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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |
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|  | Public Meeting held September 02, 2010 |
| Commissioners Present: |  |
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| James H. Cawley, Chairman |
| Tyrone J. Christy, Vice Chairman |
| John F. Coleman, Jr. |
| Wayne E. Gardner |
| Robert F. Powelson |
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| Application of tw telecom data services llc 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-2010-2181491 |
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| Application of tw telecom data services llc 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 territory of:  |  |
| Verizon Pennsylvania Inc. | A-2010-2181492 |
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ORDER

**BY THE COMMISSION:**

On April 21, 2010, tw telecom data services llc (Applicant) filed an Application seeking Certificates 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 Reseller of Interexchange Toll Services (IXC Reseller)[[2]](#footnote-2) throughout the Commonwealth of Pennsylvania,
2. As a Competitive Local Exchange Carrier (CLEC) in the service territory of Verizon Pennsylvania Inc. within the Commonwealth of Pennsylvania.

The Applicant was granted provisional authority pursuant to our Secretarial Letter of June 14, 2010, to provide the proposed services: IXC Reseller throughout the Commonwealth of Pennsylvania and CLEC services in the service territory of Verizon Pennsylvania Inc. pursuant to its proposed IXC and CLEC tariffs during the pendency of the application process. The assigned utility code is 3110608.

The Applicant complied with notice requirements set forth in our *TA-96* *Implementation Orders*[[3]](#footnote-3) by serving a copy of its Application upon the aforementioned incumbent local exchange carrier, 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:

* Applicant is currently certified as a Competitive Access Provider.[[4]](#footnote-4)
* The Applicant is a Delaware Limited Liability Company with its principal place of business at 10475 Park Meadows Dr, Littleton, Colorado 80124, telephone (303) 566-1000, facsimile (303) 566-1777.
* The Applicant complied with 15 Pa. C.S. § 8981, relating to a foreign limited liability company.
* The Applicant’s registered office provider within Pennsylvania is CT Systems, 1515 Market Street, Suite 1210, Philadelphia, PA 19102.
* The Applicant’s Pennsylvania Emergency Management Agency contact is Rochelle Jones, Senior Vice President, 10475 Park Meadows Dr, Littleton, Colorado 80124, telephone (212) 364-7319, facsimile (303) 566-1777.
* Correspondence to resolve complaints may be directed to Rochelle Jones, Senior Vice President Regulatory, or Tammy Chatfield, Regulatory Compliance Analyst, telephone (212) 364-7319, facsimile (303) 566-1777, at company headquarters.
* The Applicant will not be using a fictitious name.
* The Applicant has affiliates rendering public utility services in 33 States and the District of Columbia.
* The Applicant is operating as a public utility in 33 States and the District of Columbia.

 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.

Applicant intends to provide integrated private line and local exchange service, including various ancillary services such as custom calling features, long distance and internet access. Initially, the Applicant will provide services via: (1) commercial wholesale agreements with authorized competitive local exchange carriers to gain access to the public switched telephone network and third- party 911 networks to provide connectivity to the public service answering points, (2) leased facilities from long haul and local carriers, or (3) a combination thereof. Toll services will be provided via Applicant’s underlying long distance carrier. Applicant only plans to provide telecommunications services to business and enterprise customers and will offer these services using traditional and internet protocols to provide voice and data services that interact seamlessly with the traditional public switched network. Applicant will continuously monitor and maintain a high level of control over its network on a 24-hours-a day and 7-days-a-week basis.

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 as 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 as a CLEC, consistent with this Order. Premised upon our review of the Application 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 Tariffs 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.

In addition, we note that no switched access tariff accompanied the instant Application. Until a switched access tariff is filed, the Applicant is not permitted to apply access charges, e.g., originating and terminating access billed to interexchange carriers.

**Conclusion**

Accordingly, we shall grant the Application. Upon the approval of the Initial Tariffs, Certificates of Public Convenience shall be issued evidencing the Applicant’s authority to provide services as an IXC Reseller in the Commonwealth of Pennsylvania and as a CLEC in the service territory of Verizon Pennsylvania Inc., consistent with this Order and our decisions in the *MFS Intelenet* and such other proceedings; **THEREFORE,**

**IT IS ORDERED:**

1. That the Application of tw telecom data services llc at Docket No. A‑2010-2181491, for authority to operate as a Reseller of Interexchange Toll Services throughout the Commonwealth of Pennsylvania, is granted, consistent with this Order.
2. That the Application of tw telecom data services llc at Docket No. A‑2010-2181492, for authority to operate as a Competitive Local Exchange Carrier within the service territory of Verizon Pennsylvania Inc, 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 an Initial Tariff shall be labeled on its face according to the respective authority: “Competitive Local Exchange Carrier Tariff” and “Reseller Interexchange Toll Carrier 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, 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, CLEC and CAP revenues in the state.
10. That in accordance with Commission Orders entered on 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 thirty (30) days of entry 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 the 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 Application at Docket Nos. A‑2010-2181491 and A‑2010-2181492 shall be dismissed and the authority granted herein revoked without further Commission Order.
14. That upon the approval of the Initial Tariffs, Certificates of Public Convenience shall be issued authorizing the Applicant to furnish services as a Reseller of Interexchange Toll Services throughout the Commonwealth of Pennsylvania and to furnish services as a Competitive Local Exchange Carrier within the service territory of Verizon Pennsylvania Inc., consistent with this Order.
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 Pennsylvania 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 Certificates 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 tariffs on file with the Commission.
	* The Applicant shall contact Cyndi Page ((717) 787-5722; 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 tariffs 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 Pennsylvania Department of Revenue, Bureau of Corporation Tax and PEMA (Pennsylvania Emergency Management Agency) Bureau of 9-1-1 Programs.



 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: September 2, 2010

ORDER ENTERED: September 3, 2010

APPENDIX A

tw telecom data services llc

Docket Nos. A-2010-2181491 and A-2010-2181492

Proposed tariffs for Reseller of Interexchange Carrier Services and

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 Certificates of Public Convenience issued. **The Applicant must submit a copy of this Appendix with its revised compliance tariffs. On that copy, please note the page/sheet of the compliance tariffs where the required revision is located for each item below.**

**Tariff deficiencies noted – IXC Reseller Tariff No. 3**

1. Correct the Title to read:

tw telecom data services llc

RESELLER INTEREXCHANGE TOLL CARRIER

Business Customers Only

Regulations and Schedule of Charges

Within the state of Pennsylvania

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. All Pages: Change authority in the header to Reseller Interexchange Toll Carrier.
3. All Pages: Remove “PAi1000” from the footer.
4. Pages 15-25, Section 2.1: 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. Page 28, Section 2.5.2 D: State deposit rate as 6 % annually pursuant to 52 Pa. Code 53.82(4).
6. Page 31, Section 2.6.2 E: Pursuant to 52 Pa Code §53.84, clearly specify whether, if bills are paid by mail, the date of the post mark will considered the payment date.
7. Page 32, Section 2.6.2 G: Provide reference as to where Restoration Charge is found i.e. Page 54, Section 3.6.2.
8. Page 34, Section 2.6.4: Pursuant to 52 Pa. Code §63.206(b), add language to this section indicating that a final bill will be issued within 42 days of a customer initiated disconnection.
9. Page 38, Section 2.7.3 H: Remove this section as it is in violation of 52 Pa. Code §63.24(b) (3).
10. Pages 46-50, Section 2.15: Remove this section as it not applicable to this tariff. This section would only be appropriate in an FCC tariff.
11. Page 54, Section 3.6.2: Change Restoration Charge to $50.00 so that the Company’s IXC tariff is consistent with its CLEC tariff.
12. Page 55, Section 3.8.2: Change Records Order Change Charge to $20.00 so that the Company’s IXC tariff is consistent with its CLEC tariff.
13. Page 55, Section 3.7: Delete this section as it is not applicable to an IXC tariff.
14. Page 61, Section 5.3: Add language to indicate that promotional offerings will be filed with the commission as a tariff supplement.

**Tariff deficiencies noted – CLEC Local Tariff, Tariff No. 2**

1. Title Page: Add Pittsburgh Suburban Local Exchange Area (185C) as this Exchange Service Area is provided in Section 4.3 D.
2. All Pages: Enter issued and effective dates as per ordering paragraph.
3. All Pages: Remove “PAi1000” from the footer.
4. Pages 18-31, Sections 2.1-2.3: 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. Pages 25-26, Section 2.1.11: Replace 911 text in this Section; See our website for standard text at <http://www.puc.state.pa.us/telecom/docs/911_Sample_Language.doc>
6. Page 29, Section 2.3.1 I: Replace “as provided in this tariff” with the correct section reference.
7. Page 30, Section 2.3.2 B: Remove “including attorney’s fees and court costs” as the Commission does not empower parties to collect their legal fees or court costs from other parties. This matter must be dealt with in court proceedings or negotiations between the parties.
8. Page 31, Section 2.3.2 C: Add reference to where in this tariff the prevailing rate for service calls can be found i.e. Page 51, Section 2.7.6.
9. Page 34, Section 2.5.2: State deposit rate as 6 % annually pursuant to 52 Pa. Code 53.82(4).
10. Page 35, Section 2.6.1 A: Remove reference to attorney’s fees at the end of paragraph 4.
11. Page 39, Section 2.6.2: Pursuant to 52 Pa Code §53.84, clearly specify whether, if bills are paid by mail, the date of the post mark will considered the payment date.
12. Page 40, Section 2.6.2 F: Add Company’s address so that Customer’s have the ability to mail in claims and supporting documents for disputed charges.
13. Page 40, Section 2.6.2 G: Add reference to where in this tariff rates for restoration of service can be found i.e. Page 72, Section 3.5.2.
14. Page 42, Section 2.6.4: Pursuant to 52 Pa. Code §63.206(b), add language to this section indicating that a final bill will be issued within 42 days of a customer initiated disconnection.
15. Page 46, Section 2.7.1 A.1 d: Change reference to; allowances set forth in a-c.
16. Page 49, Section 2.7.3 H: Remove this section as it is in violation of 52 Pa. Code §63.24(b) (3).
17. Page 53, Section 2.8.1: Remove the last sentence in this paragraph. This tariff should only deal with matters involving the Company’s customers.
18. Pages 60-64, Section 2.16: Remove this section as it is not applicable to a Pa. P.U.C Telephone Tariff.
19. Pages 68-69, Section 2.19: Delete this section; inside wire is no longer regulated and should not appear in this tariff.
20. Page 82, Section 5.2.1: Remove reference to the Company’s Private Line tariff. Also, add description for Class of Service (CoS) and the additional charges for upgrading to a Premium Bundle to this tariff. Add reference as to where there the additional charges have been added.
21. Page 82, Section 5.2.1: Add Section 6.14 or add the charge for additional ITNs to an appropriate section. Then add corrected reference if necessary.
22. Page 82, Section 5.2.1 A. Correct spacing typo at the beginning of the second paragraph.
23. Page 110, Section 6.1.3 B.: Add connection charges to this or an appropriate section. If adding to another section reference where the connection charges are located.
24. Page 110, Section 6.1.3 C: Be advised, any new features offered in the future must be filed as a tariff supplement that includes a description and rates.
25. Page 117-118, Section 6.6.2: Add per message charge for all messages that are received beyond the stated allowance.
26. Page 145, Section 7.4: Indicate that Special Promotions will be filed as a tariff supplement.
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 maintain a tariff with the Commission. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. See Docket No A-2008-2075535; order entered January 23, 2009, certificate granted January 22, 2009. [↑](#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 Investigation.,* 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)