

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6297

Resale Agreement between New England)
Telephone and Telegraph Company d/b/a Bell)
Atlantic-Vermont and Advanced)
Telecommunications Network, Inc.)

Order entered: 12/8/99

I. INTRODUCTION

On September 30, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") and Advanced Telecommunications Network, Inc. ("ATN") filed an agreement for Public Service Board ("Board") approval under Subsection 252(e) of the Telecommunications Act of 1996 (the "Act"). See 47 U.S.C.A. § 252(e). Under the Agreement, Bell Atlantic will offer telecommunications services it provides at retail to end users in the State of Vermont, including local exchange services, for resale by ATN (the "Resale Agreement" or "Agreement"). After considering the Agreement and the comments of the Vermont Department of Public Service (the "Department"), I recommend that the Board approve the Resale Agreement, finding that it is consistent with the public interest, convenience, and necessity and that it does not discriminate against other carriers.

II. BACKGROUND

The Bell Atlantic-ATN Resale Agreement represents another in a series of interconnection agreements between an incumbent local exchange carrier ("LEC") and a competitive LEC (or "CLEC") filed in Vermont that focuses on resale of the incumbent's services. Previously, the Board has approved numerous interconnection agreements between Bell Atlantic and CLECs directed towards the provision of unbundled network elements, as well as several interconnection agreements between Bell Atlantic and companies offering cellular mobile radio services. The Board has also previously approved numerous resale agreements.

The Board initiated this investigation and appointed me as Hearing Officer, and I convened a prehearing conference in this matter on October 21, 1999. The independent LECs operating in Vermont (the "Independents")¹ did not attend the prehearing conference and are

1. The independent telephone companies are: STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Perkinsville Telephone Company; Shoreham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom and d/b/a Champlain Valley Telecom; Topsham Telephone Company; Franklin Telephone Company; Northfield Telephone Company; and Ludlow Telephone

participating as interested persons. No party objected to the Independents' participation as interested persons.

At the October 21 prehearing conference, the parties agreed that a hearing was unnecessary. Although this proceeding is not a contested case within the meaning of the Vermont Administrative Procedures Act, the parties agreed to a procedure in which I would issue a proposed decision based upon the written filings in this proceeding on which other parties could comment. Accordingly, I report to the Board my findings and recommendation that the Resale Agreement be approved.

III. LEGAL FRAMEWORK

The Board's review of the Resale Agreement is governed by the federal law that authorizes such agreements. Under Subsection 251(a) of the Act, all telecommunications carriers, including Bell Atlantic and ATN, have the duty to "interconnect directly or indirectly . . ." 47 U.S.C.A. § 251(a)(1) (Supp. 1996). Under Section 251(b) of the Act, a local exchange carrier has the duty "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." *Id.* § 251(b)(1). Under Section 251(c) of the Act, incumbent local exchange carriers, including Bell Atlantic, have the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." *Id.* at § 251(c)(4)(A). Upon receiving an interconnection or resale request, an incumbent LEC "may negotiate and enter into a [voluntary] binding agreement with the requesting telecommunications carrier . . . without regard to the standards set forth in Subsections (b) and (c) of section 251 [governing the interconnection obligations of incumbent LECs] . . ." *Id.* § 252(a)(1). This means that the standards the Board applies to arbitration of interconnection and resale agreements, including the unbundled network element and resale discount pricing, do not directly apply to interconnection and resale agreements arrived at exclusively through negotiations.

The interconnection agreement "shall include a detailed schedule of itemized charges for interconnection and each service or network element included . . . [and] be submitted to the State commission under Subsection (e) of [Section 252]." *Id.*

Any agreement negotiated under Section 252(a) must be submitted to the State commission, in this instance, the Board, for review under Section 252(e). The "State commission," the Board in Vermont, has the authority to "approve or reject the agreement, with written findings as to any deficiencies." The Board must act to approve or reject the agreement within 90 days of its submission, or the agreement is deemed approved. *Id.* at

§ 252(e)(4). The parties have agreed that the 90-day review period mandated by that section ends on December 29, 1999.

Section 252(e) also sets out the standards under which the Board must review a negotiated agreement. Subparagraph 252(e)(2) defines these standards.

- (2) GROUNDS FOR REJECTION. -- The State commission may only reject --
- (A) an agreement (or any portion thereof) adopted by negotiation if it finds that --
- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . .

Accordingly, 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).

The federal Act also mandates that the State commission make available to the public each agreement approved by it. *Id. at* § 252(h). Finally, Section 252(i) of the Act requires that the LEC, Bell Atlantic, make available "any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." This provision helps ensure that the LEC will not agree to terms and conditions that are discriminatory.

As the Board found in Docket 5905, Section 252(e)(1) of this Act requires that the Board "approve or reject the agreement with written findings as to any deficiencies." Thus, the Board cannot condition approval. Instead, the Board must either approve the agreement or reject it, specifying the changes the parties must make to render the agreement approvable.

Based upon the record in this proceeding, I hereby report the following findings of fact in accordance with the provisions of 30 V.S.A. § 8.

IV. FINDINGS OF FACT

1. Bell Atlantic is the largest LEC operating in Vermont. Vermont Telecommunications Plan, December 1996 [herein cited as "Telecommunications Plan"] at 1-25.
2. ATN is a competitive local exchange provider. Agreement at 1.
3. Bell Atlantic and ATN have agreed on, and submitted for Board approval under Sections 251 and 252 of the Act, a Resale Agreement dated as of August 26, 1999.

4. ATN plans to provide local exchange services in Vermont and, therefore, has negotiated and filed the Resale Agreement in anticipation of its entry into the Vermont market. Agreement at 1.

5. ATN plans to act as a reseller. Under the Agreement, Bell Atlantic will offer telecommunications services it provides at retail to end users in Vermont for resale by ATN in accordance with the "Terms and Conditions -- Resale Services" attached to the Agreement as Attachment A ("Attachment A"). Agreement at 1 (§ 1).

6. Bell Atlantic filed a "Statement of Generally Available Terms and Conditions for Interconnection Services, Access to Unbundled Network Elements, Resale Telecommunications Services and Ancillary Telecommunications Services Under Sections 251 and 252 of The Telecommunications Act of 1996" dated as of September 29, 1997 (the "SGAT"), which was filed in Docket 5936 under Section 252(f) of the Act. The SGAT sets forth the terms, conditions and rates under which Bell Atlantic will make generally available to telecommunications carriers' network interconnection, access to unbundled network elements, and resale of Bell Atlantic's retail services, under Sections 251 and 252(d) of the Act. The SGAT is in effect in Vermont. Letter from Mr. Dailey dated July 30, 1997, filing SGAT in Docket 5936; Docket 5936, Order of 1/5/98 at 2.

7. The Board has the authority to continue to review the SGAT, even though it was permitted to take effect. The Board has exercised its authority to do so. 47 U.S.C.A. § 252(f)(4); Docket 5936, Order of 1/5/98 at 2.

8. Section 6 of the SGAT contains resale provisions that Bell Atlantic will make available to telecommunications carriers under the Act. Section 6 of the SGAT is incorporated into the Resale Agreement as Attachment A. Resale Agreement at 1 (§ 1).

9. The services offered to ATN under the Agreement and Attachment A are those offered by Bell Atlantic to end users under the terms and conditions of Bell Atlantic's tariff VTPSB No. 20. Attachment A, at § 6.5.1.2(A).

10. Under the Resale Agreement, the discount for services specified in VTPSB No. 20, Part A, Section 5.1 through 5.4 and the exchange line portion of services in Part H is 27.66% for Business Services and 20.43% for Residence Services, where ATN provides Operator Services/Directory Assistance. Otherwise, the discount for Business Services is 26.01% and the discount for Residence Services is 18.20%. Attachment A, at § 6.10.5.

11. Orders for resold services and modifications to or cancellation of an existing order by ATN must be placed by ATN with Bell Atlantic through automated interfaces established by Bell Atlantic. Attachment A, at § 6.3.1.2(A).

12. The Resale Agreement provides that ATN shall pay a Recurring Monthly Service Establishment charge of \$2,605.55 per month set out in Section 6.10.5.3.2 of Attachment A (and the SGAT). Under Section 3.B. of the Agreement, this service charge shall not be payable

by ATN or any other reseller, unless and until such charge has been approved by the Board. Resale Agreement, at 2 (§ 3.B).

13. Recognizing that the Board may set different rates or discounts as a result of arbitration proceedings or the investigation in Docket No. 5713, and may order changes to the SGAT, Bell Atlantic and ATN agreed to a retroactive "true-up" of the payments made under the Resale Agreement (to the extent such Board Order is issued within six months of the effective date of the Resale Agreement). Resale Agreement, at 2 (§ 3.A.).

14. The Agreement's term is not limited. Either party may cancel the Agreement on 90 days' notice to the other party. Resale Agreement, at 2 (§ 2.E.).

15. The Vermont Telecommunications Plan provides 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. When effective, competition stimulates efficiency in both the production and consumption of goods and services to the benefit of consumers, resulting in lower costs and greater value from the network. Telecommunications Plan at 1-22.

16. The overriding goal of the Telecommunications Plan is to develop modern telecommunications services for the benefit of all Vermonters and, to accomplish these goals, telecommunications services should, among other characteristics, be competitively provided. *Id.* at i.

17. The Telecommunications Plan encourages the Board to work 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* and Docket 5713 investigation and decisions." *Id.* at iii (emphasis added).

18. The Resale Agreement contains provisions that provide a framework for addressing the prerequisites and conditions for competition as set forth in the Telecommunications Plan (as amended). *See* Agreement; findings 3-18, *supra*.

19. Bell Atlantic also is a party to Docket 5713, the Board's investigation of local exchange competition, and therefore will be bound by the final outcome of that docket; Sections 2.D and 3.A. of the Resale Agreement reserve to ATN and Bell Atlantic the right to modify the Agreement to incorporate the results of any Board orders in Docket No. 5713 or other dockets and they have agreed to report any such modifications to the Board.² *See* Agreement 2-3 (§§ 2.D and 3.A).

2. Although ATN is not a party to Docket 5713, it will be governed by the findings and policies developed therein.

V. DISCUSSION

ATN and Bell Atlantic request that the Board approve their Resale Agreement pursuant to Section 252(e) of the Act. The Agreement is an Interconnection Agreement within the meaning of Section 252 of the Act that sets forth the terms under which Bell Atlantic will offer telecommunications services it provides at retail to end users in Vermont for resale by ATN.

The Resale Agreement is the result of negotiations between two telecommunications carriers. The principals established a comprehensive set of resale terms and conditions that will facilitate ATN's entry as a CLEC in Vermont. 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 in its review of the interconnection agreement between NYNEX and Hyperion, 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). Docket 5905, Order of 11/4/96 at 12.

Under the Bell Atlantic-ATN Resale Agreement, the basic terms and conditions under which Bell Atlantic will make its services available for resale by ATN are set out in Section 6 of Bell Atlantic's SGAT, which the Agreement incorporates by reference. The key pricing terms in the SGAT – the resale discounts – were established by the Board in Docket 5906, *Petition of New England Telephone and Telegraph Company for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with AT&T AND Petition of AT&T Communications of New England, Inc. for Arbitration Under the Telecommunications Act of 1996*, Order of 12/4/96.³ At present, there is no basis to conclude that these terms are inconsistent with the public interest.

Moreover, the SGAT's terms and conditions are presently in effect in Vermont and available to other telecommunications carriers, although the Board has continued its review in accordance with Section 252(f) of the Act. As other companies may take advantage of the same terms, I conclude that the Agreement does not discriminate.

I note, however, that my conclusions with respect to this Resale Agreement are limited to the specific terms and conditions of the Agreement. Certain portions of the Agreement contemplate further negotiations and changes to the terms and conditions, specifically Section 6.5.3.4 which describes Special Contract Arrangements. Approval of the present Agreement does not constitute approval of these prospective future arrangements that are not now

3. I expect that the Board will reexamine these prices either in Docket 5936 or 5713.

specifically identified as agreements between the parties. At the same time, it is necessary to recognize that the parties' agreement may change as ATN begins offering services. Therefore, I recommend that the parties 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.

In its analysis of the Hyperion agreement, the Board concluded that "the agreement furthers the Board's and the Act's pro-competitive policies." *Id.* at 19. I recommend that the Board reach the same conclusion here. Like the Hyperion agreement, the Agreement contains terms and conditions that will encourage the development of competition in the state. This competition 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.

VI. CONCLUSION

The Bell Atlantic-ATN Resale Agreement meets the requirements of Section 252(e) of the Act. It does not discriminate against other carriers and is consistent with the public interest, convenience, and necessity. Accordingly, I recommend that the Board approve the agreement.

The Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

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

s/Gregg C. Faber

Gregg C. Faber
Hearing Officer

VII. ORDER

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

1. The findings and recommendations of the Hearing Officer are adopted.
2. Pursuant to Section 252(e)(1) of the Telecommunications Act of 1996, the Resale Service Agreement between New England Telephone and Telegraph Company and Advanced Telecommunications Network, Inc. ("ATN") is hereby approved.
3. Bell Atlantic and ATN shall report to the Board and Department as follows:
 - a. Bell Atlantic and ATN shall report to the Board and request approval of any modifications and amendments to the agreement. Such terms and conditions shall not take effect until approved by the Board;
 - b. Bell Atlantic and ATN shall request Board approval with respect to any Individual Case Basis pricing and related terms and conditions under Attachment A of the Resale Service Agreement, agreed upon subsequent to Board approval of the present agreement. Such terms and conditions shall not take effect until approved by the Board.
4. ATN and Bell Atlantic shall be bound to comply with any lawful requirement imposed by the Board in Docket No. 5713, Docket No. 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.

Dated at Montpelier, Vermont, this 8th day of December, 1999.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/Suzanne D. Rude)

) BOARD

s/David C. Coen)

) OF VERMONT

OFFICE OF THE CLERK

FILED: December 8, 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.