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MEMORANDUM

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Arizona Corporation Commission

DOCKETED

MAY 31 2011

DOCKETED BY 

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: May 31, 2011

RE: IN THE MATTER OF THE APPLICATION OF MOSAIC NETWORKX LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND RESOLD AND FACILITIES-BASED INTRALATA AND INTERLATA PRIVATE LINE SERVICES. (DOCKET NO. T-20777A-10-0510)

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

- Facilities Based Local Exchange Services
- Resold and Facilities-Based IntraLATA and InterLATA Private Line Services

On April 1, 2011, the Applicant amended its request for approval to the following services:

- Resold and Facilities-Based IntraLATA and InterLATA Private Line Services

Staff is recommending approval of the application with conditions.

SMO:AFF:tdp

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

SERVICE LIST FOR: MOSAIC NETWORKX LLC
DOCKET NO.: T-20777A-10-0510

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

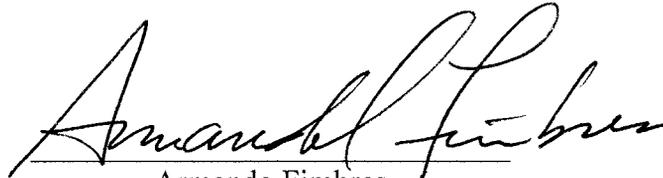
MOSAIC NETWORKX LLC
DOCKET NO. T-20777A-10-0510

IN THE MATTER OF THE APPLICATION OF MOSAIC NETWORKX LLC
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES AND RESOLD AND FACILITIES-BASED INTRALATA AND INTERLATA
PRIVATE LINE SERVICES

MAY 31, 2011

STAFF ACKNOWLEDGMENT

The Staff Report for Mosaic Networkx LLC, Docket No. T-20777A-10-0510, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide facilities-based local exchange; resold and facilities-based intraLATA and interLATA private lien services and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read "Armando Fimbres", written over a horizontal line.

Armando Fimbres
Public Utility Analyst V

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1. INTRODUCTION

On December 20, 2010, Mosaic Networkx LLC (“Mosaic” or “Applicant” or “Company”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based local exchange services and resold and facilities-based intraLATA and interLATA private line services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission (“ACC” or “Commission”) for a determination that its proposed services should be classified as competitive.

On February 7, 2011, Staff issued its First Data Request. On April 1, 2011, Mosaic provided its response to Staff’s First Data Request. Additional information was provided on April 29, 2011 by Mosaic in response to informal Staff inquiries via email.

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, if the Applicant’s initial rates are just and reasonable and if approval of the Applicant’s CC&N should be conditioned.

2. REQUESTED SERVICES

In response to Staff’s First Data request, the Applicant stated “Mosaic does not currently intend to provide local dial tone service and amends its CC&N application to remove its request for Facilities- Based Local Exchange Services authority. Following receipt of Mosaic’s April 1, 2011 application amendment, Staff limited its review to matters pertaining only to resold and facilities-based intraLATA and interLATA private line services on a statewide basis in the State of Arizona.

The revised tariff submitted by Mosaic with its April 1, 2011 response to Staff’s First Data Request, contains terms and conditions for private line services. Mosaic states its services as follows in section 3.1 of its tariff – “Customers may order from the Company private line telecommunications transport services, subject to availability. The term “services” used in this section refers only to such intrastate telecommunications transport services between two locations traversing the Company’s end points each of which originate or terminate at a Customer’s or the Company’s designated location, unless otherwise stated in this tariff. Any service provided over a third party’s facilities, arranged for the Customer by the Company, may be provided on an Individual Contract Basis” (“ICB”).

3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Mosaic states in its application that it is certificated to provide telecommunications services in California, Nevada and New York. Through email communications with Staff, Mosaic explained that it was approved for service in Florida on February 21, 2011 and since filing its application in Arizona has also filed for certification in Colorado, Georgia, Massachusetts, Pennsylvania, Virginia, Washington, and Wisconsin.

The Mosaic President, Managing Partner and Executive Vice Presidents of Mosaic have approximately 40 years of combined telecommunications and related industry experience. Based on the information submitted by the Applicant and subsequent Staff research, Staff believes that Mosaic possesses the technical capabilities to provide the services it is requesting the authority to provide.

4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

With its application, Mosaic reported the following financials for the period ending December 31, 2009 - Total Assets of \$1,116,555, Shareholder Equity of \$303,833 and Net Income of \$395,416. With its response to Staff's First Data Request, Mosaic reported the following financials for the period ending December 31, 2010 - Total Assets of \$1,149,236, Shareholder Equity of \$317,632 and Net Income of \$229,071.

The Applicant lists conditions under which advance payments may be required for services in its proposed Tariff No. 1, Section 2.13.1. 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 should be granted the discretion to procure either the performance bond or the ISDLC. The Applicant is requesting a CC&N for resold and facilities based private line services. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$25,000 for resold private line services, \$100,000 for facilities-based local exchange private line services and \$100,000 for facilities-based interexchange private line services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$225,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant shall not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure a performance bond or the ISDLC equal to \$225,000. The minimum performance bond or the ISDLC amount of \$225,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the ISDLC amount should be increased in increments of \$112,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$22,500 of the performance bond or the ISDLC amount. 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 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 the 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 10 days before the first customer is served, whichever comes first. Staff also recommends that the

Company notify Staff through a compliance filing when it begins serving customers. The original bond or Letter of Credit should be filed with the Commission's Business Office and copies of the bond or Letter of Credit 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 Letter of Credit 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 Letter of Credit 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.

5. 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 actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be 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 highly 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 net book value or fair value rate base at the end of its first 12 months of operation would be zero (\$0).

Mosaic submitted Tariff No. 1 with its application. A revision to Tariff No. 1 was provided to Staff on April 1, 2011. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive private line providers operating in the State of Arizona. 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 rate base information provided should not be given substantial weight in this analysis.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. Consumer Services 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. Staff's research did not reveal any issues related to the Mosaic top executives.

7. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

7.1 Private Line Services

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

7.2 Description of Requested Services

Mosaic proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

7.3 A Description of the General Economic Conditions That Exist That Make the Relevant Market for the Service Competitive.

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, ILECs and a number of CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

7.4 The Number of Alternative Providers of the Service.

IXCs are providers of private line service in the State of Arizona. ILECs and CLECs also provide private line service.

7.5 The Estimated Market Share Held by Each Alternative Provider of the Service.

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

7.6 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.

7.7 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms, and Conditions.

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in its respective service territories. Similarly, many of the CLECs offer substantially similar services.

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 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 required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
4. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
5. 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 Mosaic indicating that its net book value or fair value rate base at the end of 12 months of operation would be zero (\$0). Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other private line providers 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;

6. 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 a conforming tariff 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 a performance bond or an ISDLC equal to \$225,000. The minimum bond or draft amount of \$225,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$112,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$22,500 of the bond amount or ISDLC amount; and
 - b. 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 or 10 days before service to end-user customers is commenced, whichever comes first. The original 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 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 prepayments or deposits collected from the Company's customers;
 - c. Staff also recommends that the Company notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal 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 Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

8.2 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS 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.