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MEMORANDUM

TO: Docket Control

FROM: Deborah R. Scott
Director
Utilities Division

for

DATE: March 20, 2001

RE: IN THE MATTER OF THE APPLICATION OF NXGEN NETWORKS, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE LOCAL AND INTEREXCHANGE TOLL COMPETITIVE SERVICES AND PETITION FOR COMPETITIVE CLASSIFICATION OF PROPOSED SERVICES WITHIN THE STATE OF ARIZONA. (DOCKET NO. T-03969A-00-1006)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Facilities-based local services
- Facilities-based interexchange services
- Resold local services
- Access services

Staff is recommending approval of the application following a hearing.

/mgk

Originator: Marta Kalleberg

Attachment: Original and Ten Copies

STAFF REPORT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

NXGEN NETWORKS, INC.

DOCKET NO. T-03969A-00-1006

IN THE MATTER OF THE APPLICATION OF NXGEN NETWORKS, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE LOCAL AND INTEREXCHANGE TOLL COMPETITIVE SERVICES AND PETITION FOR COMPETITIVE CLASSIFICATION OF PROPOSED SERVICES WITHIN THE STATE OF ARIZONA

MARCH 20, 2001

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STAFF ACKNOWLEDGMENT

The Staff Report for NxGen Networks, Inc., Docket No. T-03969A-00-1006, was the responsibility of the Staff member listed below. Marta Kalleberg was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide facilities-based interexchange services; facilities-based and resold local exchange services; access telecommunications service; and petition for a determination that its proposed services should be classified as competitive.

Marta Kalleberg
Economist II

1. INTRODUCTION

On December 11, 2000, NxGen Networks, Inc. ("NxGen" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based interexchange services; facilities-based and resold local exchange services; and access service within the State of Arizona. NxGen petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. THE APPLICANT'S APPLICATION FOR A CERTIFICATE OF CONVENIENCE & NECESSITY

This section of the Staff Report contains descriptions of the geographic market to be served by the Applicant, the requested services, and the Applicant's technical and financial capability to provide the requested services. In addition, this section contains the Staff evaluation of the Applicant's proposed rates and charges and Staff's recommendation thereon.

2.1 DESCRIPTION OF THE GEOGRAPHIC MARKET TO BE SERVED

NxGen seeks authority to provide telecommunications services throughout the service territory of Qwest (formerly known as U S West).

2.2 DESCRIPTION OF REQUESTED SERVICES

NxGen proposes to provide facilities-based interexchange services; facilities-based and resold local exchange services; and switched and special access services. These services include, but are not limited to the following: directory assistance, E911 service, CLASS services, and directory listings.

2.3 THE ORGANIZATION

NxGen is incorporated under the laws of the State of Nevada and has authority to transact business in Arizona. NxGen's subsidiary company is International Long Distance Corporation (ILDC). NxGen holds 82% of the assets of ILDC and ILDC will merge into NxGen. The surviving company will be named NxGen.

2.4 TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

NxGen stated in its application that by December 31, 2000, it anticipates having applications pending for facilities-based and resold local exchange and interexchange service in more than 20 states. The officers of NxGen have prior experience at various telecommunications and information technology companies.

2.5 FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

NxGen has submitted the audited financial information of its subsidiary, International Long Distance Corporation (ILDC) for the year ended December 31, 1999. These financial data list assets of $3.33 million; negative stockholders' equity of ($1.62 million); negative retained earnings of ($7.69 million); and a net loss of ($7.4 million) on revenues of $174,494. Based upon the limited amount of assets and increasing net losses over time, Staff believes that NxGen lacks sufficient financial strength to offer the requested telecommunications services in Arizona absent the procurement of a performance bond.

Since the Applicant does not appear to have sufficient financial resources, Staff believes that any deposits or prepayments received from the Applicant's customers should be protected. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with A.A.C. R14-2-1107.

To that end, Staff recommends that the Applicant procure a performance bond equal to $100,000. The minimum bond amount of $100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. If the Applicant desires to discontinue service it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application pursuant to A.A.C. R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond. Staff further recommends that proof of the above mentioned performance bond be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first.

After one year of operation under the CC&N granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision.

2.6 ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The Applicant has submitted illustrative proposed tariffs. Staff requires historical fair value information in order to thoroughly analyze the Applicant's tariffs. Without this information, Staff is unable to provide tariff analysis and recommendations in terms of a fair value finding. Therefore, Staff recommends that, if the Applicant wishes to proceed with its certificate application, any tariffs filed in this matter be approved on an interim basis. If a certificate is conditionally granted and tariffs are authorized on an interim basis, the Applicant should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:

1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification, adjusted to reflect the **maximum rates** that the Applicant has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.

2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification.

3. The value of **all assets,** listed by major category, including a description of the assets, used for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

Staff further recommends that the Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the certificate and of the tariffs.

3. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Since the Applicant intends to provide local exchange service, the issues related to the provision of that service are discussed below.

3.1 INTERCONNECTION

The Applicant has applied for a CC&N to become a local exchange company. As such, the Applicant will need to connect its network to other local exchange company networks in order to provide ubiquitous calling capabilities to its customers. The Commission approved the parameters under which interconnection between the Applicant and other telephone service providers will take place (Decision No. 59761, dated July 22, 1996, in Docket No. RT-00000F-96-0001). The 1996 Telecommunications Act has set forth general guidelines for interconnection. Staff therefore recommends that, unless it provides services solely through the use of its own facilities, the Applicant procure an Interconnection Agreement that is consistent with these guidelines before being allowed to offer local exchange service.

3.2 DIRECTORY LISTINGS AND DIRECTORY ASSISTANCE

Callers should be able to determine the telephone numbers belonging to customers of alternative local exchange companies, such as the Applicant. There are three issues associated with the provision of Directory Assistance for subscribers to new local exchange company services, no matter what service provider the subscriber uses. These issues are:

1. Should there be one Directory Assistance database administrator?
2. If there is one Directory Assistance database administrator, what should the rates be for inclusion in the directories?
3. What should be included in the Directory Assistance database?

Staff recommends that the Applicant indicate how it plans to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases before it begins providing local exchange service.

3.3 NUMBER PORTABILITY

Another issue associated with the Applicant's proposal to become a competitive local exchange company relates to how telephone numbers should be administered. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings.

Staff recommends that the Applicant pursue interim and permanent number portability arrangements with other local exchange carriers ("LECs") that are consistent with federal laws, federal rules and state rules.

3.4 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

The Commission has adopted rules to address maintenance of universal telephone service during and after the transition to a competitive telecommunications services market. The rules contain the terms and conditions for contributions to and support received from telephone service subscribers to finance the Arizona Universal Service Fund ("AUSF"). Under the rules, the Applicant will be required to participate in the financing of the AUSF and it may be eligible for AUSF support. Therefore, Staff recommends that approval of the Applicant's application for a CC&N be conditioned upon the Applicant's agreement to abide by and participate in the AUSF mechanism established by Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498).

3.5 QUALITY OF SERVICE

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for USWC in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties that were developed in this docket were initiated only because USWC's level of service was not satisfactory, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

3.6 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. In those areas where the Applicant installs the only local exchange service facilities, the Applicant will be a monopoly service provider. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant provide customers served in these areas with access to alternative local exchange service providers. In this way, a customer may be served by an alternative local exchange service provider if the customer so desires. With this requirement in place, the Applicant will not be able to exert monopoly power over customers who are located in areas where the Applicant is the only provider of facilities to serve the customer. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated thereunder and Commission rules on interconnection and unbundling.

3.7 911 SERVICE

The Applicant has indicated in its application that it will provide all customers with 911 and E911 service, where available, and will coordinate with ILECs and emergency service providers to provide the service. Staff believes that the Applicant should be required to work cooperatively with local governments, public safety agencies, telephone companies, the National Emergency Number Association and all other concerned parties to establish a systematic process in the development of a universal emergency telephone number system. Staff recommends that the Applicant be required to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers before it begins to provide local exchange service.

3.8 CUSTOM LOCAL AREA SIGNALING SERVICES

In its decisions related to USWC's proposal to offer Caller ID and other CLASS features in the State, the Commission addressed a number of issues regarding the appropriateness of offering these services and under what circumstances it would approve the proposals to offer them. The Commission concluded that Caller ID could be offered provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, should be provided as options to which customers could subscribe with no charge. The Commission also approved a Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, which indicates that the number has been blocked. The Commission further required that USWC engage in education programs when introducing or providing the service(s).

Staff recommends that the Applicant be required to abide by all the Commission decisions and policies regarding Caller ID and other CLASS services. However, Staff does not believe that it is necessary for the Applicant to engage in the educational program that was ordered for USWC as long as customers in the areas where the Applicant intends to serve have already been provided with educational material and are aware that they can have their numbers blocked on each call or at all times with line blocking.

3.9 EQUAL ACCESS FOR INTEREXCHANGE CARRIERS

Although the Applicant did not indicate that its switch will be "fully equal access capable" (i.e. would provide equal access to interexchange companies), the Commission requires local exchange companies to provide 2-Primary Interexchange Carriers ("2-PIC") equal access. 2-PIC equal access allows customers to choose different carriers for interLATA and intraLATA toll service and would allow customers to originate intraLATA calls using the preferred carrier on a 1+ basis. Staff recommends that the Applicant be required to provide 2-PIC equal access.

4. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive. The Applicant has not published legal notice of the application in all counties in which it requests authorization to provide service. The Applicant has not certified that all notification requirements have been completed. Staff's analysis and recommendations are discussed below.

4.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

4.1.1 **A description of the general economic conditions that exist which make the relevant market for the service one that is competitive.**

The analysis of the market for local exchange service that the Applicant seeks to enter must take into account the fact that there are two local exchange service submarkets. The first is the local exchange service market that consists of locations where ILECs currently provide service. The second local exchange service market consists of locations within ILECs' service territories where ILECs are authorized to provide local exchange service, but where they do not actually provide service.

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. Staff recommends that, in those instances where the Applicant provides the only facilities used to provide telecommunications service, that the Applicant be required to allow other local exchange companies to use those facilities to serve customers who wish to obtain service from an alternative provider pursuant to federal laws, federal rules and state rules.

4.1.2 **The number of alternative providers of the service.**

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

4.1.3 **The estimated market share held by each alternative provider of the service.**

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local

exchange resellers have only recently been authorized to offer service they have limited market share.

4.1.4 **The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

4.1.5 **The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

4.1.6 **Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.

b. One in which new entrants will be dependent upon ILECs:

   1. To terminate traffic to customers.
   2. To provide essential local exchange service elements until the entrant's own network has been built.
   3. For interconnection.

c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.

d. One in which Qwest provides a quality of service that has generated a significant number of complaints. These complaints led the Commission to adopt service quality rules that contain penalties if the service quality standards are not met. A provider of alternative service, such as the Applicant, should provide Qwest--as well as other incumbents--with the incentive to produce higher quality service including service installation and repair on a timely basis.

4.2.6 **Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

a. One with numerous competitors and limited barriers to entry.

b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.

c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

4.3 COMPETITIVE SERVICES ANALYSIS FOR ACCESS SERVICES

4.3.1 **A description of the general economic conditions that exist which make the relevant market for the service one that is competitive.**

The market for telecommunications service in which the Applicant intends to provide access service is:

a. One in which ILECs are the main providers of intrastate access service.

b. One in which ILECs own networks that reach nearly every residence and business in their service territories, which provide them with a virtual monopoly over intrastate access service in their service territories.

c. One in which the Applicant may be reliant upon ILECs to access customers in order to provide competitive access services.

4.3.2 **The number of alternative providers of the service.**

ILECs are still the main providers of access service in their territories. However, a number of new entrants are competing for intrastate access customers.

4.3.3 **The estimated market share held by each alternative provider of the service.**

Since ILECs have historically been the only providers of access service in their service territories, they have a majority of the market share in those territories. However, new entrants are gaining market share.

4.3.4 **The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications applicant, as defined in A.A.C. R14-2-801.**

None.

4.3.5 **The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Each service that the Applicant provides will have at least one alternative supplier.

4.3.6 **Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The following represent other indications of ILECs' market power in the intrastate switched access service market:

a. The fact that ILECs, such as Qwest, are providing the majority of intrastate access. New entrants have been authorized to provide intrastate access and are beginning to establish a presence in the market.

b. Customer relationships with incumbent carriers, such as Qwest, that have existed over a number of years.

c. The fact that the ILECs, such as Qwest, have access to information about all of the customers located in their service territories that other providers do not (e.g. billing and calling pattern information).

d. The fact that the ILEC is often the first contact for customers entering an area.

5. RECOMMENDATIONS

The following sections contain the Staff recommendations on the Applicant's Application for a CC&N and the Applicant's Petition for a Commission Determination that its Proposed Services Should be Classified as Competitive.

5.1 RECOMMENDATIONS ON THE APPLICANT'S APPLICATION FOR A CC&N

NxGen is incorporated under the laws of the State of Nevada and has authority to transact business in Arizona. NxGen's subsidiary company is International Long Distance Corporation (ILDC). NxGen holds 82% of the assets of ILDC and ILDC will merge into NxGen. The surviving company will be named NxGen. NxGen stated in its application that by December 31, 2000, it anticipates having applications pending for facilities-based and resold local exchange

and interexchange service in more than 20 states. The officers of NxGen have prior experience at various telecommunications and information technology companies. The Applicant has demonstrated that it has the capability to provide its proposed services, as requested, and the provision of these would merely be an extension of its current activities elsewhere. Therefore, Staff recommends that the Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in Section 2.2 of this Report, be granted subject to the following recommendations:

1. That, unless it provides services solely through the use of its own facilities, the Applicant procure an Interconnection Agreement before being allowed to offer local exchange service;

2. That the Applicant file with the Commission, within 30 days of an Order in this matter, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;

3. That the Applicant pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;

4. That the Applicant agree to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);

5. That the Applicant abide by the quality of service standards that were approved by the Commission for USWC in Docket No. T-01051B-93-0183;

6. That in areas where the Applicant is the sole provider of local exchange service facilities, the Applicant will provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;

7. That the Applicant be required to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 30 days of an Order in this matter;

8. That the Applicant be required to abide by all the Commission decisions and policies regarding CLASS services;

9. That the Applicant be required to provide 2-PIC equal access;

10. That the Applicant be required to certify that all notification requirements have been completed prior to a final determination in this proceeding;

11. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's address or telephone number;

12. That the Applicant comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

13. That the Applicant maintain its accounts and records as required by the Commission;

14. That the Applicant 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;

15. That the Applicant maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

16. That the Applicant cooperate with Commission investigations of customer complaints; and

17. That the Applicant participate in and contribute to a universal service fund, as required by the Commission.

Staff further recommends that the Applicant's application for a CC&N to provide intrastate telecommunications services be granted subject to the following conditions:

1. The Applicant should be ordered to file conforming tariffs within 30 days of an Order in this matter, and in accordance with the Decision;

2. Applicant should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:

    a. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification, adjusted to reflect the **maximum rates** that the Applicant has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.

    b. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification.

c. The value of **all assets,** listed by major category, including a description of the assets, used for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list;

3. The Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the certificate and of the tariffs; and

4. In order to protect the Applicant's customers,
   a. the Applicant should be ordered to procure a performance bond equal to $100,000. The minimum bond amount of $100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from the Applicant's customers;
   b. if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
   c. the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
   d. proof of the performance bond should be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first; and
   e. after one year of operation under the CC&N granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision that the requested cancellation is in the public interest.

5.2 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange, access, or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange, access, or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Staff further recommends that the Applicant be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that the Applicant provides essential services or facilities that potential competitors need in order to provide their services, the Applicant should be required to offer those facilities or services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules.