

OPEN MEETING ITEM



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COMMISSIONERS
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TOM FORESE
ANDY TOBIN



Executive Director
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ARIZONA CORPORATION COMMISSION

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DATE: APRIL 13, 2016
DOCKET NOS.: T-20946A-15-0384

Arizona Corporation Commission
AZ CORP COMMISSION
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APR 13 2016

TO ALL PARTIES:

DOCKETED BY [Signature]

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

X5 OPCO, LLC
(CC&N/RESELLER AND FACILITIES-BASED LONG DISTANCE)

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 22, 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:

MAY 3, 2016 AND MAY 4, 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.

[Signature]
JODI A. JERICH
EXECUTIVE DIRECTOR

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 THE APPLICATION OF X5
9 OPCO, LLC FOR A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO PROVIDE
11 COMPETITIVE RESOLD AND FACILITIES-
12 BASED LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES IN THE
14 STATE OF ARIZONA.

DOCKET NO. T-20946A-15-0384

DECISION NO. _____

OPINION AND ORDER

15 DATE OF HEARING: March 15, 2016
16 PLACE OF HEARING: Phoenix, Arizona
17 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
18 APPEARANCES: Mr. Timothy J. Sabo, SNELL & WILMER, LLP, on
19 behalf of X5 OpCo, LLC; and
20 Mr. Matthew Laudone, Staff Attorney, Legal Division,
21 on behalf of the Utilities Division of the Arizona
22 Corporation Commission.

23 **BY THE COMMISSION:**

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

26 FINDINGS OF FACT

27 Procedural History

28 1. On November 9, 2015, X5 OpCo, LLC (“X5” or “Company”), filed with the
29 Commission an application for a Certificate of Convenience and Necessity (“CC&N” or “Certificate”)
30 to provide competitive resold and facilities-based long distance telecommunications services in the
31 state of Arizona (“Application”).¹

32 2. On December 9, 2015, Staff filed a Letter of Sufficiency stating that the Application

33 _____
34 ¹ Also on November 9, 2015, NovaTel Ltd., Inc. (“NovaTel”) and X5 filed a joint application for Commission approval of
35 a sale of NovaTel’s assets, including its customer base, to X5, in Docket No. T-20946A-15-0385.

1 was sufficient pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-502.

2 3. On December 11, 2015, a Procedural Order was filed setting the hearing in the matter
3 for March 15, 2015.

4 4. On January 4, 2016, X5 filed its Affidavit of Publication.

5 5. X5 docketed responses to Staff’s Data Requests on January 6 and 19, 2016.

6 6. Staff filed its Staff Report on February 2, 2016.

7 7. Pursuant to a Procedural Order issued February 23, 2016, the Company’s witness,
8 Daniel Horton, was granted permission to appear at the hearing telephonically.

9 8. On March 15, 2016, 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 were present to provide comments in this matter.

12 9. Staff recommends approval of X5’s Application for a CC&N and its petition for a
13 determination that its proposed telecommunications services should be classified as competitive.

14 10. Staff recommends that:

- 15 a. X5 comply with all Commission Rules, Orders, and other requirements relevant
16 to the provision of intrastate telecommunications services;
- 17 b. X5 notify the Commission immediately upon changes to X5’s name, address or
18 telephone number;
- 19 c. X5 cooperate with Commission investigations including, but not limited to
20 customer complaints;
- 21 d. Although Staff considered the fair value rate base (“FVRB”) information
22 submitted by X5, the fair value information provided should not be given
substantial weight; and
- 23 e. X5’s rates should be classified as competitive.

24 11. Staff further recommends that X5 comply with the following conditions within the
timeframes outlined below or X5’s CC&N should be considered null and void, after due process.

- 25 a. Staff recommends that X5 docket conforming tariffs for each service within its
26 CC&N within 365 days from the date of an Order in this matter or 30 days prior
to providing service to its first customer, whichever comes first.
- 27 b. Staff recommends that X5 notify the Commission through a compliance filing
28 within 30 days of the commencement of service to its first end-user customer.

- 1 c. Staff recommends that X5 abide by the Commission-adopted rules that address
2 Universal Service in Arizona, A.A.C. R14-2-1204(B), and require X5 to make
3 the necessary monthly payments into the Arizona Universal Service Fund
4 (“AUSF”).

3 **Technical Capabilities**

4 12. X5 is a foreign limited liability corporation organized under the laws of the state of
5 Delaware and authorized to transact business in Arizona, with its headquarters located in the state of
6 Washington. X5 is a wholly-owned subsidiary of X5 Holdings, LLC, which, in turn, is majority-owned
7 and controlled by NewSpring Holdings, LLC.

8 13. X5 plans to use switching equipment located out of state to route and complete inter-
9 and intrastate long distance calls. Although the Company does not own facilities in Arizona, it plans to
10 lease the necessary transport facilities.

11 14. X5 is authorized to provide, and is providing, various telecommunications services in
12 21 states, with pending applications in nine states.

13 15. Staff notes that the officers and management team for X5 have a combined total of 47
14 years' experience in the telecommunications industry.

15 16. X5 does not have any employees in Arizona, and the Company does not anticipate
16 having any in the future. Customer complaints will be handled through the Company's customer
17 service center in Washington.

18 17. Given the foregoing, Staff concludes that X5 has the technical capabilities to provide
19 the telecommunications services it seeks to provide in Arizona.

20 **Financial Capabilities**

21 18. X5 provided unaudited consolidated financial statements for 2015 and *pro forma*
22 projected financial statements for 2016.² For the twelve-month period ending December 31, 2015, X5
23 reported total assets of \$21,556,479; total equity of \$10,279,413, and net income of negative
24 \$1,729,457. The *pro forma* projected financial statements for the twelve-month period ending
25 December 31, 2016, lists total assets of \$69,490,000, total equity of \$24,662,000, and net income of
26 \$1,824,000.

27 _____
28 ² The Company's projected 2016 *pro forma* financial statements assume the combined acquired assets of X5, NovaTel and Cornerstone Telephone Company, the latter two of which represent X5's planned acquisitions to be completed in 2016.

1 **Rates and Charges**

2 19. Pursuant to A.A.C. R-14-2-1109, X5 may charge rates for services that are not less than
3 its total service long-run incremental costs of providing service.

4 20. Information provided to Staff projected X5's FVRB to be zero within twelve months of
5 beginning its operations.

6 21. Given the competitive markets in which the Company will operate, X5's FVRB may
7 not be useful as the sole determinant of rates.

8 22. X5's proposed rates are for competitive services. In general, rates for competitive
9 services are not set according to the rate of return regulation.

10 23. Based on Staff's review, X5's proposed rates are comparable with other competitive
11 carriers operating in Arizona.

12 24. X5's FVRB should not be given substantial weight in this analysis.

13 25. X5's proposed rates are just and reasonable and should be approved.

14 **Complaint Information**

15 26. In its Application, X5 states that it has not had an Application for authority to provide
16 service denied in any state or jurisdiction. Staff contacted the Public Utility Commissions in seven of
17 the jurisdictions in which X5 is authorized to provide service. Staff's investigation found that no
18 complaints have been filed against the Company in those jurisdictions.

19 27. None of X5's officers, directors or partners have been involved in any civil or criminal
20 investigations, or formal or informal complaints, and none of its officers, directors or partners have
21 been convicted of any criminal acts in the past ten years.

22 28. According to Staff, the Corporations Division reported that X5 is in good standing. The
23 Consumer Services Section of the Utilities Division reported that there were no complaints, inquiries,
24 or opinions filed against the Company from January 1, 2012 to December 1, 2015. Staff also noted
25 that a search of the FCC website found that there have been no complaints filed against X5.

26 **Competitive Services Analysis**

27 29. X5 has requested that its telecommunications services in Arizona be classified as
28 competitive. X5's proposed services should be classified as competitive because there are alternatives

1 to the Company's proposed services; interexchange carriers ("IXCs") hold a substantial share of the
2 private line service market; X5 will have to convince customers to purchase its services; X5 has no
3 ability to adversely affect the local exchange or interexchange market as several competitive local
4 exchange carriers ("CLECs") and incumbent local exchange carriers ("ILECs") provide private line
5 service; and X5, therefore, will have no market power in those markets where alternative providers to
6 private line telecommunications services exist.

7 30. Staff's recommendations are reasonable and should be adopted.

8 CONCLUSIONS OF LAW

9 1. X5 is a public service corporation within the meaning of Article XV of the Arizona
10 Constitution and A.R.S. §40-281 and 40-282.

11 2. The Commission has jurisdiction over X5 and the subject matter of the Application.

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

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

15 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
16 Statutes, it is in the public interest for X5 to provide the telecommunications services set forth in its
17 Application.

18 6. X5 is a fit and proper entity to receive a CC&N authorizing it to provide resold and
19 facilities-based long distance telecommunications services in Arizona, subject to Staff's
20 recommendations.

21 7. The telecommunications services that X5 intends to provide are competitive within
22 Arizona.

23 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
24 is just and reasonable and in the public interest for X5 to establish rates and charges that are not less
25 than the X5's total service long-run incremental costs of providing the approved competitive services.

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

27 10. X5's rates, as they appear in its proposed tariffs, are just and reasonable and should be
28 approved.

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ORDER

IT IS THEREFORE ORDERED that the Application of X5 OpCo, LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold and facilities-based long distance telecommunications services in Arizona is granted, subject to the conditions in Findings of Facts Nos. 10 and 11.

IT IS FURTHER ORDERED that if X5 OpCo, LLC fails to comply with the timeframes stated in Findings of Fact No. 11, the granted Certificate of Convenience and Necessity 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
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BAM:ru(aw)

1 SERVICE LIST FOR:

X5 OpCo, LLC

2 DOCKET NO.:

T-20946A-15-0384

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