

DT 04-012

**SOUTHWESTERN BELL COMMUNICATIONS SERVICES INC.
D/B/A SBC LONG DISTANCE**

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

Order Nisi Granting Authorization

ORDER NO. 24,380

October 6, 2004

On February 4, 2004, Southwestern Bell Communication Inc. d/b/a SBC Long Distance (SBCS) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide facilities based Competitive Local Exchange Carrier (CLEC) service in New Hampshire, pursuant to N.H. Administrative Rule Chapter Puc 1300. Pursuant to RSA 374:22-g, the Commission may authorize the provision of intrastate switched and non-switched local exchange telecommunications services by more than one provider, in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines.

SBCS, a Delaware corporation, is privately held. SBCS is a wholly-owned subsidiary of SBC Communications Inc. The Petitioner is authorized to provide local exchange service in Vermont. On February 25, 1997, SBCS was certified to provide intraLATA toll service in the State of New Hampshire under IXC No. 12797.

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

SBCS 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. SBCS states 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.

SBCS requests a waiver of the basic service requirements of Puc 1306.01(a) on the grounds that SBCS initially intends to provide non-switched private line, point-to-point transport services and will not offer voice services. Staff recommends that the Commission grant the waiver on an interim basis, until SBCS begins to provide service other than private line service.

We find that SBCS has satisfied the requirements of Puc 1304.01(a)(1) and (2). We also find that granting SBCS authority to operate as a CLEC in Verizon's territory, 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. Admin. Rule Puc 201.05(a). 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 SBCS offer its services only in those territories served by Verizon. Given that SBCS intends to initially provide private line service, the Commission also finds that granting SBCS's request for waiver from the basic service requirements of Puc 1306.01(a) is in the public interest for as long as SBCS only provides private line service. We will grant the waiver of Puc 1306.01(a) on an interim basis and direct SBCS to notify the Commission within 10 days of the date it first offers a service other than private line service at which time the interim waiver will expire. Granting the waiver requests will not disrupt the orderly proceeding of the Commission and, therefore, we grant the waiver of Puc 1304.02(a)(6) and an interim waiver of Puc 1306.01(a) as outlined herein.

As part of its petition, SBCS states that it will not charge access rates higher than Verizon's effective access rates as filed in Tariff 85.

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 which will apply when SBCS begins offering service other than private line service. Puc 1306.01(a)(8) and Puc 1306.01(a)(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. See *Enhanced 911*, Order No. 21,800, 80 NH PUC 554 (1995). Pursuant to Puc 1306.01(b) (1) and (2), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 4 cents per access line per month. See *Adjust Basic Exchange Rates for Telecommunications Relay Service*, 87 NHPUC 826 (2002).

As new competitors enter the telecommunications market, we recognize that New Hampshire's 603 area code encounters increasing demand. Accordingly, we will require that SBCS request and use numbers responsibly and conservatively, and we invite SBCS to explore alternative mechanisms to use existing numbers as efficiently as possible. In approving this application, we require SBCS to comply with our orders on number conservation, including 85 NHPUC 20 (2000) and 85 NHPUC 45 (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, SBCS's application for authority to provide facilities based local exchange telecommunications services, is GRANTED, limited to Verizon's service area and subject to all relevant Commission rules and orders; and it is

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

FURTHER ORDERED, that SBCS notify the Commission within 10 days of the date it first offers a switched service, upon which the interim waiver of Puc 1306.01(a) will expire; and it is

FURTHER ORDERED, that SBCS'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, SBCS shall file with the Commission a rate schedule including the name, description and price of each service, in accordance with Puc 1304.03 (b); and it is

FURTHER ORDERED, that, should SBCS 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 SBCS 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 October 15, 2004 and to be documented by affidavit filed with this office on or before October 29, 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 October 22, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective November 5, 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 sixth day of
October, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary