**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held August 27, 2020

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| Commissioners Present:  Gladys Brown Dutrieuille, Chairman, Statement  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora |  |
| Joint Petition of Verizon North LLC and Comcast Phone of Pennsylvania LLC for Approval of an Amendment to an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996 | A-2020-3020494 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is the Joint Petition filed by Verizon North LLC (Verizon North) and Comcast Phone of Pennsylvania LLC (Comcast) (collectively, Parties) requesting approval of an Amendment to an Interconnection Agreement (Amendment). The Amendment 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 or Act), 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; Order on Reconsideration entered September 9, 1996); *see also* *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (collectively, *Implementation Orders*).

**History of the Proceeding**

On June 22, 2020, Verizon North and Comcast filed a Joint Petition for approval of an Amendment to an Interconnection Agreement. Notice of the Joint Petition and Agreement was published in the *Pennsylvania Bulletin* on July 4, 2020, at 50 Pa. B. 3366, advising that any interested parties could file comments concerning the Joint Petition and Agreement within ten days. No comments have been received.

The Amendment has an effective date of January 12, 2020. Amendment at 1. In the Joint Petition before us, Verizon North is the Incumbent Local Exchange Carrier (ILEC). Comcast is certificated as a Competitive Local Exchange Carrier (CLEC) in the service territory of Verizon North.[[1]](#footnote-1)

**Discussion**

**A. Standard of Review**

The standard for review of a negotiated interconnection agreement is set forth in Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2). Section 252(e)(2) provides in pertinent part, that:

(2) Grounds for rejection. The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that –

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . . .

With these criteria in mind, we shall review the Amendment submitted by Verizon North and Comcast.

**B.** **Summary of Terms**

The Parties note that as a result of the FCC’s Order FCC 19-66, a *Report and Order on Remand* and *Memorandum Opinion and Order* in WC Docket Nos. 18-141, *et al.* *(UNE [Unbundled Network Elements] Transport Forbearance Order)* released on July 12, 2019 and Order FCC 19-72, *Memorandum Opinion and Order* in WC Docket 18-141 *(UNE Loop and Resale Forbearance Order)* released on August 2, 2019, (together, *UNE/Resale Forbearance Orders*), the FCC has reduced the obligations of certain price cap ILECs for transport and unbundling. Pursuant to FCC action, Comcast’s ability to order new services and retain existing services from Verizon North is limited.[[2]](#footnote-2) The Parties also note that the amendments are made without waiving any rights or arguments they may have with respect to whether an amendment is required to effectuate the *UNE/Resale Forbearance Orders* under the existing terms of the Agreement. Amendment at 1.

The Agreement is being amended by adding terms and conditions for UNE and Resale as set forth in the Amendment. The revisions include, *inter alia*, Verizon North’s discontinuance of services previously provided under Section 251(c) of the Act, subject to FCC-established transition periods: (1) Unbundled Analog Loops (UNE Analog Loops); [[3]](#footnote-3) (2) Unbundled Dedicated Interoffice Transport and Enhanced Extended Loop (UNE Transport);[[4]](#footnote-4) and (3) Wholesale Discounts for Resold services;[[5]](#footnote-5) Amendment at 1-7.

As a general condition and in line with the *UNE/Resale Forbearance Orders*, Comcast’s ability to order new services and retain existing services from Verizon North, pursuant to the Agreement, is altered, in part, as follows:

**UNE Analog Loops:** Effective February 2, 2020, Comcast will no longer be able to obtain new UNE Analog Loops. Comcast may retain UNE Analog Loops that are in-service or obtained before February 2, 2020, which will continue to be available during a transition period at the rates, terms and conditions under the Agreement until August 2, 2022. After August 2, 2022, Verizon North will no longer be providing any Unbundled Analog Loops under the terms of the Agreement, and Comcast will be solely be responsible for either disconnecting the Analog Unbundled Loops or converting them to an appropriate Special Access services under Verizon North’s applicable tariff.

