

D.P.U. 94-77

Petition of over twenty customers of New England Telephone and Telegraph d/b/a NYNEX, pursuant to Chapter 159, § 24 of the General Laws, requesting an investigation by the Department of Public Utilities to research and develop an additional and new calling plan for NYNEX North Shore customers.

---

APPEARANCES: Barbara Anne Sousa, Esq.  
185 Franklin Street, Room 1403  
Boston, Massachusetts 02110-1585  
FOR: NEW ENGLAND TELEPHONE & TELEGRAPH  
COMPANY  
d/b/a  
NYNEX

## I. INTRODUCTION

On April 26, 1994, pursuant to G.L. c. 159, § 24, the Department of Public Utilities ("Department") received a petition from over twenty customers ("Petitioners") of the New England Telephone and Telegraph Company d/b/a NYNEX ("Company" or "NYNEX"), requesting that a new calling plan be developed that would provide a more extensive primary calling area ("PCA")<sup>1</sup> to customers residing in the towns of Beverly, Beverly Farms, Manchester, Magnolia, Gloucester, Essex and Rockport. The petition was docketed as D.P.U. 94-77.

After due notice, the Department held a public hearing in Beverly on March 15, 1995. Several residents of Rockport and Manchester testified at the hearing, as did Nicola Barletta, Chairman of the Rockport Board of Selectmen (Tr. at 7-11, 22-24). On December 21, 1995, the Company filed the testimony of Philip Wood, Director of Regulatory Planning for NYNEX. Mr. Wood's testimony is Exhibit NYNEX-1. II. POSITIONS OF THE PARTIES

### A. Petitioners

At the hearing, Mr. Barletta testified, on behalf of the Rockport Board of Selectmen, that Rockport residents are unhappy with their limited calling area since it includes only Gloucester, noting further that calls made to the Magnolia section of Gloucester are toll calls (id. at 7-8). Mr. Barletta stated that NYNEX should conduct an in-depth study into the calling patterns of Rockport and Manchester (id. at 9). Mr. Barletta contended that residents of Rockport and Manchester are limited in their calling area, and that their telephone bills are higher than in other

---

<sup>1</sup> The PCA for any particular NYNEX exchange is defined as all exchanges that a customer who subscribes to basic unlimited service can call without incurring a usage (toll or local per-message/per-minute) charge. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 52 (1990).

communities such as the City of Gloucester, where the residents can call several thousand more phones without a toll charge (id. at 8-9). Mr. Barletta testified that Rockport residents may not be able to afford toll calls and that there should be an expanded, toll-free calling area for the residents of these towns (id. at 10). Mr. Barletta testified that the various towns are a close-knit community in the Cape Ann area,<sup>2</sup> that communication is very important, and that to "have to pay to call" results in treatment that is not equal or fair compared to other communities ( id. at 18).

Lillian Brauneis testified that Beverly and Rockport should be included as contiguous towns to the rest of the Cape Ann area (id. at 12). Judith Banks stated that, as a resident of Rockport and someone involved in real estate in the Cape Ann area, she is not able to make any calls, other than to Gloucester, without paying a toll, and that is unfair (id. at 13-14). Ms. Brauneis testified that compared with a landlocked town such as Worcester surrounded by numerous bordering towns, in a coastal town, such as Rockport, contiguous exchanges are limited (id. at 15). Ms. Brauneis stated that to avoid penalizing people living on the coast more towns should be added to the coastal PCA (id. at 15).<sup>3</sup>

B. The Company

NYNEX stated that the existing local service configuration is consistent with statewide provisions of basic local telephone exchange service as established in New England Telephone

---

<sup>2</sup> The Cape Ann area is comprised of the towns of Essex, Gloucester, Rockport, Manchester and the village of Magnolia.

<sup>3</sup> PCAs are generally defined to include all contiguous exchanges. Given that Rockport and Manchester are coastal towns, contiguous, or touching exchanges, are limited.

and Telegraph Company, D.P.U. 89-300 (1990) and is, at a minimum, fair, equitable, and reasonable (Exh. NYNEX-1, at 2, 9). The Company stated that in order to avoid unnecessary disruption to local and toll rate structures, it is not contemplating changes in the local calling area of these customers or other customers in the state (id. at 14).

NYNEX stated that it has taken action to reduce toll rates for customers in eastern Massachusetts, including customers in the Manchester, Rockport and Beverly exchanges, by introducing optional calling services that offer customers reduced toll rates (id. at 12-13). The Company also stated that it is currently evaluating the feasibility of offering an unlimited Local Access and Transport Area ("LATA") wide calling plan to its customers in Massachusetts (id. at 12-13).

### III. STANDARD OF REVIEW

Under the provisions of G.L. c. 159, §16, the Department may order NYNEX to make changes in service when the Department finds such service to be "unjust, unreasonable, unsafe, improper, or inadequate." Before ordering changes, however, the Department must consider "the relative importance and necessity of the changes ... the financial ability of the carrier to comply with the requirements of the order and the effect of such other changes, if any, as may be deemed by the Department to be of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public." G.L. c. 159, § 16.

### IV. ANALYSIS & FINDINGS

Since the 1970's, the Department has received many requests to expand the PCAs of exchanges in all parts of the Commonwealth. For many years, the Department's decisions

concerning PCAs applied a standard that focused on "community of interest." See, e.g., Sudbury, D.P.U. 18153 (1976); Cheshire, D.P.U. 18836 (1976); Chesterfield, D.P.U. 19140 (1978). In these cases, the Department considered whether the customer had demonstrated a strong need to call the neighboring community or communities for everyday medical, business, occupational and social purposes, and whether toll charges for such calls imposed an unreasonable hardship on the affected customers. Id. Upon making this determination, the Department looked at the financial impact on the Company if it had to remedy the claimed inadequacies of the customers' PCA. Id.

Subsequently, the Department considered the PCA issue on a comprehensive, state-wide basis and developed the existing PCA framework. D.P.U. 89-300, at 52-73. The Department balanced customers' interests in expansive PCAs against the advantages of a comprehensive rate structure that was cost-based, fair, ensured rate continuity for customers and earnings stability for the Company, and protected universal service. Id. at 69-70. The Department determined after reviewing the relevant costs and balancing the Department's rate structure goals of fairness, rate continuity and protected universal service that a reasonable PCA would consist of the customer's home and contiguous exchanges. Id. The Department concluded that expanding PCAs beyond the home and contiguous exchanges would "violate our goal of economic efficiency by including significant amounts of use that is properly priced at toll rates ... within the unlimited local service rate." Id. at 52-73. The Department also found that increasing the scope of PCAs could, "over time, push [local exchange] rates to much higher levels," which "could make the unlimited service option unaffordable to many customers and might, thus, pose problems for rate continuity." Id. The Department also noted that the expansion of PCAs to permit toll-free calling on a county- or

region-wide basis would exacerbate existing disparities among PCAs and move the rate structure further from fair and consistent calling areas. Id. at 69-70.

The Department has relied on D.P.U. 89-300 when deciding recent PCA cases. See Northern Berkshire, D.P.U. 90-308 (1992); Southern Berkshire/Pittsfield, D.P.U. 90-277 (1992); and Dennis, D.P.U. 94-77 (1995). In D.P.U. 90-277, at 7, the Department further noted that it was not reasonable or cost-effective to require NYNEX to redesign exchanges solely for the purpose of matching the existing municipal boundaries.

The Supreme Judicial Court ("SJC") has addressed the PCA issue and held that the Department's determination of that issue was not arbitrary and capricious simply because a PCA resulted in perceived inequities. Bosley v. Department of Public Utilities, 417 Mass. 510, 513 (1994) ("Bosley").<sup>4</sup> The Court found that the adoption of home and contiguous exchanges as first set forth in D.P.U. 89-300 is a proper balance of customers' interest in expanding PCAs against the advantages of a comprehensive rate structure and earnings stability for NYNEX and protected universal service. Id. The Court stated that the Department's proffered reason -- a comprehensive system and the over-all reduction in rates provided by that system -- amply

---

<sup>4</sup> In Bosley, the plaintiff, State Representative Daniel Bosley, asked the SJC to modify or set aside Northern Berkshire, D.P.U. 90-308 (1992), an order that denied Representative Bosley's request to expand the PCA of the North Adams telephone exchange to include toll-free calling to Pittsfield. The petitioners in docket D.P.U. 30-308, at 9, made two arguments: first, that NYNEX customers served by an exchange not contiguous to Pittsfield have no less "community of interest" with Pittsfield than other towns that are served by exchanges contiguous to Pittsfield; and second, incurring toll charges for calls to Pittsfield unreasonably burdens the customers' social, commercial, and governmental relationships and activities.

justifies the Department's decision. Id. at 514. The Court also noted that the Department is better equipped to balance the competing interests in such cases and affords it substantial deference to do such. Id.

In arguing for an expansion of their PCA, the complainants have raised similar arguments to those raised and rejected in the past -- that these communities share a community of interest, or that customers must make toll calls to reach certain areas. The petitioners have failed to distinguish the case before us from previous cases and thus failed to meet the burden of proof to justify a larger PCA.

Therefore, the Department does not find NYNEX's service to be unjust, unreasonable, improper, or inadequate pursuant to G.L. c. 159 § 16. A change in the existing framework would disrupt the Department's goals of economic efficiency, fairness, simplicity, and consistency in the statewide concept of a PCA. D.P.U. 89-300, at 69-70.

## V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the petition filed on April 26, 1994, requesting that NYNEX provide a new calling plan that would include a more extensive toll-free local calling area to customers residing in the Towns of Beverly, Beverly Farms, Manchester, Magnolia, Gloucester, Essex and Rockport is hereby denied.

By Order of the Department,

---

John B. Howe  
Chairman

---

Mary Clark Webster  
Commissioner

---

Janet Gail Besser  
Commissioner

Appeal as to matters of law from any 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).