

ORIGINAL
COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: JANUARY 11, 2013

DOCKET NO.: T-20842A-12-0116

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Jibilian. The recommendation has been filed in the form of an Opinion and Order on:

ONVOY, INC. dba ONVOY VOICE SERVICES
(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:

JANUARY 22, 2013

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:

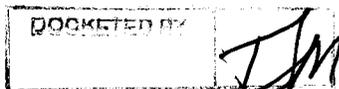
JANUARY 30, 2013 AND JANUARY 31, 2013

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

JAN 11 2013



Jodi A. Jerich
JODI JERICH
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.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

7 IN THE MATTER OF THE APPLICATION OF
8 ONVOY, INC. dba ONVOY VOICE SERVICES
9 FOR APPROVAL OF A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO PROVIDE
11 RESOLD AND FACILITIES-BASED LOCAL
12 EXCHANGE, RESOLD AND FACILITIES-BASED
13 INTRALATA AND INTERLATA PRIVATE LINE,
14 AND SWITCHED ACCESS
15 TELECOMMUNICATION SERVICES IN
16 ARIZONA.

DOCKET NO. T-20842A-12-0116

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING: January 3, 2013
14 PLACE OF HEARING: Phoenix, Arizona
15 ADMINISTRATIVE LAW JUDGE: Teena Jibilian
16 APPEARANCES: Mr. Michael Hallam, LEWIS AND ROCA, LLP, on
17 behalf of Applicant; and
18 Mr. Wesley Van Cleve, Staff Attorney, Legal Division,
19 on behalf of the Utilities Division of the Arizona
20 Corporation Commission.

19 **BY THE COMMISSION:**

20 * * * * *

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

23 **FINDINGS OF FACT**

24 1. On March 28, 2012, Onvoy, Inc. dba Onvoy Voice Services (“Onvoy” or “Company”)
25 filed with the Arizona Corporation Commission (“Commission”) an application for approval of a
26 Certificate of Convenience and Necessity (“CC&N”) to provide resold and facilities-based local
27 exchange, resold and facilities-based long distance, resold and facilities-based intraLATA and
28

1 interLATA private line, and switched access telecommunication services in Arizona. Onvoy's
2 application also requests a determination that its proposed services are competitive in Arizona.

3 2. On July 7, 2012, Michael T. Hallam of Lewis and Roca LLP, filed a Notice of
4 Appearance as local counsel for Onvoy.

5 3. On July 9, 2012, Onvoy filed a supplement to its application.

6 4. On August 14, 2012, Onvoy filed an amendment to its application withdrawing its
7 request to provide resold and facilities-based long distance telecommunication services in Arizona.
8 Onvoy seeks by its amended application to provide only resold and facilities-based local exchange,
9 resold and facilities-based intraLATA and interLATA private line, and switched access
10 telecommunication services in Arizona.

11 5. On September 18, 2012, the Commission's Utilities Division ("Staff") filed a Staff
12 Report recommending approval of Onvoy's amended application, with conditions.

13 6. On October 9, 2012, by Procedural Order, the hearing in the matter was scheduled to
14 commence on January 3, 2013, and other procedural deadlines were established.

15 7. On November 5, 2012, Onvoy docketed its Affidavit of Publication, indicating that
16 notice of the application and hearing had been published in the *Arizona Republic* on October 19,
17 2012.

18 8. On January 3, 2013, a hearing was held as scheduled before a duly authorized
19 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Onvoy and Staff
20 appeared through counsel and presented evidence and testimony. No members of the public appeared
21 to give public comments in this matter. At the conclusion of the hearing, the matter was taken under
22 advisement pending submission of a Recommended Opinion and Order to the Commission.

23 **Technical Capabilities**

24 9. Onvoy, formerly known as Minnesota Equal Access Network Services, Inc., was
25 founded in 1988, and changed its name to Onvoy, Inc. in 1998. Onvoy became a direct subsidiary of
26 Zayo Group Holdings, Inc., a Delaware corporation, in November 2007. The ultimate parent of Zayo
27 Group Holdings, Inc. is Communications Infrastructure Investments, LLC.

28 10. Onvoy has several affiliates currently authorized to provide all or some of the same

1 services Onvoy is proposing to provide.¹

2 11. The telecommunications experience of Onvoy's top four executives exceeds a
3 combined total of 110 years.

4 12. Onvoy is currently authorized to provide local and/or interexchange
5 telecommunications service in California, Colorado, Indiana, Idaho, Iowa (interexchange only),
6 Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio,
7 Oregon, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming.

8 13. Onvoy plans to provide resold and facilities-based local exchange services and resold
9 and facilities-based intraLATA and inter LATA private line services to large enterprise (business)
10 customers, and to provide switched access services to other carriers such as Incumbent Local
11 Exchange Carriers ("ILECs") and Competitive Local Exchange Carriers ("CLECs"), Interexchange
12 Carriers and Wireless Carriers. Onvoy's application states that it will not provide services to
13 residential customers.

14 14. Based on Onvoy's experience in the telecommunications industry, Onvoy has the
15 technical capabilities to provide the telecommunications services it is requesting to provide in
16 Arizona.

17 **Financial Capabilities**

18 15. Onvoy provided Staff with audited consolidated financial statements for the twelve
19 months ending June 30, 2010, and the twelve months ending June 30, 2011. The audited
20 consolidated financial statements ending June 30, 2010 list total assets of \$48,083,000; total equity of
21 \$39,211,000; and net income of \$908,000. The audited consolidated financial statements ending June
22 30, 2011, list total assets of \$59,065,000; total equity of \$29,817,000; and a net income of
23 \$2,535,000.

24
25 ¹ Decision No. 72561 (August 24, 2011) granted Zayo Group, LLC authority to provide facilities-based local exchange
26 and resold and facilities-based intraLATA and interLATA private line services in Arizona. Decision No. 62710 (June 30,
27 2000) and Decision No. 69240 (January 19, 2007) granted 360networks (USA), inc. authority to provide facilities-based
28 interexchange services and facilities-based local exchange services. Decision No. 62628 (June 9, 2000) authorized
AboveNet Communications, Inc. (formerly known as Multimedia Fiber Network Services, Inc.) to provide resold and
facilities-based non-switched dedicated and private line high capacity fiber optic telecommunications services.

1 16. Onvoy's tariffs indicate that it may collect advances, deposits, and/or prepayments
2 from its customers. Staff states that advances, deposits and/or prepayments received from Onvoy's
3 customers should be protected by Onvoy's procurement of either a performance bond or an
4 irrevocable sight draft letter of credit ("ISDLC"). Staff states that based on the services Onvoy is
5 requesting authority to provide, and on the Commission's current performance bond or ISDLC
6 requirements, Envoy should obtain either a performance bond or an ISDLC in a minimum amount of
7 \$125,000, and that this amount should be increased in increments of 50 percent of the minimum
8 amount when the total amount of deposits, advances, and/or prepayments is within 10 percent of the
9 minimum amount.

10 17. Staff recommends that if the Commission finds, in its discretion, that Onvoy is in
11 default of its obligations arising from its CC&N, the Commission draw on the performance bond or
12 ISDLC on behalf of, and for the sole benefit of Onvoy's customers, and that the Commission use the
13 performance bond or ISDLC funds as appropriate to protect Onvoy's customers and the public
14 interest and take any and all actions the Commission deems necessary, in its discretion, including, but
15 not limited to, returning prepayments or deposits collected from Onvoy's customers.

16 18. Staff recommends that measures should be taken to ensure that Onvoy will not
17 discontinue service to its customers without first complying with Arizona Administrative Code
18 ("A.A.C.") R14-2-1107 regarding notice to the Commission and to Onvoy's customers. Staff
19 recommends that Onvoy's failure to comply with the notice requirements therein should result in
20 forfeiture of Onvoy's performance bond or ISDLC.

21 19. With the protections afforded by a performance bond or ISDLC as recommended by
22 Staff, Onvoy has the financial capability to provide the telecommunications services it is requesting
23 to provide in Arizona.

24 **Rates and Charges**

25 20. Pursuant to A.A.C. R14-2-1109, Onvoy may charge rates for service that are not less
26 than its total service long-run incremental costs of providing service.

27 21. Onvoy's proposed rates are for competitive services. In general, rates for competitive
28 services are not set according to the rate of return regulation.

1 22. Onvoy will be providing service in areas where ILECs, various CLECs, and
2 interexchange carriers are providing telecommunications services, and will have to compete with
3 those providers in order to obtain subscribers for its services.

4 23. Based on the competitive environment in which Onvoy will be operating, Onvoy will
5 not have the ability to exert any market power, and the competitive process should result in rates that
6 are just and reasonable.

7 24. Staff found that Onvoy's projected fair value rate base ("FVRB") at the end of the first
8 twelve months of operation in Arizona is zero.

9 25. Given the competitive markets in which Onvoy will operate, Onvoy's FVRB is too
10 small to be useful in a fair value analysis.

11 26. Onvoy's proposed rates, as they appear in its updated tariffs in Hearing Exhibits A-1
12 and A-2, are just and reasonable and should be approved. Onvoy should be ordered to file tariffs in
13 conformance with those tariffs ("Conforming Tariffs").

14 **Complaint Information**

15 27. Onvoy has not had an application for service denied, or revoked, in any state.²

16 28. Staff stated that it found no instances of any formal or informal complaint proceedings
17 pending before any state or federal regulatory commission, administrative agency or law enforcement
18 agency involving Onvoy or any of its officers, directors or managers.

19 29. Onvoy was involved in a 2003 civil lawsuit filed by AT&T against MCI and Onvoy.³
20 Staff states that AT&T reached a settlement with Onvoy on February 23, 2004, and separately,
21 AT&T and MCI also settled their dispute, whereupon AT&T withdrew its lawsuit. Staff states that its
22 investigations found no further instances of Onvoy or any of its officers, directors or partners being
23 involved in any civil or criminal investigations, found no judgments levied by any administrative or
24 regulatory agency, and found no convictions of any criminal acts in the past ten years.

25 _____
26 ² In the Staff Report, Staff explains that on March 24, 2006, Onvoy was granted authority to provide local exchange
27 services in the state of Iowa. Staff states that Onvoy provided wholesale access service and other regulated services in
28 Iowa, but never began providing local exchange services. Staff states that in a proceeding commenced in 2010, the Iowa
Utilities Board cancelled Onvoy's local exchange certificate and tariff without prejudice to Onvoy seeking such authority
in the future.

³ United States District Court for the Eastern District of Virginia, Alexandria Division, Civil Action No. 03-1114-A, filed
September 2, 2003.

1 30. The Commission's Corporations Division has indicated that Onvoy is in good
2 standing, and the Consumer Services Section reports no complaints have been filed in Arizona. Staff
3 states that a search of the Federal Communications Commission's ("FCC's") website found no
4 formal or informal complaint proceedings there involving Onvoy.

5 **Competitive Services Analysis**

6 31. Onvoy has requested that its telecommunications services in Arizona be classified as
7 competitive. Staff states that Onvoy's proposed services should be classified as competitive because
8 there are alternatives to Onvoy's local exchange and private line services; ILECs hold a virtual
9 monopoly in local markets; Onvoy will have to convince customers to purchase its services; Onvoy
10 has no ability to adversely affect the local exchange service market as several CLECs and ILECs
11 provide local exchange and private line services. Staff states that there are alternative providers of
12 the telecommunications services Onvoy wishes to provide, and that based on these circumstances,
13 Onvoy will have no market power in the markets in which it seeks authority to operate.

14 **Staff Recommendations**

15 32. Staff recommends that Onvoy's amended application for a CC&N to provide intrastate
16 telecommunications services be granted. Staff further recommends that Onvoy be ordered to:

- 17 a. Comply with all Commission Rules, Orders and other requirements relevant to
18 the provision of intrastate telecommunications services;
- 19 b. Abide by the quality of service standards the Commission approved for Qwest
20 in Commission Docket No. T-01051B-93-0183;
- 21 c. Provide access to alternative local exchange service providers who wish to
22 serve areas where the Company is the only provider of local exchange service
23 facilities, pursuant to the 1996 Telecommunications Act, the rules promulgated
24 thereunder, and Commission Rules on interconnection and unbundling;
- 25 d. Notify the Commission immediately upon changes to the Company's name,
26 address or telephone number;
- 27 e. Cooperate with Commission investigations including, but not limited to,
28 customer complaints;
- f. Offer Caller ID with the capability to toggle between blocking and unblocking
the transmission of the telephone number at no charge;
- g. Offer Last Call Return service that will not return calls to telephone numbers
that have the privacy indicator activated;

- 1 h. Comply with federal laws, federal rules and Commission Rule A.A.C. R14-2-1308(A), to make number portability available;
- 2 i. Provide all customers with 911 and E911 service, where available, or coordinate with ILECS and emergency service providers to provide 911 and
- 3 E911 service in accordance with Commission Rule A.A.C. R14-2-1201(6)(d) and FCC Rules 47 CFR §§ 64.3001 and 64.3002; and
- 4 j. File, in the event the Company desires to discontinue service, an application with the Commission pursuant to Commission Rule A.A.C. R14-2-1107, and
- 5 notify each of its customers and the Commission 60 days prior to filing the application, with failure to meet this requirement resulting in forfeiture of
- 6 Onvoy's performance bond or ISDLC.

7 33. Staff recommends that Onvoy's proposed services be classified as competitive.

8 34. Staff recommends that the Company be authorized to discount its rates and service

9 charges to the marginal cost of providing the services.

10 35. Staff states that its recommendation for approval of Onvoy's application is based upon

11 Onvoy's representation to the Commission that Onvoy will be providing local exchange service

12 directly to end-users in Arizona. Staff recommends that in the event Onvoy does not provide local

13 exchange service directly to end-user customers, Onvoy should be required to notify the

14 Commission within three years of this Decision, and to file an application to cancel the CC&N for

15 local exchange services granted herein.

16 36. Staff further recommends that Onvoy be ordered to comply with the following, and

17 that if Onvoy does not do so, Onvoy's CC&N shall be null and void, after due process:

- 18 a. Onvoy shall docket, with the Commission's Docket Control, a Conforming
- 19 Tariff for each service within its CC&N within 365 days from the date of an
- 20 Order in this matter or 30 days prior to providing service, whichever comes
- 21 first;
- 22 b. Onvoy shall:
- 23 i. Procure a performance bond or an ISDLC equal to \$125,000, and
- 24 increase the performance bond or ISDLC amount in increments of
- 25 \$62,500 whenever the total amount of advances, deposits, and/or
- 26 prepayments is within \$12,500 of the bond or ISDLC amount;
- 27 ii. File the original performance bond or ISDLC with the Commission's
- 28 Business Office and 13 copies of the performance bond or ISDLC with the Commission's Docket Control, as a compliance item in this docket, within 90 days of this Decision or 10 days before the first customer is served, whichever comes earlier. The performance bond or ISDLC must remain in effect until further order of the Commission;

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iii. Notify the Commission through a compliance filing within 30 days of the first customer being served; and

c. Onvoy shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund. Onvoy shall make the necessary monthly payments required by .A.AC. R14-2-1204(B).

37. Staff's recommendations are reasonable and should be adopted.

CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over Onvoy 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 telecommunications services.

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

6. Onvoy is a fit and proper entity to receive a CC&N authorizing it to provide competitive resold and facilities-based local exchange telecommunications services, resold and facilities-based intraLATA and interLATA private line services and switched access service in Arizona, subject to Staff's recommendations set forth herein.

7. The telecommunications services that Onvoy intends to provide are competitive within Arizona.

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

9. Staff recommendations are reasonable and should be adopted.

ORDER

1
2 IT IS THEREFORE ORDERED that the application of Onvoy Inc., as amended on August
3 14, 2012, for a Certificate of Convenience and Necessity for authority to provide competitive resold
4 and facilities-based local exchange, resold and facilities-based intraLATA and interLATA private
5 line, and switched access telecommunication services in Arizona is hereby granted.

6 IT IS FURTHER ORDERED that Onvoy Inc. shall comply with the recommendations of
7 Staff as set forth in Findings of Facts No. 32.

8 IT IS FURTHER ORDERED that Onvoy Inc. is hereby ordered to comply with the following
9 six items in this Ordering Paragraph, and that if Onvoy Inc. fails to timely comply therewith, the
10 Certificate of Convenience and Necessity granted herein shall be considered null and void after due
11 process:

- 12 1. Onvoy Inc. shall docket, with the Commission's Docket Control, a
13 Conforming Tariff for each service within its CC&N within 365 days from
14 the date of an Order in this matter or 30 days prior to providing service,
15 whichever comes first;
- 16 2. Onvoy Inc. shall procure a performance bond or an irrevocable sight draft
17 letter of credit in an original amount equal to \$125,000;
- 18 3. Onvoy Inc. shall file the original performance bond or irrevocable sight
19 draft letter of credit with the Commission's Business Office, and 13 copies
20 of the performance bond or irrevocable sight draft letter of credit with the
21 Commission's Docket Control, as a compliance item in this docket, within
22 90 days of this Decision or 10 days before the first customer is served,
23 whichever comes earlier;
- 24 4. Onvoy Inc. shall increase the performance bond or irrevocable sight draft
25 letter of credit amount in increments of \$62,500 whenever the total amount
26 of advances, deposits, and/or prepayments is within \$12,500 of the bond or
27 irrevocable sight draft letter of credit amount;
- 28 5. Onvoy Inc. shall notify the Commission through a compliance filing within

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30 days of the first customer being served;

6. Onvoy Inc. shall abide by the Commission adopted rules that address Universal Service in Arizona, including making the necessary monthly payments required by Commission Rule A.A.C. R14-2-1204(B).

IT IS FURTHER ORDERED that Onvoy Inc's. performance bond or irrevocable sight draft letter of credit shall remain in effect until further Order of the Commission.

IT IS FURTHER ORDERED that in the event Onvoy, Inc. discontinues service to its customers and fails to comply with the notice requirements of A.A.C. R14-2-1107, Onvoy Inc.'s performance bond or irrevocable sight draft letter of credit shall be forfeited.

IT IS FURTHER ORDERED that if the Commission finds, in its discretion, that Onvoy Inc. is in default on its obligations arising from its Certificate of Convenience and Necessity, the Commission may draw on the performance bond or irrevocable sight draft letter of credit, on behalf of, and for the sole benefit of, the customers of Onvoy Inc.

IT IS FURTHER ORDERED that the Commission may use Onvoy Inc.'s performance bond or irrevocable sight draft letter of credit as appropriate to protect Onvoy's customers and the public interest, and may take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning advances, prepayments or deposits collected from Onvoy's customers.

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1 IT IS FURTHER ORDERED that if Onvoy, Inc. has not commenced providing local
2 exchange service directly to end-user customers within three years of this Decision, Onvoy Inc. shall
3 file with the Commission's Docket Control an application to cancel the Certificate of Convenience
4 and Necessity for local exchange services granted herein.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, JODI JERICH, 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 _____ 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ONVOY INC. DBA ONVOY VOICE SERVICES

2 DOCKET NO.: T-20842A-12-0116

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