

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for  
acknowledgment of adoption of  
existing agreement between  
Verizon Maryland Inc. f/k/a Bell  
Atlantic-Maryland, Inc. and  
Business Telecom, Inc., by  
Winstar Communications, LLC.

DOCKET NO. 020353-TP  
ORDER NO. PSC-02-1174-FOF-TP  
ISSUED: August 28, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING PETITION FOR ACKNOWLEDGMENT OF ADOPTION OF AN  
AGREEMENT UNDER FCC APPROVED MERGER CONDITIONS AND GRANTING STAFF  
AUTHORITY TO ADMINISTRATIVELY ACKNOWLEDGE ADOPTION OF AGREEMENTS  
UNDER FCC APPROVED MERGER CONDITIONS AND ORDER AMENDING  
ADMINISTRATIVE PROCEDURES MANUAL

BY THE COMMISSION:

On April 19, 2002, Verizon Florida f/k/a GTE Florida Incorporated (Verizon-Florida) submitted to the Commission for its acknowledgment an agreement between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc. (BTI), which is being adopted by Winstar Communications, LLC according to the terms of the FCC's Order approving the Bell Atlantic/GTE merger.

Verizon-Florida is seeking acknowledgment of Winstar's adoption of the agreement because the FCC's merger conditions confer no jurisdiction to approve or deny adoptions, so acknowledgment has been considered appropriate in prior cases involving the adoption of agreements approved by other state commissions and adopted under the terms of the Bell Atlantic/GTE merger agreement. Verizon-Florida's letter states that the

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agreement between Verizon Maryland and BTI is a post-merger agreement according to the Bell Atlantic/GTE merger conditions released by the FCC on June 16, 2000 in CC Docket No. 98-184. The Verizon Maryland/BTI agreement is being adopted by Winstar pursuant to the terms of paragraph 31(a) of the Most-Favored Nation Provisions for Out-of Region and In-Region Arrangements in the Bell Atlantic/GTE Merger conditions and the terms are intended to govern the provision of services in Verizon-Florida's service territory.

This Commission has previously acknowledged the adoption by SBC National, Inc. d/b/a SBC Telecom, Inc. (SBCT-Florida) of the collocation and DS3 terms of the interconnection agreement between SBC Telecom, Inc. and Verizon Northwest Incorporated (f/k/a GTE Northwest Incorporated) by Order No. PSC-01-0603-FOF-TP, issued March 13, 2001.

Since the requested adoption is pursuant to FCC Merger Conditions, we do not have jurisdiction to approve or deny this adoption. However, acknowledging this petition is appropriate because it will enable us to track agreement activity between these companies, should the companies request arbitration with this Commission in the future or other companies choose to adopt this agreement.

While the agreement was crafted pursuant to the terms of the Telecommunications Act and approved by the Maryland Public Service Commission, it was sanctioned for adoption pursuant to the Bell Atlantic/GTE Merger Conditions approved by the FCC. The Merger Conditions of paragraph 31(a) of Section IX expressly state that "Terms, conditions, and prices contained in the tariffs cited in Bell Atlantic/GTE's interconnection agreements shall not be considered negotiated provisions." The Merger Conditions also state that:

Exclusive of price and state-specific performance measures and subject to the Conditions specified in this Paragraph, qualifying interconnection arrangements or UNEs shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. §252(i), provided that the interconnection arrangements or UNEs shall not be available beyond the last date that they are available in the underlying

agreement and that the requesting telecommunications carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis pursuant to 47 U.S.C. §252 to the extent applicable.

Based on the foregoing, we acknowledge this adopted agreement pursuant to Section 364.01(4), Florida Statutes, wherein the Legislature requires us to encourage and promote competition.

Furthermore, for future agreements filed under FCC merger conditions, we hereby direct our staff to issue a memo acknowledging the adoption in accordance with the procedure already outlined in the APM applicable to agreements under the Act. The rules for adopting agreements under merger conditions are similar to the procedure under Section 252 of the Telecommunications Act of 1996 although the agreements do not go into effect by operation of law under Section 252(e) and we do not have jurisdiction to approve or deny the adoption. Acknowledgment of such agreements administratively, in the manner dictated by Section 2.07.C.15 of the APM, is appropriate because we do not have the authority granted to state commissions by Section 252(e) of the Telecommunications Act to approve or reject agreements between telecommunications carriers in this instance. For these reasons, that Section 2.07.C.15 of the APM shall be updated as reflected in Attachment A.

Thus, we direct our staff to administratively acknowledge all future agreements submitted to the Commission which have been adopted under merger conditions approved by the FCC.

We also approve the amendment to the Administrative Procedures Manual shown in Attachment A, and incorporated by reference herein, to implement this procedure.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that the petition for acknowledgment of the adoption of the agreement between Verizon Maryland f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc. by Winstar Communications, LLC is hereby approved. It is further

ORDERED that the proposed amendment to the Administrative Procedures Manual as set forth in Attachment A is incorporated by reference into this Order and hereby approved. It is further

ORDERED that the Florida Public Service Commission staff shall administratively acknowledge the adoption of agreements under merger conditions approved by the FCC. It is further

ORDERED that Docket No. 020353-TP shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of August, 2002.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

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JAE

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**ATTACHMENT A**

2.07.C.15      The Division of Competitive Markets and Enforcement and the Office of the General Counsel may administratively dispose of a request by a telecommunications carrier to adopt an Interconnection Agreement between carriers that was previously approved by the Commission or allowed to go into effect by operation of law. The adoption of agreements approved by other state commissions under the terms of a FCC approved merger agreement may also be disposed of administratively by the Division of Competitive Markets and Enforcement and the Office of the General Counsel using this procedure. The docket shall be closed upon filing of an acknowledgment memorandum to the docket file.