



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

IN REPLY,
PLEASE REFER
TO OUR FILE
A-2023-3041424

September 19, 2023

Re: Docket No. A-2023-3041424 - Joint Petition of Commonwealth Telephone Company dba Frontier Communications Commonwealth Telephone Company and Comcast Phone of Pennsylvania, LLC, Frontier Communications of Breezewood, LLC and Frontier Communications of Pennsylvania, LLC and Comcast Phone of Pennsylvania, LLC for Approval of an Amendment to Interconnection Agreement, under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Interconnection Amendment**)

TO ALL PARTIES OF RECORD:

Background

On June 22, 2023, Commonwealth Telephone Company dba Frontier Communications Commonwealth Telephone Company and Comcast Phone of Pennsylvania, LLC, Frontier Communications of Breezewood, LLC and Frontier Communications of Pennsylvania, LLC (Frontier Companies) and Comcast Phone of Pennsylvania, LLC (Comcast) (collectively, Party or Parties) filed a letter-Petition for Approval of Amendment 3¹ to an Interconnection Agreement (Joint Petition) in the above-captioned proceeding (Amendment 3).² Amendment 3 was filed pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code) (TA-96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996) (*June 1996 Implementation Order*); Order on Reconsideration entered September 9, 1996; *see also, Proposed Modifications to the Review of Interconnection Agreement* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively,

¹ In the Joint Petition Frontier identified the Amendment as Amendment 3, which was not reflected in the *Pennsylvania Bulletin* when it was published. We have corrected the Amendment to Amendment 3 throughout this Secretarial Letter.

² The original Agreement(s) was docketed at No. A-2013-2343235 and became effective on March 14, 2013 (Frontier Communications Commonwealth Telephone Company); and docketed at No. A-2013-2352201 and became effective on May 9, 2013 (Frontier Communications of Breezewood, LLC and Frontier Communications of Pennsylvania, LLC).

Implementation Orders).³ See also, *Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreement Pursuant to 47 U.S.C. § 252(e)(2), et al.*, Docket No. M-2022-3030709 (Final Order entered June 16, 2022) (*June 2022 Modifications Order*).⁴

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of Amendments with the Commission within thirty (30) days of their signing. The last Party signed Amendment 3 on May 24, 2023. Accordingly, Amendment 3 was filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on July 8, 2023, at 52 *Pa. B.* 3684, advising that any interested parties could file comments within ten (10) days. No comments have been received.

Amendment 3 became effective upon the Parties' signing of Amendment 3 on May 24, 2023. Amendment 3 at 1.

Frontier and Comcast have signed two Amendments on behalf of their affiliates involving: (1) Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; (2) Frontier Communications of Breezewood, LLC; and (3) Frontier Communications of PA, LLC which are Incumbent Local Exchange Carriers (ILECs) and Comcast Phone of Pennsylvania which is a Competitive Local Exchange Carrier (CLEC) in Pennsylvania, making Amendment 3 equally applicable to each of the three ILECs and the two CLECs. In order to facilitate the adoption of an interconnection agreement by other parties, pursuant to 47 U.S.C. §252(i), only one ILEC should be party to a single interconnection agreement. To facilitate timely consideration of Amendment 3, according to the schedule set forth in TA-96, we shall sever Amendment 3 into two amendments: (1) one pertaining to Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, and Comcast Phone of Pennsylvania; and (2) one pertaining to

³ Section 252(e) of TA-96 requires that the Commission's review of the Amendments be completed within 90 days of its filing. The Amendment was filed on June 22, 2023, and the statutory deadline for the Commission to approve or disapprove the Amendment is on September 20, 2023.

⁴ The Commission, through the issuance of the *June 2022 Modifications Order*, revised its practice of considering for disposition at a scheduled Public Meeting voluntarily negotiated interconnection Agreements and amendments thereto between telecommunications carriers that are routine, ministerial, and do not involve policymaking considerations. In the *June 2022 Modifications Order*, the Commission determined that such routine, non-policymaking review of Interconnection Agreement will be delegated to Commission Staff to advise the parties of such disposition through the issuance of a Secretarial Letter, which shall have the same legal effect as disposition at Public Meeting.

Frontier Communications of Breezewood, LLC and Frontier Communications of Pennsylvania, LLC and Comcast Phone of Pennsylvania for purposes of consideration and disposition here (and, in the future, for purposes of adoption by non-parties).

In the Joint Petition before the Commission, the Frontier Companies are the ILECs, and Comcast is certificated as a Competitive Local Exchange Carrier (CLEC in the Frontier Companies' service territories.⁵

Standard of Review

The standard for review of a negotiated interconnection Agreement is set out in pertinent part, in Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2), which provides that the state commission may only reject an Agreement adopted by negotiation under subsection (a) if it finds that: (1) the Agreement discriminates against a telecommunications carrier not a party to the Amendment; or (2) the implementation of such Agreement or portion is not consistent with the public interest, convenience, and necessity.

Summary of Terms

The Parties note that as a result of the Federal Communications Commission's (FCC's) Order FCC 20-152, *In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services Report*

⁵ We note that regardless of the types of services covered by this Amendment, it would be a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq.*, if Comcast began offering services or assessing surcharges to end users where it has not been authorized to provide such services and for which tariffs have not been authorized.

and Order in WC Docket No. 19-308 (*FCC 2020 UNE [Unbundled Network Element] Order*) related to access to unbundled network elements that was released on October 28, 2020, the FCC has further reduced the obligations of certain price cap ILECs for unbundled loops and resale.⁶ The Parties note that they wish to amend their existing agreement in accordance with the *FCC 2020 UNE Order* and agree to do so under the terms and conditions contained in Amendment 3. The Parties also note that Amendment 3 is made without waiving any rights or arguments they may have with respect to whether an amendment is required to effectuate the *FCC 2020 UNE Order* under the existing terms of the agreement. Amendment 3 at 1.

The existing agreement is being amended by adding terms and conditions for UNE services as set forth in Amendment 3. The revisions include, *inter alia*, Frontier Companies' discontinuance of services previously provided under Section 251(c) of the Act, subject to FCC-established transition periods: (1) UNE Digital Loops (2) UNE DS1 Loops; (3) UNE DS3 Loops; (4) Dark Fiber Transport; (5) UNE Subloops and Network Interface Devices; (6) Conversion of Special Access Circuits; and (7) Operations Support Systems Functions. Amendment at 2-3.

As a general condition and in line with the *FCC 2020 UNE Order*, Comcast's ability to order new services and retain existing services from Frontier is altered, as follows:

Digital (DS0) UNE Loops: As of February 8, 2023, Comcast may no longer order new Digital Loops pursuant to this Agreement in Wire Centers designated as urbanized areas by the United States Census Bureau. Any existing Digital Loops ordered on or before February 8, 2023 ("Digital Loop Embedded Base") are grandfathered until February 8, 2025 pursuant to rates, terms and conditions of the Agreement, except that Fronter may increase the then-current rate up

⁶ The *FCC 2020 UNE Order* eliminates unbundling requirements, subject to a reasonable period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide. The Order also eliminates unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks but provides an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by CLECs that may harm customers. In essence, the *FCC 2020 UNE Order* is aimed at ending unbundling and resale requirements where they stifle technology transitions and broadband deployment but preserves unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans. *FCC 2020 UNE Order* at 2.

to 25% beginning February 8, 2024 for the last twelve months of the transition period. As of February 10, 2025, incumbent local exchange carriers are no longer required to maintain existing Digital Loops in urbanized areas. Comcast shall convert the Digital Loop Embedded Base to a commercial offering, or an alternate arrangement, or disconnect such Digital Loop on or before February 8, 2025. For any grandfathered Digital Loops not converted or disconnected on or before February 8, 2025, Fronter may bill {or back-bill, as applicable) Comcast and Comcast shall pay the difference between the UNE Digital Loop rate and the applicable, higher non-UNE rate.

Amendment 3 at 2.

DS1 UNE Loops: As of February 8, 2023, Comcast may no longer order new “DS1 Loops” pursuant to this Agreement in Wire Centers in counties deemed to be competitive. Any existing DS1 Loops ordered on or before February 8, 2023 (“DS1 Loop Embedded Base”) are grandfathered until July 8, 2024 pursuant to the rates, terms and conditions of the Agreement Comcast shall convert the DS1 Loop Embedded Base to an alternate arrangement or disconnect such DS1 Loop on or before July 8, 2024. For any grandfathered DS1 UNE Loops not converted or disconnected on or before July 8, 2024, Fronter may bill {or back-bill, as applicable) Comcast and Comcast shall pay the difference between the LINE DS1 Loop rate and the applicable, higher non-UNE rate.

Amendment 3 at 2.

DS3 UNE Loops: As of February 8, 2021, Comcast may no longer order new “DS3 Loops” pursuant to this Agreement in Wire Centers in counties deemed to be competitive. Any existing DS3 Loops ordered on or before February 8, 2021 (“DS3 Loop Embedded Base”) are grandfathered until February 8, 2024 pursuant to the rates, terms and conditions of the Agreement Comcast shall convert the DS3 Loop Embedded Base to an alternate arrangement or disconnect such DS3 Loop on or before February 8, 2024. For any grandfathered D53 Loops not converted or disconnected on or before February 8, 2024, Fronter may bill (or back-bill, as

applicable) Comcast and Comcast shall pay the difference between the UNE DS3 Loop rate and the applicable, higher non-UNE rate.

Amendment 3 at 2.

Dark Fiber Transport: As of February 8, 2021, Comcast may no longer order new “DFT” pursuant to this Agreement where the dark fiber transport is connected to a Tier 3 wire center located within ½ mile of competitive fiber as described in the FCC UNE Relief Order and designated by the FCC. Any existing UNE Dark Fiber Transport facility ordered before February 8, 2021 (“Dark Fiber Transport Embedded Base”) is grandfathered until February 8, 2029 pursuant to the rates, terms and conditions of the Agreement. Comcast shall convert the UNE Dark Fiber Transport Embedded Base to an alternate arrangement or disconnect such UNE Dark Fiber Transport on or before February 8, 2029. For any grandfathered UNE Dark Fiber Transport not converted or disconnected on or before February 8, 2029, Frontier may bill (or back-bill, as applicable) Comcast and Comcast shall pay the difference between the UNE Dark Fiber Transport rate and the applicable, higher non-UNE rate. If the FCC determines that additional wire centers are subject to forbearance, Comcast shall cease ordering DFT as of the date specified by the FCC and adhere to any FCC-specified transition timelines.

