

D.P.U. 94-50

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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INTERLOCUTORY ORDER ON MOTIONS FOR CLARIFICATION
OF NYNEX, NEW ENGLAND CABLE TELEVISION ASSOCIATION,
THE ATTORNEY GENERAL, AND AT&T; AND MOTION FOR STAY
OF NEW ENGLAND CABLE TELEVISION ASSOCIATION

I. INTRODUCTION

On April 14, 1994, New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX" or "Company") filed with the Department of Public Utilities ("Department") documents described as revisions to its tariff, M.D.P.U. Mass. No. 10, for effect May 14, 1994, as part of an Alternative Regulatory Plan ("Plan") for NYNEX's Massachusetts intrastate operations. ¹ The matter was docketed as D.P.U. 94-50. ²

On June 14, 1994, the Department issued an Interlocutory

¹ The Plan proposes an alternative form of regulation for NYNEX to replace the Department's existing rate-of-return regulation. Instead of continuing to regulate the Company's expenses, revenues, and earnings, the Department would only regulate the Company's prices, under a "price cap" form of alternative regulation. The "price cap" mechanism would allow the Company to change prices each year based on increases in inflation, less a pre-determined productivity factor, adjusted for exogenous cost changes.

² On April 20, 1994, the Department suspended the Company's filing for investigation until November 14, 1994. On April 28, 1994, the Attorney General of the Commonwealth filed a "Motion to Dismiss or To Require Additional Filings." On May 24, 1994, the Department issued an Order on the Attorney General's Motion, finding that the Company's April 14, 1994 tariff filing was not a tariff filing and vacating the April 20th Order of Suspension. NYNEX/May 24th Interlocutory Order, D.P.U. 94-50, at 14 (1994) (Interlocutory Order on Attorney General's Motion to Dismiss). The Department considered the Company's filing sufficient as a petition for an alternative regulatory plan and determined to continue its investigation of the Plan in this docket. Id.

Order addressing, inter alia, the scope of this proceeding. See NYNEX/June 14th Interlocutory Order, D.P.U. 94-50 (1994) (Interlocutory Order on Motion to Dismiss of the New England Cable Television Association, Inc. ("NECTA"); Motions to Consolidate of MCI Telecommunications Corporation ("MCI") and AT&T Communications of New England, Inc. ("AT&T"); Motions on Scope of NYNEX, AT&T, MCI, the Attorney General of the Commonwealth ("Attorney General") and NECTA; and Motion of NYNEX to Defer Transitional Filing). The Department set forth the scope of its inquiry into the propriety of the Company's current level of earnings as a starting point for regulation under the proposed Plan. Id. at 19-23. The Department found that it was not necessary for the Department to conduct a full rate case review of NYNEX either as a threshold step to consideration of the proposed Plan or as a component of its review in this proceeding. Id. at 22. Rather, the Department stated that a review focussed on the reasonableness of NYNEX's earnings would allow the Department to determine whether the current rates represent the appropriate starting point for implementation of the Plan. Id. The Department found:

that a review of the Company's revenue requirement, cost allocation, and rate structure is beyond the scope of the case. The Department will limit its investigation on the issue of the Company's current level of earnings to an examination of whether: (1) the adjustments prescribed by the Department in D.P.U. 86-33-G have been properly reflected in the test year account balances presented in NYNEX's filing; and (2) the resulting rate of return on

investment is reasonable.

Id. at 22.

In its June 14th Interlocutory Order, the Department declined to extend the scope of the investigation in this proceeding to encompass the resolution of market structure issues. Id. at 21. The Department further stated that while resolution of market structure issues was not strictly necessary to the investigation in this proceeding, it would nonetheless (1) take market conditions into consideration in reviewing the Plan and (2) guard against giving NYNEX an unfair competitive advantage through alternative regulation. Id. at 21-22.

At a procedural conference on June 20, 1994, the Department sought to clarify the June 14th Interlocutory Order and noted that the standard for judging the reasonableness of NYNEX's current return on investment is the rate of return approved by the Department in New England Telephone and Telegraph Company, D.P.U. 86-33-G (1989) (Tr. at 37).

On June 27, 1994, NYNEX filed a Motion for Clarification of the Department's June 14th Interlocutory Order, and NECTA filed a Motion for Reconsideration ³ of that Order and a Motion for Stay

³ The Department's Procedural Rules expressly limit reconsideration to Final Orders. See 220 C.M.R. § 1.11(10). As captioned, NECTA's Motion for Reconsideration of the Department's June 14th Interlocutory Order is deficient and beyond our review. Nevertheless, in the interests of fairness we will treat NECTA's pleading as a Motion for Clarification and respond to it.

of the procedural schedule. On June 30, 1994, the Attorney General filed a "Motion in Response" to the motions of NYNEX and NECTA.⁴

On June 30, 1994, pursuant to a deadline established by the Hearing Officer, NYNEX filed a Response to NECTA's Motions, NECTA filed a Response to NYNEX's Motion, and AT&T filed a Response to the motions of NYNEX and NECTA.⁵

II. NYNEX MOTION

A. NYNEX

In its Motion, the Company seeks clarification of the portion of the Department's June 14th Interlocutory Order that ruled on the extent of inquiry into the issue of whether the Company's current level of earnings represents an appropriate starting point for the proposed Plan (NYNEX Motion at 1). Specifically, the Company requests that the Department issue a ruling specifying that: (1) "any matter concerning the reasonableness of the current level of earnings ... may appropriately be the subject of inquiry by parties in this proceeding either through cross-examination or in a direct case;

⁴ The Attorney General's Motion is in the nature of a Motion for Clarification and will be treated as such by the Department.

⁵ Although captioned a "Response," AT&T's pleading asks the Department to clarify its Order in a manner not requested by the other movants. Therefore, the Department will treat AT&T's pleading as a Motion for Clarification.

and (2) any party may seek to question the presumption that the Company's currently authorized rate of return is reasonable" (id. at 4-5).

As grounds for its Motion, NYNEX asserts that "it would be an incorrect interpretation of the Order on scope to preclude the parties from presenting evidence on, or inquiring about, issues other than the adjustments made by the Department in D.P.U. 86-33-G" (id. at 3). The Company further argues that although it agrees that the rate of return now in effect is entitled to a presumption of reasonableness, the Department should not preclude intervenors from presenting evidence which contests this presumption (id. at 4). The Company states its concern that due process rights of the parties may be impeded by limitations precluding parties from challenging the Company's case (id.). The Company states that the Department should allow parties to "inquire fully into matters relating to the Company's study period earnings" (id.).

B. NECTA

NECTA states that it agrees with NYNEX that an examination of the Company's earnings under existing rates is appropriate to determine a starting point for price regulation (NECTA Response at 2). NECTA contends that since there is no annual earnings experience under the Company's current rates, NYNEX cannot demonstrate the reasonableness of earnings based on those rates

(id. at 2-3). Thus, NECTA reasserts its argument that the Plan should be dismissed and that a new Plan not be submitted until the Company has sufficient operating experience under existing rates (id. at 2-4).

C. AT&T

AT&T joins NYNEX in requesting that the Department reexamine its June 14th Interlocutory Order (AT&T Response at 1). AT&T states that the June 14th Order unduly limits the scope of issues to be litigated and arbitrarily restricts evidence that may be presented (id.). AT&T contends that NYNEX did not intend to preclude intervenors from litigating issues raised by its filing (id. at 2). Specifically, AT&T states that NYNEX anticipated that intervenors would litigate rate of return/cost of service and competition issues (id.). AT&T states that the Department should allow "full litigation of all issues relating to the reasonableness of NET's current earnings and current rates" (id. at 3). AT&T argues that it cannot determine the reasonableness of the Company's earnings without examining "every component of its revenues and expenses" (id.).

D. Analysis and Findings

As noted, NYNEX has asked the Department to clarify its rulings on the permitted scope of inquiry for determining the appropriateness of NYNEX's current level of earnings as a starting point for the Company's Plan. In its June 14th Order and at the subsequent procedural conference, the Department indicated that it would (1) confine its examination of the Company's current level of earnings to an assessment of whether NYNEX properly applied the adjustments set forth in D.P.U.

86-33-G to its 1993 operating results, and (2) consider the Company's current authorized rate of return as reasonable. Because it is the Department's intent to conduct this proceeding fairly and consistent with the due process rights of all parties, the Department recognizes the need to clarify the scope of inquiry.

Thus, the scope of inquiry into the reasonableness of NYNEX's current earnings as an appropriate starting point for the Plan will be as follows: (1) any matter concerning the reasonableness of the current level of earnings, including the Company's study period expenses, revenues, and investment, may appropriately be the subject of inquiry by parties in this proceeding either through cross-examination or by presentation of direct testimony by intervenors, jointly or severally; and (2) any party may seek to rebut the presumption that the Company's currently adjudicated and authorized rate of return is prima facie reasonable. Although the Department recognizes that intervenors may examine the Company's earnings, it hereby confirms its previous determination that cost allocation and rate structure issues are beyond the scope of the present proceeding. Accordingly, the Department hereby grants NYNEX's Motion for Clarification.

Consistent with this examination, NYNEX may, if it desires, submit additional testimony on its rate base, expenses, revenues,

capital structure and rate of return. The additional opportunity for the parties to present evidence on this issue will assist the Department in its determination of whether the current rates are the appropriate starting point for the Plan. If such a determination is made, then the Plan could be put in place, assuming the Department finds the Plan appropriate and reasonable in its final Order. However, should the Department determine that NYNEX's current rates are not the appropriate starting point for the Plan, further proceedings may be warranted. To expedite a future proceeding, part of the record in the instant case could be incorporated into the record of that future proceeding.

To address the due process rights of all parties, that part of the proceeding relating to hearings on NYNEX's earnings should be rescheduled to allow for additional discovery and preparation. We hereby direct the Hearing Officers to provide the parties with a revised procedural schedule consistent with our findings.

III. NECTA MOTIONS

A. NECTA

NECTA argues that the Department should not defer ruling on its previously filed Motion to Dismiss NYNEX's filing on the ground that the Department lacks the statutory authority to approve the Plan.⁶ In addition, NECTA asks that the Department

⁶ NECTA initially raised this issue in its May 11, 1994 Motion to Dismiss. NYNEX objected to the Motion on May 17, 1994. The Attorney General filed comments on NECTA's Motion to

change its ruling on the scope of the proceeding. ⁷

Regarding NECTA's contention that there is no basis at this time for the Department to defer ruling on dismissal, NECTA claims that the "sole and specific ground upon which the Department based its decision to defer" was to allow other parties to respond to NECTA's Motion to Dismiss (id.). NECTA maintains that the Attorney General and NYNEX, the only parties to comment on the Motion to Dismiss, have no desire to respond further (id., citing Tr. of June 20th Procedural Conference at 33).⁸ According to NECTA, "[g]iven the existence of new circumstances which demonstrate that there is no basis to defer a ruling on NECTA's Motion to Dismiss," determination of the issue now is warranted (id. at 1-2, citing Massachusetts Electric

Dismiss on May 20, 1994. NECTA expanded on its arguments in its May 23, 1994 Reply to NYNEX's objection.

⁷ NECTA objects to the rulings contained in the Department's June 14th Order, as amplified by the Department's pronouncements made at the June 20th procedural conference, that indicated (1) parties could inquire into issues of alternative forms of regulation that are "modifications" to or "natural extensions" of the Company's Plan, and (2) the level of inquiry into the Company's earnings would entail the specific examination of (a) whether the adjustments prescribed by the Department in D.P.U. 86-33-G have been properly reflected in the test year account balances presented in NYNEX's filing, and (b) whether the rate of return that results from that calculation is no more than was allowed by the Department in D.P.U. 86-33-G.

⁸ NECTA states that "[a]t no time did the Attorney General indicate any need or desire to expand upon his position" (NECTA Motion at 2). In addition, NECTA claims that NYNEX indicated at the June 20th procedural conference "that it had fully responded to NECTA's Motion to Dismiss" (id.).

Company, D.P.U. 89-194-C/89-195-A at 3-4 (1990); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989)) and is consistent with the parties' desire for prompt resolution of a threshold legal issue (id. at 2-3).⁹

With regard to scope, NECTA first argues that "it is a blatant violation of intervenors' due process rights" to prevent intervenors from presenting evidence on forms of alternative regulation that "are not 'modifications' or 'natural extensions'" of the Company's price cap plan or that "completely differ" from the Plan (id. at 4). In addition, NECTA asserts that intervenors should be allowed to address "'potential performance concerns'" such as "the need for tariff unbundling, presubscription, number portability, interconnection arrangements, [and] video allocations" (id.).

Also, regarding scope, NECTA contends that the Department's ruling on the permissible inquiry into the Company's earnings is inconsistent with other rulings on scope, "arbitrary or capricious," and a denial of procedural and substantive rights (id. at 4-8). According to NECTA, the ruling prevents intervenors from presenting evidence on "modifications," such as a sharing mechanism, or evidence showing that the Plan should be

⁹ As an alternative to dismissal, NECTA proposes that the Department "stay [the] proceedings and permit NYNEX to file a modified plan that does not offend G.L. c. 159 and related statutes" (NECTA Motion at 3).

rejected (id. at 4-5). Moreover, NECTA contends that the Department has erred in limiting the scope of inquiry into NYNEX's earnings to an examination of whether the Company has properly reflected the adjustments ordered by D.P.U. 86-33-G, instead of allowing parties to examine the Company's current revenue requirement (id. at 5). NECTA claims that because the Company's existing rates are based upon a dated revenue requirement, the Department should allow intervenors to inquire fully into the Company's 1993 test-year revenue requirement, including presenting evidence on other adjustments besides those ordered by the Department in the Company's last rate case (id. at 5-6).¹⁰ Finally, NECTA takes issue with the Department's ruling that "capital structure, but not rate of return," is the subject of inquiry.¹¹

Lastly, NECTA asks that the Department stay the proceedings until after the Department rules on the instant motion (NECTA Motion at 3, 10). NECTA contends that a stay is warranted

¹⁰ NECTA maintains that "without the ability to fully examine the Company's present revenue requirements, based upon a recent test year, adjusted for changes which take into account specific annual costs (not D.P.U. 86-33-G costs), intervenors are being prevented from proposing a [reduced starting point] to the [Plan]" (NECTA Motion at 7).

¹¹ In addition, NECTA makes other claims of due process violations and "serious errors or abuses of discretion" in a section of its Motion entitled "Other Scope Issues" (NECTA Motion at 8-10). However, because its arguments are not stated clearly and, thus are confusing, the Department will not address them (id. at 8-10).

because any change in the scope of the proceeding would affect discovery, witness selection, and other case preparation decisions (id. at 3).

B. NYNEX

NYNEX argues that "except for NECTA's request for reconsideration relating to the scope of inquiry into the Company's 1993 study period operating results," NECTA's Motion fails to demonstrate any factual or legal basis for reconsideration and, therefore, should be denied (NYNEX Response at 2).

With regard to NECTA's contention that the Department should review its decision to defer ruling on the statutory issue, NYNEX responds that the Department acted within its discretion to seek additional pleadings in the belief "that further pleadings would be helpful to [the Department] in order to address fully the legal issues raised in NECTA's Motion to Dismiss" (id. at 3-4). In addition, NYNEX asserts that NECTA has presented no arguments in support of a stay of the procedural schedule since, as NYNEX points out, NECTA has not shown "demonstrable prejudice" to any substantive interests resulting from the Department's decision to proceed with the case pending a decision on NECTA's argument for dismissal (id. at 5).

