



Public Service Commission
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DATE: AUGUST 8, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *DAE* *pic*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (SIMMONS) *SAS*
RE: DOCKET NO. 020353-TP - 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.
AGENDA: 08/20/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\ 020353.RCM

CASE BACKGROUND

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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the 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?

RECOMMENDATION: Yes. The Commission should grant the 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. **(Elliott, Simmons)**

STAFF ANALYSIS: Since the requested adoption is pursuant to FCC Merger Conditions, staff believes that the Commission does not have jurisdiction to approve or deny this adoption. However, acknowledging this petition is appropriate because the Commission would be able to track agreement activity between these companies, should the companies request arbitration with the 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.

The Merger Conditions confer no jurisdiction on the Commission. However, staff believes that acknowledgment of the agreement is appropriate for the reasons set forth previously.

Staff recommends acknowledgment of this adopted agreement pursuant to Section 364.01(4), Florida Statutes, wherein the Legislature requires the Commission to encourage and promote competition.

ISSUE 2: Should the Commission direct staff to handle these agreements in the manner consistent with Section 2.07.C.15 of the Administrative Procedures Manual (APM)?

RECOMMENDATION: Yes, the Commission should direct staff to handle these agreements in the manner consistent with Section 2.07.C.15 of the APM. If the Commission approves staff's recommendation in Issue 2, Section 2.07.C.15 of the APM should be updated as reflected in Attachment A. (Elliott, Simmons)

STAFF ANALYSIS: While these agreements do not go into effect by operation of law in the same manner as adoptions under Section 251 (i) of the Act, the Commission should allow staff to issue a memo acknowledging the agreement in accordance with the procedure already outlined in the APM as 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 the Commission does not have jurisdiction to approve or deny the adoption. Acknowledgment of the agreement administratively, in the manner dictated by Section 2.07.C.15 of the APM, is appropriate because the Commission does 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, staff recommends that Section 2.07.C.15 of the APM should be updated as reflected in Attachment A.

Although it is not common practice that Commission staff request authority for administrative approval at an agenda conference, staff believes that it is appropriate for this recommendation. In Order No. PSC-01-1335-PAA-TP in Docket No. 990546-TL, the Commission granted staff the authority to administratively approve intraLATA toll dialing parity plans and amended Section 2.07 of the Administrative Procedures Manual for this purpose. Staff believes that since the Commission does not have the authority to approve or deny agreements adopted under FCC approved merger conditions that granting administrative authority to acknowledge these agreements for tracking purposes is appropriate. Administrative authority will streamline the process and allow staff to process these filings within a shorter time

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frame since the agreements would not go into effect by operation of law before acknowledgment.

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

Staff also proposes that the Commission approve the amendment to the Administrative Procedures Manual shown in Attachment A to this recommendation to implement this procedure.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. Since no other issues need to be addressed by this Commission, this docket should be closed upon issuance of the Commission Order. (Elliott)

STAFF ANALYSIS: Since no other issues need to be addressed by this Commission, this docket should be closed upon issuance of the Commission Order.

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.