

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6172

Interconnection Agreement between New)
England Telephone and Telegraph Company)
d/b/a Bell Atlantic - Vermont and Network)
Access Solutions, Inc.)

Order entered: 02/03/99

I. INTRODUCTION

On November 5, 1998, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") and Network Access Solutions, Inc. ("NAS") filed an agreement providing for the interconnection of traffic between them (the "Interconnection Agreement" or "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). After considering the Interconnection Agreement, I recommend that the Board approve the Interconnection Agreement, finding that it is consistent with the public interest, convenience, and necessity and that it does not discriminate against other carriers.¹

II. BACKGROUND

The Bell Atlantic-NAS Interconnection Agreement represents one of a series of agreements between an incumbent local exchange carrier ("LEC") and a competitive wireline LEC (or "CLEC") filed in Vermont. Previously, the Board has approved several interconnection agreements between Bell Atlantic and CLECs directed towards the provision of unbundled network elements, as well as five interconnection agreements between Bell Atlantic and companies offering cellular mobile radio services. The Board initiated this investigation and appointed me as Hearing Officer, and I convened a prehearing conference in this matter on December 7, 1998. The Vermont Department of Public Service (the "Department") was made a party.

1. In many respects, this Agreement is similar to agreements that Bell Atlantic has used in previously approved interconnection agreements. However, the instant Agreement also contains significant differences from its predecessors, reflecting NAS' business plan. To the extent that differences exist, none of these differences alter the fundamental conclusion reached in this decision that the Agreement satisfies the requirements of Section 252(e) of the Act.

At the prehearing conference, the parties agreed to a schedule by which the Hearing Officer would issue a Proposal for Decision based upon the written pleadings, with other parties commenting thereupon.

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. Accordingly, I report to the Board my findings and recommendation that the Interconnection Agreement be approved.

III. LEGAL FRAMEWORK

The Board's review of the Interconnection 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 NAS, have the duty to "interconnect directly or indirectly . . ." 47 U.S.C.A. § 251(a)(1) (Supp. 1996). Upon receiving an interconnection 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 agreements, including the unbundled network element and resale discount pricing, do not directly apply to interconnection 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. 47 U.S.C. § 252(e)(4). The parties have agreed that the 90-day review period mandated by that section ends on February 3, 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 Interconnection 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. 47 U.S.C. § 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.

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. NAS has negotiated and filed the present interconnection agreement in anticipation of providing service in Vermont. NAS is a Virginia corporation with offices at 100 Carpenter Drive, Sterling, Virginia. Interconnection Agreement ("Agreement") at 1.

3. Bell Atlantic and NAS have agreed on, and submitted for Board approval under Sections 251 and 252 of the Act, an Interconnection Agreement dated October 16, 1998. *See* November 4, 1998 Letter from Victor D. Del Vecchio, Esq. (and accompanying agreement).

4. The Interconnection Agreement with Bell Atlantic sets out the terms and conditions under which Bell Atlantic will provide NAS with unbundled network elements, telecommunications services for resale, collocation, and other services. *See generally* Agreement at §§ 1.0, 5.0, 6.0.

5. The parties have agreed to reciprocal compensation for the transport and termination of local-exchange traffic originated on the other's network. *See generally* Agreement at § 5.7.

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. 47 U.S.C.A. § 252(f)(4); Docket 5936, Order of 1/5/98 at 2.

8. Bell Atlantic and NAS have agreed that the interim rates for unbundled network elements shall be as set forth in Exhibit A to the Agreement, and that the rates in the Vermont SGAT and finally approved by the Board shall apply to any applicable network element provided under the Agreement. Agreement, Exh. A, Pricing Sch.

9. Recognizing that the Board may set different rates as a result of arbitration proceedings or the cost studies required in Docket No. 5713, Bell Atlantic and NAS agree to incorporate those rates into this agreement.² Agreement at §§ 10.1 – 10.2.

2. Although NAS is not currently a party to Docket 5713, it will be governed by the findings and policies developed therein. NAS, of course, may seek to become a party to Docket 5713 at any time.

10. The Interconnection Agreement allows NAS to purchase links (local loops), including "2-Wire Analog Voice Grade Unbundled Local Loops (ULL)," "4-Wire Analog Voice Grade ULL," "2-Wire ISDN Digital Grade ULL," "2-Wire ADSL Compatible ULL," "2-Wire HDSI-Compatible ULL," "4-Wire HDSL-Compatible ULL," and "4-Wire DS-1 Compatible ULL." Agreement at § 5.2.

