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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF MOSAIC 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. 72721

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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[1] Exhibit A-1.
[2] Id.

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

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

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

6. Staff recommends that:

a. Mosiac comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;

b. Mosiac abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;

c. Mosiac notify the Commission immediately upon changes to Mosiac's name, address or telephone number;

d. Mosiac cooperate with Commission investigations including, but not limited to customer complaints;

e. The rates proposed by Staff are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from Mosiac indicating that its net book value or fair value rate base at the end of 12 months of operation would be zero. Staff has reviewed the rates to be charged by Mosiac and believes they are just and reasonable as they are comparable to other private line providers offering service in Arizona and comparable to the rates Mosiac charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influence by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analyis; and

f. The Commission authorize Mosiac to discount its rates and service charges to the marginal cost of providing the services.

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:

a. Mosiac shall docket conforming tariffs for each of its proposed services within 365 days from the date of a Decision in this matter, or 30 days prior to providing service, whichever comes first.

b. Mosiac shall:

i. Procure either a performance bond or irrevocable sight draft letter of credit ("ISDLC") equal to $225,000. The minimum performance bond or ISDLC of $225,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from Mosiac's customers. The performance bond or ISDLC should be increased in increments of $112,500. This increase should occur when

the total amount of advances, deposits, and/or prepayments is within $12,500 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 in 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. Mosiac shall notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and

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

Technical Capability

8. Mosiac's application states Mosiac provides business solutions for large enterprise and carrier customers on an individual case basis ("ICB").[3] Mosiac intends to primarily provide private line, wavelength, Ethernet, and internet services using a combination of its own facilities, the leased facilities of other carriers, and through the resale of the facilities of other certificated carriers.[4] Mosiac 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.

the telecommunications industry.[8]

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

Financial Capabilities

13. Mosiac was formed on October 24, 2008.[10] Mosiac provided financial statements for the periods ending December 2009 and 2010.[11] For the period ending December 2009, Mosiac's financial statement indicates Total Assets of $1,116,555; Total Equity of $303,833; and a Net Income of $395,416.[12] For the year ending December 31, 2010, Mosiac reported Total Assets of $1,149,236; Total Equity of $317,632; and Net Income of $229,071.[13]

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

Rates and Charges

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

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[8] Id.
[9] Exhibit S-1.
[10] Exhibit A-1
[11] Exhibit A- 1 and A-2.
[12] Exhibit A-1, Attachment D.
[13] Exhibit A-2 Attachment C.
[14] Exhibit A-2.
[15] Tr. at 9.
[16] Tr. at 16.
[17] Tr. at 15.
[18] Exhibit S-1.

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

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

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

Complaint Information

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

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

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

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

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[19] Id.
[20] Exhibit S-1.
[21] Id.
[22] Id.
[23] Exhibit A-1.
[24] Id.
[25] Exhibit S-1.
[26] Exhibit A-1.

the past ten years.[27]

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

Competitive Analysis

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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[27] Id.
[28] Exhibit S-1.
[29] Exhibit S-1 at 8.

7. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Mosiac to establish rates and charges that are not less than Mosiac's total service long-run incremental costs of providing the competitive services approved herein.

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

ORDER

IT IS THEREFORE ORDERED that the application of Mosiac Networx, LLC for a Certificate of Convenience and Necessity to provide competitive resold and facilities-based IntraLATA and InterLATA private line telecommunication services in Arizona, is hereby conditionally approved, subject to Mosiac's compliance with the requirements set forth in Findings of Fact No. 6.

IT IS FURTHER ORDERED that if Mosiac Networx, LLC fails to comply with the following ordering paragraphs, the Certificate of Convenience and Necessity conditionally granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that Mosiac Networx, LLC shall docket a conforming tariff for each service within its Certificate of Convenience and Necessity within 365 days of the effective date of this Decision, or 30 days prior to providing service whichever comes first.

IT IS FURTHER ORDERED that Mosiac Networx, LLC shall notify the Commission through a compliance filing in this docket within 30 days of the commencement of service to end-user customers.

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

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 9th day of December 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

YBK:db

SERVICE LIST FOR: MOSAIC NETWORX, LLC

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

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