

Docket No. 5713

Order entered: 11/7/96

INTRODUCTION

PROCEDURAL HISTORY

On May 29, 1996, the Board issued a final Order in Phase I of this docket in which it delineated the general methodological requirements for TSLRIC studies. On August 6th, NYNEX, the Department of Public Service ("DPS"), AT&T Communications of New England, Inc. ("AT&T"), MCI Communications Corporation ("MCI"), and Atlantic Cellular Company, L.P. ("Atlantic Cellular") filed a detailed stipulation ("Stipulation") on the methods, elements, and timing of the TSLRIC studies. At the August 22nd status conference, the parties to the settlement stated that they were engaged in additional discussions to determine possible changes

3. *Id.* at 129.

to the Stipulation, to make it consistent with the Federal Communications Commission's ("FCC") pricing rules promulgated two weeks earlier.⁴ The October 3rd hearing date was set to give them time to do so.

On September 26, 1996, NYNEX notified the Board that consensus had not been reached on how to modify the Stipulation to conform to the FCC's TELRIC approach, and the Company requested that the evidentiary hearing be rescheduled "as a status conference to discuss the issues raised in this letter and those in NYNEX's forthcoming motion."⁵

The Department opposed NYNEX's request, arguing that the purpose of the October evidentiary hearing "was and remains review of the stipulation NYNEX itself filed with the Board August 5."⁶ The DPS went on to say that "Further delay of Board review and approval of the stipulation will delay the onset of effective competition in the Vermont market. . . ."⁷ The Department reiterated its position in a letter filed on September 30th, opposing the NYNEX motion submitted three days earlier.

On the morning of October 3rd, prior to the hearing, the parties discussed privately the issues raised in the several filings. When the hearing began, the parties informed me that the NYNEX motion had been withdrawn and that the Cost Study Stipulation would be entered into the record, sponsored by the testimony of DPS witness Thomas Weiss.

4. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996). The FCC adopted a study methodology that it called total element long-run incremental costing ("TELRIC") which, with certain identifiable differences, is quite similar to TSLRIC. Tr. 10/3/96 at 15-23.

5. NYNEX Letter, 9/30/96 (dated 9/26/96, facsimile transmission), at 2. The referenced motion was filed on September 27th. In that motion, NYNEX argued that "The clear purpose of the October 3 technical hearings was to consider a modified stipulation, not to litigate a new methodology" and that, in the absence of such modifications, the hearing should be rescheduled as a status conference. NYNEX also suggested two options for developing costs and prices in this docket: litigation or reliance on the findings in Docket 5906 (the NYNEX/AT&T interconnection agreement arbitration). NYNEX Motion, 9/27/96, at 2-4.

6. DPS Letter, 9/27/96, at 1.

7. *Id.* at 2.

FINDINGS OF FACT

1. On August 5, 1996, NYNEX, the DPS, AT&T, MCI, and Atlantic Cellular filed a "Stipulation Regarding Cost Methodology." The Stipulation describes the methodology and schedule for completion of forward-looking cost studies to be performed by NYNEX, in accordance with the Board's final Order in Phase I of this docket. Exh. Joint-1; tr. 10/3/96 at 13-14; *see, generally*, Phase I Order (dated 5/29/96).
2. The cost-study methodology described in the Stipulation meets the requirements set by the Board in the Phase I Order. Specifically, the costing approach conforms to the TSLRIC methodology adopted by the Board. Exh. Joint-1, Attachment A; tr. 10/3/96 at 14, 16, 26; Phase I Order at 27-49.
3. Within six months of Board approval of the Stipulation, NYNEX will complete TSLRIC studies of the unbundled network functions associated with the Link, End-Office Switching, Inter-Office Transport, Tandem Switching, Signalling, and specified Operations Support Systems. Within nine months of Board approval, NYNEX will complete like studies of specified Ancillary Services and Basic Exchange Service. Exh. Joint-1 at 2-3.
4. Within six months of Board approval of the Stipulation, NYNEX will submit a proposed schedule for the completion of TSLRIC studies of the remaining services, functions, and elements not already specified in the Stipulation. *Id.* at 3.
5. The cost studies that will be produced under the terms of the Stipulation are intended to form the basis for setting prices for unbundled functions, elements, and services. However, by adopting the Stipulation and its costing methodology, the Board will not have reached any conclusions about pricing or rate design. Such questions will be addressed in later hearings in this phase of Docket 5713. *Id.*, Attachment A; tr. 10/3/96 at 18-20; *see* Phase I Order at 41-48.

DISCUSSION

The Stipulation marks a significant milestone in this docket, and in Vermont's deliberate transition to a competitive market for local exchange services. It resolves important methodological questions and it sets a reasonable timetable for completion of the studies. The agreement puts into motion a process for the ultimate resolution of some of the thorny pricing issues that must be finally dealt with if the hoped-for benefits of competition are going to be delivered to Vermont consumers.

The Stipulation meets the requirements laid out by the Board in the Phase I Order, and I recommend that the Board approve it. By doing so, the Board will not have constrained its later discretion to weigh and decide pricing and rate design questions. The cost studies will illuminate the magnitudes and causative properties of the costs of NYNEX's elements and services and will inform—but not dictate—the Board's future decisions. Economic efficiency is not the sole (nor,

in many instances, the primary) determinant of pricing policy. I expect these questions (including, for example, the assignment and magnitude of any "mark-up" for joint and common costs) to be fully explored after the completed studies are filed.

At the time of the evidentiary hearing, the FCC's Interconnection Order had been temporarily stayed by the U.S. Court of Appeals, Eighth Circuit. The Eighth Circuit was still considering the question of whether to make the stay permanent pending a final decision in the case. It was this uncertainty—in particular, the possibility that the FCC's TELRIC rules would not be put into effect—that led the parties in this docket to continue to rely upon the August 5th TSLRIC Stipulation as the basis for cost studies.⁸ Since that time, the Eighth Circuit has issued a stay of "the operation and effect of only the pricing provisions and the 'pick and choose' rule contained in the FCC's First Report and Order pending our final determination of the issues raised by the pending petitions for review."⁹ In the absence of FCC rules on costing methods and pricing, it becomes all the more important that we initiate and complete the TSLRIC studies under consideration today.¹⁰

On a final note, all parties in this docket are not signatories to the Stipulation. The significance of this fact was addressed in my Procedural Order of September 4, 1996, stating:

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.¹¹

In its letter of September 17th, AT&T requested clarification of this ruling, saying that it "believes that not only non-signatories but signatories to the costing stipulation should be entitled to take issue with the empirical results of the cost studies performed by NYNEX. It is only the

8. Tr. 10/3/96 at 31-32.

9. Iowa Utilities Board v. FCC, Case No. 96-3321 and consolidated cases (8th Cir., October 15, 1996) at 1-2.

10. The ultimate resolution of that appeal before the Eighth Circuit is, of course, unknown. In this knowledge, therefore, it is important that NYNEX take all reasonable steps to assure that its TSLRIC studies (including their underlying data) can be adapted, as appropriate, to conform to the FCC's TELRIC methodology, should the need arise. Tr. 10/3/96 at 16-18.

11. Procedural Order, 9/4/96, at 2, fn. 2.

methodology to be used by NYNEX that signatories will have agreed to."¹² AT&T's point is correct and, at the hearing on October 3rd, I amended my earlier ruling accordingly. I affirm that decision today.

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8. 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 6th day of November, 1996.

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

12. AT&T Letter, 9/18/96, at 1-2.

ORDER

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

1. The findings and conclusions of the Hearing Officer are adopted.
2. The Stipulation Regarding Cost Methodology filed by NYNEX, the DPS, AT&T, MCI, and Atlantic Cellular is approved.
3. NYNEX shall file completed cost studies, according to the terms of the Stipulation, within six and nine months of today's Order. Also within six months of this Order, NYNEX will file a proposed schedule for the completion of TSLRIC studies of all its remaining services, elements, and functions not specifically identified in the Stipulation.

DATED at Montpelier, Vermont, this 7th day of November, 1996.

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

OFFICE OF THE CLERK

FILED: NOVEMBER 7, 1996

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.