

ORIGINAL

MEMORANDUM



0000163962

TO: Docket Control

FROM: Thomas M. Broderick  
Director  
Utilities Division

DATE: August 20, 2015

RE: IN THE MATTER OF THE APPLICATION OF WANRACK, LLC FOR A TELECOMMUNICATIONS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE PRIVATE LINE TRANSPORT SERVICES AND PETITION FOR COMPETITIVE CLASSIFICATION. (DOCKET NO. T-20925A-15-0113)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following service:

- Private Line Telecommunications Services

Staff is recommending approval of the Application with conditions.

TMB:LLM:nr\BES

Originator: Lori L. Morrison

Attachment: Original and Thirteen copies

Arizona Corporation Commission

**DOCKETED**

AUG 20 2015

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DOCKET NO.: T-20925A-15-0113

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

WANRACK, LLC  
DOCKET NO. T-20925A-15-0113

IN THE MATTER OF THE APPLICATION OF WANRACK, LLC FOR A  
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CLASSIFICATION

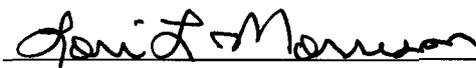
AUGUST 20, 2015

## TABLE OF CONTENTS

	PAGE
<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES .....</b>	<b>1</b>
<b>3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES.....</b>	<b>2</b>
<b>4. ESTABLISHING RATES AND CHARGES.....</b>	<b>2</b>
<b>5. REVIEW OF COMPLAINT INFORMATION .....</b>	<b>3</b>
<b>6. COMPETITIVE SERVICES ANALYSIS.....</b>	<b>4</b>
6.1 <i>Private Line Services.....</i>	<i>4</i>
6.2 <i>A Description Of The General Economic Conditions That Exist That Make The Relevant Market For The Service One That Is Competitive. ....</i>	<i>4</i>
6.3 <i>The Number Of Alternative Providers Of The Service.....</i>	<i>4</i>
6.4 <i>The Estimated Market Share Held By Each Alternative Provider Of The Service. ....</i>	<i>4</i>
6.5 <i>The Names And Addresses Of Any Alternative Providers Of The Service That Are Also Affiliates Of The Telecommunications Applicant, As Defined In A.A.C. R14-2-801. ....</i>	<i>4</i>
6.6 <i>The Ability Of Alternative Providers To Make Functionally Equivalent Or Substitute Services Readily Available At Competitive Rates, Terms And Conditions. ....</i>	<i>4</i>
<b>7. RECOMMENDATIONS.....</b>	<b>4</b>
7.1 <i>Recommendations On The Application For A CC&amp;N.....</i>	<i>5</i>
7.2 <i>Recommendation On The Applicant's Petition To Have Its Proposed Services Classified As Competitive.....</i>	<i>6</i>

## STAFF ACKNOWLEDGMENT

The Staff Report for WANRack, LLC, Docket No. T-20925A-15-0113, was the responsibility of the Staff member listed below. Lori L. Morrison was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide Private Line Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in cursive script, reading "Lori L. Morrison", is written over a horizontal line.

Lori L. Morrison  
Utilities Consultant

## 1. INTRODUCTION

On April 3, 2015, WANRack, LLC (“WANRack” or “Applicant”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based private line telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. On April 7, 2015, the Applicant filed a copy of its Certificate of Good Standing as issued by the Corporations Division.

On April 24, 2015, Dr. Darwin J. Stiffler, on behalf of the Yuma Elementary School District #1, and Ms. Toni Badone, on behalf of the Yuma High School District #70, each filed a letter in support of WANRack’s application.

On May 5, 2015, WANRack filed a revised Private Line tariff which replaces the Private Line Tariff that was filed with the Application. Staff requested that WANRack revise its proposed tariff to include maximum rates for its proposed services.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

## 2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

WANRack, LLC is a privately held, limited liability foreign corporation organized under the laws of the State of Kansas. WANRack’s headquarters is located at 25656 West 97<sup>th</sup> Street, Lenexa, Kansas. The three members of the Applicant’s senior management team each average over fourteen years’ experience in the telecommunications industry.

The Applicant indicated that it is authorized and currently offering telecommunications services similar to those that it will or intends to offer in Arizona in Missouri<sup>1</sup> and Wyoming<sup>2</sup> and was recently approved to provide telecommunications services in Kansas<sup>3</sup> and Texas.<sup>4</sup> Staff contacted the regulatory Commissions of each of these states/jurisdictions to determine if WANRack is certificated or registered to provide telecommunications services in these states as listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant in those jurisdictions. The information Staff obtained indicates that WANRack is authorized to provide telecommunications services in each of these states/jurisdictions and there have

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<sup>1</sup> WANRack, LLC is authorized to provide interexchange and private lines services in Missouri – File No. TA-2015-0051.

<sup>2</sup> WANRack, LLC is authorized to provide local telecommunications services - Docket No. 70244-I-TA-14 (local exchange) and registered to provide interexchange services in Wyoming.

<sup>3</sup> WANRack, LLC is authorized to provide local telecommunications services - Docket No. 15-WRKT-497-COC.

<sup>4</sup> WANRack, LLC is authorized to provide local exchange, interexchange and private lines services in Texas – Docket No. 44595.

been no consumer complaints filed against WANRack in any of the above listed states/jurisdictions.

