



Agenda Date: 2/17/23  
Agenda Item: IVA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION  
AND TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF VERIZON )  
NEW JERSEY INC. AND FUSION, LLC FOR APPROVAL )  
OF AN AMENDMENT TO AN INTERCONNECTION )  
AGREEMENT UNDER SECTION 252 (e) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )  
)

ORDER APPROVING  
AMENDMENTS TO THE  
INTERCONNECTION  
AGREEMENT

IN THE MATTER OF THE APPLICATION OF VERIZON )  
NEW JERSEY INC. AND FUSION, LLC FOR APPROVAL )  
OF AN AMENDMENT TO AN INTERCONNECTION )  
AGREEMENT UNDER SECTION 252 (e) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )  
)

DOCKET NO TO22110714  
DOCKET NO TO22110716

**Parties of Record:**

**Patricia Kolvitz**, Senior Analyst, Verizon, New Jersey, Inc.  
**J. Prenetta**, Fusion, LLC.  
**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On November 30, 2022, Verizon New Jersey, Inc. (“Verizon”) and Fusion, LLC (“Fusion”)(collectively, “Parties”), filed two (2) joint applications with the New Jersey Board of Public Utilities (“Board”) for approval of amendments to an interconnection agreement. One joint application, assigned Docket No. TO22110714, pertains to a Resale Forbearance Amendment to the Interconnection Agreement between Verizon and Fusion (“Amendment 1”), and the other, assigned Docket No. TO22110716, pertains to the October 2020 UNE Order Amendment to the Interconnection Agreement between Verizon and Fusion (“Amendment 2”).<sup>1</sup> Both applications were filed pursuant to Sections 251 and 252 of the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. § 151 *et seq.*) (“Act”). The Parties seek Board approval of Amendment 1 and Amendment 2 (together, “Amendments”),

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<sup>1</sup> The preambles to both Amendment 1 and Amendment 2 initially identify Verizon and Fusion Cloud Services, LLC as the parties to the Agreement. However, the preambles both, by reference to Attachment 1 to each of Amendment 1 and Amendment 2, also identify Fusion, LLC, as a party to each of Amendment 1 and Amendment 2.

which are amendments to a negotiated interconnection agreement (“Agreement”) by and between Verizon and Fusion.<sup>2</sup> Verizon is an incumbent local exchange carrier (“ILEC”), as defined by the Act, with the duty to negotiate interconnection agreements pursuant to Section 252 of the Act. See 47 U.S.C. § 251(c) and § 251(h)(1). Fusion is a competitive local exchange carrier (“CLEC”) authorized to operate in the State of New Jersey.

## **BACKGROUND AND PROCEDURAL HISTORY**

Section 251(c)(3) of the Act sets forth an ILEC’s network unbundling obligations. Following Congress’s directive that the Federal Communications Commission (“FCC”) determine which network elements should be subject to the unbundling rules, the FCC created a list of unbundled network elements (“UNEs”) that CLECs can lease from ILECs in order to provide competitive local service. Upon receiving a request for interconnection, services, or network elements, an ILEC may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers pursuant to Section 252(a)(1). The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. Under Section 252(e)(1), the agreement shall be submitted to the State commission for approval. The Act provides that the Board, as the relevant state commission, may reject a negotiated agreement, as relevant here, only 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...” 47 U.S.C. § 252(e)(2)(A).

### **Amendment 1**

On July 12, 2019, the FCC released a Report and Order on Remand and Memorandum Opinion and Order in WC Docket No. 18-141 that, in part, relieved price cap ILECs such as Verizon from offering certain DS1 Dedicated Transport and DS3 Dedicated Transport facilities as UNEs pursuant to 47 U.S.C § 251(c)(3) (“UNE Transport Forbearance Order”). On August 2, 2019, the FCC released a Memorandum Opinion and Order in WC Docket No. 18-141 (“UNE Loop/Resale Forbearance Order”), which relieved ILECs from requirements to offer UNE Analog loops and Avoided Cost Resale of certain services. The UNE Loop/Resale Forbearance Order, together with the UNE Transport Forbearance Order are referred to together as the “UNE/Resale Forbearance Orders”.

Pursuant to the UNE/Resale Forbearance Orders, under Amendment 1 to the Agreement, Verizon will discontinue or no longer make available to Fusion the following loops and associated services on Verizon’s network:

1. UNE Analog Loops effective as of February 3, 2020, subject to the transitional period set forth in Amendment 1.
2. UNE DS1 and DS3 Dedicated Transport between certain wire centers. To the extent DS1 and DS3 Dedicated Transport would otherwise be available, such availability is subject to Verizon’s application of the tiered wire center classification as defined in 47 C.F.R. 51.319(d)(i) and (ii) and referenced in an applicable Verizon Tariff.

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<sup>2</sup> See I/M/O of the Joint Application of Verizon New Jersey, Inc. and Simlab Communications for Approval of an Interconnection Agreement Under Section 252 of the Telecommunications Act of 1996, BPU Docket No. TO06120861 (Order dated April 12, 2007).

3. Wholesale Discount for Resold Services, subject to the transitional period set forth in Amendment 1.

### **Amendment 2**

On October 28, 2020, the FCC released a Report and Order in WC Docket No. 19-308, *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services* (“2020 UNE Order”), which became effective on February 8, 2021. The 2020 UNE Order eliminates Section 251 and Section 252 unbundling requirements for certain legacy services subject to a reasonable transition period. Specifically, the 2020 UNE Order eliminates rules requiring unbundling of: 1) enterprise-grade DS1 and DS3 loops<sup>3</sup> where there is evidence of actual and potential competition, 2) broadband-capable DS0 loops in the most densely populated areas, and 3) voice-grade narrowband loops nationwide. The 2020 UNE Order preserves unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition. The 2020 UNE Order further eliminates requirements for 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 deployment by CLECs that may harm consumers.

Pursuant to the rule changes in the 2020 UNE Order, under Amendment 2, Verizon will discontinue or no longer make available to Fusion the following loops, subloops and associated devices or services on Verizon’s network:

1. DS1 and DS3 UNE Loops effective February 8, 2021 subject to a 24-month and 42-month transition period for end users served by such loops in any competitive county.<sup>4</sup>
2. DS0 UNE Loops and Associated UNE Copper Subloops effective February 8, 2021 subject to the transition period set forth in Subsection 4.2 of Amendment 2.
3. Hybrid Loops and Grandfathered 64 Kbps Voice Grade Channels effective February 8, 2021 subject to the transition period set forth in Subsection 5.2 of Amendment 2.
4. Multiunit Premises Subloops effective February 8, 2021 subject to the transition period set forth in Subsection 6.2 of Amendment 2.
5. Network Interface Devices effective February 8, 2021 subject to the transition period set forth in Subsection 7.2 of Amendment 2.
6. Dark Fiber Transport effective February 8, 2021 subject to the transition period set forth in Subsection 8.2 of Amendment 2.

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<sup>3</sup> A Digital Signal level loop (DS0, DS1, DS2, DS3 etc.) means one of several transmission rates used to transmit voice and data in the time-division multiplex hierarchy of the telephone network.

<sup>4</sup> A county is deemed competitive when either (1) at least 50% of the locations with business data service demand within the county are within a half mile of a competitive provider’s network, or (2) a cable competitor’s network serves at least 75% of the census blocks with business data services demand within the county. 47 CFR § 69.803.

7. Operations Support Systems Functions effective February 8, 2021 subject to the transition period set forth in Subsection 9.2 of Amendment 2.

The Parties asserted that the Amendments outlined in the joint applications satisfy the FCC rule changes and the requirements for Board approval because they do not discriminate against any other telecommunications carrier, as required by Section 252(e)(2)(A)(i) of the Act. The Parties also assert the Amendments are consistent with the public interest, convenience, and necessity as required by Section 252(e)(2)(A)(ii).

By letter dated January 30, 2023, the New Jersey Division of Rate Counsel submitted comments to the Board recommending that the Board actively monitor complaints filed under the Amendments to the Agreement, but stating it does not object to Board approval of the Amendments.

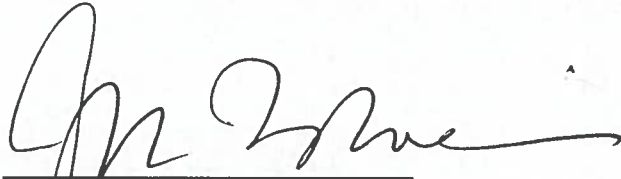
### **DISCUSSION AND FINDINGS**

The Board's review of the joint application indicates that the Amendments are consistent with the public interest, convenience, and necessity, and do not discriminate against telecommunications carriers who are not parties to the Amendments and Agreement. Therefore, the Board **FINDS** that the Amendments meets the standards set forth in the Act. Accordingly, the Board **HEREBY APPROVES** the Amendments to the Agreement submitted by the Parties. The Parties should note this approval is not to be construed as preapproval of any future petitions for rate recovery of costs incurred pursuant to the Amendments. Additionally, this approval does not constitute a determination concerning, nor shall the Board be bound by, any provisions within the Amendments or the Agreement regarding the confidentiality of information. Pursuant to 47 U.S.C. §252(h), a copy of the Amendments to the Agreement shall be made available for public inspection and copying within ten days of the issuance of this Order.

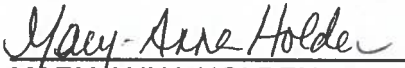
This Order shall be effective on February 24, 2023.

DATED: February 17, 2023

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



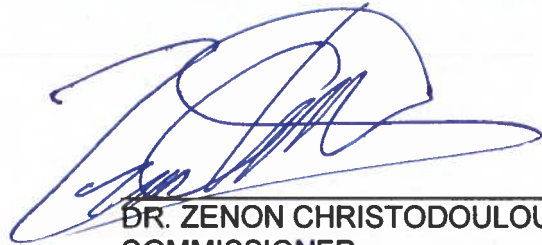
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DIANNE SOLOMON  
COMMISSIONER

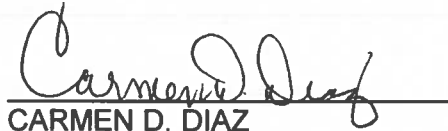


ROBERT M. GORDON  
COMMISSIONER



DR. ZENON CHRISTODOULOU  
COMMISSIONER

ATTEST:



CARMEN D. DIAZ  
ACTING SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

IN THE MATTER OF THE APPLICATION OF VERIZON NEW JERSEY INC AND FUSION, LLC FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT UNDER SECTION 252 (e) OF THE TELECOMMUNICATIONS ACT OF 1996

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