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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 14 2011

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

DOCKETED BY
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IN THE MATTER OF THE APPLICATION OF
CINCINNATI BELL ANY DISTANCE INC. FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE RESOLD LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-04228A-10-0378

DECISION NO. 72625

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

Procedural History

1. On September 14, 2010, Cincinnati Bell Any Distance Inc. ("CBAD") filed with the Arizona Corporation Commission ("Commission") an application requesting a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange telecommunications services in Arizona and petitioning to have its proposed services classified as competitive.

2. On July 28, 2011, CBAD filed its 2010 financial information.

3. On July 29, 2011, CBAD filed an affidavit of publication showing that notice of its application had been published in *The Arizona Republic* on July 7, 2011.

4. On August 22, 2011, the Commission's Utilities Division ("Staff") issued a Staff Report recommending approval of CBAD's application, with conditions.

Fitness and Properness to Obtain a CC&N

5. CBAD is a subchapter C corporation, formed under the laws of Delaware, and a

1 wholly owned subsidiary of IXC Internet Services, Inc., which is ultimately owned by Cincinnati
2 Bell, Inc. ("Cincinnati Bell"),¹ a publicly traded corporation and holding company.

3 6. CBAD received authorization to transact business in the State of Arizona effective
4 April 21, 1993, and is in good standing with the Commission's Corporations Division.

5 7. CBAD was granted a CC&N to provide competitive resold interexchange
6 telecommunications services and alternative operator services ("AOS"), except local exchange
7 services, in Arizona in Decision No. 67579 (February 15, 2005). CBAD currently provides resold
8 long distance services to 11 residential and 89 business customers in Arizona.

9 8. CBAD stated in its application that none of CBAD's officers or directors has been or
10 is currently involved in any formal or informal proceedings before any state or federal regulatory
11 agency.

12 9. CBAD further stated in its application that none of CBAD's officers or directors has
13 been or is currently involved in any civil or criminal investigations and that none of CBAD's officers
14 or directors has had judgments levied by any administrative or federal regulatory agency or been
15 convicted of any criminal acts within the last 10 years.

16 10. CBAD is authorized to provide, and is currently providing, local exchange
17 telecommunications services in California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas,
18 Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New
19 Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina,
20 Tennessee, Texas, Washington, and Wisconsin. At the time of its application, CBAD was in the
21 process of requesting authority to provide telecommunications services in Oklahoma, Delaware, and
22 Connecticut.

23 11. CBAD reported that it has not had an application to provide service denied in any
24 jurisdiction.

25 12. Staff's search of the Federal Communications Commission's website showed that
26 there have been no complaints filed against CBAD. Staff's Consumer Services Section reported that

27 _____
28 ¹ IXC Internet Services, Inc. is a subsidiary of Cincinnati Bell Technology Solutions Inc., which is a subsidiary of
BRCOM Inc., which is a subsidiary of Cincinnati Bell.

1 there have been no complaints, inquiries, or opinions filed against CBAD through February 11, 2011.
2 Staff's inquiries to other public utilities commissions revealed only one customer complaint against
3 CBAD, involving the accidental porting of a customer's telephone number, which has been resolved
4 and closed.

5 **Technical Capabilities**

6 13. The 13 members of CBAD's senior management team have, on average, 13 years of
7 experience each in the telecommunications industry.

8 14. CBAD resells the local exchange services of AT&T and Verizon in a number of states
9 and operates as a switchless reseller. CBAD does not currently have a local exchange resale
10 agreement in Arizona.

11 15. Staff believes that CBAD possesses the technical capabilities to provide the services
12 for which it is requesting CC&N authority in Arizona. We agree and will adopt Staff's finding.

13 **Financial Resources**

14 16. CBAD intends to rely upon the financial resources of its ultimate parent, Cincinnati
15 Bell, and provided audited financial statements for Cincinnati Bell for several years, ending with
16 calendar year 2010. For the period ending December 31, 2009, Cincinnati Bell showed total assets of
17 \$2,064.3 million; total equity of (\$654.6 million); and net income of \$89.6 million. For the period
18 ending December 31, 2010, Cincinnati Bell reported total assets of \$2,653.6 million; total equity of
19 (\$667.8) million; and net income of \$28.3 million.

20 17. CBAD also provided its own unaudited balance sheets and income statements for
21 several years, ending with calendar year 2010. For the period ending December 31, 2009, CBAD
22 showed net revenues of \$98,105,405 and operating income of \$14,360,251. For the period ending
23 December 31, 2010, CBAD showed net revenues of \$89,910,294 and operating income of
24 \$10,355,949.

