STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6391

In Re: Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and Fairpoint Communications Corp.)

Order entered: 7/31/2000

BACKGROUND

On May 31, 2000, Fairpoint Communications Corp. ("Fairpoint") and New England Telephone & Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") requested that, pursuant to Section 252(e) of the Telecommunications Act of 1996 (the "Act"), the Public Service Board ("Board") approve an Interconnection Agreement ("Agreement") between them dated April 7, 2000.

A prehearing conference took place on June 20, 2000. At that time, the parties agreed to a procedure by which the Hearing Officer would make recommendations based upon the Interconnection Agreement and any other written filings.[1] Any parties wishing to submit further information could comment upon the Hearing Officer's Proposal for Decision.

Victor D. Del Vecchio, Esq., and Gregory M. Kennan, Esq., on behalf of Bell Atlantic, filed Motions to waive Board Rule 2.201(C). Those Motions are granted.

DISCUSSION

The Board's review of the Interconnection 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).[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 agreement or

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1. The parties also agreed that preparation of a Prehearing Conference Memorandum was unnecessary.

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

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 Board must act to approve or reject the agreement within 90 days of its submission, or the agreement is deemed approved.[3] The parties have agreed that the 90-day review period mandated by that section ends on August 29, 2000.

The Interconnection Agreement negotiated by Bell Atlantic and Fairpoint is similar to the Interconnection Agreement between Bell Atlantic and other providers of telecommunications services which the Board previously approved.[4] The Interconnection Agreement contains terms and conditions for interconnection of the networks,[5] purchase of unbundled network elements,[6] resale of Bell Atlantic's services (with discounts),[7] as well as other provisions that will allow Fairpoint to obtain facilities and services from Bell Atlantic. The parties have agreed that the term of the Interconnection Agreement shall be until April 7, 2002, and that the Agreement shall thereafter continue in effect until terminated by either party.[8]

The Interconnection 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

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3. 47 U.S.C. § 252(e)(4).
4. See, in particular, the Interconnection Agreement between Bell Atlantic and Log On America. Docket 6345, Order of 3/15/00.
5. Interconnection Agreement, Sections 4.0 and 5.0 at 11-19.
6. Interconnection Agreement, Section 11 at 32-46 and Pricing Schedule.
7. Interconnection Agreement, Section 12 at 46-47 and Pricing Schedule.
8. Interconnection Agreement at 58.

Agreement raises the risk of harm to consumers (and thus is not consistent with the public interest).[9]

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.

The discussion and recommendations set out in this Proposal for Decision relate solely to the terms and conditions that the parties have negotiated. Certain provisions of the Pricing Schedule do not specify prices, but leave those arrangements to future determination. 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, 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.

CONCLUSION

The Bell Atlantic-Fairpoint Interconnection 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.

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

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8.

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 25th day of July, 2000.

s/George E. Young
George E. Young
Hearing Officer

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 Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and Fairpoint Communications Corp. is hereby approved.

3. Bell Atlantic and Fairpoint 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.

4. Bell Atlantic and Fairpoint shall notify the Board and Department of any modifications to the Interconnection Agreement or the establishment of any terms and conditions that the Interconnection Agreement as filed leaves to further negotiations. If necessary, Bell Atlantic and Fairpoint shall seek Board approval for the new or changed terms and conditions.

Dated at Montpelier, Vermont, this 31st day of July, 2000.

s/Michael H. Dworkin)	PUBLIC SERVICE
)	BOARD
)	OF VERMONT
s/David C. Coen)	

OFFICE OF THE CLERK

FILED: July 31, 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 the Clerk of the Board (by e-mail, telephone, or mail) of any technical 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.