

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

<p>1. <u>REPORT DATE:</u> November 22, 2005</p>	<p>2. <u>BUREAU AGENDA NO.</u> DEC-2005-OSA-0340*</p>
<p>3. <u>BUREAU:</u> Office of Special Assistants</p>	<p>4. <u>SECTION(S):</u></p>
<p>6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: R. Marinko 3-3930 Legal Review: K. Barrow 772-8840 <i>KMB</i></p>	<p>5. <u>PUBLIC MEETING DATE:</u> December 1, 2005</p>
<p>7. <u>PERSONS IN CHARGE:</u> <i>SS</i> G. Stella 7-1023</p>	<p>9. <u>EFFECTIVE DATE OF FILING:</u> January 9, 2006</p>
<p>8. <u>DOCKET NO.:</u> A-310814F7004</p>	<p>DOCUMENT FOLDER</p> <p>DOCKETED DEC 12 2005</p>

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

(a) Joint Petition of ALLTEL Pennsylvania, Inc., (ALLTEL) and US LEC of Pennsylvania, Inc., (US LEC) for Approval of the Adoption of an Interconnection Agreement under Section 252(i) of the Telecommunications Act of 1996.

(b) On October 11, 2005, ALLTEL and US LEC filed a Joint Petition seeking approval to opt into an existing Interconnection Agreement between ALLTEL and Certainty Tech Telecom Agreement that was approved by the Commission by entered on May 10, 2004, at Docket No. A-311283F7004. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on October 22, 2005. 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.

Order Doc. No. 576781v1

Calendar Doc. No. 576790v1

11. MOTION BY: Commissioner Chm. Holländ **Commissioner Shane - Yes**
SECONDED: Commissioner Cawley **Commissioner Pizzingrilli - 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

December 5, 2005

A-310814 F7004

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212 LOCUST STREET
PO BOX 9500
HARRISBURG PA 17108-9500

DOCUMENT
FOLDER


Joint Petition of ALLTEL Pennsylvania, Inc. and US LEC of Pennsylvania, Inc. for Approval of the Adoption of an Interconnection Agreement Under Section 252 (i) of the Telecommunications Act of 1996.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 1, 2005 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

Enclosure
Certified Mail
LJM

RJP

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 1, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

Joint Petition of ALLTEL Pennsylvania, Inc. and
US LEC of Pennsylvania, Inc. for Approval of
the Adoption of an Interconnection Agreement
under Section 252(i) of the Telecommunications
Act of 1996

A-310814F7004

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition filed by ALLTEL Pennsylvania, Inc. (ALLTEL) and US LEC of Pennsylvania, Inc. (US LEC) requesting approval of an Interconnection Agreement by means of the adoption of an existing Interconnection Agreement between ALLTEL and Certainty Tech Telecom, LLC (Certainty). 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* (Order entered on September 9, 1996); and *Proposed Modifications to the Review of Interconnection Agreements* (Order entered on May 3, 2004). (*Implementation Orders*).

History of the Proceeding

On October 11, 2005, ALLTEL and US LEC filed the instant Joint Petition requesting approval to opt into an existing Agreement between ALLTEL and Certainty Agreement that was approved by the Commission by Order entered on May 10, 2004, at Docket No. A-311283F7004. The Agreement provides for the interconnection of the two Companies' networks. The Commission published notice of the Joint Petition and the instant Agreement in the *Pennsylvania Bulletin* on October 22, 2005, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement has an effective date of the date on which the Commission approves it. The Agreement shall terminate simultaneously with the termination of the Agreement between ALLTEL and Certainty.

ALLTEL is an Incumbent Local Exchange Carrier (ILEC) certificated to provide local exchange telephone service in Pennsylvania. US LEC is certificated as a Reseller, an Interexchange Carrier and a Competitive Local Exchange Carrier in Pennsylvania.

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:

- (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 –
 - (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

Regarding the availability of Interconnection Agreements to other telecommunications carriers, Section 252(i) of TA-96 provides that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The FCC subsequently changed its interpretation of Section 252(i) of TA-96, and its rule 47 C.F.R. § 51.809. *See* CC Docket No. 01-338, rel. July 13, 2004 (2004 FCC LEXIS 3841). The FCC has now adopted an “all-or-nothing rule” that requires a

requesting carrier to adopt the agreement in its entirety, taking all rates, terms and conditions from the adopted agreement. The revisions were published in the *Federal Register* on July 22, 2004, and became effective on August 23, 2004.

With these criteria in mind, we shall review the Agreement submitted by ALLTEL and US LEC.

B. Summary of Terms

In their Joint Petition, ALLTEL and US LEC agree that US LEC will exercise its right under Section 252(i) of TA-96 to adopt the existing Agreement between ALLTEL and Certainty. 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 TA-96. The Parties further aver that the Agreement is consistent with the public interest, convenience, and necessity, as required by Section 252(e) of TA-96.¹

C. Disposition

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving these privately negotiated agreements, including any provisions limiting unbundled access to ALLTEL's network, we express no opinion regarding the enforceability of our

¹ 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, 66 Pa. C.S. §§ 101 *et seq.*, 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.

independent state authority preserved by 47 U.S.C. § 251(d)(3) and any other applicable law.

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 instant Agreement does not discriminate against a telecommunications carrier not a party to the negotiations.

TA-96 requires that the terms of the Agreement be made available for other parties to review. 47 U.S.C. § 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 ALLTEL or US LEC to embody the terms of the Agreement in a filed tariff.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect those obligations of the ILEC 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 ILEC, 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 instant Agreement are consistent with the public interest.

Consistent with our May 3, 2004 Order at Docket No. M-00960799, we shall require that the ILEC file an electronic, true and correct copy of the Interconnection Agreement in “.pdf format” for inclusion on the Commission’s website, within thirty days of the entry date of this Opinion and Order.

Conclusion

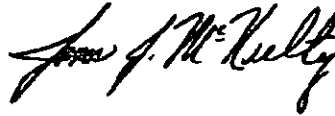
Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Agreement between ALLTEL and US LEC filed on October 11, 2005; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Petition of ALLTEL Pennsylvania, Inc. and US LEC of Pennsylvania, Inc. seeking the approval of the adoption of an existing Interconnection Agreement filed on October 11, 2005, pursuant to the Telecommunications Act of 1996, and the Commission’s Orders 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, is 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 Interconnection Agreement.

3. That ALLTEL Pennsylvania, Inc. shall file an electronic, true and correct copy of the Interconnection 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.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 1, 2005

ORDER ENTERED: **DEC 05 2005**