

Decision No. R04-0962

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-213T

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING REVISED STIPULATION, GRANTING
AUTHORITIES, GRANTING JOINT MOTION,
WAIVING RESPONSE TIME TO THE
JOINT MOTION, AND CLOSING DOCKET**

Mailed Date: August 13, 2004

Appearances:

Robert Weaver, President of LecLink, Inc., on behalf of Applicant
LecLink, Inc.; and

John J. Roberts, Esq., Assistant Attorney General, for Intervenor
Staff of the Colorado Public Utilities Commission.

I. STATEMENT

1. On April 29, 2004, LecLink, Inc. (LecLink or Applicant), filed an 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 April 30, 2004. Staff of the Commission (Staff) timely intervened, and is the only intervenor in this proceeding.¹

3. The undersigned Administrative Law Judge (ALJ) held a prehearing conference on July 6, 2004, after which she established a procedural schedule and scheduled a hearing for October 5, 2004. *See* Decision No. R04-0745-I, as modified by Decision No. R04-0792-I.

4. On July 20, 2004, Applicant and Staff filed a Joint Motion to Approve Stipulation and Settlement Agreement, Vacate Remaining Procedural Schedule, Waive Response Time, and Close Docket. A Stipulation and Settlement Agreement (Stipulation) accompanied that filing. The ALJ granted that motion insofar as it requested that the Commission vacate the remaining procedural schedule, including the hearing scheduled for October 5, 2004. *See* Decision No. R04-0842-I. In that Order the ALJ also scheduled a hearing on the Stipulation and requested that the Parties be prepared to respond to the issues identified in the Order.

5. On August 6, 2004, the ALJ held a hearing on the Stipulation. Both Parties were present and participated. The ALJ heard the testimony of Mr. Robert Weaver, President of LecLink, and of Mr. John Trogonoski, a Rate Financial Analyst in the Commission's Telecommunications Unit. Hearing Exhibits No. 1 (the Stipulation) and No. 2 (an amendment to the Stipulation) were marked, identified, and admitted into evidence.

6. At the conclusion of the hearing, the ALJ took this matter under advisement.

7. On August 9, 2004, the Parties filed a Joint Motion to Approve Revised Stipulation and Settlement Agreement, Waive Response Time, and Close Docket. With this filing the Parties submitted a Revised Stipulation and Settlement Agreement (Revised

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

Stipulation).² The Joint Motion to Waive Response Time to the Joint Motion to Approve Revised Stipulation and Settlement Agreement will be granted. In this Recommended Decision the ALJ will refer to and will consider whether to approve and to adopt the Revised Stipulation.

8. 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

9. LecLink is a Colorado corporation formed on April 21, 2004, and is in good standing in Colorado. LecLink is wholly-owned by ionSKY, Inc., a Colorado Wireless Internet Services Provider.

10. LecLink 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 *Code of Colorado Regulations* (CCR) 723-25-2.2. LecLink also seeks a Letter of Registration (LOR) to provide emerging competitive telecommunications services in Colorado.³ *See* § 40-15-301, C.R.S.; Rule 4 CCR 723-25-2.7. LecLink does not seek a specific form of price regulation in this proceeding.

11. Because LecLink is a newly-formed corporate entity, it has no financial statements; has no payment or other financial history, particularly with its probable wholesale provider Qwest Corporation (Qwest); and presented no evidence of its financial stability. Under

² The Revised Stipulation contains a slightly amended ¶ 19 and has incorporated the amendment (Hearing Exhibit No. 2) offered at hearing.

³ Applicant seeks to provide the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, non-optional operator services, and premium services. It does not seek to provide switched access. *See* Application at ¶ 8.

these circumstances, therefore, LecLink believes that a bonding requirement is reasonable and that the amount of the bond stated in the Revised Stipulation is reasonable.

12. LecLink was formed for the purpose of acquiring shares of Colorado Teleserv, Inc., a Competitive Local Exchange Carrier (CLEC) which has an existing CPCN in Colorado, an existing Interconnection Agreement with Qwest, and an existing customer base. Although he was uncertain about the exact date on which the transaction might be completed, LecLink witness Weaver testified that LecLink intends to go forward with its deal with Colorado Teleserv, Inc., and (if possible) to acquire some or all of the customers of Colorado Teleserv, Inc.⁴

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

14. 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 of the Commission decision accepting the Revised Stipulation. *See* Revised 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;⁵ the increase in the amount of the surety bond; the reports and verifications to be filed by Applicant with the Commission concerning the surety bond; the disbursement of the surety bond; and the procedures to be followed in the event of a default of the surety bond. *See generally id.* at ¶ 6 through and including ¶ 16.

⁴ Colorado Teleserv, Inc., has an Application to Discontinue or to Curtail Service in Colorado pending before the Commission. *See* Docket No. 04A-359AT.

⁵ Each assumption stated in the formula found in Exhibit A to the Revised Stipulation will be recalculated.

15. Section 40-15-503.5(1), C.R.S.,⁶ provides the basis for the bonding (or surety) 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.

16. Of necessity, because LecLink does not yet have authority to provide telecommunications service, the amount of the surety bond is based on projections, not actual numbers.⁷ 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 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 the estimates used to establish the surety bond amount are supported by the record and are reasonable.

⁶ Section 40-15-503.5(1), C.R.S., provides, in pertinent part:

The commission may require regulated telecommunications service providers to post a bond or provide other security as a condition of obtaining a [CPCN, LOR], or operating authority[.] In setting the amount of the bond or security, the commission may consider the following criteria:

(a) The financial viability of the service provider, as evidenced by its audited financial statements and its general credit history;

(b) The total amount of deposits made by customers to the provider to obtain service and the aggregate amount of prepayments made by customers for monthly regulated service; and

(c) The history of the provider's statutory payment obligations, including those to the Colorado high-cost support mechanism, the Colorado telephone low-income assistance program, the Colorado telephone relay system, and the Colorado fixed utility fund.

⁷ All assumptions are stated on Exhibit A to the Revised Stipulation.

17. The ALJ finds that, on the facts of this case, the surety bond provisions of the Revised Stipulation, including the \$50,000 minimum bond amount,⁸ are reasonable and necessary.

18. First, LecLink 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 LecLink's entry as a CLEC into the telecommunications market. Based on its agreement to the surety bond provisions and the testimony of LecLink witness Weaver, the ALJ finds that LecLink has determined for itself that the surety bond is not a barrier to its entry into the local telecommunications market in Colorado.

19. Second, the record establishes that LecLink is a newly-formed corporation with no financial history. It presented no financial records, and no documentary evidence about its financial stability and financial viability. Based on the record in this proceeding, it is a reasonable precaution to have a time-limited and specific surety bond requirement in place to protect LecLink's end-users, wholesale supplier of telecommunications service to LecLink (*i.e.*, Qwest), and the Commission in the event of unforeseen difficulties in the future.⁹

20. Third and finally, as discussed above, the amount of the bond takes into account the factors enumerated in § 40-15-503.5(1), C.R.S. (*see* Revised Stipulation at Exhibit A), and is calculated to assure that the bond is sufficient to cover amounts which LecLink may owe to its wholesale supplier(s), its customers, and the enumerated statutory funds.

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

⁸ The surety bond will not be less than \$50,000 at any time.

⁹ This protection or insurance against future events is the *raison d'être* of § 40-15-503.5, C.R.S.

22. The testimony and exhibits presented during the hearing in this matter answered the questions asked, and the issues raised, in Decision No. R04-0842-I. The ALJ is satisfied with the information provided and finds that the record addresses the issues raised. As a result, the ALJ finds that there is no need to modify the Revised Stipulation.

23. Based on the testimony provided during the hearing and on her review of the Revised Stipulation, the ALJ finds that the Revised Stipulation is just, is reasonable, and is in the public interest. The ALJ finds and concludes that the Revised Stipulation should be, and will be, accepted.

24. In view of the provisions of the Revised Stipulation and based on the record, the ALJ finds and concludes that LecLink possesses the requisite technical competence, managerial qualifications, and financial resources to provide the regulated telecommunications services which it seeks authority to provide.

25. Based on the record and in view of the provisions of the Revised Stipulation, the ALJ finds that granting the Application, as conditioned by the Revised 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.

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

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

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

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

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

31. 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 Approve Revised Stipulation and Settlement Agreement is granted.

2. The Revised Stipulation and Settlement Agreement filed on August 9, 2004, is accepted and approved without modification.

3. The Revised Stipulation and Settlement Agreement filed on August 9, 2004, a copy of which is attached hereto as Appendix A, is incorporated by reference into this Order as if fully set forth.

4. LecLink, 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: LecLink, Inc., must comply with the provisions of the Revised Stipulation and Settlement Agreement and of this Decision. A detailed description of the service territory of LecLink, Inc., shall be delineated in the local exchange maps filed with the tariff.

5. LecLink, Inc., is granted a Letter of Registration to provide specified emerging competitive telecommunications services throughout the State of Colorado, subject to the following condition: LecLink, Inc., must comply with the provisions of the Revised Stipulation and Settlement Agreement and of this Decision. The Letter of Registration permits LecLink, Inc., to provide the following emerging competitive telecommunications services: advanced features, interLATA toll, intraLATA toll, jurisdictional private line services, non-optional operator services, and premium services. This Letter of Registration does not include authority for LecLink, Inc., to provide switched access services.

6. LecLink, 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 LecLink, Inc.

7. Unless the Commission orders otherwise, LecLink, 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.

8. Unless the Commission orders otherwise, LecLink, 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.

9. Before commencing operations under this Certificate of Public Convenience and Necessity to provide local exchange telecommunications services, LecLink, 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. Before commencing operations under this Letter of Registration to provide emerging competitive telecommunications services, LecLink, 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.

11. If LecLink, 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 LecLink, Inc., additional time within which to file a tariff.

12. If LecLink, 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 LecLink, Inc., additional time within which to file a tariff.

13. LecLink, Inc., shall maintain its books of accounts and records using Generally Accepted Accounting Principles.

14. In accordance with the terms of the Revised Stipulation and Settlement Agreement (*see* Appendix A) and with the applicable rules of the Commission, LecLink, 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.

15. LecLink, Inc., shall comply with all terms of the Revised Stipulation and Settlement Agreement and of this Decision.

16. The Joint Motion to Waive Response Time to the Joint Motion to Approve Revised Stipulation and Settlement Agreement is granted.

17. Response time to the Joint Motion to Approve Revised Stipulation and Settlement Agreement is waived.

18. Docket No. 04A-213T is closed.

19. 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.

20. 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.

21. 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