

DT 04-047

SPECTROTEL, INC.

**Petition for Authority to Provide Switched and Non-Switched
Local Telecommunications Services
Order Nisi Granting Authorization**

ORDER NO. 24,341

June 25, 2004

On March 11, 2004, Spectrotel, Inc. (Spectrotel) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide Competitive Local Exchange Carrier (CLEC) service in New Hampshire pursuant to N.H. Administrative Rules, Chapter Puc 1300. Pursuant to RSA 374:22-g, the Commission may authorize the provision of switched and non-switched local exchange telecommunications services by more than one provider in all telephone franchise areas served by a telephone utility that provides local exchange service and that has more than 25,000 access lines.

Spectrotel, a Delaware corporation, has no subsidiaries. The Petitioner is authorized to provide local exchange service in 11 states and the District of Columbia. Spectrotel is providing local exchange service in Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia. On March 19, 2004, Spectrotel was certified to provide intraLATA toll service in the State of New Hampshire under IXC No. 03-005-04.

Pursuant to N.H. Administrative Rules, Chapter Puc 1300, an applicant's petition for certification as a CLEC shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Spectrotel's petition for compliance with these standards. Staff reports that Spectrotel has provided all the information required by Puc 1304.02, and that the information provided supports Spectrotel's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b)(2), (e), and (g). Staff further reports that adding Spectrotel to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

Spectrotel states that it does not require deposits or advanced payments from customers. Based on this statement Staff recommends that the Commission grant Spectrotel a waiver of Puc 1304.02(b) which requires the posting of a surety bond to cover refunds of all customer deposits.

Spectrotel requests a waiver of Puc 1304.02(a)(6), which requires the filing of a U.S. Geological Survey-based map of the areas in which service will be offered. Spectrotel states that it will offer service only in those territories served by Verizon New England d/b/a Verizon New Hampshire (Verizon). Maps of those territories are already on file with the Commission. Staff recommends granting the waiver.

We find that Spectrotel has satisfied the requirements of Puc 1304.01(a)(1) and (2). We also find that granting Spectrotel authority to operate as a CLEC in Verizon's franchise area is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent telephone company's

opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred.

The Commission grants requests to waive the provisions of any rule when such a waiver serves the public interest and will not disrupt the orderly proceeding of the Commission. See N.H. Administrative Rule Puc 201.05(a)(1). Spectrotel requests that the Commission grant any standard waivers of regulatory requirements typically granted to competitive local service providers. Spectrotel further states it will not charge any customer deposits, advanced payments, or prepayments. Based on this statement, Staff recommends a waiver of Puc 1304.02(b), which requires the posting of a surety bond to cover refunds of all customer deposits. Given that Spectrotel will not charge any customer deposits, advanced payments, or prepayments, and the fact that the waiver will not be disruptive, the Commission finds Staff's recommendation for a waiver of Puc 1304.02(b) to be in the public interest and will grant the request. However, this waiver shall apply only so long as Spectrotel does not require such deposits, advanced payments, or prepayments. In the event Spectrotel decides to change its policy on deposits, advanced payments, or prepayments it must immediately notify the Commission.

Spectrotel requests waiver of Puc 1304.02(a)(6), which requires the filing of a U.S. Geological Survey-based map of the areas in which service will be offered. As stated above, the waiver of any rule provision is appropriate if the Commission finds that such a waiver serves the public interest and the waiver will not disrupt the orderly proceeding of the Commission. N.H. Administrative Rules Puc 201.05(a)(1) The Commission finds that filing a redundant map is not necessary and therefore the public interest will be served by granting a

waiver of Puc 1304.02(a)(6) provided that Spectrotel offer its services only in those territories served by Verizon.

As part of its petition, Spectrotel states that it will charge access rates no higher than Verizon's effective access rates as filed in Tariff 85. The Commission will monitor access rates as the intraLATA toll and local exchange markets continue to develop, to avoid any inhibition of intraLATA toll competition in contravention of the Telecommunications Act of 1996. (Pub.L.No. 104-104, 110 Stat. 56, *codified* at 47 U.S.C. §151 *et seq.*)

Pursuant to Puc 1304.02(a)(7), applicants for CLEC certification agree to adhere to all state laws and Commission policies, rules, and orders. We take this opportunity to draw attention to two rules in particular. Puc 1306.01(8) and Puc 1306.01(10), respectively, describe Enhanced 911 (E911) and Telecommunications Relay Service (TRS) as part of the minimum basic service that every CLEC must provide. Pursuant to Puc 1306.01(c), CLECs are responsible for collecting and properly remitting the E911 surcharge, currently set at 42 cents per access line per month. See *Enhanced 911*, Order No. 21,800, 80 NH PUC 554 (1995). Pursuant to Puc 1306.01(b)(1) and (2), CLECs are responsible for collecting TRS charges from customers, and remitting those charges to the trustee appointed by the Commission.

As new competitors enter the telecommunications market, we recognize that New Hampshire's 603 area code encounters increasing demand. Accordingly, we will require that Spectrotel request and use numbers responsibly and conservatively, and we invite Spectrotel to explore alternative mechanisms to use existing numbers as efficiently as possible. In approving this application, we require Spectrotel to comply with our orders on number conservation,

including Order No. 23,385, issued January 7, 2000, and Order No. 23,392, issued January 27, 2000, as well as further orders issued by the Commission concerning this matter.

Based upon the foregoing, it is hereby

ORDERED NISI, that conditioned upon the effective date below, Spectrotel's petition for authority to provide resold and facilities based local exchange telecommunications services is GRANTED only within Verizon's franchise area, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that Staff's recommendation for a waiver of the surety bond requirement per Puc 1304.02(b) is GRANTED on the condition that Spectrotel not collect any deposits, prepayments, or advanced payments prior to the provision of service; and it is

FURTHER ORDERED, that Spectrotel's request for waiver of the map filing requirement per Puc 1304.02(a)(6) is GRANTED; and it is

FURTHER ORDERED, that Spectrotel shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than July 6, 2004; and to be documented by affidavit filed with this office on or before July 19, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective July 25, 2004, unless Spectrotel fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date, and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this

matter before the Commission no later than July 6, 2004; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 19 2004; and it is

FURTHER ORDERED, that, should Spectrotel fail to exercise the authority granted herein within two years of the date of this order, pursuant to Puc 1304.03(a), the authority granted shall be deemed withdrawn, null, and void; and it is

FURTHER ORDERED, that no less than ten days prior to commencing service, Spectrotel shall file with the Commission a rate schedule including the name, description, and price of each service, in accordance with Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of June, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary