

OPEN MEETING ITEM



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ORIGINAL

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



Executive Director

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ARIZONA CORPORATION COMMISSION

2008 JUL 11 P 12:19

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: JULY 11, 2008  
DOCKET NO: T-03733A-06-0749  
TO ALL PARTIES:

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

DIAL-THRU, INC.  
(CANCELLATION OF 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:

JULY 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:

JULY 29, 2008 AND JULY 30, 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.

Arizona Corporation Commission  
DOCKETED

JUL 11 2008

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
DIAL-THRU, INC. FOR THE CANCELLATION  
OF THE CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. T-03733A-06-0749

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

ORDER

Open Meeting  
July 29 and 30, 2008  
Phoenix, Arizona

**BY THE COMMISSION:**

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

FINDINGS OF FACT

1. Dial-Thru, Inc. ("Company") has a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services within Arizona pursuant to Decision No. 62886 (September 18, 2000) ("Decision").<sup>1</sup>

2. Under the terms of the Decision, the Company was not authorized to collect from customers any prepayments, advances or deposits. The Company was not required to file a performance bond.

3. On November 30, 2006, the Company filed with the Commission an application for cancellation of its Certificate ("Application").

4. On November 30, 2007, the Commission's Utilities Division Staff ("Staff") filed its Staff report recommending cancellation of the Company's Certificate.

5. The Staff Report noted that on December 6, 2006, Staff notified the Company via

<sup>1</sup> The CC&N was granted to the Company under the name RDST, Inc. The Company changed its name to Dial-Thru, Inc., approved in Decision No. 64565 (February 26, 2002).

1 certified mail that its application was insufficient pursuant to the Arizona Administrative Code and  
2 requested the Company to respond to Staff's data requests ("Data Requests"). The Data Requests  
3 were returned to Staff marked Return to Sender.

4 6. Staff contacted the Company's consultant, who told Staff to resend the Data Requests.  
5 Staff resent the Data Requests via certified mail on January 4, 2007. The Data Requests were not  
6 returned, but the Company never responded to the Data Requests.

7 7. On October 4, 2007, Staff again contacted the Company's consultant regarding the  
8 Company's failure to respond. The consultant said that he could not respond to the Data Requests and  
9 that the Company was out of business.

10 8. Staff observed that the Company filed its Utilities Division Confidential Annual  
11 Report for the years 2001 through 2005. In each report, the Company reported revenue indicating that  
12 it was providing service to customers in Arizona. The Company did not file a Confidential Annual  
13 Report for 2006.

14 9. However, according to the Staff Report, Staff concluded there would be no economic  
15 risk in cancelling the Company's Certificate because the Company has no Arizona customers from  
16 whom it collected advances, deposits and/or prepayments.

17 10. Staff noted that the Company does have a tariff on file with the Commission and  
18 recommends cancellation of that tariff.

19 11. The Commission's Consumer Services Section of the Commission's Utilities Division  
20 reported that there were no customer complaints, inquiries or opinions against the Company.

21 12. There is no evidence that the Company complied with the terms of A.A.C. R-14-2-  
22 1107(A)(2) & (B), requiring the Company to provide notice to customers of its discontinuation of  
23 service, a plan for the refund of deposits, a list of alternate providers, and publish notice of the  
24 application.

25 13. As discussed in Decision No. 67404 (November 2, 2004), it would render A.A.C.  
26 R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to exempt a  
27 Company from the requirements of the rule because it has no customers due to its discontinuation of  
28 service. However, as discussed in that Decision, the intent of the rule is to ensure that existing

1 customers have advance notice of a telecommunications provider's pending plan to discontinue  
2 service such that they will be afforded an opportunity to procure service through an alternative  
3 provider prior to such discontinuance.

4 14. Because the Company has no Arizona customers and did not collect any advances,  
5 deposits and/or prepayments, the requirements of A.A.C. R-14-2-1107(A)(2) & (B) are hereby  
6 waived.

7 15. Given the foregoing, Staff's recommendations are reasonable.

8 **CONCLUSIONS OF LAW**

9 1. The Company is a public service corporation within the meaning of Article XV of the  
10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over the Company and the subject matter of the  
12 Application.

13 3. The cancellation of the Company's Certificate is in the public interest.

14 4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding  
15 Certificates of Convenience and Necessity for certain telecommunication services without a hearing.

16 5. Staff's recommendations are reasonable and should be adopted.

17 **ORDER**

18 IT IS THEREFORE ORDERED that the application of Dial-Thru, Inc. for the cancellation of  
19 its Certificate of Convenience and Necessity to provide competitive resold interexchange  
20 telecommunications services in Arizona shall be, and is hereby, approved, and the Certificate of  
21 Convenience and Necessity is cancelled.

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IT IS FURTHER ORDERED that Dial-Thru, Inc.'s tariff, Arizona CC Tariff No.1, is hereby cancelled.

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 \_\_\_\_\_

BM:db

1 SERVICE LIST FOR: DIAL-THRU, INC.

2 DOCKET NO.: T-03773A-06-0749

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4 Kenyatta Perkins  
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