DT 03-197

ONESTAR LONG DISTANCE, INC.

Show Cause Why Authority to Do Business in New Hampshire Should Not Be Revoked Effective November 19, 2003

O R D E R N O. 24,239

November 20, 2003

I. BACKGROUND

On October 17, 2003, the New Hampshire Public Utilities Commission (Commission) issued Order No. 24,219 requiring OneStar Long Distance, Inc. (OneStar) to appear at a hearing to show cause why the company's authorization to provide local exchange service and intrastate long distance service in the State of New Hampshire should not be revoked effective November 19, 2003.

Commission Staff (Staff) had reported to the Commission that OneStar, a competitive local exchange carrier and certified competitive toll provider, was in default of bill payment obligations to Verizon and that Verizon was going to discontinue service to OneStar creating the potential for an interruption of service to OneStar customers. Staff outlined the history of events, as reported to it by Verizon, which led to Verizon's notice to OneStar that service would be discontinued. As a result, Order No. 24,219 was issued, scheduling a hearing on October 28, 2003, and requiring OneStar to: 1) provide a customer list with mailing addresses to the Commission; 2) post the Order on OneStar's website; and 3) provide a copy of the Show Cause Order to any customer contacting the Company with a complaint.

On October 20, 2003, the Commission received a complaint from Freedom Ring Communications, LLC, d/b/a BayRing Communications (BayRing) against OneStar Long Distance for failure to pay access charges for the origination and termination of toll calls on BayRing's network. The Commission also received written notification on October 20, 2003 from the Office of Consumer Advocate of its intent to participate on behalf of residential ratepayers consistent with RSA 363:28.

On October 24, 2003, Verizon filed a Motion to Intervene.

On October 27, 2003, OneStar filed a request to postpone the hearing for one week to give the company an opportunity to submit a written response to the Commission's Order No. 24,219 by October 28, 2003. OneStar indicated its written response might provide the Commission with sufficient information such that a further hearing might not be deemed necessary. Were the hearing to proceed, OneStar separately requested it be allowed to appear at the October 28 hearing telephonically and stated that "OneStar believes that its interests can be fully represented through its written submission and participation in the October 28 hearing by telephone." The

Commission, by Secretarial Letter dated October 27, 2003, denied the request to postpone the hearing and granted the request to appear at the hearing by telephone.

The Commission also received a letter from Verizon on October 27, 2003 stating that it would discontinue all remaining services provided to OneStar on November 19, 2003. OneStar filed its written response on October 28, 2003, and the hearing was held as scheduled.

At the October 28 hearing, Ami Larrison, Director of Regulatory Affairs for OneStar, participated by telephone. Also appearing by telephone on behalf of OneStar was Kemal Hawa, an attorney who had been hired by OneStar on October 28. According to Hawa, OneStar's prior counsel had a conflict of interest with Verizon, a conflict Verizon would not waive. At the hearing, OneStar moved for a continuance to give its attorney more time to prepare for the case. The Commission took a recess to consider the Motion to Continue during which time the parties and Staff crafted an agreement to accommodate OneStar's desire to postpone the hearing and to accommodate the Verizon witness who had traveled from out of the region to appear at the hearing. The parties and OneStar agreed that: 1) OneStar would provide notice to its local customers that it would discontinue local service on November 19, 2003 and that such notice would be postmarked no later than October 30, 2003; 2) Staff would work with OneStar to draft the notice to OneStar's local customers; 3) OneStar would refrain from marketing to obtain new toll customers during the pendency of this proceeding; 4) OneStar would notify its telemarketers not to seek new toll customers in New Hampshire; 5) OneStar would pay Verizon for services billed on and after September 15 through services rendered on and before November 19 and that payment for those services would be made on or before November 19, 2003; 6) OneStar would pay BayRing for services billed and used during the same period from September 15 through November 19, 2003; 7) the hearing would be continued to November 12, 2003; and 8) OneStar would file a Motion for Waiver of the 60-day notice required prior to cessation of local exchange service. OneStar, BayRing, Verizon, OCA and Staff expressed agreement to the terms which were orally recited on the record. Both Ms. Larrison and Mr. Hawa were on the telephone during the recitation of the settlement terms. Mr. Hawa stated the terms were acceptable. Neither one requested time to take the agreement back to anyone else within the company.

The Commission approved the agreement, subject to a further agreement at the Commission's request, that the parties would submit their positions in writing before the hearing on November 12, 2003 regarding whether OneStar's authority to operate as a competitive toll provider should be revoked.

On November 7, 2003, Verizon submitted the information that it had planned to introduce at the October 28th hearing. On November 7, 2003, OneStar submitted its Motion for Waiver of the 60-day notice period before cessation of local exchange service operations. On November 12, 2003, Staff submitted a statement from the Consumer Affairs Division and OneStar submitted the testimony of Ami Larrison.

II. POSITONS OF THE PARTIES

A. OneStar

OneStar witness, Ami Larrison, testified that OneStar has been a reliable company operating in New Hampshire as a toll provider for nearly ten years. OneStar has more recently offered local service but is now in the process of exiting the local market in several jurisdictions within Verizon's service territory and will exit the New Hampshire local market on November 19, 2003. OneStar explained that it would be moving to a switchless provisioning arrangement for toll service and therefore would no longer incur access charges. OneStar stated that its financial position was secure. OneStar also indicated that it had 1700 long distance customers in New Hampshire and that its presence in the long distance market increases customer choices. OneStar argued that it has always had a strong customer service focus, that it has a team of experienced technical and operational managers and that its authority to operate as a toll provider should not be revoked. OneStar further stated that no other state was revoking its authorization to provide toll service.

With regard to the agreement made at the October 28 hearing, Ms. Larrison testified that OneStar had performed all of the commitments it had agreed to with the exception of payment to Verizon for service billed on and after September 15, 2003 through service rendered on and before November 19, 2003. Ms. Larrison further advised the Commission that as a result of OneStar's payment to BayRing, BayRing would withdraw its complaint.[1] Regarding the payment to Verizon, Ms. Larrison testified that neither she nor the attorney who represented OneStar at the October 28 hearing had the authority to agree to such an undertaking. Ms. Larrison recommended that the Commission conditionally allow OneStar to continue to do business as a competitive toll provider if OneStar wired $63,180.42 to Verizon for services it received from Verizon after the date of the originally scheduled hearing, from October 28, 2003 through November 19, 2003.

[1] On November 12, 2003 RayRing submitted a letter to the Commission withdrawing its complaint without prejudice, in light of a payment agreement reached with OneStar.

B. OCA

The OCA did not present a witness but expressed concern about lack of adequate customer notice and the financial ability of OneStar going forward.

C. Staff

Staff argued that OneStar's authority to operate as a competitive toll provider should be revoked. Staff expressed concern over OneStar's failure to communicate with the Commission and its customers and averred that OneStar was no longer managerially competent. Staff also asserted that OneStar was no longer financially competent because, in addition to the payment default with Verizon, OneStar owed approximately $50,000 in access charges to several independent telephone companies in New Hampshire. Finally, Staff reported that, in a survey conducted of independent telephone companies, it appeared OneStar's policy was not to make payment on bills until a company calls OneStar and demands payment.

III. COMMISSION ANALYSIS

One of the consequences of a transition to the competitive supply of services previously offered by regulated monopolies is that some companies will thrive while others struggle. This, in turn, will affect retail customers and other providers with which the competitor does business. In an increasingly competitive marketplace, the Commission is not in a position to fully protect customers whose competitive provider is unable or unwilling to perform. The Commission can, however, ensure that the terms under which it authorized a competitor to provide services are met and that the provider honors the commitments it makes to the Commission.

In this case, OneStar terminated its intrastate toll service without notice to its customers. One Star did not dispute that it owed monies to Verizon. It owes other telecommunications providers as well. OneStar's local service was scheduled to be terminated on November 19, 2003.

The Commission has the authority, as the entity that granted OneStar authorization to enter the competitive local exchange and intrastate toll markets, to condition its continued operation. Though urged by our Staff to terminate OneStar's authorization to provide intrastate toll service, we are not convinced that OneStar's shortcomings are egregious enough to warrant revocation of its authorization to do business as a competitive toll provider in New Hampshire. We are persuaded, in part, by the argument presented by OneStar's counsel that the market should, and will, determine the fate of OneStar's future in New Hampshire. In that regard, it may be that some customers desire to maintain service with OneStar and we do not seek to remove that option for such customers. Accordingly, we will allow OneStar to continue to provide intrastate toll service in

New Hampshire, subject to conditions. If, after observation of OneStar's conduct during this conditional period, the Commission finds that OneStar has not met its conditions or has engaged in other conduct to demonstrate OneStar does not possess the managerial, technical and financial capability to provide service, we will withdraw OneStar's authority to provide service of any kind in the state of New Hampshire. *See* RSA 374:28.

The conditions we impose fall into five categories: 1) cessation of local exchange service; 2) payment to Verizon; 3) notice to customers; 4) Commission monitoring of accounts payable; and 5) notice to the Commission of changes in OneStar's provision of service.

1. Cessation of Local Exchange Service

OneStar offered on the record that it would cease providing local exchange service and that it would no longer be the provider of "dial tone" to any customer in New Hampshire. We will accept OneStar's offer and hereby revoke its certification of authority as a competitive local exchange carrier. In the event OneStar seeks to re-enter this market in the future, it shall file the necessary application with the Commission, at which time the company's qualifications will be evaluated.

Because of its financial problems, OneStar's remaining current local exchange customers face termination of service as of November 19, 2003. OneStar agreed to notify these customers by letter postmarked October 30, 2003 that they must seek an alternate local exchange provider prior to November 19, 2003 to continue to receive dial tone.

2. Payment to Verizon

OneStar does not dispute owing Verizon monies for services billed on and after September 15 through services rendered through November 19.[2] At the October 28, 2003 Commission hearing, OneStar's attorney, Kemal Hawa, and Ami Larrison, its Director of Regulatory Affairs, committed to a payment agreement under which OneStar would pay Verizon the amount owed to Verizon for the period billed from September 15, 2003 through services rendered on November 19, 2003.[3]

At the October 28, 2003 hearing, Verizon estimated the amount due to it for bills rendered to OneStar on September 15, 2003 and for services rendered to OneStar through November 19, 2003 to be approximately $225,000.[4] OneStar agreed to the terms, as delineated by Staff Counsel Jackson which included payment for services billed and rendered during this period:

[2] OneStar owes Verizon another $800,000, approximately, for charges incurred prior to September 15, 2003, and it owes other entities as well. The Commission will not intercede in these claims; they are for the companies to resolve through payment plans and court action if necessary.

[3] At the request of OneStar, the company's participation was by telephone. The Commission's letter authorizing such participation stated that OneStar should be aware that participation by telephone may affect the weight the Commission accords the written statement or other statements offered during the hearing.

[4] On November 7, 2003, Verizon made a filing with the Commission revising that figure to $270,600.09.

> The parties also agreed that, and have accepted a commitment from OneStar, that OneStar will pay Verizon for services billed beginning September 15th, through services rendered on and before November 19th, and that payment for those services would be made on or before November 19th. The amount of money involved in that payment will be identified by the parties, Verizon and OneStar, who will work together in good faith to identify that amount so that that can occur.

Tr. Day I, p. 18. Mr. Hawa stated that the recitation of the agreement "fairly characterizes the agreement." Tr. Day I, p. 20.

As a result of the commitments made at the hearing, the Commission agreed to continue further consideration of the show cause proceeding until November 12, 2003 at which time the issue of OneStar's continued authorization as a competitive toll provider would be considered. Further, based on OneStar's commitments, Verizon agreed to refrain from terminating local exchange service to OneStar, and indirectly to OneStar's customers, prior to November 19, 2003.

At the November 12th hearing, OneStar's newly-retained counsel asserted that neither the prior attorney, Kemal Hawa, nor the OneStar employee had the legal authority to bind OneStar to this payment obligation. OneStar now agreed to pay only $63,180.42 to Verizon, the amount it anticipated owing Verizon for the period October 28 through November 19, 2003. The amounts it previously committed to pay Verizon, for the bills rendered on

September 15 and services rendered through October 27, 2003, apparently would now be added to the amounts Verizon must seek through the collection process in court.

We find OneStar's position to be untenable. OneStar determined who would participate in the hearing on October 28. The company's Director of Regulatory Affairs did not speak out against the terms of the agreement, ask for clarification or request time to consult with others within her company before the agreement became binding. Mr. Hawa never stated he was without authority to agree to terms. To bind a client, an attorney must have express or implied authority. *Ducey v. Corey*, 116 N.H. 163, 164 (1976) (court refused to enforce settlement where client not notified of offer, negotiations or agreement). In this case OneStar's attorney had the company's Director of Regulatory Affairs participating with him in the discussions and both were participants before the Commission in agreeing to the terms of the settlement. He clearly had implied if not express authority to settle the matter.

