

OPEN MEETING ITEM



0000151801

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ARIZONA CORPORATION COMMISSION RECEIVED

2014 MAR 11 A 11:12

DATE: MARCH 17, 2014

DOCKET NO.: T-20869A-12-0499

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

ORIGINAL

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:

CONTERRA ULTRA BROADBAND, LLC
(CC&N)

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:

MARCH 26, 2014

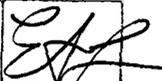
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 8, 2014 and APRIL 9, 2014

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.

Arizona Corporation Commission
DOCKETED

MAR 17 2014

DOCKETED BY 


JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
CONTERRA ULTRA BROADBAND, LLC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES.

DOCKET NO. T-20869A-12-0499

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: January 29, 2014

PLACE OF HEARING: Phoenix, AZ

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

APPEARANCES: Mr. Kelley Boan, Regulatory & Special Projects
Manager, and Ms. Angela Lee, Vice President,
Corporate Counsel, CONTERRA BROADBAND
SERVICES, Applicant; and

Ms. Maureen Scott, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On December 27, 2012, Conterra Ultra Broadband, LLC (“Conterra” 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 Cellular Backhaul Transport (Carrier Grade Ethernet or TDM Connectivity and Transport) and Access Networks and Broadband Networks (Carrier Grade Ethernet and Voice Connectivity Transport)¹ telecommunication services within the State of Arizona. Conterra’s application also requests a determination that its proposed services are competitive in Arizona.

On May 6, 2013, Conterra filed a response to the Commission’s Utilities Division (“Staff”) First Set of Data Requests.

¹ Conterra’s Access Networks and Broadband Networks services are considered private line services in Arizona and are regulated by the Commission.

1 On June 5, 2013, Conterra filed a response to Staff's Second Set of Data Requests.

2 On July 30, 2013, Conterra filed a response to Staff's Third Set of Data Requests.

3 On October 11, 2013, Staff filed a Staff Report recommending approval of Conterra's
4 application, subject to certain conditions.

5 On November 18, 2013, by Procedural Order, a hearing was scheduled to begin January 29,
6 2014, and other procedural deadlines were established.

7 On December 31, 2013, Conterra filed a Notice of Filing Affidavit of Publication stating that
8 public notice of the application and hearing date had been published in the *Arizona Republic*, a
9 newspaper of general circulation in the State of Arizona.

10 On January 14, 2014, Conterra filed a request to allow Mr. Kelley Boan to represent Conterra
11 at the hearing scheduled for January 29, 2014.

12 On January 23, 2014, a telephonic procedural conference was initiated by the Hearing
13 Division to address the Company's request to allow Mr. Boan to represent Conterra at the hearing.
14 Conterra's request was granted at the procedural conference.

15 On January 29, 2014, a full public hearing was held as scheduled before a duly authorized
16 Administrative Law Judge ("ALJ") of the Commission. Mr. Kelly Boan appeared on behalf of
17 Conterra and presented testimony. Staff appeared through counsel and presented testimony and
18 evidence. No members of the public appeared to provide public comment. At the conclusion of the
19 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
20 Order to the Commission.

21 * * * * *

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

24 **FINDINGS OF FACT**

25 1. Conterra is a foreign limited liability company organized under the laws of South
26 Carolina and authorized to transact business in Arizona.²

27
28 ² Exhibit S-2 at Attachment A.

1 2. Conterra’s principal offices are located in Charlotte, North Carolina.³

2 3. Conterra was established in 2001 and is a wholly owned subsidiary of Conterra Ultra
3 Broadband Holdings, Inc.⁴

4 4. On December 27, 2012, Conterra filed an application with the Commission requesting
5 authority for a CC&N to provide intrastate telecommunications services in Arizona.

