**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 8, 2009

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Kim Pizzingrilli

Wayne E. Gardner

Robert F. Powelson

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| Joint Petition of TDS Telecommunications  Corporation and Sprint Spectrum L.P. d/b/a Sprint PCS for Approval of Interconnection and Traffic Interchange Agreement for Commercial Mobile Radio Services Under Section § 252(e) of the Telecommunications Act of 1996 | A-2009-2123477 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is a Joint Petition filed by (1) TDS Telecommunications Corporation (TDS Telecom), on behalf of its subsidiaries Mahanoy and Mahantango Telephone Company and Sugar Valley Telephone Company, both d/b/a TDS Telecom, and (2) Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp., and NPCR Inc. d/b/a Nextel Partners and its affiliates that provide Wireless services (collectively Sprint PCS), requesting approval of a Commercial Mobile Radio Services (CMRS) Interconnection and Interchange Traffic Agreement (Agreement). The Agreement was filed pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code) (TA‑96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission’s Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M‑00960799 (Order entered June 3, 1996); Order on Reconsideration entered September 9, 1996; see also *Proposed* *Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) *(Implementation Orders)*.

**History of the Proceeding**

On August 6, 2009, TDS Telecom and Sprint PCS filed the instant Joint Petition seeking approval of the Agreement for the exchange of traffic between the networks of both Parties and the establishment of a reciprocal compensation arrangement for the exchange of such traffic. The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on August 22, 2009, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement became effective on April 1, 2008, for an initial term of one year from the effective date. Thereafter, the Agreement shall continue in force and effect for successive month-to-month terms unless either party provides notice of its intent to terminate or renegotiate the Agreement with no less than ninety days prior notification. Agreement at 1-11.

TDS Telecom has signed the interconnection agreement on behalf of two of its affiliates, Mahanoy and Mahantango Telephone Company, and Sugar Valley Telephone Company, both of whom are Incumbent Local Exchange Carriers (ILECs) in Pennsylvania, making the agreement equally applicable to each of the two ILECs. In order to facilitate the adoption of an interconnection agreement by other parties, pursuant to 47 U.S.C. §252(i), only one ILEC should be party to a single interconnection agreement. To facilitate timely consideration of this agreement, according to the schedule set forth in TA-96, we shall sever the agreement into two agreements (one pertaining to Mahanoy and Mahantango Telephone Company and the other pertaining to Sugar Valley Telephone Company) for purposes of consideration and disposition here (and, in the future, for purposes of adoption by non-parties).

Sprint Spectrum, Nextel West Corp. anfd NPCR Inc. are Commercial Mobile Radio Service (CMRS) providers licensed by the Federal Communications Commission (FCC) to provide service in Pennsylvania.

**Discussion**

**A. Standard of Review**

The Commission’s standard of review of a negotiated interconnection agreement is set out in Section 252(e)(2) of TA-96, 47 U.S.C § 252(e)(2), which provides, in pertinent part, that:

(2) Grounds for rejection. The state Commission may only reject -

(A) an agreement (or any portion thereof) adopted by

negotiation under subsection (a) if it finds –

(i) the agreement (or portion thereof) discriminated

against a telecommunications carrier not a party

to the agreement; or

(ii) the implementation of such agreement or portion

is not consistent with the public interest, convenience

and necessity . . . .

With these criteria in mind, we shall review the Interconnection Agreement submitted by TDS Telecom and Sprint PCS.

**B.** **Timeliness of Filing**

The Agreement between TDS Telecom and Sprint PCS became effective on April 1, 2008. The last party to sign the Agreement did so on February 13, 2009. A period of one hundred-seventy-one days elapsed from the time the Agreement was executed until it was submitted to the Commission for review. Neither TA‑96 nor the Federal Communications Commission (FCC) rules interpreting TA‑96 provide for the specific time in which the negotiated agreement is to be filed with the state commission. However, consistent with Ordering Paragraph No. 5 of our May 3, 2004 Final Order at Docket No. M-00960799, “the Incumbent Local Exchange Carrier is responsible for filing, on behalf of itself and the requesting entity, a jointly signed interconnection agreement with the Commission, for Commission approval, within thirty days of the date that the agreement is signed.”

We remind the Parties that failure to comply with our *Implementation Orders*, as well as this Order, could subject the Parties to civil penalties for violations pursuant to Section 3301 of the Code, 66 Pa. C.S. § 3301.

**C. Summary of Terms**

The Agreement sets forth, *inter alia*, terms and conditions under which the Parties agree to interconnect their networks for purposes of mutually exchanging traffic, the establishing of reciprocal compensation, and providing indirect or direct interconnection arrangements.

The interconnecting facilities between TDS Telecom and Sprint PCS will be used only for the handling of interchanged traffic originating and terminating on Sprint PCS’ system, including, but not limited to, traffic that is delivered via a third-party tandem switch. (Agreement at 3-4).

The Parties agree to reciprocally and symmetrically compensate one another for transport and termination of local traffic terminated to their respective customers at the Reciprocal Compensation rates of $0.015053 per terminating conversation minute. For originating and terminating non-local traffic each party shall pay the other TDS Telecom’s intrastate or interstate switched network access service rate found in TDS’s access services tariffs. (Agreement at 6, Appendix B).

**D. Disposition**

We shall approve the Agreement, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving this privately negotiated Agreement, we express no opinion regarding the enforceability of our independent state authority preserved by 47 U.S.C. § 251(d)(3) and any other applicable law.

We shall minimize the potential for discrimination against other carriers not parties to the Agreement by providing here that our approval of this Agreement shall not serve as precedent for agreements to be negotiated or arbitrated by other parties. This is consistent with our policy of encouraging settlements. 52 Pa. Code § 5.231; *see also,* 52 Pa. Code § 69.401, *et seq*., relating to settlement guidelines, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq*. On the basis of the foregoing, we find that the Agreement does not discriminate against telecommunications carriers not parties to the negotiations.

TA-96 requires that the terms of the Agreement be made available for other parties to review. 47 U.S.C. § 252(h). However, this availability is only for purposes of full disclosure of the terms and arrangements contained therein. The accessibility of the Agreement and its terms to other parties does not connote any intent that our approval will affect the status of negotiations between other parties. In this context, we will not require TDS Telecom and Sprint PCS to embody the terms of the Agreement in a filed tariff.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect the obligations of the ILEC in the areas of protection of public safety and welfare, service quality, and the rights of consumers. *See, e.g*., Section 253(b). This is consistent with TA-96 wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the ILEC, and continue unaffected by a negotiated agreement. We have reviewed the terms relating to 911 and E911 services set forth in the Agreement and conclude that these provisions of the instant Agreement are consistent with the public interest.

We will therefore approve the severed agreements between (1) Mahantango Telephone Company d/b/a TDS Telecom and Sprint PCS, and (2) Sugar Valley Telephone Company d/b/a TDS Telecom and Sprint PCS.

Before concluding, we note that the Joint Petitioners have filed a signed, true and correct electronic copy of the Agreement as part of their Joint Petition. The Commission’s Secretary’s Bureau has posted an electronic copy of the Agreement to the Commission’s website prior to publishing notice of the Agreement in the *Pennsylvania Bulletin.* Consistent with our May 3, 2004 Order at Docket No. M-00960799, since we will approve the Agreement without any modifications, as filed, we will not require that either ILEC file an electronic, true and correct copy of the Agreement after the entry of this Opinion and Order.

**Conclusion**

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we determine that the Interconnection and Traffic Interchange Agreement between TDS Telecom and Sprint PCS is non-discriminatory to other telecommunications companies not parties to it and that it is consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for approval of a Interconnection and Traffic Interchange Agreement filed on August 6, 2009 by (1) TDS Telecommunications Corporation, on behalf of its subsidiaries Mahanoy and Mahantango Telephone Company and Sugar Valley Telephone Company, both d/b/a TDS Telecom, and (2) Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp., and NPCR Inc. d/b/a Nextel Partners and its affiliates that provide Wireless services, pursuant to the Telecommunications Act of 1996, and the Commission’s Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996); *Order on Reconsideration* (Order entered September 9, 1996); and *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) is granted, consistent with this Opinion and Order.

2. That in order to facilitate the adoption by non-parties in the future, the instant, filed Interconnection Agreement shall be severed into two agreements (one pertaining to Mahanoy and Mahantango Telephone Company and the other pertaining to Sugar Valley Telephone Company).

3. That approval of the Interconnection and Traffic Interchange Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Agreement.

4. That this matter be marked closed.



**BY THE COMMISSION**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: October 8, 2009

ORDER ENTERED: October 9, 2009