



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

REFER TO OUR FILE

MARCH 17, 1998

A-310354F5000, A-310354F2000
 A-310354F0002, A-310646, A-310646F0002
 A-310470, etc

DOCKETED
 APR 3 1998

DANA FRIX ESQUIRE
 MICHAEL C WU ESQUIRE
 SWIDLER & BERLIN
 3000 K STREET NW STE 300
 WASHINGTON DC 20007

Amended Joint application of Hyperion Telecommunications of Harrisburg, Partnership for authority to transfer assets and to transfer its Certificate of Public Convenience to Hyperion Telecommunications of Harrisburg, Inc., and for Hyperion Telecommunications of Harrisburg, Partnership, to abandon service as a Competitive Access Provider and as a Competitive Local Exchange Carrier after transfer.

Amended Application of Hyperion Telecommunications of Harrisburg, Inc., for authority to begin to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the public.

Amended application of Hyperion Telecommunications of Harrisburg, Inc. for authority to begin to offer, render, furnish or supply Competitive Local Exchange Telecommunication Services to the public

Amended Joint Petition of Hyperion Telecommunications of PA, Inc., Lenfest Telephony, Inc., Hyperion Telecommunications of Harrisburg, Partnership, and Hyperion Telecommunications of Harrisburg, Inc., for approval of the proposed Corporate Reorganization.

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 February 26, 1998, in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
 Secretary

DOCUMENT BTL
FOLDER

smk
 Encls.
 Cert.Mail

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 26, 1998

Commissioners Present:

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

DOCKETED

APR 3 1998

Amended Joint Application of Hyperion Telecommunications of Harrisburg, Partnership, for Authority to Transfer Assets and to Transfer its Certificate of Public Convenience to Hyperion Telecommunications of Harrisburg, Inc., and for Hyperion Telecommunications of Harrisburg, Partnership, to Abandon Service as a Competitive Access Provider and as a Competitive Local Exchange Carrier after the Transfer	A-310354 F5000 A-310354 F2000 A-310354 F0002
Amended Application of Hyperion Telecommunications of Harrisburg, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Telecommunication Services as a Competitive Access Provider to the Public	A-310646
Amended Application of Hyperion Telecommunications of Harrisburg, Inc., for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunication Services to the Public	A-310646 F0002
Amended Joint Petition of Hyperion Telecommunications of PA, Inc., Lenfest Telephony, Inc., Hyperion Telecommunications of Harrisburg, Partnership, and Hyperion Telecommunications of Harrisburg, Inc., For Approval of the Proposed Corporate Reorganization	A-310470 A-310354 A-310354, F0002 A-310646 A-310646, F0002

DOCUMENT
FOLDER

OPINION AND ORDER

BY THE COMMISSION:

Before us for review are the Amended Joint Applications of Hyperion Telecommunications of Harrisburg, Inc., (Corporation), and Hyperion Telecommunications of Harrisburg, Partnership, (Partnership), seeking authority for the Corporation to offer telecommunication services to the public as a competitive access provider (CAP), a competitive local exchange carrier (CLEC), and an intraLATA toll provider within the Commonwealth. The parties also seek approval of various corporate reorganizations, through which the Corporation is acquiring the Partnership, which will cease to exist. The Partnership further seeks authority to abandon its CAP and CLEC services upon completion of the acquisition. The Partnership is a jurisdictional public utility with authority to provide CAP service and provisional authority to provide CLEC service, as captioned above.

The Application Process

On October 10, 1996, the Partnership filed an Application at Docket No. A-310354, F0002, seeking authority to offer CLEC and intraLATA toll 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.*, (Act).¹ In conjunction with the Application, the Partnership also petitioned for a Protective Order, relative to certain financial information.

