

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-081T

IN THE MATTER OF THE APPLICATION OF ESODUS COMMUNICATIONS, INC. D/B/A INSTATONE 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.

ORDER GRANTING APPLICATION

Mailed Date: April 2, 2004
Adopted Date: March 31, 2004

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. On February 26, 2004, Esodus Communications, Inc. (Esodus), filed an application 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 throughout the State of Colorado. 4 *Code of Colorado Regulations* (CCR) 723-25-4.

2. Notice of the application was posted on the Commission's web site on February 27, 2004. Interventions were due on or before March 18, 2004. None were filed.

3. On March 10, 2004, Esodus supplemented the original application and filed responses to Staff of the Commission's questions. This information completed the application.

B. Discussion

4. The application is unopposed and may be considered without a hearing. § 40-6-109(5), C.R.S.

5. Granting the application of Esodus is consistent with the legislative policy statements contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

6. Before providing local exchange and emerging competitive telecommunications services, Esodus must: (1) have effective tariffs for its services on file with the Commission; and (2) comply with all statutory and regulatory requirements applicable to telecommunications providers subject to the jurisdiction of the Commission. 4 CCR 723-25-4.1.10.

II. ORDER

A. The Commission Orders That:

1. Esodus's application is deemed complete.
2. Esodus 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. Esodus's local exchange telecommunications services will be regulated under the default regulatory scheme contained in 4 CCR 723-38.
4. Esodus 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 jurisdictional private line services.
5. Esodus's emerging competitive telecommunications services will be regulated under the default regulatory scheme contained in 4 CCR 723-38.

6. Esodus 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, Esodus shall not be required to extend service to customers where the underlying facilities-based provider has no facilities.

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

8. 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, Esodus 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. Esodus may also file a separate price list with the proposed tariff.

9. If Esodus 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 Esodus additional time within which to file a tariff.

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

11. Consistent with terms and conditions established in previous Commission decisions, Esodus 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.

12. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 31, 2004**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners