|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
|  |  | | |  |
|  | | Public Meeting held March 14, 2013 | | |
| Commissioners Present: | |  | | |
|  | |  | | |
| Robert F. Powelson, Chairman | | | | |
| John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer | | | | |
|  | | | | |
|  | | | | |
|  | | |  | |
|  | | |  | |
| Application of North Penn Long Distance Corporation d/b/a North Penn Access 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: | | |  | |
| Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company | | | A-2013-2343018 | |
|  | | |  | |
|  | | |  | |
| Application of North Penn Long Distance Corporation d/b/a North Penn Access for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania. | | | A-2013-2343017 | |
|  | | |  | |
|  | | |  | |
|  | | |  | |
|  | | |  | |

ORDER

**BY THE COMMISSION:**

On December 27, 2012, North Penn Long Distance Corporation d/b/a North Penn Access (Applicant) filed an amended 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 Competitive Local Exchange Carrier (CLEC) in the service territory of Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company within the Commonwealth of Pennsylvania, and
2. As a Competitive Access Provider (CAP) throughout the Commonwealth of Pennsylvania.

The Applicant was granted provisional authority pursuant to our Secretarial Letter of January 14, 2013 to provide the proposed CAP service pursuant to its proposed tariff during the pendency of the application process. As required by 52 Pa. Code § 5.14, the Application also 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. The protest period for this instant Application expired February 11, 2013. The assigned utility code is 311360.

The Applicant complied with notice requirements set forth in our *TA-96* *Implementation Orders*[[2]](#footnote-2) 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 an Interexchange Toll Reseller[[3]](#footnote-3).
* The Applicant is a Pennsylvania Corporation with its principal place of business at 4145 Route 549, Mansfield, PA 16933, telephone (570) 549-6737, facsimile (570) 549-2500.
* The Applicant complied with 15 Pa. C.S. §1306, relating to Domestic corporation.
* The Applicant’s Pennsylvania Emergency Management Agency contact is Pete McClure, Vice President and General Manager, 4145 Route 549, Mansfield, PA 16933, telephone (570) 549-3321, facsimile (570) 549-2500.
* Correspondence to resolve complaints may be directed to Debi Wright, Service Bureau Manager, 34 Main Street, Prattsburgh, NY 14873, telephone (607) 522-4239, facsimile (607) 522-4250.
* The Applicant will be using a fictitious name: North Penn Access.
* The Applicant is not operating as a public utility in other states.
* The Applicant has affiliates or predecessors within Pennsylvania: North Penn Telephone Company and Community Cable Corporation.
* 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 proposes to offer local interconnection services, which enable two-way public switched telephone network (PSTN) interconnection for voice calls within the local calling area or other geographic areas. Local interconnection service also provides access to domestic and international toll services. Applicant also proposes to offer Internet services, High Capacity Transmission Services including: High capacity point-to-point, point-to-multipoint, multipoint- to-multipoint, dedicated connection between one or more customer locations, and/or Company. The services may utilize Ethernet interfaces over optical fiber and/or copper cable facilities and be scalable from 1 Mbps to 10 Gbps.

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 a CAP.

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 a CAP, 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.[[7]](#footnote-7) 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.[[8]](#footnote-8) 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.

Further, the Commission makes no determination whether the Applicant’s switched access rates are in compliance with Act 183 of 2004.[[9]](#footnote-9)

**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 a CAP in the Commonwealth of Pennsylvania and as a CLEC in the service territory of the Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, consistent with this Order and our decisions in the *MFS Intelenet* and such other proceedings; **THEREFORE,**

**IT IS ORDERED:**

1. That the Application of North Penn Long Distance Corporation d/b/a North Penn Access at Docket No. A‑2013-2343018, for authority to operate as a Competitive Local Exchange Carrier within the service territory of the Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, is granted, consistent with this Order.
2. That the Application of North Penn Long Distance Corporation d/b/a North Penn Access at Docket No. A‑2013-2343017, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania, is granted, consistent with this Order.
3. That the Applicant shall either eFile or submit an original copy 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,” “Competitive Local Exchange Carrier Switched Access Tariff,” and “Competitive Access Provider 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 the Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, 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 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_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‑2013-2343017, and A‑2013-2343018 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 Competitive Local Exchange Carrier within the service territory of the Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; and to furnish services as a Competitive Access Provider throughout the Commonwealth of Pennsylvania, 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 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.
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: March 14, 2013

ORDER ENTERED: March 14, 2013

APPENDIX A

North Penn Long Distance Corporation d/b/a North Penn Access

Docket Nos. A-2013-2343017 and A-2013-2343018

Proposed tariffs for Competitive Local Exchange Carrier Service; and

Competitive Access Provider

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 – CLEC Local Tariff A-2013-2343018, Tariff No. 1**

1. Correct the Title to read:

North Penn Long Distance Corporation d/b/a North Penn Access

COMPETITIVE LOCAL EXCHANGE CARRIER

Regulations and Schedule of Charges

1. All Pages: Need to change the name of the company to North Penn Long Distance Corporation d/b/a North Penn Access in the header.
2. All Pages: Enter issued and effective dates as per ordering paragraph.
3. Missing: The Company did not provide a page for future revisions, typically labeled “List of Modifications” as per 52 Pa. Code § 53.21(10) and 52 Pa. Code § 53.21.
4. Original Page 1, Check Sheet: “Explanation of Notes” page is listed in tariff as table of contents page 7. Need to add table of contents page 7 to the check sheet.
5. Original Page 1, Check Sheet: Need to delete section 5, pages 7-14 on check sheet. Those page numbers are not found in tariff.
6. Missing: All technical terms and abbreviations used in the tariff, the meanings of which are not common knowledge and cannot be gathered exactly from the context in which used, must be defined in the definition section.
7. Original Page 1, Section 1.1.2: Need to delete this section because there shouldn’t be any unavailable services contained in the tariff.
8. Missing: There must be language in section 2.3 explaining clearly and specifying whether, if bills are paid by mail, the date of the postmark will be considered the date of payment as per 52 Pa. Code § 53.84.
9. Missing: There must be a statement of compliance with Chapter 64 and a statement that BCS has primary jurisdiction over residential complaints in the tariff.
10. Missing: As per BCS requirement, Call Blocking 900/976 and Toll Denial Services must be listed in the tariff.
11. Original Page 2, Section 2.1.2.a: Remove “attorney fees and court costs.” The Commission does not empower parties to collect their legal fees from other parties via the tariff. This must be dealt with in court proceedings or negotiations between the parties.
12. 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>.
13. Original Page 8, Section 2.3.3: Need to change the Bureau of Consumer Services telephone number. The correct BCS number is 1-800-692-7380.
14. Original Page 9, Section 2.3.5: There is no return check charge listed in the tariff. Need to either list a charge in the tariff or remove the statement that the charge is listed in the rates and charges section of the tariff.
15. Original Page 11, Section 2.6.1: All surcharges must be listed in the tariff. Need to either list all the surcharges or remove this statement from this section.
16. Original Page 23, Sections 2.9.1 & 2.9.2: The language in these two paragraphs seems to be coming from a tariff for New York. Either revise language or delete these two paragraphs.
17. Original Page 11, Section 4.2.4.3: Need to change “4.4” to read “4.3.”
18. Original Page 12, Section 4.3: The following language must be added: “All promotions and trials have a 6 month limit and must be filed as tariff supplements with the Commission as per 52 Pa. Code § 53.60.”
19. Original Page 2, Section 6.1.2: Need to add residence access line charge of $0.08.

**Tariff deficiencies noted – CLEC Switched Access Tariff A-2013-2343018 No. 2**

1. Correct the Title to read:

North Penn Long Distance Corporation d/b/a North Penn Access

SWITCHED ACCESS TARIFF

Regulations and Schedule of Charges

1. All Pages: Need to change the name of the company to North Penn Long Distance Corporation d/b/a North Penn Access in the header.
2. All Pages: Enter issued and effective dates as per ordering paragraph.
3. Missing: The Company did not provide a page for future revisions, typically labeled “List of Modifications” as per 52 Pa. Code § 53.21(10) and 52 Pa. Code § 53.21.
4. Original Pages 4-5, Definitions: 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: “Access Minutes,” “Communications System,” “Interstate Communications,” “Intrastate Communications,” “Originating Direction,” “Point of Termination,” and “Transmission Path.”
5. Original Page 10, Section 2.3.1: Remove “attorney fees and court costs” twice in the paragraph. The Commission does not empower parties to collect their legal fees from other parties via the tariff. This must be dealt with in court proceedings or negotiations between the parties.
6. 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. Original Page 25, Section 4.1: Revise last sentence by indicating that ICB rates will be made available to the Commission upon request.

**Tariff deficiencies noted – CAP A-2013-2343017 Tariff No. 3**

1. Correct the Title to read:

North Penn Long Distance Corporation d/b/a North Penn Access

COMPETITIVE ACCESS PROVIDER CARRIER

Regulations and Schedule of Charges

1. All Pages: Need to change the name of the company to North Penn Long Distance Corporation d/b/a North Penn Access in the header.
2. All Pages: Enter issued and effective dates as per ordering paragraph.
3. Missing: The Company did not provide a page for future revisions, typically labeled “List of Modifications” as per 52 Pa. Code § 53.21(10) and 52 Pa. Code § 53.21.
4. Original pages 4-5, Definitions: 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: “Communications System,” “Interstate Communications,” “Intrastate Communications,” “”Point of Termination,” and “Transmission Path.”
5. Original Page 11, Section 2.3.1: Remove “attorney fees and court costs” twice in the paragraph. The Commission does not empower parties to collect their legal fees from other parties via the tariff. This must be dealt with in court proceedings or negotiations between the parties.
6. 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. Original Page 11, Section 2.3.1: The rate of “1.5%” should read “1.25%.”
8. Original Page 13, Section 2.5: Please either explain the difference between advance payment and a security deposit or remove the first sentence of the paragraph.
9. Original Page 22, Section 3.2: Revise last sentence by indicating that ICB rates will be made available to 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. *Id.* [↑](#footnote-ref-2)
3. See Docket No. A-311360, January 30, 2006 [↑](#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)
9. Act 183, P.L. 1398 (66 Pa. C.S § 3017(c)). [↑](#footnote-ref-9)