

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6318

Investigation of geographically deaveraged)
unbundled network prices)

Order entered: 12/29/99

PROCEDURAL ORDER

A prehearing conference was held in this docket on December 21, 1999. Attending through counsel were the Department of Public Service ("DPS") and New England Telephone and Telegraph, Inc., d/b/a/ Bell Atlantic-Vermont ("BA-VT"). Also attending through counsel were nine independent Vermont telephone companies.

Parties and Attorneys

A motion to intervene by AT&T Communications of New England, Inc. was granted. Motions for waiver of Rule 2.201(c) were granted as to Mr. Kennan, Mr. DelVecchio and Mr. Salinger.

Based upon discussion at the prehearing conference, Vermont's independent local exchange carriers are classified under federal law as rural telephone companies and, as such, are presently exempt from the unbundling requirements of Section 251 of the Telecommunications Act of 1996. Since these independent telephone companies are presently exempt from unbundling requirements, it appears uncontested that they are presently exempt from the subject matter of this docket, that is, from the obligation to deaverage unbundled network element prices. Independent local exchange carriers may move to intervene in this docket, but for the present they will not be parties to this proceeding.¹ Therefore, BA-VT is the only local exchange carrier whose unbundled rates are presently in issue.

1. The independents' attorney, Mr. Phillips, has, however, asked to be made an interested person on the service list. Also, the DPS asked and was granted permission, following its further examination of the statutes, to move to have the independents brought in as an indispensable party.

Schedule

This docket is severely constrained by the FCC's May 1, 2000, deadline requiring the Board to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules.² It is also constrained by the fact that there are presently no permanent UNE prices in effect in Vermont. That issue will, however, soon be resolved in Docket 5713, and the Board's decision in that docket may well have significant effects here.

If time were not limited, it would be desirable to commence this docket only after compliance filings have been made pursuant to the Board's anticipated order in Docket 5713. However, delay seems impracticable given the FCC's May deadline. Rather, I have decided to establish a schedule calling for the prompt prefiling of testimony. This will preserve a reasonable opportunity to meet the April 3 deadline that the Board established in the opening order and also to meet the FCC's May 1 deadline.

I conclude that many issues of both policy and underlying fact can be advanced here without reliance upon the final rates in Docket 5713. This is true because many issues presented here are broad questions of policy. As to factual issues, I also note that the parties are not entirely without resources. The parties admitted here participated in Docket 5713 and are already familiar with the cost studies filed in that docket by Bell Atlantic and AT&T.³ The adequacy of those studies has been intensively litigated, and a proposed decision has been issued suggesting that, with significant and well-defined revisions, they should form the basis for UNE rates in Vermont.⁴

2. *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, Nov. 2, 1999 (FCC 99-306) ¶ 120.

3. I also encourage the parties, if they have not done so, to familiarize themselves with the forward-looking model recently announced by the Federal Communications Commission for use in calculating intrastate support to high cost states. This model has refined numerous aspects of the older version of the "Hatfield" model that was litigated in Docket 5713.

4. As to outside plant, the Proposed Decision in Docket 5713 concluded that neither Bell Atlantic's modeling approach nor the Hatfield model yielded a reasonable representation of the total element long-run incremental costs for outside plant facilities in Vermont. Docket 5713, Proposed Decision at 21. Nevertheless, the Proposed Decision recommended that the Board adopt the BA-VT study with significant specified modifications. *Id.* at 21-22. As to switching, the Proposed Decision recommended adoption of BA-VT's "SCIS" cost model with significant specified revisions. *Id.* at 26.

The parties should be able to file complete testimony regarding most of the issues raised in the Opening Order. These include: which UNEs must be deaveraged; what principles should be pursued and constraints that should be faced in defining zones; whether there should be two, three or more zones; whether zone boundaries should be aggregations of wire centers; to which documents should the deaveraged prices be applied; and the effects, if any, on retail pricing and ETC eligibility.

I also request BA-VT to include in its prefiled testimony a summary of the proposal it made in Docket 5713 for three regional zones. This summary should describe how the zones were defined and should describe the costs produced by BA-VT's original study in each zone.⁵ This filing will serve as a "straw man" for our review in this proceeding, and it will give the parties at least one model by which Vermont can complete the deaveraging task set for us by the FCC. There is some risk that focus on such a model may be overtaken by the Board's decision in Docket 5713. I will certainly entertain arguments from the parties on this point once 5713 has been decided. However, given the many uncertainties presently in this docket, I conclude that having this proposal placed in the record early has a good chance to help focus our proceeding, and it may substantially simplify the task before us.

I want to emphasize a point made by Mr. Allen at the Prehearing Conference. This docket will not provide an opportunity to reopen questions to be decided in Docket 5713. Even though I have requested information concerning the cost studies submitted in Docket 5713, the accuracy and characteristics of those cost studies is being decided solely in that Docket. On appropriate motion, I intend to exclude any evidence offered here that is outside the scope of this proceeding, including issues resolved in Docket 5713.

When the Board does issue its decision in Docket 5713, the parties may wish to propose changes either in their filed testimony or to the schedule set forth below. For example, it may be necessary for the parties to seek extraordinary means to supplement their prefiled testimony, either through additional prefiled testimony or orally at the hearings. Assuming that the Board's decision in Docket 5713 has been issued before the date of hearings here, I intend to offer the parties an opportunity to update their testimony orally in light of the Docket 5713 Order.

5. In the alternative, BA-VT may elect to file a different zone classification plan, and it may, if it chooses, update its original 5713 cost study in any way that it feels is warranted by its experience to date in Docket 5713. Given the short time remaining until prefiled testimony is due, however, the opportunity to update a cost study would seem minimal.

The following schedule is established.

January 14, 2000	All parties prefile testimony
January 28	All parties prefile rebuttal testimony
February 9 and 10	Hearings
March 3	Briefs and Proposed Findings due
March 10	Reply Briefs due
March 20	Proposed Decision sent to parties
March 28	Parties file Comments on Proposed Decision
April 3	Proposed Decision and Comments given to Board

Other Procedural Issues

The parties also discussed the possibility of a "paper proceeding" without live testimony. While I encourage the parties to simplify this proceeding in any way possible, there are preconditions to a paper proceeding. Live testimony and the opportunity for cross-examination could be avoided in two circumstances. First, there is no need for hearings if there are no genuine issues of material fact. This could be achieved by the filing of a stipulation on all issues, combined with a motion for summary judgment. Second, there is no need for live hearings if all of the parties explicitly waive the right to cross-examine prefiled testimony. I leave it to the parties to file appropriate motions or stipulations.

I have asked the parties to provide the Clerk of the Board with E-mail addresses. This is so that testimony, briefs, proposed findings and proposed decisions may be interchanged promptly and without delay. Given the very tight schedule proposed below, avoiding unnecessary delay is of great importance. Electronic exchange of documents will not relieve parties or the Board, however, of sending concurrently a paper copy of the document, as required by the Board's rules.

DATED at Montpelier, Vermont, this 29th day of December, 1999.

s/Peter M. Bluhm
Peter M. Bluhm, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: December 29, 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.