

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6339

Resale Agreement between New England Telephone and Telegraph)
Company d/b/a Bell Atlantic-Vermont and We Connect)
Communications, Inc.)

Order entered: 3/15/2000

I. INTRODUCTION

On December 27, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic Connect Communications, Inc. ("We Connect") filed an agreement for Public Service Board ("Board") under the Telecommunications Act of 1996 (the "Act"). See 47 U.S.C.A. § 252(e). Under the Agreement, We Connect provides telecommunications services at retail to end users in the State of Vermont, including local exchange carrier ("LEC") and a competitive LEC (or "CLEC") services. After considering the Agreement and the public interest, convenience, and necessity, I recommend that the Board approve the Resale Agreement.

II. BACKGROUND

The Bell Atlantic-We Connect Resale Agreement represents another in a series of interconnection agreements between Bell Atlantic and a competitive LEC (or "CLEC") filed in Vermont that focus on unbundled network elements, as well as several interconnection agreements between Bell Atlantic and CLEC 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 hearing on February 9, 2000.

At the February 9 prehearing conference, the parties agreed that a hearing was unnecessary in this contested case within the meaning of the Vermont Administrative Procedures Act, the parties agreed

proposed decision based upon the written filings in this proceeding on which other parties could interest of a timely decision in this matter, a prehearing conference memorandum was unnecessary; memorandum accordingly. Consequently, I report to the Board my findings and recommendations.

III. LEGAL FRAMEWORK

The Board's review of the Resale Agreement is governed by the federal law that authorizes the Act, all telecommunications carriers, including Bell Atlantic and We Connect, have the duty under 47 U.S.C.A. § 251(a)(1) (Supp. 1996). Under Section 251(b) of the Act, a local exchange carrier may not impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services. Section 251(c) of the Act, incumbent local exchange carriers, including Bell Atlantic, have the duty to provide telecommunications service that the carrier provides at retail to subscribers who are not telecommunications service providers. Upon receiving an interconnection or resale request, an incumbent LEC "may negotiate and enter into an interconnection or resale agreement with the requesting telecommunications carrier . . . without regard to the standards set forth in Subsection (e) of Section 252 of the Act." *Id.* § 252(a)(1). This means that the standards for interconnection and resale agreements, including the unbundled network element and resale discounts, have been arrived at exclusively through negotiations.

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

Any agreement negotiated under Section 252(a) must be submitted to the State commission under Section 252(e). The "State commission," the Board in Vermont, has the authority to "approve or reject the agreement within 90 days of the date of submission. If the agreement is not approved or rejected within 90 days, it shall be deemed approved." *Id.* at § 252(e)(4).

The parties have agreed that the 90-day review period mandated by that section ends on the date of the Board's decision. Section 252(e) also sets out the standards under which the Board must review a negotiated agreement. The Board 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 telecommunication agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest and necessity; . . .

Accordingly, the Board may not reject the proposed Resale Agreement in whole or in part if any material portion thereof discriminates against a non-party carrier or is inconsistent with the public interest. The Board may 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 any information. Finally, Section 252(i) of the Act requires that the LEC, Bell Atlantic, make available "any information provided under an agreement approved under this section to which it is a party to any other requirement on the same terms and conditions as those provided in the agreement." This provision helps ensure that the conditions that are discriminatory.

As the Board found in Docket 5905, Section 252(e)(1) of this Act requires that the Board report its written findings as to any deficiencies." Thus, the Board cannot condition approval. Instead, the Board may 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 Docket 6339.

IV. FINDINGS OF FACT

1. Bell Atlantic is the largest LEC operating in Vermont. Vermont Telecommunications: "Telecommunications Plan"] at 1-25.
2. We Connect is a competitive local exchange provider. Agreement at 1.
3. Bell Atlantic and We Connect have agreed on, and submitted for Board approval under the Resale Agreement dated as of October 22, 1999.
4. We Connect plans to provide local exchange services in Vermont and, therefore, has in the anticipation of its entry into the Vermont market. Agreement at 1.

5. We Connect plans to act as a reseller. Under the Agreement, Bell Atlantic will offer to retail to end users in Vermont for resale by We Connect in accordance with the "Terms and Conditions of the Resale Agreement as Attachment A ("Attachment A"). Agreement at 1 (§ 1).

6. Bell Atlantic filed a "Statement of Generally Available Terms and Conditions for Interconnection of Network Elements, Resale Telecommunications Services and Ancillary Telecommunications Services" under the Telecommunications Act of 1996" dated as of September 29, 1997 (the "SGAT"), which was filed with the Board under the Act. The SGAT sets forth the terms, conditions and rates under which Bell Atlantic will make good faith arrangements for carriers' network interconnection, access to unbundled network elements, and resale of Bell Atlantic's services under § 252(d) of the Act. The SGAT is in effect in Vermont. Letter from Mr. Dailey dated July 30, 1998, and Order of 1/5/98 at 2.

7. The Board has the authority to continue to review the SGAT, even though it was previously approved by the Board under 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 other carriers under the Act. Section 6 of the SGAT is incorporated into the Resale Agreement as Attachment A. Resale Agreement, Attachment A.

9. The services offered to We Connect under the Agreement and Attachment A are those services specified in the terms and conditions of Bell Atlantic's tariff Vt. PSB No. 20. Resale Agreement, Attachment A.

10. Under the Resale Agreement, the discount for services specified in Vt. PSB No. 20, 1998, for the exchange line portion of services in Part H is 27.66% for Business Services and 20.43% for Residential Services/Directory Assistance. Otherwise, the discount for Business Services is 26.01% for Residential Services and 18.20% for Business Services. Attachment A, at § 6.10.5.

11. Orders for resold services and modifications to or cancellation of an existing order by We Connect shall be processed through automated interfaces established by Bell Atlantic. Attachment A, at § 6.10.5.3.2.

12. The Resale Agreement provides that We Connect shall pay a Recurring Monthly Service Charge for each month set out in Section 6.10.5.3.2 of Attachment A (and the SGAT). Under Section 3.B. of the Resale Agreement, the charge is payable by We Connect or any other reseller, unless and until such charge has been approved by the Board.

13. Recognizing that the Board may set different rates or discounts as a result of arbitrat No. 5713, and may order changes to the SGAT, Bell Atlantic and We Connect agreed to a retro: the Resale Agreement (to the extent such Board Order is issued within six months of the effecti Agreement, at 2 (§ 3.A.).

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

15. The Vermont Telecommunications Plan provides that competition is the preferred s reasonable price, availability, and high quality of service provided that there is adequate assuran When effective, competition stimulates efficiency in both the production and consumption of go 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 telecommr Vermonters and, to accomplish these goals, telecommunications services should, among other cl at i.

17. The Telecommunications Plan encourages the Board to work to create a "framework affordable basic service rates, high quality of service, consumer protection [and] universal service 5713 investigation and decisions." *Id.* at iii (emphasis added).

18. The Resale Agreement contains provisions that provide a framework for addressing competition as set forth in the Telecommunications Plan (as amended). *See* Agreement; finding

19. Bell Atlantic also is a party to Docket 5713, the Board's investigation of local exchang the final outcome of that docket; Sections 2.D and 3.A. of the Resale Agreement reserve to We the Agreement to incorporate the results of any Board orders in Docket No. 5713 or other dock modifications to the Board.¹ *See* Agreement 2-3 (§§ 2.D and 3.A).

V. DISCUSSION

1. Although We Connect is not a party to Docket 5713, it will be governed by the findings and policies develop

We Connect and Bell Atlantic request that the Board approve their Resale Agreement p Agreement is an Interconnection Agreement within the meaning of Section 252 of the Act that s will offer telecommunications services it provides at retail to end users in Vermont for resale by

The Resale Agreement is the result of negotiations between two telecommunications car comprehensive set of resale terms and conditions that will facilitate We Connect's entry as a CLI provides, is therefore limited to the issues set forth in Section 252(e)(2)(A): whether the agreem against a telecommunications carrier not a party to the agreement; and whether the agreement i convenience, and necessity. As the Board concluded in its review of the interconnection agreem making its determination, the Board must focus upon the potential effect of the agreement on tl whether the agreement raises the risk of harm to consumers (and thus is not consistent with the 11/4/96 at 12.

Under the Bell Atlantic-We Connect Resale Agreement, the basic terms and conditions services available for resale by We Connect are set out in Section 6 of Bell Atlantic's SGAT, whi The key pricing terms in the SGAT – the resale discounts – were established by the Board in Do and Telegraph Company for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 199 with AT&T AND Petition of AT&T Communications of New England, Inc. for Arbitration Under th 12/4/96.² At present, there is no basis to conclude that these terms are inconsistent with the pub

Moreover, the SGAT's terms and conditions are presently in effect in Vermont and avail although the Board has continued its review in accordance with Section 252(f) of the Act. As ot 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 Agreement. Certain portions of the Agreement contemplate further negotiations and changes t 6.5.3.4 which describes Special Contract Arrangements. Approval of the present Agreement do future arrangements that are not now specifically identified as agreements between the parties. that the parties' agreement may change as We Connect begins offering services. Therefore, I rec

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

the Board at the time they negotiate any changes to the agreement or specific terms, such as Ind Board and other parties to examine the subsequent arrangements and determine whether additi will ensure that entities that are not party to the Agreement have the ability to examine those co Section 252(i) of the Act. To the extent that the modifications affect the Agreement itself, it is a approval again under Section 252(a) of the Act.

In its analysis of the Hyperion agreement, the Board concluded that "the agreement furth policies." *Id.* at 19. I recommend that the Board reach the same conclusion here. Like the Hyp terms and conditions that will encourage the development of competition in the state. This com and is consistent with the State's telecommunications goals as set out in 30 V.S.A. § 202c and the Section 202d. At the same time, the Agreement does not contain terms that will harm consumer interest.

VI. CONCLUSION

The Bell Atlantic-We Connect Resale Agreement meets the requirements of Section 252 against other carriers and is consistent with the public interest, convenience, and necessity. Acco the agreement.

The Proposal for Decision has been served on all parties to this proceeding in accordance

DATED at Montpelier, Vermont, this 3rd day of March, 2000.

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 S

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 Ser
Telephone and Telegraph Company and We Connect Communications, Inc. ("We Connect") is l
3. Bell Atlantic and We Connect shall report to the Board and Department as follows:
 - a. Bell Atlantic and We Connect shall report to the Board and request approval of
any modifications and amendments to the agreement. Such terms and conditions shall n
 - b. Bell Atlantic and We Connect shall request Board approval with respect to any
Individual Case Basis pricing and related terms and conditions under Attachment A of th
subsequent to Board approval of the present agreement. Such terms and conditions shal
4. We Connect 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 obli
Vermont.

Dated at Montpelier, Vermont, this 15th day of March, 2000.

<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: March 15, 2000

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 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 Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for re Clerk of the Board within ten days of the date of this decision and order.