

OPEN MEETING ITEM  
ORIGINAL



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



RECEIVED Executive Secretary

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ARIZONA CORPORATION COMMISSION

2005 JUN 23 P 2: 20

DATE: June 23, 2005

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKET NO: T-04297A-04-0918

TO ALL PARTIES:

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

PHONE1, INC.  
(CC&N/RESELLER/AOS)

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:

JULY 5, 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:

JULY 12 AND 13, 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.

Arizona Corporation Commission

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JUN 23 2005

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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

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

9 IN THE MATTER OF THE APPLICATION OF  
10 PHONE1, INC. FOR A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 RESOLD INTEREXCHANGE  
13 TELECOMMUNICATIONS SERVICES, AND  
14 ALTERNATIVE OPERATOR SERVICES.

DOCKET NO. T-04297A-04-0918

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

**ORDER**

11 Open Meeting  
12 July 12 and 13, 2005  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

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

**FINDINGS OF FACT**

17 1. On December 21, 2004, Phone1, Inc. ("Applicant" or "Phone1") filed with the  
18 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide  
19 resold interexchange telecommunications services, and for alternative operator services ("AOS")  
20 within the State of Arizona.

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

23 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
24 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction  
25 of the Commission.

26 4. In Decision No. 57339 (April 5, 1991), the Commission found that AOS providers  
27 were public service corporations subject to the jurisdiction of the Commission.  
28

1           5.       In Decision No. 58421 (October 1, 1993), the Commission adopted A.A.C. R14-2-  
2 1001 through R14-2-1014 to regulate AOS providers.

3           6.       Phone1 has authority to transact business in the State of Arizona.

4           7.       On February 3, 2005, Phone1 filed an Affidavit of Publication indicating compliance  
5 with the Commission's notice requirements.

6           8.       On April 27, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff  
7 Report which includes Staff's fair value rate base determination in this matter and recommends  
8 approval of the application subject to certain conditions.

9           9.       In the Staff Report, Staff stated that Phone1 provided audited financial statements  
10 from its parent company, Phone1Globalwide, Inc., and its subsidiaries, for the twelve months ending  
11 March 31, 2004, which list assets of \$14,726,549, equity of \$10,806,257 and net loss of \$16,590,231.

12          10.       According to the Staff Report, Phone1 provides resold long distance service and AOS  
13 in 27 states. In the event that Applicant encounters financial difficulty, there should be minimal  
14 impact on long distance and AOS customers because of numerous competitors willing to replace any  
15 provider.

16          11.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
17 it has determined that Phone1's fair value rate base ("FVRB") is zero. Staff has determined that  
18 Applicant's FVRB is too small to be useful in a fair value analysis, and is not useful in setting rates.  
19 Staff further stated that in general, rates for competitive services are not set according to rate of return  
20 regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and  
21 reasonable as they are comparable to several long distance carriers operating in Arizona and  
22 comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff  
23 considered the FVRB information submitted by the Applicant, the FVRB information provided  
24 should not be given substantial weight in this analysis.

25          12.       Staff believes that Phone1 has no market power and that the reasonableness of its rates  
26 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
27 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed  
28 tariffs for its competitive resold interexchange services will be just and reasonable, and recommends

1 that the Commission approve them.

2 13. The Commission adopted maximum rates for AOS in Decision No. 61274 (December  
3 14, 1998), and these rates are reflected in Schedules 1 and 2 attached to the Staff Report. These  
4 maximum rates when coupled with discounting authority provide AOS providers with the ability to  
5 compete on price and service quality.

6 14. In its Staff Report, Staff reviewed the rates for five major toll carriers to establish the  
7 maximum AOS rates, service charges and operator-dialed surcharges set forth on Schedules 1 and 2.

8 15. Staff recommends that if Phone1 desires to increase its rates, in response to an  
9 increase in maximum rates by any carriers used in developing Schedules 1 or 2, Phone1 should be  
10 authorized to allow its rates to float in accordance with the carriers' revised higher rates so long as  
11 the Applicant files the following items for Commission review: 1) an estimate of the value of its plant  
12 to serve Arizona customers; 2) a tariff setting forth the new maximum rates, which do not exceed the  
13 maximum rate of the five major carriers; and 3) all information required by Arizona Administrative  
14 Code ("A.C.C.") R14-2-1110.

15 16. In its Staff report, Staff recommends Applicant's interLATA or intraLATA rates and  
16 service charges be set at the maximum rate for each mileage band, respective of the day of the week  
17 and time of day, currently authorized for any facilities-based interexchange carriers ("IXC") as set  
18 forth in Schedule 1 or authorized for any facilities based intraLATA carriers set forth in Schedule 2.  
19 Further, Staff indicated that the proposed rates and charges, as set forth in Phone1's tariff filing of  
20 December 21, 2004, for either interLATA or intraLATA telephone services are identical to or less  
21 than the rates and service charges contained in Schedules 1 and 2, and therefore, Staff believes that  
22 Phone1's proposed tariffs are reasonable and recommends that the Commission approve them.

23 17. According to Staff's Report, in prior decisions, the Commission has approved both an  
24 operator-dialed (operator assisted call) surcharge and a property (location-specific or subscriber)  
25 surcharge. Staff recommends that property charges be limited to \$1.00 per call, instead of \$2.00 per  
26 call as requested by Applicant, to facilitate a level playing field for all competitors.

27 18. Staff recommended approval of Phone1's application for a CC&N to provide resold  
28 interexchange services and AOS telecommunications services subject to the following:

- 1 (a) The Applicant should be ordered to comply with all Commission rules, orders,  
2 and other requirements relevant to the provision of intrastate telecommunications  
3 service;
- 4 (b) The Applicant should be ordered to maintain its accounts and records as  
5 required by the Commission;
- 6 (c) The Applicant should be ordered to file with the Commission all financial and  
7 other reports that the Commission may require, and in a form and at such times as the  
8 Commission may designate;
- 9 (d) The Applicant should be ordered to maintain on file with the Commission all  
10 current tariffs and rates, and any service standards that the Commission may require;
- 11 (e) The Applicant should be ordered to comply with the Commission's rules and  
12 modify its tariffs to conform to these rules if it is determined that there is a conflict  
13 between the Applicant's tariffs and the Commission's rules;
- 14 (f) The Applicant should be ordered to cooperate with Commission investigations  
15 of customer complaints;
- 16 (g) The Applicant should be ordered to participate in and contribute to a universal  
17 service fund instituted in Decision No. 59623 (April 24, 1996), as required by the  
18 Commission;
- 19 (h) The Applicant should be ordered to notify the Commission immediately upon  
20 changes to the Applicant's name, address or telephone number;
- 21 (i) The Applicant's interexchange service offerings should be classified as  
22 competitive pursuant to A.A.C. R14-2-1108;
- 23 (j) The Applicant's maximum rates for resold interexchange rates should be the  
24 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
25 for the Applicant's competitive services should be the Applicant's total service long  
26 run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
- 27 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
28 competitive service, the rate stated should be the effective (actual) price to be charged  
for the service as well as the service's maximum rate;
- (l) In the event Applicant seeks to change its rates, Applicant shall follow the  
procedure as set forth in A.A.C. R14-2-1110;
- (m) The Applicant is authorized to discount its rates and service charges to the  
marginal cost of providing the services;
- (n) The Applicant's interLATA rates and service charges for AOS should be based

1 on the maximum rates and service charges as set forth in Schedule 1 attached to the  
2 Staff Report;

3 (o) The Applicant's intraLATA rates and service charges for AOS should be based  
4 on the maximum rates and service charges as set forth in Schedule 2 attached to the  
5 Staff Report;

6 (p) The Applicant's property surcharge for AOS be limited to \$1.00 per call;

7 (q) If at some future date, the Applicant wants to collect from its resold  
8 interexchange customers an advance, deposit and/or prepayment, Staff recommends  
9 that the Applicant be required to file an application with the Commission for  
10 Commission approval. Such application must reference the Decision in this docket  
11 and must explain the Applicant's plans for procuring a performance bond; and

12 (r) If, at some future date, Applicant requests to discontinue service and/or  
13 abandon its service area, applicant must in accordance with A.A.C. R14-2-1107  
14 comply, and obtain Commission authorization of compliance, with all of the requests,  
15 including but not limited to the notice requirements, prior to the discontinuance of  
16 service and/or abandonment of its service area.

17 19. Staff further recommended that Phone1's Certificate should be conditioned upon the  
18 Applicant filing conforming tariffs in accordance with this Decision within 30 days from the date of  
19 an Order in this matter.

20 20. Staff further recommended that if the Applicant fails to meet the timeframe outlined in  
21 Findings of Fact No. 19, that Phone1's Certificate should become null and void without further Order  
22 of the Commission, and that no time extensions for compliance should be granted.

23 21. Phone1 will not collect advances, prepayments or deposits from customers.

24 22. The rates proposed by this filing are for competitive services.

25 23. Staff's recommendations as set forth herein are reasonable.

26 24. Phone1's fair value rate base is zero.

### 27 CONCLUSIONS OF LAW

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

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

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

1 4. Applicant's provision of resold interexchange telecommunications services and  
2 interLATA and intraLATA AOS except local exchange service in Arizona is in the public interest.

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

5 6. Staff's recommendations in Findings of Fact No. 11, 12, 15, 16, 17, 18, 19 and 20  
6 should be adopted.

7 7. Phone1's fair value rate base is not useful in determining just and reasonable rates for  
8 the competitive services it proposes to provide to Arizona customers.

9 8. Phone1's rates, as they appear in its proposed tariffs, are just and reasonable and  
10 should be approved.

11 9. Pursuant to A.R.S. § 40-282(c)(2), a hearing is not required for the issuance of a  
12 Certificate to a reseller or an AOS provider.

13 **ORDER**

14 IT IS THEREFORE ORDERED that the application of Phone1, Inc. for a Certificate of  
15 Convenience and Necessity for authority to provide competitive resold interexchange  
16 telecommunications services and AOS, except local exchange services, is hereby granted,  
17 conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of  
18 Fact No. 19 above.

19 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
20 11, 12, 15, 16, 17, 18, 19, and 20 above are hereby adopted.

21 IT IS FURTHER ORDERED that Phone1, Inc. shall comply with the adopted Staff  
22 recommendations as set forth in Findings of Fact Nos. 18 and 19 above.

23 ...

24 ...

25 ...

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27 ...

28 ...

1 IT IS FURTHER ORDERED that if Phone1, Inc. fails to meet the timeframe outlined in  
2 Findings of Fact. No. 19 above that the Certificate conditionally granted herein shall become null and  
3 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.

6  
7  
8 CHAIRMAN

COMMISSIONER

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10  
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

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 \_\_\_\_\_, 2005.

17 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_

21 YK:mj  
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1 SERVICE LIST FOR: PHONE1, INC.  
2 DOCKET NO.: T-04297A-04-0918

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