



**February 23, 2023**

Re: Docket No. A-2022-3037220 - Joint Petition of Brightspeed of Pennsylvania, LLC f/k/a The United Telephone Company of Pennsylvania LLC and Onvoy Spectrum, LLC for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of an Interconnection Agreement**)

**TO ALL PARTIES OF RECORD:**

**Background**

On December 13, 2022, Brightspeed of Pennsylvania, LLC f/k/a The United Telephone Company of Pennsylvania LLC (Brightspeed) and Onvoy Spectrum, LLC (Onvoy Spectrum) (collectively, Party or Parties) filed a Joint Petition for Approval of a Commercial Mobile Radio Service (CMRS) Interconnection Agreement (Joint Petition) in the above-captioned proceeding.<sup>1</sup> The Interconnection Agreement (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), 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*).<sup>2</sup> *See also Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreements*

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<sup>1</sup> The Transfer of Control of Lumen Technologies, Inc., the parent company of The United Telephone Company of Pennsylvania LLC, to Connect Holding LLC, Brightspeed Pennsylvania, LLC's parent company, was consummated on October 3, 2022. The Agreement was executed on November 16, 2022, subsequent to the Transfer of Control, under the title of The United Telephone Company of Pennsylvania LLC.

<sup>2</sup> Section 252(e) of TA-96 requires that the Commission's review of the Agreement be completed within 90 days of its filing. The Agreement was filed on December 13, 2022, and the statutory deadline for the Commission to approve or disapprove the Agreement is on March 13, 2023.

*Pursuant to 47 U.S.C. § 252(e)(2), et al., Docket No. M-2022-3030709 (Final Order entered June 16, 2022) (June 2022 Modifications Order).*<sup>3</sup>

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the Agreement with the Commission within thirty days of its signing. The last Party signed the Agreement on November 16, 2022. Accordingly, the Agreement was filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on December 24, 2022, at 52 *Pa. B.* 8037, advising that any interested parties could file comments within ten days. No comments have been received.

In the Joint Petition before the Commission, Brightspeed is the Incumbent Local Exchange Carrier (ILEC) and Onvoy Spectrum is authorized by the Federal Communications Commission (FCC) to provide CMRS in parts of Pennsylvania.<sup>4</sup>

### **Standard of Review**

The standard for review of a negotiated interconnection agreement is set out in pertinent part, at Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2), which provides that the state commission may only reject an agreement adopted by negotiation under subsection (a) if it finds that: (1) the agreement discriminates against a telecommunications carrier not a party to the agreement; or (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

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<sup>3</sup> The Commission, through the issuance of the *June 2022 Modifications Order*, revised its practice of considering for disposition at a scheduled Public Meeting voluntarily negotiated interconnection agreements and amendments thereto between telecommunications carriers that are routine, ministerial, and do not involve policymaking considerations. In the *June 2022 Modifications Order*, the Commission determined that such routine, non-policymaking review of Interconnection Agreements will be delegated to Commission Staff to advise the parties of such disposition through the issuance of a Secretarial Letter, which shall have the same legal effect as disposition at Public Meeting.

<sup>4</sup> We note that regardless of the types of services covered by this Agreement, it would be a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq.*, if Onvoy Spectrum 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.

## **Summary of Terms**

The Parties sought approval of the Agreement, which sets forth their respective obligations and the terms and conditions under which the Parties interconnect their respective networks so that customers of each Party can place and receive calls that originate from or terminate to a CMRS carrier which originate on one Party's network and terminate on the other Party's network.

The Agreement will become effective upon the Commission's approval, however the Parties may agree to implement the provisions of the Agreement upon execution by both Parties. The Agreement has an initial term of three years (Initial Term) after execution by both Parties and shall continue in force unless cancelled or terminated earlier in accordance with terms of the Agreement. If neither Party terminates the Agreement as of the last day of the Initial Term, the Agreement shall continue in force and effect on a month-to-month basis. Under the Agreement, either Party may terminate the Agreement effective upon the expiration of the Initial Term by providing written notice of termination ninety days in advance of the termination date. Agreement at 16-17.

The Agreement also contains the following eight Articles: (1) Definitions; (2) General Terms and Conditions; (3) Implementation Article; (4) Operational Terms Article; (5) Interconnection Transport and Terminating Traffic; (6) Additional Services Article; (7) Pricing Article with Table 1 and (8) Miscellaneous Article.

The Parties agree to reciprocally exchange Local Traffic at \$0.00 per minute of use and third party originated traffic at \$0.000348 per minute of use. Table 1.

## **Disposition**

The Commission approves the Agreement, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving this privately negotiated Agreement, the Commission expresses no opinion regarding the enforceability of its independent state authority preserved by Section 251(d)(3) of TA-96, 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 here that our approval of this 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 the Commission's Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* On the basis of the foregoing, the Agreement does not discriminate against other telecommunications

carriers not parties to the negotiations that resulted in the Agreement or to the Agreement itself.

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 the approval of such an agreement will affect the status of negotiations between other parties. In this context, we will not require Brightspeed or Onvoy Spectrum to embody the terms of the Agreement in a filed tariff. In addition, we note that the Parties have filed a signed, true and correct copy of the Agreement as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of the Agreement to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve the Agreement as filed, without any modifications, we will not require the Joint Petitioners to file an electronic copy of the Agreement upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection agreement may affect or eliminate an ILEC's obligations with regard to protection of the public safety and welfare, continued service quality, and preservation of the rights of consumers. *See, e.g.*, Section 253(b) of TA-96. This is consistent with TA-96 and with Chapter 30 of the Code,<sup>5</sup> wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,<sup>6</sup> 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.<sup>7</sup>

### **Conclusion**

Based on the foregoing and pursuant to Section 252(e) of TA-96 and our subsequent orders thereunder, we determine that the Agreement between Brightspeed and Onvoy Spectrum is non-discriminatory to other telecommunications companies not party to the Agreement and that the Agreement is consistent with the public interest. Therefore, we shall grant the Joint Petition of Brightspeed and Onvoy Spectrum for approval of the Interconnection Agreement and mark this docket closed.

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<sup>5</sup> 66 Pa. C.S. §§ 3011-3019.

<sup>6</sup> 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.

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

Any affected party may appeal the staff action (approval or rejection of the Joint Petition under TA-96 standards) to the full Commission by filing a Petition for Appeal from actions of staff pursuant to 52 Pa. Code § 5.44 within twenty (20) days of the date of this Secretarial Letter. Should you have any questions, you may contact the Office of Special Assistants, Kathryn G. Sophy, Director. Please direct your inquiry to (717) 787-1827 or [RA-OSA@pa.gov](mailto:RA-OSA@pa.gov).

Very truly yours,

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary