



Agenda Date: 12/01/09
Agenda Item: IVA-1

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT APPLICATION OF)	<u>ORDER APPROVING</u>
VERIZON NEW JERSEY INC. AND BIRCH)	<u>INTERCONNECTION</u>
COMMUNICATIONS, INC. FOR APPROVAL OF AN)	<u>AGREEMENT</u>
INTERCONNECTION AGREEMENT UNDER SECTION)	
252 OF THE TELECOMMUNICATIONS ACT OF 1996)	DOCKET NO. TO09080658

(SERVICE LIST ATTACHED)

Richard A. Chapkis, Esq., Vice President & General Counsel, for Verizon New Jersey

Sharyl Fowler, Manager Legal & Regulatory, for Birch Communications, Inc. Macon, GA

BY THE BOARD:

By letter dated August 11, 2009, Verizon New Jersey Inc. ("Verizon"), a New Jersey corporation, and Birch Communications, Inc. ("Birch") (individually, "a Party", and jointly, "the Parties"), pursuant to Section 252(e) of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. §151 et seq.) ("the Act"), submitted to the Board of Public Utilities ("Board") a joint application ("Application") for approval of a certain negotiated interconnection agreement dated August 7, 2009 ("the Agreement").

The Agreement sets forth the terms, conditions, and prices under which Verizon will offer and provide access to unbundled network elements, ancillary services, and wholesale telecommunications services available for resale to Birch. The Agreement is in effect until August 6, 2011 and thereafter, as noted in the Agreement, continues in full force and effect unless terminated as provided in the Agreement.

The Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") recommends that the Board approve the Agreement subject to conditions. The Board finds that Rate Counsel's objections to certain provisions of the Agreement and accompanying Letter Agreement are without merit, and accordingly, the Board declines to make modifications to the Agreement. See Order, I/M/O the Joint Application of Verizon New Jersey, Inc. and Ernest Communications, Inc. For Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, Docket No. TO02050287, dated September 18, 2002 (rejecting Rate Counsel's recommendation that Condition 3 of the Pricing Section of the Agreement is inconsistent with FCC rules).

DISCUSSION

Pursuant to 47 U.S.C. §252(a)(1), an incumbent LEC may negotiate and enter into a binding interconnection agreement with a carrier requesting interconnection, service, or network elements. In addition, 47 U.S.C. §252(e)(1) requires approval by the Board of any interconnection agreement adopted by negotiation or arbitration, and further requires the Board to approve or reject the Agreement, with written findings as to any deficiencies. The Act provides that the Board may reject a negotiated agreement or any portion thereof only if it finds that: (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion thereof is not consistent with the public interest, convenience, and necessity. [47 U.S.C. §252(e)(2)(A)].

The Board's review of the Agreement and the record in this matter indicate that the Agreement is consistent with the public interest, convenience, and necessity, and that the Agreement does not discriminate against telecommunications carriers not parties to the Agreement. Therefore, the Board FINDS that the Agreement meets the standards set forth in the Act, and HEREBY APPROVES the Agreement as presented by the Parties. This approval should not be construed as preapproval of any future petitions for rate recovery of costs incurred pursuant to the Agreement, nor shall the Board be bound by any provisions within the Agreement regarding the confidentiality of information.

The Board notes that amendments or modifications to Board-approved interconnection agreements are subject to Board review and approval. No agreement shall be read, nor does the Board believe the Parties to the Agreement intend that it be read, to limit the authority of the Board under Section 252(e) of the Act to review interconnection agreements. Accordingly, until and unless otherwise provided by the Board, subsequent amendments or modifications to the Agreement approved herein shall be subject to review and approval by the Board. Additionally, pursuant to 47 U.S.C. §252(h), a copy of the Agreement will be made available for public inspection and copying within ten days of the issuance of this Order.

DATED: 12/1/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox

JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

Joseph L. Fiordaliso
JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

Elizabeth Randall
ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

Service List

Docket No. TO09080658

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