

ORIGINAL

OPEN MEETING ITEM



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Executive Director

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 6, 2009

DOCKET NO: T-04194A-07-0624

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

US LEC COMMUNICATIONS, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 15, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 20, 2009 AND OCTOBER 21, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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[Signature]
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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

DOCKET NO. T-04194A-07-0624

DECISION NO. _____

ORDER

Open Meeting
October 20 and 21, 2009
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 20, 2004, in Decision No. 66740, US LEC Communications Inc. ("USLEC") was granted a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold interexchange telecommunications services, except local exchange services, in Arizona. USLEC was not required to obtain either a performance bond or an irrevocable sight draft letter of credit and was not authorized to collect advances, deposits, or prepayments.

2. On October 30, 2007, USLEC filed with the Commission an application for approval to relinquish its CC&N and a request for a waiver of the notice requirement of Arizona Administrative Code ("A.A.C.") R14-2-1107(B) as it was no longer serving customers in Arizona. As required by A.A.C. R14-2-1115(I), USLEC's request for a waiver of A.A.C. R14-2-1107(B) included a verification.

3. On December 26, 2007, the Commission's Utilities Division Staff ("Staff") issued a

1 Letter of Insufficiency and First Set of Data Requests to USLEC.

2 4. On June 25, 2008, Staff again issued a Letter of Insufficiency and First Set of Data
3 Requests to USLEC, as Staff had discovered that its initial letter had been sent to an outdated
4 address.¹

5 5. On July 11, 2008, USLEC filed data responses.

6 6. On April 22, 2009, a Procedural Order was issued directing Staff to file an update in
7 this matter by May 20, 2009, as nothing further had been filed in the docket.

8 7. On May 20 and 21, 2009, Staff filed an Update and Amended Update in this matter
9 stating that Staff continued to process and review the application and recommending that this docket
10 remain open.

11 8. On September 28, 2009, Staff filed a Staff Report recommending that USLEC's
12 application for approval to cancel its CC&N and for a waiver of A.A.C. R14-2-1107(B) be approved.

13 9. USLEC is an affiliate of PAETEC Communications, Inc. ("PAETEC") and a wholly
14 owned subsidiary of PAETEC Holding Corp. ("PAETEC Holding"), as the result of a merger of
15 PAETEC Corp. and US LEC Corp. into PAETEC Holding in February 2007.² PAETEC received a
16 CC&N to provide resold interexchange telecommunications services in Arizona in Decision No.
17 62458 (April 14, 2000).

18 10. On or around April 30, 2007, PAETEC sent USLEC customers a letter notifying them
19 that they needed to obtain an alternate service provider by May 21, 2007, and stating that PAETEC
20 would automatically transition their services to PAETEC on or about June 1, 2007. The USLEC
21 customers were informed that they had the right to select a carrier other than PAETEC and were
22 advised that a transfer to PAETEC would not involve any interruption of service or change in the
23 rates, terms, or conditions of service as received from USLEC.³

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25 ¹ According to the Staff Report, the initial letter was returned to sender on April 3, 2008.

26 ² Staff stated that because neither USLEC nor PAETEC is a Class A utility, the Commission's Public Utility Holding
27 Companies and Affiliated Interests Rules, A.A.C. R14-2-801 et seq. ("Affiliated Interests Rules"), do not apply in this
28 matter. We agree with Staff, as the Affiliated Interests Rules apply only to the organization and reorganization of a public
utility holding company involving a Class A investor-owned utility or transactions involving a Class A investor-owned
utility and an affiliate.

³ Staff stated that PAETEC either honored the terms of existing USLEC service contracts or offered terms equivalent to
or better than those provided by USLEC under the service contracts.

1 11. USLEC transferred 12 Arizona business customers to PAETEC and ceased to provide
2 telecommunications services in Arizona on September 30, 2007. According to Staff, the notice sent
3 by PAETEC regarding the transfer of USLEC's customers was sent in compliance with Federal
4 Communications Commission ("FCC") rules governing the sale or transfer of a subscriber base from
5 one carrier to another carrier within a holding company. The transfer of customers was not made as a
6 result of any merger or consolidation between USLEC and PAETEC, both of which continue to exist
7 as subsidiaries of PAETEC Holding.

8 12. USLEC continues to operate in Indiana, Louisiana, New York, Ohio, Texas, and West
9 Virginia.

10 13. USLEC did not collect any advances, deposits, or prepayments from its Arizona
11 customers.

12 14. USLEC does not have any customers, employees, or facilities in Arizona and never
13 provided service to residential customers in Arizona.

14 15. Staff's Consumer Services Section reported that no complaints, inquiries, or opinions
15 were filed regarding USLEC from January 1, 2004, through September 17, 2008.

16 16. USLEC is in good standing with the Corporations Division of the Commission.

17 17. Staff's Compliance Section reported that USLEC does not have any compliance
18 delinquencies.

19 18. Staff recommends approval of USLEC's application to cancel its CC&N to provide
20 competitive resold interexchange telecommunications services in Arizona. Staff also recommends
21 that the requirements of A.A.C. R14-2-1107 be waived because USLEC no longer has any customers
22 in Arizona. Staff further recommends the cancellation of USLEC's tariffs on file with the
23 Commission and the closure of Docket No. T-04194A-03-0514 (the Docket for Decision No. 66740).

24 19. A.A.C. R14-2-1107(A)(2) requires that an application to discontinue service include
25 verification that all affected customers have been notified of the proposed discontinuance and that all
26 affected customers will have access to an alternative provider. USLEC stated in its application that
27 the rule did not apply because USLEC no longer has any customers in Arizona. We disagree with
28 USLEC's assertion in this regard, because such a position would allow any telecommunications

1 provider with Arizona customers to circumvent the intent of the rule⁴ simply by dumping all of its
2 Arizona customers before applying to discontinue its CC&N. However, we also find that USLEC
3 effectively complied with the rule when its affiliate, PAETEC, provided notice to all of USLEC's
4 customers in April 2007 concerning USLEC's upcoming discontinuance of service, the automatic
5 transfer of their service to PAETEC if they took no action, and their right to obtain service from
6 another provider. Thus, USLEC does not require a waiver of the requirements of A.A.C. R14-2-
7 1107(A)(2).

8 20. A.A.C. R14-2-1107(A)(4) requires that an application to discontinue service include a
9 list of all alternative utilities providing the same or similar service within the affected geographic
10 area. USLEC stated in its application that numerous alternative utilities, including Qwest, Alltel, and
11 Level 3, offer the same or similar long distance services in Arizona. We find that this information
12 substantially complies with A.A.C. R14-2-1107(A)(4), as USLEC was authorized to provide service
13 within the entire State of Arizona, which has many other authorized resold interexchange
14 telecommunications services providers available. Thus, USLEC does not require a waiver of the
15 requirements of A.A.C. R14-2-1107(A)(4).

16 21. A.A.C. R14-2-1107(B) requires a competitive telecommunications provider to publish
17 legal notice of its application to discontinue service in all counties affected by its application within
18 20 days after filing the application. Because USLEC no longer provides telecommunications services
19 anywhere in Arizona and has not done so for more than two years, it is unclear what counties, if any,
20 would be affected by USLEC's application, and it appears that there is currently no benefit to be
21 gained from requiring USLEC to publish notice of its application for cancellation of its CC&N.
22 Thus, it is appropriate and in the public interest to grant USLEC's request for waiver of the
23 requirements of A.A.C. R14-2-1107(B).

24 22. Staff's recommendations to cancel USLEC's CC&N to provide competitive resold
25 interexchange telecommunications services and to grant USLEC a waiver of the requirements of
26 A.A.C. R14-2-1107(B) are reasonable and should be adopted, as should Staff's recommendations to

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28 ⁴ The rule is intended to require that customers receive notice before their service is discontinued, so that they have an opportunity to transfer their service to another provider without a break in service.

1 cancel USLEC's tariffs on file with the Commission and to close Docket No. T-04194A-03-0514.

2 **CONCLUSIONS OF LAW**

3 1. USLEC is a public service corporation within the meaning of Article XV of the
4 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

5 2. The Commission has jurisdiction over USLEC and the subject matter of the
6 application.

7 3. USLEC has effectively complied with A.A.C. R14-2-1107(A)(2) and (4).

8 4. It is in the public interest to grant USLEC a waiver of the requirements of A.A.C.
9 R14-2-1107(B).

10 5. The cancellation of USLEC's CC&N to provide competitive resold interexchange
11 telecommunications services in Arizona is in the public interest.

12 **ORDER**

13 IT IS THEREFORE ORDERED that US LEC Communications Inc.'s Certificate of
14 Convenience and Necessity to provide competitive resold interexchange telecommunications services
15 in the State of Arizona, granted in Decision No. 66740 (January 20, 2004), is hereby cancelled.

16 IT IS FURTHER ORDERED that US LEC Communications Inc.'s request for a waiver of the
17 requirements of A.A.C. R14-2-1107(B) is hereby granted.

18 IT IS FURTHER ORDERED that US LEC Communications Inc.'s tariffs on file with the
19 Commission are hereby cancelled.

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IT IS FURTHER ORDERED that Docket No. T-04194A-03-0514 is hereby closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2009.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR: US LEC COMMUNICATIONS INC.

2 DOCKET NO.: T-04194A-07-0624

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