**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

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| IN THE MATTER OF THE APPLICATION OF PHONE1, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTEREXCHANGE TELECOMMUNICATIONS SERVICES, AND ALTERNATIVE OPERATOR SERVICES. | DOCKET NO. T-04297A-04-0918<br><br>DECISION NO. 67988<br><br>**ORDER** |

Open Meeting
July 12 and 13, 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 21, 2004, Phone1, Inc. ("Applicant" or "Phone1") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interexchange telecommunications services, and for alternative operator services ("AOS") 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. In Decision No. 57339 (April 5, 1991), the Commission found that AOS providers were public service corporations subject to the jurisdiction of the Commission.

5. In Decision No. 58421 (October 1, 1993), the Commission adopted A.A.C. R14-2-1001 through R14-2-1014 to regulate AOS providers.

6. Phone1 has authority to transact business in the State of Arizona.

7. On February 3, 2005, Phone1 filed an Affidavit of Publication indicating compliance with the Commission's notice requirements.

8. On April 27, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff Report which includes Staff's fair value rate base determination in this matter and recommends approval of the application subject to certain conditions.

9. In the Staff Report, Staff stated that Phone1 provided audited financial statements from its parent company, Phone1Globalwide, Inc., and its subsidiaries, for the twelve months ending March 31, 2004, which list assets of $14,726,549, equity of $10,806,257 and net loss of $16,590,231.

10. According to the Staff Report, Phone1 provides resold long distance service and AOS in 27 states. In the event that Applicant encounters financial difficulty, there should be minimal impact on long distance and AOS customers because of numerous competitors willing to replace any provider.

11. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Phone1's fair value rate base ("FVRB") is zero. Staff has determined that Applicant's FVRB is too small to be useful in a fair value analysis, and is not useful 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, the FVRB information provided should not be given substantial weight in this analysis.

12. Staff believes that Phone1 has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed tariffs for its competitive resold interexchange services will be just and reasonable, and recommends

that the Commission approve them.

13. The Commission adopted maximum rates for AOS in Decision No. 61274 (December 14, 1998), and these rates are reflected in Schedules 1 and 2 attached to the Staff Report. These maximum rates when coupled with discounting authority provide AOS providers with the ability to compete on price and service quality.

14. In its Staff Report, Staff reviewed the rates for five major toll carriers to establish the maximum AOS rates, service charges and operator-dialed surcharges set forth on Schedules 1 and 2.

15. Staff recommends that if Phone1 desires to increase its rates, in response to an increase in maximum rates by any carriers used in developing Schedules 1 or 2, Phone1 should be authorized to allow its rates to float in accordance with the carriers' revised higher rates so long as the Applicant files the following items for Commission review: 1) an estimate of the value of its plant to serve Arizona customers; 2) a tariff setting forth the new maximum rates, which do not exceed the maximum rate of the five major carriers; and 3) all information required by Arizona Administrative Code ("A.C.C.") R14-2-1110.

16. In its Staff report, Staff recommends Applicant's interLATA or intraLATA rates and service charges be set at the maximum rate for each mileage band, respective of the day of the week and time of day, currently authorized for any facilities-based interexchange carriers ("IXC") as set forth in Schedule 1 or authorized for any facilities based intraLATA carriers set forth in Schedule 2. Further, Staff indicated that the proposed rates and charges, as set forth in Phone1's tariff filing of December 21, 2004, for either interLATA or intraLATA telephone services are identical to or less than the rates and service charges contained in Schedules 1 and 2, and therefore, Staff believes that Phone1's proposed tariffs are reasonable and recommends that the Commission approve them.

17. According to Staff's Report, in prior decisions, the Commission has approved both an operator-dialed (operator assisted call) surcharge and a property (location-specific or subscriber) surcharge. Staff recommends that property charges be limited to $1.00 per call, instead of $2.00 per call as requested by Applicant, to facilitate a level playing field for all competitors.

18. Staff recommended approval of Phone1's application for a CC&N to provide resold interexchange services and AOS telecommunications services subject to the following:

(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 these 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 of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal service fund instituted in Decision No. 59623 (April 24, 1996), 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 interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(j) The Applicant's maximum rates for resold interexchange 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;

(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;

(l) In the event Applicant seeks to change its rates, Applicant shall follow the procedure as set forth in A.A.C. R14-2-1110;

(m) The Applicant is authorized to discount its rates and service charges to the marginal cost of providing the services;

(n) The Applicant's interLATA rates and service charges for AOS should be based

on the maximum rates and service charges as set forth in Schedule 1 attached to the Staff Report;

(o) The Applicant's intraLATA rates and service charges for AOS should be based on the maximum rates and service charges as set forth in Schedule 2 attached to the Staff Report;

(p) The Applicant's property surcharge for AOS be limited to $1.00 per call;

(q) If at some future date, the Applicant wants to collect from its resold interexchange customers an advance, deposit and/or prepayment, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the Decision in this docket and must explain the Applicant's plans for procuring a performance bond; and

(r) If, at some future date, Applicant requests to discontinue service and/or abandon its service area, applicant must in accordance with A.A.C. R14-2-1107 comply, and obtain Commission authorization of compliance, with all of the requests, including but not limited to the notice requirements, prior to the discontinuance of service and/or abandonment of its service area.

19. Staff further recommended that Phone1's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 30 days from the date of an Order in this matter.

20. Staff further recommended that if the Applicant fails to meet the timeframe outlined in Findings of Fact No. 19, that Phone1's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

21. Phone1 will not collect advances, prepayments or deposits from customers.

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

23. Staff's recommendations as set forth herein are reasonable.

24. Phone1'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 and interLATA and intraLATA AOS except local exchange service in Arizona 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 and AOS in Arizona.

6. Staff's recommendations in Findings of Fact No. 11, 12, 15, 16, 17, 18, 19 and 20 should be adopted.

7. Phone1'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. Phone1's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

9. Pursuant to A.R.S. § 40-282(c)(2), a hearing is not required for the issuance of a Certificate to a reseller or an AOS provider.

**ORDER**

IT IS THEREFORE ORDERED that the application of Phone1, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services and AOS, except local exchange services, is hereby granted, conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of Fact No. 19 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 11, 12, 15, 16, 17, 18, 19, and 20 above are hereby adopted.

IT IS FURTHER ORDERED that Phone1, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 18 and 19 above.

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IT IS FURTHER ORDERED that if Phone1, Inc. fails to meet the timeframe outlined in Findings of Fact. No. 19 above that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

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 18th day of July, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

YK:mj

SERVICE LIST FOR: PHONE1, INC.

DOCKET NO.: T-04297A-04-0918

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