

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 16, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Proposed Modifications to the Review
of Voluntarily Negotiated Interconnection Agreements
Pursuant to 47 U.S.C. § 252(e)(2)

M-2022-3030709

Implementation of the Telecommunications Act of 1996

M-00960799

FINAL OPINION AND ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission), through issuance of this Final Opinion and Order, shall modify its current practice of considering for disposition and approval, voluntarily negotiated interconnection agreements and amendments thereto (collectively ICAs) which are filed pursuant to the statutory requirements of the federal Telecommunications Act of 1996 (TA-96), 47 U.S.C. § 252(e)(1). The current practice of Commission consideration and disposition of ICAs at a scheduled Public Meeting shall be revised. Effective upon entry of this Final Opinion and Order, voluntarily negotiated ICAs, that do not involve policymaking considerations, or ICAs that involve routine matters, shall be assigned to a Commission

Bureau with the delegated authority, and the delegated Commission Bureau shall advise the parties of such disposition of the ICA via issuance of a Secretarial Letter.

Background

By Tentative Opinion and Order entered February 24, 2022, in the above captioned dockets (*Tentative Order*) the Commission requested Comments from the stakeholder community of our proposal to modify the practice by which we consider and issue dispositions on voluntarily negotiated ICAs that are filed for state commission approval pursuant to TA-96.¹ The February 24, 2022, *Tentative Order* was published in the *Pennsylvania Bulletin* on March 12, 2022. The Order sought Comments from interested parties concerning the proposal to modify current Commission practice within thirty (30) days of publication. Replies to Comments were due ten (10) days thereafter. *See Tentative Order* at ¶ 3.

Pursuant to the *Tentative Order*, on April 11, 2022, the Commission received Comments: (1) Verizon² and (2) The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink). On April 11, 2022, the Commission received a Letter in lieu of Comments from the Pennsylvania Telephone Association (PTA and PTA Comments). No Reply Comments are noted.³

¹ State commission approval of an ICA, evidenced by the filing of a final, executed ICA with the state commission, is mandatory pursuant to TA-96. *See* TA-96 Section 252(e)(1); 47 U.S.C. § 252(e)(1): “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.”

² Verizon Pennsylvania LLC and Verizon North LLC, collectively.

³ The Commission dockets indicate several “returned mail” notifications from the United States Postal Service for parties appearing on the Commission’s service list of Docket No. M-00960799.

As explained in the *Tentative Order*, prior Commission practice and procedure for consideration and disposition of ICAs filed with the Commission was initially established through our *Implementation Order*, Docket No. M-00960799, and subsequent revisions and modifications to the *Implementation Order*.⁴ Under prior practice, voluntarily negotiated ICAs and amendments were approved through consideration of the item at a scheduled Public Meeting. The ICA was scheduled for consideration and disposition at a Public Meeting after the filing and publication in the *Pennsylvania Bulletin*, of a Joint Petition for approval filed by the incumbent local exchange telecommunications carrier (ILEC) on behalf of itself and the requesting carrier as the negotiating parties. Typically, the requesting carrier is a competitive local exchange carrier (CLEC).

Pursuant to the *Implementation Order*, at 24-34, the Commission acknowledged that the process under which a requesting carrier obtains an ICA with the ILEC proceeds in three phases: (1) negotiations phase; (2) arbitration phase; and (3) adjudication phase. *Id.* at 24. Our *Implementation Order* further acknowledged that with regard to the “adjudication phase,” that “[i]t is clear that the Act [TA-96] envisions that upon resolution of all terms and conditions of interconnection, whether through negotiation and mediation or arbitration, the contracting parties must reduce the agreement to writing and execute the agreement. Pursuant to Section 252(e) [47 U.S.C. § 252(e)], the executed agreement must then be filed with the state commission to conduct the adjudication phase of the proceeding.” *Tentative Order* at 2-3, citing *Implementation Order* at 33.

⁴ See *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996); (*Implementation Order*); also *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order on reconsideration entered September 9, 1996); *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004).

Notwithstanding that the *Implementation Order*, in discussing the relevant time periods for state commissions to act on ICAs, *i.e.*, adjudication phase, referenced approval through issuance of an “order,” in the *Tentative Order* we concluded that the use of the word “order,” in the context of our discussion was ambiguous. *Tentative Order* at 6, citing *Implementation Order* at 34.

Significantly, our *Tentative Order* noted that the current practice and procedure of scheduling voluntarily negotiated ICAs for disposition at Public Meeting has become routine, ministerial and non-policymaking in nature. As the procedure and practice has become routine, ministerial and non-policymaking, the process was a proper candidate for delegation to Commission staff. The *Tentative Order* concluded as follows:

Because the approval of voluntarily negotiated ICAs and amendments thereto pursuant to TA-96, 47 U.S.C. § 252(e)(2), has become routine, ministerial and non-policy making, we propose to delegate authority to a designated Commission bureau to approve the filing. The bureau designated with this authority will prepare a Secretarial Letter determining whether the Joint Petition for approval of the ICA should be approved or rejected under the standards of TA-96 and whether the final ICA should be submitted to the Commission pursuant to 47 U.S.C. § 252(h). That Secretarial Letter will then be forwarded to the Commission’s Secretary’s Bureau for formal issuance in lieu of Public Meeting action. The Secretarial Letter will have the same authority as a Commission order. *See 2013 Delegation Order*, citing *West Penn Power Co. v. Pa. PUC*, 174 Pa.Super. 123, 100 A.2d 110 (1954).

Tentative Order at 7; (note omitted).

Discussion

Consistent with the request in our *Tentative Order*, Comments were received from Verizon, CenturyLink and the PTA. A summary of each Party's comments is provided below.

A. Verizon

In its Comments, Verizon advises that it supports the Commission's proposal. Verizon, as a frequent party to voluntarily negotiated ICAs, and the party that normally files the Joint Petition, agrees with the Commission's conclusion that the process of reviewing these uncontested agreements has, for the most part, become routine, ministerial and non-policy making. Verizon Comments at 2. Verizon believes that the proposed change will appropriately conserve Commission resources to address more pressing matters at Public Meeting and that the delegated bureau will be able to appropriately review and approve these voluntarily negotiated agreements and amendments. *Id.*

Further, notes Verizon, the Commission's proposal contains sufficient safeguards to allow any novel matters of policy or issues resulting from changes in federal law to be reviewed at Public Meeting if either the parties or the delegated bureau find such review to be warranted. Verizon Comments at 2.

B. CenturyLink

CenturyLink supports the Commission's proposal to review and approve voluntarily negotiated ICAs through a Commission bureau with delegated authority. CenturyLink also agrees with the Commission's conclusion that use of delegated authority for voluntarily negotiated ICAs would be consistent with the obligations of

states under TA-96. In this regard, CenturyLink points out that, in some states, voluntarily negotiated ICAs are filed and deemed approved upon the expiration of a certain number of days after filing, assuming no objection or other action occurs. *See* CenturyLink Comments at 2, summarizing procedures in the states of Arizona, Colorado, New Mexico, and North Dakota.

CenturyLink does not see any inconsistencies with the modification proposal set forth in the *Tentative Order* and TA-96. CenturyLink adds that the proposal to review and approve voluntarily negotiated ICAs and ICA amendments via a Secretarial Letter (absent any issues) should help the contracting parties better gauge the timing of Commission action on the ICA. CenturyLink Comments at 2. Also, the proposal is a step to streamlining regulatory processes and thus is welcomed by CenturyLink. *Id.*

In conclusion, CenturyLink commends the Commission for seeking to streamline that portion of its processes related to voluntarily negotiated ICAs and supports the proposal to review and approve voluntarily negotiated ICAs, and amendments thereto, via a Secretarial Letter that will be issued through a Commission bureau with delegated authority. CenturyLink Comments at 2.

C. PTA

The PTA comments that allowing voluntarily negotiated ICAs to be reviewed and approved at the staff level via Secretarial Letter, as opposed to awaiting Public Meeting consideration, is a more efficient process in light of today's routine and noncontroversial nature of the negotiated agreements. The PTA explains that the *Tentative Order* demonstrates a recognition that the Commission is cognizant of the competitive nature of the state's telecommunications industry and the benefits that a streamlined regulatory process offers in this regard.

In conclusion, the PTA comments that the proposed change in internal procedures is an important stepping stone in moving Pennsylvania closer to the modernized regulatory structure for which the PTA has consistently advocated before the Commission. The PTA notes that mutually agreed-to ICAs and subsequent amendments, while required to be filed with the Commission under federal law, need not be subject to a regulatory process that is complicated or elongated.

Disposition

The Public Utility Code, 66 Pa. C.S. § 305(c) (Code), provides in pertinent part, “The commission may appoint, fix the compensation of, authorize and delegate such officers, consultants, experts, engineers, statisticians, accountants, inspectors, clerks and employees as may be appropriate for the proper conduct of the work of the commission”

On consideration of the Comments filed in response to our *Tentative Order*, we shall revise and modify our current practice of consideration and disposition of voluntarily negotiated ICAs at a scheduled Public Meeting. Voluntarily negotiated ICAs submitted for Commission review and approval at the adjudication phase, which are routine and non-policy making shall be assigned to a Commission Bureau with delegated authority. The bureau designated with this authority shall prepare a Secretarial Letter determining whether the Joint Petition for approval of the ICA should be approved or rejected under the standards of TA-96 and whether the final ICA should be submitted to the Commission pursuant to 47 U.S.C. § 252(h). That Secretarial Letter will then be forwarded to the Commission’s Secretary’s Bureau for formal issuance in lieu of Public Meeting action. The Secretarial Letter will have the same authority as a Commission order. *See, West Penn Power Co. v. Pa. PUC*, 100 A.2d 110 (Pa. Sup. Ct. 1954).

Under the revised procedure, due process controls will be maintained. Each Secretarial Letter shall note that an affected party may appeal the staff action (approval or rejection of the ICA 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 after service of notice of the action. Additionally, no other changes to the current practice will be affected. The Joint Petition for approval of the voluntarily negotiated ICA will continue to be published in the *Pennsylvania Bulletin* to allow interested parties to comment as necessary prior to Commission staff action via a Secretarial Letter.

Furthermore, in the event of changes in law or telecommunications policy, primarily emanating from the Federal Communications Commission, the assigned Commission bureau shall exercise discretion and good judgment in determining whether a voluntarily negotiated ICA reflecting such change in law or federal policy, should nevertheless be placed on a Public Meeting agenda.

Conclusion

We conclude that the approval of voluntarily negotiated interconnection agreements under 47 U.S.C. § 252(e)(2), including amendments thereto, has become routine, ministerial, and non-policy making, such that the delegation to a Commission bureau to approve or reject such filing via issuance of a Secretarial Letter in lieu of consideration of the matter at a Public Meeting is advisable. Based on the foregoing, and consistent with the authority of the Commission, pursuant to 66 Pa. C.S. § 305(c), we issue this Final Opinion and Order advising of the modification of the current Commission practice; **THEREFORE,**

IT IS ORDERED: That, effective upon entry of this Final Opinion and Order, voluntarily negotiated Interconnections Agreements and subsequent amendments that do not involve policymaking considerations, or that involve routine matters shall be assigned to a Commission Bureau with delegated authority, and the delegated Commission Bureau shall advise the parties of such disposition of the Interconnection Agreement or Interconnection Agreement amendments via issuance of a Secretarial Letter, consistent with the discussion in this Opinion and Order.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022