

OPEN MEETING

MEMORANDUM



0000155487

TO: THE COMMISSION

Arizona Corporation Commission

DOCKETED

FROM: Utilities Division

AUG 22 2014

DATE: August 22, 2014

DOCKETED BY

RE: IN THE MATTER OF THE APPLICATION OF CREXENDO BUSINESS SOLUTIONS, INC. FOR APPROVAL OF AN ORDER RESCINDING ITS BOND REQUIREMENT. (DOCKET NO. T-20737A-14-0204)

RECEIVED

2014 AUG 22 A 11: 24

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

ORIGINAL

Introduction

On June 25, 2014, Crexendo Business Solutions, Inc. ("Crexendo" or "Applicant") submitted an Application requesting an order rescinding the \$125,000 performance bond requirement contained in Decision No. 72733 (January 6, 2012). In its Application, Crexendo states it provides competitive resold and facilities-based long distance and resold and facilities-based local exchange services primarily to small and mid-sized business in Arizona. Crexendo does not provide services to residential customers in Arizona.

In addition, the Applicant states Crexendo submitted a \$125,000 letter of credit to the Arizona Corporation Commission ("Commission" or "ACC") on January 26, 2012.

Background

On April 13, 2010, Crexendo filed an application for approval of a Certificate of Convenience and Necessity ("CC&N") for resold long distance and local exchange telecommunications service. On October 12, 2010, Crexendo amended their application to include facilities-based local exchange services. As a result of its analysis during the course of that Docket, Staff recommended denial of Crexendo's application based on the seriousness of complaint information uncovered by Staff that Crexendo failed to unilaterally disclose.¹ Alternatively, Staff also recommended that should the Commission decide to approve the application, Crexendo be required to meet several conditions proposed by Staff.

On January 6, 2012, in Decision No. 72733, Docket No. T-20737A-10-0144, the Commission granted Crexendo a Certificate of Convenience and Necessity to provide competitive resold and facilities-based long distance and resold and facilities-based local exchange services within the State of Arizona. At that time the Commission also adopted Staff's conditions and ordered Crexendo to comply with the following:

¹ See Docket No. T-20737A-10-0144, Decision No. 72733, paras. 57, 58 and 62. This information included a prior criminal investigation by the Department of Justice of a company, Inter-Tel Tech, during the time when Mr. Steve Mihaylo, the CEO of Crexendo, was Chairman and CEO of Inter-Tel Tech, which resulted in disbarment of Inter-Tel Tech from the E-Rate Program; litigation regarding the business practices of StoresOnline for which Mr. Mihaylo also served as CEO and the denial of Crexendo's application to provide service by the South Carolina Commission.

- Provide an initial report of the total number of full time employees;
- Provide a 90-day advance written notice to Docket Control of any workforce reductions thereafter;
- For a period of three years from the Decision date, provide a report every six months indicating the number of full time employees which should also include an explanation of any increase or decrease from the previous period;
- Within thirty days of the Decision date, provide an attestation that Crexendo is not utilizing the same marketing practices as its subsidiary, StoresOnline;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer informing the Commission of any investigations, litigation, settlements, fines or judgments involving Crexendo or its officers;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer certifying that Crexendo is in full compliance with Commission Rules and Decisions, Arizona State Statutes, and Federal laws;
- Docket conforming tariff pages for each service within its CC&N within 365 days from the effective date of the Order or thirty days prior to providing service, whichever comes first;
- Procure a performance bond or irrevocable sight letter draft letter of credit ("ISDLOC") equal to \$125,000;
- Procure an additional performance bond or ISDLOC equal to \$1 million to remain in effect three years and which could be reduced or eliminated via Commission approval of such a request after the three year period; and
- File the original performance bonds or ISDLOCs with the ACC Business Office with copies to Docket Control.

On April 10, 2013, Crexendo filed an application to amend Decision No. 72733 specifically regarding the requirement that Crexendo maintain an additional performance bond or ISDLOC equal to \$1 million for three years. In support of this request, Crexendo alleged the modification would provide additional funds for Crexendo to invest in its expanding operations including its corporate headquarters located in Tempe, Arizona. On July 16, 2013, in Decision No. 73391, the Commission granted this request and extinguished the \$1 million bond requirement.

Crexendo's Application

In its Application to eliminate the performance bond or the ISDLOC requirement, Crexendo cites Arizona Administrative Code ("A.A.C.") R14-2-1105(d), which states that "[i]n appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust." Crexendo believes maintaining a performance bond is no longer necessary as it has made substantial investment (in the form of a Data Center located in Tempe) and has over 65 employees in Arizona, has shown it has both the technical and financial

capability to provide reliable and adequate services in Arizona, and does not collect any deposits or advance payments. Therefore, rescinding the bond/ISDLOC requirement will not alter the rates, terms or conditions of service for Arizona Crexendo customers, will not adversely impact service and will put Crexendo on "equal footing" with other Arizona competitive local exchange carriers ("CLEC")s as well as incumbent service providers such as CenturyLink.

Staff Analysis

Staff examined the content of the required compliance filings listed above from Decision No. 72733 and did not note anything of concern. To the best of Staff's knowledge, there is no evidence Crexendo has violated any rules or been involved in any investigation or litigation in any jurisdiction since being granted its CC&N in Arizona.

Staff has confirmed that on January 25, 2012, Crexendo filed the original \$125,000 letter of credit with the ACC Business Office. The terms of the letter of credit state it automatically renews on the expiration date, unless the bank sends notice that it does not intend to renew, and no such notification has been received. Therefore the letter of credit is current.

Complaints and Compliance

The Consumer Services Section of the Utilities Division reports there have been no complaints or opinions about Crexendo for the period of January 1, 2011 to the present. According to the Corporations Division, Crexendo is in good standing. The Compliance Section reports Crexendo is currently in compliance.

Staff Recommendations

The Commission has, in appropriate circumstances, relieved telecommunications providers of the obligation to maintain a performance bond or ISDLOC. Staff believes that based on the evidence Crexendo has thus far met all the compliance requirements of Decision No. 72733 in a timely manner, there have been no reported complaints or opinions about Crexendo and Crexendo is an Arizona-based employer in good standing, this is such an appropriate circumstance. Therefore, Staff recommends that Crexendo be relieved of the \$125,000 performance bond or ISDLOC obligation contained in Decision No. 72733.

Crexendo indicates in its Application that upon approval of this Application, the performance bond should be released and returned to the following name and address:

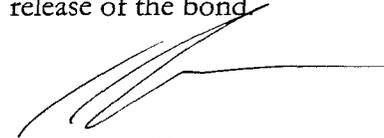
THE COMMISSION

August 22, 2014

Page 4

Jeff Korn
Chief Legal Officer
Crexendo Business Solutions, Inc.
1615 South 52nd Street
Tempe, AZ 85281

Crexendo has also indicated that no other Commission action is necessary to effectuate the release of the bond



Steven M. Olea
Director
Utilities Division

SMO:MAC:sms\CHH

ORIGINATOR: Matt Connolly

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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 CREXENDO BUSINESS SOLUTIONS,)
 INC. FOR APPROVAL OF AN ORDER)
 RESCINDING ITS BOND REQUIREMENT.)

DOCKET NO. T-20737A-14-0204
 DECISION NO. _____
ORDER

Open Meeting
 September 9 and 10, 2014
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On June 25, 2014, Crexendo Business Solutions, Inc. (“Crexendo” or “Applicant”) submitted an Application requesting an order rescinding the \$125,000 performance bond requirement contained in Decision No. 72733 (January 6, 2012).

2. In its Application, Crexendo states it provides competitive resold and facilities-based long distance and resold and facilities-based local exchange services primarily to small and mid-sized businesses in Arizona. Crexendo does not service residential customers on Arizona.

3. In addition, the Applicant states Crexendo submitted a \$125,000 letter of credit to the Arizona Corporation Commission (“Commission” or “ACC”) on January 26, 2012.

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Background

4. On April 13, 2010, Crexendo filed an application for approval of a Certificate of Convenience and Necessity ("CC&N") for resold long distance and local exchange telecommunications service. On October 12, 2010, Crexendo amended their application to include facilities-based local exchange services. As a result of its analysis during the course of that Docket, Staff recommended denial of Crexendo's application based on the seriousness of complaint information uncovered by Staff that Crexendo failed to unilaterally disclose.¹ Alternatively, Staff also recommended that should the Commission decide to approve the application, Crexendo be required to meet several conditions proposed by Staff.

5. On January 6, 2012, in Decision No. 72733, Docket No. T-20737A-10-0144, the Commission granted Crexendo a Certificate of Convenience and Necessity to provide competitive resold and facilities-based long distance and resold and facilities-based local exchange services within the State of Arizona. At that time the Commission also adopted Staff's conditions and ordered Crexendo to comply with the following:

- Provide an initial report of the total number of full time employees;
- Provide a 90-day advance written notice to Docket Control of any workforce reductions thereafter;
- For a period of three years from the Decision date, provide a report every six months indicating the number of full time employees which should also include an explanation of any increase or decrease from the previous period;
- Within thirty days of the Decision date, provide an attestation that Crexendo is not utilizing the same marketing practices as its subsidiary, StoresOnline;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer informing the Commission of any investigations, litigation, settlements, fines or judgments involving Crexendo or its officers;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer certifying that Crexendo is in full compliance with Commission Rules and Decisions, Arizona State Statutes, and Federal laws;
- Docket conforming tariff pages for each service within its CC&N within 365 days from the effective date of the Order or thirty days prior to providing service, whichever comes first;

¹ See Docket No. T-20737A-10-0144, Decision No. 72733, paras. 57, 58 and 62. This information included a prior criminal investigation by the Department of Justice of a company, Inter-Tel Tech, during the time when Mr. Steve Mihaylo, the CEO of Crexendo, was Chairman and CEO of Inter-Tel Tech, which resulted in disbarment of Inter-Tel Tech from the E-Rate Program; litigation regarding the business practices of StoresOnline for which Mr. Mihaylo also served as CEO and the denial of Crexendo's application to provide service by the South Carolina Commission.

- 1 • Procure a performance bond or irrevocable sight letter draft letter of credit (“ISDLOC”) equal to \$125,000;
- 2 • Procure an additional performance bond or ISDLOC equal to \$1 million to remain in effect three years and which could be reduced or eliminated via Commission approval of such a request after the three year period; and
- 3 • File the original performance bonds or ISDLOCs with the ACC Business Office with copies to Docket Control.

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6 6. On April 10, 2013, Crexendo filed an application to amend Decision No. 72733,
7 specifically regarding the requirement that Crexendo maintain an additional performance bond or
8 ISDLOC equal to \$1 million for three years. In support of this request, Crexendo alleged the
9 modification would provide additional funds for Crexendo to invest in its expanding operations
10 including its corporate headquarters located in Tempe, Arizona. On July 16, 2013, in Decision No.
11 73391, the Commission granted this request and extinguished the \$1 million bond requirement.

12 **Crexendo’s Application**

13 7. In its Application to eliminate the performance bond or the ISDLOC requirement,
14 Crexendo cites Arizona Administrative Code (“A.A.C.”) R14-2-1105(d), which states that “[i]n
15 appropriate circumstances, the Commission may require, as a precondition to certification, the
16 procurement of a performance bond sufficient to cover any advances or deposits the
17 telecommunications company may collect from its customers, or order that such advances or deposits
18 be held in escrow or trust.”

19 8. Crexendo believes maintaining a performance bond is no longer necessary as it has
20 made substantial investment (in the form of a Data Center located in Tempe) and has over 65
21 employees in Arizona, has shown it has both the technical and financial capability to provide reliable
22 and adequate services in Arizona, and does not collect any deposits or advance payments. Therefore,
23 rescinding the bond/ISDLOC requirement will not alter the rates, terms or conditions of service for
24 Arizona Crexendo customers, will not adversely impact service and will put Crexendo on “equal
25 footing” with other Arizona CLECs as well as incumbent service providers such as CenturyLink.

26 **Staff Analysis**

27 9. Staff examined the content of the required compliance filings listed above from Decision
28 No. 72733 and did not note anything of concern. To the best of Staff’s knowledge, there is no

1 evidence Crexendo has violated any rules or been involved in any investigation or litigation in any
2 jurisdiction since being granted its CC&N in Arizona.

3 10. Staff has confirmed that on January 25, 2012, Crexendo filed the original \$125,000 letter
4 of credit with the ACC Business Office. The terms of the letter of credit state it automatically renews
5 on the expiration date, unless the bank sends notice that it does not intend to renew, and no such
6 notification has been received. Therefore the letter of credit is current.

7 **Complaints and Compliance**

8 11. The Consumer Services Section of the Utilities Division reports there have been no
9 complaints or opinions about Crexendo for the period of January 1, 2011 to the present. According
10 to the Corporations Division, Crexendo is in good standing. The Compliance Section reports
11 Crexendo is currently in compliance.

12 **Staff Recommendations**

13 12. The Commission has, in appropriate circumstances, relieved telecommunications
14 providers of the obligation to maintain a performance bond or ISDLOC. Staff believes that based on
15 the evidence that Crexendo has thus far met all the compliance requirements of Decision No. 72733
16 in a timely manner, there have been no reported complaints or opinions about Crexendo and
17 Crexendo is an Arizona-based employer in good standing, this is such an appropriate circumstance.
18 Therefore, Staff recommends that Crexendo be relieved of the \$125,000 performance bond or
19 ISDLOC obligation contained in Decision No. 72733.

20 13. Crexendo indicates in its Application that upon approval of this Application, the
21 performance bond should be released and returned to the following name and address:

22 Jeff Korn
23 Chief Legal Officer
24 Crexendo Business Solutions, Inc.
25 1615 South 52nd Street
26 Tempe, AZ 85281

27 Crexendo has also indicated that no other Commission action is necessary to effectuate the release of
28 the bond.

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CONCLUSIONS OF LAW

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1. Crexendo Business Solutions, Inc. is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Crexendo Business Solutions, Inc. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated August 22, 2014, concludes that it is in the public interest to approve the Crexendo Business Solutions, Inc. Application as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of Crexendo Business Solutions, Inc. to terminate the performance bond or irrevocable sight draft letter of credit requirement contained in Decision No. 72733 be and hereby is approved.

IT IS FURTHER ORDERED that Crexendo Business Solutions, Inc. may cancel, rescind, discontinue and be released from any performance bond, irrevocable sight draft letter of credit or other instrument obtained in compliance with the \$125,000 performance bond or irrevocable sight draft letter of credit requirement set by Decision No. 72733.

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1 IT IS FURTHER ORDERED that the \$125,000 performance bond on file with the
2 Commission on behalf of Crexendo Business Solutions, Inc. be returned to the following name and
3 address provided by the Applicant:

4 Jeff Korn
5 Chief Legal Officer
6 Crexendo Business Solutions, Inc.
7 1615 South 52nd Street
8 Tempe, AZ 85281

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

10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

11 _____
CHAIRMAN

COMMISSIONER

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14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto, set my hand and caused the official seal of this
18 Commission to be affixed at the Capitol, in the City of
19 Phoenix, this _____ day of _____, 2014.

20 _____
JODI JERICH
EXECUTIVE DIRECTOR

21
22 DISSENT: _____

23 DISSENT: _____

24 SMO:MAC:sms\CHH
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1 SERVICE LIST FOR: Crexendo Business Solutions, Inc.
2 DOCKET NO. T-20737A-14-0204

3 Mr. Michael W. Patten
4 Roska DeWulf & Patten, PLC
5 One Arizona Center
6 400 East Van Buren Street, Suite 800
7 Phoenix, Arizona 85004

8 Mr. Steven M. Olea
9 Director, Utilities Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ms. Janice M. Alward
14 Chief Counsel, Legal Division
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 Ms. Lyn Farmer
19 Chief Administrative Law Judge
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

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