

ORIGINAL

MEMORANDUM



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Director  
Utilities Division

*EA for EGJ*

2009 JUL -6 A 11: 57

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DATE: July 6, 2009

RE: IN THE MATTER OF THE APPLICATION AS AMENDED OF CVC CLEC, LLC APPROVAL FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20646A-09-0005)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Local Exchange Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application.

EGJ:LLM:red

Originator: Lori Morrison

Attachment: Original and Thirteen copies

Arizona Corporation Commission

DOCKETED

JUL -6 2009

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SERVICE LIST FOR: CVC CLEC, LLC  
DOCKET NO. T-20646A-09-0005

Mr. Mark Foster  
Attorney at Law  
702 Rio Grande Street  
Austin, TX 78701

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Janice M. Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

CVC CLEC, LLC  
DOCKET NO. T-20646A-09-0005

IN THE MATTER OF THE APPLICATION AS AMENDED OF CVC CLEC, LLC  
APPROVAL FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FACILITIES-  
BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

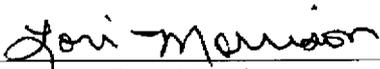
JULY 6, 2009

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## STAFF ACKNOWLEDGMENT

The Staff Report for CVC CLEC, LLC, Docket No. T-20646A-09-0005, was the responsibility of the Staff member listed below. Lori Morrison was responsible for the review and analysis of CVC CLEC, LLC Application for a Certificate of Convenience and Necessity to provide Resold Local Exchange and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

  
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Lori Morrison  
Public Utilities Analyst I

## **1. INTRODUCTION**

On January 7, 2009, CVC CLEC, LLC ("CVC" or "Applicant" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, facilities-based long distance, resold local exchange and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. Included in the application, the Applicant submitted a proposed tariff for the services it is requesting the authority to provide.

On March 2, 2009, the Applicant filed an amended application indicating it was seeking a CC&N to provide resold local exchange and facilities-based local exchange telecommunications services within the State of Arizona. Included in the amended application was a revised tariff to replace the one filed with the initial application. On April 3, 2009, the Applicant filed to withdraw the March 2 tariff and replace it with a revised tariff containing revisions and corrections made at the request of Staff.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant will be providing resold and facilities-based local exchange services to business customers in Arizona. CVC has indicated that 52 employees will be located in Arizona. The Applicant has a 24/7 Customer Service Call Center located in Tempe, Arizona that will be handling all customer concerns, complaints and repair inquiries.

The Applicant is not currently providing service in any jurisdiction. In the amended application and in response to Staff Data Request LLM 2.2, CVC states it is authorized to provide facilities-based local exchange services in Montana, North Dakota and Washington. The Applicant anticipates it will start operations in these states no later than the end of 2009. In addition, CVC has applications pending in South Dakota and Iowa. In response to Staff Data Request LLM 2.1, the Applicant indicated that its two key employees possess a combination of over 10 years experience in the telecommunications industry.

Based on the above information, Staff believes CVC possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

## **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant is a startup company and as such, did not provide financial statements. Instead, the Applicant provided a recent bank statement indicating it has \$100,000.00 in its account. In addition, in the Applicant's response to Staff Data Request LLM-4.1, CVC provided

a three year projection of its assets, equities and net income/(loss). That information is reflected in the table listed below:

<b>Three Year Projection</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Projected Assets	\$500,000	\$465,000	\$430,000
Projected Equity	\$500,000	\$465,000	\$430,000
Projected Net Income/(Loss)	\$60,000	\$300,000	\$500,000

The Applicant stated in its proposed tariff (reference Sections 2.6 of CVC's proposed Arizona Tariff No. 1) that it will not collect advances, deposits and prepayments from any applicant or customer. The Commission's current practice regarding the performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements is \$10,000 for resold long distance (for those long distance service resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or ISDLC for multiple services is an aggregate of the minimum bond or draft amount for each type of telecommunications service requested by the Applicant. The amount of performance bond or ISDLC coverage needed for each service is as follows: resold local exchange \$25,000; and facilities-based local exchange line \$100,000. Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$125,000. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC Credit be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLC should be filed with the Commission's Business Office and 13 copies of the performance bond or ISDLC be filed with Docket Control, as a compliance item in this docket. The Commission may draw on the performance bond or ISDLC 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 bond or 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.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local

exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

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 indicating 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. CVC has submitted proposed tariff pages reflecting the actual rates that it will be charging for its local exchange services. CVC has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. 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.

## **5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of Local Exchange service are discussed below.

### *5.1 Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### *5.2 Provision of Basic Telephone Service and Universal Service*

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect

into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### *5.3 Quality of Service*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

### *5.4 Access to Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

### *5.5 911 Service*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

### *5.6 Custom Local Area Signaling Services*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone

numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

## 6. REVIEW OF COMPLAINT INFORMATION

The Applicant indicated it has not had an Application for service denied nor authority to provide service revoked in any state. Staff did not find any instances of denied applications or revocation of authority to provide service. The Applicant indicated that none of its officers, directors or partners have been or are currently involved any formal or informal complaints proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency. Staff has found no instances of any formal or informal complaint proceedings involving the Applicant or any of its officers, directors or managers. The Applicant also indicated that none of its officers, directors or partners have been in or are currently involved in any civil or criminal investigations, or had judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts in the past ten (10) years. Staff has found no instances of any civil or criminal investigations, judgments levied by any administrative or regulatory agency, or criminal convictions within the last ten (10) years involving the Applicant or any of its officers, directors or managers.

Staff contacted the state commissions in the jurisdictions where the Applicant is currently authorized to service (Montana, North Dakota and Washington) to verify certification to provide service and to inquire about complaints. Both Montana and Washington responded and advised that the Applicant was indeed authorized to provide service in their jurisdiction and that no complaints had been received about the Applicant. Although the North Dakota Public Service Commission did not respond, Staff was able to verify that the Applicant was registered to provide service through that Commission's website. The Corporations Division has indicated that CVC CLEC, LLC is in good standing. The Consumer Services Division reports no complaints have been filed in Arizona from January 1, 2006 to January 12, 2009. A search of the Federal Communications Commission's website found that there have been no formal or informal complaint proceedings involving the Applicant.

## 7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### *7.1 Competitive Services Analysis for Local Exchange Services*

#### **7.1.1 A description of the general economic conditions that exist which make the relevant market for the service one that is competitive.**

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service

market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

**7.1.2 The number of alternative providers of the service.**

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

**7.1.3 The estimated market share held by each alternative provider of the service.**

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service, they have limited market share.

**7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

**7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

**7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.

- b. One in which new entrants will be dependent upon ILECs:
  - 1. To terminate traffic to customers.
  - 2. To provide essential local exchange service elements until the entrant's own network has been built.
  - 3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## 8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### *8.1 Recommendations on the Application for a CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

- 1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
- 2. That the Applicant complies with federal laws, federal rules and A.A.C. R14-2-1308(A), to make number portability available;
- 3. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- 4. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;

5. That the Applicant provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002;
6. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
7. That the Applicant cooperates with Commission investigations including, but not limited to customer complaints;
8. 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 company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance companies offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
9. In the event the Applicant requests to discontinue and/or abandon its service are, 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;
10. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
11. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
12. Staff recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further 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 pages 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.

2. The Applicant shall:
  - a. Procure either a performance bond or an ISDLC equal to \$125,000; and
  - b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and 13 copies of the performance bond or ISDLC 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 ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC 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 ISDLC 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.
3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

*8.2 Recommendation on the Applicant's Petition to Have Its Proposed Services Classified As Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.