

OPEN MEETING ITEM



0000046102

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



ORIGINAL

BRIAN C. McNEIL
Executive Director

22

ARIZONA CORPORATION COMMISSION

DATE: March 17, 2006
DOCKET NO: T-04282A-04-0763
TO ALL PARTIES:

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:

ACC TELECOMMUNICATIONS, LLC
(CC&N/FACILITIES-BASED/POINT-TO-POINT)

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:

MARCH 27, 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:

APRIL 4 AND 5, 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.

RECEIVED

2006 MAR 17 P 2:31

AZ CORP COMMISSION
DOCUMENT CONTROL

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 ACC TELECOMMUNICATIONS, LLC dba
10 ADELPHIA FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 INTRASTATE, FACILITIES-BASED, NON-
13 SWITCHED, DEDICATED POINT-TO-POINT
14 DATA TRANSPORT TELECOMMUNICATIONS
15 SERVICES IN THE STATE OF ARIZONA AND
16 PETITION FOR COMPETITIVE
17 CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04282A-04-0763

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING:

May 2 and June 29, 2005

13 PLACE OF HEARING:

Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

15 APPEARANCES:

Jo Gentry, Director of External Affairs, on behalf
of ACC Telecommunications, LLC dba
Adelphia; and

Keith A. Layton, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

19 **BY THE COMMISSION:**

20 * * * * *

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

23 FINDINGS OF FACT

24 1. On October 22, 2004, ACC Telecommunications, LLC dba Adelphia ("Applicant")
25 submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of
26 Convenience and Necessity ("CC&N") to provide intrastate, facilities-based, non-switched, dedicated
27 point-to-point data transport telecommunications services, which will allow the customer to connect
28 directly two or more intrastate locations with dedicated, non-switched services, throughout the State

1 of Arizona. The application petitioned the Commission for determination that its proposed services
2 should be classified as competitive.

3 2. On March 1, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff
4 Report recommending approval of the application.

5 3. On March 10, 2005, a Procedural Order was issued setting a hearing for May 2, 2005
6 and requiring publication of notice of the hearing.

7 4. On April 5, 2005, an Affidavit of Publication was filed certifying that notice of the
8 hearing on the application was published in The Arizona Republic on April 1, 2005.

9 5. No intervention requests were filed.

10 6. The hearing was convened as scheduled on May 2, 2005. No members of the public
11 appeared to provide comment. Staff appeared through counsel. Applicant failed to appear.

12 7. By Procedural Order issued May 3, 2005, the hearing was continued to May 26, 2005,
13 and the timeclock for a Commission Decision on the application was suspended pending the
14 continuation of the hearing.

15 8. On May 26, 2005, Applicant filed a motion seeking continuance of the May 26, 2005
16 hearing date due to an unexpected emergency conflict. The motion stated that Applicant had
17 consulted with Staff, and that Staff did not object to the requested continuance.

18 9. By Procedural Order issued May 26, 2005, the hearing was continued to June 29,
19 2005.

20 10. The hearing was reconvened on June 29, 2005, as scheduled. Jo Gentry testified
21 telephonically on behalf of Applicant and was represented by counsel. Staff appeared and was
22 represented by counsel. The hearing was conducted before a duly authorized Administrative Law
23 Judge. Evidence was presented and testimony was taken. A schedule was set for the briefing of legal
24 issues, including the lawfulness of the individual case basis ("ICB") pricing included in Applicant's
25 proposed tariffs.

26 11. On July 27, 2005, Applicant and Staff filed legal briefs. Applicant stated on brief that
27 it would file a tariff including minimum and maximum price ranges for all its proposed services.
28 Staff stated on brief that if Applicant were to submit an amended application, Staff would file an

1 amended Staff Report based upon its review of the amended application.

2 12. On August 1, 2005, Applicant filed a Notice of Errata.

3 13. On September 16, 2005, Applicant filed an amended tariff. The revised tariff did not
4 include ICB pricing. The tariffs were also corrected to indicate that Applicant will not collect any
5 advance payments or deposits, as was discussed by Applicant's witness at the hearing.

6 14. On December 20, 2005, a Procedural Order was issued directing Staff to file an
7 amended Staff Report including an analysis of Applicant's amended tariff, and Staff's
8 recommendation to the Commission regarding action on the application, based on that analysis.

9 15. On January 20, 2006, Staff filed its Amended Staff Report. The Amended Staff
10 Report recommends approval of the application, stating that Staff has reviewed the amended tariff
11 and determined that the terms and conditions for services within the amended tariff are similar to
12 those of the dominant incumbent local exchange provider ("ILEC") in Arizona, with proposed rates
13 essentially equal to those of the dominant ILEC and in some cases lower.

14 16. Applicant is a limited liability company organized under the laws of the State of
15 Delaware and has been authorized to do business in Arizona since August 16, 2004.

16 17. Applicant has the technical and managerial capabilities to provide the services that are
17 proposed in its application.

18 18. Applicant will be providing services in areas where ILECs, along with various
19 competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone
20 and private line services. Applicant's witness stated that the only area where Applicant currently has
21 facilities in place in Arizona is in the vicinity of Yuma, Arizona.

22 19. Staff recommended that Applicant's proposed services be classified as competitive
23 because there are alternatives to Applicant's services; Applicant will have to convince customers to
24 purchase its services; Applicant has no ability to adversely affect the local exchange, interexchange,
25 or point-to-point dedicated data service markets; and Applicant will therefore have no market power
26 in those local exchange, interexchange, or point-to-point dedicated data service markets where
27 alternative providers of telecommunications services exist.

28 20. It is appropriate to classify all of Applicant's authorized services as competitive.

1 21. According to the Staff Report, Applicant provided unaudited financial statements,
2 including notes, of its parent company, Adelphia Communications Corporation,¹ for the 26 months
3 ending August 4, 2004. The financial statements listed current assets in excess of \$52 billion; total
4 equity in excess of \$2 billion; and a net loss in excess of \$1.2 billion.

5 22. The Staff Report stated that Consumer Services reports no complaint history for
6 Applicant within Arizona. Applicant has not had an application for service denied or authority
7 revoked in any state. There have been no civil or criminal proceedings involving Applicant. The
8 Staff Report stated that Applicant indicated in its application that two former board members of
9 Adelphia Communications Corporation, Applicant's parent, John Rigas and Tim Rigas, were
10 involved in several criminal matters involving fraud within Adelphia Communications Corporation.
11 At the hearing, Applicant's witness testified that John and Tim Rigas had been convicted on various
12 fraud counts and that no member of the Rigas family currently has any involvement in the
13 management or business operations of Adelphia or any of its affiliates. Applicant's witness also
14 testified that Applicant's current management team is operating totally independently of any of the
15 "historical situations" that led to the fraud convictions.

16 23. Staff recommended that Applicant be granted a CC&N to provide the requested
17 telecommunications services. In addition, Staff recommended the following:

- 18 a. That the Applicant be required to notify the Commission immediately upon
19 changes to the Applicant's name, address or telephone number;
- 20 b. That the Applicant comply with all Commission rules, orders, and other
21 requirements relevant to the provision of intrastate telecommunications
22 service;
- 23 c. That the Applicant maintain its accounts and records as required by the
24 Commission;
- 25 d. That the Applicant file with the Commission all financial and other reports that
26 the Commission may require, and in a form and at such times as the
27 Commission may designate;

28 ¹ Adelphia Communications Corporation was still in bankruptcy at the time of the hearing. Applicant's witness testified that Applicant has bankruptcy approval to proceed with the normal course of business, including the funding of normal course of business operations.

- 1 e. That the Applicant maintain on file with the Commission all current tariffs and
2 rates, and any service standards that the Commission may require;
- 3 f. That the Applicant cooperate with Commission investigations including, but
4 not limited to, customer complaints;
- 5 g. That the Applicant abide by and participate in the AUSF mechanism
6 established in A.A.C. R14-2-1204(B)(3)(b);
- 7 h. That if in the future, Applicant wishes to provide telecommunications services
8 different from those addressed in this application, that Applicant be required to
9 file an application with the Commission so indicating; and
- 10 i. That the Applicant be required to notify each of its private line service
11 customers and the Commission 60 days prior to filing an application to
12 discontinue service pursuant to A.A.C. R14-2-1107 in the event Applicant
13 desires to discontinue service.

14 24. Staff further recommended that Applicant be ordered to docket conforming tariffs for
15 its point-to-point dedicated data service within 365 days from the date of an Order in this matter or 30
16 days prior to providing service, whichever comes first, and in accordance with this Decision. Staff
17 recommended that if Applicant fails to timely comply with this recommendation, Applicant's CC&N
18 become null and void.

19 25. At the hearing, Applicant agreed to comply with all of Staff's recommendations

20 26. Based on information obtained from Applicant, Staff determined that Applicant's fair
21 value rate base ("FVRB") is zero and too small to be useful in a fair value analysis. In general, rates
22 for competitive services are not set according to rate of return regulation. Staff stated that as a new
23 entrant to the point-to-point dedicated data services market, Applicant will have to compete with
24 several existing companies in order to obtain customers, and would generally not be able to exert
25 market power. Staff reviewed the rates in Applicant's revised tariffs filed on September 16, 2005,
26 and determined that the terms and conditions for services within the amended tariff are similar to
27 those of the dominant ILEC in Arizona, with proposed rates essentially equal to those of the
28 dominant ILEC and in some cases lower. Staff stated that while it considered Applicant's FVRB
information, it did not believe the information deserved substantial weight in setting Applicant's
rates.

29 27. The rates ultimately charged by Applicant will be heavily influenced by the market.

1 Because of the nature of the competitive market and other factors, a fair value analysis is not
2 necessarily representative of Applicant's operations.

3 28. Staff's recommendations, as set forth herein, are reasonable.

4 29. Applicant's fair value rate base is determined to be zero for purposes of this
5 proceeding.

6 CONCLUSIONS OF LAW

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

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

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

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

14 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
15 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
16 in its application.

17 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide
18 intrastate, facilities-based, non-switched, dedicated point-to-point data transport telecommunications
19 services, which will allow the customer to connect directly two or more intrastate locations with
20 dedicated, non-switched services, throughout the State of Arizona.

21 7. The telecommunications services that Applicant intends to provide are competitive
22 within Arizona.

23 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
24 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are
25 not less than the Applicant's total service long-run incremental costs of providing the competitive
26 services approved herein.

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

28 10. The maximum rates as set forth in Applicant's revised proposed tariffs filed on

1 September 16, 2005 are just and reasonable and should be approved.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of ACC Telecommunications, LLC dba
4 Adelphia for a Certificate of Convenience and Necessity to provide intrastate, facilities-based, non-
5 switched, dedicated point-to-point data transport telecommunications services, which will allow the
6 customer to connect directly two or more intrastate locations with dedicated, non-switched services,
7 throughout the State of Arizona is hereby approved.

8 IT IS FURTHER ORDERED that ACC Telecommunications, LLC dba Adelphia shall file
9 with Commission Docket Control, as a compliance item in this matter, tariffs for its point-to-point
10 dedicated data service that conform to the revised tariffs filed on September 16, 2005, within 365
11 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes
12 first.

13 IT IS FURTHER ORDERED that if ACC Telecommunications, LLC dba Adelphia fails to
14 timely comply with the preceding Ordering Paragraph, that the Certificate of Convenience and
15 Necessity granted herein shall become null and void after due process.

16 IT IS FURTHER ORDERED that ACC Telecommunications, LLC dba Adelphia shall
17 comply with all of the Staff recommendations set forth in Findings of Fact No. 23 above.

18 IT IS FURTHER ORDERED that in the event ACC Telecommunications, LLC dba Adelphia
19 desires to discontinue service, ACC Telecommunications, LLC dba Adelphia shall notify each of its
20 private line service customers and the Commission 60 days prior to filing an application to
21 discontinue service pursuant to A.A.C. R14-2-1107.

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the services ACC Telecommunications, LLC dba Adelphia
2 is authorized to provide herein are hereby classified as competitive.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

17
18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

DISSENT _____

TW:mlj

1 SERVICE LIST FOR: ACC Telecommunications, LLC dba Adelphia

2 DOCKET NO.: T-04282A-04-0763

3 Jane Whang
4 DAVIS WRIGHT TREMAINE, LLP
5 One Embarcadero Center, Suite 600
6 San Francisco, CA 94111
7 Attorney for ACC Communications, LLC dba Adelphia

8 Michael van Eckhardt
9 DAVIS WRIGHT TREMAINE, LLP
10 2600 Century Square
11 1501 Fourth Avenue
12 Seattle, WA 98101-1688

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

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

24
25
26
27
28