

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

2012 MAR 28 A 9:33

ORIGINAL

DATE: MARCH 28, 2012
DOCKET NO.: T-03727A-11-0360
TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

DSLNET COMMUNICATIONS, LLC
(CANCEL 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:

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:

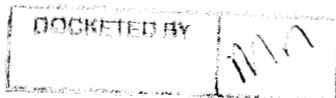
APRIL 24, 2012 and APRIL 25, 2012

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



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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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
DSLNET COMMUNICATIONS, LLC TO CANCEL
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. T-03727A-11-0360

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. DSLnet Communications, LLC ("DSLnet" or the "Applicant"), has a Certificate of Convenience and Necessity ("CC&N") to provide competitive facilities-based and resold local exchange, interexchange and access telecommunications services in Arizona pursuant to Decision No. 62409 (April 3, 2000). Based on a recommendation from the Commission's Utilities Division Staff ("Staff"), and prior to Commission grant of a CC&N, DSLnet posted a \$34,000 performance bond on February 10, 2000. DSLnet filed a renewed performance bond with the Commission on March 31, 2006.

2. On September 23, 2011, DSLnet filed an application with the Commission to cancel its CC&N and Arizona tariff ("Application").

3. According to the Applicant, the cancellation request is a result of an anticipated intra-corporate reorganization of certain wholly-owned direct and indirect subsidiaries of CCGI Holding Corporation, including DSLnet, into DIECA Communications, Inc. ("DIECA"), a wholly-owned indirect subsidiary of CCGI Holding Corporation. DIECA is authorized by the Commission to

1 provide competitive facilities-based and resold local exchange and interexchange telecommunications
2 services in Arizona pursuant to Decision No. 61942 (September 17, 1999).

3 4. DSLnet is a wholly-owned subsidiary of MegaPath, Inc. ("MegaPath"), which in turn,
4 is a wholly-owned subsidiary of CCGI Holding Corporation. In its Application, DSLnet states that it,
5 along with MegaPath, DSLnet Communications VA, Inc. and Covad Communications Company,¹
6 will merge into DIECA with DIECA as the surviving entity. The Applicant states that once the
7 reorganization is complete, DSLnet will no longer exist and its CC&N will no longer be necessary.
8 (Pre-Transaction, Merger Depiction, and Post-Transaction Charts are attached as Exhibit A.)

9 5. DSLnet notes that neither DSLnet nor DIECA are Class A utilities and, as such, the
10 Applicant asserts the Commission's Public Utility Holding Companies and Affiliated Interest Rules,
11 Arizona Administrative Code ("A.A.C.") R14-2-801, *et seq.*, do not apply.

12 6. DSLnet states that it does not have any jurisdictional assets used to provide intrastate
13 service in Arizona that will transfer to DIECA upon merger. Additionally, the Applicant notes that
14 DIECA already holds an Arizona telecommunications CC&N so transfer of DSLnet's CC&N to
15 DIECA is not necessary. For these reasons, the Applicant asserts that Commission approval of the
16 reorganization under A.R.S. § 40-285(A) is not required. The Applicant also states that it does not
17 currently provide any regulated intrastate service or serve any intrastate customers in Arizona and
18 requests a waiver of the terms of A.A.C. R14-2-1107.

19 7. DSLnet requests that the Commission cancel its CC&N and its Arizona tariff upon
20 notification by the Applicant that the merger has been completed.

21 8. In its Staff Report filed November 1, 2011, Staff recommended approval of DSLnet's
22 Application.

23 9. According to Staff, in response to Staff data requests, DSLnet stated that it has never
24 provided regulated intrastate services in Arizona, explaining that the only service it is currently
25 providing is interstate high speed internet access. The Applicant also advised Staff that because
26 DSLnet never provided intrastate services in Arizona, it did not collect advances, deposits, and/or

27 ¹ DSLnet Communications VA, Inc. is another wholly-owned subsidiary of MegaPath. Covad Communications
28 Company is a wholly-owned subsidiary of Covad Communications Group, Inc., which, in turn, is a wholly-owned
subsidiary of CCGI Holding Corporation. (Application, pages 2-3, and Exhibit A.)

1 prepayments from customers in Arizona.

2 10. Staff notes that there have been no complaints, inquiries or opinions filed with the
3 Commission against DSLnet from January 1, 2008, to October 13, 2011, and the Corporations
4 Division reported to Staff that DSLnet is in good standing. Staff states that DSLnet has no
5 compliance delinquencies.

6 11. Staff agrees that because neither DSLnet nor DIECA are Class A utilities, the
7 provisions of A.A.C. R14-2-801, *et seq.*, do not apply to the internal reorganization.

8 12. Staff recommends waiver of A.A.C. R14-2-1107 and cancellation of DSLnet's CC&N
9 subject to the Applicant's notification to the Commission that the merger has been completed. Staff
10 recommends that upon cancellation of its CC&N, DSLnet's Arizona tariff should be cancelled and
11 withdrawn.

12 13. The provisions of A.A.C. R14-2-1107 require, among other things, that a certificated
13 telecommunications company provide a plan for the refund of deposits and publish notice of the
14 application prior to cancellation of its CC&N. As discussed in Decision No. 67404 (November 2,
15 2004), it would render A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and
16 plain language to exempt a company from the requirements of the rule because it has no customers
17 due to its discontinuation of service. However, as discussed in that Decision, the intent of the rule is
18 to ensure that existing customers have advance notice of a telecommunications provider's pending
19 plan to discontinue service such that they will be afforded an opportunity to procure service through
20 an alternative provider prior to such discontinuance.

21 14. DSLnet did not provide facilities-based or resold local exchange, interexchange or
22 access telecommunications services to any Arizona customers and did not collect any advances,
23 deposits and/or prepayments. Additionally, there are other telecommunications carriers offering
24 services in Arizona similar to DSLnet's authorized services. Under these circumstances, the
25 requirements of A.A.C. R-14-2-1107 should be waived.

26 15. We find that because neither DSLnet nor DIECA are Class A utilities, the terms of
27 A.A.C. R14-2-801, *et seq.*, do not apply. Additionally, we agree that because DSLnet is not
28 transferring any Arizona assets or its CC&N to DIECA, has never provided facilities-based or resold

1 local exchange, interexchange or access telecommunications services in Arizona, and there are no
2 Arizona customers that could be harmed by the reorganization, Commission approval of the
3 reorganization under A.R.S. § 40-285(A) is not required.

4 16. Accordingly, we find that Staff’s recommendations are reasonable and shall be
5 adopted.

6 **CONCLUSIONS OF LAW**

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

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

11 3. The cancellation of DSLnet’s CC&N is in the public interest.

12 4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding CC&Ns
13 for certain telecommunication services without a hearing.

14 5. The requirements of A.R.S. § 40-285 and A.A.C. R14-2-801, *et seq.*, do not apply in
15 this matter.

16 6. The requirements of A.A.C. R14-2-1107 should be waived in this matter.

17 7. Staff’s recommendations are reasonable and should be adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that DSLnet Communications, LLC’s Application for
20 cancellation of its Certificate of Convenience and Necessity to provide competitive facilities-based
21 and resold local exchange, facilities-based and resold interexchange, and access telecommunications
22 services in Arizona granted in Decision No. 62409 is approved, subject to the condition stated below.

23 IT IS FURTHER ORDERED that DSLnet Communications, LLC shall file with Docket
24 Control, as a compliance item in this docket, within 30 days of the completion of the merger, a Notice
25 stating that the merger has closed.

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IT IS FURTHER ORDERED that upon filing this Notice, DSLnet Communications, LLC's Certificate of Convenience and Necessity and its Arizona tariff shall be cancelled and DSLnet Communications, LLC may cancel its \$34,000 performance bond.

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 _____ 2012.

ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

DSLNET COMMUNICATIONS, LLC

2 DOCKET NO.:

T-03727A-11-0360

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