STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5903

Investigation into Service Quality Standards,)
Privacy Protections, and other Consumer)
Safeguards for Retail Telecommunications)
Service)

Order entered: 9/28/99

ORDER RE: MOTIONS FOR RECONSIDERATION

Following the Public Service Board's ("Board") issuance of a final Order in this proceeding on July 2, 1999, AT&T Communications of New England, Inc. ("AT&T"), New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic"), the nine independent Vermont local exchange carriers (the "Independents"), and Sprint Communications Company L.P. ("Sprint") filed Motions for Reconsideration of that Order. The Department of Public Service ("Department") opposed the Motions, instead recommending that the Board not modify its Order. In addition, the Department requested Board approval of a proposed treatment of the first two months of service quality results reported by carriers. This Order addresses each of the issues raised in the Motions for Reconsideration.[1]

I. Disconnection of Local Service for Non-Payment of Toll and Ancillary Services

AT&T, Bell Atlantic, and Sprint all request that the Board reverse or modify our decision to adopt a policy prohibiting disconnection of local service when a customer fails to pay his or her bill for toll and ancillary services (the "no-disconnect" policy). These parties

1. In addition to the Motions for Reconsideration, the Board also received a letter from Comcast Telecommunications, Inc. d/b/a Comcast Long Distance ("Comcast"), a non-party, requesting clarification as to the applicability of the Service Quality Standards to providers of telecommunications services other than local exchange carriers ("LECs").

argue that the no-disconnect policy will remove an incentive for customers to pay their bills, leading to an increase in uncollectibles for interexchange carriers ("IXCs") and encouraging consumer fraud by customers that choose not to pay their bills. These changes, they argue, could result in increased rates for consumers, with the potential for a decrease in subscribership. The Department contests each of the assertions made by Bell Atlantic, Sprint, and AT&T.

Before considering the specific arguments of the industry parties, it is important to address the industry suggestion that the no-disconnect policy will somehow insulate customers from responsibility to pay their phone charges. The Board fully agrees with the industry parties that consumer fraud should be discouraged. As we stated in the July Order:

> We want to be clear that the no-disconnect policy is not in any way intended to relieve consumers of the obligation to pay for services that they use. If a customer does not pay for toll service charges, the provider of those services may, consistent with Board Rules, disconnect the customer from those services and may initiate steps to collect amounts owed.[2]

The no-disconnect policy in no way alters the basic consumer responsibility for full payment of legitimate bills. Instead, as the July Order stressed, the policy recognizes that in the new telecommunications environment, services, and the companies that offer those services, are separate and distinct from one another. Toll service offered by AT&T, Sprint, or another IXC is separable from the basic exchange service that Bell Atlantic or an Independent offers. The no-disconnect policy extends this principle, which underlies both state and Federal Communications Commission policies for opening up the telecommunications network, from the provision of service (as to which there is no disagreement) to the ability to disconnect local service.

As to the specific arguments raised by the industry parties, we find no basis in the record to alter our decision. The record in this proceeding does not demonstrate that consumer fraud will significantly increase. Nor does the record demonstrate that uncollectible revenues for telecommunications services will increase. As we stated in the July Order, some increase

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2. Order of 7/2/99 at 93. *See also Id.* at 93.

in uncollectible revenues for IXCs may occur, but at the same time, uncollectible revenues for basic exchange services may decrease.[3] The evidence provides no basis for concluding that these effects will occur and, if they do, will harm consumers.[4] Similarly, even if uncollectible revenues for IXCs do increase, experience has shown that cost changes for IXCs are not necessarily passed on to consumers for marketing and other reasons.[5]

Finally, nothing in the record suggests that a no-disconnect policy will lead to a decrease in subscribership. To the contrary, we concluded that the no-disconnect policy could well have the opposite effect: encouraging greater connectivity as customers that cannot pay for toll service are retained on the network by paying their local service charges.[6]

Bell Atlantic argues that there is no evidence that the no-disconnect policy will facilitate competition, citing the fact that industry parties have uniformly supported the previous policy allowing IXCs to leverage a customer's basic exchange service to obtain payment.[7] The July Order adequately addressed this issue. The no-disconnect policy will ensure that all companies have the same ability to disconnect customers that fail to pay their charges. Currently, companies that do not use LEC billing and collection services may not disconnect local service for failure to pay toll charges, whereas other companies can use the ability to disconnect basic service as a means to obtain payment for toll charges. The no-disconnect policy puts all companies on an equal footing.

Sprint argues that market forces should be permitted to determine the need for billing and collection services through local exchange providers.[8] We concur with Sprint that companies should be free to enter into billing and collection arrangements with one another with significant discretion as to terms in areas where market forces are functioning effectively.

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3. Order of 7/2/99 at 92.

