

DT 02-097

MCIMETRO ACCESS TRANSMISSION SERVICES LLC

**Petition for Authority to Provide
Local Telecommunications Services**

Order NISI Granting Authorization

O R D E R N O. 24,063

October 8, 2002

On May 17, 2002, MCImetro Access Transmission Services LLC (MCImetro) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services. Granting such authority in New Hampshire is governed by RSA 374:22-g and New Hampshire Administrative Rules Puc 1300.

MCImetro was certified by the Commission to provide local exchange services in Docket No. DE 96-339 by Order No. 22,639 dated July 1, 1997. This certification became forfeit pursuant to Puc 1304.03(a) when the company failed to exercise its authority to provide service within two years.

Pursuant to Rule Puc 1300, an applicant's petition for certification as a Competitive Local Exchange Carrier (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 MCImetro's petition for compliance with these standards. Staff reports that the company has provided all the information required by Puc 1304.02 and that the information provided supports MCImetro'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).

Since MCImetro is affiliated with WorldCom, Staff asked the Company to provide additional documentation as to the relationship between MCImetro and WorldCom, and to assess the potential impact of WorldCom's voluntary Chapter 11 bankruptcy on this entity. MCImetro responded that while MCImetro, as a wholly-owned subsidiary of WorldCom, is in Chapter 11 bankruptcy in the Southern District of New York, under Case No. 02-13533 (AJG), the Company is currently, and intends to remain, a viable corporate entity with sufficient financial resources to provide the telecommunications services for which it seeks authority to offer. Staff finds this to be credible, and further reports that the financial statements provided support MCImetro's claim that it has the financial resources available to provide service to New Hampshire consumers. Staff also reports that the products MCImetro is proposing are ones that are popular with consumers

who are generally under-served by the current mix of CLECs. Therefore, Staff concludes that adding MCImetro to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

MCImetro requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, MCImetro submitted a sworn statement that it does not require advance payments or deposits of their customers. Staff recommends granting the waiver.

MCImetro has requested a waiver of 1304.02(a)(6) which requires the filing of U.S.G.S. based map of the areas in which service will be offered. MCImetro avers that it will offer service only in those territories served by Verizon New Hampshire. Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

Based upon the filing and Staff's recommendations, we find that MCImetro has satisfied the requirements of Puc 1304.01(a)(1) and (2). In order to determine, pursuant to Puc 1304.01(a)(3), that certification is in the public good, RSA 374:22-g requires that we consider the interests of competition along with other factors such as fairness, economic efficiency, universal service, and carrier of last resort. In addition, we must consider the incumbent's opportunity to realize a reasonable

return on its investment, and recovery by the incumbent of expenses incurred.

The evidence reviewed by Staff supports a conclusion that WorldCom, and thus MCImetro, has the financial qualifications to provide the services that are being planned for New Hampshire. We will, however, require MCImetro to keep its monthly undisputed charges from Verizon current, and will monitor and address the issue of any noncompliance with payment obligations if it occurs. With this condition, we find that MCImetro has satisfied the requirements of Puc 1304.01(a) and will grant the petition.

Given that MCImetro will not charge any customer deposits, we find reasonable MCImetro's request for a waiver of the requirement it post a surety bond to cover refunds of deposit. We also find reasonable MCImetro's request for a waiver of the requirement that it file maps delineating the territory in which it intends to provide service. We will grant both requests.

As part of its petition, MCImetro states that it will charge access rates no higher than Verizon New Hampshire's present and future rates for intraLATA switched access. If at any point MCImetro seeks to exceed Verizon New Hampshire's access rates it will first seek Commission review. The Commission will monitor access rates as the intraLATA toll and local exchange

markets develop, in order to avoid any inhibition of intraLATA toll competition in contravention of the Telecommunications Act of 1996.

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), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per access line. Pursuant to Puc 1306.01(b), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 8 cents per access line.

In Commission Orders No. 22,798 and 22,903 (the Fresh Look Orders), we require all CLECs operating in New Hampshire to notify the Commission when they begin to provide service in an area served by a Verizon wire center. For these purposes, provision of service is defined as the use of UNE loops to provide local service to a customer physically located in the wire center. The CLEC must make their report to the Commission within 10 days of completing their first call on behalf of such customers in each wire center they open for service.

We note that as new competitors enter the market and request numbering resources, increased pressure is put on the 603 area code so long as today's number assignment process remains in effect. As evidenced by our recent orders, we have serious concern for the maintenance and viability of the 603 area code and the North American Numbering Plan as a whole. Accordingly, we will require that MCImetro request and use numbers responsibly and conservatively, to join in exploring alternative mechanisms to use existing numbers as efficiently as possible, and to comply with our orders on number resource optimization, including but not limited to Order No. 23,385, issued January 7, 2000, and Order No. 23,392, issued January 27, 2000.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, MCImetro's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Verizon New Hampshire, is GRANTED, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that MCImetro will keep its monthly undisputed charges from Verizon current; and it is

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

FURTHER ORDERED, that MCImetro's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to MCImetro's agreement not to collect any deposit, prepayment or advance payment prior to the provision of service; and it is

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

FURTHER ORDERED, that MCImetro 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 11, 2002 and to be documented by affidavit filed with this office on or before October 22, 2002; 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 18, 2002; and it is

FURTHER ORDERED, that this Order Nisi shall be effective October 22, 2002, unless the Petitioner 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, should the petitioner fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed withdrawn, null, and void.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary