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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF TRIPLET MOUNTAIN COMMUNICATIONS, INC. FOR RESCISSION OF BOND REQUIREMENT CONTAINED IN ARIZONA CORPORATION COMMISSION DECISION NO. 70101.	**DOCKET NO.** T-20487A-15-0306

APPLICATION

Triplet Mountain Communications, Inc. ("TMCI" or "Applicant") hereby files this application for rescission of the bond requirement in Arizona Corporation Commission ("Commission") Decision No. 70101.

Arizona Corporation Commission
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BACKGROUND

TMCI was certified by the Commission to provide intrastate telecommunications services in Arizona on December 21, 2007. *See* Decision No. 70101. TMCI is a tribal corporation incorporated under the laws of the San Carlos Apache Indian Tribe and is authorized to transact business in Arizona as a foreign corporation. TMCI is in good standing with the Commission's Corporations Division. TMCI provides telecommunications services to customers located outside the San Carlos Apache Indian Reservation. TMCI does not require deposits from any customers and is not holding any customer deposits.

When TMCI was certified by the Commission in 2007, it was standard practice for Commission Staff to require a performance bond. Decision No. 70101 requires TMCI to maintain a performance bond or irrevocable sight draft letter of credit ("ISDLOC") in the amount of $110,000, which reflects $100,000 for facilities-based long distance, and $10,000 for resold long distance. TMCI has maintained an ISDLOC since January of 2008. This letter of credit is costly to TMCI both in terms of annual expense and in tying up TMCI's funds. It will need to be renewed again in January of 2016.

ANALYSIS

"In 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." A.A.C. R14-2-1105(D). TMCI is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the terms of its certification. Decision No. 70101 p. 9, para. 44(a). While the Commission may require a performance bond, for the reasons set forth below, TMCI submits that continuing this requirement for established competitive telecommunications companies, such as TMCI, is unnecessary, costly and inefficient, while doing nothing to enhance the services TMCI is able to provide to its customers.

1. Excellent Record of Compliance.

TMCI has been certified in Arizona since 2007. Throughout this period, TMCI has complied with all the requirements of its certification. No formal complaints have been lodged with the Commission against TMCI. TMCI is unaware of any informal complaints. TMCI strives to resolve any customer concern immediately without the involvement of any regulatory agency. The ISDLOC TMCI has maintained since 2008 has never been drawn upon or requested. Obtaining and maintaining this ISDLOC creates an expense for TMCI and prevents TMCI from using those resources to grow its network or reduce prices to customers.

2. The Bond Requirement Is Neither Necessary Nor Reasonable.

The Commission "*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers." A.A.C. R14-2-1105(D) (emphasis added). This rule was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) *(Eschelon Telecom of Arizona CC&N Application).* At that time, many providers were new to Arizona and few carriers had invested in equipment and facilities. The new competitive local exchange carriers ("CLECs") did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal obligations. Bonds were one way for the Commission to protect customer deposits from asset-less companies with few ties to Arizona.

Now, fifteen years later, the market is very different. Far fewer telecommunications companies remain, and most of those remaining have invested in Arizona. CLECs own switches, equipment and fiber cable valued in the millions. Customer deposits and advances are no more at risk with an established, facilities-based CLEC like TMCI than they are with major carriers such as Qwest Corporation, Cox or Sprint — all of which operate in competition with facilities-based CLECs but carry no performance bonds benefiting the Commission. TMCI has invested in Arizona infrastructure, its employee base and its customers. Further, TMCI does not require customer deposits or prepayments and is not holding any customer deposits today. TMCI executive and employees are available in Arizona to respond to any Commission concerns at any time and without delay.

3. The Commission is Moving Towards Requiring a Bond Only When Warranted; a Bond or ISDLOC is Not Warranted Here.

The Commission recently approved a carrier certification request without requiring a bond of the applicant. *See* TNCI Operating Company, LLC T-20882A-13-0108. (Note: "TNCI" is a different entity than "TMCI"). In recommending approval of the TNCI certification application, Staff recommended no bond, reflecting an appropriate reaction to changes in the competitive telecom market. Staff has recommended a "case by case" analysis for assessing the need for a bond. This makes sense. The Commission retains full authority to impose a bond if Staff is concerned about a company's managerial or technical ability to provide service in Arizona and the Commission concerns in that concern. Companies like TMCI, however, that have been providing service for years, hold no customer deposits, show no history of customer complaints or problems, and have demonstrated their technical and managerial expertise to provide service, should not be required to post a bond. It is highly likely that, were TMCI to file a new certification application today, no bond would be required.

Additionally, the Commission has recently been releasing, on a regular basis, performance bonds and ISDLOCs deposited with the Commission by other CLECs. *See e.g., In the Matter of the Application of Eschelon Telecom of Arizona, Inc., for Approval of an Order Rescinding Its Bond Requirement,* Decision No. 74555 (June 20, 2014); *In the Matter of the Application of Dishnet Wireline L.L.C. for Approval for Rescission of Bond Requirement Contained in Decision No. 72496,* Decision No. 74493 (May 23, 2014); *In the Matter of the Application of Tw Telecom of Arizona LLC for Approval of Rescission of Bond Requirement Contained in ACC Decision 70057,* Decision No. 74497 (May 23, 2014); *In the Matter of Application of XO Communications Services, LLC for Approval of Rescission of Bond Requirement Contained in Arizona Corporation Commission Decision No. 70471,* Decision No. 74490 (May 23, 2014); *In the Matter of the Application of Gila Local Exchange Carrier, Inc. D/B/A Allavion Communications for Rescission of Bond Requirements Contained in Arizona Corporation Commission Decision No. 70039, Decision No. 74453 (April 18, 2014).* As in these cases, TMCI has demonstrated its high level of service to its customers. There are no shortcomings in TMCI's "managerial or technical abilities to provide its services in Arizona," which is the remaining ground for requiring a bond under the Commission Staff's current bond policy. *See In The Matter of the Application of TNCI Operating Company L.L.C. for Approval of a Certificate of Convenience and Necessity,* Decision No. 74152 (October 25, 2013), pgs.6-7, para. 18.

CONCLUSION

For the foregoing reasons, TMCI respectfully requests an order rescinding the bond requirement included in Decision No. 70101.

RESPECTFULLY SUBMITTED this 20th day of August 2015.

David I. Thompson, 016793
DICKINSON WRIGHT PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, Arizona 85004-4568
Telephone (602) 285-5021
dthompson@dickinsonwright.com
courtdocs@dickinson-wright.com
Electronic Service Preferred (ESP)

ORIGINAL and thirteen (13) copies of the foregoing filed this 20th day of August, 2015 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street Room 108
Phoenix, Arizona 85007

Marsha Falls

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