



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

IN REPLY,
PLEASE REFER
TO OUR FILE
A-2023-3041874

September 19, 2023

Re: Docket No. A-2023-3041874 – Joint Petition of Windstream Pennsylvania, LLC and Onvoy, LLC for Approval of an Interconnection Agreement, under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Interconnection Agreement and Amendment**)

TO ALL PARTIES OF RECORD:

Background

On July 24, 2023, Windstream Pennsylvania, LLC (Windstream) and Onvoy, LLC (Onvoy) (collectively, Party or Parties) filed a Joint Petition for Approval of an Interconnection Agreement and Amendment No. 1 to the 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 Agreement* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).¹ *See also, Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreement*

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 July 24, 2023, and the statutory deadline for the Commission to approve or disapprove Amendment No. 1 is on October 25, 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).*²

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of Amendments with the Commission within thirty (30) days of their signing. The last Party signed the Agreement on June 29, 2023. 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 July 8, 2023, at 52 *Pa. B.* 3684, advising that any interested parties could file comments within ten (10) days. No comments have been received.

The Agreement became effective on the first business day following receipt of final approval of this Agreement by the relevant state Commission or, where approval by such state Commission is not required, the date that both Parties have executed the Agreement. Agreement at 1. The Parties agree to the provisions of this Agreement for an initial term of two (2) years from the Effective Date of this Agreement, and thereafter on a month-to-month basis, unless terminated or modified pursuant to the terms and conditions of this Agreement. Agreement at 2. Either Party may request for this Agreement to be renegotiated upon the expiration of the initial two (2) year term or upon any termination of this Agreement, except in cases in which this Agreement has been terminated for Default pursuant to Section 4.6. *Id.* The Party desiring renegotiation shall provide written notice to the other Party. Not later than thirty (30) days from receipt of said notice, the receiving Party will acknowledge receipt of the written notice and the Parties will commence negotiation, which shall be conducted in good faith. *Id.* If either Party has requested re-negotiations and the Parties have not executed a Subsequent Agreement or filed arbitration at the applicable state commission, then this Agreement will continue on a month-to-month basis upon the date the arbitration window closes (the 160th day). *Id.* After completion of the initial two (2) year term, this Agreement may be terminated by either Party for any reason not prohibited by law upon sixty (60) days written notice to the other Party. However pursuant to this Section 4.5, if the Parties are exchanging traffic or otherwise operating pursuant to this Agreement, termination of the Agreement can only take place by the effectuation of a Subsequent Agreement. *Id.* By mutual Agreement, the Parties may amend this Agreement in writing to modify its terms. *Id.*

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 (ICA) 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 ICAs 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.

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

Standard of Review

The standard for review of a negotiated interconnection agreement is set out in pertinent part, 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) Agreement or its amendments discriminate against a telecommunications carrier not a party to the amendment; or (2) the implementation of such Agreement or portion is not consistent with the public interest, convenience, and necessity.

Summary of Terms

The Agreement specifies the rights and obligations of each Party with respect to, *inter alia*, the terms of agreement, assignment, payment of rates and late payment charges, dispute resolution, taxes, insurance, force majeure, network maintenance and management.

The Agreement also contains a Glossary and twenty-one (21) attachments most of which were left blank, except for the following: (1) Attachment 4 – Network Interconnection Architecture; (2) Attachment 7 – Collocation; (3) Attachment 12 – Compensation; (4) Attachment 13 – Numbering; (5) Attachment 14 – Numbering Portability; (6) Attachment 18 – Performance Measures; (7) Attachment 9 – Bone Fide Requests; (8) Attachment 20 – Definitions; and (9) Attachment 21 – Acronyms.

The Parties note that the existing agreement has been amended to delete Attachment 7, Intentionally left blank, and replaced in its entirety with the attached, Attachment 7: Collocation, with Exhibit A, Physical Collocation Pricing. Attachment 7 to Amendment No. 1 at 1.

The Collocation Attachment 7 sets forth the rates and terms and conditions upon which Windstream will offer physical collocation to Onvoy. Accordingly, Windstream will allow dedicated space in Windstream's wire Centers to place equipment in such space to interconnect with Windstream's network. Onvoy's collocated space will

³ 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 Onvoy 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.

be separated from other CLECs collocation space and Windstream's space through cages constructed by Windstream. Onvoy will be responsible for the installation, maintenance and repair of its equipment located within the collocated space rented from Windstream. Onvoy shall pay for Collocation Space(s) according to the rates contained in Exhibit A attached to Amendment No. 1.

Disposition

The Commission approves the Agreement and Amendment, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving the privately negotiated agreement, the Commission express 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 Amendment No. 1 by providing here that our approval of Amendment No. 1 shall not serve as precedent for Amendments 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, Amendment No. 1 does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in Amendment No. 1 or to the Agreement.

TA-96 requires that the terms of Amendment No. 1 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 Amendment No. 1 and its terms to other parties do not connote any intent that the approval of Amendment No. 1 will affect the status of negotiations between other parties. In this context, we will not require the Windstream or Onvoy to embody the terms of Amendment No. 1 in filed tariffs. In addition, we note that the Parties have filed signed, true and correct copies of Amendment No. 1 as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of Amendment No. 1 to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve Amendment No. 1 as filed, without any modifications, we will not require the Joint Petitioners to file an electronic copy of Amendment No. 1 upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection amendment may affect or eliminate 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

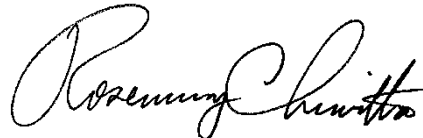
TA-96 and with Chapter 30 of the Code,⁴ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁵ and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, ILECs cannot, through the negotiation of amendments or agreements, eliminate its carrier of last resort obligations.⁶

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96 and our subsequent orders thereunder, we determine that the Agreement 1 between Windstream and Onvoy 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 the Windstream and Onvoy for approval of the 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, Kim Hafner, Acting Director. Please direct your inquiry to (717) 787-1827 or RA-OSA@pa.gov.

Very truly yours,



Rosemary Chiavetta
Secretary

⁴ 66 Pa. C.S. §§ 3011-3019.

⁵ 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.

⁶ *See, e.g.*, Section 253(b) of TA-96.