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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held December 17, 2009 | | |
| Commissioners Present: | |  | | |
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| James H. Cawley, Chairman | | | | |
| Tyrone J. Christy, Vice Chairman | | | | |
| Kim Pizzingrilli | | | | |
| Wayne E. Gardner | | | | |
| Robert F. Powelson | | | | |
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| Application of Entelegent Solutions, Inc. for approval to offer, render, furnish or supply telecommunication services as a Reseller of Interexchange Toll Services to the public in the Commonwealth of Pennsylvania | | | A-2009-2130862 | |
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| Application of Entelegent Solutions, Inc. for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier to the public in the Commonwealth of Pennsylvania in the service territories of: | | |  | |
| Verizon Pennsylvania Inc., | | | A-2009-2130863 | |
| Verizon North Inc.,  The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania, and  Windstream Pennsylvania, LLC | | | A-2009-2130864  A-2009-2130865  A-2009-2130900 | |
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CORRECTED ORDER

**BY THE COMMISSION:**

On September 8, 2009, Entelegent Solutions, Inc. (Applicant) filed an Application seeking a Certificate of Public Convenience pursuant to the Telecommunications Act of 1996, 47 U.S.C. § §  201, *et seq*., (TA-96)[[1]](#footnote-1) and to Chapter 11 of the Public Utility Code (Code) (66 Pa. C.S. § 1101, *et seq.*) evidencing authority to provide the following telecommunication services to the public:

1. As a detariffed Reseller of Interexchange Toll Services (IXC Reseller)[[2]](#footnote-2) throughout the Commonwealth of Pennsylvania, and
2. As a Competitive Local Exchange Carrier (CLEC) in the service territories of Verizon Pennsylvania Inc., Verizon North Inc. (collectively Verizon), The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (Embarq Pennsylvania)[[3]](#footnote-3), and Windstream Pennsylvania, LLC (Windstream) within the Commonwealth of Pennsylvania,

The Applicant was granted provisional authority pursuant to our Secretarial Letter of September 18, 2009 to provide the proposed IXC Reseller (detariffed) throughout the Commonwealth of Pennsylvania and CLEC services in the Verizon service areas pursuant to its proposed CLEC tariff during the pendency of the application process. The Applicant requested and was granted a waiver of the newspaper publication requirement for CLEC entry in the Embarq Pennsylvania and Windstream service territories. The assigned utility code is 3111195.

The Applicant complied with notice requirements set forth in our *TA-96* *Implementation Orders*[[4]](#footnote-4) by serving a copy of its application upon the aforementioned incumbent local exchange carriers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Attorney General. No protests were filed. No hearings were held.

Information concerning the Applicant is as follows:

* The Applicant is a North Carolina Corporation with its principal place of business at 3800 Arco Corporate Drive, Suite 310, Charlotte, North Carolina 28273, telephone (704) 323-7464, facsimile (866) 295-0471.
* The Applicant complied with 15 Pa. C.S. § 4124, relating to a foreign corporation.
* The Applicant’s registered office provider within Pennsylvania is Corporation Service Company located at 2704 Commerce Drive, Harrisburg, PA 17110.
* The Applicant’s Pennsylvania Emergency Management Agency contact is David Gibson, Vice President of Operations, 3800 Arco Corporate Drive, Charlotte, North Carolina 28273, telephone (704) 323-7464, facsimile (866) 295-0471.
* Correspondence to resolve complaints may be directed to David Gibson, telephone (704) 323-7464, facsimile (866) 295-0471, at company headquarters.
* The Applicant will not be using a fictitious name.
* The Applicant is operating, or is in the process of being approved, as a public utility under CLEC and IXC authority in every state except Alaska and Maine.
* The Applicant has no affiliates or predecessors within Pennsylvania.
* The Applicant has no affiliates or predecessors rendering public utility service outside Pennsylvania.

The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing.

The Applicant will provide business only facilities-based local telephone exchange service by purchasing network elements from underlying local carriers via Interconnection Agreement and/or Commercial Agreement. The Applicant will provide resold interexchange services by reselling the telecommunications services of facilities-based long distance carriers. At this time, the Applicant does not propose to construct its own facilities in Pennsylvania.