25 18. CBAD projects total Arizona intrastate revenue of \$50,700 for the first 12 months of
26 service, with total intrastate operating expenses of \$35,300 for the same period.

27 19. We find that CBAD has sufficient financial resources to provide the
28 telecommunications services for which CC&N authorization is requested.

1 **Competitive Services/Proposed Rates**

2 20. CBAD has petitioned to have its proposed services classified as competitive,
3 consistent with prior Commission decisions regarding such services.

4 21. CBAD initially will be providing local exchange service in areas in which an
5 incumbent local exchange carrier ("ILEC") and various competitive local exchange carriers
6 ("CLECs") and interexchange carriers are already providing services. Staff stated that CBAD will
7 need to compete with the other providers to obtain subscribers and, as a new entrant, will face
8 competition from both an incumbent provider and other competitive providers in offering services to
9 potential customers. Staff asserted that CBAD thus generally will not be able to exert market power
10 and that the competitive process should result in rates that are just and reasonable.

11 22. CBAD projects a net book value of \$0 for all Arizona jurisdictional assets to be used
12 to provide telecommunications services to Arizona customers for the first 12 months of service and a
13 fair value rate base ("FVRB") of \$0.

14 23. In general, rates for competitive services are not set according to rate of return
15 regulation. Staff reviewed the rates included in CBAD's proposed tariff and determined that they are
16 comparable to rates charged by competitive local carriers and local incumbent carriers operating in
17 Arizona. Staff stated that the rates ultimately charged by CBAD will be heavily influenced by the
18 market. While Staff considered the FVRB information submitted by CBAD, Staff did not accord that
19 information substantial weight in its analysis.

20 24. We find that CBAD's current FVRB is \$0 and that it is too small to be useful in an
21 analysis of CBAD's rates.

22 **Performance Bond/Irrevocable Sight Draft Letter of Credit**

23 25. CBAD stated that while it normally does not charge deposits or advanced payments,
24 CBAD's proposed tariff authorizes CBAD to collect a deposit of up to two times the actual monthly
25 or estimated monthly charges for an applicant/customer for the purpose of guaranteeing final
26 payment for service, if the applicant's or customer's financial condition is not acceptable to CBAD or
27 is not a matter of general knowledge. CBAD's proposed tariff provides for interest on cash deposits
28 to be paid per Commission rules and for each deposit to be refunded or credited to the customer upon

1 termination or after one year of prompt payment for service. CBAD stated that although it has been a
2 reseller of long distance services for years in Arizona, it has not charged a single deposit to date.
3 CBAD also stated that it does not believe that a surety bond is necessary because of CBAD's
4 affiliation with Cincinnati Bell and affiliates, which have been providing local telecommunications
5 services for more than 130 years.

6 26. Staff's position is that advances, deposits, and/or prepayments received from
7 customers should be protected by either a performance bond or an irrevocable sight draft letter of
8 credit ("ISDLOC"). The Commission generally requires the applicant for a CC&N for resold local
9 exchange service to obtain a performance bond/ISDLOC in the amount of \$25,000, which must be
10 increased in increments equal to 50 percent of the total minimum performance bond/ISDLOC amount
11 whenever the total amount of advances, deposits, and/or prepayments is within 10 percent of the total
12 minimum performance bond/ISDLOC amount.

13 27. Staff explained that the original performance bond/ISDLOC should be filed with the
14 Commission's Business Office, with copies docketed, and that the performance bond/ISDLOC must
15 remain in effect until further order of the Commission. Staff stated that the Commission may draw
16 on the performance bond/ISDLOC on behalf of and for the sole benefit of CBAD's customers, if the
17 Commission finds, in its discretion, that CBAD is in default of its obligations arising from its CC&N.
18 Staff further stated that the Commission may use the performance bond/ISDLOC funds, as
19 appropriate, to protect CBAD's customers and the public interest and take any and all actions the
20 Commission deems necessary, in its discretion, including but not limited to returning prepayments or
21 deposits collected from CBAD's customers.

22 28. Staff also stated that measures should be taken to ensure that CBAD will not
23 discontinue service to its customers without first complying with Arizona Administrative Code
24 ("A.A.C.") R14-2-1107.

25 **Regulatory Requirements**

26 29. A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number
27 portability available to facilitate the ability of a customer to switch between authorized local carriers
28 within a given wire center without changing the customer's telephone number and without

1 impairment of quality, functionality, reliability, or convenience of use.

2 30. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
3 interconnect to the public switched network to provide funding for the Arizona Universal Service
4 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
5 that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as
6 provided under A.A.C. R14-2-1204(B)(1) and those that begin providing toll service after April 26,
7 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2). A.A.C. R14-2-
8 1204(B)(3)(b) requires all other telecommunications service providers that interconnect to the public
9 switched network and begin providing telecommunications service after April 26, 1996, to make
10 written elections as to how they will be categorized for purposes of AUSF assessments. Staff
11 asserted that CBAD will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

12 31. Commission rules require CBAD to file a tariff for each competitive service that states
13 the maximum rate as well as the effective (actual) price that will be charged for the service. Under
14 A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total service long-
15 run incremental cost of providing the service. Any change to CBAD's effective price for a service
16 must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in CBAD's
17 tariff must comply with A.A.C. R14-2-1110.

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

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

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

1 35. CBAD indicated in its application that its customers will be able to access alternative
2 toll service providers or resellers via 1+101XXXX access.

3 36. According to Staff, CBAD has certified that, in accordance with A.A.C. R14-2-
4 1201(6)(d) and 47 CFR 64.3001 and 64.3002, CBAD will provide all customers with 911 and E911
5 service, where available, or will coordinate with ILECs and emergency service providers to provide
6 911 and E911 service.

7 **Staff's Recommendations**

8 37. Staff recommends approval of CBAD's application for a CC&N to provide resold
9 local exchange telecommunications services and further recommends:

10 (a) That CBAD be required to comply with all Commission Rules, Orders, and
11 other requirements relevant to the provision of intrastate telecommunications services;

12 (b) That CBAD be required to abide by the quality of service standards that were
13 approved by the Commission for Qwest in Docket No. T-01051B-93-0183 (Decision No. 59421),
14 without application of the penalties therein;²

15 (c) That CBAD be prohibited from barring access to alternative local exchange
16 service providers who wish to serve areas where CBAD is the only provider of local exchange
17 service facilities;

18 (d) That CBAD be required to notify the Commission immediately upon changes
19 to CBAD's name, address, or telephone number;

20 (e) That CBAD be required to cooperate with Commission investigations,
21 including but not limited to those related to customer complaints;

22 (f) That CBAD be required to provide notice to both the Commission and its
23 customers, in accordance with A.A.C. R14-2-1107, in the event that CBAD desires to discontinue
24 service;³

25 _____
26 ² Because the penalties developed in Decision No. 59421 were initiated to address Qwest's unsatisfactory level of
27 service, and CBAD does not have a similar history of service quality problems, Staff recommends that those penalties not
28 apply to CBAD. Staff added that the competitive market in which CBAD will operate should force CBAD to provide a
satisfactory level of service or risk losing its customers, which bolsters Staff's position that CBAD need not be subjected
to those penalties at this time.

³ Staff stated that failure to meet this requirement should result in forfeiture of CBAD's performance bond/ISDLOC.

1 (g) That CBAD be required to offer Caller ID with the capability to toggle
2 between blocking and unblocking the transmission of the telephone number at no charge;

3 (h) That CBAD be required to offer Last Call Return service that will not return
4 calls to telephone numbers that have the privacy indicator activated; and

5 (i) That CBAD be authorized to discount its rates and service charges to the
6 marginal cost of providing the services.

7 38. Staff further recommends that CBAD be ordered to comply with the following and
8 that its CC&N granted herein become null and void, after due process, if it fails to do so:

9 (a) CBAD shall, within 365 days from the date of an Order in this matter or 30
10 days prior to providing service, whichever comes first, docket conforming tariffs for each service
11 within its CC&N.

12 (b) CBAD shall:

13 (i) Procure a performance bond or an ISDLOC in the amount of \$25,000;

14 (ii) Within 30 days of the effective date of a Decision in this matter, as a
15 compliance item in this docket, file the original performance
16 bond/ISDLOC with the Commission's Business Office and 13 copies
17 of the performance bond/ISDLOC with the Commission's Docket
18 Control; and

19 (iii) Ensure that the \$25,000 performance bond/ISDLOC remains in effect
20 until further Order of the Commission.

21 (c) CBAD shall comply with Commission rules addressing Universal Service in
22 Arizona by making the monthly AUSF payments required under A.A.C. R14-2-1204(B).

