

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

<p>1. REPORT DATE: November 9, 1999</p>	<p>2. BUREAU AGENDA NO. NOV-1999-OSA-0461*</p>
<p>3. BUREAU: Office of Special Assistants</p>	<p>5. PUBLIC MEETING DATE: November 18, 1999</p>
<p>4. SECTION(S):</p>	<p>6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: <i>[Signature]</i></p>
<p>7. PERSONS IN CHARGE: David Munsch 7-1660</p>	<p>8. DOCKET NO.: A-310824F0002</p>

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

(a) Joint Application of GTE North, Incorporated and DSLnet Communications LLC, for approval of an Interconnection Agreement

(b) On September 22, 1999, GTE North, Incorporated (GTE) and DSLnet Communications LLC (DSLnet) filed a Petition seeking approval for DSLnet to "opt into" the existing Interconnection Agreement between GTE and Dakota Services Limited (Dakota) at Docket No. A-310760F0002. The existing Interconnection Agreement between GTE and Dakota sets forth the terms, conditions, and prices under which GTE and DSLnet will offer and provide interconnection for the purpose of exchanging traffic.

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

Order Doc. No. 161683v1

Calendar Doc. No. 159653v1

10. MOTION BY:	Commissioner Chm. Quain	Commissioner Brownell - Yes
		Commissioner Wilson - Yes
SECONDED:	Commissioner Bloom	Commissioner Fitzpatrick - 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

November 19, 1999

A-310824 F0002

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Joint Petition for Approval of an Interconnection Agreement
 between GTE North, Incorporated and DSLnet Communications LLC
 under Section 252(e) of the Telecommunications Act of 1996

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 18, 1999 in the above
 entitled proceeding.

An Opinion and Order has been enclosed for your records.

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 November 18, 1999

Commissioners Present:

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

Joint Petition for Approval of an
Interconnection Agreement between GTE North,
Incorporated and DSLnet Communications LLC
under Section 252(e) of the Telecommunications
Act of 1996

A-310824F0002

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for approval of an Interconnection Agreement (Agreement) between GTE North, Incorporated (GTE) and DSLnet Communications LLC (DSLnet), pursuant to Sections 252(e) and 252(i) of the Telecommunications Act of 1996, 47 U.S.C. §§201, *et seq.* (TA-96 or the Act).

History of the Proceeding

On September 22, 1999, GTE and DSLnet filed the instant Joint Petition seeking approval of an underlying Interconnection Agreement which sets forth the terms

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conditions, and price of interconnection, resale and unbundled network elements provided by GTE to DSLnet.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on October 9, 1999, advising that any interested parties could file comments within ten (10) days. To date, 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:

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 to other telecommunications carriers, Section 252(i) of the Act 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 these criteria in mind, we shall review the Agreement submitted by GTE and DSLnet.

B. Summary of Terms

In the Joint Petition, GTE and DSLnet agree that DSLnet will exercise its right under Section 252(i) of the 1996 Act to “opt into” the Interconnection Agreement between GTE and Dakota Services Limited (Dakota) which was approved by the Commission at Docket No. A-310760F0002 on June 24, 1999. The Agreement between GTE and DSLnet is based on that approved Agreement.

In the Petition, GTE and DSLnet aver that:

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 as Exhibit 1.

The key provisions of the Interconnection Agreement between GTE and Dakota at Docket No. A-310760F0002 already approved by the Order entered on June 24, 1999, are as follows:

- V. Interconnection and Transport and Termination of Traffic include reciprocal compensation for local interconnection (\$0.00551749), tandem switching (\$0.001749), common transport facilities (\$0.0000433), and common transportation termination

(\$0.0002586). The tandem transiting charge is comprised of tandem switching (\$0.001749), tandem transport (\$0.0004330), transport termination ((\$0.0005172), and the transiting charge (\$0.0026551).

- VI. Resale of Services are based upon an avoided cost discount of 10.3% from GTE's retail rates. The avoided cost discount is based on GTE's most current available cost studies. In addition, GTE assesses a separate interim universal service fund surcharge for resale of Basic Local Exchange Residential and Business Services.
- VII. Unbundled Network Element rates are addressed by category in Appendix D of the Agreement.
- VIII. Additional Services and Coordinated Service Arrangements described in Appendix F of the Agreement illustrates the operations support systems that GTE will use and the related functions and services for trunk-side interconnections, unbundled elements, resold services, centralized message distribution, order processing, maintenance of the systems, network management controls, electronic interface and electric interface and electronic systems redesign.
- IX. Collocation: Article IX of the agreement specifies that GTE will provide DSL the physical collocation of equipment pursuant to 47 CFR §51.323 necessary for interconnection or for access to Unbundled Network Elements (UNEs), provided that GTE may provide virtual collocation in place of physical collocation or deny a particular collocation request entirely, if GTE demonstrates that physical or virtual collocation is not practical because of technical or space limitations, as provided in Section 251(c)(6) of the Act.
- X. Access to Poles, Ducts, Conduits and Rights-of-Way: Article X demonstrates that to the extent required by the Act, GTE and DSL shall each afford to the other

access to the poles, ducts, conduits and Rights of Way (ROW) comparable to those offered to any other entity pursuant to each party's tariffs and/or standard agreement.

