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SEP 04 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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SHEILA OLIVER  
Lt. Governor

*Filed*  
*Sept. 5, 2018*



State of New Jersey

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SEP 04 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

STEFANIE A. BRAND  
Director

**Via Electronic and Regular Mail**

August 30, 2018

Ms. Aida Camacho, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Fl., Rm 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 Block Line Systems, LLC for Approval of a Resale  
Agreement **BPU Docket No. TO18060636**

Dear Secretary Camacho:

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 Block Line Systems, LLC, ("Block Line") collectively ("Petitioners" and/or "Parties") for approval by the New Jersey Board of Public Utilities ("Board") of a Resale Agreement ("Agreement") entered into by Petitioners, which allows Block Line to purchase telecommunications services from CenturyLink on a resale basis. CenturyLink is a New Jersey corporation, and an authorized incumbent local exchange telephone services provider throughout portions of the State of New Jersey. Block Line is certified to provide telecommunications services in New Jersey as a competitive local exchange carrier ("CLEC").

Rate Counsel does not object to Board approval of the Agreement subject to the recommendations discussed below. Enclosed are original and (10) copies of Rate Counsel's comments. Kindly return a stamped "Received" or "Filed" copy to Rate Counsel for its record.

**Subsequent Board Review of Changes or Amendments**

Rate Counsel respectfully recommends that the Board assert its continuing authority over this Agreement<sup>1</sup> and state specifically in the language of the Order in this matter that any

<sup>1</sup>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

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subsequent amendments or modifications to the Agreement negotiated by the Parties or the Agreement or occasioned either directly or indirectly by any change or revision in Federal or State law shall be subject to review and approval by the Board in accordance with applicable legal standards.<sup>2</sup> The Board has previously adopted this position, which also preserves the function of Section 252(i) of the Act.<sup>3</sup> 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.

### **Prohibition Against Anticompetitive and Discriminatory Treatment**

Pursuant to 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.

The Board may reject the Agreement if it finds that the Agreement discriminates against other carriers or is not consistent with the public interest, convenience or necessity.<sup>4</sup> Certain provisions of Section 41(Security Deposit) of the Agreement warrant Board attention under Section 252(e) (2) (A) (ii) of the Act.<sup>5</sup> The Agreement section contains language that implicates potential discriminatory and unjust treatment of competitive carriers, and violate the public interest, as exercising such action could act as a barrier to entry for competitive providers and should therefore be either modified or rejected by the Board. These include but are not limited to the following:

#### **Subsection 41.4**<sup>6</sup>

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

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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).

<sup>2</sup> 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 p. 4.

<sup>3</sup> 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).

<sup>4</sup> 47 U.S.C. § 252(e)(2).

<sup>5</sup> 47 U.S.C. § 252(e)(2)(A)(ii) establishes a public interest consideration for State Commission approval of an interconnection agreement.

<sup>6</sup> Resale Agreement By and Between United Telephone Company of New Jersey, Inc., d/b/a/ CenturyLink and Block Line Systems, LLC for the State of New Jersey, dated April 19, 2018, at pp.36-37.

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:

- 41.4.1 - when CLEC's undisputed balances due to CenturyLink are more than thirty (30) Days past due; or
- 41.4.2 - when CLEC files for protection under bankruptcy laws;<sup>7</sup> or
- 41.4.3 - when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) Days;
- 41.4.4- when this Agreement expires or terminates; inclusive of requirements set forth under (Agreement Sections 41.5 through 41.7)

The provisions discussed above are similar to previous other proposals intended to reduce credit risks that were investigated and determined to be discriminatory by the FCC and such credit terms warrant close consideration and rejection if determined by the Board to foster and/or result in discriminatory practices creating barriers to competitive entry by other service providers and contrary to the public interest.

The subjective triggers (i.e., "CenturyLink may exercise its right") contained throughout the noted sections of the Agreement permit CenturyLink great discretion in saddling its CLEC competitor with additional deposit requirements similar to those that were not approved by the FCC.<sup>8</sup> Thus, as the terms contained under Section of 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 (ii) not consistent with the public interest, convenience, and necessity, and are contrary to 47 U.S.C. §252(e)(2)(A)(ii) of the Act.<sup>9</sup> Agreements that contain such terms and conditions frustrate and thwart the intent and purpose of Section 252(e) to the detriment of New Jersey ratepayers who pay the price in the form of less competition and higher rates for telecommunications services. Accordingly, Rate Counsel respectfully recommends that the Board modify and/or reject these specific provisions of the Agreement.

Notwithstanding, Rate Counsel notes that the terms of the Agreement, except as discussed and noted above, meet the requirements of Section 252(e) of the Telecommunications Act of 1996.<sup>10</sup> Moreover, Rate Counsel is cognizant that it is the policy of the State to provide diversity in the supply of telecommunications services, and found that competition will "promote

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<sup>7</sup> Rate Counsel notes that the FCC has 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 have also allowed creditors to terminate service to nonpaying customers on short notice. *I/M/O Verizon's Petition for Emergency Declaratory and Other Relief: Policy Statement*, WC Docket No. 02-202, ("Policy Statement") (rel. Dec. 23, 2002), at paras. 6, 18 and 20 (internal citations omitted).

<sup>8</sup> Tariff revisions are generally adopted by the FCC as filed, and are set for investigation only where a potential problem is discerned.

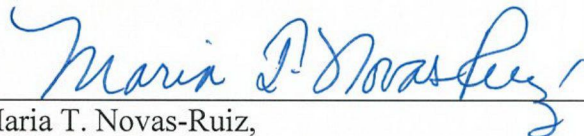
<sup>9</sup> 47 U.S.C. §252(e)(2)(A)(ii) establishes a public interest consideration for State commission approval of an interconnection agreement.

<sup>10</sup> 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.

efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.”<sup>11</sup> Accordingly, Rate Counsel does not object to Board approval of the Agreement subject to the recommendations stated herein.

Very truly yours,

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



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Maria T. Novas-Ruiz,  
Assistant Deputy Rate Counsel

MNR/td  
c: Service List

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<sup>11</sup> *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 Joint petition of United Telephone  
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CenturyLink and Block Line Systems,  
LLC. for Approval of a Resale**

**BPU Docket No. TO18060636  
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