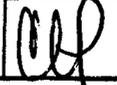




Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

1  
2  
3 WILLIAM A. MUNDELL  
CHAIRMAN  
4 JIM IRVIN  
COMMISSIONER  
5 MARC SPITZER  
COMMISSIONER

AUG 22 2002

DOCKETED BY 

6 IN THE MATTER OF THE APPLICATION OF  
7 EIGHT 9 LINE, L.L.C. FOR A CERTIFICATE OF  
8 CONVENIENCE AND NECESSITY TO PROVIDE  
9 COMPETITIVE RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES, EXCEPT  
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04056A-01-0819

DECISION NO. 65103

**ORDER**

10 Open Meeting  
11 August 20 and 21, 2002  
Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 **FINDINGS OF FACT**

16 1. On October 16, 2001, Eight 9 Line, L.L.C. ("Applicant" or "Eight 9 Line") filed with  
17 the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to  
18 provide competitive resold interexchange telecommunications services, except local exchange  
19 services, within the State of Arizona.

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

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

25 4. Eight 9 Line has authority to transact business in the State of Arizona.

26 5. On November 21, 2001, Eight 9 Line filed an Affidavit of Publication indicating  
27 compliance with the Commission's notice requirements.

28 6. On March 6, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff

1 Report in this matter recommending approval of the application subject to certain conditions, and  
2 making other recommendations.

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

8 8. Staff believes that Eight 9 Line has no market power and that the reasonableness of its  
9 rates will be evaluated in a market with numerous competitors. In light of the competitive market in  
10 which the Applicant will be providing its services, Staff believes that the rates in Applicant's  
11 proposed tariffs for its competitive services will be just and reasonable, and recommends that the  
12 Commission approve them.

13 9. Staff recommended approval of Eight 9 Line's application subject to the following:

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

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

19 (c) The Applicant should be ordered to file with the Commission all financial and  
20 other reports that the Commission may require, and in a form and at such times as the  
21 Commission may designate;

22 (d) The Applicant should be ordered to maintain on file with the Commission all  
23 current tariffs and rates, and any service standards that the Commission may require;

24 (e) The Applicant should be ordered to comply with the Commission's rules and  
25 modify its tariffs to conform to these rules if it is determined that there is a conflict  
26 between the Applicant's tariffs and the Commission's rules;

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

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

(h) The Applicant should be ordered to notify the Commission immediately upon

1 changes to the Applicant's address or telephone number;

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

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

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

11 10. Staff further recommended that Eight 9 Line's Certificate should be conditioned upon  
12 the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the  
13 date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

14 11. Eight 9 Line's proposed tariff indicates that it intends to collect advances, deposits, or  
15 prepayments from its customers. Eight 9 Line provided its unaudited financial statements for the  
16 period ending August 14, 2001. The financial statements list assets of \$38,845, equity of \$3,845 and  
17 a net loss of \$19,356.

18 12. Based on Eight 9 Line's financial condition and its indication it will collect advances,  
19 deposits, or prepayments, Staff also recommended that:

20 (a) Eight 9 Line's Certificate should be conditioned upon the Applicant procuring  
21 a performance bond as described below, and filing proof of that performance  
22 bond within 365 days from the date of an Order in this matter, or 30 days prior  
23 to providing service, whichever comes first, and the bond must remain in effect  
24 until further Order of the Commission;

25 (b) Eight 9 Line be required to procure a performance bond in the initial amount of  
26 \$10,000, with the minimum bond amount of \$10,000 to be increased if at any  
27 time it would be insufficient to cover all advances, deposits, or prepayments  
28 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) If at some time in the future, Eight 9 Line does not collect from its customers  
any advances, prepayments or deposits, then Eight 9 Line should be allowed to  
file with the Commission a request for cancellation of its established  
performance bond. Staff stated that after a review of such filing, Staff would  
forward its recommendation on the matter to the Commission for a Decision.

13. Staff recommended that if the Applicant fails to meet the timeframes outlined in

1 Findings of Fact. Nos. 10 and 12 above, then Eight 9 Line's Certificate should become null and void  
2 without further Order of the Commission, and that no time extensions for compliance should be  
3 granted.

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

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

6 16. Eight 9 Line's fair value rate base is zero.

7 **CONCLUSIONS OF LAW**

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

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

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

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

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

17 6. Staff's recommendations in Findings of Fact Nos. 7, 8, 9, 10, 12 and 13 should be  
18 adopted.

19 7. Eight 9 Line's fair value rate base is not useful in determining just and reasonable  
20 rates for the competitive services it proposes to provide to Arizona customers.

21 8. Eight 9 Line's rates, as they appear in its proposed tariffs, are just and reasonable and  
22 should be approved.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the application of Eight 9 Line, L.L.C. for a Certificate  
25 of Convenience and Necessity for authority to provide competitive resold interexchange  
26 telecommunications services, except local exchange services, is hereby granted, conditioned upon its  
27 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10 and 12  
28 above.

1 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
2 7, 8, 9, 10, 12 and 13 above are hereby adopted.

3 IT IS FURTHER ORDERED that Eight 9 Line, L.L.C. shall comply with the adopted Staff  
4 recommendations as set forth in Findings of Fact Nos. 9, 10 and 12 above.

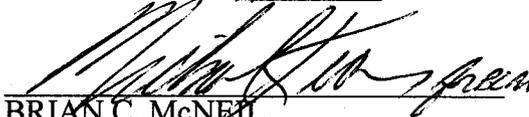
5 IT IS FURTHER ORDERED that if Eight 9 Line, L.L.C. fails to meet the timeframes outlined  
6 in Findings of Fact Nos. 10 and 12 above, then the Certificate conditionally granted herein shall  
7 become null and void without further Order of the Commission.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10   
11   
12   
CHAIRMAN COMMISSIONER COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 22<sup>nd</sup> day of AUGUST, 2002.

18   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

19 DISSENT \_\_\_\_\_  
20 PD:mlj

21  
22  
23  
24  
25  
26  
27  
28

1 SERVICE LIST FOR: EIGHT 9 LINE, L.L.C.

2 DOCKET NO.: T-04056A-01-0819

3

4 Jeffrey Smith  
Chief Executive Officer  
5 Eight 9 Line, L.L.C.  
159 S. Lincoln, Suite 221  
6 Spokane, WA 99201

7 Monique Byrnes  
8 Technologies Management, Inc.  
210 N. Park Ave  
9 Winter Park, FL 32789  
Consultant to Eight 9 Line, L.L.C.

10 Christopher Kempley, Chief Counsel  
11 Legal Division  
ARIZONA CORPORATION COMMISSION  
12 1200 West Washington Street  
Phoenix, Arizona 85007

13 Ernest G. Johnson, Director  
14 Utilities Division  
ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
Phoenix, Arizona 85007

16

17

18

19

20

21

22

23

24

25

26

27

28