

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

17

1. REPORT DATE: February 27, 2002	2. BUREAU AGENDA NO. MAR-2002-OSA-0086*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: March 14, 2002
6. APPROVED BY: Director: Cheryl W. Davis 7-1827 Supervisor:	DOCKETED MAR 27 2002
7. PERSONS IN CHARGE: David Munsch 7-1660	
8. DOCKET NO.: A-310130F7001	

9. (a) **CAPTION (abbreviate if more than 4 lines)**
(b) **Short summary of history & facts, documents & briefs**
(c) **Recommendation**

DOCUMENT FOLDER

(a) Joint Petition for approval of an Interconnection and Resale Agreement between Verizon North Pennsylvania Inc. (Verizon North) and National Telephone Exchange, Inc., (NTE), pursuant to Section 252 of the Telecommunications Act of 1996

(b) On January 14, 2002, Verizon PA and NTE filed the Joint Petition seeking approval of the aforementioned Interconnection and Resale Agreement. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on February 9, 2002, advising that any interested parties could file comments within ten days. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which grants the Joint Petition consistent with the Opinion and Order.

Order Doc. No. 309883v1

Calendar Doc. No. 309886v1

10. MOTION BY: Commissioner Chm. Thomas

**Commissioner Pizzigrilli - Yes
Commissioner Wilson - Yes
Commissioner Fitzpatrick - Yes**

SECONDED: Commissioner Bloom

CONTENTS OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 14, 2002

A-310130F7001

NORMAN JAMES KENNARD
CRAIG R BURGRAFF
MALATESTA HAWKE & MCKEON LLP
HBG ENERGY CTR 100 N 10TH ST
PO BOX 1778
HARRISBURG PA 17105

DOCUMENT
FOLDER

Joint Petition of Verizon North Inc. and National Telephone Exchange, Inc. for Approval of an Interconnection and Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on March 14, 2002 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

DOCKETED

MAR 20 2002

James J. McNulty
Secretary

Enclosure
Certified Mail
TAB

ROGER J NESS
2417 N FRONT ST
HARRISBURG PA 17110

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held March 14, 2002

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Kim Pizzingrilli
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Joint Petition of Verizon North Inc. and
National Telephone Exchange, Inc., for
Approval of an Interconnection and Resale
Agreement under Sections 251 and 252 of the
Telecommunications Act of 1996

A-310130F7001

DOCUMENT
FOLDER

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Verizon North Inc. (Verizon North) and National Telephone Exchange, Inc., (NTE) for approval of an Interconnection and Resale Agreement (Agreement). The Agreement 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) (*Implementation Orders*).

DOCKETED

MAR 20 2002

History of the Proceeding

On November 5, 2001, Verizon North and NTE filed the instant Joint Petition seeking approval of an Agreement, which sets forth the terms, conditions, and prices under which Verizon North will offer and provide to NTE certain telecommunication services available for interconnection and resale, as well as resale support services.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on February 9, 2002, advising that any interested parties could file comments within ten days. No comments have been filed.

A. Standard of Review

The Commission's standard of review of a negotiated interconnection agreement is set forth 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 telecommunications 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. . .

With these criteria in mind, we shall review the Agreement submitted by Verizon North and NTE.

B. Timeliness of Filing

We note that the instant Agreement provides that the “Effective Date” is November 30, 2001. (Joint Petition, p. 1). However, we note that a period of approximately a month and a half has elapsed from the time the Agreement was executed until it was submitted to the Commission for review. Neither TA-96 nor the Federal Communications Commission (FCC) rules interpreting TA-96 provide for the specific time in which the negotiated agreement is to be filed with the state commission. However, we have addressed our expectations regarding the proper time considerations to be observed with regard to negotiated agreements. (*See Implementation Order*, June 3, 1996, slip op., p. 33).¹

We advise the Parties that failure to comply with our *Implementation Orders*, as well as this Order, could subject the Parties to civil penalties for violations under Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301.

C. Summary of Terms

The key provisions of the Agreement are:

- (1) access by NTE to Verizon North’s operation support systems; (Agreement, pp. 44-45)

¹ “The Act [TA-96] does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*).

- (2) the resale of Verizon North's telecommunications services for an avoided cost discount, excluding Operator Services and Directory Assistance (OS/DA) of 11.1%. The avoided cost discount for OS/DA is 2.0%; (Agreement, p. 117)
- (3) routing to Directory Assistance/Operator Services platforms; (Agreement, p. 39) and,
- (4) including NTE' customers' primary listings in the appropriate alphabetical directory and shall provide initial distribution of such directories to such NTE' Customers in the same manner that it provides such directories to its own customers. (Agreement, p. 40).

Verizon North and NTE aver that the Agreement² complies with the criteria identified in TA-96 at 47 U.S.C. §252(e)(2)(i) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. The Parties assert that the Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other telecommunications carrier under §252(i) of TA-96. Furthermore, the Parties note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Verizon North. (Joint Petition, p. 2, ¶4).

² It is noted that, regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code if the Applicant began offering services or assessing surcharges, to end users, for which it has not been authorized to provide and for which tariffs have not been authorized.

D. Disposition

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We shall minimize the potential for discrimination against other carriers not a party to the Agreement by providing here that our conditional approval of this Agreement 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 the instant Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the Interconnection Agreement be made available for other parties to review (§252(h)). However, this availability is only for purposes of full disclosure of the terms and arrangements contained therein. The accessibility of the Interconnection Agreement 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 North or NTE to embody the terms of the Interconnection Agreement in a filed tariff, but we will require that the parties file the Interconnection Agreement with this Commission. It shall be retained in the public file for inspection and copying consistent with the procedures relating to public access to documents.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect those obligations of the telecommunications company 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 and with Chapter 30 of the Public Utility Code, wherein service quality and standards,

i.e., universal service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the local exchange company, and continue unaffected by a negotiated agreement. We have reviewed the Agreement's terms relating to 911 and E911 service. (Agreement, pp. 110-111). We conclude that the Agreement's terms relating to 911 and E911 services are consistent with the public interest.

The initial expiration date of the Agreement between Verizon North and NTE is November 29, 2003. Thereafter, the Agreement shall continue in force and effect unless and until cancelled or terminated as provided in the Agreement. (Agreement, p. 1).

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Agreement between Verizon North and NTE filed on January 14, 2002; **THEREFORE**,

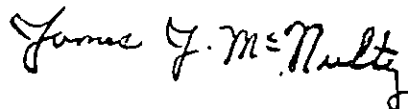
IT IS ORDERED:

1. That the Joint Petition of Verizon North Inc. and National Telephone Exchange, Inc., seeking the approval of a Interconnection and Resale Agreement filed on January 14, 2002, pursuant to the Telecommunications Act of 1996 and the Commission's Opinion and Orders in *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), is granted, consistent with this Opinion and Order.

2. That approval of the Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

3. That the Parties shall file a true and correct copy of the Inter-connection Agreement with this Commission within thirty (30) days of the date of entry of this Opinion and Order.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 14, 2002

ORDER ENTERED: **MAR 14 2002**