

OPEN MEETING ITEM



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



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ARIZONA CORPORATION COMMISSION

2010 NOV -2 P 2: 07

AZ CORP COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 2, 2010
DOCKET NOS.: T-04080A-04-0510, T-04058A-04-0510 and T-04058A-04-0715

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

COMTECH21, LLC dba COMTECH21
AND
UNITED SYSTEMS ACCESS TELECOM, INC.
(CANCEL/TRANSFER 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 12, 2010

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 22, 2010 and NOVEMBER 23, 2010

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

DOCKETED

NOV - 2 2010

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
COMTECH21, LLC DBA COMTECH21 TO
TRANSFER CUSTOMER BASE OF UNITED
SYSTEMS ACCESS TELECOM, INC TO
COMTECH21, LLC DBA COMTECH21.

DOCKET NO. T-04080A-04-0510
DOCKET NO. T-04058A-04-0510

IN THE MATTER OF THE APPLICATION OF
UNITED SYSTEMS ACCESS TELECOM,
INC. FOR CANCELLATION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE IN ARIZONA.

DOCKET NO. T-04058A-04-0715
DECISION NO. _____

ORDER

Open Meeting
November 22 and 23, 2010
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

1. In Decision No. 65409 (November 20, 2002), the Arizona Corporation Commission
("Commission") granted United Systems Access Telecom, Inc. ("USAT") a Certificate of
Convenience and Necessity ("CC&N") to provide resold long distance telecommunications services
within the State of Arizona.

2. On July 19, 2004, USAT and ComTech21, LLC ("ComTech21") filed with the
Commission a notification of transfer of USAT's commercial customers to ComTech21.¹

¹ See Docket Nos. T-04080A-04-0510 and T-05069A-04-0510. ComTech21 was granted a CC&N in Commission
Decision No. 65760 (March 20, 2003).

1 3. On August 17, 2004, ComTech21 requested waiver of the Commission's Slamming
2 and Cramming rules related to the transfer of USAT's customers to ComTech21.

3 4. On September 30, 2004, USAT filed a letter with the Commission stating that it had
4 ceased doing business in Arizona, as of June 30, 2004, and requesting cancellation of its authority to
5 provide resold long distance telecommunications services in Arizona.²

6 5. On October 18, 2004, Staff sent a Letter of Insufficiency and First Set of Data
7 Requests to USAT.

8 6. On October 29, 2004, the Commission's Utilities Division ("Staff") filed a Staff
9 Report recommending approval of the transfer of customer base from USAT to ComTech21. Staff
10 also recommended waiver of Commission Rules A.A.C. R14-2-1904 and R14-2-1905 ("Slamming"
11 and "Cramming" Rules) related to the transfer of customer base.

12 7. On November 1, 2004, USAT filed responses to Staff's First Set of Data Requests.

13 8. On December 1, 2004, Staff filed its Second Set of Data Requests to USAT.

14 9. On December 7, 2004, by Procedural Order, Staff was directed to file an Addendum to
15 the Staff Report discussing 1) the statutory authority or Commission rule, if any, requiring
16 Commission approval of the transfer of customer base and 2) the extent to which R14-2-1107 applies
17 to the transfer of customer base.

18 10. On December 27, 2004, Staff filed an Addendum to the Staff Report, stating Staff
19 believes that a customer group is not an asset as traditionally defined and therefore the transfer does
20 not require Commission approval. Staff further recommended waiver of the Commission rules R14-
21 2-1904 and 1905 because Staff believed adequate consumer protections had been taken in order for
22 the Commission to approve the transfer and because the transfer does not constitute a discontinuance
23 of service. Staff stated that A.A.C. R14-2-1107 does not apply. Staff continued to recommend
24 approval of the transfer of customer base from USAT to ComTech21.

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28 ² See Docket No. T-04058A-04-0715.

1 11. On March 29, 2005, by Procedural Order, Docket Nos. T-04080A-04-0510, T-
2 05069A-04-0510 and T-04058A-04-0715 were consolidated. The Procedural Order further instructed
3 Staff to submit recommendations regarding USAT's request to cancel its CC&N.

