

STATE OF NEW HAMPSHIRE
SUPREME COURT

DOCKET NO. 2009-0168 (Consolidated)

Appeal of
Union Telephone Company d/b/a Union Communications

APPENDIX TO
REPLY BRIEF OF PETITIONER-APPELLANT

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TABLE OF CONTENTS

PUC Order No. 24,454, <i>France Telecom Corporate Solution, LLC</i> , Order <i>Nisi</i> Granting Authorization (April 7, 2005)	1
PUC Order No. 24,382, <i>TransNational Communications International, Inc.</i> , Order <i>Nisi</i> Granting Authorization (October 8, 2004)	7
PUC Order No. 23,541, <i>Access Point, Inc.</i> , Order <i>Nisi</i> Granting Authorization (July 24, 2000)	13
PUC Order No. 22,025, <i>Re: National Accounts, Inc.</i> , Order (February 21, 1996)	19

DT 05-021

FRANCE TELECOM CORPORATE SOLUTIONS LLC

**Petition for Authority to Provide Non-Facilities Based
CLEC Services**

Order *Nisi* Granting Authorization

ORDER NO. 24,454

April 7, 2005

I. BACKGROUND

On February 7, 2005, France Telecom Corporate Solutions, LLC (France Telecom) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide non-facilities based Competitive Local Exchange Carrier (CLEC) service, pursuant to N.H. Administrative Rules Chapter 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 entity in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines.

France Telecom, a Delaware limited liability company, is owned by FTCS Telecom S.A. The Petitioner has filed to provide CLEC services in 30 states.

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.

II. STAFF RECOMMENDATION

The Commission Staff (Staff) has reviewed France Telecom's petition for compliance with these standards. Staff reports that France Telecom has provided all the information required by Puc 1304.02 and that the information provided supports France Telecom'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 France Telecom to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

France Telecom 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. France Telecom 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.

III. COMMISSION ANALYSIS

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 \$.04 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 France Telecom request and use numbers responsibly and conservatively, and we invite France Telecom to explore alternative mechanisms enabling them to use existing numbers as efficiently as possible. In approving this application, we require France Telecom to comply with our orders on number conservation, including Order No. 23,385 (January 7, 2000), and Order No. 23,392 (January 27, 2000) as well as further orders issued by the Commission concerning this matter.

The Commission finds that France Telecom has satisfied the requirements of Puc 1304.01(a) (1) and (2). We also find that granting France Telecom authority to operate as non-facilities based CLEC in Verizon's service 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.

France Telecom attests it will not charge any customer deposits, including advance payments, and seeks waiver of Puc 1304.02(b) which requires a non-facilities based 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 France Telecom's attestation and the fact that the waiver will not be disruptive, the Commission finds France Telecom'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 France Telecom does not require such deposits or advance payments. In the event France Telecom 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 as a map of Verizon's service territory is on file with the Commission, and therefore the public interest will be served by granting a waiver of Puc 1304.02(a)(6), provided that France Telecom offer its services only in those territories served by Verizon.

The Commission, therefore, will grant France Telecom authority to provide non-facilities based CLEC service in the territories of Verizon.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that conditioned upon the effective date below, France Telecom's petition for authority to provide non-facilities based local telecommunications services is GRANTED only within Verizon's franchise area, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that France Telecom's request for a waiver of the surety bond requirement per Puc 1304.02(b) is GRANTED on the condition that France Telecom not collect any deposits, prepayments, or advanced payments prior to the provision of service; and it is

FURTHER ORDERED, that France Telecom's request for waiver of the map filing requirement per Puc 1304.02(a) (6) is GRANTED; and it is

FURTHER ORDERED, that France Telecom 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 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 France Telecom 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 France Telecom 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 no less than ten days prior to commencing service, France Telecom shall file with the Commission a rate schedule including the name, description, and price of each service, in accordance with Puc 1304.03(b).

05-021

- 6 -

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 and Secretary

DT 04-099

TRANS NATIONAL COMMUNICATIONS INTERNATIONAL, INC.

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

Order Nisi Granting Authorization

ORDER NO. 24,382

October 8, 2004

On June 2, 2004, Trans National Communications International, Inc. (TNCI) 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.

TNCI, a Delaware corporation, has no subsidiaries. TNCI is authorized to provide local exchange service in seventeen states and the District of Columbia.

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 TNCI's petition for compliance with these standards. Staff reports that TNCI has provided all the information required by Puc 1304.02 and that the information provided supports TNCI's assertion of financial resources,

04-099

- 2 -

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 TNCI to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

TNCI 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. TNCI 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.

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

TNCI 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

DT 00-141

-6-

effective August 21, 2000, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner 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).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of July, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary

81 NH PUC 105

Re National Accounts, Inc.

DE 95-298

Order No. 22,025

New Hampshire Public Utilities Commission

February 21, 1996

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 105.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 105.

BY THE COMMISSION:

ORDER

[1, 2] On October 25, 1995, National Accounts, Inc. (National), a New Jersey corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. National has demonstrated the financial, managerial and technical ability to

Page 105

offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically

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modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that National is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered until the Commission orders otherwise.
3. National shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, National shall notify the Commission of the change.
5. National is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. National shall maintain its book and records in accordance with Generally Accepted Accounting Principles.
7. National shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. National shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. National shall compensate the appropriate Local Exchange Company for all originating and terminating access used by National pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow National to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that National shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said

Page 106

publication shall occur no later than February 28, 1996, and an affidavit proving publication shall be filed with the Commission on or before March 6, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. National shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; 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 March 13, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 20, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 22, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that National shall file a compliance tariff with the Commission on or before March 22, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1996.

Notice of Conditional Approval of
NATIONAL ACCOUNTS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On October 25, 1995, National Accounts, Inc. (National), a New Jersey corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,025, issued in Docket No. DE 95-298, the Commission granted National conditional approval to operate as of March 22, 1996, subject to the right of the public and interested parties to comment on National or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Comments on National's petition to do business in the State must be submitted in writing no later than March 13, 1996, and reply comments no later than March 20, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*02/21/96*[89039]*81 NH PUC 107*New England Telephone and Telegraph Company

[Go to End of 89039]

81 NH PUC 107

Re New England Telephone and Telegraph Company

DR 95-310
Order No. 22,026

New Hampshire Public Utilities Commission

February 21, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of two optional transport features for its switched access customers: Common Channel Signaling Access and Signaling System 7. The new services are in response to specific requests for service from

Page 107

two wireless communications customers.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Local exchange carrier. p. 108.

2. SERVICE, § 467

[N.H.] Telephone — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Local exchange carrier — Requests from wireless