

**EXCEPTION
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BEFORE THE ARIZONA CORPORATION COMMISSION
2005 AUG 22 P 4: 11

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF VALLEY TELEPHONE COOPERATIVE, INC. FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN COCHISE COUNTY	DOCKET NO. T-01847A-05-0171 DOCKET NO. T-01051B-05-0171 EXCEPTIONS AND NOTICE OF FILING COCHISE COUNTY FRANCHISE
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On August 12, 2005, the Arizona Corporation Commission's administrative law judge issued her recommended opinion and order ("ROO") in the above-captioned docket. Valley Telephone Cooperative ("Valley Telephone" or the "Company"), by and through its counsel undersigned, hereby submits its exceptions to the ROO, together with a copy of its Cochise County Franchise that was approved by Resolution No. 05-56 dated August 16, 2005. The Company requests the ROO be modified as described herein.

COCHISE COUNTY FRANCHISE

In this docket, Valley Telephone is requesting to extend its certificate of convenience and necessity ("CC&N") to include a portion of Cochise County, Arizona, that is currently included in Qwest Corporation's Wilcox Exchange. Qwest filed comments in this docket stating that it supports the transfer of the territory to Valley Telephone, and Utilities Division Staff filed its Staff Report recommending approval of the transfer, subject to conditions.

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1 Valley Telephone holds a Cochise County Franchise which was initially granted on
2 August 3, 1964. The Company applied to expand its Cochise County Franchise to include all of
3 Cochise County, and on August 16, 2005, the Cochise County Board of Supervisors approved a
4 county-wide franchise for Valley Telephone in Resolution No. 05-56, a copy of which is attached
5 hereto as Attachment A.

6 As drafted, the ROO, requires that Valley Telephone's Cochise County Franchise be filed
7 within 365 days of a decision approving the transfer of the extension area. Specifically, Finding
8 of Fact 23 states:

9 Staff recommends that transfer of the extension area from Qwest to Valley
10 Telephone be approved subject to the following conditions:

11 (a) Valley Telephone and Qwest should be required to update and docket their
12 respective Tariffs within thirty (30) days of a Commission Decision to reflect the
13 transfer of the extension area;

14 (b) Valley Telephone should be ordered to charge its existing rates and charges in
15 the extensions area until further Order of the Commission;

16 (c) Valley Telephone [should] apply to extend its existing Cochise County
17 Franchise within thirty (30) days of a Commission Decision approving its
18 application; and

19 (d) Valley Telephone shall docket an update to its franchise with Cochise County,
20 which includes the extension area, within 365 days of the effective date of a
21 Decision approving its Application.

22 ROO, pg. 4, lines 3-14. The ROO, in the third ordering paragraph, requires Valley Telephone to
23 comply with Finding of Fact 23. ROO, pg. 5 lines 9-10.

24 With this filing, Valley Telephone has already satisfied conditions (c) and (d) of Finding
25 of Fact 23. The inclusion of requirements in a final decision which have already been satisfied
26 may lead to confusion in the future as the Commission tracks compliance with its decisions.
Thus, Valley Telephone respectfully requests the ROO be modified as follows:

1. Insert new Finding of Fact 26 stating: "Valley Telephone filed with the
Commission an updated Cochise County Franchise on August 22, 2005., which includes the
extension area."

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Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

A COPY of the foregoing mailed
this 22nd day of August, 2005, to:

Norm Curtright, Staff Attorney-Policy and Law
QWEST SERVICES CORPORATION
4041 North Central Avenue, Suite 1100
Phoenix, Arizona 85012



1715361

ATTACHMENT A

Board of Supervisors

Patrick G. Call
Chairman
District 1

Paul Newman
Vice-Chairman
District 2

Richard R. Searle
District 3



Jody N. Klein
County Administrator

Nadine Parkhurst
Clerk

RESOLUTION NO. 05 - 56

GRANTING A TELECOMMUNICATIONS SERVICES FRANCHISE TO VALLEY TELEPHONE COOPERATIVE, INC.

KNOW ALL MEN BY THESE PRESENTS, THAT,

WHEREAS, VALLEY TELEPHONE COOPERATIVE, INC., an Arizona corporation, was granted a franchise by the Board of Supervisors of Cochise County, Arizona, on August 3, 1964, to erect, construct, operate and maintain telephone lines across, over and along public roads and highway, and streets, and alleys of unincorporated cities, towns and villages within specified areas of Cochise County; and

WHEREAS, VALLEY TELEPHONE COOPERATIVE, INC., wishes to expand the area included within its franchise to extend to all of Cochise County, and has applied and petitioned, pursuant to A.R.S. §§ 40-283 and 9-583, to the Board of Supervisors of Cochise County, Arizona, for the right, privilege, license, and franchise to construct, install, operate, and maintain along over, under and across the streets, alleys, and highways, within the County, facilities for the purpose of maintaining and operating a telecommunication system, and all other facilities and improvements necessary for local network and intrastate telecommunications services; and

WHEREAS, reasonable public notice of this Application has been provided in the manner required by A.R.S. §§ 40-283 of the filing of said Application and of the public hearing on this matter set for August 16, 2005, at 9:00 A.M., at the regular meeting place of the Board in the City of Bisbee, Arizona, as the time and place for the consideration of the matter; and

WHEREAS, it appears from the affidavit of publication of the Arizona Range News that due and regular notice of said date, time, and place set for the consideration of such action has been published once a week for three (3) consecutive weeks prior to the said date of the hearing, to-wit: in the issues of the 27th day of July 2005; the 3rd day of August 2005; and the 10th day of August 2005, of said newspaper, and the matter being called at 9:00 o'clock

A.M., and it appearing that the Board of Supervisors has not received a petition signed by more than 50% of the qualified electors of said County asking the Board to deny said Application on or before the date set for consideration thereof; and

WHEREAS, said Application came on regularly to be heard on the 16th day of August, 2005, before the Board of Supervisors of Cochise County, and the Board considered the Application for the franchise, and there being good cause to grant this Application,

NOW, THEREFORE, it being determined by the Board of Supervisors of Cochise County that the grant of this franchise is regular, proper, authorized by law and in the best interest of Cochise County, and the inhabitants thereof;

NOW, THEREFORE, IT IS HEREBY ORDAINED:

1. That this Board of Supervisors of Cochise County, Arizona, acting for and on behalf of said County (the "County"), does hereby grant unto VALLEY TELEPHONE COOPERATIVE, INC. (hereinafter called "Grantee") a nonexclusive right, privilege, license, and franchise (hereinafter "the franchise") to construct, install, operate, and maintain along, over, under and across the streets, alleys, and highways under the jurisdiction of the County, facilities for the purpose of maintaining and operating a telecommunications system, and all other facilities and improvements necessary for telecommunications. This grant does not include the authorization to use State highways and those areas within the corporate boundaries of any city or town. This grant is subject to the terms, conditions, and limitations expressed below or incorporated herein by reference.
2. The County reserves the right to impose future restrictions, limitations and conditions upon the exercise of the rights granted herein as it deems best for the public safety and welfare. The Grantee is further required to comply with all lawful, applicable ordinances of Cochise County regulating the conduct of work within the public rights of-way; as such ordinances are now enacted or may be amended or adopted from time to time. The Grantee is required to obtain a separate Right-of-Way Use Permit from the County prior to initiating any construction in the right-of-way and to pay the applicable fees for the associated inspections.
3. The franchise granted hereby shall not be exclusive, and nothing herein shall be construed to prevent the County from granting other like or similar franchises to any other person, firm, or corporation.
4. The Grantee shall bear all expenses and costs, including damages and compensation for the alteration of the direction, surface, grade, or alignment of a

public roadway or for revenues lost by the Grantee, which may arise in connection with its exercise of the rights granted herein.

5. The Grantee shall erect, construct, and maintain all facilities authorized herein in a good and workmanlike manner and in compliance with all valid laws, ordinances, and regulations, which may be in force from time to time. All such work shall be performed in such a manner as may be necessary to avoid any unreasonable damage, disturbance, or modification to existing public rights-of-way, including roads, streets, highways, bridges, borrow ditches or shoulders thereon.

6. The Grantee shall, immediately upon erecting, constructing, replacing or repairing its facilities, or any part thereof, at its own cost and expense, restore any effected public right-of-way, including any road, street, highway, bridge, borrow ditch or shoulder thereon, to not less than the same condition which existed prior to the Grantee's action.

7. The County does not waive or relinquish any rights it may have to the full and complete use of the public rights-of-way subject to this franchise, whether for road purposes or otherwise. The rights of the County in and to the use of the right-of-way are, and shall be, paramount and superior to the rights of the Grantee. In the event that the location of the Grantee's facilities may interfere or conflict with the County's use, expanded use, alteration, improvement, or maintenance of the County's rights-of-way, the County may require the Grantee to relocate, at the Grantee's expense, all facilities which give rise to such interference or conflict. The County will provide the Grantee with reasonable notice of any relocation requirement and will provide a reasonable period of time for the Grantee to perform such relocation.

8. The Grantee assumes the sole responsibility for all liability for any injury or damage to any person or property, or to the road and right-of-way itself, caused by or arising out of the exercise of the rights granted herein and attributable to any act or omission of the Grantee. The Grantee shall indemnify, defend and hold harmless Cochise County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, including all costs of legal defense, arising out of the exercise of these rights which are attributed to any act or omission of the Grantee, its agents, employees, or anyone acting under its direction, control or on its behalf.

9. The County grants this franchise for a term of five (5) years from the date of its authorization. This franchise may not be sold, leased, assigned, conveyed or transferred in any manner, in whole or in part, including pursuant to the sale or merger of the Grantee corporation itself, without the express written consent of the County, which consent shall not be unreasonably withheld.

10. The County reserves the right to alter or amend the terms of this franchise in any manner necessary to protect the safety or welfare of the public or the public interest. This reservation includes, but is not limited to, the authority to impose such amended franchise fees, rentals or use payments, or other form of compensation or assessment as the County may be authorized, now or in the future, to impose under the laws of the State of Arizona and the United States.

11. The County may terminate this franchise in the event that the Grantee fails to comply with the terms and conditions of this franchise. The Board of Supervisors, or its designee, shall provide the Grantee with written notice of noncompliance and allow the Grantee a period of not less than sixty (60) days to remedy any breach. If the Grantee continues to fail to comply with the terms of this franchise after this notice and remedy period, the Board of Supervisors may, following a public hearing, revoke all rights granted herein and render this franchise null and void.

12. Upon termination of the franchise, whether by expiration or its term, or for cause, or by voluntary abandonment, and after written notice from the County, the Grantee may remove all of its facilities, installed pursuant to the rights granted herein within one hundred eighty (180) days of such termination, and shall repair any damages caused thereby. All such facilities which are not removed within this period shall be deemed to be abandoned and shall become the property of the County.

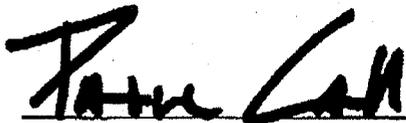
13. This franchise will not be effective for any purpose until the Grantee has indicated its acceptance in writing below.

14. The rights, privileges, and franchise granted herein are made pursuant to the laws of Arizona, including A.R.S. §§ 40-283 and 9-582, et seq., which are incorporated herein by reference.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Cochise, State of Arizona, has caused these presents to be executed and signed by the Chairman of the Board of Supervisors on this 16th day of August, 2005.

**BOARD OF SUPERVISORS
COUNTY OF COCHISE:**

ATTEST:



Patrick G. Call, Chairman



Nadine Parkhurst, Clerk of the Board

Board of Supervisors

Patrick G. Call
Chairman
District 1

Paul Newman
Vice-Chairman
District 2

Richard R. Searle
District 3



Jody N. Klein
County Administrator

Nadine Parkhurst
Clerk

CERTIFICATE OF CLERK

I, Nadine Parkhurst, Clerk of the Board of Supervisors of Cochise County, Arizona, do hereby certify that the foregoing excerpt from the minutes of the meeting of the Board of Supervisors of Cochise County, Arizona, held on August 16, 2005, constitutes a true and correct copy of the said minutes insofar as they relate to the Application of VALLEY TELEPHONE COOPERATIVE, INC., an Arizona corporation, for a telecommunications franchise in the County and to the granting of said franchise pursuant to the resolution hereinabove set out, all as appears in the official records of the Board of Supervisors.

IN WITNESS WHEREOF, I have set my hand and official seal of the Board of Supervisors of Cochise County, Arizona, this 16 day of August, 2005.

CLERK, BOARD OF SUPERVISORS
COCHISE COUNTY, ARIZONA

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ACCEPTANCE OF FRANCHISE

This is to certify that the Grantee, VALLEY TELEPHONE COOPERATIVE, INC., has on the 16th day of August, 2005, accepted the foregoing franchise. Grantee agrees that it will be bound by, observe, and carry out the terms and conditions of such franchise.

Dated: Aug 16, 2005

GRANTEE:

VALLEY TELEPHONE COOPERATIVE, INC.

By: David Thompson
David Thompson, President