

ORIGINAL



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MEMORANDUM

TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division  
DATE: April 15, 2009

*EA for EGT*

RE: **AMENDED STAFF REPORT**-IN THE MATTER OF THE APPLICATION OF EXTELCOM INC. DBA EXPRESS TEL FOR CANCELLATION OF THEIR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES AND ALTERNATIVE OPERATOR SERVICE (DOCKET NO. T-02543A-07-0147)

Attached is the Amended Staff Report for the above referenced application. The applicant is seeking to cancel its Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Long Distance Services
- Alternative Operator Service

Staff recommends cancellation of the CC&N.

EGJ:CLA:red

Originator: Candrea Allen

Attachment: Original and Thirteen Copies

Arizona Corporation Commission  
**DOCKETED**

APR 15 2009

DOCKETED BY	<i>mm</i>
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AZ CORP COMMISSION  
DOCKET CONTROL

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SERVICE LIST FOR: Extelcom, Inc. dba Express Tel  
DOCKET NO. T-02543A-07-0147

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AMENDED STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

EXTELCOM INC. DBA EXPRESS TEL  
DOCKET NO. T-02543A-07-0147

IN THE MATTER OF THE APPLICATION OF EXTELCOM, INC. DBA EXPRESS TEL  
FOR CANCELLATION OF THEIR CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES AND  
ALTERNATIVE OPERATOR SERVICE

APRIL 15, 2009

## STAFF ACKNOWLEDGEMENT

The Amended Staff Report for the application of Extelcom, Inc., Docket No.T-02543A-07-0147, for approval to cancel its Certificate of Convenience and Necessity to provide Resold Long Distance Telecommunications Services and Alternative Operator Service was the responsibility of the staff member listed below. Candrea Allen was responsible for the review and analysis of the application.

A handwritten signature in black ink, appearing to read "Candrea Allen", written over a horizontal line.

Candrea Allen  
Public Utilities Analyst

## **BACKGROUND**

On January 12, 1995, the Arizona Corporation Commission (“Commission”), in Decision No. 58941, granted Extelcom, Inc. (“Extelcom” or “Applicant”) a Certificate of Convenience and Necessity (“CC&N”) to provide alternative operator service within the State of Arizona. On March 19, 1997, the Commission, in Decision No. 60108, granted Extelcom a CC&N to provide resold long distance telecommunications services within the State of Arizona. On October 7, 1998, the Commission issued Decision No. 61163, which granted a CC&N to Buyers United International, Inc. (“Buyers”) to provide resold long distance telecommunications services within the State of Arizona.

On July 16, 2003, Buyers filed an application requesting Commission approval to change its name to Buyers United, Inc. (“BUI”). Buyers filed tariffs with the Commission reflecting the intended name change. On August 28, 2003, Commission Staff filed a request to close the docket, indicating that the tariff had become effective by operation of law on August 14, 2003. On September 2, 2003, Docket Control formally closed the docket with Administrative Closure Number 66228. On December 29, 2004, BUI filed an application requesting Commission approval to change its name from Buyers United, Inc. to UCN, Inc (“UCN”). BUI filed tariffs with the Commission reflecting the intended name change. On March 9, 2005, Commission Staff filed a request to close the docket, indicating that the tariff had become effective by operation of law on January 27, 2005. On March 21, 2005, Commission Docket Control formally closed the docket with Administrative Closure Number 67702.

On July 18, 2005, the Commission issued Decision No. 67979, which granted a CC&N to UCN, Inc. to provide resold and facilities-based local exchange telecommunications services in Arizona.

On March 8, 2007, UCN, on behalf of Extelcom, filed an application to cancel its CC&N to provide resold long distance telecommunications services and alternative operator service within the State of Arizona. UCN requests Commission approval to cancel Extelcom’s CC&Ns to provide long distance telecommunications services and alternative operator service and withdraw its tariff. The application also included the notification of an “Asset Purchase Agreement” in which Extelcom had transferred its long distance customer base to UCN’s service. A notice of that transaction had been received by Docket Control on May 23, 2005. However, the notification was not assigned a Docket No. and therefore at the time was not reviewed.

On May 16, 2008, Staff filed a Staff Report recommending cancellation of Extelcom’s CC&N. On July 21, 2008, the Administrative Law Judge (“ALJ”) issued a Procedural Order requiring Staff to file an Amended Staff Report addressing the following statutory and regulatory issues:

- I. Applicability of Arizona Revised Statutes (“A.R.S.”) § 40-285(A) to this matter, specifically whether Extelcom and UCN were required to obtain Commission approval before consummating the sale of Extelcom’s assets to UCN;
- II. Compliance by Extelcom with the requirements of Arizona Administrative Code (“A.A.C.”) R14-2-1107;
- III. Compliance by Extelcom with the requirements of A.A.C. R14-2-1901 through R14-2-1913 and A.A.C. R14-2-2001 through R14-2-2007 (“Slamming and Cramming Rules”);
- IV. Compliance by Extelcom with the requirements of the A.A.C. R14-2-801 through R14-2-806 (“Public Utilities Holding Companies and Affiliated Interest Rules”); and
- V. Staff’s recommendations regarding Extelcom’s tariffs.

#### **APPLICABILITY OF A.R.S. § 40-285(A)**

Pursuant to A.R.S. § 40-285(A), the sale or transfer of Extelcom’s long distance customer base to UCN requires approval by the Commission. The notice received by Docket Control on May 23, 2005, had not been reviewed by Staff and therefore, the Companies state that they were unaware of any further action that needed to be taken to ensure compliance of any applicable Statutes or Commission rules. In addition, at the time of Extelcom’s May 23, 2005 notification, there had been some uncertainty as to whether a company’s customer base should be treated as an asset and therefore subject to A.R.S. § 40-285 (A). Further, there have been Decisions in which the Commission had determined that the transfer of a customer base did not require Commission approval as a transfer of assets<sup>1</sup>. However, there have been other Decisions in which the Commission has concluded that the transfer of a customer base is in fact a transfer of an asset and therefore subject to A.R.S. § 40-285 (A)<sup>2</sup>.

#### **COMPLIANCE WITH ARIZONA ADMINISTRATIVE CODE R14-2-1107**

In the Applicant’s response to Staff’s Data Request filed April 6, 2007, UCN stated that as of July 1, 2005, the transaction between Extelcom and UCN had closed. UCN did not file to cancel Extelcom’s CC&N until March 12, 2007. In addition, in its responses to Staff’s Data Request, UCN indicated that the company mistakenly believed that Extelcom’s CC&N would be cancelled upon closing of the transfer between the two companies. At the time of the instant application, Extelcom no longer provided service to customers in Arizona. Therefore, although it was not requested by the Applicant, Staff believes that a waiver of A.A.C R14-2-1107 is appropriate in this matter.

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<sup>1</sup> Decision No. 66197; Decision No. 69390

<sup>2</sup> Decision No. 68965; Decision No. 68347

*Compliance with Arizona Administrative Code R14-2-1901 through R14-2-1913 and R14-2-2001 through R14-2-2007 ("Slamming and Cramming" Rules)*

In its application to cancel Extelcom's CC&N, UCN provided copies of the customer notice that was sent to customers prior to the transfer in May 2005. Staff has reviewed the May 2005 customer notification letters that were provided to customers. Because the notice was provided in a timely manner and informs the customers that the rates, terms, and conditions of service would not change as a result of the transfer, Staff believes that the Commission's Slamming and Cramming rules should be waived in this matter.

*Compliance with Public Utility Holding Companies and Affiliated Interest Rules: Arizona administrative Code R14-2-801 through R14-2-806*

Neither Extelcom nor UCN was a Class A Utility at the time of the 2005 transfer of customers. In addition, UCN is not currently as Class A Utility. Therefore, Extelcom was not and UCN is not subject to the restrictions imposed by A.A.C. R14-2-801 through R14-2-806.

UCN also stated that Extelcom never collected any advances, deposits, and/or prepayments from customers. According to the Compliance Section, Extelcom has no bond on file with the Commission. Therefore, there is no risk that any advances, deposits, and/or prepayments would be lost by canceling Extelcom's CC&N. UCN also stated in its responses to Staff's Data Requests that Extelcom does not have any employees or facilities in Arizona.

Consumer Services Staff has indicated that from January 1, 2006 to current, there have been no complaints, inquiries, or opinions filed for Extelcom. On March 24, 2009, the Corporations Division reported that Extelcom filed an application for withdrawal on August 24, 2007. The application was also approved on August 24, 2007. Since there are numerous other carriers offering the same or similar services as Extelcom and Extelcom did not have any customers in Arizona at the time of this application, Staff believes that approval of Extelcom's request to cancel its CC&N and withdraw its tariff is in the public interest.

## **RECOMMENDATIONS**

Staff recommends the approval of Extelcom's application to cancel its CC&N. Extelcom is not conducting business nor providing services to customers in Arizona. Upon cancellation of its CC&N, Extelcom will no longer be authorized to provide resold long distance telecommunications services or alternative operator service in Arizona. Therefore, Extelcom will no longer be subject to the requirements of Decision Nos. 58941 and 60108. In addition, Staff recommends withdrawal of Extelcom's tariffs on file with the Commission.