

Decision No. C03-1029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-105T

IN THE MATTER OF THE APPLICATION OF T3 COMMUNICATIONS LLC 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.

**DECISION REVERSING RECOMMENDED
DECISION AND GRANTING APPLICATION**

Mailed Date: September 11, 2003

Adopted Date: August 20, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of Decision No. R03-0878 (Recommended Decision) issued by the Administrative Law Judge (ALJ) on August 7, 2003. In that decision, the ALJ approved the Stipulation and Settlement Agreement (Stipulation) between Applicant T3 Communications, LLC (T3) and the Colorado Office of Consumer Counsel (OCC), and, subject to the provisions of the Stipulation, granted T3's Application for a Certificate of Public Convenience and Necessity (CPCN) to Provide Local Exchange Telecommunications Service and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services. We stayed the Recommended Decision to allow for Commission review of that decision, pursuant to the provisions of § 40-6-109(2), C.R.S. See Decision No. C03-0959 (Mailed Date of August 21, 2003). Now being duly advised, we reverse the Recommended Decision, reject the Stipulation between T3 and the OCC, and grant the

Application for a CPCN to provide local exchange service and for a Letter of Registration (LOR) to provide emerging competitive services.

B. Discussion

2. This docket concerns T3's Application for a CPCN to provide local exchange telecommunications service and for a LOR to provide the following emerging competitive telecommunications services throughout the state: advanced features, premium services, intraLATA toll, interLATA toll, switched access, jurisdictional private line services, and non-optional operator services. The OCC intervened in this case and requested a hearing, expressing concerns regarding T3's financial viability to conduct operations as a regulated telecommunications provider. We assigned this matter to the ALJ for further proceedings on the Application.

3. The OCC and T3 reached a settlement in this matter (the Stipulation) which resolved all issues concerning the Application. The Stipulation, in pertinent part, requires T3 to post a bond (or letter of credit) with the Commission in various amounts depending on the number of access lines served by T3. The initial amount of the bond would be \$25,000, increasing to \$50,000 when T3 serves more than 1,000 lines, and to \$75,000 upon T3 serving more than 2,500 lines. The bond would remain in effect for two years after T3 begins providing service to customers. According to the Stipulation, the purpose of the bond is: to ensure that T3 complies with all Commission rules, and Colorado and federal law relating to regulated telecommunications providers; to ensure T3 makes required payments into statutory funds such as the 9-1-1 Fund, the Colorado High Cost Support Mechanism, and the Low Income Telephone Assistance Fund; and to guarantee customer deposits, customer payments in advance for service,

and transition costs in the event of business failure. Payment would be made from the bond only upon Commission approval.

4. The ALJ conducted a hearing on the Stipulation and, in the Recommended Decision, approved it. The ALJ accepted the bonding provisions in the Stipulation based upon newly enacted § 40-15-503.5, C.R.S. That statute gives the Commission discretion to require regulated telecommunications providers to post a bond or other security as a condition of obtaining authority to provide regulated telecommunications services. Under the statute, the Commission is empowered to promulgate rules to implement its provisions; the Commission has not yet done so. The ALJ concluded that requiring T3 to post a bond pursuant to the Stipulation was appropriate given the fact that T3, as a newly formed entity, had no audited financial statement, no credit history, no customer deposits or prepayments, and no history of making the statutory payments required of regulated telecommunications providers.

5. We reverse the Recommended Decision. We are reluctant to impose a bonding requirement on T3 as a condition of approving its CPCN and LOR when we have neither rules nor a set policy on the imposition of bonds as allowed under § 40-15-503.5, C.R.S. We are disinclined to require T3 to post a bond based on speculation that there may be non-compliance with our rules in the future. We acknowledge that T3 has not provided evidence of credit history or an audited financial statement, but we note that we have granted many CPCNs to companies with similar financial circumstances. Further, there is no evidence that T3 has ever violated any statutory or regulatory requirements in the past. In our view, the bonding statute should be used sparingly because it erects a barrier to entry, and the Commission has been directed by the legislature to promote competition.

6. We note that T3 will be a reseller of local and emerging competitive services, not a facilities-based provider. This is important for two reasons: 1) a company does not need nearly as much upfront financial resources for resale as one does to build facilities; and 2) if T3 were to go out of business it is much easier to default the customers to the underlying carrier than if no underlying carrier exists.

7. Therefore, we find that granting T3's Application is consistent with the legislative policy statements contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S. Before providing local exchange and emerging competitive telecommunications services, T3 must: (a) have effective tariffs for its services on file with the Commission; and (b) comply with all statutory and regulatory requirements applicable to telecommunications providers subject to the jurisdiction of the Commission. 4 *Code of Colorado Regulations* 723-25-4.1.10.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Decision No. R03-0878 is reversed, and the Stipulation and Settlement Agreement between T3 Communications, LLC and the Colorado Office of Consumer Counsel is rejected.

2. T3 Communications, LLC is granted a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services throughout the State of Colorado. A detailed description of the applicant's service territory will be delineated in the local exchange maps filed with the tariff.

3. T3 Communications, LLC's local exchange telecommunications services will be regulated under the default regulatory scheme contained in 4 *Code of Colorado Regulations* (CCR) 723-38.

4. T3 Communications, LLC is granted a Letter of Registration to provide the following emerging competitive telecommunications services throughout the State of Colorado: advanced features, premium services, intraLATA toll, interLATA toll, switched access, and non-optional operator services.

5. T3 Communications, LLC's emerging competitive telecommunications services, with the exception of non-optional operator services, will be regulated under the default regulatory scheme contained in 4 CCR 723-38.

6. T3 Communications, LLC's non-optional operator services will be regulated under the default regulatory scheme contained in 4 CCR 723-18.

7. T3 Communications, LLC 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 provided with the applicant's tariffs. However, T3 Communications, LLC shall not be required to extend service to customers where the underlying facilities-based provider has no facilities.

8. Unless the Commission orders otherwise, T3 Communications, LLC shall begin providing local exchange and emerging competitive telecommunications services within three years after the grant of this Certificate of Public Convenience and Necessity. 4 CCR 723-25-6.

9. Before commencing operations under this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services and Letter of Registration to provide emerging competitive telecommunications services, T3 Communications, LLC 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. 4 CCR 723-1-41. T3 Communications, LLC may also file a separate price list with the proposed tariff.

10. If T3 Communications, LLC fails to file an effective tariff within three years from the Mailing Date of this Order, this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services and 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 Mailing Date of this Order, the Commission may grant T3 Communications, LLC additional time within which to file a tariff.

11. In accordance with the Commission's Rules of Practice and Procedure, T3 Communications, LLC will be required to maintain its books of accounts and records using Generally Accepted Accounting Principles. 4 CCR 723-1-25(c).

12. Consistent with terms and conditions established in previous Commission decisions, T3 Communications, LLC will be required to contribute to 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 that may be created in the future by the Commission to implement §§ 40-15-502(4) and (5), C.R.S.

13. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 20, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners