

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: April 20, 2004	2. BUREAU AGENDA NO. APR-2004-OSA-0119*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: C.W. Davis 7-1827 Mgr/Spvr: Legal Review: R. Albert 7-8108	April 29, 2004
7. PERSONS IN CHARGE: G. Strella 7-1023	
8. DOCKET NO.: A-310130F7001	

DOCKETED
MAY 06 2004

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

(a) Joint Petition for approval of Amendment No. 1 to an Interconnection Agreement between Verizon North Pennsylvania Inc. (Verizon North) and National Telephone Exchange, Inc. (NTE) pursuant to Section 252(e) of the Telecommunications Act of 1996

(b) On March 1, 2004, Verizon North and NTE filed the Joint Petition seeking approval of Amendment No. 1 to an existing Interconnection Agreement. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on March 30, 2004, 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. 465815v1

Calendar Doc. No. 465817v1

10. MOTION BY: Commissioner Chm. Fitzpatrick	Commissioner Thomas - Yes
SECONDED: Commissioner Bloom	Commissioner Pizzigrilli - Yes
	Commissioner Holland - Yes

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT
FOLDER**

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

IN REPLY PLEASE
REFER TO OUR FILE

APRIL 30, 2004

A-310130 F7001

NORMAN JAMES KENNARD ESQUIRE
HAWKE MCKEON SNISCAK & KENNARD LLP
100 NORTH TENTH STREET
PO BOX 1778
HARRISBURG PA 17105-1778

DOCUMENT
FOLDER

Joint Petition for Approval of Amendment No. 1 to the Interconnection Amendment between Verizon North, Inc., and National Telephone Exchange under Section 252(e) of the Telecommunications Act of 1996.

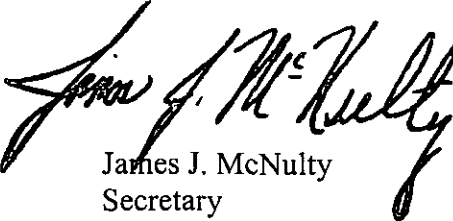
To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on April 29, 2004 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

DOCKETED
MAY 18 2004



James J. McNulty
Secretary

fg
encls
cert. mail

DANIEL E MONAGLE ESQUIRE
VERIZON PENNSYLVANIA, INC.
1717 ARCH STREET 32-N
PHILADELPHIA PA 19103

ROGER J NESS
2417 N FRONT STREET
HARRISBURG PA 17110

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 29, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

DOCUMENT
FOLDER

Joint Petition for Approval of Amendment
No. 1 to the Interconnection Amendment
Between Verizon North Inc. and
National Telephone Exchange under
Section 252(e) of the Telecommunications
Act of 1996.

A-310130F7001

DOCKETED
MAY 18 2004

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition requesting approval of Amendment No. 1 (Amendment) to the Interconnection Agreement (Agreement) between Verizon North Inc. (Verizon North) and National Telephone Exchange, Inc. (NTE). The Amendment 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 on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996). (*Implementation Orders*).

History of the Proceeding

On March 1, 2004, Verizon North and NTE filed the instant Joint Petition seeking approval of the Amendment which supplements the terms of the Agreement which was approved by the Commission by our Opinion and Order entered on March 14, 2002. This Amendment will be attached and made part of the existing Agreement.

The Commission published notice of the Joint Petition and the instant Amendment in the *Pennsylvania Bulletin* on March 30, 2004, advising that any interested parties could file comments within ten days. No comments have been received.

NTE received a certificate of public convenience on December 8, 1998, at Docket No. A-310130F0002, to provide services as a facilities based Competitive Local Exchange Carrier.

Discussion

A. Standard of Review

The Commission's standard of review of a negotiated interconnection agreement or amendment is set forth at 47 U.S.C. § 252(e)(2), which 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 –

- (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

Regarding the availability of interconnection agreements or amendments 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.

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

B. Timeliness of Filing

The instant Amendment has an “Effective Date” is January 13, 2004. We note that a period of 48 days has elapsed from the time the Amendment 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 or amendment 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 or amendments. (*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 Amendment deletes the original “Services Available for Resale” (Appendix A of the original Agreement) and replaces it with Attachment 1 to the Amendment which contains modified prices for resale services. This Amendment was adopted because NTE desired to change the Pricing Appendix. The Parties agree that in the event of a conflict between the rates, terms and provisions of the Amendment and the rates, terms and provisions of the Interconnection Agreement, the Amendment shall govern. The Amendment further states that the fact that a rate, term or provision appears in the Amendment but not in the Interconnection Amendment, or in the Interconnection Agreement and not in the Amendment, shall not be interpreted as, or deemed grounds for finding a conflict for purposes of Section 2 of the Amendment. Amendment No. 1 at 1-2.

Verizon North and NTE aver that the Amendment complies with the criteria identified in TA-96 at 47 U.S.C. § 252(e)(2)(A) quoted above, pursuant to which we must determine whether to accept or reject the Amendment. The Parties assert that the Amendment is not discriminatory and that the interconnection arrangements contained in

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.*).

the Amendment 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 Amendment and are free to pursue their own negotiated arrangements with Verizon North pursuant to Section 252 of TA-96.

The Parties further assert that the Amendment is consistent with the public interest, convenience, and necessity,² as required by Section 252(e) of TA-96.

D. Disposition

Having reviewed Amendment No. 1 to the Amendment, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving these privately negotiated agreements or amendments, including any provisions limiting unbundled access to Verizon North's network, we express no opinion regarding the enforceability of our independent state authority preserved by 47 USC § 251(d)(3) and any other applicable law.

We shall minimize the potential for discrimination against other carriers not a party to the Amendment by providing here that our conditional approval of this 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 the instant Amendment does not discriminate against a telecommunications carrier not a party to the negotiations.

² It is noted that regardless of the types of services covered by this Inter-connection Amendment, it would be a violation of the Public Utility Code if the

TA-96 requires that the terms of the Amendment 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 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 North or NTE to embody the terms of the Amendment in a filed tariff, but we will require that the Parties file the Amendment 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 or amendment 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 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 Amendment's terms relating to 911 and E911 services and conclude that these provisions are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we determine that the Amendment to the Interconnection Amendment between Verizon North and NTE is non-discriminatory to other

Applicant 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.

telecommunications companies, not party to it, and that it is consistent with the public interest; **THEREFORE,**

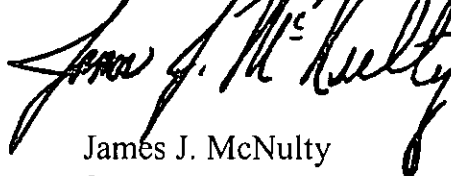
IT IS ORDERED:

1. That the Joint Petition for approval of Amendment No. 1 to the Interconnection Amendment filed on March 1, 2004, by Verizon North Inc. and National Telephone Exchange, Inc., pursuant to the Telecommunications Act of 1996, and the Commission's Orders 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 Amendment No. 1 to the Interconnection Amendment shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant Amendment.

3. That the Parties shall file a true and correct copy of Amendment No. 1 to the Interconnection Amendment 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: April 29, 2004

ORDER ENTERED: **APRIL 30** 2004

2. Article Number



7160 3901 9843 0006 0623

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-310130F7001 0
 Norman James Kennard Esq.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
 David Sheggar MAY 3 2004

C. Signature
 X *David Sheggar* Agent
 Addressee

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes
 No

PS Form 3811, February 2003

Domestic Return Receipt

2. Article Number



7160 3901 9843 0006 0630

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-310130F0001 0
 Roger J. Reed

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
 Christine Semoff 5-3-04

C. Signature
 X *Christine Semoff* Agent
 Addressee

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes
 No

PS Form 3811, February 2003

Domestic Return Receipt