

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Joint Petition of Verizon North LLC and
Windstream Communications, LLC for Approval of an
Interconnection Agreement and Amendment under
Section 252(e) of the Telecommunications Act of 1996

A-2022-3030774

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration is the Joint Petition filed by Verizon North LLC (Verizon North) and Windstream Communications, LLC (Windstream) (collectively, Parties) requesting approval of an Interconnection Agreement (Agreement) and an Amendment thereto. The Agreement and Amendment 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) (*June 1996 Implementation Order*); Order on Reconsideration entered September 9, 1996; *see also Proposed*

Modifications to the Review of Interconnection Agreements (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).

History of the Proceeding

On February 7, 2022, Verizon North and Windstream filed a Joint Petition for approval of an Agreement and an associated Amendment for network interconnection and traffic exchange. The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the Agreement and the Amendment with the Commission within thirty days of its signing. The last Party signed the Agreement on January 28, 2022. The last Party signed the Amendment on January 10, 2022. Accordingly, the Agreement and Amendment were filed in accordance with the required thirty-day deadline. Notice of the Joint Petition, Agreement, and Amendment was published in the *Pennsylvania Bulletin* on February 19, 2022, at 52 *Pa.B.* 1227, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement became effective on January 9, 2022, and shall be effective as of that date and, unless cancelled or terminated earlier in accordance with the terms of the Agreement, shall continue until January 31, 2024 (Initial Term). Thereafter, the Agreement will continue in full force and effect unless and until cancelled or terminated as provided in the Agreement. Under the Agreement, either Party may terminate the Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at ninety days in advance of the date of termination. Agreement at 1-2. The Amendment filed with the Agreement became effective on January 10, 2022. Amendment at 1.

In the Joint Petition before us, Verizon North is the Incumbent Local Exchange Carrier (ILEC). Windstream is certificated as Complete Local Exchange Carrier (CLEC) in Verizon North's service territory.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 telecommunications 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 Agreement and Amendment submitted by Verizon North and Windstream.

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 (Code), 66 Pa. C.S. §§ 101 *et seq.*, if Windstream began offering services or assessing surcharges to end users, where it has not been authorized to provide such services and for which tariffs have not been authorized.

B. Summary of Terms

1. Agreement Terms

The Agreement specifies the rights and obligations of each Party with respect to the establishment of rates, terms and conditions for interconnection and the exchange of Indirect Traffic and Direct Traffic with the other's network.

The Agreement also contains a Glossary and the following seven attachments: (1) Additional Services Attachment; (2) Interconnection Attachment with Exhibit A; (3) Resale Attachment; (4) Network Elements Attachment; (5) Collocation Attachment; (6) 911 Attachment; and (7) Pricing Attachment with Appendix A.

The Pricing Attachment provides that the charges that Windstream bills Verizon North for Windstream's services shall not exceed the charges for Verizon North's comparable services, except to the extent that Windstream's cost to provide its services to Verizon North exceeds the charges for Verizon North's comparable services and Windstream has demonstrated such costs to Verizon North or, at Verizon North's request, to the Commission or the Federal Communications Commission (FCC). Agreement at 131.

Appendix A to the Pricing Attachment contains reciprocal compensation rates of \$0.00 per minute of use for traffic that terminates at an end office and \$0.0047856 per minute of use for tandem transit traffic. Exchange Access Service shall be subject to Verizon North's Interstate and/or Intrastate Access tariff. Appendix A at 115. The wholesale discount offered for resale services will be 22% if Windstream provides its own operator services platform and 18.34% if Windstream uses Verizon North's operator services platform. Appendix A to Pricing Attachment at 1.

2. Amendment Terms

The Parties note that as a result of the FCC's Order, FCC 20-152, *In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services Report and Order* in WC Docket No. 19-308 (*FCC 2020 UNE [Unbundled Network Elements] Order*) related to access to unbundled network elements that was released on October 28, 2020, the FCC has further reduced the obligations of certain price cap ILECs for unbundled loops and resale.² The Parties note that they wish to amend the Agreement in accordance with the *FCC 2020 UNE Order* and agree to do so under the terms and conditions contained in the Amendment. The Parties also note that the Amendment is made without waiving any rights or arguments they may have with respect to whether an amendment is required to effectuate the *FCC 2020 UNE Order* under the existing terms of the agreement. Amendment at 1.

The Agreement is being amended by adding terms and conditions for UNE services as set forth in the Amendment. The revisions include, *inter alia*, Verizon North's discontinuance of services previously provided under Section 251(c) of the Act, subject to FCC-established transition periods: (1) UNE DS1 and DS3 Loops in Competitive Counties (UNE DS1 and DS3 Loops); (2) UNE DS0 Loops and Associated UNE Copper Subloop; (3) Hybrid Loops and UNE Narrowband Voice-Grade Loops;

² The *FCC 2020 UNE Order* eliminates unbundling requirements, subject to a reasonable period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide. The Order also eliminates unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but provides an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by CLECs that may harm customers. In essence, the *FCC 2020 UNE Order* is aimed at ending unbundling and resale requirements where they stifle technology transitions and broadband deployment, but preserves unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans. *FCC 2020 UNE Order* at 2.

(4) Multiunit Premises Subloop; (5) Network Interface Devices; (6) Dark Fiber Transport; (7) Operations Support Systems Functions; and (8) Embedded Base and Replacement Arrangement. Amendment at 3-7.

As a general condition and in line with the *FCC 2020 UNE Order*, Windstream's ability to order new services and retain existing services from Verizon North is altered, as follows:

DS1 and DS3 UNE Loops: Effective February 8, 2021, and subject to a transitional period of 42 months Windstream can no longer obtain new DS1 and DS3 UNE Loops in Competitive Counties. DS1 and DS3 UNEs that would otherwise be available to Windstream under the Agreement, will now be available for installation until February 7, 2023. After February 7, 2023 and February 7, 2024, Verizon North will no longer be providing or maintaining any DS1 and DS3 UNEs, respectively.

Amendment at 3-4.

DS0 UNE Loops and Associated Copper Subloops: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain DS0 UNE Loops and their associated subloops in any Urbanized Census Block. New purchases of DS0 UNE Loops may be made for installations occurring through February 7, 2023. Grandfathered DS0 UNE Loops purchased before February 7, 2023 will continue to be provisioned through February 7, 2025. After February 7, 2025, Verizon North will no longer provide or maintain any DS0 UNE Loop in any Urbanized Census Block. Grandfathered DS0 UNE Loops will be provided at the rates that apply under this agreement through February 7, 2024 and after that at 125% of rates that apply under the Agreement through February 7, 2025.

Amendment at 4.

Hybrid Loops and Grandfathered 64 kbps Voice Grade Channels: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain Hybrid Loops and their associated subloops. Hybrid Loops or Grandfathered 64 kbps Voice-Grade Channels purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon North will no longer provide or maintain any Hybrid Loops or Grandfathered 65 kbps Voice Grade Channels.

Amendment at 4-5.

Multiunit Premises Subloops: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain Multiunit Premises Subloops. Multiunit Premises Subloops purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon North will no longer provide or maintain any Multiunit Premises Subloops.

Amendment at 5.

Network Interface Devices: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain Network Interface Devices. Network Interface Devices purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon North will no longer provide or maintain any Network Interface Devices as UNEs.

Amendment at 5.

Dark Fiber Transport: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain Dark Fiber Transport unless at least one end of the transport route is a Tier 3 wire center that is not an

Alternative Fiber Wire Center. Dark Fiber Transport purchased before February 8, 2021, will continue to be provisioned through February 7, 2029. After February 7, 2029, Verizon North will no longer provide or maintain any Dark Fiber Transport as a UNE.

Amendment at 5-6.

Operations Support Systems Functions: Effective February 8, 2021, and subject to a transitional period, Windstream will no longer be able to obtain Operations Support Systems Functions unless such functions are used to manage other UNEs that remain available from Verizon North, local interconnection, or local number portability.

Amendment at 6.

Embedded Base and Replacement Arrangements: Where Verizon North is permitted to cease providing a UNE under the Amended Agreement and Windstream has not submitted a Local Service Request (“LSR”) or Access Service Request (“ASR”), as appropriate, to Verizon North requesting disconnection of the Discontinued UNE and has not separately secured from Verizon North an alternative arrangement to replace the Discontinued UNE as of the end of the applicable transition period, then Verizon North may disconnect the subject Discontinued UNE without further notice.

Amendment at 6-7.

The Amendment revises the terms of the Agreement to the extent necessary to give effect to the terms of the Amendment. In the event of a conflict between the terms and conditions of the Amendment and the terms and conditions of the Agreement, the terms and conditions of the Amendment shall govern. *See* Amendment at 7.

C. Disposition

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

TA-96 requires that the terms of the Agreement and Amendment 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 Agreement and Amendment and their terms to other parties does not connote any intent that our approval will affect the status of negotiations between other parties. In this context, we will not require Verizon North and Windstream to embody the terms of the Agreement and Amendment in a filed tariff.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement or amendment may affect or eliminate statutory

obligations of telecommunications carriers in the area of protection of the public safety and welfare, service quality, and rights of consumers. *See, e.g.*, Section 253(b). This is consistent with TA-96 and Chapter 30 of the Code,³ wherein service quality and standards, *e.g.*, Universal Service, 911, Enhanced 911,⁴ and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, an ILEC cannot, through the negotiation of an agreement or amendment, eliminate its carrier of last resort obligations.⁵

Before concluding, we note that the Joint Petitioners have filed signed, true and correct copies of the Agreement and Amendment as part of their Joint Petition and that both were filed in accordance with the required thirty-day deadline set forth in the Commission's *Implementation Orders*. Further, the Commission's Secretary's Bureau has published electronic copies of the Agreement and Amendment to the Commission's website prior to publishing notice of those documents in the *Pennsylvania Bulletin*. Consistent with our *May 2004 Implementation Order*, since we will approve the Agreement and Amendment as filed without any modifications, we will not require the Joint Petitioners to file electronic copies of the Agreement and Amendment 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*, we determine that the Agreement and Amendment between

³ 66 Pa. C.S. §§ 3011 *et seq.*

⁴ Both ILECs and CLECs are under the affirmative obligation to route 911/E911 call traffic to the appropriate public safety answering point (PSAP). Although CLECs may have direct trunking arrangements with PSAPs for the handling of 911/E911 call traffic, we note that such traffic is often routed to the PSAP through the switching and trunking facilities of an interconnected ILEC.

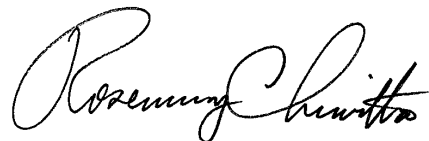
⁵ *See, e.g.*, Section 253(b) of TA-96.

Verizon North and Windstream are non-discriminatory to other telecommunications companies not party to the Agreement and Amendment and that the Agreement and Amendment are consistent with the public interest; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Approval of an Interconnection Agreement filed on February 7, 2022, by Verizon North LLC and Windstream Communications, LLC and the Amendment thereto, is granted consistent with this Opinion and Order.
2. That approval of the Interconnection Agreement and Amendment shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the Interconnection Agreement and Amendment.
3. That this matter be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022