

DT 04-032

1 COM, INC.

**Petition for Authority to Provide Non-Facilities Based
Local Telecommunications Services**

Order Nisi Granting Authorization

ORDER NO. 24,311

April 23, 2004

On March 10, 2004, 1 Com, Inc. (1 Com) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide non-facilities based Competitive Local Exchange Carrier (CLEC) service in New Hampshire, pursuant to N.H. Admin. 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.

1 Com, a Massachusetts corporation, is privately held. The Petitioner has received authority to provide local exchange services in the states of Massachusetts, Maine, Vermont, New York and Rhode Island. On January 30, 2002, 1 Com was certified to provide intraLATA toll service in the State of New Hampshire under IXC No. 01-003-02.

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 1 Com's petition for compliance with these standards. Staff reports that 1 Com has provided all the information required by Puc 1304.02 and that the information provided supports 1 Com's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b)(2), (e), and (g). Staff further reports that adding 1 Com to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

1 Com requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, 1 Com submitted a sworn statement averring that it does not require deposits or advanced payments from customers. Staff recommends granting the waiver.

1 Com 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. 1 Com 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.

We find that 1 Com has satisfied the requirements of Puc 1304.01(a) (1) and (2). We also find that granting 1 Com 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.

1 Com attests it will not charge any customer deposits, advanced payments or prepayments and seeks waiver of Puc 1304.02(b) which requires a CLEC applicant to post a

surety bond to cover refund of deposits and advanced payments. A rule waiver is appropriate upon a determination by the Commission that such a waiver serves the public interest and will not disrupt the orderly proceeding of the Commission. Puc 201.05(a). Based on 1 Com's attestation and the fact that the waiver will not be disruptive, the Commission finds 1 Com's request for a waiver of Puc 1304.02(b) to be in the public interest and will grant the request. However, this waiver shall apply only so long as 1 Com does not require such deposits or payments. In the event 1 Com decides to change its policy on prepayments, it must immediately notify the Commission.

The Commission also finds reasonable 1 Com'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.

As part of its petition, 1 Com 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 1 Com request and use numbers responsibly and conservatively, and we invite 1 Com to explore alternative mechanisms to use existing numbers as efficiently as possible. In approving this application, we require 1 Com 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, 1 Com's petition for authority to provide non-facilities based 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 1 Com's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby granted subject to the condition that 1 Com not collect any deposit, prepayment or advanced payment prior to the provision of service; and it is

FURTHER ORDERED, that 1 Com's request for a waiver of the map filing requirement in Puc 1304.02(a) (6) is granted; 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 May 3, 2004 and to be documented by affidavit filed with this office on or before May 17, 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 May 10, 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 May 17, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective May 24, 2004, unless 1 Com 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 1 Com 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 twenty-third day of April, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director & Secretary