**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 5, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley, Concur in Result Only

Pamela A. Witmer

Gladys M. Brown

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| Joint Petition of Verizon Pennsylvania LLC and North Penn Long Distance Corporation d/b/a North Penn Access for Approval of an Interconnection Agreement Under Section 252(i) of the Telecommunications Act of 1996 | A-2014-2414793 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition is the Joint Petition (Joint Petition) of Verizon Pennsylvania LLC (Verizon PA) and North Penn Long Distance Corporation d/b/a North Penn Access (North Penn) requesting approval of the adoption 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 April 4, 2014, Verizon PA and North Penn filed the Joint Petition for approval of the Agreement by means of adoption of an existing Interconnection Agreement between Verizon PA and Transbeam, Inc. (Transbeam), which was approved on March 14, 2013, at Docket No. A-2013-2344581 (Existing Agreement). As part of the Agreement, the Parties have attached a five-page letter, dated January 27, 2014, with an Appendix A, containing additional terms and rates for services that the Parties have agreed to abide by in regard to the adoption of the Existing Agreement. The Commission published notice of the Joint Petition in the Pennsylvania Bulletin on April 19, 2014, at *44 Pa. B. 2494*, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement became effective on January 27, 2014, and will remain in effect pursuant to the terms of the Existing Agreement. The term for the Existing Agreement expires on November 28, 2014.

Verizon PA is an Incumbent Local Exchange Carrier (ILEC) authorized to provide local exchange telephone service in Pennsylvania. North Penn is a Competitive Local Exchange Carrier (CLEC) in Verizon PA’s service territory.

**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* *In the Matter of Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers,* 19 FCC Rcd 13494 (2004). 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. *Id.* at 13494. 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 Verizon PA and North Penn.

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

In their Agreement, Verizon PA and North Penn agree to be bound by the terms of the Existing Agreement. The Agreement substitutes North Penn in place of Transbeam in the terms of the Existing Agreement, where appropriate. The Parties also agree that the adoption of the Existing Agreement does not include adoption of any provision imposing an unbundling obligation on Verizon PA that: (a) is no longer required under the FCC’s Report and Order and Order on Remand (FCC 03-36) released on August 21, 2003, in CC Docket Nos. 01-338, 96-98, 98-147 or the Order on Remand in WC Docket No. 04-313 an CC Docket No. 01-338, released on February 4, 2005; or (b) is otherwise not required by 47 U.S.C. § 251(c)(3) or 47 C.F.R. Part 51. Agreement at 1-2.

The Parties state that the Agreement’s terms are not provided either voluntarily or by a negotiated agreement and that Verizon PA does not waive any rights or remedies it may seek. Additionally, Verizon PA may seek to review the terms or provisions of the adopted Agreement. The Parties further state that the adoption of the Existing Agreement shall not be construed as, nor is it intended to be, a concession or admission by Verizon PA that any provision in the Agreement complies with the rights and duties imposed by TA-96, the decisions of the FCC, the Commission, court decisions, or other law. Agreement at 3.

The Parties also agree that Verizon PA reserves the right to deny North Penn’s application of the terms of the Existing Agreement when the costs of providing the adopted terms to North Penn are greater than the costs of providing them to Transbeam. Verizon PA also reserves the right to deny the provisioning of the adopted terms to North Penn when it is not technically feasible, or if otherwise not obligated under the law. Agreement at 3.

Furthermore, the Parties agree that the adoption of the terms will not result in reciprocal compensation payment for internet traffic, which will be handled pursuant to the FCC’s Order on Remand and Report and Order adopted April 18, 2001, which held that internet traffic constitutes “information access” outside the scope of the reciprocal compensation obligation set forth in 251(b)(5) of TA-96. Agreement at 3-4.

**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 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 do not connote any intentthat our approval will affect the status of negotiations between other parties. In this context, we will not require Verizon PA and North Penn 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 a signed, true and correct copy 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 Verizon PA and North Penn 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 April 4, 2014, by Verizon Pennsylvania LLC and North Penn Long Distance Corporation d/b/a North Penn Access, 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: June 5, 2014

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