

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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DATE: JULY 27, 2015  
DOCKET NO.: T-20529A-14-0392

ORIGINAL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Opinion and Order on:

NEW HORIZONS COMMUNICATIONS CORP.  
DBA NHC COMMUNICATIONS, INC.  
(CC&N/RESELL)

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:

AUGUST 5, 2015

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:

AUGUST 18, 2015 AND AUGUST 19, 2015

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

JUL 27 2015

DOCKETED BY

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 [SBernal@azcc.gov](mailto:SBernal@azcc.gov).

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

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

IN THE MATTER OF THE APPLICATION OF  
NEW HORIZONS COMMUNICATIONS CORP.  
DBA NHC COMMUNICATIONS, INC. FOR  
APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
RESOLD LONG DISTANCE, RESOLD LOCAL  
EXCHANGE, AND FACILITIES-BASED LOCAL  
EXCHANGE TELECOMMUNICATIONS  
SERVICES.

DOCKET NO. T-20529A-14-0392

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: July 14, 2015  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Sasha Paternoster  
APPEARANCES: Mr. Michael W. Patten, SNELL & WILMER, L.L.P., on behalf of the Applicant; and  
Mr. Wes Van Cleve and Mr. Matthew Laudone, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On November 17, 2014, New Horizons Communications Corp. dba NHC Communications, Inc. ("NHC") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N"), to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunications services on a statewide basis in Arizona. NHC's application also petitioned the Commission for a determination that its proposed services be classified as competitive.

On February 13, 2015, NHC filed a revised proposed tariff in an amendment to its application.

1 Also on February 13, 2015, NHC filed its Responses to Commission’s Utilities Division’s  
2 (“Staff”) First Set of Data Requests.

3 On March 5, 2015, NHC filed a supplement to its response filed on February 13, 2015.

4 On March 26, 2015, a change of address was filed for Michael W. Patten, Attorney for NHC.

5 On April 1, 2015, NHC filed a replacement page to its proposed tariff as a supplement to its  
6 application.

7 Also on April 1, 2015, NHC filed its Responses to Staff’s Second Set of Data Requests.

8 On April 6, 2015, a Notice to the Parties was filed by the Administrative Law Judge (“ALJ”)  
9 assigned to this matter.

10 On April 9, 2015, NHC filed its Responses to Staff’s Third Set of Data Requests.

11 On May 21, 2015, Staff filed its Staff Report recommending approval of NHC’s application,  
12 subject to certain conditions.

13 On May 26, 2015, a Procedural Order was issued setting the date for hearing on July 14,  
14 2015, and establishing other procedural deadlines.

15 On May 27, 2015, NHC filed a Request to Appear Telephonically (“Request”) for the July 14,  
16 2015 hearing, stating the witness, Mr. Glen Nelson, resides in Massachusetts.

17 On June 2, 2015, by Procedural Order, NHC’s Request was granted.

18 On June 8, 2015, NHC filed an Affidavit of Publication indicating that notice of the  
19 application and hearing date had been published in the *Arizona Republic*, a newspaper of general  
20 circulation in Arizona.

21 On June 19, 2015, an Amended Procedural Order was issued to establish the deadline to file  
22 objections to the Staff Report.

23 On July 14, 2015, a full public hearing was held as scheduled before a duly authorized ALJ of  
24 the Commission. NHC and Staff appeared through counsel and presented testimony and evidence.  
25 No members of the public appeared to give comments on the application. At the conclusion of the  
26 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and  
27 Order to the Commission.

28 \* \* \* \* \*

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

3 **FINDINGS OF FACT**

4 1. NHC is a foreign corporation, incorporated in the State of Delaware and headquartered  
 5 in Massachusetts.<sup>1</sup>

6 2. NHC is authorized to transact business in Arizona and is in good standing with the  
 7 Commission's Corporations Division.<sup>2</sup>

8 3. On November 17, 2014, NHC filed an application with the Commission to provide  
 9 resold long distance, resold local exchange, and facilities-based local exchange telecommunications  
 10 services. The application also seeks a determination that NHC's proposed services be classified as  
 11 competitive.

12 4. Notice of NHC's application was given in accordance with the law.

13 5. Staff recommends approval of NHC's application for a CC&N to provide resold long  
 14 distance, resold local exchange, and facilities-based local exchange telecommunications services in  
 15 Arizona and that NHC's proposed services be classified as competitive.

16 6. Staff further recommends that:

- 17 a. NHC comply with all Commission Rules, Orders, and other requirements  
 relevant to the provision of intrastate telecommunications services;
- 18 b. NHC abide by the quality of service standards that were approved by the  
 19 Commission for Qwest dba CenturyLink QC in Docket No. T-01051A-13-  
 0199;
- 20 c. NHC be prohibited from barring access to alternative local exchange service  
 21 providers who wish to serve areas where NHC is the only provider of local  
 exchange service facilities;
- 22 d. NHC be required to notify the Commission immediately upon changes to  
 23 NHC's name, address, or telephone number;
- 24 e. NHC cooperate with the Commission investigations including, but not limited  
 to, customer complaints;
- 25 f. The rates proposed by this filing are for competitive services. In general, rates  
 26 for competitive services are not set according to rate of return regulation. Staff  
 obtained information from NHC and has determined that its fair value rate base

27 \_\_\_\_\_  
 28 <sup>1</sup> Exhibit S-1 at 1.

<sup>2</sup> Ex. A-1, Attachment A.

1 is zero. Staff has reviewed the rates to be charged by NHC and believes they  
 2 are just and reasonable as they are comparable to other competitive local  
 3 carriers and local incumbent carriers offering service in Arizona and  
 4 comparable to the rates NHC charges in other jurisdictions. The rate to be  
 ultimately charged by NHC will be heavily influenced by the market.  
 Therefore, while Staff considered the fair value rate base information  
 submitted by NHC, the fair value information provided was not given  
 substantial weight in this analysis;

- 5 g. NHC offer Caller ID with the capability to toggle between blocking and  
 6 unblocking the transmission of the telephone number at no charge;
- 7 h. NHC offer Last Call Return service that will not return calls to telephone  
 numbers that have the privacy indicator activated; and
- 8 i. The Commission authorize NHC to discount its rates and service charges to the  
 9 marginal cost of providing the services.

10 7. Staff further recommends that NHC's CC&N be considered null and void after due  
 process if NHC fails to comply with the following conditions:

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

20 8. Staff also recommends NHC's proposed services be classified as competitive given  
 21 the availability of alternatives, the inability of NHC to adversely affect the local exchange or long  
 22 distance service markets, and NHC's lack of market power.

23 **Technical/Managerial Capabilities**

24 9. NHC's witness, Mr. Glen Nelson, vice president of marketing and business  
 25 development, testified that NHC provides communications services to businesses and organizations,  
 26 ranging from basic telephone service to data networks and hosted VOIP services.<sup>3</sup> Mr. Nelson

27  
 28 <sup>3</sup> Transcript at 8.

1 testified that NHC has been in business since 2002 and has had no immutable revocations of service.<sup>4</sup>

2 Mr. Nelson indicated that NHC's CC&N application in Tennessee was recently approved.<sup>5</sup>

3 10. With the recent addition of Tennessee, NHC is authorized to provide  
4 telecommunications services in all states except for Alaska, Arizona, and Hawaii.<sup>6</sup>

5 11. Staff contacted the Public Utility Commissions in twenty (20) states and found that  
6 NHC is authorized to provide telecommunications services in each state with one (1) consumer  
7 complaint having been filed against NHC.<sup>7</sup> According to Staff, the one complaint has been resolved  
8 and closed.<sup>8</sup>

9 12. In Arizona, NHC plans to offer facilities-based local exchange, resold local exchange  
10 and long distance services to business end-user customers.<sup>9</sup> Mr. Nelson testified that NHC has  
11 several customers ready to be served and that NHC anticipates providing hosted Private Branch  
12 Exchange ("PBX") and Session Initiation Protocol ("SIP") services as soon as possible.<sup>10</sup>

13 13. To provide its proposed services, NHC does not intend to construct its own facilities  
14 but, instead, will rely on interconnection agreements with incumbent and underlying carriers, such as  
15 Qwest Corporation d/b/a CenturyLink ("CenturyLink").<sup>11</sup> NHC will not have employees in Arizona,  
16 but will maintain a toll-free number as well as a website where customer complaints can be  
17 addressed.<sup>12</sup> NHC will use CenturyLink technicians or third-party contractors for maintenance and  
18 repair issues.<sup>13</sup>

19 14. As a part of its application and in response to Staff's data requests, NHC submitted  
20 information on its executive management team ("Team") which showed that the Team possesses  
21 sufficient managerial experience in the telecommunications industry to provide the services requested  
22 in the application.<sup>14</sup>

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23 <sup>4</sup> Tr. at 10.

24 <sup>5</sup> Id. at 7-8.

25 <sup>6</sup> Ex. S-1 at 1.

26 <sup>7</sup> Id.

27 <sup>8</sup> Id.

28 <sup>9</sup> Id.

<sup>10</sup> Tr. at 11-12.

<sup>11</sup> Ex. S-1 at 2.

<sup>12</sup> Id at 1-2; Tr. at 12.

<sup>13</sup> Ex. S-1 at 2.

<sup>14</sup> Id. at 1; Ex. A-4.

1           15.     Based on NHC's experience in the telecommunications industry, and the experience of  
2 its Team, Staff believes NHC possesses the technical and managerial capabilities to provide the  
3 telecommunications services it is requesting in Arizona.

4 **Financial Capabilities**

5           16.     NHC provided audited financial statements for the 12 months ending December 31,  
6 2012, listing total assets exceeding \$5.3 million; total equity exceeding \$700,000; and a net income  
7 exceeding \$80,000.<sup>15</sup> For the 12 months ending December 31, 2013, NHC listed total assets  
8 exceeding \$7.8 million; total equity exceeding \$2.4 million; and a net income exceeding \$3.9  
9 million.<sup>16</sup>

10 **Rates and Charges**

11           17.     Staff believes that NHC will have to compete with other incumbent local exchange  
12 carriers ("ILECs"), and various competitive local exchange ("CLECs"), and interexchange carriers  
13 ("IXCs") in Arizona in order to gain new customers.<sup>17</sup> Staff states it does not believe NHC will be  
14 able to exert market power given its status as a new entrant in the market.<sup>18</sup>

15           18.     Pursuant to A.A.C. R14-2-1109, the rates charged for each service NHC proposes to  
16 provide may not be less than NHC's total service long-run incremental cost of providing service.

17           19.     Staff states that in general, rates for competitive services are not set according to rate  
18 of return regulation. Staff believes that NHC's rates will be heavily influenced by the market.<sup>19</sup> Staff  
19 reviewed NHC's proposed tariff pages and the rate comparison information of other CLECs and  
20 ILECs. Staff believes that NHC's proposed rates are comparable to the rates charged by CLECs and  
21 ILECs providing service in Arizona.<sup>20</sup> Therefore, Staff states that while it considered the fair value  
22 rate base ("FVRB") information provided by NHC, that information was not afforded substantial  
23 weight in Staff's analysis.<sup>21</sup>

24 . . .

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25 <sup>15</sup> Exhibit S-1 at 2.

26 <sup>16</sup> Id.

27 <sup>17</sup> Id.

28 <sup>18</sup> Id.

<sup>19</sup> Id. at 3.

<sup>20</sup> Id.

<sup>21</sup> Id.

1 **Local Exchange Carrier Specific Issues**

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

6 21. Pursuant to A.A.C. R14-2-1204(A), all telecommunications service providers that  
7 interconnect to the public switch telephone network shall provide funding for the AUSF. NHC shall  
8 make payments to the AUSF described under A.A.C. R14-2-1204(B).

9 22. In Commission Decision No. 74208 (December 3, 2013), the Commission approved  
10 quality of service standards for Qwest to insure customers received a satisfactory level of service. In  
11 this matter, Staff believes NHC should be ordered to abide by those service standards.

12 23. In areas where NHC is the only local exchange service provider, Staff recommends  
13 that NHC be prohibited from barring access to alternative local exchange service providers who wish  
14 to serve the area.

15 24. NHC will provide all customers with 911 and E911 service where available, or will  
16 coordinate with ILECs and emergency service providers to facilitate the service.

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

20 26. NHC must offer Last Call Return service, which will not allow the return of calls to  
21 the telephone numbers that have the privacy indicator activated.

22 **Complaint Information**

23 27. NHC's application states that Nevada temporarily revoked NHC's authority to provide  
24 telecommunications services in 2009 and 2014 due to NHC's failure to pay annual assessments and  
25 to timely comply with filing requirements.<sup>22</sup> However, Staff has confirmed that NHC's authority has  
26 since been reinstated.<sup>23</sup>

27 \_\_\_\_\_  
28 <sup>22</sup> Ex. A-1 at (A-18).

<sup>23</sup> Ex. S-1 at 4.

1 28. NHC's application also indicates that Texas revoked NHC's long distance authority in  
 2 2011 for failure to file an annual report and NHC's local exchange authority in 2014 for failure to file  
 3 a CLEC renewal. NHC's authority to provide long distance<sup>24</sup> and local exchange services have been  
 4 reinstated.<sup>25</sup>

5 29. NHC states that none of its officers, directors, partners, or managers have been  
 6 involved in any civil or criminal investigations, or been convicted of any criminal acts within the last  
 7 ten (10) years.<sup>26</sup>

8 30. NHC's application and data responses disclosed thirteen (13) complaints filed against  
 9 it over the past five (5) years. NHC explained that seven (7) of the complaints were related to the  
 10 underlying ILEC's service issues; four (4) complaints were billing issues that NHC resolved; one (1)  
 11 complaint related to a porting issue caused by the customer's former service provider; and one (1)  
 12 complaint was mistakenly filed against NHC. According to NHC, all of the complaints have been  
 13 resolved and closed.<sup>27</sup>

14 31. Staff states that the Commission's Consumer Services Section reported that no  
 15 complaints, inquiries, or opinions have been filed against NHC through April 23, 2015.

16 32. As of the date of the hearing, NHC had no complaints filed with the Federal  
 17 Communications Commission.

### 18 Competitive Review

19 33. NHC's application requests that its proposed telecommunications services in Arizona  
 20 be classified as competitive. Staff believes NHC's proposed services should be classified as  
 21 competitive because NHC will have to compete with CLECs and ILECs to gain customers; there are  
 22 alternative providers to NHC's proposed services; ILECs hold a virtual monopoly in local exchange  
 23 and IXC markets; and that NHC will not have the ability to adversely affect the local exchange or  
 24 IXC markets in Arizona.<sup>28</sup>

25 <sup>24</sup> Id. at 4-5.

26 <sup>25</sup> Official notice is taken of NHC's CC&N found at Public Utility Commission of Texas, Filings,  
[https://www.puc.texas.gov/industry/communications/directories/clec/report\\_clec.aspx?ID=CLSQL01DB1245455300001](https://www.puc.texas.gov/industry/communications/directories/clec/report_clec.aspx?ID=CLSQL01DB1245455300001),  
 27 (last visited on July 27, 2015), which indicates NHC's local exchange authority was certificated on May 18, 2015.

<sup>26</sup> Ex. S-1 at 5.

<sup>27</sup> Id.

28 <sup>28</sup> Id. at 5-8.



1 IT IS FURTHER ORDERED that New Horizons Communications Corp. dba NHC  
2 Communications, Inc.'s telecommunications services are competitive in Arizona.

3 IT IS FURTHER ORDERED that if New Horizons Communications Corp. dba NHC  
4 Communications, Inc. fails to comply with the Staff conditions described in Finding of Fact No. 7,  
5 the Certificate of Convenience and Necessity granted herein shall be considered null and void after  
6 due process.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10  
11 CHAIRMAN \_\_\_\_\_ COMMISSIONER

12  
13 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

14  
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 \_\_\_\_\_ day of \_\_\_\_\_ 2015.

20 \_\_\_\_\_  
21 JODI JERICH  
22 EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_

24 DISSENT \_\_\_\_\_  
25 SP:ru

1 SERVICE LIST FOR:

NEW HORIZONS COMMUNICATIONS CORP. DBA  
NHC COMMUNICATIONS, INC.

2

3 DOCKET NO.:

T-20529A-14-0392

4

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