Neither Ms. Larrison nor Mr. Hawa notified the Commission of any problem with the settlement terms after the conclusion of the hearing. It was not until the date of the continued hearing, 15 days later, that Ms. Larrison and OneStar's newest counsel, Mr. Coolbroth, stated the company would not honor the prior commitment. This does not alter OneStar's obligation.

See Norberg v. Fitzgerald, 122 N.H. 1082, 1083 (1982) (client attempt not to honor terms after the time of agreement but before the approval of court did not change the binding nature of the agreement).

We will not allow the Commission process to be abused as OneStar seeks to do. The commitment to pay Verizon by November 19, 2003 was a significant element in our decision to grant OneStar's motion to continue the show cause hearing. It is not the Commission's obligation to question the authority of the witnesses who profess to speak for an entity appearing before it. New Hampshire law recognizes the practical needs of settlement to resolve disputes. Authority of attorneys to make settlement agreements "is, in practice, never questioned." *Beliveau v. Amoskeag Co.*, 68 N.H. 225, 226 (1894), quoted with approval, *Manchester Housing Authority*, 118 N.H. 268, 269 (1978). If Mr. Hawa agreed to something he should not have, that is a matter for OneStar and Mr. Hawa to resolve. We will not relieve OneStar of the commitments it made at the October 28, 2003 hearing before the Commission. Given that November 19 has now passed, Verizon is capable of determining the exact amount owed for services rendered through November 19, 2003. Therefore, we will require OneStar to pay Verizon for services billed on or after September 15 through services rendered through November 19, 2003, within ten days of receipt of a final bill.

3. Notice to Customers re: Intrastate Toll Service

Of the conditions enumerated herein, one of the most important is for OneStar to provide accurate and complete information to its toll customers regarding the conditions under which it operates and the competitive alternatives available to its customers.

OneStar shall notify its toll customers, in writing, no later than December 10, 2003, of the following: it is under a conditional grant of authority from the Commission; it is subject to certain financial monitoring by the Commission; customers may chose to continue to receive toll service from OneStar or select a new toll carrier; and any charges a customer pays to remain with OneStar or obtain a new toll provider, i.e. primary interLATA and intraLATA carrier (PIC) change charges, will be reimbursed by OneStar.

This notice shall be reviewed and approved by the Commission Staff prior to being mailed to customers. To give adequate time for review and change, if needed, OneStar shall submit the draft to the Commission no later than December 3, 2003.

4. Commission Monitoring of Accounts Payable

The Commission's regulatory obligation to customers includes the assurance that service is adequate, whether provided by a monopoly provider or a competitive provider. *See* RSA 374:1.

In light of OneStar's payment history to other telecommunications providers with which it does business (which led, in this case, to the termination of service to customers and could well lead to such a result in the future), we will require financial monitoring of OneStar for a period of 18 months, that is from November 2003 through May 2005. OneStar, or its successor, shall report on a monthly basis all accounts payable that relate to telecommunications providers with which OneStar does business for services in New Hampshire.[5] These reports shall be filed with the Commission by the 15th of the month, covering the previous month, that is, a December 15, 2003 report addressing monies paid and owed as of November 30, 2003. The reports shall be sworn to by a person duly authorized to make such representations on behalf of the company.

5. OneStar Notification of Change in Provision of Service

OneStar has stated on the record that it intends to provide toll service through resale of another carrier's product. If the method by which it provides service to its customers should change in the future, OneStar shall notify the Commission no later than 30 days prior to the change.

[5] These reports shall not include amounts owed or paid to OneStar's provider(s) of telecommunications services related to expenses for the operation of its office business. The Commission is only concerned with payables that relate to the provision of telecommunications to customers in New Hampshire.

Based upon the foregoing, it is hereby

ORDERED, that OneStar is authorized to continue to provide competitive intrastate toll service to its customers subject to the conditions stated herein; and it is

FURTHER ORDERED, that OneStar's authority to operate as a competitive local exchange carrier is hereby withdrawn; and it is

FURTHER ORDERED, that OneStar's Motion for Waiver of the 60-day notice period before cessation of local exchange service operations is GRANTED; and it is

FURTHER ORDERED, that BayRing's complaint against OneStar is withdrawn without prejudice; and it is

FURTHER ORDERED, that Verizon's Motion to Intervene is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 2003.

Thomas B. Getz Chairman	Susan S. Geiger Commissioner	Graham J. Morrison Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary