



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

OCT 25 2005

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

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
DMJ COMMUNICATIONS, INC. FOR  
CANCELLATION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES IN THE  
STATE OF ARIZONA.

DOCKET NO. T-03571A-03-0706

DECISION NO. 68231

ORDER

Open Meeting  
September 7 and 8, 2005  
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. In Decision No. 61861 (August 5, 1999), the Commission granted to DMJ Communications, Inc. ("DMJ" or "Applicant") a Certificate of Convenience and Necessity ("Certificate" or "CC&N") authorizing it to provide competitive intrastate telecommunications service as a provider of resold local exchange service in Arizona.

2. On September 23, 2003, DMJ filed an application requesting cancellation of its CC&N.

3. DMJ's application stated that it was no longer in business and that it no longer had an office or customers in Arizona.

4. On October 18, 2002, Docket No. T-3889A-02-0796, Staff filed a formal complaint against the Phone Company Management Group ("PCMG") and several of its affiliates. The complaint included DMJ and alleged that PCMG and/or its affiliates had provided telecommunications service without a CC&N and had cancelled its services without proper notice to customers.

1           5.           On May 11, 2004, in Decision No. 66984, the Commission concluded that PCMG had  
2 acted in violation of the Arizona Administrative Code ("A.A.C") and was subject to penalties.  
3 However, the Commission found that DMJ was not subject to penalties in the above referenced  
4 matter.

5           6.           On June 18, 2004, Staff issued a letter of insufficiency to DMJ.

6           7.           On July 8, 2004, Joyce Howard, former Vice President of Operations for DMJ,  
7 responded to Staff's letter of insufficiency stating the company was no longer in business and to her  
8 knowledge, security deposits were not collected by DMJ.

9           8.           On June 21, 2005, by Procedural Order, Staff was ordered to file a status report  
10 stating its position on DMJ's application to cancel its CC&N.

11          9.           On July 22, 2005 Staff filed its report, recommending approval of DMJ's application  
12 for cancellation of its CC&N.

13          10.          Staff's Report stated that DMJ had 14 customer complaints between July 25, 2003 and  
14 July 31, 2003 due to a discontinuation of service. The Staff Report indicated that DMJ's 700  
15 customers were disconnected from service due to a billing dispute between DMJ and Qwest  
16 Corporation ("Qwest"). Staff's Report further states that DMJ has not offered service to customers  
17 in Arizona since July 31, 2003.

18          11.          According to Staff, DMJ stated that all customer monies, related to the disconnection  
19 of service, were refunded within 60 days of July 31, 2003. Further, Staff reported that all complaints,  
20 inquiries and opinions regarding the refunds have been closed.

21          12.          Staff believes that because all monies have been refunded to customers for monthly  
22 service paid in advance there is no risk that customer advances, deposits and/or prepayments will be  
23 lost by canceling DMJ's CC&N.

24          13.          Pursuant to A.A.C R14-2-1107(B) an applicant for discontinuation of service must  
25 publish legal notice of the application in all counties affected by the cancellation.

26          14.          Staff's Report recommends that the notification requirements set forth in A.A.C. R14-  
27 2-1107(B) be waived because DMJ is insolvent, has no officers and no customers. However, as  
28 explained in Decision No. 67404 (November 2, 2004), it would render A.A.C. R14-2-1107

1 meaningless and would run afoul of the rule's intent and plain language to exempt an applicant from  
2 the requirements of the rule because it has no customers due to its discontinuation of service.

3 15. In this case, because DMJ is insolvent, it would be impossible for the company to  
4 fulfill the requirements of Rule 1107. Additionally, because all customer complaints have been  
5 resolved, there is no likelihood that former customers will be harmed by the cancellation of DMJ's  
6 CC&N. Therefore, the public notice requirements of A.A.C. R14-2-1107 should be waived under the  
7 unique circumstances of this case. However, this waiver should not be considered precedent for other  
8 carriers that wish to discontinue service. Absent the unique facts presented in this case, we will  
9 strictly enforce the requirements set forth in A.A.C. R14-2-1107.

10 **CONCLUSIONS OF LAW**

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

13 2. A.A.C. R14-2-1107 applies to any telecommunications company providing  
14 competitive local exchange or interexchange service on a resold or facilities-based basis that intends  
15 to discontinue service or to abandon all or a portion of its service area.

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

18 4. The cancellation of Applicant's CC&N is in the public interest.

19 5. The requirements of A.A.C. R14-2-1107 should be waived based upon the unique  
20 circumstances of this case.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to DMJ Communications, Inc. in Decision No. 61861 is hereby cancelled.

IT IS FURTHER ORDERED that DMJ Communications, Inc.'s tariffs are hereby cancelled.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

*Jeffrey W. Hatch*  
CHAIRMAN

*[Signature]*  
COMMISSIONER

*[Signature]*  
COMMISSIONER

*Lawrence E. Blum*  
COMMISSIONER

*[Signature]*  
COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 25<sup>th</sup> day of October, 2005.

*[Signature]*  
BRIAN C. McNEIL  
Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

YK: mj

1 SERVICE LIST FOR:

DMJ COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03571A-03-0706

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