

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 6, 2011
DOCKET NO.: T-20565A-09-0563

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:

BROADVIEW NETWORKS, 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:

JUNE 15, 2011

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 21, 2011 and JUNE 22, 2011

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 6 2011

DOCKETED BY	
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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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
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 GARY PIERCE, Chairman
5 BOB STUMP
6 SANDRA D. KENNEDY
7 PAUL NEWMAN
8 BRENDA BURNS

9 IN THE MATTER OF THE APPLICATION OF
10 BROADVIEW NETWORKS, INC. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD LOCAL
13 EXCHANGE TELECOMMUNICATIONS
14 SERVICES.

DOCKET NO. T-20565A-09-0563

DECISION NO. _____

ORDER

15 Open Meeting
16 June 21 and 22, 2011
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

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

21 **FINDINGS OF FACT**

22 1. On December 16, 2009, Broadview Networks, Inc. ("Broadview" or "Company"),
23 filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N")
24 to provide resold local exchange telecommunications services in Arizona ("Application").

25 2. On June 4, 2010, Broadview filed updated information to Application.

26 3. On June 18, 2010, the Company filed revised tariff pages.

27 4. On August 6, 2010, Broadview filed an Affidavit of Publication indicating that notice
28 of the Application had been published on July 23, 2010, in *The Arizona Republic*.

On September 7, 2010, the Commission's Utilities Division Staff ("Staff") filed its
Staff Report recommending approval of Broadview's Application subject to certain conditions.

Fitness and Properness to Obtain a CC&N

6. Broadview is a New York "S" corporation, granted authority on August 28, 2007, to
do business in Arizona as a foreign corporation.

7. Broadview is in good standing with the Commission's Corporations Division.

1 8. Broadview holds a CC&N in Arizona for the provision of resold long distance
2 telecommunications service pursuant to Decision No. 71295 (October 7, 2009).

3 9. Broadview has indicated that neither Broadview nor any of its officers, directors,
4 partners, or managers have been or are currently involved in any civil or criminal investigations, have
5 had 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 10. In its Application, Broadview disclosed that its status as a foreign corporation had
8 been revoked by the State of Illinois as a result of its failure to file an annual report and pay an annual
9 franchise tax. This revocation resulted in the cancellation by the Illinois Commerce Commission
10 (“ICC”) in 2002 of Broadview’s authority to provide telecommunications services in that state.¹

11 11. The ICC granted Broadview authority to provide resold interexchange
12 telecommunication service in Illinois on June 25, 2008. Staff noted Broadview had received its
13 original authorization from the ICC on September 7, 2000.

14 12. Staff learned that there were no formal or informal consumer complaints filed with the
15 ICC against Broadview prior to revocation of its authority, and that there have not been any formal or
16 informal complaints filed with the ICC since Broadview’s reinstatement.

17 13. According to Broadview, it currently offers local exchange service in 44 states and the
18 District of Columbia. Staff contacted five of the 44 state public utility commissions (“PUCs”) in
19 which Broadview currently operates to confirm Broadview’s operating authority and to inquire as to
20 consumer complaints. Staff contacted the California, Colorado, Florida, Texas and Washington
21 PUCs. These five states confirmed that Broadview is authorized to provide telecommunications
22 services in their jurisdictions and that no complaints had been received about the Company.

23 _____
24 ¹ Broadview also disclosed this information in its resold long distance application. In that matter, according to
25 Broadview, its failure to file timely the required documentation and to pay the franchise tax was a result of an oversight
26 occasioned by an internal restructuring of a number of its office locations in New York, New Jersey and Pennsylvania in
27 the spring of 2002. Broadview states that it did not become aware of its oversight until it learned of the revocation of its
28 authority to provide telecommunication services. Broadview stated that it has instituted safeguards to ensure its future
compliance with all reporting obligations. Broadview asserted that it has established internal procedures, including the
hiring and training of individuals whose primary job responsibility it is to monitor the status of Broadview’s operating
authority, respond promptly to any and all state Commission’s inquiries and/or data requests, and timely submit all
reports and information as required to maintain Broadview’s operating authority in all jurisdictions. Decision No. 71295
(October 7, 2009).

1 14. Staff notes that a search of the Federal Communications Commission's ("FCC")
2 website found that there have been two informal complaints filed against Broadview. The FCC
3 determined that the Company had made unauthorized changes in the complainants'
4 telecommunications service providers, but both complaints were resolved by switching the
5 complainants back to their original service providers and removal of service charges.

6 15. Finally, Staff states that the Consumer Services Section of the Utilities Division
7 reported no complaints, inquiries, or opinions filed within Arizona against Broadview.

8 **Technical Capabilities**

9 16. Broadview intends to offer resold local exchange telecommunications services to
10 subscribers in Arizona.

11 17. Broadview is a wholly-owned subsidiary of Broadview Networks Holdings, Inc.
12 ("Parent Company"), which also owns a number of other entities authorized to provide
13 telecommunications services. One of these entities, ATX Licensing, Inc., is authorized to provide
14 telecommunications services in Arizona.

15 18. Staff notes that Broadview's top six officers have a combined experience in the
16 telecommunications industry of 135 years.

17 19. Broadview has authority to provide, and/or is providing, resold local exchange
18 telecommunications services similar to those it intends to offer in Arizona in 44 states and the District
19 of Columbia.

20 20. Broadview notes that although it will not have any employees in Arizona, it maintains
21 a large customer care department at multiple locations, and customer assistance is available 24 hours
22 a day, seven days a week to handle customer concerns, complaints and repair inquiries.

23 21. Based on its operations in Arizona and in other states, Staff determined that
24 Broadview has sufficient technical capabilities to provide resold local exchange telecommunications
25 services in Arizona.

26 **Financial Resources**

27 22. Broadview provided unaudited consolidated financial statements for its Parent
28 Company for the periods ending December 31, 2008 and December 31, 2009. According to the Staff

1 Report, the 2008 financial statements list assets of \$359,028, total equity of \$424,294, and a net loss
2 of \$31,786. The 2009 financial statement list assets of \$324,505, total equity of \$401,316, and a net
3 loss of \$11,699.

4 23. Broadview stated that it will not rely on the financial resources of its Parent Company.

5 24. Broadview projects total revenues generated by the provision of telecommunications
6 services to Arizona customers for the first 12 months of operations to be \$300,000, with operating
7 expenses during that period of \$50,000.

8 25. Broadview projects the net book value of all Arizona jurisdictional assets and the
9 projected value of all Arizona assets after the first 12 months of operations to be zero.

10 26. If Broadview experienced financial difficulty, it would have only a minimal impact on
11 its customers because many companies provide resold local exchange telecommunications services,
12 and facilities-based providers are also available. Broadview's customers will be able to access
13 alternative toll service providers or resellers via 1+101XXXX access.

14 **Proposed Rates**

15 27. Staff indicates that the rates proposed by Broadview are for competitive services and
16 that rates for competitive telecommunications services are generally not established according to rate-
17 of-return regulation.

18 28. Staff has determined that Broadview's fair value rate base ("FVRB") is zero. While
19 Staff considered the FVRB information submitted by Broadview, Staff determined that the FVRB
20 information should not be given substantial weight in its analysis.

21 29. As a reseller of services purchased from other telecommunications companies,
22 Broadview will have no market power and will have to compete with other providers to obtain
23 subscribers to its services.

24 30. In light of this competitive market, Staff believes that Broadview's proposed tariffs are
25 just and reasonable.

26 31. Broadview's tariff indicates that it may collect advance payments, deposits, and/or
27 prepayments from its resold local exchange customers. In order to protect the Company's customers,
28 Staff recommends that the Company should acquire a performance bond or irrevocable sight draft

1 letter of credit equal to \$25,000. The bond or irrevocable sight draft letter of credit should be
2 increased by \$12,500 whenever the total amount of advance is within \$2,500 of the performance
3 bond or irrevocable sight draft letter of credit amount.

4 32. Staff recommends that Broadview file the original performance bond or irrevocable
5 sight draft letter of credit with the Commission's Business Office and file copies with Docket
6 Control, as a compliance item in this docket, within 90 days of the effective date the Decision in this
7 matter, or at least 10 days before the first customer is served, whichever comes first. The
8 performance bond or irrevocable sight draft letter of credit will remain in effect until further order of
9 the Commission.

10 **Competitive Services**

11 33. Staff states that there are alternatives to Broadview's services, the Company will have
12 to 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 34. Staff notes that if Broadview wishes to discontinue service, it must file an application
17 with the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107.
18 Additionally, the Company must notify each of its customers and the Commission 60 days prior to
19 filing an application to discontinue service. Failure to meet these requirements could result in
20 forfeiture of the Company's performance bond or irrevocable sight draft letter or credit.

21 35. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), Broadview
22 shall make number portability available to facilitate the ability of a customer to switch between
23 authorized local carriers within a given wire center without changing their telephone number and
24 without impairment to quality, functionality, reliability or convenience of use.

25 36. Commission rules require Broadview to file a tariff for each competitive service that
26 states the maximum rate as well as the effective (actual) price that will be charged for the service.
27 Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be below the total service
28 long-run incremental cost of providing the service. Any change to Broadview's effective price for a

1 service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in
2 Broadview's tariff must comply with A.A.C. R14-2-1110.

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

8 38. In accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications
9 Commission 47 CFR Sections 64.3001 and 64.3002, the Company will provide all customers with
10 911 and E911 service, where available, or will coordinate with ILECs and emergency service
11 providers to provide 911 and E911 service.

12 39. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from
13 unauthorized carrier changes ("slamming") and apply to each public service corporation providing
14 telecommunications services within the State of Arizona and over which the Commission has
15 jurisdiction.

16 40. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from
17 unauthorized carrier charges ("cramming") and apply to each public service corporation providing
18 telecommunications services within the State of Arizona and over which the Commission has
19 jurisdiction.

20 **Staff's Recommendations**

21 41. Staff recommends approval of Broadview's Application and further recommends:

- 22 a. That Broadview be ordered to comply with all Commission rules, orders, and
23 other requirements relevant to the provision of intrastate telecommunications
24 service;
- 25 b. That Broadview be required to notify the Commission immediately upon
26 changes to its name, address or telephone number;
- 27 c. That Broadview be ordered to cooperate with Commission investigations,
28 including but not limited to customer complaints;
- d. That Broadview be ordered to comply with federal laws, federal rules and
A.A.C. R14-2-1308(A);

- 1 e. That Broadview be ordered to abide by the quality of service standards that
2 were approved by the Commission for Qwest in Docket No. T-01051B-93-
3 0183;
- 4 f. That Broadview be prohibited from barring access to alternative local
5 exchange service providers who wish to serve areas where it is the only
6 provider of local exchange service facilities;
- 7 g. That Broadview be ordered to provide all customers with 911 and E911
8 service, where available, or to coordinate with ILECs and emergency service
9 providers to provide these services in accordance with A.A.C. R14-2-120(6)(d)
10 and 47 CFR §§ 64.3001 and 64.3002;
- 11 h. That Broadview's fair value base rate is zero;
- 12 i. That Broadview's services be classified as competitive;
- 13 j. That should Broadview request to discontinue and/or abandon its service area,
14 Broadview must provide notice to both the Commission and its customers, in
15 accordance with A.A.C. R-14-2-1107;
- 16 k. That Broadview offer Last Call Return service that will not return calls to
17 telephone numbers that have the privacy indicator activated;
- 18 l. That Broadview offer Caller ID with the capability to toggle between blocking
19 and unblocking the transmission of the telephone number at no charge; and
- 20 m. That Broadview be ordered to do the following and that its CC&N be rendered
21 null and void, after due process, if it fails to do the following:
- 22 i. Broadview shall docket conforming tariffs for each service within its
23 CC&N within 365 days from the date of an Order in this matter or 30
24 days before providing service, whichever comes first. The tariffs
25 submitted shall coincide with the Application.
- 26 ii. Broadview shall procure either a performance bond or an irrevocable
27 sight draft letter of credit equal to \$25,000. The minimum performance
28 bond or irrevocable sight draft letter of credit should be increased if it
becomes insufficient to cover advances, deposits, and/or prepayments
collected from the Company's customers. The performance bond or
irrevocable sight draft letter of credit amount should be increased in
increments of \$12,500. This increase should occur when the total
amount of the advances, deposits, and prepayments is within \$2,500 of
the performance bond or irrevocable sight draft letter of credit.
- iii. Broadview shall file the original performance bond or irrevocable sight
draft letter of credit with the Commissioner'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 10 days before
the first customer is served, whichever comes first. The performance
bond or irrevocable sight draft letter of credit must remain in effect

1 until further order of the Commission. The Commission may draw on
2 the performance bond or irrevocable sight draft letter of credit, on
3 behalf of, and for the sole benefit of, the Company's customers, if the
4 Commission, in its discretion, finds that the Company is in default of
5 its obligations arising from its Certificate. The Commission may use
6 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.

7 iv. As a compliance filing, the Company shall notify the Commission that
8 it has started providing service in Arizona within 30 day of the first
customer being served.

9 42. We also find it reasonable to require:

- 10 a. That the maximum rates for Broadview's services be the maximum rates
11 proposed by Broadview in its proposed tariffs;
- 12 b. That the minimum rates for Broadview's services be the total service long-run
13 incremental costs of providing those services, as set forth in A.A.C. R14-2-
14 1109;
- 15 c. If Broadview states only one rate for a service in its proposed tariff, that the
16 rate stated be the effective (actual) price to be charged for the service as well as
the service's maximum rate;
- 17 d. That Broadview be ordered to maintain its accounts and records as required by
18 the Commission;
- 19 e. That Broadview be ordered to file with the Commission all financial and other
20 reports that the Commission may require, in a form and at such times as the
21 Commission may designate;
- 22 f. That Broadview be ordered to maintain on file with the Commission all current
23 tariffs and rates and any service standards that the Commission may require;
- 24 g. That Broadview be ordered to comply with the Commission's rules and to
25 modify its tariffs to conform to those rules if it is determined that there is a
26 conflict between Broadview's tariffs and Commission rules; and
- 27 h. That Broadview be ordered to participate in and contribute to the AUSF as
28 required by the Commission;

42. Staff's recommendations and those stated in Finding of Fact No. 42 are reasonable and
should be adopted.

26 ...
27 ...
28 ...

CONCLUSIONS OF LAW

1
2 1. Broadview will be a public service corporation within the meaning of Article XV of
3 the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Broadview and the subject matter of the
5 Application.

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

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

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

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

14 7. Broadview is a fit and proper entity to receive a CC&N authorizing it to provide resold
15 local exchange telecommunications services in the State of Arizona.

16 8. The telecommunications services that Broadview desires to provide are competitive in
17 Arizona.

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

22 10. The recommendations set forth in Findings of Fact No. 41 and 42 are reasonable and
23 should be adopted.

24 11. Broadview's fair value rate base is not useful in determining just and reasonable rates
25 for the competitive services it proposes to provide Arizona customers.

26 12. Broadview's rates, as they appear in its proposed tariffs, are just and reasonable and
27 should be approved.

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ORDER

IT IS THEREFORE ORDERED that the Application of Broadview Networks, Inc., for a Certificate of Convenience and Necessity to provide resold long distance telecommunications services in Arizona is hereby granted conditioned upon compliance with the conditions and recommendations set forth in Findings of Fact Nos. 41 and 42.

IT IS FURTHER ORDERED that if Broadview Networks, Inc., fails to meet the conditions outlined in Findings of Fact No. 41(m) within the timeframes therein, the Certificate of Convenience and Necessity conditionally granted herein shall become 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 _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: BROADVIEW NETWORKS, INC.

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