

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: May 13, 2003	2. BUREAU AGENDA NO. MAY-2003-OSA-0110* FOLDED
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: May 22, 2003
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: D. Munsch 7-1660 Legal Review R. Albert 7-8108	DOCKETED JUN 25 2003
7. PERSONS IN CHARGE: P.C. Foster 3-5243	
8. DOCKET NO.: A-310782F7000	

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

(a) Joint Petition of Verizon Pennsylvania Inc. (Verizon PA) and IDT America Corp. (IDT) for approval of the Adoption of an Interconnection Agreement under Sections 251(i) of the Telecommunications Act of 1996

(b) On March 27, 2003, Verizon PA and IDT filed a Joint Petition for approval of the Adoption of an Interconnection Agreement (Joint Petition), under Sections 251(i) of the Telecommunications Act of 1996. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on April 12, 2003. No comments have been received.

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

Order Doc. No. 395558v1

Calendar Doc. No. 395559v1

10. **MOTION BY:** Commissioner Chm. Fitzpatrick
SECONDED: Commissioner Bloom
Commissioner Wilson - Yes
Commissioner Thomas - Yes
Commissioner Pizzingrilli - Yes

CONTENT 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

MAY 23, 2003

A-310782 F7000

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

KJR

Joint Petition of Verizon Pennsylvania, Inc., and IDT America Corp., for approval of an Interconnection Agreement under Sections 251(i) of the Telecommunications Act of 1996, by means of adoption of an Interconnection Agreement between Verizon New York, Inc., and MCImetro Access Transmission Services LLC.

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 May 22, 2003 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
FG

JAMES COURTER PRESIDENT
IDT AMERICA CORP
520 BROAD STREET
NEWARK NJ 07102-3111

DOCKETED
JUN 11 2003

DOCUMENT
FOLDER

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 22, 2003

Commissioners Present:

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

Joint Petition of Verizon Pennsylvania Inc.
and IDT America Corp. For Approval of an
Interconnection Agreement Under Sections 251(i)
of the Telecommunications Act of 1996, by
Means of Adoption of an Interconnection
Agreement between Verizon New York Inc.
and MCImetro Access Transmission Services LLC

A-310782F7000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Verizon Pennsylvania Inc. (Verizon PA) and IDT America Corp. (IDT) for approval of an Interconnection Agreement (Agreement) by means of adoption of an existing Interconnection Agreement between Verizon New York Inc. d/b/a Verizon New York (Verizon NY) and MCImetro Access Transmission Services LLC (MCImetro). This 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

DOCUMENT
FOLDER

DOCKETED
JUN 11 2003

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*).

History of the Proceeding

On March 27, 2003, Verizon PA and IDT filed the instant Joint Petition seeking approval of the aforementioned Agreement. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on April 12, 2003, advising that any interested parties could file comments within ten days. No comments have been received.

Discussion

A. Standard of Review

The standard of review of a negotiated interconnection agreement is set forth at 47 U.S.C. §252(e)(2) of TA-96, 47 U.S.C. §252(e)(2). Section 252(e) 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 . . .

Regarding the availability of interconnection agreements to other telecommunications carriers, Section 252(i) of TA-96 states:

A local exchange carrier shall make available any interconnection services, 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 regard to IDT's desire to opt-in to the terms and conditions of the instant out-of-state Interconnection Agreement, the Federal Communications Commission (FCC) permits CLECs to opt-in to interconnections agreements approved in other states in accordance with the "Most Favored Nation" (MFN) requirements in paragraph 32 of the Bell Atlantic Corp./GTE Merger Conditions released June 16, 2000 at CC Docket No. 98-184.

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

B. Summary of Terms

In their Joint Petition, Verizon PA and IDT agree that IDT will exercise its right under Section 252(i) of TA-96 and the FCC's June 16, 2000 Memorandum Opinion and Order to adopt the Agreement between Verizon NY and MCImetro, which was approved by the Connecticut Department of Public Utility Control at Case No. 98-04-69, on June 3, 1998. Under the adoption, IDT has agreed that it will be

bound by the terms of the Verizon NY/MCImetro Interconnection Agreement presently in effect. (Joint Petition, p. 2, ¶3).

The key provisions of the Agreement, as summarized by the Parties, are:

- (1) Unbundled loops – providing IDT access to existing Verizon PA customers – based on a rate methodology specified in Appendix 2 to the Adoption.
- (2) Customers to retain their telephone numbers when they switch to IDT.
- (3) Including IDT customers' primary listing in the appropriate alphabetical directory (White Pages) and, for business customers, in the appropriate classified directory (Yellow Pages).
- (4) The resale of Verizon PA telecommunications services for a wholesale discount as specified in Appendix 2 to the Adoption.
- (5) The continued provision of 911 services to all customers.
- (6) Performance standards for services provided by Verizon PA to IDT equal to the level of service provided by Verizon PA to its own end-user customers and other telecommunications carriers.

(Joint Petition, p. 2, ¶5).

Paragraph 2 of the January 23, 2003 Verizon Adoption Letter setting forth the understanding of the Parties, opting into the Verizon NY/MCImetro Agreement, provides, in pertinent part, that the Verizon NY/MCImetro terms shall govern. The Verizon NY/MCImetro Agreement provides that either Party may terminate the Agreement by delivering 120 days' advance written notice to the other Party of the intention to terminate the Agreement. (Verizon NY/MCImetro Agreement, p. A-2).

C. Disposition

We determine that the Agreement 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 Agreement. We further determine 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, we note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Verizon PA.

We find that the Agreement is an important step towards allowing IDT to compete with Verizon PA, as a facilities-based local telephone service carrier for both residential and business customers, which is what TA-96 contemplated and the Pennsylvania General Assembly envisioned when it enacted Section 3009(a) of the Public Utility Code, 66 Pa. C.S. §3009(a), and that, therefore, the Agreement protects the public interest, convenience, and necessity.¹

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

¹ 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 which it has not been authorized to provide and for which tariffs have not been authorized.

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 Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the 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 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 PA or IDT to embody the terms of the Agreement in a filed tariff, but we will require that the Parties file the 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 services and conclude that these provisions of the Agreement 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 will approve the Interconnection Agreement between Verizon Pennsylvania Inc. and IDT America Corp. filed on Mach 27, 2003;

THEREFORE,

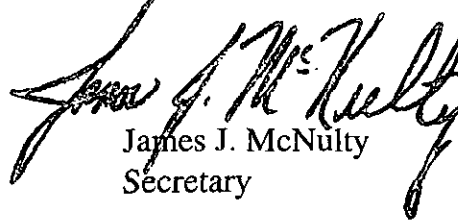
IT IS ORDERED:

1. That the Joint Petition of Verizon Pennsylvania Inc. and IDT America Corp. filed on March 27, 2003, seeking approval to adopt the terms of the existing Interconnection Agreement between Verizon New York Inc and MCImetro Access Transmission Services LLC which was approved by the Connecticut Department of Public Utility Control on June 3, 1998 at Case No. 98-04-36, 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 hereby granted, consistent with this Opinion and Order.

2. That approval of the Interconnection 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 Interconnection 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: May 22, 2003

ORDER ENTERED: **MAY 23 2003**