

OPEN MEETING ITEM

COMMISSIONERS
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ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: SEPTEMBER 26, 2011

DOCKET NO.: T-20695A-09-0387

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 Opinion and Order on:

INTELEPEER, INC.
(CC&N/RESELLER/FACILITIES-BASED)

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:

OCTOBER 5, 2011

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:

OCTOBER 11, 2011 and OCTOBER 12, 2011

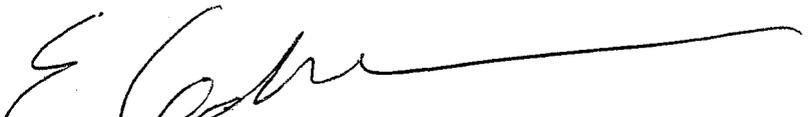
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

SEP 26 2011

DOCKETED BY 


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 INTELEPEER, INC. FOR APPROVAL OF A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE RESOLD LONG
12 DISTANCE, RESOLD LOCAL EXCHANGE,
13 FACILITIES-BASED LONG DISTANCE AND
14 FACILITIES-BASED LOCAL EXCHANGE
15 TELECOMMUNICATION SERVICES.

DOCKET NO. T-20695A-09-0387

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: May 12, 2011
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
14 APPEARANCES: Mr. Michael Hallam, LEWIS AND ROCA, LLP, on
15 behalf of Applicant; and
16 Ms. Bridget Humphrey, Staff Attorney, Legal Division,
17 on behalf of the Utilities Division of the Arizona
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 On August 7, 2009, IntelPeer, Inc. ("IntelPeer" or "Company") filed with the Arizona
20 Corporation Commission ("Commission") an application for approval of a Certificate of
21 Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange,
22 facilities-based local exchange, and facilities-based long distance telecommunication services in
23 Arizona. IntelPeer's application also requests a determination that its proposed services are
24 competitive within the State of Arizona.

25 On September 4, 2009, the Commission's Utilities Division ("Staff") issued its First Set
26 of Data Requests to IntelPeer.

27 On October 2, 2009, IntelPeer filed responses to Staff's First Set of Data Requests,
28 Provided corrections to its application, including revised tariff pages, and requested authority to

1 also provide switched access telecommunication services in Arizona.

2 On December 7, 2009, Staff issued its Second Set of Data Requests to the Company.

3 On January 6, 2010, IntelPeer filed responses to Staff's Second Set of Data Requests,
4 which included revised tariff pages.

5 No other filings were docketed in 2010.

6 On January 31, 2011, Staff filed a Staff Report recommending approval of IntelPeer's
7 application, subject to certain conditions.

8 On March 14, 2011, by Procedural Order, a hearing was set to commence on May 12, 2011,
9 and other procedural deadlines were established.

10 On April 22, 2011, IntelPeer filed an affidavit of publication stating notice of the hearing
11 had been published in the *Arizona Republic*, a newspaper of general circulation, on March 30, 2011.

12 On the same date, IntelPeer filed a request for its witness to appear telephonically for the
13 hearing.

14 On April 28, 2011, by Procedural Order, IntelPeer's request for its witness to appear
15 telephonically for the hearing was granted.

16 On May 3, 2011, Michael T. Hallam of Lewis and Roca, LLP, filed a Notice of Appearance
17 as local counsel for IntelPeer.

18 On May 12, 2011, the hearing was held as scheduled. IntelPeer and Staff appeared through
19 counsel and presented evidence and testimony. No members of the public were present to present
20 public comments. At the conclusion of the hearing, the Company was directed to file as a late-filed
21 exhibit an updated list of states in which IntelPeer is authorized to provide service.

22 On May 20, 2011, IntelPeer docketed a late-filed exhibit.

23 After receipt of the late-filed exhibit the matter was taken under advisement pending
24 submission of a Recommended Opinion and Order to the Commission.

25 * * * * *

26
27 Having considered the entire record herein and being fully advised in the premises, the
28 Commission finds, concludes, and orders that:

FINDINGS OF FACT

1
2 1. IntelPeer is a foreign, limited liability corporation organized under the laws of
3 Delaware, with its principal place of business in San Mateo, California.

4 2. IntelPeer was originally founded on July 1, 2003, as VoEx, Inc.

5 3. On September 18, 2007, VoEx, Inc. changed its name to IntelPeer.

6 4. On August 7, 2009, IntelPeer filed an application requesting a CC&N to provide
7 resold long distance, resold local exchange, facilities-based long distance and facilities-based local
8 exchange telecommunication services.

9 5. On October 2, 2009, IntelPeer filed an amendment to its application stating it is also
10 seeking authority to provide switched access telecommunication services in Arizona.

11 6. Notice of the amended application was given in accordance with the law.

12 7. IntelPeer proposes to offer its telecommunication services to business and enterprise
13 customers through the use of interconnection agreements.¹

14 8. Staff recommends that the Commission approve IntelPeer's amended application for
15 a CC&N to provide resold long distance, resold local exchange, facilities-based long distance,
16 facilities-based local exchange, and switched access telecommunication services. Staff further
17 recommends that:

- 18 a. IntelPeer comply with all Commission Rules, Orders, and other requirements
19 relevant to the provision of intrastate telecommunication services;
- 20 b. IntelPeer abide by the quality of service standards that were approved by the
Commission for Qwest in Docket No. T-01051B-93-0183;
- 21 c. IntelPeer be prohibited from barring access to alternative local exchange
22 service providers who wish to serve areas where IntelPeer is the only local
provider of local exchange service facilities;
- 23 d. IntelPeer notify the Commission immediately upon changes to IntelPeer's
24 name, address or telephone number;
- 25 e. IntelPeer cooperate with Commission investigations including, but not limited
to customer complaints;
- 26 f. The fair value rate base information provided for IntelPeer not be given
27 substantial weight in this analysis;

28 ¹ Tr. at 19-21.

- 1 g IntelPeer offer Caller ID with the capability to toggle between blocking and
unblocking the transmission of the telephone number at no charge;
- 2 h IntelPeer offer Last Call Return service that will not return calls to telephone
3 numbers that have the privacy indicator activated;
- 4 i The Commission authorize IntelPeer to discount its rates and service charges
to the marginal cost of providing the services; and
- 5 j. IntelPeer submit local exchange, interexchange, and access tariffs indicating
6 that it may collect advances, deposits, and/or prepayments.
- 7 9. Staff recommends that IntelPeer's CC&N be considered null and void, after due
8 process if IntelPeer fails to comply with the following conditions:
- 9 a. IntelPeer shall docket conforming tariffs for each of its proposed services
10 within 365 days from the date of a Decision in this matter, or 30 days prior to
providing service, whichever comes first.
- 11 b. IntelPeer shall:
- 12 i. Procure either a performance bond or irrevocable sight draft letter of
13 credit ("ISDLC") equal to \$235,000. The minimum performance bond
14 or ISDLC of \$235,000 should be increased if at any time it would be
15 insufficient to cover advances, deposits, and/or prepayments collected
16 from IntelPeer's customers. The performance bond or ISDLC should
17 be increased in increments of \$117,500. This increase should occur
18 when the total amount of advances, deposits, and/or prepayments is
19 within \$23,500 of the total performance bond or ISDLC amount; and
- 20 ii. File the original performance bond or ISDLC with the Commission's
21 Business Office and copies of the performance bond or ISDLC with
22 Docket Control, as a compliance item in this docket, within 90 days of
23 the effective date of the Decision in this matter or 10 days before the
24 first customer is served, whichever comes first. The original
25 performance bond or ISDLC must remain in effect until further order of
the Commission.
- 26 iii. The Commission may draw on the performance bond or ISDLC, on
27 behalf of, and for the sole benefit of the Company's customers, if the
28 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 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; and
- c. IntelPeer should abide by the Commission adopted rules that address
Universal Service in Arizona, which indicates that all telecommunications
service providers that interconnect into the public switched network shall
provide funding for the Arizona Universal Service fund. IntelPeer should
make the necessary monthly payments required under by A.A.C. R14-2-
1204(B).

1 **Technical Capability**

2 10. IntelPeer submitted resumes for its top three executives with its application.²
 3 IntelPeer's top management has a combined total of more than 30 years in the telecommunications
 4 industry.³ IntelPeer currently is certified to provide its proposed services in 41 states and the
 5 District of Columbia and is currently providing service in approximately 30 of those states.⁴ Further,
 6 IntelPeer employs 120 employees across various states.⁵

7 11. IntelPeer states it will provide fully managed, hosted, on-demand, peering
 8 infrastructure to support voice traffic between telephony devices using traditional T1 and DS3
 9 circuits.⁶

10 12. IntelPeer will provide its proposed resold and facilities-based services primarily
 11 using Qwest Communications ("Qwest") as its underlying carrier.⁷ IntelPeer also plans to deploy its
 12 own network to participate in commercial wholesale agreements with incumbents.⁸

13 13. IntelPeer will provide customer service to its proposed Arizona customers via its
 14 customer service centers located in Colorado or California.⁹

15 14. Based on the above information, Staff concluded that IntelPeer has the technical
 16 capability to provide its proposed services in Arizona.

17 **Financial Capability**

18 15. IntelPeer provided financial statements for the years ending June 30, 2008, and
 19 2009.¹⁰ Staff indicates that for the year ending June 30, 2009, IntelPeer list total assets of
 20 \$33,929,771; total equity of negative \$22,540,383; and a net income of negative \$5,165,130.¹¹

21 ...

22 ...

23

24 ² Application at Attachment E.

³ Response to Staff's Data Request dated October 2, 2009.

25 ⁴ Tr. at 7-10.

⁵ Tr. at 7.

26 ⁶ Tr. at 11.

⁷ Staff Report at 2.

27 ⁸ Id.

⁹ Tr. at 10.

¹⁰ Staff Report at 2.

28 ¹¹ Id.

1 16. Staff believes that start-up fees and capital investment are generally high for start-up
2 companies like IntelPeer.¹² Therefore, Staff did not find significant IntelPeer's reported negative
3 equity and a negative net income on its financial statements.¹³

4 17. IntelPeer's proposed tariffs state that IntelPeer may collect advances, deposits,
5 and/or prepayments from its customers.¹⁴ Staff recommends that Arizona customer's advances,
6 deposits, and/or prepayments be protected by IntelPeer's procurement of a performance bond or
7 ISDLC in the amount of \$235,000.¹⁵

8 **Rates and Charges**

9 18. Staff believes that IntelPeer will have to compete with various incumbent local
10 exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), and interexchange
11 carriers ("IXCs") to provide its proposed services in Arizona.¹⁶

12 19. Given the competitive environment in which IntelPeer will be providing service,
13 Staff believes IntelPeer will not be able to exert any market power and the competitive process will
14 result in rates and charges that are just and reasonable.¹⁷

15 20. According to Staff, rates for competitive servicers are not set according to a rate of
16 return.¹⁸ IntelPeer states that its net book value or its fair value rate base will be zero for all of its
17 Arizona assets during its first 12 months in service in Arizona.¹⁹ Staff believes that IntelPeer's rates
18 will be heavily influenced by the market and while Staff considered the fair value rate base
19 information submitted by IntelPeer, Staff believes it should not be given substantial weight in this
20 analysis.²⁰

21 **Local Exchange Carrier Specific Issues**

22 21. Staff recommends that pursuant to A.A.C. R14-2-1308(A) and federal laws and rules,
23 IntelPeer should make number portability available to facilitate the ability of customers to switch

24 ¹² Tr. at 16.

25 ¹³ Id.

26 ¹⁴ Application at Attachment B.

27 ¹⁵ Staff Report at 2.

28 ¹⁶ Staff Report at 3.

¹⁷ Id.

¹⁸ Staff Report at 3.

