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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**DOCKETED**

OCT 24 2003

COMMISSIONERS

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

DOCKETED BY *sd*

IN THE MATTER OF THE APPLICATION OF  
MOTION TELECOM, INC. FOR A CERTIFICATE  
OF CONVENIENCE AND NECESSITY TO  
PROVIDE COMPETITIVE RESOLD  
INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES, EXCEPT LOCAL EXCHANGE  
SERVICES

DOCKET NO. T-04186A-03-0406

DECISION NO. 66448

**ORDER**

Open Meeting  
October 21 and 22, 2003  
Phoenix, Arizona

**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 June 12, 2003, Motion Telecom, Inc. ("Applicant" or "Motion") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

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

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. Motion has authority to transact business in the State of Arizona.

5. On August 13, 2003, Mercury filed an Affidavit of Publication indicating compliance with the Commission's notice requirements.

1           6.     On August 22, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff  
2 Report, which includes Staff's fair value rate base determination in this matter and recommends  
3 approval of the application subject to certain conditions.

4           7.     In the Staff Report, Staff stated that Motion provided financial statements for the  
5 period ending December 31, 2002, which list assets of \$14.9 million, total equity of \$4.5 million, and  
6 a net income of \$1.7 million.

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

13           9.     Staff believes that Motion has no market power and that the reasonableness of its rates  
14 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
15 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed  
16 tariffs for its competitive services will be just and reasonable, and recommends that the Commission  
17 approve them.

18           10.    Staff recommended approval of Motion's application subject to the following:

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

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

24           (c)    The Applicant should be ordered to file with the Commission all financial and  
25 other reports that the Commission may require, and in a form and at such times as the  
26 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 these rules if it is determined that there is a conflict

1 between the Applicant's tariffs and the Commission's rules;

2 (f) The Applicant should be ordered to cooperate with Commission investigations  
3 of customer complaints;

4 (g) The Applicant should be ordered to participate in and contribute to a universal  
5 service fund, as required by the Commission;

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

8 (i) The Applicant's interexchange service offerings should be classified as  
9 competitive pursuant to A.A.C. R14-2-1108;

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

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

17 11. Staff further recommended that Motion's Certificate should be conditioned upon the  
18 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective  
19 date of this Decision, or 30 days prior to providing service, whichever comes first.

20 12. Based on Motion's indication that it collects from its customers an advance, deposit,  
21 and/or prepayment, Staff also recommended the following:

22 (a) that Motion's Certificate should be conditioned upon the Applicant procuring a  
23 performance bond as described below, and filing proof of that performance bond  
24 within 365 days from the date of an Order in this matter, or 30 days prior to providing  
25 service, whichever comes first;

26 (b) that Motion be required to procure a performance bond in the initial amount of  
27 \$10,000, with the minimum bond amount of \$10,000 to be increased if at any time it  
28 would be insufficient to cover all advances, deposits, or prepayments collected from  
its customers, in the following manner: The bond amount should be increased in  
increments of \$5,000, with such increases to occur whenever the total amount of the  
advances, deposits, and prepayments reaches a level within \$1,000 under the actual  
bond amount; and

(c) that, if at some time in the future, Motion does not collect from its customers  
any advances, prepayments or deposits, that Motion should be allowed to file with the

1 Commission a request for cancellation of its established performance bond. Staff  
2 stated that after Staff review of such filing, Staff would forward its recommendation  
on the matter to the Commission for a Decision

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

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

7 15. Staff's recommendations as set forth herein are reasonable.

8 16. Motion's fair value rate base is zero.

9 **CONCLUSIONS OF LAW**

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

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

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

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

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

19 6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, 12, and 13 should be  
20 adopted.

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

23 8. Motion's rates, as they appear in its proposed tariffs, are just and reasonable and  
24 should be approved.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application of Motion Telecom, Inc. for a Certificate  
27 of Convenience and Necessity for authority to provide competitive resold interexchange  
28 telecommunications services, except local exchange services, is hereby granted, conditioned upon its

1 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11  
2 and 12 above.

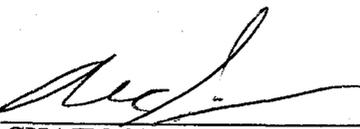
3 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
4 8, 9, 10, 11, 12, and 13 above are hereby adopted.

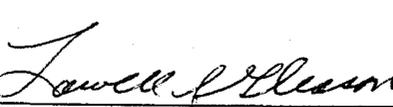
5 IT IS FURTHER ORDERED that Motion Telecom, Inc. shall comply with the adopted Staff  
6 recommendations as set forth in Findings of Fact Nos. 10, 11, and 12 above.

7 IT IS FURTHER ORDERED that if Motion Telecom, Inc. fails to meet the timeframes  
8 outlined in Findings of Fact Nos. 11 and 12 above, that the Certificate conditionally granted herein  
9 shall become null and void without further Order of the Commission.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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14 CHAIRMAN COMMISSIONER COMMISSIONER

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17 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 24<sup>th</sup> day of October, 2003.

23   
24 BRIAN C. McNEIL  
25 EXECUTIVE SECRETARY

26 DISSENT \_\_\_\_\_

27 DISSENT \_\_\_\_\_  
28 AP:mj

1 SERVICE LIST FOR: MOTION TELECOM, INC.

2 DOCKET NO.: T-04186A-03-0406

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