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MEMORANDUM

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FROM: Ernest G. Johnson  
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Utilities Division

THRU: Matthew Rowell  
Chief, Telecommunications & Energy Section  
Utilities Division

Wilfred Shand, Jr.  
Manager, Telecommunications & Energy Section  
Utilities Division

DATE: May 5, 2006

RE: IN THE MATTER OF THE APPLICATION OF WESTEL, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD  
LONG DISTANCE TELECOMMUNICATIONS SERVICES, DOCKET NO. (T-  
04307A-05-0112)

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

- Resold Long Distance Services

Staff is recommending approval of the application.

EGJ:AFF:tdp

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

*EA for EGJ*

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AZ CORP COMMISSION  
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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

WESTEL, INC.

T-04307A-05-0112

APPLICATION OF WESTEL, INC. FOR  
A CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE RESOLD LONG DISTANCE  
TELECOMMUNICATIONS SERVICES

May 5, 2006

## STAFF ACKNOWLEDGMENT

The Staff Report for Westel, Inc. (Docket No. T-04307A-05-0112) was the responsibility of the Staff member signed below. Armando Fimbres was responsible for the review and analysis of the Company's application.

A handwritten signature in black ink, appearing to read "Armando Fimbres". The signature is written in a cursive style with a large initial "A".

Armando Fimbres  
Public Utilities Analyst V

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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**Application for a Certificate of Convenience and Necessity to Provide Resold  
Long Distance Telecommunications Services.**

**Applicant: Westel, Inc.**  
**Docket No.: T-04307A-05-0112**

On January 20, 1996, Westel, Inc., f/k/a Westel Long Distance, Co. ("Westel") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

On December 19, 2002, Westel was granted a CC&N by Decision No. 65459, Docket No. T-02694A-96-0348.

On July 12, 2004, Westel filed its performance bond.

On July 20, 2004, Staff sent written notification to Westel that its performance bond was filed 206 days outside the 365 day period specified in Decision No. 65459 and therefore, its CC&N was "null & void without further order of the Commission." The same correspondence, informed Westel that another application for a CC&N would need to be filed for Westel to provide telecommunications service in Arizona.

On February 16, 2005, Staff docketed a memorandum informing Westel that its CC&N, granted in Decision No. 65459, Docket No. T-02694A-96-0348, was Null & Void.

On February 17, 2005, Westel filed an application for a CC&N to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

October 20, 2005, Staff docketed a memorandum certifying that Westel's compliance with Decision No. 65459, Docket No. T-02694A-96-0348, had been met.

In addition to filing a bond on July 12, 2004, Westel also filed its 2003 and 2004 Annual Reports and continued to provide resold long distance service pending the processing of Westel's second CC&N application, filed on February 17, 2005.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N to provide competitive resold intrastate interexchange telecommunications services. Staff's review considers the Applicant's technical and financial capabilities, and whether the Applicant's proposed rates will be just and reasonable.

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**REVIEW OF APPLICANT INFORMATION**

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Staff makes the following finding, indicated by an "X," regarding information filed by the Applicant:

- The necessary information has been filed to process this application, and the Applicant has authority to transact business in the State of Arizona.**
- The Applicant has published legal notice of the application in all counties where service will be provided. On September 26, 2002, as part of Docket T-02694A-96-0348, Applicant filed Affidavits of Publication in the counties where the authority to provide resold long distance telecommunications services is requested.**

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**REVIEW OF TECHNICAL INFORMATION**

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The Applicant has demonstrated sufficient technical capability to provide the proposed services for the following reasons, which are marked:

- The Applicant is currently providing service in Arizona.**
- The Applicant is currently providing service in other states.**
- The Applicant is a switchless reseller.**
- In the event the Applicant experiences financial difficulty, end users can access other interexchange service providers.**

The Applicant indicated that it currently **offers resold interexchange service in eight (8) states, excluding Arizona**. Staff has determined that the Applicant has sufficient technical capabilities to provide resold interexchange telecommunications services in Arizona.

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**REVIEW OF FINANCIAL INFORMATION**

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- The Applicant is required to have a performance bond to provide resold interexchange service in the State of Arizona.**

The Applicant did provide **unaudited** financial statements for the twelve months ending December, 2003. These financial statements list assets of \$8,769,087; equity of \$6,466,647; and net income of \$549,941. The Applicant **did not** provide notes related to the financial statements.

The Applicant stated in its Tariff, Section 2.6.2, page 14, that it will not collect advances, deposits and/or prepayments from its resold interexchange customers.

On April 20, 2005, the Applicant amended its application by submitting revised tariff pages 14 and 14.1 and indicated that deposits would be collected. As a result, Staff recommends that the Applicant procure a performance bond equal to \$10,000. The minimum bond should be increased if at any time the bond 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 \$5,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$1,000 of the bond amount. Staff further recommends that proof of the above mentioned performance bond be docketed within 365 days of the effective of an Order in this matter or 30 days prior to the provision of service, whichever ever comes first, and must remain in effect until further order of the Arizona Corporation Commission ("Commission").

On July 12, 2004, Westel filed a \$10,000 performance bond in connection with Docket T-02694A-96-0348.

If at some time in the future, the Applicant does not collect from its customers and advance, deposit and/or prepayment, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond regarding its resold interexchange service. Such request should be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendations to the Commission.

If this Applicant experiences financial difficulty, there should be minimal impact to the customers of this Applicant because there are many companies that provide resold interexchange telecommunications service or the customers may choose a facilities-based provider. If the customer wants interexchange service from a different provider immediately, that customer is able to dial a 101XXXX (dial around) access code. In the longer term, the customer may permanently switch to another company.

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#### **REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION**

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- The Applicant has filed a proposed tariff with the Commission.**
- The Applicant has filed sufficient information with the Commission to make a fair value determination.**

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 Applicant and has determined that its fair value rate base is approximately \$400,000. While Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions.

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## COMPETITIVE SERVICES' RATES AND CHARGES

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### Competitive Services

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the intrastate interexchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

### Effective Rates

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with Arizona Administrative Code ("A.A.C.") R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

### Minimum and Maximum Rates

A.A.C. R14-2-1109 (A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110.

### STAFF RECOMMENDATIONS

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Staff has reviewed the application for a Certificate of Convenience and Necessity to offer intrastate interexchange services as a reseller and the Applicant's petition to classify its intrastate interexchange services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to provide resold intrastate interexchange services, Staff recommends approval of the application. In addition, Staff further recommends that:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;
7. The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name address or telephone number;
9. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
10. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

11. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;
12. 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 Applicant and has determined that its fair value rate base is \$400,000. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, 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 should not be given substantial weight in this analysis.

Staff recommends that the CC&N granted to the Applicant be considered Null and Void after due process if the Applicant fails to meet the conditions stated below:

1. The Applicant shall file conforming tariffs within 30 days from the date of an Order in this matter.
2. The Applicant shall be required to maintain its performance bond consistent with the findings in this Staff report. If at some time in the future, the Applicant does not collect from its customers advances, deposits and/or prepayments, the Applicant shall file a request for cancellation of its established performance bond. Such request should be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendations to the Commission

This application may be approved without a hearing pursuant to A.R.S. § 40-282.