Amendment 3 at 2.

UNE Subloops or UNE Network Interface Devices: As of February 8, 2021, Comcast may no longer order new UNE Subloops or UNE Network Interface Devices (NIDs) pursuant to this Agreement.

Amendment 3 at 2.

Conversion of Special Access Circuits to UNEs: As of February 8, 2021, CLEC may no longer convert existing Special Access circuits (as defined, ordered, and provisioned in Frontier's applicable tariffs or price lists) to UNEs.

Amendment 3 at 3.

Operations Support Systems Functions: Frontier is no longer required to offer OSS as an independent UNE nationwide, subject to the transition periods that apply to the corresponding UNEs, except where necessary to manage other UNEs, for interconnection, or for the local number port orders.

Amendment 3 at 3.

Additional terms:

For avoidance of any doubt, the limitations on availability of UNEs set forth in this amendment apply regardless of whether they are ordered or used as a stand-alone UNE, in combination with another UNE (e.g. as part of a loop-transport combination), or commingled with a non-UNE Service or other arrangement.

Amendment 3 at 3.

Amendment 3 revises the terms of the existing agreement to the extent necessary to give effect to the terms of Amendment 3. In the event of a conflict between the terms and conditions of Amendment 3 and the terms and conditions of the existing agreement, the terms and conditions of Amendment 3 shall govern. *See*, Amendment 3 at 3.

Disposition

The Commission approves Amendment 3, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving the privately negotiated Amendment, the Commission express no opinion regarding the enforceability of its independent state authority preserved by Section 251(d)(3) of TA-96, 47 U.S.C. § 251(d)(3), and any other applicable law.

We shall minimize the potential for discrimination against other telecommunications carriers not parties to Amendment 3 by providing here that our approval of Amendment 3 shall not serve as precedent for amendments to be negotiated or arbitrated by other parties. This is consistent with our policy of encouraging settlements. 52 Pa. Code § 5.231; *see also* 52 Pa. Code § 69.401, *et seq.*, relating to settlement guidelines, and the Commission's Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* On the basis of the foregoing, Amendment 3 does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in Amendment 3 or to the Agreement.

TA-96 requires that the terms of Amendment 3 be made available for other parties to review. 47 U.S.C. § 252(h). However, this availability is solely for the purpose of full disclosure of the terms and arrangements contained therein. The accessibility of Amendment 3 and its terms to other parties do not connote any intent that the approval of such amendment will affect the status of negotiations between other parties. In this context, we will not require the Frontier Companies or Comcast to embody the terms of Amendment 3 in filed tariffs. In addition, we note that the Parties have filed signed, true and correct copies of Amendment 3 as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of Amendment 3 to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve Amendment 3 as filed, without any modifications, we will not require the Joint Petitioners to file an electronic copy of Amendment 3 upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection amendment may affect or eliminate ILEC's obligations with regard to protection of the public safety and welfare, continued service quality, and preservation of the rights of consumers. *See, e.g.*, Section 253(b) of TA-96. This is consistent with TA-96 and with Chapter 30 of the Code,⁷ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁸ and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, ILECs cannot, through the negotiation of amendments or agreements, eliminate its carrier of last resort obligations.⁹

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96 and our subsequent orders thereunder, we determine that Amendment 3 between the Frontier Companies and Comcast are non-discriminatory to other telecommunications companies not party to Amendment 3 and that Amendment 3 is consistent with the public interest. Therefore, we shall grant the Joint Petition of the Frontier Companies and Comcast for approval of Amendment 3 and mark this docket closed.

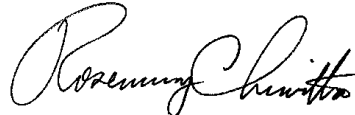
⁷ 66 Pa. C.S. §§ 3011-3019.

⁸ Both ILECs and CLECs are under the affirmative obligation to route 911/E911 call traffic to the appropriate Public Safety Answering Point (PSAP). Although CLECs may have direct trunking arrangements with PSAPs for the handling of 911/E911 call traffic, we note that such traffic is often routed to the PSAP through the switching and trunking facilities of an interconnected ILEC.

⁹ *See, e.g.*, Section 253(b) of TA-96.

Any affected party may appeal the staff action (approval or rejection of the Joint Petition under TA-96 standards) to the full Commission by filing a Petition for Appeal from actions of staff pursuant to 52 Pa. Code § 5.44 within twenty (20) days of the date of this Secretarial Letter. Should you have any questions, you may contact the Office of Special Assistants, Kim Hafner, Acting Director. Please direct your inquiry to (717) 787-1827 or RA-OSA@pa.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary