

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6901

Interconnection Agreement between Verizon New)
England Inc., d/b/a Verizon Vermont, and XO Long)
Distance Services, Inc.)

Order entered: 1/7/2004

ORDER APPROVING INTERCONNECTION AGREEMENT

I. BACKGROUND

On October 13, 2003, XO Long Distance Services, Inc. ("XO") 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 Ciera Network Systems, Inc. ("Ciera") and Verizon, that was approved as an effective agreement by the Board.¹ The parties state that the new Interconnection Agreement ("Agreement"), adopting the Ciera/Verizon Agreement, shall be effective as of August 27, 2003.

On October 31, 2003, the Board solicited a recommendation from the Vermont Department of Public Service ("Department"). The Department, by letter dated November 21, 2003, 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.

II. DISCUSSION

The Board's review of interconnection agreements 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

¹ Docket 6627, Order of 3/13/2002.

Section 252(e).² 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 interconnection 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 interconnection agreement under Section 252(e)(3). The Board must act to approve or reject the interconnection agreement within 90 days of its submission, or the interconnection agreement is deemed approved.³ The 90-day review period mandated by that section for this Agreement ends on January 12, 2004.

The Agreement adopted by Verizon and XO sets out the terms and conditions under which Verizon will make certain services available to XO. In particular, the Agreement specifies the terms and conditions for purchasing of unbundled network elements, types of interconnection and collocation agreed to, and compensation arrangements that will apply. While Verizon states that "[the] adoption of the Terms is currently scheduled to expire on November 15, 2003,"⁴ the new agreement shall be controlled by the term and termination provisions of the Ciera/Verizon agreement, which state that the agreement will remain in effect until terminated by either party upon 90 days' notice.⁵

The 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

²Under the Act, the Board is the "State Commission" in Vermont. 47 U.S.C.A. § 3(41).

³47 U.S.C. § 252(e)(4).

⁴ Letter dated August 13, 2003, from Verizon to XO at ¶ 3.

⁵ Ciera/Verizon agreement at 1-2.

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).⁶

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.

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.

Finally, our approval of the Agreement applies only to those terms and conditions set out therein. To the extent parties negotiate modifications or clarifications to the Agreement, they are not subsumed in our approval of the current 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 XO Long Distance Services, Inc., is hereby approved.
2. Verizon and XO 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 XO shall notify the Board and Department of any modifications to the Interconnection Agreement or the establishment of any terms and conditions that the

⁶Docket 5905, Order of 11/4/96 at 12.

Interconnection Agreement as filed leaves to further negotiations. If necessary, Verizon and XO shall seek Board approval for the new or changed terms and conditions.

Dated at Montpelier, Vermont, this 7th day of January, 2004.

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

OFFICE OF THE CLERK

FILED: January 7, 2004

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.