



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

IN REPLY PLEASE
REFER TO OUR FILE

DECEMBER 1, 2000

A-310824F0002

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DOCKETED
DEC 07 2000

Joint Petition of Verizon Pennsylvania, Inc., f/k/a Bell Atlantic-Pennsylvania Inc., and
DSL.NET Communications LLC, d/b/a DSL.NET for Approval of Amendments
Nos. 1, 2 and 3 to the Interconnection Agreement Under Section 252(e) of the
Telecommunications Act of 1996

**DOCUMENT
FOLDER**

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 November 29, 2000 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

See Attached Listing for Additional Parties of Record

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 29, 2000

Commissioners Present:

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

Joint Petition of Verizon Pennsylvania Inc.
f/k/a Bell Atlantic-Pennsylvania Inc. and DSL
NET Communications LLC, d/b/a DSL.NET
for Approval of Amendments Nos. 1, 2 and 3
to the Interconnection Agreement Under
Section 252(e) of the Telecommunications Act
of 1996

A-310824F0002

**DOCUMENT
FOLDER**

OPINION AND ORDER

DOCKETED
DEC 07 2000

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for approval of Amendment Nos. 1, 2, and 3 to the existing Interconnection Agreement (Agreement) between Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. (VZ-PA) and DSL Net Communications LLC d/b/a DSL.NET (DSL.NET). The Amendments to the Agreement were filed pursuant to the Telecommunications Act of 1996 (TA-96), Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code), 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*).

History of the Proceeding

On September 6, 2000, VZ-PA and DSL.NET filed the instant Joint Petition seeking approval of the aforementioned Amendments Nos. 1, 2, and 3 to the existing Agreement. These Amendments supplement the terms of the Agreement which was approved by our Opinion and Order entered October 1, 1999.

The Commission published notice of the Joint Petition and the Amendments in the *Pennsylvania Bulletin* on September 23, 2000, advising that any interested parties could file comments within ten (10) days. No comments have been received.

Discussion

A. Standard of Review

The Commission's standard of review of a negotiated interconnection agreement 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 . . .

B. Timeliness of Filing

We note that Amendments Nos. 1, 2, and 3 have effective dates of February 14, 2000, April 24, 2000, and June 9, 2000, respectively. Amendment Nos. 1, 2, and 3 were filed 211 days, 141 days, and 95 days after each Agreement's 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, slip op., p. 33).¹

C. Summary of Terms

The Parties assert that Amendment No. 1 adds a new section, Section 11.2.10 to the existing Agreement. (Amendment No. 1, p. 1). Section 11.2.10 provides for the rates and the manner in which VZ-PA will make available Digital Designed Loops (*i.e.*, ADSL, HDSL and BRI ISDN) available to DSL.NET. In addition,

¹ "The Act 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.*).

Amendment No. 1 deletes Section IV to Exhibit A of the Agreement and replaces it with a revised Section IV. (Amendment No. 1, p. 4). Section IV of Exhibit A contains the recurring and nonrecurring charges for all types of unbundled loops, including POTS, ISDN, Customer Specified Signaling (2 and 4 wire), DS1, and various types of DSL loops.

Amendment No. 2 is filed pursuant to the Order issued by the FCC on November 5, 1999, at CC Docket N. 96-98 (UNE [Unbundled Network Elements] Remand Order) and the FCC's Supplemental Order issued on November 24, 1999, in the same proceeding. Both Orders became effective on February 17, 2000, and fully effective on May 17, 2000. The Parties state that VZ-PA is now prepared to provide network elements and collocation in accordance with, but only to the extent required by all effective and unstayed laws, government regulation and applicable orders. (Amendment No. 2, p. 1).

Amendment No. 2 provides for: (1) the manner and conditions under which VZ-PA will provide 4-wire 56 kbps Loops (Amendment No. 2, p. 2); (2) the manner in which DSL.NET shall be permitted to connect one of its loops to a VZ-PA Network Interface Device (NID) (Amendment No. 2, pp. 2-3); and (3) the manner in which VZ-PA shall provide DSL.NET with a combination of network elements (Amendment No. 2, p. 3).

Amendment No. 3 provides the rates, terms, conditions and ordering process under which VZ-PA will provide Sub-Loops (Amendment No. 3, pp. 2-4), Dark Fiber Loops (Amendment No. 3, pp. 4-7), and Collocation in Remote Terminals to DSL.NET. (Amendment No. 3, p. 8).

According to Amendment No. 3, the charges for the Sub-Loop and the Dark Fiber are contained in Exhibit A to the Amendment. However, Exhibit A contains no rates, and Section 1(f)(1) specifies that Exhibit A will be completed and upon notice to DSL.NET, shall be deemed to be a part of Exhibit A. Specifically, Section 1(f)(1) states that:

. . . DSLnet acknowledges that the Rates are not set forth in Exhibit A as of the Effective Date but that BA is developing the Rates and BA has not finished developing the rates as of the Effective Date. When BA finishes developing a Rate, BA shall notify DSLnet in writing of such Rate in accordance with, and subject to, the notices provision of the Inter-connection Agreement and thereafter shall bill DSLnet, and DSLnet shall pay to BA, for services provided under this Amendment on the Effective Date and thereafter in accordance with such Rate, subject to Section 1 (f)(2) of this Amendment. Any notice provided by BA to DSLnet pursuant to this Section 1(f)(1) shall be deemed to be a part of Exhibit A immediately after BA sends such notice to DSLnet and thereafter.

(Amendment No. 3, p. 9).

D. Disposition

We are concerned that, with regard to Amendment No. 3, the rates are not provided in Exhibit A or any other section of Amendment No. 3. However, we shall approve Amendment No. 3 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 Amendments Nos. 1, 2, and 3, finding that they satisfy 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 Interconnection 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 Agreement does not discriminate against any 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 Amendments to the Agreement and their terms to other parties do not connote any intent that our approval will affect the status of negotiations between other parties. In this context, we will not require the Parties to embody the terms of the Amendments to the Interconnection Agreement in a filed tariff, but we will require that the Parties file the Amendments to the Interconnection Agreement with this Commission, consistent with the condition that a copy of the rates associated with Amendment No. 3 also be filed at such time that they are developed, as required by this Opinion and Order. The Amendments 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, *supra*, and our *Implementation Orders*, we will approve Amendments Nos. 1, 2, and 3 to the

Interconnection Agreement between VZ-PA and DSL.NET that were filed on September 12, 2000, consistent with the conditions delineated in this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and DSLnet Communications LLC d/b/a DSL.NET, filed September 12, 2000, seeking approval of Amendments Nos. 1, 2, and 3 to the existing Interconnection Agreement, pursuant to the Telecommunication Act of 1996 and the Commission's June 3, 1996 Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, is granted consistent with this Opinion and Order.

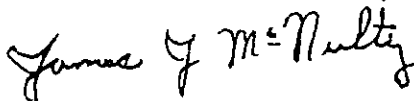
2. That approval of the Amendments to the Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

3. That approval of Amendments to the Agreement shall not be construed as a review under Section 271 of the Telecommunications Act of 1996, 47 U.S.C. §271.

4. That the Parties shall file a true and correct copy of the Amendments to the 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 included in Amendment No. 3, 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,

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive style with a large, stylized "J" and "M".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 29, 2000

ORDER ENTERED: **DEC 01 2000**