

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6567

Interconnection Agreement between Verizon New)
England Inc., d/b/a Verizon Vermont, and KMC)
Telecom V, Inc.)

Order entered: 3/13/2002

ORDER APPROVING INTERCONNECTION AGREEMENT

I. BACKGROUND

On September 24, 2001, KMC Telecom V, Inc. ("KMC Telecom") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), requested that, pursuant to Section 252(e) of the Telecommunications Act of 1996 (the "Act"), the Vermont Public Service Board ("Board") approve the adoption, with the exclusions detailed below, of the Interconnection Agreement as negotiated between Global NAPS Inc. ("GNAPS") and Verizon New England Inc., f/k/a New England Telephone and Telegraph Company, that was approved as an effective agreement in the State of Maine by the Maine Public Utilities Commission (Docket # 98-662) on October 1, 1998 ("GNAPS/Verizon Maine Agreement"). The parties state that the new Interconnection Agreement ("KMC/Verizon Agreement"), adopting the GNAPS/Verizon Maine Agreement, shall be effective on September 24, 2001, the date of KMC Telecom's filing with the Board.

On October 16, 2001, the Board solicited a recommendation from the Vermont Department of Public Service ("Department"). The Department, by letter dated November 7, 2001, recommended that the Board approve the Agreement in whole, finding that the Interconnection Agreement did not violate Section 252 of the federal Telecommunications Act of 1996 and that the Agreement did not contain terms that will harm Vermont consumers or competitors.

In November, 2001, the Board concluded that the Interconnection Agreement had expired by its own terms, so that no further action was needed. Specifically, the letter from Verizon to

KMC Telecom,¹ that outlined the negotiated terms of the Interconnection Agreement, contained the following explicit condition:

The GNAPS/Verizon Maine agreement is currently scheduled to terminate on October 1, 2001. Thus, the Verizon Maine Terms adopted by KMC also shall terminate on that date.²

The Board notified Verizon of the Board's understanding that this language rendered the request moot, inasmuch as the KMC/Verizon Agreement would have expired before it was approved.

On February 28, 2002, KMC again requested that the Board approve the KMC/Verizon Agreement. The Parties clarified that their intent had been that the KMC/Verizon Agreement would continue in effect until the termination of the GNAPS/Verizon Maine Agreement. The GNAPS/Verizon Maine Agreement will terminate on April 25, 2002, so that the KMC/Verizon Agreement also will terminate on April 25, 2002.³

II. DISCUSSION

The Board's review of the Interconnection Agreement is governed by the federal law that authorizes such agreements. Under Subsection 252(a) of the Act, any interconnection agreement negotiated under Section 252(a) must be submitted to the State commission for review under Section 252(e).⁴ The State commission has the authority to "approve or reject the agreement, with written findings as to any deficiencies." The Board may not reject the proposed Interconnection Agreement in whole or in part unless it finds that the agreement or any material portion thereof discriminates against a non-party carrier or is inconsistent with the public interest. The Board may also establish and enforce other requirements of State law in its review of the agreement under Section 252(e)(3). The Board must act to approve or reject the agreement

1. Letter from Jeffrey A. Masoner (Vice President - Verizon Interconnection Services), dated April 4, 2001, to Andrew M. Klien, Esq. (Counsel to KMC Telecom), reviewed and countersigned by Michael P. Duke, Director - Government Affairs, KMC Telecom.

2. *Id.* at 2.

3. Verizon letter, February 13, 2002, at 2, stating ". . . Verizon has sent notice dated January 25, 2002, terminating the KMC/Verizon VT arrangement (to the extent it is in effect). Accordingly, . . . Verizon will honor [the GNAPS Agreement] terms until they terminate as of April 25, 2002."

4. Under the Act, the Board is the "State Commission" in Vermont. 47 U.S.C.A. § 3(41).

within 90 days of its submission, or the agreement is deemed approved.⁵ While the 90-day review period mandated by that section ended on November 27, 2001, the Board did not need to act by that date as the filed Interconnection Agreement had already expired. Rather, with the understanding that a revised request was forthcoming, the Board considers the original filing moot, and to be superceded by the current, February 28, 2002, filing.

The Interconnection Agreement negotiated by Verizon and KMC Telecom sets out the terms and conditions under which Verizon will make certain services available to KMC Telecom. In particular, the Agreement specifies the terms and conditions for resale of Verizon's services, purchasing of unbundled network elements, types of interconnection and collocation agreed to, and compensation arrangements that will apply.⁶ The initial term of the GNAPS Agreement ended October 1, 2001, but its terms will continue in effect until April 25, 2002.

The Interconnection Agreement is the result of arms-length negotiations between two telecommunications carriers. The Board's focus, as the Act provides, is therefore limited to the issues set forth in Section 252(e)(2)(A): whether the Agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the Agreement, and whether the Agreement is consistent with the public interest, convenience, and necessity. As the Board concluded previously, in making its determination, the Board must focus upon the potential effect of the Agreement on the evolution of competition in this state and whether the Agreement raises the risk of harm to consumers (and thus is not consistent with the public interest).⁷

The competition enabled by this and other interconnection agreements will likely benefit Vermont consumers and is consistent with the State's telecommunications goals as set out in 30 V.S.A. § 202c and the Telecommunications Plan adopted under Section 202d. At the same time, the Agreement does not contain terms that will harm consumers or competitors. It thus promotes the public interest.

5. 47 U.S.C. § 252(e)(4).

6. GNAPS Agreement at 14-64 and Exhibit A, Pricing Schedule.

7. Docket 5905, Order of 11/4/96 at 12.

The KMC/Verizon Agreement also does not discriminate against telecommunications carriers who are not a party to it. Pursuant to 47 U.S.C. § 252(i), other companies seeking to interconnect may adopt the same terms and conditions.

Finally, our approval of the KMC/Verizon Agreement applies only to those terms and conditions set out therein. To the extent parties negotiate modifications or clarifications to the KMC/Verizon Agreement, they are not subsumed in our approval of the current KMC/Verizon Agreement. To the extent the changes are material, the parties will need to seek additional approvals from the Board.

III. ORDER

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

1. Pursuant to Section 252(e)(1) of the Telecommunications Act of 1996, the Interconnection Agreement between Verizon New England Inc., d/b/a Verizon Vermont, and KMC Telecom V, Inc., is hereby approved.
2. Verizon and KMC Telecom shall be bound to comply with any lawful requirement imposed by the Board in Docket 5713, Docket 5903, any docket or rule established with respect to E-911 service, and any other docket or rulemaking proceeding governing the obligations of telecommunications carriers in Vermont.
3. Verizon and KMC Telecom shall notify the Board and Department of any modifications to the Interconnection Agreement or the establishment of any terms and conditions that the Interconnection Agreement as filed leaves to further negotiations. If necessary, Verizon and KMC Telecom shall seek Board approval for the new or changed terms and conditions.

Dated at Montpelier, Vermont, this 13th day of March, 2002.

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

OFFICE OF THE CLERK

FILED: March 13, 2002

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 apparent 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.