



**STAFF REPORT
UTILITIES DIVISION
RIZONA CORPORATION COMMISSION**

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**Application For a Certificate of Convenience and Necessity to
Provide Resold Local Exchange Service
and For Determination that Services of the Applicant are Competitive**

AZ CORP COMMISSION
DOCUMENT CONTROL

**Applicant: EZ Phone Inc.
Docket No.: T-03927A-00-0679**

On September 7, 2000, the Applicant filed an application for a Certificate of Convenience and Necessity (CC&N) to provide resold local exchange services in the State of Arizona.

Staff reviews such applications and makes a recommendation to the Commission that the application be approved or denied. In arriving at its recommendation, Staff assesses the following criteria: a) sufficiency of the application, b) technical and managerial capability of the Applicant, c) financial capability, d) proposed tariff, e) complaint history of the Applicant, and f) whether the Applicant's proposed rates will be competitive, just, and reasonable.

REVIEW OF APPLICANT INFORMATION

- The necessary information has been filed to process this application, and the Applicant has authority to transact business in the State of Arizona.**
- The Applicant has published legal notice of the application in all counties where service will be provided.**

Arizona Corporation Commission

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REVIEW OF TECHNICAL AND MANAGERIAL INFORMATION

- The Applicant has sufficient technical and managerial capabilities to provide resold local exchange service in the State of Arizona.**

The Applicant is approved to offer resold local exchange service in 4 states. The Applicant is currently offering local and intrastate interexchange service in Tennessee, California, Kentucky, and Arkansas. The Applicant has a resale agreement with the states they were approved in. Based on this information, Staff has concluded that the Applicant has sufficient technical and managerial capabilities to provide resold local exchange service.

REVIEW OF FINANCIAL INFORMATION

- The Applicant has sufficient financial resources to provide resold local exchange service in the State of Arizona.**
- The Applicant lacks sufficient financial resources to provide resold local exchange service in the State of Arizona absent the procurement of a performance bond.**

The Applicant has provided financial statements for the period ending December 31, 2000. These financial statements indicate that the Applicant has total assets of \$96,024 and stockholders' equity \$74,088. In addition, the Applicant had a net income of \$44,810. Based on this information, Staff believes the Applicant lacks sufficient financial resources to provide resold local exchange service in the State of Arizona absent the procurement of a performance bond.

Since this Applicant does not appear to have sufficient financial resources, Staff believes that any deposits or prepayments received from the Applicant's customers should be protected by the procurement of a performance bond. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with A.A.C. R14-2-1107.

To that end, Staff recommends that the Applicant procure a performance bond equal to \$25,000. The minimum bond amount of \$25,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. If the Applicant desires to discontinue service it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application pursuant to A.A.C. R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond. Staff further recommends that proof of the above mentioned performance bond be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first.

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However, 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 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 for a Decision.

REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

- The Applicant has filed a proposed tariff with the Commission.**
- The Applicant has filed with the Commission information sufficient to make a fair value determination.**

The Applicant has submitted proposed tariffs. The Applicant did not respond to Staff's request for fair value information. Without this information, Staff is unable to provide tariff analysis and recommendations in terms of a fair value finding. Therefore, Staff recommends that, if the Applicant wishes to proceed with its certificate application, any tariffs filed in this matter be approved on an interim basis. If a certificate is conditionally granted and tariffs are authorized on an interim basis, the 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 the Applicant following certification, adjusted to reflect the **maximum rates** that the 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 the Applicant following certification.
3. The value of **all assets**, listed by major category, including a description of the assets, used for the first twelve months of telecommunications service provided to Arizona customers by the 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.

Staff further recommends that the Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the certificate and of the tariffs.

REVIEW OF COMPLAINT INFORMATION

- Complaints against the Applicant (if any) are not sufficient to deny the application to provide resold local exchange service in the State of Arizona.**

The Applicant has neither had an application for service denied, nor revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. Consumer Services reports no complaint history within Arizona.

COMPETITIVE SERVICES' RATES AND CHARGES

- The Applicant's proposed rates will be competitive, just, and reasonable.**

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the local exchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. Staff recommends that the Applicant's competitive services be priced at the rates proposed by the Applicant in its most recently filed tariffs. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

A.A.C. R14-2-1109(A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110.

STAFF RECOMMENDATIONS

Staff has reviewed the Applicant's application for a Certificate of Convenience and Necessity to offer resold local exchange services and its petition to classify its local exchange services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to provide resold local exchange services, Staff recommends approval of the application subject to the following:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to 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;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations of customer complaints;
7. The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;
8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;
9. The Applicant's local exchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
10. 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 as set forth in A.A.C. R14-2-1109;

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11. 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; and

Staff recommends approval of the application subject to the following conditions:

1. The Applicant should be ordered to file conforming tariffs within 30 days of an Order in this matter, and in accordance with the Decision;
2. 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:
 - a. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification, adjusted to reflect the **maximum rates** that the 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.
 - b. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification.
 - c. The value of **all assets**, listed by major category, including a description of the assets, used for the first twelve months of telecommunications service provided to Arizona customers by the 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.
3. The Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the certificate and of the tariffs; and
4. In order to protect the Applicant's customers,
 - a. the Applicant should be ordered to procure a performance bond equal to \$25,000. The minimum bond amount of \$25,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from the Applicant's customers;
 - b. if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
 - c. 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;

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- d. proof of the performance bond should be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first; and
- e. 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.

This application may be approved without a hearing pursuant to A.R.S. § 40-282.

for

Deborah R. Scott
Director
Utilities Division

5-15-01
Date

Originator: Anthony Gatto

Date: May 3, 2001