

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

APR 18 2005

DATE: April 18, 2005

DOCKET NO: T-04122A-04-0610

TO ALL PARTIES:

DOCKETED BY

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

AIRESPRING, INC.
(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:

APRIL 27, 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 Open Meeting to be held on:

MAY 3 AND 4, 2005

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

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 AIRESRING, INC. FOR A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO PROVIDE
11 RESOLD LOCAL EXCHANGE
12 TELECOMMUNICATIONS SERVICE IN
13 ARIZONA AND FOR COMPETITIVE
14 CLASSIFICATION OF ITS SERVICES.¹

DOCKET NO. T-04122A-04-0610

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 7, 2005
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Amanda Pope
13 APPEARANCES: Michael W. Patten, ROSHKA HEYMAN & DEWULF,
14 P.L.C., on behalf of Airespring, Inc.; and
15 Diane Targovnik, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
17 Corporation Commission.

18 **BY THE COMMISSION:**

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

21 **FINDINGS OF FACT**

- 22 1. On August 18, 2004, Airespring, Inc. ("Airespring" or "Applicant") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 competitive resold and facilities-based local exchange telecommunications services statewide.
25 2. On February 4, 2005, Applicant docketed a Notice of Filing of Affidavit of
26 Publication that complies with Commission rules.
27 3. Airespring is a Delaware corporation authorized to do business in Arizona.
28 4. On December 21, 2004, the Commission's Utilities Division Staff ("Staff") filed its

¹ At the March 7, 2005 hearing, Airespring modified its August 18, 2004 application by deleting its application to provide facilities-based local exchange telecommunications services.

1 Staff Report, which included Staff's fair value rate base ("FVRB") determination in this matter and
2 recommended approval of the application subject to certain conditions.

3 5. On December 30, 2004, a Procedural Order was issued setting this matter for hearing
4 on March 7, 2005 and setting various procedural deadlines.

5 6. On March 7, 2005, a full public hearing in this matter was held as scheduled.
6 Applicant appeared telephonically. Staff appeared and was represented by counsel. The hearing was
7 conducted before a duly authorized Administrative Law Judge. Evidence was presented and
8 testimony was taken. At the conclusion of the hearing, the Administrative Law Judge took the matter
9 under advisement and informed the parties that a Recommended Opinion and Order would be
10 prepared for the Commissioners' consideration.

11 7. At the hearing, Airespring indicated that it was amending its application by
12 withdrawing its request for authority to provide facilities-based local exchange services.

13 8. As a consequence of its amendment, Airespring requested a reduction of the bond
14 requirement recommended by Staff from \$125,000 to \$25,000.

15 9. At the hearing, Staff testified that based upon Airespring's oral amendment, it
16 recommends one modification to its Staff Report. Specifically, Staff amended its recommendation
17 with regard to the procurement of a performance bond such that Airespring should be required to
18 obtain a performance bond in the amount of \$25,000 rather than \$125,000.

19 10. According to the Staff Report, Airespring submitted unaudited financial statements for
20 the five months ending May 31, 2004. These financial statements list assets in excess of \$2.1 million,
21 equity in excess of \$908,000, and a net income of \$57,518.

22 11. In its Staff Report, Staff stated that based on information obtained from the Applicant,
23 it has determined that Airespring's fair value rate base ("FVRB") is zero, is not useful in a fair value
24 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
25 services are not set according to rate of return regulation. Staff has reviewed the rates to be charged
26 by the Applicant and believes they are just and reasonable as they are comparable to several long
27 distance carriers operating in Arizona and comparable to the rates the Applicant charges in other
28 jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant,

1 the FVRB information provided should not be given substantial weight in this analysis.

2 12. Staff believes that Airespring has no market power and that the reasonableness of its
3 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
4 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
5 proposed tariffs for its competitive services will be just and reasonable and recommends that the
6 Commission approve them.

7 13. Staff recommended that Airespring's application for a Certificate to provide
8 competitive resold local exchange telecommunications services be granted subject to the following
9 conditions:

- 10 (a) that, unless it provides services solely through the use of its own facilities,
11 Applicant be ordered to procure an Interconnection Agreement, within 365
12 days of the effective date of the Order in this matter or 30 days prior to the
13 provision of service, whichever comes first, that must remain in effect until
14 further order of the Commission, before being allowed to offer local exchange
15 service;
- 16 (b) that Applicant be ordered to file with the Commission, within 365 days of the
17 effective date of the Order in this matter or 30 days prior to the provision of
18 service, whichever comes first, its plan to have its customers' telephone
19 numbers included in the incumbent's Directories and Directory Assistance
20 databases;
- 21 (c) that Applicant be ordered to pursue permanent number portability
22 arrangements with other LECs pursuant to Commission rules, federal laws and
23 federal rules;
- 24 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism
25 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
26 00000E-95-0498);
- 27 (e) that Applicant be ordered to abide by the quality of service standards that were
28 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) that Applicant be prohibited from barring access to alternative local exchange
service providers who wish to serve areas where the Applicant is the only
provider of local exchange service facilities;
- (g) that Applicant be ordered to certify, through the 911 service provider in the
area in which it intends to provide service, that all issues associated with the
provision of 911 service have been resolved with the emergency service
providers within 365 days of the effective date of an Order in this matter or 30
days prior to the provision of service, whichever comes first, which
certification must remain in effect until further Order of the Commission;
- (h) that Applicant be ordered to abide by all the Commission decisions and
policies regarding CLASS services;

