

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: November 19, 1999	2. BUREAU AGENDA NO. DEC-1999-OSA-0468*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: December 2, 1999
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor:	
7. PERSONS IN CHARGE: David Munsch 7-1660	
8. DOCKET NO.: A-310828F0002	

**DOCUMENT FOLDER
DOCKETED**

DEC 13 1999

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

(a) Joint Petition of GTE North, Incorporated and Fibernet Telecommunications of Pennsylvania, LLC for approval of an Interconnection Agreement

(b) On August 13, 1999, GTE North Incorporated (GTE) and Fibernet Telecommunications of Pennsylvania, LLC (Fibernet) filed a Joint Petition seeking approval of an Interconnection Agreement which sets forth the terms, conditions, and prices under which GTE and Fibernet 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.

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Order Doc. No. 163693v1

Calendar Doc. No. 163680v1

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

DECEMBER 3, 1999

A-310828F0002

SCOTT SAWYER ESQUIRE
VICE PRESIDENT REGULATORY AFFAIRS
222 RICHMOND STREET SUITE 206
PROVIDENCE RI 02903

Joint Petition for approval of an Interconnection Agreement between
GTE North, Incorporated and Fibernet Telecommunications of
Pennsylvania, 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 December 2, 1999 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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DEC 09 1999

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 2, 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 Fibernet Telecommunications of
Pennsylvania, LLC under Section 252(e) of the
Telecommunications Act of 1996

A-310828F0002

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for Adoption [Approval] of an Interconnection Agreement (Agreement) between GTE North, Incorporated (GTE), and Fibernet Telecommunications of Pennsylvania, LLC (Fibernet), 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).

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History of the Proceeding

On August 13, 1999, GTE and Fibernet filed the instant Joint Petition¹ seeking approval of an underlying Interconnection Agreement which sets forth the terms, conditions, and price of interconnection, resale and unbundled network elements provided by GTE to Fibernet.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on October 16, 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

¹ Although this Petition was filed more than ninety (90) days prior to the entry of this Opinion and Order, and is, therefore, deemed approved pursuant to 47 U.S.C. §251(e)(4), we nevertheless issue this Opinion and Order to formalize our approval of the Interconnection Agreement.

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 Fibernet.

B. Summary of Terms

In the Joint Petition, GTE and Fibernet agree that Fibernet will exercise its right under Section 252(i) of TA 96 Act to adopt the terms of the Interconnection Agreement between GTE and Hyperion Susquehanna Telecommunications (HST) which was approved by the Commission at Docket No. A-310547F0002 on October 27, 1997. The Agreement between GTE and Fibernet is based on that approved Agreement.

In the Petition, GTE and Fibernet aver that:

Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Federal Act"), Fibernet Telecommunications of Pennsylvania, LLC ("Fibernet") notified GTE that it desired to adopt the terms (the "Terms") of the Interconnection Agreement between GTE and Hyperion Susquehanna Telecommunications

approved by the Pennsylvania Public Utility Commission (the "Commission") in Docket No. A-310547 (the "Agreement"). Subsequent to this, GTE and Fibernet signed a letter relating to Fibernet'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 HST at Docket No. A-310547F0002 and approved by Order entered on October 27, 1997, are as follows:

- IV. Transport and Termination of Traffic refers to Appendix C for the following rates. Local Call Termination: In balance 10% +/- Bill and Keep, Out of Balance - GTE rate of \$0.011227 (PMOU), tandem switching \$0.0018546 per minute of use. Intrastate toll access based on GTE's Intrastate tariff. The unbundled port local switching charge is (\$0.0041551) for originating and termination. (Appendix F).
- V. Resale of Services are based upon an avoided cost discount of 12.05% from GTE's retail rates.
- VI. Unbundled Network Elements are addressed by category in Appendix F of the Agreement.
- VII. Additional Services and Coordinated Service Arrangements are described in Appendix G. 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.

- VIII . General Rules Governing Resold Services and Unbundled Elements describe the technical parameters and services availability in the appropriate GTE intrastate tariff.
- IX. Collocation: Article IX of the agreement specifies that GTE will provide HST the physical collocation of equipment 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 HST 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 Fibernet aver that, pursuant to Section 252(i) of the Act, *supra*, Fibernet has a right to adopt the terms of the GTE-HST Interconnection Agreement. (Joint Petition, pp. 1-2).²

The Agreement will be in effect for two (2) years and thereafter will continue year to year.

² 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.

C. Disposition

As noted above, through this Petition, Fibernet seeks permission to adopt the terms of the existing Interconnection Agreement between GTE and HST which we approved by Opinion and Order entered October 27, 1997, at Docket No. A-310547F0002. In that Opinion and Order, we granted conditional approval in Ordering Paragraph 1, which stated:

That the Joint Petition of GTE North Incorporated and Hyperion Susquehanna Telecommunications for Approval of an Interconnection Agreement, filed on June 26, 1997 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, shall be conditionally approved, pending submission of the permanent unbundled loop rates and other appropriate network elements. That if the above referenced revisions are not received by this Commission within thirty (30) days of entry of the Commission's Opinions and Orders approving GTE North, Inc., compliance filings in the above referenced proceeding, said approval shall be rescinded.

As can be seen from this quote, we were concerned about the submission of the permanent unbundled loop rates and other appropriate network elements. On August 27, 1998, HST filed the tariff revisions in compliance with that Order, which were permitted to become effective on August 18, 1998.

We will approve the Petition of GTE and Fibernet to permit Fibernet to adopt the terms of the Interconnection Agreement between GTE and HST, 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 Fibernet 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 E911 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 Fibernet is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest; **THEREFORE,**

IT IS ORDERED:

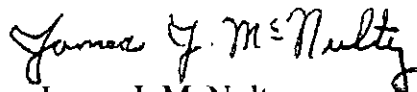
1. That the Joint Petition of GTE North, Incorporated and Fibernet Telecommunications of Pennsylvania, LLC, filed on August 13, 1999, seeking permission for Fibernet Telecommunications of Pennsylvania, LLC to adopt an Interconnection Agreement between GTE North, Incorporated and Hyperion Susquehanna Telecommunications, approved by Order entered on October 27, 1997, at Docket No. A-310547F0002, 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: December 2, 1999

ORDER ENTERED: **DEC 03 1999**