



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120
March 22, 2023

IN REPLY PLEASE
REFER TO OUR FILE
A-2023-3037592

Re: Docket No. A-2023-3037592 - Joint Petition of Palmerton Telephone Company, Inc. and Teleport Communications America, 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 January 11, 2023, Palmerton Telephone Company, Inc. (Palmerton) and Teleport Communications America, LLC (Teleport) (collectively, Party or Parties) filed a Joint Petition for Approval of an Interconnection Agreement (Joint Petition) in the above-captioned proceeding. 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*).¹ *See also Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreements 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*).²

¹ 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 January 11, 2023, and the statutory deadline for the Commission to approve or disapprove the Agreement is on April 11, 2023.

² 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.

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 December 8, 2022. Accordingly, the Agreement was not filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on January 28, 2023, at 53 *Pa. B.* 688, advising that any interested parties could file comments within ten days. No comments have been received.

In the Joint Petition before the Commission, Palmerton is the Incumbent Local Exchange Carrier (ILEC) and Teleport is certificated as a Competitive Local Exchange Carrier (CLEC) in Palmerton's service territory.³

A. 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.

B. Timeliness of Filing

As indicated above, the Agreement between Palmerton and Teleport was signed on December 8, 2022, and was not filed within the required thirty days. The Agreement was filed on January 11, 2023. A period of thirty-four days has elapsed from the time the Agreement was executed until it was submitted to the Commission for review. Neither TA-96 nor the Federal Communications Commission (FCC) rules interpreting TA-96 provide for the specific time in which the negotiated agreement is to be filed with the state commission. However, we have addressed our expectations

³ 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 Teleport 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.

regarding the proper time considerations to be observed with regard to negotiated agreements. (*See June 1996 Implementation Order*, slip op., p. 33).⁴

We remind the Parties that failure to comply with our Implementation Orders, as well as this Order, could subject the Parties to civil penalties for violations pursuant to Section 3301 of the Code, 66 Pa. C.S. § 3301.

C. Summary of Terms

The Parties sought approval of the Agreement, which sets forth their respective obligations and the terms and conditions under which they will interconnect their respective networks, exchange local traffic and provide other services.

The Agreement became effective on December 7, 2022. The Agreement will have an initial term of two years (Initial Term). The Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Initial Term on a year-to-year basis. Under the Agreement, either Party may terminate the Agreement effective upon the expiration of the Initial Term or any succeeding renewal term by providing written notice of termination ninety days in advance of the termination date. Agreement at 2.

The Agreement also contains the following Articles that delineates the terms and conditions: (1) General Terms; (2) Definitions; (3) Compensation Article with Appendix A; (4) Methods of Interconnection Article; (5) Network Design and Management Article; (6) Interconnection Transport and Terminating Traffic; (7) Local Number Portability Article; and (8) Miscellaneous Article.

The Parties agree to initially exchange ISP-Bound Traffic and Local Traffic indirectly by transiting through a third-party Tandem until the monthly two-way aggregate volume traffic exceeds 400,000 minutes of use for three consecutive months (Direct Connection Threshold). As and when the Direct Connection Threshold is met, and if either Party desires direct interconnection, then direct interconnection shall be mandatory. Agreement at 3.

For Direct Interconnection, Teleport will establish an Interconnection Point (IP) at Palmerton's service territory boundary on Palmerton's network or any technically

⁴ “The Act [TA-96] does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*)

feasible point within Palmerton's service territory. The Parties will make available to each other two-way trunks at the IP(s) for the two-way exchange of Local Traffic and Local Internet Traffic. The Parties agree to deliver only Local Traffic and Local Internet Traffic over the established facilities. Agreement at 3.

The Parties agree that the nature of the Local Traffic to be exchanged between the Parties and all other mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that the relative obligations and consideration are sufficiently in balance between the Parties such that neither Party has any obligation to provide any monetary compensation to the other Party for the other Party's origination or termination of Local Traffic. The Parties acknowledge that under current network and service arrangements, Local Internet Traffic may be switched and transported as if it is Local Traffic. Agreement at 6.

The terms of compensation for Local Traffic do not apply to the following:

- (1) interstate or intrastate Exchange Access or exchange services for Exchange Access;
- (2) intraLATA Toll Traffic or interLATA Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXX) basis;
- (3) Optional Extended Local Calling Area Traffic; (4) Tandem Transit Traffic; and
- (5) any wireless traffic. Agreement at 6.

The Directory Listing Article provides that the Parties acknowledge that Palmerton does not provide Directory Assistance services and does not publish a Directory book for its service area. Nothing in this Agreement shall be construed to prevent Teleport from obtaining Directory Assistance services from any third party. Nothing in this Agreement shall be construed to prevent Teleport from pursuing arrangements with third party publishers of directory books that cover the service area of Palmerton to include Teleport's End User listings in such third party published directory. Agreement at 11.

Each Party is solely responsible for making 911/E911 arrangements to connect to a 911 service provider servicing the PSAP (Public Safety Answering Point). Agreement at 4.

D. 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 Palmerton or Teleport 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,⁵ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁶ 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.⁷

⁵ 66 Pa. C.S. §§ 3011-3019.

⁶ Both ILECs and CLECs are under the affirmative obligation to route 911/E911 call traffic to the appropriate 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.

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

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 Palmerton and Teleport 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 Palmerton and Teleport for approval of the Interconnection Agreement and mark this docket closed.

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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary