

DT 00-036

**NET-TEL CORPORATION**  
d/b/a Evergreen Communications Corporation

**Revocation of Certification to Operate in  
the State of New Hampshire**

**Order Revoking Certification**

**O R D E R    N O.    23,896**

**January 11, 2002**

**I. INTRODUCTION AND BACKGROUND**

On January 2, 2001, the New Hampshire Public Utilities Commission (the Commission) received notification from Technologies Management, Inc. of the bankruptcy and the discontinuance of business operations by Net-tel Corporation (NET-tel) d/b/a Evergreen Communications Corporation. NET-tel is a New Hampshire-certified CLEC pursuant to Order Nisi No. 23,499, dated May 31, 2000, issued in Docket No. DT 00-036. NET-tel was certified as an intraLATA Competitive Toll Provider (CTP) under IXC No. 18497 dated March 24, 1997.

Technologies Management provided the name and address of the last known contact for NET-tel. A letter from Commission staff to that contact dated November 15, 2001, requested information and issued a warning that the failure of NET-tel to respond prior to December 15, 2001, would result in the withdrawal of the certifications noted above. That letter also provided notice that NET-tel would be considered in

violation of New Hampshire Code of Administrative Rules Puc 411.05 and 1304.03(c). The latter requires Commission approval prior to a CLEC's cessation of operations and the former, along with Puc 1304.03(d), specify the conditions under which a public utility may discontinue operations. These rules demand that notice be sent to customers and adequate time be provided such that customers may make alternative service arrangements with other utilities and that any amounts owed to customers be refunded.

## **II. STAFF RECOMMENDATION**

Staff asserts that both the CTP and the CLEC certification held by NET-tel should be revoked. The Staff has attempted to contact the corporation by mail, telephone and the internet all without success. The Certificate of Authority to Transact Business in the State of New Hampshire issued by the Secretary of State to Evergreen Communications Corporation on February 6, 1997, has been dissolved by that Agency effective December 7, 2001. Furthermore, the company has failed to file any financial reports with this Commission.

Puc 411.05 and 1304.03(d) specify the conditions under which a public utility may cease operations. 411.05 governs the conditions for a CTP while 1304.03(d) deals with CLEC certifications. The former requires at least 14 days

notice to customers and refunds of any customer balances. As there appears to be no proof of whether or not these requirements were met, Staff recommends against imposition of any penalties.

Staff avers there is no indication that NET-tel ever operated as a CLEC in New Hampshire. Therefore, there appear to be no customers to be notified or provided refunds. Puc 1304.03(c) which requires notification of cessation by "a CLEC which has commenced operations," appears not have been violated either. Staff recommends against any further action.

Additionally, NHRSA 374:28 requires that the Commission determine that a cessation is in the public good. Staff notes that a competitive market may bring failure as it may bring success. Given that competition in the telecommunications marketplace is recognized as a public benefit then it follows that the departure of a competitor must also be in the overall public good. Staff recommends withdrawal of the company's right to do business under RSA 374:28.

### **III. COMMISSION ANALYSIS**

The Commission has concerns regarding the possible disregard of its Notification rule and believes the 14-day notice requirement of Puc 411.04(1) remains crucial to protect

the public interest in a competitive market. However, the Commission acknowledges that regrettable circumstances can develop with such rapidity that a sufficiently lengthy time frame for compliance simply may not be achievable. The possible failure of NET-tel to return to customers any amounts of money which may have been due to them is more problematic. Since no customer complaints have been lodged against the company with this Commission, and Staff has found no evidence that NET-tel ever operated as a CLEC in New Hampshire, it is reasonable to believe that either any amounts owing have been refunded or none existed. In this case, given the above evidence, we will invoke the provisions of RSA 374:28 and revoke the certifications of NET-tel Corporation.

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

**ORDERED**, that the CLEC certification of NET-tel Corporation granted in Order Nisi No. 23,499 is REVOKED; and it is

**FURTHER ORDERED**, that the intraLATA toll provider certification granted under IXC No. 18497 is REVOKED; and it is

**FURTHER ORDERED**, that NET-tel return any and all deposits, advanced payments or any other applicable funds owed, to their N.H. customers, forthwith.

By order of the Public Utilities Commission of New  
Hampshire this eleventh day of January, 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