



DOCKET NO. T-04266A-04-0466

02-03-2005

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE APPLICATION) DOCKET NO.
 4 OF AZTECH COMMUNICATIONS, INC.) T-04266A-04-0466
 5 FOR A CERTIFICATE OF CONVENIENCE)
 6 AND NECESSITY TO PROVIDE RESOLD)
 7 LONG DISTANCE AND FACILITIES-)
 8 BASED LOCAL EXCHANGE SERVICES IN)
 9 THE STATE OF ARIZONA AND PETITION)
 10 FOR COMPETITIVE CLASSIFICATION OF)
 11 PROPOSED SERVICES.)

8

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12 At: Phoenix, Arizona

13 Date: February 3, 2005

14 Filed: FEB 22 2005

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ORIGINAL



1 INDEX TO EXAMINATIONS

2 WITNESS PAGE

3 DAVID NELSON

4 Direct Examination by Mr. Patten 6
5 Examination by ALJ Garlick 10

6

7 ADAM LEBRECHT

8 Direct Examination by Ms. Wagner 19
9 Examination by ALJ Garlick 23

10

11

12 INDEX TO EXHIBITS

13 NO. DESCRIPTION Identified Admitted

14 A-1 Application of Aztech
15 Communications, Inc. 6 816 A-2 Letter dated September 7, 2004
17 from the Law Offices of Peter A.
18 Casciato in response to Staff
19 Letter of Insufficiency and First
20 Set of Data Requests 6 8

21 S-1 Staff Report 20 23

22 S-2 Amendment to Staff Report -
23 Page 11, Paragraph 15 20 23

24

25

1 ALJ GARLICK: Let's go on the record. Welcome
2 to the Arizona Corporation Commission.

3 We are here in the matter of the application of
4 Aztech Communications, Inc. for a Certificate of
5 Convenience and Necessity to provide resold long
6 distance and facilities-based local exchange services
7 in the State of Arizona and petition for competitive
8 classification of proposed services. This is Docket
9 No. T-04266A-04-0466.

10 My name is Greg Garlick. I'm the
11 Administrative Law Judge assigned to this case.

12 Why don't we go ahead and take appearances for
13 the Applicant.

14 MR. PATTEN: Good morning, Your Honor. Michael
15 Patten, Roshka, Heyman & DeWulf, on behalf of the
16 applicant.

17 ALJ GARLICK: You said Michael Patten?

18 MR. PATTEN: Patten. P-A-T-T-E-N.

19 ALJ GARLICK: Okay. And for the Staff?

20 MS. WAGNER: Good morning, Your Honor. Janet
21 Wagner appearing on behalf of Commission Staff.

22 ALJ GARLICK: Okay. At this point we would
23 take any public comment. Is there anyone who would
24 like to make a public comment?

25 Let the record reflect that no one wishes to

1 give a comment.

2 And are there any procedural matters we need to
3 go through before we begin?

4 MR. PATTEN: Your Honor, we will address this
5 during the testimony, but the publication in this
6 matter was only done in Mohave County, although the
7 application indicated it was for statewide authority.
8 And we'll be amending our request for authority to just
9 Mohave County where the publication took place.

10 ALJ GARLICK: Okay. Anything else for you,
11 Ms. Wagner?

12 MS. WAGNER: No, Your Honor. Nothing that I'm
13 aware of.

14 ALJ GARLICK: Okay. Would you like to do
15 opening statements, Mr. Patten?

16 MR. PATTEN: We would waive opening statement.

17 ALJ GARLICK: Staff?

18 MS. WAGNER: And Staff will waive opening
19 statements as well.

20 ALJ GARLICK: Okay. Mr. Patten, do you want to
21 call your first witness?

22 MR. PATTEN: Sure. We call David Nelson.
23 He's appearing live, not by telephone.

24 ALJ GARLICK: Why don't you come up here,
25 Mr. Nelson, and the court reporter will swear you in.

1 DAVID NELSON,
2 called as a witness on behalf of the Applicant, having
3 been first duly sworn by the Certified Court Reporter
4 to speak the whole truth and nothing but the truth, was
5 examined and testified as follows:

6

7

DIRECT EXAMINATION

8

9 Q. (BY MR. PATTEN) Mr. Nelson, could you please
10 state your name and business address for the record.

11 A. David Nelson. My business address is 7084
12 North --

13 ALJ GARLICK: I'm sorry, Mr. Nelson. Just put
14 that next to you and make sure the green light is on.
15 I should have said that before.

16 THE WITNESS: My business address is 7084 North
17 Cedar Avenue in Fresno, California.

18 Q. (BY MR. PATTEN) And what is your position with
19 Aztech Communications?

20 A. I'm vice president of Aztech Communications.

21 Q. Mr. Nelson, you have in front of you Exhibits
22 A-1 and A-2. A-1 is the application in this docket
23 that was docketed on June, I believe, 25, 2004. And
24 A-2 is a letter from Peter Casciato to Adam Lebrecht of
25 the Utilities Division, dated September 7, 2004.

1 Do you have those two exhibits in front of you?

2 A. Yes. I have both of those exhibits.

3 Q. Have you had an opportunity to review both of
4 those exhibits?

5 A. Yes, I have.

6 Q. Mr. Nelson, I understand that publication was
7 only provided in Mohave County with respect to this
8 application. Is that your understanding?

9 A. That is my understanding.

10 Q. And Aztech Communications, does it desire to
11 amend the application in this docket from statewide
12 authority to authority in Mohave County?

13 A. Yes. We wish to modify our authority to only
14 Mohave County at this time.

15 Q. Aside from that change to the application, are
16 there any other substantive revisions to either A-1 or
17 A-2?

18 A. No. There are not.

19 Q. And are you adopting Exhibits A-1 and A-2 as
20 your testimony today?

21 A. Yes, I am.

22 MR. PATTEN: I would move admission of Exhibit
23 A-1 and A-2.

24 ALJ GARLICK: Any objection?

25 MS. WAGNER: No objection.

1 ALJ GARLICK: Okay. They're admitted.

2 Q. (BY MR. PATTEN) Mr. Nelson, have you had an
3 opportunity to review the Staff Report in this docket?

4 A. Yes, I have.

5 Q. And in particular, the recommended conditions
6 in Section 6 of that Staff Report?

7 A. Aztech Communications can accept all of the
8 recommended conditions.

9 Q. As set forth in --

10 A. As set forth in Section 6 of the Staff Report.

11 Q. You're also aware that Staff has provided an
12 additional condition regarding 911 service, that I
13 believe they will have marked as an exhibit, but
14 they've provided us a copy of the text.

15 Are you familiar with that text?

16 A. Yes, I am.

17 Q. And Aztech is willing to abide by that
18 additional condition as well?

19 A. Yes.

20 Q. Mr. Nelson, can you explain where
21 interconnection negotiations stand?

22 A. We've contacted the Fort Mohave
23 Telecommunications telephone company, which is on
24 Indian land, and are in the process of negotiating with
25 them. We've contacted Frontier Communications, and

1 they are awaiting our award of certificate before
2 negotiating with us for an interconnection agreement.

3 Q. Is it their policy that -- or Frontier's policy
4 that they won't negotiate unless and until you actually
5 have a certificate?

6 A. I believe so.

7 Q. And, Mr. Nelson, when does Aztech intend to
8 begin providing service in Mohave County?

9 A. In September of this year.

10 Q. And let me just ask a couple of more questions
11 about what Aztech is intending to do. Aztech is going
12 to use its own facilities to provide service.

13 Could you briefly describe what they intend to
14 do in Mohave County?

15 A. Aztech intends to provide service through their
16 own direct-bury fiber optic systems in Mohave County.

17 Q. And you intend to install that fiber network in
18 developments being built in and around --

19 A. Primarily to developments, but also in select,
20 currently-built areas where we determine the market
21 conditions exist for a successful business.

