

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6687

In Re: Resale Agreement between Verizon New)
England Inc., d/b/a Verizon-Vermont, and 1 Com,)
Inc.)

Order entered: 6/13/2002

ORDER APPROVING RESALE AGREEMENT

I. BACKGROUND

On April 15, 2002, 1 Com, Inc. ("1 Com") 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 Public Service Board ("Board") approve a Resale Agreement between them dated April 5, 2002.

On May 24, 2002, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the Board approve the Resale Agreement between Verizon and 1 Com. The Department, in its letter, stated that the Resale Agreement was not in violation of Section 252 of the Telecommunications Act of 1996 and did not appear to contain any terms that will harm Vermont consumers or competitors.

II. DISCUSSION

The Board's review of the Resale 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).¹ 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 Resale 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).

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

The Board must act to approve or reject the agreement within 90 days of its submission, or the agreement is deemed approved.² The 90-day review period mandated by that section ends on July 15, 2002.

The Resale Agreement negotiated by Verizon and 1 Com is substantially similar to the Resale Agreements between Verizon and other providers of telecommunications services which the Board previously approved. The Resale Agreement contains terms and conditions for the resale of Verizon's services,³ discounts for resold services,⁴ recurring monthly establishment charges,⁵ as well as other provisions that will allow 1 Com to obtain services from Verizon. The Resale Agreement's term is not limited. Either party may cancel the Agreement on 90 days' notice to the other party.⁶

The Resale 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 Resale Agreement does not contain terms that will harm consumers or competitors. It thus promotes the public interest.

2. 47 U.S.C. § 252(e)(4).

3. Resale Agreement at 1 (§ 1).

4. Resale Agreement, Appendix A to Resale Attachment, at §§ I- II.

5. Resale Agreement, Appendix A to Resale Attachment, at § II.

6. Resale Agreement, at 1 (§ 2.2.).

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

The 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.

The discussion and recommendations set out in this Order relate solely to the terms and conditions that the parties have negotiated. Approval of the present Agreement does not constitute approval of these prospective future arrangements that are not now specifically identified as agreements between the parties. Therefore, the parties must be required to notify the Board at the time they negotiate any changes to the agreement or specific terms, such as Individual Case Basis Pricing. This will allow the Board and other parties to examine the subsequent arrangements and determine whether additional proceedings are necessary. In addition, it will ensure that entities that are not party to the Agreement have the ability to examine those commitments and take advantage of them under Section 252(i) of the Act. To the extent that the modifications affect the Agreement itself, it is also likely that the parties will need to seek approval again under Section 252(a) of the Act.

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 Resale Agreement between Verizon New England Inc., d/b/a Verizon-Vermont, and 1 Com, Inc. is hereby approved.
2. Verizon and 1 Com 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 1 Com shall notify the Board and Department of any modifications to the Resale Agreement or the establishment of any terms and conditions that the Resale Agreement as filed leaves to further negotiations. If necessary, Verizon and 1 Com shall seek Board approval for the new or changed terms and conditions.

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

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: June 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 in writing) 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.