

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet**

<p>1. REPORT DATE: December 30, 1999</p>	<p>2. BUREAU AGENDA NO. JAN-2000-OSA-0007*</p>
<p>3. BUREAU: Office of Special Assistants</p>	<p>5. PUBLIC MEETING DATE: January 12, 2000</p>
<p>4. SECTION(S):</p>	<p>6. APPROVED BY: Director: C.W. Davis 7-1827 <i>[Signature]</i> Supervisor:</p>
<p>7. PERSONS IN CHARGE: D. Munsch 7-1660</p>	<p>8. DOCKET NO.: A-310804</p>

DOCKETED
FEB 3 2000

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 Bell Atlantic-Pennsylvania, Inc. (BA-PA) and DPI Teleconnect (DPI) for approval of a Resale Agreement under Section 252(e) of the Telecommunications Act of 1996

(b) On October 29, 1999, BA-PA and DPI filed a Joint Petition for approval of a Resale Agreement (Petition). Notice of the Petition was published in the *Pennsylvania Bulletin* on November 13, 1999. 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 Resale Agreement.

Order Doc. No. 169274v1

Calendar Doc. No. 167193v1

10. MOTION BY: Commissioner Chm. Quain

Commissioner Brownell - Yes

SECONDED: Commissioner Bloom

Commissioner Wilson - Yes

Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.

SRB



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

IN REPLY PLEASE
REFER TO OUR FILE

JANUARY 13, 2000

A-310804

DOCKETED
JAN 18 2000

KYLE DICKSON ESQUIRE
MAXWELL BAKER & MCFATRIDGE PC
2525 SOUTH SHORE BLVD SUITE 410
LEAGUE CITY TX 77573

DOCUMENT
FOLDER

Joint Petition of Bell Atlantic-Pennsylvania, Inc., and
DPI Teleconnect, for approval of a Resale Agreement
Under Section 252(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 January 12, 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

SRB

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 12, 2000

Commissioners Present:

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

Joint Petition of Bell Atlantic-Pennsylvania,
Inc. and DPI Teleconnect, for approval
of a Resale Agreement under Section 252(e)
of the Telecommunications Act of 1996

DOCKETED
JAN 18 2000
A-310804

DOCUMENT
FOLDER
OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Bell Atlantic-Pennsylvania, Inc. (BA-PA) and DPI Teleconnect (DPI) 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 October 29, 1999, BA-PA and DPI filed the instant Joint Petition seeking approval of the subject Agreement. The Agreement makes available to DPI services offered by BA-PA for resale as well as resale support services. (Joint Petition, p. 1).

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on November 13, 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 resale 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 DPI.

B. Summary of Terms

In the Joint Petition, BA-PA and DPI state that this Agreement is an “important step towards comprehensive local competition in Pennsylvania.” (Joint Petition, p. 1).

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

The Agreement sets forth the terms, conditions and prices under which BA-PA will offer and provide to DPI 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:

- (i) access by DPI to BA-PA's operation support systems;
- (ii) the resale of BA-PA telecommunications services for a wholesale discount of 18.43% or 20.69% (depending upon whether DPI provides its own operator services); and,
- (iii) routing to Directory Assistance/Operator Services platforms.

(Joint Petition, p. 2, ¶5).

BA-PA and DPI assert that the 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 state that the Agreement is not discriminatory and that the resale arrangements contained in the Agreement are available to any other telecommunications carrier under §252(i) of the Act. 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 BA-PA. (Joint Petition, p. 3, ¶7).

The Parties aver that the Agreement is consistent with the public interest requirements of Section 252(e)(2)(a)(ii) of the Act because it will permit DPI to compete with BA-PA as a local telephone service reseller for both residential and business customers. (Joint Petition, p. 3, ¶8).

C. Disposition

Having reviewed the 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 parties 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.

The Act 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 BA-PA or DPI 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 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 and conclude that these provisions of the Agreement are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252, *supra*, and our *Implementation Order*, we will approve the Resale Agreement between BA-PA and DPI filed on October 29, 1999; **THEREFORE,**

IT IS ORDERED:

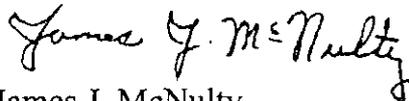
1. That the Joint Petition of Bell Atlantic-Pennsylvania, Inc. and DPI Teleconnect, seeking the approval of a Resale Agreement filed on October 29, 1999, pursuant to the Telecommunications Act of 1996 and the Commission's June 3, 1996 Opinion and Order in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, is hereby granted, consistent with this Opinion and Order.

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 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 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: January 12, 2000

ORDER ENTERED: **JAN 13 2000**