

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: 10/21/97

SECOND AMENDED ORDER RE:
PROCEDURAL SCHEDULE FOR REMAINDER OF PHASE II

A. DPS Motion to Compel and For Relief From Procedural Schedule

On September 3, 1997, in response to a request for clarification filed by New England Telephone and Telegraph Company ("NYNEX" or "Company"), I issued a revised procedural schedule for the remainder of Phase II. On September 16th, the Department of Public Service ("Department" or "DPS") filed a motion for relief from that schedule, asserting that NYNEX's failure to meet its discovery obligations had left the DPS "unable to effectively evaluate and, if necessary litigate, NYNEX's cost studies." DPS Motion, 9/16/97, at 3. The DPS requested that I compel NYNEX to respond immediately and fully to all interrogatories and to also extend the filing deadline for the Department's prefiled testimony.

AT&T Communications of New England, Inc. ("AT&T") filed a similar motion the next day, also asserting failure by NYNEX to meet its filing requirements, and asked for a continuance of the discovery schedule. AT&T Motion, 9/17/97 at 1.

On September 25th, NYNEX filed a letter proposing a yet-again revised procedural schedule (although it did not include new hearing dates). The schedule had been worked out by the DPS, AT&T, and the Company, and was unopposed by Hyperion Telecommunications of Vermont, Inc. ("Hyperion"), Atlantic Cellular Company, and the independent telephone companies. On behalf of these parties, NYNEX asked that I approve the new schedule. NYNEX Letter, 9/25/97, at 1.

On October 17, 1997, a status conference was held by telephone. At that time, I informed the parties that the proposed schedule was fine. We then agreed on dates for the evidentiary hearings. The schedule for the remainder of Phase II is therefore as follows:

Phase II-Module 2

Filing of NYNEX's Revised Loop Study	10/3/97
Filing of NYNEX's responses to first round of discovery	10/3/97
Completion of parties' (except DPS's) 2nd round of discovery on NYNEX	10/14/97
Completion of DPS's 2nd round of discovery on NYNEX	10/17/97
NYNEX's responses to 2nd round of discovery	10/24/97
NYNEX's responses to DPS's 2nd round of discovery	10/27/97
Filing of alternate cost studies and all intervenor and DPS testimony (except Weiss)	10/30/97
Completion of NYNEX's discovery on intervenors	11/7/97
NYNEX's rebuttal prefiled testimony	11/14/97
Thomas Weiss's prefiled testimony (not later than:)	11/17/97
NYNEX rebuttal to Weiss's testimony (not later than:)	12/2/97
Evidentiary hearings	12/8 - 12/12/97 and 12/16 - 12/18/97

We will set a briefing schedule at the end of the hearings.

B. Briefing in Phase II-Module One

Several memoranda have been filed by various parties in the days since reply briefs were due. On September 22, 1997, after initial and reply briefs were filed in Phase II-Module One, the Department moved for leave to file a limited surreply memorandum. The DPS contended that, in its reply brief, NYNEX raised two issues that should have been raised in its initial brief; consequently, the DPS asked for an opportunity to respond to them, and attached a short surreply memorandum.

On October 1, 1997, the Department submitted a letter describing a recent decision of the Federal Communications Commission ("FCC"). The DPS asserts that the decision, Docket FCC 97-336, *In the Matter of Silver Star Telephone Company, Inc., Petition for Preemption and Declaratory Ruling* (9/24/97), is relevant to the issues now before me and, moreover, supports the Department's recommendations with respect to competition in the territories of the independent local exchange companies ("ILECs"). DPS Letter, 10/1/97, at 1. The Department attached a copy of the decision to its letter. Six days later, the DPS informed me of another FCC decision that it argues is pertinent to the ILEC issue. DPS Letter, 10/6/97.

On October 8th, NYNEX filed a motion to respond to the DPS's surreply memorandum and, to it, attached the response.

Also on October 8th, the ILECs submitted a letter asking that I strike the Department's October 1st and October 6th letters (though not the FCC decision itself) from the record, arguing that the "letters go beyond mere transmittal of the decisions and instead contain additional argument to which the parties in Docket 5713, now that briefing is complete, will not be able to respond." ILEC Letter, 10/8/97, at 1.

On October 14th, the DPS responded to the ILEC's letter, opposing their recommendation that its earlier letters be stricken. The DPS stated that "It is the responsibility of the parties to bring relevant legal authorities to the attention of the tribunal" and, furthermore, that both of its letters "summarized in a straightforward manner two recent decisions which bear directly on the question of rural incumbent protectionism pending before [the Board]." DPS Letter, 10/14/97, at 1. Three days later, the ILECs filed a letter asking that, given the dispute, all parties "be afforded an opportunity to respond to the untimely arguments raised by the Department in [its] letters."

I deny the ILECs' request to strike the Department's additional pleadings. All other parties shall have until October 31, 1997, to file responses to the issues raised in the DPS's letters of October 1, 6, and 14, 1997. I also grant the motions of the DPS to file a surreply memorandum and of NYNEX to file a response to it.

C. Other Procedural Matters

On October 1, 1997, Hyperion filed a letter in this docket and in Docket 6000, NYNEX's petition for approval of a price regulation plan. It notified the Board that it was not then planning to intervene in Docket 6000, but would do so if the docket "develops in a way that is adverse to Hyperion's interests. . . ." Hyperion then noted its primary concern about the relationship of Docket 6000 to this case:

The Board should not decide important policy questions about regulation for one carrier in Docket No. 6000 without also addressing important policy questions for all carriers, including universal service, in the proceeding that the Board has initiated for that purpose. Hyperion therefore respectfully asks that the Board schedule remaining proceedings in Docket No. 5713—including litigation of the ongoing cost studies in Phase II's second module and Phase III—on a schedule that will permit the Board to issue a final decision in Docket No. 5713 no later than the date on which it expects to issue a final decision in Docket No. 6000 (for which Vermont law requires final Board action no later than May 1, 1998).

Hyperion Letter, 10/1/97, at 2.

It is my intention to complete the remaining phases of this docket as soon as is reasonably possible. I expect to issue a recommended decision on Phase II-Module One before the end of November 1997, and one on Phase II-Module Two (cost studies) early in 1998. In the knowledge of other cases on the Board's docket in the coming months, I suspect that completing Phase III before May 1, 1998, will be problematic. In any event, to the extent that there is any overlap of issues between this docket and No. 6000, I expect that their review and ultimate disposition by the Board will be handled in such a way as to protect the rights and interests of affected parties and, more importantly, promote the public good.

On September 3, 1997, I approved the intervention of C-TEC Services, Inc. ("C-TEC"). There had been some question then as to the correct name of the intervenor (see Order of 9/3/97 at 3, fn. 5), and it appears now to have been more confusing than at first thought. On September

9th, intervenor's counsel filed a letter stating that C-TEC's affiliate, RCN Telecom Services, Inc. ("RCN"), rather than C-TEC itself, had intended to participate in the docket. Given this clarification, I approve the intervention of RCN.

SO ORDERED.

DATED at Montpelier, Vermont, this 21st day of October, 1997.

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

OFFICE OF THE CLERK

FILED: October 21, 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.