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ORIGINAL

MAILING ADDRESS:
P.O. BOX 1776
HARRISBURG, PA 17105

September 22, 1999

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building - Filing Room (B-18)
Post Office Box 3265
Harrisburg, PA 17105-3265

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PA. P.U.C.
SECRETARY'S BUREAU

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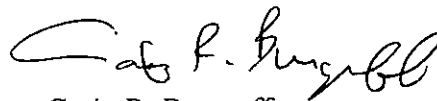
RE: In the Matter of the Adoption by DSLnet Communications LLC of an
Interconnection Agreement Between GTE North Incorporated and Dakota
Services Limited Pursuant to Section 252(i) of the Telecommunications
Act of 1996; Docket No. A-310824 F0002

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of the Adoption of Interconnection
Agreement between GTE North Incorporated and DSLnet Communications LLC.

If you have any questions, please feel free to contact me.

Respectfully,



Craig R. Burgraff

KJR

CRB:tld
enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

DOCKETED

SEP 29 1999

In the Matter of the Adoption by DSLnet)
Communications LLC of an)
Interconnection Agreement Between GTE)
North Incorporated And Dakota Services)
Limited Pursuant)
To Section 252(i) of the Telecommunications)
Act of 1996)

Docket No.

A-310824F0002

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ADOPTION OF INTERCONNECTION AGREEMENT

COMES NOW, GTE North Incorporated ("GTE") and respectfully files this Adoption of Interconnection Agreement. In connection with this filing, GTE states as follows:

1. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Federal Act"), DSLnet Communications LLC ("DSLnet") notified GTE that it desired to adopt the terms (the "Terms") of the Interconnection Agreement between GTE and Dakota Services Limited ("Dakota") that was approved by the Pennsylvania Public Utility Commission (the "Commission") in Docket No. A-310760F0002 (the "Agreement"). Subsequent to this, GTE and DSLnet signed a letter relating to DSLnet's adoption of the Terms. A copy of said letter is attached to this filing as Exhibit 1.

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2. Section 252(i) of the Federal Act provides as follows:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS

CARRIERS.-

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 condition as those provided in the agreement.

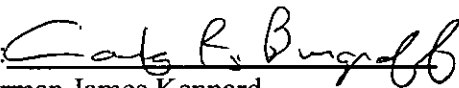
The Commission approved the Agreement pursuant to Section 252(e) of the Federal Act. Accordingly, per Section 252(i), DSLnet has the right to adopt the Terms.

3. Subject to the terms of the letter attached as Exhibit 1, there are no outstanding issues between GTE and DSLnet relating to such adoption. Therefore, the adoption is effective upon the filing of this document with the Commission.

WHEREFORE, GTE respectfully submits this Adoption of Interconnection Agreement.

Respectfully submitted,

GTE NORTH INCORPORATED

By: 

Norman James Kennard

Craig R. Burgraff

Malatesta Hawke & McKeon LLP

Harrisburg Energy Center

100 North Tenth Street

P.O. Box 1778

Harrisburg, PA 17105

ATTORNEY FOR GTE NORTH
INCORPORATED

EXHIBIT 1

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



GTE Network
Services

HQE03B28
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75038
972/718-4586
FAX 972/719-1523

August 30, 1999

Schula P. Hobbs
Manager, Regulatory Affairs
DSLnet Communications LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511

A- 310824F0002

Dear Ms. Hobbs:

We have received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, you wish to adopt the terms of the Interconnection Agreement between Dakota Services Limited ("Dakota") and GTE that was approved by the Commission as an effective agreement in the State of Pennsylvania in Docket No. A-310760F0002 (Terms)¹. The terms provide for the election by Dakota of certain additional provisions from a future GTE arbitrated agreement and may also include provisions that could be interpreted contrary to the law ("Arbitrated Provisions"). I understand you have a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Terms requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which DSLnet seeks to adopt does *not* reflect the Court's decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, DSLnet agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is the FCC gave the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 – 976, etc)".

In sum, GTE's proposal as described above would maintain the status quo until the legal landscape is settled.

DSLnet's adoption of the Dakota Terms shall become effective upon filing of this letter with the Pennsylvania Public Utility Commission and remain in effect no longer than the date the Dakota Terms are terminated. The Dakota arbitrated agreement is currently scheduled to expire on July 8, 2001.

As these Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of its position as to the illegality or unreasonableness of certain Arbitrated Provisions or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Arbitrated Provisions, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant with respect to the Arbitrated Provisions, or to seek review in any way of any provisions included in these Terms as a result of DSLnet's 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or DSLnet that any Arbitrated Provisions comply with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and DSLnet expressly reserve their full right to assert and pursue claims arising from or related to the Arbitrated Provisions. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should DSLnet attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Please indicate by your countersignature on this letter your understanding of and commitment to the following three points:

- (A) DSLnet adopts the Terms of the Dakota agreement for interconnection with GTE and in applying the Terms, agrees that DSLnet be substituted in place of Dakota in the Terms wherever appropriate.
- (B) DSLnet requests that notice to DSLnet as may be required under the Terms shall be provided as follows:

To : DSLnet Communications LLC
Attention: Wendy Bluemling
Director, Regulatory Affairs
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511
Telephone number: 203/782-7440
FAX number: 203/624-3612

Ms. Schula P. Hobbs
August 30, 1999
Page 5

- (C) DSLnet represents and warrants that it is a certified provider of local dialtone service in the State of Pennsylvania, and that its adoption of the Terms will cover services in the State of Pennsylvania only.

Sincerely,

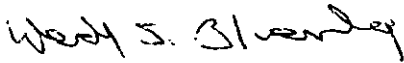
GTE North Incorporated



Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C:

DSLnet Communications LLC



for DSLnet Communications LLC

c: D. Robinson - HQE03B73 - Irving, TX

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SECRETARY'S BUREAU

DATE: September 28, 1999

SUBJECT: A-310824F0002

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *J.J.*

KJR

DOCKETED

SEP 29 1999

**DOCUMENT
FOLDER**

IN THE MATTER OF THE ADOPTION BY DSLnet COMMUNICATIONS LLC
OF AN INTERCONNECION AGREEMENT BETWEEN GTE NORTH
INCORPORATED AND DAKOTA SERVICES LIMITED PURSUANT TO SECTION
252(i) OF THE TELECOMMUNICATIONS ACT OF 1996.

KJR

Attached is a copy of a Joint Petition for Approval of
an Interconnection Agreement filed in connection with the
above-docketed proceeding.

Enclosed is a copy of the notice that we provided to
the Pennsylvania Bulletin to be published on October 9,
1999. Comments are due on or before 10 days after the
publication of this notice.

This matter is assigned to your Office for
appropriate action.

Attachment

cc: Bureau of Fixed Utility Services
Office of Administrative Law Judge-copy of memo only

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LEGISLATIVE REFERENCE
BUREAU

PENNSYLVANIA PUBLIC UTILITY COMMISSION 8 PM 2:09
99 SEP 28

PA. CODE & BULLETIN

NOTICE TO BE PUBLISHED

In the Matter of the Adoption by DSLnet Communications LLC of an Interconnection Agreement Between GTE North Incorporated And Dakota Services Limited Pursuant to Section 252 (i) of the Telecommunications Act of 1996.
Docket Number A-310824F0002

KJR

DOCKETED

SEP 29 1999

GTE North Incorporated and DSLnet Communications LLC by its counsel, filed on September 22, 1999, at the Public Utility Commission, a Joint Petition for approval of an Interconnection Agreement under Section 252 (i) of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. All such Comments are due on or before 10 days after the date of publication of this notice. Copies of the GTE North Incorporated and DSLnet Communications LLC Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

Contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

BY THE COMMISSION

KJR

DOCUMENT
FOLDER

James J. McNulty

James J. McNulty
Secretary