

DT 01-250

**NUI TELECOM, INC.**

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

**Order Nisi Granting Authorization**

**O R D E R N O. 23,960**

**May 1, 2002**

On December 21, 2001, NUI Telecom, Inc. (NUI) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Commission Staff (Staff) recommended approval of the petition and, accordingly, on March 8, 2002 we entered Order No. 23,933 approving the petition on a nisi basis. Specifically, we indicated that the approval granted in the Order would be effective as of April 8, 2002 unless otherwise ordered by the Commission, we established March 25, 2002 as the deadline for public comments and/or requests for hearing on the petition, and we directed NUI to publish the text of the Order in a newspaper of statewide circulation no later than March 18, 2002. On April 10, 2002, NUI advised the Commission in writing that it had not accomplished the

publication of Order No. 23,933.

In these circumstances, we deem it appropriate to treat our previous Order nisi as annuled, pursuant to our authority under RSA 365:28, as not having become effective, a condition precedent (publication) having not been satisfied by the petitioner. In its April 10 letter, NUI assents to reissuance of our previous Order nisi and, indeed, requests that the Commission do so.

NUI is a certified Competitive Toll Provider in New Hampshire having been issued IXC No. 30298 dated June 25, 1998. NUI is certified to provide local exchange services in at least ten states and the District of Columbia. NUI is also certified as a long distance reseller in 18 states and the District of Columbia according to the petition.

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.

As already noted, and as previously stated in Order

No. 23,933, Staff has reviewed NUI's 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 NUI's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff further reports that adding NUI to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

NUI also requests a waiver of 1304.02(a)(6) which requires the filing of U.S.G.S. based maps of the areas in which service will be offered. NUI avers that it will offer service only in those territories served by Verizon New Hampshire and that relevant maps are already on file with the Commission. Staff recommends granting the waiver.

We find that NUI 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. This finding is further supported by the Telecommunications Act of 1996 (TAct).

Because NUI has satisfied the requirements of Puc 1304.01(a), we will grant the petition for authorization. On the basis of Staff's recommendation, we will grant NUI's requests for waiver of the requirements of Puc 1304.02(a)(6) and 1304.02(b).

As part of its petition, NUI avers it will charge access rates no higher than Verizon New Hampshire's present and future rates for intraLATA switched access. At any point NUI 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.

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 Puc 1306.01(c), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per access line. Pursuant to Puc 1306.01(b), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 8 cents per access line.

We note that as new competitors enter the market, constantly increasing pressure is put on the 603 area code, so long as today's number assignment process remains in effect. Accordingly, we will require that NUI request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as possible. As evidenced by our recent orders, we have serious concern for the maintenance and viability of the 603 area code and the North American Numbering Plan as a whole. In approving this petition, we require NUI to comply with our orders on number resource optimization, including but not limited to Order No. 23,385 issued January 7, 2000, and Order No. 23,392 issued January 27, 2000.

**Based upon the foregoing, it is hereby**

**ORDERED NISI**, that NUI's petition for authority to provide switched and non-switched intrastate local exchange 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 NUI's request for a waiver of Puc 1304.02(a)(6) is GRANTED; and it is

**FURTHER ORDERED**, that NUI's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to NUI's agreement not to collect any deposit, prepayment or advance payment prior to the provision of service; 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 NUI 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 May 13, 2002 and to be documented by affidavit filed with this office on or before May 24, 2002; 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 May 20, 2002; and it is

**FURTHER ORDERED,** that this Order Nisi shall be effective May 31, 2002, 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; 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, the authority granted shall be deemed withdrawn, null, and void.

By order of the Public Utilities Commission of New Hampshire this first day of May, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director and Secretary