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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

Via Electronic and Regular Mail

March 6, 2019

Ms. Aida Camacho-Welsh - 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 Company of New Jersey, Inc.,
d/b/a/ CenturyLink and Peerless Network of New Jersey, LLC, for Approval
of an Interconnection Agreement - **BPU Docket No.: TO18121350**

Dear Secretary Camacho-Welsh:

The New Jersey Division of Rate Counsel ("Rate Counsel") submits the following comments on the above-referenced matter, filed by United Telephone Company of New Jersey, Inc., d/b/a/ CenturyLink ("CenturyLink" and/or "ILEC") on behalf of both CenturyLink and Barr Tell USA, Inc., ("Barr Tell" and/or "CLEC" or "Carrier") collectively ("Petitioners") seeking 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 may jeopardize the provision of safe, and adequate services at reasonable rates to New Jersey customers. 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 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 satisfied that the terms of the Agreement meet the requirements of Section 252(e) of the Telecommunications Act of 1996,² and accordingly does not object Board approval of the

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.

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Agreement subject to consideration of the following specific issues, conditions and recommendations:

Rate Counsel respectfully requests that the Board reject the terms commencing under paragraph 41 subtitled, "Security Deposit" of the Agreement's Article III. Implementation Section.

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 the terms contained under Paragraph 41 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 41 are subsections 41.1 through 41.7 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 not 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 and CenturyLink may stop processing orders for service.(Agreement at 41.1)

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 41.4).

- 41.4.1 when CLEC's undisputed balances due to CenturyLink are more than thirty (30) Days past due; and/or
- 41.4.2 when CLEC files for protection under bankruptcy laws; and/or
- 41.4.3 when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) Days; and/or ⁴
- 41.4.4 when this Agreement expires or terminates.

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

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

⁴ *See also*, (Agreement at 107, section titled Bankruptcy), "CenturyLink may, if CenturyLink so elects but not otherwise, and with or without notice of such election or other action by CenturyLink, forthwith terminate this Agreement."

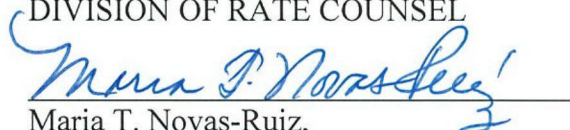
new deposit. If payment of the new deposit is not made within thirty (30) Days of the request, CenturyLink may stop processing orders for service and CLEC will be considered in breach of the Agreement. (Agreement at 41.5)

The proposed terms of paragraph 41 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 41.1, “or other relevant factors” at 41.3; and “CenturyLink may require” at 41.5, 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 makes ineffective 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.

Notwithstanding, Rate Counsel because the New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, to promote competition, efficiency and innovation of services at competitive market-based prices,⁶ Accordingly, Rate Counsel does not object to Board approval of the Interconnection Agreement with the exception of the Agreement sections addressed by Rate Counsel herein.

Very truly yours,

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



Maria T. Novas-Ruiz,
Assist.ant Deputy Rate Counsel

MNR/td

c: Service List

⁵/ Tariff revisions are generally adopted by the FCC as filed, and are set for investigation only where a potential problem is discerned. *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 paras. 18 and 20 (internal citations omitted).

⁶/N.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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**BPU Docket No. TO18121350
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