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CHRIS CHRISTIE
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KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

November 18, 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 the Joint Petition of United Telephone of New Jersey, Inc., d/b/a/ CenturyLink and for Approval of a Commercial Mobile Radio Services Interconnection Agreement between CenturyLink and New Cingular Wireless PCS, LLC. BPU Docket No. TO15040481

Dear Ms. 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" and/or "Petitioner") on behalf of both CenturyLink and New Cingular Wireless PCS, LLC ("New Cingular Wireless," "Carrier" 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 continued provision of safe and adequate services at reasonable rates. Enclosed with this original please find ten copies, kindly return a time/date stamp "Received" and/or "Filed" copy to Rate Counsel for its record.

Petitioners, CenturyLink, and New Cingular Wireless 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 not 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).

CMS
Legal (2)
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Irene K. Asbury, Board Secretary-Ltr.
CenturyLink / New Cingular Wireless PCS
BPU Docket No. TO15040481
November 18, 2016
Page 2 of 5

1996,² but would not object to Board approval of the Agreement between CenturyLink and New Cingular Wireless subject to inclusion of the following recommended conditions:

Rate Counsel respectfully requests that the Board reject the terms commencing under paragraph “29” subtitled “Security Deposit” under the Agreement’s Part B. “General Terms and Conditions.”

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 contrary to the allegations by CenturyLink at Paragraphs 8, 9 and 10 at page 2 of its Petition, the terms contained under Paragraph 29 of the Petition’s annexed 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 29 are subsections 29.1 through 29.8 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 29.1)
- CenturyLink may increase the security deposit requirements when, (i) the amount of the deposit currently held by CenturyLink is less than two (2) months’ estimated billings, (29.4) or (ii) when gross monthly billings has increased beyond the level used to determine the security deposit. (Agreement at 29.6)

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.

Irene K. Asbury, Board Secretary-Ltr.
CenturyLink / New Cingular Wireless PCS
BPU Docket No. TO15040481
November 18, 2016
Page 3 of 5

- 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 29.7).
 - when CLEC's undisputed balances due to CenturyLink are more than thirty (30) days past due; (Agreement Section 29.7.1.).
 - when CLEC files for protection under bankruptcy laws;(Agreement Section 29.7.2.).
 - when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) days; (Agreement Section 29.7.3.).
 - when this Agreement expires or terminates; (Agreement Section 29.7.4.).
 - 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 29.7.5.). 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 29.7.6.)
- 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 29.8).

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

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).

Irene K. Asbury, Board Secretary-Ltr.
CenturyLink / New Cingular Wireless PCS
BPU Docket No. TO15040481
November 18, 2016
Page 4 of 5

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

The proposed terms of paragraph 29 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 29.1, “or other form of security acceptable to CenturyLink” at 29.2; and “CenturyLink may require” at 29.6, that permit CenturyLink great discretion in saddling its CLEC competitor with additional deposit requirements similar to those that were not approved by the FCC and continue to raise the same valid concerns in these types of predominantly one-sided negotiations.⁵ 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 for telecommunications services. In view of the above, Rate Counsel respectfully recommends, that the Board reject these specific provisions in the CenturyLink/ New Cingular Wireless PCS Agreement.

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.

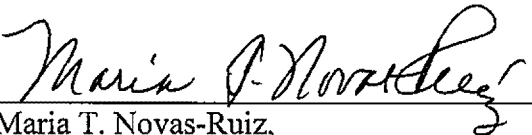
Irene K. Asbury, Board Secretary-Ltr.
CenturyLink / New Cingular Wireless PCS
BPU Docket No. TO15040481
November 18, 2016
Page 5 of 5

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.” Accordingly, Rate Counsel does not object to Board approval of the Interconnection Agreement if approval excepts and excludes the Paragraph 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/ld
cc: Service List

⁷N.J.S.A. 48:2-21.16(a)(4) and N.J.S.A. 48:2-21.16(b)(1) and (3).

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