

ORIGINAL

OPEN MEETING ITEM



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



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Executive Director

ARIZONA CORPORATION COMMISSION

2010 MAR 10 P 2:07

AZ CORP COMMISSION
DOCKET CONTROL

DATE: MARCH 10, 2010

DOCKET NO.: T-03470A-09-0212

TO ALL PARTIES:

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

LDMI TELECOMMUNICATIONS, INC. dba
CAVALIER BUSINESS COMMUNICATIONS
(CANCEL CC&N)

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:

MARCH 19, 2010

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:

MARCH 31, 2010 and APRIL 1, 2010

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.

Arizona Corporation Commission
DOCKETED

MAR 10 2010

DOCKETED BY *MM*

[Signature]
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov

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
9 OF LDMI TELECOMMUNICATIONS, INC., D/B/A
10 CAVALIER BUSINESS COMMUNICATIONS FOR
11 THE CANCELLATION OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY FOR
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03470A-09-0212

DECISION NO. _____

ORDER

14 Open Meeting
15 March 31 and April 1, 2010
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. LDMI Telecommunications, Inc., d/b/a Cavalier Business Communications (“LDMI”
22 or “Company”) has a Certificate of Convenience and Necessity (“CC&N”) to provide resold
23 interexchange telecommunications services in Arizona pursuant to Decision No. 61169 (October 8,
24 1998).

25 2. On May 4, 2009, the Company filed with the Commission an application for
26 cancellation of its CC&N and its AZ.C.C. Tariff No. 3 (“Application”). LDMI stated in its
27 Application that it currently has no customers in Arizona and does not hold any customers’ advance
28 payments or deposits.

 3. On October 30, 2009, the Commission’s Utilities Division Staff (“Staff”) filed its Staff
Report recommending approval of LDMI’s Application.

 4. Arizona Administrative Code (“A.A.C.”), R-14-2-1107 requires the Company to
provide notice to customers of its discontinuation of service, a plan for the refund of deposits, a list of

1 alternate providers, and to publish notice of the application.

2 5. LDMI filed an affidavit dated May 26, 2009, stating that as of April 30, 2009, the
3 Company has no Arizona customers. On August 27, 2009, the Company provided to Staff a copy of
4 correspondence dated August 19, 2009, that LDMI sent to customers who were previously served by
5 LDMI. The letter advised the customers that the Company would no longer provide long distance
6 services after October 1, 2009, and that the customer has a right to choose another provider other than
7 LDMI's delegated LDMI affiliate, Talk America, Inc.

8 6. The Company requests a waiver from compliance with the requirements that it provide
9 a plan for refund of deposits, that it provide a list of alternate providers, and that it publish notice of
10 the Application because, as of the date of the Application, it no longer had any customers in Arizona
11 and did not hold any advances, prepayments and/or deposits.

12 7. Staff concurs with LDMI's reasoning and recommends that Company compliance
13 with these provisions should be waived.

14 8. As discussed in Decision No. 67404 (November 2, 2004), it would render
15 A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to
16 exempt a Company from the requirements of the rule because it has no customers due to its
17 discontinuation of service. However, as discussed in that Decision, the intent of the rule is to ensure
18 that existing customers have advance notice of a telecommunications provider's pending plan to
19 discontinue service such that they will be afforded an opportunity to procure service through an
20 alternative provider prior to such discontinuance.

21 9. The Company did not have any Arizona customers at the time of the Application and
22 does not hold any customers' advances, prepayments and/or deposits. Under these circumstances, the
23 requirements of A.A.C. R-14-2-1107(A)(3) & (4) and (B) should be waived.

24 10. The Commission's Consumer Services Section of the Commission's Utilities Division
25 reported that there were no customer complaints, inquiries or opinions against the Company from
26 January 1, 2005, through January 14, 2009.

27 11. The Commission's Corporations Division reported that LDMI is in good standing.

28 12. Staff recommends approval of LDMI's Application and cancellation of the

1 Company's CC&N and its AZ.C.C. Tariff No. 3.

2 13. Staff's recommendation is reasonable and should be adopted.

3 **CONCLUSIONS OF LAW**

4 1. The Company is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over the Company and the subject matter of the
7 Application.

8 3. The cancellation of the Company's CC&N is in the public interest.

9 4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding
10 Certificates of Convenience and Necessity for certain telecommunication services without a hearing.

11 5. The requirements of A.A.C. R-14-2-1107(A)(3) & (4) and (B) should be waived in
12 this case.

13 6. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the Application of LDMI Telecommunications, Inc., d/b/a Cavalier Business Communications for the cancellation of its Certificate of Convenience and Necessity to provide resold interexchange telecommunications services in Arizona is hereby approved, and its Certificate of Convenience and Necessity and its AZ.C.C. Tariff No. 3 are hereby cancelled.

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 _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: LDMI TELECOMMUNICATIONS, INC, D/B/A
2 CAVALIER BUSINESS COMMUNICATIONS

3 DOCKET NO.: T-03470A-09-0212

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