

OPEN MEETING ITEM  
**ORIGINAL**



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



ARIZONA CORPORATION COMMISSION

22

DATE: MARCH 24, 2008

DOCKET NO: T-20456A-06-0266

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:

SUNESYS, INC.  
(CC&N/FACILITIES-BASED)

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:

APRIL 2, 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:

APRIL 8, 2008 and APRIL 9, 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.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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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  
9 SUNESYS, INC. FOR APPROVAL OF A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE FACILITIES-BASED  
12 LONG DISTANCE, FACILITIES-BASED LOCAL  
13 EXCHANGE TELECOMMUNICATIONS  
14 SERVICES AND PRIVATE LINE SERVICE.

DOCKET NO. T-20456A-06-0266

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

**OPINION AND ORDER**

11 DATE OF HEARING: March 23, 2007

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Mr. Jeffrey E. Rummel, ARENT FOX, LLP, on behalf  
15 of Sunesys, Inc., and

16 Ms. Maureen Scott, Senior Staff Attorney, Legal  
17 Division, on behalf of the Utilities Division of the  
18 Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 On April 21, 2006, Sunesys, Inc. ("Sunesys" or "Applicant") submitted to the Arizona  
21 Corporation Commission ("Commission") an application for a Certificate of Convenience and  
22 Necessity ("Certificate" or "CC&N") to provide facilities-based long distance, facilities-based local  
23 exchange and private line telecommunications services within the State of Arizona. The Applicant  
24 also requested that its services be classified as competitive.

25 On May 17, 2006, the Commission's Utilities Division Staff ("Staff") sent its first set of data  
26 requests to the Applicant.

27 On June 20, 2006, Sunesys submitted supplemental information in support of its application  
28 as well as an amendment to its application.

1 On July 6, 2006, Staff sent its second set of data requests to Sunesys.

2 On July 31, 2006, Sunesys submitted its response to Staff's data requests and a second  
3 amendment to its application.

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

6 On September 26, 2006, by Procedural Order, the matter was set for hearing to commence on  
7 December 18, 2006.

8 On December 13, 2006, Sunesys filed a Motion to Continue the Hearing ("Motion") and  
9 requested expedited consideration of its Motion.

10 On December 14, 2006, Sunesys' Motion was granted by Procedural Order.

11 On December 27, 2006, Sunesys filed an amendment to its application.

12 On January 25, 2007, by Procedural Order the hearing in this matter was reset to commence  
13 on March 23, 2007 and the timeclock was extended.

14 On March 21, 2007, Applicant filed a Notice of Appearance and a Motion and Consent of  
15 Local Counsel for Pro Hac Vice Admission.

16 On March 23, 2007, a full public hearing was held before a duly authorized Administrative  
17 Law Judge of the Commission at its offices in Phoenix, Arizona. Sunesys and Staff appeared through  
18 counsel at the hearing and presented evidence and testimony. At the conclusion of the hearing, the  
19 matter was taken under advisement pending submission of a Recommended Opinion and Order to the  
20 Commission.

21 On July 9, 2007, a Recommended Opinion and Order was docketed and the matter was  
22 tentatively scheduled for the July 24 and 25, 2007, Open Meeting.

23 On July 23, 2007, the Applicant contacted the Commission and requested that the  
24 Recommended Opinion and Order be pulled from the Open Meeting agenda.

25 On October 11, 2007, Applicant filed an amendment to its application to reflect a change in  
26 its corporate parent from InfraSource Services, Inc., to Quanta Services, Inc.

27 On November 9, 2007, by Procedural Order, Staff was directed to file a Supplemental Staff  
28 Report and the timeclock was suspended.

1 On December 14, 2007, Staff filed its Supplemental Staff Report continuing to recommend  
2 approval of the Applicant's application with conditions.

3 \* \* \* \* \*

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

6 **FINDINGS OF FACT**

7 1. On April 21, 2006, Sunesys, Inc. submitted to the Commission an application for a  
8 CC&N to provide facilities-based long distance, facilities-based local exchange and private line  
9 telecommunications services within the State of Arizona. The Applicant also requested that its  
10 services be classified as competitive.

11 2. On October 11, 2007, Sunesys filed an amended application which discussed a merger  
12 transaction completed on August 30, 2007, in which Sunesys' corporate parent changed from  
13 InfraSource Services, Inc., to Quanta Services, Inc., ("Quanta").

14 3. Quanta is a Delaware corporation and the merger has been approved in all states  
15 where Sunesys has been authorized to provide telecommunications services. (Amendment pg. 1)

16 4. On December 14, 2007, Staff filed a Supplemental Staff Report continuing to  
17 recommend approval of Sunesys' application, subject to the following conditions.

- 18 a. That Sunesys comply with all Commission Rules, Orders and other  
19 requirements relevant to the provision of the intrastate telecommunications  
20 services;
- 21 b. That Sunesys abide by the quality of service standards that were approved by  
22 the Commission for Qwest in Docket No. T-01051B-93-0183;
- 23 c. That Sunesys be prohibited from barring access to alternative local exchange  
24 service providers who wish to serve areas where Sunesys is the only provider  
25 of the local exchange service facilities;
- 26 d. That Sunesys be required to notify the Commission immediately upon changes  
27 to its name, address or telephone number;
- 28 e. That Sunesys cooperate with Commission investigations including, but not  
limited to customer complaints;
- f. That although Staff considered the fair value rate base information submitted  
by Sunesys, the fair value information provided was not given substantial  
weight in this analysis;

- 1 g. That Sunesys offer Caller ID with the capability to toggle between blocking  
and unblocking the transmission of the telephone number at no charge;
- 2 h. That Sunesys offer Last Call Return service that will not return calls to  
3 telephone numbers that have the privacy indicator activated;
- 4 i. That Sunesys be authorized to discount its rates and service charges to the  
5 marginal cost of providing the services; and
- 6 j. That Sunesys submit interexchange tariffs indicating that it may collect  
advances, deposits and or prepayments.

7 5. Staff further recommends that Sunesys comply with the following conditions within  
8 the timeframes outlined or Sunesys' CC&N should be considered null and void, after due process.

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

13 (2) That Sunesys shall:

14 a. Procure a performance bond or irrevocable sight draft letter of credit  
15 equal to \$200,000. The minimum bond amount of \$200,000 should be  
16 increased if at any time it would be insufficient to cover advances, deposits,  
17 and/or prepayments collected from Sunesys' customers. The bond amount  
should be increased in increments of \$100,000. This increase should occur  
when the total amount of the advances, deposits, and prepayments is within  
\$20,000 of the bond or draft amount.

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

27 **Technical Capabilities**

28 5. In its amended application, Sunesys stated it offers and provides telecommunications

1 services in New Jersey, Maryland, Pennsylvania, California and Georgia.

2 6. Sunesys and its affiliate, Sunesys of Virginia, Inc., are authorized to provide  
3 telecommunications services in Delaware, District of Columbia, Florida, Illinois, New York, North  
4 Carolina, Ohio and Virginia.

5 7. Sunesys' application states that it has a four (4) member senior management team with  
6 an average of eighteen (18) years experience each in the telecommunications business.

7 8. Based on the information provided by Sunesys, Staff continues to believe that  
8 Sunesys possesses the technical capabilities to provide the telecommunication services it is  
9 requesting in this application.

10 **Financial Capabilities**

11 9. In its amended application, Sunesys provided audited, consolidated financial statements  
12 for its parent company, Quanta, for the twelve months ending December 31, 2006. The financial  
13 statements showed assets of \$1.6 billion; equity of \$729 million; and net income of \$17.5 million.

14 10. Sunesys provided additional financial data for periods ending December 31, 2002  
15 through December 31, 2005 and notes related to the financial statements.

16 11. Sunesys has indicated that it has access to unencumbered cash or cash equivalent of at  
17 least \$15 million which is reasonably liquid and readily available to meet the expenses of the  
18 proposed operations.

19 12. Sunesys plans to finance the initial costs of construction through cash flows from its  
20 operations. However, Sunesys will rely on the finances of its parent company to the extent that  
21 Sunesys' cash flow is insufficient.

22 13. Sunesys' proposed tariffs states it may collect advances from its customers.

23 14. All CC&Ns for facilities based local exchange and facilities based long distance  
24 services must be secured by a minimum bond or irrevocable sight draft letter of credit in the amount  
25 of \$100,000 for each type service.

26 15. Pursuant to Arizona Administrative Code ("A.A.C") R-14-2-1107, if Sunesys desires  
27 to discontinue service in Arizona it must file an application with the Commission, and notify its  
28 customers and the Commission sixty (60) days prior to filing the application to discontinue service.

1 Further, Sunesys' failure to meet the requirements of the rule will result in a forfeiture of Sunesys'  
2 performance bond or irrevocable sight draft letter of credit.

3 **Rates and Charges**

4 16. Pursuant to A.A.C. R-14-2-1109, Sunesys may charge rates for service that are not  
5 less than its total service long-run incremental costs of providing service.

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

8 18. Staff determined Sunesys' fair value rate base ("FRVB") to be \$2 million.

9 19. Given the competitive markets in which Sunesys will operate, Sunesys' FVRB may  
10 not be useful as the sole determinate of rates.

11 20. Based on Staff's review, Sunesys' proposed rates are comparable with other  
12 competitive local carriers, local incumbent carriers and major long distance carriers operating in  
13 Arizona.

14 21. FVRB should not be given substantial weight in this analysis.

15 22. Sunesys' proposed rates are just and reasonable and should be approved.

16 **Local Exchange Carrier Specific Issues**

17 23. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Sunesys will make  
18 number portability available to facilitate the ability of customers to switch between authorized local  
19 carriers within a given wire center without changing their telephone number and without impairment  
20 to quality, functionality, reliability or convenience of use.

21 24. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that  
22 interconnect into the public switched network shall provide funding for the Arizona Universal Fund  
23 ("AUSF").

24 25. Sunesys will contribute to the AUSF as required by the A.A.C., and make the  
25 necessary monthly payments as required under A.A.C. R14-2-1204(B).

26 26. In Commission Decision No. 59421 (December 20, 1995) the Commission approved  
27 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of  
28 service. In this matter, Sunesys does not have a similar history of service quality problems, and

1 therefore the penalties in that decision should not apply.

2 27. In the areas where Sunesys is the only local exchange service provider, Sunesys is  
3 prohibited from barring access to alternative local exchange service providers who wish to serve the  
4 area.

5 28. Sunesys will provide all customers with 911 and E911 service where available, or will  
6 coordinate with ILECs, and emergency service providers to facilitate the service.

7 29. Pursuant to prior Commission Decisions, Sunesys may offer customer local area  
8 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or  
9 unblock each individual call at no additional cost.

10 30. Sunesys must also offer Last Call Return service, which will not allow the return of  
11 calls to the telephone numbers that have the privacy indicator activated.

#### 12 **Complaint Information**

13 31. Sunesys has not had an application for service denied, or revoked in any state, and  
14 there have been no formal compliant proceedings and no civil or criminal proceeding involving  
15 Sunesys.

16 32. Staff attempted to contact each of the Public Utility Commissions regulating the  
17 states/jurisdictions that Sunesys or its affiliate, Sunesys of Virginia, Inc., is authorized to provide  
18 telecommunications services. Based on the feedback received, Staff reported no complaint history  
19 for Sunesys.

20 33. None of Sunesys' officers, directors or partners have been involved in any civil or  
21 criminal investigations, or formal or informal complaints, and none of its officers, directors or  
22 partners have been convicted of any criminal acts in the past ten (10) years.

#### 23 **Competitive Services Analysis**

24 34. Sunesys has requested that its telecommunications services in Arizona be classified as  
25 competitive. Sunesys' proposed services should be classified as competitive because there are  
26 alternatives to Sunesys' proposed services; ILECs and large facilities-based interexchange carriers  
27 hold a virtual monopoly in local exchange markets and in the interLATA interexchange market;  
28 Sunesys will have to convince customers to purchase its services; Sunesys has no ability to

1 adversely affect the local exchange or interexchange market as several CLECs and ILECs provide  
2 local exchange and interexchange services; and Sunesys therefore will have no market power in  
3 those local exchange markets or interexchange markets where alternative providers to  
4 telecommunications services exists.

5 **Private Line Telecommunications Service**

6 35. Private line service is a direct circuit or channel specifically dedicated to the use of an  
7 end user organization for the purpose of directly connecting two or more sites in a multi-site  
8 enterprise.

9 36. Sunesys' witness<sup>1</sup> testified at hearing that once Sunesys is granted authority by a state,  
10 Sunesys begins building its private line communications facilities for specific customers and  
11 managed wide area network services for specific customers. He stated, "the idea being that we don't  
12 build our networks on a speculative basis, but rather build networks as we find customers who are  
13 willing to fund a portion of the construction of those networks." (Tr. Pg. 12, lines 18-25 and pg. 13,  
14 lines 1-5)

15 37. Sunesys' witness further testified that typically the private line networks are provided  
16 to large commercial customers and non-profit organizations, such as healthcare companies. He  
17 stated that the managed wide area networks are traditionally provided to public schools and public  
18 library systems.

19 38. Sunesys' witness testified that if Sunesys is granted authority to operate in Arizona the  
20 company anticipates that it would have its first customer under contract within three to six months  
21 and its first network constructed in six to nine months after the contracts are signed. (Tr. Pg. 13,  
22 lines 20-25 and pg. 14, lines 1) He further stated that initially customer calls will be routed to  
23 Sunesys' California office, via a 1-800 number, but that Sunesys will contract with Arizona repair  
24 companies to handle any service related issues and Sunesys anticipates eventually having employees  
25 and facilities in Arizona.

26 39. Staff reviewed the proposed rates submitted in Sunesys' tariff pages which showed  
27

28 <sup>1</sup> Mr. Paul Bradshaw, senior counsel and assistant executive secretary for Sunesys.

1 Sunesys' current rates that it charges for comparable fiber services in various cities. Staff noted that  
2 the rates charged by Sunesys in those states for fiber services vary on an individual contract basis,  
3 but because Sunesys has no ability to set prices in any given jurisdiction the market will ultimately  
4 decide whether Sunesys' rates are comparable to other private line service providers.

5 40. Sunesys' witness testified that as of December 31, 2006, Sunesys, Inc. was merged  
6 into a newly formed sister company, Sunesys, L.L.C. He further testified that after completion of the  
7 restructuring, the name of the LLC was changed from Sunesys, L.L.C., dba InfraSource Sunesys,  
8 LLC to merely Sunesys, L.L.C. At the hearing, Sunesys submitted into evidence the Articles of  
9 Amendment that was filed with the Commission showing the modification of the Applicant's name.

10 41. Staff's recommendations, as set forth herein are reasonable and should be adopted.

11 42. The rates proposed by this filing are for competitive services.

#### 12 CONCLUSIONS OF LAW

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

15 2. The Commission has jurisdiction over Applicant and the subject matter of the  
16 application.

17 3. Notice of the application was given in accordance with the law.

18 4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a  
19 CC&N to provide competitive telecommunications services.

20 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
21 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
22 in its application.

23 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide  
24 competitive facilities-based long distance, facilities-based local exchange and private line  
25 telecommunications services in Arizona, subject to Staff's recommendations.

26 7. The telecommunications services that Applicant intends to provide are competitive  
27 within Arizona.

28 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,

1 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are  
2 not less than the Applicant's total service long-run incremental costs of providing the competitive  
3 services approved herein.

4 9. Staff recommendations, as amended herein, are reasonable and should be adopted.

5 10. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and  
6 should be approved.

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**ORDER**

IT IS THEREFORE ORDERED that the application of Sunesys L.L.C., for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based long distance, facilities-based local exchange and private line telecommunications services within the State of Arizona, is hereby granted, conditioned upon compliance with Staff's recommendations set forth in Findings of Fact Nos. 4 and 5, and failure to comply with the requirements in Finding of Fact No. 5 will result in the CC&N becoming 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

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, 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.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

YBK:db

1 SERVICE LIST FOR: SUNESYS, INC.  
2 DOCKET NO.: T-20456A-06-0266

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