

DT 00-132

ESSEX COMMUNICATIONS, INC. d/b/a eLEC COMMUNICATIONS

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

**Order Nisi Granting Authorization
and Denying in Part
a Requested Waiver of Commission Rules**

O R D E R N O. 23,725

June 8, 2001

On October 20, 2000, Essex Communications, Inc. d/b/a eLEC Communications (eLEC) 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 Petition includes a request for an exemption from the Commission's requirements for record keeping that provide for detail on a state-specific basis. On May 1, 2001, eLEC supplied additional information to their application.

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

We find that eLEC 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 in accord with the goals of the federal Telecommunications Act of 1996 (TAct). Because eLEC has satisfied the requirements of PUC 1304.01(a), we will grant the petition.

With respect to its request for an exemption from

Commission requirements for record keeping that provide detailed records on a state-specific basis, eLEC asserts that it maintains its financial records in conformance with Generally Accepted Accounting Principles (GAAP) rather than the Uniform System of Accounts (USOA). The USOA, eLEC points out, was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. According to eLEC, having to maintain records pertaining specifically to its New Hampshire local service operations would constitute a severe burden.

Staff recommends granting the requested record keeping waiver only in part. The pertinent rule, N.H. Admin. Rule Chapter PUC 1308.01(1)(d), requires all competitive local exchange carriers (CLECs) to file an annual report with the Commission that includes a statement of income specific to New Hampshire [PUC 1308.01(d)(1)] and a statement of revenues specific to New Hampshire [PUC 1308.01(d)(2)]. Staff recommends granting the requested waiver with regard to PUC 1308.01(d)(1) and all but one of the five subsections of 1308.01(d)(2). The Commission should deny the exemption for 1308.01(d)(2)b's requirement for an annual report of basic service revenue. RSA 363-A:2 requires that the Commission assess its expenses against all public utilities by a calculation involving the gross revenues of each New Hampshire utility. Without this information, the Commission will be unable to carry out this

statutory mandate. We agree with Staff's analysis and will deny the request in part and grant it in part as recommended by Staff.

As part of its petition, eLEC avers it will charge access rates no higher than by Verizon New Hampshire's present and future rates for intraLATA switched access. At any point eLEC seeks to exceed Verizon New Hampshire's access rates, it shall 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 and to carry out its responsibilities under RSA 378:17-a, III.

As new competitors enter the telecommunications market, New Hampshire's 603 area code encounters greater and greater demand. Accordingly, we will require that eLEC request and use numbers responsibly and conservatively, and invite eLEC to join in exploring alternative mechanisms to use existing numbers as efficiently as possible. In approving this petition, we require eLEC to comply with our orders on number conservation including Order No. 23,385 issued January 7, 2000 and Order No. 23,392 issued January 27, 2000 as well as any further orders regarding number resource optimization.

Based upon the foregoing, it is hereby

ORDERED NISI, that eLEC's petition for authority to

provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Verizon New Hampshire, is hereby GRANTED, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that the request for exemption of the state-specific reporting requirements of PUC 1308.01 is GRANTED IN PART AND DENIED IN PART for the reasons cited herein; and it is

FURTHER ORDERED, that no less than ten days prior to commencing service, eLEC 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 eLEC 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 June 15, 2001 and to be documented by affidavit filed with this office on or before June 22, 2001; 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 June 25, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be

effective July 5, 2001, unless 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 eighth day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary