon direct request by telephone or in writing from the affected customer, or upon a three-way call among the affected customer, NYNEX, and the new carrier to whom the customer wishes to ILP PIC subscribe.

5. ILP PIC Disputes: It is reasonable to expect, based on the increase in the number of slamming incidents reported on a national basis, that ILP PIC disputes will arise between competing carriers regarding specific customer accounts. The Parties agree that NYNEX should not be required to act as an intermediary, but will provide information as needed and if available to investigate ILP PIC disputes between two carriers if NYNEX is not one of the two carriers directly involved. If NYNEX is one of the two carriers involved in the dispute, NYNEX will attempt to investigate and resolve the dispute to the customer's satisfaction.

M. Service Negotiations:

The Parties agree to the following service negotiation procedures:

1. Service Negotiations For Existing Customers - NYNEX local exchange customers who request an ILP PIC change to a carrier other than NYNEX will be encouraged to contact that carrier directly to process their ILP PIC request since that carrier can answer any questions that the customer may have regarding the carrier's service and rates. However, if the customer requests that NYNEX take their ILP PIC request, NYNEX will process the order. No ILP marketing activities will occur during customer initiated calls made to carriers for the purpose of effecting an ILP PIC change.

The Parties agree that if a customer calls NYNEX to change its ILP PIC during the thirty (30) days prior to ILP implementation, NYNEX will instruct customers to contact their ILP carrier of choice directly.

The Parties agree that NYNEX and other LECs should not be required to maintain lists of participating carriers who are providing toll service in Vermont and read them to the customers. It is the responsibility of each carrier to inform customers of its services.

2. Service Negotiations for New Service Customers - The Parties agree that NYNEX and the other LECs will inform new local service customers about the availability of ILP during service negotiations and ask the customer to affirmatively select a carrier to provide their intraLATA toll calls. The Parties agree that NYNEX and other LECs should not be required to have service representatives read a list of participating ILP carriers or provide contact numbers for the IECs. Based on the FCC's August 8, 1996, Order, the Parties understand that new service customers who fail to select an intraLATA carrier, must first dial 10XXX to complete their intraLATA toll calls[15]. The Parties agree that all LECs shall inform the new service customer that failure to select an intraLATA carrier will result in the customer's having to dial 10XXX for intraLATA toll calls. Once these customers decide upon their toll carrier of choice, they can call their carrier of choice to change their ILP PIC selection. If NYNEX fails to advise a new customer of his or her right to select an intraLATA toll carrier, and as a result the customer chooses NYNEX, then the customer's intraLATA calls shall default to the customer's interLATA choice of carrier, where possible. No ILP marketing activities shall occur during customer initiated calls made to carriers for the purpose of establishing local service.

3. Interim Service Procedures for New and Existing Customers - A waiver period of 90 days will apply, after the introduction of ILP, in which existing customers will not be charged a $5 ILP PIC change charge for an initial PIC change. In order to reduce customer confusion during the introduction of ILP, NYNEX proposes to provide an 800 number for customers as discussed in the Customer Education section (Section 2-J) earlier in the plan.

Again, the Parties support having the customer contact the carrier directly and then having the carrier forward a mechanized ILP PIC change request to NYNEX. The carrier is positioned to answer any of the customer's questions regarding calling plans and rates. NYNEX will take the ILP PIC change request from the customer, if the customer prefers that NYNEX process the order. Mechanized ILP PIC changes from carriers are received and processed on a daily basis, except Sunday. During the New York implementation, NYNEX processed nearly 90% of the orders in this manner. This percentage is consistent with NYNEX's understanding of what other LECs that have implemented ILP have experienced.

N. Initial ILP PIC order processing: NYNEX will flash cut all central offices in Vermont on November 3, 1997 to allow all switches to begin accepting orders for intraLATA presubscription directly from carriers.[16] NYNEX will not accept orders from carriers until this date. At approximately 12:01 AM on the day of the flash cut, NYNEX will begin accepting and processing the orders on a mechanized or manual basis. The date for ILP implementation that will be publicized will be three days later, beginning on November 6, 1997. The ninety (90) day

15. CC Docket 96-128, page 131, par. 263.

16. As previously noted, this assumes a final Board order in Docket 5670 to be issued by July 1, 1997. If the implementation date is later, the Parties agree that NYNEX will flash cut its switches on a weekend date that is mutually acceptable to the Parties, the Department of Public Service, and the Board, and that NYNEX will begin accepting orders for ILP PIC changes from carriers at 12:01 AM on the Monday following cut-over. The "public" implementation date will be three (3) days after NYNEX begins to accept orders as provided for herein.

implementation period will extend from November 6, 1997 until February 4, 1998. This process will likely be driven by the carriers rather than NYNEX since the placement of orders will be a function of their promotional advertising and telemarketing programs.

O. Payphones: In the FCC's Report and Order released September 20, 1996[17], regarding the implementation of the payphone provisions of the Act, the FCC adopted rules to promote competition and regulatory parity among payphone service providers. In accordance with that order, location providers have control over the choice of intraLATA carriers for payphones located on their premises through their selection of a payphone service provider. The payphone service provider is the subscriber to the line and is responsible for notifying the Company of the ILP PIC.

P. Exchange of Information: NYNEX currently makes available a wide range of information to all competing carriers in connection with interLATA presubscription. NYNEX provides daily data to each carrier, that includes a list of all customers who signed up with that carrier and a list of all customers who elected to change from that carrier. Accordingly, NYNEX will provide similar information as it relates to intraLATA presubscription. NYNEX marketing and sales representatives will not receive ILP PIC information prior to the time that such information is available to other providers of intraLATA services.

Q. Discontinuance of Service: The Board should adopt policies to protect customers and underlying carriers in the event a toll carrier files for bankruptcy or abruptly discontinues service to customers in Vermont. The Parties propose that if a carrier discontinues its provision of presubscribed intraLATA service, the carrier must send written notification of such discontinuance to its customers and their local exchange companies. The carrier will be responsible for paying the ILP PIC change charges to change the customers to another carrier(s) and for notifying the customers that they must select a new carrier. Additionally, the Board should determine the appropriate safeguards for consumers relative to the disconnection of service. In the event the carrier is unwilling or unable to pay the ILP PIC change charge, the Board should determine who shall incur the relevant charge.

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17. CC Docket 96-128, page 131, par. 263.

SECTION 3
TECHNICAL AND OPERATIONAL REQUIREMENTS

In addition to the issues already identified, the technical and operational processes required to make ILP available to customers in Vermont involve the activities of hundreds of people in almost every department within NYNEX. The New York ILP implementation provided valuable experience in this regard, and work is underway in New Hampshire, where NYNEX is planning to introduce ILP on June 2, 1997. When the Information Systems (IS) work is completed for New Hampshire, most of the IS work effort will have been completed for the other New England states, including Vermont.

Technical requirements: From a network perspective, ILP can be made available to customers served by the 5ESS and DMS 100 digital switches following the completion of switch translations. A list of the switches in Vermont is included as Attachment A. Outlined below are the processes and activities that must be completed to provide ILP:

1. Activate switch generic software for a second PIC option (known as the ILP PIC);
2. Design and load switch translations (software provision);
3. Complete all Board discussions about processes and procedures;
4. Design and/or modify the operational policies and procedures (how do we interact with customers);
5. Complete the design, coding and testing of the information systems (IS) upgrades required in every operational support system that integrate customer contact, billing, provisioning, maintenance and technical support processes;
6. Design and/or modify the operational methods based on testing, etc.
7. Inform all carriers about ILP in Vermont.
8. Train every customer contact employee in ILP policies and procedures;
9. Notify and educate end user customers.

Software Provisioning: The software provisioning process involves work activities that require trunk translations in every switch for every NPA and NXX. This activity will correctly route a customer's intraLATA call to the ILP PIC of their choice. The degree of complexity in each switch depends on the number of NPAs, NXXs, remote switch modules, EAS arrangements, and rate zones.

Information Systems: The IS work is the most complex and expensive process of implementing ILP. As noted, a number of operational support systems must be upgraded to provide for the ILP functionality required to process and bill ILP changes.

If Vermont were the first state in New England to implement ILP, IS work necessary to implement ILP would have been expected to take eight to ten months, followed by the operational testing. Since New Hampshire is the first state, most of the overall IS implementation efforts are very similar for Vermont, except for state specific differences such as optional calling plans.

SECTION 4
COSTS

Direct costs relating to the introduction of ILP in Vermont can be grouped into the following categories. These are: switch or network costs; field methods and support costs; customer education costs; customer contact training and support costs; information systems (IS) costs; and foregone ILP PIC Charges. Some costs identified with the implementation of ILP in Vermont, such as IS upgrade costs, are common to two or more NYNEX New England jurisdictions. These “common costs” will be allocated to each jurisdiction on a weighted per access line basis.

Switch costs consist of the right-to-use fees and hardware upgrade costs in NYNEX’s Vermont end office and TOPS (Traffic Operator Position System) switches necessary for implementing ILP technology. It also includes the work effort to build the translations and recorded announcements required by these modifications.

Field methods and support costs consist of the costs associated with developing methods and procedures for the field operations; system changes for treatment and collections; IS requirements documents; and providing technical and network support during ILP cut-over.

Customer education costs consist of the costs for bill inserts for ILP customer notification, and a toll free 800 informational number provided for one year. This category also includes carrier notification costs which include carrier ILP workshops and industry letters.

Customer contact training and support costs consist of the costs associated with training, support, and the development of methods and procedures for customer service negotiators.

Information systems costs include the software and hardware modifications to NYNEX’s mechanized systems necessary to implement ILP.

The forgone PIC charges consists of the waiver of the initial ILP PIC change charges made during the 90 day waiver period following the introduction of ILP.

The following provides a breakdown of the estimated ILP implementation costs for Vermont:

	TYPE OF COSTS	CAPITAL EXPENSE	TOTAL
Switch or network	$127,111	$323,789	**$450,900**
Field Methods & Support	$0	$34,082	**$34,082**
Customer Education	$0	$4,115	**$4,115**[18]
Customer Contact Training & Support	$0	$51,004	**$51,004**
Information Systems	$200,762	$182,965	**$383,727**
Foregone ILP PIC charges	$0	$85,886	**$85,886**
TOTAL	$327,873	$681,841	**$1,009,714**

The costs detailed above represent NYNEX's best assessment at this time of anticipated ILP expenses, given current information. Additional costs may be realized from customer education or service representative training that had not been anticipated. Therefore, NYNEX's cost projections are subject to revision based on actual experience, changed circumstances or modifications to the plan made during the regulatory process.

SECTION 5

COST RECOVERY PROPOSAL

Although not specifically addressed by the Act, the FCC concluded that there is a need for national rules regarding the recovery of costs for implementing ILP. The FCC identified three specific methods for cost recovery in its Number Portability Order, referenced in the FCC's Second Report and Order in CC Docket 96-98, released August 8, 1996, at ¶¶ 92-95: gross telecommunications revenues, number of lines, or number of active telephone numbers. Cost recovery shall be shared by all intrastate toll carriers, including NYNEX.[19] As ordered in New Hampshire, and stipulated to in Rhode Island and Maine, the cost recovery mechanism shall be based on an equal charge per originating minute of use[20].

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18. As previously indicated, the cost included for the 800 number is based on an informational message only for a 3 month period, while the 800 number will actually be available for a year according to the terms of this Plan, and also include a list of carriers.

19. In the event that a land line customer is presubscribed to a CMRS provider for intraLATA toll, the CMRS provider is subject to the same monthly charge as part of the cost recovery process.

20. Use of this cost recovery mechanism is without waiver of rights with respect to this issue in other states and shall not be construed as an admission by any party as to whether it is (continued...)

The Parties agree that NYNEX will recover the ILP implementation costs for Vermont over a two year period, and that NYNEX will establish a new rate element called the Equal Access Cost Recovery Charge ("EACRC"). The EACRC NYNEX proposes is $0.002247 per minute of use. This charge is based on estimated implementation costs of $1,118,744.[21] NYNEX also proposes a true-up to identify any over- or under-recovery of costs. This true-up will begin on the first anniversary of ILP implementation. A technical session with the Department and the Parties will be scheduled, after issuance of the Board's order approving the ILP plan, to determine the charges based on estimated cost figures submitted by NYNEX. The proposed charges shall be submitted to the Board for approval no later than 90 days after issuance of the Board's order approving the Plan.

SECTION 6

MISCELLANEOUS PROVISIONS

The Parties agree that this Stipulation is being submitted to the Board as a unified settlement of all issues relating to NYNEX's implementation of ILP in Vermont. Unless approved in substantially the same form as set forth in this document, the parties reserve the right to submit a revised stipulation. If agreement on a revised stipulation cannot then be reached, the stipulation shall be null and void.

Respectfully submitted,

New England Telephone
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(...continued)
more or less appropriate than other methods.

21. The cost of $1,118,744 is based on the initial cost of $1,009,714 amortized over the two year recovery period at a continuous compounding rate of 11% per year.

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