

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

33

1. REPORT DATE: December 30, 1999	2. BUREAU AGENDA NO.: JAN-2000-OSA-0012*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: January 12, 2000
6. APPROVED BY: Director: C.W. Davis 7-1817 Supervisor: <i>C. W. Davis</i>	
7. PERSON IN CHARGE: D. Munsch 7-1660	
8. DOCKET NO.: A-310828F0002	

DOCKETED
FEB 3 2000

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

(a) Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Fibernet Telecommunications of Pennsylvania, LLC for approval of an Interconnection Agreement that would provide for the interconnection of the two (2) companies' networks

(b) On November 5, 1999, Bell Atlantic-Pennsylvania, Inc. (BA-PA) and Fibernet Telecommunications, LLC (Fibernet) filed a Joint Petition seeking approval of an Interconnection Agreement which sets forth the terms, conditions, and prices under which BA-PA and Fibernet will offer and provide interconnection for the purpose of exchanging traffic.

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

Order Doc. No. 169310v1 Calendar Doc. No. 167788v1

10. MOTION BY: Commissioner Chm. Quain Commissioner Brownell - Yes
Commissioner Wilson - Yes
 SECONDED: Commissioner Bloom 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-310828F0002

SCOTT SAWYER ESQUIRE
FIBERNET TELECOMMUNICATIONS OF PENNSYLVANIA LLC
222 RICHMOND STREET SUITE 206
PROVIDENCE RI 02903

LOCKETED
JAN 18 2000

DOCUMENT
FOLDER

Joint Petition of Bell Atlantic-Pennsylvania, Inc., and
Fibernet Telecommunications of Pennsylvania, LLC
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 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 Fibernet Telecommunications of
Pennsylvania, LLC for Approval of an
Interconnection Agreement Under Section 252(e)
of the Telecommunications Act of 1996

A-310828F0002

DOCUMENT
FOLDER

OPINION AND ORDER

DOCKETED
JAN 18 2000

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition of Bell Atlantic-Pennsylvania, Inc. (BA-PA) and Fibernet Telecommunications of Pennsylvania, LLC (Fibernet) 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 November 5, 1999, BA-PA and Fibernet filed the instant Joint Petition seeking approval of the aforementioned Interconnection Agreement that would provide for the interconnection of the two (2) companies' networks and makes available to Fibernet access to unbundled network elements, wholesale telecommunications services, and ancillary services offered by BA-PA.

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on November 20, 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 Fibernet.

B. Summary of Terms

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

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

(Joint Petition, p. 2).

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

- (1) Reciprocal compensation for terminating local traffic at rates of \$.001864 or \$.002902 per minute of use, depending on where traffic is terminated on the BA-PA and Fibernet networks.
- (2) Unbundled loops--providing Fibernet access to existing BA-PA customers--based on a rate methodology specified in the Agreement.
- (3) Customers to retain their telephone numbers when they switch to Fibernet, at interim rates of \$1.50/Month/Ported number in addition to an interim rate of \$5.00 per service order and \$4.00 for installation per number at same location.

- (4) Including Fibernet customers' primary listings in the White Pages (two listings for each residence telephone number and one listing for each business telephone number) and Yellow Pages (one listing for each business telephone number) directories.
- (5) The resale of BA-PA telecommunications services for a wholesale discount of 18.43% or 20.69% (depending upon whether Fibernet provides its own operator services).
- (6) The continued provision of 911 services to all customers.
- (7) Performance standards for services provided by BA-PA to Fibernet equal to the level of service provided by BA-PA to its own end-user customers and other telecommunications carriers.

BA-PA and Fibernet 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.

The parties assert that the Agreement is an important step towards allowing Fibernet 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.¹

The initial expiration date of the proposed Agreement is August 31, 2000. Thereafter, the Agreement shall continue in force and effect unless and until terminated by either Party as follows:

At least one hundred eighty (180) days before the term expires, either Party shall file with the Commission any request for an extension of that term and shall on the same day provide notice to the other Party. At least one hundred fifty (150) days before the term expires, the other Party shall respond to the requested extension.

(Interconnection Agreement, Section 1.3).

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

¹ For the record, we note that, to the extent that this, or any, interconnection agreement includes provisions for services beyond the types of services which we have authorized, and 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 approved.

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 Fibernet 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 Fibernet filed on November 5, 1999; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Fibernet Telecommunications of Pennsylvania, LLC seeking the approval of an Interconnection Agreement filed on November 5, 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.

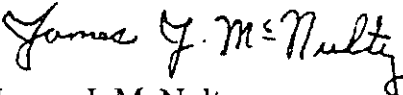
2. That approval of the Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

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 Inter-connection 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: January 12, 2000

ORDER ENTERED: **JAN 13 2000**