

DT 01-256

NYNEX LONG DISTANCE COMPANY AND BELL ATLANTIC COMMUNICATIONS

**Petition for Authority to Provide
Competitive IntraLATA Toll Service**

Prehearing Conference Order

O R D E R N O. 23,946

April 8, 2002

APPEARANCES: Micki Chen, Esquire, for Verizon Long Distance and Verizon Enterprise Solutions; Anne Ross, Esquire of the Office of Consumer Advocate for residential New Hampshire ratepayers; and Lynmarie Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On November 30, 2001, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance (VLD) and NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (VES) (collectively, the Petitioners), filed with the New Hampshire Public Utilities Commission (Commission) a Petition for authority to register as competitive intraLATA toll providers (CTPs) pursuant to N.H. Admin Rule Puc 411.02. The Commission is required by Puc 411.02(f) to issue a certificate of authorization to provide CTP service once a carrier has provided the applicable registration material, unless the Commission finds evidence to support a denial of the registration application as set forth in Puc 411.03(b).

The Commission commenced the current docket by Order of Notice dated February 25, 2002, indicating the filing raised concerns related to whether it was in the public interest for an incumbent local exchange carrier (ILEC) to have affiliates registered as competitive intraLATA toll providers (CTPs).

VLD and VES are affiliates of Verizon New England d/b/a Verizon New Hampshire (Verizon NH), an incumbent local exchange carrier (ILEC). Verizon NH also currently offers intraLATA toll services in New Hampshire.

On February 14, 2002, the Office of Consumer Advocate (OCA) filed its intent to participate in this docket. On March 7, 2002, the Association of Communications Enterprises (ASCENT) filed a Petition to Intervene in this docket. A prehearing conference was held on March 12, 2002, pursuant to the Order of Notice. All the parties were present at the prehearing conference, with the exception of ASCENT. Also present was a representative of Union Telephone Company, who expressed a desire to monitor the case.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Petitioners

At the prehearing conference, counsel for the Petitioners represented that they would be the entities

soliciting interstate long distance customers if Verizon NH obtains permission from the Federal Communications Commission to provide interLATA toll service in New Hampshire. In addition to providing interstate toll service, the Petitioners wish to become intraLATA toll providers in the state of New Hampshire. VLD is the entity that intends to provide long distance services to the residential segment of the market. VES is the entity that intends to provide long distance services to small business customers. Petitioners believe that it is in the public interest for VLD and VES to be certified to provide intraLATA toll services in New Hampshire because some customers may want their inter and intraLATA toll service to be provided by a single toll provider. Petitioners believe that without intraLATA toll authority, VLD and VES would not be able to satisfy those customers' needs and would therefore be at a competitive disadvantage with respect to the other intraexchange carriers in New Hampshire. The Companies argue there is no reason to put VLD and VES in a different competitive posture in New Hampshire simply because they are affiliated with the ILEC, Verizon NH.

The Companies addressed the issues raised in the Order of Notice and claimed that it was not their intention to compete with Verizon NH. They suggest that it is the plan of

VLD and VES to focus on signing up customers for intraLATA service who are not currently receiving intraLATA service from Verizon NH. They aver it is not their intention to encourage Verizon NH intraLATA toll customers to switch their toll provider away from the ILEC. Petitioners further claim that in states where VLD is currently authorized to provide intraLATA toll services (CT, MA, NY), the long distance affiliates do not market their in-state long distance services; it is the ILEC that markets the intraLATA toll services to customers at prices generally below what the long distance affiliates offer. The Petitioners suggest the need for the certification as an intraLATA CTP arises from the desire to serve customers who want to receive all of their long distance services from a single provider.

As for the issue regarding the accounting of revenues and costs, the Companies point to 47 U.S.C. §272(B), which requires affiliates to maintain separate books. The Petitioners state that none of the long distance companies' revenues or costs will appear on the books of the ILEC. Petitioners aver that VLD and VES will pay Verizon NH for all services that the ILEC provides. Petitioners maintain that the service transactions will be carried out in accordance with state and federal affiliate transaction requirements.

As for the ability of a §272 affiliate to impact the ILEC's basic rates, the Petitioners do not believe that the authorization of VLD and VES as CTPs will have any such effect. Petitioners aver that since VLD and VES do not plan to encourage Verizon NH customers of intraLATA toll service to receive toll service from the long distance affiliates, Verizon NH should not see any material decrease in its intraLATA toll revenues.

Finally, addressing the issue of customer confusion as articulated in the Order of Notice, the Petitioners do not believe that any such confusion will occur since it is not the intent of the affiliate to proactively market intraLATA toll services to New Hampshire customers. The Petitioners suggest that the vast majority of customers will retain Verizon NH as their intraLATA toll provider and choose VLD and VES only for their state-to-state long distance needs. The Petitioners posit that the fact that Verizon NH has telephone long distance company affiliates that provide intraLATA toll services should not cause undue confusion.

B. Office of Consumer Advocate

The OCA reiterates the concerns and issues delineated in the Order of Notice dated February 25, 2002. In addition, at this point there is not sufficient information to

form a strong position in this case. The OCA is generally cautious regarding an affiliate competitive entity competing with an ILEC as the existing toll provider because of potential rate impacts. The OCA believes that discovery is necessary in this docket to better understand what the potential impacts of the Commission's decision are likely to be on New Hampshire ratepayers.

C. Staff

Staff has many questions and concerns regarding the necessity of granting Petitioners' request at this time. Staff points out that the Companies' prehearing conference statements suggest that the affiliates' focus is on state-to-state service and it is only the rare customer that they will seek to serve who wants both interLATA and intraLATA service. Staff argues that it may not be in the public interest to grant the application when it is only a handful of customers that the §272 affiliates are attempting to serve. At this point in time, and without further examination, granting intraLATA CTP status appears unnecessary and undesirable to Staff. In addition, Staff has a number of questions and concerns regarding some of the discounts proposed to be offered to customers in Petitioners' tariff. Staff believes that a period of discovery is necessary in order to make an

informed recommendation to the Commission.

III. PROCEDURAL SCHEDULE

On March 13, 2002, Staff filed with the Commission a joint recommendation, together with Petitioners and the OCA, regarding a proposed procedural schedule for the docket. Staff and the Parties agreed that instead of the usual schedule, the Petitioners would either file a proposed modification to the original applications or let the Commission know by March 22, 2002, that they would not file a modification. Depending on the substance of the March 22, 2002, filing, the Staff and Parties would conference on March 26, 2002, to either set a procedural schedule that includes a time-frame established for a contested case or to resolve the case more expeditiously.

IV. COMMISSION ACTION

The Commission is not aware of any modification or any proposed schedule that has been made to date. In fact, we have received a letter from Staff indicating that the parties have not agreed to any modification. The letter requests an extension until April 19th to resolve the docket. We grant that extension as we believe it is administratively efficient. Additionally, rather than setting a protracted schedule for the case, the Commission will require all parties to file

Comments with the Commission by April 26, 2002 if the Staff and parties do not resolve the docket by April 19th. Once the Comments are received, either a hearing will be scheduled or a decision will be rendered.

Based upon the foregoing, it is hereby

ORDERED, that an extension for a negotiated solution is granted until April 19, 2002; and it is

FURTHER ORDERED, that if no solution is agreed to by April 19th, the Staff and parties shall file comments with the Commission on or before April 26, 2002; and it is

FURTHER ORDERED, that the intervention request by ASCENT is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary