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ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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AZ CORP COMMISSION
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DATE: JULY 29, 2002
DOCKET NO: T-04090A-0-0178
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:

NORTH BY NORTHEASTCOM LLC dba
SOUTHEASTCOM LLC
(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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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
10 NORTH BY NORTHEASTCOM LLC DBA
11 SOUTHEASTCOM LLC FOR A CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO PROVIDE
13 COMPETITIVE RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES

DOCKET NO. T-04090A-02-0178

DECISION NO. _____

ORDER

16 Open Meeting
17 August 20 and 21, 2002
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

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 March 12, 2002, North by NortheastCom LLC dba SoutheastCom LLC
24 ("Applicant" or "SoutheastCom") filed with the Arizona Corporation Commission ("Commission")
25 an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
26 resold interexchange telecommunications services, except local exchange services, within the State of
27 Arizona.

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

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

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

5. On June 17, 2002, SoutheastCom filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2 6. On May 7, 2002, Staff filed in this docket a letter to the Applicant requesting
3 information necessary in order to make a fair value rate base finding. Applicant filed its response on
4 June 12, 2002.

5 7. On June 21, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff
6 Report which includes Staff's fair value rate base determination in this matter and recommends
7 approval of the application subject to certain conditions.

8 8. In the Staff Report, Staff stated that SoutheastCom provided financial statements for
9 the three months ending March 31, 2002, which list assets of \$172.0 million, total equity of \$153.3
10 million, and net income of \$5.4 million.

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

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

21 11. Staff recommended approval of SoutheastCom's application subject to the following:

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

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

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

1 (d) The Applicant should be ordered to maintain on file with the Commission all
2 current tariffs and rates, and any service standards that the Commission may require;

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

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

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

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

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

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

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

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

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

28 13. Staff recommended that if the Applicant fails to meet the timeframes outlined in
Findings of Fact No. 12, that SoutheastCom'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. SoutheastCom'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. SoutheastCom's fair value rate base is not useful in determining just and reasonable
14 rates for the competitive services it proposes to provide to Arizona customers.

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

ORDER

17
18 IT IS THEREFORE ORDERED that the application of North by NortheastCom LLC dba
19 SoutheastCom LLC for a Certificate of Convenience and Necessity for authority to provide
20 competitive resold interexchange telecommunications services, except local exchange services, is
21 hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set
22 forth in Findings of 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 North by NortheastCom LLC dba SoutheastCom LLC
26 shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 11 and 12
27 above.

28 IT IS FURTHER ORDERED that if North by NortheastCom LLC dba SoutheastCom LLC

1 fails to meet the timeframes outlined in Findings of Fact. No. 12 above that the Certificate
2 conditionally granted herein shall become null and void without further Order of the Commission.

3 IT IS FURTHER ORDERED that North by NortheastCom LLC dba SoutheastCom LLC shall
4 not require its Arizona customers to pay advances, prepayments or deposits for any of its products or
5 services.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9

10 CHAIRMAN COMMISSIONER COMMISSIONER

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

16 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT _____
18 MES:dap

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1 SERVICE LIST FOR: NORTH BY NORTHEASTCOM LLC DBA
2 SOUTHEASTCOM LLC

3 DOCKET NO.: T-04090A-02-0178

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