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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |
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|  | Public Meeting held June 11, 2015 |
| Commissioners Present: |  |
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| Gladys M. Brown, Chairman |
| John F. Coleman, Jr., Vice Chairman |
| James H. Cawley |
| Pamela A. Witmer |
| Robert F. Powelson |

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| Application of Blue Ridge Digital Phone Company for Expanded Authority to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of twenty-four additional Incumbent Local Exchange Carriers | A-2015-2473240 |

ORDER

**BY THE COMMISSION:**

Before this Commission for review is an Application, filed March 16, 2015, by Blue Ridge Digital Phone Company (Applicant), utility code 311397, to expand the service area for its Competitive Local Exchange Carrier (CLEC) authority into the service territories of the following Incumbent Local Exchange Carriers (ILECs): Armstrong Telephone Company - North; Armstrong Telephone Company - Pennsylvania; Bentleyville Telephone Company d/b/a Fairpoint Communications; Citizens Telephone Company of Kecksburg; Consolidated Communications of Pennsylvania Company; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; Marianna Scenery Hill Telephone Company d/b/a Fairpoint Communications; The North- Eastern Pennsylvania Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Mahanoy and Mahantango Telephone Company; TDS Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream Buffalo Valley, Inc.; Windstream Conestoga, Inc.; and Yukon Waltz Telephone Company (collectively, the additional ILECs).

The Applicant is currently certified as an Interexchange Toll Reseller[[1]](#footnote-2) and as a CLEC in the service territories of Verizon Pennsylvania LLC; Verizon North LLC; The United Telephone Company d/b/a CenturyLink; Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; Frontier Communications of Pennsylvania, LLC; North Penn Telephone Company; Palmerton Telephone Company; Windstream D&E, Inc.; and Windstream Pennsylvania, Inc.[[2]](#footnote-3)

The Applicant complied with notice requirements set forth in our TA-96 Implementation Orders[[3]](#footnote-4) by serving a copy of its Application upon the aforementioned ILECs, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Attorney General. As required by 52 Pa. Code § 5.14, the Application 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 May 18, 2015. No protests or petitions to intervene were filed and no hearings were held. The assigned utility code is 311397.

Information concerning the Applicant is as follows:

* The Applicant is a Commonwealth of Pennsylvania domestic corporation with its principal place of business at 613 Third Street, Palmerton, Pennsylvania 18071, phone (610) 826-2551, fax (610) 826-9297.
* The Applicant complied with 15 Pa. C.S. § 1306 relating to a domestic corporation.
* The Applicant’s Pennsylvania Emergency Management Agency contact is Thomas Grower, 124 Iron Street, Lehighton, Pennsylvania 18235, phone (610) 826-9595, fax (610) 826-9421.
* Correspondence to resolve complaints may be directed to Dianne Borger, 124 Iron Street, Lehighton, Pennsylvania 18235, phone (610) 826-9582, fax (610) 826-9421.
* The Applicant will not be using a fictitious name.
* The Applicant has non-jurisdictional affiliates within Pennsylvania: Pencor Services Inc., Blue Ridge Cable Technologies, Inc., and Penn TeleData, Inc.
* The Applicant has jurisdictional affiliates rendering public utility service within Pennsylvania: Palmerton Telephone Company, Palmerton Long Distance, and Penn TeleData, LP.[[4]](#footnote-5)

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 intends to expand the provision of its current CLEC services to customers located in exchanges served by the additional ILECs. The Applicant provided a proposed CLEC Tariff Telephone – Pa. P.U.C. No. 3 to cancel and replace CLEC Tariff Telephone – Pa. P.U.C. No. 1, adding the local exchanges of the additional ILECs. The Applicant also submitted a Switched Access Carrier Tariff with this filing.[[5]](#footnote-6)

Issues affecting CLECs have been addressed and are being addressed in a number of Commission proceedings.[[6]](#footnote-7) 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.[[7]](#footnote-8) Also, per federal rules, CLECs are required to ensure the efficient usage of their numbering resources and are required to report, semi-annually, 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 six 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.[[8]](#footnote-9)

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 contacted each county or municipal authority by certified letter where it intends to provide CLEC telecommunications services and made the necessary arrangements for the provisioning of emergency 911 services.

Prior to approving an application for authority to provide local telecommunications services in Pennsylvania, the Commission seeks to ensure the financial fitness of the Applicant. In this case, Applicant is a viable company currently doing business in the Commonwealth of Pennsylvania and is, by reason of past performance, considered capable of providing service to the public in the Commonwealth of Pennsylvania.

We conclude that the Applicant has met the requirements for expanded certification as a CLEC in the service territories of the additional ILECs consistent with this Order and subject to the conditions imposed on the Applicant in conjunction with its original certificate of authority. 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 Applicant’s proposed replacement CLEC tariff and the proposed switched access tariff and shall therefore direct the Applicant to revise its proposed tariffs in accordance with the changes noted in Appendix A of this Order.[[9]](#footnote-10) The Applicant shall thereafter file its tariffs reflecting the requested changes on or before thirty (30) days from the date of entry of this Order. The Applicant may file its tariffs electronically, consistent with Commission Rules.[[10]](#footnote-11) Copies of the tariffs shall also be served upon the same entities receiving service of the original Application. If the time required for such resolution and filing exceeds thirty (30) days, the Applicant may request an extension of an additional thirty (30) days with the Commission’s Secretary. Thus, if the tariffs are not filed within sixty (60) 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. To the extent that the tariffs comply with all of the applicable requirements, the tariffs may become effective on one (1) day’s notice from the date upon which they filed and served.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. Any tariff provisions contained in the Applicant’s tariff regarding limitation of liability found to be inconsistent with any applicable laws, rules and regulations will be deemed inoperative and superseded.

Further, the Commission makes no determination whether the Applicant’s switched access rates are in compliance with Act 183 of 2004.[[11]](#footnote-12)

Accordingly, we shall grant the Application for extending its CLEC authority into the service territories of the additional ILECs. Upon the approval of the replacement CLEC and switched access tariffs, an amended Certificate of Public Convenience shall be issued evidencing the Applicant’s CLEC service territory expansion to include the service territories of the additional ILECs, consistent with this Order and our decisions in *MFS Intelenet, et al*., Docket Nos. A‑310203F0002, *et al*. (Orders entered October 4, 1995; July 31, 1996; and August 7, 1997); and such other proceedings; **THEREFORE**;

**IT IS ORDERED:**

1. That the Application of Blue Ridge Digital Phone Company for the expansion of its CLEC authority into the service territories of twenty four additional Incumbent Local Exchange Carriers as delineated in the body of this Order is granted, consistent with this Order.
2. That the Applicant shall either eFile or submit an original copy of each tariff consistent with the requisite changes noted in Appendix A of this Order within thirty (30) days (sixty (60) days including an approved extension) after the date of entry of this Order. **The Applicant is directed to identify any changes made to the tariffs that are in addition to the changes noted in Appendix A.** The Applicant shall serve copies of the tariffs on each entity receiving a copy of the original Application. The tariffs may become effective on or after one (1) day’s notice from the date upon which they are filed and served.
3. 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.*
4. That the Applicant shall continue to 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 this Commission’s Order entered February 4, 2000, at Docket No. M-00900239.
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 accurate accounting records that segment its CLEC revenues in the state.
7. That if the Applicant has not, within sixty (60) days (including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Application shall be dismissed without any further proceeding and the expanded authority granted herein revoked without further Commission Order.
8. That upon the approval of the proposed tariffs, the Applicant’s Certificate of Public Convenience will be amended reflecting that the Applicant has the authority to furnish services as a Competitive Local Exchange Carrier within the service territories of twenty-four additional Incumbent local Exchange Carriers as delineated in the body of this Order, in addition to Verizon Pennsylvania LLC; Verizon North LLC; The United Telephone Company d/b/a CenturyLink; Frontier Communications Commonwealth Telephone Company; Frontier Communications of Pennsylvania, LLC; North Penn Telephone Company; Palmerton Telephone Company; Windstream D&E, Inc.; and Windstream Pennsylvania, Inc., consistent with this Order.
9. 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.
10. That a copy of this Order be served on the Pennsylvania Department of Revenue, Bureau of Corporation Tax and the Pennsylvania Emergency Management Agency (PEMA) 9-1-1 Office.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 11, 2015

ORDER ENTERED: June 11, 2015

The proposed tariffs contain certain deficiencies that must be addressed by the Applicant before the tariffs can be approved and an amended Certificate 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 tariff where the required revision is located for each item below.**

| ***Section/Page*** | ***CLEC Local Service Tariff Deficiency*** |
| --- | --- |
| All Pages | Revise tariff number to Tariff Telephone PA P.U.C. No. 2 as this tariff will be cancelling and replacing Tariff Telephone PA P.U.C. No. 1. |
| Various Pages | Correct the names of the incumbent local exchange carriers to reflect their current/correct legal names: Bentleyville Telephone Company d/b/a Fairpoint Communications; Consolidated Communications of Pennsylvania Company; Frontier Communications Company of Pennsylvania; Frontier Communications of Oswayo River, LLC; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Lackawaxen Telecommunications Services; Marianna Scenery Hill Telephone Company d/b/a Fairpoint Communications; The North- Eastern Pennsylvania Telephone Company; TDS Mahanoy and Mahantango Telephone Company; TDS Sugar Valley Telephone Company; Verizon Pennsylvania LLC; Verizon North LLC; and The United Telephone Company d/b/a CenturyLink, Frontier Communications Commonwealth Telephone Company.  |
| Title Page | Add verbiage stating Tariff Telephone PA P.U.C. No. 2 cancels and replaces Tariff Telephone PA P.U.C. No. 1.  |
| Table of Contents | Update the Table of Contents to reflect changes made in compliance with this Order. |
| Check Sheet | Revise to correctly reflect the number of pages within this tariff. |
| Section 2.1.4, | The limitations of liability tariff provisions should be generally consistent with the Commission’s relevant Policy Statement at 52 Pa. Code § 69.87 and the Commission Order under Docket No. M-00981209. |
| Section 3.1.1,Pages 37-80 | 1. Create sub-sections for each Incumbent Local Exchange Carriers’ Originating Exchanges Local Calling Areas. For your convenience, this information and a format guide can be found on our website under the heading of [*Incumbent Local Exchange Calling Areas*](http://www.puc.state.pa.us/telecom/docs/Application-Local_Calling_Areas.doc)at; <http://www.puc.pa.gov/utility_industry/telecommunications/application_to_provide_telecom_services.aspx>
2. Be sure *all* Originating Exchanges and Local Calling Areas for each ILEC’s service territory are included.
 |
| Toll Presubscription | Missing; See our website for standard text at, <http://www.puc.state.pa.us/telecom/docs/Toll_Presub_Sample_Language.doc> |
| 911 Text | Replace text at Section 3.6; See our website for standard text at, <http://www.puc.state.pa.us/telecom/docs/911_Sample_Language.doc> |
| Pennsylvania TRS | Replace text at Section 3.7; See our website for standard text at, <http://www.puc.state.pa.us/telecom/docs/TRS_Sample_Language.doc> |

| ***Section/Page*** | ***CLEC Switched Access Service Tariff Deficiency*** |
| --- | --- |
| All Pages | Add “Switched Access Service Tariff” to center of the header. |
| Various Pages | Correct the names of the incumbent local exchange carriers to reflect their current/correct legal names: Bentleyville Telephone Company d/b/a Fairpoint Communications; Consolidated Communications of Pennsylvania Company; Frontier Communications Company of Pennsylvania; Frontier Communications of Oswayo River, LLC; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Lackawaxen Telecommunications Services; Marianna Scenery Hill Telephone Company d/b/a Fairpoint Communications; The North- Eastern Pennsylvania Telephone Company; TDS Mahanoy and Mahantango Telephone Company; TDS Sugar Valley Telephone Company; Verizon Pennsylvania LLC; Verizon North LLC; and The United Telephone Company d/b/a CenturyLink, Frontier Communications Commonwealth Telephone Company. |
| Section 2.14 | The limitations of liability tariff provisions should be generally consistent with the Commission’s relevant Policy Statement at 52 Pa. Code § 69.87 and the Commission Order under Docket No. M-00981209. |

1. *See* Docket A-311397. [↑](#footnote-ref-2)
2. *See* Dockets: A-311397 F0002, A-311397 F0002 AMA, A-211397397F0002 AMB, A-311397 AMC, A‑2010‑2169878, A-2010-2169880, and A-2010-2169862. In addition, *see* Dockets P-2014-2446303 and P‑2014‑2446304 wherein Verizon Pennsylvania LLC and Verizon North LLC were granted competitive reclassification of certain wire centers. [↑](#footnote-ref-3)
3. Market entry requirements, in light of the policy objectives of the Telecommunications Act of 1996, 47 U.S.C. §§ 201 et seq. (TA-96), for telecommunication service providers are set out 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 collectively, “*TA‑96 Implementation Orders”*). [↑](#footnote-ref-4)
4. *See* Dockets: A-00082875, A-310147, and A-310685. [↑](#footnote-ref-5)
5. Staff notes the proposed tariffs are numbered incorrectly and the Applicant is directed to correct the tariff numbering in the Appendix to this Order. [↑](#footnote-ref-6)
6. *See, e.g., MFS Intelenet, et al.,* Docket Nos. A-310203F0002, *et al.,* (Orders entered 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-7)
7. *Universal Service Investigation*,Docket No. I-00940035 (Order entered January 28, 1997). [↑](#footnote-ref-8)
8. *See* Docket A-310442 *Blue Ribbon*,(Orders entered April 25 and August 4, 1997). [↑](#footnote-ref-9)
9. Regardless of the review process, any tariff provisions inconsistent with the provisions of the Code, the TA-96, our regulations or Orders will be deemed inoperative and superseded. [↑](#footnote-ref-10)
10. *See* Docket L-00070187 *Final Rulemaking to Permit Electronic Filing* (Order entered May 23, 2008). [↑](#footnote-ref-11)
11. Act 183, P.L. 1398 (66 Pa. C.S § 3017(c)). [↑](#footnote-ref-12)