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Arizona Corporation Commission

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DATE: June 2, 2011

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RE: IN THE MATTER OF THE APPLICATION OF WINDSTREAM NUVOX, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20786A-11-0088)

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 with conditions.

SMO:AFF:kdh

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

SERVICE LIST FOR: WINDSTREAM NUVOX, INC.
DOCKET NO.: T-20786A-11-0088

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

WINDSTREAM NUVOX, INC.
DOCKET NO. T-20786A-11-0088

IN THE MATTER OF THE APPLICATION OF WINDSTREAM NUVOX, INC. FOR
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

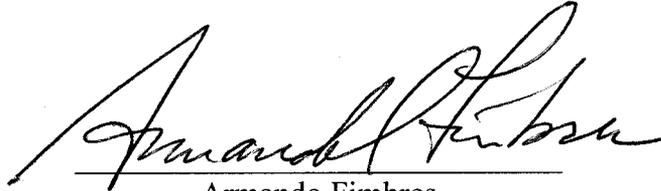
JUNE 2, 2011

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STAFF ACKNOWLEDGMENT

The Staff Report for Windstream NuVox, Inc., Docket No. T-20786A-11-0088, 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 resold local exchange service 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

1. INTRODUCTION

On February 24, 2011, Windstream NuVox, Inc. (“WIN-NuVox” or “Company” or “Applicant”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold local exchange 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 April 4, 2011, Staff issued its First Data Request. On May 2, 2011, WIN-NuVox provided its response to Staff’s First Data Request. WIN-NuVox’s response included revisions to the tariff submitted in its CC&N application.

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

WIN-NuVox is requesting statewide authority to provide Resold Local Exchange Services in Arizona. WIN-NuVox has entered into resale agreements with Verizon Business. WIN-NuVox is not seeking authority to provide long distance services in Arizona as an affiliate, Windstream Communications, Inc. (“WCI”), is already certificated to provide long distance services in Arizona.

While WIN-NuVox is seeking statewide certification, it does not at this time have plans for expansion beyond the service areas described in the section 4.2 of its tariff. The proposed service areas are those where it can currently receive service from its provider, Verizon Business. In the event that Win NuVox experiences customer demand for additional service areas, it would attempt to expand its Verizon Business contract and amend its tariff to reflect the additional service areas.

Selected services, such as SoftPhone, in the tariff associated with WIN-NuVox’s CC&N application are based on Voice over The Internet Protocol (“VoIP”). In its response to Staff’s First Set of Data Requests, WIN-NuVox acknowledged its obligation to include in reports to the Commission all intrastate revenues for services provided under the authority of the Commission’s CC&N and associated with services included in the proposed Tariff No. 1.

3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

WIN-NuVox is a wholly owned, indirect subsidiary Windstream Corporation (“Windstream”), a publicly traded corporation. WIN-NuVox and Windstream are headquartered at 4001 Rodney Parham Road Little Rock, Arkansas. Windstream was formed in 2006 through the spinoff of Alltel Communication’s landline business and merger with VALOR Communications Group.

WIN-NuVox states in its application that it is authorized to provide telecommunications services in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. WIN-NuVox is in the process of requesting authority to provide telecommunications services in Arizona, Colorado, Connecticut, Colorado, Idaho, Maine, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont and Wyoming. WINS-NuVox also states in its application that it has not been denied authorization to provide telecommunications services in any jurisdiction. WIN-NuVox provides telecommunications services in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

All of the key management identified in WIN-NuVox's application have numerous years of telecommunications experience. Based on the information submitted by the Applicant and subsequent Staff research, Staff believes that WIN-NuVox possesses the technical capabilities to provide the services it is requesting the authority to provide.

4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

WIN-NuVox states in its application that it will rely on the resources of its parent, Windstream. For the period ending December 31, 2009, Windstream reported Total Assets of \$9,145.4 million, Shareholder Equity of \$260.7 million and Net Income of \$334.5 million. For the period ending December 31, 2010, Windstream reported Total Assets of \$11.35 billion, Shareholder Equity of \$830.6 million and Net Income of \$310.7 million.

The Applicant lists conditions under which advance payments may be required for services in its proposed Tariff No. 1, Section 2.5.5. 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 one type of service – resold local exchange. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirement is \$25,000 for resold local exchange. 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 \$25,000. The minimum performance bond or the ISDLC amount of \$25,000 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 \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 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 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 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 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).

WIN-NuVox submitted Tariff No. 1 with its application. A revised tariff was submitted to Staff on May 2, 2011. 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. 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. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

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

6.1 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.

6.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

WIN-NuVox is a wholly owned, indirect subsidiary Windstream Corporation ("Windstream"), a publicly traded corporation. WIN-NuVox and Windstream are headquartered at 4001 Rodney Parham Road Little Rock, Arkansas. Windstream was formed in 2006 through the spinoff of Alltel Communication's landline business and merger with VALOR Communications Group. With operations in many states, Staff believes WIN-NuVox and its parent Windstream have an extensive understanding of basic telephone and universal services

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).

6.3 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 (f/k/a 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.

6.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE 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.

6.5 911 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.

6.6 CUSTOM LOCAL AREA SIGNALING SERVICES

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.

7. 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 WIN-NuVox top executives.

8. 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.

8.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

8.1.1 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 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.

8.1.2 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.

8.1.3 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.

8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.

None.

8.1.5 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.

8.1.6 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.
 3. 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.

9. 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.

9.1 RECOMMENDATIONS ON THE APPLICATION FOR A CC&N

Staff recommends that Applicant's application for a CC&N to provide resold local exchange 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 cooperate 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 WIN-NuVox 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 wholesale transport 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;
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 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 irrevocable sight draft Letter of Credit equal to \$25,000. The minimum bond or draft amount of \$25,000 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 \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments

is within \$2,500 of the bond amount or IDLOC amount; and

- b. File the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit 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 irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, 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 irrevocable sight draft Letter of Credit 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).

Furthermore, Staff recommends that approval of the Application be conditioned on the following:

1. That WIN-NuVox's application be approved based upon its representation to the Commission that WIN-NuVox will be providing local exchange service to end-users in Arizona. Should WIN-NuVox Access not provide service directly to end-user customers, it shall notify the Commission and file for cancellation its CC&N.

9.2 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.