

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: November 28, 2000	2. BUREAU AGENDA NO. DEC-2000-OSA-0349*(REV)
3. BUREAU: Office of Special Assistants	5. PUBLIC MEETING DATE: December 7, 2000 DOCKETED JAN 09 2001
4. SECTION(S):	
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor:	
7. PERSONS IN CHARGE: D. Munsch 7-1660	
8. DOCKET NO.: A-310824F0002	

- 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. 4 to the Interconnection Agreement between Verizon Pennsylvania Inc. f/k/a Bell Atlantic Pennsylvania, Inc. (Verizon PA) and DSLnet Communications, LLC, d/b/a DSLnet (DSLnet), under Section 252(e) of the Telecommunications Act of 1996

(b) On September 19, 2000, Verizon PA and DSLnet filed Amendment No. 4 to the Interconnection Agreement approved by the Commission by Order entered on October 1, 1999, at the same docket number. Notice of the Petition was published in the *Pennsylvania Bulletin* on September 23, 2000. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order granting the Petition and conditionally approving the Amendment to the Interconnection Agreement.

**DOCUMENT
FOLDER**

Order Doc. No.221722v2

Calendar Doc. No. 221728v1

10. MOTION BY: Commissioner Chm. Quain

SECONDED: Commissioner Bloom

Commissioner Brownell - Yes
Commissioner Wilson - Yes
Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

December 18, 2000

A-310824
F0002

DANIEL E MONAGLE CHRISTOPHER ARFAA
& JULIA A CONOVER ESQS
VERIZON PENNSYLVANIA INC
1717 ARCH STREET 32ND FLOOR
PHILADELPHIA PA 19103

DOCUMENT
FOLDER

Amendment No. 4 to the Interconnection Agreement between
Verizon Pennsylvania Inc., f/k/a Bell Atlantic Pennsylvania, Inc.,
and DSLnet Communications, LLC, d/b/a DSLnet 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
December 7, 2000 has adopted an Opinion and Order in the above entitled
proceeding.

An Opinion and Order has been enclosed for your records.

DOCKETED

DEC 20 2000

Very truly yours,

James J. McNulty
James J. McNulty,
Secretary

encls
cert. mail
law

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 7, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

DOCUMENT
FOLDER

Amendment No. 4 to the Interconnection
Agreement between Verizon Pennsylvania
Inc., f/k/a Bell Atlantic Pennsylvania, Inc.
and DSLnet Communications, LLC, d/b/a
DSLnet under Section 252(e) of the
Telecommunications Act of 1996

DOCKETED

DEC 20 2000

A-310824F0002

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is Amendment No. 4 to the Interconnection Agreement (Amendment) between Verizon Pennsylvania, Inc., f/k/a Bell Atlantic-Pennsylvania, Inc. (Verizon PA) and DSLnet Communications, LLC, d/b/a DSLnet (DSLnet), 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 Order 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 Order*).

History of the Proceeding

On September 19, 2000, Verizon PA and DSLnet filed the instant Amendment which supplements the terms of the Interconnection Agreement (Agreement) which we approved by Order entered on October 1, 1999, at Docket No. A-310824F0002. The Amendment sets forth the terms, conditions, and prices under which Verizon PA will offer and provide Line Sharing arrangements to facilitate DSLnet's provision of ADSL, Splitterless ADSL, RADSL, MVL, or any other xDSL technology provided by Verizon PA to DSLnet.

The Commission published notice of the Joint Petition and the Amendment in the *Pennsylvania Bulletin* on October 14, 2000, advising that any interested parties could file comments within ten (10) days. No comments have been received.

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 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 Amendment submitted by Verizon PA and DSLnet.

B. Timeliness of Filing

We note that Amendment No. 4 has an effective date of June 9, 2000. (Amendment No. 4, p. 1). The Amendment was filed with this Commission on September 19, 2000, more than thirty (30) days after the respective effective date. 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 Order, slip op., p. 33).¹

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

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 by no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*)

C. Summary of Terms

The Amendment sets forth the terms, conditions and prices under which Verizon PA will offer and provide Line Sharing arrangements. This will facilitate DSLnet's provision of ADSL, Splitterless ADSL, RADSL, MVL, or any other xDSL technology that is presumed to be acceptable for shared line deployment in accordance with FCC rules, to a particular customer location over an existing copper Loop that is being used simultaneously by Verizon PA to provide analog circuit-switched voice grade service. The Parties agree that rates set forth in Exhibit A shall be considered interim in nature until they have been approved by the Commission or otherwise allowed to go into effect as a result of a proceeding before the Commission. (Amendment, pp. 1-2).

Verizon PA and DSLnet aver that the Amendment to Agreement² shall amend, modify and revise the Agreement only to the extent set forth expressly in this Amendment. (Amendment, p. 8).

D. Disposition

Having reviewed the Amendment to the Agreement, we note that Exhibit A was not attached to Amendment No. 4, as the Parties aver in the Amendment. It appears to us that Exhibit A was inadvertently omitted from the filing, since nothing in the

² It is noted that, regardless of the types of services covered by this Amendment to the 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.

Petition or Amendment No. 4 states that the rates are still under development. We are concerned that, with regard to Amendment No. 4, the rates are not provided in Exhibit A or any other section of Amendment No. 4. However, we shall approve Amendment No. 4 in order that we do not impede the implementation of the FCC's Remand UNE Orders, *supra*, on the condition that the Parties immediately provide the Commission with a copy of the final rates when they are developed and that the rates are consistent with the Commission's obligations under 47 U.S.C. Section 252(e)(2).

Accordingly, we shall approve Amendment No. 4, 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 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 Amendment to the Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the Agreement and amendments 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 to 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 and DSLnet to embody the terms of the Amendment to the Agreement in a filed tariff, but we will require that the Parties file the Amendment to 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.

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Order*, we determine that Amendment No. 4 to the Interconnection Agreement between Verizon PA and DSLnet is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Petition of Verizon PA Pennsylvania Inc., f/k/a Bell Atlantic-Pennsylvania, Inc., and DSLnet Communications, LLC, d/b/a DSLnet filed on September 19, 2000, seeking approval of Amendment No. 4 to the existing Interconnection Agreement approved by Opinion and Order entered on October 1, 1999, at Docket No. A-310824F002, pursuant to the Telecommunications Act of 1996 and the Commission's June 3, 1996 Opinion and Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, is conditionally granted, consistent with this Opinion and Order.

2. That approval of Amendment No. 4 to the Interconnection Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Interconnection Agreement.

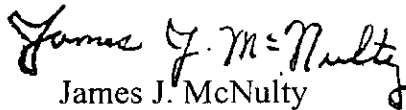
3. That approval of Amendment No. 4 to the Interconnection Agreement shall not be construed as review under Section 271 of the Telecommuni-

cations Act of 1996, 47 U.S.C. §271.

4. That the Parties shall file a true and correct copy of Amendment No. 4 to the Interconnection Agreement with this Commission within thirty (30) days of the date of entry of this Opinion and Order.

5. That upon completion of developing the final rates included in Amendment No. 4, the Parties shall immediately file a copy of those final rates with the Secretary of the Commission for inclusion in the official file.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2000

ORDER ENTERED: **DEC 18 2000**