

OPEN MEETING ITEM



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



RECEIVED  
Executive Director

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2010 JUN 14 P 3: 23

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

ORIGINAL

ARIZONA CORPORATION COMMISSION

DATE: JUNE 14, 2010  
DOCKET NO.: T-20663A-09-0130

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

ENTELEGENT SOLUTIONS, INC.  
(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:

JUNE 23, 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:

JUNE 29, 2010 AND JUNE 30, 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

JUN 14 2010

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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 ENTELEGENT SOLUTIONS, INC. FOR  
10 APPROVAL OF A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 RESOLD LONG DISTANCE, FACILITIES-BASED  
13 LOCAL EXCHANGE, AND SWITCHED ACCESS  
14 TELECOMMUNICATIONS SERVICES IN  
15 ARIZONA.

DOCKET NO. T-20663A-09-0130

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

OPINION AND ORDER

11 DATE OF HEARING: April 29, 2010  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
14 APPEARANCES: Mr. Matt Bingham, LEWIS AND ROCA, LLP, on  
15 behalf of the Applicant; and  
16 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

19 **BY THE COMMISSION:**

20 On March 17, 2009, Entelegent Solutions, Inc. ("ESI" or "Company") filed with the Arizona  
21 Corporation Commission ("Commission") an application for a Certificate of Convenience and  
22 Necessity ("CC&N") to provide resold long distance and facilities-based local exchange  
23 telecommunications services in Arizona.

24 On July 21, 2009, ESI docketed proof of filing a \$100,000 performance bond with the  
25 Commission's Business Office.

26 On September 9, 2009, ESI docketed amended application pages, which included a request to  
27 provide switched access telecommunications services in Arizona. ESI's filing also provided  
28 responses to the Commission's Utilities Division ("Staff") First Set of Data Requests.

On October 26, 2009, ESI filed revised tariff pages and responses to Staff's Second Set of

1 Data Requests.

2 On February 19, 2010, Staff filed a Staff Report recommending approval of the amended  
3 application, subject to certain conditions.

4 On March 15, 2010, by Procedural Order, the hearing in this matter was scheduled for April  
5 29, 2010 and other procedural deadlines were established.

6 On March 31, 2010, Matthew G. Bingham, Esq., filed a notice of appearance on behalf of  
7 ESI.

8 On April 8, 2010, ESI docketed a filing showing notice of the application, as amended, had  
9 been published on March 26, 2010, in the *Arizona Republic*, a newspaper of general circulation in the  
10 proposed service area.

11 On April 12, 2010, ESI filed a response to the Staff Report stating that ESI had decided to  
12 remove from its proposed tariffs the deposit and/or prepayment requirement for resold long distance  
13 customers. ESI's response also stated that Staff agrees that with the filing of the revised tariff, no  
14 additional bond would be necessary. ESI submitted replacement tariff pages removing the deposit  
15 and/or prepayment requirement for resold long distance customers, as well as a filing showing  
16 updated maximum and current rates.

17 On April 28, 2010, Staff docketed an amended Staff Report, continuing to recommend  
18 approval of ESI's application and eliminating its recommendation requiring ESI to procure a \$10,000  
19 performance bond or irrevocable sight draft letter of credit ("ISDLC") associated with ESI's resold  
20 long distance customers.

21 On April 29, 2010, a full public hearing was held before a duly authorized Administrative  
22 Law Judge of the Commission at its offices in Phoenix, Arizona. ESI and Staff appeared through  
23 counsel at the hearing and presented evidence and testimony. No members of the public appeared to  
24 give public comments in this matter. At the conclusion of the hearing, the matter was taken under  
25 advisement pending submission of a Recommended Opinion and Order to the Commission.

26 \* \* \* \* \*

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

**FINDINGS OF FACT**

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1. ESI is a foreign corporation, organized under the laws of North Carolina, with its principal place of business in Charlotte, North Carolina.<sup>1</sup> ESI is authorized to transact business in Arizona and is in good standing with the Commission.<sup>2</sup>

2. On March 17, 2009, ESI filed an application seeking a CC&N to provide resold long distance and facilities-based local exchange telecommunication services in Arizona. ESI's application also requests a determination that its proposed telecommunications services are competitive.

3. On September 9, 2009, ESI filed amended pages to its application stating that in addition to its request to provide resold long distance, and facilities-based local exchange services in Arizona, ESI is also seeking authority to provide switched access telecommunications services within the State.<sup>3</sup> ESI also filed amended proposed tariffs, which included its proposed switched access telecommunications service.<sup>4</sup>

4. Notice of application, as amended, was given in accordance with the law.

5. Staff recommends approval of ESI's amended application for a CC&N to provide resold long distance, facilities-based local exchange, and switched access telecommunications services in Arizona and that ESI's proposed services be classified as competitive.

- 6. Staff further recommends that:
  - a. ESI comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
  - b. ESI comply with federal laws, federal rules and A.A.C R14-2-1308 (A), to make number portability available;
  - c. ESI abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
  - d. ESI be prohibited from barring access to alternative local exchange service providers who wish to serve areas where ESI is the only local provider of local exchange service facilities;

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<sup>1</sup> Application at Attachment A.  
<sup>2</sup> Application at Attachment A.  
<sup>3</sup> ESI's response to Staff's Data Request dated September 9, 2009.  
<sup>4</sup> Id.

- 1 e. ESI provide all customers with 911 and E911 service, where available, or will  
2 coordinate with ILECs and emergency service providers to provide 911 and  
3 E911 service in accordance with A.A.C. R14-2-1201(6)(d) and Federal  
4 Communications Commission 47 CFR Sections 64.3001 and 64.3002;
- 5 f. ESI notify the Commission immediately upon changes to ESI's name, address  
6 or telephone number;
- 7 g. ESI cooperate with Commission investigations including, but not limited to  
8 customer complaints;
- 9 h. The fair value rate base information provided for ESI not be given substantial  
10 weight in this analysis;
- 11 i. In the event ESI discontinues and/or abandons its service area, ESI must  
12 provide to both the Commission and its customers notice as set forth in A.A.C.  
13 R14-2-1107;
- 14 j. ESI offer Caller ID with the capability to toggle between blocking and  
15 unblocking the transmission of the telephone number at no charge;
- 16 k. ESI offer Last Call Return service that will not return calls to telephone  
17 numbers that have the privacy indicator activated;
- 18 l. The Commission authorized ESI to discount its rates and service charges to the  
19 marginal cost of providing the services.

20 7. Staff recommends that ESI's CC&N should be considered null and void, after due  
21 process, if ESI fails to comply with the following conditions:

- 22 a. ESI docket conforming tariffs for each of its proposed services within 365  
23 days from the date of an Order in this matter, or 30 days prior to providing  
24 service, whichever comes first. The tariffs submitted to the Commission should  
25 coincide with the services described in ESI's amended application.
- 26 b. ESI's performance bond,<sup>5</sup> remain on file with the Commission and should be  
27 increased if at any time it would be insufficient to cover advances, deposits,  
28 and/or prepayments collected from ESI's customers. The performance bond or  
ISDLC should be increased in increments of \$50,000. This increase should  
occur when the total amount of advances, deposits, and/or prepayments is  
within \$10,000 of the total \$100,000 performance bond or ISDLC amount.  
The performance bond or ISDLC should remain in effect until further order of  
the Commission. The Commission may draw on the performance bond or  
ISDLC on behalf of and for the sole benefit of ESI's customers, if the  
Commission finds, in its discretion, that ESI is in default of its obligations  
arising from its CC&N. The Commission may use the performance bond or

<sup>5</sup> ESI docketed proof of filing a \$100,000 performance bond with the Commission for its proposed services on July 21, 2009.

1 ISDLC funds, as appropriate, to protect ESI's customers and the public interest  
 2 and take any and all actions the Commission deems necessary, in its discretion,  
 3 including, but not limited to returning prepayments or deposits collected from  
 4 ESI's customers.

- 5 c. ESI should notify the Commission as a compliance filing when its first  
 6 customer is served.
- 7 d. If at some time in the future ESI does not collect advances, deposits, and/or  
 8 prepayments from its local exchange or switched access customers, ESI should  
 9 file a request for cancellation of its established performance bond or ISDLC  
 10 regarding its resold long distance, facilities-based local exchange, and  
 11 switched access telecommunications services. Further, any such request should  
 12 reference the Decision in this docket and explain ESI's plans for cancelling  
 13 those portions of the performance bond or ISDLC.
- 14 e. If ESI wants to collect advances, deposits, and/or prepayments from its resold  
 15 long distance customers in the future, ESI should file an application with the  
 16 Commission requesting approval to do so, and said application should  
 17 reference any Decision in this docket.
- 18 f. ESI should abide by the Commission adopted rules that address Universal  
 19 Service in Arizona, which indicates that all telecommunications service  
 20 providers that interconnect into the public switched network shall provide  
 21 funding for the Arizona Universal Service fund. ESI should make the  
 22 necessary monthly payments required under by A.A.C. R14-2-1204(B).

### 23 Technical Capability

24 8. ESI proposes to provide the same services it is requesting authority to provide in  
 25 Arizona in all states except for Alaska.<sup>6</sup>

26 9. Mr. Dave Gibson, vice president of operations and technology for ESI, testified that  
 27 ESI will provide services through reseller and/or wholesale agreements with incumbents like AT&T,  
 28 Qwest, and Verizon.<sup>7</sup> Mr. Gibson further stated that since filing the application, ESI has been  
 authorized to provide telecommunications services in all states except for Louisiana, Arizona, Maine,  
 and Alaska.<sup>8</sup> According to Mr. Gibson, ESI has customers in 23 of the states where ESI has been  
 approved to provide its proposed services.<sup>9</sup>

10. According to Staff, ESI will market its proposed services in Arizona to large, multi-

<sup>6</sup> Application at A-18.

<sup>7</sup> Tr. at 11.

<sup>8</sup> Tr. at 8.

<sup>9</sup> Tr. at 11.

1 location businesses.<sup>10</sup> ESI does not anticipate having employees in Arizona, and may sell its services  
2 through contract sales agents.<sup>11</sup>

3 11. ESI provided information showing that its top executives have in excess of 50 years  
4 experience in the telecommunications industry.<sup>12</sup>

5 12. Based on the above information, Staff concluded that ESI has the technical capabilities  
6 to provide its proposed services in Arizona.

7 **Financial Capabilities**

8 13. ESI provided limited unaudited financial information showing ESI had total assets of  
9 approximately \$1.4 million; total equity of \$1.4 million; and a net income of \$1.3 million, as of  
10 March 2009.<sup>13</sup>

11 14. To supplement its limited financial information and in response to Staff's Data  
12 Request, ESI provided a three year projection of its assets, equity, and net income. ESI anticipates  
13 that by the year 2011 it will have total assets of \$3.4 million, equity of \$2.5 million, and a net income  
14 of \$770,000.<sup>14</sup>

15 15. ESI filed proposed tariffs showing that it may collect advances and/or deposits from  
16 its local exchange or switched access customers.<sup>15</sup>

17 16. Staff recommends requiring ESI to secure a performance bond or ISDLC in the  
18 amount of \$100,000. Staff based its recommendation on the Commission's policy of requiring  
19 facilities-based local exchange providers to procure a \$100,000 performance bond or ISDLC.

20 17. ESI docketed proof of filing a \$100,000 performance bond with the Commission on  
21 July 21, 2009; therefore, ESI has satisfied Staff's recommendation regarding the performance bond or  
22 ISDLC for its proposed facilities-based local exchange services.

23 18. Staff believes ESI will have to compete with various incumbent local exchange  
24 carriers ("ILEC"), competitive local exchange carriers ("CLECs"), and interexchange carries

25 <sup>10</sup> Staff Report at 1.

26 <sup>11</sup> Tr. at 12, Staff Report at 1.

27 <sup>12</sup> Amended Application at Attachment A.

28 <sup>13</sup> ESI states it is a start-up company and therefore had limited financial information at the time of filing its application.  
Application at Attachment D.

<sup>14</sup> Response to Staff's Data Request dated September 9, 2009.

<sup>15</sup> Application at Attachment B.

1 (“IXCs”) currently providing telecommunications services in order to obtain customers in Arizona.<sup>16</sup>

2 19. Given the competitive environment in which ESI will be providing service, Staff  
3 believes ESI will not be able to exert any market power and the competitive process will result in  
4 rates that are just and reasonable.<sup>17</sup>

5 20. ESI’s rates are for competitive services. According to Staff, in general, rates for  
6 competitive services are not set in the same manner as for non-competitive services. Although fair  
7 value rate base is taken into account as part of the approval process for competitive services, Staff  
8 believes that ESI’s fair value rate base is too small to be useful in a fair value analysis.<sup>18</sup>

9 21. Staff reviewed ESI’s proposed tariffs showing the actual rates and charges for its  
10 proposed services. Staff believes the proposed rates and charges are comparable to rates charge by  
11 other competitors in the market providing similar services. Staff stated that although Staff considered  
12 ESI’s fair value rate base, the information should not be given substantial weight in this analysis.<sup>19</sup>

13 22. Staff believes ESI’s proposed rates, as presented in its proposed tariffs, are just and  
14 reasonable and Staff recommends that the Commission approved ESI’s proposed rates.<sup>20</sup>

15 **Local Exchange Carrier Specific Issues**

16 23. Staff recommends that pursuant to A.A.C. R14-2-1308(A) and federal laws and rules,  
17 ESI should make number portability available to facilitate the ability of customers to switch between  
18 authorized local carriers within a given wire center without changing their telephone number and  
19 without impairment to quality, functionality, reliability, or convenience of use.

20 24. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that  
21 interconnect into a public switched network shall provide funding for the Arizona Universal Service  
22 Fund (“AUSF”). Staff recommends that ESI contribute to the AUSF as required by the A.A.C. and  
23 that ESI make the necessary monthly payments as required under A.A.C. R14-2-1204(B).

24 25. In Commission Decision No. 59421 (December 20, 1995) the Commission approved  
25 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of

26 <sup>16</sup> Amended Staff Report at 3.

27 <sup>17</sup> Id.

28 <sup>18</sup> Id

<sup>19</sup> Amended Staff Report at 4.

<sup>20</sup> Id at 10.

1 service. In this matter, ESI does not have a similar history of service quality problems, and therefore  
 2 Staff recommends that the penalties outlined in the Qwest Decision should not apply to ESI.

3 26. In areas where ESI is the only local exchange service provider, Staff recommends that  
 4 ESI be prohibited from barring access to alternative local exchange service providers who wish to  
 5 serve the area.

6 27. ESI will provide all customers with 911 and E911 service where available, or will  
 7 coordinate with ILECs, and emergency service providers to facilitate the service.

8 28. Pursuant to prior Commission Decision, ESI may offer customer local area signaling  
 9 services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each  
 10 individual call at no additional cost.

### 11 Complaint Information

12 29. According to ESI's application, it has not had an application for service denied in any  
 13 State where it has applied for a certificate to provide service.<sup>21</sup>

14 30. Staff reviewed the information from five (5) State Commissions where ESI is  
 15 authorized to provide service and found no evidence of any complaints being filed in any of those  
 16 States or with the Federal Communications Commission against ESI.<sup>22</sup>

17 31. ESI's application states that no officers, directors, and /or managers have been and  
 18 currently are not involved in any formal or informal complaint proceedings.<sup>23</sup> Further, ESI states that  
 19 no officers, directors, or manager have been or are currently involved in civil or criminal  
 20 investigations and that none have been convicted of criminal acts within the last ten years.<sup>24</sup>

21 32. The Commission's Consumer Services Division reported that no complaints had been  
 22 filed against ESI in Arizona from January 1, 2006 through March 25, 2009.<sup>25</sup>

### 23 Competitive Analysis

24 33. Staff recommends approval of ESI's proposed services as competitive. Staff states  
 25

26 <sup>21</sup> Application A-18.

27 <sup>22</sup> During Staff's review, Staff contacted the State Commissions in California, Michigan, North Carolina, Texas, and  
 Virginia.

28 <sup>23</sup> Application A-11.

<sup>24</sup> Application A-12.

<sup>25</sup> Amended Staff Report at 6.

1 that ESI will have to convince customers to purchase its services; has no ability to adversely to affect  
2 the competitive local exchange or ILEC markets; and alternative providers exist in the markets ESI  
3 desires to serve. Therefore, Staff believes ESI will not have any market power in the markets it  
4 wishes to serve and that ESI's proposed services should be classified as competitive.

5 34. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

#### 6 CONCLUSIONS OF LAW

7 1. ESI is a public service corporation within the meaning of Article XV of the Arizona  
8 Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

9 2. The Commission has jurisdiction over ESI and the subject matter of the application.

10 3. Notice of the amended application was given in accordance with the law.

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

13 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
14 Statutes, it is in the public interest for ESI to provide the telecommunications services set forth in its  
15 amended application.

16 6. ESI is a fit and proper entity to receive an CC&N authorizing it to provide competitive  
17 resold long distance, facilities-based local exchange, and switched access telecommunications  
18 services in Arizona, subject to Staff's recommendations as set forth herein.

19 7. The telecommunications services ESI intends to provide are competitive within  
20 Arizona.

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

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

#### 26 ORDER

27 IT IS THEREFORE ORDERED that the application of Entelegent Solutions, Inc. for a  
28 Certificate of Convenience and Necessity to provide competitive resold long distance, facilities-based

1 local exchange, and switched access telecommunications services in Arizona is hereby approved,  
2 subject to Commission Staff's recommendations as described in Findings of Fact Nos. 6 and 7.

3 IT IS FURTHER ORDERED that if Entelegent Solutions, Inc., fails to comply with Staff's  
4 conditions, as described in Findings of Fact No. 7, the Certificate of Convenience and Necessity  
5 granted herein shall be considered null and void after due process.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
8  
9

10 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11  
12 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

13  
14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
15 Executive Director of the Arizona Corporation Commission,  
16 have hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

19 \_\_\_\_\_  
20 ERNEST G. JOHNSON  
21 EXECUTIVE DIRECTOR

22 DISSENT \_\_\_\_\_

23 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR: ENTELEAGENT SOLUTIONS, INC.

2 DOCKET NO.: T-20663A-09-0130

3

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