

the dynamic challenges facing the regulated community while remaining sensitive to the need to reduce the cost and size of government. In transferring certain functions of the DEPE to the BPU and relocating the BPU in, but not of, the Department of Treasury, this Plan recognizes the interdependent relationship between energy management planning and the provision of safe, adequate, and proper service by the State's public utilities and cable television operators. At the same time, those aspects of the Board's function most closely related to environmental concerns—the Board's regulation of solid waste—are vested in a redenominated Department of Environmental Protection.

This Plan speaks ultimately to a matter of vital concern: the Board's public interest in ensuring safe, adequate and proper service to all ratepayers, which includes cost-effective ratemaking and long-term energy policymaking. We recognize that the assurance of a consumer voice in the ratemaking process is essential to maintaining public trust. For too long, however, State government has been structured on the assumption that an advocate must be limited to an adversarial role. By formally reposing this essential consumer voice in a separately constituted Department of the Public Advocate, staffed with litigators who billed their adversaries by the hour and expressed the consumer voice in adversary proceedings, we have fostered litigation as a policymaking tool at the expense of reasoned consensus. Although the statutory charge of the Public Advocate has been the protection of the public interest, in recent years Rate Counsel has assumed a reflexively adversarial role in rate proceedings, while utilities have been encouraged to inflate their rate increase requests in anticipation of certain opposition and litigation expenses. To more effectively protect the consumer, this counterproductive cycle must be broken. There is no more wasteful institution than bureaucracy, and no more wasteful process than litigation. We have married the two, we have bureaucratized litigation, and we are all the poorer.

Recognizing that there are cases in which litigation may be necessary in order to protect the interest of the ratepayers, the Plan transfers certain personnel from the Office of Rate Counsel to a newly constituted Division of the Ratepayer Advocate within the BPU. However, the Plan recognizes that litigation must be the last resort where accommodation has failed.

Accordingly, the Plan authorizes the Director of the Division of the Ratepayer Advocate to negotiate with the utilities in advance of the filing of rate case proposals in order to seek an accommodation of views on rate issues so that the consumer's voice is accounted for prior to rate case filings. Further, the Plan envisions that the Director of the Division of the Ratepayer Advocate will participate after the rate proposal is filed in a pretransmittal conference to seek a further accommodation of views. The current system of funding, which provides every incentive to litigate and no motive to accommodate, shall be reformed. No longer will advocates on behalf of the consumer bill by the hour, and no longer will there be an incentive for rate proposals to be inflated because of the likelihood that rate proposals will be subject to protracted litigation. Only after negotiation has failed will litigation be considered.

The Division of the Ratepayer Advocate's role will not be limited to individual ratemaking cases; rather, the Director will play an active role in policymaking, sitting on the Advisory Council of Energy Planning and Conservation and on the Energy Master Plan Committee within the BPU. Additionally, the Director of the Division of the Ratepayer Advocate will assist, advise and cooperate with the BPU Commissioners in the exchange of information and ideas in the formulation of long-term energy policy and goals which impact all New Jersey ratepayers. This will afford the consumer a previously unheard voice in the long-range energy planning for this State. By assuring that the consumer's voice is heard at the outset of the ratemaking and policymaking processes, the Plan promotes the development of consensus and spares the State and its citizens the expense and inefficiency of a process that is reflexively adversarial rather than administratively inclusive. Moreover, although the Division of Rate Counsel was created to represent and protect the

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public interest in rate case proceedings, in practice Rate Counsel has, in the past, limited its representation to the interests of residential ratepayers. Under this Plan, the Division of the Ratepayer Advocate will be empowered to represent, protect, and advance the interests of all consumers of utility services, including residential, small business, commercial, and industrial ratepayers, in an effort to protect and promote the economic interests of all New Jersey ratepayers.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," L.1969, c. 203 (C. 52:14C-1 et seq.), I find, with respect to each aspect of the reorganization included in this Plan, that each aspect is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. Promote more effective management of the Executive Branch or its departments because it will group similar regulatory functions within agencies specifically focused on industries with similar regulatory concerns;
2. Promote the better and more efficient execution of the law by functionally regulating the State's utility, environmental and energy industries according to major purposes;
3. Group, coordinate, and streamline regulatory functions in a more consistent and practical way;
4. Reduce expenditures; and
5. Eliminate duplication and overlapping of effort that has resulted from the transfer of the BRC to the DEPE by consolidating certain functions which will result in a savings of State funds.

PROVISIONS OF THE REORGANIZATION PLAN

1. a. The Board of Regulatory Commissioners, including the functions, powers, and duties assigned to it pursuant to L.1911, c. 195, as amended (C. 48:2-1), et seq. and L.1987, c. 365, § 9 (C. 52:18A-2.1), and allocated in, but not of, the Department of Environmental Protection and Energy pursuant to Reorganization Plan No. 002-1991 together with all of its functions, powers, and duties, is continued and is transferred to and constituted as the New Jersey Board of Public Utilities in, but not of, the Department of Treasury, except as hereinafter provided. The President of the BRC shall be the President of the BPU.

b. The BPU shall remain constituted as a three-member Board as now provided by law (C. 48:2-1). The BPU's final agency decisions, consistent with applicable law, shall be appealable to the Appellate Division of the Superior Court. Further, the BPU shall exercise its substantive authority and powers independent of the supervision of any other department or agency.

c. Pursuant to the authority conferred by N.J.S.A. 52:14C-5, vacancies on the BPU shall be filled by the Governor on an ad interim basis by the filing of a letter evidencing the appointment with the Secretary of State, which appointment shall be effective for no more than 90 days and which shall then expire and may not be repeated, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

d. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Board of Regulatory Commissioners and the chairperson thereof, the same shall mean and refer to the New Jersey Board of Public Utilities and the President thereof.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this reorganization will help to ensure that the State's public utility policy and energy policies, including energy conservation goals, are effectively developed and carried out. Further, continuing the Governor's limited authority to name an acting member to the BPU will ensure the BPU's ability to carry out its

Last additions in text indicated by underline; deletions by ~~strikeouts~~

important regulatory functions without delay in the event of a vacancy on the Board.

2. a. The Division of Energy Planning and Conservation established in the Board of Public Utilities, pursuant to Reorganization Plan No. 002-1989, ¶ I(1)(a), and created pursuant to L.1977, c. 146, as amended (C. 52:27F-7), repealed by L.1987, c. 365, § 17, and the functions, powers and duties of which were transferred to, and vested in, the Department of Environmental Protection and Energy and the Commissioner thereof pursuant to Reorganization Plan No. 002-1991, are hereby reinstated and all of its functions, powers and duties are hereby transferred to, and vested in, the BPU and the President thereof.

b. The Office of Energy Planning established by Reorganization Plan No. 002-1991 and all of its functions, powers, and duties are hereby transferred to, and vested in, the Division of Energy Planning and Conservation in the BPU. All powers of implementation and enforcement relating to the Clean Air Act Amendments and the Safe Drinking Water Act, as currently being implemented and enforced by the DEPE, shall remain vested in the Department of Environmental Protection.

c. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Office of Energy Planning, the same shall mean and refer to the Division of Energy Planning and Conservation in the BPU.

d. The responsibility and authority now vested in the Commissioner of the DEPE for the assessment of need and the issuance of a certificate of need for an electric facility under L.1983, c. 115, § 1 (C. 48:7-16 et seq.) and Reorganization Plan No. 002-1991 is hereby transferred to the BPU.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this reorganization will confer on the BPU the necessary authority to implement the important goals of coordinating and integrating the State's utility and energy policies. The reorganization also will promote the development and utilization of dynamic new energy conservation programs for residential, commercial, and industrial utility customers and will further provide a structure for promoting the economic interests of the State.

3. a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation, which was transferred to the Department of Environmental Protection and Energy pursuant to Reorganization Plan No. 002-1991, ¶ 3a, and which was created by L.1977, c. 146, § 10 (C. 52:27F-12), together with all its functions, powers and duties as set forth in L.1977, c. 146, § 11 (C. 52:27F-13), is continued and transferred to, and constituted as, the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities. The President of the BPU shall serve as Chairman of the Advisory Council and the Director of the Division of the Ratepayer Advocate shall serve as a member thereof.

b. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Department of Environmental Protection and Energy, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this reorganization will provide the President and the Commissioners of the BPU with the necessary facilities to enable them to research, study, and implement the State's utility and energy policies.

4. The responsibility and authority vested in the Commissioner of the Department of Environmental Protection and Energy to act as Chairperson of the Energy Master Plan Committee, established by L.1987, c. 365, § 14 (C. 52:27F-14), pursuant to Reorganization Plan No. 002-1991, ¶ 4, is hereby

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vested in the President of the BPU: the responsibility and authority of the Commissioner of the Department of Environmental Protection and Energy to serve as a member of the Energy Master Plan Committee is continued.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this reorganization will help to ensure close coordination and integration of the State's energy and environmental policies with the proper emphasis on energy and the environment.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in L.1977, c. 146, § 16 (C. 52:27F-18), which was transferred to the Department of Environmental Protection and Energy and the Commissioner thereof, pursuant to Reorganization Plan No. 002-1991, is transferred to the President of the BPU.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this transfer is consistent with the centralization of energy policy decisions within the BPU.

