

D.P.U. 95-83-A

Investigation by the Department of Public Utilities on its own motion as to the propriety of the rates and charges set forth in tariff schedules M.D.P.U. Nos. 10 and 15, filed with the Department on July 3, 1995, to become effective September 15, 1995, by New England Telephone and Telegraph Company d/b/a NYNEX.

---

APPEARANCES: Bruce P. Beausejour, Esq.  
Barbara Anne Sousa, Esq.  
185 Franklin Street, Room 1403  
Boston, MA 02107  
FOR: NEW ENGLAND TELEPHONE &  
TELEGRAPH COMPANY D/B/A NYNEX  
Petitioner

L. Scott Harshbarger, Attorney General  
By: Daniel Mitchell  
Assistant Attorney General  
Public Protection Bureau  
Regulated Industries Division  
200 Portland Street, 4th Floor  
Boston, MA 02114  
Intervenor

Jeffrey F. Jones, Esq.  
Jay E. Gruber, Esq.  
Palmer & Dodge  
One Beacon Street  
Boston, MA 02108

-and-

Eleanor R. Olarsch, Esq.  
32 Avenue of the Americas  
Room 2700  
New York, NY 10013  
FOR: AT&T COMMUNICATIONS OF NEW  
ENGLAND, INC.

Intervenor

Robert Glass, Esq.  
Glass, Seigle & Liston  
75 Federal Street  
Boston, MA 02110

-and-

Richard C. Fipphen, Esq.  
Hope Barbalescu, Esq.  
One International, Drive  
Rye Brook, NY 10573

FOR: MCI TELECOMMUNICATIONS  
CORPORATION

Intervenor

Alan D. Mandl, Esq.  
Rubin and Rudman  
50 Rowes Wharf  
Boston, MA 02110

-and-

Thomas K. Steel Jr., Esq.  
100 Grandview Road, Suite 201  
Braintree, MA 02184

FOR: NEW ENGLAND CABLE TELEVISION  
ASSOCIATION, INC.

Intervenor

Mark R. Perkell, Esq.  
29 Church Street  
P.O. Box 967  
Burlington, VT 05402

FOR: FRONTIER COMMUNICATIONS OF NEW  
ENGLAND, INC. AND FRONTIER  
COMMUNICATIONS INTERNATIONAL, INC.

Intervenor

Sheryl A. Butler, Esq.  
Regulatory Law Office  
Office of the Judge Advocate General  
Department of the Army  
Litigation Center, Suite 713  
Arlington, VA 22203-1837

FOR: THE UNITED STATES DEPARTMENT OF  
DEFENSE AND ALL OTHER FEDERAL  
EXECUTIVE AGENCIES  
Intervenor

Jodie Donovan-May, Esq.  
Eastern Regional Counsel  
2 Lafayette Centre, Suite 400  
1133 21st Street, N.W.  
Washington D.C., 20036

FOR: TELEPORT COMMUNICATIONS GROUP,  
INC.  
Intervenor

I.     INTRODUCTION     On July 3, 1995, New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX" or "Company") filed revisions to its tariffs, M.D.P.U. Nos. 10 and 15 ("July 3rd Compliance Filing") with the Department of Public Utilities ("Department"), in compliance with the Department's May 12, 1995 Order in New England Telephone and Telegraph Company d/b/a NYNEX, D.P.U. 94-50 (1995) ("Price Cap Order"). The filing constitutes NYNEX's initial annual filing under the price cap form of regulation approved for NYNEX by the Department in the Price Cap Order. The Department docketed its investigation into this matter as D.P.U. 95-83 but did not suspend the tariffs, which were scheduled to go into effect on September 15, 1995.

A.     Procedural History

Pursuant to notice duly issued, the Department held a public hearing on August 17, 1995, at the offices of the Department in Boston. The Attorney General ("Attorney General") filed notice of intervention pursuant to G.L. c. 12, § 11E. Petitions to intervene were filed by AT&T Communications of New England, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Frontier Communications of New England, Inc. and Frontier Communications International, Inc. (collectively "Frontier"), New England Cable Television Association ("NECTA"), the Department of Defense and all other Federal Executive Agencies ("DOD/FEA") and Teleport Communications Group Inc., on behalf of Teleport Communications-Boston ("TC-Boston"), all of which were granted.

By Order dated September 14, 1995, the Department found that NYNEX had provided substantial evidence in its July 3rd Compliance Filing to warrant allowing the revisions to M.D.P.U. Nos. 10 and 15 to go into effect pending further investigation, to be adjusted

prospectively if necessary. New England Telephone and Telegraph Company d/b/a NYNEX, D.P.U. 95-83, at 14 (1995). The Department set a procedural schedule for further investigation of the propriety of the tariffs and the propriety of the price floor data filed with the Department on August 1, 1995.<sup>1</sup> On September 15, 1995, the tariff revisions went into effect, representing an aggregate decrease in NYNEX's intrastate revenues of \$32.8 million.

By Hearing Officer ruling, dated October 23, 1995, the issue of the correct calculation of price floors was moved from this docket into IntraLATA and Local Exchange Competition, D.P.U. 94-185. October 23, 1995 Joint Hearing Officer Ruling, D.P.U. 94-185/D.P.U. 95-83; See also October 10, 1995 Joint Procedural Notice, D.P.U. 94-185/95-83, at 2. (The Department recognized the inter-relatedness of price floor issues and the pricing and costing of interconnection arrangements being investigated in D.P.U. 94-185, and the efficiency of examining these similar issues in one docket.) Therefore, the scope of this docket is limited to whether or not NYNEX's first set of price changes included in the July

---

<sup>1</sup> In the Price Cap Order, the Department ordered that NYNEX provide a listing and calculation of the relevant price floors for all of NYNEX's regulated services, both monopoly and competitive. Price Cap Order at 205-206. On June 9, 1995, NYNEX filed a motion with the Department requesting a six-month extension of the price floor filing requirement, which was to have been submitted with the initial compliance filing on July 1, 1995. On June 28, 1995, the Department denied NYNEX's motion for a six-month extension, instead allowing NYNEX until August 1, 1995, to submit the price floor data. See New England Telephone and Telegraph Company d/b/a NYNEX, D.P.U. 94-50-C (1995). On July 12, 1995, NYNEX filed a motion for reconsideration in which NYNEX asked the Department to allow it to submit by August 1, 1995, only those price floors related to the specific rate changes proposed in the July 3rd Compliance Filing and to file price floor data for all of its other regulated services by September 15, 1995. The Department granted NYNEX's motion on July 21, 1995. On August 1, 1995, NYNEX filed with the Department the price floor data related to the specific rate changes proposed in its July 3rd Compliance Filing. On September 15, 1995, NYNEX filed with the Department price floor data for all of its other regulated services.

3rd Compliance Filing are in compliance with the pricing rules established in the Price Cap Order.

On November 8, 1995, the Department held an evidentiary hearing. NYNEX presented the testimony of James Lehane, Director of Public Affairs, and Paula Brown, Managing Director - Massachusetts Pricing. The evidentiary record includes 20 exhibits, one entered by NYNEX, and nineteen entered by the Attorney General, and three responses to record requests. A briefing schedule was set but none of the parties filed formal briefs.<sup>2</sup>

B. Attorney General's Appeal of November 8 Hearing Officer Ruling

1. Background

On November 6, 1995, NYNEX filed an objection to Attorney General Information Requests, Set 2, Nos. 17 to 21 and 23 to 28. The information requests sought information concerning revenues of NYNEX Information Resources Company ("NIRC")<sup>3</sup> from its directory advertising operations ("Directory Advertising" or "Yellow Pages") in Massachusetts as well as payments that NIRC makes to NYNEX under a licensing agreement. NYNEX objected to the information requests as immaterial and irrelevant to any legitimate area of inquiry concerning its compliance with the Price Cap Order.<sup>4</sup>

---

<sup>2</sup> However, NYNEX and the Attorney General did file a joint letter dated November 14, 1995 on the issue of the correct interpretation of the Service Quality Index ("SQI") in the Price Cap Order. See n.14, infra.

<sup>3</sup> NIRC provides directory publishing services, database management and delivery services, and information technology services to NYNEX through directory licensing and associated agreements. Price Cap Order at 386.

<sup>4</sup> NYNEX noted the following in its responses to Attorney General Information Requests, Set 2, Numbers 17 to 21 and 23 to 28: "[A]ny effort to take into account miscellaneous revenues from non-regulated activities, such as directory advertising, in the pricing rules would be: (1) inconsistent with express provisions of the Price Cap Plan; (2)  
(continued...)

At the November 8, 1995 hearing, the Attorney General moved that NYNEX be compelled to answer the information requests (Tr. at 5). The Hearing Officer denied the Attorney General's motion, stating that miscellaneous revenues are not governed by the price cap rules (id. at 15). The Hearing Officer ruled that the information requests, therefore, were irrelevant to this proceeding.<sup>5</sup>

On November 17, 1995, pursuant to 220 C.M.R. 106(6)(d)(3), the Attorney General filed an appeal to the Hearing Officer's November 8th ruling. On December 1, 1995, NYNEX filed a reply to the Attorney General's appeal. No other parties filed comments.

2. Positions of the Parties

a. Attorney General

The Attorney General expressly accepts the Hearing Officer's ruling "to the extent the Hearing Officer's ruling only applies to NYNEX's application of the pricing rules" (Attorney General's Appeal at 1). However, the Attorney General states: "to the extent that the Hearing Officer's ruling would preclude the Attorney General and other interested parties from seeking relevant information for the determination of whether NYNEX's rates and/or earnings are just and

---

(...continued)

irreconcilable with the price regulation concept adopted by the Department; (3) nothing more than reargument of an issue from D.P.U. 94-50; and (4) an effort to apply precedent used to determine revenue requirements under rate-of-return regulation to the Department's Price Cap Plan" (NYNEX Response to Attorney General Information Request, Set 2, Number 17).

<sup>5</sup> The Hearing Officer referred to page 207 of the Price Cap Order where the Department stated: "The Department approves the Company's proposed first pricing rule except that this rule will govern the allowable change in the weighted average of all regulated services in the monopoly basket, whether or not those services are tariffed." The Hearing Officer noted that Yellow Page Revenues are not regulated services in the monopoly basket and therefore are not governed by the pricing rule (Tr. at 15-16, 18).

reasonable during the annual price cap compliance filings -- an issue that has not been raised in the instant proceeding -- the Attorney General requests that the Hearing Officer's ruling be reversed" (id. at 1-2).

The Attorney General argues that the Price Cap Order states that NYNEX's compliance filings would most likely constitute general increases in rates under G.L. c. 159, § 20 (id. at 2). Further, the Attorney General notes that the Department responded to the June 2, 1995 Attorney General Motion for Clarification of the Price Cap Order, by stating that the Price Cap Order did not limit the rights of parties to present evidence only on NYNEX's compliance or non-compliance with the pricing rules (id.). The Attorney General also notes that the Department did not indicate that it would preclude parties from presenting other types of relevant evidence during those proceedings (id.).

The Attorney General states that he is concerned that the Hearing Officer's ruling in this compliance case could later result in an argument that such revenues could never be considered an appropriate subject matter for discovery in any future price cap compliance filing, such as to determine the overall justness and reasonableness of NYNEX's rates (id. at 2-3).

The Attorney General requests that the Hearing Officer's ruling either be limited expressly or reversed (id. at 3).

b. NYNEX

NYNEX disputes the Attorney General's position that there is ambiguity in the Price Cap Order regarding whether Directory Advertising revenues should be included in calculating the first pricing rule applicable to monopoly services (NYNEX Reply at 4-5). NYNEX states that the Hearing Officer's ruling indicating that Directory Advertising revenues do not fall within the monopoly basket to which the first pricing rule applies is correct (id. at 5).

NYNEX states that the only services subject to any of the pricing rules are regulated telecommunications services and that the only services that are taken into account in computing the first pricing rule are regulated tariffed and non-tariffed monopoly services (id. at 5, citing D.P.U. 94-50, at 204). NYNEX states that services within the monopoly basket were identified on the record in the Price Cap Order at pages 204 and 207 (id.). NYNEX states that Directory Advertising is not currently, nor has it ever been, a regulated telecommunications service (id.). NYNEX argues that the rates for Directory Advertising have never been tariffed and that the Department has never set or even reviewed any of the rates, terms or conditions for Directory Advertising (id.). Further, NYNEX states that Directory Advertising is not a monopoly service but is a competitive business of a separate NYNEX corporation (id.).

NYNEX asserts that the application of the pricing rules to Directory Advertising revenues was the only issue raised by the Attorney General at the November 8th hearing and was the only issue ruled on by the Hearing Officer (id.). NYNEX asserts that the Attorney General's concern that the ruling could be construed to limit discovery in any future price cap compliance filing is misplaced (id. at 6). Thus, NYNEX contends that the Attorney General's appeal should be denied (id.).

### 3. Standard of Review

The Department's Procedural Rules state that the Hearing Officer "shall make all decisions regarding the admission or exclusion of evidence ... in the course of the hearing." 220 C.M.R. § 1.06(6)(a). The State Administrative Procedure Act provides that "[e]vidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G.L. c. 30A, § 11(2); see also Town of Framingham v. Dept. of Pub. Utils., 355 Mass. 138, 144 (1969). Except in matters of privilege, however, administrative agencies "need not observe the rules of evidence observed by courts." G.L. c. 30A, § 11(2); Boston Gas Company, D.P.U. 88-67 (Phase I), at 16 (1988).

With regard to the legal standard for relevance, the Supreme Judicial Court has stated:

As a general rule the parties to an action have a right to show all material facts .... In determining whether evidence offered serves any valid purpose we apply the rule that it must merely render the desired inference more probable than it would be without the evidence .... We are influenced by the general view that relevant evidence should be admitted unless there is a quite satisfactory reason for excluding it ....

Green v. Richmond, 369 Mass. 47, 59 (1975) (citations omitted).<sup>6</sup>

### 4. Analysis and Findings

The issue before us is whether the Hearing Officer acted correctly in sustaining NYNEX's objection to Attorney General Information Requests, Second Set, Nos. 17 to 21 and 23 to 28. Pursuant to the above standard of review, we must determine whether the information sought is relevant to a material issue in this proceeding. For the reasons cited below, we find that the

---

<sup>6</sup> Although the Department is not bound by judicial rules of evidence, we find this standard instructive.

information is not relevant for it would not tend to prove facts of consequence to issues material to this investigation.

The contested information requests sought information about revenues generated by NIRC from its Directory Advertising operations in Massachusetts as well as payments that NIRC makes to NYNEX under a licensing agreement. It is uncontested that NIRC is an unregulated affiliate of NYNEX and that Directory Advertising is not now, nor has it ever been, a regulated telecommunications service.

As noted, supra, the Department's inquiry in this proceeding is limited to whether or not the July 3rd Compliance Filing complies with the pricing rules set forth in the Price Cap Order.<sup>7</sup> In the Price Cap Order, the Department clearly stated that the first pricing rule "will govern the allowable change in the weighted average of all regulated services in the monopoly basket, whether or not those services are tariffed." Price Cap Order at 207.<sup>8</sup> The information requested by the Attorney General relates to an unregulated service, specifically Directory Advertising, provided by an unregulated affiliate of NYNEX. Because Directory Advertising is not a regulated service in the monopoly basket, and therefore clearly does not fall under the first pricing rule, it is irrelevant to a determination of NYNEX's compliance with the pricing rules.<sup>9</sup>

---

<sup>7</sup> In the Hearing Officers' ruling dated October 23, 1995, which moved the issue of the proper calculation of price floors from this docket into IntraLATA and Local Competition, D.P.U. 94-185, the Hearing Officers stated that the "Department's investigation in D.P.U. 95-83 ... will be limited to NYNEX's compliance with the pricing rules in the Department's May 12 Price Cap Order in D.P.U. 94-50." October 23, 1995 Joint Hearing Officer Ruling, D.P.U. 94-185/D.P.U. 95-83, at 1-2.

<sup>8</sup> The Department established five pricing rules; only the first one is at issue here.

<sup>9</sup> In addition, NECTA contends that there is "some ambiguity" in the Price Cap Order  
(continued...)

Regarding the Attorney General's concern that the Hearing Officer's ruling may constrain discovery in future price cap annual filings, the Department limits this ruling to the specific facts of this case. The Department will consider future requests for information regarding NIRC on their merits at the appropriate time. It would be premature for the Department to speculate on evidentiary matters in advance of a future filing.

Therefore, the Department affirms the Hearing Officer's ruling and denies the Attorney General's appeal.

## II. DESCRIPTION OF THE COMPLIANCE FILING

In its July 3rd Compliance Filing, NYNEX proposed the following tariff and rate changes:

- the business local message rate within the 617/508 LATA is reduced and restructured from \$.03 per-message for all exchanges to \$.028 per-message for Zone 1 exchanges and \$.01 per message for Zone 2 exchanges;
- the local message rate for central offices where timing facilities were unavailable is deleted; timing facilities are available in all central offices in Massachusetts;
- the usage rate for Circle Calling, Suburban, Metropolitan Service, Bay State East Service, and Call Around 413 Plus Services are disaggregated into residence one-party unlimited usage and premium usage components;
- the Bay State East Service is changed by: (1) eliminating the time period restriction; (2) disaggregating the usage rate into residence one-party unlimited usage and premium usage components; and (3) reducing the usage rate by \$1.00 for Metropolitan service customers and \$2.01 for non-Metropolitan service

---

(...continued)

regarding application of the first three pricing rules to non-tariffed services. The Price Cap Order clearly notes that the first pricing rule applies to regulated monopoly services, tariffed and non-tariffed; therefore, pole and conduit attachment revenues are included in the first pricing rule while Yellow Pages revenues are not, since Yellow Pages are a non-regulated service. Further, the second and third pricing rules apply only to tariffed monopoly services and therefore do not apply to conduit and pole attachment fees, since they are not tariffed rates. See Tr. at 8-11; See also August 17, 1995 Procedural Conference, D.P.U. 95-83, at 18-19.

customers;

- the Measured Circle Calling Service rate is reduced from \$8.25 to \$7.35;
- the Eastern LATA time-of-day structure for switched access service is changed to peak/off-peak to match the Western LATA. Simultaneously, the originating carrier common line rate is reduced to zero and the common line usage credit is eliminated;
- the originating and terminating local switching rates for 800 switched access service are reduced; and
- the 800 originating and terminating local transport termination rates are reduced.

(Exh. NYNEX-1, July 3rd Compliance Filing Cover Letter).

NYNEX states that the estimated impact of the tariff revisions is an approximately \$32.8 million decrease in its Massachusetts intrastate revenues (id.). NYNEX states with respect to the aggregate revenue reduction: \$7.54 million is attributable to decreases in various switched access rates that will bring these rates to or closer toward target levels approved in the Department's docket, D.P.U. 93-125, the last NYNEX transitional filing case; \$19.67 million is attributable to rate reductions for residence optional calling plans, i.e., Baystate East (Metropolitan and non-Metropolitan) and Measured Circle Calling Services; and \$5.73 million is attributable to reductions in Zone 1 and Zone 2 message rates, for a total of \$32.8 million (id.).<sup>10</sup>

The Company's July 3rd Compliance Filing contains descriptions and calculations of the price cap formulae and supporting analyses to demonstrate whether the Company's filing is in compliance with the pricing rules established in the Price Cap Order (Exh. NYNEX-1).

---

<sup>10</sup> The Company states that an additional \$5.3 million revenue reduction is the result of a \$2.50 per-month increase in the Lifeline credit for eligible subscribers, which took effect on June 11, 1995, as required by the Price Cap Order (id.).

### III. COMPLIANCE WITH THE PRICING RULES

#### A. The Five Pricing Rules

##### 1. Introduction

As established in the Price Cap Order, the changes in the Company's rates are governed by five pricing rules. The pricing rules are defined, in part, in reference to several indices: (1) actual price index ("API"); (2) price regulation index ("PRI"); (3) actual rate element index ("AREI"); and (4) rate element index ("REI"). Price Cap Order at 70-72. These indices dictate the allowable changes in the rates of all tariffed services by placing a ceiling on these changes. Id. Also, any price increase is subject to NYNEX meeting specified levels of service quality. Id.

##### 2. First Pricing Rule

Under the first pricing rule, the API must be equal to or less than the PRI. Price Cap Order at 73. This rule governs the allowable change in the weighted average price of all tariffed services<sup>11</sup> by placing a ceiling on that change. Id. The PRI is based on a formula of inflation, minus a productivity factor, plus or minus exogenous changes. Id.

##### a. NYNEX's Filing

NYNEX calculated a PRI adjustment of (2.23) percent, using a 2.7 percent change in the Gross Domestic Product - Price Index ("GDP-PI") as an inflation factor, minus an adjusted productivity factor of 4.93 percent (Exh. NYNEX-1, Section A, Tab 1). NYNEX did not include any exogenous cost adjustments (id. at 2). In calculating the new API, NYNEX set the initial

---

<sup>11</sup> Only regulated telecommunications services are subject to the pricing rules. Price Cap Order at 204-5. Further, as indicated supra, only regulated tariffed and non-tariffed monopoly services are to be used in computing the first pricing rule. Id. at 207.

value of the API at 100.0, and reduced the value by applying the PRI adjustment of (2.23) percent. This resulted in an adjusted API of 97.77 percent (id.).

b. Analysis And Findings

In the Price Cap Order, the Department determined that the GDP-PI was the appropriate measure for inflation in a price cap formula. Price Cap Order at 141. The Department further determined that the appropriate productivity offset for NYNEX was 4.1 percent. Id. at 161.

We find that NYNEX properly used the year-end average GDP-PI as reported for each of the two prior calendar years to calculate the 2.7 percent change in the GDP-PI. We also find that the Company correctly adjusted its productivity factor to reflect the SQI results,<sup>12</sup> resulting in an adjusted productivity factor of 4.93 percent. Also, given that the new API of 97.77 percent is equal to the new PRI of 97.77 percent, the Department finds that NYNEX is in compliance with the first pricing rule.

3. Second Pricing Rule

Under the second pricing rule, NYNEX may not propose an increase in any rate element that would result in the AREI exceeding the REI. Price Cap Order at 73.

a. NYNEX's Filing

The REI is an index for each tariffed rate element in the monopoly basket, reflecting the percent change in the Consumer Price Index ("CPI"), plus or minus exogenous changes (Exh. NYNEX-1, Section A, Tab 1). The AREI is an index which reflects the actual percent change in

---

<sup>12</sup> As noted in Section III.A.6, infra, the Company failed to meet the 33-point service quality threshold, which resulted in an increase in the offset to the productivity factor of ten/twelfths of one percent, or 0.83 percent (Exh. NYNEX-1, Section A, Tab 1).

the price for each rate element implemented by NYNEX (id.).

In its filing, NYNEX set the initial values of the AREI and REI at 100.0 (id.). The Company calculated the percent change in the price of each individual rate element to determine the AREI adjustment (id.). In a similar fashion, NYNEX calculated the REI by adjusting this index by the percent change in the CPI, plus or minus exogenous changes (id.).

b. Analysis and Findings

In the Price Cap Order, the Department determined that for the purpose of calculating the AREI, NYNEX must compare the proposed price with the price for the rate element that was in effect in the prior year. Price Cap Order at 75-76. In its compliance filing, NYNEX provided workpapers listing all of the rate elements subject to price changes in the July 3rd Compliance Filing (Exh. NYNEX-1, Section C, Tab 3). In all instances, the new AREI is less than the new REI, and, therefore, the Department finds that NYNEX has complied with the second pricing rule.

4. Third Pricing Rule

Under this rule, NYNEX may increase the price for an existing service only at the time of an annual filing, made on or before June 1 of each year. Price Cap Order at 75.<sup>13</sup> The annual filing may include price changes, both increases and decreases, and must show the calculations of the new PRI, REI, API and AREI, and demonstrate that the price changes comply with all the pricing rules (id.).

---

<sup>13</sup> In the Price Cap Order, the Department allowed NYNEX to make its first annual filing on July 1, 1995, for effect September 15, 1995. Price Cap Order at 219, n.128. Because July 1st fell on a Saturday, the Department allowed NYNEX until July 3rd to submit its filing.

a. NYNEX's Filing

In the July 3rd Compliance Filing, NYNEX did not propose an increase in any existing tariffed services. However, the Company proposed rate decreases to a number of its services, which took effect on September 15, 1995 (see Section II, supra).

b. Analysis and Findings

The third pricing rule allows increases for existing services at the time of an annual filing. Given that no increases were proposed as part of the July 3 Compliance Filing, the Department finds that NYNEX has complied with this aspect of the third pricing rule. Also, we also find that consistent with the Price Cap Order, the Company has provided calculations and supporting workpapers of the new indices, and has demonstrated that the price changes comply with all the pricing rules.

5. Fourth Pricing Rule The fourth pricing rule requires that switched access rates be decreased in two steps to achieve the target rates established in D.P.U. 89-300. Price Cap Order at 76. The first decrease was to be proposed in the Company's first compliance filing. Id.

a. NYNEX's Filing

In the July 3rd Compliance Filing, NYNEX proposed to reduce its originating non-800 service charges to target rate levels (Exh. NYNEX-1, Section B). The Company also proposed to reduce its 800 service switched access charges to levels approaching target levels (id.). These rate reductions are reflected in workpapers provided in the compliance filing concerning changes in rates for individual rate elements (Exh. NYNEX-1, Section C, Tab 3).

b. Analysis and Findings

We find that NYNEX has complied with the fourth pricing rule in that switched access services have been reduced for both non-800 and 800 service charges, and that non-800 service charges reflect target levels (Exh. NYNEX-1, Section B at 1).

6. Fifth Pricing Rule

Under the fifth pricing rule, NYNEX will experience an increase in the productivity offset by one-twelfth of one percent for each month the Company fails to meet either the 33-point SQI threshold for overall performance or when three or more of the twelve individual service items that comprise the SQI fall below the standard threshold in any month. Price Cap Order at 237-8.<sup>14</sup>

a. NYNEX's Filing

NYNEX calculated the SQI penalty using a monthly penalty provision offset to the productivity factor of one-twelfth of one percent, or a maximum of one percent for a 12-month period (Exh. NYNEX-1, Section A, Tab 2).

b. Positions of the Parties

i. Attorney General

The Attorney General argues that NYNEX is incorrect in its assertion that the service

---

<sup>14</sup> During the November 8th hearing, the Attorney General requested clarification of the SQI penalty provision (Tr. at 85). On November 14, 1995, NYNEX and the Attorney General, by joint letter in lieu of a formal brief, presented their views on the issue of the correct interpretation of the SQI in the Price Cap Order. The joint letter includes as appendices: (1) the Attorney General's August 21 Comments on Suspending the Effective Date of NYNEX's Proposed Tariff Schedules M.D.P.U. Nos. 10 and 15 ("Attorney General's August 21 Comments"); (2) NYNEX's responses to Attorney General Information Request 1-2; and (3) NYNEX's August 28, 1995 Reply Comments.

quality penalty provision established in the Price Cap Order is capped at one percent (Attorney General's August 21 Comments at 2). The Attorney General argues that the Department chose a performance mechanism which included not only explicit penalties for failing to meet predefined standards of overall performance, but also included penalties for failing to meet the standards for individual services (id. at 2-3).

The Attorney General refers to the Price Cap Order:

Failure to meet the 33-point threshold for overall performance in any given month thus will result in an increase in the productivity offset by one-twelfth of one percent for the purposes of the subsequent filing. [footnote omitted] **In addition,** the Department finds that the Company should also have a financial incentive to achieve standard performance for individual service items, **as well as for the overall measurement of service quality.** Therefore, we find that when three or more of the twelve individual service items that comprise the SQI fall below the standard threshold in a given month, the productivity offset shall be increased by one-twelfth of one percent for purposes of the subsequent annual filing.

(id. at 3, citing Price Cap Order at 237-238, emphasis added).

The Attorney General argues that the Department did not indicate that the operation of the two components of the service quality performance adjustment were mutually exclusive (Attorney General's August 21 Comments at 3). To the contrary, the Attorney General states that the Company is subject to a performance penalty if its overall performance relative to twelve individual performance measures is less than acceptable and is also subject to a performance penalty if its service relative to three or more of the twelve measures is less than acceptable (id.). The Attorney General interprets the penalty provision as requiring an offset of one-twelfth of one percent twice in any given month, in the first instance where the overall performance threshold falls below 33 points for that month, and in the second instance where NYNEX fails to achieve standard performance for three or more individual service items for that same month (id.).

ii. NYNEX

NYNEX notes that during the Price Cap case the Attorney General proposed a "one-twelfth of one percent increase in the productivity offset for every month in which the SQI is below the required level" (NYNEX's August 28 Reply Comments at 7). NYNEX contends that the Department found that the Attorney General's service penalty provision was appropriate and therefore adopted the Attorney General's proposed one percent annual service penalty (id., citing Price Cap Order at 237). NYNEX contends that during the Price Cap case neither the Attorney General nor any other party proposed that the penalty provision be imposed twice in any given month (id. at 8).

NYNEX argues that the Department intended for the service penalty to apply if NYNEX fails to meet the 33-point threshold for overall performance for any given month (id.). Further, NYNEX argues that even if the Company meets or exceeds that threshold, NYNEX can be penalized one-twelfth of one percent if it fails to meet three or more of the twelve service measurements (id.).

Finally, NYNEX argues that applying the one-twelfth of one percent penalty twice in any given month, as now suggested by the Attorney General, would result in the Company being penalized twice for one month's service based on a twelve-month rolling average (id. at 8). The Company claims that such an outcome would be punitive and was not intended by the Department nor was it proposed by any party during the course of the proceeding (id.).

c. Analysis and Findings

The issue before us is whether the Department intended in the Price Cap Order that the maximum service quality penalty be one percent annually, as NYNEX maintains, or two percent,

as the Attorney General maintains. Pursuant to the Price Cap Order, the total penalty assessed in any given month for failure to meet service quality standards is an increase of one-twelfth of one percent in the productivity adjustment for that month. Price Cap Order at 237-238. The penalty can be incurred when the overall 33-point performance threshold is not met or when three or more individual service quality items fall below standard performance levels (*id.*). It was not the intent of the Department to assess a double penalty during any given month for NYNEX's performance shortcomings. Therefore, we find that the Price Cap Order intended that the penalty offset should not exceed one-twelfth of one percent for any given month and should not exceed one percent for any twelve-month period. Consequently, the Department finds that NYNEX has complied with the fifth pricing rule.

In addition, NYNEX indicated that the monthly SQI scorecard results would be presented to the Department on an annual basis with each annual filing (Tr. at 68). The Price Cap Order requires, however, that "the SQI would be a new measurement in the monthly reports currently provided to the Department." Price Cap Order at 77. Therefore, the Department finds that NYNEX shall provide SQI scorecard results on a monthly basis, as part of its monthly service quality reports.

B. Compliance with Pricing Rules

In summary, we find that NYNEX has complied with the pricing rules for the Price Cap Plan approved in the Price Cap Order. In addition, we find that it is not necessary, at this time, to make any adjustments to the revisions to NYNEX tariffs M.D.P.U. Nos. 10 and 15, which took effect on September 15, 1995.

IV. ORDER

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

FOUND: That the revisions to tariffs M.D.P.U. Nos. 10 and 15, filed by New England Telephone and Telegraph Company d/b/a NYNEX on July 3, 1995, are in compliance with the pricing rules established in D.P.U. 94-50; and it is

ORDERED: That NYNEX shall submit to the Department the results of the SQI in the monthly service quality reports currently provided to the Department.

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 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).