



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

**DIVISION OF**  
**TELECOMMUNICATIONS**

IN THE MATTER OF THE BOARD'S INVESTIGATION  
AND REVIEW OF LOCAL EXCHANGE CARRIER  
INTRASTATE EXCHANGE ACCESS RATES

**PREHEARING ORDER**

)  
) DOCKET NO. TX08090830

**SERVICE LIST ATTACHED**

BY THE BOARD:

**BACKGROUND**

At its October 6, 2008 Agenda Meeting, the Board of Public Utilities ("Board"), in recognition of requests by certain telecommunications providers in the State, ordered the initiation of this current investigation into Local Exchange Carrier ("LEC") Intrastate Exchange Access Rates ("Access Rates"). Specifically, the Board directed Staff and the Office of the Attorney General to convene a pre-hearing conference to allow interested parties an opportunity to present positions on the issues involved, the nature of the proceeding, and the schedule for discovery, hearings, and decision. This conference was held on October 29, 2008, after notice to the telecommunications industry 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. In addition, a number of entities appeared via teleconference. At the conclusion of the pre-hearing conference, the entities present were provided the opportunity to submit initial and reply proposed schedules, 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.

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:**

This is a contested matter flowing from the Board's decision to open an investigation into the appropriate level for access rates in the State. At core are two basic positions: one group believes that access rates should be immediately reduced, ideally to the interstate level set by the Federal Communications Commission ("FCC"), and that this should occur immediately. To

the extent that other issues may exist, such as rate impact or federal preemption, those issues can be resolved, if necessary, after the setting of the appropriate access rate. The other group accepts the Board's ability to review access rates, but calls upon the Board to engage in a deliberate and intensive review prior to any modifications in the access rate, and this group does not concede that the FCC's interstate rate is necessarily reasonable. Furthermore, this group calls upon the Board to await the FCC's decision on access rates that continues to be expected, in order to minimize unnecessary review and burden.

Based upon the Board's review of the submissions, as well as the underlying nature of the investigation, the Board HEREBY FINDS that the Board shall not wait for the FCC to make a determination in its currently pending rulemaking related to Intercarrier compensation reform. This Board has jurisdiction over intrastate exchange access services and shall move forward. The Board FURTHER FINDS that it would be inappropriate to simply set the intrastate access rates to the interstate level without providing an opportunity for all parties to provide foundation and input into a just and reasonable access rate. Accordingly, the Board HEREBY ORDERS that the scope of this matter shall include a review of the proper intrastate access rate, with individual parties providing evidence and argument as they deem appropriate in support of their respective positions. The question of revenue recovery is not an appropriate area of review in this docket and shall be considered, if necessary, in a separate matter, as appropriate, following the conclusion of this matter. This approach reflects the commitment set forth in the ILEC stipulations in Docket No. TX07110873. The Board FURTHER ORDERS that cost studies, to the extent requested or otherwise used in this matter, shall be forward-looking.

Additionally, the Board views this as an investigation as to the entire industry, with the expectation that the results will apply, unless otherwise appropriate, to all entities who charge intrastate access rates, despite their status in this matter. This investigation is designed to set rates which all entities will be required to charge, including default rates where entities have failed to participate in this proceeding. The significant impact of the Board's findings on all carriers requires a comprehensive review of costs as well as other relevant information in order for the Board to make its determination. Pursuant to N.J.S.A. 48:2-36.1, the Board may order any public utility to compile and submit information to the Board for review respecting this or any other matter. Telecommunications companies with relevant information in this matter, regardless of status in the case, must comply with the Board's anticipated demands for information, and will be subject to the Board's findings respecting access rates. As such, it would be inappropriate to exclude any particular LEC, and, despite the arguments raised by Warwick Valley as to the burden and nature of its inclusion in this case, the Board HEREBY DENIES Warwick Valley Telephone's request that the Board deem that the scope of this docket excludes the review of, or potential adjustment of, Warwick's intrastate access rates.

## **2. PARTIES AND ATTORNEYS OR REPRESENTATIVES**

Motions for admission *pro hac vice* were timely filed by a number of parties. Each motion was unopposed and accordingly, the Board HEREBY GRANTS each motion for admission *pro hac vice* in this matter. Likewise, eight motions to intervene and five motions for participant status were timely received. Again, these motions were unopposed, and as each moving party provided an appropriate foundation for inclusion in this case, the Board HEREBY GRANTS each intervention and participation motion. Based upon these grants, the representation list is attached as the "Current Service List." This Order is the final document, prior to the ultimate Board decision that will be sent to all entities; all future documentation in this matter will be limited to those parties that have sought and received intervention or participation status, and thus are included on the Current Service List.

**3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

None at this time.

**4. SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Hearings will be held on September 14-18, 2009, before Commissioner Elizabeth Randall. Hearings will commence at 10:00 a.m. in the 8<sup>th</sup> Floor hearing room of the Board of Public Utilities, Two Gateway Center, Newark, New Jersey.

**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 an informal basis by the parties in attendance at the Prehearing Conference of October 29, 2008. Based upon those submissions, the nature of the case, and the needs of the Board, the following schedule has been set:

|                                                                    |                   |
|--------------------------------------------------------------------|-------------------|
| Last Date for First Round of Discovery                             | December 24, 2008 |
| Requests for Intervention Due                                      | December 24, 2008 |
| Last Date for Responses to First Round of Discovery                | January 22, 2009  |
| Initial Testimony                                                  | February 13, 2009 |
| Last Date for Discovery Requests on Initial Testimony              | February 23, 2009 |
| Last Date for Responses to Discovery Requests on Initial Testimony | March 16, 2009    |

|                                                                     |                       |
|---------------------------------------------------------------------|-----------------------|
| Reply Testimony                                                     | April 20, 2009        |
| Last Date for Discovery Requests on Reply Testimony                 | May 1, 2009           |
| Last Date for Responses to Discovery Requests on Reply Testimony    | May 22, 2009          |
| Rebuttal Testimony                                                  | June 22, 2009         |
| Last Date for Discovery Requests on Rebuttal Testimony              | July 2, 2009          |
| Last Date for Responses to Discovery Requests on Rebuttal Testimony | July 13, 2009         |
| Evidentiary Hearings                                                | September 14-18, 2009 |
| Initial Briefs                                                      | October 12, 2009      |
| Reply Briefs                                                        | November 6, 2009      |
| Anticipated Board Action                                            | December, 2009        |

**9. ORDER OF PROOFS:**

1. Telecommunications Providers
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:**

None at this time.

**12. MOTIONS CONTEMPLATED, PENDING OR GRANTED:**

With the exception of the motions granted above, no outstanding motions exist at this time.

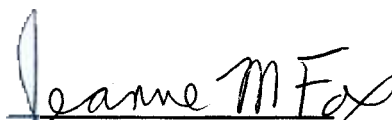
**13. OTHER SPECIAL MATTERS:**

None.

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

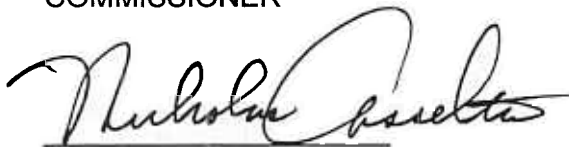
DATED: 12/18/08

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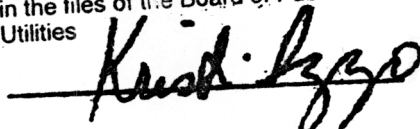
  
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ATTEST:

  
KRISTI IZZO  
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I HEREBY CERTIFY that the within  
document is a true copy of the original  
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