



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION)
OF BELL ATLANTIC-NEW JERSEY, INC.)
FOR APPROVAL OF A MODIFIED PLAN)
FOR AN ALTERNATIVE FORM OF)
REGULATION AND TO RECLASSIFY ALL)
RATE REGULATED SERVICES AS)
COMPETITIVE SERVICES)

ORDER

DOCKET NO. TO99120934

IN THE MATTER OF THE APPLICATION)
OF VERIZON NEW JERSEY, INC. FOR)
APPROVAL OF AN EXTENSION OF ITS)
PLAN FOR AN ALTERNATIVE FORM OF)
REGULATION)

DOCKET NOS. TO92030358
TO00120955

(SERVICE LIST ATTACHED)

BY THE BOARD:

I. INTRODUCTION

By letter dated December 1, 2000, Verizon New Jersey (VNJ, or the Company) informed the Board of Public Utilities (Board) of its determination to withdraw its December 30, 1999 petition in Docket No. TO99120934 that sought approval of its proposed "Competitive Telecommunications Plan" (CTP).¹ In its letter, VNJ stated that it intended to re-file a plan for an alternative form of regulation (Plan) which sought approval on the issues addressed in the CTP petition, either individually or combined, as soon as practicable. The letter also requested an extension of the existing Plan, now scheduled to expire on December 31, 2000, until the re-filed case is concluded.

This Order memorializes the following: (1) VNJ's CTP petition is withdrawn and this matter is terminated, with terms and conditions being imposed for a new VNJ Plan filing; (2) the existing Plan is extended for one year, i.e., from December 31, 2000 to December 31, 2001; (3)

¹ The Procedural History in this matter is set forth in more detail in Appendix A.

minimum filing requirements are set forth for the next VNJ Plan filing; (4) a procedural schedule is established that will enable the Board to render a decision on a new Plan filing prior to the end of 2001; (5) the motion to dismiss the CTP petition, made orally by the Division of the Ratepayer Advocate (Advocate) on October 30, 2000, and filed on November 9, 2000, is dismissed as moot; (6) certain pending discovery motions in the CTP docket are denied as moot; and (7) decision on a pending motion to unseal a portion of the record in the CTP docket is deferred.

The decisions contained herein reflect not only the Board's analysis and review of the filings and comments of the parties in this matter, but also reflect the public response to the CTP filing. The Board heard directly from ratepayers, as well as from many of their elected representatives, at three public hearings and through countless letters advising the Board of an almost universal view that the VNJ proposal was unacceptable. In order to provide guidance to VNJ, prior to its next Plan filing, and to address the deficiencies that the public, interested parties and this Board have raised as concerns, the Board has set forth in Section II of this Order certain key minimum standards with which the Board requires VNJ to comply when it files a new Plan proposal.

As set forth more fully in Section III below, the Board believes it is the right of a petitioner, in appropriate circumstances, to withdraw or modify its petition prior to Board action on that petition. In the present circumstances, withdrawal of the CTP proposal clearly is in keeping with the overwhelming public sentiment that the CTP proposal should not be approved. Acceptance of the CTP withdrawal, coupled with issuance by the Board of the guidance contained herein, advances the interests of the public and the parties to this proceeding that have been critical of the CTP from the outset. The Board's decisions to dismiss as moot the Advocate's motion to dismiss, as well as the pending discovery motions, follows logically from VNJ's CTP petition withdrawal.

The Board also believes, for the reasons set forth more fully in Section IV below, that it is in the public interest to extend the current Plan for an additional year, and the Board has set forth herein a schedule for a new Plan filing that will accommodate the comprehensive proceeding that the Board expects will ensue with the filing of VNJ's next Plan proposal. Extending the present Plan not only maintains the current \$8.19 basic residential service rate, and the programs and protections inherent in the Plan, for another year, but it also allows the Board to

conclude ongoing proceedings that will facilitate local competition for all consumers, including residential customers. In order to help ensure the completion of these critical matters, namely the ongoing hearings to set non-discriminatory, cost based Unbundled Network Element (UNE) rates, the ongoing testing of VNJ's Operations Support Systems (OSS), and the ongoing review and adoption of performance remedies, the Board must extend the existing VNJ Plan. Not extending the current Plan raises the spectre of a complex and time consuming rate base, rate of return review of VNJ, which typically takes 9-12 months to complete. We are certain that embarking on such a review at this point would most severely impair the Board's ability to complete the UNE, OSS and performance remedies proceedings, which are critical in advancing the legislative goal of competition. As stated above, the extension will maintain the public policy of this Board of ensuring affordable telephone service by maintaining the existing \$8.19 residential basic exchange service rate. It will also ensure that all other existing programs, such as Lifeline service for low-income consumers, continue uninterrupted.

Finally, the provisions in this Order will ensure that a Plain Old Telephone Service or POTS option will continue to be made available to consumers, since the Board is requiring that VNJ offer POTS service as a minimum criteria in the new Plan. The criteria will allow VNJ to propose what it views as future, marketplace offerings as options to consumers, however, the Plan will be deficient if it does not also contain an affordable POTS offering. The local service collaborative held earlier this year gave some insight as to the potential direction of market forces, based upon the experience in other states. The criteria requires Verizon to provide to the Board, through its filing, its current offerings in those other states so that the trends elsewhere can be analyzed as part of the review of the proposed new Plan. The criteria permit VNJ to propose such options here in New Jersey in addition to affordable POTS service, but any such proposals will be subject to scrutiny by the Board, the public and all participating parties.

Having presaged several important decisions contained herein, we now turn to what the Board considers to be a critical aspect of this Order, namely, the guidance we provide to VNJ as it considers the form and substance of its next Plan proposal.

II. MINIMUM CRITERIA FOR THE NEW PLAN PROPOSAL & PROCEDURAL SCHEDULE

As discussed in Section III below, VNJ's petition is withdrawn and this matter is being terminated, with terms and conditions being imposed for a new Plan filing. To ensure that a complete and thorough analysis of a new Plan can be accomplished by the Board in a reasonable time frame and to ensure that the concerns raised in the original petition with respect to the lack of sufficiency and specificity of the petition and supporting evidence can properly be addressed at the outset of the Board's review of the new Plan petition, and cognizant of the parallel UNE proceeding and OSS testing, the Board shall set forth the following minimum criteria for the new Plan, and a procedural schedule that will allow the Board to render a decision on the new Plan within 1 year as described above, that is, before December 31, 2001.

VNJ is HEREBY DIRECTED to include in any filing which seeks to replace or modify the currently effective plan (including the extension ordered herein at Section IV), a new, complete and comprehensive plan which contains specific proposals and an analysis and recommendations addressing various options for the Board. If the proposal includes a request for any rate revision, the filing must at a minimum contain a detailed cost of service study and resulting revenue analysis along with proposed rates, including increases or decreases, individually, for every VNJ rate regulated service. In addition, any proposed changes in rates must include an analysis of the price elasticity of demand for that service. Any proposed revision to basic residential service must include a proposal for affordable POTS with a specific proposal for future treatment for additional lines, and in particular whether they should be subject to the same treatment as the initial line. VNJ also must provide an analysis of the specific impact of its proposals on different classes of customers and the rates for each must be separately provided for the Board's consideration.

In addition to the above, the company is HEREBY DIRECTED to submit following:

- (1) a specific proposal for the Board to consider to address alleged subsidies in basic exchange services, in the event that the Board determines that it is appropriate to maintain (or lower) the existing \$8.19 residential basic service rate, or establish some other rate below the long run incremental cost of such

service. VNJ shall include an analysis and recommendation of whether a Universal Service Program should be instituted. The proposal shall include a specific dollar amount, identify the source of alleged subsidies and how a program will be administered;

- (2) a detailed proposal for an expanded Lifeline program to include, at a minimum, senior citizens and ratepayers that are not currently eligible under the existing plan, i.e., low-income consumers who do not currently qualify for the seven State assistance programs utilized today to determine Lifeline eligibility. In addition, VNJ must include a specific proposal identifying measures to initiate a customer outreach program in order to increase the level of subscribership. Further, VNJ must provide details concerning the benefits and costs of implementing an automatic enrollment program that would allow applicants to certify as to eligibility;
- (3) a specific proposal for the continuation of the existing Access New Jersey (ANJ) program beyond the year 2001 including, but not limited to, the expansion of the services currently offered under the plan;
- (4) a new comprehensive proposal of service quality standards that includes all applicable retail metrics contained in the Carrier-to-Carrier Guidelines approved by Board Order dated July 13, 2000 at Docket Nos. TX95120631 and TX98010010; with new standards at least as stringent as those contained in the Carrier-to-Carrier Guidelines;
- (5) a comprehensive financial analysis of Verizon New Jersey's earnings, with particular attention to the existing policy that determines the amount of dividends sent to the parent Corporation. In order to assure a thorough review of any proposal from a financial viewpoint, the Company shall make available such other data, as may be requested, by the Board;
- (6) a detailed quantification of the savings resulting from the 1997 Bell Atlantic/NYNEX merger and the 2000 Bell Atlantic/GTE merger, and a plan for

the distribution of the merger savings to customers, in the event the Board orders such a distribution; and

- (7) an analysis and recommendation as to whether existing provisions contained in the current Plan, such as Revenue Sharing, Exogenous Events and Earnings Reporting, should be included, modified or eliminated in the new Plan, and how their inclusion, modification and/or elimination meet the eight criteria contained in the Act.

Prior to any Board determination on the critical public policy issues that will be addressed in this matter, the Board shall retain an independent, third party consultant who shall conduct a comprehensive review of VNJ's financial integrity and its relationship with Verizon Corporation, utilizing the information submitted in response to (5) above, and also quantify the savings resulting from the two mergers described in (6) above. This financial review shall commence immediately after the retention by the Board of the third party consultant.

In addition to the minimum requirements described above, the Board DIRECTS VNJ to submit with the filing, all local service offerings that Verizon Corporation and its operating affiliates have introduced in their respective service territories, particularly those states where Verizon Corporation has introduced offerings in which geographic limitations have been lifted. Further, VNJ shall include the Company's analysis and recommendations as to whether the Board should consider the following options as part of the new Plan:

- (1) geographic expansion of local calling areas and the collapsing of toll bands:

with regard to the analysis of the geographic expansion of local calling areas, VNJ shall provide several options, each of which shall include the cost of the expansion, the number of access lines included in each new calling area and the expected rate impact to consumers;

- (2) basic service options in addition to POTS:

with regard to the analysis of any basic service revisions to be offered to customers, VNJ shall analyze options and customer choices that would permit customers the ability to buy usage and features on an a la carte basis, including, but not limited to, a basic service option for dial tone service only, where subscribers receive access to the network for a flat monthly fee, and pay for usage separately; and,

(3) discounting and/or flexible pricing:

this analysis must include recommendations as to the extent to which existing pricing flexibility should or should not be expanded.

If the new Plan contains a proposal to reclassify any rate regulated service to a competitive service, in addition to meeting the statutory criteria for approval of a Plan for an Alternative Form of Regulation, VNJ's proposed new Plan must at a minimum, meet the standards found at N.J.S.A. 48:2-21.19(b) for such a determination. In addition, if the new Plan contains a proposal to reclassify any rate regulated service as competitive, and proposes that the market set the price for such service or that a proposed transition period be established before a market price becomes effective, the Board shall not be bound by any proposal for a revenue neutral rebalancing of rates where some rates are decreased to offset proposed increases in other services.

VNJ is HEREBY DIRECTED to file its proposed Plan, containing a proffer sufficient to establish a prima facie case for compliance with the applicable standards in the New Jersey Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq. (Act). When filing the proposal, that is, on February 15, 2001, VNJ must provide to the Board and to all parties on the attached service list, the full and complete filing as required herein, with an electronic and hard copy of all testimony, all documents, including all work papers, cost models², spreadsheets and any other material that any VNJ witness will rely upon and a summary of all inputs, assumptions and data sources from all cost models. Proprietary versions must be provided to the Board, Board Staff, Board and Staff counsel, and any party who has executed an appropriate proprietary agreement.

If the filing does not contain all the requirements contained in this Order when filed on February 15, 2001, the filing will be deemed deficient and the Board shall take action as it deems appropriate. Finally, in light of the existing schedule for the current UNE proceeding, it is unlikely that a Board decision will be rendered in that matter prior to the February 15, 2001 filing date of the new Plan. Therefore, the February 15, 2001 filing may be amended, as necessary, at the time the Board issues its final UNE decision and necessary adjustments to the schedule will be made. The Board HEREBY ADOPTS the following procedural schedule:

Filing of Complete VNJ Case and Testimony	February 15, 2001
Discovery Begins	February 15, 2001
Prehearing Conference	February 22, 2001
Responsive Testimony	May 1, 2001
Rebuttal Testimony	June 1, 2001
Discovery Ends	June 15, 2001
Hearings – Both Evidentiary and Public	July 2 – September 28, 2001
Initial Briefs	October 19, 2001
Reply Briefs	November 9, 2001
Board Decision	On or before December 31, 2001.

III. WITHDRAWAL OF VNJ's CTP

A. VNJ's Submission

By letter dated December 1, 2000, VNJ informed the Board that it had determined to withdraw its petition in this matter. VNJ indicated that one of the key assumptions in this case had been that several parallel proceedings under way before the Board would be completed at or near the conclusion of the hearings in this matter. VNJ noted that these proceedings, which involve UNE rates, OSS testing and performance measures, standards and incentives related to wholesale services, “all have a bearing on the Board’s consideration of the CTP... because the Board’s initiatives to confirm the opening of the local competitive marketplace in this state – of which these three proceedings are a part – form at least one important part of the environmental

² Any model or spreadsheet filed with the Plan must contain all executable and data files and include specific documentation and instructions to permit the use on an IBM-compatible system operating at 366 MHz or higher under the Windows 95 or 98

backdrop against which the relief sought in the CTP petition must be measured.” Because these proceedings have not yet been concluded, VNJ noted that its CTP cannot be completed this year and that it therefore had determined to withdraw its original petition, notwithstanding its belief that its filing had been meritorious. It indicated that it intends to re-file for approval on the issues addressed in the CTP petition, either individually or combined, as soon as practicable. To allow time for the other proceedings and its “CTP re-file” to conclude, VNJ also requested an extension of its existing Plan.

B. Comments of the Parties

1. Division of the Ratepayer Advocate

In response to the Board’s request for comments, the Advocate urged the Board to grant its motion to dismiss VNJ’s filing. In comments dated December 11, 2000 the Advocate urged the Board not to allow VNJ to withdraw its petition, but instead have the Board decide on the Advocate’s pending motion to dismiss, to ensure that a filing presenting similar issues as the current petition will not have to be relitigated. (Comments at 1,2) According to the Advocate, VNJ’s petition was fully litigated before the Board and all proofs in support of its approval before the Board were presented in their entirety. Therefore, the Advocate argued that the petition is deficient as a matter of law and should not be relitigated. If the Board determines to permit the withdrawal, the Advocate maintained that it must be conditioned on it being withdrawn with prejudice.

Further, the Advocate made suggestions regarding the conduct of future proceedings. The Advocate suggested the Board should provide guidance on future filings. Additionally the Board should develop standards for a competitive service other than the three minimal requirements set forth in N.J.S.A. 48:2-21.19 (b) since the Advocate believes it was the Legislature’s intention to have detailed fully comprehensive standards. The Advocate suggested the Board convene a rulemaking proceeding. (Id. at 3) Additionally, the Advocate claimed the Board should analyze VNJ’s market share and market power as the FCC did in deregulating AT&T in the interstate jurisdiction. (Id. at 3,4) Finally, the Advocate claimed the Board should confirm the applicability of the standards in the Board’s Presubscription Order, Docket No. TX94090388 for all future revenue neutral rate-rebalancing proposals. (Id. at 4)

2. AT&T Communications of NJ, LP

AT&T Communications of NJ, LP (AT&T) claimed that the Board must dismiss VNJ's original CTP petition or direct its withdrawal with prejudice. AT&T believes that withdrawal would allow VNJ to escape the consequences of its actions and should not be allowed because the new filing would be duplicative. (Comments at 2) AT&T stated that New Jersey Court Rule 4:37 – 1 (b) applies to VNJ's request for withdrawal. (Comments at 5) The parties engaged in extensive discovery filed testimony, filed briefs, and participated in hearings. VNJ's case was fully presented and failed to establish a prima facie case satisfying statutory criteria, according to AT&T. Under these circumstances, AT&T argued that VNJ's petition should be dismissed or withdrawn with prejudice. In the alternative, if the Board permits the withdrawal without prejudice, AT&T maintained that the Board must require VNJ to pay counsel fees to AT&T as a condition of the withdrawal. Because VNJ indicated an intent to re-file the CTP, AT&T asserted that it would have to duplicate its efforts and therefore is entitled to counsel fees.

3. Sprint Communications Company, Inc.

In its comments, Sprint Communications Company, Inc. (Sprint) stated that there is no reason to prohibit VNJ from withdrawing its petition. Sprint pointed out that this is an administrative proceeding, as opposed to Superior Court litigation. Sprint further remarked that the Board and the parties should focus their attention on the other pending matters, that is, OSS, and UNE rates. (Comments a 2,3)

4. VNJ Reply

VNJ claimed that the arguments of the parties are nothing more than a rehash of the arguments they made in support of the original motion to dismiss. VNJ argued that the other parties ignore the basis for VNJ's request: that is, that the unforeseen delays in the UNE pricing proceeding, OSS testing and wholesale performance standards proceeding have prevented those cases from culminating at the same time as this case. VNJ claimed that this is the same reason AT&T, the Advocate and other parties gave when they made the same recommendation to the Board earlier this year that the Plan case be scheduled after the UNE proceeding. VNJ

asserted that the Board should recognize this by granting VNJ's request to withdraw its Petition in this case, until such time as it can refile, so that all of these interrelated proceedings can be resolved in a comprehensive fashion.

VNJ contended that several parties have made a number of suggestions that have no legal basis, and should be rejected. VNJ stated that while the Advocate suggested that the Board should establish standards for its future classification of services under N.J.S.A. 48:2-21.19, the statute, however, already delineates the standards, and the Board has consistently applied them time after time. VNJ also criticized the Advocate's suggestion that the Board adopt new standards for future rate restructuring. VNJ claimed that the Board has reviewed each prior proposed restructuring based upon the particular circumstances of that proposal, and has no reason to now abandon its regulatory flexibility.

5. Ratepayer Advocate and Sprint Reply Comments

The Advocate in her reply comments states none of the parties filing comments in this proceeding support the Board's unconditional approval of the relief VNJ is seeking. The Advocate disagrees with Sprint, which suggests there is no reason to deny VNJ's request for withdrawal.

Sprint in their reply comments disagrees with the Advocate that the Board should develop "criteria defining the evidence necessary to demonstrate the existence of competition" for the future Plan and competitive designation filings. Sprint claims the development of specific parameters for the withdrawal of the Plan is the appropriate remedy and not the expansion of resources to develop criteria. (Reply at 1, 2)

C. Discussion

We have carefully considered VNJ's letter indicating that it is withdrawing its December 30, 1999 petition and comments of various parties with regard thereto. Our analysis begins with a review of regulations of the Office of Administrative Law (OAL), N.J.A.C. 1:1-1.1 et seq. which the Board applies to evidentiary hearings which it is conducting. See N.J.A.C. 1:1-1.1(a). The OAL's regulations provide that a party may withdraw a request for a hearing or a defense raised

by notifying the judge and all parties. N.J.A.C. 1:1-19.2(a). Upon receipt of such notification, the judge "shall discontinue all proceedings and return the case file to the Clerk," who then shall return the matter to the transmitting agency "for appropriate disposition." N.J.A.C. 1:1-19.2(a); N.J.A.C. 1:1-19.2(b). If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and return the matter to the transmitting agency for appropriate disposition. N.J.A.C. 1:1-19.2(a).

The OAL's regulations do not define "appropriate disposition," and we, therefore, turn to the New Jersey Court Rules for any guidance which may be appropriate. See N.J.A.C. 1:1-1.2(a) (in the absence of an OAL rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with the purposes of the OAL rules "to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay"); Sansone Oldsmobile-Cadillac, Inc., 211 N.J. Super. 304, 313 (Law Div. 1986) (the principles of R.4:37-1(b) should be applied when an applicant seeks to withdraw, without prejudice, a pending application before a zoning board of adjustment). Pursuant to R. 4:37-1(b) of the New Jersey Court Rules, a plaintiff may voluntarily dismiss an action after a defendant has filed a responsive pleading "only by leave of court and upon such terms and conditions as the court deems appropriate." The purport of R. 4:37-1(b) is to protect "a litigant where a termination of the proceedings without prejudice will place him in the probable position of having to defend, at additional expense, another action based upon similar charges at another time." Sansone, supra, at 312-313 (quoting Union Carbide Corp. v. Litton Precision Products, Inc., 94 N.J. Super. 315, 317 (Ch. Div. 1997)).

Thus, while N.J.A.C. 1:1-19.2(a) appears to permit a proponent of relief to determine that it no longer wishes to pursue the relief sought, the Board has authority under N.J.A.C. 1:1-19.2(a) and (b) to render an "appropriate disposition" of the withdrawal of a petition, and, consistent with R. 4:37-1(b), to establish terms and conditions for a withdrawal. Moreover, it is well established that the Board has authority "to select those procedures most appropriate to enable [it] to implement legislative policy." In re PSE&G Co.'s Rate Unbundling, 330 N.J. Super. 65, 106, 111 (App. Div. 2000), *aff'd*, N.J.³ (); In re Solid Waste Util. Customer Lists, 106 N.J. 508, 519 (1987) (quoting Texter v. Human Servs. Dep't., 88 N.J. 376, 385 (1982)).

³ By Order dated December 6, 2000, the Supreme Court of New Jersey affirmed the judgment of the Superior Court of New Jersey, Appellate Division and indicated that opinions of the Court will follow.

Consistent with our authority, in rendering an appropriate disposition with regard to VNJ's withdrawal of its petition and as terms and conditions thereof, we have set forth in this Order specific requirements to which VNJ must adhere in filing any new proposed plan for an alternative form of regulation and/or to reclassify services as competitive. We concur with various parties that neither the Board, the parties, nor the public would be well served by consuming further resources litigating again certain of the very same issues heard in the within matter. In setting forth specific requirements for any new petition, we are making it clear that a subsequent filing cannot simply be a refiling of the petition which was at issue herein.

By establishing requirements for any new filing, we are satisfied that a subsequent petition will not involve the very same issues which were the subject of hearings herein, and thus will not involve a duplication of counsel fees. Accordingly, the Board need not reach the issue of whether it has the authority to impose counsel fees as a condition of withdrawal in the within circumstances. See Union Carbide Corp., supra, at 317-318 (plaintiff was permitted to withdraw on the condition that no subsequent action based on the same subject matter would be instituted, and under these circumstances, the court found that a subsequent action would not involve litigation of the same issue and denied an application for counsel fees).

Accordingly, VNJ's CTP petition is withdrawn and the within matter is TERMINATED subject to the terms and conditions set forth herein. Because VNJ is no longer pursuing its petition, the Advocate's motion to dismiss VNJ's petition is moot and therefore is DISMISSED. We have, however, carefully considered the concerns and arguments raised by the Advocate and other parties, as well as the public, in framing the minimum criteria for the filing of a new plan for an alternative regulation. Finally, because VNJ's petition has been withdrawn, all pending discovery motions are moot and therefore are DISMISSED.⁴

IV. VNJ'S REQUEST FOR AN EXTENSION OF ITS PLAN FOR AN ALTERNATIVE FORM OF REGULATION

⁴ We defer consideration of the Advocate's October 24, 2000 motion to unseal a portion of the record in this matter, which VNJ has requested remain confidential.

A. VNJ's Submission

As noted above, by letter dated December 1, 2000, VNJ requested an extension of its existing Plan, scheduled to expire on December 31, 2000, until its re-filed Plan is concluded. Throughout the extended term of the Plan, VNJ pledged to adhere to its commitments underpinning the Plan and to abide by its Universal Service obligations and commitments under ONJ, including ANJ, as well as compliance reporting requirements. VNJ noted that during the CTP, the Advocate and other parties had requested "just such an extension to allow the case to be considered after the OSS and UNE matters were decided."

B. Comments of the Parties

1. Division of the Ratepayer Advocate

The Advocate claimed that VNJ's request for an extension is problematic. Since the current Plan expired on its own terms on December 31, 1999 and the Board in approving the current Plan made findings that the plan would satisfy the statutory standards for the duration of the plan, the Board did not find the plan would continue to satisfy statutory standards for any time following 1999. (Comments at 5) The Advocate also stated that in order for the Board to extend the current PAR, it would have to find the plan will satisfy in 2001 and beyond the eight statutory criteria have been met. Factual findings can only be made in evidentiary hearings. (ibid. at 6)

2. AT&T Communications of NJ, LP

AT&T claims the PAR extension should be rejected since VNJ has not attempted to show a PAR extension satisfies statutory requirements. Further, AT&T claims VNJ could have included an alternative claim for relief requesting an extension of the current PAR in its original December 31, 1999 CTP petition. Further, it should not be allowed to benefit from a regulatory situation it created through a meritless CTP. AT&T claims VNJ can return to rate base, rate of return regulation upon expiration of the PAR on December 31, 2000. (Comments at 2,4) If the Board does grant the extension, AT&T asserts that VNJ should be required to file notice with the Board by December 31, 2000 detailing timing and content of its next filing. (Id. at 3) AT&T

claims the comment period is factually and legally insufficient to permit an extension request. The Board should require VNJ to comply with statutory and regulatory requirements for a PAR extension. AT&T believes the comment procedure is insufficient because it impermissibly tries to shift away from VNJ the burden of proof. (Comments at 14,15) Further without an evidentiary record, AT&T argues that there can be no basis for the Board to grant an extension, if the extension does not satisfy statutory criteria. (Id. at 15)

3. Sprint Communications Company, Inc.

Sprint claims it would be appropriate for the Board to set a timetable for refiling of the elements of the CTP, as a condition for the extension of the existing Plan. However, the filing should be made after the conclusion of the UNE proceeding. Further, Sprint claims as a specific condition for continuing the Plan, VNJ should not pursue a Section 271 determination until the conclusion of the Board's review of the revised CTP. (Comments at 3,4) Additionally, Sprint claims VNJ should be required to specifically identify how its new filing addresses issues which were before the Board in the current proceeding.

4. MCI Worldcom

MCI claims the burden should be on VNJ after a petition, evidence, and hearings to demonstrate why it should be granted an extension. Further, VNJ should not be rewarded with continued alternative regulation for failure to implement the conditions necessary to open the local market. After the current Plan expires, VNJ should return to rate base, rate of return regulation. (Comments at 2)

Further, MCI states VNJ has failed to file a petition requesting the current Plan be extended and there have been no hearings to determine if an extension would meet the statutory criteria. However, if a review were to take place to evaluate an extension, MCI argues that VNJ's current Plan would be found to suffer from the same deficiencies that led to the current withdrawal, by failing to meet the statutory criteria for just and reasonable UNE rates and the plan would unduly and unreasonably prejudice competitors due to lack of fully functioning OSS and self-executing performance remedies.

Further from a policy perspective, MCI states it would be wrong to grant another extension.

Approval now would reward VNJ for its lack of movement on local competition issues. (Comments at 3) MCI therefore believes the current Plan should expire on December 31, 2000 and that VNJ should return to rate base, rate of return regulation. (ibid.) MCI additionally believes the Board should work with the parties to discuss potential settlement of local competition issues as addressed in their November 13, 2000 letter to the Board. AT&T and the Advocate support this idea. (Id. at 4)

5. VNJ Reply

VNJ asserts that the other parties positions that in order for the Board to extend the existing Plan, it must first conduct evidentiary hearings and make findings of fact equivalent to a full-scale review of a new Plan are without merit. The Board has already rejected these arguments by the Advocate when it opposed the current Plan extension adopted by the Board on May 24, 1999. Further, VNJ claims other parties' opposition to an extension now represents a complete reversal of their position from this past summer. VNJ contends that they thought when it served their interests in delaying the relief sought in this case, these parties were willing to extend the Plan without consideration to any statutory requirements.

While the Advocate claims that extending the present Plan would create an opportunity for VNJ to thwart competition, VNJ claims no conceivable nexus exists between extending the Plan and the speed with which the Board is able to complete its pending UNE case or the OSS review being conducted by a third-party contractor, KPMG. Further, maintaining the status quo with an extension of the old Plan is not a "reward" to VNJ. In fact, MCI admits, with the rate stability provisions of the old Plan still in place, the additional extension would prevent VNJ from changing any regulated rates without Board approval, nor could VNJ reclassify any competitive services without satisfying the Board. Further, with regard to Sprint's suggestion that any VNJ Section 271 filing be deferred until all other proceedings, including a re-filed Plan case, are completed, VNJ argued that there is no statutory basis for this attempt to delay competition in the interLATA market.

6. Ratepayer Advocate and Sprint Reply Comments

The Advocate claims in its reply comments that the Board cannot simply extend the PAR

without a process to review whether the extension would meet the relevant statutory standards and criteria. (Reply at 2, 3) Further, the Advocate states that any consideration of extending the plan must include appropriate public notice, hearings and a review of the plan to ensure compliance with statutory criteria. (Id. at 5)

The Advocate goes on to state if the Board were to improperly act and extend the current PAR without hearings, the Advocate contends the Board would be required to make material changes to the PAR before extending it for any period of time. (Id. at 7, 8) Additionally, the Advocate claims further issues need to be addressed such as what the features would be of any PAR succeeding ONJ; earnings sharing; merger savings; and the productivity factor. (Id. at 8, 9)

Sprint states in its reply comments that it agrees with the notion of initiating a global settlement but VNJ's PAR should not be included in such discussions. (Id. at 2) Any resolution of the PAR proceeding should not complicate or delay the resolution of other issues such as OSS and UNE rates. (Id. at 3)

B. Discussion

As we explain in detail below, the Board is convinced that the public interest is best served by extending VNJ's Plan for one additional year. Considerable benefit accrues to the public by continuation of the low rates for basic local exchange services under the Plan, the competitive safeguards embodied in the Plan, and the deployment of VNJ's advanced telecommunications network as provided for by Opportunity New Jersey, as accelerated by the Board through its Order dated June 10, 1997 in Docket No. TX96100707. In addition, in light of the pro-competition policies and goals set forth in the Act (see N.J.S.A. 48:2-21.16), the Board does not believe the Legislature would require a lengthy proceeding to review a request to extend VNJ's alternative regulation plan at the same time the Board is engaged in several proceedings whose goal it is to open up the local exchange telecommunications marketplace to the competition which all parties, including this Board, so desire, and which the Legislature itself has indicated is the State's policy to encourage. The alternatives to the action which the Board herein takes, that is, an extensive proceeding to review a request for approval of a new Plan, or a complex and time consuming rate base, rate of return review of VNJ rates for non-competitive services,

are equally undesirable at this time.

VNJ has requested extension of its current Plan from January 1, 2001 through the conclusion of the Board's review of a new Plan proposal. As justification to extend the current Plan, VNJ has referenced ongoing Board efforts to restructure the local exchange marketplace, and the likely conclusion of the ongoing UNE proceeding and OSS testing in the first quarter of 2001.

In carefully considering VNJ's request and the positions of other parties' with regard thereto, the Board recognizes that several proceedings remain open and pending before the Board.

First, we note that pursuant to the Order of the Honorable Katherine Hayden, U.S.D.C.J., dated June 6, 2000, the Board has undertaken to review VNJ's cost-based rates for unbundled network elements (UNEs) in Docket No. TO00060356. We note that this proceeding began prior to VNJ's withdrawal of its CTP petition. The telecommunications industry participants, the Advocate, and the Board have already invested considerable resources in this proceeding, recognizing that its successful conclusion is necessary to the commencement of meaningful local exchange competition in New Jersey. The continuation of this proceeding would be jeopardized were the Board to now engage in a lengthy Plan review or rate base, rate of return proceeding.

Second, the testing of VNJ's operations support systems (OSS) is not yet completed. This testing process has unfortunately taken more time than originally anticipated.

Third, the Board has not yet resolved all issues regarding whether there will be self-executing penalties or incentives for failure to meet the Board ordered VNJ wholesale performance standards.

Considering these circumstances, the Board believes that the public interest is best served by approval of a one-year extension to the Plan. We also note that the legislature has declared that:

in a competitive marketplace, traditional utility regulation
is not necessary to protect the public interest and that

competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation.

[N.J.S.A. 48:2-21.16(b)(1)].

We again assert that the Legislature could not have envisioned that the 1992 Act would require VNJ, the Board and interested parties to undergo a full rate base, rate of return proceeding at the end of a Plan term, when at the same time the Board is engaged in significant regulatory efforts to promote competition in the local exchange marketplace. We continue to believe that under the present circumstances, requiring the filing of a full alternative plan of regulation in order to extend the current Plan without change, or in the alternative, requiring a full rate base, rate of return proceeding, would promote inefficiency, create regulatory delay and again distract the Board and the parties from the work of completing the UNE, OSS and performance remedies proceedings which we are committed to accomplish. A review of isolated aspects of the Plan would also create regulatory delay and moreover would be inappropriate to review isolated parts of an integrated Plan.

Extension of the Plan for an additional year will maintain rates for residential services i.e., \$8.19 or less. We note that rates for access services were reduced by approximately \$25 million earlier this year. (Docket No. TT00080519, effective August 7, 2000). Modification of rates for other protected services would require Board review proceedings. The Board has established, and the current Plan continues, a Lifeline low income assistance program wherein eligible low income telephone customers will enjoy discounts on their already low basic local exchange service. Thus, extension of the Plan will mean that rates will remain affordable for yet another year. Further, VNJ has waived its rights under the original plan to propose formula based rates. Moreover, all structural and non-structural safeguards (imputation, embedded analysis reporting, financial reporting, etc.) in the Plan will remain in place. Accordingly, competing providers will continue to be protected. Moreover, VNJ has again pledged to honor all Plan commitments, including service quality standards and ONJ. Thus, the Plan as extended, will continue to provide for enhanced economic development and preservation of service quality. Therefore, extension of the current Plan for one year furthers the goals which the Legislature enunciated when it passed the Act. Universal service will be maintained at the current affordable rates (N.J.S.A. 48:2-21.16(a)(1)); VNJ customers will continue to pay reasonable

charges for VNJ's local exchange services (N.J.S.A. 48:2-21.16(a)(2)); maintenance of VNJ's current rate structure and current EAS accounting and reporting system will ensure that VNJ's non-competitive services do not subsidize its competitive ventures (N.J.S.A. 48:2-21.16(a)(3)); continued VNJ's adherence to its obligations to modernize its network will ensure maximum availability of the full range of advanced telecommunications services (N.J.S.A. 48:2-21.16(a)(4)); and, by the exercise of its statutory authority to approve a one-year extension of the current Plan, the Board's action will allow the new plan proposal to better reflect the structure of the changing local exchange telecommunications landscape (N.J.S.A. 48:2-21.16(a)(5)).

We again reject the arguments of several parties that approval of VNJ's request for an extension of its Plan requires evidentiary hearings leading to Board findings that the extended Plan meets the statutory criteria set forth in N.J.S.A. 48:2-21.18(a). In light of the various pending proceedings mentioned above, the Board does not read into the language of N.J.S.A. 48:2-21.18(a) a requirement that it must conduct separate evidentiary hearings to review the proposed extension of the existing plan which has already been found to meet the statutory criteria, the approval of which was conclusively affirmed by the Appellate Division (Application of New Jersey Bell Telephone Co., 291 N.J. Super. 77 (App. Div. 1996)), which is not being modified by its proponent, and whose obligations will continue to be honored by its proponent. We note again that N.J.S.A. 48:2-21.18(a) does not specifically address an extension of an existing plan for an alternative form of regulation. Accordingly, in light of the present circumstances, that is, the existence of the open proceedings referenced above, the continued benefits which the State and its citizens will derive from an extension of the Plan, and the desire

of the Board not to divert the limited resources of the Board and the parties away from the work of fully opening the local exchange marketplace to competition, after thorough review of the comments of the parties and subject to the extensive conditions set forth in this Order, the Board APPROVES VNJ's request for an extension of its Plan for an Alternative Form of Regulation, and extends the Plan from December 31, 2000 through December 31, 2001.

DATED:12/22/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY

APPENDIX A

Procedural History

Pursuant to the Act, N.J.S.A. 48:2-21.16 et seq. (the 1992 Act), the instant matter was initiated by the filing on December 30, 1999, of a petition by VNJ requesting approval by the Board of modifications to its PAR. VNJ's petition called for the reclassification of all remaining rate regulated services as competitive services. In its petition, VNJ asserted that its proposed Plan modification, which it terms the "Competitive Telecommunications Plan" (CTP), reflects the continuing evolution of New Jersey's telecommunications marketplace.

By Order dated January 27, 2000, the Board determined that, prior to holding hearings on the CTP, it would conduct an open dialog, termed a "Collaborative," among interested parties which would develop policy options pertaining to VNJ's provision of residential basic exchange service (RBES) effective January 1, 2001. See Order, I/M/O the Application of Bell Atlantic-New Jersey, Inc. for Approval of a Modified Plan for an Alternative Form of Regulation and to Reclassify All Rate Regulated Services as Competitive Services, Docket No. TO99120934 (January 27, 2000) at 2-3. The Board stated that the Collaborative was an issue-limited, time-restricted series of round table meetings. The Board directed that it would be appropriate for the Board to consider, at least in a preliminary manner, a schedule for review of VNJ's CTP, its request for reclassification of its rate regulated services, as well as all the issues and ramifications associated with the CTP proposal. The Board also directed VNJ to file a supplement to its December 30, 1999 petition one week following the close of the Collaborative "containing a proffer sufficient to establish a prima facie case for compliance with the standards in the [1992 Act] for both a finding that its rate regulated services should be deemed competitive and a finding that its modified plan ... should be approved." Id. at 3. In addition, the Board ordered that the supplemental filing address the issue of savings and other impacts from the recent mergers of Bell Atlantic Corporation with NYNEX and GTE, and VNJ's plan to meet all remaining ONJ commitments. Id. at 3-4.

By letter dated May 18, 2000, VNJ submitted its supplemental filing in response to the Board's January 27, 2000 Order. The supplemental filing consisted of the testimonies of six witnesses supporting VNJ's assertion that all of its remaining rate regulated services now satisfy the

statutory criteria under the 1992 Act for competitive classification. The CTP included an initial revenue-neutral rate restructuring of Residential Basic Exchange Service ("RBES"). VNJ's proposed rate restructuring would bundle together into one package, Touch-Tone and three other unnamed vertical services, plus 25 minutes of regional toll calling, for \$17.50 per month. In the same letter, VNJ advised that it concurrently filed with the Board, under seal, the information required by the Board in its Order approving the current Plan to monitor the competitiveness of services. See Decision and Order, I/M/O the Application of New Jersey Bell Telephone Company for Approval of its Plan for an Alternative Form of Regulation, Docket No. TO92030358 (May 6, 1993) at 133; affirmed, 291 N.J. Super. 77 (App. Div. 1996).

A prehearing conference was held on June 5, 2000 at the Board's hearing room in Newark, conducted by the Board's counsel and Staff. On July 6, 2000, the Board issued its Prehearing Order in this matter setting forth the issues to be decided, the date for filing of respondents' testimony and hearing dates. On August 8, 2000 Commissioner Armenti issued a letter to all parties reconfirming that all responsive testimony shall continue to be due no later than close of business, August 9, 2000, with one exception which permitted the Advocate an extension of nine days to file supplemental testimony of Dr. Lee L. Selwyn, containing cost analysis of residential exchange service. Commissioner Armenti also instructed VNJ to file cost of service justification with supporting testimony for all proposed rates contained in the CTP, no later than August 11, 2000.

Three public hearings were held by the Board, on September 13, 2000 at 5:00 p.m. in the Board's hearing room at Two Gateway Center, 8th Floor, Newark, at 5:00 p.m., on September 20, 2000 at the Department of Personnel Hearing Room at 44 South Clinton Avenue, 1st Floor, Trenton and on October 18, 2000 at 1:00 p.m. at the Marlboro Administration Building in the Municipal Courthouse. Evidentiary hearings were also conducted by the Board on September 18, 19, 20, 21, 22, 25, 26; October 2, 3, 4, 5, 10, 19, 20, 24, 25, 27, and 30.

On October 27, 2000, following 17 days of hearings, VNJ concluded the presentation of its direct case on the merits with the completion of the cross examination of Dr. William E. Taylor on his surrebuttal testimony. At the continuation of the hearings, on Monday, October 30, 2000, the Advocate advised the Board of its intent to file a written motion to dismiss the petition in accordance with N.J.A.C. 1:1-1.1(A), N.J.C.A. 1:1-12.1 and R. 4:37-2(b), for the failure of VNJ to

satisfy its burden of proof under the Act. At the October 30th hearing, the Board identified a list of concerns it had with the VNJ proposal and directed the Advocate to file its Brief in support of its Motion to Dismiss on November 6, other parties in support of Advocate's motion to file on November 10, VNJ's response on November 16 and reply brief on November 21. On November 8, Commissioner Butler revised the schedule.

On November 9, 2000, the Advocate filed a Brief on its Motion to Dismiss the case. Claiming VNJ failed to meet the statutory standards for the relief it seeks, namely approval of their CTP. The Advocate further stated VNJ failed to provide evidence for each and every service it seeks to have reclassified as competitive.

On November 14, 2000, AT&T, MCI, Sprint, New Jersey Cable Telecommunications Association (NJCTA), New Jersey Citizen Action (NJCA), Legal Services of New Jersey, (LSNJ), and the Senate Democrats filed briefs in support of the Advocate's Motion to Dismiss. On November 16, 2000, Cablevision also filed a brief in support of the Motion.

On November 21, 2000, VNJ filed its Brief in Opposition. VNJ claims the Advocate and the other parties supporting the Advocate's Motion failed by a wide margin to meet the heavy burden they bear to prove VNJ did not present the minimum evidence necessary to establish a prima facie case that meets each of the legal criteria for the relief VNJ is seeking.

On December 1, 2000, replies were filed in opposition to VNJ's November 21, 2000 submission. Separately, VNJ filed a letter on December 1, 2000 to withdraw the petition and requested an extension of the existing PAR.

On December 6, 2000, the Board established a comment period for parties to respond to VNJ's request to extend the existing Plan. Comments were filed on December 11, 2000 by AT&T, MCI, Sprint and the Ratepayer Advocate. Reply comments were filed on December 15, 2000 by VNJ, Sprint and the Ratepayer Advocate.

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