

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> June 15, 2004	2. <u>BUREAU AGENDA NO.</u> JUN-2004-OSA-0162*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: R. Albert 7-8108 Legal Review:	June 24, 2004
7. <u>PERSONS IN CHARGE:</u> K. Miceli 7-1888	
8. <u>DOCKET NO.:</u> A-310906F7002	

DOCKETED
JUL 21
JUN 30 2004

**DOCUMENT
FOLDER**

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

(a) Joint Petition of The United Telephone Company of Pennsylvania d/b/a Sprint (Sprint) and ACN Communication Services, Inc.(ACN), for Approval of a Master Interconnection, Collocation, and Resale Agreement (Agreement) under Sections 251(e) and 252(a) of the Telecommunications Act of 1996

(b) On April 28, 2004, Sprint and ACN filed a Joint Petition for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996. Notice of the Joint Petition was published in the Pennsylvania Bulletin on April 24, 2004. No comments were received.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which grants the Joint Petition, thereby approving the Agreement.

10. **MOTION BY:** Commissioner Chm. Fitzpatrick Commissioner Thomas - Yes
 Commissioner Pizzingrilli - Yes
SECONDED: Commissioner Bloom Commissioner Holland - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

June 25, 2004

IN REPLY PLEASE
REFER TO OUR FILE

A-310906F7002

ZSUZSANNA E BENEDEK
SENIOR ATTORNEY
240 NORTH THIRD STREET SUITE 201
HARRISBURG PA 17101

DOCUMENT

Joint Petition of The United Telephone Company of
Pennsylvania d/b/a Sprint and ACN Communication
Services, Inc. for Approval of a Master Interconnection,
Collocation and Resale Agreement Under Sections 251(c)
and 252(a) of the Telecommunications Act of 1996

To Whom It May Concern:

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JUL 08 2004

This is to advise you that the Commission in Public Meeting on June 24, 2004, 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

mk
encls
cert. mail

DAVID STEVANOVSKI
CHIEF OPERATING OFFICER
32991 HAMILTON CT
FARMINGTON HILLS MI 48332

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 24, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland,

DOCKETED
JUL 08 2004

Joint Petition of The United Telephone
Company of Pennsylvania d/b/a Sprint and ACN
Communication Services, Inc. for Approval of a
Master Interconnection, Collocation and Resale
Agreement Under Sections 251(c) and 252(a) of
the Telecommunications Act of 1996

A-310906F7002

OPINION AND ORDER

DOCUMENT

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition, filed by The United Telephone Company of Pennsylvania d/b/a Sprint (Sprint) and ACN Communication Services, Inc. (ACN) for approval of a Master Interconnection, Collocation and Resale Agreement (Agreement). The Joint Petition 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* entered on September 9, 1996). (*Implementation Orders*).

History of the Proceeding

On April 28, 2004, Sprint and ACN filed the Joint Petition for approval of the Agreement. The Agreement sets forth the terms, conditions, and prices under which Sprint and ACN will offer and provide local interconnection, local resale, and the purchase of unbundled network elements and collocation.

The Commission published notice of the Joint Petition, and Agreement in the *Pennsylvania Bulletin* on May 15, 2004, advising that any interested parties could file comments within ten days. ACN received a certificate of public convenience on October 23, 2002, at Docket No. A-310906F0002, to provide services as a facilities based Competitive Local Exchange Carrier (CLEC).

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 telecom-

munications 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 and Amendment No. 1 submitted by Sprint and ACN

B. Timeliness of the Filing

The Agreement Between Sprint and ACN became effective on December 15, 2003. The Agreement was filed with this Commission on April 28, 2004. Therefore, more than five months have elapsed from the time the Agreement became effective until it was submitted to the state Commission for review. Neither TA-96, nor the Federal Communications Commission (FCC) rules interpreting TA-96 provide for the specific time in which the negotiated agreement is to be filed with the Commission. However, we have addressed our expectations regarding the proper time considerations to be observed with regard to negotiated agreements. (*See Implementation Order*, June 3, 1996 Order, slip op., at 33)¹

We remind the Parties that failure to comply with our *Implementation Orders*, as well as this Order, could subject the Parties to civil penalties for violations pursuant to Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301.

¹ “The Act [TA-96] does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed by no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*).

C. Summary of Terms

Under the key provision of the Agreement Sprint will provide to ACN Operator and Directory Assistance services at a resale discount of 15.26% and a discount of 10.87% for all other resold services. (Agreement at 175)

Sprint and ACN aver that the Agreement complies with the criteria identified in TA-96 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 TA-96. 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 Sprint pursuant to Section 252 of TA-96.

The Parties further assert that the Agreement is consistent with the public interest, convenience, and necessity,² as required by Section 252(e) of TA-96. The Agreement will permit ACN to continue providing telecommunications services to its customers.

D. Disposition

We determine that the Agreement complies with the criteria identified in TA-96 at 47 U.S.C. § 252(e)(2)(A) quoted above, pursuant to which we must determine:

² 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 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.

whether to accept or reject the Agreement. We further determine that the Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other telecommunications carrier under § 252(e) of TA-96. Furthermore, we note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Sprint.

We find that the Agreement is an important step towards allowing ACN to compete with Sprint as a local telephone service carrier for both residential and business customers, which is what TA-96 contemplated 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.

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. 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.*):

We note that in approving these privately negotiated agreements, including any provisions limiting unbundled access to Sprint'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 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 instant Agreement does not discriminate against a telecommunications carrier not a party to the negotiations. In this context, we will not require ACN or Sprint to embody the terms of the Agreement in a filed tariff. However, consistent with our May 3, 2004 Order at Docket No. M-00960799, we do require that the incumbent local exchange carrier file a jointly signed, true and correct copy of the interconnection agreement with the Commission, within thirty days after the date that the interconnection agreement is signed for retention in the Commission's official files so that it is available to the public for inspection and copying consistent with the procedures related to public access to documents.

We also require that the incumbent local exchange carrier file an electronic, true and correct copy of the Interconnection Agreement in ".pdf format" for inclusion on the Commission's website. To the extent that a signed, true and correct copy of the interconnection agreement was not filed with the Commission, we shall direct the incumbent local exchange carrier to file a signed, true and correct copy with this Commission within thirty days of the date of this Opinion and Order.

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 TA-96 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 service. (Agreement at 95) We conclude that the Agreement's terms relating to 911 and E911 services are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, we will approve the Agreement and Amendment No. 1 to the Agreement between Sprint and ACN, filed on April 28, 2004; **THEREFORE,**

IT IS ORDERED:

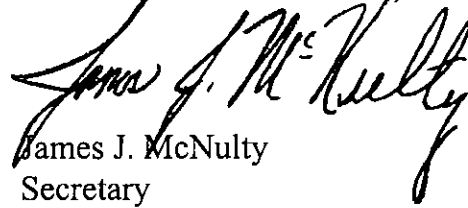
1. That the Joint Petition of The United Telephone Company of Pennsylvania d/b/a Sprint, and ACN Communication Services, Inc. seeking approval of a Master Interconnection, Collocation and Resale Agreement filed on April 28, 2004, pursuant to the Telecommunications Act of 1996, and the Commission's Orders 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) is granted, consistent with this Opinion and Order.

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

3. That the United Telephone Company of Pennsylvania d/b/a Sprint, shall file an electronic 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.

4. That, within thirty (30) days of the date of entry of this Opinion and Order, The United Telephone Company of Pennsylvania d/b/a Sprint shall notify the Commission as to whether the interconnection agreement filed on April 28, 2004, is a signed, true and correct copy. If the Interconnection Agreement filed April 28, 2004 is not a signed, true and correct copy, The United Telephone Company of Pennsylvania d/b/a Sprint is further directed to file a signed, true and correct copy of the Interconnection Agreement 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: June 24, 2004

ORDER ENTERED: JUN 25 2004