



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

IN REPLY
PLEASE REFER
TO OUR FILE
A-2022-3037244

March 8, 2023

Re: Docket No. A-2022-3037244 - Joint Petition of Verizon Pennsylvania LLC and Fusion Cloud USA, 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 or before March 14, 2022.

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 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 [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.⁴ 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 PA'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 4-8.

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

⁴ 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.

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

Amendment at 4.

DS0 UNE Loops and Associated Copper Subloops: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA 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 4-5.

Hybrid Loops and Grandfathered 64 kbps Voice Grade Channels: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA will no longer provide or

maintain any Hybrid Loops or Grandfathered 65 kbps Voice Grade Channels.

Amendment at 5.

Multiunit Premises Subloops: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA will no longer provide or maintain any Multiunit Premises Subloops.

Amendment at 5-6.

Network Interface Devices: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA will no longer provide or maintain any Network Interface Devices as UNEs.

Amendment at 6.

Dark Fiber Transport: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA will no longer provide or maintain any Dark Fiber Transport as a UNE.

Amendment at 6.

Operations Support Systems Functions: Effective February 8, 2021, and subject to a transitional period, Fusion Cloud 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 PA, local interconnection, or local number portability.

Amendment at 6.

Embedded Base and Replacement Arrangements: Where Verizon PA is permitted to cease providing a UNE under the Amended Agreement and Fusion Cloud has not submitted a Local Service Request (“LSR”) or Access Service Request (“ASR”), as appropriate, to Verizon PA requesting disconnection of the Discontinued UNE and has not separately secured from Verizon PA an alternative arrangement to replace the Discontinued UNE as of the end of the applicable transition period, then Verizon PA 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 8.

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,⁵ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁶ 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.⁷

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

⁵ 66 Pa. C.S. §§ 3011-3019.

⁶ 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.

⁷ *See, e.g.*, Section 253(b) of TA-96.

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,

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

Rosemary Chiavetta
Secretary