



Robert C. Barber
Senior Attorney

Room 3-D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
INTERNET rbarber@gamgw.attmail.com

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July 7, 1997

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KJR

Mr. James J. McNulty, Prothonotary
Pennsylvania Public Utility Commission
North Office Building - Room B-20
North Street & Commonwealth Avenue
Harrisburg, PA 17120

JUL 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Joint Application of the United Telephone Company of
Pennsylvania and Cellular Rentals, Inc. d/b/a/ Pennsylvania
Telecom South for Approval of an Interconnection/Resale
Agreement Under Section 252(e) of the Telecommunications
Act of 1996 - Docket No. A-310482 F7002

Dear Mr. McNulty:

Enclosed for filing in the above-referenced matter are an original and
three (3) copies of the Comments of AT&T Communications of Pennsylvania,
Inc.

Please do not hesitate to contact me with any questions regarding this
filing.

Very truly yours,

Robert C. Barber

cc: Service List

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF THE
UNITED TELEPHONE COMPANY OF
PENNSYLVANIA AND CELLULAR RENTALS, INC.
d/b/a PENNSYLVANIA TELECOM SOUTH
FOR APPROVAL OF AN INTERCONNECTION/
RESALE AGREEMENT UNDER SECTION 252(e)
OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKETED

JUL 11 1997

Docket No. A-310482

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COMMENTS OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.

JUL 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Given that the Telecommunications Act of 1996 places far less stringent requirements on negotiated (as opposed to arbitrated) interconnection agreements, AT&T Communications of Pennsylvania, Inc. has no reason to object to approval of the negotiated interconnection agreement submitted by United Telephone Company of Pennsylvania ("Sprint/United") and Cellular Rentals, Inc. d/b/a Pennsylvania Telecom South ("Pa. Telecom"). AT&T's position is predicated on two assumptions: (1) that, consistent with the Commission's Opinion and Order approving the Bell Atlantic/MFS negotiated interconnection agreement,¹ Commission approval of the Sprint/United and Pa. Telecom agreement carries no weight as precedent for any other interconnection agreements; and (2) that approval of this agreement will not in any way serve as adjudication or recognition of Sprint/United's claim that it is a "rural telephone company" under 47 U.S.C. §153(r)(47)(D).

¹ Opinion and Order, Docket No. A-310203F0002, October 3, 1996, at 8.

As the Commission has previously recognized, the standards that apply under the Telecommunications Act to a negotiated interconnection agreement are substantially less stringent than those that apply to an arbitrated agreement. Section 252(a) of the Act makes it clear that a negotiated agreement may be entered "without regard to the [interconnection, unbundling, resale and other] standards set forth in subsections (b) and (c) of section 251." Section 252(e)(2) of the Act, in turn, states that the Commission may reject a negotiated agreement only if it finds either "(i) the agreement (or a 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."

Against this minimal standard, AT&T takes no position on the merits of the interconnection agreement between Pa. Telecom and Sprint/United. If the agreement is acceptable to the Sprint/United and Pa. Telecom, then they should be permitted to do business under its terms, assuming that the agreement otherwise meets the nondiscrimination and public interest tests of the Act.

AT&T's position assumes, of course, that approval of the Pa. Telecom and Sprint/United agreement is not a precedent for agreements to be negotiated and/or arbitrated by others. Under the Act, it is clear that each new entrant has the right to negotiate its own arrangements with the incumbent carrier. Such other agreements are sure to vary -- perhaps dramatically -- in their rates, terms and conditions from the agreement between Pa. Telecom and Sprint/United, just as new local exchange carrier entrants will vary markedly by size, by experience, and by the scope of their respective local service business plans. The nondiscrimination and public interest standards for

approval of a negotiated agreement suggest that Congress intended to let interconnection agreements between consenting parties alone, so long as such agreements do not harm others.

Thus, the Pa. Telecom and Sprint/United agreement should not serve in any way as a precedent for any subsequent interconnection agreements. The Commission recognized this important principle when it approved, with modification, the negotiated interconnection agreement between Bell Atlantic-Pennsylvania, Inc. and MFS Intelenet of Pennsylvania, Inc., holding that Commission approval of a negotiated agreement "shall not serve as precedent for agreements to be negotiated or arbitrated by other parties."²

It also clearly should not serve as any final adjudication on the issue whether Sprint/United falls within the definition of "rural telephone company" set forth in Section 153(r)(47)(D) of the Telecommunications Act. In this regard, the joint application submitted with the interconnection agreement asserts that "Sprint/United falls within the definition of 'Rural Telephone Company'" set forth in the Act.³ However, as the Commission is aware, Sprint/United's status as a rural carrier has not been definitively established by this Commission, and, indeed, under the Commission's application of the Act, remains in serious doubt.⁴

² Opinion and Order, Docket No. A-310203F0002, October 3, 1996, at 8.

³ Joint Application at 2.

⁴ ALLTEL Pennsylvania, Inc., like Sprint/United, is the only other carrier of which AT&T is aware whose claimed status as a "rural telephone company" under 47 U.S.C. §153(r)(47)(D) has not yet been resolved by the Commission.

Specifically, the section of the Telecommunication Act of 1996 under which Sprint/United claims classification as a rural carrier limits that designation to companies that have less than 15 percent of their access lines "in communities of more than 50,000. . . ."⁵ For purposes of applying this provision, the Commission adopted the broad definition of "community" that is set forth in the Community Economic Recovery Program Act:⁶

a municipality, including counties, cities, boroughs, incorporated towns, townships, home rule municipalities and councils of local government.⁷

By its terms this definition is not limited to minor civil divisions, but extends to geographic and governmental areas as large as counties.

There is no question that Sprint/United provides service in counties that exceed 50,000 in population. Indeed, Sprint serves no less than three counties (Cumberland, Franklin, and Adams) that exceed this population threshold. Accordingly, that company cannot simply define itself as an rural telephone company on the ground that its serves no "community" with a population of over 50,000.

Of course, providing service in a county of over 50,000 does not automatically disqualify Sprint/United from rural status under Section 153(r)(47)(D). However, to obtain such status that company must show that no more than 15 percent of its access lines are in any such county. If the company cannot make such a showing, it cannot be deemed to be a rural company under the Act.

⁵ 47 U.S.C. §153(r)(47)(D).

⁶ Order on Reconsideration, Docket No. M-00960799, September 9, 1996, at 10.

⁷ 73 Pa. C.S. §399.2 (emphasis supplied).

Accordingly, until Sprint/United submits additional information to the Commission in support of its request for rural status setting forth: (1) its total number of access lines in Pennsylvania and (2) the total number of access lines in each county in which the companies provide service, it cannot properly be determined to be a rural carrier. It is only from this information the Commission can then properly conclude whether Sprint/United meets the standards for rural telephone company classification under Section 153(r)(47)(D). Because it has not submitted such information here -- and, indeed, because this application would not be a proper vehicle for making that determination -- the Commission should clarify that any approval of the Sprint/United and Pa. Telecom interconnection agreement does not serve as a determination concerning Sprint/United's claim for "rural telephone company" status under the Act.

ACCORDINGLY, AT&T respectfully requests that the Commission explicitly recognize that the rates, terms and conditions of this agreement establish no precedent for other interconnection agreements that may be submitted by other parties under Section 252 of the Act for mediation, arbitration or approval, and that any approval of this agreement shall not serve as a final determination of Sprint/United's claim for recognition as a "rural telephone company" under 47 U.S.C. §153(r)(47)(D).

Respectfully submitted,

**AT&T COMMUNICATIONS
OF PENNSYLVANIA, INC.**



Robert C. Barber
3033 Chain Bridge Road
Oakton, Virginia 22185
(703) 691-6061

Dated: July 7, 1997

Certificate of Service

Docket No. A-310482

The undersigned hereby certifies that a true and correct copy of the Comments of AT&T Communications of Pennsylvania, Inc. was caused to be served upon the persons listed below in accordance with the requirements of 52 Pa. Code Section 1.56(a) of the Commission's rules.

*Daniel T. Dineen, Esq.
The United Telephone Co. of PA
1201 Walnut Bottom Road
Carlisle, PA 17013

*Glenn S. Richards, Esq.
Fisher, Wayland, Cooper, Leader and
Zaragoza L.L.P.
Suite 400
2001 Pennsylvania Avenue, N.W.
Washington, DC 20036

#Bernard A. Ryan, Jr., Esq.
Office of Small Business Advocate
Commerce Building - Suite 1102
300 N. Second St.
Harrisburg, PA 17101

#Irwin A. Popowski, Esq.
Craig Burgraff, Esq.
Office of Consumer Advocate
1425 Strawberry Sq.
Harrisburg, PA 17120

#Kandace F. Melillo, Esq.
Office of Trial Staff
PA Public Utility Commission
901 North Seventh Street - Rear
Harrisburg, PA 17102



Robert C. Barber

Dated: July 7, 1997

*Via Federal Express
#U.S. Mail