

OPEN MEETING ITEM



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
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ARIZONA CORPORATION COMMISSION RECEIVED

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DATE: MAY 1, 2014

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO: T-20534A-07-0346

TO ALL PARTIES:

ORIGINAL

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:

UNITE PRIVATE NETWORKS, LLC
(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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 9, 2014

Company has waived the 10 days for filing of exceptions

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 Working Session and Open Meeting to be held on:

MAY 13, 2014 and MAY 14, 2014

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

MAY 01 2014

DOCKETED BY 


JODI JERICH
EXECUTIVE DIRECTOR

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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

8 IN THE MATTER OF THE APPLICATION OF
9 UNITE PRIVATE NETWORKS, LLC, FOR
10 APPROVAL OF A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 FACILITIES-BASED TELECOMMUNICATION
13 SERVICES IN ARIZONA.

DOCKET NO. T-20534A-07-0346

DECISION NO. _____

ORDER

10 DATE OF HEARINGS: October 15, 2013 and January 9, 2014 (Hearings) and
January 28, 2014 (Procedural Conference)

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

13 APPEARANCES: Mr. Giancarlo G. Estrada, ESTRADA-LEGAL, P.C., on
14 behalf of Applicant; and
15 Ms. Bridget A. Humphrey, Staff Attorney, Legal
16 Division, on behalf of the Utilities Division of the
Arizona Corporation.

17 **BY THE COMMISSION:**

18 On June 1, 2007, Unite Private Networks, LLC (“UPN” or “Company”) filed with the
19 Arizona Corporation Commission (“Commission”) an application for a Certificate of Convenience
20 and Necessity (“CC&N”) to provide facilities-based long distance and facilities-based local exchange
21 telecommunication services in Arizona.

22 On June 29, 2007, the Commission’s Utilities Division Staff (“Staff”) filed a Letter of
23 Insufficiency and its First Set of Data Requests.

24 On July 16, 2007, Staff docketed a second Letter of Insufficiency.

25 On August 13, 2007, UPN filed a response to Staff’s First Set of Data Requests.

26 On August 17, 2009, by Procedural Order, Staff was directed to file an update with the
27 Commission regarding the status of the above-captioned application.

28 On September 30, 2009, Staff filed an update on UPN’s application, stating that the Company

1 intended to continue pursuing the application, and that Staff recommended that the docket not be
2 administratively closed.

3 On October 7, 2011, Lance J.M. Steinhart, Esq., filed a Notice of Appearance on behalf of
4 UPN.

5 On November 28, 2011, UPN docketed its response to Staff's Second Set of Data Requests,
6 which included an amended application. UPN's amended application requests authority to provide
7 facilities-based private line telecommunication services in Arizona.

8 On March 27, 2013, UPN docketed its response to Staff's Third Set of Data Requests.

9 On March 28, 2013, UPN filed additional information related to its application.

10 On August 9, 2013, Staff filed its Staff Report recommending approval of UPN's application,
11 subject to certain conditions.

12 On August 21, 2013, by Procedural Order, this matter was set for hearing to begin on October
13 15, 2013, and other procedural deadlines were established.

14 On September 19, 2013, UPN filed its Notice of Filing of Affidavit of Publication, indicating
15 that notice of the amended application and hearing date had been published in the *Arizona Republic*, a
16 newspaper of general circulation in Arizona.

17 On October 15, 2013, a full public hearing was commenced before a duly authorized
18 Administrative Law Judge ("ALJ") of the Commission. Staff appeared through counsel. UPN failed
19 to appear. No members of the public appeared to give comments on the application. The hearing
20 was vacated because the Company failed to appear for the hearing.

21 On October 16, 2013, by Procedural Order, UPN was directed to file a pleading discussing
22 whether UPN had a continuing desire to pursue a CC&N to provide telecom services in Arizona;
23 UPN was placed on notice that the failure to timely file the above-mentioned pleading may result in
24 this docket being administratively closed; and the timeclock in this matter was suspended.

25 On October 30, 2013, UPN filed its Notice of Intent to Pursue CC&N and Notice of
26 Appearance and Substitution of Counsel.

27 On December 9, 2013, by Procedural Order, the hearing on UPN's application was
28 rescheduled to begin on January 9, 2014.

1 On January 9, 2014, a hearing was held as scheduled. Staff and UPN appeared through
2 counsel and presented testimony and evidence. At the conclusion of the hearing, UPN was directed
3 to file a late-filed exhibit in support of its application.

4 On January 16, 2014, UPN filed a late-filed exhibit.

5 On April 28, 2014, a telephonic procedural conference was held. UPN and Staff appeared
6 telephonically through counsel. Discussions were held on Staff's recommendation regarding waiver
7 of A.A.C. R14-2-1115.C.3.

8 On April 29, 2014, Staff filed a Notice of Filing stating that neither Staff nor UPN could
9 determine that the Company had requested a waiver of A.A.C. R14-2-1115.C.3. Therefore, Staff and
10 the Company agreed that Staff's recommendation for the waiver should be withdrawn and that the
11 waiver should not be ordered by the Commission in this matter.

12 On April 30, 2014, UPN filed a Request for Expedited Processing, requesting that this matter
13 to be considered and acted upon by the Commission at its May Open Meeting and waiving the 10-day
14 period for filing exceptions to the Recommended Opinion and Order.

15 Upon receipt of the post-hearing documents, the matter was taken under advisement pending
16 submission of a Recommended Opinion and Order to the Commission.

17 * * * * *

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

20 **FINDINGS OF FACT**

- 21 1. UPN is a foreign limited liability company organized under the laws of Missouri and
- 22 authorized to transact business in Arizona.¹
- 23 2. UPN's principal offices are located in Kearney, Missouri.
- 24 3. UPN is a wholly owned subsidiary of UPN Intermediate Holdings, LLC.²

25
26
27 ¹ Exhibit A-1, Attachment A.

28 ² According to Staff, on December 10, 2010, Ridgemont Equity Partners, an affiliate of Bank of America, acquired 100 percent of the outstanding members' interests of UPN and its affiliate UPN-Illinois. UPN and UPN-Illinois are now wholly owned subsidiaries of UPN Intermediate Holdings, LLC.

1 4. On June 1, 2007, UPN filed an application with the Commission requesting authority
2 for a CC&N to provide facilities-based long distance and facilities-based local exchange
3 telecommunications services in Arizona.

4 5. On November 28, 2011, UPN filed an amended application requesting authority to
5 provide facilities-based private line services in Arizona.³

6 6. Notice of the amended application was given in accordance with the law.

7 7. Staff recommends approval of the UPN's amended application for a CC&N to provide
8 intrastate telecommunications services subject to the following conditions:

- 9
- 10 a. UPN complies with all Commission Rules, Orders and other requirements
 relevant to the provision of intrastate telecommunications services;
- 11 b. UPN abides by the quality of service standards that were approved by the
12 Commission for Qwest in Docket No. T-01051B-93-0183;
- 13 c. UPN be required to notify the Commission immediately upon changes to
 UPN's name, address or telephone number;
- 14 d. UPN cooperate with Commission investigations including, but not limited to
15 customer complaints;
- 16 e. The rates proposed by this filing are for competitive services. In general, rates
17 for all competitive services are not set according to rate of return regulation.
18 Staff obtained information from the Company indicating that its fair value rate
19 base is \$185,000. Accordingly, UPN's fair value rate base is too small to be
 useful in a fair value analysis. The rate to be ultimately charged by UPN will
 be heavily influenced by the market. Therefore, while Staff considered the fair
 value rate base information submitted by UPN, the fair value information
 provided was not given substantial weight in this analysis and
- 20 f. The Commission authorizes UPN to discount its rates and service charges to
21 the marginal cost of providing the services. The pricing of competitive
 telecommunications services shall be in accordance with A.A.C. R14-2-1109.

22 8. Staff further recommends that UPN comply with the following items and that if UPN
23 fails to do so, UPN's CC&N should be null and void after due process:

- 24 a. UPN shall docket conforming tariffs pages for each service within its CC&N
25 within 365 days from the date of an Order in this matter or 30 days prior to
26 providing service, whichever comes first. The tariffs submitted shall coincide
27 with the Application and state that the Company does not collect advances,
 deposits and/or prepayments from its customers; and

28 ³ Exhibit A-2 at 1.

1 b. UPN shall abide by the Commission adopted rules that address Universal
 2 Service in Arizona. A.A.C. R14-2-1204(A) indicates that all
 3 telecommunications service providers that interconnect into the public
 4 switched telephone network shall provide funding for the Arizona Universal
 5 Service Fund ("AUSF"). The Company will make the necessary monthly
 6 payments required by A.A.C. R14-2-1204(B).

4 **Technical Capability**

5 9. UPN is currently certified to provide telecommunication services in thirteen
 6 states/jurisdictions and the Company provides telecom services in approximately 20 states.⁴

7 10. UPN's witness stated that the Company proposes providing private line, point-to-point
 8 connection using data-only fiber optic technology.⁵ UPN states its primary customers in Arizona will
 9 be school districts and other DS3 level or above large companies; however, the Company may
 10 provide services to some small business customers.⁶

11 11. UPN's top eight officers possess a combined total of 174 years in the
 12 telecommunications industry.

13 12. There are no current plans for UPN to have employees in Arizona.⁷ UPN does have
 14 employees and offices in the following states: Missouri; Nebraska; Texas; Georgia; and Colorado.⁸

15 13. Staff believes UPN has the technical capabilities to provide its proposed services in
 16 Arizona.

17 **Financial Capabilities**

18 14. UPN provided financial statements for its parent Company for the year ending
 19 December 31, 2012. The Company reported Total Assets of \$148.3 million; Total Equity of \$47.9
 20 million; and a net loss of \$124,000.⁹

21 15. UPN's amended application states that it will not collect advances, deposits, and/or
 22 prepayments.¹⁰

23 16. UPN's amended application states that the Company will rely on the financial
 24 resources of its parent company to provide its proposed services in Arizona.¹¹

25 ⁴ Tr. at 6.

26 ⁵ Tr. at 8.

26 ⁶ Tr. at 8 and 13.

27 ⁷ Tr. at 15.

27 ⁸ Id.

28 ⁹ Exhibit S-1 at 2.

28 ¹⁰ Exhibit A-2 at 5.

1 **Rates and Charges**

2 17. Staff believes that UPN's rates will be heavily influenced by the market. Staff states
3 that UPN will have to compete with other incumbent local exchange carriers ("ILECs") and various
4 competitive local exchange ("CLECs"), and interexchange carriers ("IXCs") in Arizona in order to
5 gain new customers.¹² Based on the competitive environment that UPN will be operating in, Staff
6 believes that the Company will not be able to exert any market power. Therefore, the competitive
7 process should result in just and reasonable rates.

8 18. Pursuant to A.A.C. R14-2-1109, the rates charged for each service UPN proposes to
9 provide may not be less than the Company's total service long-run incremental cost of providing that
10 service.

11 19. Staff states that although it considered the Company's fair value rate base of \$185,000,
12 Staff did not give it much weight in its analysis because UPN's rates in Arizona will be heavily
13 influenced by the market.

14 20. UPN's proposed tariff states that the Company may offer rates based on an individual
15 case basis ("ICB") for the provision of its private line services.¹³ UPN is placed on notice that all
16 ICB contracts shall comply with A.R.S. §40-334 as well as A.A.C. R14-2-1115. A.R.S. §40-334(A)
17 states that public service corporations "shall not, as to rates, charges, service facilities or in any
18 respect to make or grant any preference or advantage to any person or subject an person to any
19 prejudice or disadvantage."

20 **Complaint Information**

21 21. Staff confirmed the Company's assertion that none of its officers, directors, partners,
22 nor managers have been or are currently involved in any formal or informal complaint proceeding
23 before any state or federal regulatory agency, commission, administrative or law enforcement agency.

24 22. Staff also verified that UPN's officers, directors, partners or managers have not been
25 involved in any civil or criminal investigations, or had judgments entered in any civil matter, or by
26

27 ¹¹ Response to Commission's Third Set of Data Requests docketed March 27, 2012 at 7..

28 ¹² Exhibit S-1 at 3.

¹³ Exhibit A-2 at Tariff Sheet No. 14.

1 any administrative or regulatory agency, or been convicted of any criminal acts within the last ten
2 (10) years.¹⁴

3 23. Staff reported that no consumer complaints had been filed against UPN in Arizona or
4 with the nine (9) public utility commissions that responded to Staff's inquiry.

5 24. UPN is in good standing with the Commission's Corporation Division.

6 **Competitive Analysis**

7 25. UPN's application requests that its proposed private line services be classified as
8 competitive in Arizona. Staff believes that UPN's proposed private line services should be classified
9 as competitive because UPN will have to compete with IXC's, ILEC's, and CLEC's to gain a share of
10 the private line market, and UPN will not be able to exert any power in the market it will be operating
11 in.

12 26. Based on the above factors, Staff concludes that UPN's proposed services should be
13 classified as competitive in Arizona.

14 27. We find that Staff's recommendations are reasonable and should be adopted. We also
15 find that UPN's proposed services are competitive in Arizona.

16 **CONCLUSIONS OF LAW**

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

19 2. The Commission has jurisdiction over UPN 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 telecommunication 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 UPN to provide to provide facilities-based private line
25 telecommunications services as set forth in its amended application.

26 ¹⁴ In 2009, the Federal Communications Commission ("FCC") Enforcement Bureau issued a Notice of Liability for
27 Forfeiture in the amount of \$20,000 based on UPN's violation for failing to timely file its annual Customer Proprietary
28 Network Information ("CPNI") with the FCC. Based on the FCC's review of the record and the information provided by
UPN, the FCC concluded that UPN was not required to file an annual CPNI and no liability was imposed on the
Company.

1 IT IS FURTHER ORDERED that if Unite Private Networks, LLC fails to comply with the
2 Staff recommendations described in Findings Fact No. 8, the Certificate of Convenience and
3 Necessity granted herein shall be considered null and void after due process.

4 IT IS FURTHER ORDERED that Unite Private Networks, LLC shall abide by the provisions
5 of A.A.C. R14-2-1107.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN _____ COMMISSIONER _____

11
12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

13
14 IN WITNESS WHEREOF, I, JODI JERICH, Executive
15 Director of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this _____ day of _____ 2014.

19 _____
20 JODI JERICH
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____
24 YK:ru
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28

1 SERVICE LIST FOR: UNITE PRIVATE NETWORKS, LLC

2 DOCKET NO.: T-20534A-07-0346

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