



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

IN REPLY,  
PLEASE REFER  
TO OUR FILE  
A-2023-3041489

September 21, 2023

Re: Docket No. A-2023-3041489 – Joint Petition of Windstream D&E, LLC and Onvoy, LLC for Approval of an Amendment to Interconnection Agreement, under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Interconnection Amendment**)

**TO ALL PARTIES OF RECORD:**

**Background**

On June 26, 2023, Windstream D&E, LLC (Windstream) and Onvoy, LLC (Onvoy) (collectively, Party or Parties) filed a Joint Petition for Approval of Amendment to Interconnection Agreement (Joint Petition) in the above-captioned proceeding. Amendment 1 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*).<sup>1</sup> *See also, Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreement*

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<sup>1</sup> Section 252(e) of TA-96 requires that the Commission's review of the Amendments be completed within 90 days of its filing. Amendment 1 was filed on June 26, 2023, and the statutory deadline for the Commission to approve or disapprove Amendment 1 is on September 24, 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>2</sup>

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of Amendment 1 with the Commission within thirty (30) days of their signing. The last Party signed Amendment 1 on June 20, 2023. Accordingly, Amendment 1 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 532 *Pa. B.* 3682, advising that any interested parties could file comments within ten days. No comments have been received.

Amendment 1 became effective upon the Parties' signing of Amendment 1 on June 20, 2023. Amendment 1 at 1.

In the Joint Petition before the Commission, Windstream is the ILEC and Onvoy is the CLEC in the Windstream service territory.<sup>3</sup>

### **Standard of Review**

The standard for review of a negotiated interconnection Agreement is set out in pertinent part, in 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 amendment; or (2) the implementation of such Agreement or portion is not consistent with the public interest, convenience, and necessity.

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<sup>2</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>3</sup> 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.

## Summary of Terms

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 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.

Onvoy may terminate occupancy in the Collocation Space upon thirty (30) calendar days' prior written notice to Windstream. Amendment No. 1 at 3.1.

## 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 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,<sup>4</sup> wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,<sup>5</sup> 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.<sup>6</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 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.

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<sup>4</sup> 66 Pa. C.S. §§ 3011-3019.

<sup>5</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>6</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, Kim Hafner, Acting 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, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary