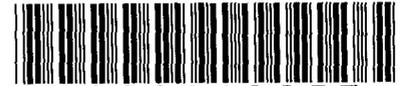


ORIGINAL

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

OPEN MEETING ITEM



0000169253

ARIZONA CORPORATION COMMISSION RECEIVED

**AZ CORP COMMISSION
DOCKET CONTROL**

DATE: MARCH 25, 2016

2016 MAR 25 PM 2 46

DOCKET NO.: T-20921A-14-0390

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Order on:

**DIAL WORLD COMMUNICATIONS, LLC
(CC&N / RESOLD)**

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:

APRIL 5, 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:

APRIL 12, 2016 AND APRIL 13, 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 A. JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

MAR 25 2016

DOCKETED BY

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

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 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF DIAL WORLD
9 COMMUNICATIONS, LLC FOR APPROVAL OF
10 AN APPLICATION FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 INTRASTATE TELECOMMUNICATIONS
13 SERVICES.

DOCKET NO. T-20921A-14-0390

DECISION NO. _____

ORDER

14 Open Meeting
15 April 12 and 13, 2016
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 On November 14, 2014, Dial World Communications, LLC (“DWC”) filed with the Arizona
19 Corporation Commission (“Commission”) an application for approval of a Certificate of Convenience
20 and Necessity (“CC&N”) to provide resold long distance telecommunications services within the State
21 of Arizona.

22 On December 19, 2014, DWC filed an Affidavit of Publication stating that notice of the
23 application had been published in the *Arizona Republic*, a newspaper of general circulation in the State
24 of Arizona.

25 On September 15, 2015, DWC filed an amendment to its application in which it updated
26 information contained in section (A-11) to include current proceedings in which DWC is involved in
27 North Carolina and Texas; section (A-12) to include details of a judgment and investigation involving
28 DWC in California; and section (A-18) to clarify the locations in which DWC has an application to
provide telecommunications services approved.

On September 16, 2015, DWC filed supporting documentation to its amendment filed on
September 15, 2015 that had inadvertently been withheld.

On October 27, 2015, DWC filed a notice of change in representation.

1 On March 4, 2016, the Commission’s Utilities Division (“Staff”) filed a Staff Report
2 recommending approval of DWC’s application, subject to certain conditions.

3 * * * * *

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

6 **FINDINGS OF FACT**

7 1. DWC is a foreign limited liability company organized under the laws of Delaware and
8 authorized to conduct business in Arizona.¹

9 2. On November 14, 2014, DWC filed an application with the Commission to provide
10 resold long distance telecommunications services on a statewide basis in Arizona. The application also
11 requested a determination that DWC’s proposed services are competitive in Arizona.

12 3. Notice of DWC’s application was given in accordance with the law.

13 4. Staff recommends approval of DWC’s application for a CC&N to provide intrastate
14 telecommunications services in Arizona, subject to the following conditions:

15 (a) DWC complies with all Commission Rules, Orders, and other requirements
16 relevant to the provision of intrastate telecommunications services;

17 (b) DWC maintains its accounts and records as required by the Commission;

18 (c) DWC files with the Commission all financial and other reports that the
19 Commission may require, and in a form and at such times as the Commission
may designate;

20 (d) DWC maintains on file with the Commission all current tariffs and rates, and
any service standards that the Commission may require;

21 (e) DWC file with the Commission tariffs which state that it does not require
22 deposits from its customers;

23 (f) DWC complies with the Commission’s rules and modify its tariffs to conform
24 to these rules if it is determined that there is a conflict between DWC’s tariffs
and the Commission’s rules;

25 (g) DWC cooperates with Commission investigations including, but not limited to
customer complaints;

26 (h) DWC participates in and contribute to the Arizona Universal Service Fund, as
27 required by the Commission;

28 ¹ Application at Exhibit A.

- 1 (i) DWC notifies the Commission immediately upon changes to DWC's name,
2 address, or telephone number;
- 3 (j) DWC's intrastate interexchange service offerings shall be classified as
4 competitive pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1108;
- 5 (k) DWC's maximum rates for these services shall be the maximum rates proposed
6 by DWC in its proposed tariffs. The minimum rates for DWC competitive
7 services shall be DWC's total service long run incremental costs of providing
8 those services as set forth in A.A.C. R14-2-1109;
- 9 (l) In the event that DWC states only one rate in its proposed tariff for a competitive
10 service, the rate stated shall be the effective (actual) price to be charged for the
11 service as well as the service's maximum rate;
- 12 (m) The rates proposed by this filing are for competitive services. In general, rates
13 for competitive services are not set according to rate of return regulation. Staff
14 obtained information from DWC and has determined that its fair value rate base
15 is zero. Accordingly, DWC's fair value rate base is too small to be useful in a
16 fair value analysis. Staff has reviewed the rates to be charged by DWC and
17 believes they are just and reasonable as they are comparable to several long
18 distance carriers operating in Arizona and comparable to the rates DWC charges
19 in other jurisdictions. Therefore, while Staff considered the fair value rate base
20 information submitted by DWC, the fair value rate base information provided
21 should not be given substantial weight in this analysis;
- 22 (n) If DWC desires to provide telecommunications services other than resold
23 interexchange services, Staff recommends that DWC be required to file an
24 Application with the Commission; and
- 25 (o) In the event DWC requests to discontinue and/or abandon its service area it must
26 provide notice to both the Commission and its customers. Such notice(s) shall
27 be in accordance with A.A.C. R14-2-1107.

19 5. Staff also recommends the CC&N granted to DWC be considered null and void after
20 due process if DWC fails to: (1) docket conforming tariffs within 365 days from the date of an Order
21 in this matter or 90 days prior to providing service to its first customer, whichever comes first; (2)
22 notify the Commission as a compliance filing within 30 days of serving its first customer.

23 **Technical Capability**

24 6. DWC states it plans to resell long distance services provided by PhoenixSoft in
25 Arizona.² DWC intends to provide prepaid calling cards for international calling to end-users.³
26
27

28 ² Staff Report at 2.

³ Staff filing dated March 9, 2016.

1 7. Currently, DWC is authorized to provide, and is presently offering, resold interexchange
2 long distance services in eleven (11) states that include California, Florida, Hawaii, Illinois, Indiana,
3 Michigan, New York, Oklahoma, Pennsylvania, Texas, and Wisconsin.⁴ While DWC included in its
4 application North Carolina as a jurisdiction it was authorized to provide resold long distance services,
5 through the course of Staff's investigation, it was discovered North Carolina had cancelled DWC's
6 authority.

7 8. DWC's two executives average twenty-four (24) years of experience in the
8 telecommunications industry.⁵

9 9. Staff believes DWC has the technical capabilities to provide its proposed services in
10 Arizona.

11 **Financial Capabilities**

12 10. DWC provided unaudited financial statements for the twelve (12) months ending
13 December 31, 2013, listing total assets of \$590,760; total equity of \$40,603; and a net income of
14 \$150,743. For the twelve (12) months ending December 31, 2014, DWC listed total assets of \$151,084;
15 total negative equity of \$9,390; and a net income of \$71,417.⁶

16 11. According to Staff, customers would be minimally affected if DWC experiences
17 financial difficulties as there are a number of companies that provide resold or facilities-based
18 interexchange telecommunications services.

19 12. Staff believes DWC has the financial capabilities to provide its proposed services in
20 Arizona.

21 **Rates and Charges**

22 13. Staff states that in general, rates for competitive services are not set according to rate of
23 return regulation. Staff believes that DWC's proposed rates are just and reasonable based on the rates
24 of comparable long distance carriers and the rates DWC charges in other jurisdictions.⁷ Staff states
25

26 _____
27 ⁴ Staff Report at 2, footnote 1.

⁵ Staff Report at 2.

⁶ Id.

28 ⁷ Id. at 4.

1 that while it considered the fair value rate base (“FVRB”) information submitted by DWC, that
2 information was not afforded substantial weight in Staff’s analysis.⁸

3 14. While the Commission allows competitive telecommunications service companies
4 flexible pricing per A.A.C. R14-2-1109, companies are required to file a tariff for each competitive
5 service that includes a maximum rate and an effective rate to be charged.

6 15. Pursuant to A.A.C. R14-2-1109, the rates charged for each service DWC proposes to
7 provide may not be less than DWC’s total service long-run incremental cost of providing service.⁹

8 **Complaint Information**

9 16. In response to section (A-11) of its application, DWC stated “Applicant nor any of its
10 officers, directors, partners, or managers has been or are currently involved in any formal or informal
11 complaint proceedings before any State or federal regulatory commission, administrative agency, or
12 law enforcement agency.” However, when verifying DWC’s status in each jurisdiction, Staff learned
13 DWC’s authority to provide telecommunications services in North Carolina¹⁰ had been canceled on
14 October 5, 2011 for failing to file requisite utility reports and failing to pay mandatory regulatory fees.
15 While DWC initially denied knowledge of the cancellation, in a docketed amendment to its application
16 dated September 15, 2015, DWC stated that the North Carolina Utilities Commission (“NCUC”)
17 notified it of the certificate cancellation in October 2011. According to DWC, it filed the Regulatory
18 Fee Report with the NCUC to rectify its omissions but neglected to include a reinstatement application
19 which result in cancellation of DWC’s certificate. DWC states it is in the process of reapplying for
20 interexchange telecommunications authority with the NCUC.¹¹

21 17. Also in the September 15, 2015 amendment to its application, DWC indicated that the
22 Public Utility Commission of Texas (“PUCT”) revoked DWC’s authority to provide service and the
23 Texas Secretary of State revoked DWC’s authority to transact business in Texas due to DWC not being
24 in good standing with the Texas Public Comptroller. DWC states that once it retroactively filed its
25 Franchise Tax Reports and remedied its tax deficiencies, DWC’s authority to do business in Texas was

26 ⁸ Staff Report at 4-5.

27 ⁹ Id. at 5.

28 ¹⁰ In DWC’s original application with the Commission, it listed North Carolina as a jurisdiction in which DWC was authorized to provide telecommunications services.

¹¹ Staff Report at 3.

1 reinstated. The PUCT granted DWC's subsequent application for authority to provide interexchange
2 services in Texas.¹²

3 18. In response to section (A-12) of its application, DWC stated "Applicant nor any of its
4 officers, directors, partners or managers has been or are currently involved in any civil or criminal
5 investigations, or had judgments entered in any civil matter, judgments levied by an administrative or
6 regulatory agency, or been convicted of any criminal acts within the last ten (10) years." When
7 verifying DWC's status with the California Public Utilities Commission ("CPUC"), Staff learned from
8 the California Safety & Enforcement Division ("SED") that DWC had entered into a settlement
9 agreement with SED after having been found to be providing prepaid calling card services in California
10 without proper authority. DWC's subsequent application requesting CPUC authority to provide
11 services was ultimately approved, along with the settlement agreement requiring a \$65,000 penalty.
12 According to DWC's amendment filed on September 15, 2015, the CPUC granted DWC a Certificate
13 of Public Convenience and Necessity effective June 11, 2015. DWC states, and Staff confirmed, that
14 DWC is current on all surcharges and fees.¹³

15 19. According to Staff, DWC has retained a third-party compliance reporting service
16 provider to prevent similar situations from re-occurring.¹⁴

17 20. Staff states that the Commission's Consumer Services Section reported that no
18 complaints, inquiries, or opinions have been filed against DWC from January 1, 2011 to June 17,
19 2015.¹⁵ Staff further states that DWC is in good standing with the Commission's Corporations
20 Division.¹⁶

21 21. Based on what Staff discovered through investigation of DWC's status in the multiple
22 jurisdictions, it is appropriate to require DWC to file, as a compliance item in this docket, with its
23 Annual Report, a list of all jurisdictions in which it operates and the type of services provided, as well
24 as a list of any cancellations of authority, investigative actions, or disciplinary action taken, or ongoing,
25

26 ¹² Staff Report at 3.

27 ¹³ Id. at 4-5.

28 ¹⁴ Id. at 4.

¹⁵ Id. at 2.

¹⁶ Id.

1 in any other jurisdiction in which DWC operates or previously operated. This requirement shall remain
 2 in place until further Order of the Commission.

3 **Competitive Review**

4 22. Staff believes DWC's proposed services should be classified as competitive because
 5 DWC is not a monopoly provider; DWC does not control a large segment of the telecommunications
 6 market; there are alternative providers to DWC's proposed services; and DWC does not have the ability
 7 to adversely affect the interexchange markets in Arizona.¹⁷

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

10 24. Staff's recommendations, as modified herein, are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

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

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

15 3. Notice of the 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 telecommunication 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 DWC to provide the resold long distance telecommunications
 20 services as set forth in the application.

21 6. DWC is a fit and proper entity to receive a CC&N authorizing it to provide intrastate
 22 telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

23 7. DWC's fair value rate base 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 DWC to establish rates and charges that are not less
 27

28 ¹⁷ Staff Report at 5.

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

3 9. Pursuant to A.R.S. § 40-282, the application in this matter may be approved without a
4 hearing.

5 10. Staff's recommendations, as modified, are reasonable and should be adopted.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of Dial World Communications, LLC for
8 a Certificate of Convenience and Necessity to provide resold intrastate telecommunications in Arizona,
9 is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact
10 Nos. 4 and 5.

11 IT IS FURTHER ORDERED that Dial World Communications, LLC shall file, as a compliance
12 item in this docket, with its Annual Report, a list of all jurisdictions in which it operates and the type
13 of services provided, as well as a list of any cancellations of authority, investigative actions, or
14 disciplinary action taken, or ongoing, in any other jurisdiction in which DWC operates or previously
15 operated. This requirement shall remain in place until further Order of the Commission.

16 IT IS FURTHER ORDERED that Dial World Communications, LLC's telecommunications
17 services are competitive in Arizona.

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1 IT IS FURTHER ORDERED that if Dial World Communications, LLC fails to comply with
2 the Staff recommendation described in Findings of Fact No. 5, the Certificate of Convenience and
3 Necessity granted herein shall be 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 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

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

17 JODI JERICH
EXECUTIVE DIRECTOR

18 DISSENT _____
19

20 DISSENT _____
21 SP:rt

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1 SERVICE LIST FOR:

DIAL WORLD COMMUNICATIONS, LLC

2 DOCKET NO.:

T-20921A-14-0390

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