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



ARIZONA CORPORATION COMMISSION

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2007 OCT 31 P 3: 08

DATE: OCTOBER 31, 2007

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKET NO: T-03882A-07-0431

TO ALL PARTIES:

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

ENKIDO, INC
(CANCEL 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:

NOVEMBER 9, 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:

NOVEMBER 27, 2007 and NOVEMBER 28, 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 Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED
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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

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

9 IN THE MATTER OF THE APPLICATION OF
10 ENKIDO, INC. TO CANCEL ITS CERTIFICATE
11 OF CONVENIENCE AND NECESSITY FOR
12 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03882A-07-0431

DECISION NO. _____

ORDER

13 Open Meeting
14 November 27 and 28, 2007
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 * * * * *

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

20 FINDINGS OF FACT

21 1. In Decision No. 63929 (August 6, 2001), the Commission granted Enkido, Inc.
22 ("Applicant") a Certificate of Convenience and Necessity ("CC&N") to provide competitive
23 facilities-based and resold local exchange, exchange access, and interexchange telecommunications
24 services in Maricopa County, Arizona, conditioned on the fulfillment of several requirements.

25 2. On September 11, 2001, in Docket No. T-03882A-00-0356, the Commission's
26 Utilities Division Staff ("Staff") sent a letter to the Applicant notifying the Applicant that it had failed
27 to meet certain compliance requirements ordered by the Commission in Decision No. 63929 and that
28 its CC&N was thus void. No further filings have been made in that docket.

3. On July 19, 2007, the Applicant filed a letter requesting cancellation of its CC&N and
stating that the Applicant has no customers in Arizona and has never conducted any business in
Arizona.

1 4. On September 6, 2007, Staff filed a Staff Report in this matter recommending
2 cancellation of the Applicant's CC&N. In support of its recommendation, Staff explained that the
3 Applicant has never conducted telecommunications business in Arizona, has never provided service
4 to any telecommunications customer in Arizona, and has never filed an annual report as required by
5 Arizona Administrative Code ("A.A.C.") R14-2-1115(F).

6 5. Staff did not expressly request waiver of the requirements in A.A.C. R14-2-1107.

7 6. A.A.C. R14-2-1107 requires a telecommunications company providing competitive
8 telecommunications service in Arizona to file an application for authorization with the Commission
9 before it discontinues service. The rule requires the telecommunications company to verify that its
10 affected customers have been notified of the proposed discontinuance, to plan for the refund of any
11 deposits collected, to file with the Commission a list of alternate utilities providing the same or
12 similar service within the affected geographic area, and to publish legal notice of the application to
13 discontinue service in all counties affected by the application. As discussed in Decision No. 67404
14 (November 2, 2004), it would render A.A.C. R14-2-1107 meaningless and would run afoul of the
15 rule's intent and plain language to exempt an Applicant from the requirements of the rule simply
16 because it is no longer providing service in Arizona. However, as discussed in Decision No. 67404,
17 the rule is intended to ensure that existing customers receive advance notice of a telecommunications
18 provider's pending plan to discontinue service so that they have an opportunity to procure service
19 through an alternate provider before the discontinuance of service.

20 7. In this case, the Applicant has never provided any telecommunications service in
21 Arizona. In light of this, it would be impossible for the Applicant to comply with A.A.C. R14-2-
22 1107(A)'s customer notification requirement, and the purpose of A.A.C. R14-2-1107 would not be
23 served by requiring the Applicant to create and file a list of alternate utilities or to publish legal notice
24 under A.A.C. R14-2-1107(B). For these reasons, and because A.A.C. R14-2-1107 expressly applies
25 to a telecommunications company "providing" service, the requirements of A.A.C. R14-2-1107(A)
26 and (B) should not apply to a company that has never provided telecommunications service in
27 Arizona.

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ORDER

IT IS THEREFORE ORDERED that the application of Enkido, Inc. to cancel its Certificate of Convenience and Necessity to provide telecommunications services in Arizona shall be, and is hereby, granted.

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, DEAN S. MILLER, Interim Executive Director 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 _____, 2007.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR: ENKIDO, INC.
2 DOCKET NO.: T-03882A-07-0431

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