11. Bell Atlantic also has agreed to provide NAS with unbundled access to Bell Atlantic network elements at any Technically Feasible Point following a Network Element Bona Fide Request by NAS. Agreement at §§ 5.0, 5.7.

12. Bell Atlantic will offer to NAS its local exchange telecommunications services for resale at retail rates, set forth in Bell Atlantic's tariffs, less the wholesale discount set forth in Exhibit A to the Agreement, and in Bell Atlantic's Vermont SGAT, as amended from time to time. *See generally* Agreement at § 6.0; Exh. A.

13. The Interconnection Agreement provides for physical collocation in Bell Atlantic's premises, although Bell Atlantic may require "Virtual Collocation" if it demonstrates to the Board that physical collocation is not practical for technical reasons or because of space limitations. Agreement at § 7.

14. The Agreement's initial term is until January 1, 2001, and will remain in force until terminated by either party. Either party may terminate the agreement after the initial term on 90 days' written notice to the other party. *See* Agreement at § 12.1.

15. The Agreement is subject to regulatory approval as required by the Act and reserves each party's rights to seek regulatory relief or other redress from each other regarding performance and implementation of the Interconnection Agreement. *See* Agreement at § 27.

16. The Vermont Telecommunications Plan ("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.

17. 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. Telecommunications Plan at i.

18. 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).

19. Some inter-carrier issues pertinent to interconnection are prerequisites for effective local-exchange competition, including central-office interconnection arrangements, connections to unbundled network elements, seamless integration into LEC interoffice networks, seamless integration into LEC signaling networks, equal status and control of network data bases, equal rights to and control over number resources, local telephone number portability, reciprocal inter-carrier compensation, and cooperative practices and procedures. *Id.* at 3-29.

20. The Interconnection 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 3-19, *supra*.

21. 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; Section 28.0 of the Interconnection Agreement reserves to Bell Atlantic and NAS the right to modify the agreement to incorporate the results of any Board orders in Docket 5713 or otherwise, and they have agreed to report any such modifications to the Board. *See* Agreement at § 27.0.

V. DISCUSSION

Bell Atlantic and NAS request that the Board approve their Interconnection Agreement pursuant to Section 252(e) of the federal Act. It is an agreement that sets forth the terms under which Bell Atlantic and NAS will interconnect their respective networks. The Agreement also delineates the network elements, services, and other arrangements that Bell Atlantic will provide to NAS.

The Interconnection Agreement is the result of negotiations between two telecommunications carriers. The principals established a comprehensive set of terms and conditions that will facilitate NAS'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 Bell Atlantic 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.

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.

Collectively, these terms, and other portions of the Agreement, establish a framework that will enable NAS to offer competition for the provision of all telecommunications services. In addition, many of the terms of the Bell Atlantic/NAS Agreement are similar to those in Interconnection Agreements that the Board has previously approved, most noticeably, the Agreements in *Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and COMAV Telco, Inc.*, Docket 6114, Order of 9/9/98, *Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and Dakota Services Limited*, Docket 6113, Order of 9/9/98, and *Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont and ACC National Telecom Corp.*, Docket 6137, Order of 11/23/98.

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.

In addition, the Agreement contains a "most favored nations" clause that enables NAS to elect to adopt sections of other carriers' agreements, pursuant to applicable law. Similar

provisions exist in the other wireline interconnection agreements that have come before the Board. See Docket 5905 (Hyperion), and Docket 5937 (C-TEC). Thus, there is the ability of carriers to adopt provisions from other agreements. Assuming similar language appears in future interconnection agreements, discrimination is not likely to occur in the future.

I note, however, that my conclusions with respect to this Interconnection 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. 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. At the same time, it is necessary to recognize that the parties' agreement may change as NAS begins deploying facilities and 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 or the offering of new unbundled network elements. 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.

VI. CONCLUSION

The Bell Atlantic/NAS 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 3rd day of February, 1999.

s/ George E. Young

George E. Young
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 Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") and Global NAPS, Inc. ("NAS") is hereby approved.
3. Bell Atlantic and NAS shall report to the Board and request approval, if necessary, of any modifications to the Agreement, or the negotiation of any new or modified terms and conditions, such as Individual Case Basis pricing and related terms and conditions, changes in the Pricing Schedule to the Agreement, other network elements made available on an unbundled basis under the Agreement.
4. Bell Atlantic and NAS 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.

Dated at Montpelier, Vermont, this 3rd day of February, 1999.

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

OFFICE OF THE CLERK

FILED: February 3, 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.