

1. <u>REPORT DATE:</u> January 18, 2005	2. <u>BUREAU AGENDA NO.</u> FEB-2005-OSA-0046*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u> February 3, 2005
6. <u>APPROVED BY:</u> Director: C. W. Davis <i>[Signature]</i> Mgr/Spvr: Legal Review: A. Arnold <i>[Signature]</i> 7-8032	
7. <u>PERSONS IN CHARGE:</u> L. E. Pilalis <i>[Signature]</i> 3-5243	9. <u>EFFECTIVE DATE OF FILING:</u> Deemed approved by operation of law after 90 days, or March 10, 2005, if the Commission does not act to approve or reject Agreement (§ 252(e)(4) of TA-96).
8. <u>DOCKET NO.:</u> A-310758F7000	

DOCKETED
 MAR 02 2005

- 10. (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 XO Pennsylvania (XO), Inc. (f/k/a Nextlink Pennsylvania, Inc.) for Approval of Amendment No. 5 to an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996.

(b) On December 10, 2004 Verizon PA and XO filed a Joint Petition requesting approval of Amendment No. 5 to an Interconnection Agreement. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on January 15, 2005. 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 and thus approving Amendment No. 5 to the Verizon PA – XO Interconnection Agreement.

**DOCUMENT
 FOLDER**

Order Doc. No. 517568v1

Calendar Doc. No. 517533

10. MOTION BY: Commissioner Chm. Holland

SECONDED: Commissioner Bloom

Commissioner Thomas - Yes
 Commissioner Pizzigrilli - 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

February 7, 2005

A-310758F7000

ANTHONY E GAY DANIEL E MONAGLE ESQUIRES
LAW DEPARTMENT
1717 ARCH STREET – 32NW
PHILADELPHIA PA 19103

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MAR 15 2005

Joint Petition of Verizon Pennsylvania Inc.
and XO Pennsylvania, Inc. (f/k/a Nextlink
Pennsylvania, Inc.) for Approval of
Amendment No. 5 to an Interconnection
Agreement under Section 252(e) of
The Telecommunications Act of 1996

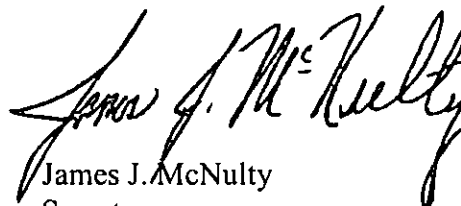
**DOCUMENT
FOLDER**

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 3, 2005, 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

mk
encls
cert. mail

See Attached Listing for Additional Parties of Record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 3, 2005

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice-Chairman
Glen R. Thomas
Kim Pizzingrilli

DOCKETED
MAR 15 2005

A-310758F7000

Joint Petition of Verizon Pennsylvania Inc.
and XO Pennsylvania, Inc. (f/k/a Nextlink
Pennsylvania, Inc.) for Approval of
Amendment No. 5 to an Interconnection
Agreement Under Section 252(e) of the
Telecommunications Act of 1996

**DOCUMENT
FOLDER**

OPINION AND ORDER

BY THE COMMISSION

Before the Commission for consideration is the Joint Petition of Verizon Pennsylvania Inc. (Verizon PA) and XO Pennsylvania, Inc. (XO) (f/k/a Nextlink Pennsylvania, Inc.) for approval of Amendment No. 5 to their preexisting Interconnection Agreement. This Joint Petition has been filed in accordance with the applicable provisions of 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), 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 on June 3, 1996); *Order on Reconsideration* (Order entered on September 9, 1996); and *Proposed Modifications to the Review of Interconnection Agreements* (Order entered on May 3, 2004) (*Implementation Orders*).

History of the Proceeding

Verizon PA and XO filed their Joint Petition seeking approval of Amendment No. 5 (Amendment) to their Interconnection Agreement (Agreement) on December 10, 2004. This Amendment supplements the terms of the Interconnection Agreement between Verizon PA and XO that was approved by this Commission by Opinion and Order entered on February 9, 2001.¹ This Amendment will be attached to, and made part of the Agreement.

The Commission published notice of the Joint Petition and the Amendment in the *Pennsylvania Bulletin* on January 15, 2005, advising that any interested parties could file comments on or before ten (10) days after the publication of this notice. No comments have been received.

This Amendment, as negotiated by the parties is effective on a retroactive basis as of June 14, 2001. However, this Amendment was respectively signed by Verizon PA and XO on November 10, 2004 and November 3, 2004.² The Amendment is submitted for Commission review in accordance with Ordering Paragraph No. 5 of the Commission's Final Order at Docket No. M-00960799, entered on May 3, 2004, and within the specified 30-day submission deadline.³

¹ *Joint Petition of Verizon Pennsylvania Inc. and NEXTLINK Pennsylvania, Inc. for Approval of an Interconnection Agreement and Amendments 1, 2, 3, and 4 Under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-310260F0002 (Order entered February 9, 2001).

² Verizon PA Joint Petition Transmittal Letter dated December 10, 2004.

³ *Proposed Modifications to the Review Of Interconnection Agreements*, Docket No. M-00960799 (Final Order entered May 3, 2004), at 25-26.

A. Standard of Review

The standard of review for a negotiated interconnection agreement and its subsequent amendments 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. . . .

In view of these criteria we shall review the Agreement Amendment that has been jointly submitted by Verizon PA and XO.

B. Summary of Terms

The Amendment addresses the reciprocal compensation payment rights and obligations of Verizon PA and XO for Internet Service Provider (ISP)-bound traffic. The Amendment states that the Verizon PA and XO intercarrier compensation rights and obligations for ISP-bound traffic shall be governed by the FCC's Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound*

Traffic, FCC 01-131, CC Docket Nos. 96-98 and 99-68, *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).⁴

C. Disposition

We shall approve the Amendment, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving this privately negotiated agreement, including any provisions limiting unbundled access to Verizon PA'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 a party to the Amendment by providing here that our conditional approval of the 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; *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 Amendment does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the Amendment 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 Amendment and its terms to other parties do not connote any intent that our approval will affect the status of the negotiations between other parties. In this context, we will not require Verizon PA and XO to embody the terms of the Amendment in a filed tariff.

⁴ Amendment, Paragraph 1, at 1.

Consistent with our May 3, 2004 Order at Docket No. M-00960799, we do require that the incumbent local exchange carrier file a jointly signed, true and correct copy of the Amendment with the Commission, within thirty days after the date that they are signed for retention in the Commission's official files so that it is available to the public for inspection and copying consistent with the procedures related to public access to documents. We also require that the incumbent local exchange carrier file an electronic, true and correct copy of the Amendment to the Interconnection Agreement in ".pdf format" for inclusion on the Commission's website.

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we determine that Amendment No. 5 to the Interconnection Agreement between Verizon PA and XO is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest; **THEREFORE**,

IT IS ORDERED:

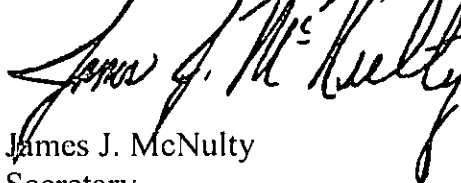
1. That the Joint Petition for approval of Amendment No. 5 to the Interconnection Agreement filed on December 10, 2004, by Verizon Pennsylvania Inc. and XO Pennsylvania, Inc., pursuant to the Telecommunications Act of 1996, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996); *Proposed Modifications to the Review of Interconnection Agreements* (Order entered on May 3, 2004); is granted, consistent with this Opinion and Order.

2. That approval of Amendment No. 5 to the Interconnection Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Amendment.

3. That Verizon Pennsylvania Inc. shall file an electronic copy of Amendment No. 5 to the Interconnection Agreement in “.pdf format,” with this Commission within thirty (30) days of the entry of this Opinion and Order for inclusion in the Commission’s website.

4. That, within thirty (30) days of the date of entry of this Opinion and Order, Verizon Pennsylvania Inc. shall notify the Commission as to whether Amendment No. 5 to the Interconnection Agreement filed on December 10, 2004, is a signed, true and correct copy. If Amendment No. 5 to the Interconnection Agreement filed December 10, 2004, is not a signed, true and correct copy, Verizon Pennsylvania Inc. is directed to file a signed, true and correct copy of Amendment No. 5 to the Interconnection 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: February 3, 2005

ORDER ENTERED: **FEB 07 2005**

0001
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