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ARIZONA CORPORATION COMMISSION

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NOV 25 2011

DATE: NOVEMBER 25, 2011

DOCKET NO.: T-20777A-10-0510

DOCKETED BY
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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 Opinion and Order on:

MOSAIC NETWORKX, LLC
(CC&N/RESELLER/FACILITIES-BASED)

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:

DECEMBER 5, 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:

DECEMBER 13, 2011 and DECEMBER 14, 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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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
MOAIC NETWORX, LLC FOR APPROVAL
OF A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE RESOLD
AND FACILITIES-BASED INTRALATA
AND INTERLATA PRIVATE LINE
TELECOMMUNICATION SERVICES IN
ARIZONA.

DOCKET NO. T-20777A-10-0510

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: September 12, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Michael W. Patten, ROSHKA, DEWULF & PATTEN PLC, on behalf of Applicant; and
Ms. Kimberly Ruht, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On December 20, 2010, Mosaic Networx, LLC (“Mosaic” or “Company”) filed with the Arizona Corporation Commission (“Commission”) an application for approval of a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line telecommunication services throughout Arizona. Mosaic’s application also requests a determination that its proposed services are competitive.

On May 23, 2011, the Company docketed responses to the Commission’s Utilities Division (“Staff”) First Set of Data Requests. The filing also included an amendment to the application

1 deleting Mosiac's request for authorization to provide facilities-based local exchange
2 telecommunication services in Arizona.

3 On May 31, 2011, Staff filed a Staff Report recommending approval of Mosaic's amended
4 application subject to certain conditions.

5 On July 15, 2011, by Procedural Order, a hearing was scheduled to begin on September 12,
6 2011, and other procedural deadlines were established.

7 On August 15, 2011, Mosiac filed an affidavit of publication showing notice of application
8 and hearing date had been published on August 4, 2011, in the *Arizona Republic*, a newspaper of
9 general circulation in Mosiac's proposed service area.

10 On August 24, 2011, Mosiac filed a Notice of Appearance and Request for Telephonic
11 Appearance.

12 On September 7, 2011, by Procedural Order, Mosiac's request for its witness to appear
13 telephonically was granted.

14 On September 12, 2011, a hearing was held as scheduled before a duly authorized
15 Administrative Law Judge of the Commission. Mosiac and Staff appeared through counsel and
16 presented testimony and evidence. At the conclusion of the hearing, the matter was taken under
17 advisement pending submission of a Recommended Opinion and Order to the Commission.

18 * * * * *

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

21 **FINDINGS OF FACT**

22 1. Mosiac is a foreign limited liability company organized under the laws of Delaware.
23 Mosiac is in good standing with the Commission's Corporation Division and is authorized to transact
24 business in Arizona.¹

25 2. Mosiac's principal place of business is in San Rafael, California.²

26
27
28 ¹ Exhibit A-1.
² Id.

1 3. By its amended application, Mosiac intends to provide resold and facilities-based
2 intraLATA and interLATA private line telecommunication services throughout Arizona.

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

4 5. Staff recommends approval of Mosiac's amended application for a CC&N to provide
5 intrastate telecommunication services in Arizona, subject to the following conditions.

6 6. Staff recommends that:

- 7 a. Mosiac comply with all Commission Rules, Orders, and other requirements
8 relevant to the provision of intrastate telecommunications services;
- 9 b. Mosiac abides by the quality of service standards that were approved by the
10 Commission for Qwest in Docket No. T-01051B-93-0183;
- 11 c. Mosiac notify the Commission immediately upon changes to Mosiac's name,
12 address or telephone number;
- 13 d. Mosiac cooperate with Commission investigations including, but not limited to
14 customer complaints;
- 15 e. The rates proposed by Staff are for competitive services. In general, rates for
16 competitive services are not set according to rate of return regulation. Staff
17 obtained information from Mosiac indicating that its net book value or fair
18 value rate base at the end of 12 months of operation would be zero. Staff has
19 reviewed the rates to be charged by Mosiac and believes they are just and
20 reasonable as they are comparable to other private line providers offering
21 service in Arizona and comparable to the rates Mosiac charges in other
22 jurisdictions. The rate to be ultimately charged by the Company will be
23 heavily influence by the market. Therefore, while Staff considered the fair
24 value rate base information submitted by the Company, the fair value
25 information provided was not given substantial weight in this analysis; and
- 26 f. The Commission authorize Mosiac to discount its rates and service charges to
27 the marginal cost of providing the services.

28 7. Staff further recommends that Mosiac's CC&N be considered null and void after due
process if Mosiac fails to comply with the following conditions:

- 29 a. Mosiac shall docket conforming tariffs for each of its proposed services within
30 365 days from the date of a Decision in this matter, or 30 days prior to
31 providing service, whichever comes first.
- 32 b. Mosiac shall:
- 33 i. Procure either a performance bond or irrevocable sight draft letter of
34 credit ("ISDLC") equal to \$225,000. The minimum performance bond
35 or ISDLC of \$225,000 should be increased if at any time it would be
36 insufficient to cover advances, deposits, and/or prepayments collected
37 from Mosiac's customers. The performance bond or ISDLC should be
38 increased in increments of \$112,500. This increase should occur when

1 the total amount of advances, deposits, and/or prepayments is within
2 \$12,500 of the total performance bond or ISDLC amount; and

3 ii. File the original performance bond or ISDLC with the Commission's
4 Business Office and copies of the performance bond or ISDLC with
5 Docket Control, as a compliance item in this docket, within 90 days of
6 the effective date of the Decision in this matter or 10 days before the
7 first customer is served, whichever comes first. The original
8 performance bond or ISDLC must remain in effect until further order of
9 the Commission. The Commission may draw on the performance bond or
10 ISDLC, on behalf of, and for the sole benefit of the Company's
11 customers, if the Commission finds, in its discretion, that the Company
12 is in default of its obligations arising from its Certificate. The
13 Commission may use the performance bond or ISDLC funds, as
14 appropriate, to protect the Company's customers and the public interest
15 and take any and all actions the Commission deems necessary, in its
16 discretion, including, but not limited to returning prepayments or
17 deposits collected from the Company's customers; and

18 iii. Mosiac shall notify the Commission through a compliance filing within
19 30 days of the commencement of service to end-user customers; and

20 c. Mosiac should abide by the Commission adopted rules that address Universal
21 Service in Arizona, which indicates that all telecommunications service
22 providers that interconnect into the public switched network shall provide it
23 necessary monthly payments required under by A.A.C. R14-2-1204(B).

24 Technical Capability

25 8. Mosiac's application states Mosiac provides business solutions for large enterprise and
26 carrier customers on an individual case basis ("ICB").³ Mosiac intends to primarily provide private
27 line, wavelength, Ethernet, and internet services using a combination of its own facilities, the leased
28 facilities of other carriers, and through the resale of the facilities of other certificated carriers.⁴
Mosiatic will provide its proposed services at a DS3 level or higher.⁵

9. Mosiac does not intend to provide telecommunication services to residential
customers.⁶

10. Mosiac has been approved to provide its proposed services in California, Nevada,
New York, Florida, Colorado, Georgia, Massachusetts, Pennsylvania, Virginia, Washington, and
Wisconsin.⁷

11. The senior officers of Mosiac have approximately 40 years combined experience in

³ Exhibit A-1.

⁴ Id.

⁵ Tr. at 9.

⁶ Exhibit A-1.

⁷ Exhibit S-1.

1 the telecommunications industry.⁸

2 12. Based on Staff's analysis of the Company, Staff concluded that Mosiac has the
3 technical experience to provide its proposed services in Arizona.⁹

4 **Financial Capabilities**

5 13. Mosiac was formed on October 24, 2008.¹⁰ Mosiac provided financial statements for
6 the periods ending December 2009 and 2010.¹¹ For the period ending December 2009, Mosiac's
7 financial statement indicates Total Assets of \$1,116,555; Total Equity of \$303,833; and a Net Income
8 of \$395,416.¹² For the year ending December 31, 2010, Mosiac reported Total Assets of \$1,149,236;
9 Total Equity of \$317,632; and Net Income of \$229,071.¹³

10 14. Mosiac filed an amended application, which included a revised proposed tariff.¹⁴ At
11 hearing, Mosiac's witness testified that Mosiac will be filing a compliance tariff indicating that
12 Mosiac's telecommunication services in Arizona will be limited to providing DS3 level or higher
13 services.¹⁵ Staff's witness testified that because Mosiac proposes to serve large customers (customers
14 having more than 100 access lines), those customers have tremendous economic power and will be
15 able to negotiate contracts that will protect their own interest.¹⁶ Therefore, based on Mosiac's
16 witness' testimony that the Company will file a conforming tariff indicating it will be providing
17 telecommunication services in Arizona at a DS3 level or higher, Staff revised its recommendation
18 eliminating the requirement for a performance bond or ISDLC.¹⁷

19 **Rates and Charges**

20 15. Staff believes Mosiac will have to compete with ILECs, various competitive local
21 exchange carriers ("CLECs") and interexchange carriers ("IXCs") to provide its proposed services in
22 Arizona.¹⁸

24 ⁸ Id.

⁹ Exhibit S-1.

25 ¹⁰ Exhibit A-1.

¹¹ Exhibit A-1 and A-2.

26 ¹² Exhibit A-1, Attachment D.

¹³ Exhibit A-2 Attachment C.

27 ¹⁴ Exhibit A-2.

¹⁵ Tr. at 9.

¹⁶ Tr. at 16.

28 ¹⁷ Tr. at 15.

¹⁸ Exhibit S-1.

1 16. Staff reviewed Mosiac's proposed tariff and concluded that Mosiac's proposed rates
2 are comparable to other incumbent providers and other competitive providers doing business in
3 Arizona.¹⁹ Therefore, given the competitive environment in which Mosiac will be providing service,
4 Staff believes Mosiac will not be able to exert any market power and the competitive process will
5 result in rates that are just and reasonable.²⁰

6 17. Mosiac requests a determination that its proposed rates are for competitive services.
7 Staff states that in general, rates for competitive services are not set in the same manner as those for
8 non-competitive services. Although Staff considered Mosiac's FVRB as part of its analysis, Staff
9 believes Mosiac's FVRB is too small to be given substantial weight in this analysis.²¹

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

14 Complaint Information

15 19. Mosiac's application states it has not been denied authority to provide its proposed
16 services in any jurisdiction.²³

17 20. Mosiac states that there have been no formal complaint proceedings, or civil or
18 criminal proceedings involving the Company.²⁴

19 21. The Commission's Consumer Services Section reports that there is no complaint
20 history for Mosiac in Arizona.²⁵

21 22. Mosiac also states that none of its officer, directors, or partners has been involved in or
22 are currently involved in any criminal investigations, or formal or informal complaints.²⁶ Mosiac
23 also reported that none of its officers, directors, or partners has been convicted of any criminal acts in
24

25 ¹⁹ Id.

26 ²⁰ Exhibit S-1.

²¹ Id.

²² Id.

27 ²³ Exhibit A-1.

²⁴ Id.

28 ²⁵ Exhibit S-1.

²⁶ Exhibit A-1.

1 the past ten years.²⁷

2 23. Staff's research of the Company confirmed that there were no complaint issues
3 related to Mosiac's top executives.²⁸

4 **Competitive Analysis**

5 24. Mosiac is seeking a determination that its proposed services are competitive in
6 Arizona.

7 25. Staff recommends approval of Mosiac's proposed services as competitive. Staff states
8 that interexchange carriers hold a substantial share of the market Mosiac desires to serve; incumbent
9 local exchange and competitive local exchange carriers also provide services similar to Mosiac's
10 proposed services. Therefore Staff believes Mosiac will not have any market power in the markets it
11 wishes to serve and that Mosiac's proposed services should be classified as competitive.²⁹

12 26. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

13 **CONCLUSIONS OF LAW**

14 1. Mosiac is a public service corporation within the meaning of Article XV of the
15 Arizona Constitution, A.R.S. § 40-281 and 40-282.

16 2. The Commission has jurisdiction over Mosiac and the subject matter of the
17 application.

18 3. Notice of the application was given in accordance with the law.

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

21 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
22 Statutes, it is in the public interest for Mosiac to provide the telecommunication services set forth in
23 its application, as amended.

24 6. The telecommunication services Mosiac intends to provide are competitive within
25 Arizona.

26
27 ²⁷ Id.

28 ²⁸ Exhibit S-1.

²⁹ Exhibit S-1 at 8.

1 IT IS FURTHER ORDERED that Mosiac Networx, LLC shall abide by the Commission
2 adopted rules that address Universal Service in Arizona, and Pursuant to A.A.C. R14-2-1204(B)
3 Mosiac Network, LLC shall make the necessary monthly payments to the Arizona Universal Fund.

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 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2011.

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT: _____

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21 DISSENT: _____

22 YBK:db
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1 SERVICE LIST FOR:

MOSAIC NETWORKX, LLC

2 DOCKET NO.:

T-20777A-10-0510

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