23 39. While it is appropriate to require CBAD to procure a performance bond or ISDLOC in
24 the amount of \$25,000, as recommended by Staff in Findings of Fact No. 38, recent Commission
25 decisions have required that a performance bond/ISDLOC be obtained and that proof of the
26 performance bond/ISDLOC be provided within 90 days after the effective date of the Decision
27 granting a CC&N or within 10 days before providing service to the first customer under the CC&N,
28 whichever comes first, and, further, have required that the Commission be provided notice within 30

1 days after the first customer is served. We find that these requirements are appropriate, and we will
2 adopt them rather than the requirement recommended by Staff in Findings of Fact No. 38(b)(ii).

3 **CONCLUSIONS OF LAW**

4 1. CBAD is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over CBAD and the subject matter of the
7 application.

8 3. Notice of CBAD's application was given in accordance with the law.

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

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

14 6. CBAD is a fit and proper entity and has the technical capabilities and financial
15 resources necessary to receive a CC&N to provide resold local exchange telecommunications
16 services.

17 7. The telecommunication services that CBAD desires to provide are competitive in
18 Arizona.

19 8. CBAD's FVRB is \$0 and is not useful in determining just and reasonable rates for the
20 competitive services it proposes to provide to Arizona customers.

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

25 10. CBAD's rates, as they appear in its proposed tariff, are just and reasonable and should
26 be approved.

27 11. Staff's recommendations set forth in Findings of Fact Nos. 37 and 38, as modified in
28 Findings of Fact No. 39, are reasonable and should be adopted.

ORDER

1
2 IT IS THEREFORE ORDERED that the application of Cincinnati Bell Any Distance Inc. for
3 a Certificate of Convenience and Necessity to provide resold local exchange telecommunication
4 services in Arizona is hereby approved, subject to the conditions set forth in Findings of Fact Nos. 37
5 and 38, as modified in Findings of Fact No. 39, and in accordance with the following ordering
6 paragraphs.

7 IT IS FURTHER ORDERED that Cincinnati Bell Any Distance Inc., shall, within 90 days of
8 the effective date of this Decision or 10 days prior to serving its first end-user customer under the
9 Certificate of Convenience and Necessity granted herein, whichever comes earlier, as a compliance
10 item in this docket, provide to the Commission's Business Office the original of a performance bond
11 or irrevocable sight draft letter of credit in the amount of \$25,000, and file 13 copies of the
12 performance bond or irrevocable sight draft letter of credit with the Commission's Docket Control.
13 Cincinnati Bell Any Distance Inc. shall ensure that the performance bond or irrevocable sight draft
14 letter of credit remains in effect until further Order of the Commission. The Commission may draw
15 on the performance bond or irrevocable sight draft letter of credit on behalf of and for the sole benefit
16 of Cincinnati Bell Any Distance Inc. customers, if the Commission finds, in its discretion, that
17 Cincinnati Bell Any Distance Inc. is in default of its obligations arising from its Certificate of
18 Convenience and Necessity. The Commission may use the performance bond or irrevocable sight
19 draft letter of credit funds, as appropriate, to protect Cincinnati Bell Any Distance Inc. customers and
20 the public interest and take any and all actions the Commission deems necessary, in its discretion,
21 including but not limited to returning prepayments or deposits collected from Cincinnati Bell Any
22 Distance Inc. customers.

23 IT IS FURTHER ORDERED that Cincinnati Bell Any Distance Inc. shall, within 30 days
24 after providing service to its first customer in Arizona under the Certificate of Convenience and
25 Necessity granted herein, file with the Commission's Docket Control, as a compliance item in this
26 docket, notice that Cincinnati Bell Any Distance Inc. has started providing such service in Arizona.

27 ...

28 ...

1 IT IS FURTHER ORDERED that if Cincinnati Bell Any Distance Inc. fails to meet the
2 conditions outlined in Findings of Fact No. 38 and in the two preceding ordering paragraphs within
3 the timeframes therein, the Certificate of Convenience and Necessity conditionally granted herein
4 shall be considered null and void after due process.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8
9  CHAIRMAN  COMMISSIONER
10  COMMISSIONER  COMMISSIONER  COMMISSIONER
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13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 14th day of October,
18 2011.

19 
20 ERNEST G. JOHNSON
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

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1 SERVICE LIST FOR: CINCINNATI BELL ANY DISTANCE INC.

2 DOCKET NO.: T-04228A-10-0378

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