

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

**OPEN MEETING ITEM**



**ARIZONA CORPORATION COMMISSION**

DATE: JANUARY 14, 2013

DOCKET NO.: T-04246A-11-~~0~~0368

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:

**TRANSWORLD NETWORK, CORP.**  
**(CC&N/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 23, 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.

RECEIVED  
2013 JAN 14 P 2:09  
ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**  
JAN 14 2013

DOCKETED BY *JSM*

*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

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

8 IN THE MATTER OF THE APPLICATION OF  
9 TRANSWORLD NETWORK, CORP. FOR  
10 APPROVAL OF A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 FACILITIES-BASED LOCAL EXCHANGE  
13 TELECOMMUNICATION SERVICES IN  
14 ARIZONA.

DOCKET NO. T-04246A-11-0368

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF HEARING: September 11, 2012

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Ms. Joan S. Burke, LAW OFFICE OF JOAN S.  
15 BURKE, P.C., on behalf of Applicant; and

16 Mr. Scott Hesla, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 On October 7, 2011, TransWorld Network, Corp. (“TWN” or “Applicant”) filed with the  
20 Arizona Corporation Commission (“Commission”) an application for approval of a Certificate of  
21 Convenience and Necessity (“CC&N”) to provide facilities-based local exchange  
22 telecommunications services in Arizona. TWN’s application also requests a determination that its  
23 proposed services are competitive in Arizona.

24 On May 11, 2012, TWN docketed a supplement to its application.

25 On July 3, 2012, the Commission’s Utilities Division (“Staff”) filed a Staff Report  
26 recommending approval of TWN’s application subject to certain conditions.

27 On July 6, 2012, by Procedural Order, the hearing in the matter was scheduled to commence  
28 on September 11, 2012, and other procedural deadlines were established.

1 On July 25, 2012, TWN docketed its Affidavit of Publication.

2 On September 11, 2012, a full public hearing was held before a duly authorized  
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and  
4 Staff appeared through counsel and presented evidence and testimony. No members of the public  
5 appeared to give public comments in this matter. At the conclusion of the hearing, the matter was  
6 taken under advisement pending submission of a Recommended Opinion and Order of the  
7 Commission.

8 \* \* \* \* \*

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

11 **FINDINGS OF FACT**

- 12 1. TWN is a “C” corporation, headquartered in Oldmar, Florida.<sup>1</sup>
- 13 2. TWN is a wholly owned subsidiary of PCC Holdings, Inc, (“PCC”), a private  
14 company.<sup>2</sup>
- 15 3. On October 7, 2011, TWN filed an application for a CC&N to provide facilities-based  
16 local exchange telecommunications services in the State of Arizona. The application also seeks a  
17 determination that its proposed services be classified as competitive.
- 18 4. Notice of the application was given in accordance with the law.
- 19 5. In a related application, TWN filed a petition for designation as an Eligible  
20 Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of  
21 1934, as amended, 47 U.S.C. § 214(e)(2).<sup>3</sup>
- 22 6. Staff recommends TWN’s application for a CC&N to provide intrastate  
23 telecommunications services be granted.
- 24 7. Staff further recommends:
  - 25 a. That the Applicant comply with all Commission Rules, Orders and other

---

26 <sup>1</sup> Exhibit T-1.  
 27 <sup>2</sup> Exhibit T-1, attachment A-2.  
 28 <sup>3</sup> Docket No. T-042464A-11-0377, In the matter of the application of TransWorld Network, Corp. petition for designation as an eligible telecommunications carrier pursuant to section 214(e)(2) of the communications act of 1934, as amended, 47 U.S.C. § 214(e)(2), filed October 13, 2011.

1 requirements relevant to the provision of intrastate telecommunications services;

- 2 b. That the Applicant abide by the quality of service standards that were approved  
3 by the Commission for Qwest in Docket No. T-01051B-93-0183;
- 4 c. That the Applicant be prohibited from barring access to alternative local  
5 exchange service providers who wish to serve areas where the Applicant is the  
6 only provider of local exchange service facilities;
- 7 d. That the Applicant be required to notify the Commission immediately upon  
8 changes to the Applicant's name, address or telephone number;
- 9 e. That the Applicant cooperate with Commission investigations including, but  
10 not limited to customer complaints;
- 11 f. The rates proposed by this filing are for competitive services. In general, rates  
12 for competitive services are not set according to rate of return regulation.  
13 TWN's projected book value or fair value rate base at the end of its first 12  
14 months of operation is projected to be \$1.3 million. Additionally, TWN  
15 provided a revenue projection of \$2.7 million for Fiscal Year 2012. Staff has  
16 reviewed the rates to be charged by the Applicant and believes they are just  
17 and reasonable as they are comparable to other providers offering service in  
18 Arizona and comparable to the rates the Applicant charges in other  
19 jurisdictions. The rate to be ultimately charged by the Company will be  
20 heavily influenced by the market. Therefore, while Staff considered the fair  
21 value rate base information submitted by TWN, the fair value information  
22 provided was not given substantial weight in this analysis;
- 23 g. That the Applicant offer Caller ID with the capability to toggle between  
24 blocking and unblocking the transmission of the telephone number at no  
25 charge;
- 26 h. That the Applicant offer Last Call Return service that will not return calls to  
27 telephone numbers that have the privacy indicator activated;
- 28 i. That the Commission authorize the Applicant to discount its rates and service  
charges to the marginal cost of providing the services.

8. Staff further recommends that the Applicant be ordered to comply with the following,  
and if it does not do so, that the Applicant's CC&N should be considered null and void, after due  
process:

- 23 a. TWN shall docket, with the Commission's Docket Control, a conforming tariff  
24 for each service within its CC&N within 365 days from the date of an Order in  
this matter or 30 days prior to providing service, whichever comes first.
- 25 b. TWN shall:
- 26 i. Procure a performance bond or an ISDLC equal to \$100,000. The  
27 minimum bond or draft amount of \$100,000 should be increased if at  
28 any time it would be insufficient to cover advances, deposits, and/or  
prepayments collected from the Applicant's customers. The bond or  
draft amount should be increased in increments of \$50,000. This

1 increase should occur when the total amount of the advances, deposits,  
2 and prepayments is within \$10,000 of the bond amount or ISDLC  
3 amount; and

- 4 ii. File the original performance bond or ISDLC with the Commission's  
5 Business Office and copies of the performance bond or ISDLC with the  
6 Commission's Docket Control, as a compliance item in this docket,  
7 within 90 days of the effective date of a Decision in this matter or 10  
8 days before service to end-user customers is commenced, whichever  
9 comes first. The original performance bond or ISDLC must remain in  
10 effect until further order of the Commission. The Commission may  
11 draw on the performance bond or ISDLC, on behalf of, and for the sole  
12 benefit of the TWN's customers, if the Commission finds, in its  
13 discretion, that the Applicant is in default of its obligations arising from  
14 its CC&N. The Commission may use the performance bond or ISDLC  
15 funds, as appropriate, to protect the Applicant's customers and the  
16 public interest and take any and all actions the Commission deems  
17 necessary, in its discretion, including, but not limited to returning  
18 prepayments or deposits collected from TWNs customers;
- 19 iii. Notify the Commission through a compliance filing within 30 days of  
20 the commencement of service to end-user customers; and
- 21 iv. Applicant shall abide by the Commission adopted rules that address  
22 Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all  
23 telecommunications service providers that interconnect into the public  
24 switched network shall provide funding for the Arizona Universal  
25 Service Fund. TWN will make the necessary monthly payments  
26 require by .A.AC. R14-2-1204(B).

27 9. Further, Staff recommends that approval of the application be conditioned on the  
28 following:

- 1 a. That TWN's application be approved based upon its representation to the  
2 Commission that TWN will be providing local exchange service directly to  
3 end-users in Arizona. That TWN provide to the Commission and request  
4 cancellation of its CC&N granted herein if it has not commenced providing  
5 local exchange services to end-user customers within three years following the  
6 effective date of this Decision.
- 7 b. That Section 3.6 – Lifeline Assistance – of Arizona Tariff No. 2 not become  
8 effective until authorized by a Commission Decision in Docket No. T-04246A-  
9 11-0377.

10 10. TWN's witness testified that the Company will comply with all of Staff's  
11 recommendations.<sup>4</sup>

12 **Technical Capabilities**

13 11. TWN's witness testified that the Company is a facilities-based provider of

14 \_\_\_\_\_  
15 <sup>4</sup> Tr. at 13.

1 communication services, using cell phone like towers to provide consumers with wireless Internet.<sup>5</sup>  
2 The witness stated that TWN's business model is to provide its services in geographical areas served  
3 by rural electric cooperatives.<sup>6</sup> The goal is to improves the lives of consumers living in rural areas by  
4 providing internet type services such as watching movies, studying at home, which will be offered at  
5 a fraction of the cost for similar satellite services.<sup>7</sup>

6 12. TWN has been providing its fixed wireless services in Arizona since 2005 and has  
7 approximately 20-25 employees in Arizona.<sup>8</sup> With this application, TWN is seeking authority to  
8 provide facilities-based local exchange.

9 13. TWN's witness stated that the Company has many millions of dollars in network  
10 facilities in Arizona as well as a field service office located in Marana, Arizona.<sup>9</sup> Further, TWN's  
11 Arizona field service office serves the states of Texas and New Mexico.<sup>10</sup>

12 14. TWN's key personnel has a combined total of over 375 years experience in the  
13 telecommunications industry.<sup>11</sup>

14 15. Staff believes TWN has the technical experience to provide its proposed services in  
15 Arizona.

16 **Financial Capabilities**

17 16. TWN provided financials to Staff for years 2010 and 2009, listing Total Assets of  
18 \$8,786,555; Shareholder Equity of (\$298,747); and Net Income of \$147,280 for the year ending  
19 December 31, 2010.

20 17. TWN's application states it will rely on financial resources of its parent company to  
21 provide services in Arizona.<sup>12</sup>

22 18. Based on the information contained in TWN's proposed tariff, Staff recommends that  
23 TWN procure a performance bond or ISDLC in the amount of \$100,000. Staff also recommends that  
24

25 <sup>5</sup> Tr. at 13.

26 <sup>6</sup> Tr. at 13.

27 <sup>7</sup> Tr. at 14.

28 <sup>8</sup> Tr. at 15-16.

<sup>9</sup> Tr. at 16.

<sup>10</sup> Tr. at 16.

<sup>11</sup> Exhibit T-1, attachment A-3.

<sup>12</sup> Exhibit T-1 (B-2).

1 if TWN, at some future date, desires to discontinue the services it is requesting to provide, that TWN  
2 file an application pursuant to A.A.C. R14-2-1107 to do so.

3 **Rates and Charges**

4 19. Staff believes that TWN will be competing with other incumbent local exchange  
5 carriers ("ILECs") and various competitive local exchange carriers ("CLECs") in Arizona in order to  
6 gain new customers.

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

9 21. TWN's proposed rates are for competitive services. In general, rates for competitive  
10 services are not set according to the rate of return regulation. The Company's application states that  
11 its projected net book value at the end of the first twelve months of operation will be \$1.3 million in  
12 jurisdictional assets, with projected revenues of \$2.7 million for the 2012 fiscal year.<sup>13</sup>

13 22. Staff reviewed TWN's proposed tariff and concluded that TWN's proposed rates are  
14 comparable to other competitive local carriers and local incumbent carriers operating in Arizona.<sup>14</sup>  
15 Given the competitive environment in which TWN will be providing service, Staff believes TWN  
16 will not be able to exert any market power and the competitive process should result in rates that are  
17 just and reasonable.<sup>15</sup> Further, while Staff considered TWN's fair value rate base information, Staff  
18 believes it should not be given substantial weight in this analysis.<sup>16</sup>

19 **Local Exchange Carrier Specific Issues**

20 23. Staff recommends that pursuant to A.A.C. R14-2-1308(A) and federal laws and rules,  
21 TWN should make number portability available to facilitate the ability of customers to switch  
22 between authorized local carriers within a given wire center without changing their telephone number  
23 and without impairment to quality, functionality, reliability or convenience of use.

24 24. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that  
25 interconnect into the public switched network shall provide funding for the Arizona Universal Fund

26 \_\_\_\_\_  
27 <sup>13</sup> Exhibit T-1 at (B-4).

<sup>14</sup> Exhibit S-1 at 8.

<sup>15</sup> Exhibit S-1 at 8.

28 <sup>16</sup> Exhibit S-1 at 8.

1 (“AUSF”). Staff recommends that TWN contribute to the AUSF as required by the A.A.C. and that  
2 TWN make the necessary monthly payments as required under A.A.C. R14-2-1204(B).

3 25. In Commission Decision No. 59421 (December 20, 1995) the Commission approved  
4 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of  
5 service. In this matter, Staff states that TWN does not have a similar history of service quality  
6 problems, and therefore Staff recommends that the penalties in that decision should not apply.

7 26. In the areas where Applicant is the only local exchange service provider, TWN is  
8 prohibited from barring access to alternative local exchange service providers who wish to serve the  
9 area.

10 27. TWN will provide all customers with 911 and E911 service where available, or will  
11 coordinate with ILECs, and emergency service providers to facilitate the service.

12 28. Pursuant to prior Commission Decisions, TWN may offer customer local area  
13 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or  
14 unblock each individual call at no additional cost.

15 29. TWN must also offer Last Call Return service, which will not allow the return of calls  
16 to the telephone numbers that have the privacy indicator activated.

17 **Complaint Information**

18 30. TWN’s application states it has not had an application for service denied, nor had its  
19 authority to provide service revoked in any state.<sup>17</sup>

20 31. TWN’s application states that neither TWN nor any of its officers, directors, partners,  
21 or managers have been or are currently involved in any civil or criminal investigation, or had  
22 judgments entered in any civil matter, judgments levied by any administrative or regulatory agency,  
23 or have been convicted of any criminal acts within the last ten years.<sup>18</sup> However, Staff’s research  
24 revealed a consolidated class action suit in the United States District Court, Northern District of  
25 California, San Francisco Division filed January 16, 2007.<sup>19</sup> In response to Staff’s inquiry related to

26 \_\_\_\_\_  
<sup>17</sup> Exhibit T-1 at (A-11).

27 <sup>18</sup> Exhibit T-1 at (A-12).

28 <sup>19</sup> Master Consolidated Complaint Against Defendants Transworld Network Corp., Comcast Telecommunications, Inc., T-Mobile USA, Inc., and McLeodUSA Telecommunications Services, Inc., for Damages, Declaratory and Equitable Relief, MDL Docket No. 06-1791 VRW, January 16, 2007.

1 the class action suit, TWN responded that because the lawsuit was voluntarily dismissed, TWN did  
2 not believe the matter pertained to the question in the application.

3 32. Staff's research did not reveal any issues related to TWN's top executives; Staff  
4 confirmed that TWN has no compliant history in Arizona; and Staff's review of the Federal  
5 Communications Commission's website showed no complaints had been filed against TWN.<sup>20</sup>

### 6 **Competitive Services Analysis**

7 33. TWN has requested that its telecommunications services in Arizona be classified as  
8 competitive. Staff recommends that TWN's proposed services be classified as competitive because  
9 there are alternatives to TWN's services; ILECs hold a virtual monopoly in local markets; TWN will  
10 have to convince customers to purchase its services; TWN has no ability to adversely affect the local  
11 exchange service market as several CLECs and ILECs provide local exchange services; and TWN  
12 therefore will have no market power in those local exchange markets where alternative providers to  
13 telecommunications services exists.

14 34. Staff's recommendations are reasonable and should be adopted.

15 35. The rates proposed by this filing are for competitive services.

### 16 **CONCLUSIONS OF LAW**

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

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

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

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

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

26 6. TWN is a fit and proper entity to receive a CC&N authorizing it to provide  
27

---

28 <sup>20</sup> Exhibit S-1 at 10.

1 competitive facilities-based local exchange telecommunications services in Arizona, subject to Staff's  
2 recommendations set forth herein.

3 7. The telecommunications services that TWN intends to provide are competitive within  
4 Arizona.

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

9 9. Staff recommendations are reasonable and will be adopted.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application of TransWorld Network, Corp. for a  
12 Certificate of Convenience and Necessity for authority to provide competitive facilities-based local  
13 exchange telecommunications services within the State of Arizona is hereby granted, subject to  
14 Staff's conditions in Findings of Facts No. 7, 8 and 9 and as set forth in the following Ordering  
15 paragraphs.

16 IT IS FURTHER ORDERED that TransWorld Network, Corp., shall procure a performance  
17 bond or irrevocable sight draft letter of credit in the amount of \$100,000.

18 IT IS FURTHER ORDERED that TransWorld Network, Corp. shall file the original  
19 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office  
20 and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as  
21 a compliance item in this docket, within 30 days of the effective date of this Decision.

22 IT IS FURTHER ORDERED that TransWorld Network, Corp.'s performance bond or  
23 irrevocable sight draft letter of credit shall remain in effect until further Order of the Commission,  
24 and the Commission may draw on the performance bond or irrevocable sight draft letter of credit, on  
25 behalf of, and for the sole benefit of the customers of TransWorld Network, Corp., if the Commission  
26 finds, in its discretion, that TWN is in default on its obligations arising from its Certificate of  
27 Convenience and Necessity.

28 IT IS FURTHER ORDERED that TransWorld Network, Corp.'s performance bond or

1 irrevocable sight draft letter of credit may be used by the Commission, as appropriate, to protect  
2 TWN Communications of America, Inc's customers and the public interest and take any and all  
3 actions the Commission deems necessary, in its discretion, including, but not limited to returning  
4 prepayments or deposits collected from customers.

5 IT IS FURTHER ORDRED that if TransWorld Network, Corp. fails to comply with the  
6 timeframes listed above, the Certificate of Convenience and Necessity granted herein shall be  
7 considered null and void after due process.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10  
11

12 CHAIRMAN

COMMISSIONER

13

14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15

16 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
17 Director of the Arizona Corporation Commission, have  
18 hereunto set my hand and caused the official seal of the  
19 Commission to be affixed at the Capitol, in the City of Phoenix,  
20 this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

21

22 \_\_\_\_\_  
23 JODI JERICH  
24 EXECUTIVE DIRECTOR

25

26 DISSENT \_\_\_\_\_

27

28 DISSENT \_\_\_\_\_

YBK:db

1 SERVICE LIST FOR: TRANSWORLD NETWORK, CORP.

2 DOCKET NO.: T-04246A-11-0368

3  
4 Colin Wood  
5 Lourdes Vinas  
6 TRANSWORLD NETWORK CORP  
7 255 Pine Ave. N  
8 Oldsmar, FL 34677

9 Gene DeJordy  
10 P.O. Box 901  
11 Southport, CT 06890  
12 Consultant for TransWorld Network Corp.

13 Joan S. Burke  
14 LAW OFFICE OF JOAN S. BURKE  
15 1650 N. First Ave  
16 Phoenix, AZ 85003  
17 Attorney for TransWorld Network Corp.

18 Janice Alward, Chief Counsel  
19 Legal Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, AZ 85007

23 Steven M. Olea, Director  
24 Utilities Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
27 Phoenix, AZ 85007

28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38