

July 18, 1997

D.P.U. 96-30

Petition of over twenty customers of New England Telephone and Telegraph Company d/b/a NYNEX, pursuant to G.L. c. 159, § 24, regarding the quality of telephone service in the Mission Hill area.

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I. INTRODUCTION

A. Procedural History

_____ On February 12, 1996, pursuant to G.L. c. 159, § 24, 29 customers of New England Telephone and Telegraph Company d/b/a/ NYNEX ("NYNEX" or "Company") in the Mission Hill area of the city of Boston ("Mission Hill") filed a petition with the Department of Public Utilities ("Department") requesting an investigation into NYNEX's quality of service. The Department docketed the matter as D.P.U. 96-30 and opened this investigation.

After notice duly issued, the Department conducted a public hearing at the Hennigan Community School in Jamaica Plain on April 10, 1996. Mission Hill customers and public officials testified at this hearing. On April 25, 1996, the Department conducted a procedural conference and granted limited participant status to State Representative Kevin W. Fitzgerald, representing the 15th Suffolk District, Boston City Councilor Maura A. Hennigan representing the sixth District of Boston, and Boston City Councilor Thomas M. Keane, representing the eighth District of Boston (collectively, "Elected Officials").¹ Status as a limited participant was also granted to Alison Pultinas, a representative for the Roxbury Neighbors for Better Telephone Service; and Richard Giordano, a representative for the Back of the Hill Community Development Corporation (together, "Customer Group").² On April 2, 1996, the

¹ The 15th Suffolk District and the sixth and eighth Districts of Boston all encompass Mission Hill.

² All Limited Participants were granted the right to: (1) receive copies of filings, pleadings and submissions made during the course of this investigation; (2) attend all conferences and hearings; and (3) file briefs or comments on the issues in this case (Procedural Conference Tr. at 5-17).

Attorney General of the Commonwealth ("Attorney General") intervened as a matter of right, pursuant to G.L. c. 12, § 11E.

On July 10, 11 and 12, 1996, the Department conducted evidentiary hearings at its offices in Boston. The evidentiary record includes 152 exhibits and 51 responses to record requests. Initial briefs were filed by NYNEX, the Attorney General, Representative Fitzgerald, City Councillor Hennigan, and City Councillor Keane. Reply briefs were filed by NYNEX, the Attorney General, Mr. Giordano, and Ms. Pultinas.

B. Issues

The Mission Hill customers identified two primary concerns: (1) the Company's response to an outage that left approximately 300 Mission Hill customers without telephone service from January 13 to January 20, 1996; and (2) alleged poor quality of telephone service to Mission Hill customers for the "last nine years" (Public Hearing Tr. at 14-16, 28). In this Order, we address issues related to NYNEX's efforts to restore service during the January 1996 outage in Section III, NYNEX's customer response during the outage in Section IV, and ongoing quality of service issues in Section V.

II. STANDARD OF REVIEW

The Department's standard to determine the propriety of the Company's quality of service to customers is set forth in G.L. c. 159, § 16, which states in pertinent part:

If the [D]epartment is of opinion, after a hearing ... that the ... practices ... or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the [D]epartment shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed ... and services thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby Before making such order, the [D]epartment shall

consider the relative importance and necessity of the changes ... proposed to be included therein and of other changes which may be brought to its attention during the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance, therewith, upon its financial ability to make such other changes, if any, as may be deemed by the [D]epartment of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public.

Thus, the Department must first determine whether the Company's regulations, practices, equipment, or service do not meet the statutory requirement, and then consider the cost of the remedy and its impact on the Company's financial ability to provide service to the public. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 289-290 (1990).

III. THE CAUSE AND LENGTH OF THE OUTAGE

A. Overview

1. Restoration of Service Issues

NYNEX stated that on January 13, 1996, severe winter weather conditions caused significant amounts of water to enter Manhole No. 20 ("MH20"), located at the corner of South Huntington and Huntington Avenues in Boston (Exh. NYNEX-1, at 3). The Company stated that two underground feeder cables³ in MH20, totalling 1800 pairs of wires, fell from their rack and suffered stress fractures (id.). Water entered the cable splice points through the cracks in the lead cable sleeve and dissolved the paper insulation of the wire conductors (id.). NYNEX stated that this situation created a short circuit in the wires and a disruption in service (id.). NYNEX also stated that the extended service outage affected 293 customers, of which

³ Feeder cable provides the connection between NYNEX's central offices and remote terminal equipment.

258 were residential and 35 were business (id. at Att. C). Further, NYNEX stated that due to a variety of circumstances, the Company was unable to restore service until January 20, 1996, when it completed the installation of two new sections of cable to temporarily bypass the damaged lead cable (id.).

On the afternoon of January 13, 1996, according to the Company, Mission Hill customers began calling the Company's Centralized Repair/Service Bureau ("CSB") to report problems with their telephone service (Exh. NYNEX-1, at 4).⁴ The Company stated that an alarm sounded at its Market Area Center ("MAC")⁵ indicating a loss of air pressure in the cables at MH20 (id.). Such pressure loss usually indicates a cable break (Tr. 1, at 23-24). NYNEX stated that on January 14, 1996, it dispatched service technicians to Mission Hill, and the technicians determined that MH20 was the source of the trouble (Exh. NYNEX-1, at 5).

NYNEX stated that due to safety concerns, service technicians refused to enter MH20 on January 14, 1996 (id.). Specifically according to NYNEX, the entrance to MH20 is located in the path of the MBTA Green Line trolley tracks and is accessible only through an eight-foot crawl space (id. at 4-5). Further, according to NYNEX, its service technicians were also concerned about the odor of petroleum in and around the manhole (Tr. 2, at 111). Although unable to enter the manhole that day, NYNEX determined that it was necessary to bypass

⁴ The CSB is one of several customer service groups at NYNEX. The CSB responds to customer calls about service problems, disseminates information to customers, electronically tests telephone lines to determine the nature of the difficulty, and clears phone lines of trouble, if possible (Tr. 2, at 82-86).

⁵ The MAC dispatches repair crews at the direction of the CSB (Exh. AG-110; Tr. 2, at 78).

MH20 to restore service, and the Company immediately began the planning and design work for the relocation of feeder cable that serves customer lines in the Lawn Street area of Mission Hill (Exh. NYNEX-1, at 6-7, 11-12).

On January 15, 1996, NYNEX's safety manager verified that air quality was acceptable to enter MH20, but service technicians still refused to enter the manhole (Tr. 2, at 103, 104). NYNEX requested an opinion from the Occupational Safety and Health Administration ("OSHA"), and on January 17, 1996, OSHA deemed it safe to work inside MH20 (id. at 111). NYNEX management personnel entered MH20 on January 17, 1996, to effect repairs (id. at 104). NYNEX stated that the temporary bypass work was completed and service restored on January 20, 1996.

NYNEX stated that when it became clear that the outage would be prolonged, NYNEX considered using its emergency service trailer to provide temporary service to the affected customers (Exh. AG-115; Tr. 1, at 80, 105). The Company stated, however, that the trailer unit was being used in Fairhaven and, thus, was not available for use in Mission Hill (Tr. 1, at 81). Further, the Company stated that even if the trailer were available, it would not have been practical to deploy the trailer in Mission Hill because of heavy street traffic in the MH20 area and the presence of other underground utilities next to NYNEX's cables (id. at 97, 104-105).

2. Permanent Bypass of MH20

To insure immediate access to MH20 in the future and thus avoid a similar extended outage, NYNEX stated that it has developed plans to permanently relocate all cables from MH20 to a new manhole (Exh. NYNEX-1, at 12, Att. C). NYNEX stated that the permanent bypass of MH20 will cost approximately \$606,000 (Exhs. NYNEX-1, Att. C; AG-17). These costs, according to NYNEX, consist of \$486,000 for placing and splicing cables, \$76,000 for cables and materials, and \$44,000 for conduit and contracting costs (Exh. AG-17). NYNEX reported that it has completed the structural phase of the replacement manhole but has encountered several obstacles in completing the project as originally planned, such as: (1) the location of a rock shelf and other utility lines beneath the area's surface; (2) trolley tracks on Huntington Avenue; and (3) additional structural concerns that impact the removal of network feeding cables through MH20 (RR-DPU-4). As a result, NYNEX estimated that the permanent bypass of MH20 will not be completed until mid-1998 (id.).

B. Positions of the Parties

1. Attorney General, Elected Officials and Customer Group

In order to reduce the possibility that a customer in an emergency situation may not have service during an extended outage, the Attorney General proposes that when an outage lasts 24 hours and affects 24 customers or more, NYNEX should be directed to deploy a mobile trailer unit within 25 hours from the time the outage began (Attorney General Brief at 9-10).

The Elected Officials state that they are encouraged by the willingness of NYNEX to improve the infrastructure around MH20 and Mission Hill (Keane Brief at 1; Hennigan Brief at

1). The Customer Group states that relocating MH20 is a "first step" toward providing safe, reasonable and adequate telephone service (Giordano Reply Brief at 2).

2. NYNEX

_____ NYNEX argues that its provision of telephone service to Mission Hill customers is just, reasonable and adequate under the statute (NYNEX Brief at 4). Further, NYNEX contends it followed a reasonable course of conduct in restoring telephone service to Mission Hill customers as quickly as possible under the circumstances (id. at 7).

_____ NYNEX asserts that its plan to bypass MH20 is reasonable to ensure that delays in service restoration efforts attributable to MH20 will not occur again (id. at 8). In addition, the Company argues that it is impractical to require NYNEX to deploy a mobile trailer unit within 25 hours of a service outage, since it takes more than 25 hours to disengage and move the unit from one site to another (id.).

C. Analysis and Findings

1. Restoration of Service Issues

The eight-day extended service outage that affected 293 customers in the Mission Hill section of Boston represents an unacceptably long period of time for customers to be without telephone service. The outage prevented many Mission Hill customers from having telephone access to public health and safety services, and from conducting affairs that require telephone service. "Where the current services ... substantially impair the ability of a community to undertake commonly required economic, social, and public health and safety functions, the Department must find that existing service is inadequate." Franklin County/New England

Telephone and Telegraph Company, D.P.U. 454, at 17 (1984). Accordingly, we find that the loss of service to Mission Hill customers from January 13 to 20, 1996 constitutes inadequate service.

Notwithstanding this finding, the facts show that, upon first learning of the outage, NYNEX took reasonable steps to identify the source and then remedy the problem. The record indicates that because of safety concerns, NYNEX was unable to immediately enter MH20. However, even as the Company was addressing such safety issues, it was simultaneously developing plans for a solution to restore service. Once OSHA determined that it was safe to enter the manhole, the Company worked to effect the temporary bypass to restore service to customers. The delay in restoring service does not appear to be attributable to Company inaction but rather appears to have resulted from safety concerns that prevented the Company personnel from entering the manhole for three days and the unusual layout of the manhole that made repairs more difficult and time-consuming. Given this unique set of circumstances, we find that NYNEX's efforts to repair damages to MH20 and its solutions for restoring service were adequate and reasonable under the circumstances.

The Attorney General argues that NYNEX could have restored service sooner by deploying its emergency trailer unit to Mission Hill when the Company first learned of the outage. However, the record indicates that it was not possible for NYNEX to deploy its emergency trailer; the trailer was being used in Fairhaven to respond to service difficulties.

2. Bypass of MH20

To prevent similar problems with access to MH20 in the event of another outage, NYNEX is in the process of removing the remaining cable from MH20 and permanently relocating it to another manhole. The record shows that because of structural difficulties, the Company will not be able to complete the project any sooner than mid-1998. The Department finds that NYNEX's plan to permanently bypass MH20 is a reasonable response to avoid potential future delays and problems in gaining access to the cables that serve Mission Hill, as well as to improve safety conditions for NYNEX's repair crews. Once the relocation is completed, the Company is hereby directed to file a detailed report with the Department on the relocation of cables from MH20, including the cost of the project. NYNEX is also required to notify the Department if completion of the project is delayed beyond June 30, 1998.

IV. QUALITY OF SERVICE DURING THE OUTAGE

Mission Hill residents raised several concerns about NYNEX's response to customers during the outage, including (1) notification procedures, (2) availability of substitute and temporary services, (3) priority restoration of service, and (4) bill credits. These issues are addressed below.

A. Overview

1. Notification Procedures

Mission Hill customers testified that NYNEX did not provide timely or accurate information on the progress of the repairs and restoration of service (Public Hearing Tr. at 21, 23-24, 32-33). NYNEX stated that on January 17, 1996, it left informational flyers on cars and in the doorways of Mission Hill residents that described the extent of the outage and apologized for the interruption of service (Exh. NYNEX-1, at 9, Att. A; Tr. 1, at 115-116). NYNEX also stated that the flyers did not provide a contact phone number for obtaining further information (id.). On January 18, 1996, the Company mailed a letter of apology, and stated that bill credits would be given to reflect the loss of service (Exh. NYNEX-1, at 9, Att. B; Tr. 1, at 119).

NYNEX stated that it does not have a formal policy of notifying police, fire and emergency medical service providers of an extended telephone outage and did not do so in this case (Tr. 1, at 120-122). Instead, according to NYNEX, its policy is to provide notice to such public safety agencies on a case-by-case basis (id. at 121). Finally, NYNEX stated that it has a policy of notifying the Department at the onset of an outage but has no formal policy of follow-up during the course of outage repairs (Tr. 2, at 125-127).

2. Availability of Substitute and Temporary Services

a. Substitute Services

NYNEX stated that it makes voice intercept⁶ and voice mail⁷ services available to customers during outages that can serve as substitutes until telephone service is restored (Tr. 1, at 34, 46-47). According to NYNEX, when a customer calls the CSB to report an outage, the CSB will inform the customer of the availability of the voice intercept service upon request (id., at 33-34). NYNEX stated that it does not, however, automatically place the voice intercept message on all lines that are out-of-service (id. at 34). NYNEX also stated that it is difficult for the Company to provide tailored messages on voice intercept because that would involve a manual effort to customize each customer's line and additional work to provide updates regarding the restoration of service (RR-AG-3; Tr. 1, at 40). NYNEX testified that a customer may remove the intercept message from a telephone line once service is restored by dialing a code directly from the telephone (RR-DPU-7). For customers requesting voice intercept, the CSB will also routinely notify the customer of the customer's ability to remove voice intercept from his or her phone after restoration of service (see id.).

⁶

Voice intercept allows a standardized message to be placed on a customer's line indicating that the line is out-of-service and is being repaired (Tr. 1, at 33-34). However, it does not provide information about the specific nature of the problem or the estimated time of repair (Tr. 1, at 35; Tr. 2, at 98-99).

⁷

Voice mail, a telephone feature marketed by NYNEX as Call Answering Service, provides the customer's telephone line with answering machine capability (i.e., a caller is able to leave a message on the customer's line that the customer then can retrieve from that line or from a remote location) (Tr. 1, at 48).

Mission Hill customers testified that voice intercept and voice mail were not available until three days after the commencement of the outage (Tr. 2, at 88-89). Further, several customers testified that they were not aware of the ability to automatically remove the intercept message, and that they had to call NYNEX, sometimes several times, to have the intercept message removed (Public Hearing Tr. at 64, 65-67).

With respect to voice mail, NYNEX testified that voice mail can be helpful to customers during extended service outages, allowing a customer to tailor specific messages for callers to their telephone line and to retrieve messages from callers (Tr. 1, at 48). However, according to NYNEX, this service requires considerable discussion between the CSB representative and the customer, and not all central offices are capable of providing voice mail (id. at 1, 48, 50-52).⁸ As with voice intercept, NYNEX does not automatically place voice mail on a customer's line during an outage (id. at 33-34). NYNEX also stated that it does not have a policy of routinely informing customers through bill inserts of the availability of substitute services, such as voice mail and voice intercept, during outages (RR-AG-17; Tr. 1, at 131).

⁸

Voice mail requires the Company to input each service order separately and to assist the caller through a number of steps, including the selection of a personal identification number (Tr. 1, at 50-51). In addition, each voice mail installation must be separately removed (id.). NYNEX stated that the task of automatically providing voice mail to, then removing from, each customer's line during an outage would be burdensome to the restoration of service (id. at 51-52).

b. Temporary Services

NYNEX indicated that while it sometimes makes available under special circumstances temporary cellular service and temporary dialtone service from a mobile trailer unit, these services are not intended for widespread use during outages (Tr. 1, at 152). Mission Hill customers testified that more widespread availability of temporary services may be needed for safety reasons, including access to 911/E-911 (Public Hearing Tr. at 15, 16).

With respect to temporary cellular service, NYNEX stated that it provides cellular phones, if requested, to healthcare and emergency services providers, such as the police and firefighters, during an extended service outage (id.). During the Mission Hill outage, NYNEX stated that it loaned a cellular phone to a nursing home (RR-AG-19; Tr. 1, at 147-148). Further, NYNEX stated that its current policy is to provide temporary cellular service during outages only to customers with identified life-threatening conditions (Tr. 1, at 125). NYNEX stated that the customer must inform NYNEX of his or her medical condition by contacting the Company's business office (id. at 126).

NYNEX stated that its emergency mobile trailer unit is capable of providing dialtone and service up to 1700 lines on a temporary basis to customers in the event of a widespread outage (Tr. 1 at 78, 79, 85). NYNEX testified that the mobile trailer is used only in special situations and is not meant to be available for all types of outages (id., at 91-92). NYNEX stated that it is in the process of constructing and making available a second emergency mobile trailer unit and expects that unit to be completed soon (id. at 79). Further, NYNEX stated that

it is re-evaluating its policies and procedures governing the deployment of mobile trailers during extended outages (Exhs. AG-30; AG-121).

3. Priority Restoration of Service

Customers also questioned NYNEX's policy regarding priority restoration of service for customers with serious health conditions (Tr. 1, at 124-126). NYNEX stated that customers who need priority restoration of service based on medical necessity must contact the NYNEX business office prior to an outage and identify themselves as requiring such service (id. at 126-130). According to the Company, NYNEX repair crews prioritize the restoration of service to residential customers who have identified themselves to NYNEX as requiring uninterruptible service due to medical necessity (id. at 132-133). Further, NYNEX indicated a willingness to investigate the development of a database to generate a list of emergency and health service providers, such as nursing homes, for priority restoration of service during an outage (Tr. 3, at 26).

4. Bill Credits

NYNEX's January 18, 1996 apology letter to customers stated that they would receive one month's credit for the local charges on their current telephone bill (Exh. NYNEX-1, Att. B). Further, NYNEX stated that its current policy is to automatically provide a bill credit for outages of 24 hours or more for residential customers (Tr. 1, at 119; Tr. 3, at 6). However, many customers testified that they did not receive the credit until contacting the Company, sometimes several times (Public Hearing Tr. at 51-52).

B. Positions of the Parties

1. Attorney General, Elected Officials and Customer Group

The Attorney General, Elected Officials and the Customer Group recommend that the Department order NYNEX to create an emergency response plan⁹ in the event of a declared emergency or when 24 or more customers are affected by a loss of service for a period more than 24 hours (Attorney General Brief at 3, 5, 6, 9, 10, 13; Fitzgerald Brief at 2; Keane Brief at 1; Hennigan Brief at 1; Poultinas Reply Brief at 7; Giordano Reply Brief at 2).¹⁰ The Attorney General states that NYNEX's existing emergency services and lack of telecommunications emergency response plan impair the public health and safety of the residents of Massachusetts (Attorney General Reply Brief at 4).

The Attorney General and Elected Officials state that the emergency plan should provide for: (1) a service outage hotline with a live customer service representative on the line to provide up-to-date information regarding an outage; (2) alternative emergency service with an emergency trailer or cellular phones to all affected customers; (3) immediate alternative emergency service to nursing homes and other customers with critical medical needs;

⁹ As NYNEX correctly points out, it already has in place emergency operating procedures for use during natural disasters (NYNEX Reply Brief at 5-6, 8). These procedures were submitted in compliance with the Department's Order in Hurricane Bob, D.P.U. 91-288 (1992). Thus, the Department interprets the recommendation by the Attorney General, Elected Officials, and the Customer Group as a request for the Company to develop a response plan for extended service outages that are caused by reasons other than natural disasters.

¹⁰ We note that NYNEX currently defines a "m a j o r s e r v i c e o u t a g e" as "a n y s i n g l e o r m u l t i p l e c a b l e f a i l u r e (t o l l , t r u n k o r e x c h a n g e) t h a t r e s u l t s i n 2 0 0 o r m o r e p a i r s o u t o f s e r v i c e . . ." (A G - R R - 3 2).

(4) notification of all local public safety agencies serving the area affected by the outages; (5) automatic voice message intercepts explaining service problems to those trying to reach affected customers; (6) voice mail service to all affected customers; (7) distribution of informational flyers to residents identifying the cause of the outage, efforts to restore service, and other information; (8) mailing of updated information letters to customers to ensure that they have proper notification; (9) a bill stuffer questionnaire sent to customers every six months to determine which customers require immediate substitute telephone service during any outage; and (10) an automatic credit provided to each customer equivalent to the duration of the outage or a penalty to NYNEX by crediting all of the harmed customers' flat-rate local service charges and intraLATA toll charges for six consecutive months (Attorney General Brief at 6-19; Fitzgerald Brief at 2; Hennigan Brief at 1; Keane Brief at 1).

The Attorney General also requests that the Department adopt additional repair service incentives to improve NYNEX's ability to resolve residential service problems within 24 hours (Attorney General Brief at 21). The Attorney General argues that the Department should require NYNEX to provide each customer making a repair service request a confirmation number and NYNEX should inform those customers when service problems will not be resolved on or before the originally scheduled date (id.). Further, the Attorney General recommends that NYNEX be required to provide customers with a cellular phone, including a battery, charger and unlimited usage for local cellular calls, until the customer's service is restored (id. at 21-22). The Attorney General recommends that for each day NYNEX misses its repair deadline, each residential customer should receive a 1/30 credit against the flat-rate

unlimited local service and intraLATA toll service portion of his or her bill (id. at 22). Finally, the Attorney General argues that NYNEX should submit an annual compliance filing for the next three years to demonstrate that the Company has: (1) implemented an emergency response plan; (2) completed the bypass of MH20 and the replacement of cables; (3) implemented recommended improvements to its repair service policy; and (4) provided Mission Hill residents with "excellent" telephone service (id. at 23-24).

2. NYNEX

NYNEX argues that the facts demonstrate that its provision of telephone service to Mission Hill customers, as well as its service restoration efforts and emergency procedures during the January 1996 outage, are just, reasonable, and adequate under G.L. c. 159, § 16 (NYNEX Brief at 4).

NYNEX asserts that its notification procedures to Mission Hill customers during the outage were just and reasonable (id. at 9). NYNEX also asserts that there is no need to establish a service outage hotline because the CSB is responsible for processing trouble reports as well as responding to caller inquiries about outages (NYNEX Reply Brief at 15).¹¹ Further, NYNEX states that it will continue to distribute informational flyers during service outages but objects to expanding their use to include information regarding temporary service and a service outage hotline (id. at 17). In addition, the Company states that it opposes mailing subsequent

¹¹ When a customer reports a service problem to the CSB, the CSB notifies the appropriate maintenance center if the CSB cannot clear the line of trouble automatically through its mechanized loop testing system (RR-AG-20; Tr. 1 at 167). The Company stated that detailed information regarding the nature of the problem as identified by field repair personnel does not flow from the MAC back to the CSB (Tr. 2, at 86).

informational letters to customers because customers may be confused if service is restored prior to the time customers receive this mail (id.).

NYNEX states that it has emergency operating procedures for use during natural disasters, such as hurricanes and floods (id. at 5-6, 8). NYNEX argues that Massachusetts law does not require NYNEX or any other common carrier to provide uninterrupted service to its customers, nor does the law define "just, reasonable, adequate service" as continuous service (id. at 3). NYNEX also argues that under G.L. c. 159, §16, the Department cannot order the Company to provide alternative service without completing a cost-analysis or feasibility study (id. at 5).

NYNEX states that there is no Department order requiring any utility to provide temporary service to customers during an outage (NYNEX Brief at 15). The Company argues that providing temporary service during a service outage would unduly interfere with the Company's ability to achieve its primary goal of restoring service promptly (NYNEX Reply Brief at 4). NYNEX also argues that it is not the Company's policy to provide cellular phones to customers as a temporary service during an outage but the Company notes that its managers, on a case-by-case basis, loan their cellular equipment to public safety agencies (NYNEX Brief at 12-14). NYNEX states nevertheless that an "extensive study" is underway to examine financial, administrative and other issues associated with introducing a cellular telephone program either for customers in a held order (i.e., installation) or service outage situation

(Tr. 2, at 5-7, 11-12; Tr. 3, at 4; NYNEX Reply Brief at 11). NYNEX asserts that after this analysis is completed, the Department then can make a "well-reasoned judgment" regarding the appropriateness of using cellular telephones in this manner (id.).

In addition, NYNEX argues that this proceeding was noticed as an investigation into the Mission Hill Petition and was not intended to serve as a forum to address broader issues relating to NYNEX's Service Quality Index ("SQI") and Price Cap Plan, and no evidence was presented in this regard (id. 19-20, citing NYNEX, D.P.U. 94-50 (1995) ("D.P.U. 94-50")). The Company also states that it would not object to providing the Department with an annual status report on its progress on its construction project in Mission Hill, but would object to submitting periodic filings, as requested by the Attorney General (id. at 20).

C. Analysis and Findings

1. Introduction

Before addressing the specific issues raised by the parties, the Department finds it necessary to discuss the scope of this proceeding, since it bears on the findings that we make below. This proceeding was opened to investigate specific complaints concerning service quality issues in Mission Hill. As noted in Section II, in determining the propriety of the Company's quality of service, the Department may consider issues "brought to its attention during the course of the hearing." G.L. c. 159, § 16. In the course of the proceeding, evidence was presented concerning NYNEX's general procedures for responding to service outages and how those procedures were applied during the Mission Hill outage. While the proceeding was not noticed as a generic investigation of NYNEX's service outage operating procedures, the

Company was put on notice by issues raised by intervenors and limited participants that the Department would be considering the adequacy of NYNEX's service outage policies and procedures. See Fitchburg Gas and Electric Light Co. v. Department of Pub. Utilities, 375 Mass. 571, 578 (1978). Although the present case was initiated because of a specific outage in the Mission Hill section of Boston, the Department developed a suitable record from which it can make findings of general application to NYNEX's entire service territory in Massachusetts.

2. NYNEX's Customer Response During Mission Hill Outage

a. Notification Procedures

The record indicates that customers were confused regarding the availability of voice intercept, voice mail and preferential restoration of services to customers with medical needs. Although NYNEX distributed informational flyers, customers were confused about whom to contact for further information and how to obtain these services. The record indicates that such confusion impeded customers from obtaining these services and, in some cases, from cancelling voice intercept messages. For some customers, services such as voice intercept, voice mail and alternative cellular telephone service may be the only means for them to communicate with public safety or health providers during a telephone outage. In addition, certain customers with medical needs may require priority restoration of service and alternative communication services. Thus, it is necessary for the public safety and health that all customers know how to obtain these services when necessary. Accordingly, the Department finds that NYNEX did not adequately inform Mission Hill customers of the availability of voice intercept and voice mail nor how to obtain preferential restoration of service.

The record indicates that NYNEX does not have formal procedures in place to notify emergency services providers (e.g., police and firefighters) and health providers (e.g., nursing homes and hospitals) about the nature and extent of an outage, and the status of repairs. The public interest requires both emergency services and health providers to be aware of the nature and extent of a telephone outage in order to meet the safety and health needs of the public. Therefore, we find that NYNEX's notification procedures to emergency services and health providers were inadequate during the Mission Hill outage.

Accordingly, the Department directs NYNEX to re-evaluate its notification procedures during extended service outages to include procedures to: (1) notify essential public service agencies and emergency services providers of an extended service outage and of the nature and expected duration of the outage within 24 hours of the determination of the extended service outage; (2) provide notification to customers concerning voice intercept and voice mail services when a customer reports a line outage; and (3) provide customers with notice of the Company's policy on the availability of bill credits, voice intercept and voice mail service, and the preferential restoration of service for residential customers with medical needs, in the white pages of the telephone directories, through bill inserts twice each year, and through informational flyers distributed to residences and businesses within 24 hours of a determination of an extended service outage.¹² In addition, the Department directs NYNEX to provide timely notification to the Department's Consumer Division regarding the time and place of the

¹² The flyers shall indicate all pertinent NYNEX contact information, including the name, title, business address and telephone number of the person(s) to be contacted. The flyers shall also explain the policy of preferential restoration of service for customers with medical needs.

extended service outage, the number of potential customers affected, expected duration of the outage, and other pertinent information within 24 hours of the determination of the extended service outage, with periodic updates every 24 hours. The Department also directs NYNEX to submit a description of its policies and procedures relating to notification in its compliance filing.

Finally, with respect to the Attorney General's request that the Company establish a service outage hotline, the Department finds that there is insufficient evidence on the record to support a finding for the need for a service outage hotline separate from functions undertaken by the CSB.

b. Availability of Substitute and Temporary Services

i. Substitute Services

The record demonstrates that, at least for certain customers, NYNEX did not make voice mail and voice intercept available at the start of the outage. As substitutes for lost telephone service, voice mail and voice intercept provide effective means for customers to communicate, albeit at a reduced level, with other callers, so that the customer can let callers know that their telephone is experiencing problems and the customers can receive important messages. Thus, we find that the substitute services of voice mail and voice intercept are an important component of NYNEX's extended outage services. NYNEX, therefore, is directed to establish procedures that ensure that these services will be made available, where technically feasible, to all customers who want such services.

Specifically, these procedures should include a policy for placing the voice intercept message on all lines that are out-of-service at the beginning of a major extended service outage. We recognize that it would be unreasonable to expect the Company to tailor specific messages for customers; however, it is not unreasonable to expect NYNEX to place the same standard message on each line at the start of the outage. The record does not reflect the cost per customer of such service. Therefore, we direct NYNEX to include this information with its compliance filing. If the cost information reveals that making voice intercept available to all customers during outage is burdensome, the Department may reconsider this directive.

ii. Temporary Services

_____The record demonstrates that NYNEX's procedures with respect to temporary cellular service during the Mission Hill outage were ad hoc and at times confusing to customers. According to NYNEX, it has no formal policy on the provision of cellular phone service during an outage. We find, therefore, that there is a need for NYNEX to develop a policy governing the provision of cellular phones to emergency services providers and hospitals and nursing homes as well as to residential customers with medical needs during extended service outages.

The Company indicated that it is undertaking a feasibility study on providing temporary cellular service for held installations or service outages (NYNEX Brief at 14). In regards to service outages, this study should include the issues of providing cellular service to customers with medical needs and the availability of substitute telephone service to all customers during extended service outages.

Accordingly, the Department directs NYNEX to submit its feasibility study the provision of substitute cellular service during outages with its compliance filing in this docket. We agree with NYNEX that this feasibility study on alternative cellular telephone service should consider the following factors: (1) financial or cost aspects; (2) procedures relating to the administration, distribution, maintenance, and retrieval of cellular phones; (3) procedures relating to identification of affected customers; (4) application of cellular usage charges beyond a specific usage threshold and/or restrictions on calling area; (5) the need for a customer usage tracking mechanism based on the level of equipment usage and turnover; (6) the time period triggering the provision of cellular phones; (7) analysis of impact on the cost of this service and its effect on NYNEX's ability to provide other services to the public; and (8) analysis of comparable cellular telephone programs in other states (see id.).

With respect to the Attorney General's proposal that when an outage lasts 24 hours and affects 24 customers or more, NYNEX must deploy a mobile trailer unit within 25 hours from the time the outage began, the evidentiary record on this issue is insufficiently developed for the Department to consider the relative importance, feasibility, and the cost of deploying an emergency trailer in the manner the Attorney General requests, and the impact of these costs on the Company's ability to provide other services to the public. However, we conclude that there is a need for NYNEX to have a formal policy regarding the use of its existing mobile trailer unit and any other units the Company may use in the future.¹³ Therefore, the

¹³ The Department notes that NYNEX is constructing a second emergency mobile trailer
(continued...)

Department directs NYNEX to develop and include in its compliance filing a description of its policies and procedures for the use of emergency mobile trailer units.

c. Priority Restoration of Service

Customers also expressed concerns regarding NYNEX's policy for priority restoration of service for customers with serious health conditions. NYNEX stated that customers who need priority restoration of service based on medical necessity must contact the NYNEX business office and identify themselves as requiring such service. According to the Company, NYNEX repair crews use a customer list to prioritize the restoration of service to those residential customers who have identified themselves as requiring uninterruptible service due to medical necessity. NYNEX has expressed a willingness to investigate the development of a database of institutional emergency services providers, to include nursing homes, for priority restoration of service to emergency services providers in the event of a disaster or outage. We find that NYNEX's policy with respect to priority restoration of service generally is adequate. However, the Department directs NYNEX to include in its compliance filing a cost analysis for the development of a database to be used to prioritize the restoration of service to institutional emergency services providers.

d. Bill Credits

¹³

(...continued)

unit, and that the Company is updating its emergency response procedures relating to the deployment of emergency mobile trailers capable of supplying dialtone to customers-in-need during outages (Exhs. AG-30; AG-121).

The Attorney General requests that the Department order NYNEX to provide an automatic credit to each customer's bill or to establish a penalty to NYNEX. NYNEX's tariff¹⁴ presently allows for a customer bill credit for an outage after notice by a customer (see RR-AG-38; RR-AG-39). We find NYNEX's current practice of automatically providing bill credits for residential customers after 24 hours of service outage adequate and order NYNEX to revise its tariff to comply with its current practice within 60 days of the date of this Order. However, we find that business customers will still be required to notify NYNEX for bill credits due to the complexity of business service.

Service problems currently experienced by NYNEX are reflected in the Company's Service Quality Index ("SQI"). D.P.U. 94-50, at 235-238. When NYNEX falls below its threshold standards of performance, the Company is assessed a penalty according to specific criteria.¹⁵ Such penalties provide the Company an incentive to maintain and improve service, including initiating repairs and clearing troubled lines. NYNEX/Bell Atlantic Merger, D.P.U. 96-78, at 4 (1997). Further, bill credits for customers affected by outages also serve as sufficient motivation to complete restoration of service in a timely fashion. Accordingly, the Department finds that any further penalties (or customer credits), as requested by the Attorney General, are not warranted at this time.

¹⁴ The Company's tariff states that customers must notify the Company within 10 days of a local exchange service outage to receive a credit on their bill (NYNEX Tariff, D.P.U.-Mass.- No. 10, Part A, § 1.4.4A).

¹⁵ In the two years since the inception of NYNEX's price cap SQL, the Company has been penalized approximately \$20 million in rate reductions for service quality problems. NYNEX/Bell Atlantic Merger, D.P.U. 96-78, at 4 n. 4 (1997).

3. Extended Service Outage Plan

As noted above, NYNEX currently has an emergency plan to cover operating procedures during a declared emergency but does not have a comprehensive plan for responding to major extended service outages caused by events other than natural disasters. NYNEX has customer service operating procedures to handle major extended service outages but the record of the Company's performance in responding to customer needs during the Mission Hill outage demonstrates that its procedures are ad hoc and in some cases inadequate for meeting the needs of customers. Therefore, the Department finds that NYNEX should develop and implement a comprehensive major extended service outage plan ("Plan") that, at a minimum, addresses all of the findings and directives contained in this Section. The Plan shall also include a definition of a major extended service outage¹⁶ and a discussion of how NYNEX would respond to outages that did not meet the proposed definition. NYNEX shall file that Plan for Department review within 60 days of the date of this Order. The Department will review the Plan and allow interested persons to comment.

The Department notes that since this proceeding was specific to NYNEX, the Department will not apply these findings generally to all competitive local exchange carriers ("CLECs"). However, the Department does recognize the possible unfairness of requiring only NYNEX to develop and implement a major extended service outage plan while CLECs currently would not be subject to the same requirement. Therefore, in the near future, the Department intends to investigate the issue of whether CLECs also should be required to

¹⁶ The definition should include a time element and customer threshold element that would signify a major extended service outage.

establish and implement major extended service outage plans, and if so, determine the components of such plans. The Department may address these questions in a separate docket or as part of its upcoming investigation of billing and termination requirements of local exchange companies.

V. ONGOING QUALITY OF SERVICE ISSUES

A. Overview

1. Static and Cross-talk Issues

_____Mission Hill customers testified that there have been numerous quality of service problems over the past nine years (Public Hearing Tr. at 14, 27-29, 46-48, 63-64, 71, 85). At the public hearing, a NYNEX customer presented the results of a recent survey he conducted concerning NYNEX telephone service in Mission Hill (id. at 46-48). He testified that 63 customers experienced "difficulty with telephone service" in the past twelve months (id. at 46). He also stated that 33 customers had three or more disruptions and 27 customers had less than three disruptions "per year" (id.). In addition, the survey indicated that 23 customers could hear other conversations and nine customers had difficulty dialing certain numbers or areas (id. at 47-8).

