

ORIGINAL



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MEMORANDUM

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TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGT*

DATE: October 28, 2005

RE: IN THE MATTER OF THE APPLICATION OF CHARTER FIBERLINK AZ-CCVII, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND LOCAL EXCHANGE, FACILITIES-BASED LONG DISTANCE AND LOCAL EXCHANGE, AND ALTERNATIVE OPERATOR SERVICES TELECOMMUNICATIONS SERVICES (DOCKET NO. T-04260A-04-0383)

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

- Resold Long Distance Services
- Resold Local Exchange Services
- Facilities-Based Local Exchange Services
- Facilities-Based Long Distance Services
- Alternative Operator Services
- Private Line Telecommunications Services

Staff is recommending approval of the application.

Originator: Wilfred Shand, Jr.

Attachment: Original and Thirteen Copies

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DOCKET NO. T-04260A-04-0383

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STAFF REPORT  
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CHARTER FIBERLINK AZ-CCVII, LLC

DOCKET NO. T-04260A-04-0383

IN THE MATTER OF THE APPLICATION OF CHARTER FIBERLINK AZ-CCVII, LLC  
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD  
LONG DISTANCE AND LOCAL EXCHANGE, FACILITIES-BASED LONG DISTANCE  
AND LOCAL EXCHANGE, AND ALTERNATIVE OPERATOR SERVICES  
TELECOMMUNICATIONS SERVICES

October 28, 2005

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## STAFF ACKNOWLEDGMENT

The Supplemental Staff Report for Charter Fiberlink AZ-CCVII, LLC, Docket No. T-04260A-04-0383, was the responsibility of the Staff member listed below. Wilfred Shand, Jr. was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold long distance, facilities-based long distance, resold local exchange; facilities-based local exchange services; alternative operator services; private line telecommunications and petition for a determination that its proposed services should be classified as competitive.



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Wilfred Shand, Jr.  
Public Utilities Analyst Manager

## 1. INTRODUCTION

On May 20, 2004, Charter Fiberlink AZ-CCVII, LLC ("CF" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, facilities-based long distance, resold local exchange, facilities-based local exchange, alternative operator services, and private line telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On September 29, 2005, CF submitted, to the Commission, updated tariffs for the services it is requesting the authority to provide. Also on September 29, 2005, the Commission's Hearing Division ("Hearing") issued a Procedural Order which continued CF's original hearing on this matter and ordered Staff to file an amendment to its Staff Report by October 28, 2005.

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. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

CF indicated that its affiliates are currently providing competitive local exchange and/or resold long distance service in 25 states excluding Arizona (See Attachment A). Based on this, Staff believes CF possesses the technical capabilities to provide the services it is requesting the authority to provide.

## 3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided unaudited financial statements of its parent company, Charter Communications, Inc., for the six months ending June 30, 2005. These financial statements list assets in excess of \$16 billion; negative equity in excess of \$5 billion; and a net loss in excess of \$355 million. The Applicant provided notes related to the financial statements.

The Applicant stated in its Tariff (reference Sections 1.7.9 on Page 20 of CF's Revised Local Exchange Service Tariff) that it does collect advances, deposits and prepayments from its local exchange service customers. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of a performance bond. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond for multiple services is an aggregate of the minimum bond amount for each type of telecommunications service requested by the Applicant. The amount of bond coverage needed for each service is as follows: resold local exchange \$25,000; facilities-based long distance \$100,000; and facilities-based local exchange \$100,000. The bond coverage needs to increase in increments equal to 50 percent of the total minimum bond amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum bond amount. Further, measures should be taken to ensure that the

Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

To that end, Staff recommends that the Applicant procure a performance bond equal to \$225,000. The minimum bond amount of \$225,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$112,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$22,500 of the bond amount. 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 to discontinue service. 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 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

However, if at some time in the future the Applicant does collect advances, deposits and/or prepayments from its resold interexchange service customers, Staff recommends that the Applicant docket proof of an additional performance bond in the amount of \$10,000. Such filing must reference the docket and decision numbers in this matter.

#### 4. 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 rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company indicating that its fair value rate base is zero. Accordingly, the company's fair value rate base is too small to be useful in a fair value analysis. CF originally indicated that its rates will be determined on an individual case

basis. On September 29, 2005, CF submitted revised tariff pages reflecting the actual rates that CF will be charging for its local and interexchange services. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent carriers and major long distance carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value rate base information provided should not be given substantial weight in this analysis.

## 5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

### 5.1 NUMBER PORTABILITY

The Commission has adopted rules to address number portability in a competitive telecommunications services market. 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. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### 5.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### 5.3 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 Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, 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.

#### 5.4 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. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

#### 5.5 911 SERVICE

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

#### 5.6 CUSTOM LOCAL AREA SIGNALING SERVICES

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

### 6. REVIEW OF COMPLAINT INFORMATION

The Applicant has neither had an application for service denied, nor revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. Consumer Services reports no complaint history within Arizona.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years.

## 7. 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.

### 7.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

#### 7.1.1 **A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

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.

#### 7.1.2 **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.

#### 7.1.3 **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.

#### 7.1.4 **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.

#### 7.1.5 **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.

**7.1.6 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 most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

**7.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES**

**7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

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

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

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

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

**7.2.4 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.

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

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

**7.2.6 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.
- 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.

## 8. ALTERNATIVE OPERATOR SERVICE SPECIFIC ISSUES

Alternative Operator Service ("AOS") is a service industry that provides resold telecommunications and operator services to large distinct customers, such as hotels, motels, health care and correctional facilities. The AOS provider will contract with the hotel or correctional facility to provide services. The hotel or correctional facility is referred to as an "aggregator" as in the ordinary course of its operations it allows for intrastate telephone services to be available to its patrons. The patrons of the "aggregator" are referred to as "end-users." AOS services are provided by routing all calls originating from the aggregator premise to the AOS provider, which then handles the call to meet the needs of the end-user.

"End-users" have no control over the aggregator's subscription for long distance service, and as such are essentially captive customers for telecommunications services. The Commission has previously determined that it is in the public interest to ensure that an end user using the telecommunications services of an AOS provider be charged rates consistent with the corresponding rates and service charges of certified facilities-based toll carriers available to the calling public.

Staff has reviewed the authorized rates and service charges applicable to AOS providers. Staff reviewed the rates of AT&T Communications of the Mountain States, Inc. ("AT&T"), MCI Telecommunications Corporation, ("MCI"), Sprint Communications Company, (Sprint), Allnet Communications Services, Inc., ("Allnet"), and QWEST Communications ("QWEST"). Staff then developed the attached Schedule 1 and 2, establishing maximum rates for the AOS services. These maximum rates coupled with discounting authority provide the market participants with the ability to compete on price and service quality. The Commission adopted these maximum rates in Decision No. 61274.

### 8.1 RATE REVIEW PROCESS

Staff has reviewed the rates of five major toll carriers to establish the maximum AOS rates, service charges and operator-dialed surcharges set forth on Schedule 1 and 2. If any of the carriers forming the rate group obtain higher rates, the Applicant should be authorized to allow its rates to float in accordance with the carriers revised higher rates so long as the AOS provider complies with the following tariff filing requirements. The Applicant is required to file: 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 rates of the five major carriers set; and 3) all information required by A.A.C. R14-2-1110.

For example, AT&T currently has maximum rates in the night/weekend rate period in mileage bands 0 through 292 for the first minute and additional minutes in Schedule 1. In the event AT&T was to increase its rates in these mileage bands, the rates changed would establish new maximum rates in Schedule 1. Pursuant to Staff's recommendation, the Applicant would be allowed to seek authorization to increase its

maximum rates and/or service charges accordingly by complying with the filing requirements described above.

## 8.2 DISCOUNTING AUTHORITY

Staff recommends that the Applicant should be allowed to discount its rates and service charges to the marginal cost of providing the services. Discount authority will provide the company with pricing flexibility to compete with other providers, as well as allow the potential benefits of price competition to accrue to end-users.

## 8.3 INTERLATA TOLL CHARGES

Staff recommends interLATA rates and service charges to be based on the maximum rates and service charges authorized for certain interexchange carriers ("IXCs") certificated in Arizona as described above.

Staff recommends that the Commission authorize the Applicant to charge the maximum rate in each mileage band, respective of the day of the week and time of the day, currently authorized for any of the facilities-based IXC's as set forth in Schedule 1. In addition, Staff recommends that the Commission limit the Company's service charges to the highest authorized maximum service charge of any of the facilities-based IXC's as set forth in Schedule 1.

## 8.4 INTRALATA TOLL CHARGES

Staff recommends IntraLATA rates and service charges to be based on the maximum rates and service charges of the various facilities-based carriers certified to carry intraLATA toll calls in Arizona as described above.

Staff recommends that the Commission authorize the Applicant to charge the maximum rate in each mileage band, respective of the day of the week and time of the day, currently authorized for any of the various facilities-based intraLATA carriers set forth in Schedule 2. Furthermore, Staff recommends that the Commission limit the Company's service charges to the highest authorized maximum service charge of any of the facilities-based intraLATA carriers set forth in Schedule 2.

The attached Schedule 1 and 2 set forth Staff's recommended surcharges for interLATA and intraLATA toll calls respectively.

## 8.5 OPERATOR-DIALED SURCHARGE AND PROPERTY SURCHARGE

An operator-dialed surcharge is imposed when an end user has the capability to dial the call, but requests the operator to dial and make the call. A property surcharge is a

per call bonus paid to the aggregator by the AOS Company. In prior decisions, the Commission has approved both an operator-dialed surcharge and a property (location-specific or subscriber) surcharge.

Staff recommends that the property surcharge be limited to \$1.00 per call. The Commission has approved a property surcharge of \$1.00 for the majority of AOS carriers certified in Arizona. Limiting the property surcharge provides a level playing field for the competitors. Staff recommends consistency in the property surcharge to stress the importance of providing service to the end-users, rather than higher payments to aggregators for the opportunity to serve end-users.

Staff recommends approval of the operator-dialed surcharge and the property surcharge as described in Schedule 1 and 2.

#### 8.6 ZERO MINUS CALLS

The term "zero-minus" refers to calls by individuals who dial "0." The Commission adopted A.A.C. R14-2-1006(A), which requires the AOS provider to route all zero-minus calls to the originating LEC. The Commission also provided a waiver from the requirement upon a showing that the AOS provider could provide the caller with equally quick and reliable service. CF has not requested such a waiver.

#### 8.7 PROPOSED TARIFF

In its original application, CF indicated that its AOS rates would be determined on an ICB. CF has since amended this statement and certified that its AOS services will not be provided on an ICB, that tariffs indicating its actual AOS rates will be submitted prior to the provision of service and that those rates will not exceed the maximum rates set forth in the attached Schedules 1 and 2.

#### 9. PRIVATE LINE TELECOMMUNICATIONS SERVICE SPECIFIC ISSUES

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant. The Applicant is therefore engaged in providing telecommunications service for hire to the public, which fits the definition of a common carrier and a public service corporation. Staff believes the Commission has jurisdiction over the services to be provided by CF. Staff also believes a hearing is necessary. On September 29, 2005, CF submitted revised tariff pages reflecting the actual rates that will be charged for Private Line Services. Staff has reviewed these rates and believes that they are comparable to the rates of other Private Line Service providers currently operating in the State of Arizona.

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 and private line services. 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.

## 10. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### 10.1 RECOMMENDATIONS ON THE APPLICATION FOR A CC&N

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is \$1,978,949. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance companies offering service in Arizona and comparable to the rates the Applicant

charges in other jurisdictions. The rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value information provided was not given substantial weight in this analysis;

7. If at some future date, the Applicant wants to collect advances, deposits and/or prepayments from its resold interexchange service customers, 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 its performance bond;
8. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
9. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
10. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;
11. That the Applicant submit interexchange tariffs indicating that it does not collect advances, deposits and or prepayments;
12. The Applicant's interLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 1;
13. The Applicant's intraLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 2;
14. The Applicant's property surcharge for AOS services be limited to \$1.00 per call.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void without further order of the Commission and no time extensions shall be granted.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
  - a. Procure a performance bond equal to \$225,000. The minimum bond amount of \$225,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's

customers. The bond amount should be increased in increments of \$112,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$22,500 of the bond amount.

- b. Docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first. The performance bond must remain in effect until further order of the Commission.
- c. If at some time in the future the Applicant does collect advances, deposits and/or prepayments from its customers, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond regarding its resold services. Such request must reference the decision in this docket and must explain the Applicant's plans for canceling those portions of the bond.

#### 10.2 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 or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

## Attachment A

The following are the states in which CF's affiliates are currently certificated to provide telecommunications services:

1. Alabama
2. Arkansas
3. California
4. Colorado
5. Conecticut
6. Georgia
7. Idaho
8. Illinois
9. Indiana
10. Kansas
11. Kentucky
12. Louisiana
13. Massachusetts
14. Michigan
15. Minnesota
16. Mississippi
17. Missouri
18. Nebraska
19. Nevada
20. New Hampshire
21. New Mexico
22. New York
23. North Carolina
24. Ohio
25. Oklahoma
26. Oregon
27. South Carolina
28. Tennessee
29. Texas
30. Vermont
31. Virginia
32. Washington
33. West Virginia
34. Wisconsin

## Schedule 1

### Alternative Operator Services Maximum InterLata Usage Charges

Mileage Band	Day Time (a)		Evening/Holiday (b)		Night/Weekend (c)	
	First Minute	Addtl. Minute	First Minute	Addtl. Minute	First Minute	Addtl. Minute
0-10	0.3000	0.3000	0.3000	0.3000	0.3000	0.3000
11-16	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
17-22	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
23-30	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
31-40	0.5065	0.3000	0.3135	0.3000	0.3000	0.3000
41-55	0.5307	0.3332	0.3135	0.3000	0.3000	0.3000
56-70	0.5560	0.3732	0.3590	0.3000	0.3000	0.3000
71-124	0.5560	0.3865	0.3590	0.3000	0.3000	0.3000
125-196	0.5560	0.4265	0.3590	0.3000	0.3000	0.3000
197-292	0.5560	0.4799	0.3590	0.3000	0.3000	0.3000
293 & Over	0.5800	0.4820	0.3908	0.3000	0.3000	0.3000

### Rate Periods

- (a) Day time is Monday through Friday 8:00 a.m. to 5 p.m.
- (b) Evening/Holiday is Sunday through Friday 5:00 p.m. to 11:00 p.m.  
Officially recognized holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. Evening rates are applicable during all holiday hours, except for hours when a lower rate (i.e. Night/Weekend) is applicable.
- (c) Night/Weekend is Sunday through Thursday 11:00 p.m. to 8:00 a.m., 11:00 p.m. Friday through 5:00 p.m. Sunday.

### Alternative Operator Services Maximum InterLata Services Charges

Service (1) (2)	Maximum Charge
Customer Dialed Calling or Credit Card	\$1.50
Operator Dialed Calling or Credit Card	\$2.50
Station – to – Station Collect	\$2.33
Person – to – Person Collect	\$4.66
Third Party Person – to – Person	\$4.66
Third Party Station – to Station	\$2.33
Person—to – Person	\$4.50
Station – to – Station	\$3.50
Directory Assistance	\$2.00

- (1) An Operator Dialed Surcharge of \$2.00 will be applied to an end user who has the capability to call, but requests the operator to do so instead. In accordance with A.A.C. R14-2-1005, end users shall be informed of this charge before call completion. This surcharge will not be imposed in cases of equipment failure or where the end user is experiencing a disability.
- (2) A Property Surcharge, Subscriber Surcharge or Location Specific Charge may be added to all operator assisted calls completed from company subscriber locations. This surcharge will appear on the customer's bill and will be capped at \$1.00 per call; all of this surcharge will be remitted to the aggregator; however, this surcharge will not be collected by the Company if the aggregator is also collecting a surcharge.

Company \_\_\_\_\_  
 Docket No. \_\_\_\_\_  
 Decision No. \_\_\_\_\_

## Schedule 2

### Alternative Operator Services Maximum IntraLata Usage Charges

Mileage Band	Day Time (a)		Evening/Holiday (b)		Night/Weekend (c)	
	First Minute	Addtl. Minute	First Minute	Addtl. Minute	First Minute	Addtl. Minute
0-10	0.3000	0.3000	0.3000	0.3000	0.3000	0.3000
11-16	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
17-22	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
23-30	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
31-40	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
41-55	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
56-70	0.5200	0.3300	0.3590	0.3000	0.3000	0.3000
71-124	0.5200	0.3300	0.3590	0.3000	0.3000	0.3000
125-196	0.5300	0.3600	0.3590	0.3000	0.3000	0.3000
197-292	0.5800	0.3600	0.3590	0.3000	0.3000	0.3000
293 & Over	0.5800	0.3800	0.3980	0.3000	0.3300	0.3000

### Rate Periods

- (a) Day time is Monday through Friday 8:00 a.m. to 5 p.m.
- (b) Evening/Holiday is Sunday through Friday 5:00 p.m. to 11:00 p.m.  
Officially recognized holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. Evening rates are applicable during all holiday hours, except for hours when a lower rate (i.e. Night/Weekend) is applicable.
- (c) Night/Weekend is Sunday through Thursday 11:00 p.m. to 8:00 a.m., 11:00 p.m. Friday through 5:00 p.m. Sunday.

### Alternative Operator Services Maximum IntraLata Services Charges

Service (1) (2)	Maximum Charge
Customer Dialed Calling or Credit Card	\$1.50
Operator Dialed Calling or Credit Card	\$2.50
Station – to – Station Collect	\$2.30
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Station – to – Station	\$3.50
Directory Assistance	\$2.00

- (1) An Operator Dialed Surcharge of \$2.00 will be applied to the capability to call, but requests the operator to do so instead. In accordance with A.A.C. R14-2-1005, end users shall be informed of this charge before call completion. This surcharge will not be imposed in cases of equipment failure or where the end user is experiencing a disability.
- (2) A Property Surcharge, Subscriber Surcharge or Location Specific Charge may be added to all operator assisted calls completed from Company subscriber locations. This surcharge will appear on the customer's bill and will be capped at \$1.00 per call; all of this surcharge will be remitted to the aggregator; however, this surcharge will not be collected by the Company if the aggregator is also collecting a surcharge.

Company \_\_\_\_\_  
 Docket No. \_\_\_\_\_  
 Decision No. \_\_\_\_\_

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BEFORE THE ARIZONA CORPORATION COMMISSION

2542

ZOMMISSIONERS

2005 SEP 29 P 3:49

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF  
CHARTER FIBERLINK AZ-CCVII, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE RESOLD LONG  
DISTANCE AND LOCAL EXCHANGE,  
FACILITIES-BASED LONG DISTANCE AND  
LOCAL EXCHANGE, ALTERNATIVE  
OPERATOR SERVICES AND PRIVATE LINE  
TELECOMMUNICATIONS SERVICES.

DOCKET IO. T-04260A-04-0 8

PROCEDURAL ORDER

**BY THE COMMISSION:**

On May 20, 2004, Charter Fiberlink AZ-CCVII, LLC ("Applicant") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long distance, facilities-based long distance, resold local exchange, facilities-based local exchange, alternative operator services and private line telecommunications services within the State of Arizona. The application petitioned the Commission for determination that its proposed services should be classified as competitive.

On December 10, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending approval of the application subject to certain conditions.

By Procedural Order issued December 17, 2004, the matter was set for hearing to commence on March 10, 2005.

Applicant caused notice of the hearing to be published in the *Arizona Republic*, a newspaper of general circulation in the requested Certificate service area. No requests for intervention were filed.

On March 10, 2005 the hearing convened as scheduled. No members of the public appeared to provide public comment.

At the hearing, Applicant requested an indefinite continuance of the hearing pending a possible amendment to its application.

1 By Procedural Order issued April 6,2005, the hearing was continued for a period of 180 days,  
2 and Applicant was informed that if no amendment to the application or request for hearing was filed  
3 by September 6,2005, that the docket would be administratively closed.

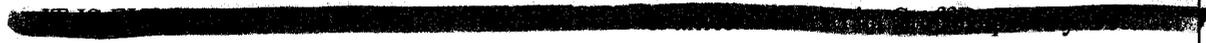
4 On September 1, 2005, Applicant filed a Request for Hearing. Applicant indicated therein  
5 that it would not be filing an amendment to its application.

6 By Procedural Order issued September 12, 2005, a new hearing date was set for September  
7 30,2005.

8 On September 29, 2005, Applicant filed a revised tariff showing rates in addition to ICB  
9 (individual case basis) for private line services and pro forma tariffs showing service descriptions and  
10 rates for various local exchange and long distance service offerings. The September 29, 2005 filing  
11 also included other updated information.

12 Prior to a hearing on the Application, Staff should have an opportunity to update its Staff  
13 Report in response to the Company's September 29, 2005 filing, and the timeclock should be  
14 suspended accordingly.

15 IT IS THEREFORE ORDERED that the **hearing** on this matter set for September 30,2005 at  
16 10:00 a.m. is hereby **continued** to **November 22,2005 at 10:00 a.m.** to allow time for Staff to file an  
17 amendment to its Staff Report in response to the Applicant's September 29,2005 filing.

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19 

20 IT IS FURTHER ORDERED that the timeclock in this proceeding is suspended pending the  
21 continuation of the hearing.

22 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
23 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

24 ...  
25 ...  
26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
2 Communications) applies to this proceeding and shall remain in effect until the Commission's  
3 Decision in this matter is final and non-appealable.

4 DATED this 29<sup>th</sup> day of September, 2005.

5  
6   
7 TEENA WOLFE  
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/faxed  
9 this 29<sup>th</sup> day of September, 2005 to:

10 Michael W. Patten  
11 ROSHKA HEYMAN & DeWULF  
12 One Arizona Center  
400 East Van Buren Street, Ste. 800  
Phoenix, AZ 85004  
Attorney for Fiberlink AZ-CCVII, LLC

13 Christopher Kempley, Chief Counsel  
14 Legal Division  
ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
Phoenix, Arizona 85007

16 Ernest Johnson, Director  
17 Utilities Division  
ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
Phoenix, Arizona 85007

19 ARIZONA REPORTING SERVICE, INC.  
20 2627 N. Third Street, Ste. Three  
Phoenix, Arizona 85004-1104

21 By:   
22 Molly Johnson  
23 Secretary to Teena Wolfe