

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

KJR

1. <u>REPORT DATE:</u> June 17, 2003	2. <u>BUREAU AGENDA NO.:</u> Jun-2003-OSA-0156(Revised) DOCUMENT FOLDER
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u> June 26, 2003
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: D. Munsch 7-1660 Legal Review: R. Albert 7-8108	DOCKETED JUL 22 2003
7. <u>PERSONS IN CHARGE:</u> K. Schiavo 3-6165	
8. <u>DOCKET NO.:</u> A-310806F7000	

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 NOW Communications Inc. (NOW) for approval of a Resale Agreement under Section 252(e) of the Telecommunications Act of 1996

(b) On May 13, 2003 Verizon.PA and NOW filed a Joint Petition seeking approval of a Resale Agreement which sets forth the terms, conditions, and prices under which Verizon PA will offer and provide NOW certain telecommunication services available for resale, as well as resale support services within the Commonwealth. Notice of the Petition was published in the *Pennsylvania Bulletin* on May 31, 2003. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which grants the Joint Petition consistent with this Opinion and Order.

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

CONTENT OF MOTION: Staff recommendation adopted.



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

KJR

REFER TO OPEN FILE

June 27, 2003

A-310806 F7000

R. SCOTT SEAB ESQUIRE
VP REGULATORY AFFAIRS
711 SOUTH TEJON STREET SUITE 201
COLORADO SPRINGS CO 80903

DOCUMENT
FOLDER

Joint Petition of Verizon Pennsylvania Inc. and NOW
Communications Inc. for Approval of a Resale Agreement under
Section 252(e) of the Telecommunications Act of 1996

To Whom It May Concern:

Opinion and
This is to advise you that an Order has been adopted by the
Commission in Public Meeting on June 26, 2003 in the above entitled
proceeding.

Opinion and
An Order has been enclosed for your records.

DOCKETED

JUL 17 2003

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
JEH

DANIEL E MONAGLE
ASSITANT GENERAL COUNSEL
1717 ARCH STREET 32N
PHILADELPHIA PA 19103

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 26, 2003

Commissioners Present:

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

DOCKETED
JUL 17 2003

Joint Petition of Verizon Pennsylvania Inc.
and NOW Communications Inc.
for Approval of a Resale Agree-
ment under Section 252(e) of the
Telecommunications Act of 1996

A-310806F7000

OPINION AND ORDER

DOCUMENT
FOLDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Verizon Pennsylvania Inc. (Verizon PA), and NOW Communications Inc. (NOW) for approval of a Resale Agreement (Agreement). The Joint Petition was filed pursuant to Sections 251 and 252 of 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 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), (*Implementation Orders*). The Agreement makes available to NOW services offered by Verizon PA for resale as well as resale support services.

History of the Proceeding

On May 13, 2003, Verizon PA and NOW filed the instant Joint Petition seeking approval of an Agreement, which sets forth the terms, conditions, and prices under which Verizon PA will offer and provide NOW certain telecommunication services available for resale, as well as resale support services. Currently, NOW is authorized to do business in Pennsylvania.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on May 31, 2003, advising that any interested parties could file comments within ten days. No comments have been received.

NOW received a certificate of public convenience on November 4, 1999 at Docket No. A-310806 to provide services as a facilities based Competitive Local Exchange Carrier.

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 Agreement submitted by Verizon PA and NOW.

B. Timeliness of Filing

The Agreement between Verizon PA and NOW became effective on October 26, 2001. A period of approximately seventeen months has elapsed from the time the Agreement was executed until it was submitted to the Commission for review. 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

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

We remind the Parties that failure to comply with our *Implementation Orders*, 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.

C. Summary of Terms

The key provisions of the Agreement, as summarized by the Parties in the Joint Petition provide for:

- (1) access by NOW to Verizon PA's operation support systems; (Agreement, pp. 38-44)
- (2) the resale of Verizon PA's telecommunications services for a wholesale discount of 23.43% or 25.69% (depending upon whether NOW provides its own operator services); (Pricing Attachment, Appendix A)
- (3) routing to Directory Assistance/Operator Services platforms; (Agreement, p. 34)

The Agreement will expire on October 25, 2003.

D. Disposition

Based on our review of the Agreement, we conclude that it satisfies the two-pronged criteria of Section 252(e), *supra*. We shall, however, 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 which may 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 a telecommunications carrier not a party to the negotiations.

We find that the Agreement is an important step towards allowing NOW to compete with Verizon PA as a local telephone service carrier for both residential and business customers, which is what TA-96 contemplates 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.²

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 and NOW to embody the terms of the Agreement in a filed tariff, but we will require the Parties to 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,

² 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.

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.

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we will approve the Resale Agreement between Verizon PA and NOW filed on May 13, 2003; **THEREFORE**,

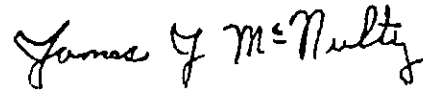
IT IS ORDERED:

1. That the Joint Petition of Verizon PA Inc., and NOW Communications Inc. seeking the approval of a Resale Agreement filed on May 13, 2003, pursuant to the Telecommunications Act of 1996 and this Commission's June 3, 1996 Opinion and 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) is granted, consistent with this Opinion and Order.

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

3. That the Parties shall file a true and correct copy of the Resale Agreement with this Commission within thirty (30) days of the entry of this Opinion and Order.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 26, 2003

ORDER ENTERED: JUN 27 2003