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



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EXECUTIVE DIRECTOR

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

AUG 11 2009

DATE: AUGUST 11, 2009

DOCKET NO.: T-04172A-03-0153

TO ALL PARTIES:

DOCKETED BY *MM*

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

TEL LOGIC dba QUALITY TELEPHONE
(COMPLAINT)

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:

AUGUST 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:

AUGUST 25, 2009 and AUGUST 26, 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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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

STAFF of the Utilities Division,

Complainant,

v.

TEL LOGIC dba QUALITY TELEPHONE,

Respondent,

DOCKET NO. T-04172A-03-0153

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: April 16, 2009
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Charles H. Hains, Staff Attorney, Legal Division on behalf of Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 29, 2008, Utilities Division (“Staff”) of the Arizona Corporation Commission (“Commission”) filed a Complaint against Tel Logic dba Quality Telephone (“Company” or “Quality”), an Arizona public service corporation, for non-compliance with the conditions set forth in Commission Decision No. 66611 (December 9, 2003) (“Complaint”).

On October 23, 2008, the Commission issued Decision No. 70566, an Order to Show Cause directing Quality to appear and respond to Staff’s Complaint.

On January 26, 2009, by Procedural Order, a Procedural Conference was set for February 12, 2009.

On February 12, 2009, the Procedural Conference was held as scheduled. Staff appeared through counsel. Quality did not appear.

1 On February 13, 2009, by Procedural Order, an evidentiary hearing in this matter was
2 scheduled for April 16, 2009.

3 On April 10, 2009, Staff filed a Motion to Dismiss Complaint (“Motion”).

4 On April 16, 2009, the evidentiary hearing was held as scheduled before a duly authorized
5 Administrative Law Judge (“ALJ”) of the Commission at the Commission’s offices in Phoenix. Staff
6 appeared through counsel. Quality did not appear. At the conclusion of hearing, Staff was directed
7 to file as a late-filed exhibit a Supplemental Staff Report addressing various issues raised during the
8 hearing.

9 On May 28, 2009, Staff filed a Notice of Filing, which included Staff’s Supplemental Staff
10 Report.

11 After receipt of the late-filed exhibit, the matter was taken under advisement pending
12 submission of a Recommended Opinion and Order to the Commission.

13 On July 14, 2009, a Notice of Appearance was filed by Michael T. Hallam.

14 * * * * *

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

17 **FINDINGS OF FACT**

18 1. Quality is a public service corporation, authorized to provide competitive resold local
19 exchange telecommunications services in Arizona.

20 2. On September 29, 2008, Staff filed a Complaint against Quality for non-compliance
21 with the conditions set forth in Commission Decision No. 66611 (December 9, 2003).

22 3. Commission Decision No. 66611 conditionally granted Quality a Certificate of
23 Convenience and Necessity (“CC&N”) to provide competitive resold local exchange
24 telecommunications services in Arizona and ordered Quality to obtain a performance bond in the
25 amount of \$25,000, within 365 days from the effective date of the Decision or 30 days prior to
26 beginning service in Arizona, whichever occurred first. The Decision further ordered that if Quality
27 failed to meet the timeframe for compliance, the CC&N conditionally granted would become null and
28 void without further Order of the Commission.

1 4. According to Staff's Complaint, between December 2004 and July 2008, Staff
2 contacted Quality numerous times to inquire about the Company's failure to obtain and file proof of
3 its performance bond in compliance with Decision No. 66611. Staff's Complaint alleges that Quality
4 is conducting business in Arizona in violation of Decision No. 66611.

5 5. On October 23, 2008, the Commission issued Decision No. 70566, an Order to Show
6 Cause directing Quality to appear and show cause why Quality's actions do not constitute a violation
7 of Decision No. 66611, why Quality has failed to procure and file proof its performance bond, why
8 sanctions should not be imposed against Quality, and why the Commission should not render
9 Decision No. 66611 null and void and cancel the conditionally granted CC&N. Decision No. 70566
10 ordered the Hearing Division to conduct further proceedings in this matter.

11 6. On January 26, 2009, by Procedural Order, a Procedural Conference was set for
12 February 12, 2009. Additionally, Quality was ordered to file an Answer to Staff's Complaint on or
13 before February 5, 2009.

14 7. Notice of the Procedural Conference was sent via first class mail and certified mail to
15 Quality. The Hearing Division received a certified mail receipt showing that on February 6, 2009, a
16 representative for Quality signed for the Procedural Order which set forth the date and time of the
17 Procedural Conference.

18 8. Quality did not file an Answer to the Complaint as ordered in the Procedural Order
19 dated January 26, 2009.

20 9. On February 12, 2009, a Procedural Conference was held as scheduled. Staff
21 appeared through counsel and Quality did not appear. During to the Procedural Conference, Staff
22 stated that Quality had not responded to Staff's phone calls.

23 10. On February 13, 2009, by Procedural Order, the evidentiary hearing in this matter was
24 set to begin on April 16, 2009. Quality was directed a second time to file an Answer to the
25 Complaint, by March 2, 2009. The Procedural Order was sent via first class and certified mail to
26 Quality.

27 11. On February 24, 2009, the Hearing Division received a certified mail receipt showing
28 that on February 18, 2009, a representative from Quality accepted and signed for receipt of the

1 February 13, 2009 Procedural Order, which set forth the date of hearing.

2 12. Quality did not file an Answer to the Complaint as directed in the February 13, 2009
3 Procedural Order.

4 13. On March 13, 2009, Staff filed a Staff Report recommending revocation of Quality's
5 CC&N and the assessment of fines and/or penalties based on Quality's failure to comply with the
6 Commission's rules and Decisions.

7 14. On April 10, 2009, Staff filed a Motion to Dismiss Complaint ("Motion"), stating that
8 Quality had provided proof of a performance bond in the amount of \$25,000 on April 8, 2009.

9 15. On April 16, 2009, the evidentiary hearing was held as scheduled. Staff appeared
10 through counsel and Quality failed to appear. At the conclusion of the hearing, Staff was directed to
11 file a Supplemental Staff Report ("SSR") addressing issues raised at the hearing.

12 16. During the hearing, Staff testified that Quality provides resold local exchange
13 telecommunications services to residential customers and has been providing service to customers in
14 Arizona on a continuous basis since 2004. (Tr. at 13)

15 17. According to the Staff Report, Staff attempted to contact Quality on December 9,
16 2004, to discuss the Company's non-compliance with Decision No. 66611, but the Company did not
17 respond to Staff's call or notice. Further, on September 15, 2005, Staff contacted Frank McGovern,
18 Senior Manager for Quality and spoke to him about the Company's non-compliance and emailed to
19 the Company a copy of Decision No. 66611.

20 18. Subsequently, on May 3, 2006, Staff emailed Mr. McGovern regarding Quality's non-
21 compliance and Staff sent Notices of Delinquency to the Company on July 7 and 17, 2006, and
22 October 12, 2007. (SR at 1) Staff reported that Mr. McGovern contacted Staff on November 12,
23 2007, and informed Staff that the Company would have a bond in place by the end of 2007. (Id.)

24 19. On June 11, 2008, Staff left a message for Mr. McGovern regarding the compliance
25 delinquency and Mr. McGovern responded that "the performance bond was not a priority for him."
26 (SR at 1) Further, Staff left messages for Mr. McGovern on July 9, August 18, September 12,
27 October 2, and October 16, 2008, and the Company failed to respond. (SR at 2)

28 20. On February 25, 2009, Staff spoke with Mr. McGovern and advised him of the hearing

1 scheduled for April 16, 2009, and strongly advised him to file proof of the bond. (SR at 2) Again on
2 March 2, and March 3, 2009, Staff contacted Mr. McGovern regarding the Company's non-
3 compliance. (SR. at 2)

4 21. Staff's efforts to obtain compliance from Quality and to notify Quality of the pending
5 OSC hearing were reasonable.

6 **Complaint History**

7 22. According to Staff's SSR, Quality operates in 13 states, including Arizona. In six of
8 those states, complaints have been filed and/or Quality's CC&N has been cancelled or revoked. Of
9 the remaining six, four provided no response and two states reported no complaints.

10 23. In October 2008, the Colorado Public Utilities Commission ("PUC") filed a complaint
11 against Quality for its failure to comply with the Commission's rules related to the Colorado High
12 Cost Support Mechanism ("CHCSM") reporting requirements. According to the Colorado PUC
13 order, Quality, as well as other facilities-based providers, are required to provide to the CHCSM
14 Administrator a verified accounting of their retail revenues, and other revenues, to determine their
15 contributions and disbursements under the CHCSM Rules. After the filing of the complaint, but prior
16 to the hearing, Quality submitted the required information and was dismissed from the complaint
17 proceeding. (SSR Ex. A)

18 24. Similarly, in September 2008, Quality was named as a respondent in a complaint filed
19 by the Florida Public Service Commission. The complaint alleged that Quality and other respondents
20 failed to respond to Staff's data request which were designed to provide data for a report submitted
21 annually to the Legislature on the status of competition in the telecommunications industry. (SSR Ex.
22 B) When Quality failed to comply, the Florida Public Service Commission assessed a \$10,000
23 penalty against Quality and because Quality failed to file a timely protest or pay the penalty by the
24 deadline set forth in the Order, the Commission cancelled Quality's Certificate effective October 21,
25 2008. (Id.) Quality was also assessed and did pay an additional \$500 Regulatory Assessment Fee
26 penalty. (Id.)

27 25. Likewise in April 2008, the Nevada PUC revoked Quality's Certificate to provide
28 telecommunications services in that state because Quality failed to pay its annual assessment fee, its

1 surcharge for assistance to persons with impaired speech and hearing, and/or file an annual report
2 pursuant to state statutes and rules. (SSR Ex. C) Quality was also assessed an administrative fine of
3 \$500. (Id.)

4 26. According to Staff's SSR, Quality is in non-compliance in Oklahoma and is listed to
5 have its Certificate revoked for failure to contribute to the Universal Service Fund and to comply with
6 filing its Annual Reports. (SSR at 2)

7 27. There were two billing complaints filed by one customer in Arkansas against Quality
8 and those complaints have been resolved. (SSR at 1)

9 28. Staff received no response to its inquiries regarding Quality's complaint history from
10 California, North Carolina, South Carolina or Tennessee. (SSR at 2) Further, Mississippi and Texas
11 reported no complaints having been filed against Quality.¹ (Id.)

12 29. In Arizona, Quality has not been contributing to the Arizona Universal Service Fund
13 ("AUSF") in violation of Commission Decision No. 66611 and pursuant to Arizona Administrative
14 Code ("A.A.C.") R14-2-1204.A. According to the SSR, Staff contacted Solix, Inc., ("Solix") the
15 administrator for AUSF regarding Quality's participation and Solix informed Staff that companies
16 usually contact them when they begin operating in Arizona and Quality has not notified Solix that it
17 is operating in the state and therefore has not been included in the database.² According to Staff,
18 Quality was added to the AUSF database effective January 1, 2009. (SSR at 2)

19 30. According to the SSR, Quality is not in good standing with the Commission's
20 Corporations Division because it failed to file its 2008 Annual Report. A review of the Corporations
21 Division website shows that on July 9, 2009, the Corporations Division issued a Certificate of
22 Revocation of Quality's authority to transact business in Arizona. However, on the same date,
23 Quality filed its 2008 Annual Report and Quality's Certificate was reinstated on July 10, 2009.
24 Quality is currently listed as being in good standing with the Corporations Division.

25 31. Quality is currently out of compliance with the Commission's Utilities Division for
26 failing to file its 2008 Utilities Division Annual Report. (SSR at 3)

27 _____
28 ¹ According to the SSR, Quality has had little to no customer development in Mississippi since 2005.

² See A.A.C. R14-2-1210.

1 32. In the SSR, Staff indicated that Quality has reported in its Utilities Division Annual
2 Reports that it has not collected advances, deposits and prepayments; however, the tariff on file for
3 Quality states:

4 1) Installation, connection, service and construction charges, where applicable must be
5 paid in advance of the establishment of service.

6 2) Recurring charges for service are billed monthly, 20 days or more in advance.

7 33. Staff believes that any advances, deposits, and/or prepayments collected by Quality
8 from its customers would be protected by a performance bond, in the event the Commission decides
9 to revoke Quality's CC&N. (SSR at 3)

10 34. Decision No. 66611 requires Quality to incrementally increase its bond based on the
11 amount of deposits, advances, and/or prepayments Quality collects from its customers. Staff's
12 witness testified that companies are required to report the amount of deposits, advances and/or
13 prepayments collected in their Annual Reports, but that the numbers are reported on a "good faith"
14 basis because the Annual Reports are unaudited. (Tr. at 20) The witness further testified that in light
15 of Quality's complaint history, Staff doesn't believe they could rely on Quality's "good faith" to
16 incrementally increase the bond as required in Decision No. 66611, but that Staff would enforce the
17 requirement. (Id.)

18 35. Staff's witness testified that Quality has no consumer complaint history in Arizona and
19 since Quality has subsequently complied with Decision No. 66611 by obtaining a performance bond,
20 the OSC against Quality should be dismissed. In the alternative, Staff recommends that the
21 Commission assess Quality a \$100 fine for its delinquency in filing its performance bond. (Tr. at 20)

22 36. According to the Staff Report, Quality serves 130 residential customers in Arizona and
23 reported gross operating revenues of \$173,830 for the year 2007.

24 37. In its late-filed exhibit, Staff explained that because the services Quality provides in
25 Arizona are competitive in nature, if the Commission were to revoke Quality's CC&N customers
26 would "readily" be able to find replacement services. Staff notes, however, that Quality must abide
27 by the provisions of A.A.C. R14-2-1107 before discontinuing service in Arizona.

28 38. Staff's investigation revealed a pattern of non-compliance in the states where Quality

1 operates. In two states, Quality has had its CC&N cancelled or revoked and is on the list in a third
2 state for revocation of its Certificate. Staff's investigation shows Quality has severe delinquencies for
3 meeting statutory, regulatory, and Commission rules requirements.

4 39. In Arizona, Quality has shown a disregard for Commission rules and orders. Quality
5 has continued to operate in Arizona in violation of Decision No. 66611 since 2004. Although Quality
6 received actual notice of these proceedings, it has ignored Commission orders by failing to file a
7 response to the Complaint and failing to appear for the OSC hearing in this proceeding. Further,
8 Quality has failed to notify the AUSF that it is conducting business in Arizona and has not been
9 contributing to the AUSF.

10 40. Based on the evidence presented, we find that Quality should not be dismissed from
11 the OSC proceeding. In addition, we find that pursuant to Article XV §§ 16 and 19 of the Arizona
12 Constitution and A.R.S. §40-425, Quality should be assessed a penalty of \$200 per year, for a total of
13 \$1000, for each year it has operated in Arizona in violation of Commission Decision No. 66611.³
14 Quality shall pay the penalty within sixty (60) days of the effective date of this Order. If Quality fails
15 to pay the penalty within the above timeframe, Quality shall comply with the provisions of A.A.C.
16 R14-2-1107 and Quality's CC&N shall be revoked without further Order of the Commission.

17 CONCLUSIONS OF LAW

18 1. Tel Logic dba Quality Telephone is a public service corporation as defined by Article
19 XV of the Arizona Constitution and A.R.S. § 40-282.

20 2. The Commission has jurisdiction over Tel Logic dba Quality Telephone and the
21 subject matter of the Complaint and Order to Show Cause.

22 3. The issuance of a Certificate of Convenience and Necessity to a public service
23 corporation imposes a duty upon the certificate hold to operate the utility in a lawful manner, to
24 comply with the law, and to provide competent management and adequate service to its customers.

25 4. Tel Logic dba Quality Telephone has violated orders set forth in Commission Decision
26 No. 66611 (December 9, 2003) for the time period of 2004 through 2008.

27
28 ³ For the years 2004 through 2008.

1 IT IS FURTHER ORDERED that upon Tel Logic dba Quality Telephone's docketing of its
2 Affidavit of Compliance with the refunding and notice requirements of Arizona Administrative Code
3 R14-2-1107, Tel Logic dba Quality Telephone's Certificate of Convenience and Necessity shall be
4 revoked without further Order of the Commission.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 CHAIRMAN _____ COMMISSIONER

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12
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 Phoenix,
17 this _____ day of _____, 2009.

18
19 _____ ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22 DISSENT _____

23 YBK:db

1 SERVICE LIST FOR: TEL LOGIC dba QUALITY TELEPHONE

2 DOCKET NO.: T-04172A-03-0153

3
4 Frank McGovern, Senior Manager
5 TEL LOGIC
6 dba QUALITY TELEPHONE
7 P.O. Box 7310
8 Dallas, Texas 75209-0310
9 **Via First Class mail and Certified Mail**
10 **Return Receipt Requested**

11 TEL LOGIC
12 dba QUALITY TELEPHONE
13 P.O. Box 7310
14 Dallas, Texas 75209-0310
15 **Via First Class mail and Certified Mail**
16 **Return Receipt Requested**

17 Michael T. Hallam, Esq.
18 LEWIS AND ROCA LLP
19 40 North Central Avenue
20 Phoenix, Arizona 85004-4429
21 Attorney for Respondent

22 Janice Alward, Chief Counsel
23 Legal Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, AZ 85007-2927

27 Steven Olea, Director
28 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007-2927

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