

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

<b>1. REPORT DATE:</b> August 3, 1999	<b>2. BUREAU AGENDA NO.:</b> AUG-1999-FUS-0504*
<b>3. BUREAU:</b> Fixed Utility Services	
<b>4. SECTION(S):</b> Telecommunications	<b>5. PUBLIC MEETING DATE:</b> August 12, 1999
<b>6. APPROVED BY:</b> Director: Supervisor: Wagner 3-6175 <i>AW</i> Legal Review: Arnold 7-8032 <i>ALB</i>	
<b>7. PERSONS IN CHARGE:</b> <i>W</i> Barrett/Nguyen: <i>Yme</i> 7-5155	DOCKET AUG 24 1999
<b>8. DOCKET NO.:</b> A - 310814, A - 310814F002, and A - 310814F003.	

9. (a) **CAPTION** (abbreviate if more than 4 lines)  
 (b) Short summary of history & facts, documents & briefs  
 (c) Recommendation
- (a) Applications of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish or supply telecommunication services as a Reseller of Toll Services, a Reseller and Facilities-Based Competitive Local Exchange Carrier, and an Interexchange Carrier.
- (b) On March 4, 1999, the subject application was filed. No protests were filed and no hearings were held.
- (c) The Bureau of Fixed Utility Services recommends that the Commission adopt the proposed draft Order approving the Applications, consistent with the Order.

EEF

DOCUMENT FOLDER

Order Doc. # 140920

Calendar Doc. # 141026

10. MOTION BY: Commissioner Chm. Quain

SECONDED: Commissioner Bloom

Commissioner Rolka - Yes  
 Commissioner Brownell - Yes  
 Commissioner Wilson - Yes

CONTENTS OF MOTION: Staff recommendation adopted.



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

REP

REFER TO OUR FILE

AUGUST 17, 1999

A-310814 A-310814F0002  
A-310814F0003

DOCUMENT  
FOLDER

LINDA C SMITH ESQUIRE  
DILWORTH PAXSON LLP  
305 N FRONT STREET STE 403  
HARRISBURG PA 17101-1236

DOCKETED  
AUG 19 1999

Application of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish or supply telecommunications services as a Reseller of Toll Services to the public in the Commonwealth of Pennsylvania.

Application of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish or supply telecommunications services as a Competitive Local Exchange Carrier to the public in the Commonwealth of Pennsylvania.

Application of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish or supply telecommunications services as a Interexchange Carrier, providing toll services as a facilities-based carrier ("Interexchange Carrier") to the public in the Commonwealth of Pennsylvania.

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on August 12, 1999 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty,  
Secretary

smk  
Encls.  
Cert.Mail

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA. 17105-3265

Public Meeting held August 12, 1999

Commissioners Present:

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

Application of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish, or supply telecommunication services as a Reseller of Toll Services to the public in the Commonwealth of Pennsylvania A-310814

Application of US LEC of Pennsylvania, 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 A-310814  
F0002

Application of US LEC of Pennsylvania, Inc. for approval to offer, render, furnish, or supply telecommunication services as an Interexchange Carrier, providing toll services as a facilities-based carrier ("Interexchange Carrier") to the public in the Commonwealth of Pennsylvania A-310814  
F0003

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BY THE COMMISSION:

ORDER

DOCKETED  
AUG 19 1999

On March 4, 1999, US LEC of Pennsylvania, Inc. ("Applicant"), filed Applications seeking a Certificate of Public Convenience pursuant to the

Telecommunication Act of 1996, 47 U.S.C. §§201, *et seq.*, (TA-96)<sup>1</sup> and to Chapter 11 and 30 of the Public Utility Code (Code) (66 Pa. C.S. §1101, *et seq.*, and §§3001, *et seq.*) evidencing authority to provide the following telecommunication services to residential and business customers in the Commonwealth of Pennsylvania:

- (1) Provide services as a Reseller of toll services,
- (2) Provide services as a Competitive Local Exchange Carrier (CLEC), on both facilities-based and resold bases, in non-rural areas of the commonwealth which shall be deemed to be the service territories of Bell Atlantic-Pennsylvania, Inc. (Bell), GTE North, Inc. (GTE), and,
- (3) Provide services as an Interexchange Carrier.

The Applicant complied with Section 5.14 of our Regulations, 52 Pa. Code §5.14, relating to applications requiring notice. The Applicant served a copy of the Application upon Bell Atlantic-Pennsylvania, Inc. and GTE North, Inc. The Applicant asserts that it will not be a rural telephone company at the present time. No protests were filed, and no hearings were held.

The Applicant is a North Carolina corporation with its principal place of business at 401 N. Tyron Street, Suite 1000, Charlotte, North Carolina 28202. Correspondence to resolve complaints should be directed to Gary D. Grefrath, at the principal place of business.

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<sup>1</sup> 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).

The Applicant is not currently doing business in Pennsylvania and has no affiliates or predecessors doing business in Pennsylvania.

Applicant will have a separate and distinct sales and switch technician force with its affiliates. However, its accounting, regulatory, marketing, engineering, financial and upper management support will come from its corporate parent. No other affiliate of Applicant will provide any material assistance or have material dealings.

The following non-jurisdictional affiliates are rendering public utility service in jurisdictions other than Pennsylvania: US LEC of North Carolina, Inc., US LEC of Georgia, Inc., US LEC of Tennessee, Inc., US LEC of Florida, Inc.

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

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<sup>2</sup> See, e.g., *MFS*, 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-0093666, as well as other CLEC proceedings.

<sup>3</sup> *Universal Service Invest.*, Docket No. I-00940035 (January 28, 1997).

consumers. In response, we articulated explicit concerns relative to an applicant's financial fitness, tariff compliance, and rates.<sup>4</sup>

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

We conclude that the Applicant has met the requirements for certification as a CLEC, IXC reseller, and facilities-based IXC, consistent with this Order. Premised upon our review of the Application(s) and the proposed tariff(s), 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 as contemplated by Section 3009(b)(4) of the Code. We note, however, deficiencies in the Applicant's proposed initial tariff(s), in the areas of, but not limited to, detailed service description, maps of service areas, and required service offerings.

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<sup>4</sup> *Blue Ribbon*, Docket No. A-310442 (April 25 and August 4, 1997).

We shall, therefore, direct the Applicant to contact Staff to revise its proposed Initial Tariff(s).<sup>5</sup> The Applicant shall thereafter file its Compliance Tariff(s) reflecting the required changes on or before sixty (60) days from the date of entry of this Order. Copies of the Compliance Tariff(s) shall also be served upon the same entities receiving service of the original Application, including the ILECs. 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 Compliance Tariff(s) is not filed within 60 days (120 days including the extension) of the entry of this Order, the Application(s) will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the tariffs contain rates, the Compliance Tariffs may become effective on one (1) day's notice from the date upon which they are filed and served. Compliance Tariffs that did not contain rates may not become effective prior to sixty (60) days notice.

### Conclusion

Accordingly, we shall grant the Applications. Upon the establishment of the approval of Compliance Tariffs, the Applicant is authorized to provide the foregoing mentioned services within the service territories mentioned above, consistent with this Order and our decisions in the *MFS* and such other proceedings;

**THEREFORE,**

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<sup>5</sup> Yen Nguyen, 717-783-3145, is the FUS contact. Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, the TA-96, or our Regulations or Orders will be deemed inoperative and supersede. (52 Pa. Code §64.213).

**IT IS ORDERED:**

1. That the Applications of US LEC of Pennsylvania, Inc., at Docket No. A-310814, Docket No. A-310814F0002, and Docket No. A-310814F0003, for authority to operate as a Reseller of Toll Services, a Competitive Local Exchange Carrier, and an Interexchange Carrier, respectively, in the service territories foregoing mentioned, are granted, consistent with this Order.

2. That the Applicant shall contact the Commission's Bureau of Fixed Utility Services - Telecommunication Group, within ten (10) days of the date of entry of this Order, to resolve any issues pertaining to its initial tariffs.

3. That the Applicant shall file its Compliance Tariff(s), consistent with the resolution reached between the Applicant and Commission Staff, within sixty (60) days after the date of entry of this Order. The Applicant shall serve a copy of its Compliance Tariff(s) on each entity receiving a copy of the original Application(s). To the extent that the Compliance Tariff(s) contains rates, the Compliance Tariff(s) may become effective on or after one (1) day's notice from the date upon which it is filed and served. Compliance Tariffs that did not contain rates may not become effective prior to sixty (60) days notice. The Compliance Tariff for Interexchange Reseller, for Competitive Local Exchange Carrier, and for Facilities-Based Interexchange Carrier shall be labeled "Interexchange Reseller Toll Tariff," "non facilities-based and facilities-based Competitive Local Exchange Carrier Tariff," and "Facilities-Based Interexchange Carrier Tariff," respectively.

4. 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, regulation, 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: the *MFS Intelenet, et al.*, Docket Nos. A-310203F0002, *et al.*; and the *Universal Service Investigation*, Docket No. I-00940035.

5. 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.

6. That the Applicant maintain separate accounting systems for its interexchange toll operations and its competitive local exchange carrier operations.

7. That the Applicant file such affiliated interest agreements as may be necessary relative to any transactions with affiliates.

8. 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, or if the Applicant fails to file monthly status letters to extend the time for compliance, the Application(s) at Docket No. A-310814, Docket No. A-310814F002, and Docket No. A-310814F003 may be dismissed and the authority granted herein revoked without further Commission Order.

9. That, upon the establishment of filed rates and the approval of the Compliance Tariff(s), a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Reseller of Toll Services, a Competitive Local Exchange Carrier, and an Interexchange Carrier, consistent with this Order.

**BY THE COMMISSION,**



James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: August 12, 1999

ORDER ENTERED: **AUG 17 1999**