



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
ISSUED: MAY 7, 2003.

IN REPLY PLEASE  
REFER TO OUR FILE  
A-310758F7000

JAMES H CAWLEY ESQUIRE  
DEBRA M KRIETE ESQUIRE  
RHOADS & SINON  
ONE MARKET SQUARE 12TH FLOOR  
PO BOX 1146  
HARRISBURG PA 17108-1146

DOCUMENT  
FOLDER

Petition of XO Pennsylvania, Inc., for Resolution of Reciprocal Compensation  
Dispute Pursuant to the Abbreviated Dispute Resolution Process.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Michael C. Schnierle..

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Third Floor; and a copy in the hands of each party of record no later than May 22, 2003., by 4:30 P.M.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Reply exceptions will not be accepted for filing and will not be entertained by the Commission.

Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,

James J. McNulty  
Secretary

FG  
Encls.  
Certified Mail  
Receipt Requested

See Attached Listing for Additional Parties of Record.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of XO Pennsylvania, Inc. :  
for Resolution of Reciprocal :  
Compensation Dispute Pursuant to : Docket No. A-310758F7000  
the Abbreviated Dispute Resolution :  
Process :

INITIAL DECISION

Before  
Michael C. Schnierle  
Administrative Law Judge

History of the Proceedings

**DOCKETED**

MAY 13 2003

DOCUMENT  
FOLDER

XO filed this petition on June 25, 2002, pursuant to the Abbreviated Dispute Resolution process, alleging that Verizon Pennsylvania Inc. ("Verizon") was obligated to pay certain reciprocal compensation charges that XO billed to Verizon under its interconnection agreement with Verizon, since June 14, 2001. XO maintained that these payments were due and owing under the terms and conditions of its interconnection agreement with Verizon. The amount of payments that XO claimed that Verizon unilaterally withheld through April 10, 2002 exceeded \$800,000, as of that time. In addition, XO sought payment of late payment charges on invoiced amounts that Verizon did not dispute, but did not pay on a timely basis.

On July 2, 2002, Verizon filed an Answer to the Petition and a Motion to Dismiss. Verizon responded that it had no contractual obligation to pay reciprocal compensation on Internet-bound traffic after June 14, 2001, the effective date of the FCC's *Order on Remand and Report and Order, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131 (April 27, 2001) ("*FCC ISP Order*"). Verizon claimed that the issues that XO raised in its Petition already had been addressed by Commission in an Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process* ("*MCI Decision*").

Verizon maintained that in that decision, the Commission interpreted the very same agreement at

issue here and rejected the very same claim here raised by XO. There, the Commission found that as of June 14, 2001, Verizon was no longer required to make reciprocal compensation payments for Internet-bound traffic to MCI WorldCom.

XO timely filed an Answer in Opposition to the Motion to Dismiss, on July 12, 2002. XO argued that Verizon's Motion to Dismiss should be denied, because the parties, facts and issues in dispute in this proceeding are different from those in Verizon's abbreviated dispute resolution ("ADR") proceeding against MCI WorldCom and are appropriate for decision in this proceeding pursuant to the ADR process. Verizon disagreed, pointing out, among other things, that the interconnection agreement at issue in this case is identical to the agreement the Commission interpreted in its *MCI Decision*.

This case was assigned to me on July 3, 2002, when the parties were informed that a prehearing conference would be held on July 11, 2002. Due to scheduling conflicts, the conference was subsequently rescheduled to July 19, 2002.

On July 19, 2002, a prehearing conference was held in this matter, and the parties discussed the procedural status of this case. On July 22, 2002, I issued a prehearing order. I noted that the Commission's *MCI Decision* was not then dispositive of this proceeding, for two reasons. First, the Commission's decision was based on the *FCC ISP Order*. After the Commission voted on the *MCI Decision* but before the decision was issued, the D.C. Circuit Court of Appeals ruled that the legal basis that the FCC relied upon in the *FCC ISP Order* was lacking merit. The Court remanded the case to the FCC for further proceedings but did not vacate the *FCC ISP Order*. Subsequently, the Court was asked to reconsider its decision and to reverse the *FCC ISP Order* in addition to the remand. Second, the PUC decided to grant reconsideration of its *MCI Decision*, pending review of, and consideration on, the merits.

By order adopted August 29, 2002 (entered August 30, 2002), the Commission denied on the merits MCI's petition for reconsideration of the *MCI Decision*. Also, on September 24 and 25, 2002, the DC Circuit Court of Appeals denied several petitions for rehearing of its

decision to remand without vacating the *FCC ISP Order*. *Worldcom Inc. v. FCC*, 2002 U.S. App. LEXIS 20541 (D.C. Cir. Sept. 24, 2002); *Worldcom Inc. v. FCC*, 2002 U.S. App. LEXIS 20542 (D.C. Cir. Sept. 24, 2002); *Worldcom Inc. v. FCC*, 2002 U.S. App. LEXIS 20545 (D.C. Cir. Sept. 25, 2002); *Worldcom Inc. v. FCC*, 2002 U.S. App. LEXIS 20546 (D.C. Cir. Sept. 25, 2002). These actions together removed any issue concerning whether the Commission's *MCI Decision* was in force.

A further prehearing conference was held on October 18, 2002. XO reported that the late payment charge issue that it raised in its Petition had been resolved and addressed by Verizon. Thereafter, on October 25, 2002, the parties advised me that they had agreed to enter into a stipulation to resolve this proceeding.

On April 18, 2003, the parties presented their Stipulation, which is attached to, and incorporated in, this decision.

#### The Terms of the Stipulation

The terms of the Stipulation are as follows:

8. The present XO petition seeks the PUC's interpretation of the MCI WorldCom Interconnection Agreement, and whether that Agreement permits Verizon to stop making reciprocal compensation payments for Internet-bound traffic as of June 14, 2001 based on the *FCC ISP Order*.

9. The Commission has ruled on the issue raised by XO herein in a different proceeding in which XO was not a party. Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process ("MCI Decision")*.

10. The parties agree that the PUC's *MCI Decision* disposes of the remaining issue in dispute in this proceeding concerning whether Verizon is required to continue paying reciprocal compensation payments for Internet-bound traffic to XO after June 14, 2001.

11. The parties agree to waive the filing of exceptions and reply exceptions in the event that the presiding ALJ issues an Initial Decision approving this Stipulation, and the Commission enters a final order adopting and approving the Initial Decision.

12. The parties agree that by entering into this Stipulation, XO does not waive its legal rights to pursue recourse of the reciprocal compensation payment issue in a different tribunal, and to pursue an appeal of the Commission's decision in this proceeding.

13. The parties agree that by entering into this Stipulation, XO does not waive its legal rights to pursue recourse of the reciprocal compensation payment issue before the Public Utility Commission or other appropriate tribunal in the event that the *MCI Decision* or the *FCC ISP Order* is overturned, reversed or otherwise invalidated on appeal.

14. The parties agree that by entering into this Stipulation, Verizon does not waive its legal rights to oppose any further legal action by XO concerning the reciprocal compensation payment issue in a different tribunal or an appeal.

15. In the event that the ALJ does not approve this Stipulation, or the PUC does not issue an order approving this Stipulation, the parties shall have the opportunity to void this Stipulation, and to pursue full litigation of the reciprocal compensation payment issue.

#### Discussion

The Stipulation resolves this matter consistent with the prevailing Commission decision on the only remaining issue while preserving the rights of the parties to pursue the issue on appeal or in a different tribunal. It accomplishes this result with no additional litigation before the Commission, thus saving all parties and the Commission the expense attendant upon such litigation. For these reasons, I conclude that it is in the public interest and should be adopted.

Conclusions of Law


1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. That portion of XO's petition which concerns late payment charges has been resolved by the parties, and is, therefore, satisfied.
3. That portion of XO's petition which concerns the payment of reciprocal compensation on Internet-bound traffic after June 14, 2001, is governed by the Commission's Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process ("MCI Decision")*.
4. The Stipulation resolves this matter consistent with the prevailing Commission decision on the only remaining issue while preserving the rights of the parties to pursue the issue on appeal or in a different tribunal.
5. The Stipulation is in the public interest. Accordingly, this petition should be dismissed in accordance with the terms of the Stipulation.

Order

THEREFORE, IT IS ORDERED:

1. That the Petition of XO Pennsylvania, Inc. for Resolution of Reciprocal Compensation Dispute at Docket No. A-310758F7000 is satisfied with respect to late payment charges.
2. That the Petition of XO Pennsylvania, Inc. for Resolution of Reciprocal Compensation Dispute at Docket No. A-310758F7000 is dismissed with respect the payment of reciprocal compensation on Internet-bound traffic after June 14, 2001, in accordance with the terms of the Stipulation submitted on April 18, 2003.

Date: April 21, 2003

  
Michael C. Schnierle  
Administrative Law Judge

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265

Petition of XO Pennsylvania, Inc. :  
for Resolution of Reciprocal :  
Compensation Dispute Pursuant to : Docket No. A-310758F0002  
the Abbreviated Dispute Resolution :  
Process :

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**STIPULATION OF XO PENNSYLVANIA, INC. AND  
VERIZON PENNSYLVANIA INC.**

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XO Pennsylvania, Inc. ("XO") and Verizon Pennsylvania Inc. jointly submit this Stipulation to propose a disposition of this proceeding without the need for hearings, briefs, or exceptions, as explained below.

**I. Procedural Background**

1. XO filed a petition on June 25, 2002, pursuant to the Abbreviated Dispute Resolution process, alleging that Verizon Pennsylvania Inc. ("Verizon") was obligated to pay certain reciprocal compensation charges that XO billed to Verizon under its interconnection agreement with Verizon, since June 14, 2001. XO maintained that these payments were due and owing under the terms and conditions of its interconnection agreement with Verizon. Verizon responded that it had no contractual obligation to pay reciprocal compensation on Internet-bound traffic after June 14, 2001, the effective date of the FCC's *Order on Remand and Report and Order, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131 (April 27, 2001) ("*FCC ISP Order*"). The amount of payments that XO claimed that

Verizon unilaterally withheld through April 10, 2002 exceeded \$800,000, as of that time. In addition, XO sought payment of late payment charges on the invoiced amounts that Verizon did not dispute, but did not pay on a timely basis.

2. On July 2, 2002, Verizon filed an Answer to the Petition and a Motion to Dismiss. Verizon claimed that the issues that XO raised in its Petition already had been addressed by the Public Utility Commission ("PUC" or "Commission") in an Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process ("MCI Decision")*. Verizon maintained that in that decision, the Commission interpreted the very same agreement at issue here and rejected the very same claim here raised by XO. There, the Commission found that as of June 14, 2001, Verizon was no longer required to make reciprocal compensation payments for Internet-bound traffic to MCI WorldCom.

3. XO timely filed an Answer in Opposition to the Motion to Dismiss, on July 12, 2002. XO argued that Verizon's Motion to Dismiss should be denied, because the parties, facts and issues in dispute in this proceeding are different from those in Verizon's abbreviated dispute resolution ("ADR") proceeding against MCI WorldCom and are appropriate for decision in this proceeding pursuant to the ADR process. Verizon disagreed, pointing out, among other things, that the interconnection agreement at issue in this case is identical to the agreement the Commission interpreted in its *MCI Decision*.

4. On July 19, 2002, a prehearing conference was held in this matter, and the parties discussed the procedural status of this case. Thereafter, ALJ Michael Schnierle issued a prehearing order on July 22, 2002. The ALJ agreed that the Commission's *MCI Decision* was not dispositive of this proceeding as of that time, for two reasons. First, the Commission's



decision was based on the *FCC ISP Order*. After the Commission voted on the MCI WorldCom decision but before the decision was issued, the D.C. Circuit Court of Appeals ruled that the legal basis that the FCC relied upon in the *FCC ISP Order* was lacking merit. The Court remanded the case to the FCC for further proceedings but did not vacate the *FCC ISP Order*. Subsequently, the Court was asked to reconsider its decision and to reverse the *FCC ISP Order* in addition to the remand. Second, the PUC decided to grant reconsideration of its *MCI Decision*, pending review of, and consideration on, the merits.

5. The D.C. Court of Appeals declined to grant reconsideration and declined to vacate the *FCC ISP Order*.

6. The PUC denied reconsideration of the *MCI Decision* in an order entered August 30, 2002 at Docket No. A-310752F7000.

7. A further prehearing conference was held on October 18, 2002. XO reported that the late payment charge issue that it raised in its Petition had been resolved and addressed by Verizon. Thereafter, on October 25, 2002, the parties advised the Administrative Law Judge that they had agreed to enter into a stipulation to resolve this proceeding.

## **II. Terms of the Stipulation**

8. The present XO petition seeks the PUC's interpretation of the MCI WorldCom Interconnection Agreement, and whether that Agreement permits Verizon to stop making reciprocal compensation payments for Internet-bound traffic as of June 14, 2001 based on the *FCC ISP Order*.

9. The Commission has ruled on the issue raised by XO herein in a different proceeding in which XO was not a party. Order entered May 29, 2002 at Docket No. A-310752F7000, Opinion and Order, *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Dispute Resolution Process ("MCI Decision")*.

10. The parties agree that the PUC's *MCI Decision* disposes of the remaining issue in dispute in this proceeding concerning whether Verizon is required to continue paying reciprocal compensation payments for Internet-bound traffic to XO after June 14, 2001.

11. The parties agree to waive the filing of exceptions and reply exceptions in the event that the presiding ALJ issues an Initial Decision approving this Stipulation, and the Commission enters a final order adopting and approving the Initial Decision.

12. The parties agree that by entering into this Stipulation, XO does not waive its legal rights to pursue recourse of the reciprocal compensation payment issue in a different tribunal, and to pursue an appeal of the Commission's decision in this proceeding.

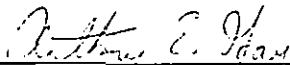
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14. The parties agree that by entering into this Stipulation, Verizon does not waive its legal rights to oppose any further legal action by XO concerning the reciprocal compensation payment issue in a different tribunal or an appeal.

15. In the event that the ALJ does not approve this Stipulation, or the PUC does not issue an order approving this Stipulation, the parties shall have the opportunity to void this Stipulation, and to pursue full litigation of the reciprocal compensation payment issue.

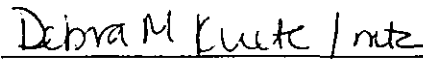
WHEREFORE, XO Pennsylvania, Inc. and Verizon Pennsylvania Inc. respectfully request the following:

- A. The ALJ's issuance of an Initial Decision adopting and approving this Stipulation;  
and
- B. The PUC's adoption and issuance of an Opinion and Order that adopts and approves the ALJ's Initial Decision.



Anthony E. Gay, Esquire  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32 NW  
Philadelphia, PA 19103

Counsel for  
**Verizon Pennsylvania Inc.**



Debra M. Kriete, Esq.  
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Counsel for  
**XO Pennsylvania, Inc.**

Dated: April 17, 2003

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CHARLES HOFFMAN ESQUIRE  
OFFICE OF TRIAL STAFF  
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LAW DEPARTMENT  
PHILADELPHIA PA 19103

A-310758F7000 XO Pennsylvania, Inc. v. Verizon Pennsylvania Inc.

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ANTHONY E GAY REGULATORY COUNSEL ✓  
VERIZON PA INC  
LAW DEPARTMENT  
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PHILADELPHIA PA 19103

TD ENR  
15/0

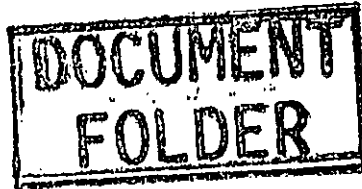
APR. 30 2003

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 7<sup>th</sup> day of May, 2003,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of May 7, 2003 at Docket No.A-310758F7000 on behalf of:

CHARLES HOFFMAN ESQUIRE  
OFFICE OF TRIAL STAFF  
PO BOX 3265  
KEYSTONE BUILDING 2ND FLOOR  
HARRISBURG PA 17105-3265



Elaine C. Meisinger  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU  
MAY 10 11 00 AM '03

2003 MAY - 8 AM 10: 30

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03 MAY - 7 PM 2:49  
PA TJC  
OFFICE OF TRIAL STAFF

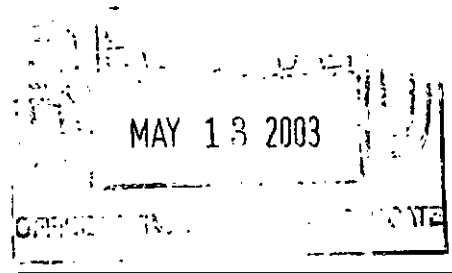
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of May 7, 2003 at Docket No.A-310758F7000 on behalf of:

CAROL PENNINGTON ESQUIRE  
OFFICE OF SMALL  
BUSINESS ADVOCATE  
COMMERCE BLDG STE 1102  
300 NORTH SECOND STREET  
HARRISBURG PA 17101

**DOCUMENT  
FOLDER**



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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03 MAY 15 PH 1:58

PA P.U.C.  
SECRETARY'S BUREAU

KJR

DATE: May 23, 2003

SUBJECT: A-310758F7000

TO: Office of Administrative Law Judge  
Susan Hoffner

FROM: James J. McNulty  
Secretary  
. nvl

*PETITION OF XO PENNSYLVANIA, INC., FOR RESOLUTION OF RECIPROCAL COMPENSATION  
DISPUTE PURSUANT TO THE ABBREVIATED DISPUTE RESOLUTION PROCESS.*

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

DOCUMENT  
FOLDER

DOCKETED  
JUN 17 2003



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Act 294

2003 MAY 28 AH 9: 03

SECRETARY'S BUREAU

Case Identification:

A-310758F7000; Petition of XO  
PA, Inc., for Resolution of  
Reciprocal Compensation  
Dispute Pursuant to the  
Abbreviated Dispute Resolution  
Process

Initial Decision By:

ALJ Michael C. Schnierle

Deadline for Return to OSA:

May 21, 2003

This decision has not been reviewed by OSA.

RECEIVED

DOCUMENT  
FOLDER

\* \* \* \* \*

MAY 27 2003

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

Glen Thomas

May 27, 2003

Commissioner

Date

**DOCKETED**  
MAY 28 2003

Act 294

Case Identification: A-310758F7000; Petition of XO  
PA, Inc., for Resolution of  
Reciprocal Compensation  
Dispute Pursuant to the  
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Process

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: May 21, 2003

This decision has not been reviewed by OSA.

RECEIVED

MAY 21 2003

OFFICE OF SPECIAL  
ASSISTANTS

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

\* Robert K. Bloom /rk

Commissioner

5-19-03

Date

J

Act 294

Case Identification: A-310758F7000; Petition of XO PA, Inc., for Resolution of Reciprocal Compensation Dispute Pursuant to the Abbreviated Dispute Resolution Process

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: May 21, 2003

This decision has not been reviewed by OSA.

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MAY 22 2003

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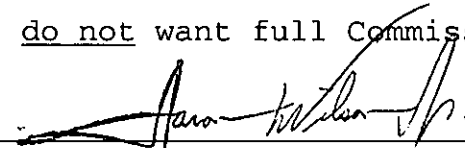
OFFICE OF SPECIAL ASSISTANTS

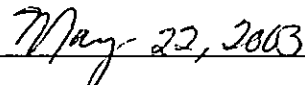
I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Date

Act 294

Case Identification: A-310758F7000; Petition of XO  
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Initial Decision By: ALJ Michael C. Schnierle

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MAY 22 2003

OFFICE OF SPECIAL  
ASSISTANTS

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

*Thomas J. Filizola*  
\_\_\_\_\_  
Commissioner

5/12/03  
\_\_\_\_\_  
Date

Act 294

Case Identification: A-310758F7000; Petition of XO  
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\* \* \* \* \*

MAY 21 2003  
OFFICE OF SPECIAL  
ASSISTANTS

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

X Kim Fitzgerald  
\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
5-20-03  
Date