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BOARD OF PUBLIC UTILITIES
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State of New Jersey
DIVISION OF RATE COUNSEL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

Via Electronic & Regular Mail

May 11, 2016

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 the Joint Petition of United Telephone of New Jersey, Inc., d/b/a/
CenturyLink and dishNET Wireline, LLC for Approval of a Resale
Agreement. BPU Docket No. TO16050394**

Dear Ms. Asbury:

The Division of Rate Counsel (“Rate Counsel”) has reviewed the above-captioned filing of the United Telephone of New Jersey, Inc., d/b/a/ CenturyLink (“CenturyLink”) and dishNET Wireline, LLC, (“dishNET”) collectively (“Petitioners”) for approval by the New Jersey Board of Public Utilities (“Board”) of a Resale Agreement (“Agreement”) entered into by Petitioners, which allows dishNET to purchase telecommunications services from CenturyLink on a resale basis. Rate Counsel respectfully recommends that the Board approve the Petitioners’ 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 record.

CenturyLink is a New Jersey corporation, and an authorized incumbent local exchange telephone services provider throughout portions of the State of New Jersey. DishNET 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 requirements of Section 252(e) of the Telecommunications Act of 1996,² and accordingly respectfully recommends that the Board approve the Agreement upon consideration of the following specific issues:

^{1/} 47 U.S.C. § 252(e)(2).

^{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.

*Case Mgmt
Not Copied*

Subsequent Board Review of Changes or Amendments

Rate Counsel respectfully recommends that the Board assert its continuing authority over this Agreement,³ and state specifically in its Order approving the Agreement that any subsequent amendments or modifications to the Agreement approved therein shall be subject to review and approval of the Board.⁴ The Board has previously adopted this position,⁵ which also preserves the function of Section 252(i) of the Act. Section 252(i) entitles a carrier to avail itself of terms and condition in any approved agreement. 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 the Board order that any provision of the Agreement that is affected either directly or indirectly by any change or revision in Federal of State law shall be approved by the Board in accordance with applicable legal standards.

Section 44 of the Agreement - Security Deposit

Certain provisions in Section 44 of the Agreement warrant Board attention under Section 252(e)(2)(A)(ii)⁶ of the Act. Section 44 of the Agreement implicate potential discriminatory and unjust treatment of competitive carriers, and violate the public interest in that it could act as a barrier to entry for competitive providers and should therefore be rejected by the Board. These include but are not limited to the following:

Agreement - Section 44.7

Any security deposit shall be held by CenturyLink as a guarantee of payment of any charges for 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

^{3/} See, *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997). State commissions, rather than the Federal Communications Commission, have continuing authority over such agreements. The subsequent history of this case comprises both administrative and judicial decisions: *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753 (1997), cert. granted *AT&T Corp. v. Iowa Utilities Bd.*, 522 U.S. 1089, 118 S.Ct. 879, 139 L.Ed.2d 867 (1998), affirmed in part, reversed in part by *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999), agency opinion after remand, *In Re: the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Order*, CC Docket No. 96-98, 14 FCC Rcd. 5263 (1999), *Iowa Utilities Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir. 2000), cert. granted in part: *Verizon Communications, Inc. v. F.C.C.*, 121 S.Ct. 877 (2001); *WorldCom, Inc. v. Verizon Communications, Inc.*, 121 S.Ct. 877 (2001); *F.C.C. v. Iowa Utilities Bd.*, 121 S.Ct. 878 (2001); *AT&T Corp. v. Iowa Utilities Bd.*, 121 S.Ct. 878 (2001); *General Communications, Inc. v. Iowa Utilities Bd.*, 121 S.Ct. 879 (2001).

^{4/} See *In the Matter 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 (Aug. 18, 1999) at 4.

^{5/} See *I/M/O Joint Application of Bell Atlantic-New Jersey, Inc. and Accelerated Connections, Inc., for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, BPU Docket No. TO98121410 (Aug. 18, 1999).

^{6/} 47 U.S.C. 252(e)(2)(A)(ii) establishes a public interest consideration for State commission approval of an interconnection agreement.

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:

- 44.7.1 - when CLEC's undisputed balances due to CenturyLink are more than thirty (30) Days past due; or
- 44.7.2 - when CLEC files for protection under bankruptcy laws; or
- 44.7.3 - when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) Days;
- 44.7.4- when this Agreement expires or terminates; inclusive of requirements set forth under (Agreement Sections 44.7.5 through 44.9); and
- 44.7.10 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.

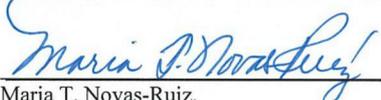
These provisions are similar to other proposals intended to reduce credit risks that were investigated as discriminatory by the FCC and such credit terms warrant review and rejection by the Board herein as these terms are contrary to the public interest and may result in discriminatory practices creating barriers to competitive entry by other service providers. The Agreement contains 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.¹⁷ Accordingly, Rate Counsel recommends that the Board reject these specific provisions of the Agreement.

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."¹⁸ Accordingly, Rate Counsel respectfully recommends approval of the Agreement with consideration of the issues described herein.

Very truly yours,

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

By:



Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/lb
c: Service List

^{17/} Tariff revisions are generally adopted by the FCC as filed, and are set for investigation only where a potential problem is discerned.

^{18/} N.J.S.A. 48:2-21.16(a)(4) and N.J.S.A. 48:2-21.16(b)(1) and (3).

**IMO CenturyLink / dishNET
Wireline Resale Agreement
BPU Docket No.
TO16050394**

Doc # 93278

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