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ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 30, 2009

DOCKET NOS.: T-20517A-07-0135 and T-04045A-07-0135

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 Opinion and Order on:

STI PREPAID, LLC and DIALAROUND ENTERPRISES, INC.
(TRANSFER OF ASSETS AND 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:

NOVEMBER 9, 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:

NOVEMBER 19, 2009 and NOVEMBER 20, 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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OCT 30 2009

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[Signature]
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF STI
9 PREPAID, LLC AND DIALAROUND
10 ENTERPRISES INC. FOR APPROVAL OF A
11 TRANSFER OF ASSETS AND CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
INTRASTATE TELECOMMUNICATIONS
SERVICES AND APPROVAL OF TERMINATION
OF SERVICE BY DIALAROUND ENTERPRISES
INC.

DOCKET NO. T-20517A-07-0135
DOCKET NO. T-04045A-07-0135

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: May 18, 2009
13 PLACE OF HEARING: Phoenix, Arizona
14 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
15 APPEARANCES: Ms. Chérie R. Kiser, CAHILL GORDON & REINDEL,
16 LLP, on behalf of STi Prepaid, LLC and Dialaround
17 Enterprises Inc.; and
18 Mr. Kevin Torrey, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

19 **BY THE COMMISSION:**

20 This case involves a joint application filed by STi Prepaid, LLC ("STI") and Dialaround
21 Enterprises Inc. ("Dialaround") (jointly the "Applicants") requesting that the Arizona Corporation
22 Commission ("Commission") (1) approve the transfer to STI of Dialaround's assets and Certificate of
23 Convenience and Necessity ("CC&N") to provide resold interexchange services; and (2) approve the
24 termination of resold long distance service by Dialaround upon transfer of the CC&N. The
25 Applicants filed the joint application because they have entered into an Asset Purchase and
26 Contribution Agreement under which Dialaround is to transfer all or substantially all of its assets to
27 STI. STI has asserted that it will provide dial-around service in Arizona, but that the vast majority of
28 its service in Arizona will be provided through prepaid calling cards.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On March 2, 2007, the Applicants filed with the Commission a joint application requesting that the Commission (1) approve the transfer to STI of Dialaround's assets and CC&N to provide resold interexchange services and (2) approve the termination of resold long distance service by Dialaround upon transfer of the CC&N. The Applicants stated that they had, on January 23, 2007, entered into an Asset Purchase and Contribution Agreement ("Agreement") under which, among other things, Dialaround agreed to transfer all or substantially all of its assets to STI. As part of the joint application, STI submitted an application for a CC&N to provide resold long distance telecommunications services. STI stated in the joint application that it will provide both dial-around service and prepaid calling card service in Arizona.

2. Between April 3, 2007, and September 12, 2008, the Commission's Utilities Division ("Staff") issued, and STI provided responses to, seven Letters of Insufficiency and Data Requests.¹ In its response to the Seventh Data Request, STI provided information related to an Assurance of Voluntary Compliance ("AVC") that STI had entered into with the Florida Attorney General's Office as the result of an investigation there that had commenced in January 2006. (*See Ex. A-28; Ex. A-30.*) STI also provided information regarding Subpoenas Duces Tecum served upon it by the Attorneys General of Illinois and New York,² class action lawsuits filed on behalf of customers in U.S. District Courts in New York and New Jersey and in California and New York trial courts,³ and

¹ During this period, Staff also filed, and then withdrew, a motion to bifurcate STI's CC&N application from Dialaround's cancellation; a Procedural Order was issued requiring the Applicants to respond to Staff's motion; and STI filed a request for confidential treatment of its financial information.

² The New York subpoena was served on Samer Tawfik, as CEO of STi Phonocard, Inc., in August 2007. The Illinois subpoena was served on STI in April 2008. STI also revealed that the Florida Attorney General's Office had served Subpoenas Duces Tecum upon it in July and November 2007.

³ The class action lawsuits are *Adighibe v. Telco Group, Inc.*, No. 07CV1206, U.S. Dist. Ct. E.D.N.Y. (filed in October 2007); *Torres-Hernandez v. STi Phonocard, Inc.*, No. 08-1089, and *Ramirez v. STi Prepaid, LLC*, No. 08-1735, U.S. Dist. Ct. D. N.J. (consolidated July 2008); *Soto v. STi Prepaid, LLC*, No. GIC868083, Superior Ct. of Cal., San Diego Cnty. (filed May 2007); *Spira v. CVT Prepaid Solutions, Inc.*, No. 301164-08, N.Y. Supreme Ct., Bronx Cnty. (filed February

1 lawsuits filed by competitors in a U.S. District Court in New Jersey and a New York trial court.⁴
 2 (*See* Ex. A-28.) The lawsuits and investigations revealed all concern allegations of unfair and
 3 deceptive business practices or consumer fraud and, except for the Florida investigation, all appear to
 4 have commenced after the joint application was filed. (*See id.*) The Florida investigation
 5 commenced before the joint application was filed, but was not revealed by STI in the joint application
 6 because STI was not yet aware of it at that time.⁵ (*See* Ex. A-1; Ex. A-30; Tr. at 49.)

7 3. On January 9, 2009, Staff issued a Staff Report recommending approval of STI's
 8 application for a CC&N, subject to a number of conditions, including a number of advertising and
 9 service-related conditions based upon requirements in the AVC. The advertising and service-related
 10 conditions based upon the AVC were included in Exhibit A to the Staff Report, which is attached
 11 hereto as Exhibit A and incorporated herein. In addition, to protect STI's customers from any
 12 potential deceptive practices related to the manufacturing, advertising, promoting, selling,
 13 distributing, or providing of telecommunications service for prepaid calling cards in Arizona, Staff
 14 recommended that STI be ordered to acquire a \$10,000 performance bond or irrevocable sight draft
 15 letter of credit ("ISDLOC") in addition to the \$10,000 performance bond/ISDLOC generally
 16 recommended for all providers of resold long distance service who collect deposits, advances, and/or
 17 prepayments from customers. Staff also recommended that Dialaround's application to transfer its
 18 assets to STI be approved and that Dialaround's CC&N authority be cancelled.⁶

19 4. On February 5, 2009, a Procedural Order was issued scheduling a hearing in this
 20 matter for May 18, 2009; scheduling a prehearing conference for May 4, 2009; and establishing other
 21 procedural requirements and deadlines.

22 5. On March 9, 2009, the Applicants filed an Affidavit of Publication showing that notice
 23 of the joint application and hearing had been published in the *Arizona Republic* on March 5, 2009.

24 2008); and *Spira v. CVT Prepaid Solutions, Inc.*, No. 08-CV-1998, U.S. Dist. Ct. S.D.N.Y. (voluntarily dismissed March
 25 2008).

26 ⁴ These cases are *IDT Telecom, Inc. v. STi Prepaid*, No. 07-1076, U.S. Dist. Ct. D. N.J. (filed April 2007), and *IDT
 Telecom, Inc. v. Leucadia National Corp.*, No. 08602149, New York Supreme Ct., N.Y. Cnty. (filed July 2008).

27 ⁵ Mr. Larsen testified that STI was not aware of the Florida investigation until July 2007, after the joint application was
 filed with the Commission. (Tr. at 49.)

28 ⁶ Staff's recommendations in this regard diverge from what the Applicants requested in the joint application in that Staff
 recommends cancellation of Dialaround's CC&N and issuance of a new CC&N to STI as opposed to transferring
 Dialaround's CC&N to STI.

1 6. On April 16, 2009, an Application for Pro Hac Vice Admission of Chérie R. Kiser and
2 Matthew Conaty was filed. Ms. Kiser and Mr. Conaty were granted admission pro hac vice through a
3 Procedural Order issued on April 22, 2009.

4 7. On May 4, 2009, a prehearing conference was held in this matter. Counsel for the
5 Applicants appeared telephonically, and Counsel for Staff appeared in person. During the prehearing
6 conference, the parties identified the witnesses whom they intended to call at hearing and were
7 informed of a number of questions to address at the hearing.

8 8. Also on May 4, 2009, the Applicants filed exceptions to the Staff Report.⁷ In their
9 exceptions, the Applicants argued that the conditions recommended by Staff would constitute
10 unlawful rulemaking, would violate due process protections under both federal and Arizona law,⁸ and
11 would discriminate against STI in violation of 47 U.S.C. § 253. Specifically, the Applicants took
12 issue with the conditions included in Exhibit A and with the recommendation that STI be required to
13 obtain a second \$10,000 performance bond/ISDLOC to protect its customers from any potential
14 deceptive practices (collectively “the contested conditions”). The Applicants asserted that the
15 Commission lacks statutory or rule authority to impose the contested conditions and requested that
16 the Commission grant STI a CC&N without imposing the contested conditions.

17 9. On May 18, 2009, Staff filed a response to the Applicants’ exceptions, arguing that the
18 Commission possesses the authority to impose the conditions through an order specific to STI and
19 that formal rulemaking at this time would be premature. Staff further asserted that imposing the
20 contested conditions upon STI would not be discriminatory treatment because there are not any
21 similarly situated telecommunications providers in Arizona at this time.

22 10. On May 18, 2009, a full evidentiary hearing was held before a duly authorized
23 Administrative Law Judge of the Commission at the Commission’s offices in Phoenix, Arizona. The
24 Applicants and Staff appeared through counsel. The Applicants provided the testimony of David
25 Larsen, a minority owner, board member, and Vice President of STI who works at Leucadia National
26 Corporation (“Leucadia”). Staff provided the testimony of John Bostwick, Administrative Services

27 _____
28 ⁷ Official notice of these exceptions was taken at the evidentiary hearing.

⁸ The Applicants subsequently acknowledged that their own due process rights were not at issue. (See Tr. at 17-19.)

1 Officer II for Staff. During the hearing, Staff withdrew its recommendation for STI to be required to
2 obtain a second \$10,000 performance bond/ISDLOC to protect its customers from potential deceptive
3 practices, but maintained its recommendation that the remaining contested conditions be imposed.
4 (Tr. at 132-33.) Mr. Bostwick testified that Staff believes the remaining contested conditions would
5 provide security to Arizona customers. (Tr. at 134-35.) At the conclusion of the hearing, the parties
6 were directed to file briefs addressing (1) whether the Commission should engage in rulemaking at
7 this time to adopt the contested conditions, (2) the applicability of 47 U.S.C. § 253 and whether
8 preemption would result therefrom, and (3) the point at which the standard \$10,000 performance
9 bond/ISDLOC recommended by Staff for all resold long-distance carriers who collect prepayments
10 should be increased in the context of STI's proposed prepaid calling card operations. In addition, the
11 Applicants were directed to file a Late-Filed Exhibit ("LFE") identifying the prepaid calling card
12 providers providing intrastate service in Arizona whom Mr. Larsen had referenced in his testimony.

13 11. On June 4, 2009, the Applicants filed their LFE ("LFE-1"), identifying 14 prepaid
14 calling cards purchased in Arizona and setting forth the results of their test regarding whether it was
15 possible to complete an intrastate long-distance call using each card. The Applicants stated that only
16 3 of the 14 providers for the prepaid calling cards are authorized to provide long distance services in
17 Arizona. The Applicants also stated that they were providing Staff the actual cards used and an extra
18 set of cards to allow Staff to perform the test itself. LFE-1 shows that 12 of the 14 cards, all of which
19 were purchased in Tucson or Phoenix, allowed intrastate calls to be completed using originating and
20 destination phone numbers within the "520" area code. (LFE-1.)

21 12. On June 17, 2009, the Applicants filed their Post-Hearing Brief,⁹ asserting that
22 imposition of the contested conditions may be preempted under 47 U.S.C. § 253; that there are 39
23 CC&N holders currently providing prepaid calling card services in Arizona; that, although a
24 rulemaking proceeding may be appropriate, STI should have its CC&N granted without regard to any
25 rulemaking; and that STI believes that the initial \$10,000 performance bond/ISDLOC amount will be
26 more than sufficient indefinitely but will work with Staff if its intrastate calling increases
27

28 ⁹ Official notice is taken of the Applicants' Post-Hearing Brief and the attachments thereto.

1 dramatically giving rise to a need to increase the amount. With its post-hearing brief, the Applicants
2 included Post-Hearing Exhibit 1 ("PHE-1"), a list of CC&N holder telecommunications companies
3 purportedly offering calling, travel, or prepaid calling card services in Arizona compiled by the
4 Applicants through a review of tariffs filed with the Commission, and Post-Hearing Exhibit 2 ("PHE-
5 2"), excerpts from Entrix Telecom, Inc.'s Arizona C.C. Tariff No. 1 regarding prepaid calling card
6 service. PHE-1 shows that 39 different CC&N holder telecommunications companies have tariffs
7 that include provisions for prepaid calling card services. (PHE-1.)

8 13. On June 18, 2009, Staff filed its post-hearing brief, asserting that rulemaking would be
9 inappropriate and is not justified because STI's circumstances are unique, rulemaking would result in
10 a massive drain on Commission resources, and it is not foreseeable that rulemaking would provide a
11 positive result. Staff further asserted that the contested conditions would not be preempted under 47
12 U.S.C. § 253 because of the Commission's authority under 47 U.S.C. § 253(b); that Staff
13 recommends that STI's standard \$10,000 performance bond/ISDLOC be increased by \$5,000
14 whenever STI's income from prepaid calling card sales comes within \$1,000 of the total outstanding
15 performance bond/ISDLOC amount; and that STI's CC&N should either be approved subject to
16 Staff's recommendations or denied.

17 14. On August 6, 2009, a Procedural Order was issued requiring Staff to analyze the
18 information provided by the Applicants in LFE-1 and PHE-1, to determine whether the information
19 provided therein is accurate and the extent to which the companies listed therein are authorized to
20 provide and are providing intrastate prepaid calling card services in Arizona similar to the services
21 for which STI has requested authorization. Staff was also required to analyze whether the
22 Commission has imposed the contested conditions, or substantially similar conditions, upon each of
23 the companies authorized to provide intrastate prepaid calling card service in Arizona similar to the
24 service for which STI has requested authority. Finally, Staff was required to test the prepaid calling
25 cards provided by the Applicants to determine whether it was possible to complete an intrastate long
26 distance call in Arizona with each one. Staff was given a deadline of August 27, 2009, to make a
27 filing detailing its analysis and including specified information. The Applicants were provided a
28 deadline of September 10, 2009, to file a response to Staff's filing.

1 15. On August 20, 2009, Staff filed a request for a procedural conference to relay several
2 issues that had arisen regarding the pending application and the current procedural posture.

3 16. On August 21, 2009, a telephonic procedural conference was scheduled to be held on
4 August 27, 2009.

5 17. On August 26, 2009, Staff filed a request for an extension of time to comply with the
6 Procedural Order of August 6, 2009, asking for a new deadline of September 24, 2009. Staff also
7 requested that the telephonic procedural conference scheduled for August 27, 2009, be vacated.

8 18. On August 26, 2009, a Procedural Order was issued vacating the telephonic
9 procedural conference scheduled for August 27, 2009; extending Staff's filing deadline to September
10 24, 2009; extending the Applicants' filing deadline to October 8, 2009; and requiring Staff, if it
11 desired modification of the filing requirement in the Procedural Order of August 6, 2009, to promptly
12 make a filing setting forth and requesting its suggested modification and explaining why the modified
13 filing requirement would provide a sufficient analysis of the information provided in LFE-1 and
14 PHE-1.

15 19. On September 11, 2009, Staff filed a response to the Procedural Order of August 26,
16 2009, stating that Staff did not anticipate any difficulty accomplishing nearly everything in the
17 August 6, 2009, Procedural Order in a timely fashion; that Staff did not believe that it had been
18 provided a set of prepaid calling cards to test; that Staff has no reason to dispute the veracity of the
19 Applicants' reported findings from their test of prepaid calling cards purchased in Arizona; and that
20 Staff would like to have its filing requirements modified by eliminating the requirement for Staff to
21 test and provide results regarding the 14 prepaid calling cards purportedly provided by the
22 Applicants.

23 20. On September 14, 2009, a Procedural Order was issued modifying the August 6, 2009,
24 Procedural Order by eliminating the requirements for Staff to test prepaid calling cards provided by
25 the Applicants and to include in its filing the results of its tests and ordering the Applicants to
26 include, in their response to Staff's filing, a discussion concerning the 14 prepaid calling cards that
27 were purportedly provided to Staff.

28 21. On September 24, 2009, Staff filed an Addendum in which it set forth its analysis of

1 the information provided in LFE-1 and PHE-1 ("Staff Addendum").¹⁰ Staff stated that all 39 of the
 2 companies identified by the Applicants as authorized to provide prepaid calling card service in
 3 Arizona do or did have such authorization;¹¹ that only 10 of the 39 companies currently provide
 4 prepaid calling card service in Arizona; and that none of the 39 companies were required, in the
 5 orders granting their CC&Ns, to comply with conditions comparable or similar to the contested
 6 conditions. Staff also stated that 11 of the companies identified by the Applicants as providing
 7 prepaid calling card service in Arizona without authorization are indeed providing prepaid calling
 8 card service in Arizona without holding CC&Ns authorizing them to do so. Staff did not, however,
 9 modify its prior recommendations in this matter.

10 22. On October 8, 2009, the Applicants filed a response to the Staff Addendum, asserting
 11 that Staff's findings support the Applicants' position that the contested conditions should not be
 12 imposed upon STI, as STI's proposed prepaid calling card service is not unique in Arizona, and the
 13 Commission has a long-standing practice of allowing prepaid calling card service to be provided in
 14 Arizona without condition or limitation. The Applicants assert that the Commission should engage in
 15 formal rulemaking procedures if it desires to establish more rigorous standards for the provision of
 16 prepaid calling card service in Arizona and stated that they would welcome stricter regulation of the
 17 Arizona prepaid calling card industry, if it applies to every carrier. The Applicants requested that
 18 STI's application for a CC&N be approved unconditionally and without further delay.

19 **Dialaround**

20 23. Dialaround is a Delaware corporation headquartered in New York State and wholly
 21 owned by Samer Tawfik, an individual. (Ex. A-1.) Mr. Tawfik is also the sole owner of Telco
 22 Group, Inc. ("Telco"); STi Phonecard Inc.; STi Mobile, Inc.; Phonecard Enterprises Inc.; VOIP
 23 Enterprises Inc.; and STi PCS, LLC (collectively "Telco and its affiliates").¹² (Ex. A-13.) STI
 24 purchased substantially all of the assets of Telco and its affiliates in March 2007, but did not purchase
 25 the companies themselves. (See Tr. at 32, 45, 68-70.) Telco and its affiliates are now shell

26 ¹⁰ Official notice is taken of the Staff Addendum and the attachments thereto.

27 ¹¹ Staff showed that five of the CC&Ns have been canceled and that one of the CC&Ns has been revoked. (Staff
 Addendum.)

28 ¹² Telco, VOIP Enterprises, Inc., and Dialaround all hold Section 214 authority from the Federal Communications
 Commission ("FCC") allowing them to provide international calling services from the U.S. (Ex. A-13.)

1 companies and are contractually prohibited from providing any sort of telecommunications services.
2 (Tr. at 68-69.)

3 24. In Decision No. 65861 (April 25, 2003), the Commission granted Dialaround a CC&N
4 to provide competitive resold interexchange telecommunications services, except local exchange
5 services, in Arizona. In that Decision, because Dialaround had indicated that it would offer prepaid
6 calling card service, Dialaround's CC&N was conditioned upon Dialaround's procuring a
7 performance bond in the amount of \$10,000, to be increased incrementally whenever the total
8 advances, deposits, and prepayments collected from Dialaround's customers reached a level within
9 \$1,000 of the bond amount. The Decision provided that Dialaround could file a request to cancel the
10 performance bond if it no longer collected advances, deposits, or prepayments from customers. The
11 Decision also required Dialaround to file conforming tariffs within one year from the date of the
12 Decision or 30 days prior to providing service, whichever came first, and stated that Dialaround's
13 CC&N would become null and void if Dialaround failed to meet the timeframe for procuring and
14 filing proof of the required performance bond or filing the conforming tariffs.

15 25. Dialaround never filed proof of having obtained a performance bond and never filed
16 conforming tariffs after Decision No. 65861 was issued. (Ex. S-1.)

17 26. Dialaround provides dial-around service in Arizona, which allows a customer to
18 bypass his or her presubscribed interexchange carrier for a particular phone call by using a code to
19 access Dialaround's interexchange services. (Ex. A-1.) Dialaround's dial-around service is available
20 to anyone, at any time, from any location by dialing the access code before dialing the destination
21 phone number. (*Id.*) In April 2009, 58 discrete phone numbers in Arizona were used to make calls
22 using Dialaround's access code. (Tr. at 44.) These calls could have been made by only one person or
23 by up to 58 different persons. (*See* Ex. A-1.) Mr. Larsen testified that dial-around service is a low-
24 cost option for international calls, which generally are quite expensive when made through
25 presubscribed long distance carriers.¹³ (Tr. at 66-67.)

26 27. Dialaround uses a third-party billing and collection vendor to interact with customers
27

28 ¹³ Mr. Larsen testified that prepaid calling cards are another low-cost option. (Tr. at 67.)

1 after the dial-around service is used. (Ex. A-1.) As a result, Dialaround does not know the identity of
2 the persons that use its dial-around service. (*Id.*)

3 28. Dialaround does not provide prepaid calling card service and has not sold or given
4 away prepaid calling cards in Arizona. (Tr. at 49; Ex. A-5.) Prepaid calling cards showing
5 Dialaround as the service provider may have been sold in other jurisdictions. (Ex. A-9.)

6 29. In the joint application, the Applicants disclosed that Mr. Tawfik had a judgment in
7 the amount of approximately \$41,000 entered against him in 2002 and that the judgment was
8 satisfied. (Ex. A-1.) STI subsequently provided documentation showing that the judgment arose as a
9 result of a lawsuit filed against Mr. Tawfik and PT-1 Communications, Inc., in a New York trial
10 court, in September 1998, for breach of an oral agreement, among other things. (Ex. A-18.) The
11 plaintiffs in that suit sought \$117 million in monetary damages, claiming that Mr. Tawfik deliberately
12 deprived plaintiffs of their 60-percent ownership interest in PT-1 Communications, Inc., which the
13 plaintiffs described as the largest prepaid debit telephone card company in the United States. (Ex. A-
14 18.) The New York Supreme Court found breach of contract and breach of fiduciary duty and
15 awarded the plaintiffs \$24,000 plus costs, which totaled approximately \$41,000 altogether. (Ex. A-
16 17.) The trial court's decision was subsequently affirmed on appeal. (Ex. A-18.)

17 30. Staff's Consumer Services Section reports that there have been no complaints,
18 inquiries, or opinions filed against Dialaround from January 1, 2005, through May 19, 2008. (Ex. S-
19 1.) The Consumer Services Section also reported that Dialaround is in good standing with the
20 Commission's Corporations Division. (*Id.*)

21 STI

22 31. STI is a Delaware limited liability company formed in December 2006 and is in the
23 process of buying companies that provide prepaid calling card services in every state. (Ex. S-1.) STI
24 registers the trade name of each company it acquires and has properly registered a number of trade
25 names in Arizona. (*Id.*) STI has registered the following as trade names to be used in conducting
26 business in Arizona: Telco Group, Telco, TGI, Dialaround Enterprises, Dialaround, DEI, VOIP
27 Enterprises, and VOIP. (Ex. A-1; Ex. A-22.) STI registered the trade names to ensure that the names
28 are associated with STI for customer inquiry purposes, although STI will not market service using

1 these names. (Ex. A-21.)

2 32. STI was named using the initials "STI" to retain the brand name that had existed for
3 some time with STI Phonenumber, one of Telco's affiliates. (Tr. at 69.)

4 33. STI is currently authorized to provide intrastate interexchange telecommunications
5 service in 49 states. (Ex. S-1.)

6 34. STI is authorized to transact business in the State of Arizona and is in good standing
7 with the Commission's Corporations Division. (Ex. S-1.)

8 35. At the time of the joint application, STI was an indirect wholly owned subsidiary of
9 Leucadia, a publicly traded New York corporation, and Mr. Tawfik was the Chief Executive Officer
10 and a board member of STI. (Ex. A-1.) STI's officers have since changed, and Mr. Tawfik is no
11 longer involved in and does not direct the day-to-day operations of STI, although he is still a board
12 member. (Ex. A-11; Tr. at 48.) Mr. Tawfik also does not have any duties with any of STI's
13 affiliates. (Tr. at 70.) The Applicants describe Mr. Tawfik as a "passive investor" in STI. (Ex. A-
14 11.)

15 **The Transfer of Assets and CC&N**

16 36. The Applicants have requested an order (1) granting the transfer to STI of
17 Dialaround's assets, including its CC&N to provide resold interexchange services; and (2) approving
18 the termination of resold long distance service by Dialaround. Mr. Larsen testified that STI seeks
19 approval for the financial transfer of the licenses and approvals related to Arizona. (Tr. at 31-32.)

20 37. A.R.S. § 40-285(A) provides:

21 A public service corporation shall not sell, lease, assign, mortgage or otherwise
22 dispose of or encumber the whole or any part of its railroad, line, plant, or system
23 necessary or useful in the performance of its duties to the public, or any franchise or
24 permit or any right thereunder, nor shall such corporation merge such system or any
25 part thereof with any other public service corporation without first having secured
from the commission an order authorizing it to do so. Every such disposition,
encumbrance or merger made other than in accordance with the order of the
commission authorizing it is void.

26 38. Staff asserts that the sale of Dialaround's assets to STI requires Commission approval
27 under A.R.S. § 40-285(A). Staff further asserts that because neither Dialaround nor STI is a Class A
28 utility in Arizona, the Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-

1 2-801 through R14-2-806 (“Affiliated Interests Rules”), do not apply in this case.¹⁴ (Ex. S-1.)

2 39. Mr. Larsen testified that the assets STI will purchase from Dialaround include some
3 accounts receivable, an FCC 214 license that allows for international services, the approvals to
4 provide intrastate telecommunications services in various states, and some data. (Tr. at 102-03.) No
5 physical assets are being purchased. (Tr. at 103.)

6 40. As a result of the Agreement, STI will be owned 75 percent by BEI Prepaid, LLC
7 (“BEI”), a Delaware limited liability company whose principal business is telecommunications
8 holdings and which is ultimately controlled by Leucadia.¹⁵ (Ex. S-1.)

9 41. The other 25 percent of STI will be owned by ST Finance, LLC, a Delaware limited
10 liability company that is owned by Mr. Tawfik through seven holding companies—Telco and its
11 affiliated and Dialaround—and the principal business of which is securities holdings. (Ex. S-1.)
12 Thus, Mr. Tawfik will indirectly hold a 25-percent interest in STI.¹⁶ (Ex. A-11; Ex. A-13.)

13 42. The FCC has approved the transfer to STI of the international section 214 authority
14 held by Telco, Dialaround, and VOIP Enterprises, Inc. and of the domestic section 214 authority held
15 by Telco and Dialaround. (Ex. A-12; Ex. A-26; Ex. S-1.)

16 43. The Applicants asserted that Dialaround was not able to provide its customers
17 notification of its intent to transfer its assets to STI and to cease providing services in Arizona
18 because it does not know the identity of its customers. (See Ex. A-26; Ex. A-1.) However, public
19 notice of the joint application and hearing in this matter was published in the *Arizona Republic* on
20

21
22 ¹⁴ The Affiliated Interests Rules apply to all Class A investor-owned utilities under the jurisdiction of the Commission.
(A.A.C. R14-2-802(A).) A telephone utility is classified as Class A if its gross utility operating revenues derived from
23 Arizona operations exceed \$1 million. (A.A.C. R14-2-103(q).) Mr. Larsen testified that he believes Dialaround’s annual
revenue from Arizona operations is less than \$1 million. (Tr. at 104.) STI estimates that its first-year Arizona intrastate
service revenue will be approximately \$38,000. (Tr. at 155.)

24 ¹⁵ BEI is owned 10 percent by Mr. Larsen and 90 percent by BEI Prepaid Holdings, LLC (“BEI Holdings”), another
Delaware limited liability company whose principal business is telecommunications holdings. (Ex. S-1.) As Mr.
25 Larsen’s BEI ownership does not include a voting interest, 100 percent of the voting interest in BEI is held by BEI
Holdings. (*Id.*) BEI Holdings is a wholly owned subsidiary of Baldwin Enterprises Inc. (“Baldwin”), a Colorado
26 corporation whose principal business is investment. (*Id.*) Baldwin is a wholly owned subsidiary of Phlcorp, Inc., a
Pennsylvania corporation whose principal business is investment holdings. (*Id.*) Phlcorp, Inc. is a wholly owned
27 subsidiary of Leucadia, whose principal business is investment. (*Id.*)

28 ¹⁶ Mr. Tawfik’s minority ownership interest in STI will entitle him to receive profits from STI subject to the rights of
BEI and its ultimate parent, Leucadia, and to nominate one of the four STI board members. (Ex. A-11.) Mr. Tawfik will
not have any authority to direct the day-to-day operations of STI. (Ex. A-11.)

1 March 5, 2009.¹⁷

2 44. According to the Applicants, the transfer of Dialaround's assets and CC&N to STI
3 will be invisible to Dialaround's customers because STI will provide service under the same terms
4 and conditions and using the same tariff used by Dialaround. (Ex. A-1.) STI stated that it will
5 continue to provide the same service in Arizona that is currently provided by Dialaround, that the
6 transfer should not result in any loss or impairment of service to any consumers, and that consumers
7 will not notice a change in service or service provider because STI will operate under the trade name
8 Dialaround, which has been registered in Arizona. (Ex. A-1.) STI will continue to use the same
9 access numbers, personal identification numbers, and customer service numbers as were used by
10 Dialaround. (Tr. at 49.)

11 45. STI intends to provide service to customers using the facilities of MCI, AT&T, Sprint,
12 Global Crossing, and other facilities-based interexchange carriers authorized to provide service in
13 Arizona. (Ex. A-24.) STI also intends to use the facilities and services of local exchange carriers
14 operating in Arizona. (*Id.*) STI does not currently intend to own any facilities in Arizona or to
15 provide private-line services in Arizona, although STI does provide facilities-based
16 telecommunication services elsewhere. (Tr. at 51.)

17 46. STI does not require deposits or advances from customers, but intends to provide most
18 of its service through prepaid calling cards. STI intends to market prepaid calling cards primarily in
19 \$2 and \$5 denominations, and to a much lesser extent in \$10 denominations, and to concentrate its
20 marketing efforts primarily toward individuals who desire to make international calls. (Tr. at 50, 84,
21 105.) STI sells two types of cards—"low access cards" that have local phone numbers to access
22 service, and traveling cards that have an 800 phone number to access service. (Tr. at 106.)
23 Approximately 75 percent of the cards sold are the low access cards. (*Id.*)

24 47. STI sells its prepaid calling cards to distributors, who sell them to stores, who sell
25 them to customers. (Tr. at 105.) STI can track how many cards are sold to a particular distributor,
26 but cannot track the cards beyond the distributor. (*Id.*) Some distributors sell cards all over the
27

28 ¹⁷ Official notice is taken of the Affidavit of Publication filed by the Applicants on March 12, 2009.

1 country, and STI is unable to say where the cards are sold. (Tr. at 105-06.)

2 48. STI does not know the names of its customers and does not offer presubscribed long-
3 distance services. (Tr. at 52.) To access STI's prepaid calling card service, a customer must have
4 local phone service available, either through a local exchange company or a cell phone provider,
5 because access to STI's service is made by dialing a local telephone number. (Tr. at 62-63.) STI will
6 not have any subscribers for its services in Arizona. (Tr. at 64.)

7 49. STI intends to offer customer service to its Arizona customers through its existing
8 fully staffed customer service department that provides 24-hour live customer service support in a
9 variety of different languages. (Tr. at 52-53.) Each card, the packaging for each card, and STI's
10 advertising materials all have the "800" numbers for customer service printed on them. (Tr. at 53.)
11 STI's customer service department is located in the Dominican Republic, and Spanish is one of the
12 languages offered for customer service. (*Id.*) Calls to the customer service department do not result
13 in debits against a customer's prepaid calling card. (*Id.*)

14 STI's Fitness and Properness to Obtain a CC&N

15 50. In its CC&N application, STI stated that its officers, directors, and managers had not
16 been and were not currently involved in any formal or informal complaint proceeding pending before
17 any state or federal regulatory commission, administrative agency, or law enforcement agency. (Ex.
18 A-1.) STI also stated that, except for Mr. Tawfik, its officers, directors, and managers had not been
19 and were not currently involved in any civil or criminal investigations; had not had judgments entered
20 against them in any civil matter or by any administrative or regulatory agency, and had not been
21 convicted of any criminal act within the past 10 years. (*Id.*)

22 51. Staff contacted the public utility commissions ("PUCs") for 15 states¹⁸ to inquire
23 about STI's authority to provide resold interexchange telecommunications services in the states listed
24 by STI and to inquire about consumer complaints in the prior 12 months. (Ex. S-1.) Fourteen PUCs
25 indicated that STI is authorized to provide resold interexchange services in their states, while the
26 fifteenth state, Utah, indicated that it does not require authorization to provide resold toll services.