The Company explained that ongoing service problems in Mission Hill have been caused primarily by 14 to 20 year-old distribution cables¹⁷ in the Mission Hill neighborhood (Exh. NYNEX-1, at 12; AG-1, at 1; Tr. 1, at 21- 22). On March 26, 1996, NYNEX

¹⁷ Distribution cables are aerial cables that connect to service drop wires that serve the customer's premises (Exh. AG-1, at 1; Tr. 1, at 19). Feeder cables carry dial tones from NYNEX's central offices and are connected to distribution cables and/or to a service area interface (Exh. AG-2, at 1; Tr. 1, at 17).

representatives met with members of both the Roxbury Neighbors for Better Telephone Service and Mission Hill Neighborhood Association to discuss service plans for Mission Hill (Exh. NYNEX-1, Att. C). As a result of that meeting, NYNEX stated that it analyzed its records and developed service plans to replace deteriorated distribution cable in the Lawn Street area (id.). NYNEX indicated that, as of October 30, 1996, all customer lines addressed in the service plan have been connected to and are working from new cable facilities (RR-DPU-4).¹⁸

2. Directory Assistance and 911 Issues

Mission Hill customers stated that they have had problems obtaining from directory assistance ("DA") listings of some Mission Hill residents because not all Mission Hill residents are included in the Boston listings (Tr. 2, at 154-155; Public Hearing Tr. at 55). According to NYNEX, some Mission Hill residents are served by exchanges in Brookline and Roxbury (Tr. 2, at 158-160). NYNEX stated that Roxbury telephone numbers, like Mission Hill numbers, are listed in the Boston DA database (id., at 155). NYNEX stated that Brookline telephone numbers are listed separately from Boston numbers but the Company's software allows Brookline addresses and exchange code to be reflected in the DA listing for Boston (id.).

Mission Hill customers also expressed concern regarding their ability to access appropriate emergency services providers by dialing 911 (Public Hearing Tr. at 11, 16).

¹⁸ As of April 26, 1996, NYNEX estimated that this project will cost \$218,700 (Exh. AG-16). These costs include underground and aerial cable replacement, cable connections, underground conduit, connections to customer premises, cable rearrangements and removal of existing cables (id.).

Specifically, Mission Hill customers served by Brookline rather than Boston/Mission Hill exchanges expressed concern that their 911 calls may be incorrectly routed to Brookline emergency services providers (Exh. AG-41). NYNEX stated that on July 10, 1996, the Brookline and Mission Hill exchange areas were converted to Enhanced 911 ("E911") service, which allows all emergency calls to be routed to a Public Safety Answering Point ("PSAP") to properly identify the caller's location (id.; RR-AG-18).

B. Positions of the Parties

1. Attorney General, Elected Officials and Customer Group

The Attorney General and the Customer Group state that telephone subscribers in Mission Hill have experienced chronic extended outages, multiple interruptions, static, and third party conversations on their lines and poor customer and repair service (Attorney General Brief at 1; Giordano Reply Brief at 1). The Elected Officials request assurance from NYNEX of uninterrupted, static-free, and third party conversation-free service along with reliable maintenance and repair service, on-time installation, and courteous and informative customer service (Fitzgerald Brief at 2). Representative Fitzgerald and City Councilors Hennigan and Keane also indicate that there is a need to develop a system to monitor quality of service delivered to all users of NYNEX (Fitzgerald Brief at 2; Hennigan Brief at 1; Keane Brief at 1).

2. NYNEX

NYNEX states that the Attorney General and the Customer Group have failed to demonstrate that the NYNEX service "substantially impairs the public health, safety, economic

and social functions" within Mission Hill and that NYNEX's service to Mission Hill customers is just, reasonable, and adequate under the statute (NYNEX Brief at 4). NYNEX also states that its current construction activities in the Mission Hill area will ensure continued provision of "quality service" (id. at 8).

C. Analysis and Findings

NYNEX identified deteriorated cable in the Lawn Street area of Mission Hill as the source of the longstanding service problems such as cross-talk, static, and loss of dial tone. NYNEX stated that it has replaced the deteriorated cables that were causing the transmission problems. Accordingly, the Department finds that NYNEX's cable replacement project in Mission Hill is an adequate and reasonable response to the long-term quality of service concerns of the Mission Hill customers.

Further, the record indicates that callers have trouble obtaining telephone listings from DA for certain Mission Hill residents if those residents are served by a Brookline exchange. The record is not clear on the extent of the problem. NYNEX has made efforts to identify those Mission Hill customers with Brookline exchanges and to include their listings in the DA database for Boston. Therefore, the Company is directed to include in its compliance filing a detailed report regarding this issue and the Company's progress to date in correcting the problem. After reviewing the report, the Department may determine that further efforts are needed.

As noted above, E911 has been implemented in Mission Hill, so that callers seeking emergency services are identified by their street address. This upgrade of 911 to E911 should

essentially alleviate this concern of Mission Hill residents. Accordingly, the Department finds that NYNEX has adequately addressed concerns raised by Mission residents concerning 911 access to emergency service providers.

VI. ORDER

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

ORDERED: That New England Telephone and Telegraph Company d/b/a NYNEX shall develop a major extended service outage plan, in compliance with the findings and directives contained in this Order, and file such a plan with the Department, for its review and approval, within 60 days of the date of this Order; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a
NYNEX shall comply with all directives contained herein.

By Order of the Department,

John B. Howe, Chairman _____

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).