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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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Handwritten: JWB
9/20/18

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VIA OVERNIGHT MAIL

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SEP 20 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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

Re: I/M/O Joint Petition of United Telephone Company of New Jersey, Inc. d/b/a CenturyLink and Onvoy, LLC for Approval of an Interconnection Agreement - BPU Docket No. TO18060665

Dear Secretary Camacho:

United Telephone Company of New Jersey, Inc. d/b/a CenturyLink ("CenturyLink") is in receipt of correspondence, dated August 30, 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 43) and bankruptcy (Section 114) 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 43 – 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's assertion is wrong and inapplicable.

The underlying Agreement between CenturyLink and Onvoy, LLC (hereinafter "Onvoy") was reached between two business entities that have independently and voluntarily agreed to these provisions pursuant to Section 252 of the Act.

The 1996 Telecommunications Act envisioned a structure where a requesting telecommunications carrier negotiates with an incumbent local exchange carrier.¹ 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.

¹ 47 U.S.C. §252(a)(1).

Handwritten signatures:
C. Vachier, Esq.
L. Bellet, Esq.
C. Castale, Esq.
C.M.S.

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."² 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.³ 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 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.]⁴

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

² FCC Policy Statement at para. 6.

³ FCC Policy Statement at para. 22.

⁴ *Id.*, at para. 21.

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.

B. Bankruptcy – Section 114.1

Rate Counsel claims that Section 114.1 at page 166 of the Agreement [section entitled “Bankruptcy”] is discriminatory towards CLECs as CenturyLink is allowed to terminate the agreement, at will on short notice, due to a potential bankruptcy. Rate Counsel cites the FCC Policy Statement addressed above.⁵

Rate Counsel’s claims and assertions regarding discrimination are meritless. First, as noted above, unlike a tariff which was at issue in the FCC Policy Statement, an interconnection agreement (ICA) is a document negotiated at “arms length” between two corporate signatory parties.⁶ Second, it is important to underscore the context for the ICA language. The context here is a bankruptcy proceeding. There is a process that companies must go through. Under the terms of the Agreement, a CLEC will not be precluded in participating in the bankruptcy process if such a context arises. Third, provisions such as the section raised by Rate Counsel are commonly included in agreements and are a normal business practice to protect interests in the event of a bankruptcy. Rate Counsel has failed to raise any legitimate reason to usurp common business practices.

Finally, CenturyLink does not discriminate between or among CLECs relative to ICAs. Rate Counsel has failed to demonstrate otherwise.

⁵ Rate Counsel letter at pg. 3.

⁶ “As we explain in greater detail below, the record in this proceeding indicates that the proposed tariff revisions are not narrowly tailored to meet the incumbent LECs’ need for additional protection against nonpayment.” *FCC Policy Statement* at para. 6.

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 bankruptcy provisions or 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,

A handwritten signature in blue ink that reads "Sue Benedek" followed by a stylized flourish.

Sue Benedek

cc: Richard Monto, General Counsel (*on behalf of Onvoy, LLC*)(*via electronic mail*)
Kyle Bertrand, Vice President NO/PM (*on behalf of Onvoy, LLC*)(*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*)