

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)
in re: Phase II)

Order entered: 9/4/96

SECOND ORDER RE: PHASE II PROCEDURAL SCHEDULE

On August 22, 1996, a status conference was held in this docket, at which were taken up several procedural questions that arose with the filing of two stipulations and the issuance of the Federal Communications Commission's August 8th order on interconnection. As a consequence, the schedule for Phase II was changed.

On June 28, 1996, the Department of Public Service ("DPS"), AT&T Communications of New England, Inc. ("AT&T"), and New England Telephone & Telegraph Company d/b/a NYNEX ("NYNEX") filed a stipulation describing certain inter-carrier service arrangements to be made available by NYNEX to competitive local exchange companies. On July 8th, the DPS filed a letter detailing "non-consensus" issues still to be litigated, and proposed a schedule for their resolution. On August 6th, NYNEX, the DPS, AT&T, MCI Telecommunications Corporation ("MCI"), and Atlantic Cellular Company, L.P. filed a "Stipulation Regarding Cost Methodology—Docket 5713." Also on that day, I issued an order setting out a procedural schedule for completing Phase II. On August 9, the Independent Local Exchange Companies ("ILECs")¹ filed a letter expressing concern that the schedule did not allot "sufficient time . . . between the scheduled status conference on August 22 and the schedule for filing prefiled testimony on August 30." ILEC Letter at 1. The ILECs went on to suggest that with issuance of the FCC's interconnection order on that very day, it would be appropriate to reassess both the schedule and objectives of this phase. *Id.*

1. 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.

During the status conference, the parties agreed that the Board should review the NYNEX cost-study stipulation separately from—and in advance of—the other Phase II issues.² As for the remaining issues, the parties agreed to reevaluate them in light of the FCC's August 8th Order, to determine whether and to what extent that Order obviates the need for litigation. To this end, the parties will work cooperatively and file a joint report on their efforts, detailing issues to be resolved and a proposed schedule for doing so.

For these reasons then, the following two-track schedule was set:

Prefiled testimony re: cost-study stipulation	9/26/96
Evidentiary Hearing re: cost-study stipulation	10/3/96
Joint filing on remaining issues	10/25/96

Lastly, the question was raised as to whether the Public Service Board is proscribed by the federal Telecommunications Act of 1996 ("Act") from ordering the ILECs to propose and conduct their own cost studies (presumably for the eventual purpose of setting rates for interconnection and unbundled network elements). The ILECs have suggested that this question arises because of the rural telephone company exemptions set out in Sections 251(f)(1) and (2) of the Act.

Resolution of this issue requires the Board to determine whether the Act preempts state authority with respect to ordering the ILECs to perform cost studies of network elements and resale services. *See also* Act § 251(d). Since its disposition will likely have an impact on when and to what degree local exchange competition will be introduced in the ILECs' service territories (including that of Vermont Telephone Company), it is appropriate that we take it up at this time. To that end, therefore, I direct the parties to file legal memoranda on the question; initial briefs will be due on September 20, 1996, and reply briefs on October 10, 1996.

2. The ILECs and the DPS raised the question of whether a non-signatory to the cost-study stipulation would be precluded from litigating the appropriateness of those studies later in Phase II, if the party fails to do so during the hearings now scheduled for October 3rd. After some discussion on the subtleties of this point, I ruled that the October 3rd hearing will be the only opportunity for non-signatory parties to litigate the stipulated cost-study methodology *insofar as it applies to NYNEX* (i.e., for the purpose of costing and pricing NYNEX's network elements). If non-signatory parties choose not to do so, however, they will not be precluded from later raising issues associated with either the *empirical results* of the cost studies or their usefulness (methodologically or empirically) to companies other than NYNEX. I reaffirm that ruling today.

DATED at Montpelier, Vermont, this 4th day of September, 1996.

s/Frederick W. Weston

Frederick W. Weston
Hearing Officer

OFFICE OF THE CLERK

FILED: 9/4/96

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

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