

PENDING PETITION MEMO

Date: 5/23/2007

TO : Office of Telecommunications
Office of General Counsel

FROM: CENTRAL OPERATIONS

UTILITY: USA DATANET WHOLESALE, INC.

SUBJECT: 07-C-0613

Petition of USA Datanet Wholesale, Inc. for an Original Certificate of
Public Convenience and Necessity as a Common Carrier.

Lance J.M. Steinhart, P.C.
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1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

RECEIVED
PUBLIC SERVICE
COMMISSION
EXEC-FILES-ALBANY

2007 MAY 23 AM 10: 19

Also Admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208
Email: lsteinhart@telecomcounsel.com

May 21, 2007

VIA OVERNIGHT DELIVERY

Ms. Jaclyn A. Brilling
Acting Executive Secretary
State of New York
Department of Public Service
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
(518) 474-6530

Re: USA Datanet Wholesale, Inc.

Dear Ms. Brilling:

On behalf of USA Datanet Wholesale, Inc. enclosed please find one original and four (4) copies of USA Datanet Wholesale, Inc.'s Application for Certification as a Common Carrier.

This filing includes an interexchange tariff consisting of sheets 1 through 39 bearing an issue date of May 23, 2007 and an effective date of August 21, 2007 and a local exchange tariff bearing an issue date of May 23, 2007 and an effective date of August 21, 2007. USA Datanet Wholesale, Inc. hereby requests that its tariff become effective on the earliest possible date following certification.

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope. If you have any questions, or if I may provide you with additional information, please do not hesitate to call me.

Respectfully submitted,

Lance J.M. Steinhart
Attorney for USA Datanet Wholesale, Inc.

Enclosures

cc: David Pogoda

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of

USA Datanet Wholesale, Inc.

**Application For Certification
as a Common Carrier**

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)
) **Case No.**

PETITION FOR CERTIFICATION AS A COMMON CARRIER

USA Datanet Wholesale, Inc. (hereinafter "Applicant"), through its attorney, hereby petitions the New York Public Service Commission (hereinafter the "Commission") for Certification as a Common Carrier pursuant to Section 99 of New York State Public Service Law. In support thereof, the following information is provided:

1. Identification of applicant and principal business office:

Company Name:

USA Datanet Wholesale, Inc.

Street Address:

640 Kreag Road, Suite 315 Pittsford, New York 14534

President and Telephone/Fax:

Mark DiGiovanni President

Telephone: (585) 641-8081; Fax: (585) 486-1888

Copies of all correspondence should be sent to Lance J.M. Steinhart, Esq., 1720 Windward Concourse, Suite 115, Alpharetta, Georgia 30005 who can be reached at 770-232-9200 (telephone), 770-232-9208 (facsimile), and lsteinhart@telecomcounsel.com (e-mail).

2. Consumer Complaint Contact:

Rich Popper, COO

640 Kreag Road, Suite 315, Pittsford, New York 14534

Telephone/Fax:

Telephone: (585) 641-8081; Fax: (585) 486-1888

3. Authority to Transact Business in New York

A copy of the company's Certificate of Incorporation and, if not incorporated in New York State, a copy of the authority to transact business in New York State (foreign business authority) is attached hereto as Exhibit A.

4. General description of the services to be offered and how it would enhance competition in the area to be served.

Upon receiving certification, the company intends to provide interstate and intrastate resold and facilities-based/UNE telecommunications services in New York, including the following:

1. Interexchange (switched and dedicated services):

- A. 1+ and 101XXXX outbound dialing;
- B. 800/888 toll-free inbound dialing;
- C. Calling cards;
- D. Directory Assistance; and
- E. Frame Relay and other data services.

2. Local Exchange:

- A. Local Exchange Services for business and residence customers that will enable customers to originate and terminate local calls in the local calling area served by other LECs, including local dial tone and custom calling features.**
- B. Switched local exchange services such as flat-rated and measure-rated local services; vertical services, Direct Inward and Outward Dialed trunks, carrier access, public and semi-public coin telephone services, and any other switched local services that currently exist or will exist in the future.**
- C. Non-switched local services (*e.g.*, private line) that currently exist or will exist in the future.**
- D. Centrex and/or Centrex-like services that currently exist or will exist in the future.**
- E. Digital subscriber line, ISDN, and other high capacity line services.**

Grant of this Application will further the public interest and enhance competition by expanding the availability of competitive telecommunications services in the State of New York. In addition, intrastate offering of these services is in the public interest because the services will provide customers with access to new technologies and service choices, and can permit customers to achieve increased efficiencies and cost savings. Applicant's entry into the telecommunications services market thereby will enhance materially the telecommunications infrastructure in the State of New York and will facilitate economic development.

In particular, the public will benefit directly, through the use of the competitive services to be offered by Applicant, and indirectly, because the presence of Applicant in this market will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service.

Applicant's proposed tariffs are attached hereto as Exhibit B. The Applicant further requests authority to file local service tariffs pursuant to 16 NYCRR 630.15, and to enter into contracts with customers in lieu of rates, charges, and regulations set forth in its tariffs on a non-discriminatory basis.

5. Description of the plant and system to be constructed and the anticipated construction schedule.

The Applicant will initially provide services by resale and by purchasing unbundled network elements from Verizon. The Applicant may construct its own transmission and switching facilities, utilizing fiber optics, microwave, copper cables, carrier, digital, analog, and other technologies. Remote vehicles and other switches may subsequently be installed in other areas. The facilities may be used for both switched and private line traffic and shall include the provision of business switched local exchange service. The facilities constructed by the Applicant may be used separately or in conjunction with similar facilities provided by or obtained from other entities.

The Applicant anticipates that its initial operations will be conducted in Manhattan, where its initial switching equipment will be located, and it will service customers in Manhattan, as well as the boroughs of Brooklyn, the Bronx, Queens and Staten Island. Future expansion will occur in other areas of the state as may be authorized by tariff. Accordingly, the Applicant requests statewide certification.

6. Statement regarding switching customers

The company has never acquired a customer by switching it from another company without the customer's authorization.

7. Statement regarding complaints

The company was never the subject of a complaint and/or investigation for unauthorized switching of a customer's local or long distance service from one carrier to another.

8. Federal Employer Identification Number.

Applicant's federal employer identification number is 20-8784285.

9. Access to public safety/emergency telephone services, access to the statewide relay system and lifeline service & Compliance with Commission's Order in Case 94-C-0095, issued May 22, 1996.

The Applicant will comply with all of the requirements set forth in the Commission's Order in Case 94-C-0095, issued May 22, 1996. The specific methodology for such compliance is set forth in Exhibit C which is attached hereto.

10. "0-" call processing

The company will have "0-" emergency calls processed by the ILEC or other "0-" certified operator services provider.

11. IntraLATA presubscription implementation plan.

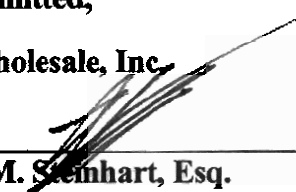
A copy of the Applicant's IntraLATA presubscription implementation plan is included as Section 2.18 in Applicant's proposed interexchange tariff.

In view of the foregoing, Applicant hereby respectfully submits that the Public Convenience and Necessity would be served by the grant of its Certification as a Common Carrier and its Certificate of Public Convenience and Necessity to operate as a reseller and facilities-based/UNE provider of local exchange and interexchange telephone services within the State of New York.

Respectfully submitted,

USA Datanet Wholesale, Inc.

By:



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770-232-9208 (Fax)
lsteinhart@telecomcounsel.com (Email)
Its Attorney

Alpharetta, Georgia

May 21, 2007

LIST OF EXHIBITS

Exhibit A - Authority To Transact Business & Certificate of Incorporation

Exhibit B – Proposed Tariffs

Exhibit C - Compliance with the Commission's Order in Case 94-C-0095

**Exhibit A - Authority to Transact Business
& Certificate of Incorporation**

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: USA DATANET WHOLESALE, INC.

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOREIGN BUS)

COUNTY: MONR

SERVICE COMPANY: BOND, SCHOENECK & KING, PLLC - 42

SERVICE CODE: 42

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FILED: 04/12/2007 DURATION: PERPETUAL CASH#: 070412001095 FILM #: 070412001000

ADDRESS FOR PROCESS

EXIST DATE

THE CORPORATION
640 KREAG ROAD SUITE 315
PITTSFORD, NY 14534

04/12/2007

REGISTERED AGENT

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FILER	FEES	250.00	PAYMENTS	250.00
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	FILING	225.00	CASH	0.00
	TAX	0.00	CHECK	0.00
AMY L. LABARGE LEGAL ASST	CERT	0.00	CHARGE	0.00
BOND SCHOENECK & KING PLLC	COPIES	0.00	DRAWDOWN	250.00
ONE LINCOLN CENTER	HANDLING	25.00	OPAL	0.00
SYRACUSE, NY 13202			REFUND	0.00

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DOS-1025 (11/89)

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:28 PM 04/03/2007
FILED 05:32 PM 04/03/2007
SRV 070395568 - 4328691 FILE

CERTIFICATE OF INCORPORATION

OF

USA DATANET WHOLESALE, INC.

(A Stock Corporation)

The undersigned, in order to form a corporation under and pursuant to the provisions of the General Corporation Law of the State of Delaware, does hereby certify and set forth as follows:

FIRST: The name of the corporation is:

USA DATANET WHOLESALE, INC.

SECOND: The Registered Office of this corporation in the State of Delaware is to be located at 3500 South Dupont Highway, Dover, Delaware 19901, in the County of Kent.
The Registered Agent in charge thereof is Vanguard Corporate Services, Ltd

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares which the corporation is authorized to issue is One Thousand Five Hundred (1,500), all of which shall be without par value.

FIFTH: The name and address of the incorporator are as follows:

<u>Name</u>	<u>Address</u>
Fred Larison	307 Hamilton Street Albany, New York 12210

SIXTH: The corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify, under said Section, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any By-Law, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Section, as to action in any capacity in which said person served at the request of the corporation.

SEVENTH: No director of the corporation shall be personally liable to the corporation or to its shareholders for monetary damages for any breach of his fiduciary duties as a director of the corporation. This provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the corporation, or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, under Section 174 of the General Corporation Law of the State of Delaware or for any transaction from which the director derived an improper or personal benefit. This provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date this provision becomes effective in accordance with Section 103(d) of the General Corporation Law of the State of Delaware.

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do hereby certify that the acts herein stated are true, and I have accordingly hereunto set my hand this 3rd day of April, 2007.

Fred Carlsson, Incorporator