

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5713

Investigation into NET's tariff filing re: Open)
Network Architecture, including the unbundling of)
NET's network, expanded interconnection, and)
intelligent networks Re: Phase II, Module One)

Order entered: 5/5/99

ORDER RE: MOTIONS TO RECONSIDER

On February 26, 1999, New England Telephone & Telegraph Company d/b/a Bell Atlantic-Vermont ("BAVT" or "Bell Atlantic") and eight of Vermont's independent telephone companies ("ILECs") filed motions to clarify, alter, or amend our February 4, 1999, Order with respect to Continuous Emergency Access ("CEA"). These filings were followed by a Memorandum in Opposition filed by the Vermont Department of Public Service ("DPS" or "Department") and a Motion to Expedite Consideration of the earlier Motion by BAVT. The latter included a request for oral argument that centered on concern over the indefinite term obligation imposed by the Board's February 4, 1999 Order ("the February 4 Order"). The Board provided the parties an opportunity for oral argument on April 21, 1999.

Prior to the February 4 Order, the Board had established a CEA obligation for BAVT (then NYNEX) in Dockets 5700/5702. This requirement was later extended to ILECS and competitive local exchange carriers ("CLECs") in Phase I of this investigation.¹ The February 4 Order further defined the scope and nature of the CEA requirement.

Requirements Imposed by the Board's Order Relevant to CEA

The February 4 Order imposed several requirements on Bell Atlantic and the ILECs that are the subject of requests for reconsideration, amendments, and/or clarifications. In particular, the Board required that the service obligation extend to all local exchange *facilities-based* providers, with the obligation applying only to *residential first* lines. The Board also required at least on an interim basis, that the obligation extend for an indefinite period after a

1. See, Dockets 5700/5702, Order of 10/5/97 at 155-156 and Phase I Order at 61-65.

residential line has been disconnected.² Carriers, however, may be exempted if they can demonstrate to the Board that the dedicated facilities are more urgently needed elsewhere.³ The Board further required that the service include a Public Service Access Point ("PSAP") call-back capability.⁴ In the Order, the Board indicated that further workshops would be needed to address the numerous detailed issues for which either no testimony or limited testimony was received.⁵

Motions of the Parties

The following issues were raised in BAVT's February 26, 1999, request for reconsideration and/or clarification and in the ILEC's February 26 motion to alter or amend:

1. BAVT requests that the Board clarify that "all issues associated with the provision of continuous emergency access . . . are open to discussion, negotiation, and reconsideration in the workshop process ordered by the Board."⁶
2. BAVT requests that the Board clarify that no new CEA functionality is required by the February 4, 1999 Order, pending the outcome of the workshops.⁷
3. BAVT requests that the Board clarify that the Board's decision to impose the obligation on facilities-based providers rather than resellers obviates the need for BAVT to file any new tariffs or tariff modifications concerning the wholesale provision of CEA.⁸
4. BAVT asks the Board to reconsider its requirement that facilities-based providers provide CEA *indefinitely*, subject only to the

2. Phase II, Module I Order at 125.

3. *Id.* at n. 450.

4. *Id.* at 95 and 126

5. *Id.* at 93.

6. BAVT *Motion*, at 1.

7. *Id.* BAVT, however, did not indicate the scope of or nature of requirements potentially relevant to the concern it raises here. The Department suggests in its later filing of March 29, 1999, that this would cover issues of PSAP call-back functionality and an audio notice requirement. DPS *Memorandum in Opposition to Motions of Reconsideration*, at 2.

8. *Id.*

demonstration of urgent need elsewhere ("urgent need exemption"). BAVT asserts that the indefinite term requirement contributes to diminished service quality and presents its own competing concerns for the health and safety associated with any new customer installations that could not be serviced.⁹ The ILECs joined BAVT in requesting reconsideration of this issue and recommend that the Board adopt the Hearing Officer's recommended four-month period over the Board's indefinite period.¹⁰

5. The ILECs further object to the nature of the urgent need exemption because the requirement, when combined with the lack of procedure for assuring a quick response, would present an impediment to the "speedy reassignment" of such lines.¹¹ In its place, the ILECs recommend that the Board permit such reassignments on a monthly basis through "notice" filings to the Department and the Board.¹²

6. The ILECs observe that there is an apparent conflict between the recommendations of the Hearing Officer that the CEA obligation only apply to first residential lines, and the language contained in the final Board decision that CEA be maintained continuously "on all lines."¹³ They request that the Board clarify its intent on this issue.

7. The ILECs note that the Order fails to indicate when carriers would be required to commence provisioning CEA. The presumption, they argue, is that all carriers must provision CEA immediately. The operators note that there are certain lead time factors that must be considered and therefore request a reasonable start-up period. They, therefore, request additional time pending the Board-sponsored

9. BAVT *Motion to Expedite Consideration of its Motion for Reconsideration and/or Clarification and Request for Oral Argument*, April 16, 1999, at 2 and 3.

10. BAVT *Motion*, at 1; ILEC *Motion* at 5.

11. The ILECs note that disconnected lines are reassigned on a daily basis. *Id.* at 5-6.

12. *Id.* at 6.

13. ILEC *Motion* at 3, referencing the Board's February 4, 1999 Order at 125 and the Hearing Officer's Proposal for Decision at 93-94.

workshop to determine a reasonable period for implementing CEA in their areas.

8. The ILECs note that the PSAP call-back capability, recommended by the Hearing Officer, adopted by the Board, and to be developed after the carriers and the Department develop workable solutions to certain potential problems, has led to some "public confusion over the meaning of the Board's Order".¹⁴ They request further clarifying language by the Board on this issue.

Response to Motions by the Department

On March 29, 1999, the Department of Public Service responded to the motions of BAVT and the ILECs. The Department urges the Board to narrow the scope of issues to be considered in future workshops in order to cover only operational issues. More specifically, the Department recommends that PSAP call-back capability be required, as it maintains was recommended by the Hearing Officer and accepted by the Board. Further, it notes that the urgent need exemption provided for in the Board's Order assures that facilities will not be tied up when required to provide service to other. To address BAVT's concerns regarding the operational aspects of exemptions, the Department recommends that the Board issue guidelines proposed by the DPS "for those circumstances under which an exemption will be granted."¹⁵ The workshop could then be used to further refine the exemption and establish a date beyond which no further exemptions will be granted.¹⁶

In response to the ILEC's Motion, the Department agrees that the order is ambiguous as to the application of the standard only to residential lines and supports the ILEC

14. The effect of that confusion, they argue, is that there are consumer expectations that the PSAP call-back obligation and capability currently applies. The ILECs ask the Board to make clear that the requirement only applies after the carriers and the Department develop workable solutions. ILEC Motion at 7.

15. *Id.* at 3.

16. *Id.* at 4.

recommendation for clarification. Unlike the ILECs, however, the Department recommends that the requirement extend to *all* residential lines rather than merely the *first* line.¹⁷

The Department disagrees with the ILECs that the Board should reverse its ruling on the provision of CEA for an indefinite term, noting that the companies have had ample time to document costs if this were a significant issue. The Department also objects to the ILEC proposal that would allow more time for implementation, noting again that the record lacks evidence to support the companies' assertion of associated costs required for implementation.¹⁸

The Department further objects to the ILEC proposal for monthly "notice" filings of line reassignments, and recommends its own more structured approach. The approach recommended by the Department includes a review list of potentially viable alternatives for meeting customer demands for new service without forcing removal of a facility already dedicated to CEA.¹⁹

Finally, the Department objects to the request by the ILECs that a start-up period be established for those companies not currently provisioning CEA. The DPS maintains that there is no evidence in the record that supports the need for such delay.²⁰

Discussion

The State of Vermont has for several years advanced an ambitious program to provide a comprehensive enhanced 911 ("E-911") system throughout the state. The value of this program will be enhanced by a policy favoring Continuous Emergency Access, or CEA, to installed telephone lines, especially residential lines, even when the customer account has been disconnected or terminated for nonpayment. An objective of this proceeding has been to provide for such access, and to maximize the value of the E-911 system where that can be done without unjustified expense or unreasonable interference with other service quality goals.

Bell Atlantic opens its motion for reconsideration with a request that we clarify that our directives with respect to CEA are to be undertaken on an interim basis only, pending the outcomes of the anticipated workshops. At this stage, the Board does not intend, generally,

17. *Id.* at 4.

18. DPS *Memorandum*, at 4-5.

19. *Id.* at 5.

20. *Id.* at 6.

to limit the scope of issues to be addressed in the workshops. Nevertheless, we wish to be clear that the obligation to provide CEA and its application to all facilities-based providers of local exchange service are firm and need not be revisited during the workshop. As indicated in the Hearing Officer's proposed decision and our Order, the purpose of the workshops is to work through the practical details of administering CEA. In the context of our further review, we invite consideration of costs and encourage providers to develop estimates of costs for potentially burdensome aspects of CEA provision. By imposing requirements in the Order over some of the more detailed aspects or characteristics of CEA, our intent is to ensure that the time and effort required for workshops not be an impediment to the establishment of progress in the deployment of CEA. Vermont's local exchange companies are under the obligation to provide CEA and we expect meaningful progress to be made by them.

We conclude that each Vermont local exchange carrier should file an implementation schedule for CEA indicating (1) its current status in meeting the CEA obligation, (2) impediments to implementation, and (3) plans and schedules for meeting the obligation. The filing shall be made within 45 days of this Order.

We contemplate that the CEA obligations will be addressed through rulemaking rather than through further proceedings in this Docket, thus, the workshops required in the Order will be prefatory to a rulemaking. We request the Department to prepare a list of issues to be covered by such a rulemaking or better yet, a proposed outline for a rule prior to the first workshop. Other proposals for an issue list will also be welcome from other parties. Any such filing shall be made within forty-five days of this Order. The first workshop will be held within one month of the Department's filing.

With respect to the second issue raised by BAVT, and echoed by the ILECs, we agree that the audio notice requirement and PSAP call-back capability raise a number of detailed implementation questions that can be left for the workshops and rulemaking. However, we view the call-back capability as an important component of the CEA. As such, immediate provision of these functions is desirable, but not required by the Board's Order at this time. As a practical matter, however, the recommendations of the Hearing Officer on these issues represent a minimum standard of service. The workshops and rulemaking process should be

used for amplification, addressing administrative details, and extending the commitments beyond those reflected in the February 4, 1999 Order.

The Board has modified the proposal of the Hearing Officer with respect to the question of whom the CEA obligation falls upon. Given that the obligation falls on the underlying facilities-based carrier, there is no need for local exchange carriers or other facilities-based providers to file a wholesale CEA tariff. Consequently, we are not imposing an obligation for carriers to file wholesale CEA tariffs as recommended in the Proposal for Decision.

Our Order recognizes that, under certain circumstances, it may not be desirable or practical to maintain CEA on particular lines for an indefinite period. Nevertheless, the Board first imposed the CEA obligation on Bell-Atlantic over four years ago and is surprised that the Company has not made better progress in providing CEA. We note further that BAVT has failed to provide cost and other information adequate to provide the clarity required for further definition or refinement of the issue. We expect BAVT and the ILECs to provide information in upcoming workshops that will provide the clarity necessary to resolve the concerns that they have raised concerning the scope and nature of the CEA obligation in Vermont. We conclude that there shall be a presumption in favor of indefinite CEA absent adequate demonstration of a preferable alternative. On an interim basis, however, we conclude that the obligation should stand for a period of six months after service disconnections have occurred. As noted above, we will allow for and expect review of this term limit in the context of the proposed rulemaking.

We also take note of the concerns about speedy resolution of the exemptions from the requirement. Where transfer of facilities or capacity has displaced the provision of CEA for new service demands (for the six-month period after disconnection), company records shall be adequate to show that alternatives to meeting new service demands were unavailable.²¹ We conclude that it will be adequate for providers to simply maintain records of CEA facilities displaced for alternative use within the six-month period. Facilities or capacity freed to meet

21. *See, for example*, BAVT *Motion to Expedite*, at 3. BAVT maintains that current practice requires that the Company: (1) see if there are defective facilities that can be repaired; (2) see if facility rearrangements can be made to free up a working pair; and (3) see if it can run wire to reach the customer prior to disconnection of the facility.

the new demand must, after the six-month period, use the most aged disconnect capacity (used for CEA).

Lastly, we clarify that the obligation to provide CEA extends only to the *first* residential line into the home. In instances where this obligation may, in application, prove ambiguous (for example, where residential lines are provided by more than a single facilities operator), then the obligation shall extend more broadly to include more than one line or all lines until the obligation is refined through the workshops and rulemaking.

SO ORDERED.

DATED at Montpelier, Vermont, this 5th day of May, 1999.

s/ <u>Richard H. Cowart</u>)	PUBLIC SERVICE
))	BOARD
s/ <u>Suzanne D. Rude</u>)	OF VERMONT
))	
s/ <u>David C. Coen</u>)	

OFFICE OF THE CLERK

Filed: May 5, 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.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.