

OPEN MEETING ITEM

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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

DATE: January 31, 2006
DOCKET NO: T-02580A-05-0383
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

NATIONAL BRANDS, INC. dba SHARENET COMMUNICATIONS COMPANY
(CC&N RESELLER/FACILITIES-BASED/AOS)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 9, 2006

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 Open Meeting to be held on:

FEBRUARY 14 AND 15, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION
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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 NATIONAL BRANDS, INC. dba SHARENET
10 COMMUNICATIONS COMPANY FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD LONG
13 DISTANCE, RESOLD LOCAL EXCHANGE,
14 FACILITIES-BASED LOCAL EXCHANGE AND
15 ALTERNATIVE OPERATORS SERVICES
16 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-02580A-05-0383

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: December 5, 2005
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
14 APPEARANCES: Mr. Thomas H. Campbell, LEWIS AND ROCA, on
15 behalf National Brands, Inc. dba Sharnet
16 Communications Company; and
17 Mr. Jason Gellman, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

18 **BY THE COMMISSION:**

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On December 4, 1990, National Brands, Inc. dba Sharnet Communications Company
24 ("Sharnet" or "Applicant") submitted to the Arizona Corporation Commission ("Commission") an
25 application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide
26 resold long distance and alternative operator services ("AOS") within the State of Arizona. That
27 application was assigned Docket No. T-02580A-90-0351. Between December 8, 1990 and October
28

1 20, 1995, the Applicant amended its application four times. On July 26, 2004, Sharenet submitted an
2 updated application. Although Sharenet was not requesting additional services, it was assigned
3 docket number T-02580A-04-0531. On May 27, 2005, Sharenet again filed an amendment to its
4 application requesting authority to provide resold long distance, resold local exchange, facilities-
5 based local exchange, alternative operator services and a determination that its proposed services be
6 classified as competitive. This application was assigned to the above referenced docket number.

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

10 3. In Decision No. 57339 (April 5, 1991), the Commission found that alternative operator
11 services ("AOS") providers were public service corporations subject to the jurisdiction of the
12 Commission.

13 4. In Decision No. 58421 (October 1, 1993), the Commission adopted A.A.C. R14-2-
14 1001 through R14-2-1014 to regulate AOS providers.

15 5. On October 26, 2005, the Commission's Utilities Division ("Staff") filed its Staff
16 Report recommending approval subject to certain conditions.

17 6. On October 31, 2005, by Procedural Order, the matter was set for hearing.

18 7. On November 21, 2005, Applicant filed an Affidavit stating that it provided notice of
19 the hearing in the *Arizona Republic*, a newspaper of general circulation.

20 8. On December 5, 2005, the hearing was convened as scheduled. No members of the
21 public appeared to provide public comment.

22 9. In the Staff Report, Staff stated the Applicant currently provides resold long distance
23 service in 18 states, including Arizona.

24 10. According to Staff's Report, Sharenet has an executive staff comprised of seven
25 employees with a combined total of over 68 years of experience in the telecommunications industry.
26 Additionally, Staff reported that the Applicant plans to add three to five additional employees.
27 Therefore, Staff concluded that Sharenet possesses the technical capabilities to provide the services it
28 seeks in its application.

1 11. Sharenet provided unaudited financial statements showing for the 12 months ending
2 July 31, 2005, that it had assets of \$5,070,171, equity of \$4,315,958 and net profits of \$400,724.

3 12. At hearing the Sharenet's witness clarified that the company will collect advances,
4 deposits and/or prepayments from both its resold and facilities-based local exchange customers, but
5 not for its AOS or resold interexchange services. To protect Sharenet's local exchange customers,
6 Staff recommended that Sharenet procure a performance bond in the amount of \$125,000. In
7 accordance with Commission rules, the bond amount would be an aggregate of the minimum bond
8 amounts for each type of telecommunications service Sharenet has requested. Specifically, the
9 aggregate bond amounts would be \$25,000 for resold local exchange and \$100,000 for the facilities
10 based local exchange. Staff further recommended that the minimum bond amount should be
11 increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments
12 collected from Sharenet's customers. The bond amount should be increased in increments of \$62,500.
13 And the increase should occur when the total amount of the advances deposits, and prepayments is
14 within \$12,500 of the bond amount.

15 13. At hearing, Staff verbally amended its recommendations to include that if Sharenet
16 desires to discontinue service in Arizona it must file an application pursuant to A.A.C. R14-2-1107
17 and failure to meet the requirements under this rule will cause a forfeiture of Sharenet's performance
18 bond.

19 14. Staff also recommended Sharenet docket proof of its performance bond within 365
20 days of the effective date of a Decision in this matter or 30 days prior to beginning service, whichever
21 comes first and that the performance bond remain in effect until further Order of the Commission.

22 15. Staff further recommended that Sharenet docket tariffs showing it does not collect
23 advances, deposits and/or prepayments from its resold interexchange customers. Additionally, Staff
24 recommended that if Sharenet, at some future date, desires to collect advances, deposits and/or
25 prepayments from its resold interexchange customers it should be required to file an application with
26 the Commission prior to doing so.

27 16. Applicant's proposed rates are for competitive services. In general, rates for
28 competitive services are not set according to the rate of return regulation. According to Staff's

1 Report, Sharenet's fair value rate base is \$1,978,949. Staff reviewed the rates to be charged by
2 Sharenet and believes they are just and reasonable as they are comparable to other competitive local
3 carriers, local incumbent carriers and major long distance companies offering services in Arizona and
4 comparable to the rates the Applicant charges in other jurisdictions. Staff concluded that although
5 Applicant's Fair Value Rate Base ("FVRB") was considered it should not be given substantial weight
6 in this analysis.

7 17. Pursuant to A.A.C. R14-2-1109, Sharenet may charge rates for service that are not less
8 than its total long-run incremental cost of providing service.

9 18. Pursuant to A.A.C. R14-2-1308 (A) and federal laws and rules, Sharenet shall make
10 number portability available to facilitate the ability of the customer to switch between authorized
11 local carriers within a given wire center without changing their telephone number and without
12 impairment TO quality, functionality, reliability or convenience of use.

13 19. In compliance with A.A.C. R14-2-1204 (A), all telecommunications service providers
14 that interconnect into the public switched network shall provide funding for the Arizona Universal
15 Service Fund ("AUSF"). Sharenet will contribute to the AUSF as required by the Arizona
16 Administrative Code.

17 20. According to Staff's Report, Staff believes that Sharenet should be ordered to comply
18 with the quality of service standards outlined for Qwest in Commission Decision No. 59421
19 (December 20, 1995), but because Sharenet has not had any unsatisfactory service issues and will be
20 operating in a competitive environment, the penalties outlined in the above referenced Decision
21 should not apply.

22 21. Staff's Report also recommends that in areas where Sharenet is the only local
23 exchange service provider, Sharenet should be prohibited from barring access to alternative local
24 exchange service providers who wish to serve the area.

25 22. Sharenet will provide all customers with 911 and E911 service where available, or will
26 coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to
27 provide the service.

28 23. Pursuant to past Commission Decisions, Sharenet may offer custom local area

1 signaling services such as caller ID and call blocking, so long as the customer is able to block or
2 unblock each individual call at no additional cost. Additionally, Sharenet must offer last call return
3 service that will not return calls to telephone numbers that have the privacy indicator activated.

4 24. According to Staff's Report, Sharenet certified that it entered into a settlement
5 agreement with the State of Ohio. The agreement concerned Sharenet's AOS tariff, which allowed it
6 and several other AOS providers in that state to charge a \$2.50 Non-Subscriber Surcharge. Under
7 Ohio's Commission rules, the surcharge was unlawful. Instead of challenging the issue, Sharenet
8 entered into a settlement agreement which included: 1) amending Sharenet's tariff canceling the Non-
9 Subscriber Surcharge and 2) Sharenet was to pay \$30,278 to the State in four payments of \$7569.50.
10 Staff also reported that the Ohio Commission showed that all payments by Sharenet had been timely
11 made and no new complaints had been filed.

12 In the instant case, Sharenet's tariff proposes a \$1.99 Non-Subscriber Surcharge. In Staff's
13 analysis of Sharenet's tariff Staff reviewed several AOS tariffs from other companies in Arizona and
14 found that they were also charging a Non-Subscriber Surcharge. Therefore, Staff concluded that
15 Sharenet should be allowed to charge a \$1.99 Non-Subscriber Surcharge for its AOS service.

16 25. According to Staff's Report, the Consumer Services Division shows no complaints
17 filed against Sharenet in Arizona.

18 26. Staff stated that in the 16 other jurisdictions where Sharenet does business only the
19 State of Texas reported having two complaints filed against Sharenet. The two complaints were made
20 by the same individual and involved charges for collect calls. According to Staff's Report, the Texas
21 Public Utilities Commission found no wrong doing on the part of Sharenet and both complaints were
22 closed.

23 27. Sharenet will be providing service in areas where ILECs, along with various
24 competitive local exchange carriers ("CLECs") and interexchange carriers are providing
25 telecommunication services.

26 28. Staff recommended that Sharenet's proposed services be classified as competitive
27 because there are alternatives to Sharenet's services; Sharenet will have to convince customers to
28 purchase its services; Sharenet has no ability to adversely affect the local exchange or interexchange

1 service markets; and Sharenet will therefore have no market power in those local exchange or
2 interexchange service markets where alternative providers to telecommunications services exist.

3 29. The Commission adopted maximum rates for AOS providers in Decision No. 61274
4 (December 14, 1998) and these rates are reflected in Schedules 1 and 2 attached to the Staff Report
5 and incorporated herein by reference. Staff believes these maximum rates when coupled with
6 discounting authority provide AOS providers with the ability to compete on price and service quality.
7 Staff also recommends that Sharenet be allowed to discount its rates and service charges to the
8 marginal cost of providing the services.

9 30. In its Staff Report, Staff reviewed the rates for five major toll carriers to establish the
10 maximum AOS rates, service charges and operator-dialed surcharges set forth in Schedules 1 and 2.
11 Staff recommends that if Sharenet desires to increase its rates in response to an increase in maximum
12 rates by any carriers used in developing Schedules 1 or 2, Sharenet should be authorized to allow its
13 rates to float in accordance with the carriers' revised higher rates so long as Sharenet files the
14 following items for Commission review: 1) an estimate of the value of its plant to serve Arizona
15 customers; 2) a tariff setting forth the new maximum rates, which do not exceed the maximum rate of
16 the five major carriers; and 3) all information required by A.A.C. R14-2-1110.

17 31. Staff's Report recommends Sharenet's interLATA or intraLATA rates and service
18 charges be set at the maximum rate for each mileage band, respective of the day of the week and time
19 of day currently authorized for any facilities-based interexchange carriers ("IXC") as set forth in
20 Schedule 1 or authorized for any facilities based intraLATA carriers set forth in Schedule 2. Further,
21 Staff recommends that the Commission limit Sharenet's service charges to the highest authorized
22 maximum service charges of any of the facilities based IXC's or IntraLATA carriers, set forth
23 respectively in Schedules 1 and 2.

24 32. According to Staff's Report, prior Commission decisions have approved both an
25 operator-dialed (operator assisted call) surcharge and a property (location-specific or subscriber)
26 surcharge. Staff recommends that Sharenet's property charges be limited to \$1.00 per call to
27 facilitate a level playing field for all competitors.

28 33. Staff recommends pursuant to A.A.C. R14-2-1006(A), that Sharenet like all AOS

1 providers be required to route all zero-minus calls (calls where the customer dials "0") to the
2 originating local exchange carrier.

3 34. Staff states that Sharenet's proposed tariffs are reasonable and recommends that the
4 Commission approve them.

5 35. Staff recommends approval of Sharenet's application for a CC&N to provide intrastate
6 telecommunications services. Staff further recommends:

- 7
- 8 (a) That Sharenet comply with all Commission Rules, Orders and other requirements
relevant to the provision of the intrastate telecommunications services;
- 9
- 10 (b) That Sharenet abide by the quality of service standards that were approved by the
Commission for Qwest in Docket No. T-01051B-93-0183;
- 11
- 12 (c) That Sharenet be prohibited from barring access to alternative local exchange
service providers who wish to serve areas where Sharenet is the only provider of
the local exchange service facilities;
- 13
- 14 (d) That Sharenet be required to notify the Commission immediately upon changes to
its name, address or telephone number;
- 15
- 16 (e) That Sharenet cooperate with Commission investigations including, but not limited
to customer complaints;
- 17
- 18 (f) That although Staff considered the fair value rate base information submitted by
Sharenet, the fair value information provided was not given substantial weight in
this analysis;
- 19
- 20 (g) That if at some future date, Sharenet wants to collect advances, deposits and/or
prepayments from its resold interexchange service customers, Sharenet should be
required to file an application with the Commission for Commission approval.
Such application must reference the Decision in this docket and must explain
Sharenet's plans for procuring a performance bond;
- 21
- 22
- 23 (h) That Sharenet offer Caller ID with the capability to toggle between blocking and
unblocking the transmission of the telephone number at no charge;
- 24
- 25 (i) That Sharenet offer Last Call Return service that will not return calls to telephone
numbers that have the privacy indicator activated;
- 26
- 27 (j) That Sharenet be authorized to discount its rates and service charges to the
marginal cost of providing the services;
- 28

- 1 (k) That Sharenet submit interexchange tariffs indicating that it does not collect
2 advances, deposits and or prepayments;
- 3 (l) That Sharenet's interLATA rates and service charges for AOS services be based
4 on the maximum rates and service charges as set forth in Schedule 1;
- 5 (m) That Sharenet's intraLATA rates and service charges for AOS services be based
6 on the maximum rates and service charges as set forth in Schedule 2;
- 7 (n) That Sharenet's property surcharge for AOS services be limited to \$1.00 per call;
- 8 (o) That Sharenet should be ordered to contribute monthly payments to the AUSF as
9 required by the Arizona Administrative Code;
- 10 (p) That if at some future date, Sharenet requests to discontinue service and/or
11 abandon its service area, Sharenet must in accordance with A.A.C. R14-2-1107
12 comply, and obtain Commission authorization of compliance, with all the requests,
13 including but not limited to the notice requirements, prior to the discontinuance of
14 service and/ or abandonment of its service area;
- 15 (q) That Sharenet's maximum rates for resold interexchange rates should be the
16 maximum rates proposed by Sharenet in its proposed tariffs. The minimum rates
17 for Sharenet's competitive services should be Sharenet's total service long run
18 incremental cost of providing those services as set forth in A.A.C. R14-2-1109;
- 19 (r) That pursuant to A.A.C. R14-2-1308 (A) and federal laws and rules, Sharenet shall
20 make number portability available to its customers;
- 21 (s) That Sharenet should provide all customers with 911 and E911 service where
22 available, or will coordinate with ILECs and emergency service providers to
23 provide the service;
- 24 (t) That Sharenet should be allowed to charge \$1.99 as a Non-Subscriber Surcharge
25 for its AOS service;
- 26 (u) That if Sharenet desires to increase its rates, in response to an increase in
27 maximum rates by any carriers used in developing Schedules 1 or 2 attached to
28 Staff's Report, Sharenet should be authorized to allow its rates to float in
accordance with the carriers' revised higher rates so long as Sharenet files the
following items for Commission review: 1) an estimate of the value of its plant to
serve Arizona customers; 2) a tariff setting forth the new maximum rates, which
do not exceed the maximum rate of the five major carriers; and 3) all information
required by A.A.C. R14-2-1110;
- (v) That Sharenet shall pursuant to A.A.C. R14-2-1006(A), like all AOS providers, be
required to route all zero-minus calls to the originating local exchange carrier.

1 36. Staff further recommends that Sharenet's non-compliance with the following items
2 will cause the CC&N to become null and void:

3
4 (a) Sharenet shall docket conforming tariffs for each service within its CC&N with
5 365 days from the date of an Order in this matter or 30 days prior to providing
6 service, whichever comes first. The tariffs submitted shall coincide with the
7 application and state that the Sharenet does not collect advances deposits and/or
8 prepayments its resold interexchange customers.

9 (b) That Sharenet shall:

10 (i) Procure a performance bond equal to \$125,000 for resold and facilities-based
11 local exchange services. The minimum bond amount of \$125,000 should be
12 increased if at any time it would be insufficient to cover advances, deposits,
13 and/or prepayments collected from Sharenet's customers. The bond amount
14 should be increased in increments of \$62,500. This increase should occur when
15 the total amount of the advances, deposits, and prepayments is within \$12,500
16 of the bond amount.

17 (ii) Docket proof of the performance bond within 365 days of the effective date of
18 an Order in this matter or 30 days prior to the provision of service, whichever
19 comes first. The performance bond must remain in effect until further order of
20 the Commission.

21 37. At hearing, Sharenet agreed to comply with all of Staff's recommendations as
22 amended herein.

23 38. Staff's recommendations, as amended and as set forth herein, are reasonable.

24 39. The rates proposed by this filing are for competitive services.

25 **CONCLUSIONS OF LAW**

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

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

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

4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a
CC&N to provide competitive telecommunications services.

1 IT IS FURTHER ORDERED that if National Brands d/b/a Sharenet fails to meet the
2 conditions outlined in Findings of Fact No. 36 the Certificate conditionally granted herein shall
3 become null and void.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSIONION.

6
7
8 CHAIRMAN

COMMISSIONER

9
10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director 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 ____ day of _____, 2006.

18
19 _____
20 BRIAN C. McNEIL
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23
24 DISSENT _____

25 YBK:mj

1 SERVICE LIST FOR: NATIONAL BRANDS, INC. dba SHARENET
2 COMMUNICATIONS COMPANY

3 DOCKET NO.: T-02580A-05-0383

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