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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

COMMISSIONER

ARIZONA CORPORATION COMMISSION

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2002 DEC -3 A 11: 06

DATE: December 3, 2002  
DOCKET NOS: T-03793A-99-0608 and T-03549A-99-0608  
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Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

MVX COMMUNICATIONS, INC.  
(CC&N TRANSFER)

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:

DECEMBER 12, 2002

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:

DECEMBER 17 AND 18, 2002

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

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
MVX COMMUNICATIONS, LLC FOR  
7 AUTHORITY TO TRANSFER ITS CERTIFICATE  
OF CONVENIENCE AND NECESSITY TO  
8 QUANTUMSHIFT COMMUNICATIONS, INC.,  
F/K/A MVX.COM COMMUNICATIONS, INC.

DOCKET NO. T-03793A-99-0608  
DOCKET NO. T-03549A-99-0608

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

9 DATE OF HEARING: August 28, 2002

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW  
12 JUDGE: Teena Wolfe

13 APPEARANCES: Michael W. Patten, ROSHKA, HEYMAN & DeWULF, PLC,  
on behalf of applicant QuantumShift Communications, Inc.; and

14 David Ronald, Staff Attorney, Legal Division, on behalf of the  
15 Commission's Utilities Division Staff.

16 **BY THE COMMISSION:**

17 On October 26, 1999, MVX Communications, LLC ("MVX") and MVX.COM  
18 Communications, Inc. (jointly, "Applicants") filed an application with the Arizona Corporation  
19 Commission ("Commission") requesting approval of the transfer of assets from MVX to MVX.COM  
20 Communications, Inc., and the transfer of MVX's Certificate of Convenience and Necessity  
21 ("CC&N") to MVX.COM Communications, Inc. ("Application").

22 Effective May 4, 2001, MVX.COM Communications, Inc. changed its name to QuantumShift  
23 Communications, Inc. ("QuantumShift").

24 On December 24, 2001, the Commission's Utilities Division Staff ("Staff") filed a Staff  
25 Report on the Application recommending that the Commission approve, after a hearing, the transfer  
26 of MVX's assets and CC&N to QuantumShift.

27 A hearing was held on the Application on August 28, 2002. Applicants and Staff appeared  
28 through counsel and presented evidence. No members of the public appeared to provide comment at

1 the hearing. At the close of the hearing, the matter was taken under advisement.

2 \* \* \* \* \*

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

5 **FINDINGS OF FACT**

6 1. MVX was granted a CC&N to provide competitive resold intrastate toll  
7 telecommunications services in Arizona in Commission Decision No. 61989 (October 8, 1999).

8 MVX is a Nevada limited liability company authorized to do business in Arizona since 1998.

9 2. MVX merged with MVX.COM Communications, Inc. on May 5, 1999.

10 3. On October 26, 1999, MVX and MVX.COM Communications, Inc. filed the  
11 Application.

12 4. On June 9, 2000, in Commission Decision No. 62640, the Commission granted  
13 MVX.COM Communications, Inc., a California corporation authorized to do business in Arizona  
14 since 1999, a CC&N to provide competitive local exchange services, but not toll services, as a  
15 reseller.

16 5. Effective May 4, 2001, MVX.COM Communications, Inc. changed its name to  
17 QuantumShift.

18 6. In the Application, MVX requests approval to transfer its CC&N to MVX.COM  
19 Communications, Inc., now known as QuantumShift, so that QuantumShift will have authority to  
20 provide both resold local exchange services and resold intrastate toll services.

21 7. On December 24, 2001, Staff filed a Staff Report on the Application recommending  
22 approval after a hearing.

23 8. By Procedural Order of February 12, 2002, the matter was set for hearing, and  
24 Applicants were ordered to publish notice of the hearing.

25 9. On March 15, 2002, Staff filed an amendment to its Staff Report to include a fair  
26 value recommendation.

27 10. A hearing was convened as scheduled on April 9, 2002. Applicants failed to publish  
28 notice of the hearing or to appear at the hearing.

1           11. By Procedural Order of April 10, 2002, the hearing was continued to May 28, 2002  
2 and Applicants were again ordered to publish notice of the hearing.

3           12. A hearing was convened as scheduled on May 28, 2002. Applicants again failed to  
4 publish notice or to appear at the hearing. Applicants' letter requesting a continuance of the May 28,  
5 2002 hearing was docketed on May 29, 2002.

6           13. A Procedural Order was issued in these dockets on June 11, 2002, ordering counsel for  
7 Applicants to file a motion for admission *pro hac vice*, or in the alternative, ordering Applicants to  
8 obtain local counsel.

9           14. On July 8, 2002, local counsel filed a Notice of Appearance in this matter.

10          15. A Procedural Order was issued on July 19, 2002 setting the matter for hearing and  
11 ordering Applicants to publish notice of the hearing.

12          16. On August 6, 2002, Applicants filed an Affidavit of Publication verifying that it  
13 caused notice of the hearing to be published in the Arizona Republic on July 26, 2002.

14          17. No intervention requests were received, and no comments on the Application were  
15 filed.

16          18. A public hearing was held as scheduled on August 28, 2002. Applicants and Staff  
17 appeared through counsel and presented evidence. No members of the public appeared to provide  
18 comment at the hearing.

19          19. QuantumShift currently provides resold local exchange and intrastate toll service to  
20 approximately 20 business customers in the State of Arizona. MVX's customers were informed of  
21 the change in provider and the name change to QuantumShift.

22          20. QuantumShift provided unaudited financial statements for it and its subsidiaries for  
23 the year ending December 2001. Those financial statements reflect a net loss for the year of \$44.7  
24 million on revenues of \$25.3 million.

25          21. Staff evaluated QuantumShift's financial and technical capabilities to provide resold  
26 intrastate toll service. Staff states that the merged company has the combined experience of its  
27 predecessors providing telecommunications services, that the Commission has not received any  
28 complaints regarding MVX or QuantumShift, and that no harm was caused to Arizona customers by

1 the merger of MVX with QuantumShift. Staff believes that the requested CC&N transfer and  
2 retroactive approval of the merger are in the public interest, and recommends approval of the  
3 Application.

4       22. QuantumShift does not collect advances or prepayments, and MVX did not collect  
5 advances or prepayments.

6       23. In its Staff Report, Staff stated that based on information obtained from QuantumShift,  
7 it has determined that QuantumShift's fair value rate base is zero, and is too small to be useful in  
8 setting rates. Staff further stated that in general, rates for competitive services are not set according  
9 to rate of return regulation, but are heavily influenced by the market. Staff did not recommend that  
10 the Commission set rates for QuantumShift based on the fair value of its rate base.

11       24. The Commission provides pricing flexibility by allowing competitive  
12 telecommunication service companies to price their services at or below the maximum rates  
13 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.

14       25. QuantumShift has no market power and the reasonableness of its rates will be  
15 evaluated in a market with numerous competitors. In light of the competitive market in which  
16 QuantumShift provides its services, MVX's tariffed rates for competitive toll services are just and  
17 reasonable, and should be approved for QuantumShift.

18       26. Staff recommends that in order to protect QuantumShift's customers in the event  
19 QuantumShift discontinues provision of local exchange service, QuantumShift should be required to  
20 post a performance bond, within 30 days of a Decision in this matter, in the amount of \$25,000. Staff  
21 further recommends that the performance bond should be forfeited if QuantumShift discontinues  
22 provision of local exchange service without complying with the requirements of A.A.C. R14-2-1107.

23       27. QuantumShift requested that it be allowed 90 days following a Decision in this matter  
24 to post the performance bond recommended by Staff in order to allow it time to accrue the cost of the  
25

1 bond.

2 28. QuantumShift's fair value rate base is determined to be zero for purposes of this  
3 proceeding.

4 **CONCLUSIONS OF LAW**

5 1. Applicants are Arizona public service corporations within the meaning of Article 15 of  
6 the Arizona Constitution and A.R.S. §§ 40-281, -282, and -285.

7 2. The Commission has jurisdiction over Applicants and the subject matter of the  
8 Application.

9 3. Notice of the Application was given in accordance with the law.

10 4. QuantumShift is a fit and proper entity to receive a CC&N authorizing it to provide  
11 intrastate toll services in Arizona as conditioned by Staff's recommendations.

12 5. It is in the public interest for the CC&N of MVX to be transferred to QuantumShift.

13 6. It is in the public interest to approve the merger of MVX with QuantumShift pursuant  
14 to A.R.S. § 40-285.

15 7. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

16 8. The competitive rates set forth in MVX's tariffs are just and reasonable and should be  
17 approved for QuantumShift.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the merger of MVX Communications, LLC with  
20 QuantumShift Communications, Inc. is hereby approved, and that the Certificate of Convenience and  
21 Necessity authorizing MVX Communications, LLC to provide competitive resold intrastate toll  
22 telecommunications services in Arizona is hereby transferred to QuantumShift Communications, Inc.,  
23 conditioned upon QuantumShift Communications, Inc.'s timely compliance with the following two  
24 Ordering Paragraphs.

25 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall file, within 30  
26 days of this Decision, tariffs reflecting the intrastate toll rates previously authorized for MVX  
27 Communications, LLC.  
28

1 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall procure a  
2 performance bond equal to \$25,000 within 30 days from the effective date of this Decision.

3 IT IS FURTHER ORDERED that if QuantumShift Communications, Inc. fails to meet the  
4 timeframes outlined in the Ordering Paragraphs above, that the approval of the merger, and the  
5 Certificate of Convenience and Necessity conditionally granted herein, shall become null and void  
6 without further Order of the Commission.

7 IT IS FURTHER ORDERED that if QuantumShift Communications, Inc. discontinues  
8 provision of local exchange service without complying with the requirements of A.A.C. R14-2-1107,  
9 QuantumShift Communications, Inc.'s performance bond shall be forfeited.

10 IT IS FURTHER ORDERED that QuantumShift Communications, Inc. shall not charge its  
11 customers any prepayments or deposits without first receiving from the Commission an Order  
12 authorizing it to do so.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15  
16

17 CHAIRMAN COMMISSIONER COMMISSIONER

18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
19 Secretary of the Arizona Corporation Commission, have  
20 hereunto set my hand and caused the official seal of the  
21 Commission to be affixed at the Capitol, in the City of Phoenix,  
22 this \_\_\_\_ day of \_\_\_\_\_, 2002.

23 \_\_\_\_\_  
24 BRIAN C. McNEIL  
25 EXECUTIVE SECRETARY

26 DISSENT \_\_\_\_\_  
27 TW:mlj  
28

1 SERVICE LIST FOR: QUANTUMSHIFT COMMUNICATIONS INC.,  
2 F/K/A/ MVX.COM COMMUNICATIONS INC. AND  
MVX COMMUNICATIONS LLC

3 DOCKET NO. T-03793A-99-0608 ET AL.

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