4. Sprint's Motion cites to evidence that IXC uncollectible revenues have increased greatly due to the implementation of the no-disconnect policy in other states. However, Sprint did not present this information in the evidentiary record of this proceeding.

5. For example, after Bell Atlantic reduced its access rates by nearly 20% in 1995, IXCs generally did not pass these significant rate decreases on to their customers, even though Bell Atlantic did. Docket 5853, Order of 2/13/96 at 7-8.

6. Order of 7/2/97 at 92.

7. Bell Atlantic Motion at 2.

8. Sprint Motion at 2.

Companies that do not want to develop their own billing systems may elect to use local exchange carriers or other entities to perform their billing. Our Order does not prohibit or restrict such arrangements, with one extremely limited exception: companies may not disconnect basic service for failure by the customer to pay charges for other services. This exception is appropriate because many customers still do not have a realistic and effective choice among multiple providers of local service both bundled with, and unbundled from, toll service.

In summary, we find the arguments for reversing our July Order unpersuasive and deny the Motions to Reconsider our adoption of the no-disconnect policy.

Application of the Policy to Business Customers

In their Motions, Bell Atlantic and the Independents request that if the Board maintains the no-disconnect policy from the July Order, the policy should only apply to residential customers.[9] According to these parties, the rationale behind the no-disconnect policy does not apply to business customers. Bell Atlantic maintains that no public policy reason supports allowing businesses not to pay their phone bills. The Independents argue that the July Order is the first time the Board expressly included business customers in the no-disconnect policy and that no evidence supports their inclusion.[10] The Department recommends that the Board deny the request to limit the no-disconnect policy.

The evidence in this proceeding demonstrated that adoption of the no-disconnect policy was reasonable, largely to ensure a fair and open competitive marketplace for telecommunications services, one in which each competitor stands on its own without special advantages. In this regard, it is irrelevant whether the consumer purchasing services is a business or a residential customer; our policy conclusions apply equally to both.[11] Moreover,

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9. Bell Atlantic Motion at 3; Independents' Motion at 4-5.

10. Independents' Motion at 4.

11. As the Independents argue, the Board has recognized distinctions between residential and business customers in the past, with the latter receiving less protection than the former. See e.g., Board Rules 3.300 and 3.400. Had our conclusions rested upon universal service principles, the residential/business distinction may have some validity. However, as we have made clear in both the July Order and herein, we have focused on the conditions appropriate (continued...)

the testimony and exhibits, and the principles, on which we relied in reaching the determination set out in the July Order made no distinction between business and residential customers.[12] In fact, neither in the Hearing Officer's Findings nor in the July Order is there any suggestion that the policy would be limited to residential customers. Thus, the Independents' suggestion that application of the policy to business consumers appeared for the first time in our July Order lacks merit.

Bell Atlantic's arguments rest upon the assumption that business customers will be insulated from paying toll charges. As we stated above, this assumption is simply incorrect. The no-disconnect policy in no way alters consumer obligations to pay legitimate charges for service.

The Independents also assert that application of the policy to businesses is unduly burdensome.[13] The Independents, however, presented no evidence in the record to support this claim, as we observed in the July Order.[14] Thus, we have no basis upon which to examine the Independents' claim and, accordingly, cannot conclude that application of the no-disconnect policy will be unduly burdensome.

In summary, we conclude that the no-disconnect policy should apply to both residential and business customers and deny the Motions on this point.

Selective Toll Blocks

The July Order allowed the imposition of selective toll blocks following disconnection of toll service, thus preventing a person from accessing the telecommunications carrier from which he or she had been disconnected.[15] AT&T requests that the Board modify the Order to

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11. (...continued)
to the present and future competitive marketplace. Here, the residential/business distinction is not relevant.

12. See Department Comments at 6; exh. DPS-CP/P-1 at 22-27.

13. Independents' Motion at 6.

14. Order of 7/2/99 at 93-94. The Independents could have presented evidence that would support their position during the hearings. At this stage, we will not consider factual information that is not in the record.

15. Order of 7/2/99 at 96.

allow the local exchange carrier to implement either selective or general toll blocks.[16] AT&T argues that the selective toll block does not "provide an incentive for the customer to pay arrearages" because the customer can request service from another carrier. The Department opposes both requests, arguing that other mechanisms exist by which IXCs can protect themselves against incurring bad debt.[17]

We agree with the Department. The purpose of allowing a selective toll block is to ensure that a customer that has been disconnected from a particular carrier cannot make further toll calls using that carrier following disconnection. By contrast, a general toll block, as advocated by AT&T, prevents customers from reaching any toll carrier, including those with which the customer has not had a previous business relationship and from which the customer has not been disconnected. We believe the selective toll block is more consonant with our intent to open the telecommunications marketplace fully to competition, with each service provider operating on its own.[18]

Moreover, as the Department points out, companies offering toll service that have concerns about the creditworthiness of a particular customer have means to protect themselves. Specifically, Board Rule 3.200 allows service providers to request reasonable customer deposits where the customer is unable to demonstrate creditworthiness.

