

ORIGINAL

**MILLER
ISAR** INC.
TRUSTED ADVISORS



0000167535

RECEIVED

ANDREW O. ISAR

4304 92ND AVENUE NW
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

2016 JAN -6 P 1:42

Via Overnight Delivery

January 5, 2016

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Arizona Corporation Commission

DOCKETED

JAN 06 2016

DOCKETED BY

ATTN: Matthew Connolly

Re: Staff's First Set of Data Requests to X5 OpCo LLC, Docket No. T-20946A-15-0384

Dear Sir/Madam:

X5 OpCo LLC submits to the Arizona Corporation Commission an original and thirteen (13) copies X5 OpCo LLC's responses to Staff's First Set of Data Requests in the above referenced matter.

Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Regulatory Consultants to
X5 OpCo LLC and

Enclosures

STAFF'S FIRST SET OF DATA REQUEST TO

X5 OPCO LLC ("X5")

DOCKET NO. T-20946A-15-0384

January 6, 2016

RECEIVED

STF 1.1 Will X5 have any employees located in Arizona? If yes, how many and what will be their function? Please include any maintenance and repair personnel.

Response: X5 will not have employees located in Arizona.

STF 1.2 Attachment E of the Application does not indicate X5 as being authorized to provide service in Missouri. However, the following link to the X5 web site appears to indicate X5 is authorized to provide service in Missouri. <http://www.x5solutions.com/about-us/legal/> Please clarify if this is correct and provide an updated Attachment (if needed) that includes the full list of jurisdictions in which X5 is authorized to provide service.

Response: Since the submission of X5's original application to the Commission, X5 has applied and been granted operating authority in Missouri among other states. An updated exhibit reflecting those jurisdictions in which X5 has applied for intrastate operating authority is attached.

ARIZONA CORPORATION COMMISSION

Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services

Of X5 OpCo, LLC

ATTACHMENT E

List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

<u>Oregon</u> Kathy Shepherd Telecommunications & Water Division Oregon Public Utility Commission 201 High St. SE, Suite 100 Salem, OR 97301-3612 Telephone: 503.378.8959 Email: kathy.shepherd@state.or.us	<u>Utah</u> John Harvey Utah Public Service Commission Heber M. Wells Building, 4th Floor 160 E. 300 South Salt Lake City, Utah 8411 Telephone: 801.530.6781 Email: jsharvey@utah.gov
<u>Washington</u> Kristen Russell Washington Utilities and Transportation Commission 1300 South Evergreen Park Drive S.W. Olympia, WA 98504-7250 Telephone: 360.664.1281 Email: Unavailable	<u>Kentucky</u> Denis Brent Kirtley 211 Sower Blvd. Frankfort, KY 40602-0615 Telephone: 502.564.3940 Email: Unavailable
<u>Missouri</u> John Van Eschen Missouri Public Service Commission 200 Madison Street, Suite 100 Jefferson City, MO 65102-0360 Telephone: 573.751.5525 Email: john.vaneschen@psc.mo.gov	<u>Pennsylvania</u> Melissa Derr Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street, Second Floor – Room N201 Harrisburg, PA 17120 Telephone: 717.783.6171 Email: mderr@pa.gov

Applicant has also been granted intrastate operating authority in Florida, Iowa, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Texas.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.3 It appears X5 has submitted a petition for Public Convenience and Necessity for authority to provide telecom service in the State of New York. Please clarify if this is the case and please provide the status of this petition.

Response: X5 has been granted a Certificate of Public Convenience and Necessity to provide local exchange and interexchange telecommunications services in New York. *See*, Matter No. 15-02220, November 25, 2015.

STF 1.4 For all jurisdictions in which X5 is authorized, or is requesting authorization to provide, please provide the type of telecommunications service (i.e. resold long distance, etc.) authorized or requested.

Response: X5 has been granted the following authorities:

Oregon:	Local exchange and interexchange
Washington	Local exchange and interexchange
Utah	Local exchange and interexchange
Florida	Interexchange
Iowa	Interexchange
Michigan	Interexchange
Minnesota	Interexchange
Missouri	Interexchange
New Jersey	Local exchange and interexchange
New York	Local exchange and interexchange
North Dakota	Interexchange
Ohio	Interexchange
Pennsylvania	Interexchange
Texas	Interexchange

STF 1.5 Section D of the Application indicates that X5 does not seek facilities-based interexchange authority. Yet Section (A-1) of the Application indicates otherwise. Please clarify this discrepancy.

Response: X5's response to question D-1 pertains to whether the Company *is currently selling facilities-based* long distance services: "Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:" X5 is not currently selling service in Arizona.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.6 Section (A-11) does not disclose the FCC Order issued in 2010 involving X5. (<https://transition.fcc.gov/eb/Orders/2010/DA-10-1829A1.html>) Please explain why this was not included in the Application and please provide any other proceedings of this type involving X5 in any other jurisdiction.

Response: The cited order pertains to X5 Solutions, Inc. an unaffiliated legal entity whose assets were acquired by Applicant X5 OpCo LLC in early 2015. The cited order has no applicability to Applicant and was not referenced, accordingly.

STF 1.7 Regarding the Attachment D financials, does the applicant understand that there will be three numbers (total assets, shareholder equity and net income) taken from those financials that will be made public in Staff's Memo and in any Order that might be issued granting the application?

Response: X5 so understands. Nevertheless, the Company reiterates its request that the confidentiality of its financial information be maintained to the greatest degree possible.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.8 A CC&N Application is required to include two years of financials. Please provide a set of *pro forma* financials for YE 2016 that include total assets, shareholder equity and net income.

Response: Please see below. Applicant considers these data to be confidential and reiterates its request that the Commission maintain the confidentiality of these data to the greatest extent possible.

X5 OpCo LLC
Pro Forma Summarized Financial Data (A)
Year Ending December 31, 2016
(Dollars in Thousands)

Income Statement:	Year Ending <u>12/31/2016</u>
Revenues	\$ 87,130
Gross Profit	\$ 29,248
SG&A Expenses	\$ 18,315
Net income	\$ 1,824

Balance Sheet:	As of <u>12/31/2016</u>
ASSETS	
Current Assets	\$ 7,884
Total Assets	\$ 69,490
LIABILITIES & EQUITY	
Current Liabilities	\$ 8,645
Total Liabilities	\$ 44,828
Total Equity	\$ 24,662
Total Liabilities & Equity	\$ 69,490

(A) - Assumes the combination of X5 OpCo LLC, Novatel and Cornerstone Telephone, as if they were acquired and merged as of January 1, 2016, based on the projected results of all three businesses.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.9 Referencing tariff page 44, section 2.5.7, would the Company consider providing an email address to which customers could submit complaints? Please also indicate the person in charge of handling customer complaints.

Response: Yes.
Meghan Perez
Customer Service Manager
X5 OpCo LLC
1008 Western Avenue, Suite 400
Seattle, WA 98104
Telephone: 888.588.1501
Email: support@x5solutions.com

STF 1.10 How will X5 market its service in the Arizona market? Please provide any marketing material X5 will be using.

Response: X5 OpCo LLC will not initially be marketing in Arizona. The Company will be integrating those Arizona and other state subscribers currently served by NovaTel Ltd., Inc. into its operations. It is anticipated that should X5 OpCo LLC expand its Arizona operations, it will rely on in house sales staff to pursue commercial subscribers, as well as reliance on a new web site.

STF 1.11 For each of the employee's listed in Attachment F, other than Mr. Nate Bledsoe, please indicate the years of service in the telecommunications service industry.

Response: Gregory Forrest, President and Chief Executive Officer – more than 20 years.
John London, Chief Financial Officer – three months.
Daniel Horton, Chief Information Officer – more than 27 years

Messrs. Manner, Hirsch, and Garber are not employees.

Applicants senior management is supported by a staff of trained and experienced telecommunications professions, most of whom have served in their current roles in X5 Solutions, Inc., a company whose assets were acquired in early 2015.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.12 In its Application, in section (A-15), the Applicant states that it does not collect deposits or advanced payments. However, in the proposed tariff, in sections 2.5.1.A.2., 2.5.1.A.3.(c), 2.5.1.B.4., 2.5.1.B.6.(a), 2.5.2.C., 2.5.6, 2.5.8., 2.7.2 and 2.10.3.A.3., there is reference to the collection of deposits. Please clarify if the Company will be collecting deposits or advanced payments in Arizona.

Response: Tariff references were taken from the NovaTel Ltd., Inc. Arizona tariff. Applicant does not intend to impose deposit requirements in Arizona to former NoveTel Ltd. Inc. subscribers or new subscribers, should it expand its operations in Arizona.

STF 1.13 Referencing tariff page 64, Section 4.5, the Company proposed maximum charge for Payphone Surcharge is \$2.25. However, the Arizona Commission doesn't allow for more than a \$.60 maximum Surcharge. Would the Company be willing to change this tariff sheet to reflect a maximum Payphone Surcharge of \$.60?

Response: Yes. This rate was taken directly from NovaTel Ltd., Inc.'s original tariff.

STF 1.14 Referencing tariff page 13, Section 3.1.2.C., there are no Commission regulations regarding minimum quality of service standards applicable to Arizona long distance carriers. Please remove this section from the tariff.

Response: X5 will remove the provision contained in Section 3.1.2.C (sic. 2.1.2.C) upon submission of a final tariff to the Commission.

STF 1.15 Referencing tariff page 32, Section 2.3.12.B., what "temporary discontinuance" situation is applicable here?

Response: This provision is taken directly from NovaTel Ltd., Inc.'s Arizona tariff. This provision is understood to apply to the temporary discontinuance of service, presumably in instances of non-payment or equipment that may be deemed incompatible with underlying carrier networks.

STF 1.16 Referencing tariff page 43, Section 2.5.7, the Company proposed reconnection fee of \$200 appears excessive. Please explain why the Company believes that this proposed rates is just and reasonable using a fair value or cost basis. Please include economic justification or cost support data. Please include any supporting materials.

Response: This provision is taken directly from NovaTel Ltd., Inc.'s Arizona tariff. NovaTel Ltd. Inc. has provided services exclusively to commercial subscribers. X5 OpCo LLC does not take a position as to the reasonableness of the charge, but notes that this would not be an excessive charge for a commercial enterprise in light of company technician and support staff costs to disconnect and reconnect services for the larger commercial subscribers that comprise NovaTel Ltd., Inc.'s customer base.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.17 Referencing tariff page 61, Section 4.1.5., Staff is confused as to the purpose and intent of this section. Please explain why this is included in the tariff and in what situation(s) it would be applicable.

Response: This provision is taken directly from NovaTel Ltd., Inc.'s Arizona tariff. It is X5 OpCo LLC's understanding that this provision is intended to ensure that commercial subscribers are routing a majority of their traffic as described in order to benefit from the rates accorded under the tariff.

STF 1.18 Although in Section 3.1 there is mention of "Service order and change charges" and "Nonrecurring Charges for installation of Facilities and Services" along with the Effective Rate Schedule provided at the end of the proposed tariff, Staff is having trouble associating them. For example, if a small business with three lines wanted to use X5's long distance service in a presubscribed manner, what would be the estimated detailed initial service charges?

Response: The provisions are taken directly from NovaTel Ltd., Inc.'s Arizona tariff. NovaTel Ltd., Inc. commercial subscribers are multi-state enterprises. The listed charges are understood to be implemented on an account basis and would not be Arizona-specific, which is why X5 OpCo LLC believes they were not included in NovaTel Ltd., Inc.'s original tariff.

STF 1.19 Will the Company be doing any rounding up to the nearest minute? If this is already addressed in the proposed tariff, please indicate the location. If not, please provide proposed language to be inserted in the tariff.

Response: X5 OpCo LLC will round up to the nearest minute. X5 OpCo LLC would propose the following: "Usage is measured and rounded up to the next billing increment." This statement is proposed to appear as a new Section 3.1.1.C on Sheet No. 56.

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.20 The Effective per minute rates for inbound and outbound switched service appear to exceed the maximum rates listed on page 62 of the tariff. Please clarify if this is the case.

Response: The minimum and maximum rates appearing on Sheet No. 62 inadvertently contained leading zeros and have been amended as follows:

4.2.1 Inbound Switched Service

Inbound Switched Service, per minute, Maximum	\$0.27
Inbound Switched Service, per minute, Minimum	\$0.02

4.2.2 Outbound Switched Service

Outbound Switched Service, per minute, Maximum	\$0.12
Outbound Switched Service, per minute, Minimum	\$0.01

STAFF'S FIRST SET OF DATA REQUEST TO
X5 OPCO LLC ("X5")
DOCKET NO. T-20946A-15-0384
January 6, 2016

STF 1.21 Please indicate why X5 believes that its rates are just and reasonable using a competitive market analysis. The analysis should contain publicly available examples of tariff rates and charges charged by other carriers for similar services. Include supporting material and any other information that X5 believes demonstrates that the proposed tariff rates and charges are just and reasonable.

To support your answer, please use a matrix format to list the Company's proposed services, rates, and charges (see provided Excel file). Based on X5's proposed tariff, list all of the telecommunications services the Company will provide in Arizona. For each of the telecommunications services listed, provide the tariff page numbers that support each of the X5's services, rates, and charges. Also, provide the same information requested of X5 for CenturyLink and two other Arizona long distance competitors using the same matrix format. List each competitor's services, rates, and charges for the same or comparable services and include copies of the tariff page of each service, rate and charge of each competitor. For a list of telecommunications carriers certified in Arizona, go to www.azcc.gov/divisions/utilities/utilitylist.asp. For a list of Commission-approved telecommunications rates and tariffs, go to www.azcc.gov/Divisions/Utilities/Tariff.

Response: X5 OpCo LLC has adopted NovaTel Ltd., Inc.'s tariffed Arizona rates verbatim, in anticipation of approval of the Company's asset acquisition in Arizona and elsewhere. As these rates have been approved by the Commission, X5 OpCo LLC maintains that NovaTel Ltd., Inc.'s tariffed Arizona rates have been deemed just and reasonable by the Commission, obviating the need for a separate market analysis.