

OPEN MEETING ITEM



0000084104

COMMISSIONERS
MIKE GLEASON - Chair
WILLIAM A. MUNNELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: APRIL 11, 2008
DOCKET NO: T-20400A-05-0556

TO ALL PARTIES:

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

FIRST CHOICE TECHNOLOGY, INC.
(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:

APRIL 21, 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:

MAY 6, 2008 and MAY 7, 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 Director's Office at (602) 542-3931.

RECEIVED

2008 APR 11 P 4:02

AZ CORP COMMISSION
DOCKET CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED
APR 11 2008

DOCKETED BY

1
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 FIRST CHOICE TECHNOLOGY, INC. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD LONG DISTANCE
14 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20400A-05-0556

DECISION NO. _____

ORDER

15 Open Meeting
16 May 6 and 7, 2008
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 * * * * *

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

22 FINDINGS OF FACT

23 1. On August 4, 2005, First Choice Technology, Inc. ("First Choice") filed with the
24 Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide
25 competitive resold long distance telecommunications services within a service area encompassing the
26 entire State of Arizona.

27 2. Between October 13, 2005, and June 21, 2007, Staff issued three Letters of
28 Insufficiency and Data Requests, and First Choice provided two responses thereto.

3. On November 8, 2005, First Choice provided Staff with Affidavits of Publication
showing that notice had been published in *Navajo Times* (Apache County) on August 25, 2005; in
The Daily Dispatch (Cochise County) on August 20, 2005; in *Sedona Red Rock News* (Coconino and
Yavapai Counties) on August 19, 2005; in *Arizona Silver Belt* (Gila County) on August 24, 2005; in
Eastern Arizona Courier (Graham County) on August 24, 2005; in *The Copper Era* (Greenlee

1 County) on August 24, 2005; in *Parker Pioneer* (La Paz County) on August 24, 2005; in *The East*
2 *Valley/Scottsdale Tribune* (Maricopa County) on August 18, 2005; in *Mohave Valley Daily News*
3 (Mohave County) on August 17, 2005; in *The Holbrook Tribune-News* (Navajo County) on August
4 19, 2005; in *Green Valley News and Sun* (Pima County) on August 19, 2005; in *Copper Basin News*
5 (Pinal County) on August 24, 2005; in *Nogales International* (Santa Cruz County) on August 19,
6 2005; and in *The Sun* (Yuma County) on August 22, 2005.

7 4. On January 31, 2008, Staff issued its Staff Report, recommending approval of First
8 Choice's application.

9 **Fitness and Properness to Obtain a CC&N**

10 5. First Choice is a foreign corporation that incorporated on February 6, 2004, and began
11 operations later that year.

12 6. First Choice is in good standing with the Commission's Corporations Division.

13 7. First Choice does not currently hold a CC&N to provide telecommunications services
14 in Arizona and is not providing telecommunications services in Arizona.

15 8. First Choice has indicated that none of its officers, directors, or partners have been
16 involved in any civil or criminal investigations or formal or informal complaints and that none of its
17 officers, directors, or partners have been convicted of any criminal acts in the past 10 years.

18 **Technical Capabilities**

19 9. First Choice is a switchless reseller and intends to resell the services of Qwest
20 Corporation.

21 10. First Choice has two officers: Scott Howsare, Secretary, with 12 years of
22 telecommunications experience; and Gordon Dumont, President, with no previous
23 telecommunications experience.

24 11. First Choice has authority to provide, and is providing, resold long distance
25 telecommunications services similar to those it intends to offer in Arizona in California, Colorado,
26 Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Missouri,
27 Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Texas, Washington,
28 and Wisconsin.

1 12. Based on its operations in other states, Staff has determined that First Choice has
2 sufficient technical capabilities to provide resold long distance telecommunications services in
3 Arizona.

4 **Financial Resources**

5 13. First Choice is wholly owned by Gordon Dumont, one of its officers.

6 14. First Choice projects total revenues generated by the provision of telecommunications
7 services to Arizona customers for the first 12 months of operations to be \$20,000, with operating
8 expenses during that period of \$12,000.

9 15. First Choice projects the net book value of all Arizona jurisdictional assets and the
10 projected value of all Arizona assets after the first 12 months of operations to be zero.

11 16. Staff reported that First Choice provided unaudited financial statements for calendar
12 years 2005 and 2006 and that the financial statements for 2006 list total assets of \$612,790,
13 shareowners' equity of (\$54,474), and net income of \$227,658.

14 17. Staff stated that First Choice's experiencing financial difficulty would have only a
15 minimal impact on its customers because many companies provide resold long distance
16 telecommunications services, facilities-based providers are also available, and First Choice customers
17 desiring to immediately obtain resold long distance service from a different provider could use a dial-
18 around access code.

19 **Proposed Rates**

20 18. First Choice states in its tariffs that it does not collect advances, deposits, and/or
21 prepayments from its resold long distance customers.

22 19. Rates for competitive telecommunications services are generally not established
23 according to rate-of-return regulation.

24 20. First Choice's fair value rate base is zero. While Staff considered the fair value rate
25 base information submitted by First Choice, Staff determined that the fair value rate base information
26 should not be given substantial weight in its analysis.

27 21. As a reseller of services purchased from other telecommunications companies, First
28 Choice will have no market power and will have to compete with other providers to obtain

1 subscribers to its services. This competitive process should result in rates that are just and
2 reasonable.

3 22. Staff has reviewed First Choice's proposed rates and determined that they are just and
4 reasonable, as they are comparable to the rates of several long distance carriers operating in Arizona
5 and to the rates First Choice charges in other jurisdictions.

6 **Regulatory Requirements**

7 23. Commission rules require First Choice to file a tariff for each competitive service that
8 states the maximum rate as well as the effective (actual) price that will be charged for the service.
9 Any changes to First Choice's effective price for a service must comply with A.A.C. R14-2-1109,
10 and any changes to the maximum rates in First Choice's tariffs must comply with A.A.C. R14-2-
11 1110.

12 24. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
13 interconnect to the public switched network to provide funding for the Arizona Universal Service
14 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
15 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.
16 R14-2-1204(B)(2).

17 25. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
18 an application for authorization with the Commission before it discontinues service and establishes
19 customer notice requirements and other requirements related to discontinuance of service.

20 **Staff's Recommendations**

21 26. Staff recommends approval of First Choice's application and that First Choice's
22 services be classified as competitive under A.A.C. R14-2-1108.

23 27. Staff recommends that the maximum rates for First Choice's services be the maximum
24 rates in its proposed tariffs and that the minimum rates for First Choice's services be the total service
25 long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109.

26 28. Staff recommends that if First Choice states only one rate for a service in its tariffs, the
27 rate stated be the effective (actual) price to be charged for the service as well as the maximum rate for
28 the service.

1 29. Staff recommends that if First Choice desires to collect advances, deposits, and/or
2 prepayments from its resold long distance customers in the future, First Choice be required to file an
3 application with the Commission, for Commission approval, referencing this Decision and explaining
4 First Choice's plan for procuring a performance bond.

5 30. Staff further recommends that First Choice be ordered to:

- 6 a. Comply with all Commission rules, orders, and other requirements relevant to
7 the provision of intrastate telecommunications service;
- 8 b. Maintain its accounts and records as required by the Commission;
- 9 c. File with the Commission all financial and other reports that the Commission
10 may require, in a form and at such times as the Commission may designate;
- 11 d. Maintain on file with the Commission all current tariffs and rates and any
12 service standards that the Commission may require;
- 13 e. Comply with the Commission's rules and modify its tariffs to conform to those
14 rules if it is determined that there is a conflict between First Choice's tariffs
15 and the Commission's rules;
- 16 f. Cooperate with Commission investigations, including but not limited to those
17 regarding customer complaints;
- 18 g. Participate in and contribute to the AUSF, as required by the Commission; and
19 h. Notify the Commission immediately upon changes to First Choice's name,
20 address, or telephone number.

21 31. Staff recommends that First Choice be required to file tariffs conforming to this
22 Decision, as a compliance item in this docket, within 365 days after the date of this Decision or 30
23 days before providing service, whichever comes first, and that First Choice's CC&N be considered
24 null and void, after due process, if First Choice fails to comply with this requirement.

CONCLUSIONS OF LAW

25
26 1. Upon receiving a CC&N, First Choice will be a public service corporation within the
27 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

28 2. The Commission has jurisdiction over First Choice and the subject matter of the

1 application.

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

4 4. Notice of First Choice's application was given in accordance with the law.

5 5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
6 it is in the public interest for First Choice to provide the telecommunications services for which it has
7 requested authorization in its application.

8 6. First Choice is a fit and proper entity to receive a CC&N authorizing it to provide
9 resold long distance telecommunications services in the State of Arizona.

10 7. The telecommunications services that First Choice desires to provide are competitive
11 in Arizona.

12 8. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is
13 just and reasonable and in the public interest for First Choice to establish rates and charges for
14 competitive services that are not less than First Choice's total service long-run incremental costs of
15 providing the competitive services approved herein.

16 9. Staff's recommendations, as set forth in Finding of Fact Nos. 26-31, are reasonable
17 and should be adopted.

18 10. First Choice's rates, as they appear in its proposed tariffs, are just and reasonable and
19 should be approved.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application of First Choice Technology, Inc. for a
22 Certificate of Convenience and Necessity to provide resold long distance telecommunications
23 services in Arizona is hereby granted, conditioned upon compliance with Staff's recommendations
24 set forth in Finding of Fact Nos. 27-31.

25 ...
26 ...
27 ...

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that if First Choice Technology, Inc. fails to meet the condition outlined in Finding of Fact No. 31 within the timeframe 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

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 _____

SNH:db

1 SERVICE LIST FOR: FIRST CHOICE TECHNOLOGY, INC.

2 DOCKET NO.: T-20400A-05-0556

3
4 Monica Haab
5 NOWALSKY, BRONSTON & GOTHARD
6 3500 North Causeway Boulevard, Suite 1442
7 Metairie, LA 70002

8
9 Gordon Dumont, President
10 FIRST CHOICE TECHNOLOGY, INC.
11 601 North Orlando Avenue, Suite 211
12 Maitland, FL 32751

13
14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, AZ 85007

19
20 Ernest G. Johnson, Director
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, AZ 85007

25
26
27
28