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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

AUG 06 2001

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED BY [signature]

IN THE MATTER OF THE APPLICATION OF ZEPHION NETWORKS COMMUNICATIONS, INC. FORMERLY DOMINO NETWORKS COMMUNICATIONS, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE FACILITIES-BASED AND RESOLD LOCAL EXCHANGE, INTEREXCHANGE, AND EXCHANGE ACCESS, TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03981A-01-0032

DECISION NO. 63922

OPINION AND ORDER

DATE OF HEARING: May 30, 2001
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
APPEARANCES: Mr. Ronald W. Del Sesto, Jr., SWIDLER BERLIN SHEREFF FRIEDMAN, LLP, on behalf of Zephion Networks Communications, Inc.;
Ms. Teena Wolfe, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

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. Zephion Networks Communications, Inc. formerly Domino Networks Communications, Inc. ("Zephion" or "Applicant") is a Delaware corporation, authorized to do business in Arizona since 2000.
2. On January 10, 2001, filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based and resold local exchange, interexchange, and exchange access telecommunications services in Arizona.

1 3. On January 23, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
2 Report, which recommended approval of the application and included a number of additional
3 recommendations.

4 4. On January 30, 2001, a Procedural Order was issued scheduling the matter for hearing
5 on May 30, 2001.

6 5. On February 12, 2001, Zephion filed an Affidavit of Publication indicating
7 compliance with the Commission's notice requirements.

8 6. On February 12, 2001, Qwest Corporation ("Qwest") filed a Motion for Leave to
9 Intervene.

10 7. On February 14, 2001, the Applicant indicated that it was changing its name from
11 Domino Networks Communications, Inc. to Zephion Networks Communications, Inc.

12 8. On February 21, 2001, Qwest was granted intervention by Procedural Order.

13 9. On May 30, 2001, a hearing was held and Zephion and Staff presented evidence.

14 10. The management of Zephion has many years of experience in the telecommunications
15 industry.

16 11. Zephion has the technical capability to provide the services that are proposed in its
17 application.

18 12. Currently there are several incumbent providers of local exchange telecommunications
19 services in the service territory requested by Applicant, and at least several other entities have been
20 authorized to provide competitive local exchange services in all or portions of that territory.

21 13. It is appropriate to classify all of Zephion's authorized services as competitive.

22 14. The Staff Report stated that Zephion has no market power and the reasonableness of
23 its rates would be evaluated in a market with numerous competitors.

24 15. According to Staff, Zephion, as a recently formed company, does not yet have actual
25 financial statements. Zephion has submitted the pro forma balance sheet of its parent company,
26 Zephion Networks, Inc. as of December 12, 2000. These financial statements list assets of \$157,135
27 and total shareholders' equity of \$10,785. Staff believes that Zephion lacks sufficient financial
28 strength to offer the requested telecommunications services in Arizona absent the procurement of a

1 performance bond.

2 16. Staff recommends that Zephion's application for a Certificate to provide competitive
3 facilities-based and resold local exchange, interexchange, and access telecommunications services be
4 granted subject to the conditions that:

- 5 (a) unless it provides services solely through the use of its own facilities, Zephion
6 procure an Interconnection Agreement before being allowed to offer local
7 exchange service;
- 8 (b) Zephion file with the Commission, within 30 days of an Order in this matter, its
9 plan to have its customers telephone numbers included in the incumbent's
10 Directories and Directory Assistance databases;
- 11 (c) Zephion pursue permanent number portability arrangements with other LECs
12 pursuant to Commission rules, federal laws and federal rules;
- 13 (d) Zephion abide by and participate in the AUSF mechanism instituted in Decision
14 No. 59623, dated April 24, 1996 (Docket No. RT-T-03908A-00-0559E-95-0498);
- 15 (e) Zephion abide by the quality of service standards that were approved by the
16 Commission for USWC in Docket No. T-0151B-93-0183;
- 17 (f) in areas where Zephion is the sole provider of local exchange service facilities,
18 Zephion provide customers with access to alternative providers of service pursuant
19 to the provisions of Commission rules, federal laws and federal rules;
- 20 (g) Zephion certify, through the 911 service provider in the area in which it intends to
21 provide service, that all issues associated with the provision of 911 service have
22 been resolved with the emergency service providers within 30 days of an Order in
23 this matter;
- 24 (h) Zephion abide by all the Commission decisions and policies regarding CLASS
25 services;
- 26 (i) Zephion provide 2-PIC equal access;
- 27 (j) Zephion certify that all notification requirements have been completed by filing
28 appropriate affidavits prior to a final determination in this proceeding;
- (k) Zephion notify the Commission immediately upon changes to Zephion's address
or telephone number;
- (l) Zephion comply with all Commission rules, orders, and other requirements
relevant to the provision of intrastate telecommunications service;
- (m) Zephion maintain its accounts and records as required by the Commission;
- (n) Zephion file with the Commission all financial and other reports that the
Commission may require, and in a form and at such times as the Commission may
designate;
- (o) Zephion maintain on file with the Commission all current tariffs and rates, and any

service standards that the Commission may require;

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2 (p) Zephion cooperate with the Commission investigations of customer complaints;
and,
3 (q) Zephion participate in and contribute to a universal service fund, as required by the
4 Commission.

5 17. Staff further recommended that Zephion's tariffs be approved on an interim basis

6 subject to the following:

- 7 (a) That Zephion file conforming tariffs within 30 days of an Order in this matter,
8 and in accordance with the Decision;
- 9 (b) That Zephion should be required to file in this Docket, within 18 months of the
10 date it first provides service following certification, sufficient information for
11 Staff analysis and recommendation for a fair value finding, as well as for an
12 analysis and recommendation for permanent tariff approval. This information
must include, at a minimum, the following:
- 13 1. A dollar amount representing the total revenue for the first twelve
14 months of telecommunications service provided to Arizona customers
15 by Zephion following certification, adjusted to reflect the maximum
16 rates that Zephion has requested in its tariff. This adjusted total
revenue figure could be calculated as the number of units sold for all
17 services offered times the maximum charge per unit.
 - 18 2. The total actual operating expenses for the first twelve months of
telecommunications service provided to Arizona customers by Zephion
following certification.
 - 19 3. The value of all assets, listed by major category, including a description
20 of the assets, used for the first twelve months of local exchange and
interexchange telecommunications services provided to Arizona
21 customers by Zephion following certification. Assets are not limited to
plant and equipment. Items such as office equipment and office
22 supplies should be included in this list.
- 23 (c) Zephion's failure to meet the condition to timely file sufficient information for
24 a fair value finding and analysis and recommendation of permanent tariffs shall
25 result in the expiration of the Certificate of Convenience and Necessity and of
the tariffs.

26 18. In order to protect Zephion's Arizona customers, Staff is also recommending that:

- 27 (a) Zephion procure a performance bond equal to \$100,000. The minimum
28 amount of \$100,000 should be increased if at any time it would be insufficient

1 to cover any prepayments or deposits collected from the Applicant's
2 customers;

3 (b) if Zephion desires to discontinue service, it should file an application with the
4 Commission pursuant to A.A.C. R14-2-1107;

5 (c) Zephion should be required to notify each of its customers and the
6 Commission 60 days prior to filing an application to discontinue service
7 pursuant to A.A.C. R14-2-1107; and any failure to do so should result in
8 forfeiture of Zephion's performance bond;

9 (d) proof of the performance bond should be docketed within 90 days of an Order
10 in this matter or 30 days prior to the provision of service, whichever comes
11 first, and must remain in effect, and;

12 (e) after one year of operation under the Certificate granted by the Commission,
13 Staff recommends that Zephion be allowed to file a request for cancellation of
14 its established performance bond. Such request should be accompanied by
15 information demonstrating Zephion's financial ability. Upon receipt of such
16 filing and after Staff review, Staff will forward its recommendation to the
17 Commission.

18 19. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
19 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
20 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
21 public service corporations in Arizona prior to setting their rates and charges."

22 20. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
23 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this
24 time we are going to request FVRB information to insure compliance with the Constitution should
25 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also
26 are concerned that the cost and complexity of FVRB determinations must not offend the
27 Telecommunications Act of 1996.

28 CONCLUSIONS OF LAW

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.

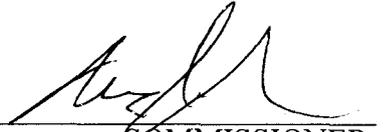
2. The Commission has jurisdiction over Applicant and the subject matter of the
application.

1 shall result in forfeiture of Zephion's performance bond. Proof of the performance bond shall be
2 docketed within 90 days of an Order in this matter or 30 days prior to the provision of service,
3 whichever comes first, and must remain in effect. However, after one year of operation under the
4 Certificate granted by the Commission, Zephion shall be allowed to file a request for cancellation of
5 its established performance bond. Such request should be accompanied by information
6 demonstrating Zephion's financial ability. Upon receipt of such filing and after Staff review, Staff
7 will forward its recommendation to the Commission.

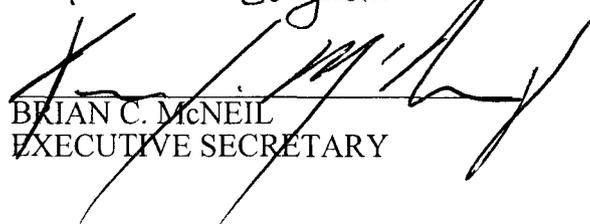
8 IT IS FURTHER ORDERED that Zephion Networks Communications, Inc. shall comply
9 with all of the Staff recommendations set forth in Findings of Fact Nos. 16, 17, and 18.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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15 CHAIRMAN COMMISSIONER COMMISSIONER

16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
17 Secretary of the Arizona Corporation Commission, have
18 hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this 6th day of August, 2001.

21 
22 BRIAN C. McNEIL
23 EXECUTIVE SECRETARY

24 DISSENT _____
25 SG:dap

1 SERVICE LIST FOR: ZEPHION NETWORKS COMMUNICATIONS, INC.

2 DOCKET NO.: T-03981A-01-0032

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