On January 23, 1997, the Partnership amended its CLEC Application to limit the CLEC service territory to the service territories of Bell Atlantic -- Pennsylvania, Inc., (Bell), and GTE North, Inc., (GTE). On January 29, 1997, the Partnership provided

¹ This Commission set forth requirements pertaining to market entry of telecommunication service providers including CLECs in light of the policy objectives of the Act. (*See, 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).)

proof of compliance with this Commission's requirements relating to notice. No protests were filed. No hearings were held.

The proposed tariff filed with the original Application did not conform to the minimum requirements established in this Commission's Implementation and Implementation Reconsideration Orders. On August 26, 1997, after extensive communication with Commission staff, the Partnership filed a proposed CLEC tariff meeting the minimum requirements.

On or about September 25, 1997, a Joint Petition (Joint Petition) was filed by Hyperion Telecommunications of PA, Inc., (Hyperion PA); Lenfest Telephony, Inc., (Lenfest);² the Partnership; and the Corporation. On or about November 17, 1997, the Joint Petition was clarified and revised. The Joint Petition was further clarified on or about December 19, 1997. After several communications with Commission staff and several iterations, a revised pre- and post-transfer organization chart (attached hereto as Appendix "A") was submitted to the Commission. The Joint Petition seeks approval of the transfer of 100% of the interests in the Partnership from Hyperion PA and Lenfest to the Corporation, which will be a wholly-owned subsidiary of Hyperion PA.

The Corporation is a Delaware corporation with its principal place of business at DDI Plaza Two, 500 Thomas Street, Suite 400, Bridgeville, PA 15017-2838. Correspondence may be directed to the Corporation's attorneys, Dana Frix and Kemal Hawa, Swidler & Berlin, Chartered, 3000 K Street, NW, Suite 300, Washington, DC 20007, with copies to the Corporation's in-house counsel, Phil Fraga and Janet Livengood, at the principal place of business. We note that the Corporation has not yet provided proof of compliance with 15 Pa.C.S. §4124, relating to foreign corporations, advised the Commission's Secretary of its commercial registered office provider, or submitted a copy of its Article of Incorporation, consistent with the Implementation and Implementation Reconsideration Orders.

² Lenfest holds no jurisdictional authority from this Commission.

The Corporation proposes to provide CAP services to the same markets and service territory as previously provided by the Partnership. The Corporation will adopt the Partnership's CAP tariff(s). The Corporation further proposes to provide CLEC services, including intraLATA toll services. The Corporation proffers the Partnership's revised CLEC and intraLATA toll tariff as its own proposed tariff. The Corporation will offer CLEC and intraLATA toll services to residential and business customers in the Bell and GTE service territories and will not be a rural carrier.

Discussion

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.³ 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.⁴ Further, Section 253(b) of the Act 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.⁵

The Corporation has provided financial information to support its Application. We note that this Commission's Assessment Section advises that, for the subject jurisdictional entities and affiliates, all Commission assessments are paid in full and that there exist no outstanding fines. We, therefore, conclude that the Corporation has demonstrated that it is financially capable of providing CLEC services, as well as intraLATA toll and CAP services, to the public.

³ See, e.g., *MFS Intelenet, et al.*, Docket Nos. A-310203, F0002, *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, as well as numerous CLEC proceedings.

⁴ *Universal Service Investigation*, Docket No. I-00940035 (January 28, 1997).

⁵ *Blue Ribbon Rentals II*, Docket No. A-310442 (April 25 and August 4, 1997).

Having received notification from the Commission's Secretary (formerly Prothonotary) that the Application had been accepted, the Partnership has had provisional authority to provide the proposed CLEC service pursuant to its proposed tariff during the pendency of this application process. With the amendment of the instant Application by the joining of the Corporation, the Corporation has also had provisional CAP and CLEC authority, consistent with our Implementation and Implementation Reconsideration Orders. While the notification from the Secretary does not constitute a certificate of public convenience, it constituted the authority to proceed under page 7, Paragraph B.1.c.4, of our Implementation Order and page 5 of our Implementation Reconsideration Order.

We conclude that the Corporation'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. Premised upon our review of the Amended Applications and the revised proposed tariff, and consistent with our Orders, the Code, our Regulations, and the Act, we conclude that the Corporation has met all of the requirements for certification as a CLEC, an intraLATA toll provider, and a CAP, consistent with this Opinion and Order. We note, however, several deficiencies in the proposed CLEC and intraLATA toll tariff, including but not limited to:

- * Omission of local exchange maps, list of exchanges, and local calling area for each 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 various provisions of 52 Pa. Code Chapter 64.
- * Omission of intraLATA toll rates.

- * Commingling of local exchange services and intraLATA toll services in a single tariff.

We shall direct the Corporation to continue working with the Commission's Bureau of Consumer Services (BCS) and Bureau of Fixed Utility Services -- Telecommunication Group (FUS) to resolve these deficiencies.⁶ The Corporation shall thereafter file its Initial CLEC and Initial IntraLATA Toll Tariffs, consistent with the resolution reached with Commission Staff. Copies of the Initial CLEC and the Initial IntraLATA Toll Tariffs shall also be served upon the same entities receiving service of the original Application, including the incumbent local exchange carriers (ILECs). If the time required for such resolution and filing exceeds sixty (60) days, the Corporation shall file monthly status letters with the Commission's Secretary indicating a projected filing date for the Initial Tariffs.

Because the revised proposed CLEC tariff contains rates, the Initial CLEC Tariff may become effective on one (1) day's notice from the date upon which it is filed and served. IntraLATA toll rates were not included in a proposed tariff and, therefore, may not become effective prior to sixty (60) days' notice. The CAP tariff may become effective upon adoption by the Corporation. We further conclude that the Partnership should be permitted to abandon service upon the commencement of service by the Corporation.

In support of the Joint Petition, the parties aver that the reorganization and transfer of assets from the Partnership to the Corporation will better serve the public in promoting competition by enabling the Corporation to pursue respective marketing and business plans more effectively through its own financial and technical resources. We conclude that the proposed ownership and asset transfers are necessary or proper for the service, accommodation, convenience, or safety of the public and should be approved.

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 Act, or our Regulations or Orders will be deemed inoperative and superseded. (52 Pa. Code §64.213.)

The Partnership's request for a Protective Order relative to the Partnership's financial information will be held in abeyance for ninety (90) days to afford the Corporation time to amend the request relative to the Corporation or to withdraw the request if it is no longer necessary. Until such time as the Petition for Protective Order is acted upon, the designated documents shall be afforded proprietary treatment on a temporary basis as requested.

Conclusion

Accordingly, we shall grant the Amended Applications and the Amended Joint Petition. Upon the establishment of filed rates and the approval of Initial CLEC and Initial IntraLATA Toll Tariffs and the formal adoption of the Partnership's CAP Tariff, the Corporation is authorized to provide services as a CAP in the Commonwealth and as a CLEC and IntraLATA toll provider in the service territory of Bell and GTE, consistent with this Opinion and Order and our decisions in the *MFS* and such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Application of Hyperion Telecommunications of Harrisburg, Inc., at Docket No. A-310646, for authority to operate as a Competitive Access Provider is granted, consistent with this Opinion and Order.
2. That the Application of Hyperion Telecommunications of Harrisburg, Inc., at Docket No. A-310646, F0002, for authority to operate as a Competitive Local Exchange Carrier and an intraLATA toll provider is granted, consistent with this Opinion and Order.
3. That a Certificate of Public Convenience be issued authorizing Hyperion Telecommunications of Harrisburg, Inc., to furnish services as a Competitive Access Provider within the Commonwealth and as a Competitive Local Exchange Carrier

and an intraLATA toll provider within the service territories of Bell Atlantic-Pennsylvania, Inc., and GTE North, Inc., consistent with this Opinion and Order.

4. That Hyperion Telecommunications of Harrisburg, Inc., file its adoption of the Competitive Access Provider Tariff of Hyperion Telecommunications of Harrisburg, Partnership. The Competitive Access Provider Tariff shall reflect on its face that it is a "Competitive Access Provider Tariff" and may become effective upon adoption.

5. That Hyperion Telecommunications of Harrisburg, 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 Competitive Local Exchange Carrier and Initial IntraLATA Toll Tariffs.

6. That Hyperion Telecommunications of Harrisburg, Inc., file its Initial Competitive Local Exchange Carrier and Initial IntraLATA Toll Tariffs, consistent with the resolution reached between the Corporation and Commission staff, with the Commission's Tariff Section and shall serve a copy on each entity receiving a copy of the original Application, as well as the incumbent local exchange carriers. The Initial Competitive Local Exchange Carrier Tariff may become effective on one (1) day's notice from the date upon which it is filed and served, provided, however, that the Initial IntraLATA Toll Tariff may not become effective prior to sixty (60) days' notice. The Initial Competitive Local Exchange Carrier Tariff shall reflect on its face that it is a "Competitive Local Exchange Carrier Tariff." The Initial IntraLATA Toll Tariff shall reflect on its face that it is an "IntraLATA Toll Tariff."

7. That Hyperion Telecommunications of Harrisburg, 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 Harrisburg, Inc., shall not be construed as conferring more than one operating right to Hyperion Telecommunications of Harrisburg, Inc.

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

11. That Hyperion Telecommunications of Harrisburg, Inc., is directed to, within ten (10) days of the date of entry of this Opinion and Order, (1) file proof of compliance with 15 Pa.C.S. §4124 relating to foreign corporations, (2) advise the Commission's Secretary of the Corporation's commercial registered office provider, and (3) file a copy of its Article of Incorporation.

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

13. That, if Hyperion Telecommunications of Harrisburg, 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 Harrisburg, Inc., fails to file monthly status letters to extend the time for compliance, the Applications at Docket Nos. A-310646, and A-310646, F0002, shall be dismissed, and the authority granted herein shall be cancelled without any further proceeding.

14. That the Amended Joint Petition of Hyperion Telecommunications of PA, Inc., Docket No. A-310470; Lenfest Telephony, Inc.; Hyperion Telecommunications of Harrisburg, Partnership, (Docket Nos. A-310354 and A-310354, F0002); and Hyperion

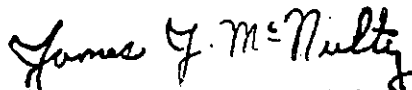
Telecommunications of Harrisburg, Inc., (Docket No. A-310646 and A-310646, F0002), for approval of the proposed corporate reorganization and asset transfer is approved.

15. That Hyperion Telecommunications of Harrisburg, Inc., has ninety (90) days after the date of entry of this Opinion and Order within which to file an adoption, amendment, or withdrawal of the Petition for Protective Order filed by Hyperion Telecommunications of Harrisburg, Partnership, in conjunction with the original Application. Until such time as the Petition for Protective Order, filed in conjunction with the original Application, is acted upon by this Commission or withdrawn by Hyperion Telecommunications of Harrisburg, Inc., the designated documents shall be afforded proprietary treatment, as requested, on a temporary basis.

16. That Hyperion Telecommunications of Harrisburg, Inc., notify this Commission of the conclusion of the proposed reorganization within thirty (30) days of the conclusion of said reorganization.

17. That the Amended Application of Hyperion Telecommunications of Harrisburg, Partnership, for authority, upon completion of the reorganization approved herein, to abandon its competitive access service at Docket No. A-310354 and its competitive local exchange service, including intraLATA toll service, at Docket No. A-310354, F0002, is approved, and such service may be abandoned upon commencement of similar services by Hyperion Telecommunications of Harrisburg, Inc., after notice to affected customers.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: February 26, 1998

ORDER ENTERED: **MAR 17 1998**