

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: May 11, 1999	2. BUREAU AGENDA NO. MAY-1999-OSA-0283*
3. BUREAU: Office of Special Assistants	MAY 26 IN 9:51
4. SECTION(S):	5. PUBLIC MEETING DATE: RECEIVED SECRETARY'S BUREAU
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: <i>Carl</i>	May 21, 1999
7. PERSONS IN CHARGE: David Munsch 7-1660	
8. DOCKET NO.: A-310806	MAY 25 1999

- 9. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Joint Petition of Bell Atlantic-Pennsylvania, Inc. and NOW Communications, Inc. for approval of a Resale Agreement

(b) On March 17, 1999, Bell Atlantic-Pennsylvania, Inc. (BA-PA) and NOW Communications, Inc. (NOW) filed a Joint Petition seeking approval of a Resale Agreement which sets forth the terms, conditions, and prices under which BA-PA will offer and provide NOW certain telecommunications services available for resale, as well as resale support services within each Local Access Transport Area, in which they both operate in Pennsylvania

(c) The Office of Special Assistants recommends that the Commission adopt the draft Opinion and Order which approves the Resale Agreement.

EEF

DOCUMENT
 FOLDER

Order Doc. No. 132437v1

Calendar Doc. No. 130820v1

10. MOTION BY: Commissioner Chm. Quain

Commissioner Rolka - Yes
 Commissioner Brownell - Yes
 Commissioner Wilson - Yes

SECONDED: Commissioner Bloom

CONTENTS OF MOTION: Staff recommendation adopted.



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

IN REPLY PLEASE
REFER TO OUR FILE

May 25, 1999

A-310806

R SCOTT SEAB
NEW COMMUNICATIONS INC
711 SOUTH TEJON STREET
SUITE 201
COLORADO SPRINGS CO 80903

Joint Petition of Bell Atlantic-Pennsylvania, Inc.
and NOW Communications, Inc. For Approval of a
Resale Agreement Under Section 252(e) of the
Telecommunications Act of 1996

DOCKETED

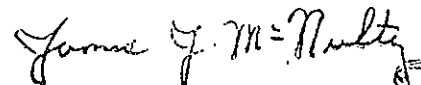
JUN 04 1999

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 May 21, 1999 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


James J. McNulty,
Secretary

encls
cert. mail
law

DOCUMENT
FOLDER

SRB

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 21, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Joint Petition of Bell Atlantic-Pennsylvania,
Inc. and NOW Communications, Inc.
For Approval of a Resale Agreement Under
Section 252(e) of the Telecommunications
Act of 1996

A-310806

OPINION AND ORDER

DOCKETED

JUN 04 1999

BY THE COMMISSION:

DOCUMENT
FOLDER

Before the Commission for consideration is the Joint Petition of Bell Atlantic-Pennsylvania, Inc. (BA-PA) and NOW Communications, Inc. (NOW) for approval of a Resale Agreement (Agreement) 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) (the Act), including 47 U.S.C. §§251, 252, and 271, and the Commission's June 3, 1996 Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (*Implementation Order*).

History of the Proceeding

On March 17, 1999, BA-PA and NOW filed the instant Joint Petition seeking approval of an underlying Resale Agreement which sets forth the terms, conditions, and prices under which BA-PA will offer and provide to NOW certain telecommunications services available for resale, as well as resale support services within each Local Access Transport Area (LATA) in which they both operate in Pennsylvania. NOW is not presently certificated to operate as a Competitive Local Exchange Carrier (CLEC) in Pennsylvania.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on March 24, 1999, advising that any interested parties could file comments within ten (10) days. To date, 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:

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) 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 BA-PA and NOW.

B. Summary of Terms

In their Joint Petition, BA-PA and NOW aver that:

The Agreement sets forth the terms, conditions and prices under which BA-PA will offer and provide to NOW telecommunications services available for resale and resale support services within each Local Access and Transport Area ("LATA") in which they both operate in Pennsylvania. The Agreement is an integrated package that reflects a negotiated balance of many interests and concerns critical to both parties.

(Joint Petition, p. 2, ¶4).

The key provisions of the Agreement, as summarized by the Parties in the Joint Petition are:

- (1) Access by NOW to BA-PA's operation support systems;
- (2) The resale of BA-PA telecommunications services for a wholesale discount of 18.43% or 20.69% (depending upon whether NOW provides its own operator services); and,
- (3) Routing to Directory Assistance/Operator Services platforms.

(Joint Petition, p. 2, ¶5).

BA-PA and NOW aver that the Resale Agreement complies with the criteria

identified in the Act 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 BA-PA is willing to make the resale arrangements contained in the Agreement available to any other telecommunications carrier certified to provide local telephone service in Pennsylvania (*See*, 47 U.S.C. §252(e)), and that the Resale Agreement is, therefore, not discriminatory. Furthermore, the parties note that other carriers are not bound by the terms of the Resale Agreement and are free to pursue their own negotiated arrangements with BA-PA. (Joint Petition, p. 3, ¶7).

The parties assert that the Resale Agreement will make vigorous local telephone service competition possible, and that, therefore, the Resale Agreement protects the public interest, convenience, and necessity.

C. Disposition

Having reviewed the Resale Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e). We shall minimize the potential for discrimination against other carriers not a party to the Resale 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 Resale Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

The Act requires that the terms of the Resale 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 Resale 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 BA-PA or NOW to embody the terms of the Resale Agreement in a filed tariff, but we will require that the parties file the Resale 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 resale agreement may affect those obligations of the telecommunications company 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 the Act and with Chapter 30 of the Public Utility Code, wherein service quality and standards, *i.e.*, 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 (Resale Agreement, pp. 39-40) and conclude that these provisions of the Agreement are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252(e), *supra*, of the Act and our *Implementation Order*, we determine that the Resale Agreement between BA-PA and NOW is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest. When NOW is in a position to operate in Pennsylvania, that is, when it has applied for certification as a CLEC, has filed a proposed

tariff, and has received the appropriate Secretarial Letter,¹ our present conditional approval of the subject Resale Agreement will become effective; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of Bell Atlantic-Pennsylvania, Inc. and NOW Communications, Inc. seeking the approval of a Resale Agreement filed on March 17, 1999, 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 hereby granted consistent with this Opinion and Order, conditioned as follows. The approval of the Resale Agreement will become effective when NOW Communications, Inc. has applied for certification as a Competitive Local Exchange Carrier, has filed a proposed tariff, and has received the appropriate Secretarial Letter consistent with the procedures contained in our *Implementation Order*.

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

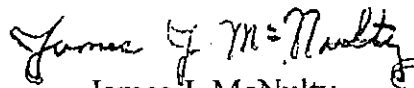
3. That approval of the Resale Agreement shall not be construed as a review under 47 U.S.C. §271.

4. That the parties shall file a true and correct copy of the Resale

¹ Pursuant to the Commission's June 3, 1996 and September 9, 1996 Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, the issuance of a Secretarial Letter advising an applicant that its application is properly filed and has generated no protests, constitutes the applicant's interim authority to proceed pending final substantive review of its application.

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: May 21, 1999

ORDER ENTERED: **MAY 25 1999**