State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P. O. BOX 003
TRENTON, NEW JERSEY 08625

CHRIS CHRISTIE
*Governor*

KIM GUADAGNO
*Lt. Governor*

STEFANIE A. BRAND
*Director*

September 18, 2015

**Via Electronic and Regular Mail**
Irene K. Asbury - Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: I/M/O the Joint Petition for Approval of an Interconnection Agreement Between United Telephone Company of New Jersey, Inc., d/b/a/ CenturyLink and Cooperative Communications, Inc.**
**BPU Docket No. TO15070774**

Dear Secretary Asbury:

The New Jersey Division of Rate Counsel ("Rate Counsel") submits its comments for your consideration, on the above-referenced matter, filed by United Telephone Company of New Jersey, Inc., d/b/a/ CenturyLink ("CenturyLink") on behalf of both CenturyLink and Cooperative Communications Inc., ("Cooperative" and/or "CLEC") (collectively "Petitioners"). Petitioners seek approval by the New Jersey Board of Public Utilities ("Board") of an Interconnection Agreement ("Agreement") entered into between Petitioners. After review of the Agreement, Rate Counsel does not object to Board approval of the Petitioners' request, subject to the exceptions discussed below to prevent discriminatory and anti-competitive practices which if permitted violate public interest and the provision of safe, and adequate services at reasonable rates. Enclosed with this original please find ten copies, kindly return a time/date stamp "Filed" copy to Rate Counsel.

Petitioners, CenturyLink, and Cooperative have entered into an agreement which sets forth the terms, conditions, and prices under which Petitioners will offer and provide network interconnection, access to network elements, ancillary network services, and wholesale telecommunications services. The Board may reject the Agreement only if it finds that the Agreement discriminates against other carriers or is not consistent with the public interest, convenience, or necessity.[1] Rate Counsel after review of the terms is satisfied that the terms of the Agreement meet the requirements of Section 252(e) of the Telecommunications Act of

[1] 47 *U.S.C.* 252(e)(2).

Tel: (609) 984-1460 • Fax: (609) 292-2923 • Fax: (609) 292-2954
http://www.nj.gov/rpa E-Mail: njratepayer@rpa.state.nj.us

1996,[2] and accordingly does not object Board approval of the Agreement between CenturyLink and Cooperative subject to consideration of the following specific issues, conditions and recommendations:

Rate Counsel respectfully requests that the Board reject the terms commencing under paragraph 44. subtitled "Security Deposit" of the Agreement's Article III. Implementation Section.

Rate Counsel recognizes that under 47 U.S.C. §252(a)(1), incumbent local exchange carriers ("ILECs") such as CenturyLink may negotiate and enter into binding interconnection agreements with common local exchange carriers ("CLECs") requesting interconnection, service or network elements. However, the terms crafted by the ILEC in said agreements must be forthright, non-abusive and non-discriminatory in application. Rate Counsel submits that the terms contained under Paragraph 44 of the underlying Agreement may (i) discriminate against a telecommunications carrier not a party to the agreement, acting as a barrier to entry for potential competitive providers, and are therefore (ii) not consistent with the public interest, convenience, and necessity, and are therefore, contrary and in violation of 47 U.S.C. §252(e)(2)(A)(ii) of the Act and must be rejected.[3]

Of particular concern under Paragraph 44 are subsections 44.1 through 44.8 and include but are not limited to the following:

- CenturyLink reserves the right to secure the account at any time with a suitable security deposit in the form and amounts set forth herein. If payment of the security is made within thirty (30) Days of the request, CenturyLink may stop processing orders for service and Carrier will be considered in material breach of the Agreement.(Agreement at 44.1)
- CenturyLink may require an increase in the security deposit requirements when, (i) the amount of the deposit currently held by CenturyLink is less than two (2) months' estimated billings, or (ii) when gross monthly billings has increased beyond the level used to determine the security deposit. (Agreement at 44.6)
- Any security deposit shall be held by CenturyLink as a guarantee of payment of any charges for carrier services billed to CLEC pursuant to this Agreement or in connection with any other services provided to CLEC by CenturyLink. CenturyLink may exercise its rights to credit any cash deposit to CLEC's account, or to demand payment from the issuing bank or bonding company of any irrevocable bank letter of credit, upon the occurrence of any one of the following events: (Agreement at 44.7).

---

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act," and all citations to the sections of the Act will be to the Act as it is codified in the United States Code.

3/ 47 U.S.C. §252(e)(2)(A)(ii) establishes a public interest consideration for State commission approval of an interconnection agreement.

- when CLEC's undisputed balances due to CenturyLink are more than thirty (30) Days past due; (Agreement Section 44.7.1.).
- when CLEC files for protection under bankruptcy laws;(Agreement Section 44.7.2.).
- when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) Days; (Agreement Section 44.7.3.).
- when this Agreement expires or terminates; (Agreement Section 44.7.4.).
- when any letter of credit issued hereunder or any bank issuing a letter of credit hereunder (each, a "Letter of Credit Bank") fails to meet the terms, conditions, and requirements set forth in this Section; (Agreement Section 44.7.5.). and/or
- CLEC fails to provide CenturyLink with a replacement letter of credit on the terms set forth herein at least ten (10) Business Days prior to the expiration of any letter of credit issued to CenturyLink hereunder. (Agreement Section 44.7.6.)

- If any security deposit held by CenturyLink is applied as credit toward payment of CLEC's balances due to CenturyLink, then CenturyLink may require CLEC to provide a new deposit. If payment of the new deposit is not made within thirty (30) Days of the request, CenturyLink may stop processing orders for service and CLEC will be considered in breach of the Agreement. (Agreement at 44.8).

These provisions are similar to proposals intended to reduce credit risks that were set for investigation by the FCC in 2002, wherein the FCC whilst recognizing the possibility that incumbent LECs may need to seek more protection from risk of nonpayment than that which was provided by existing tariffs, nevertheless ruled that the level of un-collectibles did not necessarily warrant additional deposit requirements.[4] In particular, the FCC stated:

> "We believe that the criteria listed in the various tariff revisions for triggering an increased deposit, advance payment, or shortened notice period may not be as objective as the incumbent LECs claim. These criteria could be used to disadvantage a competitor vis-à-vis the incumbent LEC's own retail operations, or a large retail end-user customer who purchases interstate access. Broad, subjective triggers that permit the incumbent LEC considerable discretion in making demands, such as a decrease in 'credit worthiness' or 'commercial worthiness' falling below an 'acceptable level,' are particularly susceptible to discriminatory application. We are also concerned by opponents' claims that almost no competitive carrier, including large carriers such as AT&T, would escape a deposit demand triggered by a low, downgraded, or potentially downgraded rating of its debt securities. Opponents further claim that almost all carriers with debt securities ranked below investment grade pay their interstate access bills on

---

4/ *I/M/O Verizon's Petition for Emergency Declaratory and Other Relief: Policy Statement*, WC Docket No. 02-202, at para. 6 (rel. Dec. 23, 2002) ("Policy Statement") citing *Access Tariff Order*, CC Docket No. 83-1145, 97 *FCC* 2d 1082, 1169. *See Policy Statement* at para. 6 and para. 13. The FCC also noted that in many bankruptcy cases involving telecommunications carriers, the courts have used their discretion to treat telecommunications services as administrative expenses receiving priority above all other claims, or require bankrupt carriers to pay a deposit (amounting to one or two weeks of service) or make accelerated or advance payments. Such orders also allow creditors to terminate service to nonpaying customers on short notice. *Policy Statement* at para. 18 (internal citations omitted).

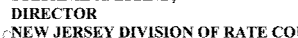
time, and that even bankrupt carriers continue to pay their access bills so that they can continue to serve their customers."5

The proposed terms of paragraph 44 of the underlying Agreement present the possibility of discriminatory application against CLEC carriers, retail services competitors, at the sole discretion of CenturyLink. The terms in the Agreement contain subjective triggers (i.e., "CenturyLink reserves the right" at 44.1, "or other form of security acceptable to CenturyLink" at 44.2; and "CenturyLink may require" at 44.6, that permit CenturyLink great discretion in saddling its CLEC competitor with additional deposit requirements similar to those that were not approved by the FCC.6 Accordingly, Rate Counsel respectfully recommends that the Board exercise their authority under 47 U.S.C. §252(e)(1) and reject these specific provisions of the Agreement as required under 47 U.S.C. §252(e)(2)(A)(ii) of the Act. Rate Counsel believes that continued inattention and inaction by the Board regarding such terms in interconnection agreements as addressed by Rate Counsel above, and in numerous other filings, makes ineffective the intent and purpose of Section 252(e) ultimately to the detriment of New Jersey ratepayers who pay the price in the form of less competition and higher rates. In view of the above, Rate Counsel respectfully recommends, that the Board reject these specific provisions in the CenturyLink/Cooperative Agreement.

Notwithstanding, Rate Counsel notes that the New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, because said competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices."7 Accordingly, Rate Counsel does not object to Board approval of the Interconnection Agreement with the exception of the Paragraphs and subsections addressed by Rate Counsel herein.

Very truly yours,

**STEFANIE A. BRAND,**
**DIRECTOR**
**NEW JERSEY DIVISION OF RATE COUNSEL**

By: 
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/rk
c: Service List

5/ *Policy Statement* at para. 20 (internal citations omitted).
6/ Tariff revisions are generally adopted by the FCC as filed, and are set for investigation only where a potential problem is discerned.
7/N.J.S.A. 48:2-21.16(a)(4) and N.J.S.A. 48:2-21.16(b)(1) and (3).

**I/M/O the Joint Petition for Approval of an Interconnection Agreement Between United Telephone Company of New Jersey, Inc., d/b/a/ CenturyLink and Cooperative Communications, Inc.**
**BPU Docket No. TO15070774**

Irene K. Asbury, Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Irene.asbury@bpu.state.nj.us

Lawanda Gilbert, Director, Cable Telco
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Lawanda.gilbert@bpu.state.nj.us

Harold Bond
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Harold.bond@bpu.state.nj.us

Alan Molner
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Alan.molner@bpu.state.nj.us

Christine Lin
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Christine.lin@bpu.state.nj.us

Jimarli Figueriredo
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Jimarli.figueriredo@bpu.state.nj.us

Rocco Della-Serra
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Rocco.della-serra@bpu.state.nj.us

Zsuzsanna E. Benedek, Esq.
Senior Counsel
United Telephone Company of New Jersey, Inc.
240 North Third Street, Suite 300
Harrisburg, PA 17101
Suc.benedek@centurylink.com

Maria Novas-Ruiz, Esq.
State of New Jersey
Division of Rate Counsel
140 E. Front Street
Trenton, NJ 08625
Mnovas-ruiz@rpa.state.nj.us

Raymond Khan, Legal Assistant
State of New Jersey
Division of Rate Counsel
140 E. Front Street
Trenton, NJ 08625
rkhan@rpa.state.nj.us