



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

IN REPLY,
PLEASE REFER
TO OUR FILE
A-2023-3042281

November 13, 2023

Re: Docket No. A-2023-3042281 - Joint Petition of Brightspeed of Pennsylvania LLC and Earthgrid PBC for Approval of an Interconnection Agreement, under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Interconnection Agreement**)

TO ALL PARTIES OF RECORD:

Background

On August 16, 2023, Brightspeed of Pennsylvania LLC¹ (Brightspeed PA) and Earthgrid PBC (Earthgrid) (collectively, Party or Parties) filed a Joint Letter-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 Agreement* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).² *See also, Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreement 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*).³

¹ As of October 3, 2022, Brightspeed has acquired the assets and operations of the former The United Telephone Company of Pennsylvania LLC dba CenturyLink. On November 14, 2022, the Commission received the notification of the name change.

² Section 252(e) of TA-96 requires that the Commission's review of the agreements be completed within 90 days of its filing. The Agreement was filed on August 16, 2023, and the statutory deadline for the Commission to approve or disapprove the Agreement is on November 14, 2023.

³ 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

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the agreements with the Commission within thirty days of their signing. The last Party signed the Agreement on July 19, 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 August 26, 2023, at 53 *Pa. B.* 5354, advising that any interested parties could file comments within ten days. No comments have been received.

The Agreement becomes effective upon the Commission's approval; however, the Parties may agree to implement the provisions of the Agreement upon execution by both Parties. Agreement at 18. In the Joint Petition before the Commission, Brightspeed PA⁴ is the Incumbent Local Exchange Carrier (ILEC), and Earthgrid is currently not certificated as a Competitive Local Exchange Carrier (CLEC) but is certificated as a Competitive Access Provider (CAP) in Brightspeed PA's service territory.⁵

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) 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.

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.

⁵ 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 Earthgrid 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. We further note that Agreement states that Brightspeed PA shall have no obligation to perform under the Agreement until the CLEC has obtained Federal Communications Commission's and the Pennsylvania Public Utility Commission's authorization(s) as may be required by applicable law for conducting business in the Pennsylvania as a CLEC. Agreement at 20 Subsection 7.

Summary of Terms

The Agreement specifies the rights and obligations of each Party with respect to the establishment of rates, terms and conditions for interconnection and the exchange of, *inter alia*, Indirect Traffic and Direct Traffic with the other's network.

The Agreement also contains eleven (11) Articles and two Tables. The eleven Articles include the following: (1) Definitions; (2) General Terms and Conditions; (3) Implementation; (4) Operational Terms; (5) Interconnection, Transport and Termination of Traffic; (6) Unbundled Network Elements; (7) Intentionally Left Blank; (8) Additional Services; (9) Collocation; (10) Pricing; (11) Miscellaneous and Table 1 – Rates and Table 2 – Collocation.

The ICA notes that Earthgrid shall pay the charges set forth in the Agreement. Agreement at 45. The pricing for various services and features regarding the network include, *inter alia*, unbundled network elements (UNEs), various types of UNEs, installation, repair, various types of loops, loop conditioning, and various aspects of intercarrier compensation. Table 1 – Rates. The pricing for various services and features regarding collocation including, but not limited to, cross connect facilities, DC/AC power, security cage construction and floor space are set forth in Table – 2 to the Agreement. Table 2 – Collocation.

Disposition

The Commission approves the Agreement, 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 the Agreement by providing here 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 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.

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 do not connote any intent that the approval of such Agreement will affect the status of negotiations between other parties. In this context, we will not require Brightspeed PA to embody the terms of the Agreement in filed tariffs. In addition, we note that the Parties have filed signed, true and correct copies 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 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,⁶ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁷ 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.⁸

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 PA and Earthgrid 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 Letter -Petition of Brightspeed PA and Earthgrid for approval of the Agreement and mark this docket closed.

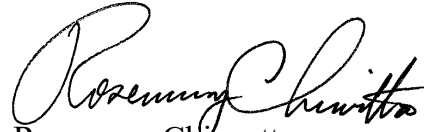
⁶ 66 Pa. C.S. §§ 3011-3019.

⁷ 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.

⁸ *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.

Very truly yours,

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

Rosemary Chivetta
Secretary