

DT 00-123
DT 00-142

**OPTIMUM GLOBAL COMMUNICATIONS, INC.,
D/B/A THE LOCAL PHONE COMPANY**

**Petition for Authority to Operate as Competitive Local
Exchange Carrier and Petition for Approval of Resale Agreement**

Order Denying Petitions Without Prejudice

O R D E R N O. 23,545

September 5, 2000

On May 24, 2000, Optimum Global Communications, Inc. (Optimum) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking authority to operate as a Competitive Local Exchange Carrier (CLEC) in New Hampshire. The Commission assigned Docket No. DT 00-123 to Optimum's petition. Subsequently, on June 24, 2000, New England Telephone and Telegraph Company, d/b/a Bell Atlantic-New Hampshire, (Bell Atlantic) filed a petition seeking the Commission's approval under Section 252(e) of the federal Telecommunications Act of an interconnection agreement made with Optimum. The Commission assigned Docket No. DT 00-142 to Bell Atlantic's petition. For the reasons that follow, we deny both petitions without prejudice to their subsequent resubmission in modified form.

In its petition for CLEC authority, Optimum indicated an intention to provide local exchange service

throughout New Hampshire via a resale arrangement with Bell Atlantic. Optimum proposed a "prepaid service whereby 30 day periods of unlimited local calling are purchased by the customer" at a cost of \$49.95 per month, plus a \$40.00 installation fee. Optimum averred that it is currently approved to provide service in Massachusetts, Connecticut and Rhode Island, that it does business in those states, and that it plans to do business in New Hampshire as "The Local Phone Company."

Optimum indicated that its service would include unlimited local calling, access to WATS lines and 911, but would not provide any ability for customers to make direct dial long distance calls, operator assisted calls, third-party billed calls, collect calls, or take advantage of any other pay-per-use services. In order to provide such restricted service, Optimum requested a waiver of a number of the Commission's rules, including a waiver of Puc 1304.02(b), which requires an applicant for certification as a CLEC to post and maintain a surety bond to cover refunds of all customer deposits.

According to Optimum, its proposed service is in the public interest because

[a] significant number of households are

currently without any home telephone service due to poor credit or outstanding telephone bills. Once "black balled" by the incumbent carriers, these households are shut out of a vital service. A Grant of authority to Applicant would allow these households to reestablish home telephone service. Once reestablished, the service will be a predictable flat rate fee that will not go up due to toll calling or pay per use features. In this manner, anyone desiring a home telephone can be assured of receiving the service without regard to prior bills with other companies.

By serving customers that other carriers refuse to serve because of poor credit, Optimum claims, more New Hampshire households will have access to basic home telephone service.

On June 28, 2000, the Commission Staff propounded interrogatories to Optimum in order to obtain more information about the service Optimum seeks to provide and the specific rules waivers that Optimum requests. Staff received Optimum's responses on August 3, 2000. In its responses to Staff's interrogatories, Optimum clarified that it is seeking waivers of the following rules applicable to CLECs:

Puc 1306.01(a)(4), requires CLECs to provide customers with "[t]he ability to complete calls to any other telephone line, which is capable of receiving calls, in the state;"

Puc 1306.01(a)(5), requires CLECs to provide customers with "[t]he opportunity to presubscribe to interLATA toll carriers;"

Puc 1306.01(a)(6), requires CLECs to provide

customers with "[t]he opportunity to presubscribe to intraLATA toll carriers pursuant to the timetable set out by the commission in DE 96-090, Order No. 22,281";

Puc 1306.01(a)(9), requires CLECs to provide customers with "[s]tatewide directory assistance";

Puc 403.03(d), limits the circumstances in which telephone utilities, including CLECS, may disconnect customers;

Puc 403.03(h), prohibits disconnection when a customer's unpaid bill is less than \$25.00 and reflects arrearage of less than 60 days, *inter alia*;

Puc 403.04, requires notice of disconnection intent prior to effecting disconnection; and

Puc 403.07, sets out the required form for customer telephone bills.

It is also apparent from our review of the petition and interrogatory responses that Optimum does not intend to comply with three other rules. They are:

Puc 403.05, requiring CLECs and other telephone utilities to provide for pre-disconnection "disconnection conferences" when customers file timely requests;

Puc 403.07, requiring the rendering of bills in a specified format with a payment due date no fewer than 25 days from the date the bill is mailed.

Finally, Puc 404.07(d) and (e) describe circumstances in which a telephone utility is obligated to credit customers' accounts for service outages.

These provisions appear to be inconsistent with the provision in

Optimum's proposed tariff.

Commission rules are promulgated in compliance with our statutory mandate to balance the interests of regulated public utilities and the interests of consumers. RSA 363:17-a. We waive requirements established by rule only upon a determination that it is in the public interest to do so. Puc 201.05(a)(1). We require that requests for rules waivers "specify the basis for the waiver and proposed alternative, if any." Puc 201.05(d). In determining whether granting a rules waiver would be in the public interest, we consider whether "[c]ompliance with the rule would be onerous given the circumstances" and whether "[t]he purpose of the rule shall be satisfied by an alternative method proposed." Puc 201.05(e).

By definition, a CLEC is a telecommunications carrier authorized by the commission to provide basic service in a particular area an incumbent local exchange carrier (ILEC) was authorized to service prior to July 23, 1995. Puc 1302.03. The elements of "basic service" are described in Puc 1306.01(a). A number of the waivers sought by Optimum constitute exemptions from the rules requiring elements of basic service, including those providing customers with the ability: to presubscribe to intraLATA toll carriers; to receive directory assistance; and to connect to any other telephone in New Hampshire. Optimum characterizes its

requests as necessary: prepayment is required in order to provide services without regard to credit history, and toll and other pay-per-call services are inconsistent with prepayment. Optimum claims the waivers are in the public interest because customers otherwise unable to obtain service at all will obtain local service.

We find that the public interest would not be served by granting the requested waivers and therefore we will not waive the rules governing minimum requirements for basic service as requested. We are not persuaded that the manner in which Optimum proposes to operate is in the public interest. In our view, while there may be CLEC service offerings targeted to customers with payment history problems that we could find acceptable, the federally mandated Lifeline and Link-Up programs offer a more appropriate means for assuring that low-income customers who have had or who currently have difficulty paying their phone bills are nevertheless able to obtain local telephone service. See *Implementation of the Telecommunications Act of 1996*, 82 NH PUC 716 (1997)). Under the Lifeline program, qualifying low-income customers pay reduced charges and carriers providing such service must offer "toll limitation." 47 C.F.R. § 54.401(a). Under the Link-up program,

such customers can obtain a reduction in a carrier's customary charge for commencing service. 47 C.F.R. §54.415(a). Carriers providing Lifeline service "may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit." *Id.* at (c).

Unlike the service proposed by Optimum, the Lifeline and Link-Up programs do not create a sub-set of customers who receive less than basic service. Our Puc Chapter 1300 rules were crafted with care to implement the requirements of RSA 374:22-g,II to allow for competition with the ILEC. The rules comply with the federal Telecommunications Act of 1996 (TAct) as well. Neither RSA 374:22-g, nor the TAct, contemplate the provision of less than basic service as advancing the public interest. In fact, an important aim of the TAct is to bring more, not fewer, services to under-served populations. We will deny Optimum's petition for authorization as a CLEC because it has not made the requisite showings with regard to its requested waivers for provision of basic service. We grant leave to re-file, either without those waivers or with a sufficient demonstration that the waivers are in the public

interest.

Although we deny Optimum's petition, for advisory purposes we next address Optimum's request for a waiver from our requirement for CLECs to post and maintain a surety bond to cover refunds of all customer deposits, including advanced billing. Puc 1304.02(b). The purpose of this rule is to protect consumers. Optimum proposes to remove this protection in exchange for providing service to un-creditworthy customers. However, as discussed above, those customers have alternative means for obtaining service without foregoing the protection of Puc 1304.02(b). In support of its request for waiver of this rule, Optimum avers that its balance sheet and income statement show that the company "has demonstrated adequate financial resources and a proven record of success such that a Surety bond is unnecessary." We are not convinced that this is a suitable alternative to satisfy the purpose of the rule.

We have waived the requirement that CLECs post a surety bond in the past, but only in circumstances where the CLEC does not require any advance payments or deposits of its customers. See, e.g., *NECLEC, LLC*, Order No. 23,539 (July 24, 2000), slip op. at 2,4. Here we are confronted with the

opposite situation: Optimum proposes to conduct all of its business through the receipt of advance payments. In this situation, the need for a surety bond is more compelling. Further, according to its interrogatory responses, as of December 31, 2000 Optimum had approximately 1,200 customers in Massachusetts, 76 customers in Connecticut and no customers in Rhode Island. The company itself has been in operation only since 1998, and proposes to establish no facilities within New Hampshire itself, relying instead on "a network of authorized Vendors who will be able to provide customers with information, accept orders for service and receive payments." In our view, it would be inconsistent with the public interest to waive the surety bond requirement for a relatively new and small company that contemplates no physical presence in New Hampshire and that would be collecting all of its revenue via advanced payments, based solely on the company's representation that the company has been solvent and successful to date.

In assessing Optimum's petition for CLEC authorization, we have not considered the fact that Optimum seeks to provide its basic monthly service at prices considerably higher than service provided by the ILEC and other CLECs. Under the regulatory scheme now followed by

state and federal policy makers, it is the competitive marketplace which is to determine whether a service is priced at the appropriate level.

Optimum proposes to do business in New Hampshire, as it has elsewhere, under the name The Local Phone Company. In responding to the Staff interrogatories, Optimum furnished promotional materials and a service application, neither of which identifies Optimum Global Communications as the actual carrier and both of which refer only to "Local Phone Company." In determining whether a CLEC application is consistent with the public good, we are required to consider the "interests of competition" as well as "fairness," *inter alia*. RSA 374:22-g, II. While we understand that Optimum intended to offer only local service, the term "local" is susceptible of different meanings. Local can mean calls within the Extended Area Service Area, calls within the area code, calls within the local exchange. Furthermore, local phone company has, in the past, applied only to the ILEC. We find that Optimum's proposed identification as the "Local Phone Company" is likely to confuse and mislead customers and is not in the public interest.

Finally, we take up the interconnection agreement

between Bell Atlantic and Optimum that is at issue in Docket No. DT 00-142. We review such agreements under Section 252(e) of the Telecommunications Act, 47 U.S.C. § 252(e). Section 252(e) authorizes the Commission to reject the proposed agreement if, *inter alia*, "the implementation of such agreement . . . is not consistent with the public interest, convenience, and necessity." *Id.* at (e)(2)(ii). Further, nothing in Section 252 prohibits the Commission from "enforcing other requirements of State law in its review of an agreement." *Id.* at (e)(3). Because we are unable to approve Optimum's petition for authority to operate as a CLEC, for reasons already stated, it follows that implementation of Optimum's agreement to purchase the necessary services from Bell Atlantic for resale would not be consistent with the public interest pursuant to 47 U.S.C. § 252(e)(2)(ii) and would also be inconsistent with New Hampshire law in the sense contemplated by 47 U.S.C. § 252(e)(3). However, as with our determination in Docket No. DT 00-123, our decision in Docket NO. DT 00-142 not to approve the interconnection agreement is without prejudice to its resubmission in circumstances consistent with our order herein.

Based upon the foregoing, it is hereby

ORDERED, that the Petition of Optimum Global Communications, Inc., d/b/a The Local Phone Company, for authority to operate as a competitive local exchange carrier is hereby **DENIED** without prejudice; and it is

FURTHER ORDERED, that the Petition of New England Telephone and Telegraph Company, d/b/a Bell Atlantic-New Hampshire, for approval of its proposed resale agreement with Optimum Global Communications, Inc., d/b/a The Local Phone Company, is hereby **DENIED** without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary