

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Petition of XO Pennsylvania, Inc. :
for Resolution of Reciprocal :
Compensation Dispute Pursuant to : Docket No. A-310758F0002
the Abbreviated Dispute Resolution :
Process :

**STIPULATION OF XO PENNSYLVANIA, INC. AND
VERIZON PENNSYLVANIA INC.**

XO Pennsylvania, Inc. (“XO”) and Verizon Pennsylvania Inc. jointly submit this Stipulation to propose a disposition of this proceeding without the need for hearings, briefs, or exceptions, as explained below.

I. Procedural Background

1. XO filed a petition on June 25, 2002, pursuant to the Abbreviated Dispute Resolution process, alleging that Verizon Pennsylvania Inc. (“Verizon”) was obligated to pay certain reciprocal compensation charges that XO billed to Verizon under its interconnection agreement with Verizon, since June 14, 2001. XO maintained that these payments were due and owing under the terms and conditions of its interconnection agreement with Verizon. Verizon responded that it had no contractual obligation to pay reciprocal compensation on Internet-bound traffic after June 14, 2001, the effective date of the FCC’s *Order on Remand and Report and Order, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131 (April 27, 2001) (“*FCC ISP Order*”). The amount of payments that XO claimed that

Verizon unilaterally withheld through April 10, 2002 exceeded \$800,000, as of that time. In addition, XO sought payment of late payment charges on the invoiced amounts that Verizon did not dispute, but did not pay on a timely basis.

2. On July 2, 2002, Verizon filed an Answer to the Petition and a Motion to Dismiss. Verizon claimed that the issues that XO raised in its Petition already had been addressed by the Public Utility Commission (“PUC” or “Commission”) in an Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process (“MCI Decision”)*. Verizon maintained that in that decision, the Commission interpreted the very same agreement at issue here and rejected the very same claim here raised by XO. There, the Commission found that as of June 14, 2001, Verizon was no longer required to make reciprocal compensation payments for Internet-bound traffic to MCI WorldCom.

3. XO timely filed an Answer in Opposition to the Motion to Dismiss, on July 12, 2002. XO argued that Verizon’s Motion to Dismiss should be denied, because the parties, facts and issues in dispute in this proceeding are different from those in Verizon’s abbreviated dispute resolution (“ADR”) proceeding against MCI WorldCom and are appropriate for decision in this proceeding pursuant to the ADR process. Verizon disagreed, pointing out, among other things, that the interconnection agreement at issue in this case is identical to the agreement the Commission interpreted in its *MCI Decision*.

4. On July 19, 2002, a prehearing conference was held in this matter, and the parties discussed the procedural status of this case. Thereafter, ALJ Michael Schnierle issued a prehearing order on July 22, 2002. The ALJ agreed that the Commission’s *MCI Decision* was not dispositive of this proceeding as of that time, for two reasons. First, the Commission’s

decision was based on the *FCC ISP Order*. After the Commission voted on the MCI WorldCom decision but before the decision was issued, the D.C. Circuit Court of Appeals ruled that the legal basis that the FCC relied upon in the *FCC ISP Order* was lacking merit. The Court remanded the case to the FCC for further proceedings but did not vacate the *FCC ISP Order*. Subsequently, the Court was asked to reconsider its decision and to reverse the *FCC ISP Order* in addition to the remand. Second, the PUC decided to grant reconsideration of its *MCI Decision*, pending review of, and consideration on, the merits.

5. The D.C. Court of Appeals declined to grant reconsideration and declined to vacate the *FCC ISP Order*.

6. The PUC denied reconsideration of the *MCI Decision* in an order entered August 30, 2002 at Docket No. A-310752F7000.

7. A further prehearing conference was held on October 18, 2002. XO reported that the late payment charge issue that it raised in its Petition had been resolved and addressed by Verizon. Thereafter, on October 25, 2002, the parties advised the Administrative Law Judge that they had agreed to enter into a stipulation to resolve this proceeding.

II. Terms of the Stipulation

8. The present XO petition seeks the PUC's interpretation of the MCI WorldCom Interconnection Agreement, and whether that Agreement permits Verizon to stop making reciprocal compensation payments for Internet-bound traffic as of June 14, 2001 based on the *FCC ISP Order*.

9. The Commission has ruled on the issue raised by XO herein in a different proceeding in which XO was not a party. Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process* (“*MCI Decision*”).

10. The parties agree that the PUC’s *MCI Decision* disposes of the remaining issue in dispute in this proceeding concerning whether Verizon is required to continue paying reciprocal compensation payments for Internet-bound traffic to XO after June 14, 2001.

11. The parties agree to waive the filing of exceptions and reply exceptions in the event that the presiding ALJ issues an Initial Decision approving this Stipulation, and the Commission enters a final order adopting and approving the Initial Decision.

12. The parties agree that by entering into this Stipulation, XO does not waive its legal rights to pursue recourse of the reciprocal compensation payment issue in a different tribunal, and to pursue an appeal of the Commission’s decision in this proceeding.

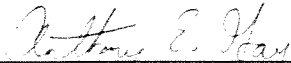
13. The parties agree that by entering into this Stipulation, XO does not waive its legal rights to pursue recourse of the reciprocal compensation payment issue before the Public Utility Commission or other appropriate tribunal in the event that the *MCI Decision* or the *FCC ISP Order* is overturned, reversed or otherwise invalidated on appeal.

14. The parties agree that by entering into this Stipulation, Verizon does not waive its legal rights to oppose any further legal action by XO concerning the reciprocal compensation payment issue in a different tribunal or an appeal.

15. In the event that the ALJ does not approve this Stipulation, or the PUC does not issue an order approving this Stipulation, the parties shall have the opportunity to void this Stipulation, and to pursue full litigation of the reciprocal compensation payment issue.

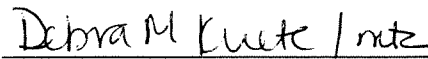
WHEREFORE, XO Pennsylvania, Inc. and Verizon Pennsylvania Inc. respectfully request the following:

- A. The ALJ's issuance of an Initial Decision adopting and approving this Stipulation;
and
- B. The PUC's adoption and issuance of an Opinion and Order that adopts and approves the ALJ's Initial Decision.



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Dated: April 17, 2003