



0000016703

OPEN MEETING ITEM ORIGINAL 32

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



RECEIVED
BRIAN C. McNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

2005 JAN 31 A 10: 25

DATE: January 31, 2005

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO: T-04257A-04-0335

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

THE J. RICHARD COMPANY dba LIVE WIRE PHONE COMPANY
(CC&N/RESELLER/FACILITIES-BASED)

10-day period for filing of exceptions has been waived.

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:

FEBRUARY 3, 2005

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:

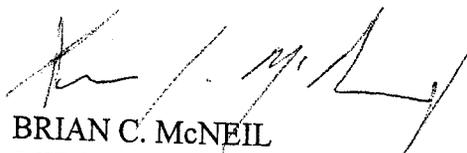
FEBRUARY 8 AND 9, 2005

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

Arizona Corporation Commission
DOCKETED

JAN 31 2005

DOCKETED BY 


BRIAN C. McNEIL
EXECUTIVE SECRETARY

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

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
THE J. RICHARD COMPANY DBA LIVE WIRE
PHONE COMPANY FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LONG DISTANCE, RESOLD LOCAL
EXCHANGE AND FACILITIES-BASED LOCAL
EXCHANGE SERVICES IN THE STATE OF
ARIZONA AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04257A-04-0335

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: January 13, 2005
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Lyn Farmer
APPEARANCES: Tom Campbell, LEWIS AND ROCA, on behalf of The J. Richard Company dba Live Wire Phone Company; and
Maureen Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On May 3, 2004, The J. Richard Company, LLC ("JRC") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long distance and resold local exchange services within the State of Arizona. JRC petitioned the Commission for a determination that its proposed services should be classified as competitive.
2. On June 9, 2004, JRC filed an amendment to the application changing JRC's name to The J. Richard Company, dba Live Wire Phone Company ("Live Wire" or "Applicant") and

1 additionally requesting authority to provide facilities-based local exchange telecommunications
2 within the State of Arizona.

3 3. On November 26, 2004, the Commission's Utilities Division Staff ("Staff") filed its
4 Staff Report, which recommended approval of the Application and included a number of additional
5 recommendations.

6 4. On December 1, 2004, a Procedural Order was issued setting this matter for hearing
7 on January 13, 2005 and setting various procedural deadlines.

8 5. On December 21, 2004, Applicant docketed an Affidavit of Publication that complies
9 with Commission rules.

10 6. On January 13, 2005, a full public hearing in this matter was held as scheduled. Live
11 Wire appeared and was represented by counsel. Staff appeared and was represented by counsel. The
12 hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented
13 and testimony was taken.

14 7. At the conclusion of the hearing, the Administrative Law Judge took the matter under
15 advisement.

16 8. The J. Richard Company, dba Live Wire Phone Company is incorporated under the
17 laws of the State of Arizona and is authorized to do business in Arizona.

18 9. Applicant has the technical capability to provide the services that are proposed in its
19 Application.

20 10. Currently there are several incumbent providers of local exchange and interexchange
21 services in the service territory requested by Applicant, and numerous other entities have been
22 authorized to provide competitive local and interexchange services in all or portions of that territory.

23 11. It is appropriate to classify all of Applicant's authorized services as competitive.

24 12. According to Staff, Live Wire submitted audited financial statements for the four
25 month period ending April 29, 2004. These financial statements list assets of \$23,500. Applicant
26 indicated that because it has not yet begun offering service, there is no net income/loss.

27 13. Staff recommended that Live Wire's Application for a Certificate to provide
28 competitive resold long distance, resold local exchange and facilities-based local exchange

1 telecommunications services be granted subject to the following conditions:

- 2 (a) that, unless it provides services solely through the use of its own facilities, Live
3 Wire be ordered to procure an Interconnection Agreement, within 365 days of
4 the effective date of the Order in this matter or 30 days prior to the provision of
5 service, whichever comes first, that must remain in effect until further order of
6 the Commission, before being allowed to offer local exchange service. If
7 Applicant provides services solely through the use of its own facilities, no
8 other information shall be required once the Applicant informs the
9 Commission by docketing a letter within the timeframes set forth above;
- 10 (b) that Live Wire be ordered to file with the Commission, within 365 days of the
11 effective date of the Order in this matter or 30 days prior to the provision of
12 service, whichever comes first, its plan to have its customers' telephone
13 numbers included in the incumbent's Directories and Directory Assistance
14 databases and to maintain the plan in effect until further order of the
15 Commission;
- 16 (c) that Live Wire be ordered to pursue permanent number portability
17 arrangements with other LECs pursuant to Commission rules, federal laws and
18 federal rules;
- 19 (d) that Live Wire be ordered to abide by and participate in the AUSF mechanism
20 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
21 00000E-95-0498);
- 22 (e) that Live Wire be ordered to abide by the quality of service standards that were
23 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 24 (f) that in areas where it is the sole provider of local exchange service facilities,
25 Live Wire be ordered to provide customers with access to alternative providers
26 of service pursuant to the provisions of Commission rules, federal laws and
27 federal rules;
- 28 (g) that Live Wire be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- (h) that Live Wire be ordered to provide 2-PIC equal access;
- (i) that Live Wire be required to notify the Commission immediately upon
changes to its name, address or telephone number;
- (j) that Live Wire be ordered to comply with all Commission rules, orders, and
other requirements relevant to the provision of intrastate telecommunications
service;
- (k) that Live Wire be ordered to maintain its accounts and records as required by
the Commission;
- (l) that Live Wire be ordered to file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;
- (m) that Live Wire be ordered to maintain on file with the Commission all current
tariffs and rates, and any service standards that the Commission may require;

- 1 (n) that Live Wire be ordered to cooperate with Commission investigations
2 including, but not limited to, customer complaints;
- 3 (o) that Live Wire be ordered to participate in and contribute to a universal service
4 fund, as required by the Commission; and
- 5 (p) that Live Wire be subject to the Commission's rules governing interconnection
6 and unbundling and the 1996 Telecommunications Act and the rules
7 promulgated thereunder to the extent that they apply to CLECs.

8 14. Although Staff included a discussion of 911 service in its Staff Report, its listed
9 recommendations did not include 911 service. Staff usually includes in its recommendations a
10 provision that requires the Applicant to certify that all issues associated with the provision of 911
11 service have been resolved. Accordingly, we will require: that Live Wire certify, through the 911
12 service provider in the area in which it intends to provide service, that all issues associated with the
13 provision of 911 service have been resolved with the emergency service providers within 365 days of
14 an Order in this matter or 30 days prior to the provision of service, whichever comes first, which
15 certification must remain in effect until further order of the Commission.

16 15. Staff additionally recommended that Live Wire's application for a CC&N to provide
17 intrastate telecommunications services should be granted subject to the following conditions:

- 18 (a) Live Wire be ordered to file conforming tariffs within 365 days from the date
19 of an Order in this matter or 30 days prior to providing service, whichever
20 occurs first, and in accordance with the Decision;
- 21 (b) If the above timeframe is not met, that Live Wire's CC&N should become null
22 and void without further Order of the Commission and no extensions for
23 compliance should be granted;
- 24 (c) if Live Wire desires to discontinue service, it should be required to file an
25 application with the Commission pursuant to A.A.C. R14-2-1107; and
- 26 (d) Live Wire should be required to notify each of its customers and the
27 Commission 60 days prior to filing an application to discontinue service
28 pursuant to A.A.C. R14-2-1107, and any failure to do so should result in
forfeiture of the Applicant's performance bond.

1 16. Based upon Live Wire's indication that it collects advances, deposits, and/or
2 prepayments from its customers, Staff recommended:

3 (a) that Live Wire should be ordered to procure a performance bond equal to
4 \$135,000. The minimum bond amount of \$135,000 should be increased if at
5 any time it would be insufficient to cover prepayments or deposits collected
6 from Live Wire's customers. The bond amount should be increased in
 increments of \$67,500 whenever the total amount of the advances, deposits and
 prepayments is within \$13,500 of the bond amount;

7 (b) that Live Wire should docket proof of the performance bond within 365 days
8 of the effective date of this Order or 30 days prior to the provision of service,
9 whichever comes first, and must remain in effect until further Order of the
 Commission;

10 (c) if at some time in the future, Live Wire does not collect from its resold long
11 distance customers an advance, prepayment, or deposit, that Live Wire should
12 be allowed to file with the Commission a request for cancellation of its
13 established performance bond for the resold long distance portion of the bond
14 only. Such request must reference the decision in this docket and must explain
15 the Applicant's plans for canceling that portion of the bond and Staff will make
16 a recommendation to the Commission for a decision; and

17 (d) If the above timeframe is not met, that Live Wire's CC&N should become null
18 and void without further Order of the Commission and no extensions for
19 compliance should be granted.

20 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,
21 it has determined that Live Wire's fair value rate base is \$5,000, and is too small to be useful in a fair
22 value analysis.

23 18. Staff further stated that in general, rates for competitive services are not set according
24 to rate of return regulation. Staff reviewed the rates to be charged by the company and believes that
25 they are just and reasonable as they are comparable to other competitive local carriers, local
26 incumbent carriers, and major long distance carriers. Therefore, while Staff considered the fair value
27 rate base information submitted by Live Wire, it recommends that the fair value rate base information
28 provided should not be given substantial weight in this analysis.

 19. At the hearing, Live Wire's executive vice president, James Beaver, testified on the
 company's behalf. Mr. Beaver testified that neither Live Wire nor any of its employees or owners has
 or has had any association with a previous certificate holder with a similar name and who was the

1 respondent in a complaint filed by Staff.¹ Mr. Beaver also testified about the company's business
 2 plan. The company plans to target prepaid home phone service in lower socioeconomic markets.
 3 Agents will be established in local convenience, check cashing, and thrift types of stores, and
 4 customers' accounts and payments will be handled by the agents. Mr. Beaver testified that the
 5 company will comply with all the Commissions' rules, including service quality, disconnection, and
 6 slamming and cramming. Staff testified that there is nothing in the company's business plan that
 7 would pose a compliance problem with Commission rules, and that Staff believes that the Applicant
 8 can abide by the Commission's rules.

9 20. Live Wire agreed to file an amended agreement with the Commission which would
 10 provide that Live Wire would file all amendments to its interconnection agreement with Qwest, with
 11 the Commission for approval. Further, Live Wire agreed to file its master services agreement with
 12 Qwest with the Commission for approval, if the Commission determines the master service
 13 agreement is an interconnection agreement requiring Commission approval.²

14 21. At the hearing, Live Wire requested that the Staff recommendation contained in
 15 Finding of Fact 17(b) be modified to allow Live Wire to docket proof of the performance bond 10
 16 days prior to the provision of service, instead of 30 days, as Live Wire wishes to begin providing
 17 service as soon as possible. Staff had no objections to that request.

18 22. Staff's recommendations, as modified at hearing and herein, are reasonable.

19 23. Live Wire's fair value rate base is determined to be \$5,000 for purposes of this
 20 proceeding.

CONCLUSIONS OF LAW

21
 22 1. Applicant is a public service corporation within the meaning of Article XV of the
 23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over Applicant and the subject matter of the
 25 Application.

26
 27 ¹ LiveWireNet of Arizona, See Decision No. 66984 (May 11, 2004); "We have no association with them. It was by
 accident, I guess you would say, that we picked an infamous name. Our families got together and by democratic process
 came up with the name Live Wire, and once we had filed, we soon found out that it was infamous." Tr. p. 24.

28 ² On January 26, 2005, Applicant filed an Application for Approval of the QPP Master Service Agreement, Docket No. T-
 04257-05-0048 et al.

1 shall procure and docket proof of a performance bond equal to \$135,000 the earlier of 365 days from
2 the effective date of this Order or 10 days prior to the commencement of service.

3 IT IS FURTHER ORDERED that if The J. Richard Company dba Live Wire Phone Company
4 fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of
5 Convenience and Necessity conditionally granted herein shall become null and void without further
6 Order of the Commission.

7 IT IS FURTHER ORDERED that The J. Richard Company dba Live Wire Phone Company
8 shall comply with all of the Staff recommendations set forth in Findings of Fact Nos. 13, 15, 16, and
9 with Findings of Fact Nos. 14 and 20.

10 ...
11 ...
12 ...
13 ...
14 ...
15 ...
16 ...
17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that if The J. Richard Company dba Live Wire Phone Company
2 fails to notify each of its customers and the Commission at least 60 days prior to filing an application
3 to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate
4 of Convenience and Necessity, The J. Richard Company dba Live Wire Phone Company's
5 performance bond shall be forfeited.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 _____
CHAIRMAN COMMISSIONER COMMISSIONER

11
12
13
14 _____
COMMISSIONER COMMISSIONER

15
16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
17 Secretary of the Arizona Corporation Commission, have
18 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2005.

19 _____
20 BRIAN C. McNEIL
EXECUTIVE SECRETARY

21
22 DISSENT _____

23
24 DISSENT _____

25
26 LF:mlj

27
28

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:

THE J. RICHARD COMPANY DBA LIVE WIRE
PHONE COMPANY

DOCKET NO.:

T-04257A-04-0335

Thomas H. Campbell
Michael T. Hallam
LEWIS AND ROCA
40 North Central Avenue
Phoenix, AZ 85004
Attorneys for The J. Richard Company
dba Live Wire Phone Company

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

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