

DT 01-132

@LINK, INC.

Request to Cease Operations in the State of New Hampshire

Order Nisi Granting Request

O R D E R N O. 23,833

November 2, 2001

I. INTRODUCTION AND BACKGROUND

On May 11, 2001, the New Hampshire Public Utilities Commission (the Commission) received notification from @Link Holdings, Inc. and @Link Network, Inc. (collectively @Link) of their filing for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in Delaware (Case Numbers 01-1540 and 01-1541 respectively). Included was notice that @Link's network was being disconnected and operations discontinued in all areas due to circumstances beyond @Link's control. Also contained within the notice was a request that any tariffs applicable to @Link or its predecessor, Dakota Services, Ltd., (Dakota) be withdrawn but any operating authority be maintained. Furthermore, @Link desired to be granted *nunc pro tunc* approval of all actions @Link had been or would be forced to take with or as a result of any federal or state court orders. Dakota is a New Hampshire-certified CLEC pursuant to Order Nisi No. 23,161, dated March 8, 1999.

The Commission received a second letter from @Link on May 14, 2001, reporting that @Link had been unable to secure the financing or strategic alliance necessary to continue doing business. @Link reported that both businesses had ceased doing business and their respective assets had been or would be liquidated shortly. The second letter requested termination of any operating authority granted to @Link or Dakota and withdrawal of their tariffs.

II. STAFF RECOMMENDATION

Commission Staff (Staff) asserts that N.H. Administrative Rules Puc 1304.03 (d) is applicable in analyzing the case. That rule requires the Commission to find that: (1) all of the CLEC's customers have been notified of the CLEC's request to cease operations; (2) a period of 60 days has elapsed within which the CLEC's customers can migrate to an alternate carrier; and (3) all of the CLEC's customers have been sent refunds of any and all deposits. Additionally, NHRSA 374:28 requires that the Commission determine that this cessation is in the public good.

In its first letter, @Link details what it characterizes as a good faith effort to notify its customers by phone that their service was being terminated and provide them with information concerning alternative service

providers. The letter also states that @Link has no dialtone customers, providing only high speed data service.

In an effort to assure that @Link had no N.H. customers, the Commission has made several attempts to reach the company including a letter through @Link's New Hampshire agent and several phone calls that were not returned. Still, there is considerable evidence that @Link, in fact, has no N.H. customers. @Link, in its year 2000 Annual Report to the Commission, reports having no New Hampshire access lines. During the long time frame since the filing by @Link, the Commission has received no complaints from former customers of @Link. Therefore, it is reasonable to conclude that @Link serves no customers within N.H. and therefore holds no deposits requiring refund under Puc 1304.03 (d)(3). Should there have been any deposits, they must be refunded. Staff recommends withdrawal of the company's right to do business under RSA 374:28.

III. COMMISSION ANALYSIS

The Commission has concerns regarding the waiver of its Notification rule and believes the 60-day notice requirement of Puc 1304.03(d)(2) remains crucial to the development of a competitive market. However, the Commission acknowledges that regrettable circumstances can develop with

such rapidity that a sufficiently lengthy fixed time for transition simply may not be achievable. In this case, given the above evidence, we find that granting @Link's request for a *nunc pro tunc* waiver from Puc 1304.03(d)(2) is in the public good. Accordingly, certification of @Link is hereby withdrawn and its tariffs are revoked. We will issue this order on a nisi basis to afford all interested parties notice and an opportunity to be heard pursuant to RSA 374:28. This order does not relieve @Link of any obligations it may have incurred while certified to provide service in New Hampshire. In addition, we remind @Link of its responsibility to return any and all customer deposits to NH customers should there have been any.

Based upon the foregoing, it is hereby

ORDERED NISI, that @Link's, f/k/a Dakota, New Hampshire Competitive Local Exchange Carrier certification issued pursuant to Order Nisi No. 23,161 dated March 8, 1999 is withdrawn; and it is

FURTHER ORDERED NISI, that the request of @Link to withdraw all tariffs is GRANTED; and it is

FURTHER ORDERED NISI, that a *nunc pro tunc* waiver of Puc 1304.03(d)(2) is granted; and it is

FURTHER ORDERED NISI, that @Link return any and all

deposits, advanced payments or any other applicable funds owed, to their N.H. customers, forthwith; and it is

FURTHER ORDERED, that the Public Utilities Commission shall cause a copy of this Order Nisi to be posted on the Commission's Internet website, such posting to be no later than November 5, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this petition shall 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 November 15, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective November 26, 2001, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New
Hampshire this second day of November, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary