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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held July 28, 2011 | | |
| Commissioners Present: | |  | | |
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| Robert F. Powelson, Chairman | | | | |
| John F. Coleman, Jr., Vice Chairman | | | | |
| Wayne E. Gardner | | | | |
| James H. Cawley | | | | |
| Pamela A. Witmer | | | | |
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| Application of WiMacTel, Inc. for approval to offer, render, furnish or supply telecommunication services as a Reseller of Interexchange Toll Services (detariffed) to the public in the Commonwealth of Pennsylvania | | | A-2011-2243140 | |
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| Application of WiMacTel, 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-2011-2243141 | |
| Verizon North LLC | | | A-2011-2243142 | |
| The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink | | | A-2011-2243143 | |
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| Windstream Pennsylvania, LLC | | | A-2011-2243145 | |
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ORDER

**BY THE COMMISSION:**

On May 4, 2011, WiMacTel, Inc. (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 detariffed 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 territories of Verizon Pennsylvania Inc., Verizon North LLC, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink), and Windstream Pennsylvania LLC (Windstream) within the Commonwealth of Pennsylvania.

The Applicant was granted provisional authority pursuant to our Secretarial Letter of May 24, 2011, to provide the proposed IXC Reseller (detariffed) services throughout the Commonwealth of Pennsylvania and CLEC services in the service territories of Verizon Pennsylvania Inc. and Verizon North LLC pursuant to its proposed CLEC tariff during the pendency of the application process. The assigned utility code is 3113568.

As required by 52 Pa. Code § 5.14, the Application for CLEC authority in the Centurylink and Windstream service areas was published in the *Pennsylvania Bulletin.* Pursuant to the Secretary’s discretion at 52 Pa. Code § 5.14(b), the Applicant was granted a waiver concerning publishing notice of its Application in newspapers of general circulation in the service territories of CenturyLink and Windstream. The protest period for this instant Application expired June 20, 2011.

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 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 Delaware Corporation with its principal place of business at 2225 East Bayshore Road, Suite 200, Palo Alto, California 94303-3220, telephone (302) 429-4214, facsimile (302) 658-6395.
* The Applicant complied with 15 Pa. C.S. § 4124, relating to a foreign corporation.
* The Applicant’s registered office provider within Pennsylvania is National Registered Agents, 600 North Second Street, Suite 500, Harrisburg, PA 17101.
* The Applicant’s Pennsylvania Emergency Management Agency contact is James MacKenzie, President, CEO, Secretary, 2225 East Bayshore Road, Suite 200, Palo Alto, California 94303-3220, telephone (888) 476-0881, facsimile (403) 398-0714.
* Correspondence to resolve complaints may be directed to James MacKenzie, President, CEO, Secretary, 2225 East Bayshore Road, Suite 200, Palo Alto, California 94303-3220, Telephone (888) 476-0881, facsimile (403) 398-0714.
* The Applicant will not be using a fictitious name.
* The Applicant is currently operating, or an approval is pending to operate, as a CLEC and IXC in 50 states.
* 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 such operations.

The Applicant intends to provide facilities-based service through commercial agreements with either the ILECs or 2nd tier certificated CLEC providers.

The Applicant will also provide interexchange long distance and operator services to various aggregator locations throughout The Commonwealth of Pennsylvania using the underlying carrier services of various certificated IXCs.

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.[[4]](#footnote-4) 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.[[5]](#footnote-5) 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.[[6]](#footnote-6) 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 a CLEC and as an IXC Reseller.

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 by certified letter 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 a CLEC and as an IXC Reseller, consistent with this Order. Premised upon our review of the Application and the proposed tariff, 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 tariff.

We shall direct the Applicant to revise the proposed tariff in accordance with the changes noted in Appendix A of this Order.[[7]](#footnote-7) The Applicant shall thereafter file its Initial Tariff reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. The Applicant may file its Initial Tariff electronically, consistent with Commission Rules.[[8]](#footnote-8) Copies of the Initial Tariff 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 Tariff is 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 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 tariff contains rates, the Initial Tariff may become effective on one (1) day’s notice from the date upon which it is 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. We shall issue a Certificate of Public Convenience evidencing the Applicant’s authority to provide services as an IXC Reseller upon entry of this order. Upon the approval of the Initial Tariff, 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 LLC, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, 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 WiMacTel, Inc. at Docket No. A‑2011-2243140, for authority to operate as a Reseller of Interexchange Toll Services (detariffed) 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 WiMacTel, Inc. at Docket Nos. A‑2011-2243141, A-2011-2243142, A-2011-2243143, and A-2011-2243145 for authority to operate as a Competitive Local Exchange Carrier within the service territories of Verizon Pennsylvania Inc., Verizon North LLC, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, 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 Tariff 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 Tariff that are in addition to the changes noted in Appendix A.** The Applicant shall serve copies of its Initial Tariff on each entity receiving a copy of the original Application. The Initial Tariff may become effective on or after one (1) day’s notice from the date upon which it is filed and served.
4. That an Initial Tariff shall be labeled on its face according to the respective authority: “Competitive Local Exchange 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: Docket Nos. A‑310203F0002, *et al., MFS Intelenet, et al.;* I‑00940035 *Universal Service Investigation*; P‑00991648, *et al*., *Global Order*; and M-00001373 *NXX Code Reclamation.*
6. That if the Applicant expands its local service into new counties in its currently authorized area of Verizon Pennsylvania Inc., Verizon North LLC, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, 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 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_Requirements.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‑2011-2243141, A-2011-2243142, A-2011-2243143, and A‑2011-2243145 shall be dismissed and the authority granted herein revoked without further Commission Order.
14. That upon the approval of the Initial Tariff, 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 LLC, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, and Windstream Pennsylvania, LLC, 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 tariff to its website, if it has one. If the Applicant does not maintain a website, the Pennsylvania Public Utility Commission will host its tariff on the Commission's website
    * Within 30 days of the filing of its Initial Tariff, the Applicant shall add the tariff to its website and mark it “Pending.”
    * Within 30 days of receipt of its Certificate of Public Convenience, the Applicant shall make any required modifications to the tariff on its website and remove the “Pending” notation. Thereafter, the Applicant will continually update the website whenever any supplemental revisions to the tariff are approved by the Commission such that the website tariff is a true and accurate representation of the tariff 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 tariff added to the Commission's website and to update the tariff upon subsequent approval of supplemental revisions to the tariff.
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 the PEMA (Pennsylvania Emergency Management Agency) Bureau of 9-1-1 Programs.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 28, 2011

ORDER ENTERED: August 1, 2011

APPENDIX A

WiMacTel, Inc.

Docket Nos. A-2011-2243141, A-2011-2243142, A-2011-2243143, and A-2011-2243145

Proposed CLEC Tariff

The proposed tariff contains certain deficiencies that must be addressed by the Applicant before the tariff 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 No. 1**

1. Add the following text to the Title Page:

This tariff has been filed with the Pennsylvania Public Utility Commission. Copies are available for inspection at the Company’s place of business: [*Insert Address*]

1. Correct the first paragraph on the Title Page to reflect the full and correct company names of the incumbent local exchange carriers:

The Company will mirror the exchange area boundaries as stated in the tariff of Verizon Pennsylvania Inc. Telephone Pa. P.U.C. Nos. 180A, 182, 182A, 185B and 185C; Verizon North LLC Telephone Pa. P.U.C. Nos. 1, 3, 5, and 6; The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink P.U.C. No. 27, and Windstream Pennsylvania, LLC Pa. P.U.C. No. 7.

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. Table of Contents, Page 5: Add page number for section 3.2 and remove Section 4.2 as it does not exist.
3. Section 1, Pages 1-3: 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: Aggregator, End Office, Hunting and Telephone Company System.
4. Section 2.1.4, Pages 4-5: 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 2.3.2, Page 18: 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>.
6. Section 2.5.2. D, Page 23: Indicate that billing no longer accrues after disconnection has been initiated.
7. Section 2.5.2. G, Page 23: Remove the 2 erroneously placed before the telephone number for the Bureau of Consumer Services.
8. Section 2.5.4, Page 25: State deposit rate as 6 % annually pursuant to 52 Pa. Code 53.82(4).
9. Section 2.12, Page 39: Add the following to this section:

If the customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission’s rules of procedure.

The Bureau of Consumer Services has primary jurisdiction over complaints and Customers may contact the Bureau at the following address: Bureau of Consumer Services, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, or by calling 1-800-692-7380.

1. Section 3.1.1, Page 1: Change Verizon North Inc. to Verizon North LLC.
2. Section 6.4.3, Page 8: Change section reference in the second paragraph to Section 6.4.6.
3. Section 10.3.2, Page 8: Correct section reference as Section 6.3.3 does not exist.

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 tariff 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 tariff 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. *Id.* [↑](#footnote-ref-3)
4. *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-4)
5. *Universal Service Investigation,* Docket No. I-00940035 (January 28, 1997). [↑](#footnote-ref-5)
6. *Blue Ribbon,* Docket No. A-310442 (April 25 and August 4, 1997). [↑](#footnote-ref-6)
7. 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-7)
8. *See Final Rulemaking to Permit Electronic Filing*, Docket No. L-00070187, Order Entered May 23, 2008. [↑](#footnote-ref-8)