WANRack proposes to offer site-to-site fiber optic transport and wide area network services to connect the sites of enterprise customers such as businesses and schools in Arizona. WANRack states<sup>5</sup> its initial project requires WANRack to build, own and operate a private fiber optic network to connect all schools in the Yuma Elementary and Yuma Unified High School Districts. As its customer base and service offerings grow, WANRack may resell services obtained from CenturyLink QC and other carriers, based on whether a leased, resold or WANRack-owned facility will provide the best solution for each of the new customers. The Applicant has a Network Operations Center (“NOC”), located in Kansas City, Kansas that is operated by two full time employees on a 24x7x365 basis.<sup>6</sup> Customer Service may be reached at 1-855-482-7225. The NOC can remotely monitor and troubleshoot WANRack’s services.<sup>7</sup> For its initial customer, Applicant will not have any Arizona employees as the services can be provided, maintained and operated with the use of contracted field technicians and repair crews in the case of a service outage.

Based on the above information, Staff believes WANRack possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant was established on April 29, 2013, and provided unaudited financial statements for the periods of April – December 2013, January – December 2014 and January – June 30, 2015. The financial statements for April - December 2013 list total assets of \$60,924; total equity of \$113,600 and a net income of negative \$52,676. The financial statements for January - December 2014 list total assets of \$404,665; total equity of \$230,246 and a net income of negative \$70,678. The financial statements for January – June 30, 2015 list total assets of \$808,372; total equity of \$144,883 and a net income of negative \$86,363. The Applicant did not provide notes related to the financial statements.

### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier (“ILEC”), along with various competitive local exchange carriers (“CLECs”) and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

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<sup>5</sup> WANRack’s response to Staff Data Request STF 1.1(c) (see Attachment 1)

<sup>6</sup> WANRack’s Response to Staff Data Request STF 1.4 and STF 1.5(a)-(d) (see Attachment 1).

<sup>7</sup> WANRack’s Response to Staff Data Request STF 1.2 (see Attachment 1).

In general, rates for competitive services are not set according to rate of return regulation. In response to item (B-4) of the Application, WANRack estimates its expected net book value or fair value rate base after the first twelve months of operation to be \$1,400,000. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Applicant, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for competitive services. WANRack will not provide service to small business or residential end users. WANRack provides non-switched private line services, and also proposes to offer customized private line services to meet the individual needs of enterprise entities such as schools and business entities in Arizona. WANRack's customers will be sophisticated school, government and business customers that typically negotiate contract rates through a competitive process with the ultimate rates provided on an individual case basis ("ICB") by WANRack. Customers who do not need individualized offerings and do not require an ICB contract to meet their needs will be able to purchase services at the rates contained in WANRack's proposed tariff.

Staff has reviewed the proposed rates to be charged by the Applicant. WANRack's rates are for highly competitive services and the services are targeted for schools and business entities. These entities have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services. The proposed tariff rates are similar to those charged by other providers of point to point services in Arizona. The rate charged for a service shall not be less than the Company's total service long-run incremental cost of providing the service pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1109. Therefore, Staff believes that WANRack's proposed rates are just and reasonable.

## **5. REVIEW OF COMPLAINT INFORMATION**

The Consumer Services Section of the Utilities Division ("Consumer Services") reports that there have been no complaints, inquiries, or opinions filed against WANRack from January 1, 2012 to April 14, 2015. Consumer Services also reports that WANRack is in Good Standing with the Corporations Division of the Commission. A search of the Federal Communications Commission's website found that there have been no formal or informal complaint proceedings involving the Applicant.

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any jurisdiction. Staff did not find any instances of denied applications or revocation of authority to provide service. The Applicant indicated in the Application that neither it nor any of its officers, directors or partners have been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency. Staff has found no instances of any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency involving the Applicant or any of its officers, directors or managers.

## 6. COMPETITIVE SERVICES ANALYSIS

### 6.1 *Private Line Services*

WANRack proposes to provide private line service. Private line service is a 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. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

### 6.2 *A Description Of The General Economic Conditions That Exist That Make The Relevant Market For The Service One That Is Competitive.*

IXCs, ILECs and CLECs each hold a substantial share of the private line market. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with the existing providers of the service in order to obtain customers.

### 6.3 *The Number Of Alternative Providers Of The Service.*

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

### 6.4 *The Estimated Market Share Held By Each Alternative Provider Of The Service.*

IXCs, ILECs and CLECs each hold a substantial share of the private line market.

### 6.5 *The Names And Addresses Of Any Alternative Providers Of The Service That Are Also Affiliates Of The Telecommunications Applicant, As Defined In A.A.C. R14-2-801.*

WANRack does not have any affiliates that are alternative providers of private line service in Arizona.

### 6.6 *The Ability Of Alternative Providers To Make Functionally Equivalent Or Substitute Services Readily Available At Competitive Rates, Terms And Conditions.*

IXCs, ILECs and CLECs have the ability to offer the same services that the Applicant has requested in their respective service territories.

## 7. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

7.1 *Recommendations On The Application For A CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-13-0199;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant 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
7. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall

coincide with the Application.

2. The Applicant shall notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

7.2 *Recommendation On The Applicant's Petition To Have Its Proposed Services Classified As Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.