

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
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JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

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2007 MAY 21 P 2:13

AZ CORP COMMISSION
DOCKET CONTROL

DATE: MAY 21, 2007
DOCKET NO: T-20434A-05-0900

TO ALL PARTIES:

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

YMAX COMMUNICATIONS CORPORATION
(CC&N)

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:

MAY 30, 2007

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:

JUNE 5, 2007, AND JUNE 6, 2007

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

MAY 21 2007

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DOCKETED BY

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
YMAX COMMUNICATIONS CORPORATION,
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE, RESOLD LOCAL EXCHANGE, AND
FACILITIES BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-20434A-05-0900
DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: March 20, 2007
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Peter Russo, on behalf of YMax
Communications Corporation; and
Ms. Maureen Scott, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On December 20, 2005, YMax Communications Corporation ("YMax" or "Applicant")
submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of
Convenience and Necessity ("Certificate" or "CC&N") to provide resold long distance, resold local
exchange and facilities-based local exchange telecommunications services in Arizona.

On January 18, 2006, the Commission's Utilities Division Staff ("Staff") filed a Letter of
Insufficiency and its first set of data requests in this matter.

On February 17, 2006, YMax filed its response to the data request.

On March 2, 2006, Staff filed a second Letter of Insufficiency and a second set of data
requests.

1 On April 3, 2006, YMax filed its Response to Staff's second set of data requests.

2 On June 27, 2006, YMax amended its application to remove its request to provide resold local
3 exchange service.

4 On December 12, 2006, Staff filed its Staff Report recommending approval of YMax's
5 application, subject to certain conditions.

6 On January 12, 2007, by Procedural Order, the hearing in this matter was set to convene on
7 March 20, 2007, and other procedural deadlines were set.

8 On February 7, 2007, YMax filed its Affidavit of Publication.

9 On March 20, 2007, a full public hearing was held before a duly authorized Administrative
10 Law Judge of the Commission at its offices in Phoenix, Arizona. At the hearing, the Applicant
11 appeared on its own behalf and Staff appeared through counsel and presented evidence and
12 testimony. No members of the public appeared to give public comments in this matter. At the
13 conclusion of the hearing, the matter was taken under advisement pending submission of a
14 Recommended Opinion and Order to the Commission.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

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

22 2. On December 20, 2005, YMax filed an application for a CC&N to provide resold long
23 distance, resold local exchange, and facilities-based local exchange telecommunications services in
24 Arizona.

25 3. On June 27, 2006, YMax amended its application withdrawing its request for
26 authority to provide resold local exchange.

27 4. On March 20, 2007, a full public hearing was held on YMax's amended application.
28

1 5. YMax's witness¹ testified at hearing, that YMax is authorized to provide facilities-
2 based local exchange and interexchange telecommunications services in 48 states, and that YMax
3 intended to commence business in Arizona upon receiving approval in all 50 states.

4 6. YMax's witness further testified that YMax proposes to provide competitive local
5 exchange and long distance services to the consumer public, and also to small and medium sized
6 businesses.

7 7. Staff concluded that YMax has the technical capability to provide the services it is
8 requesting in Arizona. Staff based its conclusion on YMax's Chief Executive Officer and Chairman,
9 Dr. Daniel Borislow's past experience in the telecommunications industry and his experience as CEO
10 and Director of Tel-Save Holdings², which offered wholesale long distance to other resellers.

11 8. Further, YMax's witness testified that YMax currently employs eight full time
12 employees and will increase to 15 by May 2007, and all of the employees have telecom experience.

13 9. According to Staff's Report, YMax is a start-up operation and provided an unaudited
14 balance sheet showing assets of \$5 million; liabilities of \$5 million; and equity of \$1,000, as of May
15 17, 2005. Staff noted that YMax will rely on the creditworthiness and financial resources of Dr.
16 Borislow, whose unaudited personal balance sheet showed \$78 million in assets, \$8 million in
17 liabilities, and in excess of \$69 million in equity as of September 30, 2005.

18 10. YMax's witness testified that since the filing of its application the parent company has
19 raised \$6.5 million in private equity and he believed that YMax's balance sheet looked quite strong at
20 this time.

21 11. YMax is requesting to collect advances, deposits, and/or prepayments from its
22 customers. Staff believes that YMax's potential customer's advances, deposits, and/or prepayments
23 should be protected by a performance bond or an irrevocable sight draft letter of credit. Staff
24 recommends that YMax procure a performance bond or irrevocable sight draft letter of credit for the
25 aggregate amount for each type of telecommunications service it is requesting. Staff further
26 recommends that the aggregate amount of the bond or irrevocable sight draft letter of credit needed is

27 _____
28 ¹ Mr. Peter Russo, vice president and secretary for YMax Communications Corporation.

² According to Staff's Report, Tel-Save Holdings is now Talk America.

1 \$10,000 for resold long distance, \$100,000 for facilities-based local exchange, for a total of
2 \$110,000.

3 12. Staff recommends that the bond or irrevocable sight draft letter of credit amount of
4 \$110,000 should be increased if at any time it would be insufficient to cover prepayments or deposits
5 collected from YMax's customers. Staff further recommends that the bond or irrevocable sight draft
6 letter of credit amount should be increased in increments of \$55,000, when the amount of the
7 advances, deposits, and prepayments is within \$11,000 of the bond or irrevocable sight draft letter of
8 credit.

9 13. Pursuant to A.A.C. R14-2-1107, YMax would be required to notify each of its
10 customers and the Commission 60 days prior to the filing an application to discontinue service in
11 Arizona. Further, failure to meet the requirements of the rule could result in forfeiture of YMax's
12 performance bond or irrevocable sight draft letter of credit.

13 14. Staff recommends that YMax docket proof of its performance bond or irrevocable
14 sight draft letter of credit within 365 days of the effective date of an Order in this matter or 30 days
15 prior to the provision of service, whichever comes first, and that the performance bond or irrevocable
16 sight draft letter of credit remain in effect until further Order of the Commission.

17 15. According to Staff, YMax will be initially providing service in areas where incumbent
18 local exchange carriers ("ILEC"), along with various competitive local exchange carriers ("CLECs")
19 are providing service.

20 16. Staff believes because YMax will have competition from both incumbent providers
21 and other competitive providers, and it will not generally be able to exert market power, therefore the
22 competitive process should result in rates that are just and reasonable.

23 17. Pursuant to A.A.C. R14-2-1109, YMax may charge rates for service that are not less
24 than its total service long-run incremental costs of providing service.

25 18. YMax's proposed rates are for competitive services. In general, rates for competitive
26 services are not set according to the rate of return regulation. According to Staff's Report, YMax's
27 fair value rate base ("FVRB") is zero. Staff reviewed the rates to be charged by YMax and believes
28 they are just and reasonable as they are comparable to other competitive local exchange carriers, local

1 incumbent carriers, and major long distance carriers operating in Arizona. Staff concluded that
2 although YMax's FVRB was considered, it should not be given substantial weight in this analysis.

3 19. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, YMax will make
4 number portability available to facilitate the ability of the customer to switch between authorized
5 local carriers within a given wire center without changing their telephone number and without
6 impairment to quality, functionality, reliability or convenience of use.

7 20. In compliance with A.A.C. R14-2-1204 (A), all telecommunications service providers
8 that interconnect into the public switched network shall provide funding for the Arizona Universal
9 Service Fund ("AUSF"). YMax will contribute to the AUSF as required by the A.A.C.

10 21. Staff believes the quality of service standards outlined for Qwest in Commission
11 Decision No. 59421 (December 20, 1995) should apply to YMax. However, Staff believes that
12 because YMax has not had any unsatisfactory service issues and will be operating in a competitive
13 environment, the penalties outlined in the above referenced Decision should not apply.

14 22. Staff also believes that in areas where YMax is the only local exchange service
15 provider, YMax should be prohibited from barring access to alternative local exchange service
16 providers who wish to serve the area.

17 23. YMax will provide all customers with 911 and E911 service where available, or will
18 coordinate with ILECs, and emergency service providers to provide the service.

19 24. Pursuant to past Commission Decisions, YMax may offer custom local area signaling
20 services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each
21 individual call at no additional cost.

22 25. YMax must also offer Last Call Return service that will not return calls to telephone
23 numbers that have the privacy indicator activated.

24 26. According to Staff's Report, YMax has not had an application for service denied or
25 revoked in any state, and there have been no formal complaint proceedings, and no civil or criminal
26 proceedings involving YMax.

27 27. Staff's Report also indicated that none of YMax's officers, directors or partners have
28 been involved in any civil or criminal investigations, or formal or informal complaints, and none of

1 its officers, directors, or partners have been convicted of any criminal acts in the past ten (10) years.

2 28. YMax's application requests that its telecommunications services in Arizona be
3 classified as competitive. According to Staff's Report, YMax will be providing service in areas
4 where ILECs, along with various CLECS also provide service.

5 29. Staff recommends that YMax's proposed services be classified as competitive because
6 there are alternatives to YMax's services; YMax will have to convince customers to purchase its
7 services; YMax has no ability to adversely affect the local exchange or interexchange service
8 markets; and YMax will therefore have no market power in those local exchange or interexchange
9 services markets where alternative providers to telecommunications services exist.

10 30. Staff recommends approval of YMax's application for a CC&N to provide intrastate
11 telecommunications services. Staff further recommends:

- 12
- 13 (a) That YMax comply with all Commission Rules, Orders and other requirements
relevant to the provision of the intrastate telecommunications services;
- 14
- 15 (b) That YMax abide by the quality of service standards that were approved by the
Commission for Qwest in Docket No. T-01051B-93-0183;
- 16
- 17 (c) That YMax be prohibited from barring access to alternative local exchange
service providers who wish to serve areas where YMax is the only provider of
the local exchange service facilities;
- 18
- 19 (d) That YMax be required to notify the Commission immediately upon changes
to its name, address or telephone number;
- 20
- 21 (e) That YMax cooperate with Commission investigations including, but not
limited to customer complaints;
- 22
- 23 (f) That although Staff considered the fair value rate base information submitted
by YMax, the fair value information provided should not given substantial
weight in this analysis;
- 24
- 25 (g) That YMax offer Caller ID with the capability to toggle between blocking and
unblocking the transmission of the telephone number at no charge;
- 26
- 27 (h) That YMax offer Last Call Return service that will not return calls to telephone
numbers that have the privacy indicator activated; and
- 28

- (i) That YMax be authorized to discount its rates and service charges to the marginal cost of providing the services.

31. Staff further recommends that if YMax fails to comply with the following conditions, YMax's CC&N should be considered null and void after due process.

- (1) That YMax docket conforming tariffs for each service authorized in its CC&N within 365 days of an Order in this matter or 30 days prior to providing service, whichever comes first.

- (2) That YMax:

- a. Procure either a performance bond or an irrevocable sight draft letter of credit equal to \$110,000. The minimum bond or irrevocable sight draft letter of credit amount of \$110,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from YMax's customers. The bond or irrevocable sight draft letter of credit amount should be increased in increments of \$55,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$11,000 of the bond or irrevocable sight draft letter of credit amount.

- b. Docket proof of the performance bond or irrevocable sight draft letter of credit within 365 days of the effective date of an Order in his matter or 30 days prior to the provision of service, whichever comes first. The performance bond or irrevocable sight draft letter of credit must remain in effect until further Order of the Commission.

32. Staff's recommendations, as set forth herein are reasonable, except that YMax should be required to procure either a performance bond equal to \$110,000 or an irrevocable sight draft letter of credit equal to \$110,000 in a form acceptable to Staff, and file the original bond or letter with the Commission's Business Office and copies of the bond or letter with Docket Control, as a compliance item in this docket, within 365 days of the effective date of this Decision or 30 days before providing service, whichever, comes first.

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

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.

1 a form acceptable to Staff, and file the original bond or letter with the Commission's Business Office
2 and copies of the bond or letter with Docket Control, as a compliance item in this docket, within 365
3 days of the effective date of this Decision or 30 days before providing service, whichever, comes
4 first.

5 IT IS FURTHER ORDERED that if YMax Communications Corporation fails to meet the
6 conditions outlined in Findings of Fact Nos. 31 and 32, within the timeframes specified, the
7 Certificate of Convenience and Necessity conditionally granted herein shall become null and void,
8 after due process.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN _____ COMMISSIONER

14
15 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2007.

22
23 _____
24 BRIAN C. McNEIL
25 EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____

28 YBK:db

1 SERVICE LIST FOR:

YMAX COMMUNICATIONS CORPORATION

2 DOCKET NO.:

T-20434A-05-0900

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