



0000167775

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

DOUG LITTLE – Interim Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
VACANT

JAN 19 2016

DOCKETED BY [Signature]

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. 75419

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”).

...

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

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

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

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

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

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

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

14          9.       Staff further recommends that:

- 15           a.       Mobilitie comply with all Commission Rules, Orders, and other requirements  
16 relevant to the provision of intrastate telecommunications services;
- 17           b.       Mobilitie be required to notify the Commission immediately upon changes to  
18 Mobilitie’s name, address or telephone number;
- 19           c.       Mobilitie cooperate with Commission investigations including, but not limited  
20 to customer complaints;
- 21           d.       Although Staff considered the fair value rate base (“FVRB”) information  
22 submitted by Mobilitie, the fair value information provided should not be given  
substantial weight; and
- 23           e.       Mobilitie’s rates should be classified as competitive.

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

- 27           a.       Staff recommends that Mobilitie docket conforming tariffs for each service  
28 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.

- 1           b.     Staff recommends that Mobilitie notify the Commission through a compliance  
2           filing within 30 days of the commencement of service to its first customer.
- 3           c.     Staff recommends that, 30 days prior to the commencement of offering service,  
4           Mobilitie notify the Commission of its customer support address, phone number,  
5           and email address.
- 6           d.     Staff recommends that Mobilitie abide by the Commission-adopted rules that  
7           address Universal Service in Arizona, A.A.C. R14-2-1204(B), requiring  
8           Mobilitie to make the necessary monthly payments into the Arizona Universal  
9           Service Fund ("AUSF").

### **Technical Capabilities**

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

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

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

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

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

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

### **Financial Capabilities**

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

1 2013, Mobilitie reported total assets of \$103,576,067; total equity of \$81,007,882, and net income of  
2 negative \$2,326,250. The financial statement for the twelve-month period ending December 31, 2014,  
3 lists total assets of \$96,015,376, total equity of \$59,178,686, and net income of negative \$29,124.

#### 4 **Rates and Charges**

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

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

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

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

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

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

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

#### 17 **Complaint Information**

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

24 26. Staff noted that Mobilitie had proceedings against it filed in eight<sup>1</sup> states for failure to  
25 timely comply with annual reporting obligations and/or for failure to pay corporation assessments.  
26 Mobilitie advised Staff that it is now compliant with all state regulations. The Company has retained  
27

28 <sup>1</sup> Nevada, Wyoming, Nebraska, Rhode Island, South Carolina, Oregon, Kansas, and Tennessee.

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

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

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

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

### 11 Competitive Services Analysis

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

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

### 21 CONCLUSIONS OF LAW

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

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

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

27 4. A.R.S § 40-282 allows a telecommunications company to file an application for a  
28

1 CC&N to provide competitive telecommunications services.

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

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

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

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

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

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

18 **ORDER**

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

24 ...  
25 ...  
26 ...  
27 ...  
28 ...

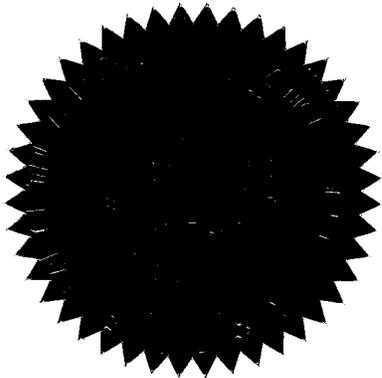
1 IT IS FURTHER ORDERED that if Mobilitie, LLC fails to comply with the timeframes stated  
2 in Findings of Fact No. 10, the Certificate of Convenience and Necessity granted herein shall be  
3 considered null and void, after due process.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

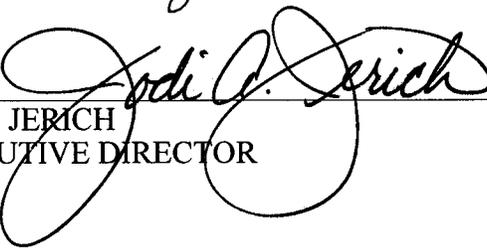
6  
7  
8  
9  
10

 CHAIRMAN	Vacant	 COMMISSIONER
 COMMISSIONER	COMMISSIONER	 COMMISSIONER



11  
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 19th day  
17 of January 2016.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
BAM:tv(ru)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SERVICE LIST FOR: MOBILITIE, LLC  
DOCKET NO.: T-20913A-15-0191

Michael Sillyman  
KUTAK ROCK, LLC  
8601 North Scottsdale Road, Suite 300  
Scottsdale, AZ 85253

Vineetha Pillai  
MARASHLIAN & DONAHUE, LLC  
1420 Spring Hill Road, Suite 401  
McLean, VA 22102

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Thomas M. Broderick, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007