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: October 25, 1999

ORDER RE: EMERGENCY MOTION REQUESTING ORDER CLARIFYING THE DEADLINES ESTABLISHED IN THE JULY 2, 1999, ORDER

On October 22, 1999, the Department of Public Service ("Department") filed an Emergency Motion Requesting Order Clarifying the Deadlines Established in the Public Service Board's ("Board") July 2, 1999, Order in this Docket and Requiring New England Telephone and Telegraph Company d/b/a Bell Atlantic-Vermont ("Bell Atlantic") to Immediately Discontinue the Practice of Disconnecting Local Service for Non-payment of Toll and Ancillary Charges. The Department's Motion asserted that Bell Atlantic is not in compliance with the Board's July 2, 1999, Order (as modified in the September 28, 1999, Order on Reconsideration). Specifically, the Department pointed to Paragraph 4 of the Order, which required local exchange carriers to discontinue the practice of disconnecting basic telecommunications service for non-payment of toll and ancillary services (the "no-disconnect policy") no later than 90 days from the date of the Order. As a result, the Department requested that the Board immediately order Bell Atlantic to comply with the no-disconnect policy, discontinue the practice of imposing across-the-board, rather than selective, toll blocks, and discontinue imposing involuntary toll blocks without an approved tariff.

Also on October 22, 1999, the Board convened an immediate hearing via conference call (before a Hearing Officer) to hear argument from the Department and Bell Atlantic on the issue of

Bell Atlantic's compliance with the Board's July 2, 1999, Order.[1] Bell Atlantic made several arguments, which essentially reflected the Company's position that the deadline for compliance had not yet passed. First, the Company asserted that the filing of a Motion for Reconsideration under V.R.C.P. Rule 59(e) tolls the deadlines in a Board Order, citing *Osborn vs. Osborn*, 147 Vt. 432, 433 (1986). Second, Bell Atlantic argued that it would have been imprudent for the Company to have begun taking steps to comply with the no-disconnect policy during the pendency of the Motion for Reconsideration since compliance would have required the Company to incur costs that would not have been necessary if the Board reversed or modified its July 2, 1999, decision. In light of the Board's earlier allowance of 90 days to comply with the no-disconnect policy, Bell Atlantic argued that it was reasonable to infer an intent by the Board to provide an equivalent period of time following the September 28, 1999, Order on Reconsideration.

Discussion

Bell Atlantic's first response to the Department's Motion was that the no-disconnect policy did not take effect September 30, 1999. Review of our Orders does not support Bell Atlantic's position. Our July 2, 1999, Order required all companies to comply with the no-disconnect policy within 90 days of that Order, i.e., by September 30, 1999. The September 28, 1999, Order denied the requests of several parties to reconsider our original decision to adopt the no-disconnect policy. That Order also denied requests from Bell Atlantic and the nine independent telephone companies (the "Independents") to extend the deadline for compliance with that policy. Denial of these requests left in place the original deadline of September 30, 1999. In fact, the Reconsideration Order makes clear that the Board did not intend to alter the original deadline as suggested by Bell Atlantic. That Order expressly denied the request of the Independents for an extension until December 1, 1999, to comply with the policy.[2] If, as Bell Atlantic argues, the Board had intended that the 90-day period commence on September 28, 1999, this denial would have been unnecessary as the 90-day period would have run until December 27, 1999.

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1. The Department's Motion was essentially a request to compel specific compliance, asking that the Board direct Bell Atlantic to comply with that Company's direct obligations under the Board's previous Orders. As the Department raised no issue concerning compliance with the Orders by other companies, the Board did not schedule the presence of the other parties to the docket in the conference call and addressed solely Bell Atlantic's compliance. See Letter of 10/25/99 from Paul Phillips on behalf of the Independent telephone companies.

2. 9/28/99 Order at 7.

We conclude that Bell Atlantic was required to comply with the no-disconnect policy by September 30, 1999. Thus, it is necessary to address Bell Atlantic's argument that the filing of Motions for Reconsideration under V.R.C.P. Rule 59(e) tolled the deadlines in the July 2, 1999, Order. Rule 59(e) authorizes parties to file a motion to alter or amend judgment within 10 days of the entry of a judgment. The Vermont Supreme Court has concluded that "[a] motion under Rule 59(e) suspends the finality of the judgment, and allows the trial court to revise its initial judgment." *Osborn*, 147 Vt. at 433; *Murray v. St. Michael's College*, 164 Vt. 205, 208 (1995). Although *Osborn* addresses the effect on a judgment while the Motion is under review,[3] the Court's decision does not state that a motion for reconsideration tolls applicable deadlines. Thus, we do not accept Bell Atlantic's argument that when the Company filed its Motion, the deadlines in the July 2, 1999, Order were tolled.

For the foregoing reasons, we grant the Department's Motion and expressly require Bell Atlantic to comply with the no-disconnect policy. Our Order on Reconsideration reaffirmed the deadlines we had announced in the July 2, 1999, Order. As a result, Bell Atlantic was required to comply with the no-disconnect policy effective September 30, 1999. This ruling applies to all aspects of the no-disconnect policy, including the use of general rather than selective toll blocks.[4]

The Department also requests that the Board order Bell Atlantic to reinstate, without charge, any customer who was disconnected due to Bell Atlantic's failure to comply with the no-disconnect policy on September 30, 1999.[5] We concur. To the extent that Bell Atlantic disconnected basic service for non-payment of toll and ancillary service charges, or took other actions inconsistent with the no-disconnect policy, the Company shall reinstate the customer, or modify its other actions to be consistent with the policy.

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3. It is not clear whether the effective date of Board decisions is stayed (i.e., the effective date of the Order is delayed) by the filing of a Motion for Reconsideration. *Osborn* suggests that the answer is yes. On the other hand, 30 V.S.A. §12 specifically states that the effective date of Board Orders is not stayed, absent a formal ruling, by the filing of a notice of appeal, in contrast to Orders of a Court. See V.R.C.P. Rule 62. As the issue before the Board is whether a Motion for Reconsideration tolls (or suspends) applicable deadlines rather than stays them, it is unnecessary to reach this question.

4. As the Department points out, Bell Atlantic's existing tariffs may need to be modified to authorize the Company to impose general toll blocks.

5. It is not clear that Bell Atlantic has, in fact, failed to comply with the no-disconnect policy, i.e., it is not clear that any customers have actually been disconnected or required to accept general toll blocks. We reach no conclusions on that factual question. However, regardless of <u>actual</u> disconnection, Bell Atlantic is also expressly prohibited from continuing to <u>threaten</u> to disconnect local service customers for failure to make payment of long distance and ancillary charges.

SO ORDERED.

Dated at Montpelier, Vermont, this 25th day of October, 1999.

s/Michael H. Dworkin	PUBLIC SERVICE
s/Suzanne D. Rude	BOARD
s/David C. Coen	OF VERMONT

OFFICE OF THE CLERK

FILED: October 25, 1999

ATTEST: s/ Judith C. Whitney
Deputy 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.