L001

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
MAY 0 5 2005
DOCKETED BY

RECEIVED
MAY 0 9 2005
AZ Corporation Commission
Director Of Utilities

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF RED RIVER NETWORKS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTEREXCHANGE TELECOMMUNICATIONS SERVICES, EXCEPT LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04296A-04-0897

DECISION NO. 67813

ORDER

Open Meeting
May 3 and 4, 2005
Phoenix, Arizona

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

1. On December 15, 2004, Red River Networks, LLC ("Applicant" or "Red River") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. Red River has authority to transact business in the State of Arizona.

5. On January 25, 2005, Red River filed in this docket an Affidavit of Publication verifying that it had published notice of its application in all counties where service will be provided.

6. On February 28, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff

Report in this matter recommending approval of the application subject to certain conditions.

7. In the Staff Report, Staff stated that Red River provided unaudited financial statements for the six months ending June 30, 2004, which list assets of $2,086,036, negative equity of $707,222, and a net income of $332,687.

8. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Red River's fair value rate base ("FVRB") is zero and is not useful in either a fair value analysis or in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant, that information should not be given substantial weight in this analysis.

9. Staff believes that Red River has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. Staff believes that the rates in Applicant's proposed tariffs for its competitive services will be just and reasonable and recommends that the Commission approve them.

10. Based on its evaluation of the Applicant's technical, managerial, and financial capabilities to provide resold interexchange services, Staff recommended approval of Red River's application and also recommended that:

(a) The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

(b) The Applicant should be ordered to maintain its accounts and records as required by the Commission;

(c) The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to those rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;

(g) The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

(i) The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(j) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(k) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

11. Staff further recommended that Red River's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

12. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact No. 11 above, that Red River's Certificate should become null and void without further Order of the Commission and that no time extensions for compliance should be granted.

13. Based upon Red River's original tariff, Staff indicated that it may collect advances, deposits and/or prepayments from its customers. Consequently, Staff recommended that Red River's Certificate should be conditioned upon the Applicant procuring a performance bond in the amount of $10,000 within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

14. Staff further recommended that the Applicant be required to file a request for cancellation of its established performance bond relating to the provision of resold interexchange

service if, at some time in the future, the Applicant does not collect from its customers an advance, deposit, and/or prepayment. Such request shall be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission

15. On March 11, 2005, Red River filed a revision to its Arizona Tariff by which it indicated that it would not require customer deposits, and accordingly, Red River requested a waiver of the performance bond recommended by Staff in its February 28, 2005 Staff Report.

16. By Procedural Order dated March 21, 2005, Staff was ordered to respond to Red River's March 11, 2005 filing.

17. On April 1, 2005, Staff filed a responsive memorandum, which indicated that a performance bond is not necessary given Red River's tariff revision.

18. Additionally, Staff recommended that Red River be required to file an application with the Commission for Commission approval if, at some future date, Red River wants to collect advances, deposits and/or prepayments from its resold interexchange customers. Such application must reference the decision in this Docket and explain Red River's plan for procuring a performance bond.

19. Staff recommended that the Applicant should be required to provide notice to the Commission and its customers in the event it requests to discontinue service and/or abandon its service area, and Staff indicates that such notice(s) shall be in accordance with Arizona Administrative Code ("A.A.C.") R14-2-1107. Pursuant to A.A.C. R14-2-1107, Red River is required to comply, and obtain Commission authorization of compliance, with all of the requirements, including but not limited to the notice requirements, prior to the discontinuance of service and/or abandonment of its service area.

20. The rates proposed by this filing are for competitive services.

21. Staff's recommendations, as modified by its April 1, 2005 filing, are reasonable and should be adopted.

22. Red River's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant 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 Applicant and the subject matter of the application.

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

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations, as modified by its April 1, 2005 filing, are reasonable and should be adopted.

7. Red River's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Red River'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 Red River Networks, LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services is hereby granted, conditioned upon Red River Network LLC's timely compliance with the following Ordering Paragraphs.

IT IS FURTHER ORDERED that Red River Networks, LLC shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that if Red River Networks, LLC fails to meet the timeframe outlined in the Ordering Paragraph above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

. . .

IT IS FURTHER ORDERED that Red River Networks, LLC shall comply with all of the Staff recommendations as modified and set forth in the above-stated Findings of Fact and Conclusions of Law.

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, BRIAN C. McNEIL, Executive Secretary 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 5th day of May, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mj

SERVICE LIST FOR: RED RIVER NETWORKS, LLC

DOCKET NO. T-04296A-04-0897

Judith A. Riley
Telecom Professionals, Inc.
2912 Lakeside Drive
Oklahoma City, Oklahoma 73120

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007