

OPEN MEETING ITEM



0000167991

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



ARIZONA CORPORATION COMMISSION RECEIVED

2015 DEC 28 P 2:59

ORIGINAL

DATE: DECEMBER 28, 2015
DOCKET NO.: T-01072A-14-0208

TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Teena Jibilian. The recommendation has been filed in the form of an Opinion and Order on:

SOUTHWESTERN TELEPHONE COMPANY
(DEREGULATE VOICE MAIL SERVICES)

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 6, 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 28 2015

JODI JERICHI
EXECUTIVE DIRECTOR

DOCKETED BY

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

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

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

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
SOUTHWESTERN TELEPHONE COMPANY, AN
ARIZONA CORPORATION, TO DEREGULATE
VOICE MAIL SERVICES.

DOCKET NO. T-01072A-14-0208

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: September 30, 2015
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Jibilian
APPEARANCES: Craig A. Marks, PLC, on behalf of Applicant
Southwestern Telephone Company; and
Ms. Maureen Scott, Senior Staff Counsel, 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
Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 25, 2014, Southwestern Telephone Company ("Southwestern Telephone")
filed with the Arizona Corporation Commission ("Commission") an application to deregulate its voice
mail services pursuant to A.R.S. § 40-281 and for withdrawal of the tariffs applicable to such services.
2. On April 30, 2015, a Procedural Order was issued setting a hearing and associated
procedural deadlines in this matter.
3. On May 14, 2015, at Southwestern Telephone's request, a telephonic procedural

1 conference was convened. Southwestern Telephone and the Commission's Utilities Division ("Staff")
2 appeared through counsel. Southwestern Telephone stated that the publication deadlines set forth in
3 the April 30, 2015, Procedural Order did not allow sufficient time for Southwestern Telephone to
4 comply, and requested that the hearing schedule be extended for approximately 60 days. Southwestern
5 Telephone and Staff agreed that it would be reasonable to schedule the hearing on the application in
6 the latter part of September, with associated changes to the procedural deadlines set by the April 30,
7 2015 Procedural Order.

8 4. On May 15, 2015, by Procedural Order, the hearing in the above-captioned matter was
9 continued to September 30, 2015.

10 5. On August 28, 2015, Staff filed its Staff Report recommending approval of the
11 application.

12 6. On September 30, 2015, a hearing on the application was convened before a duly
13 authorized Administrative Law Judge of the Commission. Southwestern Telephone and Staff appeared
14 through counsel, presented testimony and evidence through witnesses, and were provided an
15 opportunity to cross examine witnesses. No members of the public appeared to provide public
16 comment.

17 7. On September 30, 2015, Southwestern Telephone filed a Proof of Notice indicating
18 payment for publication of notice in the *Parker Pioneer* and *Quartzite Times* on July 29, 2015, and
19 indicating payment for mailings to each customer on July 29, 2015.

20 8. On October 2, 2015, Southwestern Telephone filed a Supplemental Proof of Notice to
21 which was attached a copy of the notice required by the April 30, 2015 Procedural Order issued in this
22 docket.

23 9. Following the parties' submission of evidence, the matter was taken under advisement
24 pending the submission of a Recommended Opinion and Order.

25 **Southwestern Telephone**

26 10. Southwestern Telephone is an Arizona public service corporation engaged in the
27 business of providing telephone utility service to the public in La Paz County, Arizona, in two
28 exchanges – Salome and Quartzite.

1 11. Southwestern Telephone's current rates were authorized in Decision No. 74774
2 (October 24, 2014), based on a test year ended June 30, 2013.

3 12. Southwestern Telecom has approximately 1,600 access lines.

4 **Application**

5 13. The application requests that the Commission deregulate Southwestern Telephone's
6 voice mail services, and approve the withdrawal of Southwestern Telephone's filed tariffs applicable
7 to voice mail services.

8 14. Southwestern Telephone asserts that voice mail services are not essential or integral to
9 the public utility service it provides, and requests a Commission declaration, pursuant to A.R.S. § 40-
10 281(E), that voice mail service is not subject to Commission regulation.

11 15. Southwestern Telephone asserts that voice mail services do not constitute "transmitting
12 messages or furnishing public telegraph or telephone service" under Article 15, § 2 of the Arizona
13 Constitution. Arizona Telephone states in its application that voice mail service is totally independent
14 of basic telephone service. Southwestern Telephone states that voice mail does not involve transmitting
15 messages or furnishing telephone service, but rather permits callers to record a transmitted message
16 and permits recipients to store and retrieve recorded messages.

17 16. Southwestern Telephone states that unregulated voice mail services are currently
18 available to its customers, provided by independent voice mail carriers, competitive local exchange
19 carriers, and cellular carriers and marketers, and that in addition, customers can also purchase
20 answering machines rather than purchase voice mail services.

21 17. Southwestern Telephone asserts that due to the great variety of competitive offerings, it
22 is in the public interest to allow Southwestern Telephone to respond to its competitors' offerings and
23 market unregulated voice mail services.

24 18. Southwestern Telephone contends that its request is supported by Commission Decision
25 No. 68604, which granted authority for Qwest Corporation to provide deregulated voice mail services.

26 19. Approximately 40 of Southwestern Telephone's customers currently subscribe to voice
27 mail service.

28 20. Upon approval of its application, Southwestern Telephone would like to market

1 deregulated voice mail services to its customers currently not taking the current tariffed offering.

2 21. Southwestern Telephone agrees to grandfather all current voice mail subscribers at
3 current rates.

4 **Staff Report and Recommendations**

5 22. The Staff Report recommends approval of Southwestern Telephone's request, based on
6 the Commission's acceptance of Staff's analysis of the issue of voice messaging services in Docket
7 No. T-01051B-03-0454.

8 23. Staff's witness in Docket No. T-01051B-03-0454 analyzed the issue of voice messaging
9 service and concluded that voice messaging service is not essential and integral to basic telephone
10 service, but is discrete and separable from the public switched telephone network, and is subject to
11 private contracts.¹

12 **Conclusion**

13 24. The provision of voice mail services is neither essential nor integral to Southwestern
14 Telephone's provision of telecommunications services to its customers.

15 25. Staff's recommendation for approval of Southwestern Telephone's request is reasonable
16 and should be adopted.

17 **CONCLUSIONS OF LAW**

18 26. Southwestern Telephone is a public service corporation within the meaning of Article
19 15 of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

20 27. The Commission has jurisdiction over the Company and over the subject matter of this
21 proceeding.

22 28. The Company provided notice of this proceeding in accordance with law.

23 29. The provision of voice mail services is neither essential nor integral to Southwestern
24 Telephone's provision of telecommunications services to its customers, and pursuant to A.R.S. § 40-
25 281(E), is not subject to regulation by the Commission.

26
27 ¹ The Staff Report cites to the November 18, 2004 Direct Testimony of Matthew Rowell filed in Docket Nos. T-01051B-
28 03-0454 at pp. 46-51. The parties to that docket reached a Settlement Agreement in which the parties agreed that Qwest
Corporation had met the criteria for deregulation of voice mail service. That Settlement Agreement was approved by the
Commission in Decision No. 68604 (March 23, 2006).

1 IT IS FURTHER ORDERED that Southwestern Telephone Company is hereby authorized to
2 withdraw its filed voice mail service tariffs.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN _____ COMMISSIONER

8
9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
12 of the Arizona Corporation Commission, have hereunto set my
13 hand and caused the official seal of the Commission to be affixed
14 at the Capitol, in the City of Phoenix, this _____ day
15 of _____ 2016.

16 _____
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21 TJ:ru(tv)

22
23
24
25
26
27
28

1 SERVICE LIST FOR:

SOUTHWESTERN TELEPHONE COMPANY

2 DOCKET NO.:

T-01072A-14-0208

3 Craig A. Marks
4 CRAIG A. MARKS, PLC
5 10645 N. Tatum Blvd., Suite 200-676
6 Phoenix, AZ 85028
7 Attorney for Southwestern Telephone Company

8 Janice Alward, Chief Counsel
9 Maureen Scott, Senior Staff Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 W. Washington Street
13 Phoenix, AZ 85007

14 Thomas Broderick, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19
20
21
22
23
24
25
26
27
28