

DT 04-051

RURAL ECONOMIC DEVELOPMENT NETWORK, INC.

**Petition for Authority to Provide
Private Line Telecommunications Services**

Order Nisi Granting Authorization

ORDER NO. 24,334

June 11, 2004

On March 29, 2004, Rural Economic Development Network, Inc. (Network) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide private line 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 private line telecommunications services by more than one entity in all telephone franchise areas by a telephone utility that provides local exchange service and has more than 25,000 access lines.

Network, a Delaware corporation, is privately held. Network has no subsidiaries and does not have a parent company.

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 Network's petition for compliance with these standards. Staff reports that Network has provided all the information required by

Puc 1304.02 and that the information provided supports Network'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 Network to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

Network requests that it be granted authority to provide private line telecommunications service state-wide. Network 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. Staff recommends Network's petition for certification be granted only in Verizon's franchise area. Maps of that territory are already on file with the Commission. To the extent the Commission limits Network's authority to Verizon's franchise area, Staff recommends granting the waiver.

Network requests a waiver of the basic service requirements of Puc 1306.01(a) on the grounds that Network only seeks authority to provide private line, point-to-point transport services and has no plans to offer voice services. Staff recommends that the Commission grant that waiver.

We find that Network has satisfied the requirements of Puc 1304.01(a) (1) and (2). However, we are unable to grant Network authority to operate in the franchise areas of the independent telephone companies that are not open to competition in light of the provisions of Section 251 (f)(1) of the Telecommunications Act of 1996. (Pub.L.No. 104-104, 110 Stat. 56, *codified* at 47 U.S.C. §151 *et seq.*). Notwithstanding this limitation, we find that granting Network authority to operate as a private line CLEC in Verizon's franchise area 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.

The Commission grants requests to waive certain rules when such a waiver serves the public interest and will not disrupt the orderly proceeding of the Commission. See N.H. Amin. Rule Puc 201.05(a)(1). The Commission finds that filing a redundant map is not necessary and therefore the public interest will be served by granting a waiver of Puc 1304.02(a)(6), provided that Network offer its services only in those territories served by Verizon. Given that Network intends only to provide private line service, the Commission also finds that granting Network's request for waiver from the basic service requirements of Puc 1306.01(a) is in the public interest. Granting the waiver requests will not disrupt the orderly proceeding of the Commission and, therefore, we grant the waivers of Puc 1304.02(a)(6) and 1306.01(a).

As part of its petition, Network states that it will not charge access rates higher than Verizon's effective access rates as filed in Tariff 85. However, as a practical matter Network, operating as a private line carrier, will not be providing switched access service and therefore will not be charging switched access fees.

We grant Network authority to provide private line service to end-users in Verizon's franchise area. Should Network 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, Network's petition for authority to provide private line telecommunications services is GRANTED only within the service territory of Verizon, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that Network'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 Network'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, Network 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 Network 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 Network 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 June 21, 2004 and to be documented by affidavit filed with this office on or before July 5, 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 June 28, 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 July 5, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective July 12, 2004, unless Network 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 eleventh day of June, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director