

OPEN MEETING ITEM



0000014472

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

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: November 30, 2004

Arizona Corporation Commission
DOCKETED

DOCKET NO: T-04246A-04-0201

NOV 30 2004

TO ALL PARTIES:

DOCKETED BY *[Signature]*

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

TRANSWORLD NETWORK CORP.
(CC&N/RESELLER)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 9, 2004

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:

December 14 and 15, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator, voice phone number 602-542-3931, E-mail LHogan@cc.state.az.us

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 TRANSWORLD NETWORK CORP. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD
13 INTEREXCHANGE TELECOMMUNICATIONS
14 SERVICES, EXCEPT LOCAL EXCHANGE
15 SERVICES.

DOCKET NO. T-04246A-04-0201

DECISION NO. _____

ORDER

16 Open Meeting
17 December 14 and 15, 2004
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

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

22 **FINDINGS OF FACT**

23 1. On March 17, 2004, Transworld Network Corp. ("Applicant" or "TNC") filed with the
24 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
25 competitive resold interexchange telecommunications services within the State of Arizona.

26 2. Applicant is a switchless reseller that purchases telecommunications services from a
27 variety of carriers for resale to its customers.

28 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. TNC has authority to transact business in the State of Arizona.

5. On July 19, 2004, TNC filed in this docket an Affidavit of Publication verifying that it
had published notice of its application in all counties where service will be provided.

6. On October 15, 2003, Staff filed a Staff Report in this matter recommending approval

1 of the application subject to certain conditions.

2 7. In the Staff Report, Staff stated that TNC provided unaudited financial statements for
3 the 12 months ending December 31, 2003, which list assets in excess of \$4.6 million, equity in excess
4 of \$1.3 million, and a net income of \$423,537.

5 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
6 it has determined that TNC's fair value rate base is zero, and is too small to be useful in a fair value
7 analysis. Staff further stated that in general, rates for competitive services are not set according to
8 rate of return regulation, but are heavily influenced by the market. While Staff considered the fair
9 value rate base information submitted by the Applicant, the fair value information provided should
10 not be given substantial weight in this analysis.

11 9. Staff believes that TNC has no market power, indicates that the rates to be charged by
12 the Applicant are just and reasonable as they are comparable to other major long distance carriers and
13 comparable to the rates the Applicant charges in other jurisdictions, and recommends that the
14 Commission approve Applicant's rates.

15 10. Based on its evaluation of the Applicant's technical, managerial, and financial
16 capabilities to provide resold interexchange services, Staff recommended approval of TNC's
17 application and also recommended that:

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

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

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

26 (d) The Applicant should be ordered to maintain on file with the Commission all
27 current tariffs and rates, and any service standards that the Commission may require;

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

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

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

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

7 (i) The Applicant should be required to file a request for cancellation of its
8 established performance bond relating to the provision of resold interexchange service
9 if, at some time in the future, the Applicant does not collect from its customers an
10 advance, deposit, and/or prepayment. Such request should be filed with the
11 Commission for Staff review. Upon receipt of such filing and after Staff review, Staff
12 will forward its recommendation to the Commission;

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

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

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

22 11. Staff further recommended that TNC's Certificate should be conditioned upon the
23 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
24 an Order in this matter, or 30 days prior to providing service, whichever comes first.

25 12. Based upon TNC's indication that it may collect advances, deposits and/or
26 prepayments from its customers, Staff recommended that TNC's Certificate should be conditioned
27 upon the Applicant procuring a performance bond as described in Findings of Fact No. 13 below, and
28 filing proof of that performance bond within 365 days from the date of an Order in this matter, or 30
days prior to providing service, whichever comes first.

13. Staff recommended that TNC be required to procure a performance bond in the initial
amount of \$10,000, with the minimum bond amount of \$10,000 to be increased if at any time it
would be insufficient to cover all advances, deposits, or prepayments collected from its customers, in

1 the following manner: The bond amount should be increased in increments of \$5,000, with such
2 increases to occur whenever the total amount of the advances, deposits, and prepayments reaches a
3 level within \$1,000 under the actual bond amount.

4 14. Staff further recommended that the Applicant should be required to provide notice to
5 the Commission and its customers in the event it requests to discontinue service and/or abandon its
6 service area, and Staff indicates that such notice(s) shall be in accordance with Arizona
7 Administrative Code ("A.A.C.") R14-2-1107. Pursuant to A.A.C. R14-2-1107, TNC is required to
8 comply and obtain Commission authorization of compliance with all of the requirements, including
9 but not limited to the notice requirements, prior to the discontinuance of service and/or abandonment
10 of its service area.

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

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

15 17. Staff's recommendations as set forth herein are reasonable and should be adopted.

16 18. TNC's fair value rate base is zero.

17 **CONCLUSIONS OF LAW**

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

20 2. The Commission has jurisdiction over Applicant and the subject matter of the
21 application.

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

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

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

27 6. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

28 7. TNC's fair value rate base is not useful in determining just and reasonable rates for the

1 competitive services it proposes to provide to Arizona customers.

2 8. TNC's rates, as they appear in its proposed tariffs, are just and reasonable and should
3 be approved.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the application of Transworld Network Corp. for a
6 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
7 telecommunications services is hereby granted, conditioned upon Transworld Network Corp.'s timely
8 compliance with the following Ordering Paragraphs.

9 IT IS FURTHER ORDERED that Transworld Network Corp. shall file conforming tariffs in
10 accordance with this Decision within 365 days of this Decision or 30 days prior to providing service,
11 whichever comes first.

12 IT IS FURTHER ORDERED that Transworld Network Corp. shall procure a performance
13 bond equal to \$10,000, and shall file proof of procurement of the bond with the Director of the
14 Utilities Division, the earlier of 365 days from the effective date of this Order or 30 days prior to the
15 commencement of service.

16 IT IS FURTHER ORDERED that Transworld Network Corp. shall comply with all of the
17 Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

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1 IT IS FURTHER ORDERED that if Transworld Network Corp. fails to meet the timeframes
2 outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity
3 conditionally granted herein shall become null and void without further Order of the Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2004.

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18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

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Colin Wood
TRANSWORLD NETWORK CORP.
7702 Woodland Center Blvd, Suite 50
Tampa, Florida 33614-2411

Christopher Kempsey, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

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