**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 19, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

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| Joint Petition of The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink and Lumos Networks of West Virginia Inc. for Approval of an Interconnection, Collocation, Resale Agreement Under Section 252(i) of the Telecommunications Act of 1996 | A-2013-2388660 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition is the Joint Petition of The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink (CenturyLink) and Lumos Networks of West Virginia Inc. (Lumos Networks) requesting approval of the adoption of an Interconnection, Collocation, Resale 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) (TA-96), 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 October 17, 2013, CenturyLink and Lumos Networks filed the Joint Petition for approval of the Agreement by means of adoption of an existing Interconnection, Collocation, Resale Agreement between CenturyLink and TCG Pittsburgh, Inc. and TCG Delaware Valley, Inc. (collectively, TCG), which was approved on October 17, 2013, at Docket No. A-2013-2381991 (Existing Agreement). The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on November 2, 2013, at 43 *Pa. B*. 6628, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement will become effective on the date of Commission approval; however, the Parties may agree to implement the provisions of the Agreement upon execution by both Parties. Agreement at 2. The Agreement was executed on August 13, 2013, the date upon which the last Party signed the Agreement. The Agreement has an expiration date of April 1, 2014.

CenturyLink is an Incumbent Local Exchange Carrier (ILEC) authorized to provide local exchange telephone service in Pennsylvania. Lumos Networks is a Competitive Local Exchange Carrier (CLEC) in CenturyLink’s 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 CenturyLink and Lumos Networks.

**B.** **Summary of Terms**

In their Joint Petition, CenturyLink and Lumos Networks agree to be bound by the terms of the Existing Agreement that is currently in effect in CenturyLink’s service territory within the Commonwealth of Pennsylvania. The Agreement substitutes Lumos Networks in place of TCG in the terms of the Existing Agreement, where appropriate. Agreement at 2.

**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 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 CenturyLink and Lumos Networks 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 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 CenturyLink and Lumos Networks 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 for approval of the adoption of an Interconnection Agreement filed on October 17, 2013, by The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink and Lumos Networks of West Virginia Inc., 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: December 19, 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 Lumos Networks 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)