



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

IN REPLY PLEASE
REFER TO OUR FILE

A-310806
A-310806F0002

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FOLDER

NOVEMBER 9, 1999

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NOV 17 1999

R SCOTT SEAB VICE PRES
NOW COMMUNICATIONS INC
711 SOUTH TEJON STREET STE 201
COLORADO SPRINGS CO 80903

Application of NOW Communications, Inc. for approval to offer, render, furnish or supply interexchange telecommunication services as a Toll reseller to the public in the Commonwealth of Pennsylvania.

Application of NOW Communications, Inc. for approval to offer, render, furnish or supply interexchange telecommunication services as a Competitive Local Exchange 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 November 4, 1999, in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Secretary

smk
Enclosure
cert. mail

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held November 4, 1999

Commissioners Present:

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

DOCKETED
NOV 17 1999

DOCUMENT
FOLDER

Application of NOW Communications, Inc., for approval to offer, render, furnish or supply telecommunication services as an Interexchange Toll Reseller in the Commonwealth of Pennsylvania

Docket Number:
A-310806

Application of NOW Communications, Inc., for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier in the Commonwealth of Pennsylvania

A-310806F0002

ORDER

BY THE COMMISSION:

On March 29, 1999, NOW Communications, 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)¹ and to Chapter

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).

11 and 30 of the Public Utility Code (Code) (66 Pa. C.S. §1101, *et seq.*, and §§3001, *et seq.*) evidencing authority to provide telecommunication services as an Interexchange (IXC) Toll Reseller and as a Competitive Local Exchange Carrier (CLEC) on a resold basis to the residential customers in the Commonwealth of Pennsylvania.

These applications complied with section 5.14 of our regulations, 52 Pa Code §5.14. relating to applications requiring notice. No protests were filed and no hearings were held.

The Applicant requests authority to provide local exchange telecommunication services as a CLEC in areas of Pennsylvania served by Bell Atlantic-Pennsylvania, Inc., GTE North, Inc. and Sprint/United Telephone Company of Pennsylvania. The Applicant provided proof of service of the Application on Bell Atlantic-Pennsylvania Inc. ("Bell"), GTE North, Inc. ("GTE") and Sprint/United Telephone Company of Pennsylvania ("United"). The Applicant requests authority to provide services as an IXC Toll Reseller throughout the Commonwealth.

The Applicant is a Mississippi company with its principal place of business at 1695 High Street, Suite B, Jackson, Mississippi 39208. Correspondence to resolve complaints may be directed to Ms. Elma Wade, at the principal place of business.

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.² 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.³ 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.⁴

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 to the public in the Commonwealth of Pennsylvania.

We conclude that the Applicant has met the requirements for certification as an IXC Toll 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 as contemplated by Section 3009(b)(4) of the Code. We note, however deficiencies in the proposed tariffs. See Appendix A for a list of deficiencies found in the proposed tariffs.

² 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.

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

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

We shall direct the Applicant to revise the proposed tariffs in accordance with the changes noted in Appendix-A of this Order.⁵ The Applicant shall thereafter file its compliance tariffs reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. Copies of the compliance tariff shall also be served upon the same entities receiving service of the original Application, including the ILECs. If the time required for filing of the tariffs 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 Applications will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the proposed tariffs contains rates, the compliance tariffs may become effective on one (1) day's notice from the date upon which it is filed and served.

Conclusion

Accordingly, we shall grant the Applications. The Applicant has had provisional authority under our Implementation Order (p. 7, para. B.1.c.4) and our Implementation Reconsideration Order (p. 5) to provide the proposed services pursuant to its proposed tariffs during the pendency of the application process. Upon the establishment of filed rates and the approval of Initial Tariffs, a Certificate of Public Convenience shall be issued evidencing the Applicant's authority to provide telecommunication services as an IXC Toll reseller throughout the Commonwealth and as a CLEC on a resold basis in the service territories of Bell, GTE and United, consistent with this Order and our decisions in the *MFS* and such other proceedings:

⁵ Mohan Samuel, 717-783-0697, 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).

THEREFORE,

IT IS ORDERED:

1. That the Application of NOW Communications, Inc., at Docket No. A-310806, for authority to operate as an Interexchange Toll Reseller throughout the Commonwealth of Pennsylvania, is granted, consistent with this Order.

2. That the Application of NOW Communications, Inc., at Docket No. A-310806F0002, for authority to operate as a Competitive Local Exchange Carrier on a resold basis within the service territories of Bell-Atlantic-Pennsylvania, Inc., GTE North, Inc. and Sprint/United Telephone Company of Pennsylvania is granted, consistent with this Order.

3. That the Applicant is directed to revise its proposed tariffs to reflect the changes noted in Appendix-A of this Order.

4. That the Applicant shall file its Initial tariffs, consistent with the requisite changes noted in Appendix-A of this Order, within sixty (60) days after the date of entry of this Order. The Applicant shall serve a copy of its initial tariffs on each entity receiving a copy of the original Application. To the extent the initial tariffs contain rates the initial tariffs may become effective on or after one (1) day's notice from the date upon which they are filed and served. Proposed tariffs which did not contain rates may not become effective prior to sixty (60) days notice. The Initial Interexchange Toll Reseller Services Tariff shall be labeled "Interexchange Toll Reseller Tariff". The Initial Competitive Local Exchange Carrier tariff shall be labeled "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, 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.

6. 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.

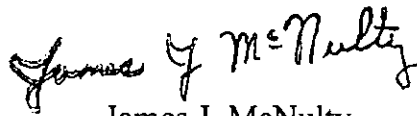
7. That the Applicant file such affiliated interest agreements as may be necessary relative to any transactions with affiliates.

8. That the Applicant contact each County or Municipal authority where it intends to provide telecommunication service and make necessary arrangements for the provisioning of Emergency-911 Service.

9. 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 extend the time for compliance, the Application at Docket Nos. A-310806 and A-310806F0002 may be dismissed and the authority granted herein revoked without further Commission Order.

10. That, upon the establishment of filed rates and the approval of Initial Tariffs, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as an Interexchange Toll Reseller throughout the Commonwealth of Pennsylvania and as a Competitive Local Exchange Carrier on a resold basis within the service territories of Bell, GTE North and United, consistent with this Order.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 4, 1999

ORDER ENTERED: **NOV -9 1999**

NOW COMMUNICATIONS, INC.
Docket Nos. A-310806; A-310806F0002

NOW Communications, Inc. ("Company") is seeking authority to provide Interexchange Toll Reseller service and Competitive Local Exchange services in Pennsylvania. The Company have filed an illustrative Tariff-Pa. PUC No. 1, which is a combined tariff for the two services that it is seeking authority. The combined tariff contains schedule of rates, rules and regulations governing the resale of Local Exchange services and (incidental) Interexchange services.

The Company is required to file separate tariffs for each of the services it intends to provide. The tariff's should conform with the Pennsylvania regulations and shall contain rules regulations and rates for the following telecommunication services it is seeking authority:

Competitive Local Exchange Carrier Services Tariff (Tariff No. 1)
Interexchange Reseller of Toll Services Tariff (Tariff No. 2)

The illustrative tariff filed by the Company at Pa. PUC No. 1, for the most part, contains provision that are more akin to its CLEC operations, except for a few references to long distance services. As such, for the purpose of the tariff review process, Tariff No. 1 is considered as been filed to cover its CLEC operations. The tariff filed was found to contain certain deficiencies which are discussed here. Each of the deficiencies discussed here are to be resolved and the initial tariff should be reflective of those changes to comply with the Public Utility regulations.

1) The Title page should contain information on the Company's service territory and the type of telecommunication services it provides. The title page should state that the tariff has been filed with the Pennsylvania Public Utility Commission and copies of the tariff is available for inspection at the Company's main place of business. The Company should state the type of service it provides as "Competitive Local Exchange Carrier Services."

2) Page 2: The symbols that are to be used in the tariff are as follows:

I	-	to signify increased rate
D	-	to signify decreased rate
C	-	to signify all other change

3) Page 11: The name of the service provided by the Company should be stated as Competitive Local Exchange Carrier Services. This tariff should only contain regulations and rates for the Company's local exchange services. IntraLATA toll service provisions should be included in its IXC Reseller of Toll services tariff. The tariff should also contain information that clearly defines its service area and other pertinent information. The Company may not block services of a customer for abnormal toll usage as suggested in the tariff.

4) Page 14: The thirty (30) days notice period required for cancellation of service after an initial minimum service period of thirty (30) days should be changed to 5 days.

5) Page 15: The customer should have the right to cancel service on a 5-days notice, either orally or in writing. The provision that gives the company ten days to connect service before refund will be considered should be removed.

6) Page 16: The Company should mail or deliver written notice to the customer before the date of proposed suspension regardless of the grounds upon which suspension is sought, with the exception of the following: Failure to comply with the material terms of a payment agreement for toll or non-basic service, or both. In which case the Company may follow limited notice upon noncompliance with report or order as contemplated in 52 Pa. Code §64.81, which states that: The Company may suspend service without prior notice only when the suspension is based on an occurrence which endangers the safety of a person or appears likely to prove physically harmful to the service delivery system of the telephone Company. However, at the time of suspension, the Company shall mail a notice of suspension to the customer's billing address. All other instances listed in this section as a reason for suspension or disconnection of service should be removed.

7) Page 17: The Company should follow the following procedures for denial of service to customers: 1) A telephone shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought. 2) When at least 10 days have passed since suspension of service, the Company may terminate service for failure to pay a reconnection fee and to remedy the original grounds for suspension due to any of the following reasons:

(a) Failure to make satisfactory arrangements to pay arrearages.

(b) Failure to post a deposit, furnish a third-party guarantee or otherwise establish credit.

(c) Failure to meet the requirements of a payment agreement.

(d) Failure to give adequate assurance that an unauthorized use or practice will cease.

8) Page 22: Credit Allowances: When service is interrupted for a period of at least 24 hours, the Company shall apply the following schedule of allowances:

- (1) One-thirtieth of the tariff monthly rate of all services and facilities furnished by the Company rendered inoperative for each of the first three 24-hour periods.
- (2) Two-thirtieths of the tariff monthly rate for each full 24-hour period beyond the first three 24-hour periods of interruption.
- (3) When service is interrupted for a period of at least 24 hours due to storms, fires, floods or other conditions beyond the control of the company, an allowance of 1/30 of the tariff monthly rate for all services and facilities furnished by the Company.

9) Page 23: The Company failed to provide the name of all the exchanges it will be serving, including its local calling areas and metropolitan areas. The Company should also provide maps for each of the exchanges it will be serving.

10) The Company also failed to provide the requirements of the Commission or information on the following services:

- 1) Lifeline Service and Link-Up America Plan;
- 2) Pennsylvania Telephone Relay Service and its surcharge rates, currently, at \$0.12 for business and \$0.06 for residential access lines;
- 3) IntraLATA and interLATA Presubscription Plan;
- 4) Caller ID Blocking service and other precautionary measures for the safety and privacy of customers;
- 5) The address and phone number of the Bureau of Consumer Services of the Commission for customers to contact in case of resolved disputes.

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