



Agenda Date: 11/30/11
 Agenda Item: 4A

STATE OF NEW JERSEY
Board of Public Utilities
 44 South Clinton Avenue, 9th Floor
 Post Office Box 350
 Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD'S INVESTIGATION) REGARDING THE RECLASSIFICATION OF) INCUMBENT LOCAL EXCHANGE CARRIER (ILEC)) SERVICES AS COMPETITIVE – PHASE II))	PREHEARING ORDER DOCKET NO. TX11090570
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(NOTIFICATION LIST IS ATTACHED)

Parties of Record:

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By Order dated October 13, 2011 Order, the Board of Public Utilities (Board) initiated a proceeding to re-evaluate the competitiveness of Incumbent Local Exchange Carrier (ILEC) services. The instant proceeding is in response to a Board Order dated August 20, 2008, in In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services As Competitive, BPU Docket No. TX07110873; and I/M/O the Application of United Telephone Company of New Jersey Inc. d/b/a Embarq for Approval of a Plan for Alternative Regulation, BPU Docket No. TO08060451 (2008 Order), which accepted and approved stipulations among Verizon, Board Staff and Division of Rate Counsel (Rate Counsel) and, separately, among Embarq, Board Staff and Rate Counsel. The key provisions of the agreements approved by the 2008 Order are as follows:

With the exception of Verizon’s residential basic exchange service including usage, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Verizon’s mass market retail services will be classified as competitive.

With the exception of Embarq's [currently known as CenutyLink] residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Embarq's mass market services shall be classified as competitive.

[2008 Order, pages 29 and 40].

As part of the Stipulation, the companies were permitted to adjust rates for the four rate regulated services on an annual basis for three years. In addition, the agreements called for a further proceeding to re-evaluate the competitiveness of those four rate regulated retail services as well as Rate Counsel being given the opportunity to seek reclassification of any retail mass market competitive services listed in Exhibit A thereof. [2008 Order, page 43].

Finally, the Order directed Board Staff and the Attorney General's Office to convene a Pre-Hearing Conference with any and all interested parties. The Pre-Hearing Conference was held on November 2, 2011, after notice to the telecommunications providers operating in the State. All entities who wished to attend were allowed to do so, without the need to seek intervention and/or participation status. At the conclusion of the pre-hearing conference, the entities present were provided the opportunity to submit initial and reply, statements of the case, and other material relevant to the terms set forth in N.J.A.C. 1:1-13.2. Finally, the entities were given a deadline for the submission of pro hac vice motions and motions to intervene and/or participate.

There was significant agreement among the parties at the conference regarding the issues and the schedule, however some procedural matters were disputed. Accordingly, Staff requested written comments be submitted. Verizon NJ and CenturyLink (hereafter the ILECs) provided comments and a response to those submissions was provided to Staff by Rate Counsel. The parties have identified three areas of disagreement (1) the number of public hearings, (2) the list of services that will be subject to reclassification, and (3) discovery.

First, the ILECs call for three public hearings consistent with the first phase of this proceeding. Rate Counsel requests the Board hold four public hearings, three in Verizon NJ territory and one in CenturyLink territory. The Board is satisfied that, consistent with Phase I of this matter that a total of three public hearings, one in CenturyLink territory and two in Verizon NJ territory, is sufficient and appropriate, and is HEREBY ORDERED.

Second, CenturyLink requests that parties make a good faith proffer of proof regarding: (a) the additional services sought to be competitively classified or the existing competitive services sought to be re-classified, consistent with the applicable statutory criteria; and (b) the relief requested. In its response, Rate Counsel objects stating that CenturyLink's proposal imposes a threshold requirement inconsistent with the October 13th Order that announced the scope of the proceeding as an investigation into the competitiveness of retail services. The Order specifically confirmed that Rate Counsel may seek reclassification of retail mass market competitive services, without any such procedural qualification. The Board agrees with Rate Counsel and no such proffer is required, therefore CenturyLink's request is HEREBY DENIED.

Third, there were several issues surrounding discovery. The ILECs request that discovery should be confined to the dates articulated in the Order and an end date for discovery be identified; that it not commence until a list of services to be reclassified is submitted or after submission of initial testimony; that discovery be limited to no more than 75 questions (including parts and sub- parts); and a process be established for the conduct of discovery disputes. Rate Counsel disagrees, stating that the Uniform Administrative Procedure Rules should be followed; that discovery should commence immediately; that discovery should not be limited to a specific number of questions; and presents its own procedure for discovery disputes.

After careful review of the parties' submissions, the Board HEREBY ORDERS the following with respect to discovery: (1) commencement of discovery by the parties at the conclusion of the Pre-Hearing conference was appropriate and the dates as articulated on the attached schedule shall prevail and will be the final dates for submission of discovery requests and responses for each of the four rounds of discovery; (2) discovery shall end on June 29, 2012; (3) the number of discovery questions shall not be limited; and (4) the Board is satisfied that the proposal submitted by CenturyLink for objections to discovery is the most efficient and equitable process to resolve disputes. Therefore, the Board HEREBY ORDERS the following:

Objections to discovery are due within 10 calendar days of receipt of discovery, to be submitted in writing (e-mail is acceptable). Parties will undertake a "Meet and Confer" within 15 calendar days of receipt of discovery. Any remaining objections should be in writing and submitted on the due date along with written responses. Any Motions to Compel are due within 3 calendar days of responses, with responses due within 5 calendar days of receipt of a Motion to Compel.

The discovery procedures ordered above are consistent with those utilized in previous contested telecommunications proceedings before the Board.

Upon consideration of the positions put forth by all entities in attendance, Board Staff makes, and the Board adopts, the following recommendations as to the prehearing requirements set out in the regulations.

1 NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED

As described in the October 13th Order, the Board will conduct a full investigation and initiate hearings in this regard as described in the Stipulation, pursuant to N.J.S.A. 48:21.19(b), to review the necessary criteria. Specifically, the Board seeks to determine if ILEC services satisfy the necessary elements of ease of market entry, presence of other competitors, and availability of like or substitute services in the relevant geographic area.

2. PARTIES AND ATTORNEYS OR REPRESENTATIVES

As described in the attached schedule, all parties are invited to intervene in this matter. Timely requests for intervener or participant status, as well as any requests for pro hac vice, will be reviewed and granted or denied by the Presiding Commissioner.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:

None at this time.

4. SCHEDULE OF HEARING DATES, TIME AND PLACE:

Evidentiary Hearings are scheduled for July 18 and 19, 2012, before Commissioner Nicholas Asselta. Hearings will commence at 10:00 a.m. in the 1st Floor hearing room of the Board of Public Utilities, 44 South Clinton Street, Trenton, New Jersey. Three Public hearings will be scheduled at a later date.

5. STIPULATIONS:

None at this time.

6. SETTLEMENT:

Settlement conference(s) among the parties are encouraged and may be convened at the convenience of the parties without prior approval or knowledge of the Board.

7. AMENDMENTS TO PLEADINGS:

None.

8. CASE EVENTS AND DATE FOR COMPLETION:

The Board has carefully considered the scheduling proposals set forth on in informal basis by the parties in attendance at the Prehearing Conference on November 2, 2011. Based upon those submissions, the nature of the case, and the needs of the Board, the attached schedule has been set.

9. ORDER OF PROOFS:

1. Incumbent Local Exchange Carriers
2. Division of the Rate Counsel
3. Others (if necessary)
4. Board Staff

10. EXHIBITS MARKED FOR IDENTIFICATION:

None at this time.

11. EXHIBITS MARKED IN EVIDENCE BY CONSENT:

None at this time.

12. ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:

To be determined.

13. MOTIONS CONTEMPLATED, PENDING OR GRANTED:

No outstanding motions exist at this time.

14. OTHER SPECIAL MATTERS:

None.

Therefore, upon consideration of the forgoing, the Board HEREBY ISSUES this Prehearing Order. The Board FURTHER ORDERS that Commissioner Asselta, as the presiding Commissioner, is HEREBY AUTHORIZED to modify the schedule set by this Order, decide all motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

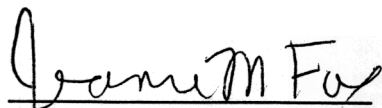
The Board HEREBY DIRECTS Staff to post this Order on the Board's website.

DATED: 11/30/11

BOARD OF PUBLIC UTILITIES
BY:




LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



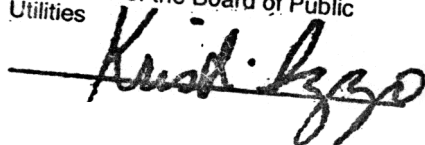
NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



KRISTI IZZO
SECRETARY

PROCEDURAL SCHEDULE

I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II

BPU Docket No.: TX11090570

ITEM	DATE
Release of Procedural Schedule	December 1, 2011
Requests for Intervention /Participant; PRO HAC VICE	December 9, 2011
Last Date to Submit List of Services for Reclassification	December 12, 2011
Last Date For Discovery Round 1	December 22, 2011
Last Date for Responses on Discovery Round 1	January 30, 2012
Initial Testimony - All Parties	February 24, 2012
Last Date for Discovery Requests Round 2	March 9, 2012
Last Date for Responses to Discovery Round 2	March, 30, 2012
Reply Testimony - All Parties	April, 27, 2012
Last Date for Discovery Round 3	May 7, 2012
Last Date for Responses to Discovery Round 3	May 29, 2012
Rebuttal Testimony of All Parties	June 11, 2012
Public Hearings	Dates TBD
Last Date for Discovery Round 4	June 15, 2012
Last Date for Responses to Discovery Round 4	June 29, 2012
Evidentiary Hearings	July 18, 2012 & July 19, 2012
Initial Briefs	August 20, 2012
Reply Briefs	September 10, 2012
Anticipated Board Action	October 2012