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Arizona Corporation Commission

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TO: Docket Control
FROM: Steven M. Olea
Director
Utilities Division
DATE: February 15, 2010

EA AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY *[Signature]*

RE: **STAFF UPDATE - IN THE MATTER OF THE APPLICATION OF COMTECH21, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD AND FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES IN THE STATE OF ARIZONA. (DOCKET NO. T-04080A-04-0034)**

On January 20, 2004, ComTech21, LLC ("ComTech" or "Applicant") filed an application with the Arizona Corporation Commission ("Commission") for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based and resold local exchange telecommunications services within the State of Arizona. Between March 23, 2004 and May 7, 2004, the Applicant filed additional information relating to the application. On August 24, 2004, a Procedural Order was issued requiring Staff to file a Status Report on the application.

Between September 13, 2004, and November 18, 2004, Staff filed its memorandum recommending this matter remain open, and issued and received responses to its Second Set of Data Requests

On October 3, 2006, a Procedural Order was issued requiring Staff to file a Status Report in this matter. On October 31, 2006, Staff filed a memorandum recommending this matter remain open. Between January 11, 2007 and August 21, 2007, Staff filed two additional sets of Data Requests and received responses from the Applicant. On August 21, 2007, in response to Staff's inquiry, the Applicant indicated that it was seeking authority to provide only resold local exchange telecommunications services, and filed an amended proposed tariff.

On June 16, 2008, a Procedural Order was issued requiring Staff to file a Status Report in this matter. On August 6, 2008, the Applicant filed financial information for 2006 and 2007. On August 18, 2008, Staff filed a memorandum recommending that this matter remain open.

On February 6, 2009, the Applicant submitted additional revised tariff pages. On January 6, 2010, a Procedural Order was issued requiring Staff to file an update in this matter and any appropriate recommendations. On February 8, 2010, the Applicant filed a third set of revised pages to its proposed tariff.

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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

Staff is recommending approval of the application, as amended.

Originator: Candrea Allen

Attachment: Original and Thirteen Copies

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DOCKET NO. T-04080A-04-0034

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

COMTECH21, LLC
DOCKET NO. T-04080A-04-0034

IN THE MATTER OF THE APPLICATION OF COMTECH21, LLC FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD AND
FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES IN
THE STATE OF ARIZONA.

FEBRUARY 15, 2010

STAFF ACKNOWLEDGEMENT

The Staff Report for the application of Comtech21, LLC, Docket No.T-04080A-04-0034, for approval of a Certificate of Convenience and Necessity to provide Resold Local Exchange Telecommunications Services was the responsibility of the staff member listed below. Candrea Allen was responsible for the review and analysis of the application.

A handwritten signature in black ink, appearing to read 'Candrea Allen', is written over a horizontal line.

Candrea Allen
Public Utilities Analyst

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1. INTRODUCTION

On January 20, 2004, ComTech21, LLC (“ComTech” or “Applicant” or “Company”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based and resold local exchange telecommunications services within the State of Arizona. However, the cover letter associated with the application stated that the Company would not be a facilities-based provider of local exchange service. The Applicant then filed, on May 7, 2004, a letter stating that the Company would be providing facilities-based and resold local exchange telecommunications services. On August 21, 2007, in its Response to Staff’s inquiry, the Applicant indicated that its application was for the authority to provide resold local exchange telecommunications services. The Applicant petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. The Commission, in Decision No. 65760, granted ComTech a CC&N to provide resold long distance telecommunications services within the State of Arizona.

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

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

ComTech indicated that it is authorized to provide and currently provides telecommunications services in Colorado and Connecticut. The Applicant states that it has two principle officers with combined experience of 84 years in the telecommunications industry. Based on this, Staff believes ComTech possesses the technical capabilities to provide the services it is requesting the authority to provide.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided unaudited financial statements for the twelve months ending December 31, 2008. These financial statements list total assets of \$6,540,506; total equity of \$3,014,032; and, net income of \$145,674. The Applicant did not provide notes related to the financial statements.

The Applicant states, in its proposed Local Exchange Telecommunications Services tariff (revised page 14, section 2.5.3 filed on February 6, 2009), that it does not collect deposits from its customers. The Commission’s current performance bond or irrevocable sight draft Letter of Credit (“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 or 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 an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or ten days before the first customer is served, whichever comes first. The original bond or ISDLC should be filed with the Commission's Business Office and copies of the 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 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 bond or ISDLC funds, as appropriate, to protect the Applicant's customer 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.

4. ESTABLISHING RATES AND CHARGES

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

Both an initial rate (the actual rate to be charged) and a maximum rate 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 Company indicating that its fair value rate base is zero. Accordingly, the Company'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 Company will be heavily influenced by the market. On August 21, 2007, in its responses to Staff's Third Set of Data Requests, ComTech submitted a revised version of its proposed tariff reflecting the actual rates that ComTech will be charging for its resold local exchange 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 Company, the fair value rate base information provided should not be given substantial weight in this analysis. On February 6, 2009, ComTech filed revisions to its proposed tariff which specified that it does not require deposits from its customers (page 14). On February 8, 2010, ComTech filed additional revisions to its proposed tariff which included additional descriptions, rates, and charges for local exchange services and other minor corrections.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

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

5.1 Number Portability

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

5.2 Provision of Basic Telephone Service and Universal Service

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

5.3 Quality of Service

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

5.4 Access to Alternative Local Exchange Providers

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

5.5 911 SERVICE

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

5.6 Custom Local Area Signaling 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.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant indicated in its application that it has neither had an application for service denied, nor revoked in any state. In addition, the Applicant states that there are, and have been, no formal complaint proceedings involving the Applicant. The Applicant also states in the application that there have not been any civil or criminal proceedings against the Applicant. The Applicant indicated that none of its officers, directors or partners has 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.

In response to Staff's inquiry, ComTech indicated that it is currently providing similar service that it intends to provide in Arizona in forty-three other states. Staff was able to obtain information from ten of the state Commissions in which the Applicant stated it is currently

providing service concerning customer complaints filed against ComTech. According to the state Commissions contacted, there have been no formal or informal complaints filed against ComTech within the previous twelve months. A search of the Federal Communications Commission's website found that there have been no complaints filed against the Applicant. Consumer Services reports that there have been no complaints, inquiries, or opinions filed for ComTech. According to the Corporations Division, ComTech is in good standing.

7. COMPETITIVE SERVICES ANALYSIS

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

7.1 Competitive Services Analysis for Local Exchange Services

7.1.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST, WHICH 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.

7.1.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.

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

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

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

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

None.

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

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

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

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built for interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.

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

8. RECOMMENDATIONS

The following sections contain 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.

8.1 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 further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant 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. Staff further 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 each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first.
2. The Applicant shall:
 - a. Procure either a performance bond or an ISDLC equal to \$25,000.
 - b. Staff recommends that ComTech file the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning deposits collected from the Company's customers.

8.2 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

ComTech21, LLC

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telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.