

DT 02-006

NET2000 COMMUNICATIONS SERVICES, INC.

**Withdrawal of Certification to Operate
Within the State of New Hampshire**

Order Granting Request

O R D E R N O. 24,040

August 19, 2002

I. BACKGROUND

NET2000 Communications Services, Inc. (NET2000) is a New Hampshire-certified Competitive Local Exchange Carrier (CLEC) pursuant to Order *Nisi* No. 23,153 dated February 22, 1999, issued under Docket No. DT 98-146. Its subsidiary, NET2000 Group Inc., holds Competitive Toll Provider certification under IXC No. 29498 dated June 1, 1998. On January 15, 2001, NET2000 requested that the New Hampshire Public Utilities Commission (the Commission) withdraw both certifications and gave notice of its filing for bankruptcy and its subsequent discontinuance of business operations.

NET2000 reports it voluntarily filed for Chapter 11 reorganization on November 16, 2001, in the U.S. Bankruptcy Court for Delaware, Case 01-11324. Prior to its bankruptcy filing, NET2000 negotiated the sale of substantially all of its assets to Cavalier Telephone Corporation (Cavalier). The transaction was approved by the Court on December 27, 2001.

NET2000 reports that it provided service to two customers in New Hampshire both of which are satellite offices of companies headquartered out-of-state. NET2000 states that those customers were notified of the change in their service provider by letters dated either November 29 or December 17, 2001. The company avers that these letters comply with the Federal Communication Commission's (FCC's) requirements for changing a customer's carrier pursuant to Section 64.1120(e) of the FCC's rules and for discontinuing service pursuant to Section 63.71. NET2000 makes no representation as to Commission rules governing customer transfers and cessation of service.

II. COMMISSION ANALYSIS

As a condition of its authorization as a CLEC, NET2000 agreed to abide by all relevant Commission rules and orders. In contravention of that agreement, NET2000 failed to obtain our approval before ceasing operations as required by N.H. Administrative Rule Puc 1304.03(c). The Commission grants approval of a petition to cease operations when it finds that (1) all the carrier's customers have been notified of the request to cease operations, (2) all customers have a 60 day period for migrating to an alternate carrier, and (3) all customer deposits have been returned. Puc 1304.03(d)(1),

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(2) and (3).

NET2000 made good faith efforts to notify its customers, in advance, of its intent to cease operations, as required in Puc 1304.03(d)(1), providing approximately 30 days prior notice to customers. With respect to 1304.03(d)(2), NET2000 did not provide 60 days opportunity to migrate. However, we find that Puc 1304.03(d)(2) is worded in such a manner as to permit NET2000's action with the proviso that customers remain free to migrate to an alternate provider for a total of 60 days. Puc 1304.03(d)(2) states that the Commission can approve cessation of operations by a CLEC when "a period of 60 days has elapsed within which the CLEC's customers can migrate to" an alternate carrier of choice. Thus, a carrier could, as NET2000 did, provide only 30 days advance notice, as long as an additional 30 days in which to migrate without charge to the customer's carrier of choice is also provided. Thus, NET2000 must permit its customers or former customers an additional 30 days migration time. In this case, Cavalier must grant customers the additional 30 days.

We here clarify Puc 1304.03(d)(2). The intent of the rule is to provide prior notice and opportunity to choose an alternate carrier before service from the original carrier ceases, in order to insure continuous service. A customer

whose telephone service has ceased in time of need will not be much comforted by a later opportunity to switch carriers, even without cost. In order to fulfill the requirement of Puc 1304.03(d)(2) a CLEC must provide 60 days prior notice.

Puc 1304.03 (d)(3), which requires the return of any and all deposits prior to a utility ceasing operations, does not apply to NET2000 as it collected no deposits from any New Hampshire customer. In sum, we find that, with one exception, NET2000 met the requirements of Puc 1304.03(d). Had NET2000 requested permission to cease operations pursuant to Puc 1304.03(c), we would have granted the request as being in the public good, conditioned on the requirement that NET2000's customers receive an additional 30 days in which to migrate to an alternate carrier.

Based upon the foregoing, it is hereby

ORDERED, that the request of NET2000 to withdraw the CLEC certification issued in Order Nisi No. 23,153 is **CONDITIONALLY GRANTED;** and it is

FURTHER ORDERED, that NET2000's customers shall be provided an additional 30 days for its customers to migrate to an alternative carrier; and it is

FURTHER ORDERED, that the request of NET2000 to withdraw the CTP certification issued under IXC No. 29498 is

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GRANTED.

By order of the Public Utilities Commission of New
Hampshire this nineteenth day of August, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director