OPEN MEETING ITEM

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
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ARIZONA CORPORATION COMMISSION

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2015 DEC 23 P 2: 47

AZ CORP COMMISSION
DOCKET CONTROL

DATE: DECEMBER 23, 2015

DOCKET NO.: T-20913A-15-0191

TO ALL PARTIES:

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

MOBILITIE, LLC
(CC&N)

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:

JANUARY 4, 2016

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.

Arizona Corporation Commission
DOCKETED
DEC 23 2015
DOCKETED BY

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 SABernal@azcc.gov.

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 MOBILITIE, LLC FOR APPROVAL TO PROVIDE RADIO FREQUENCY TRANSPORT SERVICES TO ENABLE OTHER CARRIERS, INCLUDING, BUT NOT LIMITED TO, WIRELESS TELECOMMUNICATIONS SERVICE PROVIDERS, TO PROVISION THE DIRECT TRANSMISSION OF VOICE COMMUNICATIONS AND DATA SERVICES IN ARIZONA.	DOCKET NO. T-20913A-15-0191 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARING:	October 19, 2015
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Belinda A. Martin
APPEARANCES:	Mr. Michael Sillyman, KUTAK ROCK, LLP, on behalf of Mobilitie, LLC; and Ms. Maureen Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On June 9, 2015, Mobilitie, LLC ("Mobilitie" or "Company"), filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N" or "Certificate") to provide radio frequency transport services to enable other carriers, including, but not limited to, wireless telecommunications service providers, to provision the direct transmission of voice communications and data services in Arizona ("Application").

. . .

2. On July 6, 2015, Staff filed a Letter of Sufficiency stating that the Application was sufficient pursuant to Arizona Administrative Code ("A.A.C.") R14-2-502.

3. On July 30, 2015, a Procedural Order was filed setting the hearing in the matter for October 19, 2015.

4. On August 17, 2015, Mobilitie filed its Affidavit of Publication.

5. Mobilitie docketed responses to Staff Data Requests on August 20 and 21, and September 2 and 4, 2015.

6. Staff filed its Staff Report on September 18, 2015.

7. On October 19, 2015, a full public hearing was held before the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared through counsel and presented evidence and testimony. No members of the public appeared to give public comments in this matter.

8. Staff recommends approval of Mobilitie's Application for a CC&N and its petition for a determination that its proposed telecommunications services should be classified as competitive.

9. Staff further recommends that:

a. Mobilitie comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;

b. Mobilitie be required to notify the Commission immediately upon changes to Mobilitie's name, address or telephone number;

c. Mobilitie cooperate with Commission investigations including, but not limited to customer complaints;

d. Although Staff considered the fair value rate base ("FVRB") information submitted by Mobilitie, the fair value information provided should not be given substantial weight; and

e. Mobilitie's rates should be classified as competitive.

10. Staff further recommends that Mobilitie comply with the following conditions within the timeframes outlined below or Mobilitie's CC&N should be considered null and void, after due process.

a. Staff recommends that Mobilitie docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted to the Commission should coincide with the Application.

b. Staff recommends that Mobilitie notify the Commission through a compliance filing within 30 days of the commencement of service to its first customer.

c. Staff recommends that, 30 days prior to the commencement of offering service, Mobilitie notify the Commission of its customer support address, phone number, and email address.

d. Staff recommends that Mobilitie abide by the Commission-adopted rules that address Universal Service in Arizona, A.A.C. R14-2-1204(B), requiring Mobilitie to make the necessary monthly payments into the Arizona Universal Service Fund ("AUSF").

Technical Capabilities

11. Mobilitie is a foreign limited liability company organized under the laws of the State of Nevada and authorized to transact business in Arizona, with its headquarters in California.

12. The Company is a wireless infrastructure provider which funds, deploys and operates indoor and outdoor neutral host Distributed Antennae Systems, Small Cell and Wi-Fi networks, communication tower sites and other infrastructure used by wireless carriers, emergency responders, public safety agencies, backhaul providers and other similar companies. Mobilitie plans to build this infrastructure in Arizona and/or deploy equipment within the Arizona statewide geographic market with specific locations based on market and customer demand.

13. Mobilitie is authorized to provide various telecommunications services in 46 states, and is currently providing service in 18 of the jurisdictions. The Company anticipates beginning service in Arizona as soon as practicable.

14. Staff noted that the officers and management team for Mobilitie have a combined total of 53 years' experience in the telecommunications industry.

15. Mobilitie's Network Operations Center located in Sacramento, California, provides customer service 24/7, 365 days a year. Mobilitie does not have any employees in Arizona, but it may in the future.

16. Given the foregoing, Staff concludes that Mobilitie has the technical capabilities to provide the telecommunications services it seeks to provide in Arizona.

Financial Capabilities

17. Mobilitie provided audited consolidated confidential financial statements with notes for Mobilitie and its subsidiaries for 2013 and 2014. For the twelve-month period ending December 31,

2013, Mobilitie reported total assets of $103,576,067; total equity of $81,007,882, and net income of negative $2,326,250. The financial statement for the twelve-month period ending December 31, 2014, lists total assets of $96,015,376, total equity of $59,178,686, and net income of negative $29,124.

Rates and Charges

18. Pursuant to A.A.C. R-14-2-1109, Mobilitie may charge rates for services that are not less than its total service long-run incremental costs of providing service.

19. Information provided to Staff projected Mobilitie's FVRB to be zero within twelve months of beginning its operations.

20. Given the competitive markets in which the Company will operate, Mobilitie's FVRB may not be useful as the sole determinant of rates.

21. Mobilitie's proposed rates are for competitive services. In general, rates for competitive services are not set according to the rate of return regulation.

22. Based on Staff's review, Mobilitie's proposed rates are comparable with other competitive carriers operating in Arizona.

23. Mobilitie's FVRB should not be given substantial weight in this analysis.

24. Mobilitie's proposed rates are just and reasonable and should be approved.

Complaint Information

25. During Staff's search of the Federal Communication Commission ("FCC") website, Staff found three 2011 FCC Notices of Violation ("NOV") issued against Mobilitie Investments II, LLC, for failure to post an Antenna Structure Registration Number at the base of an antenna structure. At the time, Mobilitie Investments II, LLC was solely owned by Mobilitie Partners II, LLC, which, in turn, is solely owned by Mobilitie. The Company asserts these NOVs were minor administrative issues, and the underlying violations were inadvertent.

26. Staff noted that Mobilitie had proceedings against it filed in eight[1] states for failure to timely comply with annual reporting obligations and/or for failure to pay corporation assessments. Mobilitie advised Staff that it is now compliant with all state regulations. The Company has retained

[1] Nevada, Wyoming, Nebraska, Rhode Island, South Carolina, Oregon, Kansas, and Tennessee.

the services of a third-party compliance reporting provider and Mobilitie asserted it will meet all compliance obligations in a timely manner.

46. Staff contacted other Public Utilities Commissions in states where the Company is authorized to provide telecommunications services to inquire about any customer complaints and found that no customer complaints have been filed against Mobilitie.

47. None of Mobilitie's officers, directors or partners have been involved in any civil or criminal investigations, or formal or informal complaints, and none of its officers, directors or partners have been convicted of any criminal acts in the past ten years.

48. According to Staff, the Corporations Division reported that Mobilitie is in good standing.

Competitive Services Analysis

49. Mobilitie has requested that its telecommunications services in Arizona be classified as competitive. Mobilitie's proposed services should be classified as competitive because there are alternatives to the Company's proposed services; interexchange carriers ("IXCs") hold a substantial share of the private line service market; Mobilitie will have to convince customers to purchase its services; Mobilitie has no ability to adversely affect the local exchange or interexchange market as several competitive local exchange carriers ("CLECs") and incumbent local exchange carriers ("ILECs") provide private line service; and Mobilitie, therefore, will have no market power in those markets where alternative providers to private line telecommunications services exist.

50. Staff's recommendations are reasonable and should be adopted.

CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over Mobilitie and the subject matter of the Application.

3. Notice of the Application was given in accordance with the law.

4. A.R.S § 40-282 allows a telecommunications company to file an application for a

CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Mobilitie to provide the telecommunications services set forth in its Application.

6. Mobilitie is a fit and proper entity to receive a CC&N authorizing it to provide radio frequency transport services to enable other carriers, including, but not limited to, wireless telecommunications service providers, to provision the direct transmission of voice communications and data services in Arizona, subject to Staff's recommendations.

7. The telecommunications services that Mobilitie intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Mobilitie to establish rates and charges that are not less than the Mobilitie's total service long-run incremental costs of providing the competitive services approved herein.

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

10. Mobilitie's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the Application of Mobilitie, LLC for a Certificate of Convenience and Necessity for authority to provide radio frequency transport services to enable other carriers, including, but not limited to, wireless telecommunications service providers, to provision the direct transmission of voice communications and data services in Arizona is granted, subject to the conditions in Findings of Facts Nos. 9 and 10.

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IT IS FURTHER ORDERED that if Mobilitie, LLC fails to comply with the timeframes stated in Findings of Fact No. 10, the Certificate of Convenience and Necessity granted herein shall be considered null and void, after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

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

JODI JERICH
EXCUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BAM:tv(ru)

SERVICE LIST FOR: MOBILITIE, LLC

DOCKET NO.: T-20913A-15-0191

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