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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

SUSAN BITTER SMITH – Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

Arizona Corporation Commission  
**DOCKETED**

APR 23 2015

DOCKETED BY 

IN THE MATTER OF THE APPLICATION OF  
BCN TELECOM, INC. FOR APPROVAL OF A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE RESOLD LOCAL  
EXCHANGE AND FACILITIES-BASED LOCAL  
EXCHANGE TELECOMMUNICATION  
SERVICES IN ARIZONA.

DOCKET NO. T-04057A-13-0270

DECISION NO. 75026

**OPINION AND ORDER**

DATE OF HEARING: February 12, 2015  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
APPEARANCES: Mr. Jason Gellman, SNELL & WILMER, L.L.P. on behalf of the Applicant; and  
Mr. Brian Smith, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On August 7, 2013, BCN Telecom, Inc. (“BCN” or the “Company”) filed with the Arizona Corporation Commission (“Commission”) an application for approval of a Certificate of Convenience and Necessity (“CC&N”) to provide resold local exchange telecommunication services in the State of Arizona. BCN’s application also requested a determination that its proposed services are competitive in Arizona.

On April 25, 2014, the Company filed an amendment to its application requesting authority to also provide facilities-based local exchange telecommunication services in Arizona.

On May 29, 2014, BCN filed proposed tariffs for its proposed services.

On June 6, 2014, BCN filed responses to the Commission’s Utilities Division’s (“Staff”) first set of data requests.

1 On June 16, 2014, BCN filed additional responses to Staff’s first set of data requests.

2 On July 14, 2014, BCN filed its Certificate of Good Standing.

3 On September 16, 2014, BCN filed an amended proposed tariff.

4 On October 24, 2014, BCN filed an amendment to its application.

5 On November 3, 2014, Jason D. Gellman filed a Notice of Appearance on behalf of BCN.

6 On December 1, 2014, Staff filed a Staff Report recommending approval of BCN’s  
7 application, subject to certain conditions.

8 On December 11, 2014, a Procedural Order was issued setting this matter for hearing to begin  
9 on February 12, 2015, and establishing other procedural deadlines.

10 On December 19, 2014, a Corrected Procedural Order was issued.

11 On December 22, 2014, BCN filed a Notice of Change of Address.

12 On January 16, 2015, BCN filed a Request to Allow Witness to Appear Telephonically and a  
13 Notice of Filing Affidavit of Publication, indicating that notice of the amended application and  
14 hearing date had been published on January 2, 2015, in the *Arizona Republic*, a newspaper of general  
15 circulation in BCN’s proposed service area.

16 On January 27, 2015, by Procedural Order, BCN’s request for its witness to appear  
17 telephonically for the hearing was granted.

18 On February 12, 2015, a full public hearing was held as scheduled before a duly authorized  
19 Administrative Law Judge (“ALJ”) of the Commission. The Company and Staff appeared through  
20 counsel and presented testimony and evidence. No members of the public appeared to provide public  
21 comment on the application. At the conclusion of the hearing, the matter was taken under advisement  
22 pending submission of a Recommended Opinion and Order to the Commission.

23 \* \* \* \* \*

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

26 ...  
27 ...  
28 ...

**FINDINGS OF FACT**

- 1
- 2           1.       BCN is a foreign "C" corporation, organized under the laws of New Jersey, with its
- 3 principal offices located in Bedminster, New Jersey.<sup>1</sup>
- 4           2.       BCN is authorized to transact business in Arizona and is in good standing with the
- 5 Commission's Corporations Division.<sup>2</sup>
- 6           3.       BCN's amended application requests authorization to provide resold local exchange
- 7 and facilities-based local exchange telecommunication services in Arizona.
- 8           4.       Notice of the amended application was given in accordance with the law.
- 9           5.       Staff recommends approval of BCN's amended application, subject to the following
- 10 conditions:
- 11                   (a)       BCN comply with all Commission Rules, Orders and other requirements
- 12                               relevant to the provision of intrastate telecommunication services;
- 13                   (b)       BCN abide by the quality of service standards that were approved by the
- 14                               Commission for Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") in
- 15                               Docket No. T-01051B-13-0199 (Decision No. 74208);<sup>3</sup>
- 16                   (c)       BCN be prohibited from barring access to alternative local exchange service
- 17                               providers who wish to serve areas where it is the only provider of local
- 18                               exchange service facilities;
- 19                   (d)       BCN notify the Commission immediately upon changes to BCN's name,
- 20                               address or telephone number;
- 21                   (e)       BCN cooperate with Commission investigations including, but not limited to
- 22                               customer complaints;
- 23                   (f)       The rates proposed by this filing are not for competitive services. In general,
- 24                               rates for competitive services are not set according to rate of return regulation.
- 25                               Staff obtained information from BCN and has determined that its fair value
- 26                               rate base is zero. Staff has reviewed the rates to be charged by BCN and
- 27                               believes they are just and reasonable as they are comparable to other
- 28                               competitive local carriers and local incumbent carriers offering service in
- Arizona and comparable to the rates BCN charges in other jurisdictions. The
- rate to be ultimately charged by BCN will be heavily influenced by the market.
- Therefore, while Staff considered the fair value rate base information
- submitted by the company, the fair value information provided was not given
- substantial weight in this analysis;

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<sup>1</sup> Exhibits A-2 and A-7.

<sup>2</sup> Exhibit A-7.

<sup>3</sup> Staff refers to Decision No. 74208; however, the standards Staff refers to were established in Decision No. 59421 (December 20, 1995).

- 1 (g) BCN offer Caller ID with the capability to toggle between blocking and  
unblocking the transmission of the telephone number at no charge;
- 2 (h) BCN offer Last Call Return service that will not return calls to telephone  
3 numbers that have the privacy indicator activated; and
- 4 (i) The Commission authorize BCN to discount its rates and service charges to the  
5 marginal cost of providing the services.<sup>4</sup>

6 6. Staff further recommends that BCN comply with the following items and that if BCN  
7 fails to do so, that the Company's CC&N should be considered null and void after due process:

- 8 a. BCN shall docket conforming tariffs pages for each service within its CC&N  
9 within 365 days from the date of an Order in this matter or 30 days prior to  
10 providing service, whichever comes first. The tariffs submitted shall coincide  
11 with the application;
- 12 b. BCN shall notify the Commission through a compliance filing within 30 days  
13 of the commencement of service to end-user customers; and
- 14 c. BCN shall abide by the Commission-adopted rules that address Universal  
15 Service in Arizona. A.A.C. R14-2-1204(A) indicates that all  
16 telecommunications service providers that interconnect into the public  
17 switched network shall provide funding for the Arizona Universal Service  
18 Fund ("AUSF"). BCN will make the necessary monthly payments required by  
19 A.A.C. R14-2-1204(B).

20 **Technical Capability**

21 7. BCN is authorized to provide both long distance and/or local exchange  
22 telecommunication services in forty-two (42) states/jurisdictions.<sup>5</sup>

23 8. In Decision No. 64894 (June 5, 2002), the Commission granted BCN authorization to  
24 provide resold long distance in Arizona.

25 9. BCN's top management team possesses a combined total of over 116 years in the  
26 telecommunication industry.<sup>6</sup>

27 10. BCN's witness testified that the Company was established twenty-one (21) years ago  
28 and that BCN has been providing service to Arizona customers for thirteen (13) of those years.<sup>7</sup>

11. BCN intends to provide its proposed services to small, medium, and large business  
customers in Arizona.<sup>8</sup>

<sup>4</sup> Exhibit S-1 at 8-9.

<sup>5</sup> Exhibit A-5 at Attachment B.

<sup>6</sup> *Id.* at Attachment A.

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

<sup>8</sup> *Id.* at 11.

1           12.     Staff believes BCN has the technical capabilities to provide its proposed services in  
2 Arizona.

3 **Financial Capability**

4           13.     Staff states that BCN provided unaudited financial statements for the years ending  
5 December 31, 2012 and 2013.<sup>9</sup> BCN's financial statements for the year ending December 31, 2012,  
6 listed total assets of \$10,126,391, total equity of \$913,328, and a net income of negative \$585,245.<sup>10</sup>  
7 For the year ending December 31, 2013, BCN listed total assets of \$9,575,542, total equity of  
8 \$578,704, and a net income of negative \$302,909.<sup>11</sup>

9           14.     BCN's witness stated that the Company has continued to expand its operations,  
10 geographically and physically and that BCN has established a new multi-year credit relationship with  
11 PNC, a major bank, to establish working capital for its operations.<sup>12</sup> In addition, the witness stated  
12 that the Company currently has very little debt and that the lack of debt will help BCN to be fully  
13 self-funding.<sup>13</sup>

14 **Rates and Charges**

15           15.     Staff believes BCN's rates will be heavily influenced by the market. Staff states that  
16 BCN will have to compete with other incumbent local interexchange carriers ("ILECs") and  
17 competitive local exchange carriers ("CLECs") to provide its resold local and facilities-based local  
18 exchange services in Arizona. Staff reviewed the rate comparison information provided by BCN and  
19 Staff believes the proposed rates provided are comparable to the rates charged by other CLECs,  
20 ILECs and major long distance carriers providing services in Arizona.

21           16.     Based on the competitive environment that BCN will be operating in, Staff believes  
22 the Company will not be able to exert any market power and that the competitive process should  
23 result in just and reasonable rates.

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26 \_\_\_\_\_  
<sup>9</sup> Staff Report at 2.

27 <sup>10</sup> *Id.*

28 <sup>11</sup> *Id.*

<sup>12</sup> Tr. at 8.

<sup>13</sup> *Id.*

1           17. Pursuant to A.A.C. R14-2-1109, the rates charged for each service BCN proposes to  
2 provide may not be less than the Company's total service long-run incremental cost of providing that  
3 service.

4           18. Staff states that although it considered the Company's proposed fair value rate base,  
5 Staff did not give it much weight in its analysis because the Company's rates in Arizona will be  
6 heavily influenced by the market.

7 **Local Exchange Carrier Specific Issues**

8           19. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, BCN will make  
9 number portability available to facilitate the ability of customers to switch between authorized local  
10 carriers within a given wire center without changing their telephone number and without impairment  
11 to quality, functionality, reliability or convenience of use.

12           20. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that  
13 interconnect to the public switched network shall provide funding for the AUSF. BCN shall make  
14 payments to the AUSF as described under A.A.C. R14-2-1204(B).

15           21. In Commission Decision No. 59421 (December 20, 1995), the Commission approved  
16 quality of service standards for CenturyLink which imposed penalties due to an unsatisfactory level  
17 of service. In this matter, Staff believes BCN does not have a similar history of service quality  
18 problems, and therefore the penalties in that decision should not apply.

19           22. In the areas where the Company is the only local exchange service provider, Staff  
20 recommends that BCN be prohibited from barring access to alternative local exchange service  
21 providers who wish to serve the area.

22           23. BCN will provide all customers with 911 and E911 service where available, or will  
23 coordinate with ILECs, and emergency service providers to facilitate the service.

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

27           25. BCN must offer Last Call Return service, which will not allow the return of calls to  
28 the telephone numbers that have the privacy indicator activated.

1 **Complaint Information**

2 26. BCN disclosed in its amended application that in 2009 an informal complaint was  
3 filed against the Company by the Federal Communications Commission (“FCC”).<sup>14</sup> BCN stated that:

4 [T]he FCC received a complaint on April 9, 2009, alleging that Complainant’s  
5 telecommunications service provider had been changed to WorldCom without the  
6 Complainant’s authorization. The FCC notified MCI of the complaint because WorldCom no  
7 longer existed and MCI responded on May 28, 2009. Based on MCI’s response the FCC  
8 notified Verizon of the complaint and Verizon responded September 17, 2009. Based on  
9 Verizon’s response the FCC purportedly notified BCN of the complaint. Due to lack of  
10 notice, BCN failed to respond. As a result, the FCC granted the informal complaint.<sup>15</sup>

11 27. BCN’s witness stated that the FCC complaint was an incident that was inadvertent,  
12 and when the Company was notified, BCN promptly remedied the situation to the satisfaction of the  
13 Complainant.<sup>16</sup> BCN’s witness also stated that no fines or penalties were assessed against the  
14 Company by the FCC.<sup>17</sup>

15 28. Staff verified through a search of the FCC’s website that no other complaints had been  
16 filed against the Company.<sup>18</sup>

17 29. BCN’s amended application also disclosed three (3) state proceedings that involved  
18 the Company. In Maryland, the Public Service Commission (“PSC”) issued an Order to Show Cause  
19 (“OSC”) for the Company’s failure to comply with the Commission’s notice of required tariff filing.  
20 Staff states it contacted the Maryland PSC and that Staff was advised BCN had made the required  
21 filing and that BCN was in compliance and that no penalties had been assessed against BCN.<sup>19</sup>

22 30. The South Carolina PSC issued an OSC against BCN for its failure to file certain State  
23 Universal Service Fund reports.<sup>20</sup> BCN stated that it filed the required reports and that the Company  
24 was dismissed from the OSC proceeding.<sup>21</sup>

25 31. Staff confirmed with the South Carolina PSC that the Company had resolved the  
26 matter by filing the required reports.<sup>22</sup>

27 <sup>14</sup> Exhibit A-2 at Attachment C-1.

28 <sup>15</sup> *Id.*

<sup>16</sup> Tr. at 12.

<sup>17</sup> *Id.*

<sup>18</sup> Exhibit S-1 at 4.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> Exhibit A-2 at Attachment C-1.

<sup>21</sup> *Id.*

1           32.     In 2004, the West Virginia PSC initiated an investigation for failure by BCN to file its  
2 2003 Annual Report. BCN stated that it failed to timely file its 2003 Annual Report; BCN  
3 subsequently filed the missing report explaining that BCN believed it did not need to file a report  
4 because it was not providing any services in West Virginia at that time.<sup>23</sup>

5           33.     Staff reported that the West Virginia PSC waived the fine assessed against BCN and  
6 that the proceeding has been removed from the PSC's active docket of cases.<sup>24</sup>

7           34.     In response to whether any of BCN's officers, directors, partners or managers had  
8 been involved in any civil or criminal investigations, or had judgments entered in any civil matter, or  
9 by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten  
10 (10) years, BCN disclosed that Joseph Nacchio, a member of BCN's Board of Directors, had resigned  
11 in 2005 due to being federally indicted on insider trading charges.<sup>25</sup>

12           35.     Staff determined that Mr. Nacchio's federal indictment was not related to his  
13 involvement with BCN.<sup>26</sup> Staff's review indicated that the indictment was related to Mr. Nacchio's  
14 former employer and his tenure as CEO of Qwest Communications International, Inc.<sup>27</sup> Staff  
15 concluded that the indictment was not related to BCN's operations.<sup>28</sup>

16           36.     Staff contacted ten (10) of the forty-two (42) states/jurisdictions that BCN stated it is  
17 authorized to provide service and Staff found that there were no consumer complaints filed against BCN.

18           37.     BCN is in good standing with the Commission's Corporation Division.

19           38.     Staff's witness stated that Staff believes it is in the public interest to grant BCN's  
20 application for a CC&N because the Company has been providing long distance services in Arizona  
21 for quite some time and no complaints have been filed against the Company.<sup>29</sup> The witness further  
22 explained that the Company disclosed the incidents (described above) in its application; that the  
23 incidents do not show a track record of slamming or cramming; that Staff believes BCN has the  
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25 <sup>22</sup> Exhibit S-1 at 5.

<sup>23</sup> Exhibit A-2 at Attachment C-1.

26 <sup>24</sup> Exhibit S-1 at 5.

<sup>25</sup> Exhibit A-4 at Attachment C-2.

27 <sup>26</sup> Exhibit S-1 at 6.

<sup>27</sup> *Id.*

28 <sup>28</sup> *Id.*

<sup>29</sup> Tr. at 20.

1 resources and expertise to provide telecommunication service in Arizona; and that customers in  
2 Arizona have a choice among providers.<sup>30</sup>

### 3 Competitive Analysis

4 39. BCN's application requests that the Company's proposed services be classified as  
5 competitive in Arizona. Staff believes BCN's proposed services should be classified as competitive  
6 because the Company will have to compete with ILECs and CLECs to gain a share of the market in  
7 which it intends to operate. Further, Staff believes that BCN will not be able to exert any market  
8 power in its proposed service area.

9 40. Based on the above factors, Staff concludes that BCN's proposed services should be  
10 classified as competitive in Arizona.

11 41. We find that Staff's recommendations are reasonable and should be adopted. We also  
12 find that BCN's proposed services are competitive within Arizona.

### 13 CONCLUSIONS OF LAW

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

16 2. The Commission has jurisdiction over BCN and the subject matter of the application.

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

18 4. A.R.S. §40-282 allows a telecommunication company to file an application for a  
19 CC&N to provide competitive telecommunication services.

20 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
21 Statutes, it is in the public interest to grant BCN's application to provide resold local exchange  
22 telecommunication services in Arizona.

23 6. BCN is a fit and proper entity to receive a CC&N authorizing it to provide intrastate  
24 telecommunication services in Arizona, subject to Staff's recommendations as set forth herein.

25 7. BCN's fair value rate base is not useful in determining just and reasonable rates for the  
26 competitive services it proposes to provide to Arizona customers.

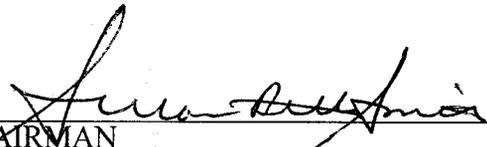
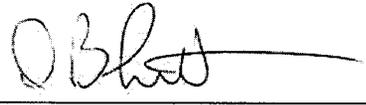
27  
28 <sup>30</sup> Tr. at 21.

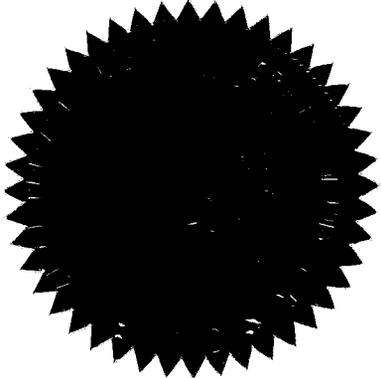


1 IT IS FURTHER ORDERED that if BCN Telecom, Inc. fails to comply with the Staff  
2 recommendations described in Findings Fact No. 6, the Certificate of Convenience and Necessity  
3 granted herein shall be considered null and void after due process.

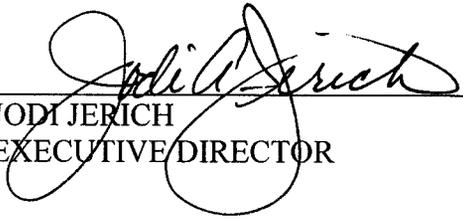
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 CHAIRMAN COMMISSIONER  
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 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  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this 23rd day of April 2015.

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JODI JERICH  
EXECUTIVE DIRECTOR

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18 DISSENT \_\_\_\_\_

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20 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR: BCN TELECOM, INC.

2 DOCKET NO.: T-04057A-13-0270

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