STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5713

Investigation into NET's tariff filing re:)
Open Network Architecture, including)
the unbundling of NET's network,)
expanded interconnection, and)
intelligent networks)

Order entered: 2/18/94

ORDER OPENING INVESTIGATION AND
NOTICE OF HEARING

With today's Order, we open an investigation into New England Telephone and Telegraph Company's ("NET" or the "Company") recent tariff filing for the provision of certain Open Network Architecture ("ONA") services in Vermont and, also, into other matters related to the unbundling of NET's network. The availability of unbundled services or "functionalities" should enhance competition in the telecommunications industry by enabling competitors to purchase, on a non-discriminatory basis, those elements of the public switched network that they need in order to develop and offer their own products. If competition and its attendant benefits for Vermont's ratepayers are to flourish in this industry, then the availability of network functionalities at non-discriminatory and cost-based prices is essential.

I. BACKGROUND

The ONA requirements referenced in NET's tariff filing stem from a comprehensive proceeding, the first phase of which occurred more than two years after the divestiture of AT&T from the Bell Operating Companies ("BOCs"). At that time, the Federal Communications Commission ("FCC" or the "Commission") decided to remove the structural separation between, on the one hand, AT&T's and the BOCs' common carrier operations and, on the other hand, their enhanced service and customer premise equipment operations. In its place, the FCC instituted a regime of ONA, accounting, and other non-structural safeguards to protect against cross-subsidization and anti-competitive behavior by the BOCs.

ONA describes a broad range of pricing methodologies by which a telecommunications provider (most often a local exchange company) makes certain elements of its network available to enhanced service providers ("ESPs") and other competitors. As the FCC explained:

> [The Commission] adopted CEI [Comparatively Efficient Interconnection] requirements so that unaffiliated ESPs could obtain nondiscriminatory access to the underlying basic network services used by the BOCs in their provision of enhanced services. Under CEI, the BOCs were required to provide their ESP competitors with "equal access" interconnections to basic network services at the same tariffed rates that the BOCs themselves paid. The Commission also required that the BOCs implement ONA, which extended CEI principles beyond the underlying services used to provide their own enhanced services to the BOCs' overall basic networks and which was designed to increase opportunities for ESPs to use the regulated networks of the BOCs in a nondiscriminatory manner. Under ONA, the BOCs were required to develop plans describing how they would provide unbundled basic service "building blocks," so that competing ESPs could use network services in a flexible and economical manner. Specifically, we required the BOCs to make available basic services, features, and functions requested by ESPs, based on the expected market demand for such elements, their utility as perceived by enhanced service competitors, and the technical and costing feasibility of such unbundling.

BOC Safeguards Order, CC Docket No. 90-623, 12/20/91, para. 59, 6 FCC Rcd. 7571 (1991).

In a series of orders during the late 1980s and early 1990s, the FCC required each BOC to demonstrate that it has tariffs in place for each of its initial interstate ONA services, and that it has filed state tariffs for each of its initial ONA intrastate services. *See, generally, In the Matter of Filing and Review of Open Network Architecture Plans Order*, CC Docket No. 88-2, Phase I, 12/22/88, 4 FCC Rcd. 1 (1989). At that time, the FCC did not approve the ONA plans filed or remove the structural separations requirements in place since the divestiture of American Telephone and Telegraph Company, but set out the guidelines and schedule for the submission of adequate plans. *Id.* at para. 1.

In 1991, the FCC approved the revised ONA plans filed by the BOCs, stating that, "[i]n place of structural separation, we adopt effective regulatory safeguards that will permit the BOCs to provide enhanced services to the public in ways that will best further the public interest and serve American consumers." *BOC Safeguards Order*, CC Docket No. 90-623, 12/20/91, para. 1, 6 FCC Rcd. 7571 (1991). The FCC went on to say:

> A regulatory framework that permits the BOCs to provide enhanced services pursuant to safeguards that will both effectively protect against cross-subsidization and discrimination and encourage efficient use of BOC resources to provide enhanced services will best serve the public interest. Eliminating all structural separation requirements and allowing the BOCs to provide enhanced services

> pursuant to nonstructural safeguards will permit the BOCs to realize fully their vast potential to provide enhanced services to the public, especially to the consumer market.

Id. at para. 6. Also in that order, the FCC set out the requirements for the filing of ONA tariffs with state regulatory authorities.

On August 19, 1992, NET filed with the FCC a petition for structural relief, pursuant to the *BOC Safeguards Order*, and explained why it had not met the ONA state tariffing requirements for certain services. The Company argued that, because there was little demand for the various services, they were not tariffed but were available on an Individual Case Basis ("ICB"). On December 19, 1992, the FCC issued its Memorandum Opinion and Order ("MO&O") in CC Docket No. 90-623 granting the petition and waiving certain state tariffing requirements. The MO&O required NET to specify in its state tariffs which ONA services were available on individual case bases and, when demand grew sufficiently large, to file general tariffs for those services. NET Letter, 11/22/93, at 1; DPS Letter, 11/24/93, at 2.

On September 17, 1993, NET filed with the Board, in response to the MO&O and pursuant to Article XX.B.2. of the Vermont Telecommunications Agreement ("VTA", as extended), revisions to its P.S.B.-Vt.-No. 20-VTA Tariff, outlining those ONA services that it would offer on individual bases (Tariff filing #1621). This tariff was revised four times over the course of the next two months, ultimately with a proposed effective date of November 24, 1993.

The proposed tariff states that NET will provide five specific ONA services to customers on an individual case basis and will file general tariffs as soon as there is sufficient market demand for those services. The five ONA services are:

- Circuit 9 Service: an intraLATA business class of service which provides a two-point electrical communications path, on an originating basis only, between the trunk side of digital or tandem offices and compatible customer premises equipment. Optional Circuit 9 features include: Automatic Number Identification; Alternate Routing; Exchange Carrier Billing for Enhanced Service Providers; Trunk Group Make Busy; Tandem Routing; and T-1 Interface.
- DOVPATH Service (Data over Voice): provides point to point data transport of low to medium speed operating concurrent with single party analog voice service.
- PULSENET Alert Transport Service: offered from specially equipped central offices to companies that perform monitoring for residential and business customers for their own security or other systems on a 24-hour basis.
- Information Delivery Service: consists of services and facilities furnished to information providers. Enables customer use of a 976 or 940 central office code to receive an Information Provider's prerecorded announcement.

- Dialed Number Identification Service on 800 Service: provides the ability to direct 800 service numbers to a specific Direct Inward dialing number at a customer-provided PBX.

On November 24, 1993, the Department of Public Service ("DPS or "Department") filed a letter and report detailing its objections to the proposed tariff and recommending that the Board suspend the tariff prior to its effective date and open "an investigation into the filing and the broader issue of Open Network Architecture and network unbundling." DPS Letter, 11/24/93, at 1, 5. The Department argued that:

> A new and potentially far-reaching tariff should simply not be submitted in the waning days of the VTA and thus avoid Board and Department review of the significant ONA issues raised in the tariff.

Id.

II. POSITIONS OF THE PARTIES

The Department opposes the proposed tariff for both procedural and substantive reasons. Procedurally, the DPS argues that, if the tariff actually offers new services, then it "appears to impair existing services, in contravention of Article XIX, Paragraph A of the VTA." *Id*. at 3. If, on the other hand, the tariff does not offer new services but merely provides notice of its intent to contract, the Department contends that it is "a 'non-tariff' tariff and as a general policy matter would not recommend this type of filing." *Id*.

As for its substance, the DPS argues that NET's ONA filing is severely flawed in that it does not identify all possible ONA services, is misleading, and is anti-competitive. In summary, the Department asserts that:

> NET's filing also highlights the need for further action on all ONA/unbundling issues in the immediate future. Through its ability to restrict the provision of unbundled services, the Company effectively preserves its monopoly position. The Department highlights these concerns in our July 16, 1993 filing with the Board following the Board's "Competition Issues Workshop." The Department recommended a review of unbundling issues that would follow a requirement that local exchange companies provide information on the underlying costs of providing service elements. A number of entities during the course of recent dockets have expressed a demand for ONA services which have not been made available to them. And, as discussed, the absence of ONA tariffs for functions necessary to provide 911 and E911 systems may impair the competitive bidding process. With advances in technology, changes in industry structure and relationships, and evolving uses of the "information highway," it remains extremely important that the Company develop full ONA tariffs to provide useful and complete information to Vermont's businesses and consumers.

Id. at 5.

In a letter dated December 21, 1993, the Company opposed the Department's request to open an investigation into the tariff. NET argues that the filing meets the requirements of the VTA and of the MO&O, the intent of which, NET asserts, "is to ensure that ONA services available under federal ONA tariffs will also be available, once demand for those services exists, under state tariff." NET Letter, 12/21/93, at 2.

The Company asserts that the proposed tariff does not offer a new product or service and, therefore, cannot interfere with existing services. Next, NET argues that:

> The tariff is not "an intent to contract," rather it serves a public notice function mandated by the FCC and alerts the public to the availability of certain ONA services. The filing under VTA Article XX.B.2. is appropriate because the services referred to in the tariff would be classified as "new products or services" under the VTA when offered. In no manner should or could these services be classified as "existing services" under Article XX. A. of the VTA.

Id. at 3.

III. DISCUSSION

The DPS has raised a number of significant issues that, in light of the recent expiration of the VTA,[1] warrant our immediate attention. The telecommunications industry is changing rapidly. Competition in the long distance toll market is increasing, and the number of alternative providers of local and special access and enhanced services is also growing. The increased range of firms and products has reduced prices for many competitive services. In order to reap the benefits of competition and to promote diversity and innovation in the supply of telecommunications services (and telecommunications-based applications), competitors, enhanced service providers, and end-users must have equal and fair access to the public switched network and its manifold capabilities.