4 12. On April 5, 2006 and June 4, 2008, Staff sent a Third Set of Data Requests and a
5 Fourth Set of Data Requests to USAT. USAT did not respond.

6 13. On January 29, 2010, a Procedural Order was issued directing Staff to file an update
7 on the consolidated matters, along with recommendations thereon.

8 14. On August 11, 2010, Staff filed a Staff Report on the consolidated dockets. Staff
9 recommends approval of the transfer of USAT's customers to ComTech21 and cancellation of
10 USAT's CC&N.

11 15. Pursuant to Commission Decision No. 65409 (November 20, 2002) USAT was not
12 authorized to collect advances, deposits, or prepayments from Arizona customers and no performance
13 bound was required.

14 16. In USAT's response to Staff's Second Set of Data Requests, USAT stated that it did
15 not collect advances, deposits, or prepayments from Arizona customers. Therefore, Staff believes a
16 plan to refund deposits is not required.

17 17. According to Staff, ComTech21 notified USAT's customers of the proposed transfer
18 and informed USAT's customers of their right to choose an alternative long distance provider, if the
19 customers desired.

20 18. Staff believes that USAT did not meet the requirements for A.C.C. R14-2-1107
21 because USAT did not file with the Commission a copy of the legal notice of the proposed transfer
22 and the list of alternative providers that was to be provided to USAT's customers.

23 19. Through an internet search, Staff was able to locate Mr. Alan Silver, United Systems
24 Access Telecom, Inc.'s³ former Chief Financial Officer. According to Staff, Mr. Silver stated that he
25 is a consultant with USAT and that USAT's sole officer works off-site. Staff stated Mr. Silver
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28 ³ Staff states that USAT and United Systems Access, Inc., are the same company according to the Commission's e-Docket System.

1 refused to provide Staff with the sole officer's address and phone number and Mr. Silver informed
2 Staff that he had himself filed the required legal notice.

3 20. Staff located USAT's founder and owner, Mr. Steven Gilbert. According to Staff, Mr.
4 Gilbert, contacted Staff by phone and confirmed that USAT is not conducting business in Arizona
5 and has no Arizona customers, but Mr. Gilbert did not return Staff's Fourth Set of Data Requests.

6 21. The Commission's Consumer Services Division reports that no complaints, inquires,
7 or opinions were filed against USAT from January 1, 2004 through May 4, 2010.

8 22. Staff stated that the Commission's Corporation Division reported that USAT is not in
9 good standing with the Commission and that USAT's authority to do business in Arizona was
10 revoked on June 2, 2005, for failure to file its 2008 Annual Report.

11 23. According to Staff, the Compliance and Enforcement Section of the Commission's
12 Utilities Division reported no outstanding compliance items for USAT.

13 24. Staff believes that USAT's request to cancel its CC&N will have no impact on
14 Arizona customers because other carriers in Arizona offer similar services, USAT has no customers,
15 and USAT has no authority to conduct business in Arizona.

16 25. Staff states that cancellation of USAT's CC&N is in the public interest.

17 26. Staff's recommendations are reasonable and should be adopted.

18 **CONCLUSIONS OF LAW**

19 1. USAT and ComTech21 are public service corporations within the meaning of Article
20 XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

21 2. The Commission has jurisdiction over USAT and ComTech21 and the subject matter
22 of the application.

23 3. The transfer of USAT's customer base in Arizona to ComTech 21 is in the public
24 interest.

25 4. The cancellation USAT's CC&N to provide resold long distance services
26 telecommunications service in Arizona is in the public interest.

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1 IT IS FURTHER ORDERED that the notice requirements set forth in A.A.C. R14-2-1107 and
2 R14-2-1901 et seq., are hereby waived.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN _____ COMMISSIONER _____

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9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

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11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2010.

16 ERNEST G. JOHNSON
17 EXECUTIVE DIRECTOR

18 DISSENT _____

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20 DISSENT _____

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1 SERVICE LIST FOR: COMTECH21, LLC DBA COMTECH21 AND
2 UNITED SYSTEMS ACCESS TELECOM, INC.
3 DOCKET NOS.: T-04080A-04-0510, T-04058A-04-0510 and T-04058A-
4 04-0715
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