



September 7, 2023

Re: Docket No. A-2023-3041420 - Joint Petition of Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Phone of Pennsylvania for Approval of an Amendment to Interconnection Agreement, under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of Interconnection Amendment**)

TO ALL PARTIES OF RECORD:

Background

On June 22, 2023, Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company (Frontier) and Comcast Phone of Pennsylvania (Comcast) (collectively, Party or Parties) filed a Joint Petition for Approval of Amendment 3¹ to an Interconnection Agreement (Joint Petition) in the above-captioned proceeding (Amendment 3).² Amendment 3 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 Agreement* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).³ *See also, Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreement Pursuant to 47 U.S.C. § 252(e)(2), et al.,*

¹ In the Joint Petition Frontier identified the Amendment as Amendment 3, which was not reflected in the *Pennsylvania Bulletin* when it was published. We have corrected the Amendment to Amendment 3 throughout this Secretarial Letter.

² The original Agreement was Docketed at No. A-2013-2352201 and became effective on May 9, 2013.

³ Section 252(e) of TA-96 requires that the Commission's review of Amendments be completed within 90 days of its filing. Amendment 3 was filed on June 22, 2023, and the statutory deadline for the Commission to approve or disapprove Amendment 3 is on September 20, 2023.

Docket No. M-2022-3030709 (Final Order entered June 16, 2022) (*June 2022 Modifications Order*).⁴

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the Amendments with Commission within thirty (30) days of their signing. The last Party signed Amendment 3 on May 24, 2023. Accordingly, Amendment 3 was filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on July 8, 2023, at 52 *Pa. B.* 3683, advising that any interested parties could file comments within ten days. No comments have been received.

Amendment 3 became effective upon the Parties' signing of the Amendment on May 24, 2023. Amendment 3 at 1.

Frontier and Comcast have signed nine Amendments on behalf of their affiliates involving: (1) Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; (2) Frontier Communications of Breezewood, LLC and (3) Frontier Communications of PA, LLC who are Incumbent Local Exchange Carriers (ILECs) and (1) Comcast Phone of Pennsylvania and (2) Comcast Business Communications, LLC who are CLECs in Pennsylvania, making the Amendment equally applicable to each of the three ILECs and the two CLECs. In order to facilitate the adoption of an interconnection agreement by other parties, pursuant to 47 U.S.C. §252(i), only one ILEC should be party to a single interconnection agreement. To facilitate timely consideration of this Amendment, according to the schedule set forth in TA-96, we shall sever the Amendment into six amendments (two pertaining to Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, and Comcast Phone of Pennsylvania and Comcast Business Communications, two pertaining to Frontier Communications of Breezewood, LLC, Comcast Phone of Pennsylvania and Comcast Business Communications, LLC, and two pertaining to Frontier Communications of Pennsylvania, LLC, Comcast Phone of Pennsylvania and Comcast Business Communications, LLC) for purposes of consideration and disposition here (and, in the future, for purposes of adoption by non-parties).

⁴ 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 Agreement 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.

In the Joint Petition before the Commission, Frontier is the ILEC, and Comcast is certificated as a CLEC in Frontier's service territory.⁵

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

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.⁶ 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 Amendment 3. The Parties also note that Amendment 3 is made without waiving any rights or arguments they may have with

⁵ 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.

⁶ 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.

respect to whether an amendment is required to effectuate the *FCC 2020 UNE Order* under the existing terms of the agreement. Amendment 3 at 1.

The existing agreement is being amended by adding terms and conditions for UNE services as set forth in Amendment 3. 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) UNE Digital Loops; (2) UNE DS1 Loops; (3) UNE DS3 Loops; (4) Dark Fiber Transport; (5) UNE Subloops and Network Interface Devices; (6) Conversion of Special Access Circuits; and (7) Operations Support Systems Functions. Amendment 3 at 2-3.

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

Digital (DS0) UNE Loops: Effective February 8, 2023, Comcast will no longer be able to obtain DS0 UNE Loops in any Urbanized Census Block. Grandfathered DS0 UNE Loops purchased before February 8, 2023, will continue to be provisioned through February 8, 2025. After February 8, 2025, Frontier 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 8, 2024, and after that at 125% of rates that apply under the Agreement through February 8, 2025. Comcast shall convert DS0 UNE Loops to a commercial offering or an alternate arrangement or disconnect such DS0 UNE Loop on or before February 8, 2025.

Amendment 3 at 2.

DS1 UNE Loops: Effective February 8, 2023, Comcast can no longer obtain new DS1 UNE Loops in Wire Centers in counties deemed to be competitive. Any existing DS1 Loops ordered on or before February 8, 2023, are grandfathered until July 8, 2024, pursuant to the rates, terms and conditions of the Agreement. Grandfathered DS1 UNE Loops will be provided at the rates that apply under this agreement through February 8, 2024. Frontier will no longer be providing or maintaining any DS1 UNE Loops. Comcast shall convert DS1 UNE

Loops to an alternate arrangement or disconnect such DS1 UNE Loop on or before February 8, 2024.

Amendment 3 at 2.

DS3 UNE Loops: Effective February 8, 2021, Comcast can no longer obtain new DS3 UNE Loops in Wire Centers in counties deemed to be competitive. Any existing Loops ordered on or before February 8, 2021, are grandfathered until July 8, 2024, pursuant to the rates, terms and conditions of the Agreement. Grandfathered DS3 UNE Loops will be provided at the rates that apply under this agreement through February 8, 2024. Frontier will no longer be providing or maintaining any DS3 UNE Loops. Comcast shall convert DS3 UNE Loops to an alternate arrangement or disconnect such DS3 UNE Loop on or before February 8, 2024.

Amendment 3 at 2.

Dark Fiber Transport: Effective February 8, 2021, and subject to a transitional period, Comcast 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 8, 2029. After February 8, 2029, Frontier will no longer provide or maintain any Dark Fiber Transport as a UNE.

Amendment 3 at 2.

UNE Subloops or UNE Network Interface Devices: Effective February 8, 2021, Comcast will no longer be able to obtain UNE Subloops or UNE Network Interface Devices pursuant to this Agreement.

Amendment 3 at 2.

Conversion of Special Access Circuits to UNEs: Effective February 8, 2021, Comcast will no longer be able to convert Special Access Circuits to UNEs.

Amendment 3 at 3.

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

Amendment 3 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.

Disposition

The Commission approves Amendment 3, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving the privately negotiated Amendment 3, the Commission express 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 Amendment 3 providing here that our approval of Amendment 3 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, Amendment 3 does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in Amendment 3 or to the Agreement.

TA-96 requires that the terms of Amendment 3 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 Amendment 3 and its terms to other parties do not connote any intent that the approval of such Amendment will affect the status of negotiations between other parties. In this context, we will not require Frontier or Comcast to embody the terms of Amendment 3 in filed tariffs. In addition, we note that the Parties have filed signed, true and correct copies of Amendment 3 as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of Amendment 3 to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve Amendment 3 as filed, without any

modifications, we will not require the Joint Petitioners to file an electronic copy of Amendment 3 upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection Amendment may affect or eliminate 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,⁷ wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,⁸ and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, ILECs cannot, through the negotiation of amendments or agreements, eliminate its carrier of last resort obligations.⁹

Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96 and our subsequent orders thereunder, we determine that Amendment 3 between Frontier and Comcast is non-discriminatory to other telecommunications companies not party to Amendment 3 and that Amendment 3 is consistent with the public interest. Therefore, we shall grant the Joint Petition of Frontier and Comcast for approval of Amendment 3 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

⁷ 66 Pa. C.S. §§ 3011-3019.

⁸ 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.

⁹ *See, e.g.*, Section 253(b) of TA-96.

Office of Special Assistants, Kimberly Hafner, Acting Director. Please direct your inquiry to (717) 787-1827 or RA-OSA@pa.gov.

Very truly yours,

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

Rosemary Chiavetta
Secretary