6. All responsibility and authority now vested in the Commissioner of the Department of Environmental Protection and Energy for the regulation of solid waste under L.1985, c. 38, as amended, (C. 13:1E-136 et seq.), and Reorganization Plan No. 002-1991, or under any other law or regulation, including, but not limited to, rate setting, is continued in the Commissioner of the Department of Environmental Protection, as is the responsibility and authority for implementation of the Clean Air Act Amendments and Safe Drinking Water Act.

I find that this continuation is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this reorganization will help ensure the close coordination and integration of the State's solid waste policies.

7. All responsibility for budget, fiscal, and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interests Law (C. 52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, and such authority specifically conferred on the BPU by N.J.S.A. 48:2-2, -3 and -7 and under Reorganization Plan No. 002-1991, is hereby transferred from the Department of Environmental Protection and Energy and the Commissioner thereof, to the BPU and the President thereof.

Specifically, but not by way of limitation:

a. The BPU shall make annual budget recommendations to the Director of the Division of Budget and Accounting and the BPU budget shall be entirely funded by statutorily authorized assessments and, to the greatest extent legally permissible, and consistent with the BPU's historic practice, its budget shall be entirely separate and independent from the State budget process;

b. The BPU shall adopt the current Code of Ethics governing the BRC pursuant to the Conflicts of Interest Law for submission to, and approval by, the Executive Commission on Ethical Standards;

c. The BPU will be responsible for the allocation of its budget and the assignment of BPU personnel;

d. BPU employees for payroll, administrative and other personnel-related practices shall remain and continue to be categorized as BPU employees; and

e. Upon the request of the Commissioner of the Department of Environmental Protection, the BPU, to the extent reasonably feasible, shall make resources available to the DEPE to carry out an orderly transition of functions now provided to the DEPE by personnel transferred to the BPU.

Last additions in text indicated by underline; deletions by ~~strikeouts~~

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, consolidation of the BPU's budget and administrative authority in the BPU will provide the required level of autonomy to the BPU in carrying out its mandate.

8. All Class 2 and Class 3 employees who serve the BRC and/or the DEPE shall be employees of the BPU and shall be transferred to the BPU pursuant to the "State Agency Transfer Act," L.1971, c. 375 (C. 52:14D-1 et seq.). Additionally, all appropriations, other employees, and records transferred pursuant to this Plan shall be transferred to the BPU pursuant to the "State Agency Transfer Act" L.1971, c. 375 (C. 52:14D-1 et seq.).

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L.1969, c. 203. In addition to the reasons set forth above, this transfer will enable the BPU to be autonomous and will allow the BPU to manage more efficiently its affairs and carry out its mandate.

9. There shall be established within the BPU a Division of the Ratepayer Advocate. The Governor shall appoint the Director of the Division of the Ratepayer Advocate, who may not be removed except for good cause. The Director's term shall be two years, with eligibility for reappointment. The Division is authorized and directed to:

- a. assist, advise and cooperate with the BRC Commissioners in the exchange of information and ideas in the formulation of long term energy policy and goals which impact all New Jersey ratepayers;
- b. negotiate with the utilities on behalf of the ratepayers in an effort to reach an accommodation of views with respect to proposed rate increases;
- c. appear before the BPU on behalf of ratepayers to the same extent that Rate Counsel is currently authorized to appear;
- d. sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee; and
- e. appeal any determination, finding, or order of the BPU determined by the Director of the Division to be adverse to the ratepayer interest.

The Division shall be funded on an interim basis pursuant to statutorily authorized assessments currently dedicated to the Division of Rate Counsel in the Department of the Public Advocate, and to the greatest extent legally permissible and consistent with Rate Counsel's historic practice, its budget shall be entirely separate and independent from the State budget process. At the Director's discretion, such personnel of the Division of Rate Counsel as are deemed necessary to fulfill the mandate of the Division of the Ratepayer Advocate are hereby transferred to the Division of the Ratepayer Advocate. The Director, or a member of the Director's staff to be appointed by the Director, shall sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee.

Notwithstanding the transfer of the Division of Rate Counsel staff to the BPU, the BPU's mission shall continue to be both to protect ratepayers on issues of rates and services and to remain concerned with the financial viability of the regulated entities. Accordingly, the Division of the Ratepayer Advocate will be located separately from the BPU staff, and shall be excluded from all BPU staff discussions of pending litigated rate cases. Neither the Director nor the technical or professional staff shall be subject to the supervision or control of the BPU. The President of the BPU shall exercise no supervisory control over the Division of the Ratepayer Advocate. All litigation and appeals functions shall be exercised independently.

I find this reorganization is necessary to accomplish the purpose set forth in Section 2 of L.1969, C. 203. In addition to the reasons set forth above, this transfer reduces the incentive for commencing or continuing unnecessary litigation and promotes a better and more efficient execution of the State's utility rate policies. Most importantly, this reorganization provides for a broader and more comprehensive role by the Division of the Ratepayer Advocate in both protecting consumers and shaping future energy policy.

Last additions in text indicated by underline; deletions by ~~strikeouts~~

CONSERVATION AND DEVELOPMENT

13:1D-4

10. The BPU shall organize itself, as nearly as practicable, along the following functional lines: There shall be nine divisions: a Division of Gas, Division of Electric, Division of Telecommunications, Office of Cable Television, Division of Water and Sewer, Division of the Ratepayer Advocate, Division of Audits, Office of the Economist, and Division of Energy Planning and Conservation.

11. a. The name of the Department of Environmental Protection and Energy is hereby changed to the Department of Environmental Protection. I find this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the Department's responsibilities and better inform the public of the Department's role under this Plan.

b. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Department of Environmental Protection and Energy or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection or the Commissioner thereof.

All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

A copy of this Reorganization Plan was filed on May 5, 1994 with the Secretary of State and the Office of Administrative Law (for publication in the New Jersey Register). This Plan shall become effective in 60 days, on July 4, 1994, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than July 4, 1994, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

Please take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under a heading of "Reorganization Plans."

Docket No. 00-2000

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AT&T Communications of New Jersey, Inc.,
State of New Jersey Division of the Ratepayer Advocate,
Plaintiff-Intervenor in District Court

v.

Verizon New Jersey, Inc., and
The New Jersey Board of Public Utilities, an agency;
Herbert H. Tate and Carmen J. Armenti, in their capacities
as Commissioners of the Board of Public Utilities,
Defendants in District Court

State of New Jersey Division of the Ratepayer Advocate,
Appellant

On Appeal from an Order of the
United States District Court, District of New Jersey

**SUPPLEMENTAL APPENDIX OF APPELLANT
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

Vol. 1, pp. 1asa-46asa

BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate
Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690

January 22, 2001

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

NEWARK, NEW JERSEY

THURSDAY, JAN. 16, 1997

ITEM 8B

Docket No. TX96070540 - In the Matter
of the Board's Consideration of
Procedures for the Implementation of
Section 252 of the Telecommunications
Act of 1996.

BEFORE: PRESIDENT HERBERT H. TATE, JR.
COMMISSIONER CARMEN J. ARMENTI

J. H. BUEHRER & ASSOCIATES
17 Academy Street - Suite 201
Newark, New Jersey 07102
(201) 623-1974

1
2 PRESIDENT TATE: Item 8B.

3 MR. GALLAGHER: Commissioners, in
4 establishing the procedures to handle
5 negotiations and arbitrations, the Board
6 developed a process that was designed to
7 essentially handle those types of
8 proceedings. To date I would note that
9 the arbitration process that the Board has
10 implemented has been successful in
11 reaching agreement and that there has been
12 success in defining the issues, both
13 telecommunications issues and economic
14 issues and the Judges should be commended
15 for their work in addition to the parties,
16 who also should be recognized for their
17 work in reaching agreements through
18 negotiations on some of these very
19 technical and complex issues.

20 Notwithstanding that success to
21 date that we have noted with some
22 experience, Staff believes now that a new
23 direction may be considered by the Board.
24 Before I get into that, I would note that
25 some significant events have occurred

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since the Board has issued its Order.

First, the FCC had issues its Order on implementation of the Telecommunications Act and that Order included a new study referred as a TELRIC study. That study was to be used to develop the interconnection rates among other rates.

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MR. GALLAGHER: (Continuing) That was a new direction that was heretofore not foreseen by the parties. Because of that some of the proceedings, especially the generic proceeding, was delayed while some of the parties sought to put a TELRIC study together and that caused a delay in the generic proceeding. That Order was then stayed by a Federal Court on the grounds that a state had the right to set rates as opposed to having them mandated or preempted through the FCC. That then also caused a delay in some of the arbitrations because of the TELRIC studies so we had a delay in the generic proceedings because of the FCC Order and that FCC Order was then stayed, so we had those factors working against each other in our proceedings.

In addition, the Board has addressed two agreements to date so far and we want to be careful that we do have consistency in those kinds of results that have been presented to the Board so far.

1
2 Finally we would note that some of
3 the arbitrations haven't been completed
4 yet, agreements have not been filed with
5 the Board indicating there is some other
6 problems in reaching agreement even though
7 the arbitration has been completed.

8 So, looking at all those factors
9 and trying to promote the overall goal of
10 getting competition in New Jersey as
11 quickly as possible, the staff would
12 suggest at this time we invite comments on
13 whether all rates should be considered
14 interim until the generic proceeding is
15 completed. Once we get the generic
16 proceeding done we then have a way of
17 gauging what those rates should be as
18 opposed to going through this piecemeal
19 process and not knowing what the outcome
20 of the FCC Order is going to be. We are
21 looking to have the generic proceeding
22 done probably in May with everything done
23 as far as testimony in briefing. After
24 that there would be a rule-making process
25 that would take place after that with the

1
2 conclusion of the rule making probably in
3 the fall so at any interim rates that
4 would be in effect for a relatively short
5 period of time.

6 We would like to invite comments
7 to be submitted to the Board by January
8 23rd. That would be initial comments and
9 reply comments by January 28th. That's
10 our suggestion to the Board at this time.

11 PRESIDENT TATE: Commissioner
12 Armenti?

13 COMMISSIONER ARMENTI: So,
14 Director, that means that those
15 arbitration agreements that have been
16 completed would be declared interim rates?

17 MR. GALLAGHER: Yes. To date both
18 of them that have been approved are
19 interim rates.

20 PRESIDENT TATE: So what we are
21 taking right now is to set up an
22 opportunity to review the matter to
23 determine whether or not there should be
24 interim rates or not. We are not voting
25 on that issue. That's going to be oral

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argument or --

MR. GALLAGHER: Right. So far we are inviting initial comments and reply comments, yes.

COMMISSIONER ARMENTI: I would move for approval of the program outline by the Director.

MR. PROVOST: May I just add one comment if I might that we would like to request those comments through a Secretary's Letter. I don't know that Director Gallagher mentioned that. So we would like to ask that you approve that authorization as well.

PRESIDENT TATE: Fine. With the additional comments of Mr. Provost I will second that motion.

SECRETARY NAPPI: Commissioner Armenti?

COMMISSIONER ARMENTI: Yes.

SECRETARY NAPPI: President Tate?

PRESIDENT TATE: Yes.



State of New Jersey

BOARD OF PUBLIC UTILITIES

TWO GATEWAY CENTER
NEWARK NJ 07102

CHRISTINE TODD WHITMAN
Governor

January 16, 1997

JAMES A. NAPPI
Secretary
Tel 201-648-3426
Fax 201-648-2409

TO: ATTACHED SERVICE LIST

Re: In the Matter of the Board's Consideration of
Procedures for the Implementation of Section
252 of the Telecommunications Act of 1996
Docket No. TX96070540

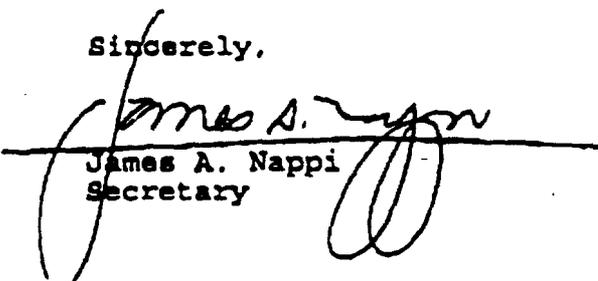
At its Special Agenda Meeting of January 16, 1997, the Board determined to request comment from interested parties on the possibility of amending its order in the above referenced matter to set interim rates until the Board's generic proceeding can be concluded. Interested parties are requested to provide their comments by close of business January 23, 1997.

Reply comments will be accepted through close of business January 28, 1997. Please forward comments to the attention of:

Michael P. Gallagher, Director
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102

In order to insure prompt exchange of comments and replies by all interested parties use of facsimile transmission is strongly recommended.

Sincerely,


James A. Nappi
Secretary

JAN/JFM/am

Excerpt

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

NEWARK, NEW JERSEY

THURSDAY, JULY 17 1997

B.P.U. Docket No. TX95120631 - In the
Matter of the Investigation Regarding
Local Exchange Competition for
Telecommunication Service

BEFORE: PRESIDENT HERBERT H. TATE, JR.
COMMISSIONER CARMEN J. ARMENTI



J. H. BUEHRER & ASSOCIATES
17 Academy Street - Suite 201
Newark, New Jersey 07102

(201) 623-1974

1
2 agreements, the rates were interim rates
3 pending the generic proceeding. The only
4 one that may be different would be the
5 AT&T one. All of the others to date have
6 been interim rates.

7 PRESIDENT TATE: That's because
8 the arbitrator in that decision declared
9 on his own that those rates were to be
10 final.

11 MR. GALLAGHER: That's correct.

12 PRESIDENT TATE: Under the Federal
13 Telecommunications Act, the Board is
14 supposed to review the Arbitrator's
15 decision, correct?

16 MR. PROVOST: Yes.

17 PRESIDENT TATE: Under certain
18 criteria?

19 MR. PROVOST: That is correct.

20 PRESIDENT TATE: The effect of
21 having this arbitration decision be final
22 versus all the other ones interim would
23 set different rates?

24 MR. PROVOST: Yes, those rates
25 would be - - it's my understanding that

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2 the rate was, I believe, \$11.76 for local
3 loop. I think the AT&T arbitration rate
4 was \$11.76 as opposed to a rate which I
5 believe you would set today of \$16.21. So
6 yes, all other rates for all other
7 carriers will be \$16.21. The stand alone,
8 very divergent rate, would be the AT&T
9 rate were that arbitration decision to be
10 final.

11 PRESIDENT TATE: And under the
12 Telecommunications Act, what's the Board's
13 authority in reviewing the arbitrator's
14 decision?

15 MR. PROVOST: The Board can reject
16 an arbitrator's decision only if it finds
17 that the agreement does not meet the
18 requirements of Section 251 including the
19 regulations of the Commission, the FCC or
20 the standards set forth in Section 252d.
21 And 252d is the pricing standards section,
22 and the pricing standards requires state
23 commissions to set just and reasonable
24 rates for network elements which shall be
25 based on costs, however not based on rate



AGENDA DATE: 9/29/99

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD'S)
INVESTIGATION REGARDING THE)
STATUS OF LOCAL EXCHANGE)
COMPETITION IN NEW JERSEY)

SUMMARY ORDER

DOCKET NO. TX98010010

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Summary Order memorializes in summary fashion the action taken by the Board of Public Utilities (Board) at its September 29, 1999 public agenda meeting with respect to access to unbundled network elements. The Board will shortly issue a more detailed Order in this matter which fully sets forth discussion of the issues as well as the reasoning which underlies the Board's determinations.

I. BACKGROUND

On July 22, 1998, the Board issued in Docket No. TX98010010 its Report entitled "Status of Local Telephone Competition: Report and Action Plan" (the Report). The Board concluded in the Report there was no significant statewide "resale-based" or "facilities-based" local landline residential competition due to inadequate Operations Support Systems (OSS) and access to Unbundled Network Elements (UNEs). In order to address these issues, the Board in the Report's Action Plan created a Technical Solutions Facilitations Team (TSFT) to serve as an impartial forum for the resolution of certain generic issues, including OSS and access to UNEs, in a collaborative, efficient and effective manner. Report at 104. The Board also set a schedule for the determination of whether it had the legal authority to order combinations of UNEs (the so-called UNE Platform, or UNE-P). Id. at 101, 105. In addition, the Board directed the TSFT to attempt to negotiate the implementation of access to UNEs following the Board's determination of the jurisdictional issue, and advised that if no negotiated resolution is reached through the TSFT process, it would act to resolve the issue of access to UNEs shortly after the conclusion of TSFT discussions. Id. at 105. On October 22, 1998, the Board found it had the authority under State law to order the provision of UNEs, in combination, including the UNE-platform and directed the TSFT to commence negotiations to determine whether UNE-P, collocation or some other method or combination of methods should be implemented. Order, I/M/O

The Investigation Regarding Local Exchange Competition for Telecommunications Services, et al., Docket Nos. TX95120631 et al. (October 22, 1998). As a result, the Board referred to the TSFT the issues of how best to employ the various methods of access to UNEs in order to foster competition. The TSFT conducted several negotiation meetings from October 1998 through January 1999 to which no agreement could be reached. Failing an agreement on these issues, the Board directed the TSFT to bring a recommendation to the Board.

Following the TSFT negotiations referred to above, Staff proposed to the Board an interim resolution on the issue of access to UNEs at the Board's April 28, 1999 Agenda meeting. The Staff proposal was based on the earlier submissions of interested parties as well as positions of parties taken during TSFT negotiation sessions. The Staff proposal was released for comments by Secretary's Letter dated April 29, 1999.

In response to Staff's UNE-P recommendation, the following parties filed comments:

ACI Corporation (ACI);
Advantage New Jersey (ANJ);
AT&T Communications of New Jersey (AT&T);
Bell Atlantic-New Jersey (BA-NJ);
Cablevision Lightpath (Cablevision);
Citizens Action (CA);
Competitive Telecommunications Association (CompTel);
COVAD Communications Corporation (Covad);
LTC Consulting (LTC);
MCI Worldcom (MCI);
Ratepayer Advocate (RPA);
Sprint Communications Company LP (Sprint); and
Telecommunications Resellers Association (TRA).

II. SUMMARY OF POSITIONS

The Competitive Local Exchange Carriers (CLECs) generally argued that the Staff recommendation does not go far enough to "jump-start" local competition because of the numerous restrictions placed on the availability of UNE-P and Extended Loops. In support of their contention, they cited both the Act and the FCC's rules as not permitting the imposition of such restrictions. Moreover, several CLECs criticized the interim nature of the recommended proposal as introducing unnecessary uncertainty into the process. In addition, the CLECs averred that the recommended collocation rates are not sufficiently supported and are contrary to the FCC's First Report and Order and Further Notice of Proposed Rulemaking, I/M/O Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC 99-48 (Released March 31, 1999) (hereinafter, *Advanced Services Order*). BA-NJ, on the other hand, commented that the recommendation will put it at a major competitive disadvantage and that statewide UNE-P for business accounts is unwarranted. BA-NJ asserted that the collocation options contained in the Staff proposal are a starting point but must be revised due to the FCC's *Advanced Services Order*.

III. SUMMARY OF STAFF MODIFICATIONS

In response to the comments, Staff recommended several modifications that will provide access to unbundled network elements consistent with the goal of the previous Staff recommendation and determinations of the Board, specifically to jump-start mass marketing to residential and small business customers.

- (1) Extend the availability of UNE-P to CLECs for the provision of Plain Old Telephone Service and BRI-ISDN services, without restrictions, to include business customers with two (2) and three (3) lines per location. When combined with the original recommendation for the availability of UNE-P for such services for residential and single line business customers, the platform is available to CLECs to serve customers who represent approximately 80% of the access lines in the state.
- (2) Modify the definition of "small business" customers from 2-10 lines, to 4-10 lines per location and to allow for review to ensure compliance;
- (3) The two (2) collocator exemption will be increased to three (3) collocators and will be further modified to include a grandfather clause for existing customers in the event a third collocator enters a central office after UNE-P is already provided;
- (4) The extended loop proposal is modified to require that BA-NJ provide essentially the same options as are available in New York, including concentration and fewer restrictions as requested by CLECs, and the definition is modified to comport with the FCC definition;
- (5) Clarifies and expands the requirements and information that BA-NJ must offer and/or provide to CLECs for advanced services;
- (6) Deletes references to glue charges;
- (7) Requires availability of UNE-P and extended loops 60 days after release of this order;
- (8) Includes clarification language;
- (9) Directs the TSFT to reconvene to attempt to resolve certain open collocation and advanced services issues; and
- (10) Directs BA-NJ to abide by all requirements in the FCC's Advanced Services Order and to follow the collocation prices required by the Board. In addition, product descriptions for UNE-P and extended loops and tariff and compliance filings for all requirements contained herein must be filed and will be effective on an interim basis subject to comments by interested parties, and full review by the Board.

Based upon the record in this matter, including comments received, the TSFT discussions and other submissions by the parties, the Board is satisfied that the Staff recommendation, as a whole, provides incentives needed to encourage CLECs to enter the local telephone market in New Jersey, will help jump-start competition to residential and small business customers and will eliminate access to unbundled elements as a barrier to such competition. Therefore, the Board HEREBY ORDERS the following:

UNE-Ps For CLECs

1. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for residential customers.
2. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for business customers with one (1), two (2), or three (3) lines per location.
3. Not later than 60 days from the date of this order and except as provided in Paragraph 9 below, BA-NJ shall provide UNE-P to CLECs for 4-10 lines per location small business customers for POTS and BRI-ISDN services. BA-NJ shall not be required to provide UNE-P to CLECs for Centrex, PBX, and PRI-ISDN. CLECs will be subject to review to ensure compliance with these line restrictions. If violations are found, the Board may impose fines as authorized by law.
4. BA-NJ shall not restrict the availability of UNE-P for Plain Old Telephone Service ("POTS") and BRI-ISDN services for all residential customers and for business customers with one (1), two (2), or three (3) lines per location.
5. BA-NJ shall continue to provide UNE-P and all other network element combinations required hereunder for all residential customers and business customers with one (1), two (2) or three (3) lines per location until the Board determines that one or more reasonable, nondiscriminatory, efficient, alternative means of network element combination is available.
6. For as long as collocation space is not available in a particular central office, BA-NJ shall provide UNE-P to CLECs for POTS and BRI-ISDN services for all customers in that central office.
7. BA-NJ shall provide UNE-P to CLECs at least 90 days prior to BA-NJ's 271 filing with the FCC, but in no event later than 60 days from the date of this order.

8. Where fewer than three collocators are present in a central office, BA-NJ shall provide UNE-P to CLECs for business customers with 4-10 lines per location only as described in number 3 above. If three or more collocators are present in a central office, BA-NJ shall not be required to provide UNE-P to CLECs for business customers with 4-10 lines per location.
9. Once a UNE-P eligible central office reaches the three collocator threshold, BA-NJ must notify CLECs that they will only be able to continue to obtain UNE-P for business customers with 4-10 lines per location, subject to the provisions of paragraphs 3 and 8, for a six month transition period. Thereafter, existing UNE-P lines may be retained, but no new orders for UNE-P will be accepted.
10. UNE-P shall be available for all residential customers and business customers with one (1), two (2), or three (3) lines per location from every BA-NJ Central Office, regardless of whether collocators are present.
11. BA-NJ shall provide any combination of elements for all residential customers, business customers with one (1), two (2) or three (3) lines per location, and small business customers, as described in paragraph 3 above, to CLECs at the generic rates established in Docket No. TX95120631, except as otherwise provided herein.
12. BA-NJ shall continue to provide UNE-P and all other combinations of elements required herein until the Board determines that one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
13. Unless otherwise determined by the Board, a Board review shall commence four (4) years after the effective date of this Order to determine whether one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
14. BA-NJ shall file a product description of the platform offerings described herein including rates, no later than 30 days from the date of this Order, certified to be in conformance with this Order. Such filing shall become effective on an interim basis based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.

**Access Fee Relief For CLECs Providing
Local Telephone Service Utilizing the Unbundled Network Element Platform**

15. Originating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis for the origination of toll services.
16. Terminating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis.

Collocation Arrangements For CLECs

17. BA-NJ shall provide collocation to CLECs, at a minimum, through the following methods: (1) all methods adopted or permitted by the FCC or approved by the Board; (2) SCOPE - Secured Collocation Open Physical Environment; (3) Shared Cages; (4) Smaller Cages; (5) Physical; (6) Virtual, and (7) Cageless collocation, with appropriate security measures as defined in the FCC's March 31, 1999 Order in CC Docket No. 98-147 (FCC 99-48).
18. Absent an agreement on rates for provisioning of collocation arrangements, collocation charges shall be flat rates. BA-NJ may require a non-refundable deposit of ½ the flat rate with a six (6) month binding forecast and a two (2) year, non-binding estimated forecast in order to ensure provisioning of requested collocation arrangements in parity with the provisioning of other CLEC requests.
19. Absent an agreement on rates, on an interim basis and until further Board order, BA-NJ shall provide, at a minimum: (1) a single bay of up to 15 sq. ft. for \$5,250; (2) a SCOPE arrangement for \$5,900; (3) 25 sq. ft. cages for \$18,000; and (4) 100 sq. ft. cages for \$35,000. These rates approximate the average projected cost identified in the TSFT by BA-NJ to construct those facilities. In order to further spur deployment of CLEC collocation facilities, BA-NJ shall provide collocation in New Jersey at rates equal to the lowest comparable rate in the entire Bell Atlantic region for orders received with the required forecast and deposit. BA-NJ shall provide such rates for a period of nine (9) months after the offer was made in another part of the Bell Atlantic region.
20. Within seven (7) days of the date of this Order, BA-NJ is directed to file revisions to its currently pending Collocation Tariff (at Docket No. TT99050370) to reflect the minimum collocation arrangements set forth in Paragraph 17 and the interim rates set forth in Paragraph 19 above, certified that it is in conformance with this Order. This revised tariff shall become effective on an interim basis, based upon the certification of BA-NJ. The interim tariff shall be subject to comment by interested parties and further review and final approval by the Board. Such Board review shall ensure compliance with the Board's generic December 2, 1997 Order (at Docket No. TX95120631) and the FCC's Advanced Services Order (CC Docket No. 98-147).

Extended Loops For CLECs

21. Not later than 60 days from the date of this Order, BA-NJ shall provide extended loops¹ to CLECs throughout the BA-NJ service territory. BA-NJ shall

¹ "Extended loop" is defined herein to mean the combination of an unbundled loop, multiplexing/concentration equipment and unbundled transport.