

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

Public Meeting held May 12, 2022

Commissioners Present:

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

Joint Petition of Citizens Telecommunications of New York, Inc., Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC and Frontier Communications of Pennsylvania, LLC and Windstream D&E Systems, Inc. for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996

A-2022-3031301

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration is a Joint Petition filed by Citizens Telecommunications of New York, Inc. (Citizens), Frontier Communications of Breezewood, LLC (Breezewood), Frontier Communications of Canton, LLC (Canton), Frontier Communications of Lakewood, LLC (Lakewood), Frontier Communications of Oswayo River, LLC (Oswayo River) and Frontier Communications of Pennsylvania, LLC (Frontier PA) (collectively, Frontier

Companies) and Windstream D&E Systems, Inc. (Windstream D&E), requesting approval of an Interconnection Agreement (Agreement or Interconnection Agreement).¹

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) (TA-96 or Act), 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 March 4, 2022, Frontier Companies and Windstream D&E (Collectively, Parties) filed the instant Joint Petition for approval of the Agreement for network interconnection and traffic exchange. The Commission's *May 2004 Implementation Order* requires the Parties to file a signed copy of the Agreement with the Commission within thirty days of its signing. The last Party signed the Agreement on February 2, 2022, and the Agreement was filed in accordance with the required thirty-day deadline. Notice of the Joint Petition and the Agreement was published in the *Pennsylvania Bulletin* on March 19, 2022, at 52 *Pa.B.* 1722, advising that any interested parties could file comments concerning the Joint Petition and Agreement within ten days. No comments have been received.

¹ The Frontier Companies are all affiliated subsidiaries of Frontier Communications Corporation and had entered into one Interconnection Agreement with Windstream Communications, LLC and Windstream D&E. However, at the time of its filing the Agreement was severed into two, one pertaining to Frontier Companies and Windstream Communications, LLC and the other pertaining to Frontier Companies and Windstream D&E, with separate docket numbers assigned to them.

The Agreement became effective on December 15, 2021. The Agreement will remain in effect until December 14, 2023 (Initial Term). Thereafter, the Agreement shall continue in force and effect unless terminated earlier in accordance with the terms of the Agreement. Upon the expiration of the Initial Term or any time thereafter, any Party may terminate the Agreement by providing ninety days written notice prior to the date of termination of the Agreement. Agreement at 1-2.

In order to facilitate the adoption of an interconnection agreement by other parties, pursuant to 47 U.S.C. §252(i), it has been the Commission's practice that only one Incumbent Local Exchange Carrier (ILEC) should be party to a single interconnection agreement. To facilitate timely consideration of this Agreement, according to the schedule set forth in TA-96, while also accommodating this practice we shall treat this single Agreement as six separate agreements (pertaining to Citizens, Breezewood, Canton, Lakewood, Oswayo and Frontier PA) for purposes of consideration and disposition here (and, in the future, for purposes of adoption by non-parties).

In the Joint Petition before us, Frontier Companies are the ILECs. Windstream D&E is the Certificated Competitive Local Exchange Carrier (CLEC) in the service territories of Frontier Companies.²

² We note that regardless of the types of services covered by this Amendment, it would be a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq.*, if Windstream D&E 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.

Discussion

A. Standard of Review

The standard for review of a negotiated interconnection agreement is set forth 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) of this section 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 submitted by Frontier Companies and Windstream D&E.

B. Summary of Terms

The Agreement is filed in accordance with Sections 251 and 252 of TA-96, which sets forth the terms, conditions and prices under which Citizens, Breezewood, Canton, Lakewood, Oswayo River and Frontier PA may provide services for network interconnection, and ancillary functions for the exchange of indirect traffic and direct traffic with Windstream D&E's network. The Agreement also sets forth the terms and

conditions under which Windstream D&E will provide services to Frontier Companies where applicable. Agreement at 1, 140.

The Agreement also contain a Glossary and the following eight attachments: (1) Additional Services Attachment; (2) Interconnection Attachment with Exhibit A; (3) Traffic Exchange Attachment; (4) Resale Attachment; (5) Network Elements Attachment; (6) Collocation Attachment; (7) 911 Attachment; and (8) Pricing Attachment with Appendix A.

The Additional Services Attachment details procedures pertaining to Alternate Billed Calls, Dialing Parity, Directory Listing and Distribution services. Frontier Companies will include Windstream D&E's end user primary listings in the appropriate sections of their telephone directories in which Frontier Companies' end user customers are ordinarily included. Agreement at 51-52.

The Interconnection Attachment addresses, *inter alia*, the point of interconnection and interconnection methods. This Attachment also outlines trunking requirements and an alternative interconnection through Fiber Meet arrangement. Agreement at 63-87.

The Resale Attachment provides that Windstream D&E subscribes to Frontier Companies' retail telecommunications services and then re-offers and provides those telecommunications services to the public under Windstream D&E's own company name. Agreement at 91.

The Agreement provides that if Windstream D&E purchases service from Frontier Companies to connect Windstream's switch to Frontier Companies' E911 routers, such service will be provided at applicable tariff rates. For all 911 and E911 call

traffic originating from Windstream D&E's network, Windstream D&E will be responsible for negotiating with the appropriate state or local public safety answering agency to ensure that such 911/E911 call traffic is properly processed and completed. Agreement at 131-139.³

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 \$0.00061854 per minute of use for tandem transit traffic. Exchange Access Service shall be subject to Frontier Companies' Interstate and/or Intrastate Access tariffs. Appendix A at 142.

C. Disposition

We shall 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 telecommunications carriers not parties to the Agreement by providing that our approval of the Agreement 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

³ Each of the Parties will also be responsible for updating the automatic location identification data base associated with the provision of E911 emergency call service.

Agreement does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in the Agreement or to the Agreement.

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 solely for the purpose of full disclosure of the terms and arrangements contained therein. The accessibility of the Agreement and its terms to other parties does not connote any intent that our approval of such Agreements will affect the status of negotiations between other parties. In this context, we will not require Frontier Companies and/or Windstream D&E to embody the terms of the Agreement in filed tariffs.

With regard to the public interest element of this matter, we note that under Chapter 30 of the Code,⁴ 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.⁵ This is consistent with TA-96 and Chapter 30, wherein service quality and standards, *e.g.*, Universal Service, 911, Enhanced 911,⁶ 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.⁷

⁴ 66 Pa. C.S. §§ 3011-3019.

⁵ *See, e.g.*, 66 Pa. C.S. § 3019(b).

⁶ 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 handling of 911/E911 call traffic, we note that such traffic is often routed to the PSAP through switching and trunking facilities of an interconnected ILEC.

⁷ *See, e.g.*, Section 253(b) of TA-96.

Before concluding, we note that the Joint Petitioners have filed a signed true and correct copy of the Agreement as part of their Joint Petition and that the Agreement has been filed within the thirty-day deadline set forth in the Commission's *Implementation Orders*. Further, 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 our *May 2004 Implementation Order*, since we will approve the Agreement as filed, without any modifications, 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(e) of TA-96 and our *Implementation Orders*, we determine that the Interconnection Agreement between Frontier Companies and Windstream D&E is non-discriminatory to other telecommunications carriers not parties to it and that it is consistent with the public interest; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Petition for approval of Interconnection Agreements of (1) Citizens Telecommunications of New York, Inc. and Windstream D&E Systems, Inc.; (2) Frontier Communications of Breezewood, LLC and Windstream D&E Systems, Inc.; (3) Frontier Communications of Canton, LLC and Windstream D&E Systems, Inc.; (4) Frontier Communications of Lakewood, LLC and Windstream D&E Systems, Inc.; (5) Frontier Communications of Oswayo River, LLC and Windstream D&E Systems, Inc.; and (6) Frontier Communications of Pennsylvania, LLC and Windstream D&E Systems, Inc. filed on March 4, 2022, is granted, consistent with this Opinion and Order.

2. That approval of the Interconnection 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,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 12, 2022

ORDER ENTERED: May 12, 2022