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**BEFORE THE ARIZONA CORPORATION**

COMMISSIONERS

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

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| IN THE MATTER OF THE APPLICATION OF LEXENT, INC. FOR APPROVAL TO CANCEL ITS CERTIFICATE OF CONVENIENCE AND NECESSITY. | DOCKET NO. T-20875A-14-0111<br>DECISION NO. 74853<br>**ORDER** |

Arizona Corporation Commission
DOCKETED
DEC 18 2014
DOCKETED BY

Open Meeting
December 11 and 12, 2014
Phoenix, Arizona

**BY THE COMMISSION:**

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Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On June 1, 2005, the Commission issued Decision No. 67883 granting CCG Communications, LLC ("CCG") a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange telecommunications services within the State of Arizona. In the Decision, CCG was required to docket conforming tariffs, procure a $100,000 performance bond, and file proof of the performance bond, among other conditions.

2. On November 4, 2005, CCG filed its tariff in compliance with Decision No. 67883.

3. On June 9, 2006, CCG docketed a filing of a performance bond in the amount of $100,000.

4. On October 5, 2012, CCG made another performance bond filing.

5. In Decision No. 73581 (November 21, 2012), CCG's CC&N was transferred to Lexent, Inc. ("Lexent" or "Company"), and the bond requirement was transferred along with the CC&N.

6. On March 24, 2014, Fernanda Hilb Manko filed with the Commission a letter on Lightower letterhead, requesting to cancel Lexent's CC&N to provide facilities-based local exchange telecommunications services. The letter stated Lexent does not provide local exchange services or have any local exchange customers in Arizona.

7. On July 21, 2014, the Commission's Utilities Divison ("Staff") filed a memorandum in this matter recommending approval of Lexent's application to cancel its CC&N.

8. According to Staff, Lexent stated it has no customers for intrastate telecommunications services in Arizona. Staff indicates the Company requested a waiver of the notice requirements set forth in Arizona Administrative Code ("A.A.C.") R14-2-1107(A)(2) due to the fact that the Company does not, and never did, have customers in Arizona. According to Staff, Lexent affirmed that it did not collect advances, deposits, and/or prepayments from customers in Arizona.

9. The Commission's Consumer Services Section reports that zero complaints, inquiries, or opinions were filed against Lexent. According to the Corporations Division, the Company is in good standing.

10. On August 7, 2014, a Procedural Order was issued directing Staff to docket a filing verifying the existence of a performance bond for Lexent and clarifying the relationship between Lexent and Lightower, among other items.

11. On October 2, 2014, a filing was docketed indicating the existence of a "License/Permit Bond" as of October 21, 2013 with Lexent as Principal, RLI Insurance as Surety, and the Commission as Obligee, in the amount of $100,000.

12. On October 9, 2014, a second letter on Lightower letterhead was docketed by David L. Mayer, in which he indicated Lightower Fiber Networks is a trade name. The letter states Mr. Mayer is authorized by the Board of Directors to bind Lexent and requests that the Commission cancel Lexent's CC&N.

13. On November 7, 2014, Staff filed a response to the August 7, 2014 Procedural Order which provided the information sought regarding Lexent and Lightower's relationship, the performance bond, and the basis for the belief that Lexent never provided facilities-based local

exchange telecommunications services in Arizona.

14. Also on November 7, 2014, Staff filed an Amended Staff Report that updated information in the Background and Staff Analysis sections and corrected the discussion related to the performance bond.

15. Staff continues to recommend cancellation of Lexent's CC&N to provide facilities-based local exchange telecommunications services. Staff also recommends granting the Company's request to waive the published notice requirements of A.A.C. R-14-2-1107(A)(2), because Lexent is not providing facilities-based local exchange telecommunications services to any customers in Arizona and it never collected deposits, advances, or prepayments from Arizona customers.

16. A.A.C. R14-2-1107 requires a certificated telecommunications company providing competitive telecommunications service in Arizona to file an application for authorization with the Commission before it discontinues service. The rule also requires the telecommunications company to verify that its affected customers have been notified of the proposed discontinuance of service, to plan for the refund of any deposits collected, to file with the Commission a list of alternate utilities providing the same or similar service within the affected geographic area, and to publish legal notice of the application to discontinue service. In Decision No. 67404 (November 2, 2004), the Commission stated that it would render A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to exempt an Applicant from the requirements of the rule simply because the Applicant is no longer providing service in Arizona. In the instant case, Lexent has affirmed that it has never served customers in Arizona and it is not holding customer deposits related to the provision of service. Therefore, based on the above information, requiring Lexent to comply with the provisions of A.A.C. R14-2-1107 serves no practical purpose as Lexent has never provided facilities-based local exchange telecommunications services to any end-users in Arizona.

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17. Staff's recommendation for approval of Lexent's application to cancel its CC&N to provide facilities-based local exchange telecommunications services is reasonable and should be adopted. Based on the filing in the docket, the performance bond executed on October 21, 2013 in Lexent's name with RLI Insurance as the surety should be released and returned to the following:

Mr. Gerard Ahearn
Lightower
80 Central Street
Boxborough, MA 01719

## CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over Lexent, Inc. and the subject matter of the application to cancel the Company's CC&N.

3. The cancellation of Lexent, Inc.'s CC&N to provide facilities-based local exchange services and to release and return the performance bond on file with the Commission is in the public interest.

4. Under the circumstances presented in this docket, waiver of the notice requirements in A.A.C. R14-2-1107 is appropriate.

5. Staff's recommendations are reasonable and should be adopted.

## ORDER

IT IS THEREFORE ORDERED that the application of Lexent, Inc., for the cancellation of its Certificate of Convenience and Necessity to provide facilities-based local exchange telecommunications services in Arizona shall be, and is hereby, approved, and the Certificate of Convenience and Necessity is cancelled.

IT IS FURTHER ORDERED that Lexent, Inc., is hereby granted a waiver of the notice requirements contained in A.A.C. R14-2-1107.

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IT IS FURTHER ORDERED that the performance bond on file with the Commission shall be released and returned to Lexent, Inc. as stated herein in Finding of Fact No. 17.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN 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 18th day of December 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP:tv

SERVICE LIST FOR: LEXENT, INC.

DOCKET NO.: T-20875A-14-0111

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