

OPEN MEETING ITEM

ORIGINAL

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



0000095349

MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

APR 13 2009

DATE: APRIL 13, 2009
DOCKET NOS: T-20398A-08-0463
TO ALL PARTIES:

DOCKETED BY

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

NAVIGATOR TELECOMMUNICATIONS, LLC
(CANCELLATION OF CC&N
GRANTED IN DECISION NO. 69884)

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 22, 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
DOCKET CONTROL

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 NAVIGATOR TELECOMMUNICATIONS,
10 LLC., FOR APPROVAL OF A REQUEST FOR
11 CHANGE IN BOND REQUIREMENT AND
12 FOR AN EXTENSION OF TIME TO COMPLY
13 WITH DECISION NUMBER 69884.

DOCKET NO. T-20398A-08-0463

DECISION NO. _____

ORDER CANCELLING CC&N
GRANTED IN DECISION NO. 69884

14 Open Meeting
15 April 28 and 29, 2009
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 * * * * *

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

21 **FINDINGS OF FACT**

22 1. On August 28, 2007, the Arizona Corporation Commission ("Commission") issued
23 Decision No. 69884, granting Navigator Telecommunications, LLC ("Navigator") a CC&N to
24 provide competitive resold local exchange, facilities-based local exchange, and access
25 telecommunications services in Arizona. The Decision ordered, among other things, that Navigator
26 obtain and docket proof of a performance bond or irrevocable sight draft letter of credit in the amount
27 of \$125,000 within 365 days of the effective date of the Decision or 30 days prior to the provision of
28 service, whichever occurred first.

2. On September 3, 2008, Navigator filed in the above-captioned docket, a Request for
Change in Bond Requirements and for an Extension of Time ("Request"). According to the Request,

1 Navigator has not procured a performance bond or letter of credit and has not yet begun to provide
2 local exchange and access services in Arizona. The Request also states that subsequent to the
3 issuance of Decision No. 69884, Navigator entered into an agreement with Access Integrated
4 Networks, Inc., dba Birch Communications ("Birch") whereby Navigator transferred, in 23 States, its
5 existing residential and business local and long distance customer lines to Birch. The Request further
6 states that as a result of the transaction with Birch, Navigator is restructuring its business in those
7 states, to focus on expanding its market in the customer owned pay telephone ("COPT") area.
8 According to Navigator, it has changed its business plans to focus on serving COPT and payphone
9 service providers. The Request states that due to the changes in its business plans, Navigator is
10 seeking Commission approval to reduce the amount of the performance bond or irrevocable sight
11 draft letter of credit set forth in Decision No. 69884 because Navigator plans to only provide COPT
12 services in Arizona.

13 3. On December 30, 2008, Navigator filed a second letter seeking to withdraw its
14 Request filed in this docket and to have it filed in the original docket where Decision No. 69884
15 (Docket No. T-20398A-06-0346) was issued. The letter clarifies that Navigator is requesting
16 cancellation of only the facilities-based local exchange portion of the CC&N granted in Decision No.
17 69884 and not the resold local exchange services and access telecommunications services portion of
18 the CC&N. The letter further reiterated that no customers will be affected by cancellation of the
19 facilities-based local exchange services because Navigator had never commenced local services in
20 Arizona. Further, Navigator states that it currently has no plans to deploy facilities in Arizona, except
21 on a resold basis.

22 4. On January 30, 2009, the Commission's Utilities Division ("Staff") docketed a
23 Memorandum¹ in response to Navigator's application. Staff's Memorandum states Staff spoke to
24 counsel for Navigator, via telephone, to discuss Navigator's request for an extension of time to file its
25 performance bond or irrevocable sight draft letter of credit and cancellation of the facilities-based
26 local services portion of the CC&N granted in Decision No. 69884. Staff expressed concerns that

27 _____
28 ¹ Staff docketed the same Memorandum in both the T-20398A-08-0463 and T-20398A-06-0346 dockets.

1 Navigator's request for an extension of time to file its performance bond or irrevocable sight draft
2 letter of credit did not state a specific length of time. Staff reasoned that because the extension of
3 time to file the performance bond or irrevocable sight draft letter of credit hinged on Commission
4 deciding whether to grant Navigator's request to cancel a portion of its CC&N, the open ended
5 extension of time was appropriate, contingent on the Commission resolving the CC&N cancellation
6 issue. Staff further noted that Decision No. 69884 required Navigator to file confirming tariffs for its
7 proposed services within 365 days of the Decision and that Navigator has failed to do so. According
8 to counsel for Navigator, the extension of time was intended to include a request to extend time for
9 Navigator to file its tariff. Based on Navigator's verbal request, Staff recommends that Navigator be
10 given an extension of time to file its performance bond contingent on the Commission resolving the
11 company's request to cancel a portion of its CC&N. Staff further recommends that Navigator be
12 required to file its tariff by March 31, 2009, and that Navigator be granted no further extensions of
13 time absent good cause.

14 5. On March 9, 2009, Navigator docketed a letter in both this docket and Docket No.
15 T-20398A-06-0346 seeking to withdraw its request to reduce the bond amount, the extension of time
16 to file its performance bond or irrevocable sight draft letter of credit and tariff and requesting that this
17 docket be closed. Navigator's letter further requests cancellation of its CC&N in its entirety.
18 Navigator's letter states that because Navigator has never initiated local services in Arizona, no
19 customers exist and no customers will be affected by its voluntary cancellation. Further, Navigator's
20 letter states Commission Decision No. 68928 (August 29, 2006) granted Navigator a CC&N to
21 provide resold long distance services and that Navigator's current request is not intended to cancel or
22 relinquish the CC&N granted in Decision No. 68928.

23 6. On March 12, 2009, Staff docketed a second Memorandum² recommending that the
24 Commission approve Navigator's application to withdraw its request for an extension of time, cancel
25 the CC&N granted in Decision No. 69884, and that the notice requirements under Arizona
26 Administrative Code R14-2-1107 be waived since Navigator has never initiated local
27

28 ² Staff docketed the Memorandum in Docket Nos. T-20398A-06-0346 and T-20398A-08-0463.

1 telecommunications services in Arizona and no customers will be affected by cancellation of the
2 CC&N.

3 7. Staff's recommendations are reasonable and should be adopted and this docket should
4 be closed.

5 **CONCLUSIONS OF LAW**

6 1. Navigator is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§40-281 and 40-282.

8 2. The Commission has jurisdiction over Navigator and the subject matter in this case.

9 3. Staff's recommendations to cancel the CC&N granted in Commission Decision No.
10 69884 and to waive the notice requirements under A.A.C. R14-2-1107 are reasonable and should be
11 adopted.

12 **ORDER**

13 IT IS THEREFORE ORDERED that Navigator Telecommunications, LLC's application to
14 withdraw its request for an extension of time to file its performance bond or irrevocable sight draft
15 letter of credit in the amount of \$125,000 and its associated tariffs, as set forth in Commission
16 Decision No. 69884 (August 28, 2007), is hereby granted.

17 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to
18 Navigator Telecommunications, LLC in Commission Decision No. 69884 (August 28, 2007), to
19 provide resold local exchange, facilities-based local exchange and access telecommunications
20 services in Arizona, is hereby cancelled.

21 IT IS FURTHER ORDERED that the notice requirements under Arizona Administrative
22 Code R14-2-1107 are hereby waived.

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IT IS FURTHER ORDERED that Docket No. T-20398A-08-0463 shall be administratively closed.

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: NAVIGATOR TELECOMMUNICATIONS, LLC

2 DOCKET NO. T-20398A-08-0463

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4 NAVIGATOR TELECOMMUNICATIONS, LLC
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