

OPEN MEETING ITEM



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



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BRIAN C. McNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

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DATE: February 13, 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO.: ~~T-01072B-03-0048~~

TO ALL PARTIES: T-03453A-03-0670

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Order on:

**RURAL NETWORK SERVICES, INC.
(CC&N/FACILITIES-BASED)**

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:

FEBRUARY 23, 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 Open Meeting to be held on:

MARCH 2 AND 3, 2004

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 Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

FEB 13 2004

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 RURAL NETWORK SERVICES, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE FACILITIES-BASED
12 LOCAL EXCHANGE TELECOMMUNICATIONS
13 SERVICE IN MARICOPA AND COCHISE
14 COUNTIES, ARIZONA AND FOR COMPETITIVE
15 CLASSIFICATION OF ITS SERVICES.

DOCKET NO. T-03453A-03-0670

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: February 12, 2004
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Philip J. Dion III
14 APPEARANCES: Ann Hobart, Brown & Bain, P.A. on behalf of Rural
15 Network Services, Inc.
16 Maureen Scott, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
18 Corporation Commission.

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 September 15, 2003, Rural Network Services, Inc. ("RNS" or "Applicant") filed
23 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
24 provide competitive facilities-based local exchange telecommunications services in Arizona. During
25 the hearing in this matter, RNS amended its application to provide service to only Maricopa and
26 Cochise counties in Arizona.
27 2. On January 29 and 30, 2004, Applicant docketed a Notice of Filing of Affidavits of
28 Publication that complies with Commission rules.

1 3. RNS is an Idaho corporation, authorized to do business in Arizona.

2 4. On December 26, 2003, the Commission's Utilities Division Staff ("Staff") filed its
3 Staff Report, which recommended approval of the application and included a number of additional
4 recommendations.

5 5. On December 31, 2003, a Procedural Order was issued setting this matter for hearing
6 on February 12, 2004 and setting various procedural deadlines.

7 6. On February 12, 2004, a full public hearing in this matter was held as scheduled.
8 Applicant appeared and was represented by counsel. Staff appeared and was represented by counsel.
9 The hearing was conducted before a duly authorized Administrative Law Judge. Evidence was
10 presented and testimony was taken. At the conclusion of the hearing, the Administrative Law Judge
11 took the matter under advisement and informed the parties that a Recommended Opinion and Order
12 would be prepared for the Commissioners' consideration.

13 7. During the hearing, Karen Ellison testified on behalf of RNS. Ms. Ellison stated she is
14 an employee of RNS and Midvale Telephone Exchange, Inc. ("Midvale"). Ms. Ellison testified that
15 although RNS and Midvale have similar ownership and employees, they are distinct entities that act
16 independently from one another. Ms. Ellison stated that it is not RNS' intent to compete with
17 Midvale as RNS does not have the desire or financial ability to serve Midvale's customers. She
18 further testified that RNS would not provide facilities-based local telecommunication services in
19 areas in which Midvale is certified to provide telecommunications services. Staff stated that based
20 upon RNS' testimony, Staff believed RNS would act as an independent entity and recommended
21 approval of RNS' application.

22 8. Applicant has the technical capability to provide the services that are proposed in its
23 application.

24 9. Currently there are several incumbent providers of local exchange and interexchange
25 services in the service territory requested by Applicant, and numerous other entities have been
26 authorized to provide competitive local and interexchange services in all or portions of that territory.

27 10. It is appropriate to classify all of Applicant's authorized services as competitive.

28 11. The Staff Report stated that Applicant has no market power and the reasonableness of

1 its rates would be evaluated in a market with numerous competitors.

2 12. According to the Staff Report, RNS submitted unaudited financial statements for the
3 year ending June 30, 2003. These financial statements list total assets of \$779,751, negative equity of
4 \$495,009, and a net loss of \$557,009.

5 13. The application states that RNS collects advances and deposits from its customers.

6 14. Staff recommends that RNS' application for a Certificate to provide competitive
7 facilities-based local exchange telecommunications services be granted subject to the following
8 conditions:

- 9 (a) that, unless it provides services solely through the use of its own facilities,
10 Applicant be ordered to procure an Interconnection Agreement, within 365
11 days of the effective date of the Order in this matter or 30 days prior to the
12 provision of service, whichever comes first, that must remain in effect until
13 further order of the Commission, before being allowed to offer local exchange
14 service;
- 15 (b) that Applicant be ordered to file with the Commission, within 365 days of the
16 effective date of the Order in this matter or 30 days prior to the provision of
17 service, whichever comes first, its plan to have its customers' telephone
18 numbers included in the incumbent's Directories and Directory Assistance
19 databases;
- 20 (c) that Applicant be ordered to pursue permanent number portability
21 arrangements with other LECs pursuant to Commission rules, federal laws and
22 federal rules;
- 23 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism
24 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
25 00000E-95-0498);
- 26 (e) that Applicant be ordered to abide by the quality of service standards that were
27 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 28 (f) that the Applicant be prohibited from barring access to alternative local
exchange service providers who wish to serve in areas where the Applicant is
the only provider of local exchange service;
- (g) that Applicant be ordered to certify, through the 911 service provider in the
area in which it intends to provide service, that all issues associated with the
provision of 911 service have been resolved with the emergency service
providers within 365 days of an Order in this matter or 30 days prior to the
provision of service, whichever comes first, which certification must remain in
effect until further Order of the Commission;
- (h) that Applicant be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- (i) that Applicant be ordered to provide 2-PIC equal access;

- 1 (j) that Applicant be required to notify the Commission immediately upon
 2 changes to its name, address or telephone number;
- 3 (k) that Applicant be ordered to comply with all Commission rules, orders, and
 4 other requirements relevant to the provision of intrastate telecommunications
 5 service;
- 6 (l) that Applicant be ordered to maintain its accounts and records as required by
 7 the Commission;
- 8 (m) that Applicant be ordered to file with the Commission all financial and other
 9 reports that the Commission may require, and in a form and at such times as
 10 the Commission may designate;
- 11 (n) that Applicant be ordered to maintain on file with the Commission all current
 12 tariffs and rates, and any service standards that the Commission may require;
- 13 (o) that Applicant be ordered to cooperate with Commission investigations
 14 including, but not limited to, customer complaints; and
- 15 (p) Applicant be ordered to participate in and contribute to a universal service
 16 fund, as required by the Commission.

17 15. Staff further recommended that the Applicant be subject to the Commission's rules
 18 governing interconnection and unbundling and the 1996 Telecommunications Act and the rules
 19 promulgated thereunder. In the event that the Applicant provides essential services or facilities that
 20 potential competitors need in order to provide their services, the Applicant should be required to offer
 21 those facilities or services to these providers on non-discriminatory terms and conditions pursuant to
 22 federal laws, federal rules and state rules.

23 16. Staff further recommended that RNS' application for a CC&N to provide intrastate
 24 telecommunications services should be granted subject to the following conditions:

- 25 (a) RNS be ordered to file conforming tariffs within 365 days from the date of an
 26 Order in this matter or 30 days prior to providing service, whichever occurs
 27 first, and in accordance with the Decision;
- 28 (b) In order to protect RNS' customers:
- (1) RNS should be ordered to procure a performance bond equal to \$100,000.
 The minimum bond amount of \$100,000 should be increased if at any time
 it would be insufficient to cover prepayments or deposits collected from
 RNS' customers. The bond amount should be increased in increments of
 \$50,000 whenever the total amount of the advances, deposits and
 prepayments is within \$10,000 of the bond amount;

1 (2) RNS should docket proof of the performance bond within 365 days of the
2 effective date of an Order in this matter or 30 days prior to the provision of
3 service, whichever comes first, and must remain in effect until further
4 Order of the Commission;

5 (3) if RNS desires to discontinue service, it should be required to file an
6 application with the Commission pursuant to A.A.C. R14-2-1107;

7 (4) RNS should be required to notify each of its local exchange customers and
8 the Commission 60 days prior to filing an application to discontinue
9 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
10 result in forfeiture of the Applicant's performance bond;

11 (c) If any of the above timeframes are not met, that RNS' CC&N should become
12 null and void without further Order of the Commission and no extensions for
13 compliance should be granted.

14 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,
15 it has determined that RNS' fair value rate base is \$36,255, and is too small to be useful in setting
16 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
17 return regulation, but are heavily influenced by the market. Staff recommended that while it
18 considered the fair value rate base information, it did not believe the information deserved substantial
19 weight in setting rates for RNS.

20 18. The rates to be ultimately charged by RNS will be heavily influenced by the market.
21 Because of the nature of the competitive market and other factors, a fair value analysis is not
22 necessarily representative of the company's operations.

23 19. Staff stated that RNS lacks the market power to adversely affect the
24 telecommunications market by either restricting output or raising prices. Also, Staff has
25 recommended that RNS' services be classified as competitive and thus subject to the flexible pricing
26 authority allowed by the Commission's Competitive Telecommunications Services rules. Staff
27 believes that these two factors, lack of market power and the competitive marketplace for the services
28 RNS proposes to offer, support the conclusion that a fair value analysis is not necessarily
representative of the company's operations, and that the rates charged by RNS will be reasonable.

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

21. RNS' fair value rate base is determined to be \$36,255 for purposes of this proceeding.

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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. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

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

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based local exchange telecommunications services in Cochise and Maricopa counties, Arizona as conditioned by Staff's recommendations.

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

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

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

10. RNS' competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Rural Network Services, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local

1 exchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon
2 Rural Network Services, Inc.'s timely compliance with the following three Ordering Paragraphs.

3 IT IS FURTHER ORDERED that Rural Network Services, Inc. shall file conforming tariffs in
4 accordance with this Decision within 365 days of this Decision or 30 days prior to providing service,
5 whichever comes first.

6 IT IS FURTHER ORDERED that Rural Network Services, Inc. shall procure a performance
7 bond equal to \$100,000 the earlier of 365 days from the effective date of this Order or 30 days prior
8 to the commencement of service. The minimum bond amount of \$100,00 shall be increased if, at any
9 time, it would be insufficient to cover prepayments or deposits collected from the Applicant's
10 customers. The bond amount shall be increased in increments of \$50,000. This increase shall occur
11 when the total amount of the advances, deposits, and prepayments is within \$10,000 of the bond
12 amount.

13 IT IS FURTHER ORDERED that Rural Network Services, Inc. shall comply with all of the
14 Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

15 IT IS FURTHER ORDERED that if Rural Network Services, Inc. fails to meet the timeframes
16 outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity
17 conditionally granted herein shall become null and void without further Order of the Commission.

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IT IS FURTHER ORDERED that if Rural Network Services, Inc. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Rural Network Services, Inc.'s performance bond shall be forfeited.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

PJD:mlj

1 SERVICE LIST FOR: RURAL NETWORK SERVICES, INC.

2 DOCKET NO.: T-03453A-03-0670

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