



0000012958

210

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

NOV - 2 2004

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

DOCKETED BY *NR*

IN THE MATTER OF THE APPLICATION OF
I-LINK COMMUNICATIONS, INC. FOR
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN THE
STATE OF ARIZONA.

DOCKET NO. T-03259A-04-0127

DECISION NO. 67404

ORDER

Open Meeting
October 26 and 27, 2004
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On October 8, 1996, in Decision No. 61168, the Commission granted to I-Link Communications, Inc. ("I-Link" or "Applicant") a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide competitive resold interexchange telecommunications services in Arizona.

2. On February 23, 2004, I-Link filed an application requesting that the Commission cancel its CC&N.

3. The application stated that I-Link no longer intends to provide telecommunications services in Arizona. I-Link further indicated that because it has no customers, there will be no adverse impact from the discontinuance of its certification.

4. On July 12, 2004, a Procedural Order was issued by which the Commission's Utilities Division Staff ("Staff") was directed to file either a data request or a Staff Report based on I-Link's February 23, 2004 application on or before August 9, 2004.

5. On July 13, 2004, Staff filed a Letter of Insufficiency and First Set of Data Requests;

1 which requested that information be submitted with regard to the following two items: (1) whether I-
2 Link ever collected deposits and/or advance payments from its Arizona customers; and (2) which of
3 the certificated services listed therein, namely facilities-based long distance, resold long distance,
4 competitive local exchange and resold local exchange, I-Link is seeking to cancel.

5 6. On July 19, 2004, I-Link filed a letter in response to Staff's July 13, 2004 letter, which
6 indicated that I-Link never collected deposits and/or advance prepayments from its Arizona
7 customers and requests the cancellation of its authority to provide facilities-based long distance,
8 resold long distance, competitive local exchange and resold local exchange telecommunications
9 services in Arizona.

10 7. On July 29, 2004, Staff filed a Staff Report in this matter, recommending that I-Link's
11 CC&N to provide resold long distance, facilities-based long distance, resold local exchange, and
12 competitive local exchange services be cancelled and that it no longer be subject to the requirements
13 of Decision Nos. 61168 and 64708.

14 8. Additionally, Staff indicated that because I-Link has no customers in Arizona, Arizona
15 Administrative Code ("A.A.C.") R14-2-1107(A) is not applicable.

16 9. A Procedural Order was issued on August 11, 2004, which indicated that while
17 Decision No. 61168 granted I-Link a CC&N to provide resold interexchange services, Decision No.
18 64708 was an Administrative Closure by which no additional authority to provide
19 telecommunications services was granted to I-Link.

20 10. The August 11, 2004 Procedural Order additionally indicated that Staff's rationale for
21 exempting I-Link from the requirements of A.A.C. R14-2-1107(A) were insufficient based upon the
22 plain language of the rule.

23 11. Accordingly, the Procedural Order required Staff to file a Supplemental Memorandum
24 which (1) clarifies the services for which I-Link is certificated; (2) clarifies the services for which I-
25 Link seeks cancellation; and (3) sets forth the legal basis for Staff's recommendation that the
26 requirements set forth in A.A.C. R14-2-1107(A) and (B) are not applicable to I-Link's application.

27 12. On September 3, 2004, Staff filed a Memorandum in this docket, which clarified that
28 I-Link does have a CC&N to provide resold interexchange services but does not have a CC&N to

1 provide facilities-based long distance, facilities-based local exchange or resold local exchange
2 services in Arizona as I-Link's application to provide these services was administratively closed in
3 Decision No. 64708. Accordingly, Staff recommended that I-Link's CC&N to provide resold
4 interexchange services be cancelled.

5 13. Additionally, Staff indicated that I-Link ceased providing service to its Arizona
6 customers on April 30, 2003, and consequently A.A.C. R14-2-1107(A) is not applicable to I-Link's
7 application as that rule applies only to companies "providing" service at the time the application is
8 filed.

9 14. Staff further indicated that I-Link's lack of customers renders the requirement for
10 publication of legal notice, as set forth in A.A.C. R14-2-1107(B), inapplicable as no counties will be
11 affected by the application.

12 15. Staff noted, however, that should it be determined that A.A.C. R14-2-1107(A) and (B)
13 apply to a company with no customers, Staff is of the opinion that I-Link has complied with those
14 rules by indicating that there are no Arizona customers and no deposits were ever collected.

15 16. By amendment proposed by Commission Staff and adopted in Decision No. 66458
16 (October 24, 2003)("Decision"), the scope of A.A.C. R14-2-1107 was expanded beyond providers of
17 local exchange services to include telecommunications companies providing interexchange service
18 on a resold or facilities-based basis.¹

19 17. As part of that Decision, the Commission adopted Appendix C, the Economic, Small
20 Business, and Consumer Impact Statement, which states in relevant part, "[t]he primary benefit of the
21 proposed rule amendment is the assurance that customers of interexchange telecommunications
22 services will be afforded notice of any **intended discontinuance** of service and an opportunity to
23 choose an alternative provider **prior to service discontinuance** (emphasis added)."

24 18. A.A.C. R14-2-1107(A), as amended, requires compliance therewith by submission of
25 an application containing certain enumerated information by "[a]ny telecommunications company
26 providing competitive local exchange or interexchange service on a resold or facilities-based basis
27

28 ¹ The amendments to A.A.C. R14-2-1107 became effective on April 26, 2004.

1 that intends to discontinue service or to abandon all or a portion of its service area.”

2 19. A.A.C. R14-2-1107(B), as amended, further requires publication of legal notice of the
3 application, which affords interested persons 30 days to file objections to the application, in all
4 affected counties no later than 20 days after the application is filed.

5 20. The intent of the amended rule, therefore, is to ensure that existing local and
6 interexchange customers will have advance notice of a telecommunications provider’s pending plan
7 to discontinue service such that they will be afforded an opportunity to procure service through an
8 alternative provider **prior to** such discontinuance.

9 21. Therefore, a provider of local and/or interexchange telecommunications services must,
10 according to the plain language of the rule, submit an application to the Commission which satisfies
11 the requirements of the rule or seeks to waive any portion of the rule which is not applicable to its
12 unique circumstances prior to discontinuing service to its Arizona customers.

13 22. Exempting those applicants no longer “providing” service in Arizona from the
14 requirements of the rule renders the rule meaningless and runs afoul of the rule’s intent and plain
15 language.

16 23. I-Link’s application to cancel its CC&N and discontinue resold interexchange service
17 was filed on February 23, 2004, approximately ten months after I-Link ceased providing service to its
18 Arizona customers on April 30, 2003.

19 24. If, however, I-Link had applied to cancel its CC&N to provide resold interexchange
20 service at the time it ceased providing that service to its Arizona customers, A.A.C. R14-2-1107
21 would not have been applicable.²

22 25. Mandating compliance with the current provisions of A.A.C. R14-2-1107 would,
23 therefore, provide retroactive protection to a class of customers not otherwise protected by the rules
24 as they existed at the time I-Link discontinued the provision of resold interexchange service. The
25 requirements of A.A.C. R14-2-1107 should, therefore, be waived based upon the unique
26 circumstances of this case.

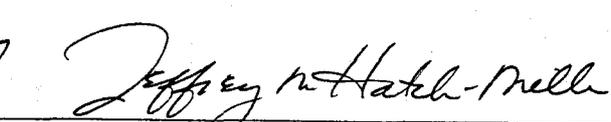
27 _____
28 ² Prior to the amendment effective April 26, 2004, A.A.C. R14-2-1107 applied solely to providers of local exchange telecommunications services.

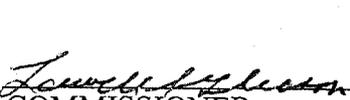
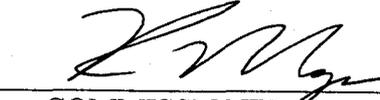
ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to I-Link Communications, Inc. in Decision No. 61168 is hereby cancelled.

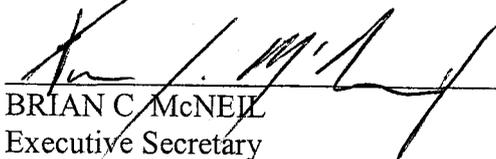
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER

	
COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 2 day of November, 2004.



BRIAN C. McNEIL
Executive Secretary

DISSENT: _____

DISSENT: _____

AP: mj

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: I-LINK COMMUNICATIONS, INC.

DOCKET NO.: T-03259A-04-0127

Lance J.M. Steinhart
1720 Windward Concourse
Suite 250
Alpharetta, Georgia 30005

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007