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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

AUG 26 2015

DOCKETED BY 

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. 75236

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.¹

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

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 ¹ Exhibit S-1 at 1.

² 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.³ Mr. Nelson

27
 28 ³ Transcript at 8.

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

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

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.⁶

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.⁷ According to Staff, the one complaint has been resolved
8 and closed.⁸

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.⁹ 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.¹⁰

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").¹¹ 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.¹² NHC will use CenturyLink technicians or third-party contractors for maintenance and
18 repair issues.¹³

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.¹⁴

23 ⁴ Tr. at 10.

24 ⁵ Id. at 7-8.

25 ⁶ Ex. S-1 at 1.

26 ⁷ Id.

27 ⁸ Id.

28 ⁹ Id.

¹⁰ Tr. at 11-12.

¹¹ Ex. S-1 at 2.

¹² Id at 1-2; Tr. at 12.

¹³ Ex. S-1 at 2.

¹⁴ 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 \$80,000.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰ 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.²¹

24 ...
25 _____
¹⁵ Exhibit S-1 at 2.

26 ¹⁶ Id.

27 ¹⁷ Id.

28 ¹⁸ Id.

¹⁹ Id. at 3.

²⁰ Id.

²¹ 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.²² However, Staff has confirmed that NHC's authority has
26 since been reinstated.²³

27 _____
28 ²² Ex. A-1 at (A-18).

²³ 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 distance²⁴ and local exchange services have been
4 reinstated.²⁵

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.²⁶

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.²⁷

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.²⁸

25 ²⁴ Id. at 4-5.

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

27 ²⁶ Ex. S-1 at 5.

28 ²⁷ Id.

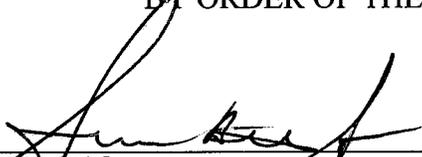
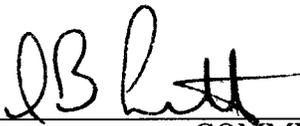
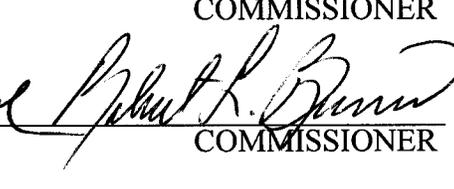
²⁸ Id. at 5-8.

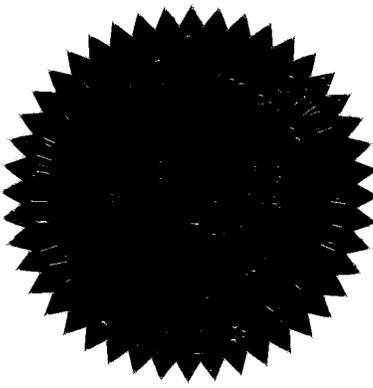
1 IT IS FURTHER ORDERED that New Horizons Communications Corp. dba NHC
2 Communications, Inc.'s telecommunications services are competitive in Arizona.

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.

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11  
12 CHAIRMAN COMMISSIONER
13   
14 COMMISSIONER COMMISSIONER COMMISSIONER



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 26th day of August 2015.

20 
21 JODI JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT _____

24 DISSENT _____
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1 SERVICE LIST FOR: NEW HORIZONS COMMUNICATIONS CORP. DBA
2 NHC COMMUNICATIONS, INC.

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