

ORIGINAL



0000003263

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

2004 FEB -4 A 10: 37

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

FEB 04 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY *ml*

IN THE MATTER OF THE APPLICATION OF
BCE NEXXIA CORPORATION FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE FACILITIES-BASED
INTEREXCHANGE SERVICES AND PETITION
FOR COMPETITIVE CLASSIFICATION OF
PROPOSED SERVICES WITH THE STATE OF
ARIZONA.

DOCKET NO. T-04200A-03-0550

PROCEDURAL ORDER

BY THE COMMISSION:

On August 5, 2003, BCE Nexxia Corporation ("Applicant" or "BCE") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide facilities-based interexchange telecommunications services within the State of Arizona. The Application petitioned the Commission for determination that its proposed services should be classified as competitive.

On October 21, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff Report.

On October 27, 2003, the Commission issued a Procedural Order that set this matter for a hearing on January 15, 2004. The Procedural Order also ordered BCE to publish notice of its filing and the hearing as stated in the Procedural Order in a newspaper(s) of general circulation in every county in Arizona in which BCE desires to provide service by November 21, 2003, and file an Affidavit of Publication with the Commission no later than December 5, 2003.

On January 15, 2004, the hearing was held as scheduled. BCE failed to appear for the hearing.

On January 16, 2004, by Procedural Order, this matter was dismissed and administratively closed due to BCE's failure to comply with the October 27, 2003 Procedural Order and BCE's failure to appear at the January 18, 2004 hearing.

1 On January 26, 2004, Mr. William Coulter of Coudert Brothers, LLP filed a Motion to
2 Reopen this matter on behalf of BCE. Mr. Coulter, who identified himself as the "primary counsel"
3 in this case, stated that the "secondary counsel", Mr. Vitale, had recently left the law firm of Coudert
4 Brothers, LLP and, as a result of his departure, Mr. Coulter and BCE were unaware of the
5 Commission's October 27, 2003 Procedural Order. Further, Mr. Coulter stated that Staff's letter of
6 administrative completeness did not give "cause to make primary counsel or Applicant inquire, or to
7 assume that additional matters remained open at this time."

8 On January 28, 2004, Staff filed its response to BCE's Motion to Reopen, stating Staff had no
9 position on the Motion.

10 In the matter at hand, Mr. Vitale was the signatory of BCE's application as well as the
11 signatory on subsequent correspondence. Therefore, it was appropriate for the Commission to
12 address all correspondence, including the Procedural Orders, to Mr. Vitale's attention.

13 As counsel for BCE, it is Coudert Brothers, LLP's responsibility to monitor the progress of
14 BCE's pending application. Further, it is Coudert Brothers, LLP's responsibility to provide the
15 Commission with the correct contact information, and to subsequently provide an update to the
16 Commission should such contact information change.

17 The dismissal of the application was the result of Mr. Coulter's and Coudert Brothers, LLP's
18 failure to monitor this matter and to provide current accurate contact information to the Commission.
19 However, because the granting of BCE's application may be in the public interest, and because BCE
20 stated it is prepared to comply with any further Procedural Orders in this matter, BCE's Motion to
21 Reopen should be granted subject to some conditions.

22 Due to BCE's failure to comply with the previous Procedural Order and the delay that has
23 occurred as a result of BCE's inaction, the time-clock for processing BCE's application should be
24 extended.

25 IT IS THEREFORE ORDERED that BCE Nexxia Corporation's Motion to Reopen this
26 matter is granted.

27 IT IS FURTHER ORDERED that the hearing on the above application and petition of
28 Applicant shall commence on April 22, 2004 at 10:00 a.m. or as soon thereafter as is practical, at the

1 Commission's offices, 1200 West Washington Street, Phoenix, Arizona 85007.

2 IT IS FURTHER ORDERED that Applicant shall publish notice of its filing and the hearing,
3 as stated below, in a newspaper(s) of general circulation in every county in Arizona in which
4 Applicant desires to provide service by March 5, 2004, and shall file Affidavits of Publication with
5 the Commission no later than March 19, 2004.

6
7 **IN THE MATTER OF THE APPLICATION OF BCE NEXXIA CORPORATION**
8 **FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY**
9 **TO PROVIDE FACILITIES-BASED INTEREXCHANGE**
10 **TELECOMMUNICATIONS SERVICES AND PETITION FOR COMPETITIVE**
11 **CLASSIFICATION OF PROPOSED SERVICES**
12 **WITHIN THE STATE OF ARIZONA**
13 **Docket No. T-04200A-03-0550**

14 BCE Nexxia Corporation ("Applicant") has filed with the Arizona Corporation
15 Commission ("Commission") an application for a Certificate of Convenience and
16 Necessity ("Certificate") to provide competitive facilities-based interexchange
17 telecommunications services in the State of Arizona. Applicant will be required by
18 the Commission to provide this service under the rates and charges and terms and
19 conditions established by the Commission.

20 The application, report of the Commission's Utilities Division Staff, and any
21 written exceptions to the staff report prepared by the applicant are available for
22 inspection during regular business hours at the offices of the Commission located at
23 1200 West Washington Street, Phoenix, Arizona 85007, and at Applicant, [address].

24 Under appropriate circumstances, interested parties may intervene in the
25 proceedings and participate as a party. You may have the right to intervene in the
26 proceeding, or you may make a statement for the record. Intervention shall be in
27 accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed
28 on or before April 9, 2004. Persons desiring to intervene must file a written motion to
intervene with the Commission and send such motion to the Company or its counsel
and to all parties of record, and which at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g. a customer of the company, a shareholder of the company, a competitor, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case.

A.A.C. R14-3-105 shall govern the granting of motions to intervene. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. The hearing is scheduled to commence on **April 22, 2004 at 10:00 a.m.** at the Arizona Corporation Commission, 1200 West

1 Washington Street, Phoenix, Arizona 85007. Please check with the Commission for
any changes to the scheduled hearing date.

2 If you have any comments, mail them to:

3 The Arizona Corporation Commission
4 Attention Docket Control
5 re: BCE Nexxia Corporation
6 T-04200A-03-0550
7 1200 West Washington Street
8 Phoenix, Arizona 85007

9 If you have any questions about this application, or want information on
10 intervention, you may contact the Consumer Services Section of the Commission at
11 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000.

12 The Commission does not discriminate on the basis of disability in admission
13 to its public meetings. Persons with a disability may request reasonable
14 accommodations such as sign language interpreter, as well as request this document in
15 an alternative format, by contacting Yvonne McFarlin, ADA Coordinator, voice phone
16 number 602/542-3931. Requests should be made as early as possible to allow time to
17 arrange the accommodation.

18 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
19 except that all motions to intervene must be filed on or before April 9, 2004.

20 IT IS FURTHER ORDERED that any objections to motions to intervene must be filed on or
21 before April 16, 2004.

22 IT IS FURTHER ORDERED that if the attorney representing BCE Nexxia Corporation at the
23 hearing is not licensed to practice law in Arizona, such attorney shall comply with Rule 33(d) of the
24 Arizona Supreme Court prior to attending the hearing.

25 IT IS FURTHER ORDERED that the time-clock for processing this application is extended
26 by 75 days due to the delay associated with BCE Nexxia Corporation's previous inaction.

27 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
28 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
Communications) applies to this proceeding as the matter is not set for public hearing.

DATED this 4 day of February, 2004.



PHILIP J. DION III
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 4 day of February, 2004 to:

3 William Coulter
4 Coudert Brothers, LLP
5 1627 I Street NW
6 Washington, DC 20006-4007

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 ARIZONA REPORTING SERVICE, INC.
18 2627 N. Third Street, Ste. Three
19 Phoenix, AZ 85004-1003

20

21 By: 
22 Molly Johnson
23 Secretary to Philip J. Dion III

24

25

26

27

28

29

30

31

32

33

34

35

36