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.[[5]](#footnote-5) A CLEC Applicant is expected to adhere to the requirements relative to universal service programs, as initially set forth or as subsequently enlarged or modified.[[6]](#footnote-6) Also, per federal rules, CLECs are required to ensure the efficient usage of their numbering resources and are required to semi-annually report their utilization and forecast data to the North American Numbering Plan Administrator. See 47 C.F.R. § 52.5 *et seq*. Any CLEC failing to comply with state and/or federal commission orders related to numbering may be subject to the reclamation of their numbering resources as well as fines pursuant to the Public Utility Code, 66 Pa. C.S. § 3301. See *Implementation of Numbering Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released March 31, 2000 – NXX Code Reclamation,* Docket No. M-00001373 (Order entered August 22, 2000), 30 Pa. B. 4701 (September 2, 2000)(Commission established process for reclaiming NXX codes from carriers who have failed to activate them within 6 months of their availability for assignment to customers).

Further, Section 253(b) of the TA-96 permits a state Commission to impose, on a competitively neutral basis and consistent with the Universal Service Section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers. In response, we articulated explicit concerns relative to an applicant’s financial fitness, tariff compliance, and rates.[[7]](#footnote-7) In this case, the Applicant has provided financial information to support its Application. We conclude that the Applicant has demonstrated that it is financially capable of providing telecommunication services as an IXC Reseller and a CLEC.

The Commission requires that Applicants seeking to provide local telecommunications services in Pennsylvania take steps to protect the public safety of consumers. One means of ensuring the public safety of consumers in the increasingly competitive telecommunications marketplace is to ensure that new entrants provide their consumers with access to a seamless communications infrastructure for emergency services, such as 911. Therefore, in accordance with the notarized Affidavit (item #22 in the Application), the Applicant avers that it has contacted each county or municipal authority where it intends to provide CLEC telecommunications service and made the necessary arrangements for the provisioning of emergency 911 service.

We conclude that the Applicant has met the requirements for certification as an IXC Reseller and a CLEC, consistent with this Order. Premised upon our review of the Applications and the proposed tariffs, and consistent with our Orders, the Code, our Regulations and the TA-96, we conclude that the Applicant’s proposed services do not raise concerns at this time regarding safety, adequacy, reliability, or privacy. We note, however, deficiencies in the proposed tariffs.

We shall direct the Applicant to revise the proposed tariffs in accordance with the changes noted in Appendix A of this Order.[[8]](#footnote-8) The Applicant shall thereafter file its Initial Tariffs reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. The Applicant may file its Initial Tariffs electronically, consistent with Commission Rules.[[9]](#footnote-9) Copies of the Initial Tariffs shall also be served upon the same entities receiving service of the original Application, including the incumbent local exchange carriers. If the time required for such resolution and filing exceeds sixty (60) days, the Applicant may request an extension of an additional sixty (60) days with the Commission’s Secretary. Thus, if the Initial Tariffs are not filed within 60 days (120 days including the extension) of the entry of this Order, the Application will be dismissed and the authority granted herein will be revoked without further Commission Order.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. The Commission does not have jurisdiction to determine liability or award monetary damages. Any tariff provisions contained in the Initial Tariff(s) regarding limitation of liability found to be inconsistent with any applicable laws, rules and regulations will be deemed inoperative and superseded. Any claim against the public utility and/or public utility’s customer regarding liability outside the limited scope of the tariff must be filed in court for determination of liability and monetary damages.

To the extent that the proposed tariffs contain rates, the Initial Tariffs may become effective on one (1) day’s notice from the date upon which they are filed and served.

Further, the Commission makes no determination whether the Applicant’s switched access rates are in compliance with Act 183 of 2004.[[10]](#footnote-10)

**Conclusion**

Accordingly, we shall grant the Application. Upon the approval of the Initial Tariffs, a Certificate of Public Convenience shall be issued evidencing the Applicant’s authority to provide services as a CLEC in the service territories of Verizon Pennsylvania Inc., Verizon North Inc., The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Windstream Pennsylvania, LLC, consistent with this Order and our decisions in the *MFS Intelenet* and such other proceedings; **THEREFORE,**

**IT IS ORDERED:**

1. That the Application of Entelegent Solutions, Inc. at Docket No. A‑2009-2130862, for authority to operate as a Reseller of Interexchange Toll Services throughout the Commonwealth of Pennsylvania, is granted, consistent with this Order and that a certificate of public convenience be issued evidencing such approval.
2. That the Application of Entelegent Solutions, Inc. at Docket Nos. A‑2009-2130863, A-2009-2130864, A-2009-2130865, and A-2009-2130900, for authority to operate as a Competitive Local Exchange Carrier within the service territories of Verizon Pennsylvania Inc., Verizon North Inc., The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Windstream Pennsylvania, LLC, is granted, consistent with this Order.
3. That the Applicant shall either eFile or submit an original and three copies of its Initial Tariffs consistent with the requisite changes noted in Appendix A of this Order within sixty (60) days (120 days including an approved extension) after the date of entry of this Order. **The Applicant is directed to identify any changes made to the proposed initial tariffs that are in addition to the changes noted in Appendix A.** The Applicant shall serve copies of its Initial Tariffs on each entity receiving a copy of the original Application. The initial tariffs may become effective on or after one (1) day’s notice from the date upon which they are filed and served.
4. That the Initial Tariffs shall be labeled: “Competitive Local Exchange Carrier Tariff,” and “Competitive Local Exchange Carrier Switched Access Tariff.”
5. That the Applicant shall comply with all the provisions of the Public Utility Code, as now exist or as may be hereafter amended, and with all pertinent rules, regulations, and Orders of this Commission, now in effect or as may be prescribed by this Commission, including but not limited to: the *MFS Intelenet, et al.,* Docket Nos. A‑310203F0002, *et al*.; the *Universal Service Investigation,* Docket No. I-00940035; the *Global Order,* Docket No. P-00991648, *et al*.; and the *NXX Code Reclamation,* Docket No. M-00001373.
6. That if the Applicant expands its local service into new counties in its currently authorized area of Verizon Pennsylvania Inc., Verizon North Inc., The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania, and Windstream Pennsylvania, LLC, Applicant shall contact the appropriate 911 coordinators, complete appropriate documents for 911 Service for each, and provide the service list to said 911 coordinators with its tariff revisions as verification that arrangements are underway for the provisioning of Emergency 911 service in the additional exchanges.
7. That if the Applicant should desire to expand its service territory to that of additional incumbent local exchange carriers, Applicant shall file an Application to amend its Certificate of Public Convenience and comply with all the requirements of the Application, including the completion of the affidavit and requirements thereto concerning Emergency 911 service.
8. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right to the Applicant.
9. That the Applicant maintains accurate accounting records that segment its IXC and CLEC revenues in the state.
10. That in accordance with Commission Orders entered October 5, 2005 at M‑00041857 and on August 21, 2006 at L-00050176, the applicant shall follow the reporting requirements outlined at the following website: <http://www.puc.state.pa.us/telecom/docs/Reporting_Requirements0409.doc>
11. That the Applicant shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within 30 days of this Order.
12. That the Applicant shall make 711 abbreviated dialing available to access Telecommunications Relay Service and to arrange its switching equipment to translate these calls to the assigned toll-free number, (888) 895-1197, in order to route calls to the Telecommunications Relay Service Provider, in accordance with Commission’s Order entered on February 4, 2000, at Docket No. M-00900239.
13. That in the event that the Applicant has not, on or before sixty (60) days (120 days including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Applications at Docket Nos. A‑2009-2130863, A-2009-2130864, A-2009-2130865, and A-2009-2130900 will be dismissed and the authority granted herein revoked without further Commission Order.
14. That upon the approval of the Initial Tariffs, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Local Exchange Carrier within the service territories of Verizon Pennsylvania Inc., Verizon North Inc., The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania, and Windstream Pennsylvania, LLC.
15. That changes and/or additions made to an approved, filed tariff shall be made in the form of supplements, consecutively numbered in the order of their filing dates, and the tariff designation shall be in the following manner: Supplement No. \_\_ to Tariff Telephone Pa. P.U.C. No.\_\_\_.
16. That the Applicant shall add its Pennsylvania tariffs to its website, if it has one. If the Applicant does not maintain a website, the PA Public Utility Commission will host its tariffs on the Commission's website.
    * Within 30 days of the filing of its initial tariffs, the Applicant shall add the tariffs to its website and mark them “Pending.”
    * Within 30 days of receipt of its Certificate of Public Convenience, the Applicant shall make any required modifications to the tariffs on its website and remove the “Pending” notation. Thereafter, the Applicant will continually update the website whenever any supplemental revisions to the tariffs are approved by the Commission such that the website tariffs are a true and accurate representation of its tariffs on file with the Commission.
    * The Applicant shall contact Cyndi Page (717-214-5434; cypage@state.pa.us) of the Commission’s Communications Office to create a link from the Commission’s website to the Applicant’s website.
    * If the Applicant does not maintain a website, the Applicant shall contact Cyndi Page to have its tariffs added to the Commission's website and to update the tariff upon subsequent approval of supplemental revisions to the tariffs.
17. That if the Applicant plans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.
18. That a copy of this Order be served on the Department of Revenue, Bureau of Corporation Tax and PEMA Bureau of 9-1-1 Programs (Pennsylvania Emergency Management Agency).



**BY THE COMMISSION,**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: December 17, 2009

ORDER ENTERED: December 22, 2009

APPENDIX A

Entelegent Solutions, Inc.

Docket Nos. A‑2009-2130863, A-2009-2130864, A-2009-2130865, and A-2009-2130900

Proposed tariffs for

Competitive Local Exchange Carrier Service

The proposed tariffs contain certain deficiencies that must be addressed by the Applicant before the tariffs can be approved and the Certificate of Public Convenience issued. **The Applicant must submit a copy of this Appendix with its revised compliance tariff. On that copy, please note the page/sheet of the compliance tariff where the required revision is located for each item below.**

**Tariff deficiencies noted – CLEC Local Tariff (A‑2009-2130863, A-2009-2130864, A-2009-2130865, and A-2009-2130900), Tariff No. 1**

1. Correct the Title to read:

Entelegent Solutions, Inc.

COMPETITIVE LOCAL EXCHANGE CARRIER

Regulations and Schedule of Charges

For Business Services Only

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. Preface, Original Pages 6 & 7: Update the Table of Contents to reflect changes made in compliance with order.
3. Preface, Original Page 8: Change the title at the top of this page to read; “Explanation of Symbols” by deleting “Reference Marks” and “Abbreviations of Technical Terms used in this Tariff.”
4. Section 1, Original Page 3: Only include definitions of terms used in the tariff. Either remove the following or provide a reference to Commission staff as to where in this tariff these terms are used: “BIT,” “Direct Inward Dialing,” “Hearing Impaired,” “PBX,” and “Point of Presence.”
5. Section 2.1.3 C, Original Page 2: Spell business correctly in the second sentence of this section.
6. Section 2.1.4, Original Pages 4-7, Liability: Remove or revise any portion of this section that does not fit within the scope of 52 Pa. Code §69.87 and the Commission Order under Docket No. M-00981209. S*ee* <http://www.pabulletin.com/secure/data/vol29/29-17/659.html>.
7. Section 2.1.4 B, Original Page 4: Remove this subsection as it conflicts with 52 Pa. Code §63.24(b)(3).
8. Section 2.1.7, Original Pages 11 & 12: Replace text with standard 911 text; See our website for standard text at [http://www.puc.state.pa.us/telecom/docs/911 Sample\_Language.doc](http://www.puc.state.pa.us/telecom/docs/911%20Sample_Language.doc).
9. Section 2.1.8, Original Page 13: Include a reference as to where in the Company’s tariff the “additional charges” mentioned in this section can be located.
10. Section 2.5.2, Original Page 23: In accordance with 52 Pa. Code § 53.84 add information that clearly specifies whether, if bills are paid by mail, the date of the post mark will be considered the date of payment.
11. Section 2.5.2 I: Remove this section as paper billing fees are not allowed.
12. Section 2.6.2 G, Original Page 33: Remove this subsection as it conflicts with 52 Pa. Code §63.24(b)(3).
13. Section 2.11, Original Page 38: Replace with standard TRS text; See our website for standard text at <http://www.puc.state.pa.us/telecom/docs/TRS_Sample_Language.doc>.
14. Section 3.1.1, Original Page 1: Remove commas in lines 1 and 2. Also, add Pa. after Embarq in line 3.
15. Section 3.2.2, Original Pages 3-42: Remove comma after Verizon Pennsylvania in the title of this section.
16. Section 3.2.3, Original Pages 43-51: Remove comma after Verizon North in the title of this section.
17. Section 3.3, Original Pages 70: Change the zone designations from Pennsylvania Exchange Areas to Verizon Pennsylvania Exchange Areas as correctly stated in Section 5.
18. Section 6.3, Original Page 4: Correct the font in this section.
19. Section 6.7, Original page 12: : Add standard text found on our website at; http://www.puc.state.pa.us/telecom/docs/Caller\_ID\_Sample\_Language.doc
20. Section 7.2, Original Page 1: Add language indicating that rates for ICB’s will be provided to the Commission upon request.

**Tariff deficiencies noted – CLEC Switched Access Tariff No. 2**

**(A‑2009-2130863, A-2009-2130864, A-2009-2130865, and A-2009-2130900)**

1. Correct the Title to read:

Entelegent Solutions, Inc.

COMPETITIVE LOCAL EXCHANGE CARRIER

SWITCHED ACCESS TARIFF

Regulations and Schedule of Charges

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. Preface, Original Page 5: Update the Table of Contents to reflect changes made in compliance with order.
3. Section 1, Original Page 3: Only include definitions of terms used in the tariff. Either remove or provide a reference to Commission staff as to where in this tariff the term “CMRS” is used.
4. Section 2.7, Original Pages 5-7: Liability: Remove or revise any portion of this section that does not fit within the scope of 52 Pa. Code §69.87 and the Commission Order under Docket No. M-00981209. S*ee* <http://www.pabulletin.com/secure/data/vol29/29-17/659.html>.
5. Section 2.10, Original Pages 13-15: In accordance with 52 Pa. Code § 53.84 add information that clearly specifies whether, if bills are paid by mail, the date of the post mark will be considered the date of payment.
6. Section 2.20.4, Original Page 28: Revise to comply with 52 Pa. Code § 63.24.
7. Section 3.9, Original Page 19: The Company is prohibited from charging any service charges until such time that the Company files a tariff supplement to add service charges to this section.
8. Section 4.1, Original Page 1: Delete Sections 4.1.1 and 4.1.2. Carey Roesel, Consultant to Entelegent Solutions Inc., stated that Entelegent Solutions, Inc. will not be offering Dedicated Access Services.
9. Section 5.1.3, Original Page 3: Change reference to “rates set forth in 5.2.4” to “rates set forth in 5.1.4.”
10. Section 5.2, Original Pages 4–7: Remove this section.
11. Section 6.2, Original page 1: Add language indicating that ICB rates are to be filed with the Commission upon request.

1. Market entry requirements, in light of the policy objectives of the TA-96, for telecommunication service providers are set out in *In Re: Implementation of the Telecommunications Act of 1996,* Docket No. M-00960799 (*Implementation Order*: June 3, 1996; and *Implementation Reconsideration Order*: September 9, 1996); herein *TA‑96 Implementation Orders*. [↑](#footnote-ref-1)
2. 66 Pa. C.S. § 3018(b)(2) gives IXCs the option to (1) file and maintain tariffs with the Commission, (2) file and maintain price lists with the Commission, or (3) detariff. Further, 52 Pa. Code § 63.104 outlines the disclosure requirements for filing and maintaining tariffs or operating as a detariffed IXC. The Applicant was provided with these options via Secretarial Letter and has elected to operate as a detariffed IXC, subject to Pennsylvania state contract and consumer protection laws. [↑](#footnote-ref-2)
3. On October 13, 2009 at Docket Number R-2009-2135685, The United Telephone Company of Pennsylvania filed Supplement 347 to Tariff PA PUC No. 26; Supplement No. 145 to Tariff PA PUC No. 27; Supplement No. 78 to Tariff PA PUC No. 29 and Supplement No. 64 to Tariff PA PUC No. 500, each proposing to introduce the fictitious name CenturyLink as the Company’s new d/b/a name on customer bills, replacing Embarq. [↑](#footnote-ref-3)
4. Note 1, S*upra.* [↑](#footnote-ref-4)
5. *See, e.g., MFS Intelenet, et al.,* Docket Nos. A-310203F0002, *et al.,* (October 4, 1995; July 31, 1996; and August 7, 1997); *Pa. PUC v. Bell,* Docket No. R-00963578; *Pa. PUC v. GTE,* Docket No. R-00963666; *Global Order*, Docket Nos. P-00991648 and P-00991649; as well as other CLEC proceedings. [↑](#footnote-ref-5)
6. *Universal Service Invest.,* Docket No. I-00940035 (January 28, 1997). [↑](#footnote-ref-6)
7. *Blue Ribbon,* Docket No. A-310442 (April 25 and August 4, 1997). [↑](#footnote-ref-7)
8. Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, the TA-96, or our Regulations or Orders will be deemed inoperative and superseded. [↑](#footnote-ref-8)
9. *See Final Rulemaking to Permit Electronic Filing*, Docket No. L-00070187, Order Entered May 23, 2008. [↑](#footnote-ref-9)
10. Act 183, P.L. 1398 (66 Pa. C.S § 3017(c)). [↑](#footnote-ref-10)