

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-515T

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING STIPULATION, GRANTING
AUTHORITIES, VACATING PREHEARING
CONFERENCE, AND CLOSING DOCKET**

Mailed Date: December 10, 2004

I. STATEMENT

1. On October 13, 2004, Northstar Telecom, Inc. (NTI or Applicant), filed a verified Application 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 (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Posting of Application Filed, dated October 14, 2004.

3. The Commission deemed the Application complete as of November 19, 2004.

4. On November 26, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing. This is the only intervention in this proceeding.¹

¹ NTI and Staff collectively are referred to as the Parties.

5. The undersigned Administrative Law Judge (ALJ) scheduled a prehearing conference in this matter. Decision No. R04-1397-I. Before the prehearing conference was held, the Parties submitted a Stipulation and Settlement Agreement (Stipulation) and made an oral motion to vacate the prehearing conference. The request was granted, and the prehearing conference was vacated by oral order. This Decision memorializes that order.

6. On December 3, 2004, Applicant and Staff filed the Stipulation that is the subject of this Decision.

7. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSION

8. NTI is a Nebraska corporation incorporated on July 2, 2004, and has its principal office in Arlington, Nebraska. Applicant is authorized to do business, and is in good standing, in Colorado.

9. NTI seeks a Certificate of Public Convenience and Necessity (CPCN) to provide basic local exchange telecommunications services in Colorado. *See* § 40-15-202, C.R.S.; Rule 4 *Code of Colorado Regulations* (CCR) 723-25-2.2. NTI also seeks a Letter of Registration (LOR) to provide emerging competitive telecommunications services in Colorado.² *See* § 40-15-301, C.R.S.; Rule 4 CCR 723-25-2.7. NTI does not seek a specific form of price regulation.

10. Because NTI is a newly-formed corporate entity, it has no financial statements; has no payment or other financial history, particularly with its probable wholesale provider

² Applicant seeks to provide the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, non-optional operator services, premium services, and switched access. Application at ¶ 8.

Qwest Corporation (Qwest); and filed few documents concerning its financial stability. Under these circumstances, therefore, NTI believes that a bonding requirement is reasonable and that the amount of the bond stated in the Stipulation is reasonable.

11. The Stipulation is a full settlement of the issues in this docket.

12. As one condition of obtaining and retaining the requested CPCN and LOR, Applicant agrees to maintain a surety bond for a period of three years from the date NTI first provides regulated telecommunications service in Colorado under its CPCN. *See* Stipulation at ¶ 6. There are provisions governing the initial and minimum amount of the surety bond (*i.e.*, \$50,000); the recalculation of the amount of the surety bond;³ the increase in the amount of the surety bond; the reports and verifications to be filed by Applicant concerning the surety bond; disbursement of the surety bond; and default and the procedures to be followed in the event of a default of the surety bond. *See generally id.* at ¶ 7 through and including ¶ 15.

13. Section 40-15-503.5(1), C.R.S., provides the basis for the bonding requirement. Pursuant to that statute and in the exercise of its discretion, the Commission may require a telecommunications provider to post a bond as a condition of obtaining Commission authority to provide regulated telecommunications services. The Commission has not promulgated regulations implementing this statutory provision.

14. Of necessity, because NTI does not yet have authority to provide telecommunications service, the amount of the surety bond is based on projections, not actual numbers.⁴ Those projections, however, are founded in calculations based on, *inter alia*, an estimated 500 customers; an estimated average revenue of \$25 per month per customer, which is

³ Each assumption stated in the formula found in Exhibit A to the Stipulation will be recalculated.

⁴ All assumptions are stated on Exhibit A to the Stipulation.

prepaid by every customer; an estimated number of retail customers who pay deposits; an estimated supplier deposit; and the current Commission-established payments into the statutory funds and programs enumerated in § 40-15-503.5(1)(c), C.R.S. The ALJ finds that the estimates used to establish the surety bond amount are reasonable.

15. The ALJ finds that, on the facts of this case, the surety bond provisions of the Stipulation, including the \$50,000 minimum bond amount,⁵ are reasonable and necessary.

16. First, NTI agreed to the surety bond as a condition of a CPCN and a LOR in this case. This agreement substantially reduces any concern that, in this case, the surety bond requirement will operate as a barrier to NTI's entry into the Colorado telecommunications market. Based on its agreement to the surety bond provisions, the ALJ finds that NTI has determined for itself that the surety bond is not a barrier to its entry into the local telecommunications market in Colorado.

17. Second, the record establishes that NTI is a newly-formed corporation with no financial history. It presented few financial records and little documentary evidence about its financial stability and financial viability. As a result, it is a reasonable precaution to have a time-limited and specific surety bond requirement in place to protect NTI's end-users, NTI's wholesale supplier of telecommunications service (*i.e.*, Qwest), and the Commission in the event of unforeseen difficulties in the future. Indeed, this protection or insurance against future events is the *raison d'être* of § 40-15-503.5, C.R.S.

18. Third and finally, the amount of the bond takes into account the factors enumerated in § 40-15-503.5(1), C.R.S. (*see* Stipulation at Exhibit A), and is calculated to assure

⁵ The surety bond will not be less than \$50,000 at any time.

that the bond is sufficient to cover amounts which NTI may owe to its wholesale supplier(s), its customers, and the enumerated statutory funds.

19. The Stipulation contains other reasonable and necessary provisions. Appendix A to this Decision.

20. Based on review of the Stipulation and of the verified Application and supporting documents, the ALJ finds that the Stipulation is just, is reasonable, and is in the public interest. The ALJ finds and concludes that the Stipulation should be, and will be, accepted.

21. Based on the record and in view of the provisions of the Stipulation, the ALJ finds and concludes that NTI possesses the requisite technical competence, managerial qualifications, and financial resources to provide the regulated telecommunications services which it seeks authority to provide.

22. Based on the record and in view of the provisions of the Stipulation, the ALJ finds that granting the Application, as conditioned by the Stipulation and this Order, is consistent with the legislative policy statements set out in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S., and with the purpose of § 40-15-503.5, C.R.S.

23. Based on the record, the ALJ finds that the present or future public convenience and necessity requires, or will require, the provision of basic local telecommunications services by NTI, so long as NTI provides those services in accordance with the provisions of the Stipulation and of this Decision.

24. The ALJ concludes that the Application should be granted, subject to the conditions contained in the Stipulation and in this Decision.

25. The ALJ concludes NTI should be granted a CPCN to provide basic local telecommunications services, so long as NTI provides those services in accordance with the provisions of the Stipulation and of this Decision.

26. The ALJ concludes that NTI should be granted a LOR to provide the emerging competitive telecommunications services identified in the Application, so long as NTI provides those services in accordance with the provisions of the Stipulation and this Decision.

27. The ALJ concludes that, in accordance with Commission policy and regulations, before NTI offers to provide local exchange telecommunications services and emerging competitive telecommunications services, NTI must have, as required, effective tariffs and price lists for its regulated telecommunications services on file with the Commission and must comply with all statutory and regulatory requirements and obligations applicable to telecommunications providers subject to the jurisdiction of the Commission.

28. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed on December 3, 2004, is accepted and approved without modification.

2. The Stipulation and Settlement Agreement filed on December 3, 2004, a copy of which is attached as Appendix A, is incorporated by reference into this Order as if fully set forth.

3. Northstar Telecom, Inc., is granted a Certificate of Public Convenience and Necessity to provide basic local exchange telecommunications services throughout the State of

Colorado, subject to the following condition: Northstar Telecom, Inc., must comply with the provisions of the Stipulation and Settlement Agreement and of this Order. A detailed description of the service territory of Northstar Telecom, Inc., shall be delineated in the local exchange maps filed with the tariff.

4. Northstar Telecom, Inc., is granted a Letter of Registration to provide, throughout the State of Colorado, emerging competitive telecommunications services, subject to the following condition: Northstar Telecom, Inc., must comply with the provisions of the Stipulation and Settlement Agreement and of this Decision. The Letter of Registration permits Northstar Telecom, Inc., to provide the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, non-optional operator services, premium services, and switched access.

5. Northstar Telecom, Inc., shall serve customers in its service territory on a non-discriminatory basis. "Service territory" shall be defined as that portion of Colorado included in the local exchange maps filed with the tariffs of Northstar Telecom, Inc.

6. Unless the Commission orders otherwise, Northstar Telecom, Inc., shall begin providing basic local exchange telecommunications service within three years of the date of issuance of a final Commission decision granting this Certificate of Public Convenience and Necessity.

7. Unless the Commission orders otherwise, Northstar Telecom, Inc., shall begin providing emerging competitive telecommunications services within three years of the date of issuance of a final Commission decision granting this Letter of Registration.

8. Before commencing operations under this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services, Northstar Telecom, Inc., shall

file an Advice Letter containing local exchange maps, local calling areas, and a proposed tariff to become effective on not less than 30 days' notice.

9. Before commencing operations under this Letter of Registration to provide emerging competitive telecommunications services, Northstar Telecom, Inc., shall file an Advice Letter containing local exchange maps, local calling areas, and a proposed tariff to become effective on not less than 30 days' notice.

10. If Northstar Telecom, Inc., fails to file an effective tariff within three years of the date of issuance of a final Commission decision in this docket, this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services shall be deemed null and void. For good cause shown, and if a proper request is filed within three years of the date of issuance of a final Commission decision in this docket, the Commission may grant Northstar Telecom, Inc., additional time within which to file a tariff.

11. If Northstar Telecom, Inc., fails to file an effective tariff within three years of the date of issuance of a final Commission decision in this docket, this Letter of Registration to provide emerging competitive telecommunications services shall be deemed null and void. For good cause shown, and if a proper request is filed within three years of the date of issuance of a final Commission decision in this docket, the Commission may grant Northstar Telecom, Inc., additional time within which to file a tariff.

12. Northstar Telecom, Inc., shall maintain its books of accounts and records using Generally Accepted Accounting Principles.

13. In accordance with the terms of the Stipulation and Settlement Agreement (*see* Appendix A), of the applicable statute, and of the applicable rules of the Commission, Northstar Telecom, Inc., shall contribute to the following: the Public Utilities Commission's Fixed

Utilities Fund, the Colorado High Cost Support Mechanism, the Telecommunications Relay Services for the Disabled Telephone Users Program, the Emergency Telephone Access Act Program (Low Income Fund), and other financial support mechanisms which the Commission may create in the future to implement §§ 40-15-502(4) and (5), C.R.S.

14. Northstar Telecom, Inc., shall comply with all terms of the Stipulation and Settlement Agreement and of this Decision.

15. The prehearing conference scheduled for December 7, 2004, is vacated.

16. Docket No. 04A-515T is closed.

17. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

18. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

19. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge