

ORIGINAL



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MEMORANDUM

667F

TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division  
DATE: April 23, 2008

*EA for EGT*

RE: **STAFF UPDATE - IN THE MATTER OF THE APPLICATION OF VOICECOM TELECOMMUNICATIONS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20394A-05-0527)**

On July 22, 2005, Voicecom Telecommunications, LLC ("Voicecom") filed application with the Arizona Corporation Commission ("Commission") for a Certificate of Convenience and Necessity to provide competitive resold long distance telecommunications services in the State of Arizona. On April 2, 2008, the Administrative Law Judge issued a Procedural Order which required Staff to file an update on Voicecom's application with any appropriate recommendation no later than April 23, 2008. Staff is filing, with this update, its Staff Report which sets forth its recommendations on this matter.

EGJ:CLA:red

Originator: Candrea Allen

Attachment: Original and Sixteen Copies.

Arizona Corporation Commission  
**DOCKETED**  
APR 23 2008

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2008 APR 23 P 3: 22  
AZ CORP COMMISSION  
DOCKET CONTROL

SERVICE LIST FOR: Voicecom Telecommunications, LLC  
DOCKET NO. T-20394A-05-0527

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Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

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

**Applicant: Voicecom Telecommunications, LLC**  
**Docket No.: T-20394A-05-0527**

On July 22, 2005, Voicecom Telecommunications, LLC ("Voicecom" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold interexchange services in Arizona.

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 October 31, 2005, Applicant filed an Affidavit 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 forty-five (45) states, excluding Arizona. Staff contacted six (6) of the forty-five state PUCs to verify if Voicecom is certificated or registered to provide resold long distance telecommunications services in the states listed in the application. Staff also inquired if there were any consumer complaints against Voicecom. Of these six states Staff contacted, (Florida, New Mexico, New York, Pennsylvania, Texas, and Washington) the only state in which Voicecom had complaints filed against it was Pennsylvania. According to the Pennsylvania Public Utility Commission ("PUC"), there have been six (6) complaints filed against Voicecom, since January 2007. Of the six complaints filed with the Pennsylvania PUC, three complaints were slamming complaints, two complaints were cramming complaints, and one complaint was a billing dispute. The Pennsylvania PUC also indicated that because Voicecom is a long distance carrier, the Pennsylvania PUC Bureau of Consumer Services ("BCS") does not have jurisdiction over the complaints filed. A search of the Federal Communications Commission website found that there have been no complaints filed against Voicecom. Based on this information, 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 provided audited financial statements for the year ending December 31, 2006. These financial statements list assets of \$14,267,868; equity of \$2,630,142; and a net income of \$807,572. The Applicant did not provide notes related to the financial statements. The Applicant stated in its Tariff, Sections 2.8 (page 19) and 2.9 (page 20), that it may collect advance payments, deposits, and/or prepayments from its resold interexchange customers.

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. The Applicant is proposing to provide only resold interexchange telecommunications services. If the Applicant desires to provide other telecommunications services other than resold interexchange services, Staff recommends that the Applicant file an application with the Commission and affirm that the Applicant's customers will be able to access alternative interexchange service providers to resellers. In the longer term, the customer may permanently switch to another company.

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

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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 zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value 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. Therefore, 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.

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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.

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## **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 zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value 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. Therefore, 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;
13. If the Applicant desires to provide other telecommunications services other than resold interexchange services, Staff recommends that the Applicant file an application with the Commission and affirm that the Applicant's customers will be able to access alternative service providers; and
14. In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.

Staff recommends that the Applicant be ordered to comply with the following. If it does not do so, Staff recommends that the Applicant's CC&N be null and void after due process.

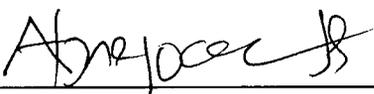
The Applicant shall:

- a. Docket conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, which ever comes first, and in accordance with the Decision. The tariffs submitted shall be consistent with the application and state that the Applicant may collect advances, deposits and/or prepayments from its customers.

- b. Procure a performance bond or irrevocable sight draft Letter of Credit, at the discretion of the Company, in the amount of \$10,000. The minimum performance bond or irrevocable sight draft Letter of Credit amount of \$10,000 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 amount should be increased in increments of \$5,000. This increase should occur when the total amount of the advances, deposits, and/or prepayments is within \$1,000 of the minimum total amount.

Staff recommends that Voicecom file the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a decision in this matter. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

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

for   
Ernest G. Johnson  
Director  
Utilities Division

Date: 4/23/08

Originator: Candrea Allen

SERVICE LIST FOR: Voicecom Telecommunications, LLC  
DOCKET NO. T-20394A-05-0527

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