

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

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DATE: NOVEMBER 25, 2013
DOCKET NOS.: T-04110A-13-0097 and T-04273A-13-0097

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

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

DIGIZIP.COM, INC.
(CANCELLATION OF 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:

DECEMBER 4, 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:

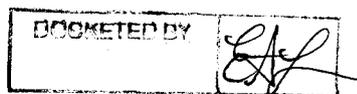
DECEMBER 17, 2013 and DECEMBER 18, 2013

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

NOV 25 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.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE APPLICATION OF DIGIZIP.COM, INC. FOR CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE TELECOMMUNICATION SERVICES IN ARIZONA , AND THE NOTICE OF WHOLESALE CARRIER SERVICES, INC. AND DIGIZIP.COM, INC. OF AN ASSET PURCHASE AGREEMENT.

DOCKET NOS. T-04110A-13-0097
T-04273A-13-0097

DECISION NO. _____

ORDER

Open Meeting
December 17 and 18, 2013
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. On April 8, 2013, Wholesale Carrier Services, Inc. ("WCS") and Digizip.com, Inc. ("Digizip.com," and together with WCS, the "Applicants"), filed with the Commission the Application of Digizip.com for the Approval of Cancellation of its Certificate of Convenience and Necessity ("CC&N") and the Notice of an Asset Purchase Agreement ("Application").

2. On October 29, 2013, the Commission's Utilities Division ("Staff") docketed its Staff Report concluding that Commission approval of the Asset Purchase Agreement was not required and recommending approval of Digizip.com's request to cancel its CC&N and Arizona tariff.

3. Digizip.com has a CC&N to provide resold long distance telecommunication services in Arizona pursuant to Decision No. 68749 (June 5, 2006). Decision Nos. 66118 (July 25, 2003) and 73831 (April 10, 2013) authorized WCS to provide resold interexchange, alternative operator services, resold local exchange, facilities-based local exchange and access telecommunication services in Arizona.

1 4. In their Application, the Applicants advised the Commission that they intend to enter
2 into an Asset Purchase Agreement under which WCS will receive all of Digizip.com's assets,
3 including its customer base. The Applicants stated that the transaction is in the public interest
4 because it will promote competitive and efficient operations. Upon consummation of the transaction,
5 Digizip.com will merge into WCS. As such, Digizip.com requests cancellation of its CC&N and
6 Arizona tariff.

7 5. Based on its review of the Applicants' 2012 Annual Reports, Staff found that neither
8 WCS nor Digizip.com are investor-owned Class A utilities. Staff concluded that the Commission's
9 Public Utility Holding Companies and Affiliated Interest Rules, Arizona Administrative Code
10 ("A.A.C.") R14-2-801, *et seq.*, do not apply, and that Commission approval of the Asset Purchase
11 Agreement is not required.

12 6. Staff related that in Digizip.com's responses to Data Requests, Digizip.com requested
13 a waiver of the terms of A.A.C. R14-2-1107. Staff stated that Digizip.com provided an affidavit
14 averring that its last Arizona customer left the network in late 2011 and it has no Arizona customers
15 that will be affected by the transaction. Digizip.com confirmed that it did not collect advances,
16 deposits and/or prepayments from its Arizona customers.

17 7. Staff noted that the Commission's Consumer Services Section reported there have
18 been no complaints, inquiries or opinions filed with the Commission against Digizip.com or WCS
19 from January 1, 2010, to April 10, 2013. The Compliance Section found no compliance
20 delinquencies for either party. The Corporations Division advised Staff that WCS is in good
21 standing, but Digizip.com did not file a 2013 corporate annual report.

22 8. Given the circumstances, Staff recommends a waiver of the terms of A.A.C. R14-2-
23 1107, and cancellation of Digizip.com's CC&N and its Arizona tariff.

24 9. The provisions of A.A.C. R14-2-1107 require, among other things, that a certificated
25 telecommunication company provide a plan for the refund of deposits and publish notice of the
26 application prior to cancellation of its CC&N. As discussed in Decision No. 67404 (November 2,
27 2004), it would render A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and
28 plain language to exempt a company from the requirements of the rule because it has no customers

1 due to its discontinuation of service. However, as discussed in that Decision, the intent of the rule is
2 to ensure that existing customers have advance notice of a telecommunications provider's pending
3 plan to discontinue service such that they will be afforded an opportunity to procure service through
4 an alternative provider prior to such discontinuance.

5 10. Digizip.com did not collect any advances, deposits and/or prepayments from its
6 Arizona customers and its last customer switched carriers more than one year before Digizip.com
7 requested cancellation of its CC&N. Under these circumstances, the requirements of A.A.C. R-14-2-
8 1107 should be waived.

9 11. We find that because neither WCS nor Digizip.com are Class A utilities, the terms of
10 A.A.C. R14-2-801, *et seq.*, do not apply.

11 12. Under A.R.S. § 40-285(A), a public service corporation must obtain Commission
12 approval before transferring its assets. Generally, the Commission will approve a transfer if the
13 transaction is deemed to be in the public interest. The Applicants assert the transaction is in the
14 public interest because it will promote efficiency and competition. Additionally, there are no Arizona
15 customers that could be harmed by the transaction.

16 13. Pursuant to A.R.S. § 40-285(A) we find that transaction is in the public interest and
17 we approve the transfer of Digizip.com's assets to WCS.

18 14. We find that Staff's recommendations are reasonable and should be adopted, except
19 that cancellation of Digizip.com's CC&N should be subject to the Applicants' notification to the
20 Commission that the transaction has been completed.

21 CONCLUSIONS OF LAW

22 1. WCS and Digizip.com are public service corporations within the meaning of Article
23 XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over WCS, Digizip.com and the subject matter of the
25 Application.

26 3. The cancellation of Digizip.com's CC&N is in the public interest.

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

1 IT IS FURTHER ORDERED that Wholesale Carrier Services, Inc. and Digizip.com, Inc.
2 shall file with Docket Control, as a compliance item in this docket, within 30 days of the completion
3 of the merger, a Notice stating that the transaction has closed.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____ 2013.

17 _____
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 BM:tv

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1 SERVICE LIST FOR: WHOLESALE CARRIER SERVICES, INC. and
2 DIGIZIP.COM, INC.

3 DOCKET NOS.: T-04110A-13-0097 and T-04273A-13-0097

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