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: 6/14/94

PREHEARING CONFERENCE MEMORANDUM

Background

On September 17, 1993, New England Telephone and Telegraph Company ("NET" or "Company") filed a proposed tariff outlining those Open Network Architecture ("ONA") services that it would offer on individual bases (Tariff filing #1621).[1] On February 18, 1994, the Board opened this investigation into NET's ONA tariff and other matters related to the unbundling of the Company's network.

On March 17, 1994, a prehearing conference was held. Matters relating to the procedural management of this docket were addressed: motions to intervene, scope of the investigation, and scheduling.

Motions to Intervene

At or before the prehearing conference, motions to intervene were filed by Topsham Telephone Company, Inc., RCI Long Distance New England, Inc. ("LDN"), Atlantic Cellular Company, L.P., d/b/a Cellular One, Northfield Telephone Company, Ludlow Telephone Company, Perkinsville Telephone Company,[2] Waitsfield-Fayston Telephone Company, Inc., Contel of Vermont, d/b/a GTE Vermont, AT&T Communications of New England, Inc. ("AT&T"), and MCI

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1. For a more detailed procedural history, refer to the Board's February 18, 1994, Order opening this docket.

2. Northfield Telephone Company, Ludlow Telephone Company, and Perkinsville Telephone Company are all owned by the same parent corporation, TDS Telecom. For simplicity's sake, and where appropriate, I will refer to them jointly as the "TDS Companies."

Telecommunications Corporation. No objections to any of the motions were raised and, therefore, I granted them at that time.

Sprint Communications Company, L.P. and Shoreham Telephone Company filed motions to intervene after the prehearing conference which, in the absence of any objections, I hereby grant. Franklin Telephone Company has not yet officially filed a motion to intervene.

Design Access Network ("DAN") stated that it intended to file a motion to intervene. That motion was subsequently filed on April 18th; however, it lacked any statement as to the particular interest that DAN has in the outcome of this proceeding. I therefore direct DAN to file, with its comments on scope to be submitted on July 8th, a statement in support of its motion to intervene.

In Docket 5608, the Board investigated the petition by Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide competitive access services. In its Order of March 16, 1994, in that docket, the Board stated (at 95-96):

> In this regard, we note that the Hearing Officer and several of the parties have recommended that we address issues pertaining to competition in a separate proceeding. We concur in this recommendation. To obviate the need for opening a new docket, however, and to try to ensure that this examination is conducted in the most efficient manner possible, we will include the issue of competition in local telephone service as a module in Docket No. 5713, . . . which is currently pending before the Board.

The Board then granted Hyperion a Certificate of Public Good ("CPG"), "subject to the results of any generic investigation to be conducted by the Board into competition and/or competitive access services." *Id.* For these reasons, Hyperion asserted that it was automatically a party to this ONA proceeding. Tr. 3/17/94 at 5-8. I concur.

The TDS Companies raised the same argument with regard to their intervention and that of other local exchange companies ("LECs"). They pointed out that, because the Board had ordered that this docket address general questions of competition, all LECs are parties "as of right." *Id.* at 8. As it turned out, all of Vermont's LECs, with the exception of Shoreham Telephone Company, were represented at the prehearing and had filed motions to intervene, which I granted at that time. *Id.* 13-17.

NET also pointed out that there are other participants in the telecommunications industry in Vermont that may have interests at stake in this proceeding, specifically the cable television companies and Vermont Electric Power Company ("VELCO"). VELCO has recently begun to install fiber-optic cable along its electric transmission rights-of-way. *Id.* at 11. In addition, NET suggested that there are companies, such as enhanced service providers, that do not currently have CPGs but may be interested in filing motions to intervene and, therefore, they should be notified of this proceeding. *Id.*

I hereby request the Clerk of the Board, by copy of this Order, to notify all cable television companies with CPGs and VELCO of this investigation. As for other potential participants, I do not know who they might be or where they are located. If any of the existing parties believe that there are potential parties who should be notified of this proceeding, they shall file an identification of such parties by July 8, 1994. The deadline for filing of notices of appearance and motions to intervene, with memoranda in support of those motions is September 30, 1994.

Scope of This Proceeding

During the prehearing conference, several of the parties offered comments on the manner in which this case should proceed, the issues to be addressed, and the time frame necessary to achieve those objectives.

NET suggested that the docket should be divided into two major phases. Tr. 3/17/94 at 20, 26. The first would deal with policy issues and the second with the detailed technical and economic considerations. In support of this general format, NET reasoned "that in order to determine what you want to do in terms of opening up the network to competition you need to understand first what the implications of that action will be." *Id.* at 21.

NET listed some of the policy issues to be addressed: universal service and funding for it, cross-subsidization, geographic de-averaging of prices, fair competition rules, and federal and state jurisdictional questions (*e.g.*, preemption). *Id.* at 21-23, 26. The second phase would investigate the technical and economic issues associated with competition: ONA services, unbundling of network functionalities, privacy, customer proprietary network information, expanded interconnection, wholesale and retail pricing, and intelligent networks. *Id.* at 23-24.

Lastly, NET raised two additional issues. The first goes to the question of burden of proof. NET questions whether, in a docket that, at its core, investigates competition in the telecommunications industry, a single company should bear the burden of proof in establishing a complete evidentiary record. This question, it asserts, must be addressed early in this docket. *Id.* at 24-25. The second point relates to deregulation: NET suggested that, if certain aspects of its business are or will soon become truly competitive, then "deregulation may be something worth considering." *Id.* at 25.

The Department of Public Service ("DPS" or "Department") stated that it supports a broad, detailed investigation into ONA and network unbundling. Originally, the DPS had envisioned a competition docket separate from a more limited ONA investigation; however, in light of the Board's Order in Docket 5608, the Department concluded that this docket should also address competitive issues, such as intraLATA presubscription, co-location, expanded interconnection, unbundling, and access charges. *Id.* at 28-29, 31-32, 59. Consequently, the DPS requested time to prepare detailed memoranda on scoping and scheduling issues. *Id.* at 29.

As a final note, the Department suggested that it may request that priority be given in this docket to emergency 911 and Enhanced 911 ("E-911) issues. *Id.* at 30.

Design Access Network agreed with the DPS that 911 issues may need to be accorded priority treatment. As for NET's proposed phases, DAN argued that it would be better to reverse their order, that is, to address technical and economic issues first and then deal with the policy questions that they raise. DAN argued that the potential for competition is, fundamentally, dependent upon network functionalities and their costs. It would not be sensible, argued DAN, to set policy objectives without first an understanding of technological capabilities and costs. *Id.* at 32-33.

Topsham Telephone Company stated that, in its view, this docket will of necessity investigate the broad range of competitive issues facing the industry today. Topsham also expressed its concern that network unbundling for independent local exchange carriers ("LECs") will involve different issues than those raised by NET's filing and, therefore, that care must be taken before applying the rules that emerge from this case to the independent LECs. *Id.* at 33-35.

LDN concurred with DAN's observations about the order of phases in the docket. LDN asserted that the first order of business must be to determine the functionalities and costs of NET's network (and that of the other LECs) and that, without such information, "there is no way that we can set policy. . . ." *Id.* at 35-36. In addition, LDN observed that a critical issue in this case will be the appropriate methodology for determining the network's costs. *Id.* at 40-42. Lastly, LDN requested that, in light of the significant efforts currently being made by the parties in other dockets,[3] the procedural schedule in this docket should not be accelerated. *Id.* at 37-39.

Hyperion suggested that the first questions to be addressed are (a) how will this docket interrelate with Dockets 5700/5702 (the investigations into NET's alternative regulation proposal and its overall revenue requirement and resulting rates) and (b) how will universal service issues be considered?[4] Hyperion argued that, without a detailed study of NET's costs, it will be impossible to determine the appropriate level of funding for universal service. *Id.* at 43.

Hyperion proposed that this docket be broken down into six phases, or modules. The first would address fundamental technological and definitional questions relating to basic service and other network functions. The second phase would investigate which of those functions are monopoly functions. The third module would determine the costs of those functions. The fourth module would examine the relationship between the costs of those functions and how they are priced. The fifth would develop tariffs for the relevant functions

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3. *I.e.*, Dockets 5700 and 5702, investigations into NET's proposed alternative regulatory plan and its overall rates, and Docket 5670, the investigation into extended area service.

4. Counsel for Hyperion also represents Atlantic Cellular. Presumably, these comments represent the positions of both parties.

and would address the question of revenue imputation for any "bundled" functions. Lastly, the sixth module would focus on competition issues and the rules for determining whether a function is competitive or monopolistic. *Id.* at 46-48.

The TDS Companies, like NET, recommended that policy questions be addressed first. In addition, they pointed out that the "carrier of last resort" issue must also be considered: in opening up the network to competitors, "the underlying question still is who is going to serve the unprofitable pieces that are left over. . . ?" *Id.* at 49. Lastly, the TDS Companies and Waitsfield-Fayston Telephone Company recommended that ample time be given to the parties to develop more detailed scoping and procedural proposals. *Id.* at 51-54.

In light of the foregoing, I direct the parties to file written comments on the scope and procedural structure of this docket, in accord with the schedule set out in the following section. Comments should address the issues raised during the prehearing conference, as well as the following, among others:

- What is the ultimate objective of this docket?

- In all likelihood, this docket will be managed in phases, or modules. How should the modules be structured, *e.g.*, along the lines recommended by Hyperion, or as NET suggested? Alternatively, is there another way of structuring the relevant issues that is preferable? What issues should be investigated?

- In accord with the Board's 3/16/94 Order in Docket 5608, one phase of this docket will focus on competitive access and other competition issues. How should that phase be managed? At what point in this proceeding should this phase be initiated?

- Should 911 and E-911 issues be given priority treatment? Will the process of dealing with competition and network issues generally also resolve 911 questions, or will the identification and costing of functionalities for 911 and E-911 require a more complete unbundling of NET's network?

- How will a decision in Dockets 5700/5702 with respect to cost studies relate to the work done in this case? Similarly, how will any cost studies relating to universal service affect this docket? What methodologies are appropriate? Should a cost study be performed in this docket and, if so, when and for what carriers?

- How should each module be structured? Should hearings for each module be scheduled sequentially, separately briefed, and completed before beginning the next? Can certain modules be scheduled concurrently? If so, which ones? Are there any informal mechanisms, such as workshops, that can be used to improve the efficiency with which this case will be managed?

- How will alternative regulatory treatment of NET and other LECs (if implemented) affect competition and network unbundling?

- How much time will be needed for each module and for the docket in its entirety?

- Who will bear the burden of proof on what issues?

This list is by no means all-inclusive. I encourage the parties to discuss these matters among themselves, as they prepare their written comments.

Schedule for Filing Comments

On July 8, 1994, the parties shall file their comments on the scope, other potential parties, and schedule for this proceeding. On August 1, 1994, the parties shall file, if they so choose, responsive comments. Within the month following the responses, I will draft a proposed schedule, circulate it among the parties, and set a date for a status conference to resolve any outstanding scheduling and procedural matters.

SO ORDERED.

DATED at Montpelier, Vermont, this 14th day of June, 1994.

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

OFFICE OF THE CLERK

FILED: June 14, 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.