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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

APR 21 2004

DOCKETED BY NR

IN THE MATTER OF THE APPLICATION OF
DNR ENTERPRISES, L.L.C. dba DESERT WIND
COMMUNICATIONS FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
LOCAL EXCHANGE SERVICES IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. T-04217A-03-0810

DECISION NO. 66935

ORDER

Open Meeting
April 20 and 21, 2004
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On November 6, 2003, DNR Enterprises, L.L.C. dba Desert Wind Communications ("Applicant" or "Desert Wind") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within Maricopa County, Arizona.
2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.
3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.
4. Desert Wind has authority to transact business in the State of Arizona.
5. On December 30, 2003, Desert Wind filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2 6. On March 1, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report in this matter, which includes Staff's fair value rate base determination in this matter and
4 recommends approval of the application subject to certain conditions.

5 7. In the Staff Report, Staff stated that Desert Wind provided unaudited financial
6 statements for the five month period ending December 31, 2003, which list assets of \$30,529, equity
7 of \$29,885, and a net loss of \$34,414.

8 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
9 it has determined that Desert Wind's fair value rate base ("FVRB") is \$4,000. Staff has determined
10 that Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting
11 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
12 return regulation, but are heavily influenced by the market. While Staff considered the FVRB
13 information, it did not believe the information deserved substantial weight in setting rates for Desert
14 Wind.

15 9. Staff believes that Desert Wind has no market power and that the reasonableness of its
16 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
17 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
18 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
19 Commission approve them.

20 10. Staff recommended approval of Desert Wind's application subject to the following:

21 (a) The Applicant should be ordered to comply with all Commission rules, orders,
22 and other requirements relevant to the provision of intrastate telecommunications
23 service;

24 (b) The Applicant should be ordered to maintain its accounts and records as
25 required by the Commission;

26 (c) The Applicant should be ordered to file with the Commission all financial and
27 other reports that the Commission may require, and in a form and at such times as the
28 Commission may designate;

 (d) The Applicant should be ordered to maintain on file with the Commission all

1 current tariffs and rates, and any service standards that the Commission may require;

2 (e) The Applicant should be ordered to comply with the Commission's rules and
3 modify its tariffs to conform to these rules if it is determined that there is a conflict
4 between the Applicant's tariffs and the Commission's rules;

5 (f) The Applicant should be ordered to cooperate with Commission investigations,
6 including but not limited to, customer complaints;

7 (g) The Applicant should be ordered to participate in and contribute to the Arizona
8 Universal Service Fund, as required by the Commission;

9 (h) The Applicant should be ordered to notify the Commission immediately upon
10 changes to the Applicant's name, address or telephone number;

11 (i) Should the Applicant seek to collect from its customers an advance, deposit,
12 and/or prepayment, it must file an application, which references this docket and
13 explains the Applicant's plan for procuring a performance bond, with the Commission
14 for Staff review. Upon receipt of such filing and after review, Staff will forward its
15 recommendations to the Commission;

16 (j) The Applicant's intrastate interexchange service offerings should be classified
17 as competitive pursuant to A.A.C. R14-2-1108;

18 (k) The Applicant's maximum rates should be the maximum rates proposed by the
19 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
20 services should be the Applicant's total service long run incremental costs of
21 providing those services as set forth in A.A.C. R14-2-1109; and

22 (l) In the event that the Applicant states only one rate in its proposed tariff for a
23 competitive service, the rate stated should be the effective (actual) price to be charged
24 for the service as well as the service's maximum rate.

25 11. Staff further recommended that Desert Wind's Certificate should be conditioned upon
26 the Applicant filing conforming tariffs in accordance with this Decision within 365 days of the
27 effective date of this Decision, or 30 days prior to providing service, whichever comes first.

28 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in
Findings of Fact No. 11, that Desert Wind's Certificate should become null and void without further
Order of the Commission and that no time extensions for compliance should be granted.

13. Staff recommended that if Desert Wind desires to discontinue service, it should be
required to notify each of its local interexchange customers and the Commission 60 days prior to

1 filing an application to discontinue service pursuant to A.A.C. R14-2-1107.

2 14. The rates proposed by this filing are for competitive services.

3 15. Staff's recommendations as set forth herein are reasonable.

4 16. Desert Wind's fair value rate base is \$4,000.

5 **CONCLUSIONS OF LAW**

6 1. Applicant is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

8 2. The Commission has jurisdiction over Applicant and the subject matter of the
9 application.

10 3. Notice of the application was given in accordance with the law.

11 4. Applicant's provision of resold interexchange telecommunications services is in the
12 public interest.

13 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
14 providing competitive resold interexchange telecommunications services in Arizona.

15 6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, 12, and 13 should be
16 adopted.

17 7. Desert Wind's fair value rate base is not useful in determining just and reasonable
18 rates for the competitive services it proposes to provide to Arizona customers.

19 8. Desert Wind's rates, as they appear in its proposed tariffs, are just and reasonable and
20 should be approved.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of DNR Enterprises, L.L.C. dba Desert
23 Wind Communications for a Certificate of Convenience and Necessity for authority to provide
24 competitive resold interexchange telecommunications services, except local exchange services within
25 Maricopa County, is hereby granted, conditioned upon its compliance with the conditions
26 recommended by Staff as set forth in Findings of Fact Nos. 10, 11, 12, and 13 above.
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1 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
2 8, 9, 10, 11, 12, and 13 above are hereby adopted.

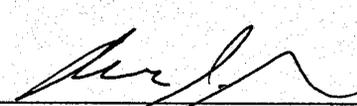
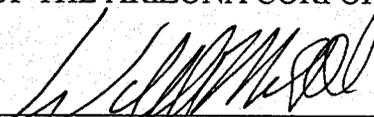
3 IT IS FURTHER ORDERED that DNR Enterprises, L.L.C. dba Desert Wind
4 Communications shall comply with the adopted Staff recommendations as set forth in Findings of
5 Fact Nos. 10, 11, and 13 above.

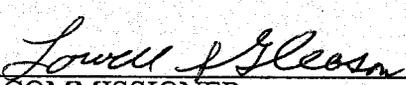
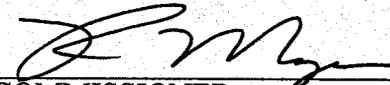
6 IT IS FURTHER ORDERED that if DNR Enterprises, L.L.C. dba Desert Wind
7 Communications fails to meet the timeframes outlined in Findings of Fact No. 12 above, that the
8 Certificate conditionally granted herein shall become null and void without further Order of the
9 Commission.

10 IT IS FURTHER ORDERED that if DNR Enterprises, L.L.C. dba Desert Wind
11 Communications fails to notify each of its customers and the Commission at least 60 days prior to
12 filing an application to discontinue service pursuant to A.A.C. R14-2-1107, its Certificate of
13 Convenience and Necessity shall be deemed void.

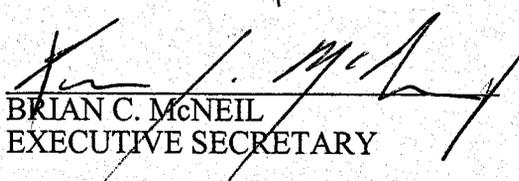
14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

16 
17 CHAIRMAN  COMMISSIONER  COMMISSIONER

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19 COMMISSIONER  COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of Phoenix,
25 this 21st day of April, 2004.

26 
27 BRIAN C. McNEIL
28 EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: DNR ENTERPRISES, L.L.C. DBA DESERT WIND COMMUNICATIONS

DOCKET NO.: T-04217A-03-0810

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