

OPEN MEETING ITEM

ORIGINAL

WILLIAM A. M
CHAIRMAN
JIM IRVING
COMMISSIONER
MARC SPITZ
COMMISSIONER



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

DATE: JULY 29, 2002

DOCKET NO: T-04075A-01-1009

TO ALL PARTIES:

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

X2COMM, INC. dba DC COMMUNICATIONS
(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 7, 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:

AUGUST 20, 2002 and AUGUST 21, 2002

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

Arizona Corporation Commission
DOCKETED
JUL 29 2002
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[Signature]
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

9 IN THE MATTER OF THE APPLICATION OF
X2COMM, INC. DBA DC COMMUNICATIONS
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
LOCAL EXCHANGE SERVICES

DOCKET NO. T-04075A-01-1009

DECISION NO. _____

ORDER

10 Open Meeting
11 August 20 and 21, 2002
12 Phoenix, Arizona

BY THE COMMISSION:

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

15 **FINDINGS OF FACT**

16 1. On December 24, 2001, X2Comm, Inc. dba DC Communications ("Applicant" or
17 "X2Comm") filed with the Arizona Corporation Commission ("Commission") an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange
19 telecommunications services, except local exchange services, within the State of Arizona.

20 2. Applicant is a switchless reseller that purchases telecommunications services from a
21 variety of carriers for resale to its customers.

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

25 4. X2Comm has authority to transact business in the State of Arizona.

26 5. On June 24, 2002, X2Comm filed an Affidavit of Publication indicating compliance
27 with the Commission's notice requirements.
28

1 6. On January 22, 2002, Staff filed in this docket a letter to the Applicant requesting
2 information necessary in order to make a fair value rate base finding. Applicant filed a corrected
3 response on May 16, 2002.

4 7. On June 27, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff
5 Report which includes Staff's fair value rate base determination in this matter and recommends
6 approval of the application subject to certain conditions.

7 8. In the Staff Report, Staff stated that X2Comm provided financial statements for the
8 three months ending March 31, 2002, which list assets of \$453,613, negative equity of \$43,992, and a
9 net loss of \$2,359.

10 9. In its Staff Report, Staff stated that based on information obtained from the Applicant,
11 it has determined that X2Comm's fair value rate base is zero, and is too small to be useful in setting
12 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
13 return regulation, but are heavily influenced by the market. Staff recommended that the Commission
14 not set rates for X2Comm based on the fair value of its rate base.

15 10. Staff believes that X2Comm has no market power and that the reasonableness of its
16 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
17 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
18 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
19 Commission approve them.

20 11. Staff recommended approval of X2Comm's application subject to the following:

21 (a) The Applicant should be ordered to comply with all Commission rules, orders,
22 and other requirements relevant to the provision of intrastate telecommunications
23 service;

24 (b) The Applicant should be ordered to maintain its accounts and records as
25 required by the Commission;

26 (c) The Applicant should be ordered to file with the Commission all financial and
27 other reports that the Commission may require, and in a form and at such times as the
28 Commission may designate;

 (d) The Applicant should be ordered to maintain on file with the Commission all

1 current tariffs and rates, and any service standards that the Commission may require;

2 (e) The Applicant should be ordered to comply with the Commission's rules and
3 modify its tariffs to conform to these rules if it is determined that there is a conflict
4 between the Applicant's tariffs and the Commission's rules;

5 (f) The Applicant should be ordered to cooperate with Commission investigations
6 of customer complaints;

7 (g) The Applicant should be ordered to participate in and contribute to a universal
8 service fund, as required by the Commission;

9 (h) The Applicant should be ordered to notify the Commission immediately upon
10 changes to the Applicant's address or telephone number;

11 (i) If at some future date, the Applicant wants to collect from its customers an
12 advance, deposit and/or prepayment, it must file information with the Commission for
13 Staff review. Upon receipt of such filing and after Staff review, Staff would forward
14 its recommendation to the Commission;

15 (j) The Applicant's interexchange service offerings should be classified as
16 competitive pursuant to A.A.C. R14-2-1108;

17 (k) The Applicant's maximum rates should be the maximum rates proposed by the
18 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
19 services should be the Applicant's total service long run incremental costs of
20 providing those services as set forth in A.A.C. R14-2-1109; and

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

24 12. Staff further recommended that X2Comm's Certificate should be conditioned upon the
25 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
26 an Order in this matter, or 30 days prior to providing service, whichever comes first.

27 13. Staff recommended that if the Applicant fails to meet the timeframes outlined in
28 Findings of Fact No. 12, that X2Comm's Certificate should become null and void without further
Order of the Commission, and that no time extensions for compliance should be granted.

14. The rates proposed by this filing are for competitive services.

15. Staff's recommendations as set forth herein are reasonable.

16. X2Comm's fair value rate base is zero.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona
3 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 interexchange telecommunications services is in the
8 public interest.

9 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
10 providing competitive resold interexchange telecommunications services in Arizona.

11 6. Staff's recommendations in Findings of Fact No. 9, 10, 11, 12 and 13 should be
12 adopted.

13 7. X2Comm's fair value rate base is not useful in determining just and reasonable rates
14 for the competitive services it proposes to provide to Arizona customers.

15 8. X2Comm's rates, as they appear in its proposed tariffs, are just and reasonable and
16 should be approved.

ORDER

17
18 IT IS THEREFORE ORDERED that the application of X2Comm, Inc. dba DC
19 Communications for a Certificate of Convenience and Necessity for authority to provide competitive
20 resold interexchange telecommunications services, except local exchange services, is hereby granted,
21 conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of
22 Fact No. 12 above.

23 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
24 9, 10, 11, 12 and 13 above are hereby adopted.

25 IT IS FURTHER ORDERED that X2Comm, Inc. dba DC Communications shall comply
26 with the adopted Staff recommendations as set forth in Findings of Fact Nos. 11 and 12 above.

27 IT IS FURTHER ORDERED that if X2Comm, Inc. dba DC Communications fails to meet the
28 timeframes outlined in Findings of Fact. No. 12 above that the Certificate conditionally granted

1 herein shall become null and void without further Order of the Commission.

2 IT IS FURTHER ORDERED that X2Comm, Inc. dba DC Communications shall not require
3 its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2002.

14 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 MES:dap

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1 SERVICE LIST FOR: X2COMM, INC. DBA DC COMMUNICATIONS

2 DOCKET NO.: T-04075A-01-1009

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