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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

2008 JUL 17 P 3:20

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

AZ CORP COMMISSION
DOCKET CONTROL

Applicant: Touchtone Communications, Inc.
Docket No.: T-04242A-04-0137

On February 26, 2004, Touchtone Communications, Inc. ("Touchtone" 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.

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 September 24, 2004, the Applicant filed an Affidavit of Publication in the counties where the authority to provide resold long distance telecommunications services is requested.

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.

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- 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-four (44) states, excluding Arizona, and the District of Columbia. Staff contacted seven (7) state PUCs to verify that Touchtone 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 Touchtone. Touchtone has had zero (0) consumer complaints filed against it in Colorado, Connecticut, New Mexico, and New York. Staff was able to obtain the following information from the states in which Touchtone has had complaints filed:

Complaint Type	Florida (2003 to 2007)	Texas (2003 to 2006)	Washington
Billing	7	0	1
Service	1	1	0
Slamming	1	1	0
Total	9	2	1

According to information provided by the Florida PSC, the nine complaints filed against Touchtone were filed from August 2003 to October 2007 and all the complaints filed have been closed. The seven billing complaints filed in Florida were all improper billing issues. The service complaint filed in Florida was a delay in connection complaint. The remaining complaint filed in Florida was a slamming issue. Two of the complaints filed in Florida were resolved in favor of the company and the remaining seven complaints were resolved in favor of the complainants. The slamming and provision of service complaints filed against Touchtone in Texas were filed in February 2003 and May 2006 respectively and are currently pending. The Consumer Division Staff of the Washington Utilities and Transportation Commission reports that the billing dispute complaint filed in 2007 is currently pending. Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide resold interexchange telecommunications services in Arizona.

REVIEW OF FINANCIAL INFORMATION

- 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 year ending December 31, 2006. These financial statements list assets of \$2,492,345.72; equity of \$116,569.49; and a

net income of \$78,956.97. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its proposed tariff (Sections 2.8 and 2.9 at page 18) that it does not collect advance payments, deposits, and/or prepayments from its resold interexchange customers. If the Applicant wants to collect advances, deposits and/or prepayments from its resold interexchange customers, Staff recommends that the Applicant be required to file an application with the Arizona Corporation Commission (“Commission”) for Commission approval. Staff recommends that the Commission require that such request reference the decision in this docket and explain the applicant’s plans for procuring a performance bond or an irrevocable sight draft Letter of Credit.

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.

REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

- 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.

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 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 for each competitive service a tariff 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

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, 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 as well as 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. If the Applicant wants to collect advances, deposits, and/or prepayments from its resold interexchange customers, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring its performance bond or irrevocable sight draft Letter of Credit;
10. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. 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 A.A.C. 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;
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 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;

14. 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; and
15. 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, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

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

for 

Ernest G. Johnson
Director
Utilities Division

Date: 7/17/08

EGJ:CLA:red

Originator: Candrea Allen

SERVICE LIST FOR: Touchtone Communications, Inc.
DOCKET NO. T-04242A-04-0137

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