



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

IN REPLY PLEASE
REFER TO OUR FILE

NOVEMBER 29, 2000

A-310829

JULIA A CONOVER ESQUIRE
VERIZON PENNSYLVANIA INC
1717 ARCH STREET 32ND FLOOR
PHILADELPHIA PA 19103

DOCUMENT
FOLDER

Joint Petition for Approval of Amendment Nos. 1 and 2 to the
Interconnection Agreement between Verizon Pennsylvania Inc.,
f/k/a Bell Atlantic Pennsylvania, Inc and VITTS Network, Inc.,
under Section 252(e) of the Telecommunications Act of 1996

DOCKETED
DEC 07 2000

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 29, 2000 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

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 29, 2000

Commissioners Present:

Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Joint Petition for Approval of Amendment
Nos. 1 and 2 to the Interconnection Agreement
between Verizon Pennsylvania Inc., f/k/a Bell
Atlantic Pennsylvania, Inc. and VITTS
Network, Inc. Under Section 252(e) of the
Telecom-munications Act of 1996

A-310829

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OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for Amendment Nos. 1 and 2 to the Interconnection Agreement (Amendment) between Verizon Pennsylvania, Inc., f/k/a Bell Atlantic-Pennsylvania, Inc. (Verizon) and VITTS Network, Inc. (VITTS), 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 June 3, 1996 Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (*Implementation Order*) and the associated September 9, 1996 Order on Reconsideration (*Reconsideration Order*).

History of the Proceeding

On August 31, 2000, Verizon and VITTS filed the instant Amendment Nos. 1 and 2. These supplement the terms of the Interconnection Agreement (Agreement) which we approved by our Opinion and Order entered on July 16, 1999, at Docket No. A-310829.

The Commission published notice of the Joint Petition and the Amendments in the *Pennsylvania Bulletin* on September 16, 2000, advising that any interested parties could file comments within ten (10) 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 and VITTS.

B. Timeliness of Filing

We note that Amendment No. 1 has an effective date of March 27, 2000. (Amendment No. 1, p. 1). The effective date for Amendment No. 2 is May 24, 2000. (Amendment No. 2, p. 1). Both Amendments were filed with this Commission on August 31, 2000, more than thirty (30) days after their respective effective dates. Neither TA-96 or 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 Order*, 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

Amendment No. 1 deletes the entire Section 22.2 of the original Agreement and replaces it with the following language: "[t]his Agreement shall be null and void if

¹ "The Act 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 by no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection." (*Id.*)

neither Party has ordered a facility, service or arrangement hereunder by February 28, 2001." (Amendment No. 1, p. 2).

The Parties assert that Amendment No. 2 is filed pursuant to the Order issued by the FCC on November 5, 1999, at CC Docket No. 96-98 (*UNE² Remand Order*) and the FCC's Supplemental Order issued on November 24, 1999, at the same docket number. Both Orders became effective on February 17, 2000, and fully effective on May 17, 2000. The Parties state that Verizon PA is now prepared to provide network elements and collocation in accordance with, but only to the extent required by all effective and unstayed laws, government regulations and applicable orders. (Amendment No. 2, p. 1).

Amendment No. 2 requires Verizon PA to provide to VITTS access to a Sub-Loop, Dark Fiber Loops, and Collocation in Remote Terminals. (Amendment No. 2, pp. 1-8).

According to Amendment No. 2, p. 4, the charges for the Sub-Loop and the Dark Fiber are contained in Exhibit A to the Amendment. However, Exhibit A contains no rates, but specifies that Exhibit A will be completed in accordance with Section 1(f)(1) of Amendment No. 2. Section 1(f)(1) states that:

VITTS acknowledges that the Rates are not set forth in Exhibit A as of the Effective Date but that BA is developing the Rates and BA has not finished developing the Rates as of the Effective Date. When BA finishes developing a Rate, BA shall notify VITTS in writing of such and thereafter shall bill VITTS, and VITTS shall pay to BA, for service provided under this Amendment on the Effective Date and thereafter in

² "UNE" is the acronym for Unbundled Network Elements.

accordance with such Rate, subject to Section 1(f)(1) of this Amendment.

(Amendment No. 2, p. 9).

Amendment No. 2 also provides for collocation in remote terminals under the terms and conditions provided for in Verizon's tariffs. (Amendment No. 2, p. 8).

D. Disposition

We are concerned that the rates are not provided in Exhibit A or any other section of Amendment No. 2. However, we shall approve Amendment No. 2 in order that we do not impede the implementation of the FCC's *UNE Remand Orders, supra*, on the condition that the Parties immediately provide the Commission with a copy of the final rates when they are developed and that the rates are consistent with the Commission's' obligations under 47 U.S.C. Section 252(e)(2).

Accordingly, we shall approve both Amendment Nos. 1 and 2, finding that they satisfy 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 these Amendments 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 Amendment Nos. 1 and 2 to the Agreement do 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 Amendments to the Agreement and their 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 and VITTS to embody the terms of the Amendments to the Agreement in a filed tariff, but we will require that the Parties file Amendment Nos. 1 and 2 to the Agreement with this Commission, as well as the final rates, at such time that they are developed. 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 Nos. 1 and 2 to the Interconnection Agreement between Verizon and VITTS 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 Verizon Pennsylvania Inc., f/k/a Bell Atlantic-Pennsylvania Inc., and VITTS Network, Inc., filed on August 31, 2000, seeking approval of Amendment Nos. 1 and 2 to the existing Interconnection Agreement, 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.

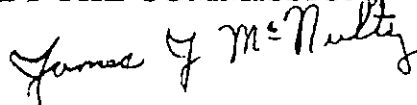
2. That approval of Amendment Nos. 1 and 2 to the Interconnection Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Interconnection Agreement.

3. That approval of Amendment Nos. 1 and 2 to the Interconnection Agreement shall not be construed as review under Section 271 of the Telecommunications Act of 1996, 47 U.S.C. §271.

4. That the Parties shall file a true and correct copy of Amendment Nos. 1 and 2 to the Interconnection Agreement with this Commission within thirty (30) days of the date of entry of this Opinion and Order.

5. That, upon completion of developing the final rates included in Amendment No. 2, the Parties shall immediately file a copy of those final rates with the Secretary for inclusion in the official file.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 29, 2000

ORDER ENTERED: **NOV 29 2000**