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October 11, 2001

T-04000A-01-0208

**VIA OVERNIGHT DELIVERY**

Brian C. McNeil, Executive Secretary  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007-8996

AZ CORP COMMISSION  
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Re: Application of Telseon Carrier Services, Inc. for Exemption from Commission Rule 14-2-1105 (D) and Request For Waiver of Deadline

Dear Mr. McNeil:

On behalf of Telseon Carrier Services, Inc. ("Telseon"), enclosed for filing are an original and ten copies of Telseon's Application for Exemption from Commission Rule 14-2-1105 (D) and Request For Waiver of Deadline. Attached to the Application is a facsimile copy of the Verification of Telseon's Executive Vice President and General Counsel; the original of the verification will be forwarded to the Commission upon receipt.

Please date-stamp the extra copy of this filing and return to me in the enclosed self-addressed, stamped envelope. If you have any questions, please contact Rogena Harris at (202) 295-8303.

Respectfully submitted,

Jeffrey M. Karp  
Rogena Harris

Counsel for Telseon Carrier Services, Inc.

Enclosures

cc: Steven Miller  
Dwight D. Nodes  
Christopher Kempsey  
Deborah Scott

Arizona Corporation Commission  
**DOCKETED**

OCT 12 2001

DOCKETED BY

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the Matter of the Application of )  
 )  
**TELSEON CARRIER SERVICES, INC.** ) Docket No. \_\_\_\_\_  
 )  
for Exemption from )  
Commission Rule 14-2-1105 (D) and )  
Request For Waiver of Deadline. )  
\_\_\_\_\_ )

**APPLICATION FOR EXEMPTION FROM COMMISSION RULE 14-2-1105 (D) AND  
REQUEST FOR WAIVER OF DEADLINE**

Telseon Carrier Services, Inc. (“Telseon”) files this Application for Exemption from Commission Rule 14-2-1105 (D)<sup>1</sup> pursuant to Rule 14-2-1115 (I)<sup>2</sup> of the Arizona Administrative Code. Telseon respectfully requests that the Arizona Corporation Commission (“Commission”) grant it an exemption from the requirement to post a performance bond as a condition of providing intrastate telecommunications services, and that it extend the deadline set for compliance with the performance bond requirement during the Commission’s consideration of this Application.

**I. Background**

On August 30, 2001, the Commission in Decision No. 63979, Docket No. T-04000A-01-0208, granted Telseon a Certificate of Convenience and Necessity to provide competitive intrastate facilities-based and resold local exchange, interexchange, and exchange access

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<sup>1</sup> R14-2-1105 (D), Arizona Administrative Code, provides:

In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

<sup>2</sup> R14-2-1115 (I), Arizona Administrative Code, provides in relevant part that the “Commission may consider variations or exemptions from the terms of requirements of any of the rules included herein (14 A.A.C. 2, Article 11) upon the verified application of an affected party. The application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulation. Any variation or exemption granted shall require an order of the Commission.”

telecommunications service (the "Order"). The Order provided that Telseon must "procure a performance bond equal to \$100,000 [by] the earlier of 90 days from the effective date of this Order<sup>3</sup> or 30 days prior to commencement of service. The minimum bond amount of \$100,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers." Additionally, the Order required Telseon to comply with all Staff recommendations set forth in Findings of Fact Nos. 14<sup>4</sup> and 15 of the Order (Order at 6, 7).

Telseon did not contest Staff's recommendation that it be required to procure the performance bond at the hearing on its certification. Previous informal discussions with Staff suggested that such a contest had no chance for ultimate success. Moreover, at that time, Telseon believed that such a bond could be procured at, if not a nominal cost, at least under terms that were not so exorbitant as to prevent it from entering the Arizona intrastate telecommunications market. However, Telseon has now discovered that in order for it to procure a \$100,000 performance bond, it must not only pay several thousand dollars to the bonding

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<sup>3</sup> Ninety days from the effective date of the Order is November, 28, 2001.

<sup>4</sup> Finding of Fact No. 14. (r) of the Order states:

In order to protect Telseon's customers:

- (1) Telseon 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 Telseon's customers;
- (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (3) that 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;
- (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however,
- (5) if, at some time in the future, the Applicant's financial outlook improves, 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.

company for the bonding company's fee, its parent corporation must also issue a Letter of Credit for the entire \$100,000 amount. This precondition to obtaining the requisite performance bond effectively will tie up those funds and prevent their use for any other purpose for as long as the bond is in effect. If allowed to persist, this financially untenable situation will preclude Telseon's entry into the Arizona intrastate telecommunications market at this time.

Telseon does not, and for the foreseeable future will not, provide traditional voice, dial-tone services. Telseon seeks to serve businesses by developing metropolitan area networks to eliminate the bottleneck between their private local area networks and long haul fiber optic backbones. Telseon's networks are designed to offer point-to-point, point-to-multipoint, and multipoint-to-multipoint network connections and to enable high-speed access between businesses and application service providers, Internet service providers, and other types of service providers. Telseon's wide range of broadband and high-speed digital private line service offerings use a public Internet protocol-based network that employs proprietary gigabit ethernet technology. Additionally, Telseon offers point-to-point connections at 2.5 and 10 gigabits per second using advanced Dense Wavelength Division Multiplexing ("DWDM") equipment that will support Gigabit Ethernet, SONET, Fiber Channel, and other protocols.

Unlike providers of local exchange voice services, Telseon does not bill in advance for its services; it bills in arrears for services the customer already has received. As Telseon does not collect advance payments, Telseon's customers are under no risk of losing advance payments. Further, Telseon does not require deposits from its customers unless there is reasonable uncertainty with regard to the credit-worthiness of the customer.

Further, Telseon is not typically the customer's sole provider of the niche services it offers; Telseon usually serves as back-up facilities to the facilities of another carrier, providing expanded capacity to the customer on an as-needed basis via a second link.

## II. The Public Interest Will Be Served by the Grant of the Exception

Competition Serves the Public Interest. As stated, the Letter of Credit required of Telseon's parent company to secure the required performance bond will tie up \$100,000 and prevent its use for any other purpose. The provision of facilities-based telecommunications services of any kind is very capital-intensive. At the present time, capital for competitive telecommunications carriers is extremely difficult to obtain. Few, if any, competitive carriers can afford to tie up \$100,000 in working capital for the purpose of securing a bond. If enforced, the requirement to obtain a \$100,000 performance bond will prevent Telseon from providing intrastate telecommunications services in Arizona.

Competition creates incentives for all carriers to lower prices, to provide better service, and to develop innovative products. The public interest is served by increasing competition; the public interest would not be served by the elimination of Telseon as a competitive provider in Arizona.<sup>5</sup>

It Is Contrary to the Public Interest to Require Performance Bonds to Protect Deposits of Business Customers. The published governing rule, promulgated in accordance with Arizona law, R14-2-1105 (D), Arizona Administrative Code, provides that the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

R14-2-1105 (D) is not limited in application to advances or deposits from residential customers. Telseon suggests that there is no need for such a rule in a competitive market in the

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<sup>5</sup> 47 U.S.C. § 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(b) states that "[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers." As discussed below, there is no need to protect business customers from the risk of a lost deposit.

business-to-business context, and that such a requirement in that context limits price competition<sup>6</sup> and reduces consumer choice. Business customers are practiced at analyzing the costs and the benefits of any transaction. For the most part, business customers are quite adept at factoring in any possible risk of losing an advance or deposit into the price they are willing to pay for a service. Some business customers will accept some risk of losing an advance or deposit in exchange for a lower price for services from a new competitive carrier. The greater the perceived risk, the more competitively-priced a competitive carrier's services must be in order to attract customers. Some business customers may make the judgment that they should pay higher rates to an incumbent carrier in order to be subjected to less risk of losing an advance or deposit. Businesses make business judgments as to whether or not a particular carrier offers the best overall value for their particular needs and circumstances. Telseon is not a sole-source provider; no business is in the position of being a "captive audience" for Telseon's services. Businesses benefit from the availability of choice.

The Commission's grant of Telseon's request would clearly serve the public interest, enabling an additional carrier to enter the Arizona market almost immediately, adding some healthy competitive pressure on all carriers offering similar services, and providing additional pricing and service choices to Arizona business customers. Telseon respectfully requests that the Commission grant it a waiver of the requirement to post a performance bond

### **III. Alternative Request for Relief**

Should the Commission be unwilling to grant an outright waiver of the requirement that Telseon obtain a performance bond, Telseon asks that the Commission grant one of the following alternative requests for relief:

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<sup>6</sup> The cost of a performance bond, like all direct costs of any business, must be recovered by any carrier incurring such a cost. Having to pay the cost of a performance bond causes carriers to have to charge more for intrastate services to Arizona customers than would otherwise have to be charged.

1. Condition Waiver on Telseon Foregoing Right to Collect Deposits. Although Telseon only requires deposits from customers whose credit-worthiness is uncertain, and strongly believes that it should be able to do so, Telseon is willing to forego the right to collect such deposits should the Commission determine that such a condition is appropriate in return for waiving the requirement to obtain a performance bond.

2. Impose Alternative Requirement That Telseon Hold In Escrow or Trust Any Deposits Obtained. In the event that the Commission is unwilling to exempt Telseon from a requirement to secure customer deposits, Telseon requests that instead of requiring a performance bond, the Commission impose the alternative requirement that Telseon hold in escrow or trust any deposits it obtains from customers, as provided by R14-2-1105 (D) (“ . . . the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.”).

3. Postpone the Date by Which the Performance Bond Must Be Acquired to November 28, 2003. Finally, should the Commission be unwilling either to grant it an exemption from the requirement to obtain a performance bond, or to substitute the alternative requirement that Telseon hold in escrow or trust any deposits that it does obtain from customers, Telseon requests that the Commission extend the time by which the bond must be acquired by two years, to November 28, 2003. Telseon planned to begin its Arizona operations in November of 2001, but presently cannot do so in light of the costly prerequisites to obtaining a bond. Telseon has spent considerable time and incurred significant expense in obtaining its Arizona certification, and does not want to lose that certificate due to its present inability to fulfill the bond requirement. While Telseon is eager to provide competitive telecommunications services to Arizona business customers as soon as possible, in the event that the Commission elected to grant a postponement

to November 28, 2003, Telseon understands that it would not be able to offer intrastate Arizona services until the bond is acquired.

#### **IV. Conclusion**

The public interest would be served by granting Telseon the requested waiver of the requirement to obtain a performance bond; the public interest would be adversely affected by leaving the current requirement in the Order in place. As discussed, the existing performance bond requirement as applied to Telseon, considering Telseon's proposed service offerings, billing procedures, and customer base, is not necessary to protect the public interest. Telseon will not provide traditional voice, dial-tone services or provide services to residential customers for the foreseeable future. Telseon seeks to provide its services only to business customers. Telseon does not bill in advance for the services it provides, and does not collect deposits from creditworthy customers (and most customers are creditworthy). Telseon only seeks deposits from those business customers who are of questionable creditworthiness. Moreover, if necessary, Telseon is willing to waive the right to collect deposits altogether. Therefore, Telseon respectfully submits that the requirement that it obtain a \$100,000 performance bond is not necessary to protect Arizona customers, and would adversely affect competition in Arizona. Should the Commission believe otherwise, Telseon respectfully submits that the Commission could achieve the same result by substituting the alternative requirement that Telseon hold in escrow or trust any deposits that it does obtain from customers for the requirement to obtain a performance bond.

Should the Commission grant Telseon the waiver requested, or substitute a requirement that deposits be held in escrow or trust, Telseon expects to introduce its Arizona intrastate services before year-end, as planned. The grant of either the requested waiver or the imposition of the substitute requirement would serve the public interest by promoting price competition and

by facilitating the introduction of additional service choices for business consumers in the Arizona intrastate telecommunications market.

WHEREFORE, Telseon respectfully requests that the Commission grant it an exemption from the requirement to post a performance bond as a condition of providing intrastate telecommunications services. In the alternative, in lieu of requiring a performance bond, Telseon asks that the Commission substitute a requirement that Telseon hold in escrow or trust any deposits it may obtain from customers, as provided by R14-2-1105 (D). Should the Commission be unwilling to either grant it an exemption from the requirement to obtain a performance bond, or to substitute a requirement that Telseon hold in escrow or trust any deposits that it does obtain from customers, Telseon requests that the Commission allow it to postpone the date by which the bond must be acquired by two years, to November 28, 2003. Finally, Telseon requests such other and further relief as is appropriate, to include waiver of the deadline set in the Order for compliance with the performance bond requirement during the Commission's consideration of this Application.

Respectfully submitted,



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Counsel for Telseon Carrier Services, Inc.

Dated: October 11, 2001

