

OPEN MEETING ITEM



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



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: APRIL 9, 2009
DOCKET NOS: T-20579A-08-0084

Arizona Corporation Commission

DOCKETED

APR - 9 2009

TO ALL PARTIES:

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

CURATEL, LLC
(CC&N RESELLER/FACILITIES-BASED)

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:

APRIL 20, 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:

APRIL 28, 2009 and APRIL 29, 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.

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AZ CORP COMMISSION
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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

7 IN THE MATTER OF THE APPLICATION
8 OF CURATEL, LLC, FOR APPROVAL OF
9 A CERTIFICATE OF CONVENIENCE AND
10 NECESSITY TO PROVIDE COMPETITIVE
11 RESOLD LONG DISTANCE, RESOLD LOCAL
12 EXCHANGE, FACILITIES-BASED LONG
13 DISTANCE, AND FACILITIES-BASED LOCAL
14 EXCHANGE TELECOMMUNICATIONS
15 SERVICES IN ARIZONA.

DOCKET NO. T-20579A-08-0084

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: February 12, 2009
13 PLACE OF HEARING: Phoenix, Arizona
14 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
15 APPEARANCES: Mr. Michael T. Hallum, Lewis and Roca, LLP, on
16 behalf of Curatel, LLC; and
17 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

19 **BY THE COMMISSION:**

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

22 **FINDINGS OF FACT**

23 1. On February 12, 2008, Curatel, LLC (“Curatel” or “Company”), filed with the
24 Arizona Corporation Commission (“Commission”) an application for a Certificate of Convenience
25 and Necessity (“CC&N” or “Certificate”) to provide competitive resold long distance, resold local
26 exchange, facilities-based long distance, and facilities-based local exchange telecommunications
27 services in Arizona (“Application”).

28 2. On June 17, 2008, the Commission’s Utilities Division (“Staff”) filed its First Set of

1 Data Requests (“Data Requests”) in this matter.

2 3. On August 21, 2008, Curatel filed its response to the Data Requests.

3 4. On December 8, 2008, Staff filed its Staff Report recommending approval of the
4 Application.

5 5. On December 17, 2008, a Procedural Order was issued setting the hearing in the
6 matter for February 12, 2009.

7 6. On January 21, 2009, Curatel filed its Affidavit of Publication.

8 7. On February 12, 2009, a full public hearing was held before a duly authorized
9 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and
10 Staff appeared through counsel and presented evidence and testimony. No members of the public
11 appeared to give public comments in this matter. At the conclusion of the hearing, the matter was
12 taken under advisement pending submission of a Recommended Opinion and Order of the
13 Commission.

14 8. Curatel is a foreign limited liability company organized under the laws of the State of
15 Delaware, headquartered in Los Angeles, California, and authorized to transact business in Arizona.

16 9. The Company is a wholly-owned subsidiary of Adir International, LLC (“Adir”),
17 which operates the La Curacao retail department stores.

18 10. Staff recommends approval of Curatel’s Application for a CC&N and its petition for a
19 determination that its proposed telecommunications services should be classified as competitive.

20 11. Staff further recommends that:

21 a. Curatel comply with all Commission Rules, Orders, and other requirements
22 relevant to the provision of intrastate telecommunications services;

23 b. Curatel abide by the quality service standards that were approved by the
24 Commission for Qwest in Docket No. T-01051B-93-0183;

25 c. Curatel be prohibited from barring access to alternative local exchange service
26 providers who wish to serve areas where the Company is the only provider of
27 local exchange service facilities;

28 d. Curatel be required to notify the Commission immediately upon changes to
Curatel’s name, address or telephone number;

e. Curatel cooperate with Commission investigations including, but not limited to
customer complaints;

- 1 f. Although Staff considered the fair value rate base ("FVRB") information
2 submitted by Curatel, the fair value information provided should not be given
3 substantial weight;
- 4 g. Curatel be required to offer Caller ID with the capability to toggle between
5 blocking and unblocking the transmission of the telephone number at no
6 charge;
- 7 h. Curatel be required to offer Last Call Return service that will not return calls to
8 telephone numbers that have the privacy indicator activated;
- 9 i. Curatel be authorized to discount its rates and service charges to the marginal
10 cost of providing the services;
- 11 j. Curatel be required to submit local exchange and interexchange tariffs
12 indicating that it may collect advances, deposits and/or prepayments; and
- 13 k. Curatel's rates should be classified as competitive.

14 12. Staff further recommends that Curatel comply with the following conditions within the
15 timeframes outlined below or Curatel's CC&N should be considered null and void, after due process.

- 16 a. Staff recommends that Curatel docket conforming tariffs for each service
17 within its CC&N within 365 days from the date of an Order in this matter or 30
18 days prior to providing service, whichever comes first. The tariffs submitted to
19 the Commission should coincide with the Application.
- 20 b. Staff recommends that Curatel should procure either a performance bond or an
21 irrevocable sight draft letter of credit equal to \$235,000. The minimum
22 performance bond or irrevocable sight draft letter of credit amount of \$235,000
23 should be increased if at any time it would insufficient to cover advances,
24 deposits, and/or prepayments collected from the Company's customers. The
25 performance bond or irrevocable sight draft letter of credit should be increased
26 in increments of \$117,500. This increase should occur when the total amount
27 of the advances, deposits, and prepayments is within \$23,500 of the
28 performance bond or irrevocable sight draft letter of credit amount.
- c. Staff recommends that Curatel should docket proof of the original performance
bond or irrevocable sight draft letter of credit with the Commission's Business
Office and copies of the performance bond or irrevocable sight draft letter of
credit with Docket Control, as a compliance item in this docket, within 30 days
of the effective date of a Decision in this matter. The performance bond or
irrevocable sight draft letter of credit must remain in effect until further order
of the Commission.

The Commission may draw on the performance bond or irrevocable sight draft
letter of credit on behalf of, and for the sole benefit of, the Company's
customers if the Commission finds, in its discretion, that the Company is in
default of its obligations arising from its Certificate. The Commission may use
the performance bond or irrevocable sight draft letter of credit funds as
appropriate to protect the Company's customers and the public interest and
take any and all actions the Commission deems necessary, in its discretion,
including, but not limited to, returning prepayments or deposits collected from
the Company's customers.

- 1 d. Staff recommends that Curatel abide by the Commission-adopted rules that
2 address Universal Service in Arizona, Arizona Administrative Code
3 (“A.A.C.”) R14-2-1204(B), requiring Curatel to make the necessary monthly
4 payments into the Arizona Universal Service Fund (“AUSF”).

4 **Technical Capabilities**

5 13. Curatel currently provides competitive facilities-based and resold telecommunications
6 services in California and is authorized by that state to provide both business and residential service,
7 although it currently only serves residential customers. The Company anticipates beginning service
8 in Arizona as soon as practicable.

9 14. According to the Company, Curatel will conduct business within Adir’s La Curacao
10 stores. Curatel notes that there is currently one La Curacao Department Store in Phoenix and Adir
11 plans to build two other stores in the Phoenix area.

12 15. Curatel ultimately intends to have seven employees, a supervisor, and a district
13 supervisor in each of the Arizona stores.

14 16. Staff noted that the six key personnel for Curatel have a combined total of over 47
15 years experience in the telecommunications industry.

16 17. The Company intends to resell local exchange and long distance services in Arizona
17 from Qwest Communications (“Qwest”). Curatel also plans to use various interexchange carriers to
18 transport long distance service, including Qwest and Global Crossing, as well as interconnecting with
19 various local exchange carriers outside of Arizona, including AT&T and Verizon.

20 18. Customer service will be provided in the Arizona La Curacao stores, as well as
21 through a toll-free customer service number.

22 19. Given the foregoing, Staff concludes that Curatel has the technical capabilities to
23 provide the telecommunications services it seeks to provide in Arizona.

24 **Financial Capabilities**

25 20. Curatel provided unaudited financial statements for the twelve months ending January
26 31, 2008. This financial statement lists total assets of \$8,828,018, total equity of \$2,702,700, and a
27 net income of \$353,547. The Company also provided financial statements for the twelve months
28 ending January 31, 2007, which indicate total assets of \$5,151,930, total equity of \$2,349,153, and a

1 net income of \$1,349,877.

2 21. According to the Company, it will not rely on Adir's financial resources for its
3 operations.

4 22. Curatel's proposed tariff states that the Company may collect deposits or advances
5 from its customers. As such, Staff recommends that the Company be required to acquire a
6 performance bond or an irrevocable sight draft letter of credit, as described in Finding of Fact No. 12,
7 above, in order to protect Arizona customers.

8 23. Pursuant to Arizona Administrative Code ("A.A.C.") R-14-2-1107, if Curatel desires
9 to discontinue service in Arizona, it must file an application with the Commission and notify its
10 customers and the Commission sixty days prior to filing the application to discontinue service.

11 **Rates and Charges**

12 24. Pursuant to A.A.C. R-14-2-1109, Curatel may charge rates for service that are not less
13 than its total service long-run incremental costs of providing service.

14 25. Information provided to Staff projected Curatel's FRVB to be \$30,000 within twelve
15 months of beginning its operations.

16 26. Given the competitive markets in which the Company will operate, Curatel's FVRB
17 may not be useful as the sole determinant of rates.

18 27. Curatel's proposed rates are for competitive services. In general, rates for
19 competitive services are not set according to the rate of return regulation.

20 28. Based on Staff's review, Curatel's proposed rates are comparable with other
21 competitive local carriers, local incumbent carriers and major long distance carriers operating in
22 Arizona.

23 29. FVRB should not be given substantial weight in this analysis.

24 30. Curatel's proposed rates are just and reasonable and should be approved.

25 **Local Exchange Carrier Specific Issues**

26 31. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Curatel will make
27 number portability available to facilitate the ability of customers to switch between authorized local
28 carriers within a given wire center without changing their telephone number and without impairment

1 to quality, functionality, reliability or convenience of use.

2 32. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
3 interconnect into the public switched network shall provide funding for the AUSF.

4 33. Curatel will contribute to the AUSF as required by the A.A.C., and make the
5 necessary monthly payments as required under A.A.C. R14-2-1204(B).

6 34. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
7 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
8 service. In this matter, Curatel does not have a similar history of service quality problems, and
9 therefore the penalties in that decision should not apply.

10 35. In the areas where Curatel is the only local exchange service provider, Curatel is
11 prohibited from barring access to alternative local exchange service providers who wish to serve the
12 area.

13 36. Curatel will provide all customers with 911 and E911 service where available, or will
14 coordinate with ILECs, and emergency service providers to facilitate the service.

15 37. Pursuant to prior Commission Decisions, Curatel may offer customer local area
16 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
17 unblock each individual call at no additional cost.

18 38. Curatel must also offer Last Call Return service, which will not allow the return of
19 calls to the telephone numbers that have the privacy indicator activated.

20 **Complaint Information**

21 39. Curatel has not had an application for service denied, or revoked in any state, and
22 there have been no formal complaint proceedings and no civil or criminal proceedings involving
23 Curatel.

24 40. Staff contacted the California Public Utilities Commission to inquire about any
25 customer complaints and found that no customer complaints have been filed against Curatel.

26 41. None of Curatel's officers, directors or partners have been involved in any civil or
27 criminal investigations, or formal or informal complaints, and none of its officers, directors or
28 partners have been convicted of any criminal acts in the past ten years.

1 **Competitive Services Analysis**

2 42. Curatel has requested that its telecommunications services in Arizona be classified as
3 competitive. Curatel's proposed services should be classified as competitive because there are
4 alternatives to the Company's proposed services; ILECs and large facilities-based interexchange
5 carriers hold a virtual monopoly in local exchange markets and in the interLATA interexchange
6 market; Curatel will have to convince customers to purchase its services; Curatel has no ability to
7 adversely affect the local exchange or interexchange market as several CLECs and ILECs provide
8 local exchange and interexchange services; and Curatel therefore will have no market power in those
9 local exchange markets or interexchange markets where alternative providers to telecommunications
10 services exists.

11 43. Staff's recommendations are reasonable and should be adopted.

12 **CONCLUSIONS OF LAW**

13 1. Curatel, LLC, is a public service corporation within the meaning of Article XV of the
14 Arizona Constitution and A.R.S. §40-281 and 40-282.

15 2. The Commission has jurisdiction over Curatel, LLC, and the subject matter of the
16 Application.

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

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

20 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
21 Statutes, it is in the public interest for Curatel, LLC, to provide the telecommunications services set
22 forth in its Application.

23 6. Curatel, LLC, is a fit and proper entity to receive a CC&N authorizing it to provide
24 resold long distance, resold local exchange, facilities-based long distance, and facilities-based local
25 exchange telecommunications services in Arizona, subject to Staff's recommendations set forth
26 herein.

27 7. The telecommunications services that Curatel, LLC, intends to provide are
28

1 competitive within Arizona.

2 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
3 it is just and reasonable and in the public interest for Curatel, LLC, to establish rates and charges that
4 are not less than the Curatel, LLC's total service long-run incremental costs of providing the
5 competitive services approved herein.

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

7 10. Curatel, LLC's, rates, as they appear in its proposed tariffs, are just and reasonable and
8 should be approved.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the Application of Curatel, LLC, for a Certificate of
11 Convenience and Necessity for authority to provide competitive resold long distance, resold local
12 exchange, facilities-based long distance, and facilities-based local exchange telecommunications
13 services in Arizona is hereby granted subject to the conditions in Findings of Facts Nos. 11 and 12.

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IT IS FURTHER ORDERED that if Curatel, LLC, fails to comply with the timeframes stated in Findings of Fact No. 12, herein, the Certificate of Convenience and Necessity granted herein shall be considered 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, 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: CURATEL, LLC
2 DOCKET NO.: T-20579A-08-0084

3
4 Michael T. Hallum, Esq.
LEWIS AND ROCA, LLP
40 North Central Avenue
5 Phoenix, Arizona 85004

6 Daniel Margolis
CURATEL, LLC
7 1605 West Olympic Blvd., Suite 800
Los Angeles, California 90015

8 Janice Alward, Chief Counsel
Legal Division
9 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
10 Phoenix, AZ 85007

11 Ernest G. Johnson, Director
Utilities Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, AZ 85007

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