- 1 (i) that Applicant be ordered to provide 2-PIC equal access;
- 2 (j) that Applicant be required to notify the Commission immediately upon
- 3 changes to its address or telephone number;
- 4 (k) that Applicant be ordered to comply with all Commission rules, orders, and other
- 5 requirements relevant to the provision of intrastate telecommunications
- 6 service;
- 7 (l) that Applicant be ordered to maintain its accounts and records as required by
- 8 the Commission;
- 9 (m) that Applicant be ordered to file with the Commission all financial and other
- 10 reports that the Commission may require, and in a form and at such times as
- 11 the Commission may designate;
- 12 (n) that Applicant be ordered to maintain on file with the Commission all current
- 13 tariffs and rates, and any service standards that the Commission may require;
- 14 (o) that Applicant be ordered to cooperate with Commission investigations
- 15 including, but not limited to, customer complaints;
- 16 (p) that Applicant be ordered to participate in and contribute to a universal service
- 17 fund, as required by the Commission; and
- 18 (q) that Applicant be subject to the Commission's rules and the 1996
- 19 Telecommunications Act to the extent that they apply to CLECs.

16 16. Staff further recommended that Airespring's application for a CC&N to provide

17 intrastate telecommunications services should be granted subject to the following conditions, as

18 modified at hearing:

- 19 (a) be ordered to file conforming tariffs within 365 days from the date of an Order
- 20 in this matter or 30 days prior to providing service, whichever occurs first, and
- 21 in accordance with the Decision;
- 22 (b) In order to protect Airespring's customers:
- 23 (1) should be ordered to procure a performance bond equal to \$25,000. The
- 24 minimum bond amount of \$25,000 should be increased if at any time it
- 25 would be insufficient to cover prepayments or deposits collected from
- 26 Airespring's customers. The bond amount should be increased in
- 27 increments of \$12,500 whenever the total amount of the advances, deposits
- 28 and prepayments is within \$2,500 of the bond amount;
- (2) should docket proof of the performance bond within 365 days of the
- effective date of an Order in this matter or 30 days prior to the provision of
- service, whichever comes first, and must remain in effect until further
- Order of the Commission;

1 (3) if Airespring desires to discontinue service, it should be required to file an
2 application with the Commission pursuant to A.A.C. R14-2-1107; and

3 (4) should be required to notify each of its customers and the Commission 60
4 days prior to filing an application to discontinue service pursuant to A.A.C.
5 R14-2-1107; and any failure to do so should result in forfeiture of the
6 Applicant's performance bond.

7 (c) If any of the above timeframes are not met, that Airespring's CC&N should
8 become null and void without further Order of the Commission and no
9 extensions for compliance should be granted.

10 18. Staff's recommendations, as set forth herein, are reasonable.

11 19. Airespring's fair value rate base is determined to be zero for purposes of this
12 proceeding.

13 **CONCLUSIONS OF LAW**

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

16 2. The Commission has jurisdiction over Applicant and the subject matter of the
17 application.

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

19 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
20 Certificate to provide competitive telecommunications services.

21 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
22 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
23 in its application.

24 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
25 competitive resold local exchange telecommunications services in Arizona as conditioned by Staff's
26 recommendations.

27 7. The telecommunications services that the Applicant intends to provide are competitive
28 within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
it is just and reasonable and in the public interest for Applicant to establish rates and charges that are

1 not less than the Applicant's total service long-run incremental costs of providing the competitive
2 services approved herein.

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

4 10. Airespring's competitive rates, as set forth in its proposed tariffs, are just and
5 reasonable and should be approved.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of Airespring, Inc. for a Certificate of
8 Convenience and Necessity for authority to provide competitive resold local exchange services in
9 Arizona shall be, and is hereby, granted, conditioned upon Airespring, Inc.'s timely compliance with
10 the following three Ordering Paragraphs.

11 IT IS FURTHER ORDERED that Airespring, Inc. shall file conforming tariffs in accordance
12 with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever
13 comes first.

14 IT IS FURTHER ORDERED that Airespring, Inc. shall procure a performance bond equal to
15 \$25,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the
16 commencement of service. The minimum bond amount of \$25,000 shall be increased if, at any time,
17 it would be insufficient to cover prepayments or deposits collected from the Applicant's customers.
18 The bond amount shall be increased in increments of \$12,500. This increase shall occur when the
19 total amount of the advances, deposits, and prepayments is within \$2,500 of the bond amount.

20 IT IS FURTHER ORDERED that Airespring, Inc. shall comply with all of the Staff
21 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

22 IT IS FURTHER ORDERED that if Airespring, Inc. fails to meet the timeframes outlined in
23 the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally
24 granted herein shall become null and void without further Order of the Commission.

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

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN COMMISSIONER COMMISSIONER

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13 COMMISSIONER COMMISSIONER

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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 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 DISSENT _____

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23

24 DISSENT _____

25 AP:mj
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1 SERVICE LIST FOR: AIRESRING, INC.

2 DOCKET NO.: T-04122A-04-0610

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