



0000101731

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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 COMMISSION ON ITS OWN MOTION INVESTIGATING THE FAILURE OF NUMEROUS UTILITIES TO FILE ANNUAL REPORTS FOR CALENDAR YEAR 2007.

DOCKET NO. C-00000A-09-0060

DECISION NO. 71245

OPINION AND ORDER

- DATE OF HEARING: May 22, 2009
- PLACE OF HEARING: Phoenix, Arizona
- ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
- APPEARANCES: Ms. Nancy Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On April 7, 2009, the Arizona Corporation Commission ("Commission") issued Decision No. 70964, a Complaint and Order to Show Cause ("OSC") against the following named Respondents¹ for failing to file their 2007 Utilities Division Annual Reports ("Annual Reports").

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
T-03711A	AIRNEX COMMUNICATIONS, INC.
T-03227A	AMERICOM TECHNOLOGIES, INC. dba NETWORK UTILIZATION SERVICES
T-03014A	CANDACE ADAIR dba ADAIR COMMUNICATIONS
W-02034A	CIENEGA WATER COMPANY, INC.
T-04258A	COGNIGEN NETWORKS, INC.
W-01558A	CROWN KING WATER COMPANY, INC.
W-01351A	ELFRIDA DOMESTIC WATER USERS ASSOCIATION
T-20444A	EMPIRE PAYPHONES, INC.
W-01896A	HOLIDAY ENTERPRISES INCORPORATED dba HOLIDAY WATER COMPANY
T-03712A	JOHN WISER dba CACTEL
W-01557A	LAKE VERDE WATER COMPANY

¹ The named Respondents shall hereinafter be referred to as the Non-Filing Respondents.

1 T-03132A LDC TELECOMMUNICATIONS, INC.
 W-01961A LUCKY HILLS WATER COMPANY
 2 T-04119A MGEN SERVICES CORP.
 W-02164A MORRISTOWN WATER COMPANY
 3 W-04069A OATMAN WATER COMPANY, L.L.C.
 T-02960A PAYPHONES PLUS INC.
 4 W-02280A SOUTH RAINBOW VALLEY WATER CO-OP
 T-02771A SOUTHSIDE LIQUORS
 5 W-01407A STRAWBERRY WATER COMPANY
 W-02386A SUN LEISURE ESTATES UTILITIES COMPANY, INC.
 6 WS-04247A SUNRISE UTILITIES, L.L.C.
 T-04124A TELLISS, LLC
 T-04312A VALUTEL COMMUNICATIONS, INC. dba VALUTEL COMMUNICATIONS
 8 T-03141A VYCERA COMMUNICATIONS, INC.
 T-04307A WESTEL, INC.
 9 W-04161A WHITE HORSE RANCH OWNERS ASSOCIATION, INC.
 T-02834A WILCAT WASH WELL, LTD.
 10 W-01084A WILLIAM P. FARR dba SALOME WATER COMPANY

11 Therein, the Commission ordered a hearing to be conducted at a date and time set by the
 12 Hearing Division.

13 On May 1, 2009, a Procedural Order was issued setting a procedural conference and hearing
 14 date for May 15, 2009 and May 22, 2009, respectively.

15 On May 7, 2009, the Commission's Utilities Division ("Staff") filed a Memorandum
 16 indicating that as of that date four utilities had filed their 2007 Annual Reports and recommending
 17 that those Respondents be dismissed from the proceeding. Staff also recommended dismissing from
 18 the proceeding one of the utilities that had filed to cancel its Certificate of Convenience and
 19 Necessity ("CC&N").

20 On May 15, 2009 a procedural conference was held at the Commission's offices in Phoenix,
 21 Arizona. Staff appeared through counsel. No appearances were entered by any of the Non-Filing
 22 Respondents.

23 On May 22, 2009, a full public hearing was held as scheduled before a duly authorized
 24 Administrative Law Judge of the Commission, at the Commission's offices in Phoenix, Arizona.
 25 Staff appeared through counsel. None of named Non-Filing Respondents appeared. At the
 26 conclusion of the hearing, the matter was taken under advisement pending submission of a
 27 Recommended Opinion and Order to the Commission.

1 * * * * *

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

4 **FINDINGS OF FACT**

5 1. Pursuant to authority granted by the Commission, the Non-Filing Respondents were
6 authorized to conduct business at various times in Arizona as public service corporations.

7 2. On February 13, 2009, Staff filed a Complaint and Petition for an Order to Show
8 Cause, stating that the above-named Non-Filing Respondents had failed to file their 2007 Annual
9 Reports, in violation of Commission Rules and laws.

10 3. On April 7, 2009, the Commission issued Decision No. 70964, an Order to Show
11 Cause ordering the above-named Non-Filing Respondents to appear and show cause why they failed
12 to file their 2007 Annual Reports, why their CC&Ns should not be revoked, and why penalties and
13 fines should not be assessed against them.

14 4. On May 1, 2009, by Procedural Order, a procedural conference and hearing date were
15 set for May 15, 2009 and May 22, 2009, respectively. Staff was ordered to file by May 7, 2009, a
16 pleading indicating which, if any, of the Non-Filing Respondents had subsequently filed their 2007
17 Annual Reports.

18 5. On May 7, 2009, Staff filed a Memorandum which Ms. Kimberly Battista, Chief of
19 Compliance testified to at the hearing, indicating that Airnex Communications, Inc., Candace Adair
20 dba Adair Communications, Sun Leisure Estates Utilities Company, Inc., and ValuTel
21 Communications, Inc. dba ValuTel Communications had late-filed their 2007 Annual Reports.² Staff
22 recommends they be dismissed from the proceeding.

23 6. Staff's Memorandum also stated that MGEN Services Corporation had filed an
24 application requesting cancellation of its CC&N.³ Staff recommends that MGEN Services
25 Corporation be dismissed from this proceeding.

26 7. Notice of the proceeding and hearing date were given in the manner prescribed by law.

27 ² These Respondents are hereinafter known as the Late-Filing Respondents.

28 ³ These Respondents are hereinafter known as the Cancellation Respondents.

1 8. During the hearing, Ms. Battista testified that each year all of the utilities and/or
2 entities are mailed an Annual Report form, which includes instructions on filling out the form, the
3 deadline for filing the Annual Report, and the consequences for failing to file an Annual Report.
4 (Tr. at 7) According to Ms. Battista, the Annual Report form advises the utilities and/or entities that
5 the failure to file an Annual Report could result in revocation of their CC&Ns, and that they maybe
6 subject to financial penalties if they fail to file. (Tr. at 8)

7 9. Ms. Battista explained that Staff uses a database containing all public service
8 corporations in Arizona to generate a report showing which utilities and/or entities have filed their
9 Annual Reports. (Tr. at 9) Ms. Battista testified that once the report is generated showing the
10 utilities and/or entities that have not filed 2007 Annual Reports, Staff contacts the companies
11 numerous times to try to get the companies to comply. (Tr. at 9) Staff filed the Complaint listing the
12 above-named Non-Filing Respondents who were still delinquent in filing their 2007 Annual Reports
13 on February 13, 2009.

14 10. Ms. Battista explained that the information obtained in Annual Reports is important
15 because the Commission can determine if a utility or entity is solvent, how many customers are being
16 served, plant-in-service, and how much should be collected from utilities and/or entities for the
17 Universal Service Fund. (Tr. at 8).

18 11. A number of the Procedural Orders containing notice of the procedural conference and
19 hearing date that were mailed to the Non-Filing Respondents' last known addresses were returned to
20 the Commission with notations such as "return to sender no forwarding address," "unable to
21 forward," and "forwarding order expired". Those Non-Filing Respondents include: Southside
22 Liquors; Empire Payphones, Inc.; Cognigen Networks, Inc.; John Wisner dba Cactel; ValuTel
23 Communications; and Telliss, LLC.

24 12. During the hearing, Ms. Batista stated that if notices of the proceeding were returned
25 with no forwarding address, Staff conducts internet searches for new addresses and contacts the
26 Corporations Division to see if a statutory agent is listed for the utility and/or entities, and the notices
27 are resent to the new addresses. (Tr. at 15)

28 13. Staff submitted into evidence an updated list of Late-Filing Respondents at the

1 hearing. (Ex. S-3) Staff recommends that the following Late-Filing Respondents be dismissed from
2 this proceeding: Airnex Communications; Americom Technologies, Inc., dba Network Utilization
3 Services; Candace Adair dba Adair Communications; Cienega Water Company, Inc.; Holiday
4 Enterprises Incorporated dba Holiday Water Company; John Wisner dba Cactel; Lake Verde Water
5 Company; LDC Telecommunications, Inc.; Lucky Hills Water Company; Oatman Water Company,
6 LLC; Strawberry Water Company; Sun Leisure Estates Utilities Company, Inc.; Sunrise Utilities,
7 LLC; Telliss, LLC; ValuTel Communications, Inc., dba ValuTel Communications; Westel, Inc.; and
8 White Horse Ranch Owners Association, Inc.

9 14. Ms. Battista testified that Staff recommends dismissing the Cancellation Respondents
10 from this proceeding to allow Staff to process the Cancellation Respondents' applications to cancel
11 their CC&Ns. (Tr. at 12) Staff lists the Cancellation Respondents as: Cognigen Networks, Inc.;
12 MGEN Services Corporation; Payphones Plus, Inc.; and Wildcat Wash Well, LTD.

13 15. Several of the Non-Filing Respondents have previously had their CC&Ns revoked by
14 the Commission. (Tr. at 12) Staff recommends the following entities be assessed fines: Crown King
15 Water; Morristown Water Company; South Rainbow Valley Water Co-op; and William P. Farr dba
16 Salome Water Company.

17 16. Staff recommends that the remaining Non-Filing Respondents have their CC&Ns
18 revoked and that they be assessed a fine. The remaining Non-Filing Respondents include: Elfrida
19 Domestic Water Users Association ("Elfrida"); Empire Payphones; Southside Liquors; and Vycera
20 Communications, Inc.

21 17. Ms. Battista testified that Staff believes Non-Filing Respondents Empire Payphones,
22 Southside Liquors, and Vycera Communications are all out of business. (Tr. at 13) She also testified
23 that Elfrida is out of compliance with the Arizona Department of Environmental Quality ("ADEQ")
24 for failing to file its 2006 and 2007 consumer confidence reports. (Id.) Because Elfrida has failed to
25 provide consumer confidence reports to ADEQ, ADEQ has been unable to determine if the Elfrida
26 water system is delivering water that meets water quality standards. (Id.) Ms. Battista testified that
27 Staff will continue to monitor the status of Elfrida's water system with ADEQ. (Tr. at 14)

28 18. Based upon our review of the record, we believe that Staff's recommendations with

1 respect to the Late-Filing and Cancellation Respondents are appropriate and they should be dismissed
2 from this proceeding. With respect to the above-described Non-Filing Respondents, we find Staff's
3 recommendation to revoke their CC&Ns and/or to assess penalties is reasonable. However, if any
4 affected Non-Filing Respondent files, within 60 days of the effective date of this Decision, its 2007
5 Annual Report, then the Order of revocation and penalty as to that utility and/or entity should be
6 rendered null and void without further Order by the Commission. Further, we adopt Staff's
7 recommendation to assess fines against the following utilities: Elfrida; Empire Payphones; Southside
8 Liquors; Vycera Communications, Inc.; Crown King Water; Morristown Water Company; South
9 Rainbow Valley Water Co-op; and William P. Farr dba Salome Water Company.

10 CONCLUSIONS OF LAW

11 1. The above-referenced Non-filing Respondents are public service corporations within
12 the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

13 2. The Commission has jurisdiction over the Non-Filing Respondents and the subject
14 matter of the Complaint and Order to Show Cause herein.

15 3. The revocation of the Certificate of Convenience and Necessity of the remaining Non-
16 Filing Respondents as described herein is in the public interest.

17 4. The Complaint and Order to Show Cause filed against the Late-Filing Respondents
18 should be dismissed.

19 5. The Complaint and Order to Show Cause filed against the Cancellation Respondents
20 should be dismissed.

21 6. Pursuant to A.R.S. §§ 40-424 and 40-425, the remaining Non-Filing Respondents
22 Elfrida, Empire Payphones, Southside Liquors, Vycera Communications, Inc., Crown King Water,
23 Morristown Water Company, South Rainbow Valley Water Co-op, and William P. Farr dba Salome
24 Water Company, should be assessed financial penalties.

25 ORDER

26 IT IS THEREFORE ORDERED that unless previously revoked, the Certificates of
27 Convenience and Necessity of the remaining Non-Filing Respondents and the authorizations granted
28 therein shall be revoked as follows:

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
1 W-01558A	CROWN KING WATER COMPANY, INC.
2 W-01351A	ELFRIDA DOMESTIC WATER USERS ASSOCIATION
3 T-20444A	EMPIRE PAYPHONES, INC.
W-02164A	MORRISTOWN WATER COMPANY
4 W-02280A	SOUTH RAINBOW VALLEY WATER CO-OP
T-02771A	SOUTHSIDE LIQUORS
5 T-03141A	VYCERA COMMUNICATIONS, INC.
6 W-01084A	WILLIAM P. FARR dba SALOME WATER COMPANY

7 IT IS FURTHER ORDERED that the Complaint and Order to Show Cause against the Late-
8 Filing Respondents: Airnex Communications, Inc.; Americom Technologies, Inc. dba Network
9 Utilization Services; Candace Adair dba Adair Communications; Cienega Water Company, Inc.;
10 Holiday Enterprises Incorporated dba Holiday Water Company; John Wisner dba Cactel; Lake Verde
11 Water Company; LDC Telecommunications, Inc.; Lucky Hills Water Company; Oatman Water
12 Company, L.L.C.; Strawberry Water Company; Sun Leisure Estates Utilities Company, Inc.; Sunrise
13 Utilities, L.L.C.; Telliss, LLC; ValuTel Communications, Inc. dba ValuTel Communications; Westel,
14 Inc.; and White Horse Ranch Owners Association, Inc., is hereby dismissed.

15 IT IS FURTHER ORDERED that the Complaint and Order to Show Cause against the
16 Cancellation Respondents as follows: Cognigen Networks, Inc.; MGEN Services Corp.; Payphones
17 Plus Inc.; and Wildcat Wash Well, Ltd., is hereby dismissed.

18 IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 40-424 and 40-425, Non-Filing
19 Respondents Crown King Water Company, Inc., Elfrida Domestic Water Users Association, Empire
20 Payphones, Inc., Morristown Water Company, South Rainbow Valley Water Co-op, Southside
21 Liquors, Vycera Communications, Inc., and William P. Farr dba Salome Water Company, shall each
22 pay a penalty in the sum of \$200 unless, within 60 days of the effective date of this Decision, the
23 Non-Filing Respondent files its 2007 Utilities Division Annual Report with the Director of the
24 Commission's Utilities Division, then said revocation and/or financial penalty shall be null and void
25 without further Order by the Commission.

26 ...

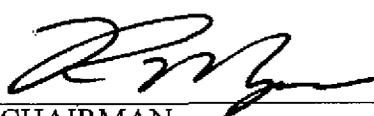
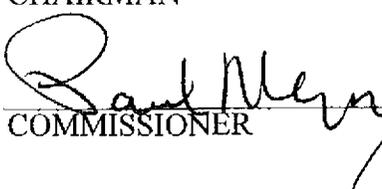
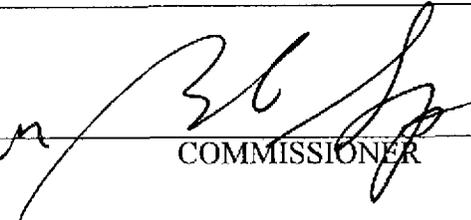
27 ...

28 ...

1 IT IS FURTHER ORDERED that the Utilities Division shall file in this docket within 90 days
2 of the effective date of this Decision, a list of any Non-Filing Respondents who filed their 2007
3 Annual Report within the 60 day time period described above.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7  
8 CHAIRMAN COMMISSIONER
9   
10 COMMISSIONER COMMISSIONER COMMISSIONER
11

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

17 
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

22 YBK:db

23
24
25
26
27
28

1 SERVICE LIST FOR:

2007 ANNUAL REPORTS

2 DOCKET NO.:

C-00000A-09-0060

3
4 Airnex Communications, Inc.
3180 Crow Canyon Pl., Ste. 109
San Ramon, CA 94583

Lucky Hills Water Company
PO Box 309
Tombstone, AZ 85638

5
6 Americom Technologies, Inc.
Network Utilization Services
PO Box 990-165
Boston, MA 02199

MGEN Services Corp.
2510 N. Redhill Ave., Ste. 230
Santa Ana, CA 92705

7
8 Candace Adair
Adair Communications
4218 W. Flower St.
Phoenix, AZ 85019-4135

Morristown Water Company
PO Box 156
Morristown, AZ 85342

9
10 Cienega Water Company, Inc.
PO Box 3518
Parker, AZ 85344

Oatman Water Company, L.L.C.
9184 N. 81st St.
Scottsdale, AZ 85258

11
12 Cognigen Networks, Inc.
10757 River Front Pkwy, Ste. 125
South Jordan, UT 84095-3556

Payphones Plus Inc.
1635 E. Redfield Rd.
Tempe, AZ 85283

13
14 Crown King Water Company, Inc.
4918 W. Park View Lane
Glendale, AZ 85310

South Rainbow Valley Water Coop.
27205 S. 170th Ave.
Buckeye, AZ 85326

15
16 Elfrida Domestic Water Users Association
PO Box 3356
Elfreda, AZ 85610

Southside Liquors
619 W. Frito Ave
Mesa, AZ 85210

17
18 Empire Payphones, Inc.
1490 Westfork Dr., Ste. G
Lithia Springs, GA 30122

Strawberry Water Company
HC 1 Box 817
Pine, AZ 85544-9719

19
20 Holiday Enterprises Incorporated
Holiday Water Company
PO Box 309
Tombstone, AZ 85638

Sun Leisure Estates Utilities Company Inc.
c/o Crites & Associates
PO Box 5681
Yuma, Az 85366

21
22 John Wiser
Cactel
2476 W. Del Oro Lane
Yuma, AZ 85364

Sunrise Utilities, L.L.C.
PO Box 3630
Mesquite, NV 89024

23
24 Lake Verde Water Company
PO Box 2777
Camp Verde, AZ 86322

Tellisss, LLC
c/o Terry Balantini
P.O. Box 131
12668 E. 116th Street
Fisher, IN 46038

25
26 LDC Telecommunications, Inc.
c/o InterControllers
8902 N. Dale Mabry Hwy., Ste. 216
Tampa, FL 33614

ValuTel Communications, Inc.
ValuTel Communications
13812 N. Highway 183, Ste. B1
Austin, TX 78750-1238

28

1 Vycera Communications, Inc.
1339 Caminito Laura
2 Encinitas, CA 92024-7003

3 Westel, Inc.
c/o Nick Tondre
4 9606 N. Mopac, St. 700
Austin, TX 78759

5 White Horse Ranch Owners Association, Inc.
PO Box 670
6 Dewey, AZ 86327-0660

7 Wildcat Wash Well, Ltd.
5212 E. 8th Street
8 Tucson, AZ 85711

9 William P. Farr
Salome Water Company
10 PO Box 550
Salome, AZ 85348

11 Janice Alward, Chief Counsel
Legal Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director
Utilities Division
15 ARIZONA CORPORATION COMMISSION
1200 West Washington
16 Phoenix, AZ 85007

17
18
19
20
21
22
23
24
25
26
27
28

- 1 Vycera Communications, Inc.
1339 Caminito Laura
- 2 Encinitas, CA 92024-7003

- 3 Westel, Inc.
c/o Nick Tondre
- 4 9606 N. Mopac, St. 700
Austin, TX 78759

- 5 White Horse Ranch Owners Association, Inc.
PO Box 670
- 6 Dewey, AZ 86327-0660

- 7 Wildcat Wash Well, Ltd.
5212 E. 8th Street
- 8 Tucson, AZ 85711

- 9 William P. Farr
Salome Water Company
PO Box 550
- 10 Salome, AZ 85348

- 11 Janice Alward, Chief Counsel
Legal Division
- 12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
- 13 Phoenix, AZ 85007

- 14 Ernest G. Johnson, Director
Utilities Division
- 15 ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

17
18
19
20
21
22
23
24
25
26
27
28