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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

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COMMISSIONERS

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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IN THE MATTER OF THE APPLICATION OF
TRANSWORLD NETWORK, CORP. FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATION SERVICES IN
ARIZONA.

DOCKET NO. T-04246A-11-0368

DECISION NO. 73675

OPINION AND ORDER

DATE OF HEARING: September 11, 2012

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

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

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

BY THE COMMISSION:

On October 7, 2011, TransWorld Network, Corp. (“TWN” or “Applicant”) 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 telecommunications services in Arizona. TWN’s application also requests a determination that its proposed services are competitive in Arizona.

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

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

On July 6, 2012, by Procedural Order, the hearing in the matter was scheduled to commence 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.¹

13 2. TWN is a wholly owned subsidiary of PCC Holdings, Inc, ("PCC"), a private
14 company.²

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).³

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 ¹ Exhibit T-1.

27 ² Exhibit T-1, attachment A-2.

28 ³ 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
heavily influenced by the market. Therefore, while Staff considered the fair
value rate base information submitted by TWN, the fair value information
provided was not given substantial weight in this analysis;
- 20 g. That the Applicant offer Caller ID with the capability to toggle between
blocking and unblocking the transmission of the telephone number at no
charge;
- 21 h. That the Applicant offer Last Call Return service that will not return calls to
telephone numbers that have the privacy indicator activated;
- 22 i. That the Commission authorize the Applicant to discount its rates and service
charges to the marginal cost of providing the services.

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

- 26 a. TWN shall docket, with the Commission's Docket Control, a conforming tariff
27 for each service within its CC&N within 365 days from the date of an Order in
28 this matter or 30 days prior to providing service, whichever comes first.
- 29 b. TWN shall:
- 30 i. Procure a performance bond or an IS DLC equal to \$100,000. The
minimum bond or draft amount of \$100,000 should be increased if at
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
amount; and

- 3 ii. File the original performance bond or ISDLC with the Commission's
4 Business Office and copies of the performance bond or ISDLC with the
5 Commission's Docket Control, as a compliance item in this docket,
6 within 90 days of the effective date of a Decision in this matter or 10
7 days before service to end-user customers is commenced, whichever
8 comes first. The original performance bond or ISDLC must remain in
9 effect until further order of the Commission. The Commission may
10 draw on the performance bond or ISDLC, on behalf of, and for the sole
11 benefit of the TWN's customers, if the Commission finds, in its
12 discretion, that the Applicant is in default of its obligations arising from
13 its CC&N. The Commission may use the performance bond or ISDLC
14 funds, as appropriate, to protect the Applicant's customers and the
15 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 TWNs customers;
- 16 iii. Notify the Commission through a compliance filing within 30 days of
the commencement of service to end-user customers; and
- 17 iv. Applicant 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. TWN will make the necessary monthly payments
require by .A.AC. R14-2-1204(B).

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

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

25 10. TWN's witness testified that the Company will comply with all of Staff's
26 recommendations.⁴

27 **Technical Capabilities**

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

⁴ Tr. at 13.

1 communication services, using cell phone like towers to provide consumers with wireless Internet.⁵
 2 The witness stated that TWN's business model is to provide its services in geographical areas served
 3 by rural electric cooperatives.⁶ The goal is to improve 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.⁷

6 12. TWN has been providing its fixed wireless services in Arizona since 2005 and has
 7 approximately 20-25 employees in Arizona.⁸ 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.⁹ Further, TWN's
 11 Arizona field service office serves the states of Texas and New Mexico.¹⁰

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

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.¹²

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 ⁵ Tr. at 13.

⁶ Tr. at 13.

⁷ Tr. at 14.

⁸ Tr. at 15-16.

⁹ Tr. at 16.

¹⁰ Tr. at 16.

¹¹ Exhibit T-1, attachment A-3.

¹² 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.¹³

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.¹⁴
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.¹⁵ Further, while Staff considered TWN's fair value rate base information, Staff
18 believes it should not be given substantial weight in this analysis.¹⁶

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 ¹³ Exhibit T-1 at (B-4).

¹⁴ Exhibit S-1 at 8.

¹⁵ Exhibit S-1 at 8.

28 ¹⁶ 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.¹⁷

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.¹⁸ 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, 2007.¹⁹ In response to Staff’s inquiry related to

26 _____
 17 Exhibit T-1 at (A-11).

27 18 Exhibit T-1 at (A-12).

28 19 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.²⁰

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 ²⁰ 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

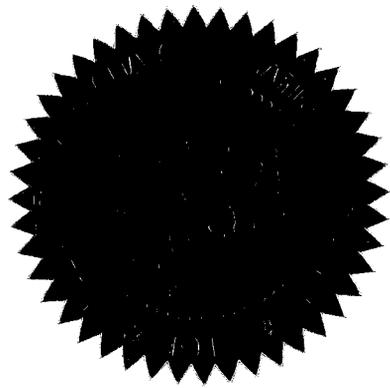
1 irrevocable sight draft letter of credit may be used by the Commission, as appropriate, to protect
2 TWN Communications of America, Inc's customers and the public interest and take any and all
3 actions the Commission deems necessary, in its discretion, including, but not limited to returning
4 prepayments 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 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 6th day of February, 2013.

20 
21 JODI JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT _____

24 DISSENT _____

25 YBK:db

26
27
28

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

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