Amendment at 1-2.

**UNE Transport:** Effective January 12, 2020, Comcast can no longer obtain new UNE DS1 and DS3 Dedicated Transport and Enhanced Extended Loop (together, referred to as UNE Transport). UNE DS1 and DS3 Dedicated Transport that are in service as of January 12, 2020, will continue to be available until July 12, 2022, at the rates, terms and conditions of the Agreement. After July 12, 2022, Verizon North will no longer be providing or maintaining any UNE Transport services under the terms of the Agreement, and Comcast will be solely responsible for either disconnecting the service or converting them to Special Access services under Verizon North’s applicable tariff.

Amendment at 2-5.

**Wholesale Discount for Resold Services:** Effective February 2, 2020, Comcast will no longer be able to obtain new telecommunications services at a discount rate. Resale services ordered by Comcast on or before February 2, 2020, will remain available during a transition period at the wholesale Discount for Telecommunications Services until August 2, 2022. During the transition period, Comcast cannot make any changes to such existing Resold Services, and any new orders for resale services will be at the full rate of Verizon North’s applicable tariff. After August 2, 2022, Telecommunications Services will continue to be provided by Verizon North at the retail price as set forth in Verizon North’s applicable tariff.

Amendment at 5.

The Amendment revises the terms of the Agreement to the extent necessary to give effect to the terms of the Amendment. In the event of a conflict between the terms and conditions of the Amendment and the terms and conditions of the Agreement, the terms and conditions of the Amendment shall govern. *See* Amendment at 6-7.

**C. Disposition**

We shall approve the Amendment, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We note that in approving this privately negotiated amendment, we express no opinion regarding the enforceability of our independent state authority preserved by 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 the Amendment by providing that our approval of this Amendment shall not serve as precedent for agreements 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 our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code §§ 69.391 *et seq*. On the basis of the foregoing, we find that the Amendment does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in the Amendment or to the Agreement itself.

TA‑96 requires that the terms of the Amendment 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 the Amendment and its terms to other parties does not connote any intentthat our approval of such an amendment will affect the status of negotiations between other parties. In this context, we will not require Verizon North and/or Comcast to embody the terms of the Amendment in a filed tariff.

With regard to the public interest element of this matter, we note that under Chapter 30 of the Code,[[6]](#footnote-6) a negotiated interconnection agreement or amendment does not alter the obligations of any telecommunications carrier with regard to protection of the public safety and welfare, continued service quality, and preservation of the rights of consumers.[[7]](#footnote-7) This is consistent with TA‑96 and Chapter 30, wherein service quality and

standards, *e.g.*, Universal Service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the telecommunications carriers and continue unaffected by a negotiated amendment. In addition, an ILEC cannot, through the negotiation of an amendment, eliminate its carrier of last resort obligations.[[8]](#footnote-8)

Before concluding, we note that the Joint Petitioners have filed a signed, true and correct copy of the Amendment as part of their Joint Petition. We also note that the Amendment was not filed within the thirty-day deadline set forth in the Commission’s *Implementation Orders*. The Amendment became effective on January 12, 2020. A period of one hundred and sixty-one days had elapsed after the Amendment became effective until it was submitted to the Commission for review. Verizon North has indicated that the Joint Petition was filed beyond the 30-day period due to the emergency related to Covid-19. Neither TA‑96 nor the FCC rules interpreting TA‑96 provide for the specific time in which the negotiated agreement is to be filed with the state commission. However, we have addressed our expectations regarding the proper time considerations to be observed with regard to negotiated agreements.[[9]](#footnote-9)

We remind the Parties that failure to comply with our *Implementation Orders*, as well as this Order, could subject the Parties to civil penalties for violations pursuant to Section 3301 of the Code, 66 Pa. C.S. § 3301.

The Commission’s Secretary’s Bureau published an electronic copy of the Amendment to the Commission’s website prior to publishing notice of it in the *Pennsylvania Bulletin*. Consistent with *Proposed Modifications to the Review of Interconnection Agreements*,Docket No. M-00960799 (Order entered May 3, 2004), since we will approve the Amendment without any modifications, as filed, we will not require the Parties to file an electronic copy of the Amendment after the entry of this Opinion and Order.

**Conclusion**

Based on the foregoing and pursuant to Section 252(e) of TA‑96 and our *Implementation Orders,* we determine that the Amendment to the Agreement between Verizon North and Comcast is non-discriminatory to other telecommunications carriers not party to the Amendment and that the Amendment is consistent with the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for approval of an Amendment to an Interconnection Agreement filed on June 22, 2020, by Verizon North LLC and Comcast Phone of Pennsylvania LLC is granted, consistent with this Opinion and Order.

2. That approval of the Amendment to the Interconnection Agreement, shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the Interconnection Agreement and Amendment.

3. That this matter be marked closed.

**BY THE COMMISSION,**

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Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 27, 2020

ORDER ENTERED: August 27, 2020

1. 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. [↑](#footnote-ref-1)
2. Both the *UNE Transport Order* and the *UNE Analog Loop and Resale Forbearance Order* became effective upon release. We note that the *UNE/Resale Forbearance Orders* are a result of, *inter alia*, the Petitions of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks. The *UNE/Resale Forbearance Orders*, *inter alia*, granted forbearance from DS1 and DS3 transport unbundling requirements at price cap carrier wire centers where competitive fiber networks are located within a half-mile of the wire center. [↑](#footnote-ref-2)
3. The FCC’s grant of forbearance from UNE Analog Loop obligations for ILECs is conditioned on a two-part transition. First, CLECs will be permitted to order new UNE Analog Loops for an additional six months after the effective date of the *UNE Analog Loop and Resale Forbearance Order*. Second, there is a three-year transition time frame for all CLEC customers. The three-year transition timeframe within which all UNE Analog Loops (including any new UNE Analog Loops ordered during the first six months) must be transitioned to alternative arrangements also commences on the effective date of the *UNE Analog Loop and Resale Forbearance Order*. *UNE Analog Loop and Resale Forbearance Order* at 12-13. [↑](#footnote-ref-3)
4. Similar to the transition periods in the *UNE Analog Loop and Resale Forbearance Order*,the six-month and three-year period from the effective date of the *UNE Transport Order*, also applies for UNE Transport. According to the FCC, the transition periods ensures small businesses will have time to adjust to the new regulatory conditions. For instance, the six-month timeframe will enable CLECs to execute short term business plans and fulfill contractual obligations they may already have to serve existing or new customers using UNE Transport. *UNE Transport Order* at 28-29. [↑](#footnote-ref-4)
5. ILEC resale obligations were further modified. The FCC conditioned its grant of forbearance from ILEC Avoided-Cost Resale obligations on a two-part transition period. First, there is a six-month period in which new Avoided-Cost Resale services can be ordered (and be grandfathered until the same date as Avoided-Cost Resale ordered prior to the effective date of the *UNE Analog Loop and Resale Forbearance Order* or August 2, 2019). Second, there is a three-year grandfathering period. According to the FCC, this transition period will also begin on the effective date of the *UNE Analog Loop and Resale Forbearance Order*. *UNE Analog Loop and Resale Forbearance Order* at 24. [↑](#footnote-ref-5)
6. 66 Pa. C.S. §§ 3011-3019. [↑](#footnote-ref-6)
7. *See, e.g*., 66 Pa. C.S. § 3019(b). [↑](#footnote-ref-7)
8. *See, e.g*., Section 253(b) of TA-96. [↑](#footnote-ref-8)
9. “The Act [TA-96] does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated inter­connection agreement accompanied by a joint petition for adoption of the agreement shall be filed no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” *Re: Implementation of the Telecommunications Act of 1996,* Docket No. M-00960799 (Order entered June 3, 1996) at 33. [↑](#footnote-ref-9)