

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7316

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

Order entered: 5/15/2013

SECOND PROCEDURAL ORDER ON REMAND

Pursuant to the April 12, 2013, Order of the Vermont Public Service Board ("Board") in this Docket, I conducted a status conference on April 30, 2013, to determine next steps in light of the decision of the Vermont Supreme Court to remand the case to the Board for additional proceedings as described in the order of the Court. In this Order, I approve a procedural schedule that was developed by the parties at the status conference.

The Board opened this docket in 2007 at the request of the Department of Public Service ("DPS") as a generic investigation to address the extent to which Vermont law under Title 30 applies to Voice over Internet Protocol ("VoIP") services, the extent to which federal law preempts Vermont law with regard to VoIP services, and, to the extent that non-preempted Vermont law applies, the degree to which the Board should "apply the same or different regulations and levels of regulations to VoIP carriers as apply to other telephone services."¹ The Board ultimately divided the docket into two phases, with Phase I an opportunity for factfinding and a jurisdictional determination and Phase II, as necessary, providing an opportunity for the Board to determine the extent to which it would exercise its regulatory authority. The Board

1. *Investigation into regulation of Voice over Internet Protocol ("VoIP") services*, Docket 7316, Order of 5/16/07 at 1.

issued its Phase I Order in 2010,² appellate proceedings before the Vermont Supreme Court ensued, and the case is now on remand to the Board with instructions to rule on a question the Phase I Order left unresolved: whether so-called "fixed VoIP" is an "information service" or a "telecommunications service" within the meaning of applicable federal law.³

Participating in the status conference were representatives of the Department of Public Service, Comcast Phone of Vermont, LLC ("Comcast"), MCImetro Access Transmission Services, d/b/a Verizon Access Transmission Services and the Voice on the Net Coalition (appearing jointly), Green Mountain Power Corporation, Telephone Operating Company of Vermont, d/b/a FairPoint Communications, and eight jointly appearing incumbent local exchange carriers (Franklin Telephone Company, Ludlow Telephone Company, Northfield Telephone Company, Perkinsville Telephone Company, Shoreham Telephone Company, Topsham Telephone Company, Inc., Vermont Telephone Company, Inc., d/b/a VTel, and Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom and Champlain Valley Telecom).

In its Phase I Order, the Board denied a request made by Comcast in 2010 to supplement the factual record with respect to the fixed VoIP service it offers to Vermont customers.⁴ The Vermont Supreme Court has directed the Board on remand to reconsider this ruling.⁵ At the status conference, all participants agreed that the record in this docket should be supplemented on this issue with a full round of prefiled testimony, discovery, and a technical hearing. I adopt this recommendation, subject to the understanding that the supplemental testimony will be strictly limited to the factual information that is necessary for the Board to determine whether the fixed VoIP services offered by Comcast in Vermont meet the definition of an "information service" or a "telecommunications service" under federal law.

Accordingly, I adopt the following agreed-upon procedural schedule for the current phase of this proceeding:

2. *Investigation into regulation of Voice over Internet Protocol ("VoIP") services*, Docket 7316, Order of 10/28/10 ("Phase I Order").

3. "Fixed VoIP" is the use of VoIP to provide calling services between fixed locations in a manner that is, from the customer perspective, the functional equivalent of traditional voice calling provided entirely over the public switched telephone network ("PSTN"). Phase I Order at 8-10.

4. Phase I Order at 30-32, 43.

5. *In re Investigation into Regulation of Voice Over Internet Protocol (VoIP) Services*, 2013 VT 23 at ¶ 33.

June 7, 2013	Supplemental prefiled testimony to be filed by Comcast
June 21, 2013	Discovery requests to be served on Comcast regarding supplemental prefiled testimony
July 11, 2013	Discovery responses to be served by Comcast
August 6, 2013	Supplemental prefiled testimony to be filed by other parties
August 20, 2013	Discovery requests to be served on other parties regarding their supplemental prefiled testimony
September 6, 2013	Discovery responses to be served by other parties
September 12, 2013, 9:30 a.m.	Status conference
October 2, 2013, 9:30 a.m.	Technical hearing, if necessary
October 17, 2013	Direct briefs due
October 28, 2013	Reply briefs due

The procedural schedule agreed upon at the status conference includes a subsequent status conference to be held on September 12, 2013, for the purpose of addressing two potential issues: (1) the extent to which the parties are able to enter into factual stipulations in a manner that reduces or eliminates the need for a technical hearing; and (2) the extent to which it will be necessary for any party to present live surrebuttal testimony at the technical hearing. Although the participants at the April 30 status conference were not optimistic about the possibility of factual stipulations, there is no reason to assume that many material facts will ultimately be in dispute given the narrow question now at issue in this docket. I will therefore expect the parties to come to the status conference in September prepared to identify the material facts that are truly disputed.

SO ORDERED.

Dated at Montpelier, Vermont, this 15th day of May, 2013.

s/Donald M. Kreis

Donald M. Kreis, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: May 15, 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)