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, Module 2 – UNE-P Issues	)

Order entered: 5/13/99

ORDER RE: REQUEST FOR STAY OF FILING REQUIREMENT

In my procedural order of March 16, 1999, I directed AT&T Communications of New England, Inc., ("AT&T") to file within 21 days (April 6th) a description of the network elements that it wishes to purchase on a combined basis. I also directed New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic", "Company",) or "BAVT") to file within another 21 days (April 27th) a response to AT&T's submission, detailing the terms, conditions, and prices upon which it will make the combined elements available.[1]

AT&T made the requisite filing on April 6th. It had been preceded, however, on April 2nd by a Bell Atlantic motion requesting that the Board review and overturn my March 16th Order. Bell Atlantic argued, among other things, that my conclusion that the Board retains jurisdiction to order local exchange companies to provide recombined unbundled network elements to competitive carriers was erroneous in light of the U.S. Supreme Court's recent decision in *AT&T v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999).

In my Order of April 7, 1999, I granted Bell Atlantic's request to seek interlocutory review of my March 16th Order. I noted also that BAVT had not requested a stay of the procedural requirements set out in that earlier Order, and that I saw no reason to stay them.[2]

1. Order of 3/16/99 at 6.
2. Order of 4/7/99 at 1.

My April 7th Order was followed by a flurry of filings. On April 14th, Bell Atlantic requested the stay that I had supposed unnecessary. On April 28th, the Department of Public Service ("DPS") filed a letter in opposition to the stay, arguing that BAVT had offered no persuasive reason for further delay. In particular, the DPS contended that Bell Atlantic was wrong to conclude that its likelihood of success on the merits was high.[3] On May 3rd, both the DPS and AT&T filed statements in opposition to Bell Atlantic's motion for Board review of the March 16th Order. The Board is currently reviewing those submissions and the March 16th Order.

Bell Atlantic's April 27th deadline has passed. The Company's arguments in favor of a stay are not persuasive. As the DPS rightly notes, "The March 16th procedural order, at 6, merely requires Bell to file terms, conditions, and prices upon which it will make combined elements available."[4] The filing alone commits Bell Atlantic to nothing at this time, since its purpose is simply to lay "the factual basis for the development of a UNE-combination policy that appropriately balances the objectives of economic efficiency, fairness, improved service, and creative product development."[5] The outcome of that exercise is as yet unknown.

For these reasons, I decline to stay Bell Atlantic's filing requirement. The Company shall, by May 28, 1999, file a description of the terms, conditions, and prices upon which it will make combined network elements available to competitors. Shortly thereafter, I will issue an order setting out a schedule detailing how we will proceed in this matter.

SO ORDERED.

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3. DPS Letter at 1-2.
4. *Id.* at 2.
5. Order of 3/16/99 at 6.

Dated at Montpelier, Vermont, this 15th day of May, 1999.

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

OFFICE OF THE CLERK

FILED: May 13, 1999

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.