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MEMORANDUM RECEIVED

3D

TO: Docket Control
FROM: Steven M. Olea
Director
Utilities Division

2010 JAN 25 P 12: 09

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: January 25, 2010

RE: STAFF REPORT IN THE MATTER OF THE APPLICATION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. DBA PAETEC BUSINESS SERVICES FOR A FINANCING ORDER AUTHORIZING VARIOUS FINANCING TRANSACTIONS (DOCKET NO. T-03267A-09-0475)

Attached is the Staff Report for the application of McLeodUSA Telecommunications Services, Inc. dba PAETEC Business Services for approval of a financing order authorizing various financing transactions and encumbrance of its assets. Staff recommends approval of the requested authorization with certain conditions.

Any party to this procedure who wishes may file comments to the Staff Report with the Commission Docket Control by 4:00 p.m. on or before February 5, 2010.

SMO:JCM:red

Originator: Juan C. Manrique

Arizona Corporation Commission
DOCKETED

JAN 25 2010

DOCKETED BY

Service List for: McLeodUSA Telecommunications Services, Inc.
Docket No. T-03267A-09-0475

Mr. Michael Patten
Mr. Timothy J. Sabo
Roshka Heyman & DeWulf, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Mr. Tony S. Lee
Ms. Grace R. Chiu
575 7th Street, N.W.
Washington, D.C. 20036

Mr. William A. Haas
Vice President of Public Policy & Regulation
PAETEC Holding Corp.
One Martha's Way
Hiawatha, Iowa 52233

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.
D/B/A PAETEC BUSINESS SERVICES
DOCKET NO. T-03267A-09-0475**

**APPLICATION FOR APPROVAL
OF A FINANCING ORDER AUTHORIZING
VARIOUS FINANCING TRANSACTIONS AND
ENCUMBRANCE OF ASSETS**

JANUARY 25, 2010

STAFF ACKNOWLEDGMENT

The Staff Report for McLeodUSA Telecommunications Services, Inc. dba PAETEC Business Services, Docket No. T-03267A-09-0475, is the responsibility of the Staff member listed below. Juan C. Manrique is responsible for the review and financial analysis of the Company's application.

A handwritten signature in black ink that reads "Juan Manrique". The signature is written in a cursive style with a large initial "J".

JUAN C. MANRIQUE
PUBLIC UTILITIES ANALYST I

EXECUTIVE SUMMARY
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.
DOCKET NO. T-03267-09-0475

On October 1, 2009, pursuant to A.R.S. §40-285 and A.A.C. R14-2-804, McLeodUSA Telecommunications, Inc. dba PAETEC Business Services ("PAETEC" or "Company") filed an application with the Arizona Corporation Commission ("Commission") requesting that the Commission authorize it to enter into various financing transactions and encumber assets in connection with those transactions.

PAETEC is an Iowa corporation with principal offices located in Hiawatha, Iowa. In Arizona, PAETEC is authorized to provide resold and facilities-based local exchange and exchange access telecommunications services pursuant to Decision No. 62627, granted June 9, 2000. PAETEC is also authorized to provide resold interexchange telecommunications services pursuant to Decision No. 61001, granted July 16, 1998.

PAETEC is an indirect wholly-owned subsidiary of PAETEC Holding Corp. ("Parent"). The Parent is a publicly-traded Delaware corporation headquartered in Fairport, New York. The Parent "anticipates that over the next five years it will enter into various financing arrangements including, but not limited to, transactions to amend, restate, and/or refinance long-term debt, finance new capital expenditures, and obtain funding for general corporate purposes and working capital."

The Company seeks authority to pledge its Arizona assets as security in connection with financings of up to \$700,000,000 being arranged for its Parent. PAETEC's Parent states that these financings will allow it to refinance existing debt on more favorable terms, conditions and covenant restrictions. The Parent also states that authorization for the aforementioned financings will strengthen its financial condition, thus creating opportunities to enhance the competitive position of its Arizona subsidiaries and by extension, benefit its Arizona customers.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

R14-2-804(B) provides that a Class A utility will not, without Commission approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the transaction to determine if it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

Staff concludes that, in this instance, a pledge of the Company's assets would not impair the availability of service to customers since PAETEC provides competitive services that are available from alternate service providers. However, customers may still have exposure to losses

to the extent they have prepaid for service or made deposits. Accordingly, any authorization for encumbrances should provide customer protection for prepayments and deposits.

Staff recommends that the Commission authorize PAETEC's request to encumber its assets in the State of Arizona in connection with financings up to \$700,000,000. Such authorization should be subject to the condition that the Company's performance bond (required by Decision No. 69346) be kept current on a yearly basis.

Staff further recommends authorizing PAETEC to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

Staff further recommends that any authorization granted in this docket terminate on June 30, 2013.

Staff further recommends that the Company file with Docket Control, as a compliance item in this matter, copies of the loan documents, to the Commission Utilities Staff, pursuant to a protective agreement, within 60 days of the execution of any financing transaction authorized herein.

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INTRODUCTION

On October 1, 2009, pursuant to A.R.S. §40-285 and A.A.C. R14-2-804, McLeodUSA Telecommunications, Inc. dba PAETEC Business Services ("PAETEC" or "Company") filed an application with the Arizona Corporation Commission ("Commission") requesting that the Commission authorize it to enter into various financing transactions and encumber assets in connection with those transactions.

PUBLIC NOTICE

On December 3, 2009, the Company filed an affidavit of publication verifying public notice of its financing application. The Company published notice of its financing application in the *Arizona Business Gazette* on November 23, 2009. The *Arizona Business Gazette* is a weekly newspaper of general circulation in the county of Maricopa, Arizona. The affidavit of publication is attached along with a copy of the Notice.

BACKGROUND

PAETEC is an Iowa corporation with principal offices located at One Martha's Way, Hiawatha, Iowa 52233. In Arizona, PAETEC is authorized to provide resold and facilities-based local exchange and exchange access telecommunications services pursuant to Decision No. 62627, granted June 9, 2000. PAETEC is also authorized to provide resold interexchange telecommunications services pursuant to Decision No. 61001, granted July 16, 1998.

PAETEC is an indirect wholly-owned subsidiary of PAETEC Holding Corp. ("Parent"). The Parent is a publicly-traded Delaware corporation headquartered at One PAETEC Plaza, 600 Willow Brook Office Park, Fairport, New York 14450. In Arizona, the Parent provides regulated communications services through three wholly-owned subsidiaries: PAETEC Business, PAETEC Communications, Inc. and US LEC Communications, Inc.

COMPLIANCE

A check of the Compliance Database indicates that there are currently no delinquencies for McLeodUSA Telecommunications Services dba PAETEC Business Services.

PURPOSE AND DESCRIPTION OF THE REQUESTED APPROVAL

The Parent "anticipates that over the next five years it will enter into various financing arrangements including, but not limited to, transactions to amend, restate, and/or refinance long-term debt, finance new capital expenditures, and obtain funding for general corporate purposes and working capital."

The Company seeks authority to pledge its Arizona assets as security in connection with financings of up to \$700,000,000 being arranged for its Parent. PAETEC's Parent states that

these financings will allow it refinance existing debt on more favorable terms, conditions and covenant restrictions. The Parent also states that authorization for the aforementioned financings will strengthen its financial condition, thus creating opportunities to enhance the competitive position of its Arizona subsidiaries and by extension, benefit its Arizona customers.

FINANCIAL ANALYSIS

PAETEC requests authorization to pledge its Arizona assets as security for various financing transactions by its Parent anticipated over the next five years up to \$700,000,000 for the following purposes: to refinance existing long-term debt obligations with lower-cost debt instruments; to refinance existing long-term debt maturities; to finance new capital expenditures supporting both the expansion of its national footprint, including the acquisition of other telecommunications companies and/or telecommunications assets, and the enhancement of its communications service offerings; and to provide for working capital and other general corporate purposes.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Further, A.A.C. R14-2-804(B) provides that a utility will not, without Commission approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the transaction to determine if it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

In this instance, a pledge of the Company's assets should not impair the availability of service to customers since PAETEC provides competitive services that are available from alternate service providers. However, customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Therefore, any authorization for encumbrance should provide customer protection for prepayments and deposits. The Company has provided an updated and renewed Performance Bond in the amount of \$600,000 with Hartford Fire Insurance Company as of April 10, 2009, for Docket No. T-03267A-06-0622, Decision No. 69346.

CONCLUSION AND RECOMMENDATIONS

Staff concludes that a pledge of the Company's assets would not impair the availability of service to customers since PAETEC provides competitive services that are available from alternate service providers. However, customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Accordingly, any authorization for encumbrances should provide customer protection for prepayments and deposits.

Staff recommends that the Commission authorize the PAETEC's request to encumber its assets in the State of Arizona in connection with financings up to \$700,000,000. Such authorization should be subject to the condition that the aforementioned performance bond be kept current on a yearly basis.

Staff further recommends authorizing PAETEC to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

Staff further recommends that any authorization granted in this docket terminate on June 30, 2013.

Staff further recommends that the Company file with Docket Control, as a compliance item in this matter, copies of the loan documents, to the Commission Utilities Staff, pursuant to a protective agreement, within 60 days of the execution of any financing transaction authorized herein.

Manrique

BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

COMMISSIONERS

- 1 KRISTIN K. MAYES - Chair
- 2 GARY PIERCE
- 3 PAUL NEWMAN
- 4 SANDRA D. KENNEDY
- 5 BOB STUMP

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 DOCKET CONTROL

7 IN THE MATTER OF THE APPLICATION OF)
 8 MCLEODUSA TELECOMMUNICATIONS)
 9 SERVICES, INC. D/B/A PAETEC BUSINESS)
 10 SERVICES FOR A FINANCING ORDER)
 11 AUTHORIZING VARIOUS FINANCING)
 12 TRANSACTIONS)

DOCKET NO. T-03267A-09-0475

**NOTICE OF FILING
AFFIDAVIT OF PUBLICATION**

McLeodUSA Telecommunications Services, Inc., dba PAETEC Business Services,
submits the attached affidavit of publication.

RESPECTFULLY SUBMITTED this 3rd day of December 2009.

ROSHKA DEWULF & PATTEN, PLC

By 

Michael W. Patten
 Timothy J. Sabo
 One Arizona Center
 400 East Van Buren Street, Suite 800
 Phoenix, Arizona 85004

Tony S. Lee
 Grace R. Chiu
 Venable LLP
 575 7th Street, N.W.
 Washington, D.C. 20036
 Of Counsel

Attorneys for McLEODUSA Telecommunications Services,
Inc. dba PAETEC Business Services

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Original and 13 copies of the foregoing
2 filed this 3rd day of December 2009 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this 3rd day of December 2009 to:

9 Lyn Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Janice Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Steve Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25
26
27
By Mary Appolito

THE ARIZONA REPUBLIC

PUBLIC NOTICE OF AN APPLICATION FOR AN ORDER AUTHORIZING THE ENCUMBRANCE OF ASSETS IN CONNECTION WITH NEW FINANCING BY MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. d/b/a PAETEC BUSINESS SERVICES ("COMPANY") AND AFFILIATES

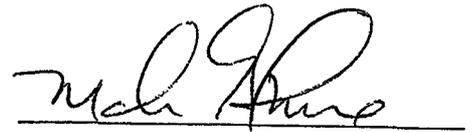
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services (the "Company") filed an Application with the Arizona Corporation Commission ("Commission") on October 1, 2009, asking for authorization to serve as a borrower, co-borrower, guarantor or otherwise provide security in connection with financings of up to \$700 million entered into by the Company and/or its affiliates, including its ultimate corporate parent, PAETEC Holding Corp. The application is available for inspection during regular business hours at the office of the Commission, located at 1200 West Washington Street, Phoenix, AZ 85007; and at the office of Rosika DeWulf & Patten, P.L.C., 400 East Van Buren Street, Suite 300, Phoenix, AZ 85004. Intervention in the Commission proceedings on the application shall be permitted to any person entitled by law to intervene and having a direct substantial interest in this matter. Persons desiring to intervene must file a Motion to Intervene with the Commission which must be served upon applicant and which, at a minimum, shall contain the following information: (1) The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different than the intervenor; (2) A short statement of the proposed intervenor's interest in the proceeding; (3) Whether the proposed intervenor desires a formal evidentiary hearing on the application and the reasons for such a hearing; (4) A statement certifying that a copy of the Motion to Intervene has been mailed to Applicant. The granting of Motions to Intervene shall be governed by A.A.C. R143-105, except that all Motions to Intervene must be filed on, or before, the 15th day after this notice. Pub: November 23, 2009

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

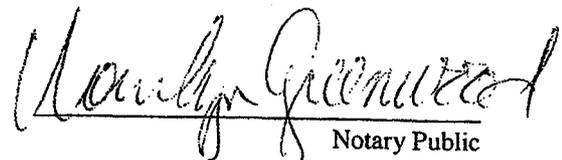
Mark Gilmore, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

November 23, 2009.



Sworn to before me this
23TH day of
November A.D. 2009


Notary Public