¹⁹ Id.

²⁰ Staff Report at 4.

1 between authorized local carriers within a given wire center without changing their telephone number
2 and without impairment to quality, functionality, reliability, or convenience of use.²¹

3 22. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
4 interconnect into a public switched network shall provide funding for the Arizona Universal Service
5 Fund (“AUSF”). Staff recommends that IntelPeer contribute to the AUSF as required by the A.A.C.
6 and that IntelPeer make the necessary monthly payments as required under A.A.C. R14-2-
7 1204(B).²²

8 23. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
9 quality of service standards for Qwest which imposed penalties for unsatisfactory levels of service.
10 In this matter, IntelPeer does not have similar history of service quality problems, and therefore
11 Staff recommends that the penalties outlined in the Qwest Decision not apply to IntelPeer at this
12 time.²³

13 24. In areas where IntelPeer is the only local exchange service provider, Staff
14 recommends that IntelPeer be prohibited from barring access to alternative local exchange service
15 providers who wish to serve the area.²⁴

16 25. IntelPeer will provide all customers with 911 and E911 service where available, or
17 will coordinate with ILECs and emergency service providers to facilitate the service.²⁵

18 26. Pursuant to prior Commission Decisions, IntelPeer may offer customers local
19 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block and
20 unblock each individual call at no additional cost.²⁶

21 **Complaint History**

22 27. IntelPeer reported it has not had an application for service denied in any state where
23 it has applied for a certificate to provide telecommunication services.²⁷ Further, IntelPeer’s
24 application states that there have been no formal complaints and no civil or criminal proceedings

25 ²¹ Staff Report at. 5.

26 ²² Id.

27 ²³ Staff Report at 5.

28 ²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Application (A-11).

1 involving the Company's officers, directors, partners, or managers.²⁸

2 28. The Commission's Consumer Services Section reported that there have been zero
3 complaints, inquiries, or opinions filed against IntelPeer in Arizona through November 29, 2010.²⁹

4 At hearing, IntelPeer's witness, Senior Vice-President of Product Development and Asset
5 Management, Julie Barghouthi testified that no additional complaints had been filed against
6 IntelPeer as of the date of the hearing.³⁰

7 28. IntelPeer is in good standing with the Commission's Corporations Division.³¹

8 29. Staff concluded that IntelPeer is a fit and proper entity to provide its proposed
9 services in Arizona.³²

10 Competitive Analysis

11 30. Staff recommends approval of IntelPeer's proposed services as competitive.³³ Staff
12 states that IntelPeer will have to convince customers to purchase its services; it has no ability to
13 adversely affect the ILEC, CLEC, or IXC markets; and alternative providers exist in the markets
14 IntelPeer desires to serve. Therefore, Staff believes IntelPeer has no market power in the markets it
15 wishes to serve and that IntelPeer's proposed services should be classified as competitive.³⁴

16 31. Staff's recommendations as set forth herein are reasonable and should be adopted

17 CONCLUSIONS OF LAW

18 1. IntelPeer is a public service corporation within the meaning of Article XV of the
19 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

20 2. The Commission has jurisdiction over IntelPeer and the subject matter of the
21 application.

22 3. Notice of the amended application was given in accordance with the law.

23 4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a
24 CC&N to provide competitive telecommunications services.

25 ²⁸ Application (A-12).

26 ²⁹ Staff Report at 5.

26 ³⁰ Tr. at 12.

27 ³¹ Application at Attachment A-1.

27 ³² Tr. at 15.

28 ³³ Staff Report at 11.

28 ³⁴ Staff Report at 6-9.

1 IT IS FURTHER ORDERED that IntelePeer, Inc. fails to comply with the timeframes
2 described in Finding of Fact No. 9, the Certificate of Convenience and Necessity conditionally
3 granted herein, shall be considered null and void, after due process.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____, 2011.

17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

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22 DISSENT _____
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SERVICE LIST FOR:

INTELEPEER, INC.

DOCKET NO.:

T-20695A-09-0387

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