

OPEN MEETING ITEM



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GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: MARCH 28, 2012
DOCKET NO.: T-20552A-07-0537
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:

TCO NETWORK, 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:

APRIL 6, 2012

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:

APRIL 24, 2012 and APRIL 25, 2012

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

MAR 28 2012

DOCKETED BY
mn

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
TCO NETWORK, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD LONG DISTANCE AND
RESOLD LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-20552A-07-0537

DECISION NO. _____

ORDER

Open Meeting
April 24 and 25, 2012
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On September 21, 2007, TCO Network, Inc. ("TCO" or "Company"), filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and resold local exchange telecommunications services in Arizona and requested that its proposed services be classified as competitive ("Application").
2. On October 19, 2007, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency and First Set of Data Requests.
3. On May 21, 2008, the Company filed its responses to Staff's First Set of Data Requests. As part of its responses, TCO filed an Affidavit of Publication indicating that notice of the Application had been published on November 14, 2007, in *The Arizona Business Gazette*.
4. On September 27, 2010, Staff sent its Second Set of Data Requests to TCO.
5. On November 9 and November 12, 2010, TCO filed its responses to Staff's Second Set of Data Requests.
6. Staff sent its Third Set of Data Requests to the Company on December 22, 2010, and

1 its Fourth Set of Data Requests on January 12, 2011.

2 7. On August 31, 2011, the Company filed its responses to Staff's Third and Fourth Set
3 of Data Requests. In its responses, TCO updated certain information from its original Application.

4 8. On September 15, 2011, TCO filed an updated response to Staff's Second Set of Data
5 Requests.

6 9. On January 12, 2012, Staff filed its Staff Report recommending approval of TCO's
7 Application subject to certain conditions, one of which was that TCO be required to file with the
8 Commission a \$25,000 performance bond or irrevocable sight draft letter of credit for its Arizona
9 resold local exchange service.

10 10. On February 21, 2012, TCO filed with the Commission an original and thirteen copies
11 of a \$25,000 performance bond.

12 **Fitness and Properness to Obtain a CC&N**

13 11. TCO is a Wisconsin "S" corporation granted authority by the Commission on August
14 20, 2007, to do business in Arizona as a foreign corporation.

15 12. TCO is in good standing with the Commission's Corporations Division.

16 13. TCO has indicated that neither TCO nor any of its officers, directors, partners or
17 managers have been or are currently involved in any civil or criminal investigations, have had
18 judgments entered in any civil or criminal matter or levied by any administrative or regulatory
19 agency, nor have been convicted of any criminal acts within the past 10 years.

20 14. TCO indicated that neither TCO, nor any of its officers, directors, partners or
21 managers have been or currently are involved in any formal or informal complaint proceedings
22 pending before any state or federal regulatory commission, administrative agency, or law
23 enforcement agency.

24 15. According to TCO, it is authorized to provide local exchange service in five states and
25 long distance service in fifteen states. Staff contacted the state public utility commissions ("PUCs")
26 in fourteen of these states and confirmed that TCO is certificated, registered or listed to provide
27 telecommunications services. The PUCs contacted by Staff reported that no customer complaints had
28 been received about the Company.

1 16. Staff notes that on February 23, 2009, the Federal Communications Commission
2 (“FCC”) Enforcement Bureau issued TCO a Notice of Liability for Forfeiture (“Omnibus NAL”). In
3 the Omnibus NAL, the FCC proposed imposition of a \$20,000 forfeiture for alleged violations of the
4 Telecommunications Act, Section 222, FCC Rules, Section 64.2009(e), and the FCC’s Electronic
5 Privacy Information Center Customer Proprietary Network Information (“CPNI”) Order (“CPNI
6 Order”), by failing to timely file an annual CPNI compliance certification with the FCC by March 1,
7 2008. In an Order released July 30, 2009, the FCC agreed with TCO that it had timely filed its CPNI
8 certification, found that TCO did not willfully and repeatedly violate the Telecommunications Act,
9 Section 222, FCC Rules, Section 64.2009(e), or the CPNI Order, and concluded that no forfeiture
10 was necessary.

11 17. Staff states the Consumer Services Section of the Utilities Division reported that no
12 complaints, inquiries, or opinions have been filed against TCO from January 1, 2008, through
13 September 8, 2011.

14 18. Staff noted that on September 9, 2011, Staff received an un-docketed e-mail from
15 TCO’s counsel advising the Commission that TCO began providing resold telecommunications
16 service in Arizona in approximately June 2010. Staff quotes the e-mail as follows:

17 TCO began provisioning of resold service to 6 business customers (no residential
18 customers) in June of 2010, approximately two years after having responded to
19 Staff’s 1st set of data requests. The company was under the assumption, if for no
20 other reason than the passage of time, that they had been issued a CC&N to
21 provide service in the State of AZ. The company believes that the resold
22 interexchange services were and are being provided pursuant to provisional
23 authority granted by ACC policy in effect at the time of filing its application. The
24 company believes that the only service for which it does not have actual authority
25 to provide service in AZ are the resold local services, which are being provided to
26 only 2 customers, and only since June of 2010. Based upon the foregoing, and the
27 company’s reasonable beliefs and efforts expended in fulfilling its obligations to
28 the ACC, including without limitation, answering all data requests, and filing a
2010 annual report with the ACC, the company believes that its CC&N should be
granted, and that TCO should not be sanctioned or penalized by the ACC for
providing resold service without actual authority to do so.¹

19. Staff states that although there are no consumer complaints, inquiries or opinions filed
against TCO and the Company is in good standing with the Corporations Division, Staff recommends

¹ Staff Report dated January 12, 2012, pages 1-2.

1 TCO should be put on notice that if it provides other telecommunications services in Arizona without
2 first obtaining Commission authorization, the Commission may impose sanctions against TCO.

3 **Technical Capabilities**

4 20. TCO intends to offer resold telecommunications services obtained from Centurylink
5 d/b/a Qwest Communications, Global Crossing and XO Communications, among others, to
6 subscribers in Arizona.

7 21. Staff notes that TCO's officers have a combined experience of 39 years in the
8 telecommunications industry.

9 22. TCO has authority to provide, and/or is providing, telecommunications services
10 similar to those it intends to offer in Arizona in fifteen states.

11 23. Based on this information, Staff determined that TCO has sufficient technical
12 capabilities to provide resold long distance and resold local exchange telecommunications services in
13 Arizona.

14 **Financial Resources**

15 24. TCO provided unaudited financial statements for the twelve-month period ending
16 December 31, 2010. According to the Staff Report, this financial statement lists TCO assets of
17 \$968,757, total equity of \$583,396, and a net income of \$399,868.

18 25. TCO projected total revenues generated by the provision of telecommunications
19 services to Arizona customers for the first 12 months of operations to be \$10,000, with operating
20 expenses during that period of \$8,000.

21 26. TCO stated that the current net book value of all Arizona jurisdictional assets is zero
22 and the projected value of all Arizona assets after the first 12 months of operations will be \$100.

23 27. If TCO experienced financial difficulty, it would have only a minimal impact on its
24 customers because there are many companies in Arizona that provide resold long distance and resold
25 local exchange telecommunications services and facilities-based providers are also available.
26 Further, TCO's customers will be able to access alternative toll service providers or resellers via
27 1+101XXXX access.

28

1 **Proposed Rates and Competitive Services**

2 28. Staff notes that the rates proposed by TCO are for competitive services and rates for
3 competitive telecommunications services are generally not established according to rate-of-return
4 regulation.

5 29. Staff has determined that TCO's fair value rate base ("FVRB") is zero. Although
6 Staff evaluated the FVRB information submitted by TCO, Staff determined that the FVRB
7 information should not be given substantial weight in its analysis.

8 30. As a reseller of services purchased from other telecommunications companies, TCO
9 will have no market power and will have to compete with other providers to obtain subscribers to its
10 services.

11 31. In light of this competitive market, Staff believes that TCO's proposed tariffs are just
12 and reasonable.

13 32. Staff states that there are alternatives to TCO's services, the Company will have to
14 convince potential customers to purchase its services, and the Company has no ability to adversely
15 affect the local exchange or interexchange service markets. As such, Staff recommends that the
16 Company's proposed services be classified as competitive.

17 33. TCO's tariff indicates that it will not collect advances, deposits, and/or prepayments
18 from its resold long distance customers. Staff recommended that if, in the future, TCO wants to
19 collect advances, deposits and/or prepayments, the Company should be required to file an application
20 with the Commission for its approval. This application must reference this Decision and must
21 explain the Company's plans for obtaining the \$10,000 performance bond or irrevocable sight draft
22 letter of credit required by the Commission from resold long distance telecommunications service
23 providers who collect advances, deposits, and/or prepayments from its customers.

24 34. In order to protect the Company's resold local exchange customers, Staff
25 recommended that the Company should acquire a performance bond or irrevocable sight draft letter
26 of credit equal to \$25,000. Staff recommended that TCO file the original performance bond or
27 irrevocable sight draft letter of credit with the Commission's Business Office and file 13 copies with
28 Docket Control, as a compliance item in this docket, within 90 days of the effective date this

1 Decision. The performance bond or irrevocable sight draft letter of credit must remain in effect until
2 further order of the Commission.

3 35. On February 21, 2012, TCO filed the original and copies of its \$25,000 performance
4 bond with the Commission; as such, TCO has complied with this Staff recommendation.

5 **Regulatory Requirements**

6 36. If TCO wishes to discontinue service, it must file an application with the Commission
7 pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107. The Company must notify each of
8 its customers and the Commission 60 days prior to filing an application to discontinue service.
9 Failure to meet these requirements could result in forfeiture of the Company's performance bond.

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

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

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

25 40. In accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications
26 Commission 47 CFR Sections 64.3001 and 64.3002, the Company will provide all customers with
27 911 and E911 service, where available, or will coordinate with ILECs and emergency service
28 providers to provide 911 and E911 service.

1 41. A.A.C. R14-2-1901 *et seq.* establish requirements to protect Arizona consumers from
2 unauthorized carrier changes (“slamming”) and apply to each public service corporation providing
3 telecommunications services within the State of Arizona and over which the Commission has
4 jurisdiction.

5 42. A.A.C. R14-2-2001 *et seq.* establish requirements to protect Arizona consumers from
6 unauthorized carrier charges (“cramming”) and apply to each public service corporation providing
7 telecommunications services in the State of Arizona and over which the Commission has jurisdiction.

8 **Staff's Recommendations**

9 43. Staff recommends approval of TCO's Application and further recommends:

- 10 a. That TCO be ordered to comply with all Commission rules, orders, and other
11 requirements relevant to the provision of intrastate telecommunications
12 service;
- 13 b. That TCO be required to notify the Commission immediately upon changes to
14 its name, address or telephone number;
- 15 c. That TCO be ordered to cooperate with Commission investigations, including
16 but not limited to customer complaints;
- 17 d. That TCO be ordered to comply with federal laws, federal rules and A.A.C.
18 R14-2-1308(A) regarding number portability;
- 19 e. That TCO be ordered to abide by the quality of service standards that were
20 approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- 21 f. That TCO be prohibited from barring access to alternative local exchange
22 service providers who wish to serve areas where it is the only provider of local
23 exchange service facilities;
- 24 g. That TCO be ordered to provide all customers with 911 and E911 service,
25 where available, or to coordinate with ILECs and emergency service providers
26 to provide these services in accordance with A.A.C. R14-2-120(6)(d) and 47
27 CFR §§ 64.3001 and 64.3002;
- 28 h. That TCO's FVRB is zero;
- i. That TCO's services be classified as competitive;
- j. That if at some time in the future TCO wants to collect advances, deposits
and/or prepayments from its resold long distance customers, TCO be required
to file an application for Commission approval that references this Decision;
- k. That should TCO request to discontinue and/or abandon its service area, TCO
must provide notice to both the Commission and its customers 60 days prior to
filing an application to discontinue service, and the application must be in
accordance with A.A.C. R-14-2-1107;

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- l. That TCO offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
 - m. That TCO offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
 - n. That the minimum rates for TCO's services be the total service long-run incremental costs of providing those services, as set forth in A.A.C. R14-2-1109;
 - o. That TCO be put on notice that if it provides a service in the future without first obtaining any and all required Commission approvals, the Commission may impose sanctions against TCO; and
 - p. That TCO be ordered to do the following and that its CC&N be rendered null and void, after due process, if it fails to do the following:
 - i. TCO shall docket conforming tariffs for each service within its CC&N within 60 days from the effective date of this Decision. The tariffs submitted shall coincide with the Application and state that TCO does not collect advances, deposits and/or prepayments from its customers.
 - ii. The performance bond TCO filed on February 21, 2012, must remain in effect until further order of the Commission. The Commission may draw on the performance bond on behalf of, and for the sole benefit of, the Company's customers, if the Commission, in its discretion, finds that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond 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 advances, prepayments and/or deposits collected from the Company's customers.
 - iii. TCO shall abide by Commission rules regarding the AUSF as stated in A.A.C. R14-2-1204(A), and shall make the necessary monthly payments as required by A.A.C. R14-2-1204(B).

19 44. We also find it reasonable to require:

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- a. That the maximum rates for TCO's services be the maximum rates proposed by TCO in its proposed tariffs;
 - b. If TCO states only one rate for a service in its proposed tariff, that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate;
 - c. That TCO be ordered to maintain its accounts and records as required by the Commission;
 - d. That TCO be ordered to file with the Commission all financial and other reports that the Commission may require, in a form and at such times as the Commission may designate;
 - e. That TCO be ordered to maintain on file with the Commission all current tariffs and rates and any service standards that the Commission may require; and

1 f. That TCO be ordered to comply with the Commission's rules and to modify its
2 tariffs to conform to those rules if it is determined that there is a conflict
3 between TCO's tariffs and Commission rules.

4 45. Staff's recommendations and those stated in Finding of Fact No. 44 are reasonable and
5 should be adopted.

6 CONCLUSIONS OF LAW

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

9 2. The Commission has jurisdiction over TCO and the subject matter of the Application.

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

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

14 5. Notice of TCO's Application was given in accordance with Arizona law.

15 6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
16 it is in the public interest for TCO to provide the telecommunications services for which it has
17 requested authorization in its Application.

18 7. TCO is a fit and proper entity to receive a CC&N authorizing it to provide resold long
19 distance and resold local exchange telecommunications services in the State of Arizona.

20 8. The telecommunications services that TCO desires to provide are competitive in
21 Arizona.

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

26 10. The recommendations set forth in Findings of Fact Nos. 43 and 44 are reasonable and
27 should be adopted.

28 11. TCO's FVRB is not useful in determining just and reasonable rates for the competitive
services it proposes to provide Arizona customers.

1 12. TCO's rates, as they appear in its proposed tariffs, are just and reasonable and should
2 be approved.

3 **ORDER**

4 IT IS THEREFORE ORDERED that the Application of TCO Network, Inc. for a Certificate
5 of Convenience and Necessity to provide competitive resold long distance and resold local exchange
6 telecommunications services in Arizona is granted conditioned upon compliance with the conditions
7 and recommendations set forth in Findings of Fact Nos. 43 and 44.

8 IT IS FURTHER ORDERED that if TCO Network, Inc. fails to meet the conditions outlined
9 in Findings of Fact No. 43(p) within the stated timeframes, the Certificate of Convenience and
10 Necessity conditionally granted herein shall become null and void after due process.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14 _____
CHAIRMAN COMMISSIONER

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16 _____
COMMISSIONER COMMISSIONER COMMISSIONER

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18 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
19 Executive Director of the Arizona Corporation Commission,
20 have hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this _____ day of _____, 2012.

23 _____
24 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

25 DISSENT _____

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27 DISSENT _____

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1 SERVICE LIST FOR: TCO NETWORK, INC.

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