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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

DOCKETED

SEP 23 2013

DOCKETED BY
NR

IN THE MATTER OF THE JOINT
APPLICATION OF TNCI OPERATING
COMPANY LLC AND TRANS NATIONAL
COMMUNICATIONS INTERNATIONAL,
INC. (DEBTOR-IN-POSSESSION) FOR
APPROVAL OF THE TRANSFER OF
CUSTOMER BASE AND ASSETS.

DOCKET NOS. T-20882A-13-0114
T-03975A-13-0114

DECISION NO. 74094

ORDER

Open Meeting
September 10 and 11, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 1, 2013, TNCI Operating Company LLC (“TNCI-OpCo”) and Trans National Communications International, Inc. (Debtor-In-Possession) (“TNCI-DIP”) (together, “Applicants”), pursuant to A.R.S. Section 40-285(A) and R14-2-1107 of the Arizona Administrative Code, request approval from the Arizona Corporation Commission (“Commission”), to the extent required, for TNCI-OpCo to acquire the customers (including the customers’ contracts) and certain assets¹ of TNCI-DIP through a sale pursuant to Section 363 of

...
...

¹ Applicants note that TNCI-DIP does not own any physical assets (facilities, switches or other equipment) located in Arizona that are used or useful in the provision of intrastate telecommunications service.

1 the United States Bankruptcy Code (the “Transaction”).² As a result of the Transaction, TNCI-
2 DIP’s customers will be transferred to TNCI-OpCo, which will become the service provider for
3 those customers.

4 2. In support of this filing, Applicants provide the following information.

5 **Introduction and Request for Expedited Treatment**

6 3. On October 9, 2011, Trans National Communications International, Inc. filed a
7 voluntary petition for relief under Chapter 11 of Title 11, U.S.C. 55 101 et seq., as amended, in the
8 United States Bankruptcy Court for the District of Massachusetts (the “Bankruptcy Court”).
9 Throughout the proceeding, TNCI-DIP has continued to operate its business and provide
10 telecommunications services to its customers. The Bankruptcy Court approved the Transaction on
11 March 13, 2013.

12 4. The Agreement (as defined below) and Sale Order provide for an Initial Closing
13 following receipt of approvals from the Federal Communications Commission (“FCC”),³ and for
14 additional closings at approximately 45-day intervals until the Final Closing, which will occur on
15 or before the 180th day following the Initial Closing. At each closing, TNCI-DIP will assign to
16 TNCI-OpCo those assets and customers for which applicable state governmental approvals have
17 been obtained in order to complete the assignment. Given the Chapter 11 status of TNCI-DIP,
18 Applicants submit that the public interest would be served by the transition of the business to
19 TNCI-OpCo as quickly as possible, and therefore urge that the Commission promptly approve the
20 requested transfer to permit the transfer of the Arizona customers and assets at the earliest possible
21 time.

22 **Description of the Applicants**

23 A. TNCI Operating Company LLC

24 5. TNCI-OpCo is a newly formed Delaware limited liability company with principal
25 offices located at 114 E. Haley Street, Suite A, Santa Barbara, California 93101. TNCI-OpCo is a
26 wholly owned subsidiary of TNCI Holdings LLC (“TNCI Holdings”), a Delaware limited liability

27 ² In re Trans National Communications International, Inc., Chapter 11, Case No. 11-19595-WCH, U.S. Bankr. Court
28 (E.D. Mass.).

³ The Initial Closing was scheduled for April 30, 2013.

1 company. TNCI Holdings is wholly owned by investment funds managed by Garrison Investment
2 Group (collectively, the "Garrison Group"), a leading middle market investor.

3 6. TNCI-OpCo does not currently provide telecommunications services. Accordingly,
4 Applicants are seeking the requisite approvals to assign TNCI-DIP's FCC licenses and, where
5 permitted under state laws, its state certifications and permits, to TNCI-OpCo. However,
6 Applicants understand that the TNCI-DIP's certifications cannot be assigned under Arizona law.

7 7. Accordingly, TNCI-OpCo separately submitted an application for a certificate of
8 convenience and necessity ("CC&N") to enable it to continue to provide the same services as
9 TNCI-DIP's customers currently receive from TNCI-DIP, see Docket No. T-20882A-13-0108 (the
10 "Certificate Application"), and urges that the Commission expedite its consideration of that
11 request to enable the Transaction to be completed as soon as possible.

12 8. TNCI-OpCo is managed by individuals with significant experience in the
13 telecommunications industry and will share many of the same customer service, technical,
14 operational and managerial personnel as TNCI-DIP. Biographies of the key personnel of TNCI-
15 OpCo were attached as Exhibit E to the Certification Application and are incorporated by
16 reference herein. Further, TNCI-OpCo has been funded by Garrison Group. Pro forma financial
17 statements of TNCI-OpCo are being provided to Staff as part of the Certification Application and
18 are incorporated by reference herein. As demonstrated by this information, TNCI-OpCo has the
19 managerial, technical and financial qualifications to provide telecommunications services to the
20 customers of TNCI-DIP.

21 B. Trans National Communications International, Inc. (Debtor-In-Possession)

22 9. TNCI-DIP is a Delaware corporation with a principal business address at 2
23 Charlesgate West, Boston, Massachusetts 02215. TNCI-DIP offers an array of communications
24 services including local and long distance service, audio/web conferencing, dedicated Internet
25 Protocol ("IP")-enabled, integrated voice and data services, private line, frame relay, and enhanced
26 network solutions. TNCI-DIP only provides service to business and enterprise customers.

27 10. In Arizona, TNCI-DIP is authorized to provide resold long distance
28 telecommunications service and resold and facilities-based local exchange telecommunications

1 service pursuant to authority granted in Docket Nos. T-03975A-00-1065 and T-03975A-04-0499,
2 respectively. TNCI-DIP is also authorized to provide intrastate telecommunications services in
3 every other state and the District of Columbia. TNCI-DIP is authorized by the FCC to provide
4 interstate and international telecommunications services.

5 **Description of the Transaction**

6 11. Pursuant to an Asset Purchase Agreement, dated January 31, 2013 (the
7 "Agreement"), TNCI-OpCo will acquire certain of the assets of TNCI-DIP, including TNCI-DIP's
8 customer accounts and contracts, telecommunications equipment, and, to the extent permitted
9 under applicable law and regulations, certificates, licenses, registrations or other authorizations to
10 provide intrastate, interstate, and international telecommunications services. The Bankruptcy
11 Court approved the Agreement and the Transaction contemplated thereby on March 13, 2013. The
12 Agreement and Sale Order provide for an Initial Closing following receipt of approvals from the
13 FCC, and for additional closings at approximately 45-day intervals until the Final Closing, which
14 will occur no later than the 180th day following the Initial Closing. Pursuant to the Agreement and
15 Sale Order, at each closing TNCI-DIP will assign to TNCI-OpCo those customers accounts and
16 contracts and assets for which applicable governmental approvals have been obtained in order to
17 complete the assignment.

18 12. In the interest of assuring seamless and uninterrupted service, all of the assigned
19 customers will continue to receive service from TNCI-OpCo under the same rates, terms and
20 conditions of services as were previously provided by TNCI-DIP. As noted above, TNCI-DIP
21 provides services only to business and enterprise customers. Its contracts with those customers
22 will be assigned to TNCI-OpCo without any changes in their rates, terms or conditions. In its
23 Certification Application, TNCI-OpCo has filed tariffs that contain the same rate, terms and
24 conditions of service as TNCI-DIP's existing tariffs. Future changes in the rates, terms and
25 conditions of service to the affected customers will be undertaken pursuant to customer contracts
26 and the applicable federal and state notice and tariff requirements.

27 13. Accordingly, as noted above, even though structured as a Section 363 asset
28 purchase under the Bankruptcy Code, the Transaction will appear to customers and the public

1 more like a transfer of control since TNCI-OpCo will have the same "TNCI" name with which
2 customers are familiar, will have the same rates and terms of service, and will share many of the
3 same customer service, technical, operational and managerial personnel as TNCI-DIP.

4 **Public Interest Considerations**

5 14. Applicants respectfully submit that the proposed Transaction serves the public
6 interest. The Transaction will result in the assignment of TNCI-DIP customers to a financially
7 stable company that will continue to provide telecommunications services to such assigned
8 customers without interruption. TNCI-OpCo's operations will be overseen by a qualified
9 management team with substantial telecommunications experience and technical expertise. In
10 addition, the proposed Transaction is structured to assure an orderly transition of customers from
11 TNCI-DIP to TNCI-OpCo. In accordance with the terms of their service contracts and the rules
12 and procedures of the FCC and applicable state(s), including this Commission, customers have
13 been notified of the proposed transaction and the change in their telecommunications provider
14 from TNCI-DIP to TNCI-OpCo. A sample of the notice that was sent to TNCI-DIP's Arizona
15 customers on March 29, 2013, at least 30 days prior to their transfer, is provided in Exhibit A of
16 the Application.

17 **Request For Waiver of Slamming and Cramming Rules**

18 15. As noted above, customers have been notified of the proposed Transaction and the
19 change in their telecommunications provider from TNCI-DIP to TNCI-OpCo. A sample of the
20 customer notice is provided in Exhibit A. Applicants respectfully request, to the extent necessary,
21 that the Commission grant a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-
22 slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of
23 customer bases.

24 16. Applicants respectfully request that the Commission, to the extent applicable, grant
25 a waiver of A.A.C. R14-2-2001-2007 (the "Cramming Rules"), which, among other things, require
26 a telecommunications company to obtain authorization from a customer when ordering
27 telecommunications products and services in order to prevent unauthorized carrier charges on their
28 bill. As described herein, TNCI-OpCo is in the process of purchasing TNCI-DIP's assets,

1 including its customers, and the affected customers will receive the same services as they currently
2 receive under the same rates, terms and conditions. Applicants do not believe that the Cramming
3 Rules apply to this proceeding because TNCI-DIP's customers are being transferred to TNCI-
4 OpCo. No new products and services are being ordered from TNCI-OpCo and no new charges
5 will be assessed as a result of the Transaction.

6 17. To the extent that the Cramming Rules arguably apply to this Transaction,
7 Applicants respectfully submit that it is in the public interest to grant a waiver of the rules in this
8 case because current TNCI-DIP customers will receive at least 30 days' notice of the Transaction
9 as required by the FCC's customer migration rules; therefore, customers will be given full notice
10 that their current services will be provided by TNCI-OpCo after the Transaction is completed, and
11 that there will be no change in the quality or cost of their services as a result of the Transaction.

12 **Request for Waiver of Discontinuance Rules**

13 18. Applicants request that the Commission grant a waiver of A.A.C. R14-2-1107,
14 which governs a telecommunications company's discontinuance of competitive local exchange or
15 interexchange services in the state. Applicants do not believe that the discontinuance rule applies
16 to this proceeding because it involves the purchase of TNCI-DIP's assets (i.e., its customers) by
17 TNCI-OpCo; therefore, service to the acquired customers is not being discontinued.⁴ Current
18 TNCI-DIP customers will receive at least 30 days' notice of the Transaction as required by the
19 FCC's customer migration rules. It would be confusing for customers to also receive a notice
20 regarding a TNCI-DIP discontinuance of service or for the planned customer transfer notice to
21 include a discussion regarding a discontinuance of service since no affected customer will be
22 discontinued as a result of the Transaction. See Decision No. 70706 (waiving discontinuance rules
23 in transfer of control case).

24 19. In the event that the Commission does not believe that a waiver of the rule in its
25 entirety is appropriate, Applicants request that the Commission grant a waiver of A.A.C. R14-2-

26 _____
27 ⁴ Commission Staff has previously come to this same conclusion. See Docket No. T-0376IA-04-0710, Addendum to
28 Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a
discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that
A.A.C. R14-2-1107 applies").

1 1107(B), which requires a telecommunications company providing competitive local exchange or
2 interexchange service to publish legal notice of an application to discontinue or abandon services
3 in counties affected by the application within 20 days of the application. As stated herein, TNCI-
4 OpCo will acquire the customer accounts of TNCI-DIP in the state of Arizona, and those
5 customers will continue to receive telecommunications services at the same rates, terms and
6 conditions as currently provided by TNCI-DIP. Written notice of this Transaction and of the
7 customer base transfer will be provided to TNCI-DIP's Arizona customers via First Class mail at
8 least 30 days prior to the transfer. Published notice to the entire community is therefore
9 unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and
10 Applicants will provide the affected customers with ample notice of the Transaction.

11 **Request To Cancel the Certificates and Tariffs of TNCI-DIP**

12 20. Following the Transaction, TNCI-OpCo will hold TNCI-DIP's customer accounts
13 and assume its operations in Arizona. Therefore, TNCI-DIP requests that, upon notification from
14 the Applicants that the Transaction is complete with regards to Arizona customers and assets, the
15 Commission cancel the CC&Ns and tariffs of TNCI-DIP.

16 **Staff Recommendations**

17 21. Staff recommends approval of the Application of TNCI-OpCo to acquire the
18 customers (including the customers' contracts) and certain assets of TNCI-DIP. Staff also
19 recommends, based on information provided by the Applicants, approval of:

- 20 • A waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations
21 that may be inconsistent with the FCC's rules regarding the transfer of customer bases,
- 22 • A waiver of A.A.C. R14-2-2001-2007 (the "Cramming Rules"),
- 23 • The Applicants' request that the Commission grant a waiver of A.A.C. R14-2-1107, and
- 24 • The Applicants' request that, upon notification from the Applicants that the Transaction is
25 complete with regards to Arizona customers and assets, the Commission cancel the
26 CC&Ns and tariffs of TNCI-DIP.

27 22. Staff further recommends that the approval of the transfer be conditioned upon
28 Commission approval of TNCI-OpCo's Application for a CC&N in Docket No. T-20882A-13-

1 0108. Approval of the instant application should not become effective until the Commission
2 approves TNCI-OpCo's Application for a CC&N.

3 CONCLUSIONS OF LAW

4 1. Trans National Communications International, Inc. is a public service corporation
5 within the meaning of Article XV of the Arizona Constitution.

6 2. The Commission has jurisdiction over Trans National Communications
7 International, Inc. and the subject matter in this filing.

8 3. The Commission, having reviewed the filing and Staff's Memorandum dated
9 August 13, 2013, concludes that it is in the public interest to grant approval as proposed and
10 discussed herein.

11 ORDER

12 IT IS THEREFORE ORDERED that the Application of TNCI Operating Company LLC to
13 acquire the customers (including the customers' contracts) and certain assets of Trans National
14 Communications International, Inc. be and hereby is approved as discussed herein.

15 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq.
16 and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules
17 regarding the transfer of customer bases be and hereby is approved.

18 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-2001-2007 (the
19 "Cramming Rules") be and hereby is approved.

20 IT IS FURTHER ORDERED that the TNCI Operating Company LLC's and Trans
21 National Communications International, Inc. (Debtor-in-Possession)'s request that the
22 Commission grant a waiver of A.A.C. R14-2-1107 be and hereby is approved.

23 IT IS FURTHER ORDERED that upon notification from TNCI Operating Company LLC
24 and Trans National Communications International, Inc. (Debtor-in-Possession) that the
25 Transaction is complete with regards to Arizona customers and assets, that the Commission cancel
26 the CC&Ns and tariffs of Trans National Communications International, Inc. (Debtor-in-
27 Possession).

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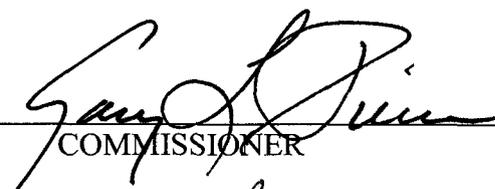
IT IS FURTHER ORDERED that the approval of the transfer shall become effective upon Commission approval of TNCI Operating Company LLC's Application for a CC&N in Docket No. T-20882A-13-0108.

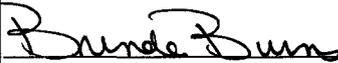
IT IS FURTHER ORDERED that within thirty (30) days following the closing of the proposed transaction, TNCI Operating Company LLC inform the Commission by filing an affidavit with Docket Control that transaction-related activities are completed.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

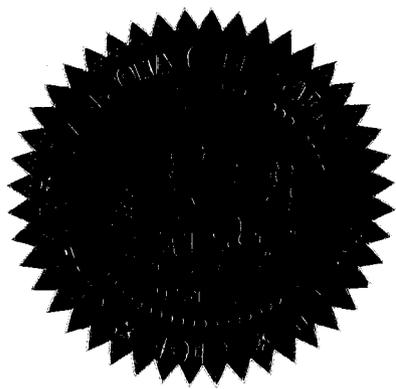

CHAIRMAN


COMMISSIONER

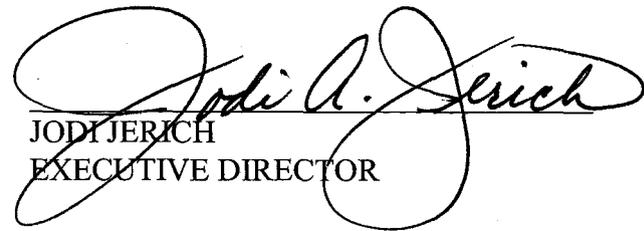

COMMISSIONER


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 this Commission to be affixed at the Capitol, in the City of Phoenix, this 23rd day of September, 2013.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:WMS:sms\CHH

1 SERVICE LIST FOR: TNCI OPERATING COMPANY LLC AND TRANS NATIONAL
COMMUNICATIONS INTERNATIONAL, INC.
2 DOCKET NOS. T-20882A-13-0114 and T-03975A-13-0114
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