Therefore, we deny the request to allow general toll blocks in lieu of the selective toll blocks adopted in the July Order.

<u>Effective Date of No-Disconnect Policy</u>

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16. AT&T Motion at 4; Sprint Motion at 6. A general toll block would prevent a customer disconnected from service by one IXC from obtaining any toll service.

17. Department Comments at 7.

18. Interestingly, the same carriers that have been urging us to emulate the competitive marketplace in pricing and telecommunications policy take a different stance here. For example, a customer who fails to pay a bill to a fuel oil dealer is not prevented from purchasing fuel oil from a competitor. Selective toll blocks better mirror this marketplace than does the use of general toll blocks.

The July Order required all LECs to comply with the no-disconnect policy within 90 days of the Order.[19] The Independents, citing their need to implement the policy through manual adjustments to the automated billing system, request the Board to extend the deadline for compliance with the policy until December 1, 1999.[20] Bell Atlantic also seeks an extension of the deadline, until June 1, 2000, because the Company is deploying a new billing system.[21] Both parties also cite the resource demands associated with the year 2000 compliance, suggesting that they lack sufficient resources to carry out both responsibilities. The Department opposes both parties' requests. The Department argues that the no-disconnect policy will benefit consumers and should not be delayed; instead, companies should direct sufficient resources to meet the obligations under the Board Order. In addition, the Department argues that Bell Atlantic (and the Independents) already must implement a no-disconnect policy for Lifeline customers.

The Board agrees with the Department that neither Bell Atlantic nor the Independents have demonstrated a basis for revising our July Order to delay the implementation date, particularly by more than six months as Bell Atlantic requests. The Board recognizes that companies will need to make adjustments to billing systems and other aspects of their daily operations to implement the new policy. The companies also face competing demands on their resources. Nonetheless, public service companies retain the responsibility to employ sufficient staff to meet their normal obligations, which includes compliance with Board Orders. Nothing in either Motion demonstrates that implementing changes to comply with the no-disconnect policy is extraordinary and warrants special treatment. Moreover, as the Department points out, the FCC has already ordered all companies to adopt the no-disconnect policy for Lifeline customers. We, therefore, decline to modify the deadline for complying with the no-disconnect policy.

II. Effective Date of Service Quality Standards

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19. Order of 7/2/99 at 117.
20. Independents' Motion at 3-4.
21. Bell Atlantic Motion at 2.

The July 2 Order established August 1, 1999, as the effective date for the Service Quality Standards established in the Order.[22] The Independents request that the Board grant a 30-day extension of the deadline for implementation of the Board's Order, until September 1, 1999.[23] The Department opposes the Independents' Motion for the same reasons it opposed an extension of time for the no-disconnect policy.[24] The Department also argues that the request is moot, as the August 1, 1999 deadline has elapsed.

After consideration of the Independents' Motion and the Department's response, we grant the extension of the deadline until September 1, 1999.[25]

The Department raised a related issue, namely, how performance will be measured against the service quality standards in the period before the first full quarter (i.e., October-December). The Department proposes that the first reporting period be counted as individual months, but not as a quarter, so that actions levels for that abbreviated quarter cannot be triggered. No party objects to the Department's proposal, which we find reasonable and accept.

III. Applicability of Standards to Cellular and Cable Television Providers

The July Order concluded that the service quality and consumer protection standards adopted therein would not apply to cellular or cable television providers at the present time. We stated that "If cellular providers (or other providers offering basic exchange services in a non-traditional manner, such as cable companies) begin offering the equivalent of basic service, displacing traditional land-line communications services, they will become subject to the standards."[26] AT&T asks that we modify our ruling to reserve judgment on the future applicability of the standards to cellular and cable companies, rather than automatically applying them.[27]

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22. Order of 7/2/99 at 117.
23. Independents' Motion for Reconsideration at 2-3.
24. DPS Comments at 8.
25. Companies should still commence monitoring and reporting data effective August 1, 1999.
26. Order of 7/2/99 at 115.
27. AT&T Motion at 5-6.

It appears that AT&T misinterprets our Order on this issue. The Order states generally the conditions under which the consumer protection and service quality standards will apply to service providers that are not now subject to them. We did not state, nor intend to mandate, that those providers would automatically become subject to the standards upon some event.[28] Rather, we would expect to affirmatively extend the standards, by rule or order, if and when it appears that the market has changed.[29] At that time, cellular, cable television, or other service providers would become subject to the consumer protection standards.

IV. Discounts for Speech and Hearing-Impaired Customers

Bell Atlantic requests that the Board clarify that the obligation to provide service to speech- or hearing-impaired individuals only applies to persons using TDD/TTY devices.[30] No party opposed this Motion.

We agree with Bell Atlantic's requested clarification. We adopted the discount to reflect the additional time speech- and hearing-impaired persons must take to complete calls using TDD/TTY devices. Bell Atlantic's Motion is consistent with this underlying purpose; accordingly, we grant the request.[31]

V. Consumer Complaint and Dispute Resolution Process

The July Order adopted a consumer complaint and dispute resolution process and required that at the time customers initiate service and at reasonable periods thereafter, each telecommunications provider must notify customers of the availability of the Department's

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28. We have determined in earlier proceedings that the Board has jurisdiction to prescribe consumer protection safeguards for cellular and cable providers. For cellular, *see Generic Investigation into the Regulation of Cellular Telecommunications Services,* Docket 5454, Order of 1/8/92 at 37-44; Order of 2/10/92 at 2-4; 47 U.S.C. § 332(c)(3). For cable, *see Tariff filing of Mountain Cable Company d/b/a Adelphia Cable Communications*, Dockets 6117, 6118, 6119, Order of 5/3/99 at 44-49; 47 U.S.C.A. § 552(c)(1) ("Nothing in this title shall be construed to prohibit any State or franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.").

29. For example, the Department could petition the Board to include cellular or cable providers under the standards.

30. Bell Atlantic Motion at 3.

31. Since its Motion, Bell Atlantic has filed tariff revisions consistent with the clarification request. Tariff filing of Sept. 2, 1999. The Department, by letter dated September 9, 1999, recommended that the Board allow the tariff to take effect.

consumer complaint process.[32] Sprint requests that we reconsider the requirement to include the information on a bill insert, arguing that dissemination through telephone directories would be preferable.[33] In addition, Sprint requests that consumers be advised of the impacts of not paying for authorized charges.

Contrary to Sprint's Motion, the Board's July Order did not specify the means by which notification to consumers must occur. Instead, the Order states that notice "may occur through telephone bills or telephone directories."[34] Thus, Sprint's Motion raises no issues requiring resolution, as Sprint can make arrangements to provide the information to its consumers through directories. Similarly, the request to advise consumers of the impact of not paying charges is not relevant at the present time; no party raised it during the proceedings and no evidentiary record concerning the merits of the proposal exist. It is inappropriate to request Board resolution of new issues in a Motion for Reconsideration.[35] We deny Sprint's Motion to Reconsider the notice of the consumer complaint and dispute resolution process.

VI. Applicability of Service Quality Standards

Comcast requested that the Board clarify whether the Service Quality Standards apply to providers of telecommunications services other than local exchange carriers ("LECs").[36] The Telecommunications Resellers Association ("TRA") submitted comments requesting that the Board clarify that network-based standards which non-facilities-based providers are incapable of meeting will be presumed inapplicable. The Department and Bell Atlantic commented that the standards should apply to all regulated telecommunications providers in the state, although the standards would not apply if a provider did not offer the specific services measured by the standards.

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32. Order of 7/2/99 at 104.

33. Sprint Motion at 7.

34. Order of 7/2/99 at 104.

35. Sprint and other companies are free, of course, to provide information to consumers, so long as that information is consistent with Board Rules and Orders.

36. The Board circulated Comcast's letter to all parties with an invitation to submit comments.

As the Department pointed out, the Stipulation and the July Order accepting it specified that the Service Quality Standards apply to all regulated telecommunications providers offering service in Vermont. Thus, to the extent that a particular standard is relevant to a carrier's provision of service, the Service Quality Standards will apply. Conversely, if a company does not offer the service measured by a standard, that standard would not apply.

TRA's comments, which raise the question of the application of the standard to non-facilities-based carriers, were addressed in the July Order. At that time, we made clear that, until the Board developed carrier-to-carrier service quality standards and made clear the respective responsibilities of each company, carriers that offer service through resale or the purchase of unbundled network elements would not be held responsible for failure to comply with the standards to the extent that the failure was the responsibility of the underlying network provider.[37] We see no reason to modify that position. We conclude that the Service Quality Standards should apply to all regulated telecommunications service providers operating in Vermont offering services within the scope of this proceeding.[38]

VII. Conclusion

The Motions for Reconsideration filed by AT&T Communications of New England, Inc., New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont, the nine independent Vermont local exchange carriers, and Sprint Communications Company L.P. are denied, except as specifically granted herein.

SO ORDERED.

Dated at Montpelier, Vermont, this 28th day of September, 1999.

s/Michael H. Dworkin)
) PUBLIC SERVICE

37. Order of 7/2/99 at 86.

38. Thus, consistent with our prior Order, the standards would not apply to cellular providers.

s/Suzanne D. Rude) BOARD

) OF VERMONT

s/David C. Coen)

OFFICE OF THE CLERK

FILED: September 28, 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.