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June 18, 2018

VIA OVERNIGHT MAIL

Ms. Aida Camacho, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625

*Case mgmt
C. Antale, Esq.
C. Vachin, Esq.
J. Helber, Esq.*

Re: I/M/O Joint Petition of United Telephone Company of New Jersey, Inc. d/b/a CenturyLink and Bluebird Communications, LLC. for Approval of a Interconnection Agreement - BPU Docket No. TO18040458

Dear Secretary Camacho:

United Telephone Company of New Jersey, Inc. d/b/a CenturyLink ("CenturyLink") is in receipt of correspondence, dated June 1, 2018, filed by the New Jersey Division of Rate Counsel ("Rate Counsel") in the above-referenced matter. Rate Counsel does not object to approval of the Interconnection Agreement (hereinafter "Agreement"), but rather requests that the New Jersey Board of Public Utilities ("Board") reject provisions in the Agreement governing security deposits (Paragraph 41) subject to Rate Counsel's letter exception. Rate Counsel's letter filing should be disregarded. As addressed below, Rate Counsel has failed to demonstrate that modification of the Agreement is lawful, just or appropriate.

A. Paragraph 41 – Security Deposits.

While correctly recognizing that ILECs and CLECs are properly permitted to voluntarily negotiate interconnection agreements, Rate Counsel wrongly requests that the Board should amend the executed Agreement. Rate Counsel relies upon proposed tariffs filed at the FCC in 2002 by Verizon Corporation ("Verizon") and other Local Exchange Carriers ("LECs")¹ as reason to reject provisions which have been fully agreed upon by negotiating parties and which are common in the industry. Rate Counsel's assertion is wrong and inapplicable.

The underlying Agreement between CenturyLink and Bluebird Communications, LLC (hereinafter "Bluebird") was reached between two business entities that have independently and voluntarily agreed to these provisions pursuant to Section 252 of the Act. Conversely, the scope of inquiry underlying the FCC's Policy Statement concerned interstate tariffs that Verizon and other LECs had proposed to apply to all CLECs.² The import of the distinction between proposed tariffs and a voluntary agreement cannot be underscored enough.

¹ Rate Counsel Letter at fn. 5, p. 3 citing *I/M/O Verizon Petition for Emergency Declaratory and Other Relief: Policy Statement*, WC Docket No. 02-202, at para. 6 (re. Dec. 23, 2002) ("Policy Statement").

² Verizon Telephone Companies Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226 (filed July 25, 2002). The FCC addressed the proposed tariff provisions pursuant to its authority under Sections 201 and 202(a) of the Act to

The 1996 Telecommunications Act envisioned a structure where a requesting telecommunications carrier negotiates with an incumbent local exchange carrier.³ That federal statutory framework evidences the public policy of allowing carriers to reach mutual contractual arrangements. The Board should reject Rate Counsel's attempt to override the Agreement's contractual arrangements. The FCC's Policy Statement cited by Rate Counsel is simply inapplicable to negotiated agreements and has not been demonstrated to be applicable to a voluntarily negotiated agreement, such as the instant Agreement.

Moreover, the FCC Policy Statement cited by Rate Counsel demonstrates that even the FCC recognized a need for security deposits and payment provisions. The FCC did not prohibit deposits, but instead noted that the specific provisions at issue in those proposed tariffs were "not narrowly targeted to meet the incumbent LECs' need for additional protection against nonpayment without imposing undue burdens on access customers in general."⁴ The FCC stated:

For all of these reasons, we believe that the bad debt problem that incumbent LECs are facing may be serious and may warrant increased protection against nonpayment, even if the bad debt problem is not of the magnitude suggested by some commenters in this and the tariff proceedings. When reviewing the proposed tariff revisions, Commission precedent requires that we balance the incumbent LECs' exposure to uncollectibles against the burdens that additional deposits would place upon incumbent LEC customers. We must also ensure that the additional protections are narrowly targeted to meet directly the risk of nonpayment. [Footnote omitted.]

The FCC then set forth additional protections against nonpayment to better balance the interests involved. *Id.*

The underlying Agreement is not a tariff. A balanced result between the negotiating parties has already been voluntarily and mutually achieved.

Moreover, the security deposit provisions of the Agreement are not discriminatory. The FCC Policy Statement cited by Rate Counsel noted that the proposed tariffs were broadly drawn to affect a broad array of access customers, not only customers that pose a risk of nonpayment.⁵ The FCC seemed to be concerned with discriminatory application of tariff provisions that would have allowed Verizon and the other LECs to increase deposit requirements based upon subjectively applied criteria such as a decrease in credit worthiness. The FCC noted:

[S]uch 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

review the justness and reasonableness of proposed charges, practices, classifications, regulations, facilities and services and to investigate the same pursuant to Sections 204 and 205 of the Act. FCC Policy Statement at para. 5.

³ 47 U.S.C. §252(a)(1).

⁴ FCC Policy Statement at para. 6.

⁵ FCC Policy Statement at para. 22.

deposit demand triggered by a low, downgraded, or potentially downgraded rating of its debt securities. [footnote omitted.] 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. [Footnote omitted.]⁶

None of the security deposit provisions of this Agreement permits CenturyLink to require/increase deposits based upon the CLEC's investment grade or credit worthiness. Moreover, the Agreement can be subject to further opt-in by any other carrier seeking to interconnect with CenturyLink or the entire Agreement (including this paragraph) can be subject to negotiation. All carriers are treated alike in terms of being given the opportunity of opting into an existing agreement or in negotiating a new agreement.

Finally, the Board's regulations enable utilities in New Jersey to require *retail* customers to provide a security deposit. *See*, N.J.A.C. 14:3-7. Among other provisions in these rules, customers in default regarding payment of bills "may be required to furnish a deposit ... in an amount sufficient to secure the payment of future bills." N.J.A.C. 14:3-7.3(a). Rate Counsel has offered no rational basis to treat wholesale arrangements differently from retail arrangements.

Rate Counsel has previously raised claims regarding security deposit provisions and, to the best of CenturyLink's knowledge, the Board has not entertained Rate Counsel's prior requests. Similarly, CenturyLink knows of no complaint or other action brought by any interconnecting carrier regarding security deposit provisions in interconnection agreements executed by CenturyLink or other carriers in New Jersey. At this point, denying CenturyLink the opportunity to include such language would be discriminatory against all current carriers having interconnection agreements with CenturyLink. As previously done by the Board, the Board should reject Rate Counsel's request in this instance as well.

Sincerely,



Sue Benedek

cc: Peter Batchelor, President (*on behalf of Bluebird Communications*) (*via electronic mail*)
Carole Artale, Esquire (*via electronic and first-class mail*)
Maria T. Novas-Ruiz, Deputy Rate Counsel (*via electronic and first-class mail*)

⁶ *Id.*, at para. 21.