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FROM: Steven M. Olea
Director
Utilities Division

DATE: February 12, 2010

RE: IN THE MATTER OF THE APPLICATION OF TRANSTELCO, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20697A-09-0395)

Attached is the Staff Report for the above referenced application. The applicant is applying for approval to provide the following services:

- Resold Local Exchange Services
- Resold Long Distance Services

Staff is recommending approval of the application with conditions.

SMO:AFF:red

Originator: Armando Fimbres

Arizona Corporation Commission
DOCKETED
FEB 12 2010
DOCKETED BY

SERVICE LIST FOR: Transtelco, Inc.
DOCKET NO. T-20697A-09-0395

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPRATION COMMISSION

TRANSTELCO, INC.
DOCKET NO. T-20697A-09-0395

IN THE MATTER OF THE APPLICATION OF TRANSTELCO, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

FEBRUARY 12, 2010

STAFF ACKNOWLEDGEMENT

The Staff Report for the application of Transtelco, Inc., Docket No. T-20697A-09-0395, for approval of a Certificate of Convenience and Necessity to provide Resold Local Exchange and Resold Long Distance Telecommunications Services was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application.

Armando Fimbres
Public Utilities Analyst V

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1. INTRODUCTION

On August 19, 2009, Transtelco, Inc. ("Transtelco" or "Applicant" or "Company") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

On August 27, 2009, Staff was notified by the Applicant that its CC&N application should be amended to request resold local exchange and resold long distance telecommunications services. Between September 23, 2009 and October 8, 2009, Staff and the Applicant engaged in several discussions and exchanged several emails to clarify the need for additional information.

On November 5, 2009, Staff issued its First Set of Data Requests to Transtelco. The Applicant's response was provided by email on November 16, 2009. Included in its response was an advance copy of the Applicant's revised Tariff and its Arizona Certificate of Good Standing. On December 22, 2009, the Applicant docketed its revised tariff at Staff's request.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N to provide resold local exchange and resold long distance telecommunications services. Staff's review considers whether the Applicant's services should be classified as competitive and whether the Applicant's proposed rates are just and reasonable.

1.1 Technical Capability to Provide the Requested Services

Headquartered in El Paso, Texas, Transtelco is a privately held company founded in 2001 as an internet service provider for the El Paso, Texas and Ciudad Juarez, Chihuahua, Mexico area. The Applicant is focused on providing telecommunications services across California, Arizona, New Mexico, Texas and Northern Mexico.

The Applicant states that it is an authorized Competitive Local Exchange Carrier ("CLEC") in Texas and New Mexico and has a CC&N application pending in California. The applicant was granted CLEC authority in Texas on April 10, 2007 and in New Mexico on March 14, 2007. California's Public Utility Commission staff has recommend approval of Transtelco's CC&N application. The proposed order has been placed on the California Commission's consent agenda for consideration at their February 25, 2010 Commission meeting.

The Applicant provided information stating that the top executives have over 25 years of combined experience in the telecommunications industry. Additionally, the Applicant states that no CC&N applications have been denied nor revoked. Based on the above information, Staff believes the Applicant possesses the technical capabilities to provide the services it is requesting the authority to provide.

1.2 Financial Capability to Provide the Requested Services

With its application, Transtelco filed unaudited financial statements for end-of-years 2008 and 2009 and for June 30, 2009. These financial statements list total assets of $3,010,358; total equity of $231,045; and net income of ($377,609) for end of year 2008. The Applicant did not provide notes related to the financial statements.

Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). The Applicant states in its proposed Arizona Tariff No. 1, Sections 2.31, Original Sheet No. 10, that it does not collect deposits. The Commission's current performance bond or ISDLC requirements are $10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), $25,000 for resold local exchange, $100,000 for facilities-based long distance and $100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be $25,000.

Staff recommends that the Applicant procure a performance bond/ISDLC equal to $25,000. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Applicant's customers.

In the future, should the Applicant desire to collect advances, deposits and/or prepayments from any of its long distance customers, Staff recommends that the Applicant be required to file an application with the Commission for approval. Such application must reference the decision in this docket and must explain the Applicant's plans for procuring a performance bond or an ISDLC.

1.3 Establishing Rates and Charges

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services.

