

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

49

1. REPORT DATE: April 15, 1999 : 2. BUREAU AGENDA NO. :
APR-1999-OSA-0230*

3. BUREAU: Office of :
Special Assistants :

4. SECTION(S): : 5. PUBLIC MEETING DATE: :
April 29, 1999

6. APPROVED BY:
Director: C.W. Davis 7-182
Supervisor:

C.W. Davis

DOCKETED
MAY 05 1999

7. PERSON IN CHARGE: :
D. Munsch 7-1660 :

8. DOCKET NO.: :
A-310803 :

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 Omnipoint Communications Enterprises, L.P. for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996.

(b) On March 2, 1999, Bell Atlantic-Pennsylvania, Inc. (BA-PA) and Omnipoint Communications Enterprises, L.P. filed a Joint Petition for approval of an Interconnection Agreement filed pursuant to the Telecommunications Act of 1996. No protests have been filed.

(c) The Office of Special Assistants recommends that the Commission adopt a draft Opinion and Order granting the Joint Petition.

**DOCUMENT
FOLDER**

Order Doc. No. 127928v1

Calendar Doc. No. 127294v1

10. MOTION BY: Commissioner Chm. Quain

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

SECONDED: Commissioner Bloom

CONTENT OF MOTION: Staff recommendation adopted.



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

REP

IN REPLY PLEASE
REFER TO OUR FILE

April 30, 1999

A-310803

JERRY O'BRIEN-SR DIR LEGAL REG AFFAIRS
OMNIPOINT COMMUNICATIONS SERVICES LLC
16 WING DRIVE
CEDAR KNOLLS NJ 07927

Joint Petition of Bell Atlantic-Pennsylvania, Inc.
and Omnipoint Communications Enterprises, L. P.
For Approval of an Interconnection 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 April 29, 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

DOCKETED

MAY 5 1999

JULIA A CONOVER ESQUIRE
BELL ATLANTIC-PENNSYLVANIA INC
1717 ARCH STREET 7TH FLOOR
PHILADELPHIA PA 19103



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 29, 1999

Commissioners Present:

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

DOCUMENT
FOLDER

Joint Petition of Bell Atlantic-Pennsylvania,
Inc. and Omnipoint Communications
Enterprises, L.P. For Approval of an Interconnection
Agreement Under Section 252(e) of the
Telecommunications Act of 1996

A-310803

DOCKETED

MAY 5 1999

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Bell Atlantic-Pennsylvania, Inc. (BA-PA) and Omnipoint Communications Enterprises, L.P. (Omnipoint) for Approval of an Interconnection 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 2, 1999, BA-PA and Omnipoint filed the instant Joint Petition seeking approval of the aforementioned Interconnection Agreement that would provide for the continued interconnection of the two (2) companies' networks, thereby facilitating Omnipoint's provision of commercial mobile radio service (CMRS) to both residential and business customers in Pennsylvania.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on March 27, 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 Omnipoint.

B. Summary of Terms

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

The Agreement sets forth the terms, conditions and prices under which BA-PA and Omnipoint will offer and provide network interconnection, reciprocal call transport and termination, and ancillary network services to each other within each Local Access and Transport Area ("LATA") in which they both operate in Pennsylvania.

(Joint Petition, p. 2, ¶4).

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

- (1) Reciprocal compensation for terminating local traffic at interim rates of \$.001864 or \$.003738 per minute of use, depending on where traffic is terminated on the BA-PA and Omnipoint networks.
- (2) The continued provision of 911 services to all customers.

(Joint Petition, p. 2, ¶5).

BA-PA and Omnipoint aver 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 assert that the Agreement is not discriminatory and that the interconnection 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 further assert that the Agreement is an important step towards allowing Omnipoint to compete with BA-PA as a facilities-based local telephone service carrier for both residential and business customers, which is what the Act contemplates 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. (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 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.

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 Omnipoint 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 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 Interconnection Agreement between BA-PA and Omnipoint filed on March 2, 1999; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Omnipoint Communications Enterprises, L.P. seeking the approval of an Interconnection Agreement filed on March 2, 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 the reciprocal compensation rates for terminating local traffic be, and hereby are, approved.

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

5. That the Parties shall file a true and correct copy of the Interconnection 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: April 29, 1999

ORDER ENTERED: **APR 30 1999**