

DT 01-129

DARK AIR CORPORATION

Petition for Authority to Provide  
Local Telecommunications Services

Order Nisi Granting Authorization

O R D E R    N O. 23,805

October 11, 2001

On June 18, 2001, Dark Air Corporation (Dark Air) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

Pursuant to Puc Chapter 1300, an applicant's petition for certification 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 Dark Air's petition for compliance with these standards. Staff reports that the company has provided all the information required by Puc 1304.02. The information provided supports Dark Air's

assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Dark Air as a New Hampshire CLEC.

Dark Air has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

We find that Dark Air has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Dark Air in its intended service area, Verizon's current service 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's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Dark Air has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Dark Air agreed to abide by Verizon's present and future rates for intraLATA switched

access or to charge a lower rate. If, at any point, Dark Air seeks to exceed Verizon's access rates it shall first contact the Staff to review the proposal. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they, in turn, pay Verizon could inhibit intraLATA toll competition which would call into question Section 253 of the Tact.

We note that as new competitors enter the market, greater pressure is put on the 603 area code, so long as today's antiquated number assignment process remains in effect. Accordingly, we will require that Dark Air request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as possible and thereby avert the need for a new area code. By granting this authority Dark Air is required 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 Dark Air's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of

Verizon, is GRANTED, subject, inter alia to the requirements of Puc 1304.03; and it is

**FURTHER ORDERED,** that Dark Air Corporation is required to comply with our Order No. 23,385 issued January 7, 2000, Order No. 23,392 issued January 27, 2000, and further orders issued by the Commission concerning number conservation; and it is

**FURTHER ORDERED,** that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

**FURTHER ORDERED,** that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than October 22, 2001 and to be documented by affidavit filed with this office on or before November 5, 2001; and it is

**FURTHER ORDERED,** that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than October 29, 2001; and it is

**FURTHER ORDERED,** that this Order Nisi shall be effective November 12, 2001, unless the Commission provides otherwise in a supplemental order issued prior to the

DT 01-129

- 5 -

effective date; and it is

**FURTHER ORDERED,** that the Petitioner shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 2001.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary