

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 97-C-0271 - Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996.

PROCEDURAL RULING

(Issued April 8, 1997)

ELEANOR STEIN, Administrative Law Judge:

In the procedural conference that took place on April 3, 1997, during the technical conference in this proceeding, I reserved decision on several issues following discussion by the parties.

First, forecasts of anticipated order volumes have been received to date from MCI Telecommunications Corporation (MCI), Sprint Communications Company, L.P. (Sprint), Time Warner Communications Holdings, Inc. (Time Warner), and AT&T Communications of New York, Inc. (AT&T). Each of these parties has requested trade secret status for its forecast and, in particular, indicated unwillingness to provide it to the other parties even under protective agreement. New York Telephone Company (New York Telephone) asserted that it needs these competitive local exchange carriers' forecasts in order to ensure the capacity to provide the services and elements requested by its competitors.

The relevance of the forecast is not contested; these are trade secret insofar as they may cause unfair competitive damage.¹ There is no compelling reason to disclose parties' internal forecasts to their competitors in this proceeding. The forecasts reflect marketing strategies entitled to protection in the context of an increasingly competitive market. The filed

¹ 16 NYCRR 6-1.3(b)(2)(i).

forecasts will be granted trade secret status, and considered by Department of Public Service staff and the Administrative Law Judges. In the event that the individual forecasts are relied upon by the Commission for its determination in this proceeding, additional procedures may be established.

I requested parties to craft and execute a protective agreement. MCI, as one of the sponsors of evidence for which trade secret protection is sought, submitted a draft protective agreement; however, parties have not stipulated to this or any other agreement. At this time there are no submissions requiring such an agreement and no additional evidentiary submissions are contemplated. In the future, any party given leave and intending to file and serve such a submission must include, with its filing, a protective agreement executed by the parties.

Second, New York Telephone requested permission to file additional material in evidentiary form in response to the other parties' April 1, 1997 affidavits and documentary evidence. New York Telephone cited the short time available for it to analyze and respond to parties' submissions during the course of the technical conference. AT&T responded that, if New York Telephone were afforded a rebuttal, it was entitled to counter the rebuttal evidence.

New York Telephone had until April 3, 1997 to analyze and respond to the other parties' evidence, through its witnesses' testimony or any other form it chose. In light of the statutory time constraints on the Commission, there will be no further evidence taken in this proceeding except for the promised responses to questions posed at the technical conference. These must be filed and served, in hand, no later than April 14, 1997. Parties that have not yet responded to the request in the Notice of Procedures issued March 21, 1997, to provide (1) the number of residential and business subscribers that are being served by each competitor, and (2) which of the exchange service facilities used by each competitor are owned by that competitor and which are owned by New York Telephone, should do so no later than April 14, 1997. Parties will have the opportunity to interpret

each others' evidence in their briefs. If it is necessary to scrutinize further any factual material, additional procedures may be established for that purpose.

Finally, at my request, New York Telephone, AT&T, MCI, and Sprint proposed tables of contents to facilitate the briefing and analysis process. Attached as Appendix A is the Table of Contents to be followed in the initial briefs to be filed and served in hand on April 18, 1997. Reply briefs, to be filed in hand on April 30, 1997, should follow the same Table of Contents; parties may omit sections they do not address on reply. Attached as Appendix B is the most recent active party list.

(SIGNED)

ELEANOR STEIN

APPENDIX A

TABLE OF CONTENTS

- I. SUMMARY OF ARGUMENT
- II. STATEMENT OF GENERALLY AVAILABLE TERMS/IMPLEMENTATION OF THE COMPETITIVE CHECKLIST
 - A. In accordance with §§251, 252 and 271 of the Telecommunications Act of 1996, for each element or service, please answer the following questions as applicable:
 - a. Is the item commercially available?
 - b. Is it available at any technically feasible point?
 - c. Is it available at rates, terms and conditions that are just, reasonable, and non-discriminatory?
 - (i) Interconnection (§251(c)(2))
 - 1. Line-side of a local switch
 - 2. Trunk-side of a local switch
 - 3. Trunk interconnection points for a tandem switch
 - 4. Central office cross-connect points
 - 5. Out-of-band signaling transfer points
 - 6. Points of access to unbundled network elements
 - (ii) Unbundled Network Elements (§251(c)(3))
 - 1. Local Loops
 - 2. Network interface services
 - 3. Local and tandem switching capability
 - 4. Interoffice transmission facilities
 - 5. Signaling and call-related databases
 - 6. Operations support systems functions
 - 7. Operator services and directory assistance facilities
 - (iii) Poles, Ducts, Conduits and Rights-of-Way

- (iv) Unbundled Local Loops
- (v) Unbundled Local Transport
- (vi) Unbundled Local Switching
- (vii) 911, Directory Assistance, Operator Call Completion Services
- (viii) White Pages Listings
- (ix) Number Administration
- (x) Signaling and Call-Related Databases
- (xi) Number Portability
- (xii) Local Dialing Parity
- (xiii) Reciprocal Compensation
- (xiv) Resale

- B. Are unbundled network elements being provided in a manner that allows requesting carriers to combine the elements in order to provide telecommunications service?
- C. Is the bona fide request process consistent with the Act?

III. LEGAL ISSUES REGARDING INTERPRETATION AND APPLICATION OF SECTION 271

a. Section 271(c) Requirements

- (i) Is New York Telephone's Reliance on the Statement of Generally Available Terms (SGAT) to meet the Section 271 Requirements inconsistent with the Act?
- (ii) Is New York Telephone's proposal to "mix and match" items from interconnection agreements and the SGAT consistent with the Act?

b. Is New York Telephone "providing" access and interconnection?

c. Are one or more competitors providing telephone exchange service to residential and business subscribers?

- d. If so, are they providing these services either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with resale?

CASE 97-C-0271
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