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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

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

DOCKET NO. T-20697A-12-0325

DECISION NO. 74093

OPINION AND ORDER

DATE OF HEARING: July 11, 2013
PLACE OF HEARING: Phoenix, AZ
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Matthew G. Bingham, LEWIS AND ROCA, L.L.P., on behalf of Applicant; and Mr. Scott Hesla, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission

BY THE COMMISSION:

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

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

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

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

On March 5, 2013, by Procedural Order, a hearing was scheduled to begin May 6, 2013, and 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 C corporation organized under the laws of Texas and  
23 authorized to transact business in Arizona.<sup>1</sup>
- 24 2. Transtelco's principal offices are located in El Paso, Texas.<sup>2</sup>
- 25 3. Transtelco is a privately held company that is wholly owned by Transtelco Holdings,  
26 Inc.<sup>3</sup>

27  
28 <sup>1</sup> Exhibit A-1 at Attachment A.  
<sup>2</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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 <sup>3</sup> Exhibit A-1 at Attachment A.

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

<sup>5</sup> 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  
6 Arizona within three years of the date of the Decision in this matter; and
- 7           b.           That Transtelco file for cancellation of its CC&N in the event it does not  
8 provide local exchange service directly to end-users in Arizona within three  
9 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.<sup>6</sup>

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

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

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

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

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

25

26 \_\_\_\_\_  
<sup>6</sup> Interconnection Agreement filed in docket No. T-020697A-12-0029.

27 <sup>7</sup> Exhibit A-1 at Attachment G.

28 <sup>8</sup> Exhibit S-1 at 2.

<sup>9</sup> Decision No. 71633 at 3.

<sup>10</sup> 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.<sup>11</sup> Transtelco also provided audited financial statements for the  
5 years 2009 and 2010.<sup>12</sup>

6 17. Transtelco's proposed tariffs state that the Company will not require deposits from its  
7 customers.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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 <sup>11</sup> Exhibit S-1 at 2.

25 <sup>12</sup> Exhibit S-1 at 2.

26 <sup>13</sup> Exhibit A-2 at Section 2.3.1.

27 <sup>14</sup> Exhibit S-1 at 2.

28 <sup>15</sup> Exhibit S-1 at 2.

<sup>16</sup> Exhibit S-1 at 3.

<sup>17</sup> Exhibit S-1 at 3.

<sup>18</sup> Exhibit A-1 at B-4.

<sup>19</sup> Exhibit S-1 at 3.

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

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 <sup>20</sup> Exhibit S-1 at 3.

<sup>21</sup> Exhibit S-1 at 3.

1 **Complaint Information**

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

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."<sup>23</sup>

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

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

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.<sup>26</sup>

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.<sup>27</sup> Staff states that the CPUC found that Transtelco failed to comply with  
19 requirements 1 and 2.<sup>28</sup>

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.<sup>29</sup>

23  
24  
25 <sup>22</sup> Exhibit A-1 at Attachment A.

26 <sup>23</sup> Exhibit A-1 at A-12.

27 <sup>24</sup> Exhibit S-1 at 6.

28 <sup>25</sup> Exhibit S-1 at 6.

<sup>26</sup> Exhibit A-1 at A-18.

<sup>27</sup> Exhibit S-1 at 5.

<sup>28</sup> Exhibit S-1 at 5.

<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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

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 <sup>30</sup> Exhibit S-1 at 5.

27 <sup>31</sup> Exhibit S-1 at 5-6.

28 <sup>32</sup> Tr. at 12, lines 5-12.

<sup>33</sup> Tr. at 13 lines 3-8.

<sup>34</sup> Tr. at 13, lines 9-14.

<sup>35</sup> Tr. at 18-19

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

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

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

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<sup>36</sup> Exhibit S-1 at 6-7.

28 <sup>37</sup> 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.

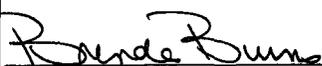
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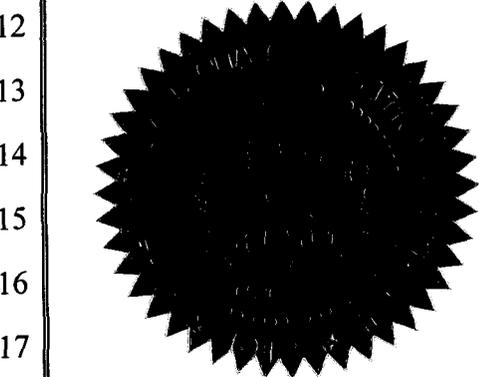
1 IT IS FURTHER ORDERED that Transtelco, Inc., is hereby on notice that it shall maintain  
2 compliance with all Federal, State, and Administrative Rules and Procedures. The failure of  
3 Transtelco, Inc., to maintain compliance may result in the assessment of fines, penalties or ultimately  
4 revocation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

9  
10  COMMISSIONER  COMMISSIONER  COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 23rd day of September 2013.

18   
JODI JERICH  
EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_

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21 DISSENT \_\_\_\_\_

22 YK:dap

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1 SERVICE LIST FOR: TRANSTELCO, INC.

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

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