



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

IN REPLY
PLEASE REFER
TO OUR FILE
A-2022-3037242

March 8, 2023

Re: Docket No. A-2022-3037242 - Joint Petition of Verizon Pennsylvania LLC and Fusion Cloud Services, LLC f/k/a Birch Communications, Inc. for Approval of an Amendment to an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Amendment to an Interconnection Agreement**)

TO ALL PARTIES OF RECORD:

Background

On December 14, 2022, Verizon Pennsylvania LLC (Verizon PA) and Fusion Cloud Services, LLC f/k/a Birch Communications, Inc. (Fusion Cloud) (collectively, Party or Parties) filed a Joint Petition for Approval of an Amendment to an Interconnection Agreement (Joint Petition) in the above-captioned proceeding. The Amendment to the Interconnection Agreement (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), 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*).¹ *See also Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreements Pursuant to 47 U.S.C. § 252(e)(2)*,

¹ Section 252(e) of TA-96 requires that the Commission's review of the Amendment be completed within 90 days of its filing. The Amendment was filed on December 14, 2022, and the statutory deadline for the Commission to approve or disapprove the Amendment is on March 14, 2023.

et al., Docket No. M-2022-3030709 (Final Order entered June 16, 2022) (*June 2022 Modifications Order*).²

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the Amendment with the Commission within thirty days of its signing. The last Party signed the Amendment on November 21, 2022. Accordingly, the Amendment was filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on December 31, 2022, at 52 *Pa. B.* 8320, advising that any interested parties could file comments within ten days. No comments have been received.

The Amendment became effective on November 21, 2022, the date on which the last Party signed the Amendment. Amendment at 1. In the Joint Petition before the Commission, Verizon PA is the Incumbent Local Exchange Carrier (ILEC) and Fusion Cloud is certificated as a Competitive Local Exchange Carrier (CLEC) in Verizon PA's service territory.³

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 agreement; or (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

² 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 Agreements 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.

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 Fusion Cloud 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.

Summary of Terms

The Parties note that as a result of the Federal Communications Commission's (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, Fusion Cloud's ability to order new services and retain existing services from Verizon PA is limited. The Parties note that they wish to amend their existing agreement in accordance with the *UNE/Resale Forbearance Orders* and agree to do so under the terms and conditions contained in the Amendment.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*, Verizon PA'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);⁵ (2) Unbundled Dedicated Interoffice Transport and Enhanced Extended

⁴ 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.

⁵ 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.

Loop (UNE Transport);⁶ and (3) Wholesale Discounts for Resale services.⁷ Amendment at 1-8.

As a general condition and in line with the *UNE/Resale Forbearance Orders*, Fusion Cloud's ability to order new services and retain existing services from Verizon PA, pursuant to the Amendment, is altered, in part, as follows:

UNE Analog Loops: Effective February 3, 2020, Fusion Cloud will no longer be able to obtain new UNE Analog Loops. Fusion Cloud 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 PA will no longer be providing any Unbundled Analog Loops under the terms of the Agreement, and Fusion Cloud will be solely responsible for either disconnecting the Analog Unbundled Loops or converting them to an appropriate Special Access services under Verizon PA's applicable tariff.

Amendment at 1-2.

UNE Transport: Effective January 12, 2020, Fusion Cloud can no longer obtain new UNE DS1 and DS3 Dedicated

⁶ 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.

⁷ 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.

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 PA will no longer be providing or maintaining any UNE Transport services under the terms of the Agreement, and Fusion Cloud will be solely responsible for either disconnecting the service or converting them to Special Access services under Verizon PA's applicable tariff.

Amendment at 2-6.

Wholesale Discount for Resale Services: Effective February 2, 2020, Fusion Cloud will no longer be able to obtain new telecommunications services at a discount rate. Resale services ordered by Fusion Cloud 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, Fusion Cloud cannot make any changes to such existing Resold Services, and any new orders for resale services will be at the full rate of Verizon PA's applicable tariff. After August 2, 2022, Telecommunications Services will continue to be provided by Verizon PA at the retail price as set forth in Verizon PA's applicable tariff.

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.

Disposition

The Commission approves the Amendment, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving this privately negotiated Amendment, the Commission expresses 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 the Amendment by providing here that our approval of this Amendment 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, the Amendment does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in the Amendment or to the Amendment 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 intent that the approval of such an agreement will affect the status of negotiations between other parties. In this context, we will not require Verizon PA or Fusion Cloud to embody the terms of the Amendment in a filed tariff. In addition, we note that the Parties have filed a signed, true and correct copy of the Amendment as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of the Amendment to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve the Amendment as filed, without any modifications, we will not require the Joint Petitioners to file an electronic copy of the Amendment upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection agreement may affect or eliminate an 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,⁸ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁹ and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, an ILEC

⁸ 66 Pa. C.S. §§ 3011-3019.

⁹ 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.

cannot, through the negotiation of an agreement or amendment, eliminate its carrier of last resort obligations.¹⁰

Conclusion

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

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, Kathryn G. Sophy, Director. Please direct your inquiry to (717) 787-1827 or RA-OSA@pa.gov.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

¹⁰ See, e.g., Section 253(b) of TA-96.