

ORDER NO. 03-547

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1173

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| In the Matter of |) | |
| |) | |
| NEHALEM BROADBAND LLC |) | ORDER |
| |) | |
| Application for a Certificate of Authority to |) | |
| Provide 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 July 31, 2003, Nehalem Broadband LLC, (Applicant) filed an application for certification to provide telecommunications service in Oregon as a competitive provider.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) within the exchange of the telecommunications utility listed in Appendix A to this order. Applicant will operate as a reseller of intraexchange service.

Applicant also proposes to provide interexchange switched service (toll) statewide in Oregon. Applicant will operate as a reseller of interexchange service. Applicant did not request authority to provide non-switched, private line service (dedicated transmission service) for either intraexchange or interexchange service. Applicant has indicated that it will not construct its own facilities, but will operate strictly as a reseller for intraexchange and interexchange service.

Applicant will not directly provide operator services as defined in OAR 860-032-0001 but will be an 'operator service provider' as defined in ORS 759.690(1)(d).

Applicant is affiliated with Nehalem Telephone & Telegraph Company. Nehalem Telephone & Telegraph Company is a utility with authority to operate as the incumbent local exchange carrier in the Nehalem Exchange and as a competitive telecommunications provider for interexchange service statewide in Oregon. *See* Order Nos. 86-1192, docket UM-67 and 01-1099, docket CP 982.

The Commission served notice of the application on August 13, 2003. No protests or requests to be made parties of the proceeding were filed.

Based on the record in this matter, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange (intraexchange) telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

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. The incumbent telecommunications utility listed in the appendix provides the same or similar local exchange services in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, Qwest Corporation, 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.

Public Interest

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Nehalem Broadband LLC to provide local exchange telecommunications service as a competitive telecommunications provider in the exchange of the telecommunications utility listed in Appendix A, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, 252) with regard to the telecommunications utility in this docket.

Conditions on the Certificate

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications providers that have been issued a certificate of authority by the Commission.
2. Whenever Applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, Applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission.
3. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to ensure that all users of its services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' Automatic Number Identification telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct

Public Safety Answering Point. Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.

4. For purposes of distinguishing between local and toll calling, Applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
5. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
6. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
7. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.

Competitive Zones

The exchange of the telecommunications utility listed in the appendix to this order is designated a competitive zone pursuant to ORS 759.050(2)(b).

Pricing Flexibility

The telecommunications utility listed in Appendix A has pricing flexibility for local exchange service under ORS 759.040, and that pricing flexibility is not affected by this order.

ORDER

IT IS ORDERED that:

1. The application of Nehalem Broadband LLC, is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchange of the telecommunications utility listed in Appendix A. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchange of the telecommunications utility listed in Appendix A is designated as a competitive zone.
4. Any obligation regarding interconnection between Applicant and the telecommunications utility listed in Appendix A shall be governed by the provisions of the Telecommunications Act of 1996 (the Act). Commission Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or subsequent Commission order.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utility listed in the appendix to this order.

Made, entered, and effective _____.

Lee Sparling
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.

APPENDIX A

CP 1173

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

None

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Nehalem Telephone & Telegraph Co.