

ORIGINAL
OPEN MEETING ITEM



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



EXECUTIVE DIRECTOR

22

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 25, 2008

DOCKET NO: C-00000A-07-0430

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**COMMISSION INVESTIGATION
(FAILURE TO FILE 2005 ANNUAL REPORTS)**

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 5, 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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AZ CORP COMMISSION
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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

FEB 25 2008

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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 COMMISSION ON ITS
9 OWN MOTION INVESTIGATING THE FAILURE
10 OF NUMEROUS UTILITIES TO FILE ANNUAL
11 REPORTS FOR CALENDAR YEAR 2005.

DOCKET NO. C-00000A-07-0430

DECISION NO. _____

OPINION AND ORDER

12 DATE OF PRE-HEARING: November, 19, 2007

13 DATE OF HEARING: February 14, 2008

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

16 APPEARANCES: Mr. Kevin Torrey, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
18 Corporation Commission.

19 **BY THE COMMISSION:**

20 On August 28, 2007, the Arizona Corporation Commission ("Commission") issued Decision
21 No. 69887, a Complaint and Order to Show Cause ("Complaint" or "OSC") against the following
22 named Respondents for failing to file their 2005 Utilities Division Annual Reports ("Annual
23 Reports"):

<u>DOCKET NO.</u>	<u>COMPANY</u>
T-03092A	COMMONWEALTH LONG DISTANCE CO. dba CLD
T-03497A	CONNECTAMERICA, INC. dba CONNECT US OF DELAWARE
T-03961A	EARLAND E CASS
T-03920A	EN-TOUCH SYSTEMS, INC.
T-04165A	EXERGY GROUP, LLC
T-03416A	GERLACH ENTERPRISES, INC. dba GCI
T-04105A	GLOBAL INTERNETWORKING, INC.
W-02271A	GREEN ACRES WATER COMPANY
T-03068A	HEATH COMMUNICATIONS, INC.
T-03174A	LIGHTYEAR COMMUNICATIONS, INC.
T-03853A	MAXCESS, INC.

1	W-02164A	MORRISTOWN WATER COMPANY
	T-04001A	MULTA COMMUNICATIONS, CORP dba MULTACOM
2	T-03505A	NIKEA COMMUNICATION, LLC
	T-03989A	NTC NETWORK, LLC
3	W-04069A	OATMAN WATER COMPANY, LLC
4	T-04005A	QUICK TEL, INC.
	W-01407A	STRAWBERRY WATER COMPANY
5	T-04000A	TELSEON CARRIER SERVICES, INC.
6	T-04070A	TOLL CALL, INC.
	T-03439A	UNITED SERVICES TELEPHONE, LLC
7	T-03998A	VISTA VOICE & DATA, INC.
8	T-03820A	W2COM INTERNATIONAL, LLC.
9	W-01084A	WILLIAM P. FARR dba SALOME WATER CO. ¹

10 Therein, the Commission ordered a hearing to be conducted at a date and time set by the
11 Hearing Division.

12 On September 7, 2007, by Procedural Order, a pre-hearing conference was scheduled on the
13 Complaint against the above-named Respondents. The Commission's Utilities Division ("Staff")
14 was ordered to file a Memorandum by November 12, 2007 to indicate which, if any, Respondents
15 filed their 2005 Annual Reports so they could be dismissed from the proceeding.

16 On November 8, 2007, Staff filed its Memorandum indicating that as of that date three
17 utilities, Green Acres Water company ("GAW"), Oatman Water Company, L.L.C. ("OWC"), and
18 Strawberry Water Company ("SWC"), had filed their 2005 Annual Reports and requested that they
19 be dismissed from the proceeding. Staff further indicated that three other utilities, Earland E. Cass
20 ("Cass"), Global Internetworking, Inc. ("GII") and Nickea Communication, L.L.C. had filed
21 applications to cancel their Certificate(s) of Convenience and Necessity ("Certificate"), and requested
22 that they also be dismissed from the proceeding.

23 On November 19, 2007, a pre-hearing conference was held at the Commission's offices in
24 Phoenix, Arizona. Staff appeared with counsel. No appearances were entered by any of the
25 Respondents.

26 On November 26 and December 19, 2007, by Procedural Order as amended, a hearing was

27 _____
28 ¹ This Respondent's name appears in error since his Certificate of Convenience and Necessity ("Certificate") was revoked
in Decision No. 64395 (January 31, 2002) for failing to file the 1999 Annual Report.

1 scheduled on February 14, 2008. Respondents GAWC, OWC and SWC were dismissed from the
 2 proceeding after filing their 2005 Annual Reports. Respondents Cass, GII and Nickea NCL were
 3 dismissed from the proceeding because they had filed applications to cancel their Certificate(s).

4 On February 14, 2008, a full public hearing was held by the Commission at its offices in
 5 Phoenix, Arizona before a duly authorized Administrative Law Judge of the Commission. Staff
 6 appeared with counsel. No other Respondents named in the proceeding appeared. At the conclusion
 7 of the hearing, the matter was taken under advisement pending submission of a Recommended
 8 Opinion and Order to the Commission.

9 * * * * *

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

12 **FINDINGS OF FACT**

- 13 1. Pursuant to authority granted by the Commission, the above-described Respondents
 14 were authorized to conduct business at various times in Arizona as public utilities.
- 15 2. On August 28, 2007, the Commission issued Decision No. 69887, a Complaint against
 16 the Respondents described above due to their failure to file their 2005 Annual Reports.
- 17 3. Notice of the proceeding was given in the manner prescribed by law.
- 18 4. On November 8, 2007, Staff filed its Memorandum in which Staff's Chief of
 19 Compliance, Ms. Kim Batista, recommended that GAW, OWC and SWC should be dismissed from
 20 the proceeding because they had filed their 2005 Annual Reports. Ms. Batista further recommended
 21 that Cass, GII and NCL be dismissed because they had filed applications to cancel their Certificates.
 22 Ms. Batista testified during the hearing that Cass', GII's and NCL's Certificates will be cancelled in
 23 subsequent proceedings.
- 24 5. On December 19, 2007, by Amended Procedural Order, GAW, OWC, SWC, Cass, GII
 25 and NCL were dismissed from this proceeding.
- 26 6. Commission records reveal that of the above-named Respondents, Salome Water
 27 Company ("Salome") had its Certificate revoked by the Commission in Decision No. 64395.
 28

1 However, Staff has confirmed that Salome is still providing public water service.

2 7. Staff has also confirmed that another Respondent, Morristown Water Company
3 (“Morristown”), is still providing public water service.

4 8. On February 21, 2008, Staff filed another Memorandum in the proceeding in which it
5 indicates that, according to the Arizona Department of Environmental Quality (“ADEQ”), both
6 Salome and Morristown are providing water which meets the requirements of the Safe Drinking
7 Water Act and water which is below the maximum contaminant level for arsenic. Additionally, Staff
8 contacted the respective county agencies and verified that both companies are current in their
9 property tax payments.

10 9. A number of the Procedural Orders which contained the notice of the proceeding’s
11 pre-hearing conference and the hearing that were mailed to the Respondents’ last known address
12 were returned to the Commission with notations such as “return to sender, no forwarding order on
13 file”, “moved, left no address, unable to forward”, and “forwarding order expired”.

14 10. Ms. Batista testified that the Complaint had been filed against the Respondents
15 because the various utility companies and/or entities that are described above had failed to file their
16 2005 Annual Reports.

17 11. Ms. Batista indicated that the Commission sent out delinquent notices to all of the
18 above-referenced utilities and/or entities to advise them that they had failed to file their 2005 Annual
19 Reports. Following the mailing of the delinquent notices, personal phone calls to each of the utilities
20 along with follow-up phone calls were made in an attempt to secure compliance with the requirement
21 that the utilities file their 2005 Annual Reports. Staff has been unable to contact the 16 remaining
22 telecommunications utilities and believes they are out of business.

23 12. Staff is recommending that the Certificates of the Respondents which have either
24 failed to file their 2005 Annual Reports and/or failed to advise the Commission of their proper
25 mailing addresses be revoked and the utility and/or entity be penalized.

26 13. Based upon our review of the record, we believe that Staff’s recommendations should
27 be adopted with respect to the above-described Respondents, the Certificates of the Respondents
28 should be revoked and they should also be assessed financial penalties. However, if any affected

1 Respondent files, within 60 days of the effective date of this Decision, its 2005 Annual Report, then
 2 upon Staff's filing a notice of compliance, the Order of revocation and penalty as to that utility and/or
 3 entity should be rendered null and void without further Order by the Commission.

4 **CONCLUSIONS OF LAW**

5 1. The above-referenced Respondents are public service corporations within the meaning
 6 of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

7 2. The Commission has jurisdiction over the Respondents and of the subject matter of the
 8 Complaint herein.

9 3. The revocation of the Certificates of the remaining Respondents as described above
 10 would benefit the public interest.

11 4. Pursuant to A.R.S. § 40-425, the remaining Respondents should also each be
 12 penalized the sum of \$200 unless, within 60 days of the effective date of this Decision, the remaining
 13 Respondent files its 2005 Annual Report.

14 **ORDER**

15 IT IS THEREFORE ORDERED that the Certificates of Convenience and Necessity of the
 16 remaining Respondents and the authorizations therein be revoked as follows:
 17

18 <u>DOCKET NO.</u>	<u>COMPANY</u>
19 T-03092A	COMMONWEALTH LONG DISTANCE CO. dba CLD
20 T-03497A	CONNECTAMERICA, INC. dba CONNECT US OF DELAWARE
21 T-03920A	EN-TOUCH SYSTEMS, INC.
22 T-04165A	EXERGY GROUP, LLC
23 T-03416A	GERLACH ENTERPRISES, INC. dba GCI
24 T-03068A	HEATH COMMUNICATIONS, INC.
25 T-03174A	LIGHTYEAR COMMUNICATIONS, INC.
26 T-03853A	MAXCESS, INC.
27 W-02164A	MORRISTOWN WATER COMPANY
28 T-04001A	MULTA COMMUNICATIONS, CORP dba MULTACOM
T-03989A	NTC NETWORK, LLC
T-04005A	QUICK TEL, INC.
T-04000A	TELSEON CARRIER SERVICES, INC.
T-04070A	TOLL CALL, INC.
T-03439A	UNITED SERVICES TELEPHONE, LLC

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T-03998A VISTA VOICE & DATA, INC.
T-03820A W2COM INTERNATIONAL, LLC.

IT IS FURTHER ORDERED that the above-named Respondents shall each be penalized the sum of \$200 unless, within 60 days of the effective date of this Decision, the above-named Respondent files its 2005 Utilities Division Annual Report with the Director of the Commission's Utilities Division, then upon the Staff's filing a notice of compliance, said revocation and financial penalty shall be null and void without further Order by the Commission.

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 _____, 2008.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES: db

1 SERVICE LIST FOR: 2005 ANNUAL REPORTS

2 DOCKET NO.: C-00000A-07-0430

3 T-03092A
4 COMMONWEALTH LONG DISTANCE CO.
5 dba CLD
6 105 Carnegie Center
7 Princeton, NJ 08540

8 T-03497A
9 CONNECTAMERICA, INC.
10 dba CONNECT US OF DELAWARE
11 1842 Centre Point Drive, Suite 128
12 Naperville, IL 60563

13 T-03068A
14 HEATH COMMUNICATIONS, INC.
15 COMMUNITY PAYPHONES
16 P.O. Box 86143
17 Tucson, AZ 85754

18 T-03174A
19 LIGHTYEAR COMMUNICATIONS, INC.
20 1901 Eastpoint Parkway
21 Louisville, KY 40223

22 W-02164A
23 MORRISTOWN WATER COMPANY
24 P.O. Box 156
25 Morristown, AZ 85342

26 T-03989A
27 NTC NETWORK, LLC
28 633 West 5th Street, 56th Floor
Los Angeles, CA 90071

T-04005A
QUICK TEL, INC.
324 Trinity Place
Elizabeth, NJ 07201

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