

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: October 18, 2005	2. BUREAU AGENDA NO. OCT-2005-OSA-0319*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: C.W. Davis 72827 Mgr/Spvr: R. Marinko 3-3930 Legal Review: K. Barrow 772-8840 <i>KMB</i>	October 27, 2005
7. PERSONS IN CHARGE: <i>/ / /</i> G. Strella 7-1023	9. EFFECTIVE DATE OF FILING: November 24, 2005
8. DOCKET NO.: A-310814F7005	

**DOCUMENT
FOLDER**

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

(a) Joint Petition of North Pittsburgh Telephone Company (North Pittsburgh) and US LEC of Pennsylvania, Inc., (US LEC) for Approval of an Interconnection Agreement pursuant to Section 252(e) of the Telecommunications Act of 1996.

(b) On August 26, 2005, North Pittsburgh and US LEC filed the Joint Petition seeking approval of an Interconnection Agreement. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on September 27, 2005. No comments have been received.

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

DOCKETED
NOV 08 2005

Order Doc. No. 566928v1

Calendar Doc. No. 566929v1

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

November 1, 2005

A-310814F7005

PATRICIA ARMSTRONG ESQUIRE
THOMAS THOMAS ARMSTRONG AND NIESEN
SUITE 500 PO BOX 9500
HARRISBURG PA 17108-9500

DOCUMENT
FOLDER

Joint Petition of North Pittsburgh Telephone Company and
US LEC of Pennsylvania, Inc.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on **October 27, 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

rpb
encls
cert. mail

DOCKETED
APR 24 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 27, 2005

Commissioners Present:

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

DOCUMENT
FOLDER

Joint Petition of North Pittsburgh Telephone
Company and US LEC of Pennsylvania, Inc.,
for Approval of an Interconnection Agreement
pursuant to Section 252(e) of the
Telecommunications Act of 1996

A-310814F7005

OPINION AND ORDER

DOCKETED
APR 24 2006

BY THE COMMISSION:

Before the Commission for consideration is the Joint Petition for approval of an Interconnection Agreement (Joint Petition) between North Pittsburgh Telephone Company (North Pittsburgh) and US LEC of Pennsylvania, Inc., (US LEC) 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 *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); *see also Proposed Modifications to the review of Interconnection Agreements* (Order entered on May 3, 2004). (*Implementation Orders*).

History of the Proceeding

On August 26, 2005, North Pittsburgh and US LEC filed the Joint Petition seeking approval of the Agreement. The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on September 27, 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 that the Commission approves it and a termination date one year thereafter. The Agreement shall remain in effect until its termination date, unless it is cancelled earlier by one of the Parties as provided for in the Agreement. Thereafter, the Agreement shall remain in effect, unless cancelled by one of the Parties as provided for in the Agreement. (Agreement at 12-13).

In the Joint Petition before us, North Pittsburgh is the Incumbent Local Exchange Carrier (ILEC) and US LEC is a Reseller and a Competitive Local Exchange Carrier.

A. Standard of Review

The standard for review of a negotiated interconnection agreement is set out 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 shall review the Agreement submitted by North Pittsburgh and US LEC.

B. Summary of Terms

The Agreement contains the terms, rates and conditions for the interconnection of the Parties' local exchange networks for the purpose of transmission and termination of calls, so that customers of each can receive calls that originate on the other's network and place calls that terminate on the other's network. Exhibit A to the Pricing Attachment to the Agreement provides for a recurring tandem switching charge of \$0.002956 per minute of use (MOU) for interstate traffic and \$0.002743 per MOU for intrastate traffic.¹

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.

C. Disposition

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

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 North Pittsburgh and 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(e) of TA-96, *supra*, and our *Implementation Orders*, we determine that the Interconnection Agreement between North Pittsburgh and US LEC is non-discriminatory to other telecommunications companies not parties to it and that it is consistent with the public interest;

THEREFORE,

IT IS ORDERED:

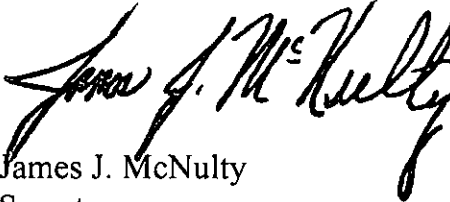
1. That the Joint Petition for approval of an Interconnection Agreement filed on August 26, 2005, by North Pittsburgh Telephone Company and US LEC of Pennsylvania, Inc., pursuant to the Telecommunications Act of 1996, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996); and *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 Interconnection Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the subject Agreement.

3. That North Pittsburgh Telephone Company shall file an electronic, true and correct copy of the Interconnection Agreement in “.pdf format” with this Commission within thirty (30) days of the entry of this Opinion and Order, for inclusion on the Commission’s website.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2005

ORDER ENTERED: **NOV 0 1 2005**