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

7 6. Staff recommends approval of the Conterra’s application for a CC&N to provide
8 intrastate telecommunications services subject to the following conditions:

9
10 (a) Conterra comply with all Commission Rules, Orders and other requirements
 relevant to the provision of intrastate telecommunications services;

11 (b) Conterra abide by the quality of service standards that were approved by the
12 Commission for Qwest in Docket No. T-01051B-93-0183;

13 (c) Conterra be required to notify the Commission immediately upon changes to
 Conterra’s name, address or telephone number;

14 (d) Conterra cooperate with Commission investigations including, but not limited
15 to customer complaints;

16 (e) The rates proposed by this filing are for competitive services. In general, rates
17 for all competitive services are not set according to rate of return regulation.
18 Staff obtained information from the Company indicating that the net book
19 value of its Arizona assets at the end of the first twelve months of operations is
20 expected to be \$583,906. Staff has reviewed the rates to be charged by
21 Conterra and believes they are just and reasonable as they are comparable to
 other wholesale transport providers offering service in Arizona and comparable
 to the rates Conterra 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; and

22 (f) The Commission authorize Conterra to discount its rates and service charges to
23 the marginal cost of providing the services.

24 ...
25 ...
26 ...

27 ³ Exhibit S-2 at Attachment A.

28 ⁴ Id.

⁵ Affidavit of Publication of Notice of Application and Hearing Date docketed December 31, 2013.

1 7. Staff further recommends that Conterra comply with the following items and if
2 Conterra fails to do so, that Conterra's CC&N be null and void after due process.

- 3 a. Conterra shall docket conforming tariffs pages for each service within its
4 CC&N within 365 days from the date of an Order in this matter or 30 days
5 prior to providing service, whichever comes first. The tariffs submitted shall
coincide with the Application and state that the Company does not collect
advances, deposits and/or prepayments from its customers.

6 **Technical Capability**

7 8. The Company's top seven officers possess a combined total of more than 100 years
8 experience in the telecommunications industry.⁶

9 9. Conterra's witness stated that the Company is currently operating in 28 states offering
10 broadband transport or Ethernet services.⁷ The witness stated that Conterra currently provides
11 service in Arizona to: the Native Vocational District on the Navajo Nation; Humboldt Unified School
12 District in Prescott Valley; Amphitheater Schools in Tucson, Arizona; and the Nogales Unified
13 School District.⁸

14 10. Conterra currently provides its private broadband telecommunications services within
15 1,700 schools nationwide and to health care providers under the E-Rate program.⁹¹⁰ The Company
16 also provides commercial backhaul for cellular providers and TeleMedicine programs.¹¹

17 11. Staff believes that Conterra has the technical capabilities to provide its proposed
18 services in Arizona.

19 **Financial Capabilities**

20 12. Conterra provided unaudited consolidated financial statements for its parent company,
21 Conterra Ultra Broadband Holdings, Inc. for the year ending December 31, 2012, and December 31,
22 2011. For the year ending December 31, 2012, Conterra's parent company reported Total Assets of
23 \$84,993,594; Total Equity of \$32,497,300; and a Net Income of negative \$1,208,334. For the year

24 ⁶ Response to Staff Data Request filed May 6, 2013.

25 ⁷ Tr. at 7.

26 ⁸ According to the testimony at the hearing, service to the Nogales Unified School District will begin as soon as the fiber
line is completed. Tr. at 7.

27 ⁹ Tr. at 8.

¹⁰ The E-Rate program is administered by the Universal Service Administrative Company, an independent, not-for-profit
corporation, created to collect universal service contributions from telecommunications carriers to give communities
across the country access to affordable telecommunications services.

28 ¹¹ Tr. at 9.

1 ending December 31, 2011, Conterra's parent company reported Total Assets of \$77,120,607; Total
2 Equity of \$32,924,300; and a Net Income of negative \$1,007,380.

3 13. Conterra's application states it will rely on the financial resources of its parent
4 company to provide its proposed services in Arizona.¹²

5 14. Conterra's proposed tariffs state that it will not require or collect deposits from its
6 customers.¹³ Conterra's proposed tariffs state that it may collect advance payments of one month's
7 estimated charges from customers, if necessary.

8 **Rates and Charges**

9 15. Staff believes that Conterra's rates will be heavily influenced by the market.¹⁴ Staff
10 states that Conterra will have to compete with other incumbent local exchange carriers ("ILECs"),
11 and various competitive local exchange ("CLECs"), and interexchange carriers ("IXCs") in Arizona
12 in order to gain new customers.¹⁵ Staff states that Conterra's potential customers are all large,
13 sophisticated wireline and wireless carriers that can negotiate contract rates on an individual case
14 basis. Staff reviewed Conterra's proposed tariff pages and compared them with other carriers in
15 Arizona and with the rates charged by Conterra in other states/jurisdictions.

