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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DATE: NOVEMBER 8, 2007

DOCKET NO: T-20515A-07-0133

NOV 08 2007

TO ALL PARTIES:

DOCKETED BY *MM*

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

GILA LOCAL EXCHANGE CARRIER  
(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 19, 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 Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION  
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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF  
9 GILA LOCAL EXCHANGE CARRIER FOR  
10 APPROVAL FOR A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 INTRASTATE TELECOMMUNICATIONS  
13 SERVICES IN ARIZONA.

DOCKET NO. T-20515A-07-0133

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

14 DATE OF HEARING: October 26, 2007

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

17 APPEARANCES: Ms. Joan S. Burke, OSBORN MALEDON, P.A., on  
18 behalf of Gila Local Exchange Carrier; and

19 Ms. Robin Mitchell, Staff Attorney, Legal Division, on  
20 behalf of the Utilities Division of the Arizona  
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On March 2, 2007, Gila Local Exchange Carrier ("GLEC") filed with the Arizona  
24 Corporation Commission ("Commission") an application for a Certificate of Convenience and  
25 Necessity ("CC&N") to provide resold and facilities-based local exchange and resold and facilities-  
26 based long distance telecommunications services in the State of Arizona. GLEC also petitioned the  
27 Commission to have its proposed services classified as competitive.

28 On March 30, 2007, the Commission's Utilities Division Staff ("Staff") filed a Letter of  
Insufficiency stating that GLEC's application had not met the sufficiency requirements outlined in  
the Arizona Administrative Code ("A.A.C."). The Letter of Insufficiency directed GLEC to provide  
Docket Control with the information requested in the Letter within 30 days.

On May 23, 2007, GLEC requested a protective agreement regarding financial information  
from its parent company, Gila River Telecommunications, Inc. ("GRTI"). Staff and GLEC  
subsequently entered a protective agreement dated June 28, 2007.

1 On July 2, 2007, Staff received GLEC's response to Staff's First Set of Data Requests. GLEC  
2 did not file the response with Docket Control. In the response, GLEC requested to amend its  
3 application to include a request for authorization to provide private line services.

4 On July 19, 2007, GLEC filed an Affidavit of Publication showing that notice of GLEC's  
5 application had been published in the *Arizona Republic* on July 12, 2007. The published notice did  
6 not include notice of a hearing.

7 On August 29, 2007, Staff filed its Staff Report recommending approval of GLEC's  
8 application and recommending that its proposed services be classified as competitive.

9 On September 7, 2007, a Procedural Order was issued scheduling a hearing for October 26,  
10 2007, and establishing procedural deadlines.

11 On October 4, 2007, GLEC filed an Affidavit of Publication showing that notice of GLEC's  
12 application and the hearing date and time had been published in the *Arizona Republic* on September  
13 21, 2007.

14 On October 5, 2007, a Procedural Order was issued directing GLEC to file with Docket  
15 Control, by October 15, 2007, all portions of GLEC's response to Staff's First Set of Data Requests  
16 that do not contain information covered by the protective agreement between Staff and GLEC.

17 On October 12, 2007, GLEC filed with Docket Control a redacted version of its Responses to  
18 Staff's First Set of Data Requests.

19 On October 26, 2007, a full public hearing was held before a duly authorized Administrative  
20 Law Judge of the Commission at its offices in Phoenix, Arizona. GLEC and Staff appeared through  
21 counsel at the hearing and presented evidence and testimony. At the hearing, Staff was requested to  
22 file a late-filed exhibit, within 10 days after the hearing, indicating whether there had been a change  
23 in Staff's policy regarding the deadline for filing proof of a performance bond or irrevocable sight  
24 draft letter of credit ("ISDLOC") and, if appropriate, making a change in Staff's recommendation as  
25 to the deadline for that proof to be filed. At the conclusion of the hearing, the matter was taken under  
26 advisement pending submission of a Recommended Opinion and Order to the Commission.

27 On November 6, 2007, Staff filed an Update stating that Staff's recommendation for the filing  
28 of a performance bond or ISDLOC in this matter is derived from Chairman Gleason's amendment

1 adopted in Decision No. 69240 (January 19, 2007), in which the Commission first ordered that the  
2 original of a performance bond or ISDLOC be filed with the Commission's Business Office and that  
3 copies of the performance bond or ISDLOC be filed with Docket Control, as a compliance item in the  
4 docket, within 30 days of the effective date of the Decision. Staff stated that prior to Decision No.  
5 69240, the Commission had required that proof of a performance bond or ISDLOC be filed within  
6 365 days from the effective date of the Decision or within 30 days before starting service, whichever  
7 came first.

8 \* \* \* \* \*

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

11 **FINDINGS OF FACT**

12 1. On March 2, 2007, GLEC filed with the Commission an application for a CC&N to  
13 provide resold and facilities-based local exchange and resold and facilities-based long distance  
14 telecommunications services in the State of Arizona. GLEC also petitioned the Commission to have  
15 its proposed services classified as competitive.

16 2. On July 2, 2007, in its response to Staff's First Set of Data Requests, GLEC requested  
17 to amend its application to include a request for authorization to provide private line services.

18 **GLEC's Fitness and Properness to Obtain a CC&N**

19 3. GLEC is a tribal corporation incorporated under the laws of the Gila River Indian  
20 Community and is in good standing under those laws.

21 4. GLEC is authorized to transact business in Arizona as a foreign corporation and is in  
22 good standing with the Commission's Corporations Division.

23 5. GLEC is a wholly owned subsidiary of GRTI, a tribal corporation incorporated under  
24 the laws of and wholly owned by the Gila River Indian Community.

25 6. According to GLEC, GRTI and the Gila River Indian Community are sovereign  
26 entities and are not subject to the jurisdiction of or regulated by the Commission.

27 7. Mr. Michael Scully, Chief Executive Officer and General Manager for both GLEC  
28

1 and GRTI, testified that GLEC will submit to the jurisdiction of the Commission in all matters  
2 relating to GLEC's provision of intrastate telecommunications services in Arizona and that GLEC  
3 will not assert sovereign immunity in the face of any compliance issues. (Tr. at 12, lines 3-21.)

4 8. GLEC does not intend to provide telecommunications services on the Gila River  
5 Indian Reservation.

6 9. GLEC does not currently provide telecommunications services in any state, including  
7 Arizona.

8 10. According to GLEC, GLEC has not had an application for service denied or revoked  
9 in any state; there have not been any civil or criminal proceedings against GLEC; none of GLEC's  
10 officers or directors have been involved in any civil or criminal investigations or formal or informal  
11 complaints; and none of GLEC's officers or directors have been convicted of any criminal acts in the  
12 past 10 years.

13 11. According to Staff, the Consumer Services Section of the Commission's Utilities  
14 Division has reported that no consumer complaints, inquiries, or opinions were filed against GLEC  
15 from January 1, 2004, through July 17, 2007.

16 12. According to Staff, the Compliance and Enforcement Section of the Commission's  
17 Utilities Division has stated that GLEC does not have any delinquent compliance items.

18 13. Mr. John Bostwick, Administrative Service Officer II for the Commission's Utilities  
19 Division, testified that, based upon his review of GLEC's application, GLEC's tariffs, and the  
20 background check performed, he believes GLEC is a fit and proper entity to receive a CC&N in the  
21 State of Arizona. (Tr. at 27, lines 16-19.)

## 22 **GLEC's Technical Capabilities**

23 14. Mr. Scully testified at hearing that GRTI is an incumbent local exchange carrier  
24 ("ILEC") and provides residential, private line, toll, and special circuit telecommunications services  
25 on the Gila River Indian Reservation. (Tr. at 13, lines 8-14.)

26 15. According to Staff, GRTI owns a switch that is fully equal access capable and that will  
27 be available to GLEC, which will enable GLEC to provide equal access to facilities-based long  
28 distance companies.

1           16.     Mr. Scully testified at hearing that GRTI's facility assets will be leased to GLEC as  
2 needed to support GLEC's network. (Tr. at 17, lines 3-7.)

3           17.     GLEC has a four-member management team, with 52 years of combined experience in  
4 the telecommunications industry, and will receive engineering services support and network  
5 operations support from two GRTI employees, each of whom has more than 20 years of experience in  
6 the telecommunications industry.

7           18.     GLEC currently has two employees, with 41 years of combined experience in the  
8 telecommunications industry, both of whom are also members of GLEC's management team.

9           19.     Staff has determined that GLEC possesses sufficient technical capabilities to provide  
10 the telecommunication services for which it has requested authorization.

11 **GLEC's Financial Resources**

12           20.     GLEC has stated that it will rely on the financial capability of GRTI, which will be  
13 providing working capital to GLEC as needed, and that GRTI has access to capital resources and  
14 banking relationships that will permit GLEC to provide the services requested to be authorized under  
15 its CC&N.

16           21.     Mr. Scully testified at hearing that, even after GLEC has become more financially  
17 independent, GRTI will provide GLEC financial support if GLEC experiences financial problems.  
18 (Tr. at 20, lines 20-24.)

19           22.     GLEC has stated that GRTI's financial statements are confidential and are not publicly  
20 available to non-tribal members.

21           23.     Under the confidentiality agreement entered with Staff, GLEC provided audited GRTI  
22 financial statements for Staff's review.

23           24.     To evaluate GLEC's financial capabilities, Staff reviewed GRTI's audited financial  
24 statements for the 12 months ending December 31, 2006. According to Staff, these financial  
25 statements list assets in excess of \$45 million, equity in excess of \$30 million, and net income in  
26 excess of \$10 million.

27 **Performance Bond or ISDLOC**

28           25.     GLEC intends to collect advances and probably deposits, but not prepayments, from

1 its customers. Staff verified that prepayments are not listed in GLEC's proposed tariff.

2 26. Because GLEC is requesting a CC&N to provide resold and facilities-based local  
3 exchange and resold and facilities-based long distance telecommunications services and will collect  
4 advances and probably deposits, Staff believes that a performance bond or ISDLOC is appropriate.

5 27. Staff recommends that GLEC be required to:

6 a. Obtain a performance bond or ISDLOC in the amount of \$235,000, which  
7 reflects \$10,000 for resold long distance, \$25,000 for resold local exchange, \$100,000 for facilities-  
8 based long distance, and \$100,000 for facilities-based local exchange;

9 b. Increase the amount of the performance bond or ISDLOC, in increments of  
10 \$117,500, whenever the accumulated advances and deposits held by GLEC reach a total that is within  
11 \$23,500 of the value of the performance bond or ISDLOC then on file with the Commission;

12 c. No later than 30 days after the effective date of a Decision in this matter, file  
13 the original performance bond or ISDLOC with the Commission's Business Office and file copies of  
14 the performance bond or ISDLOC with Docket Control, as a compliance item in this docket; and

15 d. Maintain the performance bond or ISDLOC in effect until further order of the  
16 Commission.

17 28. Staff further recommends that, if GLEC ceases to collect advances and deposits in the  
18 future, GLEC be permitted to file with the Commission a request to cancel that portion of its  
19 established performance bond or ISDLOC relating to resold long distance services.

20 29. Staff further recommends that GLEC's performance bond or ISDLOC be forfeited if  
21 GLEC fails to provide notice under A.A.C. R14-2-1107 prior to discontinuing any competitive resold  
22 or facilities-based telecommunications service.

23 **GLEC's Proposed Rates**

24 30. According to Staff, GLEC will be providing service in areas where an ILEC and  
25 various competitive local exchange carriers ("CLECs") are already providing service. Thus, GLEC  
26 will have to compete with those providers to obtain subscribers to its services and will generally not  
27 be able to exert market power. Staff believes that the competitive process should result in rates that  
28 are just and reasonable.

1           31.     According to Staff, GLEC will initially have a zero-value rate base and, at the end of  
2 its first 12 months of operation, will have a projected fair value rate base of zero. While Staff  
3 considered the fair value rate base information submitted by GLEC, it did not accord that information  
4 substantial weight in its analysis of GLEC's proposed rates, because rates for competitive services are  
5 generally not set according to rate-of-return regulation, and GLEC's fair value rate base is too small  
6 to be useful in a fair value analysis.

7           32.     Staff has reviewed GLEC's proposed rates and believes that they are just and  
8 reasonable, as they are comparable to those of other CLECs and ILECs offering service in Arizona.

9           33.     Mr. Scully testified at hearing that each rate proposed by GLEC for a service is at least  
10 equal to the estimated total service long-run incremental cost of providing the service. (Tr. at 21,  
11 lines 23-25; Tr. at 22, line 1.)

12     **Local Exchange Services**

13           34.     A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number  
14 portability available to facilitate the ability of a customer to switch between authorized local carriers  
15 within a given wire center without changing the customer's telephone number and without  
16 impairment of quality, functionality, reliability, or convenience of use.

17           35.     A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
18 interconnect to the public switched network to provide funding for the Arizona Universal Service  
19 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers  
20 that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as  
21 provided under A.A.C. R14-2-1204(B)(1).

22           36.     Staff recommends that GLEC be ordered to abide by the quality-of-service standards,  
23 other than penalties, approved for Qwest by the Commission in Decision No. 59421. Because GLEC  
24 will have no market power in the competitive market that it desires to enter, Staff believes that GLEC  
25 will be forced to provide a satisfactory level of service or risk losing its customers and that it is thus  
26 unnecessary to subject GLEC to the penalties in Decision No. 59421 at this time.

27           37.     Staff recommends that GLEC be prohibited from barring access to alternative local  
28 exchange service providers who wish to serve in areas where GLEC has installed the only local

1 exchange service facilities. Staff states that access to other providers should be provided pursuant to  
2 the 1996 Telecommunications Act, the rules promulgated thereunder, and the Commission's rules on  
3 interconnection and unbundling.

4 38. According to Staff, GLEC has certified that, in accordance with A.A.C. R14-2-  
5 1201(6)(d) and 47 CFR 64.3001 and 64.3002, GLEC will provide all customers with 911 and E911  
6 service, where available, or will coordinate with ILECs and emergency service providers to provide  
7 911 and E911 service.

8 39. Past Commission decisions have established that local exchange carriers may offer  
9 Caller ID provided that per call and line blocking, with the capability to toggle between blocking and  
10 unblocking the transmission of the telephone number, are provided as options to which customers  
11 may subscribe at no charge. Staff recommends that GLEC be required to offer Caller ID with this  
12 capability.

13 40. Past Commission decisions have established that local exchange carriers are required  
14 to offer Last Call Return service that will not return a call to a telephone number that has a privacy  
15 indicator activated. Staff recommends that GLEC be required to offer this service.

#### 16 Long Distance Services

17 41. A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
18 interconnect to the public switched network to provide funding for the AUSF. A.A.C. R14-2-  
19 1204(B)(3)(a) requires new telecommunications service providers that begin providing toll service  
20 after April 26, 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2).

#### 21 Private Line Services

22 42. According to Staff, private line service is a direct circuit or channel specifically  
23 dedicated to the use of an end user organization for the purpose of directly connecting two or more  
24 sites in a multi-site enterprise and would allow customers to transmit and receive messages and data  
25 among various customer locations over facilities operated and provided by GLEC.

#### 26 Competitive Services

27 43. Staff states that ILECs hold a virtual monopoly in the local exchange market and that a  
28 number of new CLECs have also been authorized to provide local exchange services. GLEC will

1 have to compete with ILECs in those areas where ILECs provide local exchange services and may  
2 have to convince developers to allow it to provide service to their developments in those areas where  
3 ILECs do not provide local exchange services.

4 44. Staff states that numerous facilities-based and resold interexchange carriers are  
5 providing both interLATA and intraLATA interexchange services throughout the state and that  
6 ILECs are also providing intraLATA interexchange services in many areas of the state. GLEC will  
7 be a new entrant to the interexchange market and will have to compete with those carriers to obtain  
8 customers.

9 45. Staff states that GLEC would initially be providing private line services in areas where  
10 an ILEC and various CLECs and interexchange carriers are providing telephone and private line  
11 services. GLEC would have to compete with those providers to obtain subscribers to its services.

12 46. Staff recommends that GLEC's proposed services be classified as competitive because  
13 there are alternatives to GLEC's services, GLEC will have to convince customers to purchase its  
14 services, and GLEC has no market power.

15 **Staff's Recommendation for Approval/Denial**

16 47. Mr. Bostwick testified that approval of GLEC's application for a CC&N would be in  
17 the public interest. (Tr. at 27, lines 20-22.)

18 48. Staff recommends that GLEC's application for a CC&N to provide resold and  
19 facilities-based local exchange services, resold and facilities-based long distance services, and private  
20 line services be approved.

21 **Additional Staff Recommendations**

22 49. Staff further recommends that GLEC be required to:

23 a. Comply with all Commission rules, orders, and other requirements relevant to  
24 the provision of intrastate telecommunications services;

25 b. Notify the Commission immediately upon changes to GLEC's name, address,  
26 or telephone number;

27 c. Cooperate with Commission investigations, including but not limited to  
28 customer complaint investigations; and



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**ORDER**

IT IS THEREFORE ORDERED that the application of Gila Local Exchange Carrier for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange services, resold and facilities-based long distance services, and private line services in Arizona is hereby granted, conditioned upon compliance with Staff's recommendations set forth in Findings of Fact Nos. 27-29, 36, 37, 39, 40, and 49.

IT IS FURTHER ORDERED that if Gila Local Exchange Carrier fails to meet the conditions outlined in Findings of Fact Nos. 27(a) and (c) and 49(d) within the timeframes therein, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	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: GILA LOCAL EXCHANGE CARRIER

2 DOCKET NO.: T-20515A-07-0133

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