



OPEN MEETING ITEM



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

WILLIAM A. MONDELL  
COMMISSIONER

ARIZONA CORPORATION COMMISSION

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DEC 19 2000

DATE: December 19, 2000

DOCKET NO: T-03937A-00-0731

TO ALL PARTIES:

DOCKETED BY 

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Order on:

DERYE, INC. dba COMFORT INN  
(CC&N/COPT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 29, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 9, 2001 and JANUARY 10, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 WILLIAM A. MUNDELL  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
DERYE, INC. D/B/A COMFORT INN FOR A  
7 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE CUSTOMER-OWNED  
8 PAY TELEPHONE SERVICE IN THE STATE OF  
ARIZONA

DOCKET NO. T-03937A-00-0731

DECISION NO. \_\_\_\_\_

**ORDER**

9 Open Meeting  
10 January 9 and 10, 2001  
Phoenix, Arizona

11 **BY THE COMMISSION:**

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

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

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

27 Having considered the entire record herein and being fully advised in the premises, the  
28 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.

15  
16  
17 CHAIRMAN

COMMISSIONER

COMMISSIONER

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19  
20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this \_\_\_\_ day of \_\_\_\_\_, 2001.

25  
26 \_\_\_\_\_  
27 BRIAN C. McNEIL  
28 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR:

DERYE, INC. D/B/A COMFORT INN

2 DOCKET NO.:

T-03937A-00-0731

3 Susan Welch  
4 Derye, Inc. d/b/a Comfort Inn  
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7 Lyn Farmer, Chief Counsel  
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12 Deborah Scott, Director  
13 Utilities Division  
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