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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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

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IN THE MATTER OF THE APPLICATION OF BROADVOX-CLEC, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE, RESOLD LONG DISTANCE, AND RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE IN ARIZONA.

DOCKET NO. T-20666A-09-0173

DECISION NO. 72061

OPINION AND ORDER

- DATE OF HEARING: September 14, 2010
- PLACE OF HEARING: Phoenix, Arizona
- ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
- APPEARANCES: Mr. Timothy Sabo, ROSHKA, DeWULF & PATTEN, on behalf of Applicant; and Ms. Bridget Humphrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On April 6, 2009, Broadvox-CLEC, LLC ("Broadvox" or "Company") filed an application with the Arizona Corporation Commission ("Commission") for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunication services within the State of Arizona. Broadvox's application also requests a determination that its proposed services are competitive within Arizona.

On April 22, 2009, the Commission's Utilities Division ("Staff") issued its First Set of Data Requests.

On September 23, 2009, Staff docketed a memorandum recommending that this docket be administratively closed because Broadvox had failed to respond to Staff's First Set of Data Requests.

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1 On September 29, 2009, Broadvox filed a letter requesting an extension of time to provide its
2 response to Staff's First Set of Data Requests.

3 On December 7, 2009, Broadvox filed its responses to Staff's First Set of Data Requests.

4 On January 8, 2010, Staff issued its Second Set of Data Requests to Broadvox.

5 On January 21, 2010, Broadvox filed its responses to Staff's Second Set of Data Requests.

6 On March 5, 2010, Staff issued its Third Set of Data Requests to Broadvox.

7 On March 29, 2010, Broadvox filed an amended application removing confidential
8 information that had been inadvertently included in its original application.

9 On April 7, 2010, Broadvox filed its responses to Staff's Third Set of Data Requests.

10 On June 30, 2010, Staff filed a Staff Report recommending approval of Broadvox's
11 application, subject to certain conditions.

12 On July 7, 2010, by Procedural Order, the hearing in this matter was scheduled to begin on
13 September 14, 2010, and other procedural deadlines were established.

14 On July 9, 2010, Broadvox filed a request for its witness to appear telephonically.

15 On July 13, 2010, by Procedural Order, Broadvox's request for its witness to appear
16 telephonically was denied.

17 On August 12, 2010, Broadvox filed an Affidavit of Publication stating that notice of the
18 application and hearing had been published in the *Arizona Republic*, a newspaper of general
19 circulation in the proposed CC&N area, on July 26, 2010.

20 On September 14, 2010, a full public hearing was held before an authorized Administrative
21 Law Judge ("ALJ") of the Commission. Staff and Broadvox appeared through counsel and presented
22 evidence and testimony in this matter. No members of the public appeared to give comments on the
23 application. At the conclusion of the hearing, Broadvox was directed to file late-filed exhibits related
24 to the civil complaint filed by Qwest against one of Broadvox's affiliates.

25 On September 22, 2010, Broadvox filed a notice of filing late-filed exhibits.

26 After receipt of Broadvox's late-filed exhibits, the matter was taken under advisement
27 pending submission of a Recommended Opinion and Order to the Commission.

28 ...

* * * * *

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

FINDINGS OF FACT

1. Broadvox is a foreign, limited liability corporation organized under the laws of Delaware, with its principle place of business in Cleveland, Ohio.

2. Broadvox is an indirect subsidiary of Broadvox, Inc. & Subsidiary¹ ("Broadvox, Inc"). Broadvox is a direct subsidiary of Broadvox Holding Company, LLC ("Broadvox Holding").

3. On July 31, 2009, Broadvox filed an application requesting a CC&N to provide facilities-based local exchange, resold long distance, and resold local exchange telecommunication services. Subsequently, Broadvox amended its CC&N application removing confidential information contained in its original application. Broadvox's amended application also requests that its proposed services be classified as competitive.

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

5. Broadvox proposes to offer its telecommunication services to business and enterprise customers through the use of interconnection agreements.²

6. Staff recommends that the Commission approve Broadvox's amended application for a CC&N to provide facilities-based local exchange, resold long distance, and resold local exchange, telecommunication services.

7. Staff further recommends that:

- a. Broadvox comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- b. Broadvox abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- c. Broadvox be prohibited from barring access to alternative local exchange service providers who wish to serve areas where Broadvox is the only local provider of local exchange service facilities;

¹ As of December 31, 2008, Broadvox Inc.'s subsidiaries included Broadvox, LLC; BroadvoxGo!, LLC; Broadvox – CLEC, LLC; Origination Technologies, LLC; Brivia Acquisition, LLC; and Broadvox Holding Company, LLC. Broadvox's response to Staff's Data Request dated December 8, 2009.

² Tr. at 19-21.

- 1 d. Broadvox notify the Commission immediately upon changes to Broadvox's
2 name, address or telephone number;
3
4 e. Broadvox cooperate with Commission investigations including, but not limited
5 to customer complaints;
6
7 f. The fair value rate base information provided for Broadvox not be given
8 substantial weight in this analysis;
9
10 g. Broadvox offer Caller ID with the capability to toggle between blocking and
11 unblocking the transmission of the telephone number at no charge;
12
13 h. Broadvox offer Last Call Return service that will not return calls to telephone
14 numbers that have the privacy indicator activated; and
15
16 i. The Commission authorize Broadvox to discount its rates and service charges
17 to the marginal cost of providing the services.

18
19 8. Staff recommends that Broadvox's CC&N be considered null and void, after due
20 process if Broadvox fails to comply with the following conditions:
21

- 22 a. Broadvox shall docket conforming tariffs for each of its proposed services
23 within 365 days from the date of a Decision in this matter, or 30 days prior to
24 providing service, whichever comes first.
25
26 b. Broadvox shall:
27
28 i. Procure either a performance bond or irrevocable sight draft letter of
credit ("ISDLC") equal to \$135,000. The minimum performance bond
or ISDLC of \$135,000 should be increased if at any time it would be
insufficient to cover advances, deposits, and/or prepayments collected
from Broadvox's customers. The performance bond or ISDLC should
be increased in increments of \$67,500. This increase should occur
when the total amount of advances, deposits, and/or prepayments is
within \$13,500 of the total performance bond or ISDLC amount; and
ii. File the original performance bond or ISDLC with the Commission's
Business Office and copies of the performance bond or ISDLC with
Docket Control, as a compliance item in this docket, within 90 days of
the effective date of the Decision in this matter or 10 days before the
first customer is served, whichever comes first. The original
performance bond or ISDLC must 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 the Company's
customers, if the Commission finds, in its discretion, that the Company
is default of its obligations arising from its Certificate. The
Commission may use the performance bond or ISDLC 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
iii. As a compliance filing, Broadvox shall notify the Commission that it
has started providing service in Arizona within 30 days of the first

customer being served.

- 1
- 2 c. Broadvox should abide by the Commission adopted rules that address
- 3 Universal Service in Arizona, which indicates that all telecommunications
- 4 service providers that interconnect into the public switched network shall
- 5 provide funding for the Arizona Universal Service fund. Broadvox should
- 6 make the necessary monthly payments required under by A.A.C. R14-2-
- 7 1204(B).
- 8
- 9
- 10 9. In addition, Staff recommends that approval of Broadvox's application be conditioned
- 11 on the following:
- 12
- 13 a. Broadvox docketing any filings by any party filed to date in the Qwest
- 14 Complaint proceeding (Case No. 4:10-CV-134-A) in the United States
- 15 District Court, Northern District of Texas;
- 16
- 17 b. That any such filings pertaining to Case No. 4:10-CV-134-A; be filed no later
- 18 than 30 days following the date of a Decision in this matter; or
- 19
- 20 c. That any such filings pertaining to Case No. 4:10-CV-134-A be filed in this
- 21 docket no later than 30 days following the date of such filings.
- 22

23 **Technical Capability**

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25 10. The witness for Broadvox testified that Broadvox is a competitive local exchange

26 carrier ("CLEC") currently certified to provide telecommunications services in 46 states.³ However,

27 Broadvox has not commenced providing telecommunication services in any state.⁴ The witness stated

28 that Broadvox anticipates beginning business in the states where Broadvox has been certified in the

next three to six months.⁵

11. Broadvox, Inc., has a national network providing Voice Over Internet Protocol

("VOIP").⁶ Broadvox, Inc.'s senior management team has over 80 years experience in the

telecommunications industry.⁷ The principals of Broadvox and Broadvox, Inc. are the same.⁸

12. Broadvox was formed in November 2008 and its top two executives have more than

27 years experience in the telecommunication industry.⁹

13. Broadvox's witness stated that in the future Broadvox may have employees and a

³ Tr. at 7.

⁴ Application at A-19.

⁵ Tr. at 19.

⁶ Staff Report at Attachment A.

⁷ Id.

⁸ Tr. at 17.

⁹ Staff Report at 3.

1 support center in Arizona to handle customer inquiries.¹⁰

2 14. Staff concluded that Broadvox has the technical experience to provide the services it is
3 requesting authority to provide in Arizona.

4 **Financial Capability**

5 15. Broadvox's application included consolidated financials for its parent company
6 Broadvox, Inc. for the years 2007, 2008, and 2009.¹¹ According to Staff, Broadvox, Inc. reported
7 total assets of \$15.5 million, total shareholder equity of \$6.2 million, and a net income of \$7.7 million
8 for the year ending 2009.¹²

9 16. Broadvox's proposed tariff states it will not collect advances, deposits, and/or
10 prepayments from its customers. However, Staff believes Broadvox customers should be protected
11 and Staff recommends that Broadvox procure a performance bond or ISDLC in the amount of
12 \$135,000.

13 17. Broadvox's witness testified that the Company agrees to abide by Staff's
14 recommendation requiring Broadvox to procure a performance bond or ISDLC in the amount of
15 \$135,000.¹³

16 **Rates and Charges**

17 18. Staff believes that Broadvox will have to compete with various incumbent local
18 exchange carriers ("ILEC"), CLECs, and interexchange carriers ("IXC") currently providing
19 telecommunications services in Arizona in order for Broadvox to obtain customers.¹⁴

20 19. Given the competitive environment in which Broadvox will be providing service, Staff
21 believes Broadvox will not be able to exert any market power and the competitive process will result
22 in rates and charges that are just and reasonable.¹⁵

23 20. Broadvox's proposed rates are for competitive services. Although fair value rate base
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26 ¹⁰ Tr. at 19.

¹¹ Application at Attachment D.

¹² Staff Report at 3.

¹³ Tr. at 12.

¹⁴ Staff Report at 4.

¹⁵ Id.

1 is taken into account as part of the approval process for competitive services, Staff believes that the
2 information it obtained from Broadvox indicating a fair value rate base of less than \$1,000 is too
3 small to be given significant weight in this analysis.¹⁶

4 **Local Exchange Carrier Specific Issues**

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

9 22. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
10 interconnect into a public switched network shall provide funding for the Arizona Universal Service
11 Fund ("AUSF"). Staff recommends that Broadvox contribute to the AUSF as required by the A.A.C.
12 and that Broadvox make the necessary monthly payments as required under A.A.C. R14-2-1204(B).¹⁸

13 23. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
14 quality of service standards for Qwest which imposed penalties for unsatisfactory levels of service.
15 In this matter, Broadvox does not have similar history of service quality problems, and therefore Staff
16 recommends that the penalties outlined in the Qwest Decision not apply to Broadvox at this time.¹⁹

17 24. In areas where Broadvox is the only local exchange service provider, Staff
18 recommends that Broadvox be prohibited from barring access to alternative local exchange service
19 providers who wish to serve the area.²⁰

20 25. Broadvox will provide all customers with 911 and E911 service where available, or
21 will coordinate with ILECs and emergency service providers to facilitate the service.²¹

22 26. Pursuant to prior Commission Decisions, Broadvox may offer customers local
23 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block and
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26 ¹⁶ Id. at 5.
27 ¹⁷ Staff Report at. 5.
28 ¹⁸ Id.
¹⁹ Id.
²⁰ Id.
²¹ Id.

1 unblock each individual call at no additional cost.²²

2 **Complaint History**

3 27. Broadvox's amended application states that it has not had an application for service
4 denied or revoked in any state where Broadvox is certified to provide telecommunication services.²³

5 28. According to Broadvox's amended application, none of its officers, directors, and/or
6 managers have been or are currently involved in any formal or informal complaint proceeding before
7 any state or federal regulatory commission, administrative agency or law enforcement agency.
8 Broadvox's application also states that none of its officers, directors, or partners have been involved
9 in or are currently involved in any civil or criminal investigations, or had judgments levied by any
10 administrative or regulatory agency, or been convicted of any criminal acts in the last ten (10)
11 years.²⁴

12 29. Subsequent to the filing of the amended application, Staff discovered that Qwest
13 Corporation had filed a civil complaint against several Broadvox entities in the District Court in the
14 Northern District of Texas.²⁵ Based on Broadvox's filing, Staff believes that the outcome of the civil
15 complaint could impact the resources of Broadvox's parent company Broadvox, Inc.²⁶

16 30. The civil complaint filed by Qwest alleges that the Broadvox entities have disguised
17 the long-distance calls they handle as local calls to avoid paying the access charges imposed by local
18 phone companies like Qwest.²⁷ Broadvox's witness testified that Broadvox-CLEC is not a named
19 defendant in the Texas litigation filed by Qwest.²⁸ The witness also testified that Qwest had filed a
20 similar lawsuit against the same Broadvox Inc, entities in the State of Washington and that the case
21 has been dismissed by the Washington Court on jurisdictional grounds.²⁹ Further, the witness stated
22 that in response to the civil compliant filed by Qwest in Texas, the Broadvox entities have filed a
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24 ²² Id.

²³ Amended application at A-18.

²⁴ Amended Application at A-12.

²⁵ Id. See Case No. 4:10-CV-134-A naming as defendants Broadvox, Inc., Broadvox, LLC, and Broadvoxgo!, LLC. See also, Case No. 2:08-CV-01715-RSM, United States District Court for the Western Division of Washington.

²⁶ Id.

²⁷ Qwest First Amended Complaint.

²⁸ Tr. at 13.

²⁹ Tr. at 24. See also, Order Granting the Broadvox Defendants' Motion to Dismiss for Lack of Jurisdiction, Applicant Exhibit A-18.

1 motion to dismiss the case.³⁰

2 31. Staff issued a data request to Qwest regarding the civil complaint filed against the
3 Broadvox entities in Texas.³¹ On May 7, 2010, Qwest responded to Staff's data request stating that
4 Qwest declines to respond to the questions asked and the requests pursuant to the data request,
5 because Qwest is not a party to this docket.³² Qwest stated that it was not waiving its rights to object
6 to Broadvox's CC&N application and attached a copy of its First Amended Compliant filed in the
7 Texas case.³³ Further, Qwest stated that it does not have a position on the actions the Commission
8 should take with respect to the CC&N application in this docket.³⁴

9 32. According to Staff's witness, Staff is concerned that the Texas complaint could impact
10 Broadvox's proposed services in Arizona because Broadvox proposes to use the resources of its
11 parent Company to fund operations in Arizona. However, Staff stated it continues to recommend
12 approval of Broadvox's amended application.

13 33. To address concerns regarding the Texas complaint proceeding, Staff has
14 recommended that Broadvox docket any filings made in the Texas case in this docket.

15 **Competitive Analysis**

16 34. Staff recommends approval of Broadvox's proposed services as competitive. Staff
17 states that Broadvox will have to convince customers to purchase its services; has no ability to
18 adversely affect the CLEC or IXC markets; and alternative providers exist in the markets Broadvox
19 desires to serve. Therefore, Staff believes Broadvox has no market power in the markets it wishes to
20 serve and that Broadvox's proposed services should be classified as competitive.³⁵

21 35. Staff's recommendations as set forth herein are reasonable and should be adopted.

22 **CONCLUSIONS OF LAW**

23 1. Broadvox is a public service corporation within the meaning of Article XV of the
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25
26 ³⁰ Id.

³¹ Staff Report at Attachment B.

³² Staff Report at Attachment B.

³³ Id.

³⁴ Id.

³⁵ Staff Report at 12.

1 may draw on the performance bond or irrevocable sight draft letter of credit on behalf of and for the
2 sole benefit of Broadvox-CLEC, LLC customers, if the Commission finds, in its discretion, that
3 Broadvox-CLEC, LLC is in default of its obligations arising from its Certificate of Convenience and
4 Necessity. The Commission may use the performance bond or irrevocable sight draft letter of credit
5 funds, as appropriate, to protect Broadvox-CLEC, LLC customers and the public interest and take
6 any and all actions the Commission deems necessary, in its discretion, but not limited to returning
7 prepayments or deposits collected from Broad-CLEC, LLC customers.

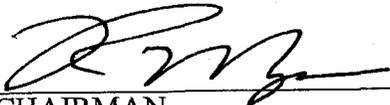
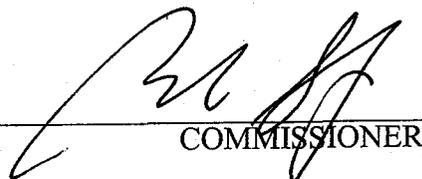
8 IT IS FURTHER ORDERED that if Broadvox-CLEC, LLC fails to comply with Staff's
9 conditions, as described in Findings of Fact No. 8, the Certificate of Convenience and Necessity
10 granted herein shall be considered null and void after due process.

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1 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted
2 herein is conditioned upon Broadvox-CLEC, LLC filing in this docket as a compliance item, copies
3 of any documents filed by any party to the Qwest Corporation Complaint proceeding (Case No. 4:10-
4 CV-134-A) within 30 days of any such filings and such compliance filings shall continue until the
5 Qwest Complaint proceeding is resolved.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
9  CHAIRMAN  COMMISSIONER
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11  COMMISSIONER  COMMISSIONER  COMMISSIONER
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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 6th day of JANUARY, 2010.

19 
20 ERNEST G. JOHNSON
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

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1 SERVICE LIST FOR: BROADVOX-CLEC, LLC

2 DOCKET NO.: T-20666A-09-0173

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