

# OPEN MEETING ITEM



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**ORIGINAL**

COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



RECEIVED

MICHAEL P. KEARNS  
Interim Executive Director

ARIZONA CORPORATION COMMISSION 1:51  
2009 FEB 11

DATE: FEBRUARY 9, 2009

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKET NO: T-04119A-07-0574

TO ALL PARTIES:

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

MGEN SERVICES CORP.  
(CANCEL 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 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:

FEBRUARY 18, 2009

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 Open Meeting to be held on:

MARCH 3, 2009 AND MARCH 4, 2009

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**

FEB 09 2009

DOCKETED BY

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION  
9 OF MGEN SERVICES CORP. FOR THE  
10 CANCELLATION OF ITS CERTIFICATE  
11 OF CONVENIENCE AND NECESSITY.

DOCKET NO. T-04119A-07-0574

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

9 ORDER

10 Open Meeting  
11 March 3 and 4, 2009  
12 Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 FINDINGS OF FACT

16 1. MGEN Services Corp. ("MGEN" or "Company") has a Certificate of Convenience  
17 and Necessity ("Certificate") to provide competitive resold interexchange telecommunications  
18 services within Arizona pursuant to Decision No. 66449 (October 24, 2003).

19 2. On October 5, 2007, the Company filed with the Commission an application for  
20 cancellation of its Certificate ("Application"). The Company stated that it no longer intends to  
21 provide service in Arizona and currently has no customers in Arizona. It also noted that it has not  
22 collected deposits and/or advance payments.

23 3. On December 12, 2008, the Commission's Utilities Division Staff ("Staff") filed its  
24 Staff Report recommending cancellation of the Company's Certificate.

25 4. Staff reviewed the Company's 2003 and 2004 Annual Reports and found that the  
26 Company provided service and received revenues from Arizona customers. Staff contacted Ingrid  
27 Galyan, Assistant Secretary of MGEN to verify the information.  
28

1           5.       Ms. Galyan related to Staff that MGEN provided service only to its parent company,  
2 Fidelity National Financial. MGEN ultimately transferred the provision of long distance services for  
3 the parent company's individual offices to AT&T, with the last office being transferred in July 2005.

4           6.       Staff concluded there would be no economic risk in cancelling the Company's  
5 Certificate because the Company has no Arizona customers and the Company did not collect  
6 advances, deposits and/or prepayments.

7           7.       The Commission's Consumer Services Section of the Commission's Utilities Division  
8 reported that there were no customer complaints, inquiries or opinions against the Company, and that  
9 the Company is in good standing with the Commission's Corporations Division.

10          8.       Staff stated that the Company did not comply with the terms of A.A.C. R-14-2-1107,  
11 requiring the Company to provide notice to customers of its discontinuation of service, a plan for the  
12 refund of deposits, a list of alternate providers, and to publish notice of the application.

13          9.       Staff recommends that, because the Company provided service only to its parent  
14 company and did not collect advances, deposits and/or prepayments, compliance with  
15 A.A.C. R-14-2-1107 should not be required.

16          10.      As discussed in Decision No. 67404 (November 2, 2004), it would render  
17 A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to  
18 exempt a Company from the requirements of the rule because it has no customers due to its  
19 discontinuation of service. However, as discussed in that Decision, the intent of the rule is to ensure  
20 that existing customers have advance notice of a telecommunications provider's pending plan to  
21 discontinue service such that they will be afforded an opportunity to procure service through an  
22 alternative provider prior to such discontinuance.

23          11.      The Company has no Arizona customers and did not collect any advances, deposits  
24 and/or prepayments and only provided service to its parent. Under these unique circumstances, the  
25 requirements of A.A.C. R-14-2-1107 should be waived.

26          12.      Staff also recommended that if the Commission approves cancellation of the  
27 Company's Certificate, the Company's Arizona CC Tariff No.1 should also be cancelled.

28          13.      Given the foregoing, Staff's recommendations are reasonable.

**CONCLUSIONS OF LAW**

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

4 2. The Commission has jurisdiction over the Company and the subject matter of the  
5 Application.

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

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

9 5. The requirements of A.A.C. R14-2-1107 should be waived based upon the unique  
10 circumstances of this case.

11 6. Staff's recommendation is reasonable and should be adopted.

**ORDER**

12  
13 IT IS THEREFORE ORDERED that the application of MGEN Services Corp. for the  
14 cancellation of its Certificate of Convenience and Necessity to provide competitive resold  
15 interexchange telecommunications services in Arizona shall be, and is hereby, approved, and the  
16 Certificate of Convenience and Necessity is cancelled.

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IT IS FURTHER ORDERED that MGEN Services Corp.'s Arizona CC Tariff No. 1 is 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, MICHAEL P. KEARNS, Interim 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: MGEN SERVICES CORP.

2 DOCKET NO.: T-04119A-07-0574

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