

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

20

1. <b>REPORT DATE:</b> April 10, 2002	2. <b>BUREAU AGENDA NO.</b> APR-2002-OSA-0145*
3. <b>BUREAU:</b> Office of Special Assistants	
4. <b>SECTION(S):</b>	5. <b>PUBLIC MEETING DATE:</b> April 24, 2002
6. <b>APPROVED BY:</b> Director: C.W. Davis 7-1827 Supervisor:	
7. <b>PERSONS IN CHARGE:</b> D. Munsch 7-1660	<b>DOCKETED</b> MAY 13 2002
8. <b>DOCKET NO.:</b> A-310806F7002	

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

**DOCUMENT FOLDER**

(a) Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint (Sprint) and NOW Communications, Inc. (NOW) for approval of a Master Resale Agreement under Section 252(e) of the Telecommunications Act of 1996

(b) On March 15, 2002, Sprint and NOW filed a Joint Petition for Approval of a Master Resale Agreement (Joint Petition). Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on April 6, 2002. To date, no comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which grants the Joint Petition thereby approving the Master Resale Agreement.

Order Doc. No. 322290v1

Calendar Doc. No. 322341v1

10. **MOTION BY:** Commissioner Wilson  
**SECONDED:** Commissioner Chm. Thomas  
Commissioner Bloom - Yes  
Commissioner Fitzpatrick - Yes  
Commissioner Pizzingrilli - Yes

**CONTENT OF MOTION:** Postponement to Public Meeting of May 9, 2002 for the Commission's further consideration.





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

IN REPLY PLEASE  
REFER TO OUR FILE

May 10, 2002

A-310806F7002

ZSUZSANNA E BENEDEK ESQ  
240 NORTH THIRD ST SUITE 201  
HARRISBURG PA 17101

REP

**DOCKETED**  
JUN 17 2002

Joint Petition of the United Telephone Company of Pennsylvania, d/b/a Sprint and NOW Communications, Inc., for approval of a Master Resale Agreement under Section 252(e) of the Telecommunications Act of 1996

**DOCUMENT**

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 9, 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  
TAB

R SCOTT SEAB VP REGULATORY AFFAIRS  
NOW COMMUNICATIONS INC  
711 SOUTH TEJON ST SUITE 201  
COLORADO SPRINGS CO 80903

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held May 9, 2002

Commissioners Present:

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

**DOCKETED**  
JUN 17 2002

Joint Petition of The United Telephone  
Company of Pennsylvania, d/b/a Sprint  
and NOW Communications, Inc.,  
for Approval of a Master Resale Agree-  
ment Under Section 252(e) of the  
Telecommunications Act of 1996

A-310806F7002

**DOCUMENT**

**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 NOW Communications Inc. (NOW), for approval of the adoption of a Master 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) (TA-96), including 47 U.S.C. §§251, 252, and 271, and the Commission's Orders *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 March 15, 2002, Sprint and NOW filed the instant Joint Petition seeking approval of the proposed Agreement.

Sprint is an Incumbent Local Exchange Carrier (ILEC) authorized to provide local exchange service in Pennsylvania. By Order entered November 9, 1999, NOW was granted authority to become a Competitive Local Exchange Carrier (CLEC) that is authorized to provide local telephone service in Pennsylvania.

According to the Agreement before us, the termination date is October 29, 2003, and the Agreement will remain in effect thereafter until cancelled by one of the parties at least sixty days notice in advance of the termination. (Agreement, pp. 7-8).

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on April 6, 2002, advising that any interested parties could file comments within ten 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 Agreement submitted by Sprint and NOW.

**B. Timeliness of Filing**

We note that the Proposed Agreement has an effective date of October 29, 2001. (Agreement, p. 1). The Agreement was filed with this Commission on March 15, 2002, nearly six months after its effective date. 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).<sup>1</sup>

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<sup>1</sup> “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 by 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 Order*, 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 NOW aver that the Agreement sets forth the terms, conditions and prices of resale of telecommunications by Sprint to NOW. (Joint Petition, p. 2, ¶3).

A resale discount of 15.26% will apply for Sprint's Operator Assistance/Directory Assistance Service and a resale discount of 10.87% will apply to all other services provided by Sprint to NOW. (Agreement, p. 38). Pursuant to the Agreement, until the implementation of electronic interfaces, Sprint shall provide such services, Network Elements, functionality or telephone numbering resources on a non-discriminatory basis to NOW as it provides to its affiliates or any other entity that obtains such services, Network Elements, functionality or telephone numbering resources. (Agreement, p. 5).

Upon deployment of electronic interfaces Sprint shall provide NOW with the same intervals and level of service provided by Sprint to its end users or other CLECs at any given time. Where Sprint is the owner or operator of the 911/E911 database, Sprint will maintain daily updating of the 911/E911 database information related to NOW's end users. Sprint will provide NOW a default arrangement/disaster recovery plan including an emergency back-up number in case of massive trunk failures. (Agreement, p. 29).

Sprint and NOW aver that the Agreement<sup>2</sup> complies with the criteria identified in TA-96 at 47 U.S.C. §252(e)(2)(i) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. (Joint Petition, p. 3, ¶6).

The Parties assert that Sprint 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 Agreement is, therefore, not discriminatory. 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. (Joint Petition, p. 3, ¶¶7 & 8).

#### **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 a telecommunications carrier not a party to the negotiations.

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<sup>2</sup> It is noted that, regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code if the Applicant began offering services or assessing surcharges, to end users, for 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 NOW 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 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 TA-96 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.

### 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 NOW filed on March 15, 2002; **THEREFORE,**

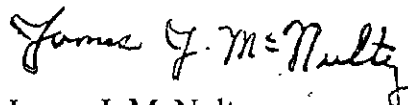
**IT IS ORDERED:**

1. That the Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint and NOW Communications, Inc., seeking approval of the adoption of a Master Resale Agreement filed on March 15, 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 on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996) is hereby granted, consistent with this Opinion and Order.

2. That approval of the 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 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: May 9, 2002

ORDER ENTERED: **MAY 10 2002**