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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION DOCKETED

AUG 06 2001

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2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
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6 IN THE MATTER OF THE APPLICATION OF
7 VIVO COMMUNICATIONS-AZ, LLC FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03973A-00-1038

DECISION NO. 63923

OPINION AND ORDER

10 DATE OF HEARING: June 21, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
13 APPEARANCES: Michael W. Patten, ROSHKA HEYMAN & DEWULF,
14 on behalf of VIVO Communications-AZ, LLC;
15 Teena Wolfe, Staff Attorney, Legal Division, on behalf
16 of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

17
18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

- 20
21 1. On December 19, 2000, VIVO Communications-AZ, LLC ("VIVO" or "Applicant")
22 filed with the Commission an application for a Certificate of Convenience and Necessity
23 ("Certificate") to provide competitive facilities-based and resold local exchange, interexchange, and
24 access telecommunications services in Arizona.
25 2. VIVO is an Arizona limited liability company, authorized to do business in Arizona.
26 3. On January 22, 2001, VIVO filed Affidavits of Publication indicating compliance with
27 the Commission's notice requirements.
28 4. On March 13, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report, which recommended approval of the application and included a number of additional
2 recommendations.

3 5. On April 4, 2001, a Procedural Order was issued setting the matter for hearing on June
4 21, 2001.

5 6. A hearing was held on June 21, 2001, at which Applicant and Staff presented
6 evidence. At the hearing, Staff made several minor changes to the Staff Report recommendations.

7 7. Qwest and VIVO have not yet executed an interconnection agreement, but such
8 negotiations are expected to begin in the near future.

9 8. The management of VIVO has many years of experience in the telecommunications
10 industry.

11 9. Applicant has the technical capability to provide the services that are proposed in its
12 application.

13 10. Currently there are several incumbent providers of local exchange, toll, and exchange
14 access services in the service territory requested by Applicant, and numerous other entities have been
15 authorized to provide competitive local exchange services in all or portions of that territory.

16 11. It is appropriate to classify all of Applicant's authorized services as competitive.

17 12. The Staff Report stated that Applicant has no market power and the reasonableness of
18 its rates would be evaluated in a market with numerous competitors.

19 13. According to Staff, VIVO submitted the unaudited balance sheet of its sister company,
20 VIVO-TN, LLC, as of November 30, 2000. These financial data list assets of \$106,293 and total
21 shareholders' equity of \$106,293. Based on this information, Staff believes that VIVO lacks
22 sufficient financial strength to offer the requested telecommunications services in Arizona absent the
23 procurement of a performance bond.

24 14. Staff recommends, as amended, that VIVO's application for a Certificate to provide
25 competitive facilities-based and resold telecommunications services be granted subject to the
26 following conditions:

27 (a) unless its provides services solely through the use of its own facilities, VIVO
28 should be ordered to procure an Interconnection Agreement before being
allowed to offer local exchange service;

- 1 (b) VIVO should be ordered to file with the Commission, within 30 days of an
2 Order in this matter, its plan to have its customers' telephone numbers included
3 in the incumbent's Directories and Directory Assistance databases;
- 4 (c) VIVO be ordered to pursue permanent number portability arrangements with
5 other LECs pursuant to Commission rules, federal laws and federal rules;
- 6 (d) VIVO be ordered to abide by and participate in the AUSF mechanism
7 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
8 03905A-00-0513E-95-0498);
- 9 (e) Applicant be ordered to abide by the quality of service standards that were
10 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 11 (f) in areas where Applicant is the sole provider of local exchange service
12 facilities, VIVO be ordered to provide customers with access to alternative
13 providers of service pursuant to the provisions of Commission rules, federal
14 laws and federal rules;
- 15 (g) VIVO be ordered to certify, through the 911 service provider in the area in
16 which it intends to provide service, that all issues associated with the provision
17 of 911 service have been resolved with the emergency service providers within
18 30 days of an Order in this matter;
- 19 (h) VIVO be ordered to abide by all the Commission decisions and policies
20 regarding CLASS services;
- 21 (i) VIVO be ordered to provide 2-PIC equal access;
- 22 (j) VIVO be required to certify that all notification requirements have been
23 completed prior to a final determination in this proceeding;
- 24 (k) VIVO be required to notify the Commission immediately upon changes to its
25 address or telephone number;
- 26 (l) VIVO be ordered to comply with all Commission rules, orders, and other
27 requirements relevant to the provision of intrastate telecommunications
28 service;
- (m) VIVO be ordered to maintain its accounts and records as required by the
Commission;
- (n) VIVO should be ordered 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) VIVO maintain on file with the Commission all current tariffs and rates, and
any service standards that the Commission may require;
- (p) VIVO should be ordered to cooperate with Commission investigations of
customer complaints;
- (q) VIVO be ordered to participate in and contribute to a universal service fund, as
required by the Commission; and

(r) In order to protect VIVO's customers:

- (1) VIVO should be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from VIVO's customers;
- (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (3) that the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
- (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however,
- (5) if, at some time in the future, the Applicant's financial outlook improves, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.

15. Staff further recommended that VIVO's tariffs be approved on an interim basis subject to the following:

- (a) That VIVO file tariffs in accordance with this Decision within 30 days of an Order in this matter or within 30 days of an Order approving its interconnection agreement, whichever is later;
- (b) That VIVO should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:
 - 1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by VIVO following certification, adjusted to reflect the maximum rates that VIVO has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.
 - 2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by VIVO

1 following certification.

2 3. The value of all assets, listed by major category, used for the first twelve
3 months of telecommunications services provided to Arizona customers by
4 VIVO following certification. Assets are not limited to plant and
5 equipment. Items such as office equipment and office supplies should be
6 included in this list.

7 (c) VIVO's failure to meet the condition to timely file sufficient information for a
8 fair value finding and analysis and recommendation of permanent tariffs
9 should result in the expiration of the Certificate of Convenience and Necessity
10 and of the tariffs.

11 16. At the hearing, VIVO agreed to comply with all of Staff's recommendations, but
12 requested waivers of two of the timelines. VIVO requests that its conforming tariffs not be required
13 until 30 days after an interconnection agreement is executed, instead of within 30 days from the date
14 of this Order. The Applicant also requests that proof of the performance bond not be required until
15 the earlier of 180 days from the issuance of this Order or 30 days prior to commencement of service.
16 Staff does not oppose either of these requests. The Applicant indicated that it intends to begin
17 operations in Arizona within six months.

18 17. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
19 in U S West Communications, Inc. vs. Arizona Corporation Commission, 1 CA-CV 98-0672, holding
20 that "the Arizona Constitution requires the Commission to determine fair value rate bases for all
21 public service corporations in Arizona prior to setting their rates and charges."

22 18. 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.

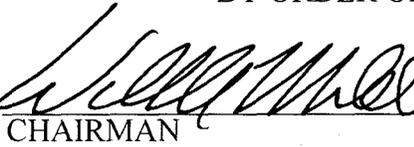
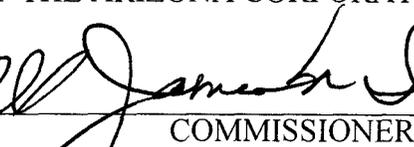
1 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall procure a
2 performance bond equal to \$100,000 the earlier of 180 days from the effective date of this Order or
3 30 days prior to the commencement of service. The minimum bond amount of \$100,000 shall be
4 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the
5 Applicant's customers.

6 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall comply with all of
7 the Staff recommendations set forth in Findings of Fact Nos. 14 and 15, as modified by Finding of
8 Fact No. 16.

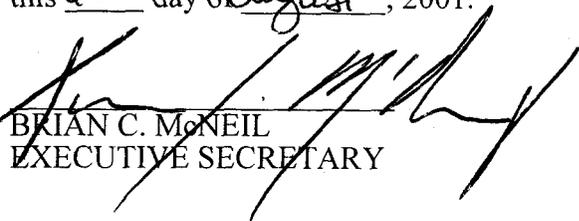
9 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall file with the
10 Compliance Section of the Utilities Division a letter indicating the date on which it will begin
11 providing service at least 60 days prior to providing service.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14 
15 CHAIRMAN  COMMISSIONER  COMMISSIONER

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

22 
23 BRIAN C. McNEIL
24 EXECUTIVE SECRETARY

25 DISSENT _____
26 DDN:mlj

1 SERVICE LIST FOR: VIVO COMMUNICATIONS-AZ, LLC

2 DOCKET NO.: T-03973A-00-1038

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4 Michael W. Patten
5 ROSHKA HEYMAN & DEWULF
6 400 N. 5th Street, Suite 1000
7 Phoenix, AZ 85004
8 Attorneys for VIVO Communications-AZ, LLC

9 Timothy Berg
10 FENNEMORE CRAIG
11 3003 North Central Avenue, Suite 2600
12 Phoenix, Arizona 85012
13 Attorneys for Qwest Corporation

14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Deborah Scott, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

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