

Decision No. R04-0001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-126T

IN THE MATTER OF THE APPLICATION OF 1-800-RECONEX, INC., D/B/A USTEL, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
MODIFYING STIPULATION,
ACCEPTING STIPULATION AS
MODIFIED, AND CLOSING DOCKET**

Mailed Date: January 2, 2004

I. STATEMENT

1. On March 31, 2003, 1-800-RECONEX, Inc., doing business as USTel (Applicant or RECONEX), filed its Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Service and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services (Application). The filing commenced this docket.

2. The Commission issued its Notice of Application Filed (Notice) on April 1, 2003. The Notice contained a procedural schedule, established an intervention period, and did not set a hearing date in this proceeding.

3. On April 22, 2003, the Colorado Office of Consumer Counsel (OCC) filed an intervention of right and request for hearing.

4. On May 15, 2003, Staff of the Commission (Staff) filed an intervention, a request for hearing, and a notice pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-9(d) and Rule 4 CCR 723-1-24(a)(1).

5. On May 16, 2003, by Decision No. R03-0527-I, the undersigned Administrative Law Judge (ALJ) vacated the procedural schedule and scheduled a prehearing conference. The ALJ later rescheduled the prehearing conference at the request of Applicant. *See* Decision No. R03-0566-I.

6. The ALJ held a prehearing conference as scheduled on June 9, 2003, following which she issued Decision No. R03-0639-I. This order established a procedural schedule and hearing dates.

7. On July 2, 2003, Applicant filed the Direct Testimony and Exhibits of William E. Braun.

8. On August 15, 2003, Staff filed the Answer Testimony and Exhibits of Roxanne Nielsen. On that same date, OCC filed the Answer Testimony and Exhibits of Patricia A. Parker.

9. On August 4, 2003, Applicant filed a Motion to Vacate Procedural Schedule. Included in that motion was Applicant's waiver of the applicability of § 40-6-109.5, C.R.S., to this proceeding.¹ In view of RECONEX's waiver of the statutory time frames, the motion was granted. *See* Decision No. R03-0996-I. A new hearing date of December 17, 2003, was established by Decision No. R03-1191-I.

10. On October 3, 2003, Applicant filed the Rebuttal Testimony of William E. Braun.

¹ The Commission had deemed the Application complete as of May 6, 2003.

11. On December 11, 2003, RECONEX, OCC, and Staff filed a Joint Motion to Accept Stipulation and Settlement Agreement and Vacate Hearing. The Stipulation and Settlement Agreement (Stipulation), signed by Applicant, OCC, and Staff, accompanied that motion. The Stipulation has two exhibits, which are incorporated into the Stipulation by reference. Exhibit A shows the formula used to calculate the amount for the surety bond required to be maintained by RECONEX. Exhibit B is the bill format which RECONEX will use for its Colorado customers.

12. On December 15, 2003, by Decision No. R03-1406-I, the ALJ vacated the hearing scheduled for December 17, 2003.

II. FINDINGS AND CONCLUSION

13. 1-800-RECONEX, Inc., is an Oregon corporation which does business as USTel. RECONEX is authorized to do business in, and is a corporation in good standing in, Colorado.

14. In the Application, RECONEX seeks a Certificate of Public Convenience and Necessity (CPCN) to provide basic local exchange telecommunications services. *See* § 40-15-202, C.R.S.; Rule 4 CCR 723-25-2.2. RECONEX also seeks a Letter of Registration (LOR) to provide specifically-listed emerging competitive telecommunications services in Colorado.² *See* § 40-15-301, C.R.S.; Rule 4 CCR 723-25-2.7.

15. RECONEX does not seek a specific form of price regulation in this proceeding.

² The Application identifies the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, nonoptional operator services, premium services, and switched access. These competitive telecommunications services are listed in § 40-15-301, C.R.S.

16. Both OCC and Staff initially opposed granting the Application. The prefiled answer testimony explained the bases for OCC's concerns and for Staff's concerns about the Application. The answer testimony also explained, from the filing party's perspective, the conditions which the Commission should require in the event the Application were to be granted. Those provisions and safeguards are found in the Stipulation. The information provided in the Rebuttal Testimony of Mr. Braun also served as a basis for the Stipulation. *See* Stipulation at 2.

17. As a 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 of the Commission decision accepting the Stipulation. *See* Stipulation at ¶ II.1. There are provisions governing the initial and minimum amount of the surety bond (*i.e.*, \$50,000); recalculation of the amount of the surety bond; increase in the amount of the surety bond; reports and verifications to be filed by Applicant with the Commission concerning the surety bond; disbursement of the surety bond; and procedures to be followed in the event of a default of the surety bond. *See generally* Stipulation at ¶¶ II.1 through and including II.11.

18. The bonding provisions are based on § 40-15-503.5, C.R.S. Pursuant to that statute, the Commission, in the exercise of its discretion, may require a telecommunications provider to post a bond or other security as a condition of obtaining authority to provide regulated telecommunications services. The Commission has not promulgated regulations implementing this statutory provision.

19. The ALJ finds that, on the facts of this case, the surety bond provisions of the Stipulation are reasonable and necessary. First, RECONEX agreed to the surety bond as a condition of a CPCN and a LOR in this case. This agreement negates, or at least should reduce

substantially, concern that a surety bond requirement represents a barrier to entry in this case. Based on its agreement to the surety bond provisions, it appears that Applicant has determined for itself that the surety bond does not represent a barrier to its entry into the local telecommunications market in Colorado. Second, the record demonstrates that RECONEX appears to have had compliance difficulties in other jurisdictions. It is a reasonable precaution, therefore, to have a time-limited and specific surety bond requirement in place to protect end-users, suppliers, and the Commission in the event of unforeseen difficulties in the future. Third and finally, RECONEX seeks to provide telecommunications service in Colorado as a facilities-based provider. Given the need for RECONEX to have the upfront financial resources to operate as a facilities-based provider and the absence of an underlying carrier,³ a surety bond is a reasonable requirement. It will assist in the event it becomes necessary to default RECONEX customers to another carrier.

20. RECONEX agrees “not [to] discontinue service to customers [in Colorado] for any reason unless it has filed an application with the Commission pursuant to 4 CCR 723-1-57.” *See* Stipulation at ¶ II.10. Rule 4 CCR 723-1-57 by its terms does not apply to providers of telecommunications services. Rule 4 CCR 723-25-7 is the rule which governs discontinuance or curtailment of telecommunications services. Rule 4 CCR 723-25-7 contains specific requirements which the Commission deems necessary to assure that a provider’s discontinuance or curtailment of telecommunications does not disrupt customers and proceeds in as orderly a fashion as possible.

21. Because Rule 4 CCR 723-1-57 and the Stipulation, taken together, do not duplicate the requirements and customer protections found in Rule 4 CCR 723-25-7, the ALJ

³ The Commission recognized this distinction in Decision No. C03-1029 at ¶ 6.

will not accept Stipulation ¶ II.10 as written. To make available to the customers of RECONEX the same protections available to customers of other providers of regulated telecommunications services in Colorado, the ALJ will modify the Stipulation by striking the language in ¶ II.10 of the Stipulation and replacing it with the following language:

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

22. RECONEX agrees to use a bill format similar to the bill format contained in Exhibit B to the Stipulation. *See* Stipulation at ¶ II.13.

23. The Stipulation contains other reasonable and necessary provisions. *See* Appendix A to this Decision.

24. As modified, the Stipulation is clear; is just; is reasonable; and is in the public interest. The ALJ finds and concludes that the Stipulation, as modified, will be accepted.

25. In view of the provisions of the Stipulation (as modified) and based on the record, the ALJ finds and concludes that RECONEX possesses the requisite technical competence, managerial qualifications, and financial resources to provide the regulated telecommunications services which it seeks authority to provide.

26. Based on the record and in view of the provisions of the Stipulation (as modified), the ALJ finds that granting the Application is consistent with the legislative policy statements contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

27. The ALJ finds that the present or future public convenience and necessity requires, or will require, the provision of basic local telecommunications services by RECONEX, so long as RECONEX provides those services in accordance with the provisions of the Stipulation, as modified, and of this Decision.

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

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

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

31. Before RECONEX offers to provide local exchange telecommunications services and emerging competitive telecommunications services, RECONEX: (a) must have effective tariffs for its regulated telecommunications services on file with the Commission; and (b) must comply with all statutory and regulatory requirements applicable to telecommunications providers subject to the jurisdiction of the Commission.

32. 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 Joint Motion to Accept Stipulation and Settlement Agreement is granted, subject to the modification of ¶ II.10 of the Stipulation and Settlement Agreement. \

2. The language of ¶ II.10 of the Stipulation and Settlement Agreement is stricken in its entirety and replaced with the following language:

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

3. As modified, the Stipulation and Settlement Agreement is accepted.

4. Except for paragraph II.10, the Stipulation and Settlement Agreement (including its two Exhibits), a copy of which is attached to this Decision as Appendix A, is incorporated by reference into this Order as if fully set forth.

5. Applicant 1-800-RECONEX, Inc., doing business as USTel, 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: 1-800-RECONEX, Inc., doing business as USTel, must comply with the provisions of

the Stipulation and Settlement Agreement, as modified, and this Decision. A detailed description of the service territory of 1-800-RECONEX, Inc., doing business as USTel, will be delineated in the local exchange maps filed with the tariff.

6. Applicant 1-800-RECONEX, Inc., doing business as USTel, is granted a Letter of Registration to provide specified emerging competitive telecommunications services throughout the State of Colorado, subject to the following condition: 1-800-RECONEX, Inc., doing business as USTel, must comply with the provisions of the Stipulation and Settlement Agreement, as modified, and this Decision. The Letter of Registration permits 1-800-RECONEX, Inc., doing business as USTel, to provide the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, nonoptional operator services, premium services, and switched access.

7. Applicant 1-800-RECONEX, Inc., doing business as USTel, 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 tariffs of 1-800-RECONEX, Inc., doing business as USTel.

8. Unless the Commission orders otherwise, 1-800-RECONEX, Inc., doing business as USTel, 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.

9. Unless the Commission orders otherwise, 1-800-RECONEX, Inc., doing business as USTel, 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.

10. Before commencing operations under this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services, 1-800-RECONEX, Inc., doing business as USTel, 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.

11. Before commencing operations under this Letter of Registration to provide emerging competitive telecommunications services, 1-800-RECONEX, Inc., doing business as USTel, 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.

12. If 1-800-RECONEX, Inc., doing business as USTel, 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 1-800-RECONEX, Inc., doing business as USTel, additional time within which to file a tariff.

13. If 1-800-RECONEX, Inc., doing business as USTel, 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 1-800-RECONEX, Inc., doing business as USTel, additional time within which to file a tariff.

14. 1-800-RECONEX, Inc., doing business as USTel, will be required to maintain its books of accounts and records using Generally Accepted Accounting Principles.

15. 1-800-RECONEX, Inc., doing business as USTel, will be required to 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.

16. The parties shall comply with all terms of the Stipulation and Settlement Agreement, as modified.

17. Docket No. 03A-126T is closed.

18. 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.

19. 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.

20. 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