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MEMORANDUM

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TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: September 28, 2009

RE: IN THE MATTER OF THE APPLICATION OF US LEC COMMUNICATIONS, INC. FOR APPROVAL TO RELINQUISH ITS CERTIFICATE OF CONVENIENCE AND NECESSITY AND REQUEST FOR A WAIVER OF COMMISSION RULE R14-2-1107.B (DOCKET NO. T-04194A-07-0624)

Attached is the Staff Report of the above Application for approval to cancel the Certificate of Convenience and Necessity ("CC&N") held by US LEC Communications, Inc. to provide resold interexchange telecommunications services and approve a waiver to the Arizona Administrative Code ("A.A.C.") R14-2-1107 (B). Staff recommends approval of the cancellation of the CC&N and of the waiver of the A.A.C. R14-2-1107 (B).

SMO:JFB:red

Originator: John F. Bostwick

Attachment: Original and Thirteen

Arizona Commission on Telecommunications

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SERVICE LIST FOR: US LEC COMMUNICATIONS, INC.
DOCKET NO. T-04194A-07-0624

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

US LEC COMMUNICATIONS, INC.
DOCKET NO. T-04194A-07-0624

IN THE MATTER OF THE APPLICATION OF US LEC COMMUNICATIONS, INC. FOR
APPROVAL TO RELINQUISH ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY AND REQUEST FOR A WAIVER OF
COMMISSION RULE R14-2-1107.B

SEPTEMBER 28, 2009

STAFF ACKNOWLEDGMENT

The Staff Report for US LEC Communications, Inc., Docket No. T-04194A-07-0624, was the responsibility of the Staff member listed below. John F. Bostwick was responsible for the review and analysis of US LEC Communications, Inc.'s Application to cancel its Certificate of Convenience and Necessity.



John F. Bostwick
Administrative Services Officer II

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INTRODUCTION

On October 30, 2007, US LEC Communications, Inc. ("Applicant" or "US LEC") submitted an Application to cancel its Certificate of Convenience and Necessity ("CC&N"). US LEC stated in its Application that it has no customers in Arizona and requests a waiver of the notice requirement of the Arizona Administrative Code ("A.A.C.") Rule R14-2-1107 (B). The Application filed was deemed insufficient and Staff sent its First Set of Data Requests to US LEC on December 26, 2007.

US LEC's address was not updated on the Service List and Staff's First Set of Data Requests was returned on April 03, 2008. Staff sent its revised First Set of Data Requests to US LEC on June 25, 2008. US LEC responded to Staff's revised First Set of Data Requests on July 11, 2008.

BACKGROUND

On January 20, 2004, the Commission, in Decision No. 66740, originally granted a CC&N to US LEC to provide resold interexchange telecommunications services within Arizona. US LEC was not required to procure either a performance bond or an irrevocable sight draft Letter of Credit.

STAFF'S ANALYSIS

US LEC stated in its Application that it no longer desires to offer telecommunications services in Arizona and, therefore, requests the cancellation of its of CC&N and its tariff. Should the Commission approve the cancellation of US LEC's CC&N, US LEC's tariff should be cancelled and Docket No. T-04194A-03-0514 should be closed.

In support of its Application, US LEC states that A.A.C. R14-2-1107(A)(2), which requires verification that affected customers have been notified of the proposed discontinuance or abandonment and will have access to alternative interexchange carriers, does not apply in this case. US LEC indicated in its Response to Staff Data Request JFB1-3 and JFB1-4 that it did not notify any Arizona customers because it stopped serving its business customers in Arizona on September 30, 2007. On January 28, 2009, Grace R. Chiu, Legal Counsel for US LEC, provided Staff with a copy of the notice sent to US LEC customers in Arizona. According to the notice dated April 30, 2007, PAETEC Communications, Inc. ("PAETEC") told US LEC customers that they should obtain an alternate service provider no later than May 21, 2007. PAETEC further stated in the notice that PAETEC will automatically transition their services to PAETEC on about June 1, 2007. Ms. Chiu reported that any other customers in Arizona served by US LEC on or before September 30, 2007 were lost through attrition. Staff believes US LEC should be granted a waiver of A.A.C. R14-2-1107(A)2.

US LEC further states in its Application that A.A.C. R14-2-1107(A)4 which requires US LEC to provide a list of alternative providers does not apply in this case. US LEC indicated in its Application that numerous utilities, including Qwest, Alltel, and Level 3 offer the same or similar long distance services as US LEC. Staff believes that compliance with A.A.C. R14-2-1107(A) is not required in this matter.

In its Application, US LEC requested a waiver to A.A.C. R14-2-1107(B) which requires US LEC to provide legal notice of the application in all counties affected by the application. In its Response to Staff Data Requests JFB1-2, US LEC stated that it did not publish legal notice of its Application because it did not serve any customers in Arizona at the time it filed its Application. Staff believes US LEC should be granted a waiver to A.A.C. R14-2-1107(B).

US LEC reported in its Application that it has no deposits or prepayments from any Arizona customers. According to the Response to Staff Data Request JFB1-6, US LEC did not collect any deposits nor did it collect any advances or prepayments from its customers in Arizona.

In its Response to Staff Data Request JFB1-3, US LEC stated that it is not serving any customers in Arizona. US LEC attached a copy of an Affidavit as proof that it is not providing telecommunications services to customers in Arizona. US LEC noted that it had service agreements with its customers. The agreements have either expired by their own terms or are unaffected by this Application. Those unaffected by the Application are a result of either the customer transferring its account to another carrier or ceasing to require service in Arizona. PAETEC either honored the terms of the US LEC service contracts or offered terms equal to or better than those received by the customer under the service contracts.

According to US LEC's Response to Staff Data Request JFB1-9, twelve (12) customers were transferred to US LEC's affiliate, PAETEC Communications, Inc. ("PAETEC"). PAETEC was originally granted a CC&N to provide resold interexchange telecommunications services in Arizona in Decision No. 62458 on April 14, 2000. The Federal Communications Commission ("FCC") under the FCC rule 47 C.F.R. § 64.1120 (e) approved a series of mergers between PAETEC Holding Corp. and US LEC Corp.¹ On January 28, 2009, Ms. Chiu informed Staff that the transfer of US LEC customers to PAETEC was not the result of a merger or a consolidation of US LEC and PAETEC. US LEC and PAETEC are as they were before the transfer of customers, separate legal entities and wholly-owned subsidiaries of PAETEC Holding Corp. Staff obtained copies of the FCC public notices as evidence of FCC's approval of the transfer of control of the US LEC subsidiary. The notice sent by PAETEC was sent in compliance with the FCC rules that govern the sale or transfer of a subscriber base from one carrier to another carrier within

¹ According to a Securities and Exchange Form 10-Q filing for the quarterly period ended June 30, 2007, on Page 13, PAETEC and US LEC completed their merger on February 28, 2007.

PAETEC's holding company parent. As such, US LEC does not believe that the Commission needs to approve the transfer of customers. Staff confirmed that neither US LEC nor PAETEC are Class A utilities and therefore, the Public Utility Holding Companies and Affiliated Interests rules, A.A.C. 14-2-801 et seq. do not apply.

On September 22, 2008, Staff contacted Ms. Chiu to verify that the customers that were transferred to PAETEC were business customers. On November 7, 2008, Ms. Chiu informed Staff that all twelve of the Arizona customers that were transferred to PAETEC were business customers. PAETEC gave US LEC customers in Arizona 30 days advance written notice of the proposed transfer of their account. The customers were informed that they had the right to select a carrier other than PAETEC. The written notice also advised US LEC customers that the transfer would not involve any interruption of service or change in the rates, term or conditions of service that the customer received from US LEC.

US LEC did not comply with every requirement of A.A.C. R14-2-1107. US LEC did provide notice to its business customers in Arizona and advised its customers of their right to select a carrier other than PAETEC. US LEC did not provide a list of alternative providers to the Commission and did not publish legal notice of its Application. Not one of the business customers has filed a complaint, opinion, or inquiry against either US LEC or PAETEC. As stated previously, Staff believes that the requirements of A.A.C. R14-2-1107 should be waived.

In its Response to Staff Data Request JFB1-8, US LEC stated that it has two affiliates that currently offer telecommunications services in Arizona. The affiliates are: PAETEC Communications, Inc. and McLeodUSA Telecommunications Services, Inc. dba PAETEC Business Services. According to its Response to Staff Data Request JFB1-10, US LEC currently operates in Indiana, Louisiana, New York, Ohio, Texas, and West Virginia. In its Response to Staff Data Requests JFB1-12 and JFB1-13, US LEC stated that it does not have any employees and does not have facilities in Arizona.

The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinion filed against either US LEC or PAETEC from January 1, 2004 through September 17, 2008. In addition, Consumer Services stated that US LEC is in good standing with the Corporations Division of the Commission. According to the Compliance Section of the Utilities Division, US LEC does not have any compliance delinquencies.

Since there are other carriers offering similar services as US LEC, Staff believes that approval of US LEC's request to discontinue service is in the public interest. US LEC's request to cancel its authority to provide resold interexchange services, cancel its tariff, and obtain a waiver to A.A.C. R14-2-1107 should be approved by the Commission.

RECOMMENDATIONS

Staff recommends approval of US LEC's Application to cancel its CC&N to provide resold interexchange telecommunications services because US LEC has no customers in Arizona. Since no harm has come to US LEC's business customers that were transferred to an affiliated entity, Staff further recommends that the Commission grant US LEC a waiver of A.A.C. R14-7-1107 in this matter.

Staff also recommends the cancellation of US LEC's tariff. Upon cancellation of its CC&N, US LEC will no longer be authorized to provide resold interexchange telecommunications services in Arizona and, therefore, will no longer be subject to the requirements of Decision No. 66740.