The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable. Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service, pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant indicating that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Applicant will be heavily influenced by the market. On March 26, 2009, the Applicant submitted a replacement tariff reflecting the actual rates that it will be charging for its resold local exchange and resold long distance services. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent carriers and major long distance carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

2. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

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

2.1 Number Portability

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

2.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

2.3 Quality of Service

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

2.4 Access to Alternative Local Exchange Providers

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

2.5 911 Service

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

2.6 Custom Local Area Signaling Service

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

3. REVIEW OF COMPLAINT INFORMATION

The Applicant has stated that it has never had an application for service denied, nor had its authority to provide service revoked in any state. Staff found no evidence of any complaints in New Mexico, Texas or at the Federal Communications Commission ("FCC"). The Applicant also states that there have not been any civil or criminal proceedings against Transtelco. The Commission's Consumer Services Section reports no complaint history within Arizona.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years.

4. COMPETITIVE SERVICES ANALYSIS

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

4.1 Competitive Services Analysis for Local Exchange Services

4.1.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST WHICH MAKES THE RELEVANT MARKET FOR THE SERVICE ONE THAT IS COMPETITIVE.

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

4.1.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.

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

4.1.3 THE ESTIMATED MARKET SHARE HELD BY EACH ALTERNATIVE PROVIDER OF THE SERVICE.

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

4.1.4 THE NAMES AND ADDRESSES OF ANY ALTERNATIVE PROVIDERS OF THE SERVICE THAT ARE ALSO AFFILIATES OF THE TELECOMMUNICATIONS APPLICANT, AS DEFINED IN A.A.C. R14-2-801.

None in Arizona.

4.1.5 THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE AT COMPETITIVE RATES, TERMS AND CONDITIONS.

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

4.1.6 OTHER INDICATORS OF MARKET POWER, WHICH MAY INCLUDE GROWTH AND SHIFTS IN MARKET SHARE, EASE OF ENTRY AND EXIT, AND ANY AFFILIATION BETWEEN AND AMONG ALTERNATIVE PROVIDERS OF TH`E SERVICE(S).

The local exchange service market is:

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

b. One in which new entrants will be dependent upon ILECs:

1. To terminate traffic to customers.
2. To provide essential local exchange service elements until the entrant's own network has been built.
3. For interconnection.

c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.

d. One in which most customers have few, if any, choices since there is generally only one provider of local exchange service in each service territory.

e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

4.2 Competitive Services Analysis for Interexchange Services

4.2.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST WHICH MAKES THE RELEVANT MARKET FOR THE SERVICE ONE THAT IS COMPETITIVE.

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

4.2.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

4.2.3 THE ESTIMATED MARKET SHARE HELD BY EACH ALTERNATIVE PROVIDER OF THE SERVICE.

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

4.2.4 THE NAMES AND ADDRESSES OF ANY ALTERNATIVE PROVIDERS OF THE SERVICE THAT ARE ALSO AFFILIATES OF THE TELECOMMUNICATIONS APPLICANT, AS DEFINED IN A.A.C. R14- 2-801.

None in Arizona.

4.2.5 THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE AT COMPETITIVE RATES, TERMS AND CONDITIONS.

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

4.2.6 OTHER INDICATORS OF MARKET POWER, WHICH MAY INCLUDE GROWTH AND SHIFTS IN MARKET SHARE, EASE OF ENTRY AND EXIT, AND ANY AFFILIATION BETWEEN AND AMONG ALTERNATIVE PROVIDERS OF THE SERVICE(S).

The interexchange service market is:

a. One with numerous competitors and limited barriers to entry.

b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.

c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

5. RECOMMENDATIONS

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

5.1 Recommendations on the Application for a CC&N

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

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;

2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;

3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;

4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

5. That the Applicant cooperates with Commission investigations including, but not limited to customer complaints;

6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance companies offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;

7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;

8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;

9. That the Applicant complies with Federal laws, Federal rules and A.A.C. R14-2-1308(A), to make number portability available;

10. That the Applicant provides all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service in accordance with A.A.C. R14-2-120(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002;

11. If the Applicant wants to collect advances, deposits and/or prepayments from its resold long distance customers in the future, Staff recommends that the Applicant

be required to file an application with the Commission for approval. Such application must reference the decision in this docket;

12. In the event the Applicant requests to discontinue and/or abandon its service are, it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107;

13. Staff recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for services within its CC&N within 365 days from the effective date of a decision in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall be consistent with the application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

2. The Applicant shall:

   a. Procure a performance bond or ISDLC in the amount of $25,000;

   b. File the original performance bond or ISDLC with the Commission's Business Office and file copies with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter or 30 days prior to service, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission;

   c. The Commission may draw on the performance bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC fund, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

3. The Applicant shall abide by the Commission's adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications services providers that interconnect into the public switched

network shall provide funding for the AUSF. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.2 Recommendation on the Applicant's Petition to Have Proposed Services Classified as Competitive

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