**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 29, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

John F. Coleman, Jr.

Wayne E. Gardner

Robert F. Powelson

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| Joint Petition of Verizon Pennsylvania Inc. (f/k/a Bell Atlantic - Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. for approval of Amendment No. 8 to an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996. | A-2010-2180146 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is the Joint Petition filed by Verizon Pennsylvania Inc. (Verizon PA), formerly Bell Atlantic – Pennsylvania, Inc. and RCN Telecom Services of Philadelphia, Inc. (RCN) requesting approval of Amendment No. 8 (Amendment 8) to an Interconnection Agreement (Agreement) between the Parties (the Agreement and the Amendments are collectively referred to herein as the Amended Agreement). Amendment 8 was filed pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code) (TA-96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission’s Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M‑00960799 (Order entered June 3, 1996); Order on Reconsideration entered September 9, 1996; see also *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (*Implementation Orders).*

**History of the Proceeding**

On June 4, 2010, Verizon PA and RCN filed the instant Joint Petition for approval of Amendment 8, which is intended to modify and revise the terms and conditions of their existing Agreement regarding Fiber Meet Arrangements. The terms of Amendment 8 shall apply to and be a part of the Agreement notwithstanding any other provision of the Amended Agreement or a Verizon Tariff. The initial Interconnection Agreement was approved by Commission Order entered January 17, 1997 at A-310555. Amendment 8 will be attached to, and made part of, the Agreement.

The Commission published notice of the Amendment in the *Pennsylvania Bulletin* on June 19, 2010 advising that any interested parties could file comments within ten days. No comments have been received.

The Amendment has an effective date of May 3, 2010. The Amendment covers services in Verizon PA’s service territory in Pennsylvania.

In the Joint Petition before us, Verizon PA is the Incumbent Local Exchange Carrier (ILEC). RCN is certificated with the Pennsylvania Public Utility Commission to provide service as a Reseller of long distance service and a Competitive Local Exchange Carrier.[[1]](#footnote-1) The Amended Agreement applies solely to the geographic territory in which Verizon PA operates as an ILEC.

**A. Standard of Review**

The standard for review of a negotiated interconnection agreement is set out in Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2). Section 252(e)(2) provides in pertinent part, that:

(2) Grounds for rejection. The state commission may only reject—

(A) an agreement (or any portion thereof) adopted by

negotiation under subsection (a) if it finds that –

(i) the agreement (or portion thereof) discriminates against a telecommu-nications carrier not a party to the agreement; or

1. the implementation of such agreement

or portion is not consistent with the public

interest, convenience, and necessity . . . .

With these criteria in mind, we shall review Amendment 8 submitted by Verizon PA and RCN.

#### B. Summary of Terms

Amendment 8 will become the Parties’ Original and Amended Agreement and contains the terms and provisions arising from RCN’s desire to change the Agreement with respect to Fiber Meet arrangements. Specifically, where the Parties’ networks have not been interconnected for a minimum of three months as required by the Amended Agreement, RCN may still request a Fiber Meet arrangement by providing written notice thereof to Verizon PA as long the conditions are met as delineated in 2.2 of Amendment 8. Notwithstanding any other provision of the Amendment, Verizon PA shall not have an obligation under Section 2.2 to establish a Fiber Meet arrangement until RCN provides a letter of credit. If, twelve months or more after establishment of a Fiber Meet arrangement between the Parties, Verizon PA determines that actual volumes of applicable traffic on the Fiber Meet arrangement are less than RCN’s forecast, than Verizon PA may draw on the letter of credit upon notice to RCN. If Verizon PA draws on a letter of credit, RCN irrevocably waives any right it may have to make a claim on the amount that Verizon has drawn. Amendment 8 at 2.

**C. Disposition**

We shall approve Amendment 8, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving this privately negotiated Amendment, we express no opinion regarding the enforceability of our independent state authority preserved by 47 U.S.C. § 251(d)(3) and any other applicable law.

We shall minimize the potential for discrimination against other carriers not parties to the Amendment by providing here that our approval of the Amendment shall not serve as precedent for agreements to be negotiated or arbitrated by other parties. This is consistent with our policy of encouraging settle­ments. 52 Pa. Code § 5.231; *see* *also*, 52 Pa. Code §§ 69.401 *et* *seq.*, relating to settlement guidelines, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code §§ 69.391 *et seq.* On the basis of the foregoing, we find that Amendment 8 does not discriminate against other telecommuni­cations carriers not parties to the negotiations.

TA-96 requires that the terms of the Amendment be made available for other parties to review. 47 U.S.C. § 252(h). However, this availability is only for purposes of full disclosure of the terms and arrangements contained therein. The accessibility of the Amendment and its terms to other parties does not connote any intent that our approval will affect the status of negotiations between other parties. In this context, we will not require Verizon Pennsylvania and RCN to embody the terms of the Amendment in a filed tariff.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect those obligations of the ILEC in the areas of protection of public safety and welfare, service quality, and the rights of consumers. *See*, *e.g.*, Section 253(b). This is consistent with TA‑96 wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the ILEC, and continue unaffected by a negotiated Agreement. We had previously reviewed the Agreement’s terms relating to 911 and E911 services and had concluded that the provisions in the Agreement were consistent with the public interest.

Before concluding, we note that the Joint Petitioners have filed a signed, true and correct copy of Amendment 8 as part of their Joint Petition. The Commission’s Secretary’s Bureau has published an electronic copy of the Amendment to the Commission’s website prior to publishing notice of the Amendment in the *Pennsylvania Bulletin*. Consistent with our May 3, 2004 Final Order at Docket No. M‑00960799, since we will approve Amendment 8 without any modifications, as filed, we will not require the Joint Petitioners to file an electronic copy of Amendment 8 after the entry of this Opinion and Order.

# Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we determine that Amendment 8 between Verizon PA and RCN is non-discriminatory to other telecommunications companies not parties to it and that it is consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for approval of Amendment No. 8 filed on June 4, 2010, by Verizon Pennsylvania Inc. (f/k/a Bell Atlantic - Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. pursuant to the Telecommunications Act of 1996, and the Commission’s Orders Inc. *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M‑00960799 (Order entered on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996); and *Proposed Modifications to the Review of Interconnection Agreements* (Order entered on May 3, 2004) is granted, consistent with this Opinion and Order.

2. That approval of Amendment No. 8 shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Agreement.

3. That this matter be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 29, 2010

ORDER ENTERED: **July 29, 2010**

1. We note that regardless of the types of services covered by this Amendment, it would be a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq*., if RCN began offering services or assessing surcharges to end users which it has not been authorized to provide and for which tariffs have not been authorized. [↑](#footnote-ref-1)