

DT 03-040

NEON Connect, Inc.

Petition for Authority to Provide
Local Telecommunications Services

Order Nisi Granting Authorization

O R D E R N O. 24,164

April 25, 2003

I. Procedural History

On February 19, 2003, NEON Connect, Inc. (NEON) filed with the New Hampshire Public Utilities Commission (Commission) an Application to Provide Competitive Local Exchange Carrier (CLEC) service in New Hampshire, pursuant to N.H. Admin. Code Rule Puc 1300. The Commission is authorized to allow the providing of switched and non-switched local exchange telecommunications services by more than one provider in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines, pursuant to RSA 374:22-g.

NEON, a Delaware corporation, is a wholly-owned subsidiary of NEON Communications, Inc. and is an affiliate of NEON Optica, Inc. the primary operating entity for the NEON Communications companies. It is also an affiliate of Northeast Optic Network of Connecticut, Inc. and Northeast Optic Network of New York, Inc. NEON is not yet certified to provide CLEC services in any state.

Pursuant to Puc Chapter 1300, an applicant's petition for certification as a 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 NEON'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 NEON's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b)(1), (e) and (f). Staff further reports that adding NEON to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

NEON also requests a waiver of Puc 1304.02(a)(6) which requires the filing of a U.S. Geological Survey-based map of the areas in which service will be offered. NEON avers that it will

offer service only in those territories served by Verizon New England d/b/a Verizon New Hampshire (Verizon). Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

II. Commission Analysis

We find that NEON has satisfied the requirements of Puc 1304.01(a) (1) and (2) and, further, that authorization 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 telephone company's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. Because NEON has satisfied the requirements of Puc 1304.01(a), we will grant the petition.

Given that NEON will not charge any customer deposits, we find reasonable NEON's request for a waiver of the requirement it post a surety bond to cover refund of deposits and advanced payments. We also find reasonable NEON'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, NEON states that it will charge access rates no higher than Verizon's effective access

rates as filed in Tariff 85. 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. (47 U.S.C. §151 *et seq.*)

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 4 cents per access line per month.

As new competitors enter the telecommunications market, we recognize that New Hampshire's 603 area code encounters constantly increasing demand. Accordingly, we will require that NEON request and use numbers responsibly and conservatively, and we invite NEON to explore alternative mechanisms to use existing numbers as efficiently as possible. In approving this application, we require NEON 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.

In order to promote the continued growth of competitive telecommunications services in New Hampshire, we will require NEON to comply with our notice requirements regarding "Fresh Look" opportunities pursuant to Order Nos. 22,798 and 22,903. The recommended method for giving notice is to provide the Commission with a contemporaneous copy of the Confirmation of Code Activation form which is used to notify the North American Numbering Code Administrator.

Based upon the foregoing, it is hereby

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

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

FURTHER ORDERED, that NEON's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to the condition that NEON not to collect any deposit,

prepayment or advance payment prior to the provision of service; and it is

FURTHER ORDERED, that NEON will notify the Commission within ten days of making their first facility-based commercial call in any exchange that has not already been opened to a "Fresh Look" opportunity as ordered in Docket DE 96-420; 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 NEON 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 May 5, 2003, and to be documented by affidavit filed with this office on or before May 19, 2003; 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 May 12, 2003; and it is

FURTHER ORDERED, that this Order Nisi shall be effective May 26, 2003, 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 twenty-fifth day of April, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary