

OPEN MEETING ITEM



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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



Executive Director

ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

DOCKET CONTROL

ORIGINAL

2016 SEP 16 AM 10 30

DATE: SEPTEMBER 16, 2016

DOCKET NO.: T-20943A-15-0343

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Order on:

CERETEL INCORPORATED
(CC&N / RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 27, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 27, 2016 AND OCTOBER 28, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


JODI A. JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

SEP 16 2016

DOCKETED BY 

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

On this 16th day of September, 2016, the following document was filed with Docket Control as a Recommended Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF
CERTEL INCORPORATED FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-20943A-15-0343
DECISION NO. _____

ORDER

Open Meeting
October 27 and 28, 2016
Phoenix, Arizona

BY THE COMMISSION:

On October 1, 2015, CereTel Incorporated (“CereTel”) filed with the Arizona Corporation Commission (“Commission”) an application for approval of a Certificate of Convenience and Necessity (“CC&N”) to provide resold intrastate interexchange telecommunications services within the State of Arizona.

On December 29, 2015, the Commission’s Utilities Division (“Staff”) filed a Letter of Deficiency, requesting a copy of CereTel’s Affidavit of Publication.

On March 1, 2016, CereTel filed its first amendment to its application which included a copy of its Affidavit of Publication stating that notice of the application had been published in the *Arizona Republic*, a newspaper of general circulation in the State of Arizona.

On March 31, 2016, Staff filed a Letter of Sufficiency.

On July 7, 2016, CereTel filed a second amendment to its application that included its responses to Staff’s First Set of Data Requests.

On July 8, 2016, the Hearing Division issued a Procedural Order directing the Staff Report to be filed on or before July 29, 2016.

On July 27, 2016, Staff requested an extension of time for filing the Staff Report until

1 September 2, 2016, which was granted by the Procedural Order issued on July 28, 2016.

2 On August 11, 2016, CereTel filed its responses to Staff's Second Set of Data Requests.

3 On September 2, 2016, Staff filed a Staff Report recommending approval of CereTel's
4 application, subject to certain conditions.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. CereTel is a foreign corporation organized under the laws of Delaware and authorized
10 to conduct business in Arizona.¹

11 2. On October 1, 2015, CereTel filed an application with the Commission to provide resold
12 interexchange telecommunications services on a statewide basis in Arizona. The application also
13 requested a determination that CereTel's proposed services are competitive in Arizona.

14 3. Notice of CereTel's application was given in accordance with the law.

15 4. Staff recommends approval of CereTel's application for a CC&N to provide intrastate
16 telecommunications services in Arizona, subject to the following conditions:

- 17 (a) CereTel complies with all Commission Rules, Orders, and other requirements
18 relevant to the provision of intrastate telecommunications services;
- 19 (b) CereTel notifies the Commission immediately upon changes to CereTel's name,
20 address, or telephone number;
- 21 (c) CereTel cooperates with Commission investigations including, but not limited
22 to, customer complaints;
- 23 (d) The rates proposed by this filing are for competitive services. In general, rates
24 for competitive services are not set according to rate of return regulation. Staff
25 obtained information from CereTel and has determined that its fair value rate
26 base is zero. Accordingly, CereTel's fair value rate base is too small to be useful
27 in a fair value analysis. Staff has reviewed the rates to be charged by CereTel
28 and believes they are just and reasonable as they are comparable to several long
distance carriers operating in Arizona and comparable to the rates CereTel
charges in other jurisdictions. Therefore, while Staff considered the fair value
rate base information submitted by CereTel, the fair value rate base information
provided should not be given substantial weight in this analysis;

¹ Application at Exhibit A.

1 (e) The granting of CereTel's CC&N is conditioned upon the granting of XYN
2 Communications, LLC's ("XYN") CC&N application request in Docket No. T-
20968A-16-0158.

3 5. Staff also recommends the CC&N granted to CereTel be considered null and void after
4 due process if CereTel fails to: (1) docket conforming tariffs within 365 days from the date of an Order
5 in this matter or 30 days prior to providing service to its first customer, whichever comes first, and in
6 accordance with the tariffs submitted with its application; (2) notify the Commission through a
7 compliance filing within 30 days of the commencement of services to the first end-user customer; and
8 (3) abide by the Commission adopted rules that address Universal Service in Arizona. Specifically,
9 Arizona Administrative Code ("A.A.C.") R14-2-1204(A) indicates that all telecommunications service
10 providers that interconnect into the public switched network shall provide funding for the Arizona
11 Universal Service Fund ("AUSF") and A.A.C. R-14-2-1204(B) sets forth the necessary monthly
12 payments.

13 6. Staff also recommends CereTel's proposed services be classified as competitive given
14 the availability of alternatives, the inability of CereTel to adversely affect the long distances service
15 markets, and CereTel's lack of market power.

16 **Technical Capability**

17 7. Currently, CereTel is authorized to provide resold intrastate telecommunications
18 services in the three (3) states of Kentucky, Oregon, and Texas and is seeking the same authority in
19 California, Illinois, and Washington.²

20 8. CereTel seeks to provide its proposed services to residential and business customers via
21 CereTel and STi, the latter brand CereTel purchased in March 2015.³ CereTel states it plans to offer
22 prepaid calling cards that it will market for use in making international calls.⁴ Although CereTel
23 intends its calling cards to be used for international calls, intrastate long distance calls will not be
24 blocked and are possible, resulting in incidental long distance services in Arizona.⁵

25 ...

26 _____
27 ² Staff Report at 1.

³ Id.

⁴ Id.

28 ⁵ Id.

1 9. Calls using CereTel prepaid calling cards that originate in Arizona will be routed to
2 XYN, who has a contract with Nuwave Communications (“Nuwave”), who, in turn, has a contract with
3 CereTel.⁶ As such, calls will go from XYN to Nuwave to CereTel’s New York softswitch.⁷

4 10. CereTel’s team of officers and managers have a combined fifty-two (52) years of
5 experience in the telecommunications industry.⁸

6 11. While CereTel does not intend to have any employees within the State of Arizona,
7 CereTel does staff customer support numbers Monday through Friday from 9:00 am to 9:00 pm Eastern
8 Standard Time.⁹

9 12. Staff believes CereTel has the technical capabilities to provide its proposed services in
10 Arizona.

11 **Financial Capabilities**

12 13. Upon signing a protective agreement, CereTel provided *pro-forma* financial statements
13 for the twelve (12) months ending December 31, 2016, listing total assets of \$9,282,000; total equity
14 of \$3,512,000; and a negative net income of \$2,367,000. For the twelve (12) months ending December
15 31, 2017, CereTel listed total assets of \$9,161,000; total equity of \$3,944,000; and a net income of
16 \$432,000.¹⁰

17 **Rates and Charges**

18 14. Staff believes that CereTel will have to compete with other incumbent local exchange
19 carriers (“ILECs”), and various competitive local exchange (“CLECs”), and interexchange carriers
20 (“IXCs”) in Arizona in order to gain customers.¹¹ Staff does not believe CereTel will be able to exert
21 market power given its status as a new entrant in the market.¹²

22 15. Staff states that in general, rates for competitive services are not set according to rate of
23 return regulation. Staff believes that CereTel’s proposed rates are just and reasonable based on the
24

25 ⁶ Staff Report at 2.

26 ⁷ Id.

27 ⁸ Id.

28 ⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

1 rates of comparable long distance carriers.¹³ Staff states that while it considered the fair value rate base
 2 (“FVRB”) information submitted by CereTel, that information was not afforded substantial weight in
 3 Staff’s analysis.¹⁴

4 16. While the Commission allows competitive telecommunications service companies
 5 flexible pricing per A.A.C. R14-2-1109, companies are required to file a tariff for each competitive
 6 service that includes a maximum rate and an effective rate to be charged.

7 17. Pursuant to A.A.C. R14-2-1109, the rates charged for each service CereTel proposes to
 8 provide may not be less than CereTel’s total service long-run incremental cost of providing service.¹⁵

9 **Complaint Information**

10 18. Staff states that the Commission’s Consumer Services Section of the Utilities Division
 11 reported that no complaints, inquiries, or opinions have been filed against CereTel from January 1,
 12 2012 to October 14, 2015.¹⁶ According to Staff, CereTel is in good standing with the Commission’s
 13 Corporations Division.¹⁷

14 19. Per the Staff Report, a search of the Federal Communications Commission’s website
 15 for CereTel returned no formal or informal complaint proceedings against CereTel.¹⁸

16 20. As of the filing of the Staff Report, CereTel was authorized to provide
 17 telecommunications services in Kentucky, Oregon, and Texas. Staff contacted the Public Utilities
 18 Commissions in each of the three states and found that CereTel is authorized to provide
 19 telecommunications services in these jurisdictions and no complaints have been filed.¹⁹

20 21. According to CereTel, it has not had an application for service denied in any state or
 21 jurisdiction.²⁰

22 . . .

23 . . .

24

25 ¹³ Staff Report at 3.

26 ¹⁴ Id.

27 ¹⁵ Id. at 2.

28 ¹⁶ Id. at 3.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

1 is just and reasonable and in the public interest for CereTel to establish rates and charges that are not
2 less than CereTel's total service long-run incremental costs of providing the competitive services
3 approved herein.

4 9. Pursuant to A.R.S. § 40-282, the application in this matter may be approved without a
5 hearing.

6 10. Staff's recommendations are reasonable and should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of CereTel Incorporated for a Certificate
9 of Convenience and Necessity to provide resold intrastate telecommunications in Arizona, is hereby
10 approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 4 and
11 5.

12 IT IS FURTHER ORDERED that CereTel Incorporated's telecommunications services are
13 competitive in Arizona.

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1 IT IS FURTHER ORDERED that if CereTel Incorporated fails to comply with the Staff
2 recommendation described in Findings of Fact No. 5, the Certificate of Convenience and Necessity
3 granted herein shall be considered null and void after due process.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN LITTLE COMMISSIONER STUMP

9
10 COMMISSIONER FORESE COMMISSIONER TOBIN COMMISSIONER BURNS
11

12 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
13 Director of the Arizona Corporation Commission, have hereunto
14 set my hand and caused the official seal of the Commission to be
15 affixed at the Capitol, in the City of Phoenix, this
16 _____ day of _____ 2016.

17 JODI A. JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

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21 DISSENT _____
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1 SERVICE LIST FOR:

CERETEL INCORPORATED

2 DOCKET NO.:

T-20943A-15-0343

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