

ORIGINAL

MEMORANDUM



TO: Docket Control

FROM: Steve M. Olea  
Director  
Utilities Division

DATE: November 29, 2012

RE: **STAFF REPORT - IN THE MATTER OF THE APPLICATION OF LEAP FROG TELECOM, L.L.C. DBA VOCE TELECOM FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES. (DOCKET NO. T-20584A-10-0319)**

Attached is the Staff Report for the above referenced application, seeking Commission's authorization to provide the following services:

- Resold Local Exchange Services
- Resold Long Distance Services

Staff is recommending denial of the application.

SMO:LLM:kdh

Originator: Lori Morrison

Arizona Corporation Commission  
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SERVICE LIST FOR: Leap Frog Telecom, LLC dba Voce Telecom  
DOCKET NO. T-20584A-10-0319

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

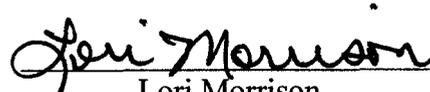
LEAP FROG TELECOM, LLC DBA VOCE TELECOM.  
DOCKET NO. T-20584A-10-0319

IN THE MATTER OF THE APPLICATION OF LEAP FROG TELECOM, L.L.C. DBA VOCE  
TELECOM FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE RESOLD LONG DISTANCE AND LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES

NOVEMBER 29, 2012

## STAFF ACKNOWLEDGEMENT

The Staff Report for the application of Leap Frog Telecom, LLC dba Voce Telecom, Docket No. T-20584A-10-0319, for approval of a Certificate of Convenience and Necessity to provide Resold Long Distance and Resold Local Exchange Telecommunications Services was the responsibility of the Staff member listed below. Lori Morrison was responsible for the review and analysis of the application.

A handwritten signature in black ink that reads "Lori Morrison". The signature is written in a cursive style with a horizontal line underneath the name.

Lori Morrison  
Utilities Consultant

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## 1. INTRODUCTION

On July 30, 2010, Leap Frog Telecom, LLC dba Voce Telecom (“Leap Frog” or “Applicant”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold local exchange and resold long distance telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive.

On August 1, 2010, Leap Frog began providing resold long distance service<sup>1</sup> to 895 customers who were transferred to it from Andiamo Telecom, LLC.<sup>2</sup> As of June 10, 2011, Leap Frog had approximately 2,000 long distance customers<sup>3</sup>.

On August 23, 2010, Staff sent Applicant its First set of Data Requests. Applicant responded on October 12, 2010.

On October 12, 2010, Staff sent its Second set of Data Requests and on October 26, 2010 sent its Third set of Data Requests. Applicant responded to both on April 20, 2011.

On June 23, 2011, the Applicant filed its Proof of Publication of Notice.

On October 7, 2011, Staff sent Applicant its Fourth set of Data Requests. Applicant responded on November 7, 2011.

On April 9, 2012, Staff sent Applicant its Fifth set of Data Requests. Applicant responded on April 11, 2012.

On August 22, 2012, Staff sent Applicant its Sixth set of Data Requests. Applicant responded on September 19, 2012.

Staff’s review of this application addresses the overall fitness of the Applicant to receive a CC&N to provide resold local exchange and resold long distance telecommunications services. Staff’s review considers whether the Applicant’s services should be classified as competitive and whether the Applicant’s proposed rates are just and reasonable.

### *1.1 Technical Capability to Provide the Requested Services*

Leap Frog is a privately held, foreign, limited liability company organized under the laws of Delaware and headquartered in Scottsdale, Arizona. The telecommunications experience of Leap Frog’s top three executives exceeds a combined total of 35 years.

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<sup>1</sup> Response to Staff Data Request STF 3.1(a).

<sup>2</sup> Response to Staff Data Request STF 4.1

<sup>3</sup> Response to Staff email, received 6/10/2011, from Leap Frog’s Regulatory Consultant.

The Applicant requests the authority to provide resold long distance and resold local exchange telecommunications services to business customers in Arizona. Leap Frog indicated that it will initially have 27 employees located in Arizona.<sup>4</sup> Leap Frog has a Customer Service Call Center located in Scottsdale, Arizona that operates Monday – Friday from 7 a.m. to 5 p.m. that will handle all customer concerns, complaints and repair inquires.<sup>5</sup> After-hours calls are directed to an outsourced call center located in Texas. Customer service personnel will be added as needed to meet customer needs.<sup>6</sup>

In its application Leap Frog indicated that it does not provide resold telecommunications services in any other state. Staff did find that Leap Frog applied for and received certification to be a long distance reseller in California, effective May 19, 2008, in Decision 08-05-021, as a result of Application 08-04-005. However, the Applicant requested cancellation of its certificate on August 13, 2008. The Applicant has no other applications pending in any other state.

Based on the above information, Staff believes the Applicant possesses the technical capabilities to provide the services it is requesting the authority to provide.

### *1.2 Financial Capability to Provide the Requested Services*

The Applicant provided unaudited financial statements for the twelve months ending December 31, 2010, and twelve months ending December 31, 2011. The financial statements ending December 31, 2010, list total assets of \$1,721,252; total equity of \$262,411; and a net income of \$340,802. The financial statements ending December 31, 2011, list total assets of \$2,511,713; total equity of \$1,164,461; and a net income of \$859,641. The Applicant did not provide notes related to the financial statements.

The Applicant states in its proposed Interexchange Telecommunications Service Tariff No. 1 (Section 2.5, Page 4) that it may collect deposits from its residential customers if they become delinquent in the payment of two or more bills within a twelve (12) period month or have been disconnected for service within the last twelve (12) month period. In proposed Local Exchange Telecommunications Service Tariff No. 2 (Section 2.5.5, Page 25), the Applicant states it may collect deposits from customers. In addition, the proposed Local Exchange Telecommunications Service Tariff No. 2 (Section 2.5.4, Page 24) states the Applicant may require advanced payments from customers. The Applicant does not offer prepaid services. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$10,000 for resold long distance (for those long distance service resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or ISDLC for multiple services is an aggregate of the minimum bond or

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<sup>4</sup> Response to Staff Data Request STF 1.30.

<sup>5</sup> Response to Staff Data Request STF 1.29(b).

<sup>6</sup> Response to Staff Data Request STF 1.29(c).

ISDLC amount for each type of telecommunications service requested by the Applicant. The amount of performance bond or ISDLC coverage needed for each service is as follows: \$10,000 for resold long distance service and \$25,000 for resold local exchange service. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$35,000. 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 advances is within 10 percent of the total minimum performance bond or ISDLC amount. Thus, bond or ISDLC amount should be increased in increments of \$17,500 when the total amount of advances is within \$3,500 of the bond or ISDLC amount.

If the Commission grants Leap Frog's requested CC&N, Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$35,000. 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 ISDLC.

Staff recommends that proof of the above-mentioned performance bond or ISDLC be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLC should be filed with the Commission's Business Office and 13 copies of the performance bond or ISDLC be filed with Docket Control, as a compliance item in this docket. The Commission may draw on the performance bond or ISDLC 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 ISDLC funds, as appropriate, to protect the Applicant'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 Applicant's customers.

### *1.3 Establishing Rates and Charges*

The Applicant is providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant is competing with those providers in order to obtain subscribers to its services. The Applicant is a new entrant and is facing competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant is generally not able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Applicant'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 Applicant indicating that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Applicant will be heavily influenced by the market. 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. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

## **2. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

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

### *2.1 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, if a CC&N is granted, 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.

### *2.2 Provision of Basic Telephone Service and Universal Service*

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"). If a CC&N is granted, the Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### *2.3 Quality of Service*

Staff believes that, if a CC&N is granted, the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest Corporation (fka USWC now dba CenturyLink) 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.

#### *2.4 Access to Alternative Local Exchange 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, if a CC&N is granted, 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.

#### *2.5 911 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.

#### *2.6 Custom Local Area Signaling Service*

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.

### **3. REVIEW OF COMPLAINT INFORMATION**

The Applicant indicated in Section (A-11) that neither it nor any of its officers, directors, partners or managers has been or are currently involved in any formal or informal complaint proceedings pending before any State or Federal regulatory commission, administrative agency, or law enforcement agency. However, during the course of its evaluation of the Application, Staff determined the management team for Leap Frog is the same management team as the

management team for Andiamo Telecom, LLC<sup>7</sup> (“Andiamo”) and includes management personnel from Dancris Telecom, LLC<sup>8</sup> (“Dancris”). According to documents in eDocket<sup>9</sup> and the Corporations Division’s STARPAS database and responses to Staff Data Requests, the management team of each company is as follows:

For Dancris:

Mr. Joseph Mickey Rao	Manager, President, Owner	Dec. 1996 to Dec. 31, 2004 <sup>10</sup>
Mr. Pete Stazzone	Chief Financial Officer	Jul. 5, 2000 to Feb. 15, 2004 <sup>11</sup>
Mr. Dimitris Pantzartzis	Chief Operations Officer	Feb. 1997 to Feb. 1999 <sup>12</sup>

For Andiamo:

Mr. Joseph Mickey Rao	Manager, President, CEO	Jan. 1, 2004 to Feb. 14, 2010 <sup>13</sup>
Mr. Pete Stazzone	CFO	Feb. 16, 2004 to Jun. 30, 2008 <sup>14</sup>
Mr. Dimitris Pantzartzis	COO	Sept. 1, 2006 to Jun. 30, 2008 <sup>15</sup>

For Leap Frog:

Mr. Joseph Mickey Rao	Manager	Aug. 28, 2003 <sup>16</sup> to present
Mr. Pete Stazzone	CFO	Jul. 1, 2008 <sup>17</sup> to present
Mr. Dimitris Pantzartzis	COO	Jul. 1, 2008 <sup>18</sup> to present

In this application, Mr. Rao is listed as Manager for the owners of Leap Frog Telecom, LLC, not a direct employee. Mr. Rao is employed by Etna Staffing Solutions and primarily provides management consulting to Leap Frog.

In response to Staff’s data requests, the Applicant stated Andiamo purchased all tangible and intangible assets, including all long distance customers, of Dancris, excluding cash<sup>19</sup> and this

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<sup>7</sup> Granted CC&N for Alternative Operator Services in Commission Decision No. 67749 on April 11, 2005 and granted CC&N for Resold Long Distance and Resold Local Exchange Telecommunications Service in Commission Decision No. 67948 on June 21, 2005.

<sup>8</sup> Granted CC&N for Resold Long Distance Telecommunications Service in Commission Decision No. 63540 on March 30, 2001 and granted CC&N for Alternative Operator Services in Commission Decision No. 65982 on June 17, 2003.

<sup>9</sup> Docket Nos. T-03296A-96-0590 and 01-0913

<sup>10</sup> Response to Staff Data Request STF 6.1(e)-(h).

<sup>11</sup> Response to Staff Data Request STF 6.2(a).

<sup>12</sup> Response to Staff Data Request STF 6.3(a).

<sup>13</sup> Response to Staff Data Request STF 6.1(e)-(h).

<sup>14</sup> Response to Staff Data Request STF 6.2(b).

<sup>15</sup> Response to Staff Data Request STF 6.3(b).

<sup>16</sup> STARPAS database, registration for Leap Frog Telecom, LLC.

<sup>17</sup> Response to Staff Data Request STF 6.2(d).

<sup>18</sup> Response to Staff Data Request STF 6.3(d).

<sup>19</sup> Response to Staff Data Request STF 3.5(a).

transaction was completed on February 16, 2004.<sup>20</sup> Neither party filed a letter of notification or an application with the Commission for approval of a transfer of assets and customers. When asked why the companies did not notify the Commission of this action, the Applicant states<sup>21</sup> it was an oversight on Andiamo's part and that Mr. Rao, the President and CEO of both companies, and Mr. Stazzone, the CFO of both companies, recognize it was their responsibility to ensure the appropriate filings were made when required. Further, Andiamo did not file an application to provide resold long distance and resold local exchange services until July 1, 2004, approximately four and a half months after the acquisition of Dancris' customers and assets. Thus, Andiamo was providing long distance service to former Dancris long distance customers without authority to do so for the same time period.

On May 30, 2007, Dancris' Statutory Agent filed a request to cancel its CC&N authority as Dancris was no longer in business.<sup>22</sup> The Commission cancelled the CC&N on May 18, 2012, in Decision No. 73158.

According to the Compliance database,<sup>23</sup> Andiamo cancelled its performance bond on October 11, 2008, effective December 14, 2008, because it did not have any customers. When Andiamo cancelled its performance bond but not its CC&N and continued to operate in Arizona for another two years, it was not in compliance with Decision No. 67948, which required a minimum bond amount of \$25,000 to cover any advances, deposits and/or prepayments for resold local exchange services. The bond requirement was not contingent on Andiamo serving customers; it was a condition of the CC&N, Decision No. 67948, that had to be met prior to providing resold local exchange services to any customers. On June 16, 2011, Andiamo filed, at Staff's request, an application to cancel its CC&N. Staff requested this action because Leap Frog stated that Andiamo was no longer in business<sup>24</sup> and 895 of Andiamo's customers had transferred to Leap Frog on August 1, 2010.<sup>25</sup> The Commission cancelled Andiamo's CC&N in Decision No. 72710, dated December 9, 2011.

The Applicant indicated that none of its officers, directors, partners or managers have been or are currently involved in any civil or criminal investigations, nor have judgments been entered in any civil matter, judgments levied by any administrative or regulatory agency, nor been convicted of any criminal acts in the past ten (10) years. Staff's review indicates otherwise. Staff found Dancris<sup>26</sup> and Andiamo<sup>27</sup> have had their authority to provide telecommunications

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<sup>20</sup> Response to Staff Data Request STF 3.5(b)

<sup>21</sup> Response to Staff Data Request STF 3.5(d).

<sup>22</sup> Docket No. T-03296A-07-0335.

<sup>23</sup> Email from S Kanlan, ACC Utilities Compliance, September 4, 2012.

<sup>24</sup> Response to Staff Data Request STF 3.7(a).

<sup>25</sup> Response to Staff Data Request STF 4.1.

<sup>26</sup> California, Florida, Illinois, Missouri, New York, Oregon, Pennsylvania, South Carolina, Washington and Wyoming.

<sup>27</sup> Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Washington, Wisconsin and Wyoming. Aside from Arizona, Staff

services revoked in numerous jurisdictions for failure to file annual reports and/or pay annual regulatory fees. Attachment 1 contains a list of jurisdictions that have revoked Dancris' authority to operate for failure to file annual reports and/or pay annual regulatory fees. Attachment 2 contains a list of jurisdictions that have revoked Andiamo's authority to operate for failure to file annual reports and/or pay annual regulatory fees.

In addition, Staff found that Dancris had been assessed civil forfeitures by the Public Utilities Commission of Ohio ("PUCO"). On April 13, 2005, in Case No. 05-379-TP-UNC, in the Matter of a Settlement Agreement between the Staff of the Public Utilities Commission of Ohio and Dancris Telecom, LLC, the PUCO Staff determined that Dancris overcharged customers by charging fees exceeding those approved by the PUCO for the period between August 1, 2002 through January 31, 2004. In the Settlement Agreement, Dancris agreed to a finding that it violated PUCO rules by charging rates in excess of those allowed in Ohio Administrative Code 4901:1-6-23 and agreed to pay the civil forfeiture of \$4,551.68 within thirty (30) days of the PUCO's adoption of the stipulation.

Further, Staff reviewed an Order<sup>28</sup> ("Order") issued by United States District Court for the Eastern District of Virginia, Alexandria Division, filed April 28, 2010, in which the Plaintiff, APCC Services, Inc. ("APCC") and the Defendant, Andiamo, had executed a Settlement Agreement and Release ("Settlement") to resolve a certain informal compliant APCC filed against Andiamo with the Federal Communications Commission ("FCC"). The informal complaint was filed at the FCC by APCC, which disputed the amount of dial-around compensation<sup>29</sup> that was to be paid by Andiamo for a period from July 1, 2006 to June 30, 2008. The case was a result of Andiamo's failure in meeting the payment schedule agreed upon in the Settlement. The Order entered default judgment in favor of APCC and against Andiamo, in the amount of \$118,661.75

The Commission's Corporations Division has indicated that Leap Frog is in good standing. The Consumer Services Section reports one (1) complaint has been filed in Arizona since this application was filed on July 30, 2010 to present and that complaint was resolved. A search of the Federal Communications Commission's website found that there have been no formal or informal complaint proceedings involving the Applicant.

#### **4. 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.

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found only one other instance where Andiamo filed to request cancellation of its authority to provide telecommunications services and that was in Kansas.

<sup>28</sup> United States District Court for the Eastern District of Virginia, Alexandria Division, APCC Services, Inc., Plaintiff, v. Andiamo Telecom, L.L.C., Defendant, Case No. 1:10cv431 (JCC/TCB), .

<sup>29</sup> Dial-around compensation (DAC) is the process by which Payphone Service Providers (PSP's) receive reimbursement from long distance service providers for toll free calls placed from PSP's payphones.

*4.1 Competitive Services Analysis for Local Exchange Services*

**4.1.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST WHICH MAKE 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 new CLECs have been authorized to provide local exchange service. 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.

**4.1.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.**

CenturyLink and various independent ILECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

**4.1.3 THE ESTIMATED MARKET SHARE HELD BY EACH ALTERNATIVE PROVIDER OF THE SERVICE.**

Since CenturyLink and the independent ILECs 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.

**4.1.4 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.

**4.1.5 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.

**4.1.6 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. Competition exists in most urban markets, but to a lesser degree in rural areas of the state.
- 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 in more rural areas have few, if any, choices since there is generally only one provider of local exchange service in rural service territories.
- 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.

*4.2 Competitive Services Analysis for Interexchange Services*

**4.2.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST WHICH MAKES THE RELEVANT MARKET FOR THE SERVICE ONE THAT IS COMPETITIVE.**

The interexchange market that the Applicant has entered is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant is a new entrant in this market and, as such, is competing with those companies in order to obtain customers.

**4.2.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.**

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

**4.2.3 THE ESTIMATED MARKET SHARE HELD BY EACH ALTERNATIVE PROVIDER OF THE SERVICE.**

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

**4.2.4 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.

**4.2.5 THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE AT COMPETITIVE RATES, TERMS AND CONDITIONS.**

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant is providing in their respective service territories. Similarly, many of the ILECs offer similar intraLATA toll services.

**4.2.6 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 interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrant is having to overcome if it wants to compete in the market.

- c. One in which the Applicant does not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## 5. RECOMMENDATIONS

Staff recommends that Leap Frog's CC&N Application to provide intrastate telecommunications services be denied. Staff's recommendation is based on the following:

- Staff determined the management team for Leap Frog is the same management team as the management team for Andiamo Telecom, LLC ("Andiamo") and includes management personnel from Dancris Telecom, LLC ("Dancris").
- Andiamo purchased all tangible and intangible assets, including all long distance customers, of Dancris, excluding cash, and this transaction was completed on February 16, 2004.
- Neither party filed a letter of notification or an application with the Commission for approval of a transfer of assets and customers.
- Mr. Rao, the President and CEO of Andiamo and Dancris, and Mr. Stazzone, the CFO of Andiamo and Dancris, recognize it was their responsibility to ensure the appropriate filings were made when required.
- Andiamo did not file an application to provide resold long distance and resold local exchange services until July 1, 2004, approximately four and a half months after the acquisition of Dancris' customers and assets.
- Andiamo was providing long distance service to former Dancris long distance customers without authority to do so from February 16, 2004 until July 1, 2004.
- Andiamo cancelled its performance bond on October 11, 2008, effective December 14, 2008, because it did not have any customers. However, Andiamo had at least 895 customers on August 1, 2010 when it transferred those customers to Leap Frog.
- Andiamo cancelled its performance bond but not its CC&N and continued to operate in Arizona for another two years. Andiamo was not in compliance with Decision No. 67948, which required a minimum bond amount of \$25,000 to cover any advances, deposits and/or prepayments for resold local exchange services.

- Leap Frog stated that Andiamo was no longer in business and 895 of Andiamo's customers were transferred to Leap Frog on August 1, 2010.
- The Applicant indicated that none of its officers, directors, partners or managers have been or are currently involved in any civil or criminal investigations, nor have judgments been entered in any civil matter, judgments levied by any administrative or regulatory agency, nor been convicted of any criminal acts in the past ten (10) years. Staff's review indicates otherwise.
- Staff found Dancris and Andiamo have had their authority to provide telecommunications services revoked in numerous jurisdictions for failure to file annual reports and/or pay annual regulatory fees as identified in Attachments 1 and 2.
- In addition, Staff found that Dancris had been assessed civil forfeitures by the Public Utilities Commission of Ohio ("PUCO") for charging fees exceeding those approved by the PUCO for the period between August 1, 2002 through January 31, 2004. In the Settlement Agreement, Dancris agreed to a finding that it violated PUCO rules by charging rates in excess of those allowed in Ohio Administrative Code 4901:1-6-23 and agreed to pay the civil forfeiture of \$4,551.68 within thirty (30) days of the PUCO's adoption of the stipulation.
- Further, Staff reviewed an Order<sup>30</sup> issued by United States District Court for the Eastern District of Virginia, Alexandria Division, filed April 28, 2010, in which the Plaintiff, APCC Services, Inc. ("APCC") and the Defendant, Andiamo, had executed a Settlement Agreement and Release ("Settlement") to resolve a complaint APCC filed against Andiamo with the Federal Communications Commission ("FCC"). The informal complaint was filed at the FCC by APCC, which disputed the amount of dial-around compensation<sup>31</sup> that was to be paid by Andiamo for a period from July 1, 2006 to June 30, 2008. The case was a result of Andiamo's failure in meeting the payment schedule agreed upon in the Settlement. The Order entered default judgment in favor of APCC and against Andiamo in the amount of \$118,661.75

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<sup>30</sup> United States District Court for the Eastern District of Virginia, Alexandria Division, APCC Services, Inc., Plaintiff, v. Andiamo Telecom, L.L.C., Defendant, Case No. 1:10cv431 (JCC/TCB), .

<sup>31</sup> Dial-around compensation (DAC) is the process by which Payphone Service Providers (PSP's) receive reimbursement from long distance service providers for toll free calls placed from PSP's payphones.

However, if the Commission disagrees with Staff and grants Leap Frog its requested CC&N, the CC&N should be granted with the following conditions:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant comply with Federal laws, Federal rules and A.A.C. R14-2-1308(A), to make number portability available;
3. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
4. 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;
5. That the Applicant provide all customers with 911 and E911 service, where available, or coordinate with ILECs and emergency service providers to provide 911 and E911 service in accordance with A.A.C. R14-2-120(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002;
6. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
7. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
8. 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 Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance companies offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value information provided was not given substantial weight in this analysis;
9. In the event the Applicant requests to discontinue and/or abandon its service area, it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107;

10. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
11. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
12. Staff recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

In addition, should the Commission grant the Applicant its requested CC&N, the Applicant should 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 conforming tariffs for each service within its CC&N within 30 days from the effective date of a decision in this matter. The tariffs submitted shall coincide with the application and state that the Applicant does collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
  - a. Procure a performance bond or ISDLC in the amount of \$35,000 and shall increase this amount in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances is within 10 percent of the total minimum performance bond or ISDLC amount. This, bond or ISDLC amount should be increased in increments of \$17,500 when the total amount of advances is within \$3,500 of the bond or ISDLC amount;
  - b. File the original performance bond or ISDLC with the Commission's Business Office and 13 copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The performance bond or ISDLC must remain in effect until further order of the Commission;
3. The Applicant shall abide by the Commission's adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications services providers that interconnect into the public switched network shall provide funding for the AUSF. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

Furthermore, should the Commission grant the Applicant its requested CC&N, that approval be conditioned on the following:

1. That Leap Frog will provide local exchange service directly to end-users in

Arizona within three years of the date of the decision for this application.

2. That Leap Frog file for cancellation of its CC&N in the event that it does not provide local exchange service directly to end-users in Arizona within three years of the date of the decision for this application. The filing for CC&N cancellation shall be filed within 39 months from the effective date of the decision for this application.

ATTACHMENT 1  
Docket No. T-20584A-10-0319

Dancris:	Jurisdictions Cancelling/Revoking Authority to Provide Telecommunications Services
State	Case No. / Docket No.
AL	Docket 28919
CA	Resolution T-17228
CO	Docket No. 04C-559T Decision No. R04-1439
FL	Docket No. 050708-TI
GA	Docket No. 33711
ID	Authority to do business in ID Cancelled by Secretary of State 5/6/2005 for failure to file annual report
IL	Case No. 06-0315
KS	Docket No. 07-DTLC-540-SHO
MO	Case No. XD-2006-0040
NV	Docket No. 05-11025
NY	Case No. 09-C-0511
NC	Docket No. P-1235 Sub 1
OR	Docket No. CP-1003 – Order No. 05-081
PA	Docket No. A-311226
WA	Docket No. UT-051260
WI	Letter sent to Company June 26, 2003
WY	Docket No. 74605-2-TI-05 (Record No. 10158)

ATTACHMENT 2  
Docket No. T-20584A-10-0319

Andiamo	Authority to provide service cancelled and revoked in the jurisdictions for failure to file annual reports and/or annual fees and/registration fees	
States	Case#/Docket#	Date of Order/Letter
AR	Docket No. 10-038-U	9/27/2010
CA	Resolution T-17359, adopted 4/19/2012	4/19/2012
CO	Docket No. 11C-774T Decision No. R11-1358	12/16/2011
FL	Docket No. 100250-TI	6/4/2010
GA	Docket No. 33711, Document No. 137609	8/4/2011
HI	Docket No. 2011-0297	1/9/2012
ID	Authority to do business in ID Cancelled by Secretary of State 4/6/2010 for failure to file annual report	4/6/2010
IL	Docket No. 10-0504	9/21/2010
KS	Docket No. 11-ANDC-001-CCS	12/20/2010
KY	Admin. Case No. 2011-0034	1/19/2012
NV	Docket No. 10-11007	6/2/2011
NC	Docket No. P-100, Sub 166	3/14/2011
OH	Case No. 10-05-TP-RPT	11/22/2010
OR	Order No. 10-164	4/26/2010
PA	A-311-377 (Revocation for failure to file 2009 annual report)	12/14/2010
SC	Docket No. 2010-337-C	1/13/2011
WA	Docket No. UT-101620	2/24/2011
WI	Letter sent to Company June 11, 2010	6/11/2010
WY	Docket No. 74623-5-TI-10 (Record No. 12673)	1/11/2011