**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held December 16, 2021

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| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  John F. Coleman, Jr., Vice Chairman  Ralph V. Yanora |  |
| Joint Petition of Windstream Pennsylvania, LLC, Windstream D&E, Inc., Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc. and Dish Wireless, L.L.C. for Approval of Interconnection Agreements under Section 252(e) of the Telecommunications Act of 1996 | A-2021-3029055 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is a Joint Petition requesting approval of four separate Commercial Mobile Radio Service (CMRS) Interconnection Agreements (Agreements) between: (1) Windstream Pennsylvania, LLC and Dish Wireless, L.L.C.; (2) Windstream D&E, Inc. and Dish Wireless, L.L.C.; (3) Windstream Buffalo Valley, Inc. and Dish Wireless, L.L.C.; (4) Windstream Conestoga, Inc. and Dish Wireless, L.L.C.[[1]](#footnote-1) (collectively, Parties). The Agreements were 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 *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 13, 2021, Windstream Parties and Dish Wireless filed for approval of CMRS Agreements between the Parties. The Commission’s May 3, 2004 *Implementation Order* requires Parties to file signed copies of the Agreements with the Commission within thirty days of their signing. The last Party signed the Agreements on September 30, 2021. Accordingly, the Agreements were filed in accordance with the required thirty-day deadline. Notice of the Joint Petition and the Agreements was published in the *Pennsylvania Bulletin* on October 23, 2021, at 51 *Pa. B*. 6752, advising that any interested parties could file comments concerning the Joint Petition and the Agreements within ten days. No comments have been received.

The Agreements will become effective on the first business day following the Commission’s approval of the Agreements. Agreements at 4. The Agreements will remain in effect for two years from the effective date (Initial Term). Thereafter, the Agreements shall continue in force and effect on a month-to-month basis unless and until terminated in accordance with the terms of the Agreements. Upon the expiration of the Initial Term or any time thereafter, either Party may terminate the Agreements by providing sixty days written notice prior to the date of termination of the Agreements. Agreements at 11-12.

Windstream Parties are Incumbent Local Exchange Carriers (ILECs) certificated to provide telecommunications services in certain exchanges within Pennsylvania and Dish Wireless is certificated by the Federal Communications Commission (FCC) to provide CMRS in parts of Pennsylvania including service territories of Windstream Parties.[[2]](#footnote-2)

**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.

With these criteria in mind, we shall review the Agreements submitted by Windstream Parties and Dish Wireless.

**B. Summary of Terms**

The key provisions of the Agreements are:

(1) The Parties intend to interconnect their facilities and networks for exchanging telecommunications traffic.

(2) The Parties agree to deliver land-to-mobile and mobile-to-land traffic between their networks.

(3) The Parties agree upon the transport and termination of all traffic on a bill and keep basis.

(4) The Parties agree to use an InterMTA[[3]](#footnote-3) traffic factor of 60:40, in favor of Dish Wireless, to estimate the amount of InterMTA traffic. The Parties also agree to 4 percent of total minutes to be billed as access charge.

(5) Dish Wireless shall pay Windstream Parties for Tandem transit service for originating traffic that is transited to third parties using Windstream Parties’ tandem at the rate of $0.0045 for traffic not exceeding 500,000 minutes of use (MOU) per month, and at $0.0055 for traffic exceeding 500,000 MOU per month.

(6) The Parties wish to replace any and all prior interconnection agreements.

Agreements at Preamble and Sections 1, 28, 32, 34-36 and 43.

Windstream Parties made the following representation with regard to 911/E911 call traffic to Public Safety Answering Points (PSAPs): [[4]](#footnote-4)

Both Windstream and Dish Wireless currently route and will continue to route their respective 911/E911 traffic directly to the appropriate selective router or PSAP;

Both Windstream and Dish Wireless already have 911/E911 traffic delivery arrangements in place that do not rely on any interconnection arrangements;

Both Parties will continue to route 911/E911 traffic originated by their respective customers as they do today, in the absence of these Agreements; and

The terms of the Agreements are intended to address traffic originated by Dish Wireless’ end user customers that is destined for termination to Windstream Parties’ end user customers and traffic originated by Windstream Parties’ end user customers that is destined for termination to Dish Wireless’ end user customers.

**D. Disposition**

We shall approve the Agreements, finding that they satisfy the two-pronged criteria of Section 252(e) of TA-96. We note that in approving these privately negotiated Agreements, 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 Agreements by providing here that our approval of these Agreements 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 Agreements do not discriminate against other telecommunications carriers not parties to the negotiations that resulted in the Agreements.

TA‑96 requires that the terms of the Agreements 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 Agreements and their terms to other parties do not connote any intentthat our approval of such Agreements will affect the status of negotiations between other parties. In this context, we will not require Windstream Parties and Dish Wireless to embody the terms of the Agreements in filed tariffs.

With regard to the public interest element of this matter, we note that under Chapter 30 of the Code,[[5]](#footnote-5) a negotiated interconnection agreement does not alter the obligations of any telecommunications carrier with regard to protection of the public safety and welfare, continued service quality, and preservation of the rights of consumers.[[6]](#footnote-6) This is consistent with TA‑96 and Chapter 30, wherein service quality and standards, *e.g.*, Universal Service, 911, Enhanced 911,[[7]](#footnote-7) and Telecommunications Relay Service, are inherent obligations of the telecommunications carriers and continue unaffected by a negotiated agreement. In addition, an ILEC cannot, through the negotiation of an interconnection agreement, eliminate its carrier of last resort obligations.[[8]](#footnote-8)

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

**Conclusion**

Based on the foregoing and pursuant to Section 252(e) of TA‑96 and our *Implementation Orders,* *supra*, we determine that the Agreements between Windstream Parties and Dish Wireless are non-discriminatory to other telecommunications companies not parties to the Agreements and that they are consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for approval of Commercial Mobile Radio Services Interconnection Agreements filed on October 13, 2021, by: (1) Windstream Pennsylvania, LLC and Dish Wireless, L.L.C.; (2) Windstream D&E, Inc. and Dish Wireless, L.L.C.; (3) Windstream Buffalo Valley, Inc. and Dish Wireless, L.L.C.; and (4) Windstream Conestoga, Inc. and Dish Wireless, L.L.C. is granted consistent with this Opinion and Order.

2. That approval of the Agreements shall not serve as binding precedent for negotiated or arbitrated Agreements between non-parties to the Interconnection Agreements.

3. That this matter be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 16, 2021

ORDER ENTERED: December 16, 2021

1. Windstream Pennsylvania, LLC, Windstream D&E, Inc., Windstream Buffalo Valley, Inc. and Windstream Conestoga, Inc (collectively, Windstream Parties) are affiliates of Windstream Corporation that entered into separate interconnection agreement with Dish Wireless, L.L.C. (Dish Wireless). [↑](#footnote-ref-1)
2. In this instance the interconnection agreements are between wireline and wireless carriers. In prior interconnection orders between wireline carriers the Commission has included a notice that all carriers and applicants beginning to provide service in Pennsylvania should not do so without Commission authorization and without complying with applicable provisions to the Public Utility Code (Code) and our Regulations. Although one carrier in these interconnection agreements is a wireless carrier, and the Commission’s regulatory oversight is more circumscribed under the Code and our Regulations, the Commission will preserve its jurisdiction over those areas allowed by law.  [↑](#footnote-ref-2)
3. MTA stands for “Major Trading Area” and is used to identify a calling area of a CMRS provider. InterMTA denotes wireless traffic originating on the network of a Dish Wireless and terminating to a Windstream Parties’ end-user customer, and vice versa. [↑](#footnote-ref-3)
4. Telecommunications carriers operating in Pennsylvania have the inherent obligation to route 911/E911 call traffic to the appropriate PSAP. Staff requested further information regarding the handling of this traffic, which Windstream Parties provided in a December 2, 2021 letter filed with the Commission. [↑](#footnote-ref-4)
5. 66 Pa. C.S. §§ 3011-3019. [↑](#footnote-ref-5)
6. *See, e.g*., 66 Pa. C.S. § 3019(b). [↑](#footnote-ref-6)
7. Both ILECs and wireless carriers are under the affirmative obligation to route 911/E911 call traffic to the appropriate PSAP. In this case, Windstream Parties have represented that both they and Dish Wireless already have in place direct trunking arrangements with PSAPs for handling all their respective 911/E911 call traffic. *See* note 4, *supra*. [↑](#footnote-ref-7)
8. *See, e.g*., Section 253(b) of TA-96. [↑](#footnote-ref-8)