

DT 03-213

VOLO COMMUNICATIONS OF NEW HAMPSHIRE, INC.

Petition for Authority to Provide Switched and non-Switched
Local Telecommunications Services

Order Nisi Granting Authorization

O R D E R N O. 24,251

December 16, 2003

I. PROCEDURAL HISTORY

On November 10, 2003, Volo Communications of New Hampshire, Inc. (Volo) 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. Pursuant to RSA 374:22-g, the Commission may authorize the provision of switched and non-switched local exchange telecommunications services by more than one entity in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines.

The Commission, on November 12, 2003, certified Volo to provide intraLATA toll service in the State of New Hampshire. See IXC No. 11-039-03 (November 12, 2003).

Volo, a Delaware corporation, is a subsidiary of Volo Communications, Inc. which, in turn, is a subsidiary of Caerus, Inc. Another subsidiary of Caerus, Inc. provides CLEC services in Florida and other subsidiaries of Caerus, Inc. are either

authorized or have applications pending in Massachusetts, Rhode Island, New York, California, Arizona and Georgia.

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 Volo'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 Volo's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b)(1) and (2), (e), (f) and (g). Staff further reports that adding Volo to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

Volo 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. Volo 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.

Finally, Volo requests a waiver of Puc 1306.01(a)(17), which requires a carrier to make Automatic Number Identification (ANI) available to other carriers, directly or indirectly. Volo argues that, while it will not remove ANI from any call, it does not always receive ANI from other carriers and, therefore, in some cases would not be able to pass it through. Staff suggests that the waiver is not necessary for wholesale traffic, as the rule applies to basic service.

II. COMMISSION ANALYSIS

We find that Volo has satisfied the requirements of Puc 1304.01(a)(1) and (2). We also find that granting Volo authority to operate as a CLEC 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.

Volo attests it will not charge any customer deposits, advanced payments or prepayments. Based on this attestation, the Commission finds reasonable Volo's request for a waiver of Puc 1304.02(b) which requires a CLEC applicant to post a surety bond to cover refund of deposits and advanced payments. However, this waiver shall apply only so long as Volo does not require such deposits or payments. In the event Volo decides to change its policy on prepayments, it must immediately notify the Commission.

The Commission also finds reasonable Volo's request for a waiver of Puc 1304.02(a)(6) which requires a CLEC applicant to file maps delineating the territory in which it intends to provide service based on its representation that its service will be offered in only those territories served by Verizon. With these conditions, we grant these waiver requests.

Volo also asked for a waiver of Puc 1306.01(a)(17) which requires a carrier to make ANI available for basic service and which does not apply to wholesale traffic. The Commission finds waiver of this rule is not necessary and denies this request. The Commission notes that Volo must provide ANI for any call placed from any of its retail customers (end-users).

As part of its petition, Volo 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. (Pub.L.No. 104-104, 110 Stat. 56, *codified* at 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 per month. 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 increasing demand. Accordingly, we will require that Volo request and use numbers responsibly and conservatively, and we invite Volo to explore alternative mechanisms to use existing numbers as efficiently as possible. In approving this application, we require Volo 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.

Based upon the foregoing, it is hereby

ORDERED NISI, that conditioned upon the effective date below, Volo'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 Volo's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to the condition that Volo not collect any deposit, prepayment or advance payment prior to the provision of service; and it is

FURTHER ORDERED, that Volo's request for a waiver of the map filing requirement in Puc 1304.02(a)(6) is GRANTED; 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 Volo 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 December 26, 2003, and to be documented by affidavit filed with this office on or before January 9, 2004; 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 January 2, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective January 15, 2004, 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, pursuant to Puc 1304.03(a), the authority granted shall be deemed withdrawn, null, and void.

By order of the Public Utilities Commission of New
Hampshire this sixteenth day of December, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary