

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7316

Investigation into regulation of Voice over )  
Internet Protocol (VoIP) Services )

Order entered: 10/3/2013

**FOURTH PROCEDURAL ORDER ON REMAND**

On October 2, 2013, I convened a duly noticed status conference in this proceeding for the purpose of determining what further proceedings are necessary for the resolution of this phase of the docket and for addressing any other issues that may be outstanding. In this Order, I approve the scheduling proposal presented by the parties at the status conference and request additional argument and information from the parties with respect to the outstanding issue of allocating certain costs incurred by the Department of Public Service ("DPS" or "Department"). I am also taking this opportunity to grant the request of the City of Burlington Electric Department ("BED") to withdraw as a party.

Participating in the status conference were Comcast Phone of Vermont, LLC ("Comcast"), the DPS, AT&T Corporation ("AT&T"), Green Mountain Power Corporation, and eight jointly appearing independent local exchange carriers (Franklin Telephone Company, Ludlow Telephone Company, Northfield Telephone Company, Perkinsville Telephone Company, Shoreham Telephone Company, Topsham Telephone Company, Vermont Telephone Company, d/b/a VTel, and Waitsfield-Fayston Telephone Company, d/b/a Waitsfield Telecom and d/b/a Champlain Valley Telecom) (the "Independent ILECS").

Comcast took the position that in light of the supplemental prefiled testimony submitted by Comcast, the DPS and the Independent ILECS, there remain mixed issues of fact and law that are in dispute and, thus, that require a technical hearing. With the assent of the other parties, Comcast proposed that (1) the parties submit, on or before October 31, 2013, a list of stipulated facts and a list of issues that may require live surrebuttal testimony at the technical hearing, (2)

the Public Service Board ("Board") schedule a one-day technical hearing for either December 5 or 6, 2013, (3) post-hearing briefs be due on or before January 13, 2014, and (4) reply briefs be due 21 days later (i.e., on February 3, 2014). In the absence of objection, I find this scheduling proposal to be reasonable and therefore approve it.

A further issue in the case, raised by AT&T, concerns the allocation to other parties of the costs incurred by the DPS in connection with its expert witness, Fred Goldstein. On August 23, 2013, the Independent ILECs sent a letter to the Secretary of Administration objecting to the cost allocations reflected in a "billback" notice issued by the DPS to the other parties on August 20, 2013.<sup>1</sup> The Independent ILECs objected to the DPS determination that it would assign 50 percent of its costs to Comcast and the remaining 50 percent equally among the remaining parties regardless of the fact that the eight Independent ILECs are appearing jointly and functioning, in essence, as one party.<sup>2</sup> Thereafter, the DPS agreed to a proposal to treat the Independent ILECs as one party for billback purposes, whereupon the Independent ILECs wrote to the Secretary of Administration to withdraw their objection.<sup>3</sup> When the DPS and the Independent ILECs referenced this agreement at the status conference, AT&T indicated that it objected to this arrangement and wished to pursue the matter further before the Board.

Following a discussion off the record, I indicated at the status conference that it appeared this issue is not properly before the Board at this time although I invited the parties to advise the Board in writing if they disagreed. Having had the opportunity after the status conference to review the applicable statutes, I have decided that if AT&T wishes to pursue its objection to the cost allocation proposed by the DPS, it would be appropriate for AT&T to file a motion to that effect pursuant to the requirements of PSB Rule 2.206. The deadline for AT&T to file any such motion shall be October 11, 2013. Thereafter, responses shall be due on October 21, 2013.

Finally, at the status conference no party expressed any objection to the request submitted on September 4, 2013, by BED for leave to withdraw as a party while remaining an "interested person" for purposes of monitoring the docket. In the absence of objection, I grant BED's request

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1. Letter of Megan R. Ludwig, Esq., Department of Public Service, to Susan M. Hudson, Clerk of the Board, 8/29/13.

2. *Id.*

3. *Id.*; letter of Cassandra LaRae-Perez Esq., to Administration Secretary Spaulding, 9/6/13.

to withdraw its intervention while remaining an "interested person" for purposes of receiving copies of Board issuances in this Docket.

In light of the foregoing, the procedural schedule applicable to this phase of the Docket is now as follows:

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|--------------------------------|--|
| October 11, 2013               | Deadline for motions regarding DPS billback allocations                                |
| October 21, 2013               | Responses to billback motion(s) due  |
| October 31, 2013               | Parties to file factual stipulation and lists of issues for live surrebuttal testimony |
| December 5, 2013,<br>9:30 a.m. | Technical hearing  |
| January 13, 2014               | Parties to file initial briefs   |
| February 3, 2014               | Parties to file reply briefs   |

**SO ORDERED.**

Dated at Montpelier, Vermont, this 3<sup>rd</sup> day of October, 2013.

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s/Donald M. Kreis  
Donald M. Kreis, Esq.  
Hearing Officer

OFFICE OF THE CLERK

FILED: October 4, 2013

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 (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*