

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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ARIZONA CORPORATION COMMISSION

2010 SEP -3 P 12:35

DATE: SEPTEMBER 3, 2010

DOCKET NO.: T-20601A-08-0351

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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:

NOVATEL LTD., 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 13, 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:

SEPTEMBER 21, 2010 and SEPTEMBER 22, 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

SEP 3 2010

DOCKETED BY

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 SABernal@azcc.gov

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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE APPLICATION OF
10 NOVATEL LTD., INC., FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 COMPETITIVE RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20601A-08-0351

DECISION NO. _____

ORDER

14 Open Meeting
15 September 21 and 22, 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. On July 10, 2008, NovaTel Ltd., Inc. ("NovaTel" or "Company"), filed with the
22 Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide
23 competitive resold long distance telecommunications services in Arizona ("Application").

24 2. On September 26, 2008, and October 28, 2008, the Company filed replacement tariff
25 pages to its Application.

26 3. On May 12, 2009, NovaTel filed an affidavit averring that notice of the Application
27 had been published according to Arizona law.

28 4. On August 4, 2010, Staff filed its Staff Report recommending approval of NovaTel's
Application subject to certain conditions.

Fitness and Properness to Obtain a CC&N

5. NovaTel is a Texas 'S' corporation, granted authority by the Commission on August
20, 2008, to do business in Arizona as a foreign corporation.

6. NovaTel is in good standing with the Commission's Corporations Division.

1 7. NovaTel currently does not hold a CC&N to provide telecommunications services in
2 Arizona.

3 8. NovaTel has indicated that neither NovaTel nor any of its officers, directors, partners,
4 or managers have been or are currently involved in any civil or criminal investigations, have had
5 judgments entered in any civil or criminal matter or levied by any administrative or regulatory
6 agency, or have been convicted of any criminal acts within the past 10 years.

7 9. According to the Company, NovaTel is authorized to provide telecommunications
8 service in California, Florida, New Jersey and Texas, and has applications to provide
9 telecommunications service pending in six other states. NovaTel states that it has not been denied
10 authorization to provide telecommunications service in any jurisdiction in which it has applied.

11 10. Staff contacted the public utility commissions ("PUCs") in the four states in which
12 NovaTel is authorized to provide service to confirm that the Company is authorized to provide
13 service in those jurisdictions, and also to inquire if there were any consumer complaints filed against
14 the Company. Staff states that, according to the PUCs Staff contacted, NovaTel has had no consumer
15 complaints in those states.

16 **Technical Capabilities**

17 11. NovaTel intends to offer resold long distance telecommunications services from
18 Verizon Business, Qwest, Global Crossing and AT&T to subscribers in Arizona.

19 12. NovaTel's management team is comprised of eight employees who have over 69 years
20 experience in the telecommunications industry.

21 13. NovaTel has authority to provide, and/or is providing, resold long distance
22 telecommunications services similar to those it intends to offer in Arizona in four states.

23 14. Based on the foregoing, Staff determined that NovaTel has sufficient technical
24 capabilities to provide resold long distance telecommunications services in Arizona.

25 **Financial Resources**

26 15. The Company provided to Staff audited financial statements for the twelve-month
27 period ending December 31, 2009. According to Staff, the financial information listed total assets of
28 \$5,365,927, total equity of (\$5,202,925), and a net income of (\$2,248,290).

1 16. In its Application, NovaTel projects the net book value of all Arizona jurisdictional
2 assets and the projected value of all Arizona assets after the first 12 months of operations to be zero.

3 17. Staff stated that if NovaTel experienced financial difficulty, it would have only a
4 minimal impact on its customers because many companies provide resold long distance
5 telecommunications services, and facilities-based providers are also available.

6 18. According to the Application, if customers desire long distance services from a
7 different provider, they are able to dial a 101XXXXX access code.

8 **Proposed Rates**

9 19. Staff indicates that the rates proposed by NovaTel are for competitive services and
10 rates for competitive telecommunications services are generally not established according to rate-of-
11 return regulation.

12 20. Staff has determined that NovaTel's fair value rate base ("FVRB") is zero. While
13 Staff considered the FVRB information submitted by the Company, Staff determined that the FVRB
14 information should not be given substantial weight in its analysis.

15 21. As a reseller of services purchased from other telecommunications companies,
16 NovaTel will have no market power and will have to compete with other providers to obtain
17 subscribers to its services. In light of this competitive market, Staff believes that the Company's
18 proposed tariffs will be just and reasonable.

19 22. Staff reviewed NovaTel's proposed rates and determined that they are just and
20 reasonable.

21 23. NovaTel's tariff indicates that it collects deposits from its customers. In order to
22 protect the Company's customers, Staff recommends that the Company should acquire a performance
23 bond or irrevocable sight draft letter of credit equal to \$10,000. The minimum performance bond or
24 irrevocable sight draft letter of credit amount of \$10,000 should be increased in increments of \$5,000
25 if at anytime it would be insufficient to cover any prepayments collected from the Company's
26 customers. This increase should occur when the total amount of the prepayments is within \$1,000 of
27 the performance bond or irrevocable sight draft letter of credit amount.

28 24. Staff recommends that NovaTel file the original performance bond or irrevocable sight

1 draft letter of credit with the Commission's Business Office and file a copy with Docket Control, as a
2 compliance item in this docket, within 90 days of the effective date the Decision in this matter, or at
3 least 10 days before the first customer is served, whichever comes first. The performance bond or
4 irrevocable sight draft letter of credit will remain in effect until further order of the Commission.

5 25. Staff notes that if NovaTel wishes to discontinue service, it must file an application
6 with the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107.
7 Additionally, the Company must notify each of its customers and the Commission 60 days prior to
8 filing an application to discontinue service. Failure to meet these requirements could result in
9 forfeiture of the Company's performance bond or irrevocable sight draft letter or credit.

10 **Competitive Services**

11 26. Staff states that there are alternatives to NovaTel's services, the Company will have to
12 convince potential customers to purchase its services, and the Company has no ability to adversely
13 affect the local exchange or interexchange service markets. As such, Staff recommends that the
14 Company's proposed services be classified as competitive.

15 **Regulatory Requirements**

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

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

27 29. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from
28 unauthorized carrier changes ("slamming") and apply to each public service corporation providing

1 telecommunications services within the State of Arizona and over which the Commission has
2 jurisdiction.

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

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

10 **Staff’s Recommendations**

11 32. Staff recommends approval of NovaTel’s Application and further recommends:

- 12 a. That NovaTel be ordered to comply with all Commission rules, orders, and
13 other requirements relevant to the provision of intrastate telecommunications
14 service;
- 15 b. That NovaTel be ordered to maintain its accounts and records as required by
16 the Commission;
- 17 c. That NovaTel be ordered to file with the Commission all financial and other
18 reports that the Commission may require, in a form and at such times as the
19 Commission may designate;
- 20 d. That NovaTel be ordered to maintain on file with the Commission all current
21 tariffs and rates and any service standards that the Commission may require;
- 22 e. That NovaTel be ordered to comply with the Commission’s rules and modify
23 its tariffs to conform to these rules if it is determined that there is a conflict
24 between the Company’s tariffs and the Commission’s rules;
- 25 f. That NovaTel be ordered to cooperate with Commission investigations
26 including, but not limited to, customer complaints;
- 27 g. That NovaTel be ordered to participate in and contribute to the AUSF as
28 required by the Commission;
- h. That NovaTel be ordered to notify the Commission immediately upon changes
to its name, address, or telephone number;
- i. That NovaTel’s intrastate interexchange service offerings be classified as
competitive pursuant to A.A.C. R14-2-1108;
- j. That the maximum rates for NovaTel’s services be the maximum rates
proposed by NovaTel in its proposed tariffs;

- 1 k. That the minimum rates for NovaTel's services be the total service long-run
2 incremental costs of providing those services, as set forth in A.A.C. R14-2-
3 1109;
- 4 l. If NovaTel states only one rate for a service in its proposed tariff, that the rate
5 stated be the effective (actual) price to be charged for the service as well as the
6 service's maximum rate;
- 7 m. That NovaTel's fair value base rate is zero;
- 8 n. If NovaTel desires to provide telecommunications services other than resold
9 interexchange services, it must file an application with the Commission and
10 affirm that the Applicant's customers will be able to access alternative
11 interexchange service providers to resellers;
- 12 o. That should NovaTel request to discontinue and/or abandon its service area,
13 NovaTel must provide notice to both the Commission and its customers, in
14 accordance with A.A.C. R-14-2-1107; and
- 15 p. That NovaTel be ordered to do the following and that its CC&N be rendered
16 null and void, after due process, if it fails to do the following:
- 17 i. NovaTel shall docket conforming tariffs for each service within its
18 CC&N within 365 days from the date of an Order in this matter or 30
19 days before providing service, whichever comes first, and in
20 accordance with the Decision.
 - 21 ii. NovaTel shall provide notice to the Commission within 30 days of the
22 first customer being served.
 - 23 iii. NovaTel shall procure either a performance bond or an irrevocable
24 sight draft letter of credit equal to \$10,000. The minimum performance
25 bond or irrevocable sight draft letter of credit should be increased in
26 increments of \$5,000 if it becomes insufficient to cover advances,
27 deposits, and/or prepayments collected from the Company's customers.
28 This increase should occur when the total amount of the advances,
deposits, and prepayments is within \$1000 of the performance bond or
irrevocable sight draft letter of credit amount.
 - iv. NovaTel shall file the original performance bond or irrevocable sight
draft letter of credit with the Commission's Business Office and copies
of the performance bond or irrevocable sight draft letter of credit with
Docket Control, as a compliance item in this docket, within 90 days of
the effective date of a Decision in this matter, or at least ten days before
the first customer is served, whichever comes first. 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, in its discretion, finds 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, in its discretion, deems necessary including, but not limited to, returning prepayments or deposits collected from the Company's customers.

33. Additionally, Staff recommends approval of the Application without a hearing pursuant to A.R.S. § 40-282.

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

8. The telecommunications services that NovaTel desires to provide are competitive in Arizona.

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

1 IT IS FURTHER ORDERED that if NovaTel Ltd., Inc., fails to meet the conditions outlined
2 in Findings of Fact No. 32(p) within the stated timeframes, the Certificate of Convenience and
3 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
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____, 2010.

17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
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28

1 SERVICE LIST FOR: NOVATEL LTD., INC.

2 DOCKET NO.: T-20601A-08-0351

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