27 _____
28 ¹⁸ Staff contacted the PUCs in Colorado, Connecticut, Florida, Idaho, Iowa, Massachusetts, Michigan, Montana, New Hampshire, Ohio, Texas, Utah, Washington, Wisconsin, and Wyoming. (Ex. S-3.)

1 (*Id.*) Only one state's PUC indicated that any complaints had been filed against STI—Florida's PUC,
2 which indicated that six complaints regarding prepaid calling cards had been filed against STI
3 between January 1, 2006, and July 8, 2008. (*Id.*) Staff summarized the six complaints, which
4 essentially involved customers complaining that their prepaid calling cards did not provide the
5 number of calling minutes advertised. (*See id.*) All of the complaints have been resolved, mostly
6 through STI's sending each customer a letter along with a replacement card or refund. (*See id.*)

7 52. STI sold more than 93 million prepaid calling cards in Florida in 2006 and 2007. (Ex.
8 A-15.) Given the number of prepaid calling cards sold during 2006 and 2007, Staff determined that
9 the number of Florida complaints against STI is insignificant and that STI has sufficient customer
10 service capabilities to provide resold interexchange telecommunications services. (Ex. S-1.)

11 53. In the Staff Report, Staff explained that in January 2006, after receiving more than 200
12 complaints regarding prepaid calling cards, the Florida Attorney General's Office ("Florida AG")
13 initiated an investigation into business practices relating to the distribution, marketing, servicing, and
14 promotion of prepaid calling cards in Florida. (Ex. S-1.) The investigation concluded in February
15 2008 and resulted in the Florida AG's entering into a settlement with nine distinct prepaid calling
16 card providers, STI among them, in May 2008. (*Id.*) As part of the settlement, each of the nine
17 providers executed an AVC, without admitting any wrongdoing. (*Id.*) Through its AVC, STI is
18 required to comply with a number of specified standards and to pay a total of \$200,000 to the Florida
19 AG over several years. (Ex. A-30.) Some of the standards in the AVC are stated as mandates and
20 others are stated as agreements made by STI. (*Id.*)

21 54. STI did not reveal either the Florida complaints or the AVC to Staff until Staff
22 specifically requested information about them in a data request. (*See, e.g.,* Ex. A-1.) Mr. Larsen
23 testified that STI only became aware of the Florida Attorney General investigation in July 2007, after
24 the joint application had been filed. (Tr. at 48-49.)

25 55. Mr. Larsen testified that of the litigation matters revealed by STI, only three remained
26 at the time of hearing—two class action lawsuits and one of the civil cases brought by a competitor.
27 (Tr. at 53-55.) Mr. Larsen testified that STI was brought into all three remaining cases as a successor
28 in liability for Telco and its affiliates and that all three cases deal with the operations of Telco and its

1 affiliates before the acquisition. (*See* Tr. at 54-55, 69-70, 102.) Mr. Larsen testified that the civil
2 case filed by the competitor was actually filed only two hours after STI had acquired the assets of
3 Telco and its affiliates. (Tr. at 54-55.) Mr. Larsen testified that no other cases have been filed since
4 STI purchased Telco and its affiliates. (Tr. at 55.)

5 56. Since purchasing Telco and its affiliates in March 2007, STI has been meeting with
6 Attorneys General, both under subpoena and at STI's request, regarding the standards applicable to
7 prepaid calling card providers and in an effort to facilitate getting a fair set of prepaid calling card
8 standards established across the country or even in individual states. (Tr. at 46.) In addition, Mr.
9 Larsen personally has been spending a significant amount of time meeting with Federal Trade
10 Commission ("FTC") staff, at STI's request, to discuss fair standards and to ask that the FTC become
11 more actively involved in establishing the standards applicable to prepaid calling card service. (Tr. at
12 46, 56.) Mr. Larsen testified that STI has significantly changed the advertising practices for the
13 brands acquired through the purchase of the assets of Telco and its affiliates. (Tr. at 56.)

14 57. Mr. Larsen testified that he would welcome standards and conditions applicable to all
15 prepaid calling card companies, because the industry has been largely unregulated to date, and "there
16 are a lot of very, very bad actors out there that . . . are cheating customers." (Tr. at 56.) Mr. Larsen
17 testified that standards must be universally applied, because when they are not, such as in Florida,¹⁹
18 companies to whom the standards do not apply come into the state and take advantage of customers'
19 misconception that all companies are required to comply with standards, harming the unsuspecting
20 customers and placing compliant companies at a competitive disadvantage. (*See* Tr. at 57, 111.) Mr.
21 Larsen is very willing to work with the Commission toward establishing a set of standards to apply to
22 all prepaid calling card providers providing intrastate service in Arizona. (*See* Tr. at 57.)

23 58. Mr. Larsen testified that two of the bad practices in the industry are (1) advertising a
24 certain number of minutes available for use on a card when calling a particular destination and then
25 having inadequately disclosed fees and surcharges that make it impossible to receive that number of
26 minutes and (2) inadequately disclosing or failing to disclose fees. (Tr. at 73-74.) Mr. Larsen
27

28 ¹⁹ Florida has only imposed the standards upon the nine companies that entered into AVCs. (Tr. at 111.) It has not adopted rules to make the standards generally applicable. (Tr. at 111-12.)

1 summed up the bad behavior as inadequate advertisement or inadequate disclosure of the terms and
 2 conditions of the cards, such that the customer cannot understand or determine how many minutes are
 3 available using one card versus another. (Tr. at 79.)

4 59. Mr. Bostwick testified that STI is a fit and proper entity to provide the services for
 5 which it has requested CC&N authority. (Tr. at 131, 138-39.)

6 60. Mr. Bostwick testified that the Prepared Statement of the FTC on Prepaid Calling
 7 Cards Before the Committee on Commerce, Science and Transportation of the U.S. Senate
 8 (September 10, 2008) ("FTC Statement"), reflects his understanding of the difficulties with the
 9 prepaid calling card industry as a whole. (Tr. at 135.) The FTC Statement indicates that there is
 10 nationwide concern regarding unfair and deceptive practices in the prepaid calling card industry and
 11 that the FTC desires Congress to repeal a law that exempts common carriers subject to the
 12 Communications Act from FTC regulation.²⁰ (See Ex. S-2.)

13 STI's Technical Capabilities

14 61. Mr. Larsen testified that the vast majority of STI's service in Arizona will be
 15 international phone calls. (Tr. at 59.) Intrastate long distance calls in Arizona are expected to be
 16 minimal, as they generally account for less than 1 percent of all the calls made by STI's prepaid
 17 calling card customers. (See Tr. at 62.) STI does not specifically market its cards to be used for
 18 intrastate long distance, although a customer can use one of its cards for intrastate long distance. (Tr.
 19 at 63.) Most of the prepaid calling card service will be for either international or interstate calling,
 20 with intrastate service really just being incidental.²¹ (Id.) STI will continue to provide dial-around
 21 service, as provided by Dialaround, although it is not a large part of STI's business. (Tr. at 68.)

22 62. STI's operations are managed by a President with more than 7 years of experience in

23 _____
 24 ²⁰ In its statement, the FTC described its authority to bring enforcement actions against companies and individuals for
 25 engaging in deceptive or unfair acts or practices in or affecting commerce, how it has used its power to bring enforcement
 26 actions against distributors of prepaid calling cards for deceptive sales practices, and how it is unable to take action
 27 against the underlying telecommunications carriers providing the services accessed through the prepaid calling cards.
 28 (Ex. S-2.) The FTC also described Senate Bill 2998, which would have required the FTC to promulgate a rule requiring,
 inter alia, that prepaid calling card providers (common carriers) and distributors provide clear and conspicuous
 disclosures of the number of minutes provided by calling cards, the amount and frequency of all fees assessed for use of
 calling cards, and the expiration date of calling cards. (Id.) Official notice is taken that Senate Bill 2998 did not pass out
 of the Senate Committee. (See <http://Thomas.loc.gov/>)

²¹ STI has requested authority to provide service in Arizona because, although it will only be incidental, intrastate long
 distance service will be provided. (Tr. at 77.)

1 the telecommunications industry; a Chief Operating Officer with approximately 14 years of
 2 experience in the telecommunications industry, some specifically involving prepaid calling card
 3 service; and a Senior Vice President of Network Operations with executive experience at both Level
 4 3 and WilTel. (Ex. A-14.)

5 63. STI is controlled by Leucadia, its ultimate majority owner. (Tr. at 48.)

6 64. According to Staff, STI has demonstrated sufficient technical capability to provide the
 7 services for which it requests CC&N authority. (Ex. S-1; Tr. at 130-31.)

8 STI's Financial Resources

9 65. Mr. Larsen testified that STI has the financial resources to make full use of its CC&N
 10 if one is granted and that, beyond using the cash flow it currently generates, STI could borrow
 11 money, could raise capital through a private infusion or public offering, and could obtain capital from
 12 its current shareholders. (Tr. at 51-52.)

13 66. With the joint application, STI provided the financial statements of Leucadia, showing
 14 that Leucadia and its subsidiaries had combined assets of \$5,260,884,000 and combined total
 15 liabilities of \$1,583,007,000 as of December 31, 2005. (Ex. A-1.)

16 67. STI does not intend to rely solely on the financial resources of Leucadia. (Ex. S-1.)
 17 STI provided confidential financial statements for calendar year 2007, which list substantial assets
 18 and showed significant net income.²² (See Ex. S-1.)

19 68. Mr. Bostwick testified that STI has the financial wherewithal to remain a viable entity
 20 to provide the services for which it has requested CC&N authority. (Tr. at 131.) In addition, Staff
 21 stated that if STI were to experience financial difficulties, end users would be able to access other
 22 interexchange service providers. (Ex. S-1.)

23 Competitive Services and the Arizona Market

24 69. Resold long distance telecommunications services are competitive in Arizona. STI
 25 intends to operate in Arizona as a reseller of services purchased from other telecommunications
 26 companies, will not be a monopoly provider of service, will not control a significant portion of the
 27

28 ²² Although STI did not object to Staff's inclusion of specific figures in the Staff Report, in spite of the asserted confidentiality of its financial statements, we have chosen not to recount the figures here.

1 telecommunications market, and will not be able to adversely affect the intrastate interexchange
 2 market by restricting output or raising market prices. (Ex. S-1.) In addition, the telecommunications
 3 companies from which STI will buy bulk service are technically and financially capable of providing
 4 alternative services at comparable rates, terms, and conditions. (*Id.*) STI hopes to achieve 10 percent
 5 of the calling card market. (Tr. at 50.)

