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GARY PIERCE



ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 27, 2008

DOCKET NO: T-20544A-07-0456

TO ALL PARTIES:

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

**BALDWIN COUNTY INTERNET/DSSI SERVICE, LLC
(CC&N FACILITIES-BASED/RESELLER)**

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 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:

NOVEMBER 12, 2008 AND NOVEMBER 13, 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.

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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
BALDWIN COUNTY INTERNET/DSSI SERVICE,
LLC FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
FACILITIES-BASED AND RESOLD PRIVATE
LINE SERVICES.

DOCKET NO. T-20544A-07-0456

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: August 14, 2008
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
APPEARANCES: Mr. Harry Bailes, President, on behalf of Baldwin
County Internet/DSSI Service, LLC; and
Ms. Maureen Scott, Senior Staff Counsel, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

On August 1, 2007, Baldwin County Internet/DSSI Service, LLC ("BCI") filed with the
Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
and Necessity ("CC&N") to provide competitive facilities-based and resold local exchange and long
distance telecommunications services in Arizona.

On August 30, 2007, BCI filed two revised proposed tariff pages.

On October 3, 2007, BCI filed an amended application page showing that BCI desires to
obtain a CC&N to provide competitive facilities-based and resold private line services, not facilities-
based and resold local exchange and long distance telecommunications services.

On October 5, 2007, Commission Utilities Division Staff ("Staff") filed a Letter of
Insufficiency and First Set of Data Requests.

1 On October 19, 2007, BCI filed a Response to Staff's First Set of Data Requests and Notice of
2 Insufficiency.

3 On October 29, 2007, BCI filed a Response to Staff's Second Set of Data Requests.

4 On April 15, 2008, Staff filed a Letter of Insufficiency and Third Set of Data Requests.

5 On April 17, 2008, BCI filed a Response to Staff's Letter of Insufficiency and Third Set of
6 Data Requests.

7 On April 22, 2008, Staff filed a Letter of Insufficiency and Fourth Set of Data Requests.

8 On May 5, 2008, BCI filed a Response to Staff's Letter of Insufficiency and Fourth Set of
9 Data Requests.

10 On June 16, 2008, Staff filed its Staff Report recommending approval of the application.

11 On June 18, 2008, a Procedural Order was issued scheduling a hearing in this matter for
12 August 14, 2008, and establishing other procedural requirements and deadlines.

13 On July 29, 2008, BCI filed an Affidavit of Publication of Notice showing that notice of the
14 application and hearing had been published in *The Arizona Republic* on July 18, 2008.

15 On August 7, 2008, BCI filed a Supplemental Filing to its Application, providing updated
16 information.

17 On August 14, 2008, a full evidentiary hearing was held before a duly authorized
18 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. BCI
19 appeared through its President, Harry Bailes, and Staff appeared through counsel. BCI and Staff
20 presented evidence and testimony. At hearing, two issues arose related to BCI's involvement with
21 another company whose infrastructure BCI intends to use as part of its business model. BCI and
22 Staff were both directed to file briefs analyzing those two issues and were allowed an additional 10
23 days to respond to each other's briefs. Staff was also directed to include in its brief an analysis and
24 recommendation regarding whether BCI should be required to file a performance bond or irrevocable
25 sight draft letter of credit ("ISDLOC") and to file a late-filed exhibit including Staff's recommended
26 tariff language for individual case basis ("ICB") pricing.

27 Also on August 14, 2008, BCI filed a Consent executed by Jeffery L. Hathaway, as sole
28 owner and manager of BCI, authorizing Mr. Bailes, as President of BCI, to appear before the

1 Commission on behalf of BCI with respect to its application for a CC&N and to take any and all
2 actions necessary to obtain the CC&N.

3 On August 18, 2008, a Procedural Order was issued memorializing the filing requirements
4 announced at the hearing and requiring BCI to file a late-filed exhibit describing in detail how service
5 is to be provided from the public network to the end-user customer. BCI was also required, if the
6 provision of service would involve a private easement arrangement, an interconnection agreement, or
7 another form of contract, to identify each type of intended arrangement, agreement, or contract and
8 the entities expected to enter into it. The Procedural Order also extended the Commission's
9 timeframe for issuing a Decision in this matter by 25 days.

10 On August 28, 2008, Staff filed Staff's Request for Extension of Time to File Supplemental
11 Staff Report.

12 On August 28, 2008, BCI filed Brief of Baldwin County Internet/DSSI Service, LLC and
13 Supplemental Filing.

14 On September 5, 2008, Staff filed as a late-filed exhibit its brief responding to the two
15 questions raised at hearing and two additional questions posed in the Procedural Order of August 18,
16 2008.

17 On September 10, 2008, Staff filed another late-filed exhibit regarding tariff language for ICB
18 pricing.

19 On September 10, 2008, BCI filed a response to Staff's brief.

20 On September 16, 2008, BCI filed a response to Staff's late-filed exhibit regarding tariff
21 language for ICB pricing and included with its filing a revised tariff page.

22 * * * * *

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

25 **FINDINGS OF FACT**

26 1. On August 1, 2007, BCI filed an application for a CC&N to provide competitive
27 facilities-based and resold local exchange and long distance telecommunications services. On
28 October 3, 2007, BCI filed an amended application page showing that BCI desires to obtain a CC&N

1 to provide competitive facilities-based and resold private line services, not facilities-based and resold
2 local exchange and long distance telecommunications services.

3 2. On July 29, 2008, BCI filed an Affidavit of Publication of Notice showing that notice
4 of the application and hearing had been published in *The Arizona Republic* on July 18, 2008.

5 3. On August 7, 2008, BCI filed a Supplemental Filing to its Application, providing
6 updated information.

7 4. On August 14, 2008, a full evidentiary hearing was held before a duly authorized
8 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. BCI
9 appeared through its President, Harry Bailes, and Staff appeared through counsel. BCI and Staff
10 presented evidence and testimony. At hearing, two issues arose related to BCI's involvement with
11 Connexion Technologies¹ ("Connexion"), a company with whom BCI has a "strategic alliance" and
12 whose infrastructure BCI intends to use as part of its business model. The first issue was whether
13 Arizona law requires Connexion to hold a CC&N. The second issue was whether the answer to the
14 first issue should impact BCI's application. BCI and Staff were both directed to file briefs analyzing
15 those two issues and were allowed an additional 10 days to respond to each other's briefs. Staff was
16 also directed to include in its brief an analysis and recommendation regarding whether BCI should be
17 required to file a performance bond or ISDLOC and to file a late-filed exhibit including Staff's
18 recommended tariff language for ICB pricing.

19 5. On August 18, 2008, a Procedural Order was issued memorializing the filing
20 requirements announced at the hearing and requiring BCI to file a late-filed exhibit describing in
21 detail how service is to be provided from the public network to the end-user customer, and using
22 what facilities, with identification of each separate entity involved and a detailed description of each
23 separate entity's role and the services and/or facilities that each entity will provide. BCI was also
24 required, if the provision of service would involve a private easement arrangement, an
25 interconnection agreement, or another form of contract entered into by any of the entities, to identify
26 each type of intended arrangement, agreement, or contract and the entities expected to enter into it.

27
28

¹ The company is actually Capitol Infrastructure, LLC, dba Connexion Technologies.

1 The Procedural Order also extended the Commission's timeframe for issuing a Decision in this
2 matter by 25 days.

3 6. On August 28, 2008, BCI filed Brief of Baldwin County Internet/DSSI Service, LLC
4 and Supplemental Filing, in which it addressed the two issues related to Connexion, whether BCI
5 should be required to obtain a performance bond or ISDLOC, proposed tariff language for ICB
6 pricing, and precisely how services are to be provided and involving what entities. With its Brief,
7 BCI included a Memorandum prepared by Connexion's Chief Legal Officer and General Counsel
8 addressing the first issue ("Connexion Memorandum").

9 7. On September 5, 2008, Staff filed as a late-filed exhibit its brief responding to the two
10 questions raised at hearing and two additional questions posed in the Procedural Order of August 18,
11 2008.

12 **The Connexion Issues**

13 8. According to the Connexion Memorandum, because Connexion does not transmit
14 messages or furnish public telephone service, it does not meet the definition of "public service
15 corporation" in Article 15, Section 2 of the Arizona Constitution and is not required to hold a CC&N
16 in Arizona. Connexion designs, builds, and manages telecommunications infrastructure, installed
17 along nonexclusive private easements in residential real estate developments and hospitality
18 properties. Connexion acts on behalf of residential real estate and hospitality property developers in
19 making the infrastructure available, usually through leasing arrangements, to multiple unaffiliated
20 third-party service providers. The services provided by the third-party providers include voice,
21 video, and Internet services provided to residents in residential developments and to occupants in
22 hospitality property units. Connexion works with 16 third-party providers across the country.
23 Connexion also negotiates third-party provider agreements on behalf of homeowners' associations
24 and monitors the services provided by the third-party providers. Connexion also builds
25 telecommunications infrastructure in public rights-of-way on behalf of certified or authorized third-
26 party providers. Connexion's sister company, Accelera Services, LLC, ("Accelera") enters into
27 contractual arrangements with third-party providers to perform billing and other support functions for
28 the third-party providers. Connexion considers BCI to be a third-party provider, but Connexion has

1 the right to purchase BCI from Mr. Hathaway as a result of an agreement reached in 2007 when
2 Connexion purchased BCI's hard assets from Mr. Hathaway and leased them back to BCI. Currently,
3 Connexion does not own an interest in BCI, and the two entities do not have any common ownership.

4 9. BCI stated that the first issue should have no impact on BCI's application for a CC&N
5 because Connexion is not a party to this matter, and whether a company with whom BCI does
6 business is required to hold its own CC&N is not relevant to BCI's application.

7 10. Staff indicated that it had reviewed the Connexion Memorandum and that Staff does
8 not consider Connexion to be a public service corporation as defined by Article 15, Section 2 of the
9 Arizona Constitution because Connexion does not engage in transmitting messages or furnishing
10 public telegraph or telephone service for a profit. Staff reasoned that Connexion is more of a private
11 carrier than a common carrier and merely provides underlying facilities to other providers operating
12 as common carriers. Thus, Staff concluded that Connexion is not required to obtain a CC&N. Staff
13 also stated that BCI's business arrangement with Connexion should have no impact on BCI's
14 application for a CC&N.

15 11. BCI's and Staff's shared position that BCI's business relationship with Connexion
16 should not serve as an impediment to BCI's obtaining a CC&N to provide facilities-based and resold
17 private line services in Arizona is reasonable and should be adopted.

18 **Provision of Services**

19 12. Regarding how services are to be provided, BCI stated that the end user for its services
20 is generally either a carrier, a Voice-over-Internet-Protocol ("VoIP") provider, a cable company, or a
21 private cable operator and that its services are provided using public rights of way, leased rights to
22 use infrastructure, or access provided to BCI by the customer on private property. BCI also stated
23 that it has placed equipment within private easements elsewhere, but does not anticipate doing so in
24 Arizona. BCI also stated that it has not yet identified the service provider that will provide services
25 to residential end-users. Further, BCI stated:

26 BCI is an intermediate carrier. As such, it provides wholesale transport
27 services to any service provider, carrier or telephone company who orders
28 the service. One type of transport service is to connect two private cable
operation (PCO) areas or developments to each other. Another example is
to connect the PCO to the public switched telephone network (PSTN). In

1 this situation, BCI may enter into a state interconnection agreement with
 2 another LEC (CLEC or ILEC), if required to handle the actual
 3 interconnection with the network (usually at the closest central office
 4 switch). This service includes 911 emergency services, number
 5 assignment, toll-free and LNP² database services, CALEA,³ and other
 6 traditional local exchange services. The actual provisioning of the local
 7 exchange services is shared by the customer service provider and the
 8 interconnecting LEC. BCI merely transports the data from one point to
 9 another: from the service provider to the POI⁴ and/or the PSTN. Almost
 10 all of this service is via fiber optic packet-switched transport (no circuit-
 11 switches), which is covered in most circumstances by a nation-wide data
 12 and VoIP carrier agreement with Level3. BCI has utilized local
 13 interconnection agreements in other states such as Alabama and Florida
 14 for legacy CLEC operations with AT&T, CenturyTel, Madison River
 15 Communications, and with Embarq. If needed, BCI and its connecting
 16 LEC will file a local interconnection agreement with the Commission for
 17 approval, as required. BCI currently has no local interconnection
 18 agreement with a LEC in Arizona; BCI anticipates utilizing its national
 19 Level3 carrier agreement.⁵

11 Performance Bond/ISDLOC

12 13. Regarding BCI's being required to obtain a performance bond/ISDLOC, BCI stated
 13 that its customers are sophisticated business entities, such as developers and service providers;
 14 perform their own determination of BCI's worthiness; and do not need to be protected by a
 15 performance bond/ISDLOC. Further, BCI stated that it does not intend to accept deposits or
 16 prepayments from its customers. BCI stated that it has in some states posted nominal letters of credit
 17 or bonds, which have never been drawn upon, and is willing to do so in Arizona, but would rather not
 18 incur the cost, which would have to be passed on to its customers.

19 14. Staff stated that because BCI will only be providing services to other carriers and will
 20 not be taking any advance payments or deposits, Staff does not believe that a performance
 21 bond/ISDLOC is necessary. However, Staff also stated that BCI should amend Section 3.11.7 of its
 22 proposed tariff to eliminate language stating that it does not require deposits or advance payments
 23 from its customers under normal circumstances, as this is inconsistent with BCI's stated intention not
 24 to collect deposits or advanced payments.

25 15. On September 10, 2008, BCI filed a response to Staff's brief, in which it stated that it

26
 27 ² "LNP" means local number portability.

³ "CALEA" means Communications Assistance to Law Enforcement Act.

⁴ "POI" means Point of Interface.

28 ⁵ BCI Brief at 4 (footnotes added).

1 agreed with Staff's filing, but desired to provide clarification on one point. Specifically, BCI stated
2 that while some of its customers may be other carriers, it expects that most of its customers will not
3 be other carriers. BCI explained that it anticipates primarily serving private cable operators/service
4 providers who provide video, Internet/data, and VoIP services within subdivisions and within resorts,
5 apartment complexes, offices buildings, and other buildings or building complexes. BCI explained
6 that it will serve such providers by providing transport service across the public right of way and/or
7 through back-hauling to the local central office for entry to the public switched telephone network.
8 BCI also provided a revised tariff page showing that it had removed paragraph 3.11.7 altogether, in
9 response to Staff's suggestion.

10 16. BCI's and Staff's shared position that, because BCI will not be collecting deposits or
11 advance payments, BCI's customers do not need to be protected by the posting of a performance
12 bond/ISDLOC is reasonable and should be adopted.

13 **ICB Pricing**

14 17. In its Brief, BCI submitted the following as proposed tariff language for ICB pricing,
15 stating that it is being used in most other states in which BCI provides service: "Due to the complex
16 and variable nature of the services it provides, many products and services are priced as ICBs, or on
17 an Individual Case Basis. The Company will work with its customers to provide the service
18 requested at a mutually agreeable rate."

19 18. On September 10, 2008, Staff filed a late-filed exhibit regarding tariff language for
20 ICB pricing. Staff recommended that the following language be used in BCI's proposed tariff to
21 accommodate its intention to provide services using ICB pricing:

22 At the option of the company, service may be offered on an Individual
23 Case Basis ("ICB") to meet the specialized needs of a customer.
24 Arrangements will be developed on an ICB in response to a special
25 request from a customer or prospective customer for a service not
generally offered under this tariff. Rates quoted in response to such a
request may be different than those specified in this tariff. ICB rates will
be offered to the customer in writing and on a nondiscriminatory basis.

26 19. On September 16, 2008, BCI filed a response to Staff's late-filed exhibit regarding
27 tariff language for ICB pricing and included with its filing a revised tariff page that includes Staff's
28 recommended language for ICB pricing.

1 20. BCI's and Staff's proposed tariff language to accommodate ICB Pricing is reasonable
2 and should be adopted.

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

4 21. BCI is a foreign limited liability company organized under the laws of Alabama and
5 was granted authority to transact business in Arizona on July 9, 2007.

6 22. BCI stated in its application that neither BCI nor any of its owners, members, or
7 managers is currently involved in any formal or informal complaint proceedings pending before any
8 state or federal regulatory commission, administrative agency, or law enforcement agency. BCI also
9 revealed that it was involved in a complaint proceeding against another company in Alabama in
10 2005, as the Complainant.

11 23. Mr. Bailes, who joined BCI as its President in approximately June 2008, testified that
12 he has not had been involved in any formal or informal complaint proceedings before any state or
13 federal regulatory commission, administrative agency, or law enforcement agency.

14 24. Mr. Bailes also testified that neither BCI nor any of its owners or managers has been
15 involved in any criminal investigations or had any judgment levied against them.

16 25. Staff contacted the Alabama and Florida Public Utilities Commissions to verify that
17 BCI is providing telecommunications services there and to inquire as to consumer complaints against
18 BCI. Staff determined that there have been no formal or informal complaints filed against BCI in
19 either Alabama or Florida. Furthermore, Staff stated that a search of the Federal Communications
20 Commission's website did not reveal any formal or informal complaint proceedings involving BCI.

21 26. Staff testified that BCI is a fit and proper entity to receive the requested CC&N.

22 **Technical Capabilities**

23 27. BCI has been authorized to provide competitive local exchange and interexchange
24 telecommunications service and is providing service in Florida, Alabama, Mississippi, Nevada,
25 Wisconsin, Virginia, and Colorado. BCI has also been authorized to provide service in Georgia,
26 Illinois, New Mexico, Tennessee, Texas, and Utah.

27 28. In all of the states in which it provides services, BCI does so through its "strategic
28 alliance" with Connexion and does not actually provide any services to end-users, only to service

1 providers. BCI only has approximately four or five customers, who are service providers.

2 29. BCI has only two employees—Mr. Hathaway, the sole owner and CEO, and Mr.
3 Bailes. Mr. Bailes testified that he has been “involved in and around the convergence of the
4 computer industry and telecommunications” for more than 30 years. Mr. Bailes previously was
5 employed by Connexion.

6 30. Through contract with Accelera, BCI obtains the services of its Executive Officer and
7 Vice President of Operations, its Network Operations Center Director, and its Customer Service
8 Director. Combined, these three individuals have more than 67 years of experience in the
9 telecommunications industry.

10 31. BCI does not intend to own its own facilities in Arizona initially, but intends to build
11 facilities as its business in Arizona grows. Initially, BCI will lease facilities from others so that it can
12 provide services directly as if it had its own facilities.

13 32. According to Staff, private line service is a direct circuit or channel specifically
14 dedicated to the use of an end-user organization for the purpose of directly connecting two or more
15 sites in a multi-site enterprise. It allows transmission of messages and data among multiple locations
16 over facilities operated and provided by the company, which fits the definition of a common carrier
17 and a public service corporation. Staff believes that the Commission has jurisdiction over the
18 services to be provided by BCI.

19 **Financial Resources**

20 33. Staff examined BCI’s unaudited financial statements for calendar year 2006, which
21 list total assets of \$5,473,146; total equity of (\$1,447,129); and net income of (\$1,246,811). BCI
22 subsequently provided unaudited financial information for calendar year 2007, which show total
23 assets of \$11,590,273; total members’ capital of \$10,815,975; and net income of (\$725,436). Staff’s
24 examination of the calendar year 2007 figures did not cause Staff to make any changes in the Staff
25 Report at hearing.

26 34. Before May 2007, BCI owned all of the assets that it used to provide VoIP, video,
27 data, and Internet service over fiber optic cable in Florida and Alabama. In May 2007, BCI sold most
28 of its hard assets to Accelera and then leased them back to enable it to continue providing the same

1 services in Florida and Alabama. The assets reflected in the 2007 figures do, however, include a 180-
2 mile fiber backbone loop in Alabama of which BCI retains ownership.

3 35. BCI is a private company, and its financing for operations comes from private funding
4 sources, such as private investors or bank financing equity.

5 **Proposed Rates and Competition**

6 36. For its ICB customers, BCI determines pricing through negotiation and based on the
7 cost of BCI doing business and a reasonable profit. BCI provides ICB priced services in the other
8 states in which it operates.

9 37. BCI will be providing service in areas where an incumbent local exchange carrier
10 (“ILEC”), various competitive local exchange carriers (“CLECs”), and interexchange carriers are
11 providing telephone service. Thus, BCI will have to compete with these carriers to obtain customers,
12 and this competitive process should result in rates that are just and reasonable.

13 38. Staff reviewed BCI’s proposed tariff rates, determined that they are similar to the
14 tariffed rates charged by BCI in other jurisdictions and to the tariffed rates of other carriers in
15 Arizona, and determined that the proposed rates are just and reasonable.

16 39. Rates for competitive services are generally not set according to rate-of-return
17 regulation. Staff determined that BCI’s fair value rate base (“FVRB”) is zero. While Staff
18 considered the FVRB in reviewing BCI’s proposed rates, Staff determined that the FVRB should not
19 be given substantial weight in its analysis.

20 40. BCI’s proposed tariff provides maximum prices, but BCI does not intend to charge the
21 maximum when it first begins providing services in Arizona.

22 41. Staff stated that most of BCI’s customers are expected to purchase data transport
23 service under tariffed rates, but that some services and products will be provided under ICB pricing
24 arrangements. Staff stated that the services and products BCI will make available under ICB pricing
25 arrangements are similar to those services and products of other carriers with ICB pricing
26 arrangements.

27 42. BCI will not be collecting deposits or advance payments from its Arizona customers.

28 43. Staff did not recommend that BCI be required to post a performance bond or ISDLOC

1 and testified that Staff does not typically recommend that a performance bond or ISDLOC be
2 required for private line CC&N holders, even facilities-based private line CC&N holders. Staff also
3 testified that it would not object to the Commission's requiring BCI to obtain a performance bond or
4 ISDLOC.

5 **Regulatory Requirements**

6 44. Commission rules require BCI to file a tariff for each competitive service that states
7 the maximum rate as well as the effective (actual) price that will be charged for the service. Under
8 Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must not be
9 below the total service long-run incremental cost of providing the service. Any change to BCI's
10 effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum
11 rate for a service in BCI's tariff must comply with A.A.C. R14-2-1110.

12 45. 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)(b) requires a new telecommunications service provider,
15 other than a basic local exchange service provider or toll service provider, that interconnects to the
16 public switched network and begins providing telecommunications service after April 26, 1996, to
17 choose to be considered either a Category 1, Category 2, or both Category 1 and 2 service provider
18 by providing an election in writing to the AUSF Administrator within 30 days of beginning to
19 provide telecommunications service in Arizona, with a copy to the Director of the Utilities Division.
20 For the selection to be effective, the Director of the Utilities Division must provide written
21 concurrence to the Administrator. The selection is irrevocable for three years.

22 **Staff's Recommendations**

23 46. Staff recommends that BCI's application for a CC&N to provide competitive
24 facilities-based and resold private line services be approved and further recommends:

- 25 a. That BCI comply with all Commission Rules, Orders, and other requirements
26 relevant to the provision of intrastate telecommunications services;
- 27 b. That BCI abide by the quality of service standards approved by the
28 Commission for Qwest in Docket No. T-01051B-93-0183;

- 1 c. That BCI be required to notify the Commission immediately upon changes to
2 BCI's name, address, or telephone number;
- 3 d. That BCI cooperate with Commission investigations, including but not limited
4 to investigations regarding customer complaints;
- 5 e. That the Commission authorize BCI to discount its rates and service charges to
6 the marginal cost of providing the services;
- 7 f. That BCI's services be classified as competitive;
- 8 g. That BCI be ordered to docket conforming tariffs for each service within its
9 CC&N within 365 days from the date of an Order in this matter or 30 days
10 before providing service, whichever comes first, and
- 11 h. That BCI's CC&N become null and void after due process if it fails to docket
12 conforming tariffs within the timeframe provided.

13 CONCLUSIONS OF LAW

- 14 1. Upon receiving a CC&N, BCI will be a public service corporation within the meaning
15 of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 16 2. The Commission has jurisdiction over BCI and the subject matter of the application.
- 17 3. A.R.S. § 40-282 allows a telecommunications company to file an application for a
18 CC&N to provide competitive telecommunications services.
- 19 4. Notice of the application was given in accordance with the law.
- 20 5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
21 it is in the public interest for BCI to provide the telecommunications services for which it has
22 requested authorization in its application.
- 23 6. BCI is a fit and proper entity to receive a CC&N authorizing it to provide facilities-
24 based and resold private line services in the State of Arizona.
- 25 7. BCI's arrangement with Connexion should not prevent BCI from obtaining a CC&N
26 to provide facilities-based and resold private line services in the State of Arizona.
- 27 8. Because BCI will not collect deposits or advance payments from its customers, BCI's
28 customers do not need to be protected by the posting of a performance bond/ISDLOC.

1 9. The telecommunications services that BCI desires to provide are competitive in
2 Arizona.

3 10. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is
4 just and reasonable and in the public interest for BCI to establish rates and charges for competitive
5 services that are not less than BCI's total service long-run incremental costs of providing the
6 competitive services approved herein.

7 11. The proposed tariff language to accommodate ICB Pricing, set forth in Findings of
8 Fact No. 18, is reasonable and should be adopted.

9 12. Staff's recommendations, as set forth in Findings of Fact No. 46, are reasonable and
10 should be adopted.

11 13. BCI's rates, as they appear in its proposed tariff pages, are just and reasonable and
12 should be approved.

13 **ORDER**

14 IT IS THEREFORE ORDERED that the application of Baldwin County Internet/DSSI
15 Service, LLC for a Certificate of Convenience and Necessity to provide facilities-based and resold
16 private line services in Arizona is hereby granted, conditioned upon compliance with Staff's
17 recommendations set forth in Findings of Fact No. 46 and the following ordering paragraphs.

18 IT IS FURTHER ORDERED that Baldwin County Internet/DSSI Service, LLC shall include
19 in its tariff the proposed tariff language to accommodate ICB Pricing that is set forth in Findings of
20 Fact No. 18.

21 IT IS FURTHER ORDERED that Baldwin County Internet/DSSI Service, LLC shall not
22 collect deposits or advance payments from its customers and shall not include in its tariff language
23 allowing it to collect deposits or advance payments from its customers.

24 ...
25 ...
26 ...
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28 ...

1 IT IS FURTHER ORDERED that if Baldwin County Internet/DSSI Service, LLC fails to
2 meet the condition outlined in Findings of Fact No. 46(g) within the timeframe therein, the Certificate
3 of Convenience and Necessity conditionally granted herein shall become null and void after due
4 process.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8
9 CHAIRMAN _____ COMMISSIONER

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2008.

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

22 SNH:db

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SERVICE LIST FOR: BALDWIN COUNTY INTERNET/DSSI SERVICE, LLC

DOCKET NO.: T-20544A-07-0456

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