

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

Arizona Corporation Commission

DOCKETED

OCT - 2 2009

DATE: OCTOBER 2, 2009

DOCKET NO.: T-20646A-09-0005

TO ALL PARTIES:

DOCKETED BY *MM*

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

CVC CLEC, LLC  
(CC&N/RESELLER/FACILITIES-BASED)

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:

OCTOBER 13, 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:

OCTOBER 20, 2009 and OCTOBER 21, 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 AMENDED  
9 APPLICATION OF CVC CLEC, LLC, FOR  
10 APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE RESOLD LOCAL EXCHANGE  
AND FACILITIES-BASED LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20646A-09-0005

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

11 DATE OF HEARING: September 30, 2009

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. Michael T. Hallam, LEWIS AND ROCA LLP, on  
15 behalf of CVC CLEC, LLC; and  
16 Mr. Kevin Torrey, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

17 **BY THE COMMISSION:**

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

20 **FINDINGS OF FACT**

21 1. On January 7, 2009, CVC CLEC, LLC ("Applicant" or "Company"), filed with the  
22 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience  
23 and Necessity ("Certificate") to provide competitive resold long distance, resold local exchange,  
24 facilities-based local exchange telecommunications and facilities-based long distance  
25 telecommunication services in Arizona ("Application").

26 2. On March 2, 2009, the Company filed an amended application ("Amended  
27 Application") which modified the Company's request for a Certificate in order to enable Applicant to  
28 be authorized to provide only resold local exchange and facilities-based local exchange

1 telecommunications services in Arizona.

2 3. On April 3, 2009, the Company filed a revised tariff(s) ("Revised Tariff") replacing in  
3 its entirety the tariff(s) submitted with its Amended Application.

4 4. On July 6, 2009, the Commission's Utilities Division ("Staff") filed its Staff Report  
5 recommending approval of the application.

6 5. On July 20, 2009, by Procedural Order, a hearing in the matter was scheduled on  
7 September 30, 2009.

8 6. On August 12, 2009, pursuant to the Commission's Procedural Order, the Company  
9 filed an Affidavit of Publication.

10 7. On September 30, 2009, a full public hearing was held before a duly authorized  
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and  
12 Staff appeared through counsel and presented evidence and testimony. No members of the public  
13 appeared to give public comment.

14 8. The Company is an Arizona limited liability company organized under the laws of the  
15 State of Arizona in 2008.

16 9. Staff recommends approval of the Company's Application for a Certificate and its  
17 petition for a determination that its proposed telecommunications services should be classified as  
18 competitive.

19 10. Staff further recommends that:

20 a. Applicant comply with all Commission Rules, Orders, and other requirements  
21 relevant to the provision of intrastate telecommunications services;

22 b. Applicant comply with federal laws, federal rules and A.A.C. R14-2-1308(A),  
to make number portability available;

23 c. Applicant complies with the quality of service standards that were approved by  
24 the Commission for Qwest in Docket No. T-01051B-93-0183;

25 d. Applicant be prohibited from barring access to alternative local exchange  
26 service providers who wish to serve areas where the Company is the only  
provider of local exchange service facilities;

27 e. Applicant be required to notify the Commission immediately upon changes to  
Applicant's name, address or telephone number;

28 f. Applicant cooperate with Commission investigations including, but not limited

to customer complaints;

- 1
- 2 g. Applicant provide all customers with 911 and E911 service, where available,
- 3 or will coordinate with ILECS and emergency service providers to provide 911
- 4 and E911 service in accordance with A.A.C. R14-2-1201(6)(d) and Federal
- 5 Communications Commission 47 CFR Sections 64.3001 and 64.3002;
- 6 h. Although Staff considered the fair value rate base ("FVRB") information
- 7 submitted by Applicant, the fair value information provided should not be
- 8 given substantial weight;
- 9 i. In the event the Applicant requests to discontinue and/or abandon its service
- 10 area, it must provide notice to both the Commission and its customers. Such
- 11 notice(s) shall be in accordance with A.A.C.R14-2-1107;
- 12 j. Applicant be required to offer Caller ID with the capability to toggle between
- 13 blocking and unblocking the transmission of the telephone number at no
- 14 charge;
- 15 k. Applicant be required to offer Last Call Return service that will not return calls
- 16 to telephone numbers that have the privacy indicator activated;
- 17 l. Applicant be authorized to discount its rates and service charges to the
- 18 marginal cost of providing the services; and
- 19 m. Applicant's rates should be classified as competitive.

20

21 11. Staff further recommends that the Company comply with the following conditions

22 within the timeframes outlined below or the Company's Certificate should be considered null and

23 void, after due process:

- 24 a. that the Company docket conforming tariff(s) for each service within its
- 25 Certificate within 365 days from the date of an Order in this matter or 30 days
- 26 prior to providing service, whichever comes first. The tariffs submitted to the
- 27 Commission should coincide with the Revised Tariff of the Amended
- 28 Application;
- 29 b. that the Company should procure either a performance bond or an irrevocable
- 30 sight draft letter of credit equal to \$125,000;
- 31 c. that the Company should docket proof of the original performance bond or
- 32 irrevocable sight draft letter of credit with the Commission's Business Office
- 33 and 13 copies of the performance bond or irrevocable sight draft letter of credit
- 34 with Docket Control, as a compliance item in this docket, within 30 days of the
- 35 effective date of a Decision in this matter. The performance bond or
- 36 irrevocable sight draft letter of credit must remain in effect until further order
- 37 of the Commission.

38 The Commission may draw on the performance bond or irrevocable sight draft

39 letter of credit on behalf of, and for the sole benefit of, the Company's

40 customers if the Commission finds, in its discretion, that the Company is in

41 default of its obligations arising from its Certificate. The Commission may use

42 the performance bond or irrevocable sight draft letter of credit funds as

1 appropriate to protect the Company's customers and the public interest and  
2 take any and all actions the Commission deems necessary, in its discretion,  
including, but not limited to, returning prepayments or deposits collected from  
the Company's customers; and

- 3 d. that the Company abide by the Commission-adopted rules that address  
4 Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all  
5 telecommunications service providers that interconnect into the public  
6 switched network shall provide funding for the Arizona Universal Service  
Fund ("AUSF"). The Applicant will make the necessary monthly payments  
required by A.A.C. R14-2-1204(B).

7 **Technical Capabilities**

8 12. Applicant has been authorized to provide various telecommunications services in  
9 approximately five states, but has not yet begun service in any of them. The Company anticipates  
10 beginning service in Arizona within 60 to 90 days after its receipt of its Certificate.

11 13. The Company currently has four employees in Arizona, but anticipates hiring  
12 approximately 10 employees upon the issuance of a Certificate and adding up to 40 or more as  
13 customers are added.

14 14. Several members of the Company's management team each have more than 10 years  
15 experience in the telecommunications industry.

16 15. Customer service will be provided by the Company through a 24/7 customer call  
17 center located in Tempe, Arizona.

18 16. Given the foregoing, Staff concludes that Applicant has the technical capabilities to  
19 provide the telecommunications services it seeks to provide in Arizona.

20 **Financial Capabilities**

21 17. The Company is a startup company and has no financial history. However, a recent  
22 bank statement provided to Staff revealed that Applicant has \$100,000 in its account.

23 18. According to a Company manager, these funds were raised from the Company's  
24 members through a capital call. The Company anticipates building up to annual revenues of  
25 \$12,000,000 once it begins operations.

26 19. The Company will not be collecting any advances, deposits or prepayments from its  
27 customers.

28 20. Staff's witness, Lori Morrison, testified that the requirement of a performance bond

1 for resold and facilities-based local exchange service is a standard requirement regardless of whether  
2 a company requires advances, deposits or prepayments from its customers. In its report, Staff is  
3 recommending that the Applicant be required to obtain a performance bond or an irrevocable sight  
4 draft letter of credit, as described in Finding of Fact No. 11, above, in order to protect Arizona  
5 customers.

6 21. Pursuant to A.A.C. R-14-2-1107, if the Company desires to discontinue service in  
7 Arizona, it must file an application with the Commission and notify its customers and the  
8 Commission 60 days prior to filing the application to discontinue service.

9 **Rates and Charges**

10 22. Pursuant to A.A.C. R-14-2-1109, the Company may charge rates for services that are  
11 not less than its total service long-run incremental costs of providing service.

12 23. Information provided to Staff projected the Company's FVRB to be zero.

13 24. Given the competitive markets in which the Company will operate, the Applicant's  
14 FVRB may not be useful as the sole determinant of rates.

15 25. Applicant's proposed rates are for competitive services. In general, rates for  
16 competitive services are not set according to the rate of return regulation.

17 26. Based on Staff's review, the Company's proposed rates are comparable with other  
18 competitive local carriers and local incumbent carriers operating in Arizona.

19 27. According to the Staff Report, FVRB should not be given substantial weight in this  
20 analysis.

21 28. The Company's proposed rates are just and reasonable and should be approved.

22 **Local Exchange Carrier Specific Issues**

23 29. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, the Company will  
24 make number portability available to facilitate the ability of customers to switch between authorized  
25 local carriers within a given wire center without changing their telephone number and without  
26 impairment to quality, functionality, reliability or convenience of use.

27 30. In compliance with A.A.C. R14-2-1204(A), all telecommunications service providers  
28 that are interconnected into the public switched network shall provide funding for the AUSF.

1           31.     Applicant will contribute to the AUSF as required by the A.A.C., and make the  
2 necessary monthly payments as required under A.A.C. R14-2-1204(B).

3           32.     In Commission Decision No. 59421 (December 20, 1995) the Commission approved  
4 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of  
5 service. Since the Company does not have a similar history of service quality problems, Staff does  
6 not recommend that the penalties in that Decision should apply to Applicant.

7           33.     In the areas where the Company is the only local exchange service provider, Applicant  
8 is prohibited from barring access to alternative local exchange service providers who wish to serve  
9 the area.

10          34.     The Company will provide all customers with 911 and E911 service where available,  
11 or will coordinate with ILECs and emergency service providers to facilitate the service.

12          35.     Pursuant to prior Commission Decisions, the Company may offer customer local area  
13 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or  
14 unblock each individual call at no additional cost.

15          36.     Applicant must also offer Last Call Return service, which will not allow the return of  
16 calls to the telephone numbers that have the privacy indicator activated.

17 **Complaint Information**

18          37.     The Company has not had an application for service denied in any state, and neither  
19 have there been any formal complaint proceedings nor any civil or criminal proceedings involving  
20 Applicant.

21          38.     Staff contacted the Public Utilities Commissions in three of the states where the  
22 Company is authorized to provide telecommunications services to inquire about any customer  
23 complaints and the two which responded indicated that no customer complaints have been filed  
24 against the Applicant in those jurisdictions. While the third state did not respond, Staff was able to  
25 verify that Applicant was authorized to provide telecommunications service through the appropriate  
26 state regulatory agency website.

27          39.     According to the Staff Report, none of the Company's officers, directors or partners  
28 have been involved in any civil or criminal investigations, or formal or informal complaints.

1 Additionally, none of the Company's officers, directors or partners have been convicted of any  
2 criminal acts in the past ten years.

3 **Competitive Services Analysis**

4 40. Applicant has requested that its telecommunications services in Arizona be classified  
5 as competitive. The Company's proposed services should be classified as competitive because there  
6 are alternatives to the Company's proposed services; ILECs and large facilities-based interexchange  
7 carriers hold a virtual monopoly in local exchange markets and in the interLATA interexchange  
8 market; the Company will have to convince customers to purchase its services; Applicant has no  
9 ability to adversely affect the local exchange or interexchange market as several CLECs and ILECs  
10 provide local exchange and interexchange services; and, therefore, the Company will have no market  
11 power in those local exchange markets or interexchange markets where alternative providers of  
12 telecommunications services exist.

13 41. Staff's recommendations are reasonable and should be adopted.

14 **CONCLUSIONS OF LAW**

15 1. Applicant is a public service corporation within the meaning of Article XV of the  
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Applicant and the subject matter of the  
18 Application.

19 3. Notice of the Application was given in accordance with the law.

20 4. A.R.S § 40-282 allows a telecommunications company to file an application for a  
21 Certificate to provide competitive telecommunications services.

22 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
23 Statutes, it is in the public interest for the Company to provide the telecommunications services set  
24 forth in its Application.

25 6. The Company is a fit and proper entity to receive a Certificate authorizing it to provide  
26 competitive resold and facilities-based local exchange telecommunications services in Arizona,  
27 subject to Staff's recommendations set forth herein.

28



1 IT IS FURTHER ORDERED that if CVC CLEC, LLC fails to comply with the timeframes  
2 stated in Findings of Fact No. 11, herein, the Certificate of Convenience and Necessity granted herein  
3 shall be considered 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, Executive  
12 Director of the Arizona Corporation Commission, have  
13 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 \_\_\_\_\_  
22

MES:db

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26  
27  
28

1 SERVICE LIST FOR: CVC CLEC, LLC

2 DOCKET NO.: T-20646A-09-0005

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