PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

##### Public Meeting held April 15, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Wayne E. Gardner

Robert F. Powelson

|  |  |
| --- | --- |
| Joint Petition of Access Point, Inc. and Windstream Pennsylvania, LLC for  Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996. | A-2010-2157061 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is the Joint Petition of Access Point, Inc. (Access Point) and Windstream Pennsylvania, LLC (Windstream) 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) (TA‑96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission's Orders in *Re: Implementation of the Telecommunications Act of 1996*, Docket No. M‑00960799 (Order entered on June 3, 1996; Order on Reconsiderationentered on September 9, 1996); *see also* *Proposed Modifications to the review of Interconnection Agreements* (Order entered on May 3, 2004) (*Implementation Orders*).

**History of the Proceeding**

On February 5, 2010, Access Point and Windstream filed a Joint Petition seeking approval of the Agreement. The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on February 20, 2010, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement is to become effective on the first business day following receipt of final approval of this Agreement by the Commission. The Agreement will remain in force for an initial term of one year from the effective date of the Agreement, and, thereafter, will remain in effect on a month to month basis, unless terminated or modified pursuant to the terms and conditions of the Agreement. Agreement at 1-2.

Upon the expiration of the initial one-year term or upon termination of the Agreement, either Party may request renegotiation by providing written notice to the other Party. No later than thirty days from receipt of said notice the receiving Party will acknowledge receipt of the written notice and the Parties will commence negotiation which shall be conducted in good faith. Agreement at 2.

In the Joint Petition before us, Windstream is the Incumbent Local Exchange Carrier (ILEC) and Access Point is a Competitive Local Exchange Carrier.[[1]](#footnote-1)

**A. Standard of Review**

The standard for review of a negotiated interconnection agreement is set out in Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2). Section 252(e)(2) 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 that –

(i) the agreement (or portion thereof) discriminates against a telecommu-nications 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 Access Point and Windstream.

#### B. Summary of Terms

The Agreement sets forth the terms, conditions and prices under which Windstream will provide resale services and ancillary functions to Access Point. Access Point will be charged a one-time Master Account Establishment charge of $380 for the establishment of each billing account number. The applicable rules, regulations and rates for Windstream’s resale service will be the same as those contained in its Local Exchange Tariff. Agreement at 23-26.

The Agreement also contains three attachments[[2]](#footnote-2) for Resale service, Definitions and Acronyms. Exhibit 1 attached to the Resale service attachment is a price list for the purchase of Telephone Directories, White Page listing and Information Pages.

**C. Disposition**

We shall approve the Agreement, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving this privately negotiated agreement, including any provisions limiting unbundled access to Windstream’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 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 other telecommunications carriers not parties 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 Windstream and Access Point to embody the terms of the Agreement in a filed tariff.

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.

Before concluding, we note that the Joint Petitioners have filed a signed, true and correct copy of the Agreement as part of their Joint Petition. The Commission’s Secretary’s Bureau has published an electronic copy of the Agreement to the Commission’s website prior to publishing notice of the Agreement in the *Pennsylvania Bulletin*. Consistent with our May 3, 2004 Final Order at Docket No. M‑0960799, since we will approve the Interconnection Agreement without any modifications, as filed, we will not require the Joint Petitioners to file an electronic copy of the Interconnection Agreement after the entry of this Opinion and Order.

**Conclusion**

Based on the foregoing and pursuant to Section 252(e) of TA-96, *supra*, and our *Implementation Orders*, we determine that the Interconnection Agreement between Access Point and Windstream is non-discriminatory to other telecommunications companies not parties to it and that it is consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition of Access Point, Inc. and Windstream Pennsylvania, LLC for Approval of an Interconnection Agreement filed on February 5, 2010, 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); and *Proposed Modifications to the review of Interconnection Agreements* (Order 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 subject Agreement.

3. That this matter be marked closed.



**BY THE COMMISSION,**

## James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: April 15, 2010

ORDER ENTERED: **April 16, 2010**

1. 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, 66 Pa. C.S. §§ 101 *et seq.,* 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. [↑](#footnote-ref-1)
2. The attachments were numbered one to twenty-one but several of them were blank pages marked “Intentionally left blank” on them. [↑](#footnote-ref-2)