

OPEN MEETING ITEM

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



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ARIZONA CORPORATION COMMISSION

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DATE:

DECEMBER 14, 2015 DEC 14 AM 11:17

Arizona Corporation Commission

DOCKETED

DOCKET NO.:

T-20912A-14-0300

DEC 14 2015

TO ALL PARTIES:

DOCKETED BY

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:

RCLEC, INC.
(CC&N / RESOLD & 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 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 23, 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:

JANUARY 12, 2016

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.

JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
4 BOB BURNS
5 DOUG LITTLE
5 TOM FORESE
6

7 IN THE MATTER OF THE APPLICATION OF
8 RCLEC, INC. FOR APPROVAL OF A
9 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20912A-14-0300

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: November 18, 2015

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Sasha Paternoster

13 APPEARANCES: Mr. Michael W. Patten, SNELL & WILMER, L.L.P., on
14 behalf of the Applicant; and

15 Mr. Robert Geake, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
17 Corporation Commission.

17 **BY THE COMMISSION:**

18 On August 12, 2014, RCLEC, Inc. ("RCLEC") filed with the Arizona Corporation Commission
19 ("Commission"), an application for a Certificate of Convenience and Necessity ("CC&N") to provide
20 resold and facilities-based local exchange and resold and facilities-based long distance
21 telecommunications services within the State of Arizona. RCLEC also petitioned for a determination
22 that its proposed services should be classified as competitive.

23 On September 12, 2014, Michael W. Patten filed a Notice of Appearance on behalf of RCLEC.

24 Also on September 12, 2014, RCLEC filed an amendment to its application to include responses
25 to Question B-4 of the application.

26 On November 12, 2014, RCLEC filed Responses to the Commission's Utilities Division's
27 ("Staff") First Set of Data Requests and included an amended response to Question A-1, indicating
28 RCLEC also seeks authority to provide private line services in Arizona.

1 On January 5, 2015, RCLEC filed Responses to Staff’s Second Set of Data Requests.

2 On March 11, 2015, RCLEC filed a supplement to its application, updating its response to
3 Section A-18 of the application and updating its tariffs.

4 On March 13, 2015, Mr. Patten filed a Notice of Filing Change of Law Firm.

5 On March 25, 2015, RCLEC filed a second supplement to its application, making additional
6 updates to its response to Section A-18 of the application.

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

9 On June 2, 2015, RCLEC filed Responses to Staff’s Third Set of Data Requests.

10 On September 10, 2015, Staff filed a Staff Report recommending approval of RCLEC’s
11 application, subject to certain conditions.

12 On September 16, 2015, a Procedural Order was issued setting the date for hearing of November
13 18, 2015, and establishing other procedural deadlines.

14 On October 1, 2015, RCLEC filed a Request to Appear Telephonically (“Request”) for the
15 November 18, 2015 hearing, stating the witness, Jeff Slater, lives out-of-state and it would necessitate
16 significant travel time for Mr. Slater to appear for what is generally a brief hearing.

17 On October 9, 2015, by Procedural Order, RCLEC’s Request was granted.

18 On October 14, 2015, RCLEC filed its Notice of Filing Affidavit of Publication indicating that
19 notice of the amended application and hearing date had been published in *The Arizona Republic*, a
20 newspaper of general circulation in Arizona.

21 On November 18, 2015, a full public hearing was held as scheduled before a duly authorized
22 ALJ of the Commission. RCLEC and Staff appeared through counsel and presented testimony and
23 evidence. No members of the public appeared to give comments on the application.

24 * * * * *

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

27 **FINDINGS OF FACT**

28 1. RCLEC is a foreign limited liability corporation organized under the laws of Delaware,

1 with its headquarters located in California.¹

2 2. RCLEC is wholly owned by RingCentral, Inc. ("RingCentral"), a reincorporated
3 company out of Delaware.²

4 3. On August 12, 2014, RCLEC filed with the Commission, an application for a CC&N to
5 provide resold and facilities-based local exchange and resold and facilities-based long distance
6 telecommunications services within the State of Arizona. RCLEC also petitioned for a determination
7 that its proposed services should be classified as competitive.

8 4. On October 2, 2014, RCLEC amended its application to include a request for the authority
9 to provide private line services in Arizona.

10 5. RCLEC currently has authority to provide resold or facilities-based local exchange
11 and/or resold or facilities-based long distance services in twenty-seven (27) jurisdictions, thirteen (13)
12 in which the application states it is providing service.³

13 6. Notice of RCLEC's amended application was given in accordance with the law.

14 7. Staff recommends approval of RCLEC's amended application for a CC&N to provide
15 intrastate telecommunications services in Arizona, subject to the following conditions:

- 16 a. RCLEC comply with all Commission Rules, Orders, and other requirements
17 relevant to the provision of intrastate telecommunications services;
- 18 b. RCLEC abide by the quality of service standards that were approved by the
Commission for Qwest in Docket No. T-01051B-13-0199;
- 19 c. RCLEC be prohibited from barring access to alternative local exchange service
20 providers who wish to serve areas where RCLEC is the only local provider of
local exchange service facilities;
- 21 d. RCLEC notify the Commission immediately upon changes to RCLEC's name,
22 address or telephone number;
- 23 e. RCLEC cooperate with Commission investigations including, but not limited to,
customer complaints;
- 24 f. The rates proposed by this filing are for competitive services. In general, rates
25 for competitive services are not set according to rate of return regulation.
26 RCLEC indicated that at the end of the first twelve months of operation the net
book value of all Arizona assets that could be used in the provision of
telecommunications service to Arizona customers will be \$0. The rate to be

27 ¹Exhibit S-1 at 2.

28 ²Id.

³Ex. S-1 at 13; Transcript at 11.

ultimately charged by RCLEC will be heavily influenced by the market. Therefore, while Staff considered the fair value rate based on information submitted by RCLEC, the fair value information provided was not given substantial weight in this analysis;

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

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

- a. RCLEC shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of a Decision in this matter or 30 days prior to providing service to its first customer, whichever comes first. The tariffs submitted shall coincide with the application;
- b. RCLEC shall notify the Commission through a compliance filing within (30) thirty days of the commencement of service to its first customer;
- c. RCLEC shall abide by the Commission adopted rules that address Universal Service in Arizona. Arizona Administrative Code ("A.A.C.") R-14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R-14-2-1204(B).

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

Technical Capability

10. RCLEC intends to operate as a wholesale carrier and offer telecommunications services to other providers. RCLEC states it will not be providing services to end users.⁴

11. RCLEC's current system consists of transport circuits connected to high-capacity soft switches and media gateways in carrier hotels in New York, Miami, Dallas, Los Angeles, San Francisco, and Chicago with plans of constructing a nationwide network.⁵

⁴ Ex. S-1 at 1; Tr. at 8-9.

⁵ Ex. S-1 at 2.

1 12. According to RCLEC, customer traffic will be picked up at a super Point of
2 Presence, either in Vienna, Virginia or San Jose, California, at carrier hotels where RingCentral's
3 equipment and RCLEC's customer equipment will be collocated, at which point the traffic will
4 be transported across RCLEC's network to the appropriate switch for routing to a terminating
5 carrier.⁶

6 13. RCLEC's Arizona network will consist of high capacity trunks between incumbent
7 local exchange carriers ("ILECs") and RCLEC, and backhaul facilities from other carriers to
8 connect to ILEC access tandems or other points of interconnection in order to route traffic for
9 RCLEC's carrier customers' end users. This traffic will be routed to RCLEC's San Jose switch
10 and media gateway.⁷

11 14. RCLEC does not initially intend to construct Arizona network facilities but, rather,
12 lease or purchase unbundled network elements from ILECs or other Arizona carriers.⁸ RCLEC
13 intends to negotiate interconnection agreements with CenturyLink, XO, AT&T, and Verizon to
14 lease connection and transport facilities.⁹

15 15. RCLEC provides customer service 24x7x365 days. RCLEC's customer service
16 representatives can be reached via a 1-888 number and all complaints will be handled directly by
17 Mr. Jeff Slater, RCLEC's senior director of Voice Gateways.¹⁰

18 16. RCLEC seeks authority to offer private line services and may resell CenturyLink's
19 intrastate long distance service, if there is sufficient market demand.¹¹

20 17. RCLEC's security measures include fault tolerant, redundant Sonus networks and
21 Fujitsu network platforms that are connected to fully redundant circuits provided by ILECs and
22 other transport providers, which are housed in secure collocation facilities with secure entry and
23 access.¹²

24
25 _____
⁶ Ex. S-1 at 2.

⁷ Id.

⁸ Id.

⁹ Id. at 2-3.

¹⁰ Id. at 2.

¹¹ Id. at 3.

¹² Id.

1 18. RCLEC's team of officers and managers have a combined total of seventy-two (72)
2 years' experience in the telecommunications industry.¹³

3 **Financial Capabilities**

4 19. RCLEC provided confidential financial statements for the year ending 2014
5 through July 2015, and indicated it will rely on the financial resources of its parent company,
6 RingCentral, given RCLEC's startup status. RingCentral's consolidated financial statements for
7 the twelve (12) months ending December 31, 2014 listed total assets of \$188,337,000; total equity
8 of \$96,505,000; and a net income of negative \$48,340,000.¹⁴ RingCentral's consolidated
9 financial statements ending June 30, 2015 listed total assets of \$202,894,000; total equity of
10 \$100,148,000; and a net income of negative \$18,822,000.¹⁵

11 **Rates and Charges**

12 20. Staff believes that RCLEC will have to compete with other ILECs, and various
13 competitive local exchange carriers ("CLECs"), and interexchange carriers ("IXCs") in Arizona
14 in order to gain new customers.¹⁶ Staff states it does not believe RCLEC will be able to exert
15 market power given its status as a new entrant in the market which should result in just and
16 reasonable rates.¹⁷

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

20 22. RCLEC projects that for the first twelve months of operation in Arizona, it will
21 have a net book value of \$0.¹⁸

22 23. Staff states that in general, rates for competitive services are not set according to
23 rate of return regulation. Staff believes that RCLEC's rates will be heavily influenced by the
24 market.¹⁹ Therefore, Staff states that while it considered the fair value rate base ("FVRB")

25 ¹³ Ex. S-1 at 2.

26 ¹⁴ Id. at 3.

27 ¹⁵ Id.

28 ¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 4.

¹⁹ Id.

1 information submitted by RCLEC, that information was not afforded substantial weight in Staff's
2 analysis.²⁰

3 **Local Exchange Carrier Specific Issues**

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

8 25. Pursuant to A.A.C. R14-2-1204(A), all telecommunication service providers that
9 interconnect to the public switched telephone network shall provide funding for the AUSF.
10 RCLEC shall make payments to the AUSF described under A.A.C. R14-2-1204(B).

11 26. In Commission Decision No. 74208 (December 3, 2013), the Commission
12 approved quality of service standards for Qwest (now CenturyLink) to insure customers received
13 a satisfactory level of service. In this matter, Staff believes RCLEC should be ordered to abide
14 by those service standards.

15 27. In areas where RCLEC is the only local exchange service provider, Staff
16 recommends that RCLEC be prohibited from barring access to alternative local exchange service
17 providers who wish to serve the area.

18 28. If RCLEC begins to provide voice local exchange service, RCLEC will provide all
19 customers with 911 and E911 service where available, or will coordinate with ILECs and
20 emergency service providers to facilitate the service.

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

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

26 ...

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28 ²⁰ Id.

1 **Complaint Information**

2 31. RCLEC states that no state has ever denied one of its applications for authority to
3 provide service. RCLEC further states that none of RCLEC's officers, directors, or partners have
4 been involved in any civil or criminal investigations, or been convicted of any criminal acts
5 within the last ten (10) years. RCLEC indicates there are no pending civil or criminal proceedings
6 or threatened litigation against RCLEC.²¹

7 32. RCLEC's application identified a federal intellectual property case in which
8 RingCentral was involved, but has since been resolved, pertaining to a patent issue that involved
9 a technology not utilized by RCLEC.²²

10 33. In processing RCLEC's application, Staff uncovered three more cases in which
11 RCLEC's parent company was named as a defendant.²³ RCLEC indicated these cases also have
12 been resolved and involved technologies not used by RCLEC. Although two of RCLEC's
13 officers worked on the settlements in these cases, RCLEC states no RCLEC officers were named
14 as defendants and that these cases do not have a bearing on RCLEC's present application.²⁴

15 34. Staff contacted the Public Utility Commissions in Texas, Florida, New York, and
16 Nevada and found that RCLEC is authorized to provide telecommunications services in these
17 states and that no complaints have been filed against RCLEC.²⁵

18 35. Staff states that the Commission's Consumer Services Section reported that no
19 complaints, inquiries, or opinions have been filed against RCLEC from January 1, 2011 to
20 September 10, 2015. According to Staff, RCLEC is in good standing with the Commission's
21 Corporation Division.²⁶

22 36. As of the filing of the Staff Report, RCLEC had no complaints filed with the
23 Federal Communications Commission ("FCC").

24 . . .

25 ²¹ Ex. S-1 at 5.

26 ²² Id. See *J2 and Advanced Messaging Technologies, Inc. v. RingCentral, Inc.*, 2:11-cv-04686-DDP-AJW (C.D. Cal.).

27 ²³ *One Number Corp. v. RingCentral, Inc.*, 1:09-cv-003897 (S.D. Ind.); *Telnit Technologies, LLC. V. RingCentral, Inc.*, 2-
21-CV-00697 (E.D. Tex.); *CallWave Communications, LLC v. RingCentral, Inc.*, 1:12-cv-01748 (D.Del.).

28 ²⁴ Id. at 6.

²⁵ Id.

²⁶ Id.

1 **Competitive Review**

2 37. RCLEC's application requests that its proposed services in Arizona be classified
3 as competitive. Staff believes RCLEC's proposed services should be classified as competitive
4 because RCLEC will have to compete with CLECs and ILECs to gain customers; there are
5 alternative providers to RCLEC's proposed services; ILECs hold a virtual monopoly in local
6 exchange and IXC markets; and that RCLEC will not have the ability to adversely affect the local
7 exchange or IXC markets in Arizona.²⁷

8 38. Based on the above factors, Staff concludes that RCLEC's proposed services
9 should be classified as competitive.

10 39. Staff's recommendations are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

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

14 2. The Commission has jurisdiction over RCLEC and the subject matter of the application.

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

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
17 CC&N to provide competitive telecommunications services.

18 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
19 Statutes, it is in the public interest for RCLEC to provide the telecommunications services set forth in
20 its application.

21 6. The telecommunications services RCLEC intends to provide are competitive within
22 Arizona.

23 7. RCLEC's FVRB is not useful in determining just and reasonable rates for the
24 competitive services it proposes to provide to Arizona customers.

25 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
26 is just and reasonable and in the public interest for RCLEC to establish rates and charges that are not
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²⁷ Id. at 6-10.

1 less than RCLEC's total service long-run incremental costs of providing the competitive services
2 approved herein.

3 9. Staff's recommendations are reasonable and should be adopted.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the application of RCLEC, Inc. for a Certificate of
6 Convenience and Necessity to provide resold and facilities-based local exchange, resold and facilities-
7 based interexchange long distance, and private line telecommunications services on a statewide basis
8 in Arizona is hereby approved, subject to the conditions set forth herein in Findings of Fact Nos. 7 and
9 8.

10 IT IS FURTHER ORDERED that RCLEC, Inc.'s telecommunications services are competitive
11 in Arizona.

12 IT IS FURTHER ORDERED that if RCLEC, Inc. fails to comply with the Staff conditions
13 described in Finding of Fact No. 8, the Certificate of Convenience and Necessity granted herein shall
14 be considered null and void after due process.

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1 IT IS FURTHER ORDERED that RCLEC, Inc. shall docket conforming tariffs for each service
2 within its Certificate of Convenience and Necessity within 365 days of the effective date of this
3 Decision or 30 days prior to serving its first customer, whichever comes first. The tariffs submitted
4 shall coincide with the application in this matter.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN _____ COMMISSIONER

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12
13 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
14 of the Arizona Corporation Commission, have hereunto set my
15 hand and caused the official seal of the Commission to be affixed
16 at the Capitol, in the City of Phoenix, this _____ day
17 of _____ 2016.

18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 SP:tv(ru)

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1 SERVICE LIST FOR:

RCLEC, INC.

2 DOCKET NO.:

T-20912A-14-0300

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