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# BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF GRANITE TELECOMMUNICATIONS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTEREXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE IN ARIZONA AND PETITION FOR COMPETITIVE CLASSIFICATION OF PROPOSED SERVICES WITHIN THE STATE OF ARIZONA.

DOCKET NO. T-04208A-03-0688

DECISION NO. 66838

**OPINION AND ORDER**

DATE OF HEARING: January 20, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope

APPEARANCES: Michael W. Patten, Roshka, Heyman & DeWulf PLC, on behalf of Granite Telecommunications, LLC

Janet Wagner, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

## FINDINGS OF FACT

1. On September 18, 2003, Granite Telecommunications, LLC ("Granite" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interexchange and facilities-based local exchange telecommunications services within the State of Arizona. The application petitioned the Commission for determination that its proposed services should be classified as competitive.

2. On November 21, 2003, Applicant docketed notice of filing an Affidavit of

Publication that complies with Commission rules.

3. Granite is incorporated under the laws of the State of Delaware and is authorized to do business in Arizona.

4. On October 22, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff Report, which recommended approval of the application and included a number of additional recommendations.

5. On October 27, 2003, a Procedural Order was issued setting this matter for hearing on January 20, 2004 and setting various procedural deadlines.

6. On January 20, 2004, a full public hearing in this matter was held as scheduled. Applicant appeared telephonically and was represented by counsel. Staff appeared and was represented by counsel. The hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented and testimony was taken. No members of the public were present to provide public comment. At the conclusion of the hearing, the Administrative Law Judge took the matter under advisement and informed the parties that a Recommended Opinion and Order would be prepared for the Commissioners' consideration.

7. Applicant has the technical capability to provide the services that are proposed in its application.

8. Currently there are several incumbent providers of local exchange and interexchange services in the service territory requested by Applicant, and numerous other entities have been authorized to provide competitive local and interexchange services in all or portions of that territory.

9. It is appropriate to classify all of Applicant's authorized services as competitive.

10. The Staff Report stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

11. According to Staff, Granite submitted its audited financial statement for the six month period ending June 30, 2003. These financial statements list assets of $4.378 million, negative equity of $2.401 million, and net income of $115,000.

12. The Application states that Granite does not collect advances and deposits from its resold interexchange customers.

13. Staff recommends that Granite's application for a Certificate to provide competitive facilities-based local exchange and resold interexchange telecommunications services be granted subject to the following conditions:

(a) that, unless it provides services solely through the use of its own facilities, Granite be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer local exchange service;

(b) that Granite be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;

(c) that Granite be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;

(d) that Granite be ordered to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);

(e) that Granite be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;

(f) that in areas where it is the sole provider of local exchange service facilities, Granite be ordered to provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;

(g) that Granite be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;

(h) that Granite be ordered to abide by all the Commission decisions and policies regarding CLASS services;

(i) that Granite be ordered to provide 2-PIC equal access;

(j) that Granite be required to notify the Commission immediately upon changes to its name, address or telephone number;

(k) that Granite be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

(l) that Granite be ordered to maintain its accounts and records as required by the Commission;

(m) that Granite be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(n) that Granite be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(o) that Granite be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;

(p) that Granite be ordered to participate in and contribute to a universal service fund, as required by the Commission; and

(q) that Granite be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that Granite provides essential services or facilities that potential competitors need in order to provide their services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules.

15. Staff further recommended that Granite's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

(a) Granite be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;

(b) In order to protect Granite's customers:

(1) Granite should be ordered to procure a performance bond equal to $100,000. The minimum bond amount of $100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Granite's customers. The bond amount should be increased in increments of $50,000 whenever the total amount of the advances, deposits and prepayments is within $10,000 of the bond amount;

(2) Granite should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission;

(3) if, at some time in the future, Granite wants to collect from its resold interexchange customers an advance, deposit and/or prepayments, Staff recommends that Granite be required to file an application with the Commission for approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring a performance bond;

(4) if Granite desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107. Granite should be required to notify each of its local exchange customers and the

Commission 60 days prior to filing an application to discontinue service, and any failure to do so should result in forfeiture of the Applicant's performance bond.

(c) If any of the above timeframes are not met, that Granite's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

16. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Granite's fair value rate base is zero, and is too small to be useful in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation, but are heavily influenced by the market. Staff recommended that while it considered the fair value rate base information, it did not believe the information deserved substantial weight in setting rates for Granite.

17. The rates to be ultimately charged by Granite will be heavily influenced by the market. Because of the nature of the competitive market and other factors, a fair value analysis is not necessarily representative of the company's operations.

18. Staff stated that Granite lacks the market power to adversely affect the telecommunications market by either restricting output or raising prices. Also, Staff has recommended that Granite's services be classified as competitive and thus subject to the flexible pricing authority allowed by the Commission's Competitive Telecommunications Services rules. Staff believes that these two factors, lack of market power and the competitive marketplace for the services Granite proposes to offer, support the conclusion that a fair value analysis is not necessarily representative of the company's operations, and that the rates charged by Granite will be reasonable.

19. Staff's recommendations, as set forth herein, are reasonable.

20. Granite's fair value rate base is determined to be zero for purposes of this proceeding.

## CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based local exchange and resold interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Granite's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

**ORDER**

IT IS THEREFORE ORDERED that the application of Granite Telecommunications, LLC for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local exchange and resold interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon Granite Telecommunications, LLC's timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Granite Telecommunications, LLC shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Granite Telecommunications, LLC shall procure a

performance bond equal to $100,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service.

IT IS FURTHER ORDERED that Granite Telecommunications, LLC shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if Granite Telecommunications, LLC fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that if Granite Telecommunications, LLC fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Granite Telecommunications, LLC's performance bond shall be forfeited.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN | COMMISSIONER | COMMISSIONER

COMMISSIONER | COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 12th day of March, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mlj

SERVICE LIST FOR: GRANITE TELECOMMUNICATIONS, LLC

DOCKET NO.: T-04208A-03-0688

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