

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held November 14, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
Andrew G. Place
John F. Coleman, Jr.
Ralph V. Yanora

Application of NGA 911, LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public as a Competitive Local Exchange Carrier in all thirty-seven Incumbent Local Exchange Carrier Service Territories within the Commonwealth of Pennsylvania A-2019-3009273

Application of NGA 911, LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public as a Competitive Access Provider in the Commonwealth of Pennsylvania A-2019-3009292

ORDER

BY THE COMMISSION:

On April 9, 2019, NGA 911, LLC (Applicant or NGA 911) filed an Application seeking Certificates of Public Convenience under our orders issued pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 201 *et seq.*, (TA-96)¹ and to Chapter 11 of the Public Utility Code (Code) (66 Pa. C.S. §§ 1101 *et seq.*) evidencing authority to provide the following telecommunication services to the public:

- (1) As a Competitive Local Exchange Carrier (CLEC) in all thirty-seven Incumbent Local Exchange Carrier (ILEC) Service Territories within the Commonwealth of Pennsylvania, and

¹ In light of the policy objectives of TA-96, market entry requirements for telecommunication service providers are set out in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996; Order on Reconsideration entered September 9, 1996) (*TA-96 Implementation Orders*).

(2) As a Competitive Access Provider (CAP) in the Commonwealth of Pennsylvania,

The Applicant was granted provisional authority pursuant to our Secretarial Letter of August 12, 2019, to provide the proposed services in the service territories of Verizon Pennsylvania, LLC and Verizon North, LLC pursuant to its proposed tariffs during the pendency of the application process. As required by 52 Pa. Code § 5.14, the Application also was published in the *Pennsylvania Bulletin*.² The Applicant was granted a waiver concerning publishing notice of its Application in newspapers of general circulation. The protest period for this Application expired September 9, 2019. The assigned utility code is 3122100.

The Applicant complied with notice requirements set forth in our *TA-96 Implementation Orders* by serving a copy of its Application upon the ILECs, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Attorney General. No protests were filed. No hearings were held.

Information concerning the Applicant is as follows:

- The Applicant is an California Corporation with its principal place of business at 8383 Wilshire Blvd, Suite 800, Beverly Hills, CA 90211, telephone (877) 899-8337, facsimile (646) 632-1311.
- The Applicant complied with Pennsylvania law relating to a foreign limited liability corporation.
- The Applicant's registered office provider within Pennsylvania is Registered Agent Solutions, Inc 125 Locust Street, Harrisburg, PA 17101.

² See 49 Pa. B. 4922 (August 24, 2019).

- The Applicant's Pennsylvania Emergency Management Agency contact is Michelle Bland, NGA 911, LLC 8383 Wilshire Blvd Suite 800, Beverly Hills, California 90211, telephone (877) 899-8337 ext. 1016, facsimile (646) 632-1311.
- Correspondence to resolve complaints may be directed to Michelle Bland, NGA 911, LLC 8383 Wilshire Blvd Suite 800, Beverly Hills, California 90211, telephone (877) 899-8337 ext. 1016, facsimile (646) 632-1311.
- The Applicant will not be using a fictitious name.
- The Applicant is operating as a public utility in other states: California, Georgia, Louisiana, Montana, South Carolina, Texas, Utah, West Virginia and Wisconsin.
- The Applicant has no affiliates or predecessors within Pennsylvania.
- The Applicant has no affiliates or predecessors rendering public utility service outside Pennsylvania.

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.

NGA 911 intends to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support Public Service Answering Point ("PSAP") operations. Applicant seeks authority to provide resold and facilities-based telecommunications services to customers throughout the Commonwealth of Pennsylvania. Applicant proposes to provide these services primarily through a combination of its own facilities and facilities to be leased from a variety of ILECs and other providers. NGA 911 does not have plans to provide retail switched voice services to residential customers in Pennsylvania. NGA 911 intends to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support PSAP operations. NGA 911 intends to provide infrastructure facilities

(such as conduit and dark or lit fiber) for use in connection with the transport and transmission of communications.

Issues affecting CLECs have been addressed in a number of Commission proceedings.³ 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.⁴ Also, per federal rules, CLECs are required to ensure the efficient usage of their numbering resources and are required to semi-annually report 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 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 (Commission established process for reclaiming NXX codes from carriers that have failed to activate them within six months of their availability for assignment to customers).

Further, Section 253(b) of TA-96 permits a state Commission to impose, on a competitively-neutral basis and consistent with universal service provisions, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. In response, we articulated explicit concerns relative to an

³ *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 (Order entered February 6, 1997); *Pa. PUC v. GTE*, Docket No. R-00963666 (Order entered May 9, 2002); *Joint Petition of Nextlink Pennsylvania, Inc. et al.*, Docket Nos. P-00991648 and P-00991649 (Order entered September 30, 1999), *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth 2000), *vacated in part sub nom. MCI Worldcom Inc. v. Pa. PUC*, 844 A.2d 1239 (Pa. 2004) (state court lacked jurisdiction to review unbundled network elements) (*Global Order*); as well as other proceedings.

⁴ *See Universal Service Investigation*, Docket No. I-00940035 (Order entered January 28, 1997).

applicant's financial fitness, tariff compliance, and rates.⁵ In this case, the Applicant has provided financial information to support its Application. We conclude that the Applicant has demonstrated that it is financially capable of providing telecommunications services as a CAP and as a CLEC.

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

We conclude that the Applicant has met the requirements for certification as a CAP 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 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 proposed tariffs.

We shall direct the Applicant to revise the proposed tariffs in accordance with the changes noted in Appendix A of this Order.⁶ The Applicant shall thereafter file its Initial Tariffs reflecting the requested changes on or before sixty days from the date of entry of this Order. The Applicant may file its Initial Tariffs electronically, consistent with

⁵ See *Application of Blue Ribbon Rentals II, Inc., d/b/a Talk One America, for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunication Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-310442 (Orders entered April 25 and August 4, 1997).

⁶ Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, TA-96, our regulations, or Orders will be deemed inoperative and superseded.

Commission rules.⁷ Copies of the Initial Tariffs shall also be served upon the same entities receiving service of the original Application, including the incumbent local exchange carriers. If the time required for such resolution and filing exceeds sixty days, the Applicant may request an extension of an additional sixty days with the Commission's Secretary. Thus, if the Initial Tariffs are not filed within sixty days (120 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.

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

To the extent that the proposed tariffs contain rates, the Initial Tariff may become effective on one day's notice from the date upon which it is filed and served.

In addition, we note that no switched access tariff accompanied the Application. Therefore, the Applicant is not permitted to apply access charges, e.g., originating and terminating access billed to interexchange carriers.

Carriers are required to provide telecommunications service to customers in Pennsylvania within one year of certification.⁸

In accordance with the affidavit that accompanied the application for a Certificate of Public Convenience, the Applicant has agreed to abide by all applicable federal and state laws and regulations and by the decisions of the Commission. We remind the Applicant that, in accordance with our *TA-96 Implementation Orders*, a public utility that

⁷ See *Final Rulemaking to Permit Electronic Filing*, Docket No. L-00070187 (Order entered May 23, 2008).

⁸ For complete details regarding this requirement, including consequences for non-compliance, see *Final Order Regarding the Commission's Plan to Implement a One-Year Timeframe for Inactive Telecommunication Carriers to Provide Service on an Annual Basis within the Commonwealth of Pennsylvania*, Docket No. M-2011-2273119 (Order entered July 19, 2012).

seeks Commission certification or that is certificated in Pennsylvania to provide telecommunications service, as defined by state and federal law, must provide the service in full compliance with all applicable provisions of Pennsylvania and federal law. This includes compliance with Section 1511 of Pennsylvania's Business Corporation Law, 15 Pa. C.S. § 1511,⁹ when siting facilities/equipment in public rights-of-way. Failure to comply with applicable law may result in fines being imposed against a public utility or in the suspension or revocation of the utility's Certificates of Public Convenience, consistent with due process.

We remind the Applicant that certificated public utilities in Pennsylvania are required to file with the Commission an accurate annual financial report and an accurate separate statement of gross intrastate revenues for fiscal assessment purposes, as received from operations conducted pursuant to the authority granted by the Commission's certification order.¹⁰ Additional reporting of intrastate retail revenues is also required for the purpose of Pennsylvania Universal Service Fund contribution assessments. Failure to comply with applicable reporting requirements may result in billing for back payments due and the imposition of fines and/or other lawful remedies, including revocation of certification, consistent with due process.

Conclusion

Accordingly, we shall grant the Application and Certificates of Public Convenience shall be issued evidencing the Applicant's authority to provide services as a

⁹ 15 Pa. C.S. § 1511(e) provides as follows: "A public utility corporation shall have the right to enter upon and occupy streets, highways, waters and other public ways and places for one or more of the principal purposes specified in subsection (a) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein. Before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof."

¹⁰ See 66 Pa. C.S. § 510(b); *see also* 52 Pa. Code §§ 63.31 *et seq.* We note that flexibility for the Applicant's system of accounts is provided by our own annual reporting regulations for competitive local exchange carriers that the Applicant may also utilize. *See generally* 52 Pa. Code §§ 63.31(3) and 63.32(c).

CAP in the Commonwealth of Pennsylvania, consistent with this Order, our decisions cited herein, and such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Application of NGA 911, LLC at Docket No. A-2019-3009273, for authority to operate as a Competitive Local Exchange Carrier within the service territories of all thirty-seven Incumbent Local Exchange Carriers within the Commonwealth of Pennsylvania is granted, consistent with this Order.

2. That the Application of NGA 911, LLC at Docket No. A-2019-3009292, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania is granted, consistent with this Order.

3. That NGA 911, LLC shall either eFile or submit an original copy of its Initial Tariffs consistent with the requisite changes noted in Appendix A of this Order within sixty (60) days (120 days including an approved extension) after the date of entry of this Order. **NGA 911, LLC is directed to identify any changes made to the proposed Initial Tariffs that are in addition to the changes noted in Appendix A.** NGA 911, LLC shall serve copies of its Initial Tariffs on each entity receiving a copy of the original Application. The Initial Tariffs may become effective on or after one (1) day's notice from the date upon which they are filed and served.

4. That Initial Tariffs shall be labeled on their faces according to their respective authority: "Competitive Access Provider Tariff" and "Competitive Local Exchange Carrier Tariff."

5. That NGA 911, LLC 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 those identified in this Order.

6. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to NGA 911, LLC shall not be construed as conferring more than one operating right to NGA 911, LLC.

7. That NGA 911, LLC shall maintain accurate accounting records that properly classify and segment its Competitive Local Exchange Carrier and Competitive Access Provider revenues from its operations within the Commonwealth and file with the Commission an accurate annual financial report and an accurate separate statement of gross intrastate revenues for fiscal assessment purposes.

8. That NGA 911, LLC shall maintain accurate accounting records that properly classify and segment its gross retail intrastate revenues for purposes of the Pennsylvania Universal Service Fund contribution assessment report.

9. That in accordance with Commission Orders entered on October 5, 2005, at Docket No. M-00041857 and on August 21, 2006, at Docket No. L-00050176, NGA 911, LLC shall follow the reporting requirements outlined at the following website: www.puc.pa.gov/telecom/docs/Reporting_Requirements.docx.

10. That NGA 911, LLC shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within thirty (30) days of entry of this Order.

11. That NGA 911, LLC 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 Telecommunications Relay Service Provider, in accordance with the Commission's Order entered on February 4, 2000, at Docket No. M-00900239.

12. That in the event that NGA 911, LLC 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, the Application at Docket Nos. A-2019-

3009273 and A-2019-3009292 shall be dismissed and the authority granted herein revoked without further Commission Order.

13. That upon the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing NGA 911, LLC to furnish services as a Competitive Local Exchange Carrier in all thirty-seven Incumbent Local Exchange Carrier Service Territories within the Commonwealth of Pennsylvania, consistent with this Order.

14. That changes and/or additions made to an approved, filed tariff shall be made in the form of supplements, consecutively numbered in the order of their filing dates, and the tariff designation shall be in the following manner: Supplement No. __ to Tariff Telephone Pa. P.U.C. No.____.

15. That NGA 911, LLC shall add its Pennsylvania tariffs or to its website within thirty (30) days of the filing of its Initial Tariff and mark it “Pending.” Within thirty (30) days of receipt of its Certificate of Public Convenience, NGA 911, LLC shall make any required modifications to the tariff on its website and remove the “Pending” notation. Thereafter, NGA 911, LLC will continually update the website whenever any supplemental revisions to the tariff are approved by the Commission such that the website tariff is a true and accurate representation of its tariff on file with the Commission.

16. That within thirty (30) days of receipt of its Certificate of Public Convenience, NGA 911, LLC shall contact Cyndi Page ((717) 787-5722; cypage@pa.gov) of the Commission’s Office of Communications to create a link from the Commission’s website to NGA 911, LLC’s website.

17. That if NGA 911, LLC plans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.

18. That a copy of this Order be served on the Pennsylvania Department of Revenue, Bureau of Corporation Tax and the Pennsylvania Emergency Management Agency Bureau of 9-1-1 Programs.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 14, 2019

ORDER ENTERED: November 14, 2019

NGA 911, LLC

Docket Nos. A-2019-3009273 & A-2019-3009252;
Proposed Competitive Local Exchange Carrier Tariff; Proposed Competitive Access
Provider Tariff

The proposed tariff contains certain deficiencies that must be addressed by the Applicant before the tariff can be approved and the Certificate of Public Convenience issued. **The Applicant must submit a copy of this Appendix with its revised compliance tariff. On that copy, please note the page/sheet of the compliance tariff where the required revision is located for each item below.**

Tariff deficiencies noted – CLEC Local Tariff (A-2018-3009273), Tariff No. 1

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. Liability: 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. (Particularly Rule 13)
3. Tariff Format: Correct Original Page 6 to reflect “Rule” Sections.
4. Rule 4, Section 4.2.: Insert a space between “Utility” and “Commission”.
5. Rule 8.3.2 and Rule 11.2.2: Discontinuance of service times vary at 7 and 8 days, respectively.
6. Section 5: Please correct all messy/outdated exchanges, including 5.2.1 Verizon North Middleburg and Milford/Log Exchanges

Tariff deficiencies noted – CAP Tariff (A-2019-3009292), Tariff No. 2

1. All Pages: Enter issued and effective dates as per ordering paragraph.
2. Liability: 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. (Particularly Rule 13)

3. Tariff Format: Correct Original Page 6 to reflect “Rule” Sections.
4. Rule 4, Section 4.2.: Insert a space between “Utility” and “Commission”.
5. Rule 8.3.2 and Rule 11.2.2: Discontinuance of service times vary at 7 and 8 days, respectively.