

DT 00-209

DT 00-288

1-800 RECONEX, INC.

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

Order Denying Petitions Without Prejudice

O R D E R N O. 23,636

February 9, 2001

I. INTRODUCTION

On September 25, 2000, 1-800 Reconex, Inc. (Reconex) 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 00-209 to the Reconex petition. Subsequently, on December 21, 2000, Verizon New England Inc. d/b/a Verizon New Hampshire (Verizon) filed a petition seeking the Commission's approval under Section 252(e) of the federal Telecommunications Act of an interconnection agreement between Verizon and Reconex. The Commission assigned Docket No. DT 00-288 to Verizon'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, Reconex indicated an intention to serve as a non-facilities-based

reseller of service furnished to customers by the incumbent local exchange carrier (ILEC). Reconex described itself as "an alternative telephone company primarily furnishing prepaid local dial tone service to individuals who have had their telephone disconnected, often for non-payment of long distance charges." Reconex Application at 1. Reconex averred that it had authority to provide its prepaid local dial tone service in 44 states. According to the draft Prepaid Local Exchange Tariff submitted by Reconex, it proposes to charge \$49.95 for its prepaid local dial tone service, plus a one-time set-up charge of \$39.00. The company does not intend to provide directory assistance to its New Hampshire customers, and will provide access to local operator services "only within the limitations imposed by the presence of the ILEC's toll restriction and billed number screening services and as required by state statutes." Proposed Prepaid Local Exchange Tariff at 18. The Company's proposed Telecommunications Tariff separately proposes to provide interLATA and intraLATA long-distance service, at a flat rate of \$0.25 per minute, on a prepaid basis at the Company's election.¹ According to

¹ Specifically, 1-800 Reconex reserves the right to require an advance payment of one month's estimated long-distance charges.

Reconex, approval of its CLEC application "will promote the public interest by bringing local and long distance service to literally thousands of otherwise disenfranchised customers who, without our offering, would be entirely without telephone service." Application at 6.

II. PROCEDURAL HISTORY

On November 22 and December 7, 2000, the Staff of the Commission (Staff) propounded interrogatories and data requests to Reconex in order to obtain further information about the company's application. Reconex provided written responses on December 28, 2000. In its responses, Reconex indicated that it is seeking a waiver of the following requirements set forth in the Commission's rules: Puc 1306.01(a)(4) (requiring 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) (requiring CLECs to provide customers with "[t]he opportunity to presubscribe to interLATA toll carriers"); Puc 1306.01(a)(6) (requiring CLECS to provide customers with "[t]he opportunity to presubscribe to intraLATA toll carriers"); and Puc 1306.01(a)(9) (requiring CLECS to

provide customers with statewide directory assistance).

According to Reconex, it is only requesting waiver of these rules to the extent necessary to provide its proposed service, stressing that customers would not be precluded from obtaining these services by other means. Reconex avers that the extent of its services will be fully described and explained to customers prior to their signing up for service. With regard to Puc 1306.01(a)(4) and (5), Reconex avers that it intends to presubscribe all customers automatically to its prepaid long-distance program, offered through ACT Communications.

In its interrogatory responses, Reconex further indicates that it is seeking a waiver of certain requirements in the Commission's rules governing disconnection. Specifically, Reconex seeks waiver of Puc 403.03(d)(1), Puc 402.03(h)(1), Puc 403.04(a) and Puc 403.04(b). Puc 403.03(d)(1) specifies that a utility may provide a notice of disconnection, and thereafter disconnect service, only if "[t]he customer has failed to pay any bill or deposit request, not disputed in good faith, within 30 days from the date of the bill is mailed by the utility, unless the customer has established payment arrangements pursuant to Puc 1203.07." Puc 403.03(h)(1) provides that a utility may not disconnect a customer if "[t]he customer's unpaid bill for regulated

services is less than \$25.00, unless it includes an arrearage in whole or in part outstanding for more than 60 days." Puc 403.04(a) prohibits a utility from disconnecting a customer's service unless the utility sends a customer written notice of its intention to disconnect, mailed at least 12 days prior to the proposed disconnection. Puc 403.04(b) precludes a utility from sending such a written notice fewer than 30 days after the original bill was mailed by the utility.

With regard to Puc 403.03(d)(1), Reconex seeks permission to send disconnection notices to customers who have failed to pay any bill, not disputed in good faith, within 15 days from the date the bill is rendered. The company notes that it proposes a pre-paid service in which, essentially, the customer would indicate each month whether it wishes to continue receiving service. Therefore, according to Reconex, if it were required to wait a full 30 days before sending disconnection notices, it would face situations in which it would be responsible to the ILEC for an entire month's billing without any ability to collect the amount in question from the customer. With regard to Puc 403.03(h)(1), Reconex seeks permission to disconnect any customer who has received a disconnection notice as noted above, as well as a final notice, if any amount is owing. With regard to Puc 403.04(a),

Reconex seeks authority to mail disconnect notices five days in advance of the proposed disconnection, as opposed to the 12 days required in the rule. Finally, as to Puc 403.04(b), Reconex seeks leave to mail disconnect notices 15 days after the original bill is rendered, as opposed to the 30 days required in the rule.

The Commission's regulations provide that a CLEC shall be certified to conduct business in New Hampshire only, *inter alia*, upon a determination that it meets the Commission's standards for financial resources. Puc 1304.01(a)(2). In the case of a non-facilities-based service provider such as Reconex, the applicable standard requires demonstration that the Company possesses a minimum of \$20,000 in cash or other financial instruments, in order to cover its first year's expenses in New Hampshire. Puc 1304.01(b)(2). The acceptable financial instruments are cash or a cash equivalent, including a cashier's check or sight draft, a certificate of deposit or other liquid deposit with a bank or other institution, an irrevocable letter of credit, a line of credit, a loan or a guarantee. Puc 1304.01(c). By interrogatory, Staff asked Reconex how it intends to comply with this requirement. Reconex responded by providing a copy

of the balance sheet for Nova Communications LLC, the Company's majority shareholder.

In response to a Staff request, Reconex identified two regulatory proceedings in other states that relate to formal complaints or investigative proceedings involving the Company. According to Reconex, a predecessor entity known as Fast Communications paid a \$2,500 fine to the Oklahoma Corporation Commission in connection with a 1998 complaint concerning the collection of reconnection fees, the timing of billing and the assessment of late fees. Reconex avers that the Oklahoma proceeding concerned four customer accounts. The Company further indicates that on July 23, 1999 it was served with a formal complaint by the Washington Utilities and Transportation Commission stemming from the results of a compliance audit of Reconex. According to Reconex,

[t]he Complaint alleged violations of various Washington Administrative Rules and were largely in the nature of meeting specific time frames for the delivery of bills and the filing of disconnection notices, charging the proper amounts under the tariff and the ultimate disconnection of the customer. The Commission and Reconex agreed that the bulk of these issues were caused by the Reconex system, which at the time, was not capable of programming on a state specific basis and developed a settlement plan geared around system improvements.

Attachment D to Reconex Interrogatory Responses at 1.

According to Reconex, it settled the matter by "agreeing to make expenditures for certain system improvements (including a new database, improvements to its call center operation, improvements to its phone switch and the OSS functions with the LECs." *Id.* Reconex further advises that \$45,000 of the proposed penalties were suspended pending the results of a follow-up audit that was to occur in September 2000.²

III. THE REQUEST FOR CLEC CERTIFICATION

In *Optimum Global Communications*, Order No. 23,454 (September 5, 2000), the Commission denied without prejudice an application from a CLEC that sought to provide prepaid services similar to those for which Reconex seeks authorization. See Order No. 23,545, slip op. at 2 (noting

² According to an Order entered in December 1999 by the Washington Utilities and Transportation Commission (WUTC) in Docket No. UT-990946, the WUTC imposed \$186,000 in penalties, \$141,000 of which was suspended pending Reconex spending \$20,000 on a customer education program and \$121,000 on improvements to its own systems and service, and the remaining \$45,000 of which was suspended on condition that Reconex attain certain service benchmarks. The Washington Commission instructed its staff to submit a compliance audit in September 2000. An audit was submitted pursuant to these instructions. In it, the Staff of the WUTC noted that Reconex had failed to spend the full \$121,000 on system and service improvements. Accordingly, Staff recommended that Reconex be liable for \$121,000 in fines, plus the additional \$45,000 in penalties that were suspended for failure to met six of thirteen established benchmarks.

that Optimum sought to provide unlimited local calling, access to WATS lines and 911, but no direct-dialed long distance calls, operator assisted calls, third-party billed calls, collect calls or other pay-per-use services), and at 3-4 (noting that Optimum was seeking waiver of rules Puc 1306.01(a)(4), 1306.01(a)(5), 1306.01(a)(6), 1306.01(a)(9), 403.03(d), 403.03(h), 403.04, 403.05 and 403.07). We noted that, pursuant to Puc 201.05(a)(1), we grant rules waivers only upon a determination that it is in the public interest to do so. *Id.* at 5. Determining that it would not be in the public interest to grant the requested rules waivers, we ruled that we were

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. . . .

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.

Id. at 6-7.

In the interrogatories posed to Reconex, Staff asked Reconex to address the question of what result should obtain in this proceeding in light of the Commission's decision in *Optimum Global Communications*. In response, Reconex noted that it was not seeking a waiver of the Commission's rule requiring CLECs to post and maintain a surety bond to cover refunds of all customer deposits. See *id.* at 7-9 (denying this waiver request). Reconex further contended that, unlike *Optimum Global Communications*, it is not simply seeking a waiver of the rules but has suggested alternatives to these Rules. Reconex Interrogatory Responses at 9. Reconex also noted that, unlike *Optimum Global Communications*, it is not proposing to do business under a name that is likely to confuse and mislead customers. See Order No. 23,545, slip op. at 10 (disapproving, on that basis, of *Optimum Global Communications'* proposal to do business in New Hampshire as "The Local Phone Company"). Finally, according to Reconex,

there are approximately 14,000 households in the state of New Hampshire who do not have telephone service. For those that do not have phone service because they are low income customers there is available the federally mandated Lifeline and Link-Up programs. However, it has been our experience that the majority of customers who desire the Reconex service do not qualify for these programs. These customers are not low-income. They are only guilty of being poor money managers. For these individuals, the only way to obtain telephone service is either through the payment of a larger deposit to the ILEC or to utilize a service such as that offered by Reconex. Providing customers to the ability to obtain telephone service, where no realistic alternative is available, is certainly in the public interest.

Reconex Interrogatory Responses at 9.

Upon careful consideration, we conclude that the Reconex petition for certification should be denied for substantially the reasons we took the same action in our *Optimum Global Communications* decision. Our concerns about the proposed name under which Optimum Global Communications proposed to do business and that company's request for exemption from the bond requirement were not the only reasons we denied that application in the form it was submitted. Rather, we were also concerned about a feature that is indistinguishable from the service proposed by Reconex: the

creation of a customer group that receives less than basic service.

Although Reconex correctly points out that some customers will be unable to acquire conventional telephone service without qualifying for low-income programs such as Link-Up and Lifeline, it is not clear how many of Reconex's purported 14,000 potential New Hampshire customers fall into this category. As to this unspecified number of customers, and in contrast to a typical utility program involving a required deposit to obtain service, there is no provision here for customers to wean themselves through regular timely payments from both the need to pre-pay and the requirement of being subject to what amounts to a risk premium in the rates they pay for local telephone service.³ Moreover, at Staff's request, Reconex provided sample marketing materials in its interrogatory responses. These materials make clear that, in essence, Reconex proposes to market its services to all New Hampshire customers who have had their phone service disconnected, whether or not they qualify for Life-Line or Link-Up. Thus, on the ground that there exists some

³ Reconex proposes to provide basic monthly service at a price considerably higher than that offered by the ILEC and other CLECS.

unspecified subset of the New Hampshire customers who lack phone service, consisting of people who can afford to pay their phone bills but have opted not to and have suffered disconnection as a result, Reconex proposes to market to *all* previously disconnected customers a service that deviates from the basic requirements of our rules while providing no countervailing benefits in terms of addressing the issues that led to the disconnections in the first place.

The service that Reconex proposes differs from that discussed in *Optimum Global Communications* in one key respect. At issue in the previous case was a prepaid service that simply offered no intraLATA or interLATA long distance service whatsoever. Reconex proposes to provide a prepaid long-distance service through a designated carrier, ACT Communications. This is fundamentally inconsistent with a key objective of both the applicable New Hampshire statute, see RSA 374:22-h (requiring Commission, "[i]n determining the public good, the commission shall consider the interests of competition") and the federal Telecommunications Act, see 47 U.S.C. § 257(b) (noting that "vigorous economic competition" is among purposes of statute). Our rules reflect a policy

determination that automatically enrolling a new customer with a particular long-distance carrier is inconsistent with the objectives of competition and customer choice. There is no public interest basis for sacrificing this requirement here, just as there was no public interest basis for approving a service in *Optimum Global Communications* that provided for no long distance service at all.

An independent basis for denying the application as filed is its facial non-compliance with the financial capability requirements of Puc 1304.01(b) and (c). By the plain language of Puc 1304(c), a CLEC must produce evidence that it has obtained a financial instrument in an amount of \$20,000 for the purpose of funding its first year of New Hampshire operations. Furnishing the balance sheet of the Company's major shareholder is insufficient. Reconex has provided no explanation for why it is unable to comply with the relevant requirement.

As we said in *Optimum Global Communications*, we do not rule out the possibility that "there may be CLEC service offerings targeted to customers with payment history problems we could find acceptable." Order No. 23,545, slip op. at 6. However, as in that case, we conclude that the public interest

does not justify the requested rules waivers and so we must deny the application without prejudice to its subsequent resubmission in a different form. If Reconex does refile, it should be prepared to address the specific issues raised by the complaint proceeding before the WUTC. Reconex's proffered justification for the waiver - that it has proposed alternatives that would accomplish the same objectives as the rules from which it seeks exemption - is unpersuasive. All of the rules from which Reconex seeks a waiver were drafted with the underlying assumption that services would be billed in arrears, thus requiring a certain set of obligations and responsibilities among the CLEC and its customers. In its present form, the pending application does not allow us to conclude that it is in the public interest to abandon this paradigm.

IV. THE INTERCONNECTION AGREEMENT

We next take up the interconnection agreement between Verizon and Reconex that is at issue in Docket No. DT 00-288. 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 Reconex's petition for authority to operate as a CLEC, for reasons already stated, it follows that implementation of the Reconex agreement to purchase the necessary services from Verizon 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 00-209, our decision in Docket NO. DT 00-288 not to approve the interconnection agreement is without prejudice to its resubmission in circumstances consistent with our order herein.

V. THE MOTION FOR CONFIDENTIAL TREATMENT

Finally, we consider the request of Reconex for confidential treatment under RSA 91-A:4 of the balance sheet and income statement it has submitted in connection with its request for CLEC certification. According to Reconex, the information contained in these documents is not of the type it

releases to the public. Reconex further avers that public disclosure of these documents would place it at a competitive disadvantage because it would allow other similar companies to gain insight into the financial condition, market share, income stream and cost structure of Reconex. Consistent with the requirement in such circumstances that we weigh "the public's interest in disclosure" against the asserted privacy interest, *see Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 553 (1997), we conclude that the Company's request for confidential treatment should be granted. There is little public interest in disclosure of the information because the Commission does not set rates for CLECs and because the Company's income statement and balance sheet do not form the basis for our resolution of this docket. By contrast, for the reasons stated by Reconex, the Company has a significant privacy interest that it reasonably seeks to protect.

Based upon the foregoing, it is hereby

ORDERED, that the Petition of 1-800 Reconex, Inc., for authority to operate as a competitive local exchange carrier is hereby **DENIED** without prejudice; and it is

FURTHER ORDERED, that the Petition of Verizon New

DT 00-209
DT 00-288

-18-

England, Inc. d/b/a Verizon New Hampshire, for approval of its proposed resale agreement with 1-800 Reconex, Inc., is hereby **DENIED** without prejudice; and it is

FURTHER ORDERED, that the motion of 1-800 Reconex, Inc. for protective treatment is granted; and it is

FURTHER ORDERED, that the determination as to the motion for protective treatment is subject to the ongoing rights of the Commission, on its own motion, the motion of Staff, any party or any member of the public, to reconsider the determination in light of RSA 91-A, should circumstances so warrant.

DT 00-209
DT 00-288

-19-

By order of the Public Utilities Commission of New
Hampshire this ninth day of February, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary