



Board of Public Utilities

State of New Jersey

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STEFANIE A. BRAND
Director

February 9, 2016

Via Electronic & Regular Mail

Irene K. Asbury - Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Fl., Ste. 314
P.O. BOX 350
Trenton, New Jersey 08625-0350

**Re: I/M/O Joint Petition of United Telephone Company of
New Jersey, Inc., d/b/a CenturyLink and Broadview
Networks, Inc., for Approval of a Resale.
BPU Docket No. TO15060747**

Dear Secretary Asbury:

The Division of Rate Counsel (“Rate Counsel”) has reviewed the above-captioned filing and herein submits its comments for consideration by the Board of Public Utilities (“Board”) in this matter. In their Petition, United Telephone of New Jersey, Inc., d/b/a/ CenturyLink (“CenturyLink”) and Broadview Networks, Inc., (“Broadview”) collectively (“Petitioners”) seek approval of an Master Resale Agreement (“Agreement”) entered into by Petitioners, which allows Broadview to purchase telecommunications services from CenturyLink on a resale basis. Rate Counsel is satisfied that the Agreement does not discriminate against other carriers and is consistent with the public interest, convenience, and necessity. Accordingly, Rate Counsel does not object to Board approval of the Petitioner’s request subject to the conditions discussed below. Enclosed with this original please find eleven (11) copies. Kindly return a stamped “Received” or “Filed” copy to Rate Counsel for its file.

CenturyLink is a New Jersey corporation, and an authorized incumbent local exchange telephone services provider throughout portions of the State of New Jersey. Broadview is certified to provide telecommunications services in New Jersey as a competitive local exchange carrier (“CLEC”).

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 is satisfied that the terms of the Agreement, except as noted below, meet the

¹/ 47 U.S.C. § 252(e)(2).

Case mgmt
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(a) Summary of Section 44 Provisions

Section 44.1 through 44.10.4 of the Agreement, "Security Deposit," sets forth several obligations that are imposed upon Broadview by CenturyLink under the Agreement. These include but are not limited to the following:

1. CenturyLink may increase the security deposit requirements when, in CenturyLink's reasonable judgment, changes in CLEC's financial status so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit. If payment of the additional security deposit amount is not made within 30 days of the request, CenturyLink may stop processing orders for service and Broadview (hereinafter "CLEC") will be considered in breach of the Agreement. (Agreement Section 44.6).
2. Any security deposit shall be held by CenturyLink as a guarantee of payment of any charges for carrier services billed to CLEC. 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 Section 44.7).
3. When CLEC's undisputed balances due to CenturyLink are more than thirty (30) Days past due; or (Agreement Section 44.7.1).
4. When CLEC files for protection under bankruptcy laws; or (Agreement Section 44.7.2).
5. When an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) Days; (Agreement Section 44.7.3).
6. When this Agreement expires or terminates; (Agreement Section 44.7.4); inclusive of requirements set forth under (Agreement Sections 44.7.5 through 44.9); and
7. 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 Agreement Sections 44.10.1 through 44.10.4; (Agreement Section 44.10).

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requirements of Section 252(e) of the Telecommunications Act of 1996,² and accordingly recommends that the Board approve the Agreement upon consideration of the following specific issues:

Subsequent Board Review of Changes or Amendments

Rate Counsel respectfully recommends that the Board assert its continuing authority over this Agreement, and state specifically in any Order approving the Agreement that any subsequent amendments or modifications to the Agreement shall be subject to review and approval of the Board. The Board has previously adopted this position, which also preserves the function of Section 252(i) of the Act. Section 252(i) entitles a carrier to avail itself of terms and conditions in any approved agreement.³ Without such action taken by the Board, other carriers will not have reasonable notice of any change or revision to the Agreement.

Accordingly, in the interest of preserving the Board's continuing authority over interconnection agreements and the rights of parties under Section 252(i), Rate Counsel recommends that any Board order issued in this matter make clear that any provision of the Agreement that is affected either directly or indirectly by any change or revision in Federal or State law must be approved by the Board in accordance with applicable legal standards.

Section 44 of the Agreement - Security Deposit

Section 44 of the Agreement implicates discriminatory and unjust treatment of competitive carriers, and should therefore be rejected by the Board. Certain provisions in Section 44 of the Agreement warrant Board attention under Section 252(e)(2)(A)(ii)⁴ of the Act. Section 44 of the Agreement could be applied in a manner that is unjust, unreasonable, and discriminatory, and therefore violates the public interest in that it could act as a barrier to entry for competitive providers.

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 / *In the Matters of the Joint Application of Bell Atlantic-New Jersey, Inc. and Focal Communications Corporation of New Jersey for an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996: Order Approving Interconnection Agreement*, BPU Docket No. TM98060367 at p. 4; and under BPU Docket No. TO98121410 both dated (Aug. 18, 1999).

⁴/ 47 U.S.C. 252(e)(2)(A)(ii) establishes a public interest consideration for State commission approval of an interconnection agreement.

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These provisions are similar to Verizon and other tariff revision proposals intended to reduce credit risks that were set for investigation by the FCC and thereafter withdrawn by the companies. With respect to these proposals the FCC stated that it had “serious concerns” about the provisions, and the potential that they could be used against customers in a discriminatory manner. Further, the FCC expressed “concern” about the potential burden that increased deposits and advance payments would impose on interstate access customers. In sum, the FCC recognized the possibility that incumbent LECs may need to seek more protection from risk of nonpayment than what is provided by existing tariffs, but nevertheless ruled that the level of un-collectibles did not necessarily warrant additional deposit requirements.⁴

The broad terms in the instant CenturyLink/Broadview Agreement could result in the imposition of additional deposit requirements on Broadview similar to the tariff revisions proposed and denied at the Federal level by the FCC. The proposed terms of Section 44 of the Agreement present the possibility of discriminatory application against CLEC carriers at the sole discretion of CenturyLink. In the instant Agreement, the terms could be used to discriminate against Broadview, a retail services competitor. In addition, the terms in the Agreement contain subjective triggers (i.e., “CenturyLink reserves the right”) that permit CenturyLink great discretion in saddling its CLEC competitor with additional deposit requirements similar to those that were not approved by the FCC. Rate Counsel submits that the same policy concerns expressed by the FCC in its review warrant rejection by the Board of the similar credit terms in this Agreement, as these terms are contrary to the public interest. Accordingly, Rate Counsel recommends that the Board reject these specific provisions of the Agreement.

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, and found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.” *N.J.S.A.* 48:2-21.16(a)(4) and *N.J.S.A.* 48:2-21.16(b)(1) and (3). Rate Counsel supports the customer benefits that will be realized through the introduction and expansion of competition in

⁴/ *I/M/O Verizon 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. *Policy Statement* at 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).


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New Jersey's telecommunications market. Accordingly, with the conditions set forth above, Rate Counsel does not object to approval of the Agreement.

Very truly yours,

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

By:



Maria T. Novas-Ruiz, Esq.
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c: Service List

**IMO CenturyLink and Broadview
Resale Agreement
BPU Docket No.: TO15060747**

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