

ORIGINAL

OPEN MEETING ITEM



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Executive Director

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



ARIZONA CORPORATION COMMISSION

DATE: SEPTEMBER 8, 2009

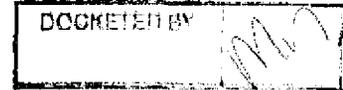
DOCKET NO: T-20565A-07-0651

TO ALL PARTIES:

Arizona Corporation Commission

DOCKETED

SEP -8 2009



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

BROADVIEW NETWORKS, INC.
(CC&N/RESELLER)

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:

SEPTEMBER 17, 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:

SEPTEMBER 22, 2009 and SEPTEMBER 23, 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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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 OF
9 BROADVIEW NETWORKS, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE RESOLD LONG
12 DISTANCE TELECOMMUNICATIONS
13 SERVICES.

DOCKET NO. T-20565A-07-0651

DECISION NO. _____

ORDER

14 Open Meeting
15 September 22 and 23, 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 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

- 22 1. On November 16, 2007, Broadview Networks, Inc. ("Broadview"), filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide
24 resold long distance telecommunications services within a service area encompassing the entire State
25 of Arizona ("Application").
- 26 2. On December 13, 2007, Broadview filed a Supplement to Application.
- 27 3. On January 3, 2008, Broadview filed an Affidavit of Publication indicating that notice
28 of the Application had been published on December 20, 2007, in *The Arizona Republic*.
4. On February 1, 2008, the Commission's Utilities Division Staff ("Staff") filed its
Letter of Insufficiency and First Set of Data Requests.
5. On July 3, 2008, Broadview filed its responses to Staff's First Set of Data Requests.
6. On July 10, 2008, Staff filed Second set of Data Requests.

1 7. On July 16, 2008, Broadview filed its responses to Staff's Second Set of Data
2 Requests.

3 8. On August 27, 2009, Staff filed its Staff Report recommending approval of
4 Broadview's Application subject to certain conditions.

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

6 9. Broadview is a New York "S" corporation, granted authority on August 28, 2007, to
7 do business in Arizona as a foreign corporation.

8 10. Broadview is in good standing with the Commission's Corporations Division.

9 11. Broadview does not currently hold a CC&N to provide telecommunications services in
10 Arizona and is not providing telecommunications services in Arizona.

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

15 13. In its Application, Broadview disclosed that its status as a foreign corporation had
16 been revoked by the State of Illinois as a result of its failure to file an annual report and pay an annual
17 franchise tax. This revocation resulted in the cancellation by the Illinois Commerce Commission
18 ("ICC") in 2002 of Broadview's authority to provide telecommunications services in that state.
19 According to Broadview, its failure to file timely the required documentation and to pay the franchise
20 tax was a result of an oversight occasioned by an internal restructuring of a number of its office
21 locations in New York, New Jersey and Pennsylvania in the spring of 2002. Broadview states that it
22 did not become aware of its oversight until it learned of the revocation of its authority to provide
23 telecommunication services. At the time of the instant Application, Broadview was in the process of
24 having its authority reinstated by the ICC.

25 14. Broadview stated that it has instituted safeguards to ensure its future compliance with
26 all reporting obligations. Broadview asserts that it has established internal procedures, including the
27 hiring and training of individuals whose primary job responsibility it is to monitor the status of
28 Broadview's operating authority, respond promptly to any and all state Commission's inquiries

1 and/or data requests, and timely submit all reports and information as required to maintain
2 Broadview's operating authority in all jurisdictions.

3 15. On July 15, 2008, Broadview provided Staff with an Order from the ICC dated June
4 25, 2008, granting Broadview authority to provide resold interexchange telecommunication service in
5 Illinois.

6 16. Staff noted Broadview had received its original authorization from the ICC on
7 September 7, 2000.

8 17. Staff learned that there were no formal or informal consumer complaints filed with the
9 ICC against Broadview prior to revocation of its authority, and that there have not been any formal or
10 informal complaints filed with the ICC since Broadview's reinstatement.

11 18. According to Broadview, it currently offers resold interexchange service in twenty
12 states. Besides the ICC, Staff contacted five of the twenty state public utility commissions ("PUCs")
13 in which Broadview currently operates to confirm Broadview's operating authority and to inquire as
14 to consumer complaints. Staff contacted the Connecticut, North Carolina, New Hampshire, Texas
15 and Wyoming PUCs.

16 19. According to Staff, the Connecticut Department of Public Utility Control related that
17 Broadview had two informal quality of service complaints. The complaints were resolved and closed
18 without fees or fines imposed against Broadview.

19 20. The New Hampshire Public Utility Commission related to Staff that there have been
20 five slamming complaints filed against Broadview. The complaints were resolved and closed without
21 fees or fines imposed against Broadview.

22 21. Staff stated that the North Carolina, Texas, and Wyoming PUCs reported that there
23 have been no complaints filed against Broadview.

24 22. Staff notes that a search of the Federal Communications Commission's ("FCC")
25 website found that there have been no complaints filed against Broadview.

26 23. Finally, Staff states that the Consumer Services Section of the Utilities Division
27 reported no complaints, inquiries, or opinions filed within Arizona against Broadview.

28

1 **Technical Capabilities**

2 24. Broadview intends to offer resold long distance telecommunications services to
3 subscribers in Arizona.

4 25. Broadview is a wholly-owned subsidiary of Broadview Networks Holdings, Inc.
5 ("Parent Company"), which also owns a number of other entities authorized to provide
6 telecommunications services. One of these entities is authorized to provide telecommunications
7 services in Arizona, ATX Licensing, Inc.

8 26. Broadview has authority to provide, and/or is providing, resold long distance
9 telecommunications services similar to those it intends to offer in Arizona in twenty states.

10 27. Based on its operations in other states, Staff determined that Broadview has sufficient
11 technical capabilities to provide resold long distance telecommunications services in Arizona.

12 **Financial Resources**

13 28. Broadview provided an unaudited consolidated financial statement for its Parent
14 Company for the period ending December 31, 2008. According to the Staff Report, the Parent
15 Company's consolidated 2008 financial statements list assets of \$359,028, negative equity of
16 \$65,266, and a net loss of \$42,866.

17 29. Broadview's Application indicated that it does not intend to rely on the financial
18 resources of its Parent Company.

19 30. Broadview projects total revenues generated by the provision of telecommunications
20 services to Arizona customers for the first 12 months of operations to be \$68,000, with operating
21 expenses during that period of \$8,000.

22 31. Broadview projects the net book value of all Arizona jurisdictional assets and the
23 projected value of all Arizona assets after the first 12 months of operations to be zero.

24 32. Staff stated that if Broadview experienced financial difficulty, it would have only a
25 minimal impact on its customers because many companies provide resold long distance
26 telecommunications services, and facilities-based providers are also available. Staff also states that
27 Broadview's customers will be able to access alternative toll service providers or resellers via
28 1+101XXXX access.

1 **Proposed Rates**

2 33. Staff indicates that the rates proposed by Broadview are for competitive services and
3 that rates for competitive telecommunications services are generally not established according to rate-
4 of-return regulation.

5 34. Staff has determined that Broadview's fair value rate base is zero. While Staff
6 considered the fair value rate base information submitted by Broadview, Staff determined that the fair
7 value rate base information should not be given substantial weight in its analysis.

8 35. As a reseller of services purchased from other telecommunications companies,
9 Broadview will have no market power and will have to compete with other providers to obtain
10 subscribers to its services. In light of this competitive market, Staff believes that Broadview's
11 proposed tariffs will be just and reasonable.

12 36. Staff has reviewed Broadview's proposed rates and determined that they are just and
13 reasonable.

14 37. Broadview's tariff indicates that it will not collect advance payments, deposits, and/or
15 prepayments from its resold long distance customers.

16 **Regulatory Requirements**

17 38. Commission rules require Broadview to file a tariff for each competitive service that
18 states the maximum rate as well as the effective (actual) price that will be charged for the service.
19 Under Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must
20 not be below the total service long-run incremental cost of providing the service. Any change to
21 Broadview's effective price for a service must comply with A.A.C. R14-2-1109, and any change to
22 the maximum rate for a service in Broadview's tariff must comply with A.A.C. R14-2-1110.

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

28 40. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from

1 unauthorized carrier changes (“slamming”) and apply to each public service corporation providing
2 telecommunications services within the State of Arizona and over which the Commission has
3 jurisdiction.

4 41. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from
5 unauthorized carrier charges (“cramming”) and apply to each public service corporation providing
6 telecommunications services within the State of Arizona and over which the Commission has
7 jurisdiction.

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

11 **Staff's Recommendations**

12 43. Staff recommends approval of Broadview’s Application and further recommends:

- 13 a. That Broadview be ordered to comply with all Commission rules, orders, and
14 other requirements relevant to the provision of intrastate telecommunications
15 service;
16 b. That Broadview be ordered to maintain its accounts and records as required by
17 the Commission;
18 c. That Broadview be ordered to file with the Commission all financial and other
19 reports that the Commission may require, in a form and at such times as the
20 Commission may designate;
21 d. That Broadview be ordered to maintain on file with the Commission all current
22 tariffs and rates and any service standards that the Commission may require;
23 e. That Broadview be ordered to comply with the Commission’s rules and to
24 modify its tariffs to conform to those rules if it is determined that there is a
25 conflict between Broadview’s tariffs and Commission rules;
26 f. That Broadview be ordered to cooperate with Commission investigations,
27 including but not limited to customer complaints;
28 g. That Broadview be ordered to participate in and contribute to the AUSF as
required by the Commission;
h. That Broadview be ordered to notify the Commission immediately upon
changes to its name, address, or telephone number;
i. That if Broadview wants to collect advances, deposits, and/or prepayments
from its resold interexchange customers, Broadview should be required to file
an application with the Commission for Commission approval. Such
application must reference the Decision in this docket and must explain

1 Broadview's plans for procuring its performance bond or irrevocable sight
2 draft letter of credit;

- 3 j. That Broadview's intrastate interexchange service offerings be classified as
4 competitive pursuant to A.A.C. R14-2-1108;
- 5 k. That the maximum rates for Broadview's services be the maximum rates
6 proposed by Broadview in its proposed tariffs;
- 7 l. That the minimum rates for Broadview's services be the total service long-run
8 incremental costs of providing those services, as set forth in A.A.C. R14-2-
9 1109;
- 10 m. If Broadview states only one rate for a service in its proposed tariff, that the
11 rate stated be the effective (actual) price to be charged for the service as well as
12 the service's maximum rate;
- 13 n. That Broadview's fair value base rate is zero;
- 14 o. That should Broadview desire to provide other telecommunications service
15 other than resold interexchange services, Broadview must file an application
16 with the Commission;
- 17 p. That should Broadview request to discontinue and/or abandon its service area,
18 Broadview must provide notice to both the Commission and its customers, in
19 accordance with A.A.C. R-14-2-1107; and
- 20 q. That Broadview be ordered to do the following and that its CC&N be rendered
21 null and void, after due process, if it fails to do the following:
- 22 i. Broadview shall docket conforming tariffs for each service within its
23 CC&N within 365 days from the date of an Order in this matter or 30
24 days before providing service, whichever comes first, and in
25 accordance with this Decision.

26 44. Staff's recommendations are reasonable and should be adopted.

27 45. Although Broadview has had several complaints brought against it in other
28 jurisdictions, the information provided by Staff indicates that those complaints were determined to be
unfounded. Because Broadview's complaint history does not indicate a pattern of problems or
misconduct, and because Broadview will not be collecting advance payments, deposits, and/or
prepayments from its resold long distance customers, it is not necessary to require the Company to
file a performance bond or irrevocable sight draft letter of credit.

CONCLUSIONS OF LAW

1. Upon receiving a CC&N, Broadview 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 Broadview and the subject matter of the

1 Application.

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

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

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

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

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

12 8. The telecommunications services that Broadview desires to provide are competitive in
13 Arizona.

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

18 10. Staff's recommendations, as set forth in Findings of Fact No. 43 are reasonable and
19 should be adopted.

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

22 12. Broadview's rates, as they appear in its proposed tariffs, are just and reasonable and
23 should be approved.

24 **ORDER**

25 IT IS THEREFORE ORDERED that the Application of Broadview Networks, Inc., for a
26 Certificate of Convenience and Necessity to provide resold long distance telecommunications
27 services in Arizona is hereby granted conditioned upon compliance with the conditions and
28 recommendations set forth in Findings of Fact No. 43.

1 IT IS FURTHER ORDERED that if Broadview Networks, Inc., fails to meet the conditions
2 outlined in Findings of Fact No. 43(q) within the timeframes therein, the Certificate of Convenience
3 and Necessity conditionally granted herein shall become null and void after due process.

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

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____
20

21 DISSENT _____
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1 SERVICE LIST FOR: BROADVIEW NETWORKS, INC.

2 DOCKET NO.: T-20565A-07-0651

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