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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF
MVX COMMUNICATIONS, LLC FOR
AUTHORITY TO TRANSFER ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
QUANTUMSHIFT COMMUNICATIONS, INC.,
F/K/A MVX.COM COMMUNICATIONS, INC.

DOCKET NO. T-03793A-99-0608
DOCKET NO. T-03549A-99-0608

DECISION NO. 65468

OPINION AND ORDER

DATE OF HEARING: August 28, 2002

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW
JUDGE: Teena Wolfe

APPEARANCES: Michael W. Patten, ROSHKA, HEYMAN & DeWULF, PLC,
on behalf of applicant QuantumShift Communications, Inc.; and
David Ronald, Staff Attorney, Legal Division, on behalf of the
Commission's Utilities Division Staff.

BY THE COMMISSION:

On October 26, 1999, MVX Communications, LLC ("MVX") and MVX.COM
Communications, Inc. (jointly, "Applicants") filed an application with the Arizona Corporation
Commission ("Commission") requesting approval of the transfer of assets from MVX to MVX.COM
Communications, Inc., and the transfer of MVX's Certificate of Convenience and Necessity
("CC&N") to MVX.COM Communications, Inc. ("Application").

Effective May 4, 2001, MVX.COM Communications, Inc. changed its name to QuantumShift
Communications, Inc. ("QuantumShift").

On December 24, 2001, the Commission's Utilities Division Staff ("Staff") filed a Staff
Report on the Application recommending that the Commission approve, after a hearing, the transfer
of MVX's assets and CC&N to QuantumShift.

A hearing was held on the Application on August 28, 2002. Applicants and Staff appeared
through counsel and presented evidence. No members of the public appeared to provide comment at

1 the hearing. At the close of the hearing, the matter was taken under advisement.

2 * * * * *

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

5 **FINDINGS OF FACT**

6 1. MVX was granted a CC&N to provide competitive resold intrastate toll
7 telecommunications services in Arizona in Commission Decision No. 61989 (October 8, 1999).

8 MVX is a Nevada limited liability company authorized to do business in Arizona since 1998.

9 2. MVX merged with MVX.COM Communications, Inc. on May 5, 1999.

10 3. On October 26, 1999, MVX and MVX.COM Communications, Inc. filed the
11 Application.

12 4. On June 9, 2000, in Commission Decision No. 62640, the Commission granted
13 MVX.COM Communications, Inc., a California corporation authorized to do business in Arizona
14 since 1999, a CC&N to provide competitive local exchange services, but not toll services, as a
15 reseller.

16 5. Effective May 4, 2001, MVX.COM Communications, Inc. changed its name to
17 QuantumShift.

18 6. In the Application, MVX requests approval to transfer its CC&N to MVX.COM
19 Communications, Inc., now known as QuantumShift, so that QuantumShift will have authority to
20 provide both resold local exchange services and resold intrastate toll services.

21 7. On December 24, 2001, Staff filed a Staff Report on the Application recommending
22 approval after a hearing.

23 8. By Procedural Order of February 12, 2002, the matter was set for hearing, and
24 Applicants were ordered to publish notice of the hearing.

25 9. On March 15, 2002, Staff filed an amendment to its Staff Report to include a fair
26 value recommendation.

27 10. A hearing was convened as scheduled on April 9, 2002. Applicants failed to publish
28 notice of the hearing or to appear at the hearing.

1 11. By Procedural Order of April 10, 2002, the hearing was continued to May 28, 2002
2 and Applicants were again ordered to publish notice of the hearing.

3 12. A hearing was convened as scheduled on May 28, 2002. Applicants again failed to
4 publish notice or to appear at the hearing. Applicants' letter requesting a continuance of the May 28,
5 2002 hearing was docketed on May 29, 2002.

6 13. A Procedural Order was issued in these dockets on June 11, 2002, ordering counsel for
7 Applicants to file a motion for admission *pro hac vice*, or in the alternative, ordering Applicants to
8 obtain local counsel.

9 14. On July 8, 2002, local counsel filed a Notice of Appearance in this matter.

10 15. A Procedural Order was issued on July 19, 2002 setting the matter for hearing and
11 ordering Applicants to publish notice of the hearing.

12 16. On August 6, 2002, Applicants filed an Affidavit of Publication verifying that it
13 caused notice of the hearing to be published in the Arizona Republic on July 26, 2002.

14 17. No intervention requests were received, and no comments on the Application were
15 filed.

16 18. A public hearing was held as scheduled on August 28, 2002. Applicants and Staff
17 appeared through counsel and presented evidence. No members of the public appeared to provide
18 comment at the hearing.

19 19. QuantumShift currently provides resold local exchange and intrastate toll service to
20 approximately 20 business customers in the State of Arizona. MVX's customers were informed of
21 the change in provider and the name change to QuantumShift.

22 20. QuantumShift provided unaudited financial statements for it and its subsidiaries for
23 the year ending December 2001. Those financial statements reflect a net loss for the year of \$44.7
24 million on revenues of \$25.3 million.

25 21. Staff evaluated QuantumShift's financial and technical capabilities to provide resold
26 intrastate toll service. Staff states that the merged company has the combined experience of its
27 predecessors providing telecommunications services, that the Commission has not received any
28 complaints regarding MVX or QuantumShift, and that no harm was caused to Arizona customers by

1 the merger of MVX with QuantumShift. Staff believes that the requested CC&N transfer and
2 retroactive approval of the merger are in the public interest, and recommends approval of the
3 Application.

4 22. QuantumShift does not collect advances or prepayments, and MVX did not collect
5 advances or prepayments.

6 23. In its Staff Report, Staff stated that based on information obtained from QuantumShift,
7 it has determined that QuantumShift's fair value rate base is zero, and is too small to be useful in
8 setting rates. Staff further stated that in general, rates for competitive services are not set according
9 to rate of return regulation, but are heavily influenced by the market. Staff did not recommend that
10 the Commission set rates for QuantumShift based on the fair value of its rate base.

11 24. The Commission provides pricing flexibility by allowing competitive
12 telecommunication service companies to price their services at or below the maximum rates
13 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
14

15 25. QuantumShift has no market power and the reasonableness of its rates will be
16 evaluated in a market with numerous competitors. In light of the competitive market in which
17 QuantumShift provides its services, MVX's tariffed rates for competitive toll services are just and
18 reasonable, and should be approved for QuantumShift.
19

20 26. Staff recommends that in order to protect QuantumShift's customers in the event
21 QuantumShift discontinues provision of local exchange service, QuantumShift should be required to
22 post a performance bond, within 30 days of a Decision in this matter, in the amount of \$25,000. Staff
23 further recommends that the performance bond should be forfeited if QuantumShift discontinues
24 provision of local exchange service without complying with the requirements of A.A.C. R14-2-1107.
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26 27. QuantumShift requested that it be allowed 90 days following a Decision in this matter
27 to post the performance bond recommended by Staff in order to allow it time to accrue the cost of the
28

1 bond.

2 28. QuantumShift's fair value rate base is determined to be zero for purposes of this
3 proceeding.

4
5 **CONCLUSIONS OF LAW**

6 1. Applicants are Arizona public service corporations within the meaning of Article 15 of
7 the Arizona Constitution and A.R.S. §§ 40-281, -282, and -285.

8 2. The Commission has jurisdiction over Applicants and the subject matter of the
9 Application.

10 3. Notice of the Application was given in accordance with the law.

11 4. QuantumShift is a fit and proper entity to receive a CC&N authorizing it to provide
12 intrastate toll services in Arizona as conditioned by Staff's recommendations.

13 5. It is in the public interest for the CC&N of MVX to be transferred to QuantumShift.

14 6. It is in the public interest to approve the merger of MVX with QuantumShift pursuant
15 to A.R.S. § 40-285.

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

17 8. The competitive rates set forth in MVX's tariffs are just and reasonable and should be
18 approved for QuantumShift.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the merger of MVX Communications, LLC with
21 QuantumShift Communications, Inc. is hereby approved, and that the Certificate of Convenience and
22 Necessity authorizing MVX Communications, LLC to provide competitive resold intrastate toll
23 telecommunications services in Arizona is hereby transferred to QuantumShift Communications, Inc.,
24 conditioned upon QuantumShift Communications, Inc.'s timely compliance with the following two
25 Ordering Paragraphs.

26 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall file, within 30
27 days of this Decision, tariffs reflecting the intrastate toll rates previously authorized for MVX
28 Communications, LLC.

1 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall procure a
2 performance bond equal to \$25,000 within 30 days from the effective date of this Decision.

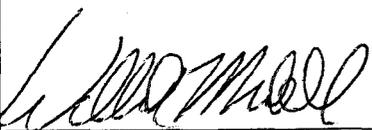
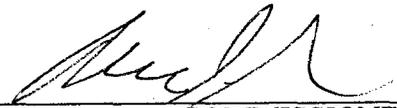
3 IT IS FURTHER ORDERED that if QuantumShift Communications, Inc. fails to meet the
4 timeframes outlined in the Ordering Paragraphs above, that the approval of the merger, and the
5 Certificate of Convenience and Necessity conditionally granted herein, shall become null and void
6 without further Order of the Commission.

7 IT IS FURTHER ORDERED that if QuantumShift Communications, Inc. discontinues
8 provision of local exchange service without complying with the requirements of A.A.C. R14-2-1107,
9 QuantumShift Communications, Inc.'s performance bond shall be forfeited.

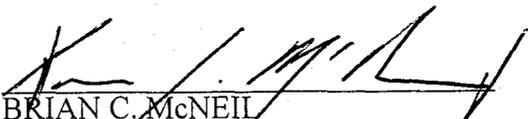
10 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall not charge its
11 customers any prepayments or deposits without first receiving from the Commission an Order
12 authorizing it to do so.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER

18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Secretary of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this 19th day of December, 2002.

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24 BRIAN C. McNEIL
25 EXECUTIVE SECRETARY

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DISSENT _____
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1 SERVICE LIST FOR:

QUANTUMSHIFT COMMUNICATIONS INC.,
F/K/A/ MVX.COM COMMUNICATIONS INC. AND
MVX COMMUNICATIONS LLC

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3 DOCKET NO.

T-03793A-99-0608 ET AL.

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Michael W. Patten

5

ROSHKA HEYMAN & DEWULF, PLC

6

One Arizona Center

7

400 East Van Buren Street, Suite 800

8

Phoenix, AZ 85007

9

Attorneys for MVX Communications, LLC and

10

QuantumShift Communications, Inc., fka MVX.COM Communications, Inc.

11

Jenna Brown

12

QUANTUMSHIFT COMMUNICATIONS, INC.

13

101 Rowland Way, Ste. 300

14

Novato, CA 94945

15

Christopher Kempley, Chief Counsel

16

Legal Division

17

ARIZONA CORPORATION COMMISSION

18

1200 West Washington

19

Phoenix, AZ 85007

20

Ernest Johnson, Director

21

Utilities Division

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ARIZONA CORPORATION COMMISSION

23

1200 West Washington

24

Phoenix, AZ 85007

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