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Docket #(s): T-04144A-02-0762

Exhibit # : A-2

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MEMORANDUM

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TO: Docket Control
Utilities Division

THRU Matt Rowell
Chief
Telecommunications and Energy

FROM: Ernest G. Johnson
Director
Utilities Division

Arizona Corporation Commission
DOCKETED

OCT 23 2003

DOCKETED BY CAR

DATE: August 5, 2003

RE: IN THE MATTER OF THE APPLICATION OF FIRST MILE SERVICES, LLC D/B/A FIRST MILE TECHNOLOGIES FOR CC&N TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-04144A-02-0762)

Attached is the Staff Report for the above referenced application. First Mile Services, LLC d/b/a First Mile Technologies is applying for approval to provide the following services:

- Resold long distance services
- Resold local exchange services
- Facilities-based local exchange services

Staff is recommending approval of the application.

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Originator: John F. Bostwick

Attachment: Original and Sixteen Copies

EXHIBIT
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SERVICE LIST FOR: FIRST MILE SERVICES, LLC D/B/A FIRST MILE TECHNOLOGIES

DOCKET NO. T-04144A-02-0762

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STAFF REPORT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

FIRST MILE SERVICES, LLC D/B/A FIRST MILE TECHNOLOGIES

DOCKET NO. T-04144A-02-0762

IN THE MATTER OF THE APPLICATION OF FIRST MILE SERVICES, LLC D/B/A FIRST MILE TECHNOLOGIES FOR CC&N TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

AUGUST 5, 2003

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STAFF ACKNOWLEDGMENT

The Staff Report for First Mile Services, LLC d/b/a First Mile Technologies, Docket No. T-04144A-02-0762, was the responsibility of the Staff member listed below. John F. Bostwick was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide resold long distance services; resold and facilities-based local exchange services; and petition for a determination that its proposed services should be classified as competitive.

John F Bostwick

John F. Bostwick
Administrative Services Officer II

1. INTRODUCTION

On October 7, 2002, First Mile Services, LLC d/b/a First Mile Technologies ("First Mile" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and resold and facilities-based local exchange 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.

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

First Mile seeks authority to provide resold long distance and resold and facilities-based local exchange telecommunications services throughout the State of Arizona.

2.2 DESCRIPTION OF REQUESTED SERVICES

First Mile proposes to provide resold long distance and resold and facilities-based local exchange telecommunications services. These services include, but are not limited to the following: directory assistance, directory listings, E911 service, CLASS services, and telephone relay service.

2.3 THE ORGANIZATION

First Mile is a foreign limited liability company organized under the laws of the jurisdiction of the District of Columbia. The Applicant has authority to transact business in Arizona. The Applicant indicated that none of its officers, directors, partners or managers have been involved in any civil or criminal investigations or formal or informal complaint proceedings before any regulatory or law enforcement agency. The Applicant also indicated that none of its

officers, directors, partners, or managers have been convicted of any criminal acts in the past ten (10) years.

2.4 TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant has received certification approval in Indiana, Colorado, Florida, and Texas under the name E.Com Technologies, LLC d/b/a First Mile Technologies. The Applicant indicated in its application that it may not possess that same or substantially similar name as another Arizona company. Having searched the availability of E.Com Technologies and finding another company with the same name, the Applicant chose to provide telecommunications services under the name First Mile Services, LLC d/b/a First Mile Technologies.

First Mile is currently providing telecommunications services in Indiana similar to those intended for Arizona. Since the Applicant is authorized and currently provides service to customers in less than six states, Staff obtained information relating to the Applicant's employees. The Applicant has five key employees that have a combined work experience of 100 years of service in the telecommunications services industry.

Based on the Applicant's certification approval in four states, provision of telecommunications services in Indiana, and the combined work experience of its key employees; Staff believes that Applicant has the technical capability to provide the requested telecommunications services in Arizona.

2.5 FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

First Mile provided the unaudited financial statements of its Parent Company, First Mile Technologies, Inc., for the year ending December 31, 2002. First Mile Technologies, Inc.'s financial statements list assets of $3.0 million; negative equity of $515,309; and a net loss of $2.2 million. The Applicant did not provide notes related to the financial statements. Also, the Applicant amended its Application to indicate that it will not rely on an investment from J. F. Shea Company for the development of its business in Arizona as stated in its initial application.

The Applicant stated in its Tariff, Section(s) 2.5.3 and 2.5.4 on page 26, that it collects from its customers an advance and/or deposit. Staff believes that an advance, deposit, and/or prepayment received from the Applicant's resold long distance customers should be protected by the procurement of a performance bond. Since the Applicant is requesting a CC&N for more than one type 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 long distance $10,000 for advances, deposits and/or prepayments collected; resold local exchange $25,000; 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 prepayment 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 local exchange customers without first complying with Arizona Administrative Code ("AAC") R14-2-1107.

To that end, Staff recommends that the Applicant procure a performance bond equal to $135,000. The minimum bond amount of $135,000 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 $67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within $13,500 of the bond amount. If the Applicant desires to discontinue local exchange service, it must file an application with the Commission pursuant to AAC R14-2-1107. Additionally, the Applicant must notify each of its local exchange 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 not collect from its resold long distance customers an 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 long distance service. Such request should be filed with the Commission for Staff's review. Upon receipt of such filing and after Staff's review, Staff will forward its recommendation to the Commission.

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

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 initial rates (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 and has determined 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. 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, it did not accord that information substantial weight in its analysis.

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 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. Staff recommends that the Applicant file a plan, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, demonstrating 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. This plan must remain in effect until further order of the Commission.

3.2 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.

3.3 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).

3.4 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.

3.5 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, an alternative local exchange service provider may serve a customer 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.

3.6 911 SERVICE

The Applicant has not indicated in its application whether it will provide all customers with 911 and E911 service, where available, or 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, within 365 days of the effective date of the order in this matter or 30 days prior to the provision of service, whichever comes first. This must remain in effect until further order of the Commission.

3.7 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.

3.8 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 makes 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.

e. 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.

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

4.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES

4.2.1 **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.

4.2.2 **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.

4.2.3 **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.

4.2.4 **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.

4.2.5 **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.

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.

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

First Mile is a foreign limited liability company organized under the laws of the jurisdiction of the District of Columbia. The Applicant has received certification approval in Indiana, Colorado, Florida, and Texas under the name E.Com Technologies, LLC d/b/a First Mile Technologies. First Mile is currently providing telecommunications services in Indiana similar to those intended for Arizona. The Applicant has five key employees that have a combined work experience of 100 years of service in the telecommunications services industry. Based the Applicant's certification approval in four states, provision of telecommunications services in Indiana, and the combined work experience of its key employees; Staff believes 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. In addition, Staff further recommends:

1. That, unless it provides services solely through the use of its own facilities, the Applicant procure an Interconnection Agreement, within 365 days of the effective date of the order in this matter or 30 days prior to the provision of service, whichever comes first, that

must remain in effect until further order of the Commission, before being allowed to offer local exchange service;

2. That the Applicant file with the Commission, within 365 days of the effective date of the order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases, that must remain in effect until further order of the Commission;

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 abides 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 365 days of the effective date of the order in this matter or 30 days prior to the provision of service, whichever comes first. This must remain in effect until further order of the Commission;

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 notify the Commission immediately upon changes to the Applicant's address or telephone number;

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

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

13. 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;

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

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

16. That the Applicant participates in and contributes to a universal service fund, as required by the Commission;

17. 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 zero. Accordingly, the company'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 its analysis;

18. The Applicant should be ordered to file an application with the Commission pursuant to AAC R14-2-1107, if the Applicant desires to discontinue service. The Applicant should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service; and any failure to do so should result in forfeiture of the Applicant's performance bond; and

19. 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.

Staff 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 file conforming tariffs for its resold long distance CC&N, its resold local exchange CC&N, and its facilities-based local exchange services CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, and in accordance with the Decision; and

2. The Applicant shall:

    a. procure a performance bond equal to $135,000. The minimum bond amount of $135,000 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 $67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within $13,500 of the bond amount; and

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, and must remain in effect until further order of the Commission. However, if at some time in the future the Applicant does not collect from its customers an 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 recommendation to the Commission.

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 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.