**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 26, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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| Joint Petition of Verizon Pennsylvania Inc. and  Zito Media Voice LLC for Approval of Adoption  of an Interconnection Agreement and Amendment  No. 1 Under Section Nos. 252(i) and 252(e) of the Telecommunications Act of 1996 | A-2012-2290900 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is a Joint Petition of Verizon Pennsylvania Inc. (Verizon PA) and Zito Media Voice LLC (Zito Media) (jointly, the Parties) filed on February 29, 2012, for: (1) the adoption of an Interconnection Agreement (Agreement); and (2) approval of Amendment No. 1 to the above Agreement in accordance with Sections 252(i) and 252(e), respectively, of the Telecommunications Act of 1996 (TA-96), 47 U.S.C. §§ 252(i), 252(e). The Agreement and Amendment were 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), 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 February 29, 2012, Verizon PA and Zito Media filed the Joint Petition for approval of an Agreement by means of adoption of the existing Agreement (including Amendment No. 1 thereto) between Verizon PA and Digizip International Inc. that was approved by Commission Order entered October 14, 2011, at Docket No. 2011-2256516. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on January 17, 2012, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement has an effective date of October 17, 2011 and Amendment No. 1 has an effective date of January 23, 2012. The Agreement and Amendment No. 1 will remain in effect in accordance with the terms of the adopted agreement as it currently exists as an effective agreement in the Commonwealth of Pennsylvania. The original agreement has a termination date of June 30, 2013. In seeking the Commission’s approval, Zito Media agrees to adopt and be bound by the terms now in effect between Verizon PA and Digizip, including the substitution of Zito Media in place of Digizip International, Inc. and Digizip in the terms of that agreement, where appropriate.

In the Joint Petition before us, Verizon PA is the Incumbent Local Exchange Carrier (ILEC) and Zito Media is authorized to provide Competitive Local Exchange Carrier (CLEC) service in Verizon PA’s service territory.[[1]](#footnote-1)

**Discussion**

**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

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . . .

Regarding the availability of Interconnection Agreements to other telecommunications carriers, Section 252(i) of TA‑96 provides that:

A local exchange carrier shall 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.

The Federal Communications Commission (FCC) recently changed its interpretation of Section 252(i) of TA-96, and its rule at 47 C.F.R. §51.809. *See* FCC Docket No. 01-338, rel. July 13, 2004 (2004 FCC LEXIS 3841). The FCC has now adopted an “all-or-nothing rule” that requires a requesting carrier to adopt the agreement in its entirety, taking all rates, terms and conditions from the adopted agreement. The revisions were published in the *Federal Register* on July 22, 2004, and became effective on August 23, 2004.

With these criteria in mind, we shall review the Agreement submitted by Verizon PA and Zito Media.

**B. Summary of Terms**

In their Joint Petition, Verizon PA and Zito Media agree that, in the event an interconnection agreement between Verizon PA and Zito Media is currently in effect in the former Bell Atlantic service territory within the Commonwealth of Pennsylvania, the current adoption shall be an amendment and restatement of the operating terms and conditions of the original interconnection agreement and shall replace in their entirety the terms of the original interconnection agreement. The adoption of the terms does not include adoption of any provision imposing an unbundling obligation on Verizon PA that no longer applies to Verizon PA under the FCC’s Triennial Review Order[[2]](#footnote-2) or Triennial Review Order on Remand.[[3]](#footnote-3) Agreement at 1-4.

The Parties have also included with the Joint Petition a standard pricing schedule at Appendix A, which contains rates and charges that apply to the interconnection agreement. Reciprocal Compensation Rates for traffic termination are as follows: the rate for traffic to an end office is $0.0009870000 per minute of use (MOU). (Appendix A to Agreement).

**C. Disposition**

Upon our review of the Agreement and Amendment No. 1, we shall approve them, finding that they satisfy the two-pronged criteria of Section 252(e) of TA‑96. We note that in approving this privately negotiated Agreement and Amendment No. 1, 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 Agreement by providing here that our approval 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*. Based on the foregoing, we find that the Agreement does not discriminate against other telecommunications carriers not parties to the negotiations.

TA‑96 requires that the terms of the Agreement, as amended, 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 Agreement and its terms to other parties does not connote any intentthat our approval will affect the status of negotiations between other parties. In this context, we will not require Verizon PA and Zito Media to embody the terms of the Agreement and Amendment No. 1 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 have reviewed the Agreement and Amendment No. 1’s terms relating to 911 and E911 services and conclude that these provisions of the Agreement are consistent with the public interest.

Before concluding, we note that the Joint Petitioners have filed signed, true and correct copies of the Agreement and Amendment No. 1 as part of their Joint Petition. The Commission’s Secretary’s Bureau has published an electronic copy of the Agreement and Amendment No. 1 to the Commission’s website prior to publishing notice of the Agreement in the *Pennsylvania Bulletin*. Consistent with our May 3, 2004 Order at Docket No. M-00960799, since we will approve the Agreement and Amendment No. 1 without any modifications, as filed, we will not require the Joint Petitioners to file an electronic copy of the Agreement and Amendment No. 1 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 the Agreement and Amendment No. 1 between Verizon PA and Zito Media are non-discriminatory to other telecommu­nications companies and that they are consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition seeking the approval of the adoption of an existing Interconnection Agreement and Amendment No. 1, thereto, filed on February 29, 2012, by Verizon Pennsylvania Inc. and Zito Media Voice, LLC pursuant to the Telecommunications Act of 1996, 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 Reconsiderationentered September 9, 1996); and *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) is granted, consistent with this Opinion and Order.

2. That approval of the Agreement and Amendment No. 1 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: April 26, 2012

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1. We note that regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq*. if Zito Media 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)
2. Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17145, para. 278 (2003). [↑](#footnote-ref-2)
3. In the matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, FCC 04-290 (February 4, 2005) [↑](#footnote-ref-3)