

ORIGINAL



0000054312

BRIAN C. McNEIL
Executive Director

22

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



ARIZONA CORPORATION COMMISSION

DATE: May 8, 2006

DOCKET NO: T-04273A-04-0609

TO ALL PARTIES:

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

DIGIZIP.COM, INC.
(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 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:

MAY 17, 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:

MAY 31 AND JUNE 1, 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.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

AZ CORP COMMISSION
DOCUMENT CONTROL

2006 MAY - 8 P 1:53

RECEIVED

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

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

9 IN THE MATTER OF THE APPLICATION OF
10 DIGIZIP.COM, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-04273A-04-0609

DECISION NO. _____

14 ORDER

15 Open Meeting
16 May 31 and June 1, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On August 18, 2004, Digizip.com, Inc. ("Digizip" or "Applicant") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 resold interexchange telecommunications services within the State of Arizona.

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

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

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

5. On March 24, 2005, Digizip filed Affidavits of Publication indicating compliance with
the Commission's notice requirements.

6. On April 26, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff

1 Report, which includes Staff's fair value rate base ("FVRB") determination in this matter and
2 recommends approval of the application subject to certain conditions.

3 7. In the Staff Report, Staff stated that Digizip provided unaudited financial statements
4 for 2001, 2002, 2003 and the four months ending March 30, 2004, which list assets of \$96,263,
5 equity of \$65,701, and a net income of \$146,686.

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

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

17 10. Staff recommended approval of Digizip's application subject to the following:

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

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

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

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

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

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

2 (g) The Applicant should be ordered to participate in and contribute to the Arizona
3 Universal Service Fund, as required by the Commission;

4 (h) The Applicant should be ordered to notify the Commission immediately upon
5 changes to the Applicant's name, address or telephone number;

6 (i) The Applicant's intrastate interexchange service offerings should be classified
7 as competitive pursuant to A.A.C. R14-2-1108;

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

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

13 (l) In the event that the Applicant requests to discontinue and/or abandon its
14 service area it must provide notice to both the Commission and its customers, pursuant
to A.A.C. R14-2-1107.

15 11. Staff further recommended that Digizip's Certificate should be considered null and void
16 after due process if it fails to meet the following conditions:

17 (a) The Applicant shall file conforming tariffs in accordance within 365 days of
18 the effective date of this Decision, or 30 days prior to providing service, whichever
19 comes first.

20 (b) If the Applicant, at some future, date wants to collect from its resold
21 interexchange customers an advance, deposit, and/or prepayment, it must file an
22 application with the Commission for Commission approval. Further, such application
23 must reference the Decision in this docket and must explain the Applicant's plans for
24 procuring a performance bond.

25 12. The rates proposed by this filing are for competitive services.

26 13. Staff's recommendations as set forth herein are reasonable.

27 14. Digizip's fair value rate base is zero.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSIONS OF LAW

- 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 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. Applicant’s provision of resold interexchange telecommunications services is in the public interest.
- 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.
- 6. Staff’s recommendations in Findings of Fact Nos. 8, 9, 10 and 11 should be adopted.
- 7. Digizip’s fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.
- 8. Digizip’s rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.
- 9. Pursuant to A.R.S. § 40-282 this application may be approved without a hearing.

ORDER

IT IS THEREFORE ORDERED that the application of Digizip.com, Inc.. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 8, 9, 10 and 11 above.

IT IS FURTHER ORDERED that Staff’s recommendations set forth in Findings of Fact Nos. 10 and 11 above are hereby adopted.

IT IS FURTHER ORDERED that Digizip.com, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

...
...

1 IT IS FURTHER ORDERED that if Digizip.com, Inc. fails to meet the timeframes outlined in
2 Findings of Fact No. 11 above, that the Certificate conditionally granted herein shall be considered
3 null and void after due process.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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
21
22
23
24
25
26
27
28
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:mj

1 SERVICE LIST FOR: DIGIZIP.COM, INC.

2 DOCKET NO.: T-04273A-04-0609

3 Becky Hegglund
4 NOWALSKY, BRONSTON & I GOTHARD
5 168 Irving Avenue, #302
6 Port Chester, NY 10573

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33