

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6066

Hearing at  
Montpelier, Vermont  
April 9, 1998

Investigation into New England Telephone and )  
Telegraph Company d/b/a Bell Atlantic- )  
Vermont, Implementation of Special Contracts )

Order entered: 9/25/2001

PRESENT: George E. Young, Hearing Officer

APPEARANCES: Sheldon Katz, Esq.  
for Vermont Department of Public Service  
Thomas Dailey, Esq.  
for Bell Atlantic-Vermont

**I. Introduction**

The Public Service Board ("Board") initiated this proceeding after New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont now known as Verizon New England Inc. d/b/a Verizon Vermont, ("Verizon" or the "Company") notified the Board that the Company had implemented four special contracts without the prior Board approval required by 30 V.S.A. § 229. Upon further examination, Verizon determined that it had, in fact, implemented twelve special contracts which the Board had not approved. In addition, Verizon implemented four amendments to contracts, also without approval. In some cases, the Company put these contracts into effect following submission of the proposed special contract to the Board, but prior to Board action. In other cases, Verizon did not even file the contracts for approval.

To its credit, upon discovering that it may have acted in violation of Section 229, Verizon promptly conducted an internal investigation, notified the Board, and then altered its internal procedures to institute mechanisms designed to assure that, in the future, the Company will obtain approval of special contracts prior to offering service at the non-tariffed rates, terms and

conditions. Verizon and the Vermont Department of Public Service ("Department") have submitted a Stipulation in which they agree that these steps were appropriate. In the Stipulation, these parties also agree that Verizon should pay \$50,000, in such manner as the Board directs, as compensation for its past violations. I recommend that the Board accept these agreements, including Verizon's commitment to pay \$50,000, conclude that Verizon has taken reasonable steps to ensure compliance with Vermont law in the future, and close this investigation.

## **II. Findings**

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. In January 1998, Verizon discovered that it had implemented four special contracts without prior Board approval. Verizon promptly and voluntarily disclosed this fact to the Board and Department. Stipulation at 2.

2. Verizon immediately commenced an internal audit and compliance investigation into the events surrounding the implementation of the special contracts without prior Board approval. Verizon submitted the audit report to the Board and Department in February 1998, a follow-up audit report in March 1998, and the compliance investigation report in early May 1998. Stipulation at 2.

3. During this audit, Verizon identified four additional contracts for which the Company had not obtained prior Board approval. Verizon Internal Audit Memorandum dated February 23, 1998.

4. Verizon subsequently identified additional contracts that it had implemented without Board approval. In all, Verizon implemented the following special contracts or amendments to previously-approved special contracts without prior Board approval:

- 214 (Rock of Ages – Centrex);
- 226 (Colchester – Centrex);
- 238 (Government Services Administration – Centrex);
- 241 (Northstar – Centrex);
- 358

- 180 and 254 (State of Vermont K-12 – Data);
- Towns of Barton, Brighton, Dorset, Orleans, and Troy (Basic 911);
- Amendments to Nos. 152 and 200.

Stipulation at 2; Verizon Position Paper on Factual Issues at 1-2.

5. Verizon's implementation of the special contracts at issue prior to Board approval resulted from lack of coordination between Verizon's sales and regulatory personnel and weaknesses in the Company's internal regulatory review processes. Stipulation at 2.

6. By summer 1998, Verizon voluntarily implemented a number of measures to improve its special contract review and implementation procedures. These measures included improved internal tracking systems for special contracts; strengthened internal procedures for review of special contracts by Company regulatory personnel; and training sessions for Verizon sales and other personnel involved in negotiation and implementation of special contracts regarding applicable statutory and regulatory requirements. Stipulation at 2-3; Internal Audit Memorandum dated March 19, 1998.

7. Verizon and the Department have agreed that, within 30 days after entry of a final order in this docket, Verizon will pay fifty thousand dollars (\$50,000), in such manner as the Board shall direct, in full settlement of any and all claims that were brought or could have been brought in this docket, including but not limited to any claims for penalties under 30 V.S.A. § 230 or any other applicable statute, regulation, or Board order, arising from Verizon's implementation of the special contracts specified in paragraph 4 above without prior Board approval. Stipulation at 3.

8. The parties recommend that the Board approve the special contracts at issue that have not yet expired, for the terms set forth in the contracts, commencing on the dates Verizon implemented them. The corresponding terms of the contracts will be:

- a. Special Contract No. 214, seven years, commencing June 1996;
- b. Special Contract No. 226, ten years, commencing January 1997;
- c. Special Contract No. 238, five years, commencing October 1996;
- d. Special Contract No. 241, ten years, commencing December 1996;
- e. Special Contract No. 358, ten years, commencing October 1996; and
- f. Amendment No. 1 to Special Contract No. 200, for the remaining term of the original Special Contract.

Stipulation at 4.

9. The Stipulation provides that its terms, conditions and provisions shall be binding upon, inure to the benefit of, and be enforceable by the respective parties, including their predecessors, successors and assigns. Stipulation at 4.

### **III. Discussion**

Vermont law requires that a regulated utility company, such as Verizon, charge customers the rates set forth in the company's tariff, unless the company first obtains approval from the Board to charge a different rate. Specifically, section 229 of Title 30 states that:

A public service company shall not directly or indirectly or by any special rate, rebate, drawback or other device or method make any deviation from the rates, fares, charges or prices for any service rendered by it or in services rendered or to be rendered in connection therewith, as specified in its schedules of charges in effect at the time such service was rendered. No public service company may enter into any contract, agreement or arrangement relating to the furnishing or rendering of any special product or special service not provided for or covered in the schedule without the prior approval of the board.

If a company grants a special rate or rebate without first obtaining approval from the Board, section 230 allows the Board to impose a civil penalty up to the larger of \$10,000 or five times the amount of the benefit or rebate. In addition, under Section 230, the Board may impose a civil penalty upon an officer or employee of the company that grants the special rate or rebate or knowingly consents thereto.

The facts relevant to this investigation are not in dispute. In early 1998, Verizon determined that the Company had been offering service under certain special contracts, at the contract rather than tariff rate, without first obtaining Board approval.<sup>1</sup> Following this discovery, Verizon notified the Department and the Board and began an internal audit and compliance investigation. As a result of the investigation, Verizon initially reported that the Company had implemented four special contracts without prior review and approval. Over the next several

---

1. In some instances, Verizon had requested, but not yet obtained, Board approval of the contracts. In other cases, including the Basic 911 contracts and the amendments to two previously approved contracts, Verizon had not even requested Board approval of the special contracts (or amendments).

months, the Company identified the other contracts improperly put into effect. Ultimately, Verizon determined that, during the period 1995 through 1997, the Company had implemented five special contracts for the provision of Basic-911 services to Vermont communities, seven special contracts with industrial customers or the State of Vermont (most of these contracts were for Centrex service), and several amendments to two special contracts (the Board had approved the underlying contracts) without obtaining approval for the special rates under Section 229.<sup>2</sup> In some instances, the unapproved special rate was in effect for a limited period of time. The Basic-911 contracts and a contract with the State of Vermont under which Verizon provided discounts for schools fall into this category. Most of the other contracts (including all of the Centrex contracts) were for longer periods, with Verizon still providing the discounted rate to customers.

The Department and Verizon both agree that by implementing the special contracts without prior Board approval, the Company has offered special rates in violation of Section 229 of Title 30. In all, Verizon provided significant discounts to customers under these unapproved special contracts – over \$300,000 in some years.<sup>3</sup>

The primary question facing the Board is the appropriate remedy for the violations. The Department and Verizon have entered into a Stipulation in which they recommend relatively minor penalties. Specifically, the parties note that Verizon promptly notified the Board and Department upon discovering that it had improperly implemented several special contracts. In addition, they state that Verizon has taken reasonable steps to correct the internal processes to ensure future compliance. As a result, the parties do not recommend that the Board impose a penalty under Section 30, although Verizon will voluntarily pay \$50,000 in such manner as the Board shall direct, in settlement of all claims that were or could have been brought in this docket. The Department agrees that this payment is appropriate and sufficient consideration for this settlement, "considering the Company's voluntary disclosure of the noncomplying contracts, its cooperation with the Board and Department in the conduct of this investigation, its voluntarily providing all relevant information to the Board and Department, the Company's voluntary development and implementation of improvements to its special contract review and

---

2. Stipulation at 2; Verizon Response to Hearing Officer's Questions, dated March 31, 2000.

3. Verizon Response to Hearing Officer's Questions.

implementation procedures, and the Company's otherwise good history of compliance with statutes and regulations administered by the Board." The parties agree that the settlement set forth in the stipulation is a compromise of contested claims reached in arms-length negotiations, and is fair, reasonable, and in the public interest.<sup>4</sup>

I recommend that the Board accept the parties' Stipulation resolving the issues in this proceeding. I conclude that Verizon has taken reasonable steps to alter the Company's internal practices in ways that should promote compliance with Section 229. Verizon's audit and compliance investigation identified several reasons that the Company had not first obtained Board approval as required by Vermont law. Verizon concluded that two factors — lack of coordination between Verizon's sales and regulatory personnel and weaknesses in the Company's internal regulatory review processes — led to the implementation of the contracts in violation of Vermont law.<sup>5</sup> Since that time, Verizon has implemented several measures designed to improve its special contract review and implementation procedures. These measures include the following:

- improved internal tracking systems for special contracts;
- strengthened internal procedures for review of special contracts by Company regulatory personnel; and
- training sessions for Verizon sales and other personnel involved in negotiation and implementation of special contracts.<sup>6</sup>

I recommend that the Board accept the parties' assertion that these measures will adequately address the shortcomings that led to the improper implementation of the special contracts.

The more difficult question is whether the Board should impose a penalty under Section 230 for Verizon's failure to comply with Section 229. Vermont law explicitly proscribes charging rates other than those approved by the Board through tariffs or arrangements under Section 229. And the potentially large penalties available under Section 230 — up to five times the value of the discount — demonstrate that the legislature considers unapproved prices to be very serious violations. For the contracts at issue in this proceeding, Verizon estimates that the discounts exceeded \$300,000 per year. Simply considering the period of time prior to the initiation of this

---

4. Stipulation at 3-4.

5. Stipulation at 2.

6. Stipulation at 3.

investigation, Verizon's discounts exceeded this amount (which would allow a penalty up to \$1.5 million).

As the Department and Verizon suggest, however, there are several reasons not to impose a significant penalty. Most significantly, Verizon acted promptly and appropriately upon learning that it had implemented the special contracts without Board approval. Verizon determined the sources of the error and put in place mechanisms designed to prevent a repeat occurrence.

Balancing these considerations and the purposes of the large potential penalties under Section 230, I recommend that the Board accept the parties' Stipulation and Verizon's commitment to make a \$50,000 payment, and not impose any penalties under Section 230. First, I place considerable weight on the fact that the Department, which is charged with representing the interests of the people of the state, finds the settlement reasonable. Second, Verizon acted swiftly to identify the reasons the Company implemented the contracts without the required approval and to alter its internal procedures to prevent recurrence. Third, in light of the facts of this case, it is unlikely that a significant penalty will serve as a deterrent, which is one of the purposes of the large penalties permitted by Section 230. Verizon recognized from the outset that its actions were inconsistent with the requirements of Vermont law. And the Company is on notice that the Board is prepared to impose substantial penalties for future violations.

Although Verizon has agreed to pay \$50,000, the parties did not specify in what manner that money would provide value to ratepayers. In their comments upon this Proposal for Decision, Verizon and the Department should recommend a specific disposition of the \$50,000, such that the money should be used for the benefit of Verizon's customers.

The final matter raised by the Stipulation is the disposition of the contracts that Verizon has implemented but that the Board has not yet approved. The Department and Verizon both request that the Board approve them, retroactive to their original commencement dates.

I recommend that the Board approve the contracts. No party opposes approval of the contracts. Moreover, disapproval could harm the customers, who bear no responsibility for the improper implementation of the contracts. I do not, however, recommend that the Board make the approval retroactive. The Board has previously determined that Section 229 requires prior approval of special rates and does not permit retroactive approval. The parties have presented no

basis for changing that decision. Instead, the Board should approve the contracts on a prospective basis. In addition, I recommend that the Board rule that these Special Contracts are not confidential.<sup>7</sup>

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 25<sup>th</sup> day of April, 2001.

s/George E. Young  
George E. Young  
Hearing Officer

---

7. The Board has typically granted confidential treatment for customer-identifying information in Special Contracts filed by telecommunications carriers. However, the Board only permits such treatment for the first three years of the contract. As all of these contracts have been implemented for over three years, there is no reason to maintain confidentiality.

#### **IV. Board Discussion**

We accept the Hearing Officer's findings and recommendations and approve the Stipulation between Verizon and the Department. Our acceptance of the Stipulation, which includes Verizon's agreement to pay \$50,000 to promote the Vermont Distance Learning Network,<sup>8</sup> should not mask our significant concern over Verizon's failure to comply with Vermont law. Verizon has the same obligations as other utilities operating in Vermont, including a duty to ensure that its actions are consistent with applicable legal requirements. As part of this duty, Verizon must ensure that its processes and procedures are designed appropriately and that employees are aware of and seek to comply with Vermont legal standards.

We recognize that Verizon has undertaken laudable efforts to determine the reasons that the Company put special contracts into effect without the prior approval of the Board (as required by Section 229) and to modify its internal practices to avoid repetition. However, the fact remains that Verizon violated Vermont law by implementing a number of special contracts and providing significant discounts to certain customers. For these actions the Board could have imposed substantial penalties. We have concluded that considering the particular factual circumstances of this case, and the Department's agreement to the resolution set out in the Stipulation, the settlement is reasonable. However, we want to make clear that we expect full compliance by Verizon in the future and, should the Board be faced with a question of whether to impose penalties upon the Company in the future, we will consider these past violations in determining the appropriate penalty amount (as permitted by 30 V.S.A. § 30).

---

8. We note that we recently considered issues related to the payment of moneys arising from settlements into special funds. *See* Docket 6331, Order of 9/13/01 at 31-35.

### V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officer's findings and recommendations are accepted.
2. The Stipulation between Verizon New England Inc., d/b/a Verizon Vermont, ("Verizon") and the Department of Public Service dated May 12, 2000, is approved.
3. Verizon shall pay \$50,000 as settlement of the claims in this proceeding. Verizon and the Department shall recommend in what manner the money will be used to benefit ratepayers.
4. The following Special Contracts are approved:
  - a. Special Contract No. 214. The contract shall expire on June 1, 2003.
  - b. Special Contract No. 226. The contract shall expire on January 1, 2007.
  - c. Special Contract No. 238. The contract shall expire on October 1, 2001.
  - d. Special Contract No. 241. The contract shall expire on December 1, 2006.
  - e. Special Contract No. 358. The contract shall expire on October 1, 2006.
  - f. Amendment No. 1 to Special Contract No. 200. The contract shall expire on May 1, 2006.
5. We approve these Special Contracts on the condition that if opportunities for special discounts or services to educational providers, libraries or certain rural health care providers arise as a result of the implementation of Sections 254(h)(1)(A) or (B) of the Telecommunications Act of 1996, the customer(s) shall not be precluded from taking advantage of those opportunities, to the extent applicable, because of these Special Contracts.
6. Verizon shall supply a copy of this Special Contract approval to the contracting customer within ten (10) days of the issuance of this Order.
7. Our approval of these Special Contracts reflects our overall judgement that, as conditioned, approval of the Special Contracts is consistent with 30 V.S.A. § 229. Except as specifically conditioned, our approval should not be construed as approval or disapproval of any of the specific negotiated terms, or as a determination that those terms are, or are not, cost-effective for the contracting customer or otherwise in the contracting customer's best interest.
8. The Special Contracts approved by this Order shall be available to the public.

Dated at Montpelier, Vermont, this 25<sup>th</sup> day of September, 2001.

_____ )	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u> )	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u> )	

OFFICE OF THE CLERK

FILED: September 25, 2001

ATTEST: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*