

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> January 14, 2008	2. <u>BUREAU AGENDA NO.</u> JAN-2008-OSA-0066*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u> January 24, 2008
6. <u>APPROVED BY:</u> Director: C. W. Davis 7-1827 Mgr/Spvr: R. A. Marinko 3-3930 Legal Review: K. Barrow 2-8840	
7. <u>PERSONS IN CHARGE:</u> H. Deichmiller 7-6723	9. <u>EFFECTIVE DATE OF FILING:</u> February 11, 2008
8. <u>DOCKET NO.:</u> A-310828F7001	

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

(a) Joint Petition of Verizon North Inc. (Verizon North) and FiberNet Telecommunications of Pennsylvania, LLC (FiberNet) for Approval of Amendment No. 2 to the Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996.

(b) On November 13, 2007, Verizon North and FiberNet filed the instant Joint Petition seeking approval of Amendment No. 2 of an interconnection agreement, pursuant to Section 252(e) of the Telecommunications Act of 1996, and in compliance with the directives of the Commission's September 13, 2007 Order at P-00042092. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on December 8, 2007. No comments were received.

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

11. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Cawley
 Commissioner Christy - Yes
 Commissioner Pizingrilli - Yes
 Commissioner

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

January 25, 2008

A-310828 F7001

STEVEN HAMULA
211 LEON SULLIVAN WAY
CHARLESTON WV 25301

**DOCUMENT
FOLDER**

Joint Petition of Verizon North Inc. and FiberNet Telecommunications of Pennsylvania, LLC
for approval of Amendment No. 2 to the Interconnection Agreement under Section 252(3)
of the Telecommunications Act of 1996.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on January 24, 2008 has adopted
an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encls
cert. mail
MH

DANIEL E MONAGLE
ASSISTANT GENERAL COUNSEL
1717 ARCH STREET 32NW
PHILADELPHIA PA 19103

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held January 24, 2008

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli

Joint Petition of Verizon North Inc. and FiberNet
Telecommunications of Pennsylvania, LLC for
Approval of Amendment No. 2 to the
Interconnection Agreement Under Section 252(e)
of the Telecommunications Act of 1996

A-310828F7001

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition for approval of Amendment No. 2 (Amendment) to an Interconnection Agreement (Agreement) between Verizon North Inc. (Verizon) and FiberNet Telecommunications of Pennsylvania, LLC (FiberNet), filed November 13, 2007, in compliance with the Commission's Opinion and Order entered September 13, 2007, at Docket No. P-00042092.¹ That Order required that certain interconnection agreements be amended to comply with the directives contained

¹ *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Pennsylvania Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order, Docket No. P-00042092 (September 13, 2007).*

therein, as well as with the Commission's February 21, 2006 Opinion and Order at the same docket number. The amendments conform existing interconnection agreements to the Federal Communication's (FCC) changes in the law regarding local exchange carrier (LEC) unbundling obligations² arising under Section 251(c)(3) of the federal Telecommunications Act of 1996 (TA-96 or the Act) 47 U.S.C. § 251(c)(3). See FCC Triennial Review Order (TRO)³ and Triennial Review Remand Order (TRRO).⁴ The instant Amendment was also 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*).

The Commission published notice of the Joint Petition and Agreement in the *Pennsylvania Bulletin* on December 8, 2007, advising that any interested parties could file comments within ten days. No comments have been received.

² Section 251(c)(3) imposes an obligation on the local exchange carrier to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ." These unbundled network elements are referred to as "UNEs."

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, . . . 18 FCC Rcd 16978 (2003) (Rel. August 21, 2003), corrected by Errata, 18 FCC Rcd 19020 (2003), vacated and remanded in part, affirmed in part, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), cert. denied, 125 S.Ct. 313, 316, 345 (2004).

⁴ *In re Unbundled Access to Network Elements, et al.*, WC Docket No. 04-313, CC Docket No. 01-338 *Order on Remand*, 20 FCC Rcd 2533 (Rel. February 4, 2005).

History of the Proceeding

On February 25, 2004, Verizon Pennsylvania Inc. and Verizon North Inc. (jointly referred to as the Verizon Companies) filed a Petition, pursuant to Section 252(b) of TA-96, 47 U.S.C. § 252(b),⁵ requesting Commission arbitration of interconnection agreements with various competitive local exchange carriers (CLECs) and commercial mobile radio service (CMRS) providers pursuant to the “change-of-law” provisions contained in said agreements. The February 25, 2004 Petition was treated in the nature of a “consolidated” arbitration proceeding as it represented the Verizon Companies’ generic approach to modification and amendment of existing interconnection agreements to conform said agreements with the TRO and TRRO. 47 U.S.C. § 252(d). The primary purpose of the Petition was to bring the various interconnection agreements between the Verizon Companies, the CLECs, and the CMRSs into compliance with applicable FCC unbundling obligations.

On February 7, 2005, the Commission entered an Order referring certain issues raised by the Verizon Companies in their Petition to the Office of Administrative Law Judge (OALJ) for such proceedings as were necessary for the issuance of a Recommended Decision. The Petition was, thereafter, assigned to Administrative Law Judge (ALJ) Wayne L. Weismandel, acting as arbitrator. Hearings were held and the Recommended Decision of ALJ Weismandel was subsequently issued on September 8, 2005. Exceptions to the Recommended Decision were filed by the Verizon Companies, various CLECs, and the Office of Consumer Advocate.

By Order entered February 21, 2006, the Commission disposed of twenty-eight unresolved issues and sub-issues, addressed by ALJ Weismandel in his Recommended Decision. Disposition of these unresolved issues was anticipated to

⁵ This section of TA-96 pertains to Agreements arrived at through compulsory arbitration.

provide direction for the amendment of existing agreements. The February 21, 2006 Order, *inter alia*, directed the participants to file amended interconnection agreements that incorporate and/or are consistent with the dispositions in said Order within thirty days from the order entry date, or no later than March 23, 2006.

On March 8, 2006, various CLECs jointly filed a Petition for Reconsideration and Clarification (Reconsideration Petition) of our February 21, 2006 Order.

By letter dated March 22, 2006, the Verizon Companies, on behalf of all of the Parties in this proceeding, jointly requested an extension of time to file the amended interconnection agreements from the March 23, 2006 deadline, until April 27, 2006, because the Parties were unable to reach an agreement on the final conforming language. The Parties also requested permission to file briefs explaining each Party's position on the disputed language. The Commission approved the joint request by Secretarial Letter dated March 24, 2006.

The Parties were unable to successfully reach agreement on final, conforming language prior to April 27, 2006. As such, on April 27, 2006, various Parties filed briefs that addressed the disputed language and provisions associated with the directives of our February 21, 2006 Order.

On July 21, 2006, the Commission entered an Order addressing the Reconsideration Petition.

By Opinion and Order entered September 13, 2007, the Commission addressed and disposed of all remaining unresolved issues addressed in the Parties' Briefs. All Parties were directed to file amended interconnection agreements by October 15, 2007, that conform with the February 21, 2006 and September 13, 2007

Orders. On October 9, 2007, the Verizon Companies and other Parties to the proceeding filed a letter requesting additional time, until October 29, 2007, to file compliance filings. That request was granted by Secretarial Letter dated October 12, 2007.

As noted above, on November 13, 2007, the Parties filed the instant Petition requesting approval of the Amendment.⁶

Discussion

A. Standard of Review

The standard for review of a negotiated or arbitrated 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. . .

⁶ We note that the Parties were subsequently granted additional time beyond the extended October 12, 2007 deadline to file the Amendment so as to allow them to obtain the proper signatures.

With these criteria in mind, we shall review Amendment No. 2 submitted by Verizon and FiberNet.

B. Summary of Terms

The instant Agreement, which has an effective date of November 5, 2007, is being amended to include, *inter alia*, the provisions discussed below. These provisions apply to and will be made a part of the Parties' existing Agreement notwithstanding any other provision of the existing Agreement or any Verizon tariff.

As a general condition, Verizon will not impose limitations, restrictions, or requirements on requests for, or the use of, UNEs for the service FiberNet seeks to offer, except as permitted by the amended Agreement. Additionally, FiberNet may not access a UNE for the exclusive provision of Mobile Wireless Services or Interexchange Services. The Agreement further provides that Verizon may, at any time and without further notice to FiberNet, cease offering or providing access on an unbundled basis at rates prescribed under Section 251 of the Act to any facility that is a Discontinued Element, whether as a stand-alone UNE, as part of a combination, or otherwise.

Under the "Provision of Certain Network Elements and Related Services" Section No. 3 of the Agreement, Verizon shall not be required to provide access to a Fiber to the Home (FTTH) or Fiber to the Curb (FTTC) loop, or any segment thereof, on an unbundled basis when it deploys such a loop to the customer premises of an end user that has not been served by any loop facility other than a FTTH or FTTC loop, or when it has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that, and in accordance with, the extent required by the Federal Unbundling Rules, as more fully detailed in Section 3.1.2 of the Agreement. However, prior to retiring any copper loop that has been replaced with a FTTH or FTTC Loop, Verizon shall comply with the network disclosure requirements as set forth in the Act, as

well as the FCC Rules. With regard to Hybrid Loops, FiberNet will not be entitled to obtain access to the packet switched features, functions, or capabilities of any Hybrid Loop on an unbundled basis.

Apart from its obligation to provide the Network Interface Device (NID) functionality as part of an unbundled loop or subloop, Verizon will provide nondiscriminatory access to the NID on an unbundled basis, and will permit FiberNet to connect its own loop facilities to on-premises wiring through Verizon's NID, or at any other technically feasible point.

To the extent the Agreement otherwise requires Verizon to provide with unbundled access to DS1 Loops, it will be provided to FiberNet with nondiscriminatory access to a DS1 Loop on an unbundled basis to any building not served by a Wire Center with at least 60,000 business lines and at least four Fiber-Based Collocators.⁷ When the wire center exceeds or has exceeded both of these thresholds, no future DS1 Loop unbundling will be required in that Wire Center, except to the extent required under the Verizon-MCI merger conditions. FiberNet and its affiliates may obtain a maximum of ten unbundled DS1 Loops to any single building in which DS1 Loops are available as unbundled loops.

Additional provisions contained in the amended Agreement, and more fully described therein, include provisions for Dark Fiber Loops, High Capacity Transport,

⁷ A Fiber-Based Collocator is any carrier, unaffiliated with Verizon, that maintains a collocation arrangement in a Verizon Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the Wire Center; (2) leaves the Verizon Wire Center premises; and (3) is owned by a party other than Verizon or any affiliate of Verizon. Dark fiber obtained from Verizon on an indefeasible right of user basis will be treated as non-Verizon fiber-optic cable. Two or more affiliated Fiber-Based Collocators in a single Wire Center will collectively be counted as a single Fiber-Based Collocator.

TRRO Certification and Dispute Process for High Capacity Loops and Transport, DSO Local Circuit Switching and Related Elements, Payment of Transition Charges, Line Sharing, Commingling and Combinations, Routine Network Modifications, and various Miscellaneous Provisions consistent with our February 21, 2006 and September 13, 2007 Orders.

C. Disposition

Upon our review of the instant Amendment, we shall approve it, finding that it conforms with the requirements of our February 21, 2006 and September 13, 2007 Orders. We note that in approving this Agreement, including any provisions limiting unbundled access to Verizon's network, we express no opinion regarding the enforceability of our independent state authority preserved by 47 U.S.C. § 251(d)(3) and any other applicable law.

We shall minimize the potential for discrimination against other carriers not parties to the underlying Agreement by providing here that our 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, 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.* Based on the foregoing, we find that the Amendment does not discriminate against telecommunications carriers not party to the negotiations.

TA-96 requires that the terms of the Agreement be made available for other parties to review. 47 U.S.C. § 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 the parties. In this context, we will not require Verizon and FiberNet to embody the terms of this Agreement in a filed tariff.

Consistent with our May 3, 2004 Order at Docket No. M-00960799, we will require that Verizon file an electronic, true and correct copy of the Amendment in “.pdf format” for inclusion on the Commission’s website, within thirty days of the date of entry of this Opinion and Order.

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we conclude that the Amendment: (1) is in compliance with our February 21, 2006 and September 13, 2007 Orders at Docket No. P-00042092; (2) is non-discriminatory to other telecommunications companies not parties to it; and (3) is consistent with the public interest. As such, we shall grant the Petition and approve the Amendment as filed; **THEREFORE**,

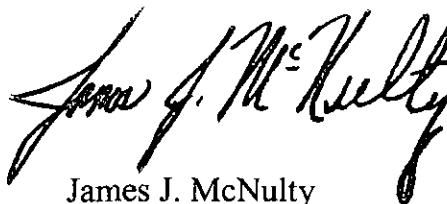
IT IS ORDERED:

1. That the Joint Petition for approval of Amendment No. 2 filed on November 13, 2007, by Verizon North Inc. and FiberNet Telecommunications of Pennsylvania, LLC, 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 June 3, 1996); *Order On Reconsideration* (Order entered September 9, 1996); *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004), and our February 21, 2006 and September 13, 2007 Orders at Docket No. P-00042092, is granted, consistent with this Opinion and Order.

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

3. That Verizon North Inc. shall file an electronic, true and correct copy of the amended Interconnection Agreement, in “.pdf format”, with this Commission within thirty (30) days of the date of entry of this Opinion and Order, for inclusion on the Commission’s website.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2008

ORDER ADOPTED:

JAN 25 2008