

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

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DATE: AUGUST 14, 2001

DOCKET NO: T-03927A-00-0679

AZ CORP COMMISSION
DOCUMENT CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip Dion. The recommendation has been filed in the form of an Order on:

EZ PHONES, INC. dba HOME PHONE, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 23, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 28, 2001 AND AUGUST 29, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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AUG 14 2001

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

8 IN THE MATTER OF THE APPLICATION OF EZ
9 PHONE, INC. D/B/A HOME PHONE, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE COMPETITIVE
12 RESOLD LOCAL EXCHANGE SERVICES

DOCKET NO. T-03927A-00-0679

DECISION NO. _____

ORDER

9 Open Meeting
10 August 28 and 29, 2001
11 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 September 7, 2000, EZ Phone, Inc. d/b/a Home Phone, Inc. ("Applicant" or "EZ
17 Phone") filed with Docket Control of the Commission an application for a Certificate of Convenience
18 and Necessity ("Certificate") to provide competitive resold local exchange services within the State
19 of Arizona.

20 2. Applicant is an Ohio corporation, authorized to do business in Arizona since 2000.

21 3. Applicant is a switchless reseller, which will purchase telecommunications services
22 from Qwest Corporation.

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

26 5. On November 21, 2000, January 16 and July 24, 2001, EZ Phone filed Affidavits of
27 Publication indicating compliance with the Commission's notice requirements.

28 6. On May 16, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report in this matter. Staff recommended approval of EZ Phone's application subject to some
2 conditions.

3 7. In the Staff Report, Staff stated that Applicant has provided financial statements for
4 the year ending December 31, 2000. These financial statements list assets of \$96,024, stockholders'
5 equity of \$74,088, and a net income of \$44,810. Based on the foregoing, Staff believes that
6 Applicant lacks sufficient financial resources to provide resold local exchange telecommunications
7 services in Arizona absent the procurement of a performance bond. Staff believes that any advances,
8 deposits or prepayments received from the Applicant's customers should be protected by the
9 procurement of a performance bond. Therefore, Staff is recommending that the Applicant procure a
10 performance bond in the amount of \$25,000 which should be increased if at any time it would be
11 insufficient to cover any advances, deposits or prepayments collected from the Applicant's
12 customers.

13 8. Staff recommended approval of the application subject to the following conditions:

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 customers 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

changes to the Applicant's address or telephone number;

(i) The Applicant's local exchange service offerings should be classified as competitive pursuant to Commission rules;

(j) The Applicant's competitive services should be priced at the rates proposed by the Applicant in its most recently filed tariffs. The maximum rates for these services should be the maximum rates proposed by the Applicant in its tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services; and,

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

9. Staff further recommended approval the application subject to the following conditions:

(a) That Applicant file conforming tariffs within 30 days of an Order in this matter, and in accordance with the Decision;

(b) That Applicant 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 Applicant following certification, adjusted to reflect the maximum rates that Applicant 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 Applicant following certification; and

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

(c) Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate of Convenience and Necessity

1 and of the tariffs; and

2 (d) In order to protect the Applicant's customers,

- 3 1. Applicant should procure a performance bond equal to \$25,000. The
4 minimum bond amount of \$25,000 should be increased if at any time it
5 would be insufficient to cover prepayments or deposits collected from the
6 Applicant's customers;
- 7 2. If the Applicant desires to discontinue service, it should file an application
8 with the Commission pursuant to R14-2-1107;
- 9 3. Applicant shall notify each of its customers and the Commission at least 60
10 days prior to filing an application to discontinue service pursuant to A.A.C.
11 R14-2-1107; and any failure to do so may result in the forfeiture of
12 Applicant's performance bond;
- 13 4. Proof of the performance bond should be docketed within 90 days of the
14 effective date of an order in this matter or 30 days prior to the provision of
15 service, whichever comes first; and,
- 16 5. After one year of operation under the Certificate granted by the
17 Commission, Applicant may file a request for cancellation of its
18 established performance bond. Such request shall be accompanied by
19 information demonstrating Applicant's financial viability. Upon receipt of
20 such filing and after Staff review, Staff will forward its recommendation to
21 the Commission for a Decision that the requested cancellation is in the
22 public interest.

17 10. 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 11. No exceptions to the Staff Report were filed.

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

24 13. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
25 Supreme Court.

26 14. On February 13, 2001, the Commission's Petition was granted.
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28

CONCLUSIONS OF LAW

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

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

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

7 4. Applicant's provision of resold local exchange telecommunications services is in the
8 public interest.

9 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
10 local exchange telecommunications services as a reseller in Arizona.

11 6. Staff's recommendations in Findings of Fact Nos. 8 and 9 are reasonable and should
12 be adopted.

ORDER

13
14 IT IS THEREFORE ORDERED that the application of EZ Phone, Inc. d/b/a Home Phone,
15 Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold local
16 exchange telecommunications services shall be and the same is hereby granted, as conditioned herein.

17 IT IS FURTHER ORDERED that EZ Phone, Inc. d/b/a Home Phone, Inc. shall comply with
18 the Staff recommendations set forth in Findings of Fact Nos. 8 and 9.

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IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, EZ Phone, Inc. d/b/a Home Phone, Inc. shall notify the Compliance Section of the Arizona Corporation Commission of the date that it will begin or has begun providing service to Arizona customers.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
SG:mlj

1 SERVICE LIST FOR: EZ PHONE, INC. D/B/A HOME PHONE, INC.

2 DOCKET NO.: T-03927A-00-0679

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