

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE JOINT APPLICATION )  
OF COMCAST PHONE OF DELAWARE, LLC AND )  
CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS )  
AND VERIZON WIRELESS POWER PARTNERS, INC., ) PSC DOCKET NO. 06-98  
FOR APPROVAL OF AN INTERCONNECTION AGREE- )  
MENT PURSUANT TO SECTION 252(e) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )  
(FILED MARCH 17, 2006) )

**ORDER NO. 6936**

This 6<sup>th</sup> day of June, 2006, the Commission determines and Orders the following:

1. In smaller matters often lurk larger questions. The answers to those often complex questions might not affect the result in the particular smaller matter under consideration. But the fear of the administrative agency is that something it might do, or say, in the smaller proceeding matter might be dredged up later to attempt to dictate the result in a later docket where the answers to the questions might really matter. This is possibly one of those smaller matter - larger question instances. Consequently, the Commission speaks with some larger reservations here.

2. On March 17, 2006, Comcast Phone of Delaware, LLC ("Comcast") and Cellco Partnership (d/b/a "Verizon Wireless") jointly asked the Commission to review and approve their negotiated "Interconnection and Reciprocal Compensation Agreement for Commercial

Mobile Radio Service (CMRS)."<sup>1</sup> Comcast is a certificated telecommunications carrier, and a Commission-jurisdictional "public utility" under state law. Verizon Wireless is (in the jargon of the federal telecommunications regime) a commercial mobile radio service ("CMRS") provider. As a telecommunications carrier utilizing cellular technology, Verizon Wireless is not a "public utility" under state law and is beyond any delegated regulatory supervision of this Commission.<sup>2</sup> The negotiated agreement offered by the parties is relatively straight-forward. It sets the terms for how Comcast and Verizon Wireless will (over the next two years) compensate each other for local and intraMTA (non-access) traffic exchanged between them in Delaware. Such compensation is to be "bill and keep" (both carriers charge a \$0 rate for termination) unless exchanged traffic patterns might later warrant reconsideration. The agreement also sets the terms on how the two carriers will directly interconnect and which will bear the transit charges for any indirect connection between them.

3. The two parties ask for approval of the agreement under the provisions of 47 U.S.C. § 252(e)(1), suggesting that the "plain language" of such provision compels them to seek this state Commission's assent to their contract.<sup>3</sup> Yet, at the same time, they also say that the Commission "has no jurisdiction over the business

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<sup>1</sup>Verizon Wireless Power Partners, Inc., another commercial radio mobile service provider, is also a party to this agreement and also has signed onto the petition.

<sup>2</sup>See 26 Del. C. §§ 101(2), 201(c) (2004 Supp.).

<sup>3</sup>Ltr. of Wm. Bailey, Esq., pg. 1 (dated May 3, 2006).

that is the subject of the agreement<sup>4</sup> and explicitly reserve the right to later assert that the agreement is not subject to the "jurisdiction" of this Commission.<sup>5</sup>

4. The two carriers' ambivalence about the source of this Commission's authority is understandable. The approval process set forth in section 252(e) of the federal Communications Act is generally thought to apply to those interconnection agreements negotiated, or constructed by arbitration, under the procedures set forth in the companion subsections 252(a) and (b).<sup>6</sup> But the processes outlined in subsections 252(a) and (b) (by their text) only apply in the case where another carrier seeks an interconnection agreement with an incumbent local exchange carrier ("ILEC").<sup>7</sup> Comcast is certificated to provide local exchange services; but it is not an ILEC - as that term is defined by federal law.<sup>8</sup> On the other hand, Verizon Wireless is neither a LEC nor an ILEC under federal law and (as noted before) is not subject to the regulatory authority of this Commission under state

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<sup>4</sup>Id.

<sup>5</sup>Joint application at 1 n. 1 (filed March 17, 2006).

<sup>6</sup>See e.g., 47 U.S.C. § 252(e)(2)(A) (allowing State Commission to reject, on specific grounds, "an agreement (or any portion thereof) adopted by negotiations under subsection (a) of this section"); 252(e)(2)(B) (allowing State Commission to reject, on specific grounds, "an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section").

<sup>7</sup>See 47 U.S.C. § 251(c)(1) (duty to negotiate in accord with § 252 is an "additional" obligation of an incumbent LEC). See also 47 U.S.C. § 252(a)(1) (obligating incumbent LEC to negotiate in response to request for interconnection and services), (b)(1) (allowing carrier or other party to the negotiation to request arbitration "after incumbent local exchange carrier receives request for negotiation under this section").

<sup>8</sup>See 47 U.S.C. § 251(h)(1).

law. Thus, it is difficult to shorehorn the agreement offered by these two carriers into the text of the section 252(e) approval regime.<sup>9</sup>

5. Of course, the above conclusion does not necessarily preclude the Commission from taking cognizance of the agreement (or at least its intrastate rate components) under the Commission's authority (under state law) to supervise the intrastate utility operations of Comcast.<sup>10</sup> However, there is no specific requirement in any Commission rules or any Commission Order that directs the filing of interconnection agreements between a non-incumbent competitive LEC and CMRS providers.<sup>11</sup>

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<sup>9</sup>This is not to say that Comcast does not have an obligation to make "arrangements" for how it will compensate other carriers, including CMRS providers, for exchanged traffic. See 47 U.S.C. § 251(b)(5) (duty of all LECs, not just ILECs, to establish reciprocal compensation arrangements); 47 C.F.R. §§ 51.701(b)(2), 51.703. In addition, outside the context of § 251(b)(5), federal regulations require a LEC and a CMRS provider to compensate the other for terminating exchanged traffic. 47 C.F.R. § 20.11(b)-(e).

<sup>10</sup>While there is a continuing debate whether LEC-CMRS provider interconnection rates should be the exclusive domain of federal regulation, it seems, as of now, that the Federal Communications Commission ("FCC") believes the States continue to oversee the intrastate interconnection rates to be charged by LECs for terminating CMRS traffic. See In the Matter of Developing Unified Intercarrier Compensation Regime and T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs. 20 FCC Rcd. 4855 at ¶ 10 & n.41 (FCC 2005) (summarizing prior FCC determinations about State authority over intrastate interconnection rates charged by LECs).

<sup>11</sup>The Commission's general Telecommunications Rules require carriers to file all "contracts with a customer to the extent the contract changes the terms or conditions generally offered to the public in the carrier's tariff or price list on file with the Commission." "Rules for the Provision of Telecommunications Services," Rule 5(e) (originally adopted by PSC Findings, Opinion and Order No. 5833 (Nov. 6, 2001)). It is unclear whether another interconnected carrier is a "customer" of the LEC under Rule 5. Moreover, under such regime, the obligation goes only to "filing." The rules do not set forth any explicit approval process but leave it to the Commission to undertake review only if thought necessary. In the absence of Commission intervention, the contract is effective.

6. Given all the above, the Commission believes the better course in this matter is for the Commission to simply take no action with regard to the joint submission of Comcast and Verizon Wireless. The Commission does not see any need to intervene to either review or explicitly approve the details of the contract negotiated by a competitive carrier and a non-jurisdictional CMRS provider about the terms of their interconnection and the compensation each is to pay (or not pay) for terminating exchanged traffic. The Commission specifically determines that its "no action" will allow the agreement (and the contractual commitments contained therein) to be effective by its own terms.

7. One caution might be appropriate. The agreement seemingly contemplates some Commission involvement in enforcing the contract's terms.<sup>12</sup> However, the contract cannot extend the authority of the Commission as such authority might be described by state law. Thus, the Commission might be unable to enforce the agreement's terms against Verizon Wireless (even though the CMRS provider has agreed to them). By state law, the Commission holds no "jurisdiction" over Verizon Wireless's "operations," "retail rates," "property rights," "equipment," or "facilities."<sup>13</sup> Given that, the Commission likely

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<sup>12</sup>The agreement - which chooses New York law for its rules of interpretation - says that this Commission will have "exclusive jurisdiction" for "all claims under this agreement that are based on issues within the jurisdiction (primary or otherwise) of the Commission." In addition, the contract proclaims that the Commission shall provide "the exclusive remedy" for all such claims. Interconnection Agreement, ¶ 14.

<sup>13</sup>See 26 Del. C. § 202(c) (2004 Supp.). As noted before, Verizon Wireless is not a "public utility" under state law.

cannot police Verizon Wireless's conduct under the agreement. The Commission's statutory enforcement powers under state law run only against "public utilities," not customers of public utilities or non-jurisdictional carriers who might be parties to a contract with a public utility. If so, subsequent enforcement of this agreement's terms will likely be asymmetrical - complaints about Comcast's intrastate performance under the contract might come here; defaults by Verizon Wireless would have to be heard elsewhere.

8. For all the above reasons, the Commission will take no action rejecting or modifying the interconnection and reciprocal compensation agreement submitted by Comcast and Verizon Wireless. By doing so, the contract will be effective under its own terms on the date of this Order.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, the Commission takes no action on the joint application of Comcast Phone of Delaware, LLC and Cellco Partnership, d/b/a Verizon Wireless and Verizon Wireless Power Partners, Inc., requesting approval of the negotiated "Interconnection and Reciprocal Compensation Agreement for Commercial Mobile Radio Service (CMRS)" submitted March 17, 2006. In doing so, the Commission finds no reason to conclude that the intrastate terms in such agreement are unjust or unreasonable. In the Commission's supervision of Comcast Phone of Delaware, LLC, a public utility, the Commission finds no reason to reject the agreement. Without Commission intervention, the tendered agreement shall be effective as of the date of this Order.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

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Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary