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Decision folder

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
DERYE, INC. D/B/A COMFORT INN FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE CUSTOMER-OWNED
PAY TELEPHONE SERVICE IN THE STATE OF
ARIZONA

DOCKET NO. T-03937A-00-0731

DECISION NO. 63294

ORDER

Open Meeting
January 9 and 10, 2001
Phoenix, Arizona

BY THE COMMISSION:

On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of the Arizona Constitution requires the Arizona Corporation Commission ("Commission") to "determine fair value rate base for all public service corporations in Arizona prior to setting their rates and charges." Although the Commission has filed a Petition for Review to the Arizona Supreme Court, we are concerned that the Opinion might create uncertainty in the competitive telecommunications industry during the review period.

On September 12, 2000, the Commission ordered the Hearing Division to open a new generic docket to obtain comments on procedures to insure compliance with the Constitution should the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. The Commission also expressed concerns that the cost and complexity of fair value rate base ("FVRB") determinations must not offend the Telecommunications Act of 1996.

Based on the above, we will approve the application of Derye, Inc. d/b/a Comfort Inn ("Applicant") at this time with the understanding that it may subsequently have to be amended to comply with the law after the exhaustion of all appeals.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

1 **FINDINGS OF FACT**

2 1. On September 22, 2000, Derye, Inc. d/b/a Comfort Inn ("Applicant") filed with the
3 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
4 customer-owned pay telephone ("COPT") service in the State of Arizona.

5 2. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
6 providers were public service corporations subject to the jurisdiction of the Commission.

7 3. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
8 through R14-2-909 to regulate COPT providers.

9 4. Decision No. 58535 (February 14, 1994) adopted a Generic Tariff that establishes
10 rates and minimum service standards applicable to COPT service.

11 5. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
12 Certificates without a hearing.

13 6. Applicant has requested that a Certificate be granted and has indicated that it will
14 provide COPT service pursuant to the rates, terms and conditions specified in the Generic COPT
15 Tariff.

16 7. Applicant does not presently provide COPT services in Arizona.

17 8. On September 27, 2000, the Commission's Utilities Division Staff ("Staff") filed a
18 Staff Report, recommending approval of the application without a hearing.

19 9. Staff stated that the Applicant has not provided a copy of its customer information
20 placard in compliance with the Generic Tariff and recommends that the Applicant be ordered to file
21 its customer information placard with Staff for approval within 30 days.

22 10. Staff also stated that increased pay telephone availability is in the public interest.

23 **CONCLUSIONS OF LAW**

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

26 2. The Commission has jurisdiction over Applicant and the subject matter of the
27 application.

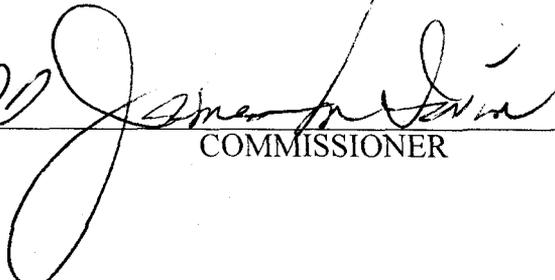
28 3. The provision of COPT service in Arizona by Applicant is in the public interest.

1 IT IS FURTHER ORDERED that the Application of Derye, Inc. d/b/a Comfort Inn for a
2 Certificate of Convenience and Necessity for authority to provide customer-owned pay telephone
3 service in Arizona shall be granted subject to the condition that Derye, Inc. d/b/a Comfort Inn shall
4 file the following FVRB information within 18 months of the date that it first provides service. The
5 FVRB shall include a dollar amount representing the total revenue for the first twelve months of
6 telecommunications service provided to Arizona customers by Derye, Inc. d/b/a Comfort Inn
7 following certification. Derye, Inc. d/b/a Comfort Inn shall also file FVRB information detailing the
8 total actual operating expenses for the first twelve months of telecommunications service provided to
9 Arizona customers by Derye, Inc. d/b/a Comfort Inn following certification. Derye, Inc. d/b/a
10 Comfort Inn shall also file FVRB information which includes a description and value of all assets,
11 including plant, equipment, and office supplies, to be used to provide telecommunications service to
12 Arizona customers for the first twelve months following Derye, Inc. d/b/a Comfort Inn's certification.

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

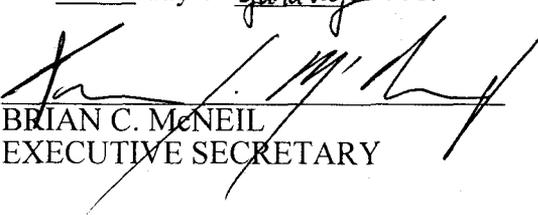
14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

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COMMISSIONER

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COMMISSIONER

22 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
23 Secretary of the Arizona Corporation Commission, have
24 hereunto set my hand and caused the official seal of the
25 Commission to be affixed at the Capitol, in the City of Phoenix,
26 this 17th day of January, 2001.

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28 BRIAN C. McNEIL
EXECUTIVE SECRETARY

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1 SERVICE LIST FOR:

DERYE, INC. D/B/A COMFORT INN

2 DOCKET NO.:

T-03937A-00-0731

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