



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

IN REPLY PLEASE
REFER TO OUR FILE

MARCH 23, 2001

A-310824F0002

ZSUZSANNA E BENEDEK ESQUIRE
UNITED TELEPHONE CO OF PA
D/B/A SPRINT
1201 WALNUT BOTTOM ROAD
CARLISLE PA 17013-0905

DOCKETED
MAR 26 2001

Joint Petition of The United Telephone Company of Pennsylvania,
d/b/a Sprint and DSLnet Communications, LLC for
Approval of Amendement No. 1 to the Master Interconnection and
Resale Agreement Under Section 252(a)(1) and (e) 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 March 22, 2001 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

DOCUMENT
FOLDER

James J. McNulty
Secretary

Enclosure
Certified Mail
FG

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held March 22, 2001

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

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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 DSLnet Communications, LLC (DSLnet), for approval of Amendment No. 1 to the Master Interconnection and Resale Agreement (Amendment). The Amendment is 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 Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996) (*Implementation Orders*).

History of the Proceeding

On January 19, 2001, Sprint and DSLnet filed the instant Joint Petition seeking Amendment of the terms of the originally filed Interconnection and Resale Agreement which we approved by Order entered on June 5, 2000, at Docket No. A-310824F0002. The Amendment sets forth the terms, conditions, and prices under which Sprint will offer and provide Dark Fiber, Line Sharing, and Subloops to facilitate DSLnet's provision of its data service offerings.

The Commission published notice of the Joint Petition and the Amendment in the *Pennsylvania Bulletin* on February 3, 2001, advising that any interested parties could file comments within ten (10) days. No comments have been received.

Discussion

A. Standard of Review

The standard for review of a negotiated interconnection agreement is set out in Section 252(e)(2) of TA-96, 47 U.S.C. §252(e)(2). Section 252(e)(2) 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 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 is not consistent with the public interest, convenience, and necessity. . . .

With these criteria in mind, we shall review the Amendment submitted by Sprint and DSLnet.

B. Summary of Terms

The Amendment sets forth terms, conditions and prices for additional services which Sprint will offer and provide to DSLnet. The Amendment was filed pursuant to paragraphs 2.2 and 2.3 of the original Agreement which permits either Party to renegotiate affected provisions of the Agreement to reflect a recent decision of the Eighth Circuit.¹ Specifically, the Amendment provides for the provision of Dark Fiber, Line Sharing Arrangements, and Subloops. The specific terms, conditions associated with these new unbundled network elements are included Attachment III of the Amendment, which replaces Attachment III of the original Agreement. The rates are included in Exhibit B to Attachment III.

Sprint and DSLnet aver that the Amendment to Agreement² will enhance DSLnet's opportunities to provide local telecommunications service to its customers in Pennsylvania as envisioned by TA-96 and Chapter 30 of the Public Utility Code. (Joint Petition, p. 2).

¹ See *Iowa Utilities Board v. FCC, Case No. 96-3321* (September 2000).

² It is noted that, regardless of the types of services covered by this Amendment to the Interconnection 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.

C. Disposition

Having reviewed the Amendment to 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 approval of this Amendment 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 Amendment to the Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the Agreement and amendments 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 Amendment to 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 and DSLnet to embody the terms of the Amendment to the Agreement in a filed tariff, but we will require that the Parties file the Amendment to 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.

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Order*, we determine that Amendment No. 1 to the Interconnection

Agreement between Sprint and DSLnet is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest;

THEREFORE,

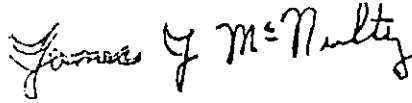
IT IS ORDERED:

1. That the Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint and DSLnet Communications, LLC, d/b/a DSLnet filed on January 19, 2001, seeking approval of Amendment No. 1 to the existing Interconnection Agreement approved by Opinion and Order entered on June 5, 2000, at Docket No. A-310824F002, pursuant to the Telecommunications Act of 1996 and the Commission's June 3, 1996 Opinion and Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, is granted, consistent with this Opinion and Order.

2. That approval of Amendment No. 1 to the Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Interconnection Agreement.

3. That the Parties shall file a true and correct copy of Amendment No. 1 to the Agreement 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: March 22, 2001

ORDER ENTERED: **MAR 23 2001**