STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6397

In Re: Resale Agreement between New England)
Telephone and Telegraph Company d/b/a Bell)
Atlantic-Vermont and Optimum Global)
Communications, Inc. d/b/a Local Phone Company)

Order entered: 8/23/2000

BACKGROUND

On July 7, 2000, Optimum Global Communications, Inc. d/b/a Local Phone Company ("Optimum") 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 a Resale Agreement ("Agreement") between them dated February 3, 2000.

A prehearing conference took place on July 25, 2000. At that time, the parties agreed to a procedure whereby the Hearing Officer would make recommendations based upon the Resale Agreement and any other written filings.[1] Bell Atlantic's motion to waive Board Rule 2.201(C) was granted verbally during the prehearing conference. No parties objected to the granting of the waiver. Any parties wishing to submit further information could comment upon the Hearing Officer's Proposal for Decision.

DISCUSSION

The Board's review of the Resale 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 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

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).

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 October 5, 2000.

The Resale Agreement negotiated by Bell Atlantic and Optimum is substantially similar to the Resale Agreement between Bell Atlantic and other providers of telecommunications services which the Board previously approved. The Resale Agreement contains terms and conditions for the resale of Bell Atlantic's services,[4] discounts for resold services,[5] recurring monthly establishment charges,[6] as well as other provisions that will allow Optimum to obtain services from Bell Atlantic. The Resale Agreement's term is not limited. Either party may cancel the Agreement on 90 days' notice to the other party.[7]

The Resale 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 Agreement raises the risk of harm to consumers (and thus is not consistent with the public interest).[8]

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 Resale Agreement does not contain terms that will harm consumers or competitors. It thus promotes the public interest.

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3. 47 U.S.C. § 252(e)(4).
4. Resale Agreement at 1 (§ 1).
5. Resale Agreement, Attachment A, at § 6.10.5.
6. Resale Agreement at 2 (§ 3.B).
7. Resale Agreement at 2 (§ 2.E.).
8. Docket 5905, Order of 11/4/96 at 12.

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. 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-Optimum 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 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 15th day of August, 2000.

s/Gregg C. Faber
Gregg C. Faber
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 Resale Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and Optimum Global Communications, Inc. d/b/a Local Phone Company is hereby approved.

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

Dated at Montpelier, Vermont, this 23rd day of August, 2000.

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

OFFICE OF THE CLERK

FILED: August 23, 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.