

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: July 5, 2005	2. BUREAU AGENDA NO. JUL-2005-OSA-0234*
3. BUREAU: Office of Special Assistants	5. PUBLIC MEETING DATE: July 14, 2005
4. SECTION(S):	
6. APPROVED BY: Director: C.W. Davis <i>7-1827</i> Mgr/Spvr: Legal Review: K. Barrow <i>772-8840</i> <i>KMB</i>	
7. PERSONS IN CHARGE: G. Stella <i>7-1023</i>	9. EFFECTIVE DATE OF FILING: August 29, 2005 <div style="text-align: center;">DOCUMENT FOLDER</div>
8. DOCKET NO.: A-311369F7003	

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

(a) Joint Petition of Commonwealth Telephone Company (Commonwealth) and Americell PA-3 L.P. (Americell) for Approval of a Negotiated Interconnection Agreement Under Sections 252(a)(1) and 252(e) of the Telecommunications Act of 1996

(b) On May 31, 2005, Commonwealth and Americell filed the instant Joint Petition seeking approval of a commercial mobile radio services Agreement for interconnection and traffic interchange. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on June 25, 2005. No comments have been received.

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

DOCKETED
JUL 20 2005

Order Doc. No. 551652v1

Calendar Doc. No. 551657v1

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|---|---|
| 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

JULY 22, 2005

A-311369F7003

NORMAN JAMES KENNARD ESQUIRE
HAWKE MCKEON SNISCAK & KENNARD LLP
100 NORTH TENTH STREET
PO BOX 1778
HARRISBURG PA 17105-1778

DOCUMENT
FOLDER

Joint Petition of Commonwealth Telephone Company and Americell PA-3L.P. for approval of a negotiated Interconnection Agreement under Section 252(a)(1) and 252(e) of the Telecommunications Act of 1996.

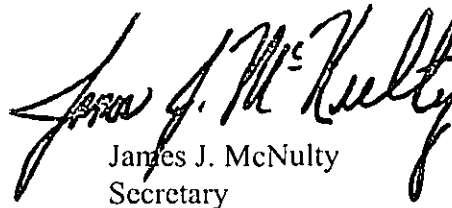
To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on July 14, 2005 has adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

DOCKETED
AUG 26 2005


James J. McNulty
Secretary

fg
encls
cert. mail

SCOTT BURNSIDE SR VP
INDUSTRY AND GOVERNMENT AFFAIRS
100 CTE DRIVE
DALLAS PA 18612

DAVID P TEWS VP
23 NORTH MAIN STREET
MANSFIELD PA 16933

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 14, 2005

Commissioners Present:

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

Joint Petition of Commonwealth Telephone
Company and Americell PA-3 L.P. for Approval of
a Negotiated Interconnection Agreement Under
Sections 252(a)(1) and 252(e) of the
Telecommunications Act of 1996

A-311369F7003

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Joint Petition filed by Commonwealth Telephone Company (Commonwealth) and Americell PA-3 L.P. (Americell) requesting approval of a commercial mobile radio services (CMRS) Interconnection and Traffic Interchange Agreement (Agreement). The Agreement 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* (Order entered on September 9,

1996); *Proposed Modifications to the review of Interconnection Agreements* (Order entered on May 3, 2004). (*Implementation Orders*).

History of the Proceeding

On May 31, 2005, Commonwealth and Americell filed the instant Joint Petition seeking approval of a CMRS Agreement for interconnection and traffic interchange. The Commission published notice of the Joint Petition and the instant Agreement in the *Pennsylvania Bulletin* on June 25, 2005, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement has an effective date of May 10, 2005, and a termination date of May 9, 2008. Thereafter, the Agreement will remain in effect, unless terminated by one of the Parties as provided for in the Agreement.

Commonwealth is an incumbent local exchange carrier (ILEC) authorized to provide local exchange telecommunications services in Pennsylvania. Americell is a CMRS licensed by the Federal Communications Commission (FCC) to provide wireless radio and other services.

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 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

B. Summary of Terms

The Agreement sets forth, *inter alia*, terms and conditions related to the types of interconnection that will be available under the Agreement, the use of facilities and services provided by and between the Parties, billing and payment requirements, allowance for interruptions, audit requirements, and charges for facilities and arrangements.

The reciprocal compensation rate for traffic exchanged at the designated points of intersection is \$0.020 per minute of use.

Commonwealth and Americell 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.

C. Disposition

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving these privately negotiated agreements, including any provisions limiting unbundled access to Commonwealth'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 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.

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 Commonwealth or Americell 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 an electronic, true and correct copy of the Interconnection Agreement in “.pdf format” for inclusion on the Commission’s website.

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.

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Agreement between Commonwealth and Americell filed on May 31, 2005; **THEREFORE,**

IT IS ORDERED:

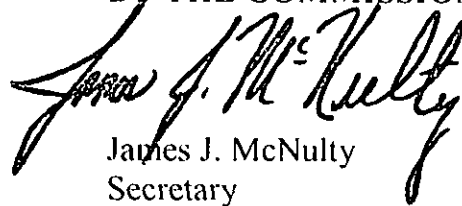
1. That the Joint Petition of Commonwealth Telephone Company and Americell PA-3 L.P. filed May 31, 2005, seeking the approval of the Commercial Mobile Radio Service Interconnection and Traffic Interchange Agreement, pursuant to the Telecommunications Act of 1996, and the Commission's Orders in *Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, entered on June 3, 1996, *Order on Reconsideration* entered on September 9, 1996, and *Proposed Modifications to the Review of Interconnection Agreements* 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 Interconnection Agreement.

3. That Commonwealth Telephone Company 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, Commonwealth Telephone Company shall notify the Commission as to whether the Agreement that was filed on May 31, 2005, is a signed, true and correct copy. If the Agreement is not a signed, true and correct copy, Commonwealth Telephone Company is further directed to file a signed, true and correct copy of the 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: July 14, 2005

ORDER ENTERED: JUL 22 2005