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MEMORANDUM

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AZ CORP COMMISSION
DOCKET CONTROL

TO: Docket Control
FROM: Steven M. Olea
Director
Utilities Division

EA for SMD

DATE: December 8, 2011

RE: IN THE MATTER OF THE APPLICATION OF CREXENDO BUSINESS SOLUTIONS, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20737A-10-0144)

Pursuant to the Procedural Order issued December 1, 2011, Staff's comments are attached following a review of the information submitted by Mr. Lloyd D. Rickenbach.

SMO:PJG

Originator: Pamela J. Genung

Arizona Corporation Commission

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INTRODUCTION

On April 13, 2010, Crexendo Business Solutions, Inc. ("Crexendo" or "Applicant") filed an Application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and resold local exchange telecommunications services within the State of Arizona. Crexendo also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On October 12, 2010, Crexendo filed an Amendment to its Application requesting authorization to also provide facilities-based local exchange telecommunications services within the State of Arizona.

On May 3, 2011, Staff filed its Staff Report recommending denial of Crexendo's Amended Application based on the seriousness of the complaint information discussed in the Staff Report that was not disclosed by Crexendo and/or its officers. However, the Staff Report also provided that if the Commission decides to approve Crexendo's Application that it be subject to several recommended conditions.

On November 14, 2011, the Hearing Division issued its Recommended Order and Opinion ("ROO") conditionally approving Crexendo's Application subject to compliance with the requirements stated in the ROO.

On December 1, 2011, public comments on Crexendo's Application were submitted to the Commission by Lloyd D. Rickenbach, attorney at law. As a result of Mr. Rickenbach's filing, the vote on the ROO was postponed, pending further review of the newly docketed information.

On December 1, 2011, a Procedural Order was issued that required Staff to review the information submitted by Mr. Lloyd D. Rickenbach and to file comments or additional recommendations related to its review. Additionally, the Procedural Order required Crexendo to file its response or comments related to the information submitted to the Commission by Mr. Rickenbach. The Staff and Crexendo filing are to be filed by December 8, 2011.

STAFF COMMENTS

After having reviewed the information filed in Docket Control by Mr. Rickenbach, Staff has determined that it was previously aware of twenty of the twenty-nine items identified by Mr. Rickenbach. While the May 3, 2011 Staff Report did not reflect each individual item, Staff was provided information concerning twenty of the items in either Crexendo's 10-K or in Crexendo's response to Staff Data Request PJG 1-4. Based on information available to Staff at that time, the litigation cases occurring in the fourteen different states were resolved by way of a Settlement Agreement, Final Judgment of Stipulation, Consent Judgment, Final Judgment and Consent Decree, Consent Order and Permanent Injunction, or an Assurance of Voluntary Compliance.

The nine additional items brought to Staff's attention via Mr. Rickenbach's filing are all related to Imergent, Inc. and/or StoresOnline. Staff requested additional information from Crexendo regarding the nine remaining items. Three of the nine items were press releases relating to previously identified cases which were resolved. Of the remaining six items, five have been resolved and one is pending resolution. The filing date of the one pending case is March 20, 2009. Mr. Rickenbach is representing the plaintiff in this case.

While this additional information is of importance to Staff and its recommendation, it is also indicative of the non-disclosure issues Staff encountered when Staff was formulating its recommendation as contained in its Staff Report. Nonetheless, the additional information does not materially change Staff's recommendations.

CONCLUSION

The additional information provided in this matter does not change Staff's denial recommendation of Crexendo's Application for a CC&N. However, if the Commission decides to approve Crexendo's Application, Crexendo should be subject to the recommended conditions as indicated in Staff's May 3, 2011 Staff Report.

SERVICE LIST FOR: CREXENDO BUSINESS SOLUTIONS, INC.
DOCKET NO.: T-20737A-10-0144

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