

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

25

1. REPORT DATE: November 13, 2001	2. <u>BUREAU AGENDA NO.</u> NOV-2001-OSA-0345*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. <u>PUBLIC MEETING DATE:</u>
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: <i>CW</i>	November 30, 2001
7. PERSONS IN CHARGE: David Munsch 7-1660	DOCKETED JAN 14 2002
8. DOCKET NO.: A-310824F7000	

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

DOCUMENT FOLDER

(a) Joint Petition for approval of a replacement Interconnection Agreement between Verizon Pennsylvania Inc. (Verizon PA) and DSLnet Communication, LLC d/b/a DSL.net (DSLnet), under Section 252(e) of the Telecommunications Act of 1996

(b) On September 17, 2001, Verizon PA and DSLnet filed a Joint Petition seeking approval of a replacement Interconnection Agreement which sets forth the terms, conditions, and prices under which Verizon PA and DSLnet will offer and provide interconnection for the purpose of exchanging traffic. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on October 13, 2001. No comments have been received.

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

Order Doc. No. 287950v1

Calendar Doc. No. 287948v1

10. **MOTION BY:** Commissioner Chm. Thomas

Commissioner Wilson - Yes
Commissioner Fitzpatrick - Yes
Commissioner

SECONDED: Commissioner Bloom

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

DECEMBER 6, 2001

A-310824 F7000

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

DOCKETED
JAN 15 2002

Joint Application of Verizon Pennsylvania Inc., and DSLnet Communications, LLC
d/b/a DSL.net for approval of an Interconnection Agreement 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 30, 2001 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

**DOCUMENT
FOLDER**

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 30, 2001

Commissioners Present:

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

DOCKETED
JAN 15 2002

Joint Application of Verizon Pennsylvania
Inc. and DSLnet Communications, LLC
d/b/a DSL.net for approval of an Inter-
connection Agreement Under Section 252(e)
of the Telecommunications Act of 1996

A-310824F7000

**DOCUMENT
FOLDER**

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition filed by Verizon Pennsylvania Inc. (Verizon PA) and DSLnet Communications, LLC d/b/a DSL.net (DSLnet), for approval of a replacement Interconnection Agreement (Agreement). The prior agreement was approved on October 1, 1999. The Agreement was 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 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 17, 2001, Verizon PA and DSLnet filed the Joint Petition seeking approval of the aforementioned Agreement that would provide for the inter-connection of the two companies' networks and makes available to DSLnet access to unbundled network elements, wholesale telecommunications services and ancillary services offered by Verizon PA.

The Commission published notice of the Joint Petition and the instant Agreement in the *Pennsylvania Bulletin* on October 13, 2001, advising that any interested parties could file comments within ten 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

With these criteria in mind, we shall review the Agreement submitted by Verizon PA and DSLnet.

B. Summary of Terms

The Agreement sets forth the terms, conditions and prices under which Verizon PA and DSLnet will offer and provide network interconnection, reciprocal call termination, access to network elements, ancillary network services, and wholesale telecommunications services available for resale to each other within each Local Access and Transport Area (LATA) in which they both operate in Pennsylvania.

(Joint Petition p. 2).

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

- (1) Reciprocal compensation for terminating local traffic at rates of \$.001723 or \$.002814 per minute of use, depending on where traffic is terminated on the Verizon PA and DSLnet networks.
- (2) Unbundled loops – providing DSLnet access to existing Verizon PA customers – based on a rate methodology specified in the agreement.
- (3) Customers to retain their telephone numbers when they switch to DSLnet.
- (4) Including DSLnet customers' primary listings in the White Pages (two listings for each residence telephone number and one listing for each business

telephone number) and Yellow Pages (one listing for each business telephone number) directories.

- (5) The resale of Verizon PA telecommunications services for a wholesale discount for OS/DA of 23.43% or 25.69% (depending upon whether DSLnet provides its own operator services).
- (6) The continued provision of 911 services to all customers.
- (7) Performance standards for services provided by Verizon PA to DSLnet equal to the level of service provided by Verizon PA to its own end-user customers and other telecommunications carriers.

(Joint Petition p. 2 ¶5).

Verizon PA and DSLnet aver that the Agreement¹ complies with the criteria identified in TA-96 at 47 U.S.C. §252(e)(2)(i) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. The Parties assert that the Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other telecommunications carrier under §252(i) of TA-96. Furthermore, the Parties note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Verizon PA. (Joint Petition, p. 3, ¶¶ 7-8).

¹ 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, for which it has not been authorized to provide and for which tariffs have not been authorized.

C. Disposition

Having reviewed the Agreement, we shall approve it, 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 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 instant Agreement does not discriminate against a 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 Agreement and its 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 Verizon PA or DSLnet to embody the terms of the Agreement in a filed tariff, but we will require that the Parties 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, 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. We have reviewed the Agreement's terms relating to 911 and E911 services and conclude that these provisions of the instant Agreement are consistent with the public interest. (Agreement p. 106).

The initial expiration date of the Agreement between Verizon PA and DSLnet is April 25, 2003. Thereafter, the Agreement shall continue in force and effect unless and until cancelled or terminated as provided in the Agreement. (Agreement, p. 1).

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Interconnection Agreement between Verizon PA and DSLnet filed on September 17, 2001; **THEREFORE,**

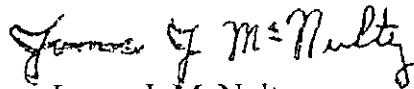
IT IS ORDERED:

1. That the Joint Petition of Verizon Pennsylvania Inc. and DSLnet Communications, LLC d/b/a DSL.net seeking the approval of a replacement Interconnection Agreement filed on September 17, 2001, pursuant to the Telecommunications Act of 1996 and the Commission's Opinion and 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 hereby granted, consistent with this Opinion and Order.

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

3. That the Parties shall file a true and correct copy of the Inter-connection 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: November 30, 2001

ORDER ENTERED: **DEC 06 2001**