

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5918

Designation of Eligible	)	Hearing at
Telecommunications Carriers Under	)	Montpelier, Vermont
the Telecommunications Act of 1996	)	April 20, 1999

Order entered: 4/29/99

**DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS**

PRESENT: Peter M. Bluhm, Hearing Officer

APPEARANCES: Sheldon Katz, Esq.  
for Vermont Department of Public Service

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\* Party of record, but did not appear at hearing.

### **Summary**

This Order recommends designation of ten Vermont local exchange companies as "Eligible Telecommunications Carriers" ("ETCs") through December 31, 2001. It also recommends that this docket remain open indefinitely to consider related issues and to renew the designation when it expires.

### **Introduction**

This docket was opened on October 4, 1996, to designate ETCs. Under federal law, ETCs are eligible for certain benefits administered by the Federal Communications Commission ("FCC"), such as high cost support. In addition, their customers are eligible for FCC-sponsored benefits, such as through the Lifeline program.

On December 23, 1997, the Board entered an Order designating ETCs for calendar year 1998. On December 31, 1998, that Order was extended for a term of four months, to expire May 1, 1999. In anticipation of that expiration, technical hearings were held on April 20, 1999.<sup>1</sup>

At technical hearings, in lieu of offering evidence, all parties present offered a Stipulation. The Stipulation was signed by: the Department of Public Service; New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont; Ludlow Telephone Company; Northfield Telephone Company; Perkinsville Telephone Company; Franklin Telephone Company; STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Shoreham Telephone Company, Inc.; Topsham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc., d/b/a Champlain Valley Telecom, d/b/a Waitsfield Telecom; and Vermont Telephone Company, Inc.

Based on the Stipulation, the Hearing Officer reports the following findings, conclusions and discussion to the Public Service Board. This proposed decision is reported to the Board in accordance with the provisions of 30 V.S.A. § 8. The parties have waived the opportunity to comment under 3 V.S.A. § 811.

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1. The hearings were delayed because the parties had advised the Hearing Officer in early March that they would be stipulating all relevant facts. That stipulation was not produced, however, until April 20, the date on which technical hearings actually were held.

### **Legal Standard**

Before a "telecommunications carrier"<sup>2</sup> is eligible for federal universal service support, it must be designated as an Eligible Telecommunications Carrier.<sup>3</sup> Under federal law, the Vermont Public Service Board is responsible to designate ETCs in Vermont, based upon standards established by federal law ("ETC Requirements").<sup>4</sup>

Before the Board may certify an ETC, the carrier must show that it offers nine services: voice grade access to the public switched network; local usage; touch tone service; single party service; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation.<sup>5</sup> These nine services must be offered throughout the service area for which the designation is received, and the services must be offered either using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services.<sup>6</sup> A carrier that merely resells another carrier's facilities is not eligible to be designated.<sup>7</sup> The ETC must also advertise the availability of those services and the charges for those services using media of general distribution.<sup>8</sup>

### **Findings**

1. The following are Telecommunications Carriers as defined by 47 C.F.R. § 54.5 and are public utilities subject to the jurisdiction of the Public Service Board under 30 V.S.A. §§ 203 and 209 ("Designated Companies").

- a. New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic-Vermont").
- b. Ludlow Telephone Company;
- c. Northfield Telephone Company;
- d. Perkinsville Telephone Company;
- e. STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont;

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2. "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.

3. 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

4. *Id.* Those standards are found generally in 47 C.F.R. § 54.101 *et seq.*

5. 47 C.F.R. § 54.101(a), (b).

6. 47 C.F.R. § 54.201(d)(1).

7. 47 C.F.R. § 54.201(i).

8. 47 C.F.R. § 54.201(d)(2).

- f. Shoreham Telephone Company, Inc.;
- g. Topsham Telephone Company, Inc.;
- h. Franklin Telephone Company;
- i. Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom and d/b/a Champlain Valley Telecom; and
- j. Vermont Telephone Company, Inc.

Stipulation at ¶ 1.

2. Each Designated Company is the incumbent local exchange carrier for its service area, as defined by 47 U.S.C. § 251(h)(1). Stipulation at ¶ 2.

3. With the exception of Bell Atlantic-Vermont, each of the Designated Companies is a rural telephone company as defined by 47 U.S.C. § 153 (37). Stipulation at ¶ 3.

4. Each Designated Company provides the nine required services: voice grade access to the public switched network; local usage; touch tone service; single party service; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation. These services are provided using each local exchange company's own facilities or a combination of its own facilities and resale of another carrier's services, in accordance with that company's schedule of rates, terms and conditions on file with the Board. Stipulation at ¶ 4.

5. Each of the Designated Companies offers Lifeline and Link-Up assistance programs for qualifying low-income customers in its respective service area, in accordance with 47 C.F.R. § 54.411. The Designated Companies also specifically notify their customers of the availability of Lifeline and Link-up Services. Stipulation at ¶ 5.

6. As required by 47 C.F.R. Section 54.201(d)(2), each Designated Company has already advertised and published to the public the availability of, and prices for, each of the services relevant to the FCC requirements for designation as an ETC, and it will continue to advertise and publish those services. Stipulation at ¶ 6.

7. None of the Designated Companies requested or requires a waiver from the requirement to provide any of the nine services described above, including, without limitation, the requirement to provide single-party service or the requirement to provide access to emergency services. Stipulation at ¶ 7.

### CONCLUSIONS AND DISCUSSION

Each of the Designated Companies provides all of the nine services required to receive Federal universal service support, either using the company's own facilities or a combination of its own facilities and resale of another carrier's services, and in a manner required by the ETC Requirements. Each Designated Company's advertising practices satisfy the requirement of the FCC that designated carriers notify the public of the availability and price of the relevant services. This Board has continuing authority to monitor the effectiveness of carriers' advertising to ensure ongoing compliance with the FCC mandate.

I conclude that designation of each of the ten Designated Companies as eligible telecommunications carriers under 47 U.S.C. § 214(e) and in compliance with 47 C.F.R. § 54.201 promotes the public good because it will ensure that federal universal service funds are available to promote universal telephone service throughout the state. Continued support is also in the interest of Vermont consumers who would likely face higher rates or lower quality service in the absence of USF support.

Consistent with the Board's earlier Order in this docket,<sup>9</sup> the proposed Order here contains two provisions of interest to parties who are not Designated Companies. One of those provisions allows any other telecommunications carrier to seek and obtain designation as an ETC in Vermont at any time. If a petition is filed, it will be reviewed using the same standards that the Designated Companies have met here. Second, the Board may designate one or more "service areas" within Bell Atlantic-Vermont's current study area, and it may alter the service areas of other Designated Companies in accordance with federal law.

The proposed order contains three new provisions regarding duration of the designation. All three provisions are consistent with the Stipulation. Their combined effect is to establish designations on a three-year renewal cycle.

First, the Board's designation will expire on December 31, 2001, which is three years from the Board's Order of December 31, 1998.<sup>10</sup> It is anticipated that the Board may thereafter renew the designation.

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9. That Order was issued on December 23, 1997, and applied to calendar year 1998.

10. *See*, Stipulation at ¶ 8.

Second, consistent with the Stipulation,<sup>11</sup> the proposed order also provides for a multi-step procedure for subsequent periodic renewal of designations in 2001 and thereafter. As a designation Order approaches expiration, each Designated Company anticipates that it will file with the Board, and will deliver a copy to the Department, a certification that it continues to satisfy all of the ETC Requirements.<sup>12</sup> This certification will be filed during the period beginning 120 days and ending 90 days prior to the expiration of the current designation. Thereafter, the Department of Public Service ("Department") may file a Notice of Objection to continued designation within the period beginning 90 days and ending 30 days prior to the expiration of the current designation. If no Notice of Objection is filed, the Board may, without taking further evidence, issue a new Order renewing the designations for an additional period of three years.

If, however, the Department does file a Notice of Objection stating that a Designated Company does not continue to satisfy one or more of the ETC Requirements, the Board will offer the Designated Company an opportunity for hearing. The Designated Company will bear the burden of demonstrating that it continues to satisfy the contested ETC Requirements. If it carries that burden, the Board will then renew the contested designation for an additional period of up to three years. During the litigation, the current designation will remain in effect, but it may be extended pending a decision on the merits.<sup>13</sup>

Third, consistent with the Stipulation,<sup>14</sup> the proposed order contains a provision to challenge a Designated Company's designation during an existing designation period. At any time during the term of a designation Order, the Department or the Board may provide to a Designated Company a written "Notice of Possible Non-Compliance" relating to one or more of the ETC Requirements. Within 30 days, the affected Designated Company must then certify in writing to the Board, and deliver a copy to the Department, that the Designated Company continues to satisfy each of the ETC Requirements identified in the notice of possible non-compliance ("Claim of Continued Compliance"). The Board may revoke the

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11. See, Stipulation at ¶ 13.

12. Those requirements are today found in 47 C.F.R. § 54.101 *et. seq.* The Stipulation recognizes that these requirements may be amended from time to time.

13. We note that the Stipulation contains notice deadlines that allow almost no time for hearings and decision by the Board. It appears possible that, should a renewal be contested according to the schedule approved here, a significant extension of the current designation Order would be requested, on a case-specific basis.

14. See, Stipulation at ¶ 14.

affected Designated Company's designation as an ETC or order such other remedies as the Board deems appropriate if either of the following occurs:

- A. The affected Designated Company has failed to file a Claim of Continued Compliance.
- B. The Designated Company has filed a Claim of Continued Compliance, but the Board subsequently determines, after opportunity for hearing, that the Designated Company has not demonstrated that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance. During these proceedings, the current designation Order will remain in effect. The Board and the Department may exercise their existing authority under Title 30 of Vermont Statutes Annotated, including, without limitation, 30 V.S.A. §§ 18 and 206. The Department and a Designated Company may at any time informally resolve or attempt to resolve compliance issues.

These procedures permit renewal of noncontroversial designations with minimal cost and delay, while at the same time permitting any party in interest the opportunity to challenge a designation where a real issue exists.<sup>15</sup> I conclude that these procedures relating to a three-year term, renewal of designation Orders, and challenge to existing designations are reasonable and consistent with the public good.

In summary, I recommend that each Designated Company receive a designation, to expire on December 31, 2001, subject to the renewal and challenge provisions described above. This will allow the ETC to receive universal service support in its respective service area in Vermont and its customers to receive the benefits of Lifeline support.

DATED at Montpelier, Vermont, this 29<sup>th</sup> day of April, 1999.

s/ Peter Bluhm  
Peter M. Bluhm, Esq.  
Hearing Officer

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15. These procedures are similar in many ways to the procedures contained in 30 V.S.A. §§ 225-227 relating to the setting and review of utility rates.

**ORDER**

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

1. The Findings and conclusions of the Hearing Officer are adopted.
2. The following carriers are designated as Eligible Telecommunications Carriers, with service areas defined by their existing study areas. This designation is made under authority of 47 U.S.C. § 214(e):
  - a. Franklin Telephone Company;
  - b. Ludlow Telephone Company;
  - c. New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont;
  - d. Northfield Telephone Company;
  - e. STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont;
  - f. Perkinsville Telephone Company;
  - g. Shoreham Telephone Company, Inc.;
  - h. Topsham Telephone Company, Inc.;
  - i. Vermont Telephone Company, Inc.;
  - j. Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom.
3. The Board retains continuing jurisdiction to review, modify, or revoke its designation of Eligible Telecommunications Carriers.
4. The designation will expire on December 31, 2001, unless otherwise extended as provided in the following paragraphs.
5. During the period beginning 120 days and ending 90 days prior to the expiration of a designation under this Order, each Designated Company may file with the Board a certification stating that it continues to satisfy all of the requirements set forth in federal law for designation as an ETC (the "ETC Requirements"), including 47 C.F.R. § 54.101(a) as it may be amended from time to time. A copy of any such certification will be given to the Department. Thereafter, the Department of Public Service ("Department") may object to continued designation, stating that a Designated Company does not continue to satisfy one or

more of the ETC Requirements ("Notice of Objection"). Any Notice of Objection shall be filed within the period beginning 90 days and ending 30 days prior to the expiration of the current designation Order.

- a. If no Notice of Objection is filed, the Board will issue a new designation Order extending the designation for an additional period of three years.
- b. If a Notice of Objection is filed, the Board will give the affected Designated Company an opportunity for hearing. The Designated Company will have the burden of demonstrating that it continues to satisfy the applicable ETC Requirements listed in the Notice of Objection. If it carries that burden, the Board may then renew the contested designation for an additional period of up to three years. Pending disposition of contested issues, the designation shall remain in effect until it expires; however, upon request, the Board may extend the designation until it reaches a decision on the merits.

6. At any time during the term of this Order, the Department or the Board may provide to a Designated Company a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. Within 30 days, the affected Designated Company shall certify in writing to the Board, and deliver a copy to the Department, that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance ("Claim of Continued Compliance"). The Board may revoke the affected Designated Company's designation as an ETC or order such other remedies as the Board deems appropriate if either of the following occurs:

- a. The affected Designated Company has failed to file a Claim of Continued Compliance.
- b. The Designated Company has filed a Claim of Continued Compliance, but the Board subsequently determines, after opportunity for hearing, that the Designated Company has not demonstrated that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance.

During the pendency of any such proceedings under this paragraph, the current designation Order shall remain in effect. The Department and a Designated Company may at any time informally resolve or attempt to resolve compliance issues.

7. This docket shall remain open indefinitely to consider matters related to designation of ETCs.

8. The Board reserves the right to alter the extent of service areas in all manners allowed to it under state and federal law. This includes the possibility that the service territories of non-rural carriers may be divided and the possibility that rural carriers may have service areas other than their present study areas.

9. A carrier who is not receiving ETC status under this Order may at any time apply and have the opportunity to demonstrate that it satisfies applicable Board and FCC rules for designation as an ETC.

10. This Order shall take effect on April 30, 1999.

DATED at Montpelier, Vermont, this 29th day of April, 1999.

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

OFFICE OF THE CLERK

Filed: April 29, 1999

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 of any technical errors, in order that any necessary corrections may be made.*

*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.*