**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 5, 2015

Commissioners Present:

Gladys M. Brown, Chairman

John F. Coleman, Jr., Vice Chairman

Pamela A. Witmer

Robert F. Powelson

Andrew G. Place

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| Joint Petition of Windstream Communications of Pennsylvania, LLC and Blue Ridge Digital Phone Company for Approval of an Interconnection Agreement Under Section 252(i) of the Telecommunications Act of 1996 | A-2015-2501649 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition is the Joint Petition (Joint Petition) of Windstream Communications of Pennsylvania, LLC (Windstream) and Blue Ridge Digital Phone Company (Blue Ridge) requesting approval of the adoption of an Interconnection Agreement with amendments (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 September 2, 2015, Windstream and Blue Ridge filed a Joint Petition for approval of an Agreement by means of adoption of an existing Interconnection Agreement (Existing Agreement) between Windstream and Service Electric Telephone Company, LLC (Service Electric), which was approved on October 2, 2014, at Docket No. A‑2014-2436775. As part of the Agreement, the Parties have attached a four-page letter, dated March 31, 2015, containing additional terms and conditions for services by which the Parties have agreed to abide in regard to the adoption of the Existing Agreement. The Commission published notice of the Joint Petition in the Pennsylvania Bulletin on September 19, 2015, at 45 *Pa. B.* 5770, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement will become effective upon approval by the Commission, and shall remain in force during until the term for the Existing Agreement expires. The terms of the Existing Agreement expired at the end of the initial period of two years, but continue to remain in effect on a month-to-month basis in accordance with the terms of the Agreement.

Windstream is an Incumbent Local Exchange Carrier (ILEC) authorized to provide local exchange telephone service in Pennsylvania. Blue Ridge is a Competitive Local Exchange Carrier (CLEC) in Windstream’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 Windstream and Blue Ridge.

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

In their Agreement, Windstream and Blue Ridge agree to be bound by the terms of the Existing Agreement. The Agreement substitutes Blue Ridge in place of Service Electric in the terms of the Existing Agreement, where appropriate. Agreement at 1.

The Parties state that adoption agreement terms are not provided either voluntary or negotiated and that the filing and performance by Windstream of the terms do not in any way constitute a waiver of the rights or remedies it may seek. Additionally, Windstream 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 Windstream that any provision in the Adopted Agreement complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the Court or other law. Windstream expressly reserves its full right to assert and pursue claims arising from, or related to, the adopted Agreement terms. Joint Petition at 6.

The Parties also agree that Windstream reserves the right to deny Blue Ridge’s application of the terms of the Existing Agreement, in whole or in part, when the costs of providing the adopted terms to Blue Ridge are greater than the costs of providing them to Service Electric. Windstream also reserves the right to deny the provisioning of the adopted terms to Blue Ridge when it is not technically feasible, or if otherwise not obligated under the law. Joint Petition at 6.

**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 Windstream and Blue Ridge 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 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 *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 Windstream and Blue Ridge is non-discriminatory to other telecommunications companies not party to it 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 September 2, 2015, by Windstream Communications of Pennsylvania, LLC and Blue Ridge Digital Phone Company, 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 this mater be marked closed

 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 5, 2015

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