

ST. PUBL. 2004-AUG

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 04A-213T

4:24

IN THE MATTER OF THE APPLICATION OF LECLINK, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FOR A LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES

**REVISED STIPULATION AND SETTLEMENT AGREEMENT**

This Revised Stipulation and Settlement Agreement (Stipulation) is entered into by and between Staff of the Colorado Public Utilities Commission (Staff) and LecLink, Inc. (LecLink) (Staff and LecLink collectively, Parties, and individually, Party).

**INTRODUCTION AND BACKGROUND**

1. LecLink is a Colorado corporation incorporated on April 21, 2004 and having its principal office in Boulder, Colorado. Robert P. Weaver is the President of LecLink.
2. On April 29, 2004 LecLink initiated this Docket by filing its Application for a Certificate of Public Convenience and Necessity (CPCN) to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services (Application).
3. Staff timely filed its Notice of Intervention in this matter on June 9, 2004. Staff is the only intervenor in this Docket.
4. The Parties now stipulate and agree that the Commission should approve the Application on the terms set forth in this Stipulation.

## TERMS OF STIPULATION AND SETTLEMENT

5. Pursuant to Section 40-15-503.5, C.R.S., LecLink shall maintain a surety bond (bond) for a period of three (3) years from the date LecLink first provides regulated telecommunications service to any customer under the CPCN approved in this Docket. Within three (3) days after LecLink first provides such telecommunications service, LecLink shall file with the Commission a verified statement, signed by an officer of LecLink, stating the date LecLink first provided regulated telecommunications service to any customer under its CPCN. LecLink shall file the bond with the Commission concurrently with its filing this verified statement. In addition to stating the date LecLink first provided regulated telecommunications service to any customer under its CPCN, the verified statement shall also identify the amount of the bond that has been issued and the term of the bond. LecLink shall attach proof of issuance, term, and the amount of the bond from the issuer to the verified statement. The beneficiary of the bond shall be the Colorado Public Utilities Commission.

6. Initially, the bond shall be in the amount of fifty thousand dollars (\$50,000), which will be the minimum amount required for the duration of the bond. The formula used to calculate the bond is attached to this Stipulation as Exhibit A and incorporated herein.

7. Within thirty (30) days of the date the number of LecLink's revenue producing lines<sup>1</sup> reaches one thousand (1,000) for the first time, LecLink shall recalculate the amount of the bond that will be required and shall file a report with the Commission that clearly shows the number of revenue producing lines and the recalculated amount of the bond that will be required,

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<sup>1</sup> The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed. In the event LecLink sells systems that serve multiple lines, the calculation of "revenue producing lines" or the equivalent shall be made pursuant to Federal Communication Commission Form 477, "Instructions for the Local Competition and Broadband Reporting Form."

using the same formula that was the basis for the initial amount of the bond, and which is attached as Exhibit A. Within thirty (30) days after the thirty-day report period has expired, an officer of LecLink shall file with the Commission a verified statement that the bond has been increased to the required amount and that identifies the new term of the bond. LecLink shall attach proof of issuance, term, and the amount of the bond from the issuer to the verified statement.

8. Beginning in 2004, LecLink shall file a report with the Commission no later than December 31 of each year that the bond is required. The report shall include the total number of revenue producing lines for the six (6) months preceding the date of the report, any change in the number of revenue producing lines for the six (6) months preceding the date of the report, the amount of the existing bond, and any recalculation of the amount of the bond that may be required.

9. By no later than August 31 of each year, an officer of LecLink shall file with the Commission a verified statement confirming that the bond has been issued for the required amount and include the new term of the bond. Proof of issuance, term, and the amount of the bond from the issuer shall be attached to the verified statement.

10. An increase in the amount of the bond will not be required unless the recalculation exceeds twenty percent (20%) of the amount of the existing bond.

11. The monies from the bond shall be disbursed as set forth in this paragraph.

Disbursement shall be made on a percentage basis, as set forth in Exhibit A. Disbursement of the bond shall be made as described below:

a. To funds mandated by the Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service.

b. To wholesale telecommunications provider(s), specifically for services provided to LecLink for which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if LecLink fails to do so due to LecLink's discontinuance of providing service, after verification of those costs by Staff.

c. Upon attestation by an officer of LecLink that all refunds owed to customers for payment for services not yet received has been rendered and the disbursement of the funds to all other parties has been completed, the Commission shall disburse to LecLink any remaining proceeds from the bond up to the amount of the refunds LecLink issued to customers.

d. For Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or the designated default provider if LecLink discontinues service and fails to mail notice to customers, as required by 4 CCR 723-25-7.4 through 8; any Commission-incurred costs associated with the transitioning of customers to another provider; and any Commission-incurred bankruptcy court costs.

12. At any time any portion of the bond is disbursed, LecLink shall obtain an addition to the current bond for the amount required based on the formula set forth in Exhibit A.

13. LecLink shall be considered in default of the bond in the following circumstances:

a. Untimely (*i.e.*, late by more than thirty (30) days) remittance or failure to remit payments to statutory funds (including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service); untimely remittance or failure to submit undisputed payments to wholesale providers; untimely payment or failure to pay any refunds, credits or deposits owed to customers; and

b. Untimely filing or failure to file Commission-required reports including, but not limited to: annual reports; line count report when the number of revenue-producing lines exceeds one thousand (1,000) for the first time; verified annual statements of line counts and bond amounts; verified statements of bond renewal or modification; and violation of any Commission rules.

14. Occurrence of any of the events described in Paragraph 13 above shall be cause for Staff to request that the Commission issue an order to show cause to determine if LecLink's bond is in default, if payment should be made to the beneficiary and disbursed as set forth in Paragraph 11 above, and whether the Commission should take action against LecLink's CPCN.

15. LecLink agrees that it will not discontinue service to customers for any reason unless it has filed an application with the Commission pursuant to 4 CCR 723-25-7 (Rule 7). For so long as LecLink is obligated to provide the bond, in the event that LecLink files an application pursuant to Rule 7, LecLink shall file with the Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by such discontinuance; (b) a customer list including the name, address and telephone number of each customer; (c) the amount of any refund due to each individual customer for payment of service not received by the

customer; and (d) the identity of all underlying providers supporting the goods and/or services affected by such discontinuance.

16. The issuer of the bond shall be rated "Secure" by A.M. Best Company, Inc.
17. LecLink expressly acknowledges that, in accordance with Section 40-5-105, C.R.S. (2004), as amended, it cannot sell, assign, or otherwise transfer its Colorado assets that are used in the provision of regulated telecommunications services, including, without limitation, Billing Account Numbers, customers, Interconnection Agreements, and its CPCN and/or its Letter of Registration, without first having obtained Commission approval.
18. LecLink shall notify Staff of its intent to enter into any marketing, customer service, or customer procurement agreements with any third party(ies) prior to entering into any such agreements, as follows: if the third party is an individual (*i.e.*, natural person) over whom LecLink exercises substantial oversight, LecLink shall provide seven (7) days notice; in all other circumstances LecLink shall provide thirty (30) days notice.
19. LecLink agrees to provide Staff a copy of its proposed bill format at least thirty (30) days prior to filing its initial tariff and accompanying advice letter. In the event LecLink files, on thirty (30) days notice, an advice letter and an initial tariff consistent with the rates, terms, and conditions of the tariff currently in effect for Colorado Teleserv, Inc., LecLink shall not be required to provide Staff a copy of its proposed bill format as required by this Paragraph.
20. LecLink shall file a report with the Commission in writing within ten (10) calendar days of any of the following events:
  - a. Assessment of civil penalties by any court or regulatory body;
  - b. Assessment of criminal penalties by any court or regulatory body;

- c. Injunctive relief awarded by any court or regulatory body;
  - d. Any corrective action taken by any court or regulatory body;
  - e. Any refund of more than one hundred dollars (\$100) in any individual case, or any refund of two hundred fifty dollars (\$250) or more to any class of customers awarded by any court or regulatory body;
  - f. Reparations to any party awarded by any court or regulatory body;
  - g. Initiation of a show cause proceeding by any court or regulatory body;
  - h. Initiation of disciplinary proceedings by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate a CPCN or offer any service;
  - i. Refusal to grant authority to operate or provide a service by any court or regulatory body;
  - j. Revocation of authority to operate or to provide a service by any court or regulatory body;
  - k. Voluntary surrender of any certificate or authority to operate in lieu of any action by a court or regulatory body; or
  - l. Any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings.
21. If LecLink fails to perform any of the obligations set forth in this Stipulation including, but not limited to, failing to obtain and maintain a bond according to the terms outlined in this Stipulation and failing to timely report to the Commission any events set forth in Paragraph 20 above, Staff shall consider LecLink to have breached this Stipulation. In that

event, Staff may request that the Commission issue an order to show cause to determine whether the Commission should take action against LecLink's CPCN.

### **GENERAL SETTLEMENT TERMS AND CONDITIONS**

22. This Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. Furthermore, this Stipulation does not constitute agreement, by any Party, that any principle or methodology contained within this Stipulation may be applied to any situation other than the above-captioned cases. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning the Stipulation, shall attach to any principle or methodology contained in the Stipulation.

23. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in these consolidated Dockets under a new procedural schedule. The withdrawing Party shall notify the Commission and the other Party to this Stipulation in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation (Notice). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation.



24. In the event this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding. Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise.

25. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable, and in the public interest. Each Party pledges its support of this Stipulation and urges the Commission to approve same, without modification.

26. Except as otherwise specifically agreed in this Stipulation, nothing contained herein shall be deemed as constituting either a settled practice or precedent for the purposes of any other proceeding, and by entering into this Stipulation, no Party shall be deemed to have agreed to any specific principles of ratemaking. The Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or to implement, this Stipulation or its terms and conditions. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

27. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement.

28. The Parties represent that the signatories to this Stipulation have full authority to bind their respective Parties to the terms of this Stipulation.

DATED this 9th day of August 2004.

**FOR LECLINK, INC.:**

By: Robert P. Weaver President  
Robert P. Weaver  
President, LecLink, Inc.  
1655 Walnut Street, Suite 120  
Boulder, Colorado 80302

Approved as to Form:

**FOR STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION:**

KEN SALAZAR  
Attorney General

By: \_\_\_\_\_  
John P. Trogonoski  
Rate/Financial Analyst IV  
  
Colorado Public Utilities Commission  
1580 Logan Street, OL-1  
Denver, Colorado 80203

By: \_\_\_\_\_  
John J. Roberts, 30124  
Assistant Attorney General  
Business and Licensing Section  
  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203

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DATED this 9th day of August 2004.

**FOR LECLINK, INC.:**

By: \_\_\_\_\_

Robert P. Weaver  
President, LecLink, Inc.  
1655 Walnut Street, Suite 120  
Boulder, Colorado 80302

**FOR STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION:**

By: \_\_\_\_\_

*John P. Trogonoski*  
John P. Trogonoski  
Rate/Financial Analyst IV

Colorado Public Utilities Commission  
1580 Logan Street, OL-1  
Denver, Colorado 80203

Approved as to Form:

KEN SALAZAR  
Attorney General

By: \_\_\_\_\_

*John J. Roberts*  
John J. Roberts, 30124  
Assistant Attorney General  
Business and Licensing Section

1525 Sherman Street, 5th Floor  
Denver, Colorado 80203

Exhibit A

Stipulation and Settlement Agreement  
Docket Number 04A-213T

Estimated Number of Customers:		500
Average Revenue per customer per month:	\$	25
Annual Jurisdictional Revenues	\$	150,000

Fixed Utilities Fund (FUF): 1.466% of Intrastate revenues

911 Fund: \$0.50 per line per month

Colorado High Cost Support Mechanism (CHCSM): 2% of revenues

Low Income Telephone Assistance Program (LITAP): \$.12 per line per month

Telecommunications Relay Service (TRS) Fund: \$.06 per line per month

PUC Administrative Costs - In the event CLEC does not perform customer transition obligations, calculated at \$1.62 per customer.

Customer deposits - assume 10% of retail customers will need to place a 2 month deposit of \$50

Prepayments - assume each customer prepays one month of service ((\$25 X 1) X 500 customers)

Supplier deposits of 2 months local (\$25 X 2) X 500 customers

		<u>% of Total</u>
FUF	2,199	4%
911 Fund	3,000	6%
CHCSM	3,000	6%
LITAP	720	1%
TRS Fund	360	1%
PUC Administrative Costs	810	2%
Customer deposits	2,500	5%
Customer Prepayments	12,500	25%
Supplier deposits	<u>25,000</u>	<u>50%</u>
Total Deposit/Bond Requirement	\$ 50,089	100%

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing REVISED STIPULATION AND SETTLEMENT AGREEMENT upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 13<sup>th</sup> day of August 2004, addressed as follows:

Robert P. Weaver  
LecLink, Inc.  
1655 Walnut Street, Suite 120  
Boulder, CO 80302

Ken Reif  
Office of Consumer Counsel  
1580 Logan Street, Suite 740  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

John Trogonoski  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

Rebecca Quintana  
Advisory Staff  
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