

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5713

Investigation into New England Telephone)
and Telegraph Company's (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: 3/3/97

ORDER RE: PHASE II PROCEDURAL SCHEDULE

On January 22, 1997, the Department of Public Service ("Department" or "DPS") filed a letter describing the status of negotiations among the parties, negotiations aimed at narrowing the number of issues yet to be litigated in the second phase of this docket. The DPS informed the Board that, "After many hours of good faith discussions, the parties have identified several issues which at least some of them believe should be addressed in Phase II of this docket, though no consensus has been reached with respect to the scope, expression and timing of issues." DPS Letter at 1. The DPS listed the issues in question and asked, on behalf of the parties, that a status conference be convened to resolve them.

That conference was held on February 11th. At that time, the parties outlined their views as to how the docket should proceed, each recommending the sets of issues to be taken up, the sequence of hearings, and other milestones to be achieved that would enable this case to be concluded by the end of the year. On many points, there was broad agreement. This Order memorializes that consensus, resolves several remaining issues, and sets the schedule for the first module of Phase II.

A. Scope

Phase II shall proceed in a stepped fashion. The first module will deal with all issues originally identified in my Scoping Order of March 1, 1995, (at fn. 2) that do not depend directly upon the availability of the cost studies for resolution.¹ Among them was a subset of issues whose inclusion in Phase II was not agreed on by the parties. Those issues are broadly

1. The first component of the cost studies will be filed on April 1, 1997. The second will be filed on August 7, 1997. On May 7, 1997, NYNEX will file a schedule for completion of all remaining cost study elements. Tr. 2/11/97 at 48-49.

summarized in the Department's January 22nd letter. Upon consideration of the parties comments, I conclude that the following are ripe for consideration in Phase II, as follows:

- (1) *Reciprocity of the Unbundling Requirement.* Here the question is legal in nature and will not require a hearing on the facts. The parties will brief it separately, and I will propose a ruling on it in advance of a proposed decision on other issues in this phase. See Schedule, below.
- (2) *Interconnection of Leased Lines.* There are both factual and legal questions surrounding this issue. For example, does the right to interconnect with leased lines apply only to "telecommunications carriers" as defined in 47 U.S.C. 153, or does it apply also to companies offering "telecommunications services" as defined in 30 V.S.A. § 203(5)?
- (3) *Local Calling Areas.* This involves, among other things, consideration of Board rulings in Docket 5670. The question of whether both competitive and incumbent providers of local exchange service should be bound by calling area boundaries as set out in Docket 5670—under what conditions can alternative calling areas be offered—should be addressed. I recognize that this may be affected by other policy considerations with respect to carrier of last resort obligations and adequacy of revenues, but it seems appropriate to begin that process at this point.
- (4) *Interim Number Portability.* Under the Interconnection Stipulation signed by the DPS, New England Telephone & Telegraph Company d/b/a NYNEX ("NYNEX"), and AT&T Communications of New England, Inc. ("AT&T"), this capability will be provided by NYNEX using available technologies. Will competitors be permitted to request alternative technologies, if they are available and technically feasible? The assignment of costs associated with providing interim number portability will also be addressed. Tr. 2/11/97 at 31.
- (5) *Directory Publication of Information Pertaining to Competitive Providers.*
- (6) *IntraLATA Presubscription ("ILP").* In its Order of February 26, 1997, in Docket 5900, *In Re: NYNEX-Bell Atlantic Merger*, the Board directed NYNEX to file a proposal within 60 days of that Order to implement ILP by December 1, 1997. Furthermore, the Board directed me to supervise the review and implementation of that plan, in this docket.² Docket 5900, Order of 2/26/97 at 36-37.
- (7) *Administration of Continuous Emergency Access.*
- (8) *Regulatory Issues.* In its January 22nd letter, the DPS lists five items that were originally slated for Phase III, but which some parties believe can be taken up now. I conclude that four of the five—carrier of last resort obligations, service area requirements, certification processes,

2. Sixty days after the Order in Docket 5900 is April 27, 1997. A filing of the ILP implementation plan on that date would not leave the other parties in this docket sufficient time to review and respond to it before the May hearings. Therefore, I direct NYNEX to file its ILP plan and prefiled testimony in support of it on April 8, 1997, along with its other prefiled testimony also due on that day. See Schedule, below.

and tariff filing requirements—can be raised at this point in the proceeding.³ The fifth, universal service fund distribution and possible legislative changes, shall remain in Phase III. Tr. 2/11/97 at 42-45.

- (9) *Tariffs and "Pick and Choose".*
- (10) *Enhanced Services.* This relates to the issues raised in the Hearing Officer's Orders of August 15, 1996, in Dockets 5836 and 5866.
- (11) *Status of the Interconnection Stipulation.* This stipulation will be reviewed in advance of the first module. Approval of it, and whether such approval should or will have any effect upon non-signatories, will be considered. Tr. 2/11/97 at 32-40, 64-66.
- (12) *Service Quality Standards.* To the degree that there are service quality issues related to the provision of interconnection and related services at wholesale *and* they are not under consideration in Docket 5903, they can be addressed in this module. *Id.* at 25-30.

The second module of Phase II will consider all issues remaining with respect to the determination of costs, pricing methods, and prices themselves (as appropriate). Those issues were detailed in the March 1, 1995, Scoping Order. Also in the second module, we will address the remaining policy questions that were originally set for Phase III.

The question of whether and how the final decisions reached by the Board in this docket apply to the independent local exchange telephone companies ("ILECs") was raised. The ATP noted that, in the context of interconnection negotiations, an ILEC will always have the freedom to argue that it should be exempt from providing certain services under the federal Telecommunications Act of 1996 ("Act"). Consequently, the ATP argued that it would not be productive at this time to delay this investigation now in order to resolve how it affects the ILECs. That would better be left to a later phase, the ATP contended. *Id.* 39-40. The other parties did not oppose this recommendation. The ILECs, moreover, argued that there is no need to litigate the applicability of the Interconnection Stipulation to them, since the Stipulation acted, in effect, as a first draft of the interconnection agreement currently being negotiated between NYNEX and AT&T. *Id.* at 63.

At this time, I am inclined to agree with the ATP and ILECs. The ultimate issue of this docket will be policies to inform the development of local exchange competition and, more specifically, the negotiation of interconnection agreements in Vermont. Nine of the state's ten ILECs have participated fully in the docket so far. A decision of the Board cannot abridge the

3. The Alternative Technology Providers ("ATP") argued that resolution of these questions requires a fuller understanding of their potential cost and revenue effects and, therefore, it will be necessary to await the filing of the cost studies before tackling them. NYNEX disagreed. As I noted during the hearing, work on these issues can begin in this module. If it turns out that final policy recommendations should be informed by empirical cost data, we will defer final judgment until that information is available. Tr. 2/11/97 at 12-22, 51-54.

rights of any party under the Act. Therefore, we will proceed in the fashion suggested by the ATP. If circumstances later warrant, I will reconsider this process.⁴

B. Schedule

The following procedural schedule was worked out during the status conference.

The Interconnection Stipulation

Hearing

week of 3/24/97

Phase II, Module One

Prefiled testimony

4/8/97

Discovery due (10-day response time)

4/15/97

Discovery due

4/29/97

Rebuttal testimony

5/7/97

Hearings

week of 5/12/97

Phase II, Module Two

Cost studies, first set

4/1/97

Cost study workshop (in Boston), parties only

week of 4/14/97

Status of cost study review (letter filing)

5/1/97

Status conference (if necessary)

week of 5/5/97

C. Miscellaneous

As I noted during the status conference, the Board is evaluating its work-loads and personnel assignments for the coming year. In the interest of exploring all reasonable alternatives for staffing, I ask that each party consider whether it would be willing to waive objection to the participation of George Young, Associate General Counsel of the Board, in this docket.⁵ I also ask that the parties consider whether, even if all parties so waived, Mr. Young would still be precluded from assisting me in this docket. Parties shall file their responses by April 8, 1997.

4. One area of concern, for example, has to do with the cost studies. ILEC customers should not be denied the benefits of competition any longer than is necessary. It is important, therefore, that appropriate steps be taken to assure that, if and when ILECs receive *bona fide* requests for interconnection and unbundling, they be prepared to respond to them expeditiously. This end would be greatly served by the production of ILEC cost studies as soon as possible. Consequently, the ILECs shall, during the second module of Phase II, present evidence on the applicability (in terms of both methods and empirical results) of the NYNEX studies to their own networks. In the alternative, they may submit their own proposals for the development and completion of relevant cost studies. See Order Re: Phase I, 5/29/97, at 31-32, 70-71.

5. Mr. Young joined the Board in the spring of 1996, after seven years' employment with the Department. He represented the DPS during Phase I of this docket, but had no involvement with Phase II.

DATED at Montpelier, Vermont, this 3rd day of March, 1997.

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

OFFICE OF THE CLERK

FILED: March 3, 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.