

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: November 30, 2000	2. BUREAU AGENDA NO. DEC-2000-OSA-0359*
3. BUREAU: Office of Special Assistants	5. PUBLIC MEETING DATE: December 20, 2000 DOCKETED JAN 10 2001
4. SECTION(S):	
6. APPROVED BY: Director: C.W. Davis 7-1827 <i>CW</i> Supervisor:	
7. PERSONS IN CHARGE: D. Munsch 7-1660	
8. DOCKET NO.: A-310872	

- 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 MVX.COM Communications, Inc. (MVX) for approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996

(b) On October 3, 2000, Verizon PA and MVX filed a Joint Petition for approval of an Interconnection Agreement (Petition) which would permit MVX to opt-in to the provisions of an existing Agreement between Verizon PA and MCImetro Access Transmission Services, Inc. Notice of the Petition was published in the *Pennsylvania Bulletin* on October 21, 2000. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order granting the Joint Petition thereby approving the Interconnection Agreement, consistent with this Opinion and Order.

Order Doc. No. 222780v1

Calendar Doc. No. 222776v1

10. MOTION BY: Commissioner Chm. Quain
SECONDED: Commissioner Bloom
Commissioner Brownell - Yes
Commissioner Wilson - Yes
Commissioner Fitzpatrick - Yes
CONTENT OF MOTION: Staff recommendation adopted.
DOCKETED
FOLDER



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

IN REPLY PLEASE
REFER TO OUR FILE

DECEMBER 22, 2000

A-310872

LANCE J M STEINHART ESQUIRE
6455 EAST JOHNS CROSSING STE 285
DULUTH GA 30097

DOCUMENT
FOLDER

Joint Petition of Verizon Pennsylvania, Inc. and MVX.COM Communications, Inc.. for approval of a Interconnection Agreement under Section 252 (e) of the Telecommunications Act of 1996

DOCKETED
JAN 03 2001

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 20, 2000 in the above-entitled proceeding has adopted an Opinion and Order.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

smk
Enclosure
cert. Mail

DANIEL E MONAGLE ESQUIRE
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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 20, 2000

Commissioners Present:

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

Joint Petition of Verizon Pennsylvania,
Inc. and MVX.COM Communications, Inc. for
Approval of an Interconnection Agreement Under
Section 252(e) of the Telecommunications
Act of 1996

A-310872

**DOCUMENT
FOLDER**

OPINION AND ORDER

DOCKETED
JAN 03 2001

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Verizon Pennsylvania Inc. (Verizon PA) and MVX.COM Communications, Inc. (MVX) for approval of an Interconnection Agreement¹ (Agreement), 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 Order in *In Re: Implementation of*

¹ Although styled as an Agreement under Section 252(e) of TA-96, this is an opt-in request by MVX under Section 252(i) of TA 96.

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 October 3, 2000, Verizon PA and MVX filed the instant Joint Petition seeking approval of the aforementioned Agreement that would provide for the interconnection of the two (2) companies' networks and makes available to MVX 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 Agreement in the *Pennsylvania Bulletin* on October 21, 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 Agreement submitted by Verizon PA and MVX.

B. Timeliness of Filing

We note that the instant Agreement provides that the “Effective Date” is June 16, 2000. (Agreement, p. 1). Also, pursuant to Section A-5 – Term of the Agreement, the Agreement shall continue in effect until August 31, 2000, and, thereafter, the Agreement shall continue in force and effect unless and until terminated as provided in the Agreement. (Agreement, Appendix 1, p. A-5).

Based on the foregoing, we note that a period of approximately three (3) months has elapsed from the time the Agreement 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).²

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

In the Joint Petition, Verizon PA and MVX agree that MVX will exercise its right under Section 252(i) of TA-96 to opt-in to the terms of the Agreement between Verizon PA and MCImetro Access Transmission Services, Inc., dated July 8, 1997, and revised as of July 29, 1997, which the Commission approved on September 3, 1997, at Docket No. A-310236F0002. An Amendment No. 1 to the MCImetro Agreement was filed on March 8, 1999, which is effective under Section 252 of TA-96. The Agreement between Verizon PA and MVX is based on the MCImetro approved amended Agreement.

In their Joint Petition, Verizon PA and MVX aver that:

The Agreement sets forth the terms, conditions and prices under which Verizon PA and MVX will offer and provide network interconnection, reciprocal call termination, access to

² “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.*)

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. The Agreement is an integrated package that reflects a negotiated balance of many interests and concerns critical to both parties.

(Joint Petition, p. 2, ¶4).

The key provisions of the Agreement, as summarized by the Parties in the 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 and MVX networks.
- (2) Unbundled loops – providing MVX access to existing Verizon customers – based on a rate methodology specified in the Agreement.
- (3) Customers to retain their telephone numbers when they switch to MVX.
- (4) Including MVX 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 telecommunications services for a wholesale discount of 18.43% or 20.69% (depending upon whether MVX provides its own operator services).
- (6) The continued provision of 911 services to all customers.

- (7) Performance standards for services provided by Verizon to MVX equal to the level of service provided by Verizon to its own end-user customers and other telecommunications carriers.

(Joint Petition, pp. 2-3, ¶5).

Verizon PA and MVX aver that the Agreement³ complies with the criteria identified in TA-96 at 47 U.S.C. §252(e)(2)(A) 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).

The Parties assert that the Agreement is an important step towards allowing MVX to compete with Verizon PA as a facilities-based local telephone service carrier for both residential and business customers, and the Agreement protects the public interest, convenience, and necessity. (Joint Petition, p. 3, ¶8).

D. 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

³ 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.

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 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 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 or MVX 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 Agreement are consistent with the public interest. (Agreement, Appendix VIII, pp. 46-48).

Conclusion

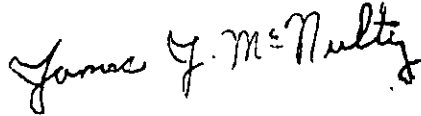
Based on the foregoing and pursuant to Section 252, *supra*, and our *Implementation Order*, we will approve the Agreement between Verizon PA and MVX filed on October 3, 2000; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of Verizon Pennsylvania Inc. and MVX.COM Communications, Inc. seeking approval of an Interconnection Agreement filed on October 3, 2000, 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 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 approval of the Interconnection Agreement shall not be construed as a review under 47 U.S.C. §271.

4. That the Parties shall file a true and correct copy of the 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 20, 2000

ORDER ENTERED: **DEC 22 2000**