**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held February 4, 2021

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| Commissioners Present:  Gladys Brown Dutrieuille, Chairman, Statement, Recusal  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora |  |
| Joint Petition of Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company 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-2020-3023208 |
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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 Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company LLC (Frontier) 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) (*June* *1996 Implementation Order*); Order on Reconsideration entered September 9, 1996; *see also* *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).

**History of the Proceeding**

On December 7, 2020, Frontier and Comcast filed a Joint Petition for approval of an Amendment to an Interconnection Agreement. The Commission’s *May 2004 Implementation Order* requires parties to file a signed copy of the Amendment with the Commission within thirty days of its signing.[[1]](#footnote-1) Since the last Party signed the Amendment on November 10, 2020, the Amendment has been filed in accordance with the required thirty-day deadline. Notice of the Joint Petition and Amendment was published in the *Pennsylvania Bulletin* on December 19, 2020, at 50 *Pa. B*. 7263, advising that any interested parties could file comments concerning the Joint Petition and Amendment within ten days. No comments have been received.

The Amendment became effective on November 6, 2020.[[2]](#footnote-2) Amendment at 1. In the Joint Petition before us, Frontier is the Incumbent Local Exchange Carrier (ILEC). Comcast is certificated as a Competitive Local Exchange Carrier (CLEC) in the service territory of Frontier.[[3]](#footnote-3)

**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 Frontier and Comcast.

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

The Parties note that as a result of the Federal Communications Commissions’ (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 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. The Parties note that they wish to amend their existing agreement in accordance with the *UNE/Resale Forbearance Orders* and agrees to do so under the terms and conditions contained in the Amendment.[[4]](#footnote-4) The Parties also note that the amendment is 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 existing agreement is being amended by adding terms and conditions for UNE and Resale as set forth in the Amendment. The revisions include, *inter alia*, Frontier’s discontinuance of services previously provided under Section 251(c) of the Act, subject to FCC-established transition periods: (1) Wholesale Discounts for Resold services; [[5]](#footnote-5) (2) Unbundled Analog Loops (UNE Analog Loops); [[6]](#footnote-6) and (3) Unbundled Dedicated Interoffice Transport and Enhanced Extended Loop (UNE Transport).[[7]](#footnote-7) Amendment at 1‑4.

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 Frontier, pursuant to the Amend, is altered, in part, as follows:

**2. Discontinuance of Wholesale Discount for Resale Services**

2.1 As of February 2, 2020, Frontier will not provide to Comcast any new teleservices for resale at a wholesale discount.

2.1.1 Resale services ordered by Comcast on or before February 1, 2020, are grandfathered at the wholesale rate in effect on the Amendment Effective Date for a transition period until the earlier of: (a) August 2, 2022; or (b) the date on which the Resold Telecommunications Services is discontinued by Comcast or is terminated by Frontier for any reason permitted under the Agreement, a Frontier tariff or applicable law. Grandfathered resale services are available only to the same extend as available on February 1, 2020, including only to the same End User with the same functionality at the same End User’s existing location.

2.1.2 On and after August 2, 2022, Frontier shall charge, and Comcast shall pay the applicable retail price for all Comcast purchases of resale Telecommunications Services, both new and those grandfathered pursuant to 2.1.1 (if any remain in service). The retail price is as set forth in Frontier’s then-current applicable tariff or, if there is no tariff price, the retail price that Frontier charges subscribers which are not telecommunications carriers. Such resale services shall be deemed to be purchased for resale under 47 U.S.C. §251(b)(1), and all rates, terms and conditions that apply to the resale of Telecommunications Services under the Agreement, other than the wholesale discount, shall continue to apply to such resale services.

Amendment at 2.

**3. Discontinuance of UNE Analog Loops**

3.1 As of February 2, 2020, Comcast shall not order, and Frontier will not provide unbundled two-wire and four-wire analog voice grade copper loops, including the attached TDM equipment (referred to individually and collectively as “UNE Analog Loops”).

3.2 UNE Analog Loops ordered by Comcast on or before February 1, 2020, are grandfathered for a transition period until the earlier of: (a) August 2, 2022; or (b) the date on which a UNE Analog Loop is converted or disconnected. During the transition period identified in this Section 3.2 and no later than August 2, 2022, Comcast shall either convert each UNE Analog Loop to an alternate non-UNE service (e.g., via a Frontier commercial offering or applicable tariff) or order disconnection of the UNE Analog Loop to be completed no later than August 2, 2022.

3.3 On and after August 3, 2022, Frontier may disconnect Comcast UNE Analog Loops that remain in service, if any, and may do so without further notice to Comcast and pursuant to State Commission rules for such disconnection.

3.4 For any grandfathered UNE Analog Loop not converted or disconnected on or before August 2, 2022, Frontier may bill (or back-bill, as applicable) Comcast and Comcast shall pay the difference between the UNE Analog Loop rate and the applicable, higher non-UNE rate.

Amendment at 2.

**4. Discontinuance of UNE DS1 and DS3 Transport Between Certain Wire Centers**

4.1 As of January 12, 2020, Comcast shall not order and Fronter will not provide unbundled dedicated DS1 and DS3 capacity transport facilities, whether stand-alone or as part of a combination (e.g., Enhanced Extended Link), between Tier 1 wire centers and between wire centers subject to the UNE DS1/DS3 Dedicated Transport forbearance as outlined in the FCC Wireline Competition Bureau’s Public Notice DA 19‑733, dated August 1, 2019 (collectively, “UNE DS1/DS3 Dedicated Transport”).

4.2 UNE DS1/DS3 Dedicated Transport ordered by Comcast on or before January 12, 2020, is grandfathered for a transition period until the earlier of: (a) July 12, 2022; or (b) the date on which a UNE DS1 or DS3 Dedicated transport is converted or disconnected. During the transition period identified in this Section 4.2 and no later than July 12, 2022, Comcast shall convert each grandfathered UNE DS1/DS3 Dedicated Transport to another Frontier service (e.g., Special Access) or disconnect such UNE DS1/DS3 Dedicated Transport service.

4.3 On and after July 13, 2022, Frontier may convert any remaining UNE DS1/DS3 Dedicated Transport of Comcast to a Special Access services at month-to-month rates, terms and conditions as established under then current tariffs or price lists. Frontier will charge, and Comcast will pay all recurring and non-recurring charges for the conversion and the service as applicable under then Frontier current tariffs or price lists.

4.4 For any grandfathered UNE DS1/DS3 Dedicated Transport not converted or disconnected by Comcast on or before July 12, 2022, and to the extent Frontier is not at fault for delays in disconnections or conversions ordered by Comcast pursuant to standard published intervals for the order type being submitted Frontier shall bill (or back-bill, as applicable) Comcast and Comcast shall pay the difference between the UNE DS1/DS3 Dedicated Transport rate and the applicable, Special Access rate as applicable under then current Frontier tariffs or price lists for converted services.

Amendment at 3.

The Amendment revises the terms of the existing 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 existing agreement, the terms and conditions of the Amendment shall govern. *See* Amendment at 3.

**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 Frontier 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,[[8]](#footnote-8) neither a negotiated interconnection agreement nor its amendment may 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.[[9]](#footnote-9) This is consistent with TA‑96 and Chapter 30, wherein service quality and standards, *e.g.*, Universal Service, 911, Enhanced 911, and Telephone Relay Service, are inherent obligations of the telecommunications carriers and continue unaffected by a negotiated contract. In addition, an ILEC cannot, through the negotiation of an agreement or amendment, eliminate its carrier of last resort obligations.[[10]](#footnote-10)

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 and that the Agreement has been filed in accordance with the required thirty-day deadline set forth in the Commission’s *Implementation Orders*. Further, the Commission’s Secretary’s Bureau has published an electronic copy of the Amendment to the Commission’s website prior to publishing notice of the Amendment in the *Pennsylvania Bulletin*. Consistent with our *May 2004 Implementation Order*, since we will approve the Amendment as filed, without any modifications, we will not require the Joint Petitioners 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 Interconnection Agreement between Frontier 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 December 7, 2020, by Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Phone of Pennsylvania 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,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 4, 2021

ORDER ENTERED: February 4, 2021

1. “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.”  *June 1996 Implementation Order* at 33. We clarified this matter in our *May 2004 Implementation Order* at 13-17, 25-26. [↑](#footnote-ref-1)
2. The Amendment’s effective date, as indicated in the preamble of the Amendment, was November 6, 2020, however, the subject matter contained in the Amendment was made effective as early as January 12, 2020 for discontinuance of Unbundled Network Elements (UNE) and DS1 and DS3 Transport and February 2, 2020, for discontinuation of wholesale discount for resale services and UNE Analog Loops, respectively, thereby causing a conflict. Since no Party has disputed the Amendment term at this time, we are not making a determination as to the effective date. [↑](#footnote-ref-2)
3. 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-3)
4. Both the *UNE Analog Loop and Resale Forbearance Order* and *UNE Transport 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-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. 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-6)
7. 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 ensure 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-7)
8. 66 Pa. C.S. §§ 3011-3019. [↑](#footnote-ref-8)
9. *See, e.g*., 66 Pa. C.S. § 3019(b). [↑](#footnote-ref-9)
10. *See, e.g*., Section 253(b) of TA-96. [↑](#footnote-ref-10)