

DT 03-218

COMPUTER NETWORK TECHNOLOGY CORPORATION

Petition for Authority to Provide Non-Switched Private Line Local
Telecommunications Services

Order Nisi Granting Authorization

O R D E R N O. 24,305

April 2, 2004

The petitioner, Computer Network Technology Corporation (CNT or Petitioner), filed an application to provide private line Competitive Local Exchange Carrier (CLEC) service with the New Hampshire Public Utilities Commission (Commission) on November 17, 2003 pursuant to NH 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.

CNT, a Minnesota corporation, holds subsidiaries incorporated under the laws of Minnesota, Delaware and nine foreign nations. CNT is certified as a CLEC in 14 states but is not yet providing local service in any of those states.

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 CNT's petition for compliance with these standards. Staff reports that CNT has provided all the information required by Puc 1304.02 and that the information provided supports CNT'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 CNT to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

CNT 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. CNT 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.

CNT requests a waiver of Puc 1306.01 that describes the basic services a CLEC must provide. CNT describes its intended service as providing dedicated private line data communications circuits to business customers. Staff recommends granting the waiver.

The Commission finds that CNT has satisfied the requirements of Puc 1304.01(a)(1) and (2). We also find that granting CNT 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, the Commission has 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.

CNT attests it will not charge any customer deposits, advanced payments or prepayments. Based on this attestation, the Commission finds reasonable CNT'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 CNT does not require such deposits or payments. In the event CNT decides to change its policy on prepayments, it must immediately notify the Commission.

The Commission also finds reasonable CNT'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, the Commission grants this waiver request.

CNT also requested a waiver of Puc 1306.01 which requires a carrier to make specific basic services available. The Commission finds waiver of Section (a) of this rule is reasonable as CNT will be providing only dedicated private line data telecommunications services.

As part of its petition, CNT states that it will charge access rates no higher than Verizon's effective access rates as filed in Tariff 85. However, as a practical matter it appears that a private line carrier, CNT will not be providing access service and therefore will not be charging access fees.

We grant CNT authority to provide non-switched (private line) service to end-users in the territories of Verizon. Should CNT modify its business plan in the future to include switched service, it must immediately notify the Commission and supplement its petition with information regarding advanced payment policies, number use, access charges and other details necessary for the provision of switched service.

Based upon the foregoing, it is hereby

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

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

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

FURTHER ORDERED, that CNT's request for a waiver of the basic service requirements described in Puc 1306.01(a), as conditioned above, 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, 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; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than April 12, 2004 and to be documented by affidavit filed with this office on or before April 26, 2004; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 19, 2004; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 26, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective May 3, 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.

By order of the Public Utilities Commission of New
Hampshire this second day of April, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary