

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED

PA P.U.C.
BUREAU
SECRETARY'S
A-310752F7000

JUL 24 2002

PREHEARING ORDER

XO Pennsylvania, Inc. filed a petition on June 25, 2002, pursuant to the Abbreviated Dispute Resolution Process, concerning Verizon Pennsylvania Inc.'s ("Verizon") failure to pay, since June 14, 2001, certain reciprocal compensation charges that XO has billed to Verizon under its interconnection agreement with Verizon. On July 2, 2002, Verizon filed an Answer to the Petition and a Motion to Dismiss. XO timely filed, on July 12, 2002, an Answer in Opposition to the Motion to Dismiss.

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.

There are two issues in this proceeding. One involves Verizon's alleged failure to pay late payment charges on undisputed amounts. The parties are cautiously optimistic that they can expeditiously settle this issue.

The second issue concerns the proper interpretation of a change of law provision in the parties' interconnection agreement in light of the Federal Communications Commission'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*"). This latter issue was decided by this Commission for an identical interconnection agreement in *Petition of Verizon Pennsylvania Inc. for Resolution of Dispute Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. A-310752F7000 (Order adopted April 11, 2002, entered May

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29, 2002) ("*MCI Decision*"). This Commission's *MCI Decision* would be dispositive of the issue here but for two factors. This Commission's *MCI decision* was based on the *FCC ISP Order*. After the Commission voted on the *MCI Decision*, but before the decision issued, the DC Circuit Court of Appeals ruled that the legal basis relied upon by the FCC in the *FCC ISP Order* was without merit. The Court, while declining to vacate the FCC's order, remanded the case to the FCC for further proceedings. The Court opined that the FCC could either establish legal support for its proposed rule pertaining to reciprocal compensation, or could come up with another rule that is legally supportable. *Worldcom, Inc., v. Federal Communications Commission*, 288 F.3d 429, 434; 2002 U.S. App. LEXIS 8542 (DC. Cir., 2002). Since then, the Commission at Public Meeting of June 27, 2002, granted MCI's petition for reconsideration of its *MCI Decision*, pending review of, and consideration on, the merits. Finally, the DC Circuit Court of Appeals has been asked to reconsider its decision not to vacate or suspend the *FCC ISP Order* in connection with its remand of that order.

The parties have recognized that the proceedings pending before the DC Circuit Court of Appeals in the *FCC ISP Order* and before the Commission in the reconsideration of the *MCI Decision* are likely to have a profound impact on the outcome of this case. Consequently, they have agreed to postpone any further proceedings here for a period of approximately 90 days or until rulings are made either by the DC Circuit concerning the *FCC ISP Order*, or by the Commission in the *MCI Decision*. Also, during that time, the parties will attempt to resolve the late payment charges issue.

ORDER

1. A further prehearing conference will be scheduled approximately 90 days from July 19, 2002.
2. The parties shall continue to attempt to resolve the late payment charges issue.
3. If the parties are unable to resolve the late payment charges issue, or if the DC Circuit Court of Appeals makes a further order on the merits concerning the *FCC ISP Order*,

or if the Commission makes an order on reconsideration of the merits in the *MCI Decision*, either party may request that the further prehearing conference be moved forward.

Date: July 22, 2002

Michael C. Schnierle
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Administrative Law Judge

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