



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

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November 19, 1999

A-310818 F0002

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Joint Petition of Bell Atlantic-Pennsylvania, Inc.
 and HarvardNet, Inc. 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 November 18, 1999 in the above entitled proceeding.

DOCKETED
 DEC 01 1999

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
 James J. McNulty
 Secretary

encls
 cert. mail
 law

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DOCUMENT
 FOLDER

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

Public Meeting held November 18, 1999

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 HarvardNet, Inc. For Approval of an
Interconnection Agreement Under Section 252(e)
of the Telecommunications Act of 1996

A-310818F0002

OPINION AND ORDER

DOCKETED

BY THE COMMISSION:

DEC 01 1999

Before the Commission for consideration is the Joint Petition of Bell Atlantic-Pennsylvania, Inc. (BA-PA) and HarvardNet, Inc. (HarvardNet) 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*).

**DOCUMENT
FOLDER**

History of the Proceeding

On September 22, 1999, BA-PA and HarvardNet 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 HarvardNet 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 October 9, 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 HarvardNet.

B. Summary of Terms

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

The Agreement sets forth the terms, conditions and prices under which BA-PA and HarvardNet 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 HarvardNet networks.
- (2) Customers to retain their telephone numbers when they switch to HarvardNet, 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.
- (3) Including HarvardNet 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.

- (4) The resale of BA-PA telecommunications services for a wholesale discount of 18.43% or 20.69% (depending upon whether HarvardNet provides its own operator services).
- (5) The provision of 911 services to all customers.

BA-PA and HarvardNet 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 HarvardNet 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

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.

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 HarvardNet 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 HarvardNet filed on September 22, 1999; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of Bell Atlantic-Pennsylvania, Inc. and HarvardNet, Inc. seeking the approval of an Interconnection Agreement filed on September 22, 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.

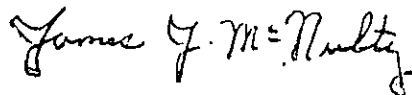
2. That approval of the Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

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: November 18, 1999

ORDER ENTERED: **NOV 19 1999**