6 70. Mr. Larsen testified that a number of telecommunications companies are offering
 7 prepaid calling card service in Arizona, specifically international service, interstate service, and
 8 incidental intrastate service, such as STI will provide, and that he believes many of them are not
 9 authorized by the Commission to provide intrastate service in Arizona. (Tr. at 64-66.) Subsequent to
 10 the hearing, the Applicants provided documentation showing that 39 telecommunications carriers
 11 have on file with the Commission tariffs that include provisions for prepaid calling card service,
 12 (PHE-1), and that the Applicants tested 14 prepaid calling cards purchased in Tucson and Phoenix
 13 and were able to make intrastate calls in Arizona using 12 out of the 14 cards, (LFE-1).

14 71. At hearing, Staff identified three companies believed to be providing prepaid calling
 15 card service in Arizona without holding a CC&N.²³ (Tr. at 147; Ex. S-3.) Mr. Bostwick also testified
 16 that Staff was aware that prepaid calling card service is listed in some carriers' tariffs on file with the
 17 Commission. (Tr. at 148.) After reviewing LFE-1 and PHE-1, Staff stated that it has no reason to
 18 dispute the veracity of the Applicants' prepaid calling card test results and confirmed that 10 of the
 19 12 underlying carriers for the prepaid calling cards that allowed intrastate calls in the test are not
 20 CC&N holders in Arizona. (*See* Staff Addendum.) In addition, Staff verified that at least 39 tariffs
 21 authorizing prepaid calling card service are on file with the Commission. (*Id.*) Staff also determined
 22 that of the 39 companies with such tariff provisions, 6 no longer hold CC&Ns, 5 plan to cancel their
 23 CC&Ns, 10 are currently providing prepaid calling card service, and 17 are not currently providing
 24 prepaid calling card service.²⁴ (*Id.*) Staff also determined that none of the 39 companies were
 25 granted CC&Ns with conditions comparable to the conditions in Exhibit A. (*Id.*)

26
 27
 28 ²³ The companies were NobelTel, Pennytalk, and Pingo.

²⁴ Staff was unable to reach GTC Telecom, Inc. (Staff Addendum.)

1 STI's Proposed Rates

2 72. STI states that it intends to use the same tariff provisions currently used by
3 Dialaround. (Ex. A-1.) Staff compared STI's proposed tariff to Dialaround's existing tariff and
4 determined that there is no material difference between the two. (Ex. S-1.)

5 73. According to Staff, rates for competitive services generally are not set according to
6 rate-of-return-regulation. (Ex. S-1.) Staff determined that STI's fair value rate base ("FVRB") is \$0
7 and thus too small to be useful in a rate of return analysis. (*Id.*) While Staff considered the FVRB
8 information submitted by STI, Staff believes that it should not be given substantial weight in its
9 analysis of whether STI's rates are just and reasonable. (*Id.*) Staff has reviewed the rates to be
10 charged by STI and believes that they are just and reasonable, as they are comparable to several long
11 distance carriers in Arizona and comparable to the rates STI charges in other jurisdictions. (*Id.*)

12 Regulatory Requirements

13 74. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
14 interconnect to the public switched network to provide funding for the Arizona Universal Service
15 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
16 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.
17 R14-2-1204(B)(2). A.A.C. R14-2-1204(B)(3)(b) requires all other telecommunications service
18 providers that interconnect to the public switched network and begin providing telecommunications
19 services after April 26, 1996, to make written elections as to how they will be categorized for
20 purposes of AUSF assessments.

21 75. Commission rules require STI to file a tariff for each competitive service that states
22 the maximum rate as well as the effective (actual) price that will be charged for the service. Under
23 A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total service long-
24 run incremental cost of providing the service. Any change to STI's effective price for a service must
25 comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in STI's tariff
26 must comply with A.A.C. R14-2-1110.

27 76. A.A.C. R14-2-1901 through R14-2-1913 and R14-2-2001 through 2011 establish
28 requirements to protect Arizona customers from unauthorized carrier changes ("slamming") and

1 unauthorized carrier charges (“cramming”) and apply to each public service corporation providing
 2 telecommunications services with the State of Arizona and over which the Commission has
 3 jurisdiction. The rules’ provisions pertain to operations that involve subscribers. If STI provides
 4 only dial-around and prepaid calling card services in Arizona, the slamming and cramming rules will
 5 not apply to STI’s operations, as STI will not have any subscribers. However, because STI could
 6 choose to provide resold long distance services through other methods in the future, it is possible that
 7 the slamming and cramming rules could apply to STI’s operations at a future date, and STI thus
 8 needs to be aware of them.

9 77. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
 10 an application for authorization with the Commission before it discontinues service; the rule also
 11 establishes customer notice requirements and other requirements related to discontinuance of service.

12 **Staff’s Position and Recommendations**

13 78. Rather than recommending that Dialaround’s CC&N be transferred to STI along with
 14 Dialaround’s assets, and that Dialaround be authorized to cease providing resold long distance
 15 services in Arizona, Staff recommends that Dialaround’s CC&N be cancelled,²⁵ that STI receive a
 16 new CC&N to provide competitive resold interexchange services in Arizona, and that the transfer of
 17 assets be approved. (Ex. S-1; Tr. at 137.) Staff reasoned that a transfer may not be appropriate when
 18 the services offered by the providers involved are different or when the Commission decides to
 19 impose additional terms and conditions on the company that will be providing service in Arizona.
 20 (Ex. S-3; Tr. at 137.) Mr. Bostwick testified that even though STI will be providing the same service
 21 as Dialaround (resold long distance service), the mechanism used is different because STI will
 22 primarily use prepaid calling cards, and Dialaround used dial-around service, and that is a significant
 23 enough change to warrant an entirely separate CC&N rather than a transfer of a CC&N. (Tr. at 138.)
 24 Staff also asserted that STI’s application for a CC&N must be approved before any of Dialaround’s
 25 assets can be transferred to STI and before Dialaround’s CC&N can be cancelled. (Ex. S-1.)
 26

27 ²⁵ Staff stated that upon cancellation of Dialaround’s CC&N, Dialaround will not be authorized to provide resold
 28 interexchange telecommunications services in Arizona and, therefore, will not be subject to the requirements of Decision
 No. 65861. (Ex. S-1.)

1 79. Staff further recommends that:

- 2 (a) STI be ordered to comply with all Commission rules, orders, and other
3 requirements relevant to the provision of intrastate telecommunications
4 services;
- 5 (b) STI be ordered to cooperate with Commission investigations, including but not
6 limited to those for customer complaints;
- 7 (c) STI be ordered to participate in and contribute to the Arizona Universal
8 Service Fund, as required by the Commission;
- 9 (d) STI be ordered to notify the Commission immediately upon changes to STI's
10 name, address, and/or telephone number;
- 11 (e) STI's intrastate interexchange service offerings be classified as competitive
12 pursuant to A.A.C. R14-2-1108;
- 13 (f) STI's maximum rates for its intrastate interexchange service offerings be the
14 maximum rates proposed by STI in its proposed tariffs, and STI's minimum
15 rates for these services not be less than STI's total service long run incremental
16 costs of providing those services, as set forth in A.A.C. R14-2-1109;
- 17 (g) Because STI's fair value rate base is too small to be useful in a fair value
18 analysis, the fair value rate base information not be given substantial weight in
19 analyzing STI's rates;
- 20 (h) In the event STI desires to discontinue and/or abandon service in Arizona, STI
21 be required to provide notice to both the Commission and STI's customers, in
22 accordance with A.A.C. R14-2-1107; and
- 23 (i) STI be ordered to do the following, and STI's CC&N be rendered null and
24 void after due process if STI fails to:
- 25 (i) File conforming tariffs with Docket Control, as a compliance item in
26 this matter, within 365 days from the date of an Order in this matter or
27 30 days before providing service, whichever comes first, and in
28 accordance with the Decision;

- 1 (ii) Procure a performance bond/ISDLOC equal to \$10,000;
- 2 (iii) File the original performance bond/ISDLOC with the Commission's
- 3 Business Office and file copies of the performance bond/ISDLOC with
- 4 Docket Control, as a compliance item in this docket, within 30 days of
- 5 the effective date of a Decision in this matter;
- 6 (iv) Maintain the performance bond/ISDLOC in effect until further Order of
- 7 the Commission;
- 8 (v) Increase the performance bond/ISDLOC, in increments of \$5,000,
- 9 whenever the income from STI's sales of prepaid calling cards comes
- 10 within \$1,000 of the performance bond/ISDLOC amount;
- 11 (vi) Honor all outstanding and unused prepaid calling cards issued by
- 12 Dialaround; and
- 13 (vii) Comply with the general terms and the advertisement and disclosure
- 14 compliance, voice prompt compliance, network access numbers, and
- 15 customer service compliance items listed in Exhibit A hereto. (See Ex.
- 16 S-1; Staff Post-Hearing Brief.²⁶)

17 80. Staff recommends that the Commission draw on the performance bond/ISDLOC on
18 behalf of, and for the sole benefit of, STI's customers if the Commission finds, in its discretion, that
19 STI is in default of its obligations arising from its CC&N. (Ex. S-1.) Staff states that the
20 Commission may use the performance bond/ISDLOC funds, as appropriate, to protect STI's
21 customers and the public interest and may take any and all actions the Commission deems necessary,
22 in its discretion, including, but not limited to, returning prepayments or deposits collected from STI's
23 customers. (*Id.*)

24 81. Staff further recommends that if at some time in the future STI no longer collects
25 advances, deposits, and/or prepayments from its customers, STI be allowed to file, in this docket, for
26 Staff's review, a request for cancellation of its established performance bond/ISDLOC regarding its
27

28 ²⁶ Official notice is taken of Staff's Post-Hearing Brief.

1 resold interexchange service. (Ex. S-1.) Staff stated that upon receipt and review of such a filing,
2 Staff shall prepare an Order with a recommendation for the Commission's consideration at an Open
3 Meeting. (*Id.*)

4 82. Staff recommends, as a condition to STI's receiving and retaining a CC&N, that
5 Dialaround be required to publish legal notice of its application to cancel its authority to provide
6 resold interexchange services and transfer its assets to STI and that a copy of such legal notice and an
7 Affidavit of Publication be filed with the Compliance and Enforcement Section, within 30 days after
8 the date of a Decision in this matter, as proof that STI complied with the Commission's legal notice
9 requirements.²⁷ (Ex. S-1.)

10 83. Staff is not concerned that the transaction between STI and Dialaround will result in
11 slamming, as Dialaround does not have subscribed customers. (Tr. at 142.) In addition, Staff pointed
12 out that Dialaround is unable to identify its customers, which would make it impossible for
13 Dialaround to provide its individual customers with notice of the transaction. (*See* Tr. at 140-42.)
14 Staff further testified that the performance bond/ISDLOC being required for STI would also protect
15 customers from the risks of slamming, such as receiving a different quality of service or being
16 assessed rates and charges that are different than and higher than those assessed by the original
17 provider. (*See id.*)

18 84. After reviewing STI's proposed tariff, Staff determined that the proposed tariff does
19 not comply with Exhibit A because it does not have the detail that is captured in Exhibit A, although
20 Staff did not determine that the tariff includes provisions inconsistent with the requirements of
21 Exhibit A. (Tr. at 150, 161.) Staff further stated that a tariff would not necessarily be as detailed as
22 Exhibit A. (Tr. at 162.)

23 85. Staff considers STI's prepaid calling card sales to be the only prepayments that STI is
24 going to collect, as STI's proposed tariff does not require deposits and does not require advances.
25 (Ex. S-3; Tr. at 144.) Staff stated that STI expects to generate \$38,000 in Arizona intrastate revenue
26 in its first year of operations. (Ex. S-3; Tr. at 155.) Staff acknowledged that Staff's standard
27

28 ²⁷ Official notice is taken that notice of Dialaround's application to discontinue service, as part of the joint application, was published in the Arizona Republic on March 5, 2009.

1 performance bond/ISDLOC recommendation would result in STI's being required to increase its
 2 performance bond/ISDLOC to cover that entire \$38,000 amount, which represents prepayments, but
 3 stated that this would not be appropriate for STI. (Ex. S-3; Tr. at 156.) Staff explained that the total
 4 outstanding value of the STI prepaid calling cards (the face value of the prepaid calling cards sold,
 5 reduced by the value already used on the cards) is the amount at risk to STI customers should STI
 6 default on its obligation to provide service. (Ex. S-3; Tr. at 156.) Staff also stated that, according to
 7 STI, less than one percent of STI's prepaid calling cards were used in placing intrastate interexchange
 8 telecommunications services in Florida. (Ex. S-3.) At hearing, Staff asserted that the performance
 9 bond/ISDLOC amount of \$10,000, which would cover 26.3 percent of STI's estimated Arizona
 10 intrastate revenue for the first year of operations, should be adequate at this time, because the amount
 11 of risk to customers is limited to the outstanding value of STI prepaid calling cards, Staff believes
 12 that the prepaid calling cards will be used rather quickly, and STI has the financial backing of
 13 Leucadia²⁸ and thus is unlikely to default on its obligation to provide service.²⁹ (Ex. S-3; Tr. at 156.)

14 86. Mr. Bostwick characterized STI as a "good apple in a bad barrel" and stated that Staff
 15 has no evidence before it that STI has engaged in any unfair or deceptive trade practices. (Tr. at 160-
 16 61.) Mr. Bostwick also testified, however, that Staff would recommend denial of STI's CC&N
 17 application if the contested conditions in Exhibit A were not to be imposed.³⁰ (Tr. at 163.) Mr.
 18 Bostwick testified that Staff does not take this position because of anything that STI has done, but
 19 because Staff desires to have this as a "landmark case" to establish the conditions in Exhibit A so that
 20 they can be applied to other companies' CC&N application cases in the future. (Tr. at 163-64.) Staff
 21 also intends to apply the conditions to other prepaid calling card providers on a case-by-case basis,
 22 such as when there is a complaint case. (Tr. at 152-53.) At hearing, Mr. Bostwick testified that Staff
 23

24 ²⁸ According to Staff, Leucadia has assets in excess of \$5 billion. (Ex. S-3.)

25 ²⁹ At hearing, Staff did not recommend that the \$10,000 performance bond/ISDLOC be increased upon the occurrence of
 26 any event. (Tr. at 157.) Rather, Staff stated that it desired to obtain additional information from STI to assist Staff in
 27 identifying the volume of prepaid calling cards outstanding, and allow Staff to derive a more accurate performance
 28 bond/ISDLOC value, but also stated that STI has asserted that it would be impossible for STI to give a realistic
 assessment of the aggregate dollar value of prepaid calling cards outstanding at any time. (Ex. S-3; Tr. at 158-59.) Staff
 further testified that the outstanding dollar value could vary substantially every minute. (Tr. at 160.)

³⁰ Mr. Bostwick elaborated that Staff desires to keep the conditions in Exhibit A intact in this case so that they can be
 imposed upon other providers that desire to provide resold intrastate interexchange services through prepaid calling cards
 in the future. (Tr. at 163.)

1 believed that an industry-wide rulemaking is unnecessary because there is no reason why STI would
 2 not be willing to comply with the contested conditions in Arizona, as they are taken from the AVC,
 3 and Staff was unable to identify any similarly situated companies.³¹ (Tr. at 130, 151.) Mr. Bostwick
 4 also testified that prepaid calling card service falls under resold interexchange service for purposes of
 5 a CC&N application and does not require a specific request and that he does not believe that the
 6 companies with prepaid calling card service in their current tariffs are complying with the conditions
 7 in Exhibit A. (Tr. at 167-68.)

8 87. Although Staff has now acknowledged that there are a number of telecommunications
 9 providers authorized to provide prepaid calling card service in Arizona and providing such service,
 10 and that those providers have not been required to comply with conditions comparable to those in
 11 Exhibit A, Staff has not withdrawn its recommendation that the contested conditions be imposed on
 12 STI, has not withdrawn its recommendation that STI's application for a CC&N be denied unless the
 13 contested conditions are imposed, and has not withdrawn its recommendation that no rulemaking be
 14 completed to make the contested conditions generally applicable to other carriers providing prepaid
 15 calling card service in Arizona. (See Staff Addendum.)

16 **STI's Position Regarding Staff's Recommended Conditions**

17 88. STI did not object to being required to comply with Staff's recommended conditions
 18 other than the contested conditions. (See Tr. at 80-87.) STI has asserted, however, that it would be
 19 impossible for STI to give a realistic assessment of the aggregate dollar value of prepaid calling cards
 20 outstanding at any time. (Tr. at 158-59.)

21 89. Mr. Larsen testified as follows regarding how STI's current operations conform to the
 22 contested provisions in Exhibit A and how its Arizona operations would conform to them:

23 § 1(a): STI's operations are consistent with this and were so before entering into the AVC.³²
 24 (Tr. at 90.)

25 § 1(b), (c), and (d): STI's operations are consistent with these. (Tr. at 93-94.)
 26

27 ³¹ Mr. Bostwick explained that Staff would be able to identify any similarly situated companies by looking at the tariffs
 of each carrier, identifying the carriers that offer prepaid calling card service, and then reviewing the annual reports of
 those carriers that offer prepaid calling card service. (Tr. at 151-52.)

28 ³² Mr. Larsen testified that none of STI's advertising practices had to be changed to comply with the AVC. (Tr. at 76.)

1 § 2(a)-(k): STI's operations are consistent with all of these in Florida, and are consistent with
 2 all but § 2(e) and (f) elsewhere. (Tr. at 95.) Some of STI's cards in some states other than
 3 Florida do not comply with § 2(e) and (f). (*Id.*) Mr. Larsen believes that it was a mistake to
 4 agree to § 2(e) and (f) in Florida because they put STI at a competitive disadvantage by
 5 limiting the manner in which STI can establish its fees, sometimes resulting in making a card
 6 less attractive to certain consumers. (Tr. at 96.) Mr. Larsen provided the example of
 7 customers who intend to use a card's complete value in one call as opposed to those who
 8 intend to use a card multiple times.³³ (*Id.*)

9 § 3(a)-(g): STI's operations are consistent with these. (Tr. at 98.)

10 § 4(a)-(h): STI's operations are consistent with these. (Tr. at 99.)

11 §§ 5-20: STI's operations in Florida are consistent with these, and its Arizona operations
 12 would be consistent with these. (Tr. at 99-101.)

13 90. STI's objection to the contested conditions, aside from Exhibit A § 2(e) and (f), is not
 14 that they are not appropriate conditions, but that only STI would be required to comply with them,
 15 which STI views as discriminatory, believes would put it at a competitive disadvantage, and believes
 16 would give the impression in the marketplace that it has engaged in misconduct (it would be
 17 "tainted").³⁴ (*See* Tr. at 90-101, 117, 123.) Indeed, Mr. Larsen testified that given the hypothetical
 18 choice between accepting the contested conditions in order for STI to get its CC&N and having STI's
 19 application suspended until such time as the Commission could complete rulemaking to adopt
 20 conditions that would apply to all prepaid calling card providers, STI would prefer to leave the
 21

22 ³³ Mr. Larsen explained that a percentage-based fee (imposed at the end of the call based on usage) that replaces an up-
 23 front flat fee can be a better value for a customer desiring to make a number of calls to a low-cost destination, such as
 24 Mexico, because a flat fee per call would eat up more of the card's value. (*See* Tr. at 109-10.) Mr. Larsen also stated that
 25 it might be advantageous to have rounding in more than one-minute increments, although he did not describe a manner in
 26 which that might be beneficial to a customer. (Tr. at 110.) It appeared that the objection is more because other providers
 27 would be able to use larger rounding increments. (*See* Tr. at 110-11.)

28 ³⁴ Mr. Larsen stated that it would be easier to accept Staff's recommendations without § 2(e) and (f), but that the taint
 issue would remain. (*See* Tr. at 124.) Mr. Larsen stated that the industry is hypersensitive due to ongoing FTC and
 attorney general investigations of some companies and that, although STI is trying to market itself "as the card you can
 believe in and the card you can trust, . . . it is a tough road to hoe in this industry." (Tr. at 124.) Mr. Larsen also
 explained that in Florida, at the time the AVC was executed, the signers were the nine largest prepaid calling card
 companies, representing approximately 80 percent of the calling card traffic in the state, which meant that STI did not
 stand out as it would in Arizona if it were the only company required to comply with the contested conditions in Exhibit
 A. (Tr. at 125-26.)

1 application pending, particularly if it would encourage expedited rulemaking.³⁵ (See Tr. at 112-18.)
 2 STI subsequently asserted that it would be a violation of 47 U.S.C. § 253 to suspend this matter
 3 pending completion of a rulemaking. (Applicants' Post-Hearing Brief.)

4 91. Mr. Larsen testified as follows regarding STI's position as a "white knight" in the
 5 prepaid calling card industry:

6 I would argue that we have made vast changes to the company, vast changes
 7 to the way that the products are marketed and advertised, and we have spent a
 8 lot of time with states' attorneys general and also the FTC in reviewing our
 9 practices. And based on the responses that I have received from all of these
 10 various states and the FTC, I would put our practices up against anybody in
 11 the industry as being—and we have even been told by some that our practices
 12 would be[—]the example for the industry.³⁶

13 92. Mr. Larsen confirmed that STI would comply with all of the contested conditions in
 14 Exhibit A, other than § 2(e) and (f), regardless of the conditions imposed by the Commission. (Tr. at
 15 125.)

16 Discussion and Resolution

17 93. The evidence establishes that STI is a fit and proper entity to receive a CC&N to
 18 provide resold interexchange telecommunications service in Arizona and that it has the technical
 19 capability and financial resources to provide such service. Although STI has been and continues to
 20 be involved in lawsuits and attorney general investigations related to the provision of prepaid calling
 21 card service, the evidence establishes that STI is involved in those cases as a successor in liability or
 22 because of the activities of Telco and its affiliates rather than as a result of any misconduct on STI's
 23 part. Indeed, the evidence shows that STI has made and continues to make strides to improve its own
 24 operations and to establish industry standards to protect customers from the unfair and deceptive
 25 business practices that appear to prevail in the prepaid calling card industry.

26 94. Because STI has entered into the Agreement to purchase substantially all of the assets
 27 of Dialaround, intends to continue providing dial-around service in Arizona, will continue to use
 28 Dialaround's name and to provide dial-around service under Dialaround's current tariffs, and has

³⁵ If it were to do this, STI would advertise that its cards could not be used for intrastate service and, if required to do so by the Commission, would block intrastate service. (Tr. at 117-18, 121.)

³⁶ (Tr. at 119.) Mr. Larsen clarified that the changes were made to the practices of Telco and its affiliates and added that STI's operations are Sarbanes-Oxley compliant. (*Id.*)

1 specifically requested to have Dialaround's CC&N transferred to STI, we believe that it is
2 appropriate to transfer Dialaround's CC&N to STI rather than cancelling it and issuing a new CC&N.
3 While we understand that Staff believes the scope of STI's service will differ from Dialaround's
4 because of the provision of prepaid calling card service, the fact remains that the CC&N was granted
5 to Dialaround to allow it to provide resold interexchange telecommunications service, which is what
6 STI will provide, with the specific knowledge that Dialaround intended to provide prepaid calling
7 card service. There is no need to cancel Dialaround's CC&N, there is no benefit to be gained from
8 cancelling Dialaround's CC&N, and there may be some advantage to reflecting the continuity
9 represented by the transfer of Dialaround's assets and CC&N to STI.

10 95. Although Dialaround has not been the subject of customer complaints here in Arizona,
11 the lawsuit activities regarding Telco and its affiliates suggest that other companies owned by Mr.
12 Tawfik may have engaged in some business practices involving prepaid calling card service in other
13 jurisdictions that we would prefer not to have occur in Arizona. In addition, we find that Dialaround
14 has complied with the requirements of A.A.C. R14-2-1107 to the extent possible, in light of
15 Dialaround's not having subscribed customers and not being able to identify its customers.
16 Specifically, Dialaround has requested permission to discontinue providing service, has explained
17 why it is making the request, has explained that STI will continue to provide the service, has provided
18 the names of several other alternative utilities providing resold interexchange service in Arizona, and
19 has had legal notice of the application published in a statewide publication of general circulation. No
20 comments in opposition to Dialaround's request have been received. In light of all of these factors,
21 we believe that it is in the public interest to grant Dialaround's request to approve the transfer of its
22 assets and CC&N to STI and to discontinue providing service in Arizona once its assets and CC&N
23 are transferred to STI.

24 96. While we appreciate Staff's ingenuity in finding the Florida AVC and in creating
25 Exhibit A from the Florida AVC and its resolve to protect Arizona customers from the unfair and
26 deceptive business practices apparently engaged in by some prepaid calling card providers, we do not
27 agree that such protection should be achieved piecemeal, on a case-by-case basis, with this case
28 essentially used as the launching pad for the protections encompassed within Exhibit A. Staff itself

1 has testified that STI is a fit and proper entity to receive a CC&N and that it is a “good apple in a bad
2 barrel.” STI has provided evidence that singling it out as the only provider required to comply with
3 the conditions in Exhibit A would put it at a competitive disadvantage, both because it would be
4 restricted from charging any fees on a percentage basis³⁷ and because it would suggest within the
5 marketplace that STI has engaged in misconduct that is being redressed through the conditions in
6 Exhibit A. Staff acknowledges that STI is not a bad actor, and we do not believe that it would be
7 appropriate to single it out and treat it as one when there have been at least 39 other companies
8 authorized to provide prepaid calling card service in Arizona and approximately 10 companies are
9 actually providing such service under their CC&Ns. Before we impose the conditions in Exhibit A
10 on any prepaid calling card provider that has not engaged in conduct that would justify our singling it
11 out for special remedial treatment, we believe that it would be beneficial to have the conditions
12 scrutinized by, and to receive input regarding the conditions from, all of Arizona’s prepaid calling
13 card providers. We believe that if the conditions in Exhibit A, or conditions like them, are to be
14 imposed on prepaid calling card providers who have not engaged in misconduct justifying special
15 restrictions, they should be imposed universally, through formal rulemaking, with input from the
16 industry. For all of the foregoing reasons, we will not adopt Staff’s recommendation to impose the
17 conditions in Exhibit A. Thus, we need not address STI’s assertions regarding whether imposing the
18 conditions in Exhibit A upon it would constitute unlawful discrimination and/or a violation of 47
19 U.S.C. § 253.

20 97. Although we agree with Staff that STI’s customers need to be protected from losing
21 the outstanding value of their prepaid calling cards, we believe that STI’s current system of sales
22 through distributors renders it unable to determine with any degree of certainty the level of income
23 from sales of prepaid calling cards in any one state. In light of this, and our knowledge that STI will
24 only be selling prepaid calling cards in denominations of \$2, \$5, and \$10, meaning that any
25 individual customer’s risk of loss should be low, we believe that we should not impose Staff’s
26 recommended requirement for STI to increase its performance bond/ISDLOC amount based on the

27 _____
28 ³⁷ We did not find persuasive Mr. Larsen’s testimony that rounding in increments larger than 1 minute could somehow be beneficial to customers. We are skeptical concerning the validity of that assertion.

1 amount of Arizona prepaid calling card sales. Rather, we will prohibit STI from selling prepaid
 2 calling cards in denominations greater than \$10 without first obtaining Commission approval of a
 3 tariff change specifically authorizing greater denominations and will require Staff to revisit the
 4 appropriate amount for a performance bond/ISDLOC if STI files a future tariff showing that prepaid
 5 calling cards will be sold in a denomination greater than \$10.

6 98. Staff's recommendations set forth in Findings of Fact No. 79(a) through (h), (i)(i)
 7 through (iv), (i)(vi), and (i)(vii); in Findings of Fact No. 80; and in Findings of Fact No. 81 are
 8 reasonable and will be adopted.

9 CONCLUSIONS OF LAW

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

12 2. Upon receiving a CC&N, STI will be a public service corporation within the meaning
 13 of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

14 3. The Commission has jurisdiction over Dialaround and STI and over the subject matter
 15 of the joint application.

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
 17 CC&N to provide competitive telecommunications services.

18 5. A.R.S. § 40-285 requires a public service corporation to obtain a Commission order
 19 providing permission before it sells or otherwise disposes of the whole or any part of its system that
 20 is necessary or useful in the performance of its duties to the public.

21 6. Notice of the joint application was given in accordance with the law.

22 7. Dialaround has complied with the provisions of A.A.C. R14-2-1107 to the extent
 23 possible.

24 8. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
 25 it is in the public interest for STI to provide the telecommunications services for which it has
 26 requested authorization in its application.

27 9. STI is a fit and proper entity to receive a CC&N, as conditioned herein, authorizing it
 28 to provide competitive resold long distance telecommunications services in the State of Arizona.

1 interexchange service offerings are not less than the total service long run incremental costs of
2 providing those services, as set forth in A.A.C. R14-2-1109; and

3 6. In the event that it desires to discontinue and/or abandon service in Arizona, provide
4 notice to both the Commission and its customers, in accordance with A.A.C. R14-2-1107.

5 IT IS FURTHER ORDERED that STi Prepaid, LLC, shall comply with the following, and its
6 CC&N approved herein shall be rendered null and void if it fails to:

7 1. File conforming tariffs with Docket Control, as a compliance item in this matter,
8 within 365 days after the date of an Order in this matter or 30 days before providing service,
9 whichever comes first, and in accordance with this Decision;

10 2. Procure a performance bond/ISDLOC equal to \$10,000;

11 3. File the original performance bond/ISDLOC with the Commission's Business Office
12 and file copies of the performance bond/ISDLOC with the Commission's Docket Control, as
13 a compliance item in this docket, within 30 days after the effective date of a Decision in this
14 matter;

15 4. Maintain the performance bond/ISDLOC in effect until further Order of the
16 Commission; and

17 5. Honor all outstanding and unused prepaid calling cards issued by Dialaround
18 Enterprises, Inc.

19 IT IS FURTHER ORDERED that the Commission shall draw on the performance
20 bond/ISDLOC required herein on behalf of, and for the sole benefit of, the customers of STi Prepaid,
21 LLC, if the Commission finds, in its discretion, that STi Prepaid, LLC, is in default of its obligations
22 arising from its Certificate of Convenience and Necessity. The Commission may use the
23 performance bond/ISDLOC funds, as appropriate, to protect the customers of STi Prepaid, LLC, and
24 the public interest and may take any and all actions the Commission deems necessary, in its
25 discretion, including but not limited to returning prepayments collected from customers of STi
26 Prepaid, LLC.

27 IT IS FURTHER ORDERED that if at some time in the future STi Prepaid, LLC, no longer
28 collects advances, deposits, and/or prepayments from its customers, STi Prepaid, LLC, may file, in

1 this docket, for Staff review, a request for cancellation of the established performance bond/ISDLOC
2 obtained as required herein. Upon receipt and review of such a filing, Staff shall prepare an Order
3 with a recommendation for the Commission's consideration at an Open Meeting.

4 IT IS FURTHER ORDERED that STi Prepaid, LLC, may not sell prepaid calling cards in
5 denominations greater than \$10 without first obtaining Commission approval of a tariff change
6 specifically authorizing greater denominations.

7 IT IS FURTHER ORDERED that if STi Prepaid, LLC, files a future tariff showing that it
8 desires to sell prepaid calling cards in a denomination greater than \$10, Staff shall revisit the
9 appropriate amount for a performance bond/ISDLOC at that time and shall prepare an Order with a
10 recommendation as to the appropriate amount for a performance bond/ISDLOC for the
11 Commission's consideration at an Open Meeting.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15
16 CHAIRMAN

COMMISSIONER

17
18 COMMISSIONER

COMMISSIONER

COMMISSIONER

19
20 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
21 Executive Director of the Arizona Corporation Commission,
22 have hereunto set my hand and caused the official seal of the
23 Commission to be affixed at the Capitol, in the City of Phoenix,
24 this _____ day of _____, 2009.

25 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

26 DISSENT _____

27
28 DISSENT _____

1 SERVICE LIST FOR:

STI PREPAID, LLC AND DIALAROUND
ENTERPRISES INC.

2 DOCKET NOS.:

T-20517A-07-0135 and T-04045A-07-0135

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19 Steve Olea, Director
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EXHIBIT A

As a condition of granting STi Prepaid a Certificate of Convenience and Necessity or authority to provide resold intrastate long distance, STi Prepaid shall comply with the following:

GENERAL TERMS

1. STi Prepaid and its parents, subsidiaries, affiliated entities, partners, successors, assigns, and any person or entity through which they do business and each of its respective officers, directors, agents, servants, employees, distributors, and attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Agreement by personal service or otherwise, are hereby permanently restrained and enjoined from:

- (a) Manufacturing, advertising, promoting, selling, distributing, or providing telecommunications services for Prepaid Calling Cards for which a voice prompt announces and informs a consumer of the number of minutes of telecommunications services available for a call UNLESS at the time of the voice prompt the consumer of the Prepaid Calling Card can actually receive for that call one hundred percent (100%) of the minutes of telecommunications services that have been announced on the voice prompt. Any number of minutes of telecommunications services announced by a voice prompt, as described in this subparagraph, must include within its calculation all relevant Per Call Fees and Periodic Fees that would apply for that call, if the consumer depleted the entire balance available for the Prepaid Calling Card on that call. For example a voice prompt that states "You have 200 minutes of call time available for this call, subject to fees and surcharges," would be a violation of this subparagraph; while a voice prompt that states, "After all applicable fees and surcharges, you have 200 minutes of call time available for this call," would be acceptable so long as the consumer could actually receive one hundred percent (100%) of the 200 minutes advertised by the voice prompt for a single call;
- (b) Advertising the number of minutes of telecommunications services and/or the Per Call Rate available to a consumer for a call with a Prepaid Calling Card to a destination referred to in any such Advertisement *unless* the consumer of the Prepaid Calling Card can actually receive one hundred percent (100%) of the minutes advertised on a single call to that destination, and any limitation on the dates for which the minutes and/or Per Call Rates advertised or promoted in the Advertisement are available to the consumer is clearly and conspicuously displayed in the Advertisement. Any advertised number of minutes of telecommunications services, as described in this subparagraph, must include within its calculation all relevant Per Call Fees and Periodic Fees, with the exception of Pay Phone Fees, fees for calls originating outside the continental United States, and/or fees assessed for calls utilizing STi Prepaid' access numbers, that would apply for a single call to the advertised destination. If STi

Prepaid assesses any Pay Phone Fees, fees for calls originating outside the continental United States, and/or fees for calls utilizing STi Prepaid's access numbers, then STi Prepaid shall disclose said fees pursuant to the terms and conditions in subparagraph 1(c).

- (c) Advertising in print advertisements the number of minutes of telecommunications services and/or the Per Call Rate(s) available to a consumer to a destination referred to in any such print Advertisement *unless* any price limitations are adjacent to the Per Call Rate advertised, in a legible font size, and clearly and conspicuously disclosed ; and
- (d) Advertising the number of minutes of telecommunications services and/or the Per Call Rate available to a consumer to a destination referred to in any such Advertisement *unless* the expiration date, if any, is clearly and conspicuously disclosed in the advertisement.

ADVERTISEMENT & DISCLOSURE COMPLIANCE

2. In connection with the advertising, selling, distributing, marketing, servicing, and promoting of any Prepaid Calling Cards or Prepaid Calling Service, STi Prepaid acknowledge and agree that they will observe the following policies and procedures regarding the purchase, development, production, review, and approval of advertising materials related to their Prepaid Calling Cards and Prepaid Calling Service:

- (a) STi Prepaid shall ensure that all products, marketing materials and advertisements clearly and conspicuously display all brand identification information;
- (b) STi Prepaid shall distribute, market, service, advertise, and/or promote Prepaid Calling cards with a stated value in U.S. Dollars or U.S. calling time;
- (c) STi Prepaid shall not advertise a Per Call Rate or a number of minutes available to call any location without also clearly and conspicuously disclosing the date of expiration, if any, for the Per Call Rate or available minutes;
- (d) STi Prepaid shall not advertise a Per Call Rate or a number of minutes available to call any location without also clearly and conspicuously disclosing any and all additional charges or costs incurred to the consumer and making such disclosures in accordance with Paragraphs 5 and 6;
- (e) STi Prepaid shall not charge percentage based fees, any derivative of a percentage based fee, or any surcharge resembling a tax in connection with any Prepaid Calling Card or Prepaid Calling Card Service;
- (f) STi Prepaid shall not charge for time-based services by the consumer/caller by more than one minute rounding increments;

- (g) STi Prepaid shall not advertise a Per Call Rate or number of minutes available to call any location without also clearly and conspicuously disclosing any and all limitations on that advertised Per Call rate;
- (h) If STi Prepaid advertise a Per Call Rate to a particular destination, any limitations on the applicability of that rate must be clearly and conspicuously disclosed, including but not limited to different rates and/or additional charges applicable using different access numbers, cell phones, pay phones, and any "1-800", "1-888" or "toll free" telephone numbers;
- (i) STi Prepaid shall not advertise "unlimited" Long Distance Call minutes or any derivative thereof in a manner that would induce a reasonable consumer into the belief that the Prepaid Calling Card will provide unlimited Long Distance Call minutes for each Long Distance Call made using the Prepaid Calling Card, unless no rate per minute or Per Call Fee is charged for use of the call, and any Periodic Fee or card expiration is clearly and conspicuously disclosed;
- (j) STi Prepaid shall not advertise "no connection fee" or any derivative thereof in a manner that would induce a reasonable consumer into the belief that no Per Call Fees will be assessed for placing a Long Distance Call, unless no Per Call Fees are assessed for placing a Long Distance Call; and
- (k) STi Prepaid shall not advertise "toll-free access" or any derivative thereof in a manner that would induce a reasonable consumer into the belief that toll-free access is at no additional charge, fees or higher rates in comparison to non-toll free access.

3. STi Prepaid shall clearly and conspicuously disclose the following information on all Prepaid Calling Cards:

- (a) The name of the prepaid calling service provider;
- (b) STi Prepaid's toll-free customer service telephone number(s) and the hours during which live operator service is available;
- (c) An access telephone number if required to access the Prepaid Service;
- (d) The authorization code of PIN if required to access the Prepaid Service;
- (e) The original balance of the card stated in U.S. currency of U.S. calling time;
- (f) Instructions informing consumers how to place Long Distance Calls utilizing the Prepaid Calling Card or Prepaid Calling Service; and
- (g) The expiration date or policy of the Prepaid Calling Card and Prepaid Calling Service.

4. STi Prepaid shall clearly and conspicuously disclose all material terms and conditions for use of a Prepaid Calling Card and their corresponding Prepaid Calling Service either on the Prepaid Calling Card or its Card Packaging, including without limitation the following items:

- (a) A list of any and all Per Call Fees, individually identified and enumerated in the same format, either U.S. dollars or U.S. calling time, for calls originating from the United States;
- (b) If the Prepaid Calling Card can be used for calls originating outside of the United States, notice that additional or different per minute rates, charges, fees, taxes or surcharges may apply to use of the Prepaid Calling Card or Prepaid Calling Service for calls originating outside the United States;
- (c) The procedure by which the consumer may obtain a refund if STi Prepaid's telecommunications network fails to operate in a manner that is commercially reasonable;
- (d) The procedure by which the consumer may add additional money to the balance of the Prepaid Calling Card or Prepaid Calling Service, if that service is available;
- (e) Notice if Per Call Rates are higher for calls made via toll-free access numbers than local access numbers, such notice to be in close proximity to the toll-free access numbers;
- (f) Any minimum charge per Long Distance Call;
- (g) Notice that Per Call Rates for calls made to international cellular destinations may be different than rates for calls to landline destinations; and
- (h) Any applicable policies relating to expiration, minute rounding and billing decrement.

5. STi Prepaid shall clearly and conspicuously disclose the information required by Paragraphs 3 and 4 on all posters and other point-of-sale Advertisements regarding a Prepaid Service.

6. STi Prepaid shall clearly and conspicuously disclose the information required by subparagraphs 3(a), (b) and (g) on all Advertisements for a Prepaid Card or Prepaid Service (other than point-of-sale materials which are covered by Paragraph 5).

7. If a Prepaid Calling Card or any point-of-sale Advertisement for a Prepaid Calling Card or Prepaid Calling Service is predominantly written in a language other than English, then the disclosures required by Paragraphs 3, 4 and 6, as applicable, shall be disclosed in that other language on the applicable Prepaid Calling Card (or the Card Packaging as

applicable) or point-of-sale Advertisement.

8. The amount of any Per Call Fee or Periodic Fee that is imposed, assessed, or deducted from a Prepaid Calling Card's value or balance shall be expressed and disclosed in the same format, either U.S. dollars or U.S. calling time, as the denomination of the Prepaid Calling Card.

9. STi Prepaid shall not debit from the balance of a Prepaid Calling Card any amount or value for a Long Distance Call if the Long Distance Call is not Answered or if the consumer receives a busy signal, a digital recording indicating that the call cannot be completed for any reason, or live telephone operator response indicating that the call cannot be completed for any reason.

VOICE PROMPT COMPLIANCE

10. STi Prepaid shall clearly and conspicuously disclose the current balance remaining on a Prepaid Calling Card, expressed in U.S. currency or U.S. calling time, via a voice prompt given to a consumer when the consumer accesses the Prepaid Calling Service before making a Long Distance Call.

11. STi Prepaid shall clearly and conspicuously disclose the accurately calculated amount of Long Distance Call time that is available for the current Long Distance Call from its inception until the call is disconnected due to insufficient balance remaining on the Prepaid Calling Card or Prepaid Calling Service via a voice prompt given to a consumer after the consumer dials the destination number. In order for the amount of Long Distance Call time announced by a voice prompt to be considered "accurately calculated," for the purposes of this paragraph, the calculated amount of Long Distance Call time announced by the voice prompt *must* include all applicable Per Call Fees and Periodic Fees that would apply for that call, if the consumer depleted the entire balance available for the Prepaid Calling Card on that call.

NETWORK ACCESS NUMBERS

12. STi Prepaid shall maintain network access numbers with sufficient capacity to accommodate a reasonable anticipated number of calls.

CUSTOMER SERVICE COMPLIANCE

13. STi Prepaid shall maintain a toll-free customer service number with sufficient capacity to accommodate a reasonable anticipated number of calls.

14. STi Prepaid shall provide customer service that is available twenty-four hours a day, seven days a week, through the toll-free customer service number.

15. STi Prepaid shall provide live operator customer service from at least 9 a.m. to at least 9 p.m. Mountain Standard time, through the toll free customer service number.

16. STi Prepaid may utilize a combination of live operators and interactive voice response, or digital voice recording of consumer inquiries or complaints, however, STi Prepaid shall provide live operator service as required in Paragraph 15.

17. If STi Prepaid choose to utilize interactive voice response or digital voice recording to accept consumer inquiries and/or complaints, then STi Prepaid shall make every reasonable effort to respond, to the extent necessary, to consumer inquiries and/or complaints within two business days from the time the consumer inquiry and/or complaint was received.

18. Live operators as provided for in Paragraph 15, shall be knowledgeable and able to advise consumers on how to place Long Distance Calls using STi Prepaid' Prepaid Calling Service and Cards, what current Per Call Rates apply, the amount and mechanics for all fees and surcharges that may apply to the consumer's requested call, and address consumer's concerns and complaints.

19. STi Prepaid shall issue refunds to consumers if the telecommunications network services associated with a Prepaid Calling Card or Prepaid Calling Service fails to operate in a commercially reasonable manner. Live operators, as provided for in Paragraph 15, shall receive and assist consumers with filing requests for refunds. Refunds, pursuant to this paragraph, shall be in an amount not less than the value lost on the Prepaid Calling Card due to the service's failure and shall be issued in the form of a replacement card, by crediting the lost amount to the Prepaid Calling Card's current balance, or a check in the amount equal to amount lost by the Prepaid Calling Card's failure to operate in a commercially reasonable manner. All refunds shall be provided to the consumer within seven to ten business (7-10) days from the date the operator received the consumer's initial complaint concerning the failure of the network service to operate in a commercially reasonable manner.

20. STi Prepaid shall offer consumers the ability to place calls to STi Prepaid's customer service number without being assessed any fee or other charge.