STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6237

Petition of Concert Communications Sales, LLC for	)
a certificate of public good to operate as a provider	)
of telecommunications services in Vermont,	)
including service to the local exchange	)

Order entered: 4/18/2001

I. INTRODUCTION

Concert Communications Sales, LLC ("Concert" or the "Company") requests issuance of a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 231, to provide intrastate interexchange telecommunications service in Vermont, including service to the local exchange. In this Order, the Vermont Public Service Board ("Board") concludes that Concert should be issued a CPG as requested to allow the Company to begin operating as a telecommunications carrier within the state.

II. PROCEDURAL HISTORY

On November 16, 2000, Concert, pursuant to 30 V.S.A. § 231 and the rules and regulations of the Board, filed a Telecommunications Provider Registration Form ("Registration Form") and the required accompanying documentation, seeking a CPG to offer all forms of telecommunications services in the State of Vermont.[1] Concert originally filed an application for a CPG on March 29, 1999, in this Docket. On June 7, 1999, a prehearing conference was held and the Vermont Department of Public Service ("Department") and Concert agreed to work together toward development of a draft proposed order. Since that time, ownership of Concert has changed and the Board has promulgated the use of the Registration Form.

On April 2, 2001, the Department filed a letter with the Board in which it recommended that a CPG be granted without the need for investigation or hearings. The Board has reviewed the petition and accompanying documents and agrees that a CPG should be issued without

1. Telecommunications Provider Registration Form at 1.

hearing. As a result, newspaper publication is not required prior to issuance of the CPG. 30 V.S.A. §§ 102(a), 231(a).

Based upon the Registration Form and accompanying documents, the Board makes the following findings.

III. FINDINGS

1. Concert has all the necessary authority to transact business in Vermont. Concert is incorporated in Delaware and was granted its Certificate of Organization to transact business in Vermont on March 24, 1999. Registration Form at Attachment 1.

2. Concert proposes to provide all forms of telecommunications services on a resale, lease and facilities-based basis throughout Vermont. Registration Form at 4.

3. Concert currently provides local exchange services in all mainland intrastate jurisdictions with the exceptions of Delaware, Georgia, Maine, Maryland and New Mexico -- where applications are pending -- and Alaska, Arkansas, Connecticut and Ohio where applications will be filed shortly. Concert is also authorized to provide interexchange services in all states except Alaska, Connecticut, Maine and Maryland where applications are pending. Registration Form at 4.

4. Concert has provided the necessary documentation regarding management structure and financial information. Registration Form at Attachments 2 and 3.

5. Concert has not filed for bankruptcy and has never been the subject of an investigation by a state or federal authority. Registration Form at 4 and 5.

6. Concert intends to serve all the counties in Vermont within twenty-four months of obtaining authorization. Registration Form at 4.

IV. DISCUSSION

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g, Docket No. 5012, Petition of Burlington Telephone Company, Order of 5/27/86.

The first rationale for entry regulation -- "consumer protection" -- remains one of the Board's policy objectives. Having reviewed the petition of Concert and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of Concert's petition nor do they warrant an investigation at this time.

The second -- or "franchise protection" -- rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition outweighed any flaws, and that competition should be permitted in Vermont's markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.[2]

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements

2. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

and Docket No. 5713 investigation and decisions."[3] The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

> impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[4]

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may not use that authority to prohibit all competitive entry.[5] Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

At the present time, however, the Board has not fully investigated the conditions that should apply to entry into local exchange competition. In Docket 5909, the Board concluded that, in general, conditions related to competitive entry could be deferred to Docket 5713 (and its successor dockets). In Docket 5909, the Board included a specific condition in Hyperion's CPG making clear that Hyperion must comply with any conditions related to competitive entry imposed in subsequent Board proceedings. The Board sees no reason to deviate from that policy here and recommends inclusion of a similar provision in Concert's CPG.

The Company should also be aware of the Board's policy regarding the provision of operator services, should the Company , in the future choose to offer these services. As a substantive matter, the Board has previously found that, for carriers such as the Company that do not possess market power, there is little need for cost-of-service or rate-of-return regulation in order to meet the statutory criterion of just and reasonable rates. There is an exception

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3. Vermont Telecommunications Plan (dated December 1996) at iii.
4. 47 U.S.C.A. § 253(b).
5. *In the Matter of Classic Telephone, Inc.,* Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

regarding regulation of rates, however, with respect to rates for operator services. In our Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Operator Service Providers in Vermont, we noted that "customers who are not expert in the rapidly changing field of telecommunications . . . stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent." Docket No. 5566, Order of 1/6/95 at 101. Consequently, we mandated rate caps for operator services, set at the rates charged by New England Telephone and Telegraph Company, now known as Verizon New England Inc. d/b/a Verizon Vermont ("Verizon"). No reseller may authorize or bill surcharges not set out in Verizon's tariff. We limited this requirement, however, as follows: "(1) the rate cap shall apply to calls (except dial-around calls) made from aggregator and other transient locations; (2) the rate cap shall not apply to calls from those locations where the subscriber selecting the presubscribed OSP carrier is also the person or entity who will be paying the bill; and (3) the rate cap will not apply to dial-around calls, which involve services selected by the caller and outside the control of the presubscribed AOS provider." *Id*.

Additionally, the Company should be aware of the Board's policy in connection with the provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the Vermont market that provide debit prepaid calling card services. *See* C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.[6] Consequently, we ordered World Telecom Group and Quest Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also

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6. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. See, e.g., C.P.G. #156, Petition of IDB WorldCom Services, Inc., Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a guideline to certain consumer protection concerns" and are not required by the Public Service Board. Id. at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

stated that we would examine the issue of whether this requirement should be instituted on anindustry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform the Company that should it decide to include the provision of debit cards among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid calling card services, for the first 12 months of operation. This approach will be fair to the Company, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

V. ORDER

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

1. Based on the above findings, discussion and conclusion, the provision of telecommunications services by Concert Communications Sales, LLC ("Concert"), will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG.

2. Prior to offering telecommunications service in Vermont, Concert shall file a tariff for intrastate service. Concert shall publish, in two newspapers of general circulation, tariff summaries approved by the Department of Public Service, within such time as the Board directs, in compliance with 30 V.S.A. § 225(a). Concert's tariff shall include terms and conditions making available unbundled service elements necessary for the provision of

enhanced 911 service, as required by 30 V.S.A. § 7055(e). Such tariff shall become effective forty-five days from the date of filing, absent further order by the Board or appropriate motions by the Department of Public Service or affected parties.

3. If Concert at any time in the future proposes to offer operator services, it shall be required to comply with the Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont, and any future orders in that docket.

4. If Concert at any time in the future proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

5. If Concert intends to do business in the State of Vermont under any name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Board and the Department of Public Service at least fifteen days before commencing business under the new trade name.[7]

Dated at Montpelier, Vermont, this 18th day of April, 2001.

s/Michael H. Dworkin	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: April 18, 2001

ATTEST: s/Judith C. Whitney
Deputy 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 in writing) 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.

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7. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.