GTE and DSLnet aver that, pursuant to Section 252(i) of the Act, *supra*, DSLnet has a right to adopt the terms of the GTE-DSL Interconnection Agreement approved by this Commission on June 24, 1999, at Docket No. A-310760, F0002. (Joint Petition, pp. 1-2).¹

C. Disposition

As noted above, through this Petition, DSLnet seeks permission to "opt into" the existing Interconnection Agreement between GTE and Dakota which we approved by Opinion and Order entered June 24, 1999, at Docket No. A-310760, F0002. In that Opinion and Order, we stated, at pages 6-7:

We further note that, under Section 2.2 of Article VI, Resale of Services, GTE proposes an "Interim Universal Service Support Charge for Resale Services" where the CLEC resells GTE's local service but does not resell its intraLATA toll service. GTE stated that, because its current intraLATA toll rates include implicit subsidies that support below-cost prices for other services and thus promote universal service, it will not resell Basic Exchange Residential or Business services unless the CLEC pays the monthly interim universal service support charge set forth in Appendix C of the Agreement. We find that this restriction on resale of GTE's service to be problematic.

¹ For the record, it is important to note 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, for which it has not been authorized to provide and for which tariffs have not been approved.

We note, first, that GTE has conditioned its obligations under the Telecommunications Act of 1996 upon payment of a specified Universal Service surcharge which has not been presented to this Commission for approval. Additionally, there was no basis on which GTE can claim that we have made a determination that GTE's intraLATA toll rates subsidize its basic rates. We find that the approval of an agreement containing this language and restriction may be contrary to the public interest.

Second, this restriction, even though negotiated by the parties, may create an anti-competitive environment in the intraLATA toll market and may be in contravention of Section 251(c) of TA-96.

In spite of the foregoing, we find that this provision is of no importance in this agreement because it is applicable to CLEC services which DSL [Dakota] will not be authorized to provide. However, we would admonish GTE to refrain from placing this restriction in future interconnection agreements.

As can be seen from this quote, we were concerned about language contained in Article VI, Section 2.2 of the GTE/Dakota Interconnection Agreement with regard to the imposition of an interim universal service support charge. However, since Dakota did not at that time have authority to operate as a CLEC, we determined that this provision was of no importance.

In the situation before us in the present case, DSLnet was granted authority to operate as a CLEC by our Order entered on September 15, 1999, at the same Docket Number as this proceeding, A-310824F0002. Because we are constrained by the requirements of 47 U.S.C. §252(i) to grant this Petition "upon the same terms and conditions as those provided in the agreement", we will grant the Petition now before us, but only under the condition that the language at Article VI, Section 2.2 be given no effect.

We further note that our Order entered on September 15, 1999, at Docket No. A-310824F0002, granting CLEC authority to DSLnet, states, at page 4 that 47 U.S.C. 253(b) “permits a state commission to impose, on a competitively neutral basis and consistent with the Universal Service Sections, requirements necessary to preserve and advance universal service...”. However, that Order contains no specific requirements regarding universal service. Accordingly, we are constrained by Section 252(i) of the Act from imposing any terms or conditions which were not in the approved GTE/Dakota Interconnection Agreement. For these reasons, we will grant the Petition under the same terms and conditions which we approved the GTE/Dakota Interconnection Agreement.

As stated above, we will approve the Petition of GTE and DSLnet to permit DSLnet to “opt into” the GTE/Dakota Interconnection Agreement approved by this Commission on June 24, 1999, at Docket No. A-310760F0002, finding it to be consistent with Section 252(i) of the Act. We further find that it satisfies the two-pronged criteria of Section 252(e) of the Act. 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 Interconnection Agreement does not discriminate against any telecommunications carrier not a party to the negotiations.

The Act requires that the terms of the Interconnection 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 Interconnection 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 GTE or DSLnet to embody the terms of the Interconnection Agreement in a filed tariff, but we will require that the parties file the Interconnection 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 carrier in the areas of protection of public safety and welfare, service quality, and the rights of consumers. (*See, e.g.,* Section 253(b) of the Act). This is consistent with the Act and with Chapter 30 of the Public Utility Code, wherein service quality and standards, *e.g.,* 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 E-911 services and conclude that these provisions of the Agreement are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Sections 252(e) and 252(i) of the Act, *supra*, and our *Implementation Order*, we determine that the Interconnection Agreement between GTE 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:

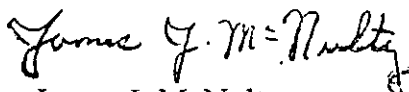
1. That the Joint Petition of GTE North, Incorporated and DSLnet Communications LLC filed on September 22, 1999, seeking permission for DSLnet Communications LLC to adopt an Interconnection Agreement between GTE North Incorporated and Dakota Services Limited approved by Order entered on June 24, 1999, at Docket No. A-310760F0002, is approved, 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 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 Interconnection Agreement.

3. That the reciprocal compensation rates for terminating local traffic are approved.

4. That the parties shall file a true and correct copy of the Interconnection Agreement, with appropriate 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: November 18, 1999

ORDER ENTERED: **NOV 19 1999**