16 16. Pursuant to A.A.C. R14-2-1109, the rates charged for each service Conterra proposes
17 to provide may not be less than the Company's total service long-run incremental cost of providing
18 that service.

19 17. Conterra projects that for the first twelve months of operation in Arizona, it will have
20 total revenues of \$1,500,000 and a net book value of \$583,906.¹⁶

21 18. Staff states that while it considered the fair value rate base information submitted by
22 the Company, Staff did not accord that information substantial weight in its analysis.

23 19. Based on the above factors, Staff believes that Conterra's proposed rates are just and
24 reasonable.

25

26 ¹² Exhibit S-2 at 7.

27 ¹³ Exhibit S-2, at Attachment B.

¹⁴ Exhibit S-2, at 3.

28 ¹⁵ Exhibit S-1, at 3.

¹⁶ Exhibit S-2 at 7.

1 **Competitive Analysis**

2 20. Conterra's application requests that its proposed private line services¹⁷ in Arizona be
3 classified as competitive. Staff believes Conterra's proposed services should be classified as
4 competitive because Conterra will have to compete with IXC's, ILEC's, and CLEC's to gain a share of
5 the private line market and that because IXC's, ILEC's, and CLEC's hold a substantial share of the
6 private line market, Conterra will not be able to exert any market power.

7 21. Based on the above factors, Staff concludes that Conterra's proposed services should
8 be classified as competitive.

9 **Complaint Information**

10 22. Conterra's application states that none of the Company's officers, directors, partners,
11 nor managers have been or are currently involved in any formal or informal complaint proceeding
12 before any state or federal regulatory agency, commission, administrative or law enforcement
13 agency.¹⁸

14 23. Conterra states that none of the Company's officers, directors, partners or managers
15 have been involved in any civil or criminal investigations, or had judgments entered in any civil
16 matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within
17 the last ten (10) years.

18 24. Conterra disclosed in its application that in 2008 the Company had been involved in a
19 compliance investigation conducted by the Florida Public Service Commission ("FPSC").¹⁹ The
20 investigation stemmed from Conterra's failure to pay an annual regulatory assessment fee.²⁰
21 Conterra states it paid all outstanding monies owed and Staff confirmed that the FPSC investigation
22 was completed and closed on September 15, 2008.²¹

23
24
25
26 ¹⁷ Staff describes private line services as 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.

27 ¹⁸ Exhibit S-2 at 3.

28 ¹⁹ Id.

²⁰ Id.

²¹ Exhibit S-1 at 4.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS THEREFORE ORDERED that the application of Conterra Ultra Broadband, LLC for a Certificate of Convenience and Necessity to provide Cellular Backhaul Transport and Access Networks and Broad Networks telecommunication services in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 6 and 7.

IT IS FURTHER ORDERED that if Conterra Ultra Broadband, LLC fails to comply with the Staff recommendations described in Findings Fact No. 7, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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 _____ day of _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YK:ru

1 SERVICE LIST FOR:

CONTERRA ULTRA BROADBAND, LLC

2 DOCKET NO.:

T-20869A-12-0499

3 Thomas Bardo

NELSON MULLINS RILEY & SCARBOROUGH, LLC

101 Constitution Avenue, NW, Suite 900

4 Washington, DC 20001

5 Angela Lee

Vice President, Corporate Counsel & Secretary

6 CONTERRA ULTRA BROADBAND, LLC

2101 Rexford Road, Suite 200E

7 Charlotte, NC 28211

8 Janice Alward, Chief Counsel

Legal Division

9 ARIZONA CORPORATION COMMISSION

1200 West Washington Street

10 Phoenix, AZ 85007

11 Steven M. Olea, Director

Utilities Division

12 ARIZONA CORPORATION COMMISSION

1200 West Washington Street

13 Phoenix, AZ 85007

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28