**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held October 28, 2021

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| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  John F. Coleman, Jr., Vice Chairman  Ralph V. Yanora |  |
| Joint Petition of Verizon Pennsylvania LLC and CTC Communications Corporation d/b/a EarthLink Business for Approval of an Amendment to an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996 | A-2021-3027947 |
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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 Pennsylvania LLC (Verizon Pennsylvania) and CTC Communications Corporation d/b/a EarthLink Business (EarthLink) (collectively, Parties) requesting approval of Unbundled Network Element (UNE)/Resale Forbearance 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 August 17, 2021, Verizon Pennsylvania and EarthLink filed a Joint Petition for approval of an Amendment to an existing Interconnection Agreement that was approved by the Commission on May 24, 2002 at Docket No. A‑310295F7000 (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. Since the last Party signed the Amendment on August 2, 2021, 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 August 28, 2021, at 51 *Pa.B*. 5518, 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 August 2, 2021, the date on which the last Party signed the Amendment. Amendment at 1. In the Joint Petition before us, Verizon Pennsylvania is the Incumbent Local Exchange Carrier (ILEC). EarthLink is certificated as a Competitive Local Exchange Carrier (CLEC) in the service territory of Verizon Pennsylvania.[[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 Pennsylvania and EarthLink.

**B.** **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 and Order* in WC Docket No. 19-308 *(FCC 2020 UNE 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.[[2]](#footnote-2) 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 the Amendment. 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 *FCC 2020* *UNE Order* under the existing terms of the Agreement. Amendment at 1.

The existing Agreement is being amended by adding terms and conditions for UNE services as set forth in the Amendment. The revisions include, *inter alia*, Verizon Pennsylvania’s discontinuance of services previously provided under Section 251(c) of the Act, subject to FCC-established transition periods: (1) UNE DS1 and DS3 Loops in Competitive Counties (UNE DS1 and DS3 Loops); (2) UNE DS0 Loops and Associated UNE Copper Subloop; (3) Hybrid Loops and UNE Narrowband Voice-Grade Loops; (4) Multiunit Premises Subloop; (5) Network Interface Devices; (6) Dark Fiber Transport; (7) Operations Support Systems Functions; and (8) Embedded Base and Replacement Arrangement. Amendment at 3-7.

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

**DS1 and DS3 UNE Loops:** Effective February 8, 2021, and subject to a transitional period of 42 months EarthLink can no longer obtain new DS1 and DS3 UNE Loops in Competitive Counties. DS1 and DS3 UNEs that would otherwise be available to EarthLink under the Agreement, will now be available for installation until February 7, 2023. After February 7, 2023 and February 7, 2024, Verizon Pennsylvania will no longer be providing or maintaining any DS1 and DS3 UNEs, respectively.

Amendment at 3-4.

**DS0 UNE Loops and Associated Copper Subloops:**

Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain DS0 UNE Loops and their associated subloops in any Urbanized Census Block. New purchases of DS0 UNE Loops may be made for installations occurring through February 7, 2023. Grandfathered DS0 UNE Loops purchased before February 7, 2023 will continue to be provisioned through February 7, 2025. After February 7, 2025, Verizon Pennsylvania will no longer provide or maintain any DS0 UNE Loop in any Urbanized Census Block. Grandfathered DS0 UNE Loops will be provided at the rates that apply under this Agreement through February 7, 2024 and after that at 125% of rates that apply under the Agreement through February 7, 2025.

Amendment at 4.

**Hybrid Loops and Grandfathered 64 kbps Voice Grade Channels:** Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain Hybrid Loops and their associated subloops. Hybrid Loops or Grandfathered 64 kbps Voice-Grade Channels purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon Pennsylvania will no longer provide or maintain any Hybrid Loops or Grandfathered 65 kbps Voice Grade Channels.

Amendment at 4-5.

**Multiunit Premises Subloops:** Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain Multiunit Premises Subloops. Multiunit Premises Subloops purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon Pennsylvania will no longer provide or maintain any Multiunit Premises Subloops.

Amendment at 5.

**Network Interface Devices:** Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain Network Interface Devices. Network Interface Devices purchased before February 8, 2021, will continue to be provisioned through February 7, 2024. After February 7, 2024, Verizon Pennsylvania will no longer provide or maintain any Network Interface Devices as UNEs.

Amendment at 5.

**Dark Fiber Transport:** Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain Dark Fiber Transport unless at least one end of the transport route is a Tier 3 wire center that is not an Alternative Fiber Wire Center. Dark Fiber Transport purchased before February 8, 2021, will continue to be provisioned through February 7, 2029. After February 7, 2029, Verizon Pennsylvania will no longer provide or maintain any Dark Fiber Transport as a UNE.

Amendment at 5-6.

**Operations Support Systems Functions:** Effective February 8, 2021, and subject to a transitional period, EarthLink will no longer be able to obtain Operations Support Systems Functions unless such functions are used to manage other UNEs that remain available from Verizon Pennsylvania, local interconnection, or local number portability.

Amendment at 6.

**Embedded Base and Replacement Arrangements:** Where Verizon Pennsylvania is permitted to cease providing a UNE under the Amended Agreement and EarthLink has not submitted a Local Service Request (“LSR”) or Access Service Request (“ASR”), as appropriate, to Verizon Pennsylvania requesting disconnection of the Discontinued UNE and has not separately secured from Verizon Pennsylvania an alternative arrangement to replace the Discontinued UNE as of the end of the applicable transition period, then Verizon Pennsylvania may disconnect the subject Discontinued UNE without further notice.

Amendment at 6-7.

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 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 Pennsylvania and/or EarthLink to embody the terms of the Amendment in a filed tariff.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement or amendment may affect or eliminate statutory obligations of telecommunications carriers in the area of protection of the public safety and welfare, service quality, and rights of consumers. *See,* *e.g.*, Section 253(b). This is consistent with TA‑96 and Chapter 30 of the Code,[[3]](#footnote-3) wherein service quality and standards, *e.g.*, Universal Service, 911, Enhanced 911,[[4]](#footnote-4) and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, an ILEC cannot, through the negotiation of an agreement or amendment, eliminate its carrier of last resort obligations.[[5]](#footnote-5)

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 Amendment 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 the Interconnection Agreement between Verizon Pennsylvania and EarthLink 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 August 17, 2021, by Verizon Pennsylvania LLC and CTC Communications Corporation d/b/a EarthLink Business 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.

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Description automatically generated BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 28, 2021

ORDER ENTERED: October 28, 2021

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 EarthLink 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. 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. [↑](#footnote-ref-2)
3. 66 Pa. C.S. §§ 3011 *et seq*. [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. *See, e.g*., Section 253(b) of TA-96. [↑](#footnote-ref-5)