

OPEN MEETING ITEM



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



ORIGIN

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ARIZONA CORPORATION COMMISSION

2003 DEC 30 P 12 28

DATE: DECEMBER 30, 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO: T-04212A-03-0733

TO ALL PARTIES:

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

HARBOR COMMUNICATIONS, 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:

JANUARY 8, 2004

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:

JANUARY 13, 2004 and JANUARY 14, 2004

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

Arizona Corporation Commission

DOCKETED

DEC 30 2003

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

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

9 IN THE MATTER OF THE APPLICATION OF
10 HARBOR COMMUNICATIONS LLC FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04212A-03-0733

DECISION NO. _____

ORDER

16 Open Meeting
17 January 13 and 14, 2004
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

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

22 **FINDINGS OF FACT**

23 1. On October 2, 2003, Harbor Communications LLC ("Applicant" or "Harbor") filed
24 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
25 provide competitive resold interexchange telecommunications services, except local exchange
26 services, within the State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a
28 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. Harbor has authority to transact business in the State of Arizona.

5. By its letter dated December 4, 2003, Harbor filed an Affidavit of Publication
indicating compliance with the Commission's notice requirements and sought to amend its October 2,

1 2003 application by limiting its service territory to Maricopa County, Arizona.

2 6. On December 19, 2003, the Commission's Utilities Division Staff ("Staff") filed a
3 Staff Report in this matter, which includes Staff's fair value rate base determination in this matter and
4 recommends approval of the application subject to certain conditions.

5 7. In the Staff Report, Staff stated that Harbor provided unaudited financial statements
6 for the nine month period ending September 23, 2003, which list assets of \$23,511, total equity of
7 \$21,734, and a net loss of \$14,016.

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

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

19 10. Staff recommended approval of Harbor's application subject to the following:

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

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

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

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

1 (e) The Applicant should be ordered to comply with the Commission's rules and
2 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;

3 (f) The Applicant should be ordered to cooperate with Commission investigations,
4 including but not limited to, customer complaints;

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

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

9 (i) If, at some future date, the Applicant wants to collect from its resold
10 interexchange customers an advance, deposit, and/or prepayment, Staff recommends
11 that the Applicant be required to file an application with the Commission for
Commission approval. Such application must reference the decision in this docket and
must explain the applicant's plans for procuring a performance bond;

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

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

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

18 11. Staff further recommended that Harbor's Certificate should be conditioned upon the
19 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective
20 date of this Decision, or 30 days prior to providing service, whichever comes first.

21 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in
22 Findings of Fact No. 11, that Harbor's Certificate should become null and void without further Order
23 of the Commission and that no time extensions for compliance should be granted.

24 13. The rates proposed by this filing are for competitive services.

25 14. Staff's recommendations as set forth herein are reasonable.

26 15. Harbor's fair value rate base is zero.
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CONCLUSIONS OF LAW

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2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona 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 Maricopa County,
11 Arizona.

12 6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, and 12 should be
13 adopted.

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

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

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of Harbor Communications LLC for a
20 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
21 telecommunications services, except local exchange services, is hereby granted, conditioned upon its
22 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11,
23 and 12 above.

24 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
25 8, 9, 10, 11, and 12 above are hereby adopted.

26 IT IS FURTHER ORDERED that Harbor Communications LLC shall comply with the
27 adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

28 ...

1 IT IS FURTHER ORDERED that if Harbor Communications LLC fails to meet the
2 timeframes outlined in Findings of Fact No. 11 above, that the Certificate conditionally granted
3 herein shall become null and void without further Order of the Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

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 _____, 2004.

17 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

19
20 DISSENT _____
AP:mj

1 SERVICE LIST FOR: HARBOR COMMUNICATIONS LLC

2 DOCKET NO.: T-04212A-03-0733

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