

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

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<b>1. REPORT DATE:</b> September 3, 1999	<b>2. BUREAU AGENDA NO.:</b> SEP-1999-FUS-0558*(REV)
<b>3. BUREAU:</b> Fixed Utility Services	
<b>4. SECTION(S):</b> Telecommunications	<b>5. PUBLIC MEETING DATE:</b>
<b>6. APPROVED BY:</b> Director: Rosenthal 3-6247 Supervisor: Wagner 3-6175 Legal Review by: Arnold 7-8032 AA	September 15, 1999  KJR
<b>7. PERSONS IN CHARGE:</b> W Barrett/Spandra/Samuel 3-0697	
<b>8. DOCKET NO.:</b> A-310828; A-310828F0002; A-310828F0003	

9. (a) **CAPTION** (abbreviate if more than 4 lines)  
 (b) **Short summary of history & facts, documents & briefs**  
 (c) **Recommendation**

- (a) Application of Fibernet Telecommunications of Pennsylvania, L.L.C. for approval to offer, render, furnish or supply telecommunication services as an Interexchange Toll Reseller, as a Competitive Local Exchange Carrier, and as a Competitive Access Provider in the Commonwealth of Pennsylvania.
- (b) On May 21, 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 Application, consistent with the Order.

Order Doc. # 149232

Calendar Doc. # 148795

**10. MOTION BY:** Commissioner Chm. Quain

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

**SECONDED:** Commissioner Bloom

**CONTENTS OF MOTION:** Staff recommendation adopted.



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

REP

IN REPLY PLEASE  
REFER TO OUR FILE

SEPTEMBER 20, 1999

A-310828 A-310828F0002  
A-310828F0003

MONIQUE BYRNES CONSULTANT  
TECHNOLOGIES MANAGEMENT INC  
210 N PARK AVENUE  
PO DRAWER 200  
WINTER PARK FL 32790-0200

Application of Fibernet Telecommunications of Pennsylvania, LLC for approval to offer, render, furnish or supply telecommunications services as a Interexchange Toll Reseller to the public in the Commonwealth of Pennsylvania.

Application of Fibernet Telecommunications of Pennsylvania, LLC 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 Fibernet Telecommunications of Pennsylvania, LLC for approval to offer, render, furnish or supply telecommunications services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania.

DOCKETED

To Whom It May Concern:

SEP 22 1999

This is to advise you that an Order has been adopted by the Commission in Public Meeting on September 15, 1999, in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty,  
Secretary

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smk  
Enclosure  
cert. mail

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA. 17105-3265**

Public Meeting held September 15, 1999

Commissioners Present:

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

Application of Fibernet Telecommunications of Pennsylvania, LLC, for approval to offer, render, furnish or supply telecommunication services as a Interexchange Toll Reseller in the Commonwealth of Pennsylvania

Docket Number:  
A-310828

Application of Fibernet Telecommunications of Pennsylvania, LLC, for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier in the Commonwealth of Pennsylvania

A-310828F0002

Application of Fibernet Telecommunications of Pennsylvania, LLC, for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania

A-310828F0003

DOCKETED

SEP 22 1999

**ORDER**

**BY THE COMMISSION:**

On May 21, 1999, Fibernet Telecommunications of Pennsylvania, LLC ("Applicant"), filed an Application seeking a Certificate of Public Convenience pursuant to the Telecommunication Act of 1996, 47 U.S.C. §§201, *et*

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*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 telecommunication services as an Interexchange (IXC) Toll Reseller, as a Competitive Local Exchange Carrier (CLEC) on a facilities-based or resold basis and as a Competitive Access Provider (CAP) to residential and business customers in the Commonwealth of Pennsylvania.

This application 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. and GTE North, Inc. The applicant provided proof of service of the Application on Bell Atlantic-Pennsylvania Inc. ("Bell"), and GTE North, Inc. ("GTE"). The applicant requests authority to provide services as an IXC Toll Reseller and CAP throughout the Commonwealth.

The Applicant is a Pennsylvania limited liability company with its principal place of business at 222 Richmond Street, Suite 206, Providence, Rhode Island 02903. Correspondence to resolve complaints may be directed to Scott Sawyer, Esq., Vice President, 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).

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 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 Application. We, therefore, 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, as a CLEC and as a CAP,<sup>5</sup> 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

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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).

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

<sup>5</sup> CAP authority may not be used to access the Public Switched Network or toll calling. If a utility with CAP authority wishes to provide access to the Public Switched Network or to provide local or IXC (intraLATA or interLATA) calling services to its customers, the utility must also have been granted CLEC and/or IXC authority by this Commission.

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.

We shall direct the Applicant to revise the proposed tariffs in accordance with the changes noted in Appendix-A of this Order.<sup>6</sup> 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.

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<sup>6</sup> 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).

## 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, as a CLEC on a facilities-based or resold basis in the service territories of Bell and GTE and as a CAP throughout the Commonwealth, consistent with this Order and our decisions in the *MFS* and such other proceedings:

**THEREFORE,**

### **IT IS ORDERED:**

1. That the Application of Fibernet Telecommunications of Pennsylvania, LLC, at Docket No. A-310828, 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 Fibernet Telecommunications of Pennsylvania, LLC., at Docket No. A-310828F0002, for authority to operate as a Competitive Local Exchange Carrier on a facilities based or resold basis within the service territories of Bell-Atlantic-Pennsylvania, Inc. and GTE North, Inc., is granted, consistent with this Order.

3. That the Application of Fibernet Telecommunications of Pennsylvania, LLC., at Docket No. A-310828F0003, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania, is granted, consistent with this Order.

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

5. 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 Reseller Toll Tariff". The Initial Competitive Local Exchange Carrier Tariff shall be labeled "Competitive Local Exchange Carrier Tariff". The Initial Competitive Access Carrier tariff shall be labeled "Competitive Access Provider Tariff".

6. 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.

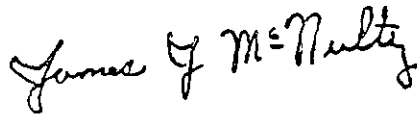
7. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right to the Applicant.

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

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-310828, A-310828F0002 and A-310828F0003 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, a Competitive Local Exchange Carrier within the service territory of Bell and GTE North, and a Competitive Access Provider, consistent with this Order.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: September 15, 1999

ORDER ENTERED: **SEP 20 1999**

**FIBERNET TELECOMMUNICATIONS OF PENNSYLVANIA, LLC**  
**Docket Nos. A-310828; A-310828F0002; A-310828F0003**

Fibernet Telecommunications of Pennsylvania, LLC ("Fibernet") have filed the following three proposed tariffs for providing telecommunications services in Pennsylvania.

- 1) Competitive Local Exchange Carrier Services (Tariff No. 1)
- 2) Interexchange Toll Reseller Services (Tariff No. 1)
- 3) Competitive Access Provider Services Tariff No. 2)

The Commission, as a policy, assigns docket numbers to applications for certification as telecommunication provider in the following order:

- 1)-Interexchange Toll Reseller Services;
  - 2) Competitive Local Exchange Services;
  - 3)- Competitive Access Provider Services.
- The tariffs filed by Fibernet should also be number according to the same sequence of the docket numbers.

The title sheet of all tariffs should have a caption as seen below: "Regulations and Schedule of Intrastate charges applicable to .....(type of service) services in the.....(service territory)." The title sheet should also state that "The tariff has been filed with the Pennsylvania Public Utility Commission and copies are available for inspection at the Company's place of business at .....(address)."

The tariffs filed were also found to contain certain deficiencies which are discussed here. The Company is requested to make the necessary changes as suggested with each of the deficiencies discussed here, for a timely approval of the tariffs:

**Interexchange Toll Reseller Services Tariff (Pa. PUC Tariff No. 1)**

1) The designation and address of the officer issuing the tariff should be shown on all the pages of the tariff.

2) Page 5: The symbols to be used in the tariff to indicate a change in the regulations or rates are as follows:

- I - to signify an increase in rates
- D - to signify a decrease in rates

3) Page 7: The definition for V&H Coordinates, contains a statement that call mileage is used for the purpose of rating calls. However, the tariff does not contain rates that are based on mileage, but flat rate for different services that comes within the range of a minimum and maximum not to exceed HITDR. If the rates provided in the tariff are not based on mileage, the above statement may be inaccurate and hence be removed from the definition.

4) Page 10: The provision that renders the Company not liable for the errors in transmission or failure to establish connections at Section B.3 should be modified to comply with the requirements placed on telecommunication carriers by the regulation at §63.63 of the 52 Pa. Code.

5) Page 12: The late payment fee should not exceed 1.25% per month.

6) Page 14: All references to the Pennsylvania Commission in the tariff should be made to Pennsylvania Public Utility Commission.

7) Page 22: The provision which allows the Company to offer its customers different rates for the same service under the "Competitive Response Promotion" may lead to discriminatory pricing. Rates for all services should be established and are to be included as part of the tariff. As such the competitive response promotion provision should be removed from the tariff.

#### Competitive Local Exchange Carrier Services (Pa. PUC Tariff No. 2)

1) The Tariff number should also be inserted in the title page. The tariff should also have check sheets listing all the pages of the tariff.

2) All pages in the tariff including the title page should indicate the issue date and the effective date. The dates may be indicated towards the bottom of the pages between the name and address of the person issuing the tariff.

3) The Title page should contain information on the Company's principal place of business, the territory served and the type of telecommunication service it provides. The Company should state the type of service it provides as "Competitive Local Exchange Carrier Services."

4) The tariff should contain a check sheet contain a list of all the pages which indicates that they are original pages.

5) The tariff should also have a page to identify the symbols to be used in the tariff in the future to indicate a change in the regulations or rates as follows:

I	-	to signify an increase in rates
D	-	to signify a decrease in rates
C	-	to signify all other changes

6) Page 7: 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 services provisions should be included in a separate tariff. Also remove statement that indicate that "Service will be provided in certain metropolitan areas and may be extended on a statewide basis." The tariff should clearly define its service area.

7) Page 9: The provisions under shortage of equipment or facilities section states that the furnishing of service under this tariff is subject to the availability of facilities and subject to the Company's execution of interconnection agreement with other facilities based local exchange carriers. This language suggests or implies that the service offering is contingent upon or subject of some later action. The contents of a Tariff are to be established and stated on definite terms. The language used here should be modification suitably.

8) Page 10: The customer should have the right to cancel service either by writing or orally informing the Company on 5-days notice. The provisions requiring 30 days notice should be changed to that effect.

9) Page 11: The provisions that another telephone company must not interfere with any right of any person or entity to obtain service directly from the Company should be removed.

10) Page 28: The rates for all services offered by the Company should be established and tarified. The price will include all expenses incurred by the Company to procure such services except for any taxes. As such the provision to pass through any charges imposed by other entity should be removed.

11) Page 29: The bills will only become payable on twenty days from the date of issue of the bill and would not be due upon receipt.

12) Page 30: The address of the Bureau of Consumer Services of the Commission should be included in the tariff. The date of the dispute should be the date the customer first contacts the Company with a dispute.

13) Page 30: The advance payment may be required only in cases involving construction of facilities and furnishing of special equipment and temporary service for a short-term. The amount of advance payment to be paid by the customer has to be established and should not be varying for customers.

14) Page 31 & 32: The amount of deposit required from customers should not exceed the estimated average 2-month bill for basic service plus average 2-month toll charges for existing customers in the applicant's exchange during the immediately preceding 12-month period. The Company may not require customers to pay bills in advance of 20 days notice. The interest on deposit currently approved by the Commission at the average of 1-year US Treasury bills for September, October, and November of the previous year.

15) Page 33-35: The provisions for discontinuance of service by the Company should include information on the notice period. According to 52 Pa. Code §§64.71 and 64.121 a local exchange carrier 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. 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:

- (1) Failure to make satisfactory arrangements to pay arrearages.
- (2) Failure to post a deposit, furnish a third-party guarantee or otherwise establish credit.
- (3) Failure to meet the requirements of a payment agreement.
- (4) Failure to give adequate assurances that an authorized use or practice will cease.

When a 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 Company, the Company need give no written notice before suspension. 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 should be removed. Also the termination provisions discussed above should be made part of this section.

16) Page 36: The Credit allowances for failure of service and equipment should follow 52 Pa. Code §64.52. When main service is interrupted for a period of at least 24 hours, credit to customers at the following rate shall apply: 1) One-thirtieth of monthly rate for each of the first three full 24-hour periods. 2) Two-

thirtieth of monthly rate for each full 24-hour period beyond the first three 24-hour period.

17) Page 38: The Company should remove any language that suggest that applications for new service are non-cancelable. The rules are applicable to all customers on an equitable basis and not on a case by case basis.

18) Page 39: The cancellation of service liability before the completion of the term in any case should not exceed the recurring charges for the remainder of the term.

19) Page 40: The communications by the customer pursuant to this tariff need not be in writing. The Customer has the option to communicate orally.

20) Page 42: The provision to charge additional non-recurring charges for resold services based on the charges that the Company is required to pay to the facilities based carrier whose facilities are used or procured from should be removed. The Company should have fixed charges for its services offered.

21) Page 43, 44 & 45: The CLEC tariff should not contain provisions for the Company's intraLATA Toll call services. The toll services are provided as per the provisions set forth in the Company's Tariff No. 1. These sections should be removed.

22) Page 43: The Company failed to provide the name of all exchanges it will be serving, including its local calling areas. The reference to incumbents LEC's tariff is not sufficient. The Company should also provide maps of each of the exchanges it will serve.

23) Page 44: All rates and charges should be stated in dollars and cents per unit, also indicate whether the rates are nonrecurring or recurring charge. The Company is required to establish its own rates for all the services it furnish to its customers. Rates for services cannot be set as a range as stated in the tariff (1% to 25% below the tariffed rates of ILEC).

24) Page 46 & 47: The language used in the tariff "depending upon availability" to list service features and other services offered should be removed. Each of the features or services listed in this section should have an explanation of its use and service.

25) Page 47: Rates for all services should be tariffed. Rates for services are to be offered to customers on a non-discriminatory manner. Rates for resold services should also be tariffed. Any rate changes in the future has to follow Commission regulations at §53.31 of the 52 Pa. Code for filing procedures.

26) Page 48: The provision for Promotion Offerings should state the maximum period of each promotional offerings. The Company should file with the Commission necessary tariff pages reflecting the information of each promotional offerings on 10 days notice.

27) The Company also failed to provide the following requirements of the Commission in its CLEC tariff:

- 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) Emergency 911 Calls (page 17 only contains the clause for the exclusion of liability arising from the use of emergency 911 calls.);
- 4) IntraLATA and interLATA Presubscription Plan;
- 5) Caller ID Blocking service and other precautionary measures for the safety and privacy of customers;
- 6) Directory Assistance with two directory assistance calls per month free of charge for residential customers.

### Competitive Access Provider Services Tariff (Pa. PUC Tariff No. 3)

1) The title of the tariff should be Competitive Access Provider Services Tariff. The registered address of the Company should also be included in the title sheet.

2) The tariff should have description and rates of all services that are offered by the Company.

3) Section 5, Page 2: The Company should establish its own rates for all the services it offers to its customers. The provision under "Pass-Through Charges" should be removed since the established rates should include all charges incurred by the Company for procuring the service. In cases where a customer requires special facilities or services that are not established in the tariff, the Company may resort to "Individual Cost Basis" pricing, after establishing such a provision in the tariff.

