

D.P.U. 94-50-A

Petition of New England Telephone and Telegraph Company d/b/a
NYNEX for an Alternative Regulatory Plan for the Company's
Massachusetts intrastate telecommunications services.

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ORDER ON AT&T/MCI MOTION TO EXTEND JUDICIAL APPEAL PERIOD;
NECTA MOTION TO EXTEND OR STAY APPEAL PERIOD

I. INTRODUCTION

On May 12, 1995, the Department of Public Utilities ("Department") issued its final Order in this case, approving price cap regulation for New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX" or "Company"). NYNEX, D.P.U. 94-50 (1994). Service of the Order was completed on May 15, 1995.¹ The 20-day statutory deadline for filing a petition of appeal with the Department is close of business on June 5, 1995.

On May 26, 1995, AT&T Communications of New England, Inc. and MCI Telecommunications Corporation ("movants") filed a joint motion for an extension of the time period within which to appeal the Department's Order ("AT&T/MCI Motion").² The movants requested that the appeal period be extended through June 23, 1995 (AT&T/MCI Motion at 3). On May 30, 1995, the Department issued a notice establishing May 31, 1995 as the deadline for answers to the AT&T/MCI Motion. On May 31, 1995, Answers to the

¹ On May 22, 1995, a Hearing Officer Notice was issued stating, "the Commission has instructed the hearing officers to notify the parties that, for purposes of calculating the deadline for any post-Order procedural motions, including a petition for appeal under G.L. c. 25, § 5, the date of service of the final Order is Monday, May 15, 1995."

² No other post-order motions have been filed as of the issuance of this Order. See 220 C.M.R. § 1.11(10).

AT&T/MCI Motion were filed by NYNEX, the New England Cable Television Association ("NECTA" or "movant"), and the Attorney General of the Commonwealth ("Attorney General").³

With its Answer, NECTA also filed its own motion to extend or stay the judicial appeal period ("NECTA Motion"), asking the Department either (1) to extend the appeal period to June 23, 1995 (as requested by AT&T/MCI) or (2) to stay the running of the appeal period until two weeks after the date of the Department's ruling on the Attorney General's motion for clarification (NECTA Motion at 2).⁴

II. POSITIONS OF THE PARTIES

A. AT&T/MCI

AT&T/MCI contend that because the Department's Order, and the record underlying the Order, is very lengthy and complex, and because the Order differs from NYNEX's petition "in material respects," additional time is needed to analyze the Order for purposes of determining whether to file an appeal (AT&T/MCI Motion at 1-2). The movants also claim that an extension is

³ In his Answer, the Attorney General expressed support for the AT&T/MCI Motion and further stated his intent to file two post-Order motions of his own on June 2, 1995 (Attorney General Answer). The Attorney General did not elaborate on the grounds for his expected motions.

⁴ The arguments advanced by NECTA in support of both the AT&T/MCI Motion and NECTA's own Motion are essentially the same. In view of this similarity, we rule on both here in order to give the movants resolution of their separate procedural claims.

appropriate given the importance of the Order to the telecommunications industry (id. at 2). In addition, AT&T/MCI argue that an extension is needed to allow parties to assess how the Department's Order impacts issues in the Department's local competition docket, D.P.U. 94-185 (id.). Finally, the movants claim that the demands of their participation in D.P.U. 94-185 have created resource constraints in analyzing the Department's Order in D.P.U. 94-50 (id. at 2-3).

B. NECTA

NECTA argues that good cause exists for either (1) extending the appeal period as requested in the AT&T/MCI Motion or (2) staying the running of the appeal period until two weeks after the date of the Department's ruling on the Attorney General's expected Motion for Clarification (NECTA Motion at 2; NECTA Answer at 2). Such a stay, NECTA maintains, would "conserve the resources of all parties and the Department" by allowing parties to file answers to the Attorney General's Motion for Clarification without having to file an appeal prior to the Department's ruling on that motion (id.).⁵ NECTA states that it also is involved in regulatory proceedings in other states thus creating a conflict during the time in which a notice of appeal must be filed in this case (id. at 1). In addition, NECTA notes

⁵ NECTA states that it intends to file an answer to the expected Attorney General motions (NECTA Motion at 2; NECTA Answer at 2).

that it is also a party to the Department's local competition docket, D.P.U. 94-185 (id.).

C. Attorney General

The Attorney General supports the AT&T/MCI Motion and indicates that he intends to file his own motions for (1) clarification of the Department's Order and (2) extension of the appeal period (Attorney General Answer).

D. NYNEX

NYNEX argues that the Motion does not demonstrate the requisite good cause for granting the requested 18-day extension of the appeal period and, therefore, should be denied (NYNEX Answer at 1). The Company contends that while the Order is "complex and lengthy, and has significant implication for both NYNEX and the telecommunications industry," it does not address issues that have not already been examined by the Department and parties during the proceeding (id. at 2). NYNEX claims that an attempt to gain additional time to reexamine these issues for purposes of determining whether to appeal is "outweigh[ed] [by] the public interest in the finality of Department orders" (id.). Finally, NYNEX asserts that if the Department determines that there is good cause for granting the Motion, an 18-day extension is "unreasonable" and a more limited extension should be allowed (id. at 3).

III. STANDARD OF REVIEW

G.L. c. 25, § 5, provides in pertinent part that a petition for appeal of a Department final order must be filed with the

Department no later than 20 days after service of the order "or within such further time as the [C]ommission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling." See also 220 C.M.R. § 1.11(11). Granting such requests lies within the sound exercise of discretion vested by the statute in the Department.

The deadlines established by statute and implemented by Department rule indicate a clear intention to ensure that an aggrieved party expeditiously makes a determination to appeal a final order of the Department, embody the appeal in a petition to the Department within twenty days, and enter that appeal with the Court ten days later. The statute has as its purpose the finality to Department proceedings. Nunnally d/b/a L&R Enterprises, D.P.U. 92-34-A at 4 (1993) (" Nunnally"). Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders. Id. at 4-5. The Court has carefully protected the demands of G.L. c. 25, § 5, as an expression of legislative will, from encroachment. See, e.g., Attorney General v. Department of Pub. Utils., 390 Mass. 208, 212-213 (1983).

In order to effect what the Legislature has mandated, the Department has required a genuine and substantive showing of good cause as a predicate to the exercise of its Section 5 discretion

to extend the statutory appeal period. To this end, the Department's procedural rule states that "reasonable extensions shall be granted upon a showing of good cause." 220 C.M.R. § 1.11(11). With respect to determining what constitutes good cause, the Department has stated:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Boston Edison Company, D.P.U. 90-335-A at 4 (1992).

IV. ANALYSIS AND FINDINGS

Given the significance of the Department's Order in this case, which establishes a new regulatory framework for the state's largest regulated utility that will provide significant benefits for NYNEX's ratepayers, there is an important public interest to be served by not delaying unnecessarily the implementation of that framework. See D.P.U. 94-50, at 107-117.

While an extension may be desired by the moving parties, the Department finds that the broad public interest in promoting finality of Department decisions and the specific public interest in not delaying unnecessarily the implementation of NYNEX's price cap plan clearly outweigh the interests of the moving parties. The movants participated vigorously in developing the evidentiary record and extensively briefed the issues in this proceeding.

They are large and knowledgeable organizations represented by informed and capable counsel. That they may have chosen to undertake conflicting obligations does not constitute good cause for disturbing what the Legislature has ordained in G.L. c. 25, § 5, or warrant the Department's exercising its discretion to depart from the statute's express terms. A busy schedule is not sufficient to justify an extension and does not rise to the level of "unique circumstances." See Nunnally at 7-8.

With regard to NECTA's grounding its own Motion on the possible filing of motions by the Attorney General, it would be premature for the Department to grant an extension in part based on such a possibility. We will treat such motions as the Attorney General may file on their own merits. The mere possibility of their being filed is not good cause for granting NECTA's motion.

Therefore, the Motions to Extend or Stay the Appeal Period are denied.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Joint Motion of AT&T Communications of New England, Inc. and MCI Telecommunications Corporation, filed with the Department on May 26, 1995, for an Extension of the Judicial Appeal Period be and hereby is DENIED; and it is

FURTHER ORDERED: That the Motion of the New England Cable

Television Association, Inc. for an Extension of the Judicial

Appeal Period or in the alternative a Stay of the Judicial Appeal Period, filed with the Department on May 31, 1995, be and hereby is DENIED.

By Order of the Department

Kenneth Gordon, Chairman

Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).