The time has come, therefore, for a thorough investigation into the relevant components and functionalities of the network, their costs, and methods for pricing them and making them available to competitors, enhanced service providers, and end-users generally. The parties to this proceeding should be prepared to address the issues raised by NET's filing and the Department's response to it, and other relevant issues, including the following:

- What should be the scope of this proceeding? Parties should discuss the question, among others, of whether this docket should address unbundling more generally. Should, for example, this docket

1. On December 1, 1993.

consist of several phases or modules, dealing with ONA, expanded interconnection, and intelligent networks?[2]

- What services and network functionalities make up the set of elements that should be the subject of this investigation?
- How should unbundled functions and services be priced? What methodological approaches are appropriate for determining the costs and prices of unbundled components?
- What degree of bundling or unbundling of services is needed? What principles should determine the level and scope of unbundling?
- What is the appropriate process for responding to requests for unbundled services? Who should be allowed to make such requests?
- What is the relationship of unbundling to, and its potential effects on, privacy issues?
- What, if any, effects will the potential outcomes of this docket have on an alternative regulation plan for NET? What, if any, effects will the potential outcomes of Docket 5700 have on this docket? How, if at all, does unbundling affect the appropriateness of increased pricing flexibility for NET?

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2. These three areas parallel the issues that the FCC is currently investigating and share the common theme of unbundling. The parties are encouraged to refer to the extensive review of these matters that the FCC has conducted in recent years, in particular, CC Docket 91-141 (*In the Matter of Expanded Interconnection with Local Telephone Company Facilities*), CC Docket 93-162 (*In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access*), and CC Docket 91-346 (*In the Matter of Intelligent Networks*). As a result of FCC directives, local exchange carriers' ("LECs") interstate expanded interconnection tariffs for special access became effective in June 1993, and LECs' interstate expanded interconnection tariffs for switched transport are proposed to become effective February 15, 1994. Also, the FCC has designated and is presently investigating several significant issues for further investigation in CC Docket 93-162. NET should be prepared to address, at a minimum, the feasibility (including timing) of (1) mirroring its interstate expanded interconnection tariffs for special access and switched transport at the intrastate level and (2) serving the Board and all parties to this proceeding, on a going-forward basis, with copies of any NYNEX filings submitted to the FCC, and relevant FCC orders released, in CC Dockets 91-141, 93-162, and 91-346. Refer to the Attachment for a more detailed (but not exhaustive) list of FCC orders pertaining to expanded interconnection and intelligent networks.

- Should this investigation be broadened to encompass all of Vermont's local exchange carriers?[3]

These questions are clearly interrelated, and there are certainly others that the parties will want to bring to our attention. The potential scope and depth of this proceeding suggest, therefore, that it will be most efficient to have the investigation conducted by a designated hearing officer.

Lastly, it is unclear whether, under the VTA, this tariff could be suspended as requested by the DPS. For two reasons, we decline to do so. One, the tariff creates an interim framework for dealing with ONA issues while this investigation is on-going. And two, even in its absence, we would expect NET or any other Vermont LEC to respond — in good faith and at reasonable rates, terms, and conditions — to requests for unbundled components or interconnection in the general course of business.

At prehearing conference, scoping and scheduling issues will be discussed, as well as any motions to intervene. Parties should be prepared to address the extent to which comment cycles should be established to facilitate the identification of specific issues and to distinguish between those issues that require the establishment of an evidentiary record and those that are a matter of policy rather than fact.

It may be appropriate, after the prehearing conference, for the parties to file memoranda on the various procedural and substantive matters at issue, which would then be followed by a scoping and scheduling order by the Hearing Officer. In any event, the parties should be prepared to address these questions at the prehearing conference.

IV. ORDER

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

1. Pursuant to 30 V.S.A. §§203, 209, 218 and 226a, an investigation is hereby instituted into the offering of Open Network Architecture Services and issues related to unbundling of NET's network services.

2. Pursuant to 30 V.S.A. §8, Frederick W. Weston, III, Utilities Analyst, is appointed to serve as the Hearing Officer in this proceeding.

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3. Regardless of its size, an LEC controls bottleneck functions. Is it appropriate at this point to open this investigation to include some or all of Vermont's other LEC's? If not, why not?

3. Pursuant to 30 V.S.A. §10(c), a prehearing conference will be held in this matter on Thursday, March 17, 1994, commencing at 1:00 P.M., at the PSB Hearing Room, Third Floor, City Center Building, 89 Main Street, Montpelier, Vermont.

4. The Clerk of the Board shall serve copies of this Order upon all companies which are certified to provide telecommunications service within Vermont.

DATED at Montpelier, Vermont, this 18th day of February, 2017.

s/Richard H. Cowart)	PUBLIC SERVICE
s/Suzanne D. Rude)	BOARD
s/Leonard U. Wilson)	OF VERMONT

OFFICE OF THE CLERK

FILED: FEBRUARY 18, 1994

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.