22 MR. PATTEN: With that, I'm finished with my
23 examination, and Mr. Nelson is available for
24 cross-examination.

25 ALJ GARLICK: Ms. Wagner?

1 MS. WAGNER: Thank you, Your Honor, but I have
2 no questions for Mr. Nelson.

3

4

EXAMINATION

5

6 Q. (BY ALJ GARLICK) I have a couple of questions
7 for you.

8

A. Sure.

9 Q. Mr. Nelson, so your application applies to both
10 business and residential, or who are you marketing to?

11

A. Primarily residential, but businesses where
12 they exist where they will -- where we pass by their
13 business with the fiber.

14

Q. Okay. To your application, I think it was
15 Attachment D. You have some pro forma numbers. I know
16 pro formas are tough to nail down, but are those
17 basically the same or are there any -- they're still on
18 target or any changes?

19

A. They're slighted delayed. Due to the weather
20 conditions in Mohave County, we haven't been able to
21 start construction. And we're also awaiting our
22 certificate, so they're slightly delayed.

23

Q. Okay. And let me ask you with your
24 application, it's Attachment A of the application,

25

A. Okay.

1 Q. One thing -- I mean, it's not a huge deal, but
2 it's your articles of incorporation.

3 A. Uh-huh.

4 Q. And under your initial business, it's defined
5 as the corporation initially intends to conduct the
6 business of -- and you guys have filled in, "fiber
7 optics."

8 A. Uh-huh.

9 Q. Is that enough of a description, or do you
10 think that you might have to amend your articles?

11 A. We probably should amend those to say, you
12 know, telephone service.

13 Q. Okay. Also, with your authorized capital, do
14 you know if that is correct? I see here in your
15 articles that you have as your authorized a million
16 shares.

17 A. Right.

18 Q. Do you know if that's --

19 A. The current outstanding shares are around
20 100,000. On September 7th, when we filed our pro forma
21 balance sheet, we had an initial investment of
22 2.5 million.

23 Q. Okay. So you said the -- I'm sorry. So your
24 issued is about 100?

25 A. Right.

1 Q. Is that what you said?

2 A. Yes..

3 Q. You know, because I actually pulled your annual
4 report, and you might just have to amend that. But it
5 looks like you just have -- and this was -- so maybe
6 you've issued some since then, but July 19, 2004 -- and
7 this isn't part of your -- I just pulled this off our
8 website. And it shows the shares issued as 50,000 and
9 authorized is 100,000. So you might need to amend
10 that.

11 A. Okay. We'll straighten that out.

12 Q. And then just a couple of questions about your
13 tariff. And, actually, the tariff, I went through it,
14 and it's obviously very important. And, actually, I
15 was very satisfied going through it. I think sometimes
16 some companies tend to be a little burdensome with
17 their liability provisions and such, and yours was very
18 fair, I thought.

19 A couple, like, interesting -- one thing I just
20 found interesting that I wanted to ask you about was
21 I'm on -- in the tariff, I'm on Section 7, page 3, and
22 it's the second paragraph. It's talking about, like,
23 default when you're going to terminate service.

24 A. Uh-huh.

25 Q. And it says, in the event of default of payment

1 of any sum -- this is the beginning of the second
2 paragraph -- due for exchange service. Okay. So that
3 obviously makes sense, like if someone is not paying
4 you. And then the second one is the use of foul or
5 profane language.

6 A. Uh-huh.

7 Q. Are you guys going to be monitoring your
8 customers? I'm just kidding. But is that just talking
9 about when you deal with your customer service? Is
10 that what that is trying to get at?

11 A. It's generally in -- this language was taken
12 from other tariffs that are currently on file here.
13 Generally, my experience in this, is if you have
14 frequent and continuous complaints from people
15 receiving calls --

16 Q. Oh.

17 A. -- and that person is identified from a single
18 telephone number and they are causing a public
19 nuisance --

20 Q. I see.

21 A. -- there is some requirement that a public
22 utility, you know, do something to halt that problem.

23 Q. Okay. I just couldn't --

24 A. I don't know if it's ever been implemented.

25 Q. That's fine. I was just wondering what you

1 were getting at there, but that makes total sense.

2 And there's a couple pages I want to type out
3 here and -- or I want to point out. And you're going
4 to do conforming tariffs. I know that in the --

5 A. Sure.

6 Q. -- Staff's recommendations within 365 days or
7 30 days of service. So just in your conforming tariffs
8 if you would just clean up -- there's just a couple of
9 typos.

10 A. Okay.

11 Q. And it's like -- I'm on Section 7, page 5.

12 A. Okay.

13 Q. And it's under deposits, and I'm not sure. It
14 says: The telephone company may, in order to safeguard
15 its interests and pursuant to chapter blank of the
16 Arizona Corporation Commission general rules. So just
17 fill in --

18 A. I see.

19 Q. -- whatever chapter that is.

20 A. Okay.

21 Q. And then two pages forward, so on Section 7,
22 page 7, under temporary suspension of service, vacation
23 service, number 1. Local exchange telephone service
24 may be temporarily suspended for a maximum period of
25 six months of an -- and then period. So just

1 whatever --

2 A. Yeah. That should be "single period" there.

3 Q. Oh, of a single period.

4 A. Uh-huh.

5 Q. Okay. I think one more -- oh, okay. Now I'm
6 on Section 12, page 1.

7 A. Okay.

8 Q. And it's under A, General. And I'll read it.
9 Custom calling services are available only in
10 connection with individual line service in exchanges
11 where the Telephone Company's central --

12 A. Office, it should be.

13 Q. Office. Okay. Just small things. And then
14 just two questions, and then I'm done. And, again, I
15 do want to stress that overall I think the tariffs are
16 very fair in the sense I don't really think they're,
17 like, overly burdensome to the customers.

18 But there's one, actually, where I pointed out
19 that last typo. And I'm on the same page, so it's
20 Section 12, page 1.

21 A. Uh-huh.

22 Q. Now, if you could just tell me why, I'll be
23 fine with it, because I just don't know why. But I'm
24 under General and in the second paragraph. And it has:
25 Each customer to Custom Calling Services agrees to

1 release, indemnify and hold harmless the Company, its
2 employees and agents from any and all loss, claims,
3 demands, suits, or other action or from any liability
4 whatsoever whether suffered, made, instituted, or
5 asserted by the customer or any other party or person
6 for any business loss, damage, or destruction of any
7 property whether owned by the customers or others,
8 arising out of the use of the Custom Calling features
9 offered in this section.

10 I think that language alone -- I mean, you
11 know, again, they have to indemnify you and hold you
12 harmless, so it's -- that can be tough like on a
13 customer. But why does it apply only to custom calling
14 services?

15 A. I would only give you some examples. Call
16 waiting for some people, if they use call waiting, they
17 think that they have an unlimited time to answer a call
18 waiting call. We may set our equipment to say call
19 waiting waits 25 seconds, and they may expect a minute.
20 And they say, well, I never picked up the call and I
21 never got it, and I lost the contract.

22 Q. Okay.

23 A. The same thing with call forwarding. Call
24 forwarding, you know, the equipment is set to a certain
25 period of time to ring a phone that it's forwarded to.

1 Q. Right.

2 A. So if, for example, call forwarding, you call
3 forward your business phone to your cellular phone and
4 the cellular phone doesn't accept it, you know, whose
5 fault is it? And if they said, well, your call
6 forwarding didn't work, well, I don't know if it's the
7 cellular company or our equipment, or maybe we only
8 ring four times.

9 Q. Okay. That makes sense.

10 A. It's due to cover us in the event that -- not
11 so much equipment malfunction as just there might be a
12 misunderstanding of the service we're offering.

13 Q. Right. Okay. And my last question is I'm on
14 Section 11, page 1. Sorry. It's back a little bit,
15 back just a couple of pages.

16 And I'm under Conditions, and Condition 3. The
17 company shall not be liable for any errors or
18 omissions, whether arising through negligence or
19 otherwise, in the information furnished; and the
20 customer shall indemnify and save the company harmless
21 against all claims, including costs and reasonable
22 attorney's fees, that may arise from the use of such
23 information.

24 And I guess this would be like directory
25 assistance?

1 A. Uh-huh.

2 Q. And that was the only one I just thought -- do
3 you think that's a little burdensome there, or what do
4 you think about that provision?

5 A. Let me read it again.

6 Q. Okay.

7 A. If we were the only person providing directory
8 assistance, it might be burdensome. But what happens
9 in the telephone industry now is we often outsource it
10 or we often provide it -- in our case we'll provide it
11 to the local exchange company. And if they make a
12 mistake, we may not want to be liable. But we would be
13 happy to accept any suggestions if you would like us to
14 modify the language.

15 ALJ GARLICK: Well, not a big deal. I might in
16 the order put something, but it's directory assistance.
17 It's nothing big. Thank you for your answers. Those
18 are good.

19 Any redirect?

20 MR. PATTEN: No redirect.

21 MS. WAGNER: And no recross since there was no
22 redirect.

23 ALJ GARLICK: Okay. Thank you, Mr. Nelson.
24 You can step down.

25 (Mr. Nelson was excused as a witness.)

1 ALJ GARLICK: Ms. Wagner, would you like to
2 call your witness?

3 MS. WAGNER: Yes. Thank you, Your Honor.
4 Staff calls Adam Lebrecht.

5

6 ADAM LEBRECHT,
7 called as a witness on behalf of Staff, having been
8 first duly sworn by the Certified Court Reporter to
9 speak the whole truth and nothing but the truth, was
10 examined and testified as follows:

11

12

DIRECT EXAMINATION

13

14 Q. (BY MS. WAGNER) Please state your name and
15 your business address for the record.

16 A. My name is Adam Lebrecht. The last name is
17 spelled L-E-B-R-E-C-H-T. My business address is 1200
18 West Washington Street, Phoenix, Arizona, 85007.

19 Q. Mr. Lebrecht, by whom are you employed and in
20 what capacity?

21 A. I'm employed by the Arizona Corporation
22 Commission and currently hold the title of Executive
23 Consultant I.

24 Q. And in your capacity as an Executive Consultant
25 I, were you assigned to evaluate the application that

1 is the subject of this hearing?

2 A. I was.

3 Q. Mr. Lebrecht, do you have before you an exhibit
4 that has been marked as Exhibit S-1?

5 A. Yes.

6 Q. Can you please identify S-1 for the record.

7 A. This appears to be a copy of the Staff Report
8 which I wrote concerning Aztech Communications,
9 Incorporated for a Certificate of Convenience and
10 Necessity to provide resold long distance and
11 facilities-based local exchange telecom services in
12 Arizona.

13 Q. Do you have any changes or additions to make to
14 S-1 at this time?

15 A. I have one change. Would you like to go over
16 it right now?

17 Q. Yes. Actually, I think it may also be helpful
18 before you go over the change if we identify S-2.

19 A. Sure.

20 MS. WAGNER: And I just realized I had failed
21 to provide S-2 to the Hearing Officer.

22 ALJ GARLICK: Thank you.

23 Q. (BY MS. WAGNER) Mr. Lebrecht, do you have a
24 copy of S-2?

25 A. I do.

1 Q. And does S-2 set forth the change that you were
2 proposing to S-1?

3 A. It does.

4 Q. And S-2 was prepared by you?

5 A. Yes.

6 Q. Can you basically summarize the content of S-2
7 at this time?

8 A. Certainly. Staff inadvertently left out a
9 recommendation concerning 911 services that, although
10 they were discussed in Section 3.6 on page 5 of the
11 Staff Report, no recommendation was made.

12 Because the current recommendation or No. 15 is
13 repetitive of Recommendation No. 4, both concerning the
14 Arizona Universal Service Fund, staff wishes to insert
15 language concerning the 911 services into
16 Recommendation No. 15 which would replace the current
17 language in Recommendation No. 15. And I'll read it so
18 that it will make more sense.

19 The current recommendation in number 15 states:
20 That the applicant participate and contribute to a
21 universal service fund as required by the Commission.

22 Once again, that recommendation is very
23 redundant of Recommendation No. 4. Staff would then
24 like to replace the current Recommendation No. 15 with
25 language that is as follows: That the Applicant be

1 required to certify through the 911 service provider in
2 the area in which it intends to provide service, that
3 all issues associated with the provision of 911 service
4 have been resolved with the emergency service providers
5 before it begins to provide local exchange service,
6 within 365 days of the effective date of the order in
7 this matter or 30 days prior to the provision of
8 service, whichever comes first, and must remain in
9 effect until further order of the Commission.

10 Q. All right. And, Mr. Lebrecht, just to be
11 clear, on page 5 of S-1, you do address 911 service;
12 isn't that correct?

13 A. I do in Section 3.6.

14 Q. All right. And so the addition that you're
15 making at this time is just to reflect your discussion
16 of 911 service in your recommendation section; is that
17 correct?

18 A. Certainly. That is correct.

19 Q. All right. Do S-1 and S-2 comprise your
20 testimony in this matter?

21 A. It does.

22 MS. WAGNER: Your Honor, I will move to admit
23 S-1 and S-2 at this time.

24 ALJ GARLICK: Any objection?

25 MR. PATTEN: No objection.

1 ALJ GARLICK: It's admitted.

2 Q. (BY MS. WAGNER) Mr. Lebrecht, have you been
3 present through the hearing today?

4 A. Yes.

5 Q. And, specifically, were you present when
6 Mr. Nelson discussed the notice that Aztech had
7 provided of this matter?

8 A. Concerning Mohave County?

9 Q. That's correct.

10 A. Yes. I was present.

11 Q. And in light of this, should a CC&N granted in
12 this matter be limited to Mohave County?

13 A. Yes.

14 MS. WAGNER: Thank you, Mr. Lebrecht. I have
15 nothing further. This witness is available for
16 cross-examination.

17 ALJ GARLICK: Mr. Patten?

18 MR. PATTEN: No cross-examination.

19 ALJ GARLICK: Okay. I just have one thing for
20 Mr. Lebrecht.

21

22 EXAMINATION

23

24 Q. (BY ALJ GARLICK) So the record is clear when
25 the order is drafted, page 1, the introduction. That

1 should be -- your very first sentence there, on June
2 23rd, it should be 2004; right?

3 A. That is correct. It currently says 2003. It
4 should be 2004.

5 ALJ GARLICK: So I will change that to 2004
6 just so it's clear. And that was -- yeah. That was
7 all I had.

8 Okay. Nothing else?

9 MS. WAGNER: No redirect, Your Honor.

10 ALJ GARLICK: Thank you, Mr. Lebrecht.

11 THE WITNESS: Thank you.

12 (Mr. Lebrecht was excused as a witness.)

13 ALJ GARLICK: Mr. Patten, would you like to
14 make any closing statements?

15 MR. PATTEN: We would just urge Your Honor to
16 recommend granting of the application for Mohave
17 County. We believe it's in the public interest.

18 ALJ GARLICK: Thank you.

19 Ms. Wagner?

20 MS. WAGNER: And we agree that granting the
21 application would be in the public interest, as long as
22 it is subject to the conditions set forth in the Staff
23 Report.

24 ALJ GARLICK: Okay. This matter will be taken
25 under advisement pending submission of a recommended

1 opinion and order to the Commissioners for their final
2 disposition. And I just want to thank everyone for
3 coming, and have a good day.

4 (The Hearing concluded at 10:25 a.m.)

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, MICHELE E. BALMER, certified Court Reporter
 No. 50489 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full,
 true and accurate transcript of the proceedings had in
 the foregoing matter, all done to the best of my skill
 and ability.

12

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14

WITNESS my hand this 15th day of February,
 2005.

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Michele E. Balmer
 MICHELE E. BALMER
 Certified Court Reporter
 Certificate No. 50489

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