

OPEN MEETING ITEM



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



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ARIZONA CORPORATION COMMISSION RECEIVED

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DATE: SEPTEMBER 16, 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO.: T-20717A-09-0578

DOCKETED BY

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 Order on:

TALTON COMMUNICATIONS, INC.
(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:

SEPTEMBER 26, 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:

OCTOBER 11, 2011 and OCTOBER 12, 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.

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 SABernal@azcc.gov

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION
OF TALTON COMMUNICATIONS, INC.
FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE CUSTOMER OWNED PAY
TELEPHONE SERVICES.

DOCKET NO. T-20717A-09-0578

DECISION NO. _____

ORDER

Open Meeting
October 11 and 12, 2011
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

1. On December 23, 2009, Talton Communications, Inc. ("Talton" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide customer owned pay telephone service ("COPT") in the State of Arizona. Talton's application states it has been awarded the Detainee Phone System contract by the Immigration and Customs Enforcement ("ICE") division of the Department of Homeland Security to provide pay telecommunication services to detainees in nine states, including Arizona.

2. On January 19, 2010, Securus Technologies, Inc. ("Securus") filed a letter with the Commission stating that Securus, through its wholly owned subsidiary Evercom Systems, Inc., ("Evercom") currently provides inmate telecommunication service to numerous county jails and state correctional facilities in Arizona and that Securus is a subcontractor in the provision of Inmate

1 Telephone Service for ICE facilities in Arizona. Securus' letter expressed concerns regarding
2 Talton's qualifications to provide its proposed telecommunication services and urged the
3 Commission to take into consideration Talton's failure to obtain prior authorization from the
4 Commission before beginning service in Arizona. Securus asserts that prior to beginning service in
5 Arizona, Talton did not have Commission approval. Securus clarified that neither it nor Evercom are
6 a predecessor or successor to Talton; that Decision No. 61300 (December 22, 1998) approved a
7 merger between Evercom and its subsidiaries Talton STC, Inc, and Talton InVision, Inc., into a
8 single subsidiary, Talton InVision, Inc., and cancelled the CC&N of Talton STC, Inc.; and that the
9 name Talton InVision, Inc., was changed to Evercom in Decision No. 66548 (November 14, 2003).

10 3. On January 20, 2010, Commissioner Bob Stump docketed a letter from Chief
11 Executive Officer, Paul Jennings for Public Communications Services ("PCS"), which states that
12 Talton is operating in Arizona without proper regulatory authority; allowing Talton to operate
13 without authority is unfair to other industry participants; and that Talton's unauthorized operations
14 may create regulatory chaos in the marketplace and could potentially harm the public. Mr. Jennings'
15 letter urged the Commission to investigate the matter.

16 4. On January 27, 2010, PCS docketed a second letter reiterating its position that Talton
17 is operating in Arizona without the proper authorization.

18 5. On January 28, 2010, Talton filed an Affidavit of Publication showing that notice of
19 Talton's application for authority to transact business in Arizona had been published in *The Fountain*
20 *Hills Times* a weekly publication of general circulation in the Fountain Hills, Arizona area.

21 6. On February 1, 2010, Talton filed a response to address the comments and concerns
22 expressed in Securus' and PCS' docketed letters. Talton's response states that based on a complex
23 and detailed planning and installation schedule for seventeen separate facilities including Arizona,
24 Talton did not realize that it needed to seek certification from the Commission. Talton confirmed that
25 it began operations in November 2009 and that immediately upon discovery that it needed
26 certification from the Commission, Talton filed, with the help of regulatory consultant, the above
27 captioned application in December 2009. Talton pledged that if it is granted a CC&N, it will remain
28 in compliance with all Commission rules and regulations on a going forward basis.

1 7. On February 5, 2010, ICE docketed a letter support of Talton's application. The letter
2 stated that the ICE Detainee Telephone System ("DTS") provides telephone services to
3 approximately 30,000 ICE detainees; provides a pro bono service network to allow detainees to
4 consult with attorneys; and allows for the use of debit, collect and pre-paid local, long distance, and
5 international calls. According to ICE, the DTS contract was awarded to Talton in May 2009, but was
6 initially delayed until September 2009 due to a series of protests from PCS, and further delayed until
7 February 2010 to resolve a contract dispute involving PCS. The ICE letter also states that PCS has
8 filed similar letters with the New Mexico and California Public Utilities Commissions ("PUCs"). ICE
9 states that Talton has filed all certifications for approval with the Federal Communication
10 Commission ("FCC"), ICE has investigated the allegations made by PCS and Securus and with the
11 exception of pending certification issues in Arizona, New Mexico, and California, ICE has found the
12 allegations to be unfounded. ICE urges immediate approval of Talton's CC&N so that Talton can
13 began business operations in Arizona.

14 8. On May 23, 2011, the Commission's Utilities Division ("Staff") filed a Memorandum
15 in response to Talton's application. Staff states that on November 20, 2009, approximately one
16 month prior to filing the application for a CC&N, Talton began providing debit and prepaid
17 institutional services at the Florence, Arizona, ICE facility.¹ Staff believes Talton should have been
18 aware of the regulatory requirements in the various states it was pursuing authority as a service
19 provider; however, Staff notes that Talton took immediate action once it realized its errors.²

20 9. Staff states that pending approval of Talton's CC&N application, Talton has arranged
21 for intrastate calls at the Florence, Arizona ICE facility to be handled by Legacy Long Distance
22 International, Inc., ("Legacy")³ via Telmate, which provides the software, end user customer billing,
23 rating, remitting, and collection of taxes, and outclearing⁴ of all calls for Talton.⁵ According to Staff,
24 Talton is providing the marketing, equipment, maintenance, and field services for Talton's accounts.⁶

25 ¹ Staff Memorandum at 4.

26 ² Id.

27 ³ In Commission Decision No. 65996 (June 17, 2003) Legacy was granted a CC&N to provide Alternative Operator
Services ("AOS").

28 ⁴ According to Staff, outclearing is an operator service provider function whereby collect call records are separated and
sent to the various Incumbent Local Exchange Carriers ("ILECs") for billing.

⁵ Staff Memorandum at 4.

⁶ Id.

1 10. Staff believes approval of Talton's application is in the public interest based on the
2 positive feedback ICE has received regarding Talton's operations in Arizona and the responsibility
3 ICE has in providing emergency DTS services to detainees.⁷

4 11. Talton submitted with its application a customized tariff showing the Company's
5 proposed rates, charges, terms and conditions for its COPT services in Arizona. The proposed tariff
6 would apply to Talton's prepaid and collect calling pay telephone services for inmates and persons
7 incarcerated in correctional/confinement institutions in Arizona.

8 12. Staff states that prepayment mechanisms (prepaid debit and prepaid collect services)
9 such as those described in Talton's tariff are a form of advance payment and the Commission's
10 policy requires that those payments be protected by a performance bond or irrevocable sight draft
11 letter of credit ("ISDLC").⁸ Staff recommends that Talton be required to procure a performance bond
12 or ISDLC in the amount of \$10,000 to protect the proposed prepayments.

13 13. According to Staff, Talton is currently providing institutional calling service in
14 seventeen ICE facilities in ten states, including Arizona.⁹

15 14. Staff's review of Talton's application indicated that in January 2010, the Consumer
16 Protection and Safety Division ("CPSD") filed a protest against Talton's application before the
17 California PUC. CPSD alleged that: 1) Talton had been unlawfully providing telecommunication
18 services in California without prior authorization from the Commission; 2) Talton failed to meet the
19 \$25,000 financial requirement to operate as a switchless reseller in California; and 3) Talton failed to
20 make all required disclosures in its application before the California PUC in regards to the
21 verification of finances, officers, and affiliation with Evercom Systems.¹⁰ According to Staff, Talton
22 and the CPSD reached a settlement whereby Talton agreed to pay a fine of \$11,000, to timely file any
23 and all reports required by the California PUC as long as it provides services in California, and CPSD
24 agreed that Talton's CC&N should be granted.¹¹ On June 24, 2010, the California PUC issued its

25 ⁷ Staff Memorandum at 4.

26 ⁸ Id.

27 ⁹ Talton is providing institutional calling in the following states: Arizona, California, Colorado, Florida, Georgia, New
28 Jersey, New Mexico, New York, Texas, and Washington. In addition, Talton is certificated or registered to provide
service to correctional facilities in Alabama, California, Colorado, Florida, Georgia, New Jersey, New Mexico, New
York, Tennessee, Texas, and Washington. (Staff Memorandum at 1)

¹⁰ Staff Memorandum at 2.

¹¹ Id.

1 Decision approving Talton's application for a CC&N and incorporating the settlement agreement
2 between Talton and CPSD.¹²

3 15. Staff's Memorandum states that in January 2010, the FCC issued a formal notice of
4 inquiry to Talton regarding its reporting and payments to the Federal Universal Service Fund
5 ("FUSF").¹³ Staff states Talton provided Staff with its confidential and proprietary response to the
6 FCC on February 24, 2011, and that Talton indicated that the FCC has taken no additional action
7 since Talton filed its response.¹⁴

8 16. Talton did not provide a customer information placard with its application describing
9 the services offered and instructions for operating the equipment located in the detention centers.¹⁵
10 According to Staff, Talton does not believe a customer information placard is applicable to inmate
11 phones.¹⁶ Staff states that in response its data request, Talton stated that inmates receive an
12 information packet which includes information on rates, dialing instructions, and rules and
13 regulations. Talton further states that on the first day of service, inmates are given a full day of free
14 calling and instruction.

15 17. Talton also indicated that it will make the following options available to the caller
16 and/or called party before charges are assessed:

- 17 a. Rate quotes for collect calls are available upon request and prior to connection
of any calls placed.
- 18 b. Rate quotes are provided via an automated announcement during the call set-
up process and prior to call acceptances.
- 19 c. The called party may listen to the rates and opt to refuse the call without
20 incurring any charges.

21 18. The Consumer Services Section of the Utilities Division reports no complaints or
22 inquiries filed within Arizona from January 1, 2008 through February 25, 2011. Consumer Services
23 also reports that Talton is in good standing with the Commission's Corporations Division.

24 19. Staff recommends approval of Talton's application. Staff based its recommendation on
25 several factors, including the minimal time period (one month lapse) in the time Talton started
26

27 ¹² Staff Memorandum at 2.

¹³ Id.

¹⁴ Id.

¹⁵ See, A.A.C. R14-2-905(B) and R14-2-906.

¹⁶ Staff Memorandum at 3.

1 providing service and when it filed its application; the expediency with which Talton rectified its
 2 failure to file an application prior to beginning service; the fact that 90 percent of Talton's calls are
 3 intrastate and are currently being handled by a Commission approved telecommunication company;
 4 and the positive feedback received from ICE regarding Talton's operations in Arizona. Staff stated
 5 that although it considered conditions and/or possible fines, Staff believes that such penalties are not
 6 necessary at this time. However, Staff believes that Talton should be put on notice that any future
 7 violations of Commission rules may result in penalties and/or sanctions, up to revocation of Talton's
 8 CC&N.

9 20. Staff's recommendation for approval of Talton's application for a CC&N to provide
 10 COPT service is reasonable and should be adopted.

11 21. In Decision No. 55817 (December 10, 1987), the Commission found that COPT
 12 providers are public service corporations subject to the jurisdiction of the Commission.

13 22. In Decision No. 57797 (April 8, 1992), the Commission adopted A.A.C. R14-2-901
 14 through R14-2-909 to regulate COPT providers.

15 23. Pursuant to A.R.S. § 40-282, the Commission may issue Decisions regarding COPT
 16 CC&Ns without a hearing.

CONCLUSIONS OF LAW

17
 18 1. Talton is a public service corporations within the meaning of Article XV of the
 19 Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

20 2. The Commission has jurisdiction over Talton and the subject matter of the
 21 applications.

22 3. Pursuant to A.R.S. § 40-282, the Commission may issue a Decision regarding COPT
 23 without a hearing.

24 4. The provision of COPT service in Arizona by Talton is in the public interest.

25 5. Talton is a fit and proper entity to receive a CC&N to provide COPT service in
 26 Arizona.

27 6. Staff's recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application Talton Communications, Inc., for a Certificate of Convenience and Necessity to provide customer owned pay telephone services within the State of Arizona is hereby approved.

IT IS FURTHER ORDERED that Talton Communications, Inc., shall procure a performance bond or irrevocable sight letter of credit equal to \$10,000. The minimum performance bond or irrevocable sight draft letter of credit of \$10,000 shall be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from Talton's customers. The performance bond or irrevocable sight draft letter of credit shall be increased in increments of \$5,000 and the increase shall occur when the total amount of the advances, deposits, and/or prepayments is within \$1,000 of the total performance bond or irrevocable sight draft letter amount.

IT IS FURTHER ORDERED that Talton Communications, Inc., shall file the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and copies of the of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, prior to beginning service, or within 30 days of the effective date of this Decision, whichever occurs first. The original performance bond or irrevocable sight draft letter of credit shall 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 finds, in its discretion, 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 deems necessary, in its discretion, including but not limited to returning prepayment or deposits collect from the Company's customers.

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IT IS FURTHER ORDERED that Talton Communications, Inc., shall be on notice that the failure to comply with Arizona Statutes and Commission Rules and Regulations may result in the assessment of penalties and sanctions up to, and including revocation of the Certificate of Convenience and Necessity granted herein.

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: _____

YBK:db

1 SERVICE LIST FOR: TALTON COMMUNICATIONS, INC.

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