With regard to NECTA's objection to the Department's ruling on the permissible inquiry into alternative forms of regulation,

NYNEX contends that the Department acted reasonably, consistent with efficient administrative process and due process, in focussing the investigation on the Company's Plan "rather than requiring all parties to litigate entirely new proposals" (id. at 8-9). NYNEX argues that the Department's rulings on scope have afforded parties wide latitude to examine the merits of the Plan, and contrary to NECTA's claim, allows intervenors to "explore the elements of other alternative forms of regulation that relate to or are natural extensions of the Company's Plan" (id. at 6-7). Moreover, the Company asserts that NECTA has failed to indicate the "completely different proposal" that it seeks to present and why such presentation is necessary to the investigation, and also has failed to explain with particularity "how it is constrained in its ability to challenge the Company's filing" based on the current scope (id. at 7).

Regarding NECTA's request that parties be allowed to question the Company's 1993 operating results and the reasonableness of the return on investment for the study period, NYNEX is in agreement with NECTA (id. at 9). NYNEX also supports a short stay of evidentiary hearings related to earnings issues to provide intervenors an additional week of discovery (id. at 10).

C. AT&T

AT&T states that it supports NECTA's motion for the same

reasons presented in support of NYNEX's Motion (see Section II.C, supra).

D. Analysis and Findings

We have considered NECTA's arguments not to defer a ruling on the question of the Department's statutory authority to approve NYNEX's Plan. We find that there is no need to clarify our previous determination. The Department will respond in a manner consistent with the discretion afforded by its procedural rules. See 220 C.M.R. § 1.04(5)(b). Accordingly, we deny NECTA's requested relief.

NECTA also requests that the Department clarify the scope of inquiry into forms of alternative regulation and permit intervenors to present evidence on forms of alternative regulation that completely differ from the Company's Plan. We find that the current scope of inquiry provides parties with ample latitude, consistent with due process considerations. At this time, the Department finds that NYNEX's filing provides us with an adequate starting point to review an alternative approach to regulation for NYNEX. As regards NECTA's arguments on "potential performance concerns," to the extent that they are discernible, we find this to be simply a repackaging of earlier arguments made by NECTA for the inclusion in this proceeding of broad market structure issues. We rejected those arguments in

our June 14th Order and do so for the same reasons now.¹² June 14th Interlocutory Order at 21-22.

Similar to NYNEX, NECTA also has asked that the Department clarify the permitted inquiry into NYNEX's earnings. To the extent that NECTA has requested relief similar to that which the Department granted NYNEX (see Section II.D, supra), we need not repeat our analysis. However, NECTA has asked the Department for certain related relief not expressly requested by NYNEX in its motion for clarification, specifically, that the Department allow intervenors to present evidence on other adjustments to NYNEX's 1993 operating results, besides those adjustments required pursuant to D.P.U. 86-33-G. We find that such inquiry is wholly consistent with our above-stated determination on the scope of the review of NYNEX's earnings. Therefore, parties will be permitted to inquire into other adjustments related to NYNEX's 1993 operating results. Accordingly, we grant that portion of NECTA's Motion that requests clarification of the scope of review of the Company's earnings.

Finally, regarding NECTA's request for a stay of the procedural schedule in this case until the Department rules on NECTA's motion, pursuant to 220 C.M.R. § 1.04(5)(b), motions filed prior to or during an adjudicatory proceeding "shall not

¹² See infra note 15.

delay the conduct of such proceeding" unless "otherwise directed by the presiding officer or the Commission." We find that it is not necessary to grant the request for a stay and that there is a reasonable alternative, which we note below. Therefore, the request for a stay is denied.

Parties necessarily and properly focus on their own particular interests in a proceeding. The Department, however, must keep in mind its own obligations: to run its proceedings in accordance with the demands of due process but also to conduct its many investigations with an eye toward management of its entire docket and administrative resources, and toward reasonable procedural expedition and conclusiveness. The Department has before it a specific NYNEX petition. The Department has agreed to permit inquiry into and suggestions for germane modifications to NYNEX's proposal. But it lies well within the Department's reasonable discretion to maintain the focus of the proceedings on the specific petition before it.

We note that we have directed the Hearing Officers to provide the parties with a revised procedural schedule to allow for additional discovery and preparation on the issue of earnings (see Section II.D., supra). In assessing what may be a reasonable time schedule for this proceeding, the Department recognizes that no mandatory rule prevails. But the Legislature has provided a statutory benchmark in G.L. c. 159, § 20, as

governed by G.L. c. 25, § 18. Were the instant proceeding a full rate investigation, the Legislature has provided by statute that the proceeding should be completed in six months. The instant proceeding, however, deals with but a subset of rate-related issues. Moreover, discovery has been underway since May. Accordingly, taking a cue from the statute and taking into account its docket and resources, the Department concludes that the formal proceeding may in fairness, and in practicality should, be concluded in calendar 1994, or soon thereafter, with a final Order to follow upon the conclusion of the Department's weighing of evidence and argument.

IV. ATTORNEY GENERAL MOTION

A. Attorney General

In his motion, the Attorney General requests that the Department: (1) grant the NYNEX and NECTA motions; (2) specifically hold that NYNEX bears the burden of proof on the question of whether the Company's Plan will yield just and reasonable rates; and (3) specifically hold that all parties may inquire into and challenge any and all revenue requirement/cost of service issues (including but not limited to the D.P.U. 86-33-G adjustments and adjustments associated with restructuring issues) as well as all cost of capital issues (Attorney General Motion at 7).

The Attorney General agrees with arguments presented in the

NYNEX and NECTA motions that intervenors should be allowed to investigate and present evidence on all cost of service and rate of return issues (id. at 4). He contends that review of only the adjustments set forth in D.P.U. 86-33-G will not produce a true representation of NYNEX's current cost of service and cost of capital (id.). Moreover, the Attorney General specifically submits that the intervenors should have the opportunity to examine pro forma adjustments to the 1993 study period earnings presented in the Company's petition ¹³ and that intervenors should have the opportunity to propose their own adjustments (id. at 5).

The Attorney General further states that the burden of proving the reasonableness of the starting rates under the Plan should be on NYNEX (id. at 6). He argues that the Department's determination that the rate of return approved in D.P.U. 86-33-G is presumptively reasonable impermissibly shifts this burden of proof to the intervenors (id.).

B. Analysis and Findings

Regarding the Attorney General's first point, the Department has granted NYNEX's Motion and granted in part and denied in part NECTA's Motion (see Sections II.D. and III.D., supra).

With respect to the issue of burden of proof, the Department did not intend its June 14th Interlocutory Order or statements

¹³ These pro forma adjustments are contained in Attachment 4 to Mr. McQuaid's pre-filed testimony.

made at the June 20th procedural conference to be interpreted as shifting the burden of proving the reasonableness of the starting rates for the Plan to the intervenors. The Department, therefore, confirms that the burden of proving the reasonableness of the Company's current level of earnings as an appropriate starting point for the Plan remains with the Company. In so stating, we note, however, that the findings of D.P.U. 86-33-G were the result of lengthy adjudication before the Department.

Regarding the Attorney General's third point, we note that our determinations above regarding NYNEX's and NECTA's motions address the Attorney General's concerns about the scope of inquiry into the Company's current level of earnings. Consistent with our determinations herein, we find, as stated earlier, that parties may inquire into and challenge any matter concerning the reasonableness of the current level of earnings.

Accordingly, we grant in part the Attorney General's Motion and deny that portion of the motion that requests that we grant NECTA's Motion for Clarification and Motion for Stay of the Procedural Schedule.

V. AT&T MOTIONA. AT&T

AT&T argues in that the Department has arbitrarily distinguished between "current market conditions," which the Department has stated are within the scope of the proceeding, and "market structure," which the Department has excluded from the scope (AT&T Response at 3-4). AT&T requests that the Department reaffirm that "the degree of regulation of [NET] must focus upon the degree of market power exhibited by that carrier" (id. at 5-6, quoting IntraLATA Competition , D.P.U. 1731, at 56 (1985)). AT&T further argues that a reduction in the form of regulation of NYNEX can occur only on the basis of a full consideration of the marketplace conditions necessary for the development of effective competition (id.).¹⁴

AT&T contends that the Department has established the principle that modifications to traditional rate of return regulation are considered only upon a demonstration that sufficient market competition exists to justify easing of regulation (id. at 4). AT&T argues, therefore, that parties should be permitted to raise as issues in this proceeding conditions that the Department should impose on NYNEX's services, rates and rate structure to ensure development of a competitive

¹⁴ AT&T also requests that the Department allow for a brief stay of the procedural schedule pending a ruling on the outstanding motions for clarification (AT&T Response at 5).

market in Massachusetts (id.).

B. Analysis and Findings

In the course of this proceeding, the Department has reiterated its commitment to fostering a competitive telecommunications marketplace in Massachusetts consistent with sound policy and the statutory scheme. June 14th Interlocutory Order at 21. The Department has also stated that it will move cautiously in considering NYNEX's Plan in order to avoid giving NYNEX an unfair competitive advantage, should the Plan be allowed in whole or in part. Id. Parties to this proceeding will have the opportunity to present evidence on aspects of the Plan that they believe afford NYNEX unfair competitive advantage and to argue for changes to the Plan to address this concern. Id.

As discussed in the June 14th Interlocutory Order, we do not view this proceeding as an appropriate vehicle for resolving market structure issues. Id. Rather, the current level of competitiveness and other market conditions are factors we will consider in our review of the Plan. Id. at 21-22. Although the Department will not resolve market structure issues in this docket,¹⁵ parties may present evidence regarding whether a

¹⁵ There appears to be some confusion among the parties about what the Department considers to be "market structure" issues. We are referring to issues such as interconnection, collocation, intraLATA presubscription, number portability, and unbundling. It is beyond the scope of the proceeding to adopt or modify policies on these issues.

certain level of competition is necessary before price regulation should be adopted. Id. at 22.

We note that AT&T essentially restates arguments offered previously in its May 20, 1994 Motion to Define Scope of Proceeding and addressed in the June 14th Interlocutory Order. The Department finds that clarification on this aspect of the Order is not required or necessary. Therefore, we reaffirm our findings with respect to market structure issues, and deny AT&T's motion.

VI. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Clarification of New England Telephone and Telegraph Company d/b/a NYNEX, filed with the Department on June 27, 1994, be and hereby is GRANTED; and it is

FURTHER ORDERED: That the Motion for Clarification of the New England Cable Television Association, Inc., filed with the Department on June 27, 1994, be and hereby is GRANTED in part and DENIED in part, consistent with the findings in Section III.D. supra; and it is

FURTHER ORDERED: That the Motion for Clarification of the Attorney General of the Commonwealth, filed with the Department on June 30, 1994, be and hereby is GRANTED in part and DENIED in part, consistent with the findings in Section IV.B, supra; and it is

FURTHER ORDERED : That the Motion for Clarification of AT&T Communications of New England, Inc., filed with the Department on June 30, 1994, be and hereby is DENIED; and it is

FURTHER ORDERED : That the Motion for Stay of the Procedural Schedule in this proceeding of the New England Cable Television Association, Inc., filed with the Department on June 27, 1994, be and hereby is DENIED; and it is

FURTHER ORDERED : That the parties shall comply with all other orders and directives contained herein.

By Order of the Department,

Kenneth Gordon
Chairman

Barbara Kates-Garnick
Commissioner

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).