



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

REFER TO OUR FILE

AUGUST 22, 1997

A-310482 F7002

DANIEL T DINEEN ESQUIRE
UNITED TELEPHONE COMPANY
1201 WALNUT BOTTOM ROAD
PO BOX 1201
CARLISLE PA 17013-0905

KJR

Joint Application of The United Telephone Company of Pennsylvania, d/b/a Sprint; and Cellular Rentals, Inc. d/b/a Pa. Telecom South for approval of an Interconnection/Resale Agreement under Section 252(e) of the Telecommunications Act of 1996.

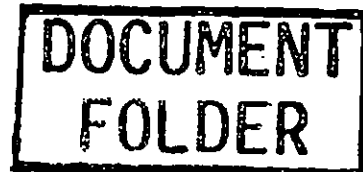
To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on August 21, 1997, in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Acting Secretary



smk
Encls.
Cert.Mail

DOCKETED
AUG 26 1997

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UNITED TELEPHONE COMPANY
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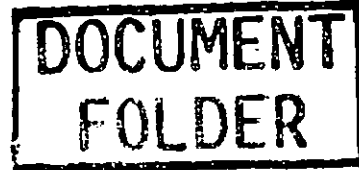
CHAD HAZAM
CELLULAR RENTALS INC
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HARRISBURG PA 17104

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17105-3265

Public Meeting held August 21, 1997 F7002

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom
John Hanger
David W. Rolka
Nora Mead Brownell



Joint Application of The United Telephone Company of Pennsylvania, d/b/a/ Sprint; and Cellular Rentals, Inc. d/b/a/ Pa. Telecom South For Approval of an Interconnection/Resale Agreement Under Section 252 (e) of the Telecommunications Act of 1996.

A-310482

DOCKETED
AUG 26 1997

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Joint Application of The United Telephone Company of Pennsylvania, d/b/a/ Sprint (Sprint or alternately Sprint/United), and Cellular Rentals, Inc. d/b/a/ Pa. Telecom South (Telecom South) for the Approval of an Interconnection/Resale Agreement (Joint Application) filed pursuant to the Telecommunications Act of 1996, 47 U.S.C. §252(e), (Act), 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 April 14, 1997, Sprint and Telecom South filed the Joint Application seeking approval of a Master Resale Agreement dated March 17, 1997 (Agreement). The Agreement sets forth the terms, conditions and prices under which Sprint will offer and provide Telecom South access to telecommunications services available for resale.

The Commission published Notice of the Joint Application and the Agreement in the Pennsylvania Bulletin on June 14, 1997. Pursuant to that Notice comments were due to be filed within twenty (20) 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 out in Section 252(e)(2) of the Act, supra. Section 252(e)(2) 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 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 the foregoing criteria in mind, we shall review the subject Agreement submitted by Sprint and Telecom South.

B. Summary of Terms

In their Joint Application, Sprint and Telecom South aver that:

The Agreement sets forth the terms, conditions and prices under which Sprint will offer and provide wholesale Telecommunications services to Telecom South for resale in Pennsylvania.

(Joint Petition p. 4., ¶ 4)

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

- (1) Customers will retain their current telephone numbers when they switch to Pa. Telecom South, and Sprint/United will install Pa Telecom's customers as quickly as it installs its own end users.
- (2) The resale of Sprint/United telecommunications retail services for an interim wholesale discount of 10.87% for all services except Operator Assistance and directory Assistance for which a 15.26% discount applies;
- (3) Sprint/United will publish Pa. Telecom subscriber listings in its directories covering the scope of Sprint United's local service areas,

- (4) Sprint/United and Pa. Telecom will work jointly to maintain a reliable network.

(Joint Application p. 4, ¶ 5)

Sprint and Telecom South state that the Agreement complies with the Act and our requirements pursuant to Section 252(e)(2)(A) of the Act. This provision of the Act states that such an agreement may be rejected only if we find that the agreement discriminates against a telecommunications carrier not a party to the agreement or is otherwise inconsistent with the public interest, convenience and necessity. The Parties assert that the resale arrangements contained in the Agreement are available to any other telecommunications carrier certified to provide local telephone service in Pennsylvania. Also, other carriers are not bound by the Agreement, but are free to pursue their own negotiated arrangements with Bell. (Joint Application p. 5).

The Agreement will also be available to all local exchange competitors under Section 252(i) of the Act. The Parties assert that the Agreement will facilitate vigorous local telephone service competition, with its promise of new services and lower prices which were anticipated by the Act.

C. Disposition

1. Rural Exemption

Sprint/United is an local exchange carrier authorized to provide local exchange telephone service in Pennsylvania. Sprint/United believes that it falls within the definition of "Rural Telephone Company" under Section 3(37)(D) of the Act because

Sprint/United had less than 15% of its access lines in communities of more than 50,000 on the date of enactment of the Act.

We note here that we have not yet made a formal determination as to "Rural Status" for Sprint/United. See Docket No. M-00960799 (Order on reconsideration entered September 9, 1996).

In our Order on Reconsideration In re: Implementation of the Telecommunications Act of 1996, slip op. at 12, it states:

The actual provision of service [within an RTC service area] by the applicant cannot occur until the Commission makes the required finding that the request for interconnection would not be 'unduly economically burdensome, is technically feasible and is consistent with Section 254 (other than subsections (b) and (c)(1)(D) thereof)'. [See Section 251(f)(1)(A).]

Sprint/United states that in order to allay any concerns and uncertainty surrounding the Commission's obligation under Section 251(f)(1)(B) related to this matter, and to avoid the Commission's need to make a 251(f)(1)(B) finding pursuant to our Order on Reconsideration, Sprint/United, as a rural telephone company, does not intend to assert or rely upon its Section 251(f) exemption from the Section 251(c) obligations arising under the Act. However, Sprint/United is not waiving any claim that it is a rural telephone company for any other purpose under the 1996 Act. (Emphasis Sprint/United).

This is the first opportunity for the Commission to address competitive entry into Sprint/United's territory. With this in mind, Sprint/United recommends that this Commission adopt the following language in its order approving this Agreement:

Sprint/United, as rural telephone company, has advised this Commission that it does not intend to assert or rely upon its Section 251(f) exemption from Section 251(c) obligations under the Act. However, Sprint/United is not waiving any claim that it is a rural telephone company for any other purposes under the 1996 Act. Accordingly, in approving this Agreement or Pa. Telecom's Application to provide local exchange resale service, we are not compelled to make a Section 251(f)(1)(B) finding pursuant to page 12 of our Order on Reconsideration, In re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799 (September 9, 1996)

On review of the above-quoted language, we find that said language is appropriate and we shall adopt the same in our Opinion and Order approving the instant Agreement. Sprint/United's status as "Rural Telephone Company" (RTC) is not, therefore, adjudicated under the dictates of the Act at this time and neither should our approval of the Agreement be considered dispositive of the issue. Therefore, approval of the instant Agreement is without prejudice to the ultimate determination of Sprint/United's RTC status.

2. The Agreement

On consideration of the Agreement, and the adoption of the above referenced language concerning "Rural Status", we shall approve said Agreement finding that it meets the two-pronged criteria of Section 252 of the Act. We shall minimize the potential for discrimination against other carriers not a party 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.

The Act requires that the terms of the Agreement be made available for other parties to review. However, this availability is only for purposes of full disclosure of the terms and arrangements. The availability 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. On the basis of the foregoing, we find that the Agreement does not discriminate against a telecommunication carrier not a party to the negotiations. In this context, we note that we will not require Sprint to embody the terms of the Agreement in a filed tariff, but will require that it file the Agreement with this Commission. The Agreement shall be retained in the public file for inspection and copying consistent with the procedures relating to public access of documents.

With regard to the public interest element of this matter, we note that a negotiated interconnection agreement shall not affect those obligations of the telecommunication company in the areas of protection of public safety and welfare, service

quality, and the rights of consumers. See, e.g., Section 253(b) of the Act. This is consistent with the Act and the Public Utility Code, Chapter 30, et al., wherein service quality and standards, i.e., universal service, 911, Enhanced 911, and Telecommunications Relay Service are inherent obligations of the Local Exchange Company which continue unaffected by the negotiated agreement. We have reviewed the Agreement's provisions relating to 911 and E911 services and find the Agreement consistent with the public interest.

Based on the foregoing and pursuant to Section 252 of the Act, supra, and our implementation Order, we find that the April 11, 1997 Agreement between Sprint and Telecom South to be non-discriminatory to other telecommunication companies not party to it and that the Agreement is consistent with the public interest; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Application of United telephone Company of Pennsylvania, D/B/A/ Sprint; and Cellular Rentals, Inc. d/b/a/ Pa. Telecom South for Approval of an Resale Agreement filed on April 14, 1997 pursuant to the Telecommunications Act of 1996 and this Commission's June 3, 1996 Opinion and Order in In re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799, be, and is hereby, granted consistent with this Opinion and Order.

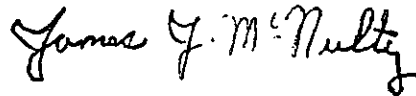
2. That approval of the April 14, 1997 Agreement shall not serve as binding precedent for the negotiated or arbitrated agreements between non-parties to the instant Agreement.

3. That approval of the April 14, 1997 Agreement shall not be construed as a review of Section 271 of the Act.

4. That approval of this Agreement between the parties does not compel the Commission to make a Section 251(f)(1)(B) finding pursuant to page 12 of our Order on Reconsideration, In re; Implementation of the Telecommunications Act of 1996, Docket No. M-00960799 (September 5, 1996)

5. That the parties shall file a true and correct copy of the Agreement with this Commission within 30 days of the entry of this Opinion and Order.

BY THE COMMISSION,



James J. McNulty
Acting Secretary

(SEAL)

ORDER ADOPTED: August 21, 1997

ORDER ENTERED: **AUG 22 1997**