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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

Arizona Corporation Commission

DOCKETED

APR 16 2007

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IN THE MATTER OF THE APPLICATION OF
FIRST COMMUNICATIONS, LLC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20473A-06-0537

DECISION NO. 69419

ORDER

Open Meeting
April 11 and 12, 2007
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On August 24, 2006, First Communications, LLC ("Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services within the State of Arizona.
2. On September 6, 2006, Commission Utility Division Staff ("Staff") filed a Letter of Insufficiency and First Set of Data Requests seeking additional information needed for Staff to complete its analysis.
3. On October 5, 2006, Staff filed its Second Letter of Insufficiency and Second Set of Data Requests.
4. On October 16, 2006, Applicant docketed its responses to Staff's Second Set of Data Requests.
5. Applicant is a switchless reseller that purchases telecommunications services from a

1 variety of carriers for resale to its customers.

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

5 7. Applicant has authority to transact business in the State of Arizona.

6 8. On October 23, 2006, Applicant filed an Affidavit of Publication indicating
7 compliance with the Commission's notice requirements.

8 9. On February 7, 2007, Staff filed a Staff Report which includes Staff's fair value rate
9 base ("FVRB") determination and recommended approval of the application subject to certain
10 conditions.

11 10. Applicant provided unaudited financial statements for the year ending December 31,
12 2005, which indicates assets of \$30,512,269, equity of \$7,514,971 and net income of \$1,296,468.

13 11. The Applicant indicated that it is authorized to offer resold interexchange service in 17
14 states, but that it currently offers resold interexchange service in only six states including Florida,
15 Indiana, Illinois, Michigan, Ohio and Pennsylvania. Staff contacted all six states to inquire if there
16 were any consumer complaints against Applicant. Staff received responses from four states with the
17 following results:

State	No. Complaints	No. resolved in favor of the customer
Florida	7	2
Indiana	11	6
Michigan	36	11
Ohio	1	0

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25 12. According to the Applicant's application, the company's senior management team has
26 a combined total 52 years experience in the telecommunications industry. Based on this information,
27 Staff determined that the Applicant has sufficient technical capabilities to provide resold
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1 interexchange telecommunications services.

2 13. The Applicant indicated that none of its officers, directors or partners has been
3 convicted of any criminal acts in the past ten (10) years.

4 14. Applicant's tariff indicates that it does not collect deposits or advance payments from
5 its customers. The tariff does not indicate that Applicant collects prepayments from its resold
6 interexchange customers. If at some future date, Applicant wants to collect advances, deposits and/or
7 prepayments from its resold interexchange customers, Staff recommends that the Applicant be
8 required to file an application with the Commission for approval. The application must reference the
9 Decision in this docket and explain the Applicant's plans for procuring a performance bond.

10 15. In the event that the Applicant experiences financial difficulties, the impact on
11 customer should be minimal impact because there are many companies that provide resold
12 interexchange telecommunications service or the customers may choose a facilities-based provider.
13 If the customer wants interexchange service from a different provider immediately, that customer is
14 able to dial a 101XXXX (dial around) access code. In the longer term, the customer may desire to
15 permanently switch to another provider.

16 16. Staff stated that based on information obtained from the Applicant, it has determined
17 that Applicant's FVRB is zero and Applicant's FVRB is too small to be useful in a fair value
18 analysis, and is not useful in setting rates. Staff further states that in general, rates for competitive
19 services are not set according to rate of return regulation, but are heavily influenced by the market.
20 Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable
21 as they are comparable to several long distance carriers operating in Arizona and comparable to the
22 rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the FVRB
23 information submitted by the Applicant, the FVRB information provided should not be given
24 substantial weight in this analysis.

25 17. Staff believes that Applicant has no market power and that the reasonableness of its
26 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
27 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
28 proposed tariffs for its competitive services will be just and reasonable, and recommends that the

1 Commission approve them.

2 18. Commission rules provide pricing flexibility by allowing competitive
3 telecommunication service companies to price their services at or below the maximum rates
4 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
5 This rule requires the Applicant to file a tariff for each competitive service that states the maximum
6 rate as well as the effective (actual) price that will be charged for the service. Any changes to the
7 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which
8 provides that the minimum rates for the applicant's competitive services must not be below the
9 Applicant's total service long run incremental costs of providing the services. The Applicant's
10 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on
11 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-
12 1110.

13 19. Staff recommended approval of Applicant's application subject to the following:

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

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

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

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

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

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

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

(h) The Applicant should be ordered to notify the Commission immediately upon

1 changes to the Applicant's name, address or telephone number;

2 (i) If at some future date, the Applicant wants to collect from its customers an
3 advance, deposit, and/or prepayment, Staff recommends that the Applicant be required
4 to file such information with the Commission for Commission approval. Such
5 application must reference the Decision Number in this docket and must explain the
6 Applicant's plans for procuring a performance bond;

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

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

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

16 (m) In the event the Applicant requests to discontinue and/or abandon its service
17 area it must provide notice to both the Commission and its customers in accordance
18 with A.A.C. R14-2-1107; and

19 (n) If Applicant desires to provide other telecommunication services other than
20 resold interexchange services, Staff recommends that the Applicant file an application
21 with the Commission and affirm that the Applicant's customers will be able to access
22 alternative interexchange services to resellers.

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

27 21. Staff recommended that if the Applicant fails to meet the timeframes outlined in
28 Finding of Fact No. 20, that Applicant's Certificate should become null and void after due process.

22 22. Applicant will not collect advances, prepayments or deposits from customers.

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

24 24. Staff's recommendations as set forth herein are reasonable, except that in the event
25 that at some future date, the Applicant wants to collect from its customers an advance, deposit, and/or
26 prepayment, we will allow Applicant to exercise discretion in procuring either a performance bond or
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1 an irrevocable sight draft Letter of Credit.

2 25. Applicant's fair value rate base is zero.

3 **CONCLUSIONS OF LAW**

4 1. Applicant is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over Applicant and the subject matter of the
7 application.

8 3. Notice of the application was given in accordance with the law.

9 4. Applicant's provision of resold interexchange telecommunications services is in the
10 public interest.

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

13 6. Staff's recommendations are reasonable except as modified herein and should be
14 adopted.

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

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

19 **ORDER**

20 IT IS THEREFORE ORDERED that the application of First Communications, LLC for a
21 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
22 telecommunications services, shall be, and hereby is, granted, conditioned upon its compliance with
23 the requirements as set forth in Findings of Fact Nos. 19 and 20, above.

24 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
25 19 and 20 as modified herein are hereby adopted.

26 IT IS FURTHER ORDERED that First Communications, LLC shall comply with the adopted
27 Staff recommendations as set forth in Findings of Fact Nos. 19 and 20 above, and as modified herein.

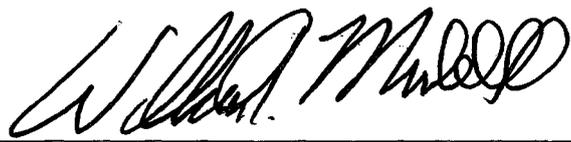
28 IT IS FURTHER ORDERED that if First Communications, LLC fails to meet the timeframes

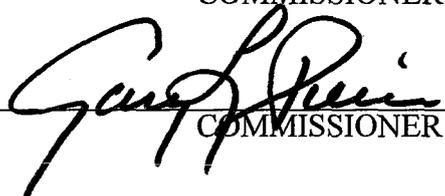
1 outlined in Finding of Fact. No. 20 above that the Certificate conditionally granted herein shall
2 become null and void after due process.

3 IT IS FURTHER ORDERED that absent future authorization from the Commission, First
4 Communications, LLC shall not require its Arizona customers to pay advances, prepayments or
5 deposits for any of its products or 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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10 CHAIRMAN COMMISSIONER

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12 COMMISSIONER COMMISSIONER COMMISSIONER

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 16th day of April, 2007.

18 
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____

24 DISSENT _____

25 JR:

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1 SERVICE LIST FOR: FIRST COMMUNICATIONS, LLC

2 DOCKET NO.: T-20473A-06-0537

3 Michael W. Patten
4 ROSHKA, DEWULF & PATTEN, PLC
5 One Arizona Center
6 400 E. Van Buren, Suite 800
7 Phoenix, AZ 85004
8 Attorneys for First Communications, LLC

9 Christopher Kempsey, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

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