**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 9, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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| Joint Petition of Frontier Communications of Pennsylvania, LLC, Frontier Communications of Breezewood, LLC and Comcast Phone of Pennsylvania, LLC for Approval of an Interconnection Agreement Under Section 252(i) of the Telecommunications Act of 1996 | A-2013-2352201 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is a Joint Petition of Frontier Communications of Pennsylvania, LLC, Frontier Communications of Breezewood, LLC (Collectively, Frontier Communications) and Comcast Phone of Pennsylvania, LLC (Comcast), filed on March 11, 2013, for the approval of an Interconnection Agreement (Agreement) in accordance with Section 252(i) of the Telecommunications Act of 1996 (TA-96), 47 U.S.C. § 252(i). 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, 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 June 3, 1996; Order on Reconsideration entered September 9, 1996); *see also* *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (collectively, *Implementation Orders).*

**History of the Proceeding**

On March 11, 2013, Frontier Communications and Comcast filed a Joint Petition seeking approval of the Agreement by means of adoption of an existing Agreement between Frontier Communications and Comcast Business Communications, LLC (Comcast Business) that was approved by Commission Order at Docket No. A‑2008‑2077502, on February 5, 2009 (Existing Agreement). The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on March 23, 2013, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement will become effective upon Commission approval and will remain in effect in accordance with the terms of the Existing Agreement. Agreement at 3.

Frontier Communications is an Incumbent Local Exchange Carrier (ILEC) authorized to provide local exchange telephone services in Pennsylvania and Comcast is authorized to provide Competitive Local Exchange Carrier (CLEC) service in Frontier Communications’ service territory.[[1]](#footnote-1)

**Discussion**

**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. . . .

Regarding the availability of interconnection agreements to other telecommunications carriers, Section 252(i) of TA‑96 provides that:

A local exchange carrier shall make available any inter­connection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the

same terms and conditions as those provided in the agreement.

In 2004, the Federal Communications Commission (FCC) changed its interpretation of Section 252(i) of TA-96, and its rule at 47 C.F.R. § 51.809. *See* FCC Docket No. 01-338, rel. July 13, 2004 (2004 FCC LEXIS 3841). The FCC adopted an “all-or-nothing rule” that requires a requesting carrier to adopt an agreement in its entirety, taking all rates, terms and conditions from the adopted agreement. The revisions were published in the *Federal Register* on July 22, 2004, and became effective on August 23, 2004.

With these criteria in mind, we shall review the Agreement submitted by Frontier Communications and Comcast.

**B. Summary of Terms**

In their proposed Agreement, Frontier Communications and Comcast agree to be bound by the terms of the Existing Agreement between Frontier Communications and Comcast Business that is currently in effect in Frontier Communications’ service territory within the Commonwealth of Pennsylvania. The adoption will substitute Comcast in place of Comcast Business in the terms of the Existing Agreement, where appropriate. Agreement at 1.

In addition to the terms in the Existing Agreement, the Parties also agree to an additional seven points in the Agreement that provide certain clarifications to the Agreement. Agreement at 1-4.

**C. Disposition**

We will 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, 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 the 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*. Based on 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 conditions contained therein. The accessibility of the Agreement and its terms to other parties does not connote any intentthat our approval will affect the status of negotiations between other parties. In this context, we will not require Frontier Communications and Comcast 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 the obligations of the ILEC in the areas of protection of public safety and welfare, service quality, and the rights of consumers. *See, e.g.,* 47 U.S.C. § 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 services and conclude that these provisions of the Agreement are consistent with the public interest.

We note that the Joint Petitioners have filed signed, true and correct copies of the Agreement as part of their Joint Petition. The Commission’s Secretary’s Bureau has published an electronic copy of the Petition to the Commission’s website prior to publishing notice of the Agreement in the *Pennsylvania Bulletin*. Consistent with *Proposed Modifications to the Review of Interconnection Agreements,* Docket No. M‑00960799 (Order entered May 3, 2004), since we will approve the Agreement without any modifications, as filed, we will not require the Joint Petitioners to file an electronic copy of the Agreement after the entry of this Opinion and Order.

# Conclusion

Based on the foregoing and pursuant to Section 252(i) of TA-96, *supra*, and our *Implementation Orders*, we determine that the Agreement between Frontier Communications and Comcast is non-discriminatory to other telecommunications companies and that it is consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition seeking the approval of the Interconnection Agreement, filed on March 11, 2013, by Frontier Communications of Pennsylvania, LLC, Frontier Communications of Breezewood, LLC and Comcast Phone of Pennsylvania, LLC 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**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 9, 2013

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1. We note 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 Comcast 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)