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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

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Application for a Certificate of Convenience and Necessity to Provide Resold Interexchange and Local Exchange Services and for Determination that Services of the Applicant are Competitive

DOCUMENT CONTROL

Applicant: CM Tel, Inc.
Docket No.: T-04185A-03-0388

On June 27, 2003, CM Tel, Inc. ("Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold interexchange and local exchange services within the State of Arizona.

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

REVIEW OF APPLICANT INFORMATION

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 July 21, 2003, Applicant filed an Affidavit of Publication from the Arizona Republic that complies with the Commission's notice requirements.

REVIEW OF TECHNICAL INFORMATION

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.

Arizona Corporation Commission

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The Applicant has sufficient technical and managerial capabilities to provide resold local exchange service in the State of Arizona.

In the event the Applicant experiences financial or technical difficulty, end users can access other interexchange service providers.

The Applicant is a start-up company. The Applicant has thirteen (13) employees with a combined experience of 119 years in the telecommunications service industry. The Applicant does not yet have a resale agreement pending or in negotiations at this time. Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide resold interexchange telecommunications services and has sufficient technical and managerial capabilities to provide resold local exchange services.

REVIEW OF FINANCIAL INFORMATION

The Applicant is required to have a performance bond to provide resold local exchange services in the State of Arizona.

The Applicant did provide unaudited consolidated financial statements, for the twelve (12) months ending March 31, 2003. These financial statements list assets of \$5.1 million; equity of \$410,452; and a net income of \$266,896. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its Tariff, Sections 2.7 on page 10, that it does not collect from its resold interexchange customers an advance, deposit, and/or prepayment. If at some future date, the Applicant wants to collect from its resold interexchange customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file an application with the Arizona Corporation Commission ("Commission") for Commission approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring a performance bond.

Since monthly service charges for resold local exchange service are paid in advance, Staff believes that an advance, deposit, and/or prepayment received from the Applicant's customers should be protected by the procurement of a performance bond. Further, measures should be taken to ensure that the Applicant will not discontinue service to its 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 \$25,000. The minimum bond amount of \$25,000 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 \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the bond amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to AAC 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.

If this Applicant experiences financial or technical 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 long distance customer wants service from a different provider immediately, that customer is able to dial a 101XXXX access code (dial around). In the longer term, the customer may permanently switch to another company.

REVIEW OF COMPLAINT INFORMATION

Complaints against the Applicant (if any) are not sufficient to deny the application to provide resold interexchange and local exchange services in the State of Arizona

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, 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.

REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

The Applicant has filed proposed tariffs 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 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.

COMPETITIVE SERVICES' RATES AND CHARGES

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 and/or the local exchange 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 ("AAC") 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 AAC R14-2-1109.

Minimum and Maximum Rates

AAC 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 AAC R14-2-1110.

STAFF RECOMMENDATIONS

Staff has reviewed the application for a Certificate of Convenience and Necessity to offer intrastate interexchange and local exchange services as a reseller and its petition to classify its intrastate interexchange and local exchange services as competitive. Based on its evaluation of the Applicant's technical, managerial, and financial capabilities to provide resold interexchange and local exchange 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 a 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 address or telephone number;
9. If at some future date, the Applicant wants to collect from its resold interexchange customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file an application with the Arizona Corporation Commission ("Commission") for Commission approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring a performance bond;
10. The Applicant's resold interexchange and local exchange service offerings should be classified as competitive pursuant to AAC R14-2-1108;
11. 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 AAC R14-2-1109;
12. 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; and
13. 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. 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; and

14. 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 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;

Staff recommends that the Applicant be ordered to comply with the following. If its 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 file conforming tariffs for each of its CC&Ns 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 \$25,000. The minimum bond amount of \$25,000 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 \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 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.

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



Ernest G. Johnson
Director
Utilities Division

Date: 8-19-03

Originator: Adam Lebrecht

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DOCKET NO. T-4185A-03-0388

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