

Control Number: 38555



Item Number: 10

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**DOCKET NO. 38555**

**APPLICATION OF XYN  
COMMUNICATIONS OF TEXAS, LLC  
FOR A SERVICE PROVIDER  
CERTIFICATE OF OPERATING  
AUTHORITY**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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**COMMISSION STAFF'S FINAL RECOMMENDATION**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) files this final recommendation regarding the August 13, 2010, filing by XYN Communications of Texas, LLC (Applicant) applying under § 54.151 of the Public Utility Regulatory Act<sup>1</sup> to provide data, facilities-based, and resale telecommunications services within the geographic areas of the major incumbent local exchange carriers in Texas exchanges, including AT&T Texas, Verizon Southwest, and CenturyLink.

**I. PURA/Substantive Rule Requirements**

Pursuant to PURA §54.154(b)(3), the applicant must demonstrate that it has the technical ability to provide the requested services and that the services meet the requirements of PURA §§54.151 - 54.159. Additionally, the applicant must demonstrate compliance with the customer protection requirements of P.U.C. SUBST. R. 26.111(c)(2)(F). Finally the applicant must establish that it has met the financial qualifications outlined in PURA §54.154(b)(3) and P.U.C. SUBST. R. 26.111(c) and (d).

**II. Staff Analysis**

Staff has examined the applicant's SPCOA application to determine if it meets the requirements of PURA §§54.151 - 54.159 and P.U.C. SUBST. R. 26.111. Gordon Van Sickle of the Commission's Infrastructure Reliability Division reviewed the application to determine whether it meets the technical requirements of PURA § 54.154(b)(3) and PURA §§ 54.151 - 54.159 and the customer protection requirements of P.U.C. SUBST. R.

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 - 66.017 (Vernon 2007 & Supp. 2008) (PURA).

26.111(c)(2)(F). Anjuli Winker of the Commission's Financial Review Section reviewed the application to determine whether it meets the requirements of PURA §54.154(b)(3) and P.U.C. SUBST. R. 26.111(c) and (d). Staff recommendations are included as attachments to this pleading and provide more specific information concerning the applicant's satisfaction of the technical, customer protection, and financial requirements.

### **III. Staff Recommendation**

After reviewing the applicant's application filed in this docket, and as evidenced by the attached recommendations of the Staff members referenced above, Staff has determined that the applicant has met the requirements of PURA §§54.151 - 54.159 and P.U.C. SUBST. R. 26.111 for approval of a Service Provider Certificate of Operating Authority (SPCOA) to provide data, facilities-based, and resale telecommunications services within the geographic areas of the major incumbent local exchange carriers in Texas exchanges, including AT&T Texas, Verizon Southwest, and CenturyLink.

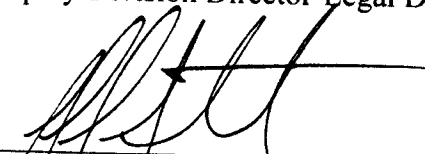
Staff respectfully requests that an order be issued consistent with this recommendation.

Date: September 21, 2010

Respectfully Submitted,

Thomas S. Hunter  
Division Director-Legal Division

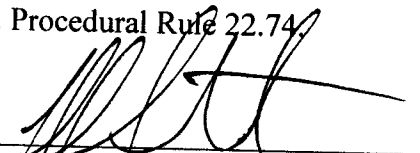
Keith Rogas  
Deputy Division Director-Legal Division

  
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For Scottie C. Aplin

Attorney-Legal Division  
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Austin, Texas 78711-3326

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on September 21, 2010, in accordance with P.U.C. Procedural Rule 22.74.

  
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For Scottie C. Aplin

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Document Management

**FROM:** Gordon H. Van Sickle, Senior Analyst – Infrastructure Reliability Division *bsv*

**DATE:** September 21, 2010

**SUBJECT:** Docket No. 38555: *Application of XYN Communications of Texas, LLC for a Service Provider Certificate of Operating Authority*

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### **Summary of Conclusions and Recommendations**

Commission Staff (Staff) finds that XYN Communications of Texas, LLC meets the technical criteria for a Service Provider Certificate of Operating Authority (SPCOA), pursuant to the Public Utility Regulatory Act (TEX. UTIL. CODE ANN. §§54.151 - 54.159) (PURA) and Public Utility Commission of Texas (PUC) Substantive Rule 26.111. Staff recommends that XYN Communications of Texas, LLC be deemed technically qualified to be granted an SPCOA to provide Facilities-based, Data, and Resale telecommunications services for the exchanges of the following Incumbent Local Exchange Carriers (ILECs) throughout the State of Texas: AT&T Texas, Verizon Southwest, Centurytel of Lake Dallas, Inc., Centurytel of Northwest Louisiana, Inc., Centurytel of Port Aransas, Inc. and Centurytel of San Marcos, Inc. Staff recommends approval of this application as submitted. If approved, the Applicant has requested that the name on the SPCOA certificate be “WiMacTel, Inc.”

### **Background Information on Application**

On August 13, 2010, XYN Communications of Texas, LLC filed an application seeking an SPCOA. Order No. 1 was issued on August 16, 2010, entering a protective order, establishing a procedural schedule, and determining filing and service procedures. On August 23, 2010, Staff filed its recommendation on eligibility. Order No. 2 was issued on August 24, 2010, certifying eligibility. On September 2, 2010, Staff filed a recommendation on deficiency/completeness of this application. Order No. 3 was issued on September 3, 2010, providing notification that Staff deems the application is sufficient and complete.

### **Description of Services**

XYN Communications of Texas, LLC is a Texas limited liability company that was established on June 23, 2010. The Secretary of State (SoS) issued an authorization to transact business in the State of Texas to XYN Communications of Texas, LLC under file number 801284933 as of June 23, 2010. We checked the requested name against the certificate of operating authority (COA), service provider certificate of operating authority (SPCOA) and

incumbent local exchange company (ILEC) official lists and found three similar names: XIT Rural Telephone Cooperative, Inc. (CCN No. 40095), XIT Telecommunications & Technology, LTD. (COA No. 50010), and XO Communications, Inc. (SPCOA No. 60173). We checked the Interexchange Carriers (IXCs) list and five similar names: XIT Telecommunications & Technology, LTD. (IXC No. IX011551), XO Communications, Inc. (IXC No. IX030091), X2Comm, Inc. (IXC No. IX011662), Xiex Telecommunications, Inc. (IXC No. IX011549), and Xiron, LLC (IXC No. IX070033). After reviewing the existing names, Staff concludes that the Applicant's requested name "XYN Communications of Texas, LLC" is distinctive and acceptable.

XYN Communications of Texas, LLC does not hold a service provider certificate of operating authority (SPCOA), certificate of operating authority (COA) or a certificate of convenience and necessity (CCN) for any part of the service area covered by this application in Texas. The Applicant stated that it has applied for local and/or interexchange authority in the following states: Florida, Illinois and New York. The Applicant has been authorized to provide local service in the following state: Florida. The Applicant has never had any telecommunications authority revoked in any state.

XYN Communications of Texas, LLC intends to provide Facilities-based, Data, and Resale local exchange service. XYN Communications of Texas, LLC intends to provide Business Only: POTS and Long Distance. XYN Communications of Texas, LLC intends to provide Business Only: Local, Domestic and International prepaid calling services. XYN Communications of Texas, LLC has established a toll-free customer service number (888) 599-6996. XYN Communications of Texas, LLC has established a principal office phone number (877) 888-5725, a fax number (877) 499-6996, and an email address ([carol@xyncom.com](mailto:carol@xyncom.com)).

XYN Communications of Texas, LLC requested that its service area be the exchanges of the following Incumbent Local Exchange Carriers (ILECs) throughout the State of Texas: AT&T Texas, Verizon Southwest, Centurytel of Lake Dallas, Inc., Centurytel of Northwest Louisiana, Inc., Centurytel of Port Aransas, Inc. and Centurytel of San Marcos, Inc.

### **Additional Information Requested for Technical Review**

XYN Communications of Texas, LLC was not requested to provide any additional or clarifying technical information concerning this application.

### **Technical Qualifications**

XYN Communications of Texas, LLC's management consists of key personnel that have accumulated over 51 years of telecommunications experience. Mr. Edward St. Croix – CEO – has at least 1 year of telecommunications experience in management, bid management, product lines, product pricing, sales, networking products and financing. Mr. Shawn Sims – President – has over 13 years of telecommunications experience in management, business development, mergers and acquisitions, investment banking, and telecommunications consulting. Mr. Mark Bunnell – COO – has over 17 years of telecommunications experience in management, network operations and support, customer retention, network design, regulatory compliance,

interconnection agreements, and product technology. Ms. Heidi Dohse – CIO – has over 18 years of telecommunications experience in management, business strategy, product marketing, customer service, data networks, voice services, hosted application services, network design, software architecture and development, service provider process engineering, and network service operations. Mr. Kyle Thomas – CTO – has at least 1 year of telecommunications experience in management, network deployment, SS7 networks, network architecture, collocation design, and network engineering. Mr. Rafik Mishreki – Vice President of Sales – has at least 1 year of telecommunications experience in management, sales, customer billing, business development, services, account management, operations and technical support.

Staff checked the following officers of XYN Communications of Texas, LLC against its Flagged Personnel List: Mr. Edward St. Croix (CEO), Mr. Shawn Sims (President), Mr. Mark Bunnell (COO), Ms. Heidi Dohse (CIO), Mr. Kyle Thomas (CTO), and Mr. Rafik Mishreki (Vice President of Sales). None of the listed officers are on the Flagged Personnel List. XYN Communications of Texas, LLC stated that none of its officers have ever been convicted of a felony.

### **Compliance Check**

A check of the Texas Comptroller's Office concerning the Franchise Tax Account Status for XYN Communications of Texas, LLC (Taxpayer ID# 32042102718) revealed the following: **IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through May 16, 2011.**

XYN Communications of Texas, LLC indicated through its responses to the PUC's Service Quality Questionnaire that it will meet the quality of service standards as they are applicable.

### **Complaint Check**

The Commission Company Contact Database shows zero complaints against XYN Communications of Texas, LLC for the past 24 months. XYN Communications of Texas, LLC filed its number of customers as zero for the past 24 months in the State of Texas. Using the above information, the customer to complaint ratio is below 6%; therefore no further investigation is warranted.

A check of the PUC Enforcement & Investigations Database indicated that XYN Communications of Texas, LLC does not have any outstanding notices of violation (NOVs). XYN Communications of Texas, LLC is a new telecommunications participant and has not opened an access line account. Upon Commission approval of its requested SPCOA; XYN Communications of Texas, LLC shall establish an access line account and submit all required reports.

**Conclusion**

Based on the information provided by the applicant and the review and analysis of this application, Staff finds that XYN Communications of Texas, LLC is technically qualified to provide Facilities-based, Data, and Resale telecommunications services for the exchanges of the following Incumbent Local Exchange Carriers (ILECs) throughout the State of Texas: AT&T Texas, Verizon Southwest, Centurytel of Lake Dallas, Inc., Centurytel of Northwest Louisiana, Inc., Centurytel of Port Aransas, Inc. and Centurytel of San Marcos, Inc. The applicant has requested that the SPCOA be issued in the name of “XYN Communications of Texas, LLC”.



# *Public Utility Commission of Texas*

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## **Memorandum**

September 21, 2010

TO: Bernice Cox, Legal  
FROM: Anjali Winker, Financial Analyst  
RE: Docket No. 38555 Application of XYN Communications Texas, LLC for a Service Provider Certificate of Operating Authority

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### **Recommendation**

XYN Communications Texas, LLC (XYN) has satisfied the financial requirements of P.U.C. Subst. R. 26.109. I recommend that the application be approved from a financial perspective.

### **Applicant**

XYN was formed as a Texas Limited Liability Company on June 23, 2010. XYN parent company is XYN Holdings International, LLC. XYN has no affiliates. XYN affirms that it has no history of bankruptcy, dissolution, merger, or acquisition in the past two calendar years.

### **Action Requested**

XYN is requesting an SPCOA to provide facilities-based, data only and resale competitive local exchange in service areas of major ILECs in Texas including AT&T, Verizon and CenturyTel.

### **Analysis and Conclusions**

The action requested requires an analysis of financial qualification pursuant to P.U.C. Subst. R. 26.109. To demonstrate financial ability, XYN's parent company provided a bank letter and account summary under protective order. The document demonstrates sufficient resources to satisfy P.U.C. Subst. R. 26.109.