

OPEN MEETING ITEM



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
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ORIGINAL



ARIZONA CORPORATION COMMISSION

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DATE: AUGUST 23, 2013 AUG 23 2013

DOCKET NO.: T-20697A-12-0325

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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:

TRANSTELCO, INC.
(CC&N/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:

SEPTEMBER 3, 2013

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:

SEPTEMBER 10, 2013 AND SEPTEMBER 11, 2013

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.


JODI JERICH
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 TRANSTELCO, INC. FOR A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO PROVIDE
11 FACILITIES-BASED LOCAL EXCHANGE
12 TELECOMMUNICATION SERVICES.

DOCKET NO. T-20697A-12-0325

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: July 11, 2013

11 PLACE OF HEARING: Phoenix, AZ

12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

13 APPEARANCES: Mr. Matthew G. Bingham, LEWIS AND ROCA, L.L.P.,
on behalf of Applicant; and

14 Mr. Scott Hesla, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
Corporation Commission

16 **BY THE COMMISSION:**

17 On July 16, 2012, Transtelco, Inc. ("Transtelco" or the "Company") filed with the Arizona
18 Corporation Commission ("Commission") an application for approval of a Certificate of
19 Convenience and Necessity ("CC&N") to provide facilities-based local exchange telecommunication
20 services in the State of Arizona. Transtelco's application also requests a determination that its
21 proposed services are competitive in Arizona.

22 On January 13, 2013, the Company filed additional information related to its application.

23 On January 22, 2013, the Company filed its proposed tariff.

24 On February 22, 2013, the Commission's Utilities Division ("Staff") filed a Staff Report
25 recommending approval of Transtelco's application, subject to certain conditions.

26 On March 5, 2013, by Procedural Order, a hearing was scheduled to begin May 6, 2013, and
27 other procedural deadlines were established.

1 On April 22, 2013, Matthew G. Bingham of Lewis and Roca, L.L.P. filed a Notice of
2 Appearance on behalf of the Company.

3 On April 24, 2013, Transtelco filed a request to extend the deadline for filing its affidavit of
4 publication and to reschedule the hearing date, due to the Company's missed publication deadline.

5 On April 26, 2013, Transtelco filed a Response to the Staff Report stating that Transtelco had
6 no specific disagreements with or comments on the Staff Report.

7 On April 29, 2013, by Procedural Order, Transtelco's request for an extension of time to
8 publish notice was granted, the hearing was rescheduled to July 11, 2013, and the timeclock in this
9 matter was suspended.

10 On May 8, 2013, Transtelco filed a Notice of Filing Affidavit of Publication stating that
11 public notice of the application and hearing date had been published in the *Arizona Republic*, a
12 newspaper of general circulation in the State of Arizona.

13 On July 11, 2013, a full public hearing was held as scheduled before a duly authorized
14 Administrative Law Judge ("ALJ") of the Commission. Transtelco and Staff appeared through
15 counsel and presented testimony and evidence. No members of the public appeared to provide public
16 comment. At the conclusion of the hearing, the matter was taken under advisement pending
17 submission of a recommended Opinion and Order to the Commission.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

- 22 1. Transtelco is a foreign S corporation organized under the laws of Texas and authorized
23 to transact business in Arizona.¹
- 24 2. Transtelco's principal offices are located in El Paso, Texas.²
- 25 3. Transtelco is a privately held company that is wholly owned by Transtelco Holdings,
26 Inc.³

27 _____
28 ¹ Exhibit A-1 at Attachment A.

² Exhibit A-1 at Attachment A.

1 4. In Decision No. 71633 (April 14, 2010), the Commission granted Transtelco a CC&N
2 to provide resold long distance and resold local exchange services in Arizona.⁴

3 5. On July 16, 2012, Transtelco filed an application with the Commission requesting
4 authority for a CC&N to provide facilities-based local exchange telecommunication services in
5 Arizona.

6 6. Notice of the application was given in accordance with the law.⁵

7 7. Staff recommends approval of Transtelco's application for a CC&N to provide
8 facilities-based local exchange telecommunication services in Arizona subject to the following
9 conditions:

- 10
- 11 (a) Transtelco comply with all Commission Rules, Orders and other requirements
 relevant to the provision of intrastate telecommunications services;
- 12 (b) Transtelco abide by the quality of service standards that were approved by the
13 Commission for Qwest in Docket No. T-01051B-93-0183;
- 14 (c) Transtelco be prohibited from barring access to alternative local exchange
15 service providers who wish to serve areas where Transtelco is the only
 provider of local exchange service facilities;
- 16 (d) Transtelco be required to notify the Commission immediately upon changes to
 Transtelco's name, address or telephone number;
- 17 (e) Transtelco cooperate with Commission investigations including, but not
18 limited to customer complaints;
- 19 (f) The rates proposed by this filing are for competitive services. In general, rates
20 for all competitive services are not set according to rate of return regulation.
21 Staff obtained information from the Company and has determined that its fair
22 value rate base is zero. Additionally, Transtelco provided a revenue projection
23 of \$182,000 for the first twelve months of operation. Staff has reviewed the
24 rates to be charged by Transtelco and believes they are just and reasonable as
 they are comparable to other providers offering service in Arizona and
 comparable to the rates Transtelco charges in other jurisdictions. The rate to be
 ultimately charged by the Company will be heavily influenced by the market.
 Therefore, while Staff considered the fair value rate base information
 submitted by the Company, the fair value information provided was not given
 substantial weight in this analysis;
- 25 (g) Transtelco offer Caller ID with the capability to toggle between blocking and
26 unblocking the transmission of the telephone number at no charge;

27 ³ Exhibit A-1 at Attachment A.

28 ⁴ As of February 22, 2013, Transtelco had not initiated its authorized services in Arizona.

⁵ Affidavit of publication docketed on May 8, 2013.

- 1 (h) Transtelco offer Last Call Return service that will not return calls to telephone
2 numbers that have the privacy indicator activated; and
- 3 (i) The Commission authorize Transtelco to discount its rates and service charges
4 to the marginal cost of providing the services.

5 8. Staff further recommends that Transtelco comply with the following items and if
6 Transtelco fails to do so, that Transtelco's CC&N be considered null and void after due process.

- 7 a. Transtelco shall docket conforming tariffs pages for each service within its
8 CC&N within 365 days from the date of an Order in this matter or 30 days
9 prior to providing service, whichever comes first.
- 10 b. Transtelco shall:
- 11 (i) Procure either a performance bond or irrevocable sight draft letter of
12 credit ("ISDLC") equal to \$100,000. The minimum performance bond
13 or ISDLC amount of \$100,000 should be increased if at any time it
14 would be insufficient to cover advances, deposits, and/or prepayments
15 collected from Transtelco's customers. The performance bond or
16 ISDLC amount should be increased in increments of \$50,000. This
17 increase should occur when the total amount of the advances, deposits,
18 and prepayments is within \$10,000 of the performance bond or ISDLC
19 amount;
- 20 (ii) Docket proof of the original performance bond or ISDLC with the
21 Commission's Business Office and copies of the performance bond or
22 ISDLC with Docket Control, as a compliance item in this docket,
23 within 30 days of the effective date of a Decision in this matter. The
24 performance bond or ISDLC must remain in effect until further order of
25 the Commission. The Commission may draw on the performance bond
26 or ISDLC, on behalf of, and for the sole benefit of the Company's
27 customers, if the Commission finds, in its discretion, that the Company
28 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;
- (iii) Transtelco notify the Commission through a compliance filing within
30 days of the commencement of service to end-user customers; and
- c. Transtelco shall abide by the Commission adopted rules that address Universal
Service in Arizona. A.A.C. R14-2-1204(A) indicates that all
telecommunication service providers that interconnect into the public switched
network shall provide funding for the Arizona Universal Service Fund
("AUSF").

1 9. Additionally, Staff recommends that Transtelco's application be conditionally
2 approved and that if Transtelco fails to meet the conditions set forth below Transtelco's CC&N
3 should be considered null and void after due process:

- 4
- 5 a. That Transtelco provide local exchange service directly to end-users in
Arizona within three years of the date of the Decision in this matter; and
- 6
- 7 b. That Transtelco file for cancellation of its CC&N in the event it does not
provide local exchange service directly to end-users in Arizona within three
8 years of the date of a Decision in this matter. The filing for CC&N cancellation
shall be filed within 39 months of the date of a Decision in this matter.

9 Technical Capability

10 10. In Decision No. 71633 (April 14, 2010), the Commission granted Transtelco
11 authorization to provide resold local exchange and resold long distance telecommunication services
12 in Arizona. As of the date of the Staff Report, Transtelco has not begun providing resold
13 telecommunication services in Arizona, but intends to do so by utilizing the underlying carrier
14 services of CenturyLink, an incumbent local exchange carrier ("ILEC") in Arizona.⁶

15 11. In addition to Arizona, Transtelco is also authorized to provide local exchange
16 telecommunication services in New Mexico and Texas.⁷

17 12. At the time of the Staff Report, Transtelco was providing local exchange services only
18 in Texas.⁸

19 13. Transtelco states that its top executives have a combined total of over 25 years in the
20 telecommunications industry.⁹

21 14. According to Staff, Transtelco's main business enterprise is serving carriers and
22 business customers with wholesale products.¹⁰

23 15. Based on the above factors, Staff believes Transtelco has the technical capabilities to
24 provide its proposed services in Arizona.

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26 _____
⁶ Interconnection Agreement filed in docket No. T-020697A-12-0029.

27 ⁷ Exhibit A-1 at Attachment G.

28 ⁸ Exhibit S-1 at 2.

⁹ Decision No. 71633 at 3.

¹⁰ Exhibit S-1 at 1.

1 **Financial Capabilities**

2 16. Transtelco provided Staff with audited financial statements for the 12 months ending
3 December 31, 2011, showing Total Assets of \$8,367,042; Shareholder Equity of \$2,449,856; and a
4 Net Income of negative \$98,784.¹¹ Transtelco also provided audited financial statements for the
5 years 2009 and 2010.¹²

6 17. Transtelco's proposed tariffs state that the Company will not require deposits from its
7 customers.¹³ The Commission's policy is that facilities-based telecommunication service providers
8 procure a performance bond or ISDLC in the amount of \$100,000. In Decision No. 71633, Transtelco
9 was required to procure a performance bond or ISDLC in the amount of \$25,000 for its resold local
10 exchange services.¹⁴ Therefore, Staff recommends that Transtelco's performance bond or ISDLC
11 currently on file with the Commission, be increased by \$100,000 for a total amount of \$125,000 to
12 cover its authorized services.¹⁵

13 **Rates and Charges**

14 18. Staff states that Transtelco will be a new entrant into the market and will face
15 competition from other incumbent local exchange carriers ("ILECs"), competitive local exchange
16 carriers ("CLECs"), and interexchange carriers in Arizona.¹⁶

17 19. Staff states that in general, rates for competitive services are not set according to a rate
18 of return regulation, but are heavily influenced by the market.¹⁷ Transtelco states that its projected net
19 book value at the end of the first twelve months of operation will be zero and that its projected
20 revenues will be \$182,000.¹⁸ Staff reviewed the proposed rates submitted by the Company and Staff
21 believes that they are comparable to the rates charged by other CLECs and local incumbent carries in
22 Arizona.¹⁹ However, Staff believes that Transtelco's fair value rate base ("FVRB") is too small to be
23 useful in a fair value analysis, would not be useful in setting rates, and should not be given substantial

24 ¹¹ Exhibit S-1 at 2.

25 ¹² Exhibit S-1 at 2.

26 ¹³ Exhibit A-2 at Section 2.3.1.

27 ¹⁴ Exhibit S-1 at 2.

28 ¹⁵ Exhibit S-1 at 2.

¹⁶ Exhibit S-1 at 3.

¹⁷ Exhibit S-1 at 3.

¹⁸ Exhibit A-1 at B-4.

¹⁹ Exhibit S-1 at 3.

1 weight in this analysis.²⁰ Staff states that while it considered the FVRB information submitted by the
 2 Company, Staff did not give it substantial weight in its analysis.²¹

3 **Local Exchange Carrier Specific Issues**

4 20. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Transtelco will make
 5 number portability available to facilitate the ability of customers to switch between authorized local
 6 carriers within a given wire center without changing their telephone number and without impairment
 7 to quality, functionality, reliability or convenience of use.

8 21. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that
 9 interconnect to the public switched network shall provide funding for the AUSF. Transtelco shall
 10 make payments to the AUSF described under A.A.C. R14-2-1204(B).

11 22. In Commission Decision No. 59421 (December 20, 1995), the Commission approved
 12 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
 13 service. In this matter, Staff believes Transtelco does not have a similar history of service quality
 14 problems, and therefore the penalties in that decision should not apply.

15 23. In the areas where the Company is the only local exchange service provider, Staff
 16 recommends that Transtelco be prohibited from barring access to alternative local exchange service
 17 providers who wish to serve the area.

18 24. Transtelco will provide all customers with 911 and E911 service where available, or
 19 will coordinate with ILECs, and emergency service providers to facilitate the service.

20 25. Pursuant to prior Commission Decisions, Transtelco may offer customer local area
 21 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
 22 unblock each individual call at no additional cost.

23 26. Transtelco must offer Last Call Return service, which will not allow the return of calls
 24 to the telephone numbers that have the privacy indicator activated.

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28 ²⁰ Exhibit S-1 at 3.

²¹ Exhibit S-1 at 3.

1 **Complaint Information**

2 27. Transtelco is in good standing with the Commission's Corporations Division.²²

3 28. Transtelco's application states that "neither applicant, nor any of its officers, directors,
4 partners, or managers are or have been involved in any formal, or informal complaint proceedings
5 before any federal or state regulatory commission, administrative agency or law enforcement agency
6 since the inception of the company."²³

7 29. The Commission's Consumer Services Section reports that Transtelco has no
8 complaint history in Arizona.²⁴

9 30. Staff states that its search of the Federal Communications Commission's website
10 confirmed that no complaints had been filed against Transtelco.²⁵

11 31. Transtelco's application states that it has never had an application for service denied;
12 but that the California Public Utility Commission ("CPUC") revoked Transtelco's authority to
13 provide telecommunication services in that State, due to Transtelco's failure to file certain surcharge
14 reports.²⁶

15 32. Staff confirmed that on March 2, 2010, the CPUC revoked Transtelco's authority
16 along with 106 other carriers, who defaulted on at least one of the following requirements: 1)
17 reporting and remittance of User Fees; 2) reporting and remittance of surcharges; and 3) submission
18 of a performance bond.²⁷ Staff states that the CPUC found that Transtelco failed to comply with
19 requirements 1 and 2.²⁸

20 33. Staff also reported that Transtelco failed to file Annual Reports with the Commission
21 for the years 2010 and 2011, but that Transtelco subsequently filed the Annual Reports on October 1,
22 2012.²⁹

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25 ²² Exhibit A-1 at Attachment A.

26 ²³ Exhibit A-1 at A-12.

27 ²⁴ Exhibit S-1 at 6.

28 ²⁵ Exhibit S-1 at 6.

²⁶ Exhibit A-1 at A-18.

²⁷ Exhibit S-1 at 5.

²⁸ Exhibit S-1 at 5.

²⁹ Exhibit S-1 at 5.

1 34. Staff's review of Transtelco's application, also showed that in the State of New
2 Mexico, Transtelco failed to file its latest Carrier and Utility Fee Report and its CLEC Annual
3 Report.³⁰

4 35. According to Staff, the Company believes its compliance issues were attributable to its
5 lack of experience with regulatory requirements; however, Staff states the Company has revised its
6 regulatory organization to ensure future compliance and that the Company anticipates applying for
7 reinstatement in California.³¹

8 36. At the hearing, Transtelco's witness testified that the Company has hired a technology
9 management services company and a compliance company to help Transtelco to automate its tracking
10 system to collect taxes and to report them properly.³²

11 37. Regarding its California revocation, Transtelco's witness stated that the Company is
12 not currently pursuing reinstatement because Transtelco is not selling any voice services in California
13 at this time and Transtelco needs time to evaluate what type of license it will need in the future in that
14 state.³³ The witness also stated that the Company's failure to file the CPUC reports stemmed from
15 Transtelco's belief that it did not need to file the reports because the Company was not selling any
16 products during that timeframe.³⁴

17 38. Staff's witness stated that Transtelco's changes should help the Company to maintain
18 compliance.³⁵

19 **Competitive Analysis**

20 39. Transtelco is requesting that its proposed telecommunication services be classified as
21 competitive in Arizona.

22 40. Staff believes that Transtelco's proposed services should be classified as competitive
23 because the Company will have to compete with other CLECs and ILECs to gain customers; there are
24 alternative providers offering Transtelco's proposed services; and that Transtelco will have no ability
25

26 ³⁰ Exhibit S-1 at 5.

³¹ Exhibit S-1 at 5-6.

³² Tr. at 12, lines 5-12.

³³ Tr. at 13 lines 3-8.

³⁴ Tr. at 13, lines 9-14.

³⁵ Tr. at 18-19

1 to adversely affect the local exchange service market because several ILECs provide the same
2 services.³⁶

3 41. Given the above factors, Staff concludes that Transtelco's proposed services should be
4 classified as competitive in Arizona.³⁷

5 **Resolution**

6 42. Transtelco has a history of non-compliance in a number of States, including Arizona.
7 Transtelco's witness testified, and the Company has reported to Staff, that it has taken steps to correct
8 its compliance issues. However, Transtelco should be on notice that this Commission expects
9 Transtelco to maintain compliance with all federal, state, and administrative rules and procedures.
10 Therefore, we find that Transtelco, subject to Staff's conditions as outlined herein, is a fit and proper
11 entity to provide its proposed services in Arizona, and that granting Transtelco authority to provide
12 its proposed services, as described in its application, is in the public interest.

13 43. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

14 **CONCLUSIONS OF LAW**

15 1. Transtelco is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Transtelco and the subject matter of the
18 application.

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

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

22 5. Subject to the Staff conditions described herein, it is in the public interest to grant
23 Transtelco authority to provide the facilities-based local exchange telecommunication services as set
24 forth in the application.

25 6. Subject to the Staff conditions described herein, Transtelco is a fit and proper entity to
26 receive a CC&N authorizing it to provide facilities-based local exchange telecommunication services

27

28 ³⁶ Exhibit S-1 at 6-7.

³⁷ Exhibit S-1 at 10.

1 in Arizona.

2 7. Transtelco's fair value rate base is not useful in determining just and reasonable rates
3 for the competitive services it proposes to provide to Arizona customers.

4 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
5 is just and reasonable and in the public interest for Transtelco to establish rates and charges that are
6 not less than Transtelco's total service long-run incremental costs of providing the competitive
7 services approved herein.

8 9. Staff's recommendations are reasonable and should be adopted.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the application of Transtelco, Inc. for a Certificate of
11 Convenience and Necessity to provide facilities-based local exchange telecommunication services in
12 Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings
13 of Fact Nos. 7, 8, and 9.

14 IT IS FURTHER ORDERED that if Transtelco, Inc. fails to comply with the Staff
15 recommendations described in Findings Fact Nos. 8 and 9, the Certificate of Convenience and
16 Necessity granted herein shall be considered null and void after due process.

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1 IT IS FURTHER ORDERED that Transtelco, Inc., is hereby on notice that it shall maintain
2 compliance with all Federal, State, and Administrative Rules and Procedures. The failure of
3 Transtelco, Inc., to maintain compliance may result in the assessment of fines, penalties or ultimately
4 revocation of the Certificate of Convenience and Necessity approved herein.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN

COMMISSIONER

10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, JODI JERICH, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____ 2013.

18
19 _____
20 JODI JERICH
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

24 YK:dap
25
26
27
28

1 SERVICE LIST FOR: TRANSTELCO, INC.

2 DOCKET NO.: T-20697A-12-0325

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