



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

SEPTEMBER 13, 2002

A-310258 F7002
A-310213 F7002

ZSUZSANNA E BENEDEK ESQUIRE
240 NORTH THIRD STREET SUITE 201
HARRISBURG PA 17101

DOCKETED
SEP 18 2002

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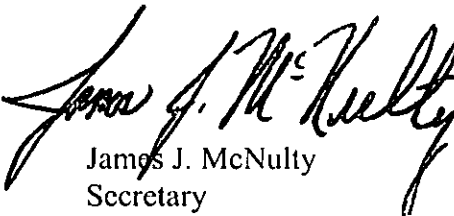
Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint, and TCG Delaware Valley, Inc., PA and TCG Pittsburgh, for approval of a Master Interconnection and Resale Agreement under Sections 252(1) of the Telecommunications Act of 1996.

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on September 12, 2002 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


James J. McNulty
Secretary

Enclosure
Certified Mail
FG

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 12, 2002

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick
Kim Pizzingrilli

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Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint, and TCG Delaware Valley, Inc. PA and TCG Pittsburgh, For Approval of a Master Interconnection and Resale Agreement Under Sections 252(i) of the Telecommunications Act of 1996

A-310258F7002
(TCG Delaware Valley)

A-310213F7002
(TCG Pittsburgh)

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint (Sprint), and TCG Delaware Valley, Inc., PA and TCG Pittsburgh (TCG) for approval of a Master Interconnection and Resale Agreement (Agreement) by means of adoption of an existing Interconnection and Resale Agreement between Sprint and Preferred Carrier Services (PCS). The Agreement was filed pursuant to the Telecommunications Act of 1996 (TA-96), Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code),

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). (*Implementation Orders*).

History of the Proceeding

On June 25, 2002, Sprint and TCG filed the instant Joint Petition seeking approval of the aforementioned Agreement by means of adoption of an existing Interconnection and Resale Agreement between Sprint and PCS¹. The Parties assert that the Agreement will enable TCG to provide local telecommunications service to customers in Pennsylvania.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on July 13, 2002, advising that any interested parties could file comments within ten days. No comments have been received.

Discussion

A. Standard of Review

The Commission's standard of review of a negotiated interconnection agreement is set forth at 47 U.S.C. §252(e)(2), which provides, in pertinent part, that:

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

¹ See, Docket No. A-310403F7002, Agreement approved by Commission Order entered December 19, 2001.

- (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds –
 - (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 is not consistent with the public interest, convenience and necessity

With these criteria in mind, we shall review the Agreement submitted by Sprint and TCG.

B. Timeliness of Filing

The Agreements between Sprint and TCG became effective on April 15, 2002. More than two months have elapsed from the time the Agreements were executed until they were 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, we have addressed our expectations regarding the proper time considerations to be observed with regard to negotiated agreements. (*See Implementation Order*, June 3, 1996 Order, slip op., p. 33).²

² “The Act does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*).

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 Public Utility Code, 66 Pa. C.S. §3301.

C. Summary of Terms

In their Joint Petition, Sprint and TCG agree that TCG will exercise its right under Section 252(i) of TA-96 to opt into the Agreement between Sprint and PCS which was approved by the Commission by Order entered December 19, 2001, at Docket No. A-310403F7002. The instant Agreement is based on the aforementioned approved Agreement between Sprint and PCS.

The Parties agree that the Agreement between Sprint and TCG shall consist of the underlying Interconnection and Resale Agreement between Sprint and PCS including the following amendment to the term of the underlying agreement:

This Agreement shall be in force for the period commencing on [April 15, 2002] and continuing until the 14th of June, 2003.

(Agreement, p. 1).

Sprint and TCG aver that the Agreement complies with the criteria identified in TA-96 at 47 U.S.C. §252(e)(2)(A) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. The Parties assert that the Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other telecommunications carrier under §252(e)(2)(A)(i) of TA-96. Furthermore, the Parties note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Sprint pursuant to Section 252 of TA-96.

The Parties assert that the Agreement will further local competition in Pennsylvania as envisioned by Chapter 30 of the Public Utility Code and by TA-96, and that, therefore, the Agreement protects the public interest, convenience, and necessity.³

The Agreement is an important step towards allowing TCG to compete as a facilities-based and reseller local exchange carrier for both residential and business customers. These are two very important objectives which TA-96 contemplated and the Pennsylvania General Assembly envisioned when it enacted Section 3009(a) of the Public Utility Code, 66 Pa. C.S. §3009(a). As such, the proposed Agreement protects the public interest, convenience, and necessity.

D. Disposition

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We shall minimize the potential for discrimination against other carriers not a party to the Agreement by providing here that our conditional 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 any telecommunications carrier not a party to the negotiations.

³ It is noted that regardless of the types of services covered by this inter-connection agreement, it would be a violation of the Public Utility Code if the Applicant began offering services or assessing surcharges to end users which it has not been authorized to provide and for which tariffs have not been authorized.

TA-96 requires that the terms of the Agreement be made available for other parties to review (§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 Sprint or TCG to embody the terms of the Agreement in a filed tariff, but we will require that the Parties file the Agreement with this Commission. It shall be retained in the public file for inspection and copying consistent with the procedures relating to public access to documents.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect those obligations of the telecommunications carrier in the areas of protection of public safety and welfare, service quality, and the rights of consumers. (*See, e.g.,* Section 253(b) of TA-96). This is consistent with TA-96 and with Chapter 30 of the Public Utility Code, wherein service quality and standards, *e.g.,* universal service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the local exchange company and continue unaffected by a negotiated agreement. We have reviewed the Agreement's terms relating to 911 and E911 services and conclude that these provisions of the Agreement are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Agreement between Sprint and TCG filed on June 25, 2002, consistent with the conditions delineated in this Opinion and Order; **THEREFORE,**

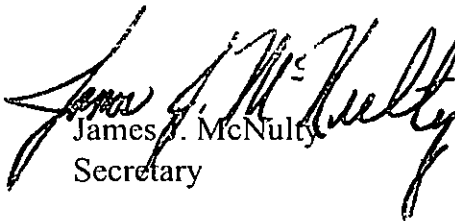
IT IS ORDERED:

1. That the Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint, and TCG Delaware Valley, Inc. PA and TCG Pittsburgh seeking the approval of a Master Interconnection and Resale Agreement filed June 25, 2002, 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* entered September 9, 1996) is granted, consistent with this Opinion and Order.

2. That approval of the Master Interconnection and Resale Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant Agreement.

3. That the Parties shall file a true and correct copy of the Master Interconnection and Resale Agreement, with appropriate amendment, with this Commission within thirty (30) days of the date of entry of this Opinion and Order.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 12, 2002

ORDER ENTERED: SEP 13 2002