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MEMORANDUM

TO: Docket Control

FROM: Stave M. Olea
Director
Utilities Division

DATE: August 9, 2013

RE: IN THE MATTER OF THE APPLICATION OF UNITE PRIVATE NETWORKS, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20534A-07-0346)

Attached is the Staff Report for the above referenced Application. The Applicant is applying for approval to provide the following services:

- Facilities-Based Private Line Services

Staff is recommending approval of the amended Application with conditions.

SMO:JFB:WS:red

Originator: John F. Bostwick and Wilfred Shand

Attachment: Original and Thirteen Copies

Arizona Corporation Commission
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Mr. Lance J.M. Steinhart
1725 Wind Concourse, Suite 150
Alpharetta, Georgia 30005

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

UNITE PRIVATE NETWORKS, LLC
DOCKET NO. T-20534A-07-0346

IN THE MATTER OF THE APPLICATION OF UNITE PRIVATE NETWORKS, LLC
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE TELECOMMUNICATIONS SERVICES

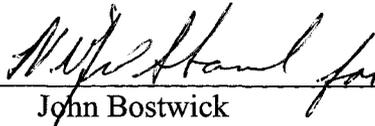
AUGUST 9, 2013

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STAFF ACKNOWLEDGMENT

The Staff Report for Unite Private Networks, LLC, Docket No. T-20534A-07-0346 was the responsibility of the Staff member listed below. John Bostwick and Wilfred Shand were responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide facilities-based interexchange and local exchange intrastate telecommunications services; and petition for a determination that the proposed services should be classified as competitive.



John Bostwick
Administrative Service Officer II



Wilfred Shand
Public Utilities Analyst Manager

1. INTRODUCTION

On June 1, 2007, Unite Private Networks, LLC. (“UPN” or “Applicant”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based interexchange and local exchange intrastate telecommunications services in Arizona. The Applicant petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. UPN amended its Application to limit its Application to a request for a CC&N to provide Facilities-Based Private Line Services.

Staff sent its First Set of Data Requests to Kevin Anderson, Chairman and Chief Executive Officer of UPN, on June 29, 2007. Staff resent its First Set of Data Requests to Mr. Anderson on July 16, 2007. Staff received responses to its First Set of Data Requests from Mr. Anderson on August 13, 2007.

On August 17, 2009, the Hearing Division of the Commission issued a Procedural Order requesting Staff to provide an update regarding the Application. The Procedural Order also directed Staff to include any appropriate recommendations. On September 30, 2009, Staff provided an update as required by the Procedural Order and stated that Mr. Anderson was still interested in pursuing the Applicant’s application.

Staff sent its Second Set of Data Requests to Mr. Anderson on September 26, 2011. On October 11, 2011, Lance J.M. Steinhart, Esq. of Lance J.M. Steinhart, P.C. filed a Notice of Appearance of Counsel to represent the Applicant. On November 28, 2011, Staff received responses to its Second Set of Data Requests from the Applicant’s legal counsel. Mr. Steinhart filed with the Commission the Applicant’s revised tariff and the Applicant’s updated Application, along with a copy of the Applicant’s updated financial statements. On March 27 and 28 of 2012, Mr. Steinhart filed responses to Staff’s Third Set of Data Requests.

Staff’s review of this Application addresses the overall fitness of the Applicant to obtain a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

1.1 Technical Capability to Provide the Requested Services

In response to Staff Data Request JFB2-1, UPN submitted an update of its Application. In its updated Application, UPN stated that it wants to provide facilities-based private line services to end users at the DS3 level or above. UPN also indicated that it currently holds authority to provide interexchange, local and/or data services in thirteen (13) states and has not been denied certification in any state. The Applicant currently provides telecommunications services in thirteen (13) states including Arizona.

In its Response to Staff Data Request JFB2-6, UPN furnished a Management Overview that identified each officer and the officer’s work experience. In addition, UPN provided a copy of each officer’s resume. These eight UPN officers have a combined total of 174 years of work

experience in the telecommunications industry. Based on this information, Staff has determined that UPN has sufficient technical capabilities to provide requested telecommunications services in Arizona.

1.2 Financial Capability to Prove the Requested Services

In its Response to Staff Data Request JFB2-9, UPN submitted a confidential copy of "UPN Intermediate Holdings LLC Consolidated Financial Statements and Auditors' Report" for twelve months ending December 31, 2010. Notes related to the consolidated financial statements identified in the above mentioned Auditors' Report indicate that UPN has been acquired since it filed its original Application in this docket. Support of the acquisition of UPN is listed in Note 1 and Note 3 of the Auditors' Report.¹ Excerpts from Note 1 – Description of Business and Note 3 – Business Combination are as follows:

Note 1 – Description of Business

UPN Intermediate Holdings LLC ("Holdings") operates through its wholly owned subsidiaries Unite Private Networks, L.L.C. ("UPN") and Unite Private Networks-Illinois, L.L.C. ("UNP-IL") (collectively, the "Company"). These subsidiaries provide high-bandwidth, fiber communications networks and related services to K-12 school districts, government organizations, carriers, data centers, health-care organizations, and enterprise business customers. Service offerings include dark and lit fiber, private line, metro-optical Ethernet, Internet access, and other customized solutions. Holdings, is a wholly-owned subsidiary of UPN Holdings LLC (the "LLC")....

Note 3– Business Combination

On December 10, 2010, Ridgemont Equity Partners ("REP"), an affiliate of Bank of America, acquired 100% of the outstanding members' interests of UPN and UPN-IL. UPN and UPN-IL are now wholly-owned subsidiaries of Holdings and Holdings is a wholly-owned subsidiary of the LLC.

Updated financial statements were provided to Staff for the twelve months ending December 31, 2012. The financial statements list assets of \$148.3 million; equity of \$47.9 million; and a net loss of \$124,700.

According to its Response to Staff's Data Request JFB2-10, UPN will provide data-only communications services over high bandwidth fiber optic networks to schools, governments, carriers and large enterprise customers under long-term contracts.

The Applicant stated in its updated Application that it will not collect advances, deposits

¹ On March, 28, 2012, Staff obtained permission from the Applicant to include in this Staff Report excerpts of Note 1 and Note 3 that appeared in the Auditors' Report.

and/or prepayments.

The Applicant is requesting a CC&N to provide facilities-based private line services to end users at the DS3 level or above. End users of private line services at the DS3 level or above are very large customers. As such, these customers have considerable influence and are able to negotiate favorable terms and conditions of their contractual telecommunications services agreements with the carrier.

If the Applicant desires to discontinue or abandon local or interexchange telecommunications services, it must file an application with the Commission pursuant to the Arizona Administrative Code ("A.A.C.") R14-2-1107. In addition, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service.

1.3 Established 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 ("CLECs") and interexchange carriers ("IXCs") 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 initial rate (actual rate to be charged) and a maximum rate must be listed for each competitive service offered. The rate for service may not be less than the Applicant's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

In its original filing of the Application, UPN did not provide rates and charges for each service offered, and no maximum rates and prices were listed in its tariff. Staff requested that UPN furnish the rates, charges and prices for services in its tariff. The Applicant did submit proposed tariff pages reflecting the rates, charges and prices that it will be charging for its private line telecommunications services as requested in Staff's Data Request JFB2-3.

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 \$185,000. 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 rate base information provided should not be given substantial weight in this analysis.

Because UPN will provide private line services to transmit data only for Arizona customers under long term contracts, Staff recommends that a waiver of R14-2-1115.C.3

pursuant to R14-2-1115.I be approved on the condition that UPN revise its tariffs within 90 days following a decision in this matter to indicate that Individual Case Basis (“ICBs”) will be provided to the Commission within five days of a written request. UPN has stated in its revised Arizona Tariff No. 1, Original Sheet 14, Item 8, that ICB arrangements or contracts will be filed with the Utilities Division of the Commission. Based on the telecommunications services the Applicant desires to provide in Arizona, Staff believes the Applicant’s initial rates are just and reasonable.

2. REVIEW OF COMPLAINT INFORMATION

In its updated Application, UPN stated that it has not had an application for service denied nor its authority to provide service revoked in any state. Staff has found no evidence of denied applications nor revoked authority to provide service in any jurisdiction involving UPN. UPN also stated in its Application that neither it nor any of its officers, directors, partners, or managers has been involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission of law enforcement agency. Staff’s research did not reveal any issues related to UPN’s officers, directors, partners, or managers.

The Applicant certified that neither it nor any of its officers, directors, partners, or managers has been involved in any civil or criminal investigations, or formal or informal complaints. The Applicant also indicated that none of its officers, directors, partners, or managers has been convicted of any criminal acts in the past ten (10) years. Staff has found no evidence of any civil or criminal investigations, civil or administrative judgments, or criminal convictions in the last ten (10) years involving UPN or any of its officers, directors, partners, or managers.

On February 24, 2009, the Federal Communications Commission’s (“FCC”) Enforcement Bureau issued UPN a Notice of Liability for Forfeiture (“Omnibus NAL”) proposing a forfeiture in the amount of twenty thousand dollars (\$20,000) based on UPN’s apparent violation of section 222 of the Act, section 64.2009(e) of the FCC’s rules, and the FCC’s EPIC Customer Proprietary Network Information (“CPNI”) Order, by failing to timely file an annual CPNI compliance certification with the FCC on or before March 1, 2008. Based upon a review of the record and additional information provided by UPN, the FCC, in its Order released December 17, 2010, agreed that UPN was not required to file a CPNI certification for calendar year 2007, and concluded that no forfeiture should be imposed.

UPN stated in its updated Application that it currently provides telecommunications services in thirteen (13) states. Of the twelve (12) state Public Utilities Commissions (“PUCs”) contacted by Staff, nine (9) PUCs responded and confirmed that UPN is certificated, registered, or listed to provide the requested telecommunications services for their respective state. Each of the nine (9) state PUCs reported that there have been no consumer complaints filed against UPN.

The Consumer Services Section of the Utilities Division reports that there have been no complaints or opinions filed against UPN from January 1, 2010 through May 29, 2013. In

addition, Consumer Services Section states that UPN is in good standing with the Corporations Division of the Commission.

As mentioned in the Technical Capability to Provide the Requested Services Section of this Staff Report, UPN is currently providing data-only private network services to the Page Arizona School District. Because this network does not connect to the public switched telecommunications network, UPN is not required to have a CC&N to provide this service. Staff believes that UPN's Application for authority to provide facilities-based private line telecommunications services to end users of DS3 level or above should be approved by the Commission.

3. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

3.1 Private Line Services

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides the means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

3.2 Description of Requested Services

UPN proposes to provide private line service. UPN provides facilities-based data telecommunications services over a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

3.3 A Description of the General Economic Conditions That Exist That Make the Relevant Market for the Service Competitive

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, the incumbent local exchange carriers ("ILECs") and a number of competitive local exchange carriers ("CLECs") have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with those companies in order to obtain customers.

3.4 The Number of Alternative Providers of the Service

IXCs are providers of private line service in the State of Arizona. ILECs and CLECs also provide private line service.

3.5 *The Estimated Market Share Held by Each Alternative Provider of the Service*

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

3.6 *The Name and Addresses of Any Alternative Providers of the Services That Are Also Affiliates of the Telecommunications Applicant, as Defined in A.A.C. R14-2-801*

None.

3.7 *The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms and Conditions*

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in its respective service territories. Similarly, many of the CLECs offer substantially similar services.

4. 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.

4.1 *Recommendations on the Application for a CC&N*

Staff recommends that the Applicant's Application for a CC&N to provide facilities-based private line telecommunication services, as listed in this Staff Report, be granted. Staff further recommends:

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 abide by the quality of service standards that were approved by the Commission for Qwest dba CenturyLink in Docket T-01051B-93-0183;
3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address, or telephone number;
4. That the Applicant cooperates with Commission investigations including, but not limited to, customer complaints;
5. That 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 \$185,000. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. 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; and

6. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services. The pricing of competitive telecommunications services shall be in accordance with A.A.C. R14-2-1109.

Staff further recommends that the Applicant be ordered to comply with the following conditions. 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 pages for each service within its CC&N within 365 days from the effective date of a Decision in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant may not collect advances, deposits, and/or prepayments from its customers.
2. 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 telephone 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).

4.2 Recommendations on the Applicant's Petition to Have 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.