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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 982

In the Matter of the Application of NEHALEM)	
TELEPHONE & TELEGRAPH COMPANY)	
for a Certificate of Authority to Provide)	ORDER
Telecommunications Service in Oregon and)	
Classification as a Competitive Provider.)	
)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On September 13, 2001, NEHALEM TELEPHONE & TELEGRAPH COMPANY (Applicant) filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. Applicant seeks to provide interexchange telecommunications service statewide in Oregon.

Applicant proposes to provide interexchange switched telecommunications service (i.e., long distance toll) statewide in Oregon. Applicant will operate strictly as a reseller of interexchange service. Applicant will not construct its own lines or transport facilities and will not purchase unbundled network elements (building blocks) from other carriers. Applicant may purchase interexchange telecommunications service for resale only from carriers certified in Oregon. Applicant did not request authority to provide non-switched, private line service (dedicated transmission service).

Operator services are part of switched telecommunications service. Applicant will not directly provide operator services as defined in OAR 860-032-0001. Applicant will be an "operator service provider" as defined in ORS 759.690(1)(d). A statement of compliance with Commission rules and with state law, including ORS 759.690 and OAR 860-032-0007 (regarding operator services), was included in the application.

Applicant, NEHALEM TELEPHONE & TELEGRAPH COMPANY, is a small telecommunications utility and is an incumbent local exchange carrier (LEC), which has a certificate of authority to serve the Nehalem telephone exchange. *See* Order No. 86-1192, docket UM 67, dated November 24, 1986. In the application before us Applicant seeks authority to provide interexchange telecommunications service statewide in Oregon. Statewide service includes the Nehalem telephone exchange, where Applicant is the incumbent LEC.

On June 30, 1999, the FCC released the Second Order on Reconsideration and Memorandum Opinion and Order, CC Docket No. 96-149 and CC Docket No. 96-61 (the Order). In the Order the FCC adopted rules pertaining to in-region, interstate toll service provided by independent incumbent LECs, such as NEHALEM TELEPHONE & TELEGRAPH COMPANY. Those rules have been codified as 47 C.F.R. §64.1901 through §64.1903. In this proceeding, the Nehalem telephone exchange is Applicant's region. The FCC requires incumbent LECs, which provide in-region, interstate telecommunications service, to do so through a separate subsidiary and to use separate books of account. If the incumbent LEC provides such service strictly on a resale basis, then the incumbent may use a separate division, but must still use separate books of account.

By a letter filed November 20, 2001, Applicant stated that it would provide the in-region, interexchange service using a separate division of NEHALEM TELEPHONE & TELEGRAPH COMPANY. Applicant also stated that it would comply with applicable FCC rules requiring separate books of account for in-region interexchange service. The Commission accepts these commitments by Applicant and interprets them to specifically include a commitment to adhere to FCC rules 47 C.F.R. §64.1901 through §64.1903. Adherence to applicable FCC rules, as well as to state laws, Oregon Commission rules and orders is a condition of this certificate of authority.

The Commission served notice of the application on the Commission's telecommunications mailing list on October 12, 2001. The Commission did not receive any protests or requests to be made parties of the proceeding.

On November 9, 2001, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for processing this docket. The ALJ set a procedural schedule. On November 29, 2001, the Commission Staff (Staff) distributed a proposed order for review by the parties. No exceptions to the proposed order were filed.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Applications to provide telecommunications service and for classification as a competitive telecommunications services provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation * * * shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

* * * * *

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. * * * For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the certificate holder fails to comply with the terms and conditions of the certificate.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. AT&T, WorldCom, Sprint Communications, Qwest

Corporation (Qwest), Verizon Northwest Inc. (Verizon), and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Applicant has met the requirements for a certificate to provide telecommunications service as a competitive provider. Based on a review of the information contained in the application, the Commission concludes that it is in the public interest to grant the application of NEHALEM TELEPHONE & TELEGRAPH COMPANY to provide interexchange switched (toll) telecommunications service statewide in Oregon, as described in the application.

Conditions of the Certificate

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to the following: OAR 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0045, 860-032-0060, 860-032-0090, and 860-032-0095. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon.

Applicant shall comply with the following conditions:

1. Applicant shall not take any action that impairs the ability of other certified telecommunications utilities, competitive providers, or cooperative corporations to meet service standards specified by the Commission.
2. Applicant shall comply with universal service requirements as determined by the Commission.
3. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.
4. Applicant shall comply with all conditions listed in the application, applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon.
5. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310, 756.320, and 756.350 and OAR 860-032-0008, 860-032-0080, 860-032-0090, and

860-032-0095. By November 1, of each year, the Commission will set the fee level that is to be based on gross retail intrastate revenues for the following calendar year. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.

By the letter filed November 20, 2001, Applicant, NEHALEM TELEPHONE & TELEGRAPH COMPANY, stated it would comply with applicable FCC rules regarding separate books of account. Applicable rules include the FCC rules in 47 C.F.R §64.1901 through §64.1903. Applicant will provide interexchange telecommunications service through a separate corporate division and use separate books of account. This Commission recognizes that the FCC rules pertain to interstate telecommunications service. We also recognize that our jurisdiction is limited to intrastate service. However, as a practical business reality, Applicant, like most interexchange carriers, will provide both interstate and intrastate interexchange service using the same business operation, personnel, and facilities. This is so because customers make both intrastate and interstate calls. Therefore, the following are also conditions of this certificate of authority:

6. For interexchange telecommunications service Applicant shall operate strictly as a reseller of other certified carriers' interexchange interstate and intrastate service.
7. Applicant shall provide interexchange interstate and intrastate telecommunications service subject to and in compliance with FCC rules in 47 C.F.R. §64.1901 through §64.1903, as adopted by the FCC in the Second Order on Reconsideration and Memorandum Opinion and Order, CC Docket No. 96-149 and CC Docket No. 96-61, released on June 30, 1999.
8. In recognition that Applicant is the incumbent local exchange carrier in the Nehalem exchange, and the potential for NEHALEM TELEPHONE & TELEGRAPH COMPANY to favor itself over other competitive providers of interexchange service, Applicant shall comply with the following conditions. Applicant shall not have arrangements or practices that discriminate in favor of itself, or provide preferential treatment for itself, over other competitive interexchange carriers in regards to rates, terms or conditions for:
 - a. The provision of access to NEHALEM TELEPHONE & TELEGRAPH COMPANY'S local exchange network;
 - b. The provision of customer billing, collection, verification and credit card information, and related services; and
 - c. The provision of other products and services such as shared or joint use of facilities and equipment, customer dialing codes,

maintenance, testing and repair services, market promotions and advertised services, network information, and customer and market information.

These conditions will allow the Commission to readily detect and resolve any competitive issues that may arise with applicant's provision of interexchange toll services in its Nehalem telephone exchange.

ORDER

IT IS ORDERED that:

1. The application of NEHALEM TELEPHONE & TELEGRAPH COMPANY to provide interexchange switched (toll) service, as described in the application, is in the public interest and is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. Pursuant to ORS 759.050(2)(c), Applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.

Made, entered, and effective _____.

Phil Nyegaard
Acting Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.