

ORIGINAL

OPEN MEETING ITEM



0000086594

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



ARIZONA CORPORATION COMMISSION

RECEIVED

2008 JUL 11 P 2:39

DATE: JULY 11, 2008
DOCKET NO: T-03632A-08-0113
TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

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

DIECA COMMUNICATIONS, INC. dba
COVAD COMMUNICATIONS COMPANY.
(FINANCE)

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

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 DIECA COMMUNICATIONS, INC. D/B/A
11 COVAD COMMUNICATIONS COMPANY FOR
12 AUTHORIZATION TO ENCUMBER ITS ASSETS.

DOCKET NO. T-03632A-08-0113

DECISION NO. _____

ORDER

13 Open Meeting
14 July 29 and 30, 2008
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

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

19 FINDINGS OF FACT

20 1. On February 27, 2008, DIECA Communications, Inc. ("DIECA") d/b/a Covad
21 Communications Company ("Covad" and together with DIECA, the "Applicant") filed with the
22 Arizona Corporation Commission ("Commission") an application for approval to pledge its Arizona
23 assets as security for certain debt financing arrangements of up to \$285 million pursuant to A.R.S. §
24 40-285 ("Application").

25 2. The Applicant caused notice of the Application to be published in the *Arizona*
26 *Business Gazette* on April 14, 2008.

27 3. On May 15, 2008, the Commission's Utilities Division Staff ("Staff") filed a Staff
28 Report recommending conditional approval of the request for encumbrance of assets.

1 DIECA is a Virginia corporation authorized by the Commission to provide
2 competitive local exchange, resold local exchange and a resold long distance service in Arizona
3 under Decision No. 61942 (September 17, 1999).

1 5. DIECA is doing business in Arizona as Covad Communications Company. Both
2 DIECA and Covad are wholly-owned subsidiaries of Covad Communications Group, Inc. ("CCGI"),
3 a publicly held Delaware company.

4 6. The Applicant provides service in 44 states and is authorized by the Federal
5 Communications Commission to provide international and domestic interstate telecommunications
6 services as a non-dominant carrier.

7 7. The Applicant now seeks approval to pledge its assets pursuant to an agreement and
8 plan of merger dated October 28, 2007, ("Agreement"), among CCGI Holding Corporation ("CCGI
9 Holding"), CCGI Merger Corporation ("CCGI Merger") and CCGI. Under the Agreement, CCGI
10 Holding intends to acquire all the equity interests of CCGI. As the Applicant is not a Class A Utility
11 under Arizona Administrative Code ("A.A.C.") R14-2-103(A)(3)(q), Commission approval of this
12 transfer is not required.

13 8. The Pre- and Post-Closing Corporate Structures are more fully illustrated in the
14 attached Exhibit A.

15 9. The purpose of the proposed financing is to allow CCGI to acquire working capital,
16 finance capital expenditures, and other general corporate purposes. The proposed financing is
17 contingent upon closing of the contemplated merger.

18 10. The borrower under the Agreement will be three entities: 1) CCGI Merger, 2) a
19 Delaware corporation formerly known as Blackberry Merger Corporation, whose outstanding equity
20 interests are owned by CCGI Holding, and 3) a Delaware corporation formerly known as Blackberry
21 Holding Corporation. Once the anticipated merger has occurred, CCGI Merger will be merged with
22 and into CCGI, who will then be the borrower ("Borrower"). (*See Exhibit A—Post-Closing*
23 *Corporate Structure.*)

24 11. The proposed financing consists of three parts. First, there will be a senior secured
25 first lien term loan facility in an amount of up to \$172,500,000. Second, there will be senior secured
26 first lien revolving credit facility of up to \$25,000,000. Third, there will be a senior secured second
27 lien term loan facility in an amount of up to \$87,500,000.

28 12. All obligations of the Borrower under the Agreement will be guaranteed and secured

1 by substantially all the assets of CCGI Holding, CCGI and certain CCGI subsidiaries including those
2 assets of the Applicant.

3 13. The Applicant asserts that its participation in the financing arrangements will not
4 result in a change in its management or operations. The transaction will be transparent to its
5 customers and will not alter rates, term and conditions of service to Arizona customers.

6 14. The Applicant finally asserts that, in addition to enabling them to better use their
7 funds, the proposed financing will serve the public interest in that it will allow the Applicant to
8 introduce new services in Arizona and allow consumers to benefit from competitive services.

9 15. A.R.S. § 40-301 provides that foreign public service corporations providing
10 communications services within the state whose physical facilities are also used in providing
11 communications service in interstate commerce are not required to obtain authorization from the
12 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
13 payable at periods of more than twelve months. Because the entities involved in this transaction are
14 foreign public service corporations, pursuant to A.R.S. § 40-301(D) the Applicant's proposed
15 financing is exempt from Commission approval.

16 16. However, A.R.S § 40-285 requires public service corporations to obtain Commission
17 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
18 captive customers from a utility's disposition of assets that are necessary for the provision of service,
19 thereby preventing any service impairment due to disposal of critical assets necessary to provide
20 service.

21 17. Based on its review of the proposed transaction, Staff determined that the pledge of
22 the Applicant's Arizona assets would not impair the availability of service to the customers since the
23 Applicant provides competitive services that are available from alternative service providers.
24 However, Staff recommends that, because customers who have prepaid for service or made deposits
25 may have exposure to losses, any authorization for encumbrances should include customer protection
26 for prepayments and deposits.

27 18. Staff recommends approval of the Applicant's request to pledge assets as security for
28 \$285 million in debt subject to the condition that all Arizona customer deposits and prepayments be

1 excluded from encumbrance or, in the alternative, be secured by a bond or an irrevocable sight draft
2 letter of credit, which is not included in the pledged collateral.

3 19. Staff recommends that the Applicant be authorized to engage in any transactions and
4 to execute or cause to be executed any documents necessary to effectuate the authorizations requested
5 in the Application.

6 20. Staff further recommends that the Applicant file with Docket Control, as a compliance
7 item in this docket, a notice of the completed transaction within 60 days of closing

8 21. Staff states that there are no compliance issues with the Applicant.

9 22. Staff's recommendations are reasonable and should be adopted.

10 CONCLUSIONS OF LAW

11 1. Applicant is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution, A.R.S. § 40-285.

13 2. The Commission has jurisdiction over the Applicant and the subject matter of the
14 Application.

15 3. Notice of the Application was given in accordance with the law.

16 4. The encumbrance approved herein is for the purposes stated in the Application and is
17 reasonably necessary for those purposes.

18 5. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

19 6. The Applicant is not a Class A Utility under A.A.C. R14-2-801 and therefore
20 Commission approval of the reorganization is not required.

21 ORDER

22 IT IS THEREFORE ORDERED that the Application by DIECA Communications, Inc. d/b/a
23 Covad Communications Company, for authorization to encumber assets as security for debt financing
24 up to \$285 million as provided for herein, shall be, and hereby is, granted, subject to the condition
25 that either all Arizona customer deposits and prepayments are excluded from encumbrance or, in the
26 alternative, are secured in the amount of the customer deposits and prepayments either by a
27 performance bond or an irrevocable sight draft letter of credit, which are not included in the pledged
28 collateral.

1 IT IS FURTHER ORDERED that DIECA Communications, Inc. d/b/a Covad
2 Communications Company shall, within 60 days of the effective date of this Decision, file with
3 Docket Control as a compliance item in this docket, either a statement that all Arizona customer
4 deposits and prepayments are excluded from encumbrance, or copies of the performance bond or
5 irrevocable sight draft letter of credit in the amount of the customer deposits and prepayments, and
6 provide the original performance bond or irrevocable sight draft letter of credit to the Commission's
7 Business Office for safekeeping.

8 IT IS FURTHER ORDERED that DIECA Communications, Inc. d/b/a Covad
9 Communications Company is hereby authorized to engage in any transactions and to execute or cause
10 to be executed any documents so as to effectuate the authorizations granted herein.

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IT IS FURTHER ORDERED that DIECA Communications, Inc. d/b/a Covad Communications Company shall file with Docket Control, as a compliance item in this docket, a notice of the completed transaction within 60 days of closing.

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 _____

1 SERVICE LIST FOR: DIECA COMMUNICATIONS, INC. D/B/A COVAD
COMMUNICATIONS COMPANY

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