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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED
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IN THE MATTER OF THE AMENDED APPLICATION OF CVC CLEC, LLC, FOR 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. 71329

OPINION AND ORDER

DATE OF HEARING: September 30, 2009

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Mr. Michael T. Hallam, LEWIS AND ROCA LLP, on behalf of CVC CLEC, LLC; and

Mr. Kevin Torrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

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

FINDINGS OF FACT

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

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

telecommunications services in Arizona.

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

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

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

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

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

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

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

10. Staff further recommends that:

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

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

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

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

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

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

to customer complaints;

g. Applicant provide all customers with 911 and E911 service, where available, or will coordinate with ILECS and emergency service providers to provide 911 and E911 service in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002;

h. Although Staff considered the fair value rate base ("FVRB") information submitted by Applicant, the fair value information provided should not be given substantial weight;

i. In the event the Applicant requests to discontinue and/or abandon its service area, it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C.R14-2-1107;

j. Applicant be required to offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;

k. Applicant be required to offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;

l. Applicant be authorized to discount its rates and service charges to the marginal cost of providing the services; and

m. Applicant's rates should be classified as competitive.

11. Staff further recommends that the Company comply with the following conditions within the timeframes outlined below or the Company's Certificate should be considered null and void, after due process:

a. that the Company docket conforming tariff(s) for each service within its Certificate within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted to the Commission should coincide with the Revised Tariff of the Amended Application;

b. that the Company should procure either a performance bond or an irrevocable sight draft letter of credit equal to $125,000;

c. that the Company should docket proof of the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and 13 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 finds, in its discretion, 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 deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Company's customers; and

d. that the Company abide by the Commission-adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public 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).

Technical Capabilities

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

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

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

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

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

Financial Capabilities

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

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

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

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

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

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

Rates and Charges

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

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

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

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

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

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

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

Local Exchange Carrier Specific Issues

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

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

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

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

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

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

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

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

Complaint Information

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

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

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

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

Competitive Services Analysis

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

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

CONCLUSIONS OF LAW

1. Applicant is 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 Applicant and the subject matter of the Application.

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

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

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

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

7. The telecommunications services that Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for the Company to establish rates and charges that are not less than Applicant's total service long-run incremental costs of providing the competitive services approved herein.

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

10. The Company's rates, as they appear in its proposed tariff(s), are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the Application of CVC CLEC, LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange and facilities-based local exchange telecommunications services in Arizona is hereby granted subject to the conditions in Findings of Facts Nos. 10 and 11.

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IT IS FURTHER ORDERED that if CVC CLEC, LLC fails to comply with the timeframes stated in Findings of Fact No. 11, herein, the Certificate of Convenience and Necessity granted herein shall be considered null and void, after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, Ernest G. Johnson, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of Oct, 2009.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

SERVICE LIST FOR: CVC CLEC, LLC

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

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