

D.P.U. 96-68

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 September 12, 1996, by New England Telephone and Telegraph Company d/b/a NYNEX, to become effective on October 15, 1996.

---

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  
Glass Seigle & Liston  
75 Federal Street  
Boston, MA 02110

-and-

Hope Barbalescu, Esq.  
One International Drive  
Rye Brook, New York 10573  
FOR: MCI TELECOMMUNICATIONS  
CORPORATION  
Intervenor

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

-and-

Robert J. Munnely, Jr., Esq.  
100 Grandview Ave., Suite 201  
Braintree, MA 02184  
FOR: NEW ENGLAND CABLE TELEVISION  
ASSOCIATION, 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

INTERLOCUTORY ORDER ON SUSPENSION  
OF NYNEX'S PRICE CAP COMPLIANCE FILING

I. INTRODUCTION

On September 12, 1996, New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX") filed revisions to its tariffs, M.D.P.U. Nos. 10 and 15, with the Department of Public Utilities ("Department"), in compliance with the Department's Order in NYNEX, D.P.U. 94-50 (1995). The filing constitutes NYNEX's second annual filing under the price cap form of regulation approved by the Department. The Department docketed this matter as D.P.U. 96-68. The proposed tariff revisions will become effective on October 15, 1996, unless suspended or disallowed by the Department.

According to the Company, the estimated impact of the tariff revisions is an approximately \$29.6 million overall decrease in NYNEX's Massachusetts intrastate revenues (Sept. 12 Compliance Filing at 1). The revenue reduction includes a \$16.3 million decrease in revenues from residential customers, a \$15.4 million decrease in revenues from business customers, a \$7.4 million decrease in revenues from access services, and a \$9.3 million increase in certain miscellaneous revenues (id.).

A. Procedural Background

The September 12th Filing was the Company's second tariff filing in this docket. The Company initially filed tariffs on June 10, 1996, for effect August 15, 1996. By letter dated August 14, 1996, and at a public hearing that same date, the Department directed NYNEX to withdraw and resubmit that filing pending the outcome of the Department's decision in Local

Competition, D.P.U. 94-185. See August 14, 1996 Department Letter to NYNEX; Tr. at 7. The Department required the withdrawal, "[g]iven the timing of the Department's issuance of its price floor [methodology] decision in D.P.U. 94-185 and in recognition of the possible (although uncertain) impact of that Order on the proposed rate changes in NYNEX's Price Cap filing ...." August 14, 1996 Letter at 2. NYNEX had expressed specific concerns about the impact of the Department's price floor decision on the new Eastern LATA Unlimited Calling Plan, which was proposed in the price cap filing (NYNEX August 8 Comments at 3). The Department noted that the withdrawal would allow NYNEX and other interested parties an opportunity to review the final order in D.P.U. 94-185, and if necessary, provide NYNEX an opportunity to revise its price cap filing to reflect the Department's price floor decision. August 14, 1996 Letter at 2. Subsequently, NYNEX withdrew its filing.

On August 29, 1996, the Department issued its decision in D.P.U. 94-185, in which it made findings on four issues related to local competition: (1) cost studies, (2) price floors, (3) regulatory safeguards, and (4) dispute resolution. Following issuance of that Order, NYNEX resubmitted its price cap filing on September 12, 1996.<sup>1</sup> The refiling (including the proposed tariff revisions) is nearly identical to the original filing in this case, with minor exceptions (see Section II, infra). The proposed rates are unchanged from the Company's original filing (id.).

The attorney General of the Commonwealth ("Attorney General") filed notice of

---

<sup>1</sup> To satisfy statutory requirements for notice and a public hearing, NYNEX was ordered to publish notice of its new filing and the Department held a public hearing on the resubmission on October 9, 1996.

intervention pursuant to G.L. c. 12, § 11E. The Department granted petitions to intervene from AT&T Communications of New England, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI"), the United States Department of Defense and All Other Federal Executive Agencies ("DOD/FEAs"), and the New England Cable Television Association ("NECTA").

The issue of whether the Department should suspend the September 12th filing was addressed by parties at the October 9th public hearing and in written comments. On September 30, 1996, AT&T, MCI and NECTA filed separate comments<sup>2</sup> in support of suspension of NYNEX's Compliance Filing, in which they principally object to NYNEX's proposed Eastern LATA Unlimited Calling Plan and Business Link Plan.<sup>3</sup> In addition, AT&T filed a supplemented motion asking the Department to require NYNEX to file by October 7, 1996, an alternative interim tariff filing designed to achieve the \$29.6 revenue reduction under the price cap formula, but without implementation of any new service offerings (AT&T Renewed and Supplemented Motion at 1).<sup>4</sup> AT&T stated that the alternative plan would give

---

<sup>2</sup> Although termed "petitions for suspension," the Department views the pleadings of AT&T and MCI as comments. NECTA's comments were included as part of its second petition to intervene.

<sup>3</sup> These comments supplemented similar comments on suspension filed by AT&T, MCI and NECTA on July 12 and 22, and August 12, 1996, respectively, concerning suspension of the June 10th Compliance Filing. In addition, the DOD/FEAs filed comments in support of suspension on August 9, 1996.

<sup>4</sup> This motion supplemented a similar motion filed by AT&T (and joined in by MCI) on August 1, 1996, which concerned NYNEX's June 10th Compliance Filing. NYNEX  
(continued...)

the Department a choice between either permitting NYNEX's tariff changes to go into effect as filed or suspending those tariffs (id.). On October 7, 1996, NYNEX filed Reply Comments, arguing against suspension.<sup>5</sup>

At the October 9th public hearing, AT&T, MCI, NECTA and NYNEX reiterated arguments made in their written comments. In addition, the Attorney General argued that the Department: (1) should not suspend implementation of the Eastern LATA Unlimited Calling Plan because of the benefits that it will provide for Massachusetts consumers; and (2) should suspend the proposed return check charge because it is excessive in light of costs and higher than similar charges imposed by other telecommunications companies.

## II. SUMMARY OF THE COMPLIANCE FILING

According to NYNEX, the September 12th Compliance filing revises M.D.P.U. Nos. 10 and 15 as follows:

### For Residence Customers

- reduces monthly rates for optional calling plans (Bay State East, Call Around 413, and Measured Circle Calling Service);
- introduces an unlimited calling plan for customers in the 508 and 617 area codes;
- introduces a 25 percent discount on customer-dialed calling card calls for Bay State East, Call Around 413, Call Around 413 Plus, and Measured Circle Calling Service customers;

---

<sup>4</sup>(...continued)

filed a response to the earlier motion on August 8, 1996.

<sup>5</sup> The reply comments closely mirror comments filed by NYNEX on August 12, 1996, concerning the question of suspension of the June 10th Compliance Filing.

- eliminates the Element 1 charge when a customer requests to change service from an existing service to certain optional calling plans;
- increases rates for non-listed numbers, non-published numbers, and for additional listings;

#### For Business Customers

- introduces an optional calling plan that provides discounts for qualified usage through volume discounts and bonus credits, including additional bonus credits for customers that agree to take the service for three years;
- increases rates for non-listed numbers, non-published numbers, and for additional listings;
- increases rates for certain analog and digital private line services;
- introduces a late payment charge for outstanding balances;

#### For Both Residence and Business Customers

- introduces a returned check charge of \$15;
- increases the Call Waiting rate;
- increases certain operator services charges, such as busy line verification, busy line interrupt, and person-to-person call surcharges;

#### For Switched Access Customers

- decreases various switched access rates to bring these rates to target levels approved in D.P.U. 93-125; and

#### For Conduit Licensees

- increases conduit license fees for full and half ducts, in accordance with the Department's order in D.P.U. 91-218.



### III. POSITIONS OF THE PARTIES

#### A. AT&T

AT&T states that NYNEX's Eastern LATA Unlimited Calling Plan is potentially anticompetitive (AT&T September 30th Comments at 3). AT&T states that the Eastern LATA Unlimited Calling Plan's bundling of service offerings in a single-priced package and the use of seven-digit intra-NPA dialing for all subscribers to the plan is directly contradictory to the Department's policies (id.).

AT&T also asserts that NYNEX's Business Link Plan similarly suffers from significant anticompetitive defects (id. at 4). AT&T states that as NYNEX enjoys a virtual monopoly in the present market and will continue to have substantial market power in the foreseeable future, the Business Link Plan is geared to provide incentives to business customers to remain with NYNEX and resist competitive offerings (id.).

AT&T further states that NYNEX has made no attempt to comply with the price floor methodology set forth in D.P.U. 94-185 and that NYNEX's filing contains no price floor calculations (id. at 4-5). AT&T maintains that under the proposed tariffs, NYNEX can introduce new services before the approval of price floor standards necessary to determine their eligibility, a practice that is contrary to Department policy (id. at 4).

AT&T urges the Department to suspend the tariffs for the Eastern LATA and Business Link plans and to investigate the calculations and assumptions underlying these services (id. at 7).

B. MCI

MCI states that NYNEX's Eastern LATA Unlimited Calling Plan and Business Link Plan are anticompetitive, because they allow NYNEX to "lock up" its monopoly local exchange service and intraLATA toll markets (MCI September 30th Comments at 3). With respect to the Eastern LATA Unlimited Calling Plan, MCI states that its bundled offering disadvantages NYNEX's potential toll competitors by exacerbating NYNEX's control of toll services (id. at 4). Additionally, MCI states that NYNEX's inclusion of an intra-NPA seven-digit dialing plan for customers is contrary to the Department's existing requirements that NYNEX use a "1+ " toll indicator and implement "1+ " ten-digit dialing for all direct-dialed toll calls (id., citing Interchangeable Numbering Plan Area (INPA), D.P.U. 93-45 (1993)). MCI further maintains that the Eastern LATA Unlimited Calling Plan and Business Link Plan are most likely priced below cost (id. at 5). With respect to the Business Link Plan, MCI states it is designed to allow NYNEX to lock in its customer base as competition approaches and that its approval would be detrimental to new entrants (id. at 6).

Furthermore, MCI states that NYNEX's failure to include price floor calculations and justification for its prices in its September 12, 1996 filing make it impossible for the Department to determine whether the two new services proposed by NYNEX comply with D.P.U. 94-50 (id.). MCI further states that NYNEX should not be allowed to use its failure to file appropriate price floors as a means of delaying implementation of the access charge reductions ordered by the Department in D.P.U. 94-50 (id. at 7). In addition, MCI maintains that the proposed access charge reductions appear to comply with D.P.U. 94-50 and should be

approved (id.).

MCI urges the Department to suspend NYNEX's proposed modifications and additions to its tariff, M.D.P.U. No. 10, pending outcome of an investigation of NYNEX's proposal (id. at 8).

C. NECTA

NECTA states that the Eastern LATA Unlimited Calling Plan is contrary to Department dialing policies and practices, and contains unjust and unreasonable terms (NECTA August 12th Comments at 3). In addition, NECTA argues that NYNEX's use of seven-digit dialing appears to be contrary to existing optional calling plan requirements and that nothing in the NYNEX filing justifies departure from Department practices (id.). NECTA also maintains that the anticompetitive aspects of the Eastern LATA Unlimited Calling Plan would be exacerbated by NYNEX's proposed area code overlay plan (id.).

NECTA states that the Business Link Plan also is anticompetitive and possibly unlawful, because it seeks to lock up customers for the long term, prior to the opening of the local exchange market to competition (id. at 4). In addition, NECTA maintains that the provision that provides for an automatic three-year extension unless the subscriber notifies NYNEX that it does not want to continue with the Business Link Plan may be anticompetitive, unreasonable and inconsistent with state law (id.).

NECTA further states that it has concerns about the Business Link Plan's compliance with the Department's price floor requirements (id.). NECTA also states that because a substantial portion of the overall revenue effect of NYNEX's proposed new services is

dependent upon the accuracy of NYNEX's demand forecasts, existing ratepayers using existing services may become shortchanged by NYNEX's proposals (id.).

NECTA urges the Department to suspend the proposed tariffs (id. at 6). NECTA also states that if the Department does not suspend NYNEX's proposed tariffs prior to conducting a full investigation, the Department should offer NYNEX the opportunity to file an alternative interim filing which does not include new service offerings or to modify its proposed tariffs prior to investigation (id.).

D. DOD/FEAs

The DOD/FEAs state that NYNEX is overestimating its revenue reductions under the two plans since the Company's revenue calculations fail to account for business and residence growth and price elastic responses to the rate reductions (DOD/FEAs Comment at 5). The DOD/FEAs maintain that with usage charges reduced up to 20 percent, more local and intraLATA calls will be expected and consequently the total revenue reduction for intrastate services should be far less than the \$29.6 million asserted by the Company (id.). The DOD/FEAs maintain that NYNEX's price floor study suggests justification for even greater discounts than the Company proposes, particularly for larger volume users who will make commitments to a rate structure for several years (id. at 7).

The DOD/FEAs urge the Department to approve a volume-usage plan with discounts at least as great as the Company proposes under the Business Link plan (id.). The DOD/FEAs maintain that the Business Link plan is a positive response to potential competition by other facilities-based carriers in Massachusetts and will permit NYNEX to focus on the larger users

that will continue to have more competitive alternatives over the next few years (id. at 6).

The DOD/FEAs state that the Department should suspend the tariff, require NYNEX to provide detailed explanations of revenue changes, price elasticities, and cost coverage, and provide an opportunity for parties to review and comment on NYNEX's supporting information (id. at 8).

E. NYNEX

NYNEX states generally that the arguments raised by AT&T, MCI, and NECTA fail to provide justification for delaying the implementation of the proposed rate reduction and that the proposed rate changes comply fully with the pricing rules established in D.P.U. 94-50 and are not anticompetitive (NYNEX October 7th Comments at 3).

NYNEX maintains that AT&T's and MCI's criticism that NYNEX's compliance filing does not contain any price floor data is unfounded (id.). NYNEX states that the computation of price floors is subject to interpretation and allows for alternative approaches (id. at 3-4).

NYNEX further states that its Eastern LATA Unlimited Calling Plan is not anticompetitive, since the proposed rate for the Eastern LATA plan exceeds the wholesale rate charged by NYNEX to other telecommunications providers plus a residence overhead loading factor (id. at 4, 7). In addition, NYNEX maintains that the Eastern LATA Unlimited Calling Plan was filed in compliance with Department directives in D.P.U. 92-100, D.P.U. 93-125, and D.P.U. 94-50 (id. at 5). NYNEX also maintains that the seven-digit dialing arrangement under the Eastern LATA Unlimited Calling Plan is not anticompetitive and does not contravene Department policy (id. at 7). NYNEX also notes that the Eastern LATA Unlimited

Calling Plan is available to resellers (id. at 7-8).

NYNEX similarly maintains that there is no basis for the argument that the Business Link plan is anticompetitive, since the average monthly usage revenue under the Business Link plan exceeds the wholesale rate charged by NYNEX to other telecommunications providers plus a business overhead loading factor (id. at 9, 11). NYNEX also maintains that AT&T's and MCI's argument that the three-year contractual option is anticompetitive because it would lock in customers is factually incorrect since a Business Link plan customer can terminate the three-year option at any time during that period without incurring a termination liability (id. at 11). NYNEX also states that other telecommunications providers, including AT&T and MCI, currently offer comparable volume usage discount plans to attract business customers in Massachusetts (id. at 11-12).

NYNEX also notes, citing D.P.U. 95-83, that it is well-established that the Department has broad discretion to adopt the tariff changes pending further investigation (id. at 12). NYNEX additionally notes that there is nothing in D.P.U. 94-50 that precludes the Company from proposing new services in its annual price cap compliance filing (id.).

In response to AT&T's motion for the filing of an alternative rate plan, NYNEX states that it would only serve to delay implementation of NYNEX's proposed rate changes which, NYNEX asserts, are just, reasonable, and not anticompetitive (id. at 12). NYNEX maintains that there is no basis for adopting an alternative rate reduction plan (id. at 13). NYNEX further states that even if the department suspends NYNEX's proposed rate changes and determines that the interim rates should be implemented pending review of the Company's compliance filing, the Department should

deny AT&T's motion (id.).

NYNEX urges the Department to approve its filing for effect on October 15, 1996, pending further investigation (id. at 13).

#### IV. ANALYSIS AND FINDINGS

The issue before the Department for determination is whether to allow the rate changes proposed by NYNEX to become effective on October 15, 1996, as filed, or to suspend the proposed changes, in whole or in part, pending further investigation.

Pursuant to G.L. c. 159, §§ 19 and 20, the Department "is accorded broad discretion in allowing, suspending and investigating proposed changes to tariffs." NYNEX, D.P.U. 95-83, at 13-14 (1995) (citations omitted). Indeed, none of the parties arguing for suspension challenge the Department's authority to investigate rate changes while they are in effect.

Contrary to the claims of certain intervenors regarding the appropriateness of NYNEX introducing new services with its Price Cap filing, D.P.U. 94-50 does not preclude NYNEX from introducing new services. NYNEX has the discretion under the Price Cap plan to determine whether to introduce new services between annual filings or at the time of annual filings. Moreover, as NYNEX correctly points out, the Department ordered NYNEX to introduce the Eastern LATA Unlimited Calling Plan. See D.P.U. 94-50, at 130; see also NYNEX April 29, 1996 Filing of Eastern LATA Unlimited Calling Plan at 1 (Company indicated that it would file tariffs implementing the plan with its Price Cap Compliance Filing "to correspond with the effective date of other tariff changes made in the Price Cap filing and to enable the company to develop the systems necessary to support the offering").

Regarding claims that the proposed Eastern LATA Unlimited Calling Plan and Business Link

Plans are anticompetitive and violate the Department's price floor standards, the Department is not sufficiently persuaded by the intervenors' allegations to order a suspension of these programs and, thus, delay the significant benefits of these programs for residence and business customers.

Intervenors will be given full opportunity, consistent with the September 27, 1996 Procedural Schedule, to demonstrate whether these programs violate the pricing rules of the Price Cap and the Department's price floors standards.

It is precisely because of the benefits to residence and business customers offered by the Eastern LATA Unlimited Calling Plan and the Business Link Plan that the Department hereby denies AT&T's motion for the Department to require NYNEX to submit an alternative plan for effecting the \$29.6 million revenue reduction. In addition, the Department believes that granting such a motion would be inconsistent with the principles of the Price Cap plan, that allows NYNEX (and not other parties or the Department) to determine the means to implement annual revenue changes, consistent with the Price Cap plan's pricing rules and price floor standards.

Notwithstanding the above, the Department finds that it is necessary to suspend M.D.P.U. No. 10, Part A, Section 6.2.7(E) that allows for seven-digit dialing within a customer's area code for the Eastern LATA Unlimited Calling Plan. This provision may violate the dialing arrangements required by the Department in INPA, D.P.U. 93-45 (1993) and also may conflict with the Federal Communications Commission's decision in C.C. docket No. 96-98, that mandates 10-digit dialing for overlay area codes.

For the reasons<sup>6</sup> discussed above, we find that NYNEX has provided a sufficient showing in its

---

<sup>6</sup> It is worth noting that the statutes allowing for suspension do not require that the Department state its reasons for suspending a proposed tariff. See G.L. c. 159, §§ 19 (continued...)



September 12th Compliance Filing and its October 7th Reply to warrant allowing the proposed tariff changes, with the exception of the seven-digit dialing provision, to go into effect pending further investigation by the Department. As a result, Massachusetts ratepayers will experience significant benefits in the form of new calling plans and an approximately \$29.6 million overall revenue reduction.

Accordingly, the Department will allow the tariff revisions to M.D.P.U. Nos. 10 and 15 (exclusive of Section 6.2.7(E) of Part A of M.D.P.U. No. 10) to go into effect pending further investigation, to be adjusted prospectively if necessary.

V. ORDER

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

ORDERED: That the operation of the seven-digit dialing option for the proposed Eastern LATA Unlimited Calling Plan in Section 6.2.7(E) of Part A of M.D.P.U. No. 10, filed with the Department on September 12, 1996, by New England Telephone and Telegraph Company d/b/a NYNEX, be suspended and the use deferred until April 15, 1997, unless otherwise ordered by the Department; and it is

FURTHER ORDERED: That the Department will further investigate the propriety of the revisions to tariffs M.D.P.U. Nos. 10 and 15, filed with the Department on September 12, 1996, by NYNEX, consistent with the procedural schedule established by the Department on September 27, 1996; and it is

---

<sup>6</sup>(...continued)

and 20. It follows that the Department is under no obligation to state its reasons for not suspending a tariff pending investigation. Nevertheless, in this case the Department has chosen to explain briefly the reasons for its determinations on the issue of suspension.

FURTHER ORDERED: That the Renewed and Supplemented Motion of AT&T Communications of New England, Inc. to Require NYNEX to File Alternative Rate Reduction Plan, submitted to the Department on September 30, 1996, be and hereby is denied.

By Order of the Department,

---

John B. Howe, Chairman

---

Janet Gail Besser, Commissioner