

OPEN MEETING ITEM

ORIGINAL



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

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 22, 2008

DOCKET NO: T-20457A-06-0294

TO ALL PARTIES:

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

IPC NETWORK SERVICES, INC.
(CC&N/RESELLER)

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:

MARCH 3, 2008

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:

MARCH 11, 2008 and MARCH 12, 2008

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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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
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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 IPC
9 NETWORK SERVICES, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE RESOLD POINT-TO-
12 POINT PRIVATE LINE TELECOMMUNICATION
13 SERVICES IN THE STATE OF ARIZONA.

DOCKET NO. T-20457A-06-0294

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: November 29, 2007

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

17 APPEARANCES: Ms. Kenya Collins, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

20 **BY THE COMMISSION:**

21 On April 28, 2006, IPC Network Services, Inc. ("IPC" or "Applicant") filed with the Arizona
22 Corporation Commission ("Commission") an application for a Certificate of Convenience and
23 Necessity ("CC&N") to provide resold point-to-point private line telecommunications services in
24 Arizona.

25 On June 5, 2006, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency
26 and first set of data requests in this matter.

27 On July 5, 2006, IPC filed its response to the data request.

28 On June 4, 2007, IPC filed updated information in response to Staff's data requests.

On June 26, 2007, Staff filed its Staff Report recommending approval of IPC's application.

On October 19, 2007, by Procedural Order, this matter was set for hearing to begin on
November 29, 2007.

1 On November 20, 2007, IPC docketed a Motion for Teleconference.

2 On November 23, 2007, IPC docketed proof of publication in accordance with the Procedural
3 Order issued in this matter. Subsequently, counsel for IPC contacted the Hearing Division stating the
4 Applicant would be requesting a continuance in this matter.

5 On November 29, 2007, a public comment session was held. On the same date, Applicant
6 filed a Motion to Continue the hearing and subsequently by Procedural Order the hearing was
7 continued to January 22, 2008.

8 On December 7, 2007, Staff filed a Staff Report Amendment, stating that it was no longer
9 requesting a hearing be held in this matter.

10 On December 19, 2007, by Procedural Order, Applicant was directed to file a response to
11 Staff's recommendation that a hearing not be held in this matter.

12 On January 8, 2008, Applicant filed its response stating that it did not desire a hearing in this
13 matter.

14 On January 22, 2008, the hearing in this matter was vacated and the matter was taken under
15 advisement.

16 On February 21, 2008, a telephonic conference was held with the parties to discuss the Staff
17 Report filed in this matter.

18 * * * * *

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

21 **FINDINGS OF FACT**

22 1. IPC is a foreign C corporation incorporated under the laws of Delaware and was
23 granted authorized to transact business in Arizona on January 26, 2006.

24 2. On April 28, 2006, IPC filed an application for a CC&N to provide resold point-to-
25 point private line telecommunications services in Arizona. The application also seeks a determination
26 that IPC's proposed services be classified as competitive.

27 3. In Commission Decision No. 58926 (December 22, 1994), the Commission found that
28 resold telecommunications providers ("resellers") are public service corporations subject to the

1 jurisdiction of the Commission.

2 4. Notice of IPC's application was given in accordance with the law.

3 5. According to IPC's application, it provides resold voice and data telecommunications
4 services primarily to financial and other trading companies that need near-instantaneous
5 communications. (Application, Exhibit 1)

6 6. According to IPC's application, it will resell the telecommunications services of
7 MCI/Verizon, Qwest and Broadwing in Arizona. (Application, Response A-17)

8 7. At present, IPC's services are not interconnected to the public switched telephone
9 network. (Application, Exhibit 1)

10 8. Staff recommends approval of IPC's application for a CC&N and its petition for a
11 determination that its proposed telecommunications services should be classified as competitive.

12 9. Staff further recommends:

- 13 a.) That IPC comply with all Commission Rules, Orders, and other requirements
14 relevant to the provision of intrastate telecommunications services;
15 b.) That IPC abide by the quality service standards that were approved by the
16 Commission for Qwest in Docket No. T-01051B-93-0183;
17 c.) That IPC be required to notify the Commission immediately upon changes to
18 IPC's name address or telephone number;
19 d.) That IPC cooperate with Commission investigations including, but not limited
20 to customer complaints;
21 e.) That although Staff considered the fair value rate base ("FVRB") information
22 submitted by IPC, the fair value information provided should not be given
23 substantial weight in this analysis;
24 f.) That IPC be authorized to discount its rates and service charges to the marginal
25 cost of providing the services.

26 10. Staff further recommends that IPC comply with the following conditions, within the
27 timeframes outlined below, or IPC's CC&N should be considered null and void, after due process.

28 1.) That IPC docket conforming tariffs for each service within its CC&N within
365 days from the date of an Order in this matter or 30 days prior to providing service, whichever
comes first. The tariffs submitted to the Commission should coincide with the application and state
that IPC may collect advances, deposits and/or prepayments from its customers.

2.) IPC shall:

- 1 a. Procure a performance bond or irrevocable sight draft letter of credit
 2 equal to \$35,000. The minimum performance bond or the irrevocable
 3 sight draft letter of credit amount of \$35,000 should be increased if at
 4 any time it would be insufficient to cover advances, deposits, and/or
 5 prepayments collected from IPC's customers. The performance bond
 6 or irrevocable sight draft letter of credit amount should be increased in
 7 increments of \$17,500. This increase should occur when the total
 8 amount of the advances, deposits, and prepayments is within \$3,500 of
 9 the performance bond or the irrevocable sight draft letter of credit
 10 amount.
- 11 b. Docket proof of the performance bond or irrevocable sight draft letter
 12 of credit within 365 days of the effective date of an Order in this matter
 13 or 30 days prior to the provision of service, whichever comes first. The
 14 performance bond or the irrevocable sight draft letter of credit must
 15 remain in effect until further order of the Commission.
- 16 c. If at some time in the future IPC does not collect advances, deposits
 17 and/or prepayments from its customers, IPC should be allowed to file a
 18 request for cancellation of its established performance bond or
 19 irrevocable sight draft letter of credit regarding its resold services.
 20 Such request must reference the decision in this docket and must
 21 explain IPC's plans for cancelling those portions of the performance
 22 bond or irrevocable sight draft letter of credit.

23 3.) IPC shall abide by the Commission adopted rules that address Universal
 24 Service in Arizona.

25 Technical Capabilities

26 11. IPC currently is authorized to provide telecommunications services in 17 states.

27 12. Staff determined that there have been no consumer complaints filed against IPC in any
 28 of the states/jurisdictions, in which IPC is authorized to provide telecommunications services.

13. Staff concluded that IPC has the technical capabilities to provide the
 telecommunications services requested in this application.

14 Financial Capabilities

15 14. IPC provided unaudited financial information for the twelve months ending September
 16 30, 2005, which showed total assets of \$9,069,421, total equity of \$5,252,788 and a net income of
 17 \$562,299.

18 15. IPC will not rely on the financial resources of its parent company IPC Systems, Inc.

1 16. IPC's proposed tariff states it may collect deposits from its resold point-to-point
2 private lines service customers.

3 17. Customer advances, deposits and/or prepayments must be protected by procurement of
4 a performance bond or irrevocable sight draft letter of credit.

5 18. IPC is a considered a reseller of long distance and reseller of local exchange services.

6 19. All CC&Ns for resold long distance services must be secured by a minimum
7 performance bond or irrevocable sight draft letter of credit in the amount of \$10,000.
8

9 20. All CC&Ns for resold local exchange services must be secured by a minimum
10 performance bond or irrevocable sight draft letter of credit in the amount of \$25,000.

11 21. IPC must secure a performance bond or irrevocable sight draft letter of credit in the
12 amount of \$35,000 to provide the resold long distance and resold local exchange services it is
13 requesting in this application.

14 22. On December 7, 2007, Staff docketed an Amended Staff Report which modified its
15 recommendation to require IPC to docket:

16
17 proof of the original performance bond or irrevocable sight draft letter of credit with the
18 Commission's Business office and copies of the performance bond or irrevocable sight draft
19 letter of credit with Docket Control, as a compliance item in this docket, within 30 days of the
20 effective date of a decision in this matter. The performance bond or irrevocable sight draft
21 letter of credit must remain in effect until further order of the Commission. The Commission
22 may draw on the performance bond or irrevocable sight draft letter of credit, on behalf of, and
23 for the sole benefit of the company's customers, if the Commission finds, in its discretion,
24 that the company is in default of its obligations arising from its Certificate. The Commission
25 may use the performance bond or irrevocable sight draft letter of credit funds, as appropriate,
26 to protect the company's customers and the public interest and take any and all actions the
27 Commission deems necessary, in its discretion, including, but not limited to returning
28 prepayments or deposits collected from the company's customers.

24 23. Pursuant to Arizona Administrative Code ("A.A.C.") R-14-2-1107, if IPC desires to
25 discontinue service in Arizona, it must file an application with the Commission, and notify its
26 customers and the Commission sixty (60) days prior to filing the application to discontinue service.
27 Further, IPC's failure to meet the requirements of the rule will result in a forfeiture of IPC's
28

1 performance bond or sight draft letter of credit.

2 24. Staff's amended proposed language regarding the procurement of a performance bond
3 or irrevocable sight draft letter of credit is consistent with recent Commission Decisions and should
4 be adopted.¹

5 **Rates and Charges**

6 25. IPC's proposed rates are for competitive services. In general, rates for competitive
7 services are not set according to the rate of return regulation.

8 26. IPC will have to compete with incumbent local exchange carriers ("ILECs"),
9 competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") currently
10 providing telecommunications services.
11

12 27. Based on the competitive environment that IPC will be operating in, it will not be able
13 to exert any market power and the competitive process should result in rates that are just and
14 reasonable.

15 28. IPC's fair value rate base ("FVRB") is zero.

16 29. Given the competitive markets in which IPC will operate, IPC's FVRB is too small to
17 be useful in a fair value analysis.
18

19 30. Pursuant to A.A.C. R-14-2-1109, IPC may charge rates for services that are not less
20 than its total service long-run incremental costs of providing service.

21 31. Staff concluded that IPC's proposed rates are just and reasonable and Staff
22 recommends that the IPC's proposed rates be approved.
23

24 **Competitive Services Analysis for Private Line Services**

25 32. Private line service is a direct circuit or channel specifically dedicated to the use of an
26 end user organization for the purpose of directly connecting two or more sites in a multi-site
27

28 ¹ In Commission Decision No. 69240 (January 19, 2007), 360Networks (USA), Inc's., application was conditionally granted, subject to the Applicant procuring either a performance bond or irrevocable sight draft letter of credit within 30

1 enterprise.

2 33. Private line service provides a means by which customers may transmit and receive
3 messages and data among various customer locations over facilities operated and provided by IPC.

4 34. Staff concluded that IPC is engaged in providing telecommunications services for hire
5 to the public, which fits the definition of a common carrier and public service corporation.

6 35. According to IPC's application, IPC proposes to provide resold voice and data
7 telecommunications services to financial and other trade companies, and the services will not be
8 interconnected to the public switched telephone network.

9 36. IPC has requested that its telecommunications services in Arizona be classified as
10 competitive. IPC's proposed services should be classified as competitive because there are
11 alternatives to IPC's services; IXCs hold a substantial share of private line service markets; a number
12 of ILECs and CLECs have been authorized to provide the same service; IPC will have to convince
13 customers to purchase its services; IPC has no ability to adversely affect the resold local exchange
14 market; and IPC will have no market power in those resold local exchange markets where alternative
15 providers to telecommunications services exists.

16
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18 **Complaint Information**

19 37. According to IPC's application it has not had an application for service denied or
20 revoked in any state.

21 38. IPC has no outstanding complaints in Arizona.

22 39. No formal complaints, civil or criminal proceedings have been filed against IPC.

23 40. None of IPC's officers, directors or partners have been involved in any civil or
24 criminal investigations, or any formal or informal complaints.

25 41. None of IPC's officers, directors or partners have been convicted of any criminal acts

26
27
28 days of the effective date of the decision and subject to the Applicant meeting the other requirements outlined above.

1 in the past ten (10) years.

2 42. Staff's recommendations as modified herein are reasonable and should be adopted.

3 43. The rates proposed by this filing are for competitive services.

4 **CONCLUSIONS OF LAW**

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

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

9 3. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a
10 CC&N to provide competitive telecommunications services.

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

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

18 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide
19 competitive resold point-to-point private line telecommunications services in Arizona, subject to
20 Staff's recommendations, set forth herein.

21 7. The telecommunications services that Applicant intends to provide are competitive
22 with Arizona.

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

24 9. Staff's recommendations, as modified herein, are reasonable and should be adopted.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application of IPC Network Services, Inc., for a
27 Certificate of Convenience and Necessity for authority to provide competitive resold point-to-point
28

1 private line telecommunications services within the State of Arizona is hereby granted, subject to
2 Staff's conditions in Findings of Facts No. 9, 10, and 22, and as set forth in the following Ordering
3 paragraphs.

4 IT IS FURTHER ORDERED that IPC Network Services, Inc., shall procure a performance
5 bond or irrevocable sight draft letter of credit in the amount of \$35,000.

6 IT IS FURTHER ORDERED that IPC Network Services, Inc., shall file the original
7 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office
8 and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as
9 a compliance item in this docket, within 30 days of the effective date of this Decision.

10 IT IS FURTHER ORDERED that if IPC Network Services, Inc., fails to comply with the
11 timeframes listed above, the Certificate of Convenience and Necessity granted herein shall be
12 considered null and void after due process.

13 IT IS FURTHER ORDERED that IPC Network Services, Inc.'s, performance bond or
14 irrevocable sight draft letter of credit shall remain in effect until further Order of the Commission,
15 and the Commission may draw on the performance bond or irrevocable sight draft letter of credit, on
16 behalf of, and for the sole benefit of the customers of IPC Network Services, Inc., if the Commission
17 finds, in its discretion, that IPC is in default on its obligations arising from its Certificate of
18 Convenience and Necessity.

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1 IT IS FURTHER ORDERED that IPC Network Services, Inc.'s performance bond or
2 irrevocable sight draft letter of credit may be used by the Commission, as appropriate, to protect IPC
3 Network Services, Inc.'s customers and the public interest and take any and all actions the
4 Commission deems necessary, in its discretion, including, but not limited to returning prepayments or
5 deposits collected from customers.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN _____ COMMISSIONER

11
12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

13
14 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this ____ day of _____, 2008.

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20 _____
21 DEAN S. MILLER
22 INTERIM EXECUTIVE DIRECTOR

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