

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

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1. REPORT DATE: June 28, 2004	2. BUREAU AGENDA NO.: JUL-2004-OSA-0170*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: July 8, 2004
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: Legal Review: R. Albert 7-8108	
7. PERSON IN CHARGE: K. Schiavo 3-6165	
8. DOCKET NO.: A-310804F7002	

**DOCKETED**  
JUL 20 2004

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

(a) Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint (Sprint) and d/P/i Teleconnect (d/P/i), for approval of a Master Interconnection, Collocation and Resale Agreement under Sections 252 (a)(1) and (e) of the Telecommunications Act of 1996

(b) On May 4, 2004, Sprint and d/P/i filed a Joint Petition seeking approval of a Master Interconnection, Collocation and Resale Agreement (Agreement) under Sections 252 (a)(1) and (e) of the Telecommunications Act of 1996, that would provide for the interconnection of the two companies' networks and make available to d/P/i services offered by Sprint for resale as well as resale support services. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on May 15, 2004. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which grants the Joint Petition, thereby approving the Agreement, consistent with this Opinion and Order.

Order Doc. No. 478484v1

Calendar Doc. No. 478532v1

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

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT  
FOLDER**



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

IN REPLY PLEASE  
REFER TO OUR FILE

July 9, 2004

A-310804F7002

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

DOCUMENT

Joint Petition of The United Telephone Company of Pennsylvania  
d/b/a Sprint and dPi Teleconnect, LLC for approval of a  
Master Interconnection, Collocation, and Resale Agreement  
under Section 252(e) of the Telecommunications Act of 1996

DOCKETED

JUL 21 2004

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on July 8, 2004, has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

mk  
encls  
cert. mail

BRIAN A BOLINGER  
VICE PRESIDENT LEGAL AFFAIRS  
2997 LBJ FREEWAY SUITE 225  
DALLAS TX 75234

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held July 8, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman  
Robert K. Bloom, Vice Chairman  
Glen R. Thomas  
Kim Pizzingrilli  
Wendell F. Holland

DOCKETED  
JUL 21 2004

Joint Petition of The United Telephone  
Company of Pennsylvania d/b/a Sprint  
and dPi Teleconnect, LLC for approval  
of a Master Interconnection, Collocation, and  
Resale Agreement under Section 252(e) of the  
Telecommunications Act of 1996

A-310804F7002

OPINION AND ORDER

BY THE COMMISSION:

DOCUMENT

Before the Commission for consideration is a Joint Petition filed by The United Telephone Company of Pennsylvania d/b/a Sprint (Sprint) and dPi Teleconnect, LLC (dPi) requesting approval of a Master Interconnection, Collocation, and Resale Agreement (Agreement) The Agreement was 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 *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). *Proposed Modifications to the review of Interconnection Agreements* (Order entered on May 3, 2004). (*Implementation Orders*).

### **History of the Proceeding**

On May 4, 2004, Sprint and dPi filed the instant Joint Petition, seeking approval of the Agreement that would provide for the interconnection of the two companies' networks and make available to dPi access to unbundled network elements (UNEs), wholesale telecommunications services, ancillary services, as well as the resale of tariffed services offered by Sprint.

The Agreement provides that the "Effective Date" is November 15, 2003, and that it will continue for a period of two years until November 14, 2005 unless earlier terminated in accordance with Section 5 of the Agreement. (Agreement at 15).

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on May 15, 2004, advising that any interested parties could file comments within ten days. No comments have been filed. DPi was granted a certificate of public convenience on October 4, 2002, at Docket No. A-310804, to provide services as a facilities based Competitive Local Exchange Carrier.

#### **A. Standard of Review**

The Commission's standard of review of a negotiated interconnection agreement is set forth 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 will review the Agreement submitted by Sprint and dPi.

**B. Timeliness of Filing**

The Agreement between Sprint and dPi became effective on November 15, 2003. A period of approximately seven months elapsed from the time the Agreement was executed until it was 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).<sup>1</sup>

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<sup>1</sup> “The Act [TA-96] 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.*).



### 3. Local Switching

The following rates will apply for Unbundled Local Switching:

<u>Local Switching</u>	<u>Recurring Charge</u>
<b>Unbundled Switch Ports POTS (R1, B1)</b>	<b>\$2.70</b>
Key System	\$2.70
CENTREX	\$2.70
Pay Station	\$2.70
ISDN-BRI	\$16.36
PRI-ISDN One Way	\$304.96
PRI-ISDN Two Way	\$504.99

### 4. 911

The following rates will apply for services associated with 911:

<u>911 Service</u>	<u>Recurring Charge</u>	<u>Non-Recurring Charge</u>
911 Tandem Port	\$18.74	\$119.84
Street Index Guide		--
Monthly	\$41.00	

In addition to the rates summarized above, Table 1 of the Agreement also includes, or references, the agreed-upon rates for: service order/installation repairs, NIDS, loops, line sharing, dedicated transport, multiplexing, unbundled dark fiber, unbundled network elements, and operator services (toll, local, and Directory Assistance).

Sprint and dPi aver that the Agreement complies with the criteria identified in the 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 local exchange carrier certified to operate in Pennsylvania. Furthermore, the Parties note that other carriers are not bound by the terms of the Agreement and are free to negotiate independently with Sprint pursuant to Section 252 of the TA-96.

#### **D. Disposition**

We determine 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. We further determine 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) of TA-96. Furthermore, we note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Sprint.

We find that the Agreement is an important step towards allowing dPi to compete with Sprint as a local telephone service carrier for both residential and business customers, which is what 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), and that, therefore, the Agreement protects the public interest, convenience, and necessity.<sup>2</sup>

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

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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 which it has not been authorized to provide and for which tariffs have not been authorized.

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.*). We note that in approving these privately negotiated agreements, including any provisions limiting unbundled access to Sprint's network, we express no opinion regarding the enforceability of our independent state authority preserved by 47 USC. § 251(d)(3) and any other applicable law.

On the basis of the foregoing, we find that the instant Agreement does not discriminate against a telecommunications carrier not a party to the negotiations. In this context, we will not require Sprint or dPi to embody the terms of the Agreement in a filed tariff. However, consistent with our May 3, 2004 Order at Docket No. M-00960799, we do require that the incumbent local exchange carrier file a jointly signed, true and correct copy of the interconnection agreement with the Commission, within thirty days after the date that the interconnection agreement is signed for retention in the Commission's official files so that it is available to the public for inspection and copying consistent with the procedures related to public access to documents.

We also require that the incumbent local exchange carrier file an electronic, true and correct copy of the Interconnection Agreement in ".pdf format" for inclusion on the Commission's website.

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

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 service. We conclude that the Agreement's terms relating to 911 and E911 services 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 Interconnection Agreement between Sprint and dPi filed on May 4, 2004; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Joint Petition of The United Telephone Company of Pennsylvania Inc. d/b/a Sprint and dPi Teleconnect LLC seeking approval of a Master Interconnection, Collocation and Resale Agreement filed on May 4, 2004, 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 granted, consistent with this Opinion and Order.

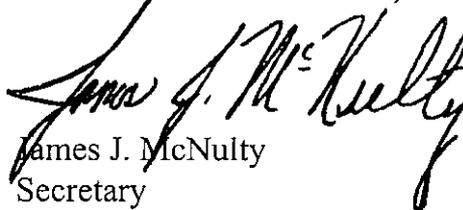
2. That approval of the Master Interconnection, Collocation, and Resale Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

3. That The United Telephone Company of Pennsylvania d/b/a Sprint shall file an electronic copy of the Master Interconnection, Collocation, and Resale

Agreement, in “.pdf format”, with this Commission within thirty (30) days of the date of entry of this Opinion and Order for inclusion on the Commission’s website.

4. That, within thirty (30) days of the date of entry of this Opinion and Order, The United Telephone Company of Pennsylvania d/b/a Sprint shall notify the Commission as to whether the Master Interconnection, Collocation, and Resale Agreement filed on May 4, 2004, is a signed, true and correct copy. If the Interconnection Agreement filed on May 4, 2004, is not a signed, true and correct copy, The United Telephone Company of Pennsylvania d/b/a Sprint is further directed to file a signed, true and correct copy of the Interconnection 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: July 8, 2004

ORDER ENTERED: JUL 09 2004