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BEFORE THE ARIZONA CORPORATION CO.

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COMMISSIONERS

Arizona Corporation Commission

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLCIATION OF  
TRIPLET MOUNTAIN COMMUNCIATIONS,  
INC. FOR APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE RESOLD LONG DISTANCE AND  
FACILITIES-BASED LOCAL EXCHANGE  
TELECOMMUNCIATIONS SERVICES IN  
ARIZONA.

DOCKET NO. T-20487A-06-0714

**STAFF'S CLARIFICATION  
TO THE RECOMMENDED  
OPINION AND ORDER**

The Utilities Division of the Arizona Corporation Commission ("Staff") respectfully submits the following clarifications in response to the Recommended Opinion and Order ("ROO") issued by Administrative Law Judge Sarah Harpring.

In its Staff Report and its direct testimony, Staff recommended, among other things, that Triplet Mountain Communications, Inc. ("Triplet") secure a performance bond or an irrevocable sight draft letter of credit (ISDLOC) in the amount of \$110,000; \$10,000 for its resold long distance services and \$100,000 for its facilities based local exchange services. Staff also recommended that in the event Triplet ceases to collect advances, deposits and prepayments in the future, that "Triplet be allowed to file a request for cancellation of its established performance bond...regarding its resold and facilities-based services" (Staff Report at 9, item (2) (c)).

According to AAC R14-2-1105 (D), the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust. It has been the policy of the Commission to require telecommunications companies to obtain a performance bond or an ISDLOC depending upon the type of service provided. For example, it has been Staff's recommendation that for facilities based local exchange and/or long distance services, the bond/ISDLOC amount is \$100,000; for resold local exchange services, Staff

1 typically recommends the amount of the bond/ISDLOC is \$25,000. For resold long distance services,  
2 the amount of the bond/ISDLOC recommended by Staff is \$10,000.

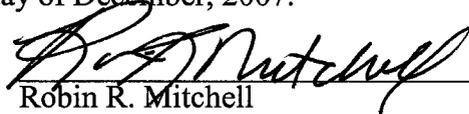
3 Staff is puzzled by the statement in Finding of Fact 25, which states that “The requirement for  
4 facilities-based service providers to obtain a performance bond or ISDLOC is *unrelated* to whether  
5 the service provider collects advances deposits or prepayments...”(*emphasis added*, see ROO at  
6 Finding of Fact 25, 14-18). Staff believes that the purpose of the requirement for a performance bond  
7 or ISDLOC by the Commission has as its overriding goal, the protection of the customers of the  
8 telecommunications service provider should the provider default on its obligations pursuant to its  
9 CC&N, which could encompass the voluntary or involuntary cessation of operations, the potential  
10 loss of pre-payments and advances by customers, the loss of monthly service that has been paid in  
11 advance by the customer; and the costs to the customer for physical equipment changes required  
12 because of a default by the provider. The Commission reserves the right to draw on that bond or  
13 ISDLOC, on behalf of and for the sole benefits of the affected customers should the Commission find  
14 in its discretion that there has been a default of the provider’s obligations arising from its CC&N.

15 Finding of Fact 25 further states that by allowing Triplet to request cancellation of its  
16 bond/ISDLOC relating to its facilities based services and if it ceases to collect advances, deposits,  
17 etc, would be inconsistent with Commission policy, Staff would respectfully disagree. As a general  
18 matter, due process dictates that public service corporations retain the right to *ask* for relief from  
19 regulatory conditions if they believe that changed circumstances warrant such a request. Staff would  
20 be concerned if the Commission issued an order that purports to deny a company such a right. Of  
21 course, the analysis in response to such a request would encompass consideration of all relevant  
22 factors and would focus on protecting customers. Thus, Staff does not believe that the Commission  
23 should provide that Triplet would only be allowed to request a cancellation of the portion of the  
24 bond/ISDLOC relating to its resold long distance services and not of a request related to all of the  
25 services that it provides, which would include its facilities based local exchange services.

26 The Commission recently allowed a telecommunications company to request cancellation of  
27 its bond/ISDLOC relating to facilities based local exchange services. In Docket No. 07-0205, Time  
28 Warner Telecom of Arizona, LLC (“TWTA”) and Xspedius Management Co Switched Services,

1 LLC and Xspedius Management Co. for Pima County, LLC (together with TWTA, "the  
2 Companies") filed a joint application for among other things, the elimination of its performance  
3 bond. The Companies held bonds totaling \$2.17 million. The Companies are a facilities-based  
4 competitive local exchange carrier. Staff recommended, in that docket, that the bonds be reduced but  
5 not eliminated. In Decision 70057, which was just issued December 4, 2007, the Commission agreed  
6 with Staff's position and reduced but did not eliminate the bond. The key point is that the Companies  
7 *were allowed* to make the request. Triplet would appear to be foreclosed from that opportunity should  
8 the Finding of Fact 25 and Conclusions of Law 10 be adopted. Staff's recommendation for Triplet  
9 would work just as it had for TWTA and Xspedius Certificated Subsidiaries; a company can make a  
10 request to have its bond eliminated; Staff makes a recommendation and the Commission rules on the  
11 request after due process.

12 RESPECTFULLY submitted this 14<sup>th</sup> day of December, 2007.

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14 Robin R. Mitchell  
15 Attorney, Legal Division  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007  
18 Telephone: (602) 542-3402

19 Original and thirteen (13) copies of the foregoing were filed this 14<sup>th</sup> day of December, 2007  
20 with:

21 Docket Control  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Copy of the foregoing mailed this 14<sup>th</sup> day of December, 2007 to:

26 Vernon R. James  
27 TRIPLET MOUNTAIN  
28 COMMUNICATIONS, INC.  
10 Telecom Lane  
Peridot, AZ 85542

Karen Twenhafel  
Sr. Regulatory Consultant  
TELCOM CONSULTING ASSOCIATES  
1465 Kelly Johnson boulevard, Suite 200  
Colorado Springs, CO 80920

Glenn M. Feldman  
MARISCAL, WEEKS, McINTYRE &  
FRIEDLANDER, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, AZ 85012-2705

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