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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1193
CP 982

In the Matter of)	
)	
NEHALEM TELECOMMUNICATIONS, INC. and)	
)	ORDER
NEHALEM TELEPHONE & TELEGRAPH CO.)	
)	
Application to Transfer a Certificate of Authority to)	
Provide Telecommunications Service in Oregon as a)	
Competitive Provider.)	

DISPOSITION: CP 1193, APPLICATION GRANTED; and
CP 982, ORDER NO. 01-1099, CERTIFICATE OF
AUTHORITY TRANSFERRED

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

INTRODUCTION

On November 12, 2003, Nehalem Telecommunications, Inc., dba Nehalem Tel & Tel and dba NTT, (Nehalem Telecommunications or Applicant) and Nehalem Telephone & Telegraph Co. (NT&T) filed with the Commission a joint application to transfer authority to provide telecommunications service in Oregon. Originally, the applicants requested to transfer from NT&T to Nehalem Telecommunications the authority as a telecommunications utility granted to NT&T by Order No. 86-1192 and to transfer NT&T's authority as a competitive provider granted by Order No. 01-1099, docket CP 982. By letter dated December 18, 2003, the parties requested a hold be placed on the transfer of the competitive authority pending approval from the Federal Communications Commission (FCC).

On January 8, 2004, the Commission granted the portion of the application related to transfer of the telecommunications utility authority. See Order No. 04-011. By letter dated February 20, 2004, the parties advised the Commission that they had received approval from the FCC, and they were in the process of executing documents to effect transfer of all assets used in the domestic and international long distance telephone service operations effective January 31, 2004. We now complete the transfer of authority requested in November 2003, and

recognizing the difficulty of coordinating actions by different agencies, we will make the transfer of competitive authority effective January 31, 2004.

The Joint Applicants request to transfer to Nehalem Telecommunications the authority granted to NT&T by Order No. 01-1099, docket CP 982. The application was filed pursuant to OAR 860-0032-0005. NT&T is the transferor. Nehalem Telecommunications is the transferee. Both entities together are referred to as Joint Applicants.

NT&T is currently authorized to provide interexchange switched service (toll), strictly as a reseller, statewide in Oregon, including the Nehalem exchange. This authority will be transferred to Nehalem Telecommunications upon issuance of this order. NT&T does not have authority to provide interexchange non-switched, private line service (dedicated transmission service). All terms and conditions of NT&T's certification will also be transferred to Nehalem Telecommunications. Upon granting this transfer of authority, NT&T will no longer have authority to provide telecommunications service in Oregon and must cease providing service in Oregon.

Nehalem Telecommunications, the Applicant, is now the incumbent telecommunications utility serving the Nehalem exchange, since that authority was transferred to Applicant by Order No. 04-011, effective January 1, 2004. Nehalem Telecommunications serves approximately 3300 access lines and is considered a small telecommunications utility under ORS 759.040. Applicant also purchased NT&T's entire membership in Nehalem Broadband LLC, which is a competitive provider with authority to provide intraexchange service in the Nehalem exchange and interexchange service statewide in Oregon. *See* Order No. 03-547, docket CP 1173. The authority of Nehalem Broadband is neither transferred by nor affected by this order.

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 Telecommunications. 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.

The Commission served notice of the application on the Commission's telecommunications mailing list on November 19, 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 OF FACT

The Proposed Operation

Applicant will provide intrastate, interexchange, switched telecommunications service (toll) statewide in Oregon. Applicant will operate strictly as a reseller for interexchange service. Applicant will not construct its own lines or transport facilities and will not purchase unbundled network elements for interexchange service. Applicant may purchase interexchange telecommunications service for resale only from carriers certified in Oregon. Applicant will not have authority to provide interexchange non-switched, private line service (dedicated transmission service).

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

OPINION

Applicable Law

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.

OAR 860-032-0015 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.

Resolution

Existence of Alternatives. AT&T, MCI, Sprint Communications Company, Qwest Corporation, Verizon Northwest Inc. and others provide toll and operator services in the service area requested by Applicant.

Suitability of Alternatives. Applicant's customers or those proposed to become customers have reasonably suitable alternatives to Applicant's services. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors.

Barriers to Entry. The level of competition in the market shows that both economic and regulatory barriers to entry are relatively low.

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: OARs 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0013, 860-032-0015, 860-032-0020, 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.

1. Applicant shall not take any action that impairs the ability of other certified telecommunications services providers to meet service standards specified by the Commission.
2. Applicant shall comply with all conditions listed in the application.
3. Applicant shall pay an annual fee to the Public Utility Commission of Oregon 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.
4. Applicant shall pay a quarterly amount to the Oregon Universal Service Fund based on a Commission approved surcharge percentage assessed on all retail telecommunications services sold in Oregon, pursuant to ORS 759.425.
5. 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.
6. Applicant, as transferee, shall be liable for all fees incurred and reports due by the transferor as of the effective date of the transfer.

Applicant, Nehalem Telecommunications, shall comply with FCC rules regarding provision of in-region, interexchange telecommunications service, including 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 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:

7. For interexchange telecommunications service Applicant shall operate strictly as a reseller of other certified carriers' interexchange interstate and intrastate service.
8. 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.
9. In recognition that Applicant is the incumbent local exchange carrier in the Nehalem exchange, and the potential for Nehalem Telecommunications 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 Telecommunication'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 detect and resolve any competitive issues that may arise with applicant's provision of interexchange toll services in its Nehalem telephone exchange.

CONCLUSIONS

Joint Applicants have met the requirements for a certificate to provide telecommunications service as a competitive provider. The application should be granted.

ORDER

IT IS ORDERED that:

1. The joint application of Nehalem Telecommunications, Inc., and Nehalem Telephone & Telegraph Co. to transfer the authority granted by Order No. 01-1099, docket CP 982, from NT&T to Nehalem Telecommunications, is granted. Applicant, Nehalem Telecommunications, Inc., is granted authority to provide interexchange service.
2. The transfer is effective January 31, 2004.
3. Applicant is designated as a competitive telecommunications provider.
4. Applicant may provide authorized services statewide in Oregon.
5. Applicant shall comply with conditions of the certificate.
6. The certificate of authority granted to Nehalem Telephone & Telegraph Co. by Order No. 01-1099 in docket CP 982 is cancelled. Nehalem Telephone & Telegraph Co. no longer has authority to operate in Oregon as a competitive telecommunications provider.

Made, entered, and effective _____.

Lee Sparling
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 pursuant to applicable law.