

ORIGINAL

OPEN MEETING ITEM

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



0000099131

MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

DATE: JUNE 9, 2009

DOCKET NOS: T-03243A-07-0666 and T-03602A-07-0666

JUN - 9 2009

TO ALL PARTIES:

DOCKETED BY

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

PRIMUS TELECOMMUNICATIONS, INC. and
LEAST COST ROUTING, INC.
(TRANSFER ASSET/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:

JUNE 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:

JUNE 23, 2009 and JUNE 24, 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

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

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

9 IN THE MATTER OF PRIMUS
10 TELECOMMUNICATIONS, INC.'S
11 NOTIFICATION OF *PRO FORMA* TRANSFER
12 OF CONTROL FOR PRIMUS
13 TELECOMMUNICATIONS, INC., AND LEAST
14 COST ROUTING, INC., AND CANCELLATION
15 OF THE CERTIFICATE OF CONVENIENCE
16 AND NECESSITY.

DOCKET NO. T-03243A-07-0666
DOCKET NO. T-03602A-07-0666

DECISION NO. _____

ORDER

11 Open Meeting
12 June 23 and 24, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 * * * * *

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

18 **FINDINGS OF FACT**

19
20 1. On November 29, 2007, Primus Telecommunications, Inc. ("PTI"), and Least Cost
21 Routing, Inc. ("LCR" and together with PTI, the "Companies"), filed a notification of the transfer of
22 assets from LCR to PTI and an application for the Cancellation of LCR's Certificate of Convenience
23 and Necessity ("CC&N").

24 2. On January 28, 2008, the Companies responded to the Commission's Utilities Division
25 Staff's ("Staff") First Set of Data Requests. Attached to their responses as Exhibit "A" was the
26 Companies' Affidavit of Publication certifying that notice of the Application was published in the
27 *Arizona Republic* on January 4, 2008.
28

1 3. On February 11, 2009, Staff filed its Staff Report recommending approval of the
2 Application, subject to certain terms and conditions.

3 4. PTI is a Delaware corporation with its principal offices in Virginia and has authority to
4 conduct business in Arizona. PTI is a wholly-owned subsidiary of Primus Telecommunications
5 Holdings, Inc. ("PTHI"), which, in turn, is a wholly-owned subsidiary of Primus Telecommunications
6 Group, Inc. ("PTGI"). Neither PTHI nor PTGI hold any regulatory license from any regulatory
7 commission.
8

9 5. PTI is authorized to provide interexchange telecommunications services in Arizona
10 pursuant to Decision No. 63529 (March 30, 2001), and is also authorized to provide similar services
11 throughout the United States and the District of Columbia. PTI is also authorized by the Federal
12 Communications Commission ("FCC") to provide interstate and international services as a non-
13 dominant carrier.
14

15 6. LCR is a Florida corporation with its principal offices in Virginia and has authority to
16 conduct business in Arizona. LCR is a wholly-owned subsidiary of TresCom International, Inc.
17 ("TCI"), which, in turn, is a wholly-owned subsidiary of PTHI.

18 7. LCR is authorized to provide interexchange telecommunications services in Arizona
19 pursuant to Decision No. 64043 (September 18, 2001), and is authorized to provide similar services
20 in numerous other states. LCR is also authorized by the FCC to provide interstate and international
21 services as a non-dominant carrier.
22

23 **Transfer of Assets**

24 8. Under A.R.S. § 40-285(A), a public service corporation must obtain Commission
25 approval before transferring its assets, including its customer base.

26 9. In the Application, the Companies first seek to transfer the assets and customers of
27 LCR to PTI. Upon transfer, PTHI will remain the corporate parent and it will have only one
28

1 subsidiary operating in Arizona: PTI. Attached to the Application as Exhibit "A" are a pre-
2 consolidation company chart and a proposed post-consolidation company chart. The proposed
3 consolidation is not expected to result in any loss or impairment of services to the Companies'
4 customers.

5 10. The Companies assert that the proposed internal consolidation will improve their
6 operational and cost efficiencies. The reorganization will allow the Companies' operations to be
7 managed more efficiently, placing the Companies in a better position to offer more cost-efficient
8 services, and promoting competition in the Arizona telecommunications market.

9 11. The Companies assert that LCR's customers will be subject to the same rates, terms
10 and conditions as they were prior to the reorganization.

11 12. Given the foregoing, we find that the transfer of assets from LCR to PTI should be
12 approved.

13
14
15 **Affiliated Interest Rules**

16 13. Staff determined that PTI and LCR each had less than \$1 million in jurisdictional
17 revenues in 2006. Therefore, Staff concludes that Arizona's Affiliated Interest Rules, Arizona
18 Administrative Code ("A.A.C.") R14-2-801 through R14-2-806, which require only utilities with
19 greater than \$1 million in jurisdictional revenues to obtain Commission approval prior to a
20 reorganization transaction, do not apply in this matter.

21 **CC&N Cancellation**

22 14. Pursuant to A.A.C. R14-2-1107, a telecommunications company intending to
23 discontinue service in Arizona must file with the Commission an application for authorization to do
24 so.
25

26 15. In their Application, the Companies provided a copy of a sample Customer Notice
27 describing the merger and assuring LCR's customers that they will continue to receive the same
28

1 telecommunications services they are currently receiving in accordance with the rates, terms and
2 conditions of their existing contracts or under the effective tariffs, and advising them of their service
3 alternatives. PTI also provided Staff with a copy of the actual notice sent to customers on November
4 21, 2007.

5 16. Based on information provided by the Companies, Staff found that 16 end-users will
6 be impacted by the proposed reorganization.

7 17. In accordance with A.A.C. R14-2-1107, the Companies published legal notice of the
8 Application in the January 4, 2008, *Arizona Republic*, and on January 28, 2008, the Companies filed
9 an Affidavit of Publication with the Commission.
10

11 **Slamming and Cramming**

12 18. Pursuant to A.A.C. R14-2-1901 through R14-2-1913, and R14-2-2001 through R14-2-
13 2007 ("Slamming and Cramming Rules"), a company must notify its customers of changes of
14 telecommunications carriers prior to such transfer, and advise its customers regarding any changes in
15 terms of service. As noted above, the Companies provided notice to their customers containing the
16 required information.
17

18 19. In their Customer Notice, the Companies also stated, "you should not be charged any
19 carrier-change charges levied by your local telephone company...." In response to a Data Request,
20 PTI noted that, "PTI acknowledges its responsibility to pay any carrier-change charges assessed as a
21 result of the proposed transfer, including a transfer to another carrier. However, as stated in the
22 [Application], PTI does not expect customers to be charged any carrier-change charges."
23

24 20. Staff recommends that PTI should not charge LCR customers a carrier-change charge
25 to have their presubscribed carrier selection changed from LCR to PTI.

26 21. Additionally, Staff recommends that PTI reimburse customers for any carrier-change
27 charges levied for moving to an interexchange provider other than PTI.
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ORDER

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IT IS THEREFORE ORDERED that the Application of Primus Telecommunications, Inc., and Least Cost Routing, Inc., for authorization to transfer assets and cancellation of Least Cost Routing, Inc.'s Certificate of Convenience and Necessity is granted, subject to certain conditions stated herein.

IT IS FURTHER ORDERED that Primus Telecommunications, Inc., shall file with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision, a copy of all information sent to Least Cost Routing, Inc.'s, existing customers of record and indicate the number of customers to whom such information was provided.

IT IS FURTHER ORDERED that Primus Telecommunications, Inc., shall insure that no Least Cost Routing, Inc. customers are charged a carrier-change charge.

IT IS FURTHER ORDERED that, if any of Least Cost Routing, Inc.'s, customers already have been levied a carrier-change charge for switching to an interexchange provider other than Primus Telecommunications, Inc., Primus Telecommunications, Inc., shall reimburse such customer for such charge within 45 days of the effective date of this Decision.

IT IS FURTHER ORDERED that Least Cost Routing, Inc.'s, Certificate of Convenience and Necessity is hereby cancelled.

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IT IS FURTHER ORDERED that Least Cost Routing, Inc.'s, tariff is hereby 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:

PRIMUS TELECOMMUNICATIONS, INC. AND
LEAST COST ROUTING, INC.

2

3 DOCKET NOS.:

T-03243A-07-0666 AND T-03602A-07-0666

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