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MEMORANDUM
Arizona Corporation Commission
DOCKETED

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MR

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AZ CORP COMMISSION
DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: July 1, 2013

RE: **AMENDED** - IN THE MATTER OF THE APPLICATION OF INTELEPEER, INC.
FOR AN ORDER AUTHORIZING THE ENCUMBRANCE OF ITS ASSETS.
(DOCKET NO. T-20695A-13-0141)

Introduction

On May 17, 2013, IntelPeer, Inc. ("IntelPeer" or "Company" or "Applicant") filed an application seeking expedited approval by the Arizona Corporation Commission ("Commission"), pursuant to, Arizona Revised Statute ("A.R.S") § 40-285 and any other applicable statutes or rules, to encumber IntelPeer's Arizona assets, to enter into a term loan arrangement of up to \$20 million and to enter into a revolving credit facility of up to \$15 million. On June 17, 2013 and June 26, 2013, IntelPeer filed an Amendment and a Supplement, respectively, to its Application. The net effect of these filings is to clarify that IntelPeer expects that the borrowing arrangements described in the Application will be entered into by its corporate parent, IntelPeer Holdings, Inc. ("Holdings"), that IntelPeer is a Class A utility and that it requests approval of its Application pursuant to A.R.S. § 40-285, Arizona Administrative Code ("A.A.C.") R14-2-804.B.1 and any other applicable statutes or rules.

On June 24, 2013, Staff filed its original Memorandum and Proposed Order in this docket. This amended Memorandum and Proposed Order replace Staff's June 24, 2013 filing.

The following background and transaction information was provided by the Applicants.

Background of Applicant

IntelPeer is organized under the laws of the State of Delaware and was formed on October 31, 2008, with principal offices located at 2855 Campus Drive, Suite 200, San Mateo, California, 94403. Holdings is the corporate parent of IntelPeer and IntelPeer is wholly owned by Holdings. IntelPeer provides telecommunications services using fully managed, hosted, on-demand peering infrastructure to directly exchange voice traffic over Internet Protocol ("IP") or legacy Time Division Modulation ("TDM") networks between any application and any telephony device. In Arizona, IntelPeer is authorized to provide resold and facilities-based local exchange, resold and facilities-based long distance and switched access telecommunication services pursuant to authority granted by the Commission in Decision No. 73249 in Docket No. T-20695A-09-0387 on June 26, 2012.

Description of The Transactions

Holdings intends to enter into two financing arrangements:

- First, Holdings intends to enter into a term loan arrangement of up to \$20 million (the "Term Loan"). The Term Loan will be used to finance capital expenditures, refinance the Company's existing financing arrangements, and other permissible corporate purposes. The Term Loan is expected to have a maturity of up to 36 months. The interest rate applicable to the Term Loan is expected to be established at closing based on market conditions, but may be up to 12%.
- Second, Holdings intends to enter into a revolving credit facility of up to \$15 million ("Revolver"). The Revolver is expected to have a maturity of 36 months, and have an interest rate equal to the 3-Month LIBOR plus 3.5%.

The financing arrangements discussed above are expected to be secured by liens on IntelPeer's assets. IntelPeer states that participation in the financing arrangements will not result in a change in IntelPeer's management or in its day-to-day operations. The financing arrangements will enable IntelPeer to bring services to new markets and allow more consumers to benefit from its competitive services.

Staff's Analysis

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

IntelPeer is a Class A entity and as such, the Affiliated Interests Rules apply. In this application, A.A.C. R40-2-804.B.1 applies and requires Commission review and approval of transactions between public utilities and affiliates before obtaining a financial interest in any affiliate not regulated by the Commission, or guarantee, or assumption of liabilities of such affiliate. Staff concludes that a pledge of the Applicant's assets would not impair the financial status of the Applicant, not prevent the Applicant from attracting capital at fair and reasonable terms and not impair the ability of the Applicant to provide safe, reasonable and adequate service.

Staff does not believe the proposed transactions will negatively impact the operations of IntelPeer. The Applicant states that the transactions proposed in this Application should be seamless and transparent to customers. The proposed transactions will not result in a change to IntelPeer's tariffed rates or terms and conditions. Following these transactions, the same

personnel who manage IntelPeer's services will continue their roles and there will be no change in the network assets used to provide IntelPeer's services. Additionally, it is important that customer deposits not be encumbered as part of the proposed transactions. In its June 17, 2013 amendment to Application, IntelPeer states that customer deposits will not be encumbered as part of the proposed transactions.

IntelPeer published a Legal Notice in the Arizona Republic newspaper on June 5, 2013. No Party has filed comments or sought intervention in this matter.

Staff's Recommendations

Staff recommends approval of the application with the following conditions:

- a. That the Company provide to the Utilities Division Director a copy of the loan documents executed pursuant to the authorizations granted herein within 30 days of the execution of the loan, and also file a letter in Docket Control verifying that such documents have been provided to the Utilities Division.
- b. That all IntelPeer customer deposits and prepayments be excluded from the proposed transaction.

Steven M. Olea
Director
Utilities Division

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ORIGINATOR: Lori Morrison

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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE APPLICATION)
OF INTELEPEER, INC. FOR AN ORDER)
AUTHORIZING THE ENCUMBRANCE OF)
ITS ASSETS.)

DOCKET NO. T-20695A-13-0141
DECISION NO. _____
ORDER

Open Meeting
July 17 and 18, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 17, 2013, IntelPeer, Inc. ("IntelPeer" or "Company" or "Applicant") filed an application seeking expedited approval by the Arizona Corporation Commission ("Commission"), pursuant to Arizona Revised Statute ("A.R.S") A.R.S. § 40-285 and any other applicable statutes or rules, to encumber IntelPeer's Arizona assets, to enter into a term loan arrangement of up to \$20 million and to enter into a revolving credit facility of up to \$15 million.

2. On June 17, 2013 and June 26, 2013, IntelPeer filed an Amendment and a Supplement, respectively, to its Application. The net effect of these filings is to clarify that IntelPeer expects that the borrowing arrangements described in the Application will be entered into by its corporate parent, IntelPeer Holdings, Inc. ("Holdings"), that IntelPeer is a Class A utility and that it requests approval of its Application pursuant to A.R.S. § 40-285, Arizona Administrative Code ("A.A.C.") R14-2-804.B.1 and any other applicable statutes or rules.

...

1 3. The following background and transaction information was provided by the
2 Applicants.

3 **Background of Applicant**

4 4. IntelePeer, Inc. is organized under the laws of the State of Delaware and was formed
5 on October 31, 2008, with principal offices located at 2855 Campus Drive, Suite 200, San Mateo,
6 CA, 94403. Holdings is the corporate parent of IntelePeer and IntelePeer is wholly owned by
7 Holdings. IntelePeer provides telecommunications services using fully managed, hosted, on-
8 demand peering infrastructure to directly exchange voice traffic over Internet Protocol ("IP") or
9 legacy Time Division Modulation ("TDM") networks between any application and any telephony
10 device. In Arizona, IntelePeer is authorized to provide resold and facilities-based local exchange,
11 resold and facilities-based long distance and switched access telecommunications services
12 pursuant to authority granted by the Commission in Decision No. 73249 in Docket No. T-20695A-
13 09-0387 on June 26, 2012.

14 **Description of the Transactions**

15 5. Holdings intends to enter into two financing arrangements:

- 16 • First, Holdings intends to enter into a term loan arrangement of up to \$20 million
17 (the "Term Loan"). The Term Loan will be used to finance capital expenditures,
18 refinance the Company's existing financing arrangements, and other permissible
19 corporate purposes. The Term Loan is expected to have a maturity of up to 36
20 months. The interest rate applicable to the Term Loan is expected to be established
21 at closing based on market conditions, but may be up to 12%.
- 22 • Second, Holdings intends to enter into a revolving credit facility of up to \$15
23 million ("Revolver"). The Revolver is expected to have a maturity of 36 months,
24 and have an interest rate equal to the 3-Month LIBOR plus 3.5%.

25 6. The financing arrangements discussed above are expected to be secured by liens on
26 IntelePeer's assets. IntelePeer states that participation in the financing arrangements will not result
27 in a change in IntelePeer's management or in its day-to-day operations. The financing
28 ...

1 arrangements will enable IntelPeer to bring services to new markets and allow more consumers to
2 benefit from its competitive services.

3 **Staff Analysis and Conclusions**

4 7. A.R.S. § 40-285 requires public service corporations to obtain Commission
5 authorization to encumber certain utility assets. The statute serves to protect captive customers
6 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
7 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
8 service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of
9 service to customers since the Applicant provides competitive services that are available from
10 alternative service providers.

11 8. IntelPeer is a Class A entity and as such, the Affiliated Interests Rules apply. In this
12 application, A.A.C. R40-2-804.B.1 applies and requires Commission review and approval of
13 transactions between public utilities and affiliates before obtaining a financial interest in any
14 affiliate not regulated by the Commission, or guarantee, or assumption of liabilities of such
15 affiliate. Staff concludes that a pledge of the Applicant's assets would not impair the financial
16 status of the Applicant, not prevent the Applicant from attracting capital at fair and reasonable
17 terms and not impair the ability of the Applicant to provide safe, reasonable and adequate service.

18 9. Staff does not believe the proposed transactions will negatively impact the operations
19 of IntelPeer. The Applicant states that the transactions proposed in this Application should be
20 seamless and transparent to customers. The proposed transactions will not result in a change to
21 IntelPeer's tariffed rates or terms and conditions. Following these transactions, the same
22 personnel who manage IntelPeer's services will continue their roles and there will be no change
23 in the network assets used to provide IntelPeer's services. Additionally, it is important that
24 customer deposits not be encumbered as part of the proposed transactions. In its June 17, 2013
25 amendment to Application, IntelPeer states that customer deposits will not be encumbered as part
26 of the proposed transactions.

27 10. IntelPeer published a Legal Notice in the Arizona Republic newspaper on June 5,
28 2013. No Party has filed comments or sought intervention in this matter.

1 **Staff Recommendations**

2 11. Staff recommends approval of the application with the following conditions:

3 a. That the Company provide to the Utilities Division Director a copy of the loan
4 documents executed pursuant to the authorizations granted herein within 30
5 days of the execution of the loan, and also file a letter in Docket Control
6 verifying that such documents have been provided to the Utilities Division.

7 b. That all IntelPeer customer deposits and prepayments be excluded from the
8 proposed transactions.

9 CONCLUSIONS OF LAW

10 1. IntelPeer, Inc. is a public service corporation within the meaning of Article XV of
11 the Arizona Constitution.

12 2. The Commission has jurisdiction over IntelPeer, Inc. and the subject matter in this
13 filing.

14 3. The Commission, having reviewed the filing and Staff's Memorandum dated July
15 1, 2013, concludes that it is in the public interest to grant approval for the Applicant to encumber
16 assets as proposed and discussed herein.

17 ORDER

18 IT IS THEREFORE ORDERED that the application of IntelPeer, Inc. seeking approval to
19 encumber IntelPeer, Inc.'s assets, be and hereby is approved, as discussed herein.

20 IT IS FURTHER ORDERED that IntelPeer, Inc. is authorized to engage in any
21 transactions and to execute any documents necessary to effectuate the authorizations granted.

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SERVICE LIST FOR:
DOCKET NO. T-20695A-13-0141

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