

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: June 13, 2000	2. BUREAU AGENDA NO. JUN-2000-OSA-0181*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: June 22, 2000
6. APPROVED BY: Director: C.W. Davis 7-1827 <i>C.W.D.</i> Supervisor:	DOCKETED JUL 13 2000
7. PERSONS IN CHARGE: D. Munsch 7-1660	
8. DOCKET NO.: A-310806	

DOCUMENT FOLDER

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

(a) Joint Application 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 April 20, 2000, Sprint and NOW filed a Joint Application for Approval of a Master Resale Agreement (Application). Notice of the Application was published in the *Pennsylvania Bulletin* on May 6, 2000. To date, no comments have been received.

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

Order Doc. No. 196768v1

Calendar Doc. No. 195837v1

10. MOTION BY: Commissioner Chm. Quain

SECONDED: Commissioner Bloom

Commissioner Brownell - Yes
Commissioner Wilson - Yes
Commissioner Fitzpatrick - Yes

CONTENT 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

JUNE 26, 2000

A-310806

R SCOTT SEAB VP
LAW & PUBLIC POLICY
711 SOUTH TEJON STREET
SUITE 201
COLORADO SPRINGS CO 80903

Joint Application 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(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 June 22, 2000 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

LYNN JENNINGS
PO BOX 807
JACKSON PA 39204-0807

DOCKETED
JUN 30 2000

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 22, 2000

Commissioners Present:

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

Joint Application 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(a)(1) and (e) of the Telecommunications Act of 1996

A-310806

DOCKETED
JUN 30 2000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Application of The United Telephone Company of Pennsylvania, d/b/a Sprint (Sprint), and NOW Communications, Inc. (NOW) for Approval of a Master Resale Agreement (Resale Agreement) filed pursuant to Sections 251 and 252 of 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*).

DOCUMENT
FOLDER

History of the Proceeding

On April 20, 2000, Sprint and NOW filed the instant Joint Application seeking approval of an underlying Resale Agreement which sets forth the terms, conditions, and prices under which Sprint will offer and provide to NOW the resale of telecommunications services available for resale. NOW is presently certificated to operate as a Competitive Local Exchange Reseller in Pennsylvania consistent with the appropriate legal requirements established by the Commission.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on May 6, 2000, 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 Section 252(e)(2) of the Act, 47 U.S.C. §252(e)(2). Section 252(e)(2) 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 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 Resale Agreement submitted by Sprint and NOW.

B. Summary of Terms

In their Joint Application, Sprint and NOW aver that:

The Agreement sets forth the terms, conditions, and prices for resale of telecommunications services provided by Sprint to NOW.

(Joint Application, p. 2, ¶3).

The key provision of the Resale Agreement, as summarized by the Parties in the Joint Petition, is:

Sprint will provide to NOW Operator and Directory Assistance services at a resale discount of 15.26% and a discount of 10.87% for all other resold services. (Agreement, Exhibit 1, p. 33).

Sprint and NOW aver that the Agreement complies with the criteria identified in the Act and quoted above, pursuant to which we must determine whether to accept or reject the Agreement. 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 Resale Agreement and are free to pursue their own negotiated arrangements with Sprint. (Joint Application, p. 2, ¶5).

The Parties assert that the Resale Agreement is consistent with the public interest, convenience, and necessity, as required by Section 252(e)(2)(a)(ii). It is further asserted that the Resale Agreement will also permit NOW to compete with Sprint as a local telephone service reseller for both residential and business customers. (Joint Application, pp. 2-3, ¶6).

C. Disposition

Based on our review of the Resale Agreement, we conclude that it satisfies the two-pronged criteria of Section 252(e), *supra*. We shall however, minimize the potential for discrimination against other carriers not a party to the Resale Agreement by providing here that our conditional approval of this Resale Agreement shall not serve as precedent for agreements which may 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 Sprint and NOW to embody the terms of the Resale Agreement in a filed

tariff, but we will require the Parties to file the Resale Agreement with this Commission.¹ 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 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 Resale Agreement's terms relating to 911 and E911 services (Resale Agreement, p. 41) and conclude that these provisions of the Agreement are consistent with the public interest. The Resale Agreement shall become effective only upon execution by both Sprint and NOW and Commission approval and shall remain in effect until September 1, 2001. Sprint and NOW agree that orders for services shall not be processed prior to the effective date. (Agreement, p. 6).

Based on the foregoing and pursuant to Section 252(e) of the Act and our *Implementation Order*, we determine that the Resale Agreement between Sprint and NOW is non-discriminatory to other telecommunications companies not party to it and that it is consistent with the public interest; **THEREFORE,**

¹ It is noted that, regardless of the types of services covered by this 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.

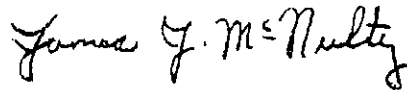
IT IS ORDERED:

1. That the Joint Application of The United Telephone Company of Pennsylvania, d/b/a Sprint, and NOW Communications, Inc. for Approval of a Master Resale Agreement seeking the approval of an Agreement for Resale filed on April 20, 2000, pursuant to the Telecommunications Act of 1996 and this 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.

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

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

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 22, 2000

ORDER ENTERED: **JUN 26 2000**