

DT 04-188

ON FIBER CARRIER SERVICES INC.

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

Order *Nisi* Granting Authorization

ORDER NO. 24,452

April 7, 2005

On October 11, 2004, On Fiber Carrier Services Inc. (On Fiber) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide facilities-based, non-switched telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

Pursuant to Puc Chapter 1300, an applicant's petition for certification as a Competitive Local Exchange Carrier (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 On Fibers 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 On Fibers 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 On Fiber to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

On Fiber 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. On Fiber 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.

Finally, On Fiber requests a waiver of the basic service requirements of Puc 1306.01(a) on the grounds that On Fiber intends to provide non-switched transport services and will not offer voice services. Staff recommends that the Commission grant the waiver on an interim basis, until On Fiber begins to provide voice service.

The Commission finds that On Fiber has satisfied the requirements of Puc 1304.01(a) (1) and (2) and, further, that authorization 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's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred.

In its petition, On Fiber avers it does not intend to offer switched-based services at this time, but may expand its proposed offerings in the future. On Fiber attested that if it expands its services to include switched access, it will charge access rates no higher than Verizon New Hampshire's present and future rates for intraLATA switched access. If at any

point On Fiber seeks to exceed Verizon New Hampshire's access rates it will first seek Commission review. 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.

On Fiber attests it will not charge any customer deposits, including advance payments, and seeks waiver of Puc 1304.02(b) which requires a CLEC applicant to post a surety bond to cover refund of deposits and advance 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 On Fibers attestation and the fact the waiver will not be disruptive, the Commission finds On Fibers 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 On Fiber does not require such deposits or advance payments. In the event On Fiber decides to change its policy on deposits and advance payments, it must immediately notify the Commission.

The Commission finds that filing a map is not necessary in these circumstances and therefore the public interest will be served by granting a wavier of Puc 1304.02(a)(6), provided that On Fiber offer its services only in those territories served by Verizon.

Given that On Fiber intends only to provide facilities-based, non-switched telecommunications services, the Commission also finds that granting On Fibers 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 waiver of Puc 1306.01(a).

The Commission grants On Fibers authority to provide facilities-based, non-switched telecommunications services to end-users in the territories of Verizon. Should the company modify its business plan in the future to include voice service, it must immediately notify the Commission and supplement its petition with information regarding advance 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 subject to the effective date below, On Fibers petition for authority to provide facilities based non-switched intrastate telecommunications services in the service territory of Verizon New Hampshire, is GRANTED, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that On Fibers request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to the condition that On Fiber not collect any deposits, prepayments or advance payments prior to the provision of service; and it is

FURTHER ORDERED, that On Fibers request of 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 is GRANTED; and it is

FURTHER ORDERED, that On Fibers request for a waiver of the basic service requirements described in Puc 1306.01(a), as conditioned above, is GRANTED until OFCS provides voice service; and it is

FURTHER ORDERED, that On Fiber shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the

Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b); and it is

FURTHER ORDERED, that On Fiber 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 April 18, 2005 and to be documented by affidavit filed with this office on or before May 9, 2005; 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 which states the reason and basis for a hearing no later than April 25, 2005 for the Commission's consideration; 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 2, 2005; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 9, 2005, unless On Fiber 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 On Fiber fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed withdrawn, null, and void.

By order of the Public Utilities Commission of New Hampshire this seventh day
of April, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary