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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 06 2009

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

DOCKETED BY  
*nr*

IN THE MATTER OF THE APPLICATION  
OF EMC TELECOM CORPORATION FOR  
A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RESOLD LONG DISTANCE AND RESOLD  
LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20615A-08-0429

DECISION NO. 71221

ORDER

Open Meeting  
July 28 and 29, 2009  
Phoenix, Arizona

BY THE COMMISSION:

\* \* \* \* \*

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

FINDINGS OF FACT

1. On August 15, 2008, EMC Telecom Corporation ("EMC" or "Company"), filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold long distance, resold local exchange, and private line data telecommunications services within a service area encompassing the entire State of Arizona ("Application").
2. On September 18, 2008, EMC filed updated tariff pages.
3. On October 14, 2008, EMC filed its responses to the Commission's Utilities Division Staff ("Staff") First Set of Data Requests.
4. On January 16, 2009, Staff filed its Staff Report recommending approval of EMC's Application.
5. On April 8, 2009, a Procedural Order was filed directing EMC to provide certain information regarding its intended private line data services, as well an Affidavit of Publication

1 indicating that EMC had published legal notice of the Application. The Procedural Order also  
2 directed Staff to file an Amended Staff Report reflecting EMC's responsive information.

3 6. On June 5, 2009, Staff filed its Amended Staff Report.

4 7. Attached to the Amended Staff Report is the Affidavit of Publication indicating that  
5 the Company published Notice of the Application in *The Arizona Business Gazette* on September 25,  
6 2008.

7 8. Staff also indicated that on April 10, 2009, EMC related to Staff that the Company  
8 wished to withdraw that portion of its Application regarding private line data service, seeking  
9 authority only to provide resold long distance and resold local exchange telecommunications services  
10 in Arizona.

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

12 9. EMC is a Nevada "S" corporation, granted authority to do business in Arizona as a  
13 foreign corporation on February 11, 2008.

14 10. EMC is in good standing with the Commission's Corporations Division.

15 11. EMC does not currently hold a CC&N to provide telecommunications services in  
16 Arizona and is not providing telecommunications services in Arizona.

17 12. EMC has indicated that neither EMC nor any of its officers, directors, partners, or  
18 managers have been or currently are involved in any civil or criminal investigations, have had  
19 judgments entered in any civil or criminal matter or levied by any administrative or regulatory  
20 agency, or have been convicted of any criminal acts within the past 10 years.

21 13. EMC has indicated that neither EMC nor any of its officers, directors, partners, or  
22 managers have been or currently are involved in any formal or informal complaint proceedings  
23 pending before any state or federal regulatory commission, administrative agency, or law  
24 enforcement agency.

25 14. EMC's Application indicates that it currently has a pending application to provide  
26 telecommunications services in California.

27 15. Finally, Staff notes that the Utilities Division's Consumer Services Section reported  
28 no complaints, inquiries, or opinions filed against it within Arizona.

1 **Technical Capabilities**

2 16. EMC intends to offer resold telecommunications services of AT&T, Verizon, Qwest,  
3 and Global Crossing to subscribers in Arizona.

4 17. EMC's four key personnel have a combined total 30 years of telecommunications  
5 experience.

6 18. Based on its findings, Staff has determined that EMC has sufficient technical  
7 capabilities to provide resold long distance and resold local exchange telecommunications services in  
8 Arizona.

9 **Financial Resources**

10 19. EMC provided Staff with financial statements for the six-month period ending June  
11 28, 2008. According to the Staff Report, EMC's financial statement lists assets of \$1,561,213, total  
12 equity of \$841,990, and a net income of \$12,097. EMC also provided financial statement for the 12-  
13 month period ending December 31, 2007. This financial statement lists assets of \$1,796,232, equity  
14 of \$925,573, and a net income of \$123,187.

15 20. EMC projects total revenues generated by the provision of telecommunications  
16 services to Arizona customers for the first 12 months of operations to be \$182,000, with operating  
17 expenses during that period of \$109,440.

18 21. EMC projects the net book value of all Arizona jurisdictional assets and the projected  
19 value of all Arizona assets after the first 12 months of operations to be zero.

20 22. If EMC were to experience financial difficulty, it would have only a minimal impact  
21 on its customers because many companies provide resold long distance telecommunications services,  
22 and facilities-based providers are also available. Also, EMC's customers will be able to access  
23 alternative toll service providers or resellers via 1+101XXXX access.

24 **Proposed Rates**

25 23. Staff indicates that the rates proposed by EMC are for competitive services and rates  
26 for competitive telecommunications services are generally not established according to rate-of-return  
27 regulation.

28 24. Staff has determined that EMC's fair value rate base ("FVRB") is zero. While Staff

1 considered the FVRB information submitted by EMC, Staff determined that the FVRB information  
2 should not be given substantial weight in its analysis.

3 25. As a reseller of services purchased from other telecommunications companies, EMC  
4 will have no market power and will have to compete with other providers to obtain subscribers to its  
5 services. In light of this competitive market, Staff believes that EMC's proposed tariffs will be just  
6 and reasonable.

7 26. Staff has reviewed EMC's proposed rates and determined that they are just and  
8 reasonable.

9 27. EMC's tariff indicates that it will not collect advance payments, deposits, and/or  
10 prepayments from its resold long distance customers. As such, Staff concludes that EMC is not  
11 required to have a performance bond or irrevocable sight draft letter of credit for its resold long  
12 distance services.

13 28. EMC also desires to provide resold local exchange service. In order to protect the  
14 Company's Arizona customers, Staff recommends that EMC should acquire a performance bond or  
15 irrevocable sight draft letter of credit equal to \$25,000.

16 29. Staff recommends that EMC file the original performance bond or irrevocable sight  
17 draft letter of credit with the Commission's Business Office and file copies with Docket Control, as a  
18 compliance item in this docket, within 30 days of the effective date the Decision in this matter. The  
19 performance bond or irrevocable sight draft letter of credit will remain in effect until further order of  
20 the Commission.

21 30. Staff notes that if EMC wishes to discontinue service, it must file an application with  
22 the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107. Additionally, the  
23 Company must notify each of its customers and the Commission 60 days prior to filing an application  
24 to discontinue service. Failure to meet these requirements could result in forfeiture of the Company's  
25 performance bond or irrevocable sight draft letter or credit.

#### 26 Competitive Services

27 31. Staff states that there are alternatives to EMC's services, the Company will have to  
28 convince potential customers to purchase its services, and the Company has no ability to adversely

1 affect the local exchange or interexchange service markets. As such, Staff recommends that the  
2 Company's proposed services be classified as competitive.

3 **Regulatory Requirements**

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

10 33. A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
11 interconnect to the public switched network to provide funding for the Arizona Universal Service  
12 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers  
13 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.  
14 R14-2-1204(B)(2).

15 34. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from  
16 unauthorized carrier changes ("slamming") and apply to each public service corporation providing  
17 telecommunications services within the State of Arizona and over which the Commission has  
18 jurisdiction.

19 35. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from  
20 unauthorized carrier charges ("cramming") and apply to each public service corporation providing  
21 telecommunications services within the State of Arizona and over which the Commission has  
22 jurisdiction.

23 36. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file  
24 an application for authorization with the Commission before it discontinues service; the rule also  
25 establishes customer notice requirements and other requirements related to discontinuance of service.

26 **Staff's Recommendations**

27 37. Staff recommends approval of EMC's Application and further recommends:

28 a. That EMC be ordered to comply with all Commission rules, orders, and other

1 requirements relevant to the provision of intrastate telecommunications  
2 service;

- 3 b. That EMC be ordered to abide by the quality of service standards approved by  
4 the Commission for Qwest in Docket No. T-01051B-93-0183;
- 5 c. That EMC may not bar access to alternative local exchange service providers  
6 who wish to serve areas where the Company is the only provider of local  
7 exchange service facilities;
- 8 d. That EMC be ordered to notify the Commission immediately upon changes to  
9 its name, address, or telephone number;
- 10 e. That EMC be ordered to cooperate with Commission investigations, including  
11 but not limited to customer complaints;
- 12 f. That EMC's fair value base rate is zero;
- 13 g. That EMC be ordered to offer Caller ID with the capability to toggle between  
14 blocking and unblocking the transmission of the telephone number at no  
15 charge;
- 16 h. That EMC be ordered to offer Last Call Return service that will not return calls  
17 to telephone numbers that have the privacy indicator activated;
- 18 i. That EMC services be classified as competitive;
- 19 j. That EMC be authorized to discount its rates and service charges to the  
20 marginal cost of providing the services;
- 21 k. That EMC be ordered to submit tariffs for its local exchange and long distance  
22 services indicating that it does not collect advances, deposits, and/or  
23 prepayments;
- 24 l. That if at some future date, EMC wishes to collect advances, deposits and/or  
25 prepayments from its resold interexchange service customers, EMC should be  
26 ordered to file an application with the Commission for approval. The  
27 application must reference this Decision and must explain EMC's plans for  
28 procuring its performance bond or irrevocable sight draft letter of credit;
- m. That EMC be ordered to submit a revised tariff for its local exchange and long  
distance services with references to private line services removed; and
- n. That EMC be ordered to do the following and that its CC&N be rendered null  
and void, after due process, if it fails to do the following:
- i. EMC shall docket conforming tariffs for each service within its CC&N  
within 365 days from the date of an Order in this matter or 30 days  
before providing service, whichever comes first. The tariffs submitted  
shall coincide with the Application and state that EMC does not collect

advances, deposits, and/or prepayments from its customers.

- ii. EMC shall procure either a performance bond or an irrevocable sight draft letter of credit equal to \$25,000.
- iii. EMC shall file the original performance bond or irrevocable sight draft letter of credit with the Commissioner'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, in its discretion, finds 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, in its discretion, deems necessary including, but not limited to, returning prepayments or deposits collected from the Company's customers.

38. Staff's recommendations are reasonable and should be adopted.

#### CONCLUSIONS OF LAW

1. Upon receiving a CC&N, EMC will be a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over EMC and the subject matter of the Application.

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

4. A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a hearing if the CC&N is for resold telecommunications services.

5. Notice of EMC's Application was given in accordance with the law.

6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes, it is in the public interest for EMC to provide the telecommunications services for which it has requested authorization in its Application.

7. EMC is a fit and proper entity to receive a CC&N authorizing it to provide resold long distance and resold local exchange telecommunications services in the State of Arizona.

8. The telecommunications services that EMC desires to provide are competitive in

1 Arizona.

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

6 10. Staff's recommendations as set forth in Findings of Fact No. 37 are reasonable and  
7 should be adopted.

8 11. EMC's fair value rate base is not useful in determining just and reasonable rates for  
9 the competitive services it proposes to provide Arizona customers.

10 12. EMC's rates, as they appear in its proposed tariffs, are just and reasonable and should  
11 be approved.

12 **ORDER**

13 IT IS THEREFORE ORDERED that the Application of EMC Telecom Corporation for a  
14 Certificate of Convenience and Necessity to provide competitive resold long distance and resold local  
15 exchange telecommunications services in Arizona is hereby granted conditioned upon compliance  
16 with conditions and recommendations set forth in Findings of Fact No. 37.

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1 IT IS FURTHER ORDERED that if EMC Telecom Corporation fails to meet the conditions  
2 outlined in Findings of Fact No. 37(n) within the timeframes stated therein, the Certificate of  
3 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.

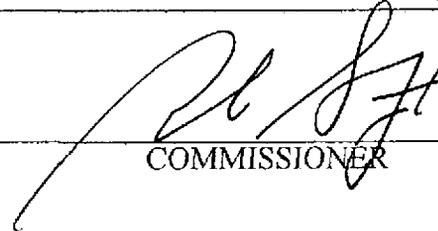
6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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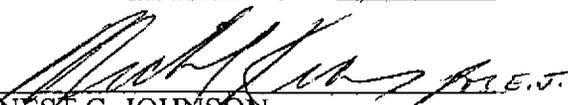
9 CHAIRMAN  \_\_\_\_\_ COMMISSIONER

10  \_\_\_\_\_

11 COMMISSIONER  \_\_\_\_\_ COMMISSIONER

12  \_\_\_\_\_ COMMISSIONER

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of  
17 Phoenix, this 6TH day of AUGUST, 2009.

18  \_\_\_\_\_

19 ERNEST G. JOHNSON  
20 EXECUTIVE DIRECTOR

21 DISSENT \_\_\_\_\_

22 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: EMC TELECOM CORPORATION

2 DOCKET NO.: T-20615A-08-0429

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