

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

EXECUTIVE DIRECTOR
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AZ CORP COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 4, 2010
DOCKET NOS.: T-20734A-10-0127, T-20734A-10-0128, T-20734A-10-0129 and T-20608A-10-0129

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:

DSI-ITI, INC. and ITI INMATE TELEPHONE, INC.
(CC&N/FINANCE/SALE/TRANSFER)

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 15, 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

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DOCKETED BY

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
9 OF DSI-ITI, LLC FOR A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO
11 PROVIDE CUSTOMER OWNED PAY
12 TELEPHONE SERVICE IN ARIZONA.

DOCKET NO. T-20734A-10-0127

13 IN THE MATTER OF THE APPLICATION
14 OF DSI-ITI, LLC, FOR APPROVAL FOR
15 AUTHORIZATION TO ENCUMBER
16 AND/OR MORTGAGE ITS ASSETS.

DOCKET NO. T-20734A-10-0128

17 IN THE MATTER OF THE APPLICATION
18 OF ITI INMATE TELEPHONE, INC. FOR
19 APPROVAL TO TRANSFER ITS ASSETS TO
20 DSI-ITI, LLC AND TO CANCEL ITS
21 CERTIFICATE OF CONVENIENCE AND
22 NECESSITY.

DOCKET NO. T-20734A-10-0129
DOCKET NO. T-20608A-10-0129

DECISION NO. _____

ORDER

23 Open Meeting
24 November 23 and 24, 2010
25 Phoenix, Arizona

26 **BY THE COMMISSION:**

27 * * * * *

28 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 April 5, 2010, DSI-ITI, LLC ("DSI") filed with the Arizona Corporation
Commission ("Commission") an application for a Certificate of Convenience and Necessity
("CC&N") to provide customer owned pay telephone service ("COPT") in Arizona ("CC&N")

1 Docket")¹; an application requesting approval to encumber and/or mortgage its assets in connection
 2 with a proposed financing arrangement ("Finance Docket")²; and an application requesting approval
 3 to purchase some of the assets of ITI Inmate Telephone, Inc. ("ITI") ("Assets/Transfer Docket")³
 4 and to transfer certain of ITI's assets to DSI.

5 2. On April 23, 2010, the Commission's Utilities Division ("Staff") filed a Motion to
 6 Consolidate ("Motion") the CC&N, Finance, and Assets/Transfer Dockets. Staff's motion stated that
 7 the issues involved in the three dockets matters are substantially related, no parties' rights will be
 8 prejudiced by the consolidation, and consolidation will aid in the Commission's evaluation of the
 9 issues.

10 3. Subsequently, on May 4, 2010, ITI filed with the Commission an application
 11 requesting cancellation of its CC&N to provide COPT services in Arizona ("Cancel Docket").⁴ ITI's
 12 application states that it has entered into an Asset Purchase Agreement with DSI and upon closing of
 13 the Asset Purchase Agreement, ITI desires to cancel its CC&N to provide COPT services in Arizona.

14 4. On June 16, 2010, by Procedural Order the CC&N, Finance, Assets/Transfer, and
 15 Cancel Dockets were consolidated for the purpose of resolving the issues in these matters.

16 **Background**

17 5. DSI is a foreign limited liability company, organized under the laws of Georgia,
 18 whose principal offices are located in Mobile, Alabama.⁵

19 6. DSI is a wholly owned subsidiary of Global Tel*Link Corporation ("GTL"), which is
 20 the sole managing member of DSI.⁶ According to DSI's application, GTL is a wholly owned
 21 subsidiary of GTEL Holdings, Inc., whose business activities are conducted through GTL.⁷

22 7. GTL is a public service corporation engaged in the business of providing managed
 23 telecommunications services to inmates of state and county departments of corrections and in owning
 24

25 ¹ Docket No. T-20734A-10-0127.

26 ² Docket No. T-20734A-10-0128.

27 ³ Docket No. T-20608A-10-0129 et al.

28 ⁴ In Commission Decision No. 70949, ITI was granted a CC&N to provide COPT in Arizona. ITI's request to cancel its
 CC&N was docketed in T-20734A-10-0129 in error and has subsequently been correctly docketed in T-20608A-10-0129.

⁵ Certificate of Registration for the State of Arizona issued March 25, 2010. See also DSI's Application at 1.

⁶ DSI Application filed in Docket No. 20734A-10-0129.

⁷ Id.

1 and operating prison payphones and public payphones.⁸ GTL provides telecommunication services
2 throughout the continental United States.⁹

3 8. GTEL Holdings, Inc., is a wholly owned subsidiary of GTEL Acquisition Corp.¹⁰
4 GTEL Holdings, Inc. is a holding company, whose only business activities are conducted through
5 GTL.¹¹

6 9. ITI is a public service corporation, engaged in the business of providing inmate
7 telephone and telecommunications services related to jails, prisons, correctional facilities, and other
8 types of confinement facilities.¹² ITI provides the above referenced services in approximately 25
9 states.¹³

10 CC&N Application

11 10. DSI filed an application with the Commission requesting approval to provide COPT
12 service to inmates in correctional facilities in Arizona.

13 11. DSI provided with its application a customized tariff showing its proposed COPT
14 rates, charges, and terms and conditions for the services DSI is seeking to provide in Arizona.

15 12. According to the Staff Report, DSI anticipates offering Collect, Prepaid Collect, and
16 Institutional Prepaid services to customers.¹⁴ The Collect service will allow billing to residential or
17 business lines; Prepaid Collect will allow recipients of collect calls from inmates to set up a prepaid
18 account; and Institutional Prepaid service will allow inmates to set up prepaid accounts for outbound
19 calls.¹⁵

20 13. According to Section 2.5 of DSI's proposed tariff, DSI will not collect deposits.
21 However, DSI's proposed tariff states that Prepaid Collect Service customers will be required to pay
22 in advance of receiving collect calls and the charges will be applied against the month's advance
23 payment.

24
25 ⁸ Id. at 2. GTL was granted a CC&N to provide COPT services in Arizona in Decision No. 59429 (December 20, 1995).

26 ⁹ Id. at 2.

¹⁰ Id.

¹¹ DSI Application filed in Docket No. 20734A-10-0129 at 3.

¹² ITI was granted a CC&N to provide COPT services in Commission Decision No. 70949 (April 7, 2009).

¹³ DSI's Application at 4 (Docket No. T-20734A-10-0129).

¹⁴ Staff Report at 3.

¹⁵ Id.

1 14. Staff recommends approval of DSI's CC&N application and its proposed tariffs.

2 Finance/Assets/Transfer Dockets

3 15. In the Finance Docket, DSI is requesting Commission approval to encumber its assets
4 to purchase the assets used in the operation of ITI's inmate phone business. In Decision No. 69952
5 (October 30, 2007), the Commission approved authorization for GTL, DSI's sole member, to
6 encumber and/or mortgage its Arizona assets as security for certain debt financing arrangements up
7 to \$250 million.¹⁶ In the present application, DSI is seeking to authority to encumber and/or
8 mortgage its assets in connection with the debt issuance approved in Decision No. 69952 and
9 pursuant to A.R.S. § 40-285.

10 16. On March 16, 2010, DSI and ITI entered into an Asset Purchase Agreement and Plan
11 of Asset Transfer transaction. According to the Asset Purchase Agreement, DSI will purchase
12 substantially (though DSI's debt issuance) all of ITI's assets used in ITI's inmate phone operations.

13 17. DSI believes the Asset Purchase Agreement will ensure continuity of service to the
14 prison system and inmates. According to DSI, because the inmate phone business involves only the
15 provision and operation of payphones and managed calling services originating from payphones, the
16 transfer of the assets will not entail any change in any end user's local exchange service or pre-
17 scribed toll service, and the parties who make and receive calls through the managed calling services
18 form an ever-changing population; notification to the customers is impractical. However, DSI states
19 that the correctional facilities impacted are being notified of the Asset Purchase transaction and of the
20 assignment or novation of contracts entailed in the transaction.

21 18. DSI states in its application that the proposed transaction is in the public interest
22 because it is only financial in nature; will not affect the technical or managerial qualifications of DSI
23 or its customers in Arizona; maintains existing ownership interests;¹⁷ and does not affect day-to-day
24 operations or the rates, terms or conditions under which DSI provides service.

25 19. A.R.S. § 40-285 requires public service corporations to obtain Commission
26 authorization to encumber certain utility assets. According to Staff, the statute serves to protect

27 ¹⁶ See Decision No. 69952 at 5.

28 ¹⁷ According to DSI, the Assets pledge will not involve the issuance of stock and the existing DSI owners will continue to hold their existing ownership interests.

1 captive customers from a utility's act to dispose of any of its assets that are necessary for the
 2 provision of service, thus, the statute serves to preempt any service impairment due to disposal of
 3 assets essential to providing service.

4 20. Staff believes that DSI's proposal to encumber its Arizona assets may not inhibit its
 5 ability to continue to serve Arizona customers. Staff further states that in the event DSI defaults on
 6 its debt obligation, its customers could readily procure similar services from alternate providers.
 7 However, Staff believes that advances, deposits, and/or prepayments received from DSI customers
 8 should be protected by the procurement of a performance bond or irrevocable sight draft letter of
 9 credit ("ISDLC") in the amount of \$10,000.

10 21. Staff recommends approval of DSI's proposed tariff on the condition that DSI procure
 11 a performance bond or ISDLC in the amount of \$10,000.

12 **Cancellation of CC&N**

13 22. ITI filed an application with the Commission stating it has entered into the above
 14 described Asset Purchase Agreement with DSI and requesting Commission approval to cancel its
 15 CC&N upon the closing of the transaction.

16 23. Staff recommends approval of ITI's request to cancel its CC&N to provide COPT
 17 services in Arizona.

18 24. Staff's recommendations as set forth herein, are reasonable, except that DSI shall be
 19 required to provide to the Commission's Business Office for safekeeping, the original of an ISDLC
 20 or performance bond in the amount of \$10,000, and file 13 copies with Docket Control, as a
 21 compliance item in this docket, within 90 days of the effective date of this Decision or 10 days prior
 22 to serving its first customer, whichever comes earlier.

23 **CONCLUSIONS OF LAW**

24 1. ITI and GTL are public service corporations within the meaning of Article XV of the
 25 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

26 2. The Commission has jurisdiction over the subject matter of the applications.

27 3. Notice of the applications was given in accordance with the law.

28 4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a

1 CC&N to provide competitive telecommunications services.

2 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
3 Statutes, it is in the public interest for DSI-ITI to provide the telecommunications services set forth in
4 its application.

5 6. DSI-ITI is a fit and proper entity to receive a CC&N authorizing it to provide COPT
6 services as described herein, subject to Staff's stated conditions.

7 7. The encumbrance approved herein is for the purposes stated in the application and is
8 reasonable necessary for those purposes.

9 8. The purchase and transfer of assets from ITI to DSI is in the public interest.

10 9. Cancellation of ITI's CC&N upon the closing of the transaction described herein is in
11 the public interest.

12 10. Staff's recommendations as modified herein are reasonable and should be adopted.

13 **ORDER**

14 IT IS THEREFORE ORDERED that the application of DSI-ITI, LLC, for a Certificate of
15 Convenience and Necessity for authority to provide customer owned pay telephone services within
16 the State of Arizona is hereby approved, subject to the condition that DSI-ITI, LLC procure and
17 maintain a performance bond or irrevocable sight draft letter in the amount of \$10,000, which is
18 excluded from the pledge assets described herein.

19 IT IS FURTHER ORDERED that DSI-ITI, LLC, DSI-ITI, LLC, shall provide to the
20 Commission's Business Office for safekeeping, the original of an irrevocable sight draft letter of
21 credit or performance bond in the amount of \$10,000, and file 13 copies with Docket Control, as a
22 compliance item in this docket, within 90 days of the effective date of this Decision or 10 days prior
23 to serving its first customer, whichever comes earlier. The performance bond or irrevocable sight
24 draft letter of credit shall remain in effect until further order of the Commission. The Commission
25 may draw on the performance bond or irrevocable sight draft letter of credit on behalf of and for the
26 sole benefit of DSI-ITI, LLC's customers, if the Commission finds, in its discretion, that DSI-ITI,
27 LLC is in default of its obligations arising from its Certificate of Convenience and Necessity. The
28 Commission may use the performance bond or irrevocable sight draft letter of credit funds, as

1 appropriate, to protect DSI-ITI, LLC's customers and the public interest and take any and all actions
2 the Commission deems necessary, in its discretion, including, but not limited to returning
3 prepayments or deposits collected from DSI-ITI, LLC customers.

4 IT IS FURTHER ORDERED that the application by DSI-ITI, LLC for authorization to
5 encumber assets to purchase the assets of ITI Inmate Telephone, Inc., as described herein, is hereby
6 approved.

7 IT IS FURTHER ORDERED that DSI-ITI, LLC is hereby authorized to engage in any
8 transaction and to execute or cause to be executed any documents to effectuate the authorizations
9 granted herein.

10 IT IS FURTHER ORDERED that the application of ITI Inmate Telephone, Inc., to cancel its
11 Certificate of Convenience and Necessity, issued in Commission Decision No. 70949 (April 7, 2009),
12 upon the closing of the Asset Purchase Agreement described herein, is hereby granted subject to the
13 following Ordering Paragraph.

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1 IT IS FURTHER ORDERED that ITI Inmate Telephone, Inc., shall file, as a compliance item
2 in this docket, notice of the closing of the Asset Purchase Agreement, within 30 days of such event
3 and upon such filing ITI Inmate Telephone, Inc.'s Certificate of Convenience and Necessity to
4 provide customer operated payphone services in Arizona and ITI Inmate Telephone, Inc.'s tariffs on
5 file with the Commission shall be immediately cancelled without further order of the Commission.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN _____ COMMISSIONER _____

11
12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

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

19 _____
20 ERNEST G. JOHNSON
21 EXECUTIVE DIRECTOR

22
23 DISSENT _____

24
25 DISSENT _____
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28

1 SERVICE LIST FOR: DSI-ITI, LLC and ITI INMATE TELEPHONE, INC.
2 DOCKET NOS.: T-20734A-10-0127, T-20734A-10-0128, T-20734A-10-0129
3 and T-20608A-10-0192

4 Lance J.M. Steinhart
5 LANCE J.M. STEINHART, P.C.
6 1720 Windward Concourse, Suite 115
7 Alpharetta, GA 30005

8 Janice Alward, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, AZ 85007

13 Steve Olea, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

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