

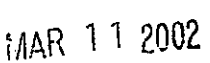


PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: February 6, 2002	2. BUREAU AGENDA NO.: FEB-2002-OSA-0068*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: February 21, 2002
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor:	 
7. PERSON IN CHARGE: D. Munsch 7-1660	
8. DOCKET NO.: A-310824F7000	

DOCUMENT FOLDE..

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 DSLnet Communications, LLC d/b/a DSLnet (DSLnet) for approval of Amendment No. 1 to the Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996

(b) On December 20, 2001, Verizon PA and DSLnet filed a Joint Petition for approval of Amendment No. 1 which supplements the terms of their Interconnection Agreement, which was approved by the Commission on December 6, 2001, at Docket No. A-310824F7000. Notice of the Petition was published in the *Pennsylvania Bulletin* on February 2, 2002. 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 thereby approving Amendment No. 1 consistent with this Opinion and Order.

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

CONTENTS 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

FEBRUARY 25, 2002

A-310824 F7000

DANIEL E MONAGLE ESQUIRE
VERIZON PENNSYLVANIA, INC.
1717 ARCH STREET 32-N
PHILADELPHIA PA 19103

DOCKETED

MAR 12 2002

Joint Petition for approval of Amendment No. 1 to the Interconnection Agreement between Verizon Pennsylvania, Inc., and DSLnet Communications, LLC, d/b/a DSLnet under Section 252(e) of the Telecommunications Act of 1996.

DOCUMENT
FOI DEE

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 February 21, 2002 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

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 21, 2002

Commissioners Present:

Glen R. Thomas, Chairman
Kim Pizzingrilli
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

DOCKETED

MAR 12 2002

Joint Petition for Approval of Amendment
No. 1 to the Interconnection Agreement
Between Verizon Pennsylvania Inc.
and DSLnet Communications, LLC
d/b/a DSLnet under Section 252(e) of the
Telecommunications Act of 1996

A-310824F7000

DOCUMENT
FILED

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for Approval of Amendment No. 1 to the Interconnection Agreement (Joint Petition) between Verizon Pennsylvania Inc. (Verizon PA) and DSLnet Communications, LLC d/b/a DSLnet, (DSLnet) 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) (TA-96), including 47 U.S.C. §§251, 252, and 271, and the Commission's Orders 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*).

History of the Proceeding

On December 20, 2001, Verizon PA and DSLnet filed the instant Joint Petition seeking approval of Amendment No. 1 (Amendment) which supplements the terms of the Interconnection Agreement (Agreement) which was filed with the Commission on September 17, 2001 and approved by the Commission on December 6, 2001. This Amendment will be attached to, and be made part of, the Agreement.

The Commission published notice of the Joint Petition and the Amendment in the *Pennsylvania Bulletin* on February 2, 2002, advising that any interested parties could file comments within ten 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

The Amendment between Verizon PA and DSLnet became effective on June 14, 2001. Approximately six months have elapsed from the time the Amendment 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

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.

¹ “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.*).

C. Summary of Terms

Amendment No.1 to the Agreement is set forth below in its entirety:

Notwithstanding any other provision of the Agreement, Local Traffic does not include any Internet traffic. The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet traffic shall be governed by the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68.

D. Disposition

We shall approve the Amendment, 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. 1 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,**

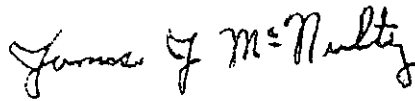
IT IS ORDERED:

1. That the Joint Petition for Approval of Amendment No. 1 to the Interconnection Agreement filed on December 20, 2001 by Verizon Pennsylvania Inc. and DSLnet Communications, LLC d/b/a DSLnet, pursuant to the Telecommunications Act of 1996 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) is granted, consistent with this Opinion and Order.

2. That approval of Amendment No. 1 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 the Parties shall file a true and correct copy of Amendment No. 1 to the Interconnection Agreement 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: February 21, 2002

ORDER ENTERED: **FEB 25 2002**