



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

IN REPLY PLEASE
REFER TO OUR FILE

SEPTEMBER 14, 2000

A-310818

A-310818F0002 A-310818F0003

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DOCKETED
SEP 16 2000

Application of HarvardNet, Inc. for approval to offer, render, furnish or supply telecommunication services as a facilities-based Interexchange Carrier of Toll Services to the public in the Commonwealth of Pennsylvania.

Application of HarvardNet, Inc. for approval to offer, render, furnish or supply telecommunication services as a facilities-based Competitive Local Exchange Carrier to the public in the Commonwealth of Pennsylvania.

Application of HarvardNet, Inc. for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on September 13, 2000 in the above-entitled proceeding has adopted an Order.

DOCUMENT
FOLDER

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 September 13, 2000

Commissioners Present:

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

DOCKETED
SEP 16 2000

Application of HarvardNet, Inc. for approval to offer, render, furnish, or supply telecommunication services as an Interexchange Carrier of Toll Services to the public in the Commonwealth of Pennsylvania

Docket Number:
A-310818

Application of HarvardNet, 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

Docket Number:
A-310818F0002

Application of HarvardNet, Inc. for approval to offer, render, furnish, or supply telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania

Docket Number:
A-310818F0003

**DOCUMENT
FOLDER**

ORDER

BY THE COMMISSION:

On April 2, 1999, HarvardNet 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 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 Carrier (“IXC”), Competitive Local Exchange Carrier (“CLEC”) and as a Competitive Access Provider (“CAP”) in the Commonwealth of Pennsylvania.

The Applicant 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 is a Delaware corporation with its principal place of business at 500 Rutherford Ave., Charlestown, MA 02129. The Applicant provided proof of compliance with 15 Pa. C.S. §4124, relating to foreign corporations. The Applicant was incorporated in 1992 as Imageware Incorporated (later changed to Harvard Toolworks, Inc.). In May of 1997, its name was changed to HarvardNet, Inc. In November of 1997, it acquired Internet Maine, Inc. In January of 1999, the Applicant acquired the assets of the Network Services Division of Comstor Corporation. Comstor’s Network Services Division was created from the assets and personnel of the Network Services Division of Management Analysis, Inc. The Applicant is currently not doing business in Pennsylvania. However, the division of Comstor Corporation whose assets the Applicant purchased provided Internet access in Pennsylvania. As such, it was not a jurisdictional public utility.

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).

The Applicant is currently certified as a local exchange carrier in Massachusetts, and its certification applications in New Hampshire and Rhode Island were recently approved. The Applicant is also seeking authority to provide local exchange telecommunications services in Maine, Maryland, New Jersey and New York, and may seek authority to provide such services in other jurisdictions in the near future. The Applicant has no affiliates operating as a public utility outside of Pennsylvania, nor is the Applicant providing services to, or receiving services from any affiliates.

On August 9, 1999, the Applicant filed Amendments to its Applications at the above-captioned docket numbers. In its Amendments the Applicant described its plans for an initial public offering ("IPO") of its common capital stock. The Applicant further stated that it had acquired the issued and outstanding shares of capital stock of HarvardNet-Virginia, which was seeking regulatory authority to operate in Virginia at the time the Amendments were filed.

On October 29, 1999, the Applicant filed a second set of Amendments to its Applications at the above-captioned docket numbers. In its second set of Amendments, the Applicant stated that its planned IPO had been postponed until sometime during the calendar year 2000. In addition, the Applicant described plans to close on a private placement of its Series A-3 Preferred Stock.

On February 28, 2000, the Applicant filed a third set of Amendments to its applications at the above captioned docket numbers. These amendments were filed to inform the Commission of its decision not to render telecommunications services as an Interexchange Carrier at this time in Pennsylvania. Consequently, the Applicant withdrew its Application to become

IXC carrier in Pennsylvania. The Applicant also filed an amended tariff with rates for certain services for its CAP services.

As such, the Commission is currently dealing with the Applications of HarvardNet, Inc.'s request for approval to offer, render, furnish, or supply telecommunication services as a CLEC and as a CAP, which were docketed under A-310818F0002 and A-310818F0003 respectively.

The Applicant states that its operations will be conducted throughout the service territories of Bell Atlantic-Pennsylvania, Inc. (the name of Bell Atlantic-Pennsylvania has been changed to Verizon Pennsylvania, Inc. ("Verizon Pennsylvania") as of August 1, 2000), and that it will provide service both through its own facilities and on a resale basis. The Applicant asserts that it will be constructing, leasing, and operating facilities, and that the facilities constructed may be used separately or in conjunction with similar facilities provided by or obtained from Verizon Pennsylvania and/or other entities. Where it is unable to provide facilities-based services, the Applicant states that it will subscribe to and resell various types of Verizon Pennsylvania local exchange, intraLATA, and interLATA interstate services and facilities. The Applicant will not be a rural telephone company. The Applicant has served copies of its Applications on Verizon Pennsylvania.

Correspondence to resolve complaints may be directed to the Applicant at the address set forth above. Customers can access customer support by calling the Applicant at 1-800-772-6771, or by e-mail via the Applicant's website (<http://harvard.net>). In addition, each customer will be assigned a dedicated account representative to register questions or concerns.

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, therefore, conclude that the Applicant has demonstrated that it is financially capable of providing telecommunication services as a CLEC and as a CAP to the public in the Commonwealth of Pennsylvania.

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

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 tariff in accordance with the changes noted in Appendix-A of this Order.⁵ 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. Copies of the initial tariffs 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 contained rates, the initial tariffs may become effective on one (1) day's notice from the date upon which it is filed and served.

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).

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 a CLEC on a facilities-based or resold basis in the service territories of Verizon Pennsylvania and a Competitive Access Provider 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 HarvardNet, Inc., at Docket No. A-310818, for authority to operate as a facilities-based Interexchange Carrier throughout the Commonwealth is allowed to be withdrawn, consistent with this Order.

2. That the Application of HarvardNet, Inc., at Docket No. A-310818F0002, for authority to operate as a Competitive Local Exchange Carrier on a facilities based or resold basis within the service territories of Verizon Pennsylvania, Inc., is granted, consistent with this Order.

3. That the Application of HarvardNet, Inc., at Docket No. A-310818F0003, for authority to operate as a Competitive Access Provider throughout the Commonwealth, is granted, consistent with this Order.

4. That the Applicant is directed to revise its proposed tariff 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 that the proposed 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. If the proposed tariffs did not contained rates, then the Initial tariff may not become effective prior to sixty (60) days notice from the date it was filed and served. The Initial Competitive Local Exchange Carrier Tariff shall be labeled "Competitive Local Exchange Carrier Tariff". The Initial Competitive Access Provider 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.

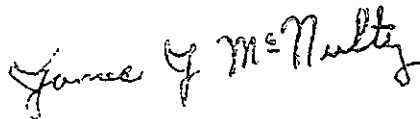
9. That the Applicant shall contact each county or municipal authority where it intends to provide telecommunications services and make the necessary arrangements for the provisioning of Emergency 911 Service.

10. 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 Telecommunication Relay Service Provider, in accordance with Commission's Order entered on February 4, 2000 at Docket No. M-00900239.

11. 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-310818F0002 and A-310818F0003 may be dismissed and the authority granted herein revoked without further Commission Order.

12. 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 a Competitive Local Exchange Carrier within the service territory of Verizon Pennsylvania and as a Competitive Access Provider throughout the Commonwealth, consistent with this Order.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 13, 2000

ORDER ENTERED: **SEP 14 2000**

HARVARDNET, INC.
Docket Nos. A-310818F0002; A-310818F0003

HarvardNet, Inc. ("HarvardNet") has filed a proposed tariff (PA PUC Tariff No. 1) for providing Competitive Access Provider services in Pennsylvania. However, no tariffs were filed for its Competitive Local Exchange Carrier Services in Pennsylvania.

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

Competitive Access Provider Tariff (Pa. PUC Tariff No. 1)

- 1) Add a Change Sheet as page 2 of the tariff. It should be headed "List of Changes Made by this Supplement" and will indicate the Supplement number and the changes made each time a tariff Supplement is issued.
- 2) The tariff should also have a check sheet that contains listing of all pages of the tariff, indicating whether it is original or revised.
- 3) Explanation of Symbols – Use the following symbols"
 - To signify increased rate (I)
 - To signify decreased rate (D)
 - To signify all other changes (C)
- 4) The title page of tariff should indicate the carriers registered address and the tariff be labeled as "Competitive Access Provider Tariff."
- 5) Page 3: Please remove references to the Company's toll tariff, since no authority to provide Toll services was requested by the Company, nor any authority was granted to the Company in Pennsylvania.
- 6) Page 8 & 9: The Company should establish its credit policies, so that Advance Payments and Deposit requirements are made applicable to all customers equally. The language suggesting discretion of the Company to require advance payments or deposits should be removed.

7) Page 9: The Returned Check Charge should be assessed at a uniform rate to all customers.

8) Page 9: The late Payment charge should not exceed 1.25% per month.

9) Page 11: The cancellation of service charges described in the tariff should be made applicable to all customers rather than applied on a case by case basis.

10) Page 11 & 12: The company may not discontinue or refuse to furnish to services without notice on the grounds of customer's fraudulent use of its telephone service or for violation of a condition established in the tariff.

11) Page 12: The requirement to make payment by cash, money order or certified check; and the condition that the restoration of service will only be made after bank clearance of the check should be removed.

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

Since no illustrative tariff was filed with the application, the following **Minimum Information Required for Tariff Sufficiency** is provided as guidelines in the preparation of a CLEC tariff:

The tariffs should contain rates, rules, regulations, practices or contracts applicable to the type of services covered by the tariff. The rules and regulations in the tariffs should conform with the provisions contained in 52 Pa. Code, 66 Public Utilities Code (Consolidated Statutes) and should also include all other requirements mandated by the Pennsylvania Public Utility Commission from time to time:

Tariff Numbering & Designation: Tariffs must be numbered consecutively, in the order of their filing dates and the tariff designation should show the type of service as "Competitive Local Exchange Carrier Services."

Title Page: The title page should contain the number of the tariff, (e.g. Pa. PUC Telephone Tariff No. 2) the name and registered address of the issuing carrier, the type of service to which the tariff applies, the territory to which the tariff applies, (Verizon Pennsylvania, Inc., GTE Inc. or United Telephone Company) the issued and the effective date of the tariff, the name, title and address of the person by whom the tariff is issued.

Check Sheet: The tariff should have a check sheet that contains listing of all pages of the tariff, indicating whether it is original or revised.

List of Modifications: The following symbols are to be used to indicate modification of existing rules, regulations or rates: 52 Pa. Code §53.22

- To signify increased rate (I)
- To signify decreased rate (D)
- To signify all other changes (C)

Table of Contents: tabulation, by page sequence or alphabetically by subject, of the contents of the tariff, setting forth the subject matter and the pages on which located, should be included. 52 Pa. Code §53.23

Availability of Equipment & Facilities: The quality of service should meet or exceed the minimum standards set forth in the Public Utility Code. The public utility shall provide access to operator assisted services for all exchanges at all hours. The public utility is also required to provide equipment and facilities designed and engineered in accordance with realistic forecasts of customer demand and should maintain, associated equipment to meet the demand. 52 Pa. §63

Limitation of Liabilities: If a carrier includes provisions which limits the liability of utilities for injury or damages as a result of negligence or intentional torts, it should be made pursuant to 66 Pa. CS §1308 and should include (1) A company specific dollar amount for the proposed limitation and 2) Work papers to substantiate the dollar amount. 52 Pa. §69.87

Service Area: Provide a description of the territory to be served by the carrier. The Company shall provide telephone services only to those service areas that has been approved, and in accordance with the tariff on file with the Commission. (52 Pa. §63.53)

Local Calling Areas: Carriers must conform, at a minimum, to those local-calling areas of the incumbent local exchange companies. The tariff should alphabetically list all the Exchanges along with its calling areas. If the local calling areas of the exchanges of the Carrier conforms with the incumbents, then the carrier need not provide maps in the tariff. However, the tariff should contain a statement that its exchanges conforms with the exchanges of the incumbents in whose territory the carrier is serving and that the maps of exchanges could be found in each of the incumbent's (name) tariff No. ____.

Service Description: Provide detailed description of all the services that are offered by the Carrier.

Rates: Use separate schedules for each class of service covered by the tariff. E.g. residential/business. All rates and charges should be stated in dollars and cents per unit. Also indicate whether the rates are charged on a nonrecurring or recurring basis. (§53.26)

Advance Payments: Payments may be required in advance of furnishing any of the following services:

- (1) The construction of facilities and furnishing of special equipment;
- (2) Temporary Service for short-term use. (§64.15)

Deposit Requirement: Carrier's should establish written procedures for determining the credit status of an applicant. The carrier may provide a list of acceptable documents/information, which it considers as proof of satisfactory credit standing. The amount of cash deposit required from an applicant may not exceed the estimated average 2-month bill for basic service plus the average 2-month toll charges for existing residential customers in the applicant's exchange during the immediately preceding 12-month period. Interest at the rate of 9% per annum shall be payable on deposit. 52 Pa. §§64.31-64.41 (The Commission has waived the interest provision at §64.41 and has allowed carriers to calculate the interest on deposit at the rate of the average of 1-year US Treasury bills for the month of September, October, and November of the previous year is payable on deposits.)

Due Date of Bills: The due date for payment of a bill may be no less than 20 days from the date of transmittal; that is, the date of mailing or physical delivery to the rate payer. §64.12

Late Payment Charge: A late payment charge on an overdue bill may be charged on the unpaid balance of the bill at a monthly rate not to exceed 1.25%. (§64.16)

Disputed Bills: Disputes can be brought to the attention of the carrier orally or in writing by the customer before actual suspension or termination of service. Suspension or termination is prohibited until the resolution of the dispute. (§§64.131-182)

Bureau of Consumer Services: Provide the address and phone number of the Commission's Bureau of Consumer Services.

Term Contract: Carrier's should provide details of any term contracts offered. The penalty for termination of a term contract shall not exceed the total recurring charges for the remainder of the term.

Service Interruptions: 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 rates for each full 24-hour period beyond the first three 24-hour periods. (§64.52)

Discontinuance of Service: A customer who wishes to have service discontinued must give at least 5 days oral or written notice to the carrier for discontinuation of service. (§64.53)

Suspension & Termination of Service: The 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. The only exception for suspension without prior notice is 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. At the time of suspension the carrier shall mail a notice of suspension to the customer's billing address. (§64.61-123)

Billing Standards: The tariff should also contain a general statement that- 'The Company complies with the requirements of Chapter 64 in 52 Pa. Code regarding billing standards and practices for residential customers. In instances where sections of this tariff may conflict with Chapter 64, regulations, the regulations in Chapter 64 will prevail'.

Lifeline Service Plan and Link-up America Program: Carriers are required to provide Lifeline Service by offering reduced end-user charges for low-income customers for basic local telephone service and Link-up America Program by offering discount on service connection charge. (Commission Orders at Docket Nos. I-00940035, P-00971274.)

Pennsylvania Telephone Relay Service: Carriers are required to provide relay telecommunications service for the deaf, hearing and/or speech disabled. Monthly surcharges at the current rates (July 1, 1999-June 30, 2000) of \$0.12 for business

and \$0.06 for residence access lines should be collected and remitted to the PA Telephone Relay Service Fund.
(Docket No. M-00900239)

911-Emergency Service: Carriers are required to contact its respective county authorities and make arrangements for the provision of toll-free 9-1-1 service for any individuals within the Commonwealth to gain rapid, direct access to emergency aid.

711-Telecommunications Relay Services: Carriers are required to make 711 abbreviated dialing available to access Telecommunications Relay Services.
(Docket No. M-00900239)

Caller ID Blocking Service (CIB): Carriers should provide CIB Service for the safety and privacy of its customers. CIB on a per call basis should be offered free of charge. CIB on a per line basis should be provided free of charge for the first instance, and subsequent requests for a change may be made for a fee which will be on a nonrecurring basis. Also indicate the precautionary measures taken by the Company for the safety and privacy of the customers. 66 Pa. CSA §2906

IntraLATA Presubscription Plan: Carriers are required to provide subscribers, the ability to presubscribe to the carrier of their choice for both interLATA and intraLATA services. Tariffs should contain language similar to that of PTA's Tariff No. 11 on IntraLATA Toll Presubscription. (Commission Docket No. I-00940034, R-00974087.)

Flat Rate Service: All residential customers should be offered a flat rate service with the option for per minute usage billing, consistent with Public Utility Code 66 §1324.

Individual Case Basis (ICB): ICB pricing may be developed for special circumstances and for services that are not listed in the carrier's tariff. These rates should be made available to similarly situated customers on a non-discriminatory basis.

Promotional Offering: The provisions for a promotional offering should indicate the form and the duration of the promotional offering available to customers. Promotional offerings are to be filed with the Commission on at least one day's notice.

Directory Assistance: Carriers should offer its residential customers two free directory assistance calls per month.

Restriction of Service: Carrier's should not restrict service to a certain class of customers. Carrier currently providing services only to business customers should offer the service to a residential customer, who request such service, offered at business rates.

Switched Access: CLECs that are facilities-based or combination CLECs are also required to file a separate Switched Access Tariff. The tariff should contain rules, regulations, rates and compensation to other carriers for the completion of incoming calls. Carriers may also include special access provisions where applicable.