

PENNSYLVANIA PUBLIC UTILITY COMMISSION DOCUMENT 42

Uniform Cover and Calendar Sheet

1. REPORT DATE: June 8, 1998	2. BUREAU AGENDA NO.: JUN-98-OSA-245*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: June 18, 1998
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: R.H. Albert 7-8108	
7. PERSONS IN CHARGE: L. F. Smith 7-8866	
8. DOCKET NO.: See below	
9. (a) CAPTIONS:	

~~A-310470:~~ Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Render Interexchange Toll Services to the Public [IXC]

A-310470, F0002: Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Render Competitive Local Exchange Telecommunication Services to the Public in Bell and GTE Service Territories [CLEC]

A-310470, F0003: Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Render Competitive Access Services to the Public [CAP]

(b) **SUMMARY:** On September 17, 1996, the Applicant filed an Application seeking CLEC and intraLATA toll authority. On August 6, 1997, after extensive coordination with Staff to develop minimally conforming proposed tariffs, the Applicant amended and expanded its Applications by filing revised proposed tariffs seeking CLEC authority in Bell and GTE service territories and IXC and CAP authority statewide. No hearings were held.

(c) **RECOMMENDATION:** The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order approving the Amended Applications, consistent with the Opinion and Order.

10. **MOTION BY:** Commissioner Chm. Quain Commissioner Rolka - Yes
 Commissioner Brownell - Yes
 SECONDED: Commissioner Bloom Commissioner Wilson - Yes

EEF

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

June 19, 1998

IN REPLY PLEASE
REFER TO OUR FILE

DOCKETED
JUL 28 1998

DANA FRIX ESQUIRE
MICHAEL C WU ESQUIRE
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007-5116

A-310470

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply IntraLATA Interexchange Services to the Public as a Reseller. ^{KJR}

A-310470F0002

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunication Services to the Public.

A-310470F0003

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Access Services to the Public.

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on June 18, 1998 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

**DOCUMENT
FOLDER**

Enclosure
Certified Mail
JEP

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 18, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

DOCKETED
JUL 28 1998

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply IntraLATA Interexchange Services to the Public as a Reseller

A-310470

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunication Services to the Public

A-310470
F0002

Amended Application of Hyperion Telecommunications of PA, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Access Services to the Public

A-310470
F0003

OPINION AND ORDER

**DOCUMENT
FOLDER**

BY THE COMMISSION:

Before us for review are the Amended Applications of Hyperion Telecommunications of PA, Inc., seeking authority to offer interexchange (IXC), competitive local exchange carrier (CLEC), and competitive access provider (CAP) services within the Commonwealth.

The Application Process

On June September 17, 1996, at Docket No. A-310470, the Applicant requested authority to offer CLEC and intraLATA IXC services pursuant to Chapters 11 and 30 of the Public Utility Code (Code), 66 Pa. C.S. §§1101, *et seq.*, and §§3001, *et seq.*, and to the Telecommunications Act of 1996, 47 U.S.C. §§201, *et seq.*, (TA-96).¹ The Applicant proposes to offer its services to business and residential customers. Further, the Applicant has complied with this Commission's requirements relating to notice. No protests were filed. No hearings were held.

The original single filing was deemed to be two Applications, one for intraLATA IXC authority at Docket No. A-310470, and one for CLEC authority at Docket No. A-310470, F0002. On January 23, 1997, the Applicant amended its filing to limit the requested service territory to the service territories of Bell Atlantic -- Pennsylvania, Inc., (Bell), and GTE North, Inc., (GTE). On August 6, 1997, after extensive communication with Commission staff, the Applicant again amended its Applications by filing revised proposed tariffs meeting the minimum requirements established in this Commission's Implementation and Implementation Reconsideration Orders. Included in the August 1997 amendment were proposed tariffs for statewide IXC and CAP services, which have been deemed to be further amendments to the Amended Applications.

The Applicant is a subsidiary of Hyperion Telecommunications, Inc., which, in turn, is a subsidiary of Adelphi Communications Corp. The Applicant has numerous jurisdictional affiliates operating within the Commonwealth. The Applicant is a Delaware corporation with its principal place of business at 5 W. Third St., Coudersport, PA 16915. The Applicant has not filed a copy of its Articles of Incorporation or proof of compliance with 15 Pa. C.S. §4124, relating to foreign

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: Sept. 9, 1996).

corporations. Correspondence to resolve complaints may be directed to Bill Wiginton or David Martin at the principal place of business.

Discussion

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.² A CLEC applicant is expected to adhere to the requirements relative to universal service and life line programs, as initially set forth or as subsequently enlarged or modified.³ 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.⁴

The Applicant has provided financial information to support its Amended Applications. We, therefore, conclude that the Applicant has demonstrated that it is financially capable of providing intraLATA IXC, CLEC, and CAP services to the public.

Premised upon our review of the Amended Applications and the amended proposed tariffs, we conclude that the Applicant's proposed services do not raise concerns at this time regarding safety, adequacy, reliability, or privacy as contemplated by Section 3009(b)(4) of the Code. We further conclude that the Applicant has met the requirements for certification to provide IXC, CLEC, and CAP services, consistent with this Opinion and Order.

² See, e.g., *MFS Intelenet, et al.*, Docket Nos. A-310203, F0002, *et al.*, (*MFS I*: Oct. 4, 1995; *MFS II*: July 31, 1996; and *MFS III*: Aug. 7, 1997); *Pa. PUC v. Bell*, Docket No. R-00963578; *Pa. PUC v. GTE*, Docket No. R-00963666, as well as other CLEC proceedings.

³ *Universal Service Invest.*, Docket No. I-00940035 (Jan. 28, 1997).

⁴ *Blue Ribbon*, Docket No. A-310442 (April 25 and Aug. 4, 1997).

We note, however, several deficiencies in the proposed tariff.⁵ We shall direct the Applicant to continue working with the Commission's Bureau of Consumer Services (BCS) and Bureau of Fixed Utility Services (FUS) to resolve these deficiencies.⁶ The Applicant shall thereafter file its Initial Tariffs consistent with the resolution reached with Commission Staff. Copies of the Initial Tariffs shall also be served upon the same entities receiving service of the original Amended Applications, including the incumbent local exchange carriers (ILECs) for the CLEC tariff. If the time required for such resolution and filing exceeds sixty (60) days, the Applicant shall file monthly status letters with the Commission's Secretary indicating a projected filing date for the Initial Tariffs. To the extent that the Applicant has provided proposed rates, the Initial Tariffs may become effective upon one (1) day's notice. For those services for which the Applicant has not provided proposed rates, Initial Tariff rates may not become effective before sixty (60) days' notice.

Conclusion

Accordingly, we shall grant the Amended Applications. The Applicant has had provisional authority under our Implementation Order (p. 7, ¶ B.1.c.4) and our Implementation Reconsideration Order (p. 5) to provide the proposed services pursuant to its proposed tariff at the proposed rates during the pendency of the application process. Upon the establishment of filed rates and the approval of Initial Tariffs, a certificate of public convenience shall be issued evidencing the Applicant's authority to provide

⁵ Deficiencies include but are not limited to: Omission of local exchange maps, list of exchanges, and local calling areas per exchange; incomplete provisions for Dual Party Relay Service and compliance with the TDD Program, Act 34 of 1995; incomplete provisions for Caller ID Blocking requirements, Act 83 of 1993; incomplete compliance with provisions of 52 Pa. Code Chapter 64; commingling of local exchange services and intraLATA toll services in a single tariff; omission of certain rates; and inconclusive statement of whether services will be provided as a facilities-based carrier, reseller, or through a combination.

⁶ Janice Ragonese, 717-772-4835, is the BCS contact. Jim Strausbaugh, 717-787-4700, is the FUS contact. 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. (52 Pa. Code §64.213.)

services as a CLEC in the service territory of Bell and GTE and as an IXC provider and a CAP throughout the Commonwealth, consistent with this Opinion and Order and our decisions in *MFS I, II, and III* and such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Amended Application of Hyperion Telecommunications of PA, Inc., at Docket No. A-310470 for authority to provide interexchange toll services is granted, consistent with this Opinion and Order.

2. That the Amended Application of Hyperion Telecommunications of PA, Inc., at Docket No. A-310470, F0002, for authority to operate as a Competitive Local Exchange Carrier within the service territories of Bell Atlantic-Pennsylvania, Inc., and GTE North, Inc., is granted, consistent with this Opinion and Order.

3. That the Amended Application of Hyperion Telecommunications of PA, Inc., at Docket No. A-310470, F0003, for authority to operate as a Competitive Access Provider is granted, consistent with this Opinion and Order.

4. That a Certificate of Public Convenience be issued authorizing Hyperion Telecommunications of PA, Inc., to furnish services as an intraLATA interexchange and competitive access provider throughout the Commonwealth and as a Competitive Local Exchange Carrier within the service territories of Bell Atlantic-Pennsylvania, Inc., and GTE North, Inc., consistent with this Opinion and Order.

5. That Hyperion Telecommunications of PA, Inc., continue to work with the Commission's Bureau of Consumer Services and Bureau of Fixed Utility Services -- Telecommunication Group to resolve any issues pertaining to its Initial Tariffs.

6. That Hyperion Telecommunications of PA, Inc., file its Initial Tariffs, consistent with the resolution reached between the Applicant and Commission staff, with the Commission's Tariff Section and serve a copy on each entity receiving a

copy of the original Amended Applications, including Bell Atlantic-Pennsylvania, Inc., and GTE North, Inc., for the competitive local exchange carrier tariffs. To the extent that the Amended Applications included proposed rates, the Initial Tariffs may become effective upon one (1) day's notice. For those services for which proposed rates were not provided, Initial Tariff rates may not become effective before sixty (60) days' notice. The Initial Competitive Local Exchange Carrier Tariff(s) shall be labeled "Competitive Local Exchange Carrier Tariff(s)." The Initial Interexchange Tariff(s) shall be labeled "Interexchange Tariff" with a designation of either "Reseller" or "Facilities-based." The Initial Competitive Access Provider Tariff shall be labeled "Competitive Access Provider Tariff."

7. That Hyperion Telecommunications of PA, Inc., 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 the Pennsylvania Public Utility Commission, now in effect or as may be prescribed by the Pennsylvania Public Utility Commission, including but not limited to: *MFS Intelenet, et al.*, Docket Nos. A-310203, F0002, *et al.*; and *Universal Service Investigation*, Docket No. I-00940035.

8. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Hyperion Telecommunications of PA, Inc., shall not be construed as conferring more than one operating right to the Applicant.

9. That Hyperion Telecommunications of PA, Inc., file its life line plan within sixty (60) days of the date of entry of this Opinion and Order.

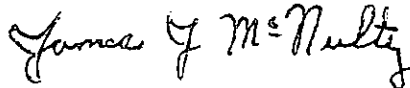
10. That Hyperion Telecommunications of PA, Inc., maintain separate accounting systems for its interexchange, competitive local exchange carrier, and competitive access provider operations.

11. That Hyperion Telecommunications of PA, Inc., file a copy of its Articles of Incorporation and proof of compliance with 15 Pa. C.S. §4124, relating to foreign corporations.

12. That Hyperion Telecommunications of PA, Inc., file such affiliated interest agreements as may be necessary relative to any transactions with affiliates.

13. That, if Hyperion Telecommunications of PA, Inc., has not, within sixty (60) days from the date of entry of this Opinion and Order, complied with the requirements set forth herein or if Hyperion Telecommunications of PA, Inc., fails to file monthly status letters to extend the time for compliance, the Amended Applications at Docket Nos. A-310470 and A-310470, F0002 and F0003, shall be dismissed, and the authority granted herein shall be canceled without any further proceeding.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 18, 1998

ORDER ENTERED: **JUN 19** 1998