



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

DEC - 9 2003

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

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
FIRST MILE SERVICES, LLC dba FIRST MILE
TECHNOLOGIES FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LONG DISTANCE, RESOLD LOCAL
EXCHANGE AND FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-04144A-02-0762

DECISION NO. 66601

OPINION AND ORDER

DATE OF HEARING: October 7, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
APPEARANCES: Mr. Michael J. Farmer, Chief Operating Officer, on behalf of FirstMile Services, L.L.C.; and Mr. Jason Gellman, 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 Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On October 7, 2002, First Mile Services, LLC, dba First Mile Technologies ("First Mile" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long distance and facilities-based and resold 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 September 22, 2003, Applicant docketed a Notice of Filing of Affidavits of

1 Publication that complies with Commission rules.

2 3. First Mile is a foreign limited liability company organized under the laws and
3 jurisdiction of the District of Columbia, and is authorized to do business in Arizona.

4 4. On August 6, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff
5 Report, which recommended approval of the application and included a number of additional
6 recommendations.

7 5. On August 15, 2003, a Procedural Order was issued setting this matter for hearing on
8 October 7, 2003, and setting various procedural deadlines.

9 6. On October 7, 2003, a full public hearing in this matter was held as scheduled.
10 Applicant's chief operating officer, Michael J. Farmer, appeared telephonically on behalf of First
11 Mile. Staff appeared and was represented by counsel. At the conclusion of the hearing, the
12 Administrative Law Judge took the matter under advisement and informed the parties that a
13 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

14 7. Applicant currently operates only in Indiana serving "greenfield" residential
15 subdivisions. First Mile's business model is to lay cable in new subdivisions in joint utility trenches
16 thereby enabling Applicant to provide a fiber coaxial network as an alternative to the incumbent local
17 exchange company.

18 8. Applicant has the technical capability to provide the services that are proposed in its
19 application.

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

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

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

26 12. According to Staff, First Mile submitted the unaudited, financial statements for its
27 parent company, First Mile Technologies, Inc, for the year ending December 31, 2002. These
28 financial statements list assets of \$3.0 million, negative equity of \$515,309, and a net loss of \$2.2

1 million.

2 13. The Application states that First Mile collects advances and/or deposits from its
3 customers.

4 14. Staff recommends that First Mile's application for a Certificate to provide competitive
5 facilities-based and resold local exchange telecommunications services be granted subject to the
6 following conditions:

- 7 (a) that, unless it provides services solely through the use of its own facilities,
8 First Mile be ordered to procure an Interconnection Agreement, within 365
9 days of the effective date of the Order in this matter or 30 days prior to the
10 provision of service, whichever comes first, that must remain in effect until
11 further order of the Commission, before being allowed to offer local exchange
12 service;
- 13 (b) that First Mile be ordered to file with the Commission, within 365 days of the
14 effective date of the Order in this matter or 30 days prior to the provision of
15 service, whichever comes first, its plan to have its customers' telephone
16 numbers included in the incumbent's Directories and Directory Assistance
17 databases;
- 18 (c) that First Mile be ordered to pursue permanent number portability
19 arrangements with other LECs pursuant to Commission rules, federal laws and
20 federal rules;
- 21 (d) that First Mile be ordered to abide by and participate in the AUSF mechanism
22 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
23 00000E-95-0498);
- 24 (e) that First Mile be ordered to abide by the quality of service standards that were
25 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 26 (f) that in areas where it is the sole provider of local exchange service facilities,
27 First Mile be ordered to provide customers with access to alternative providers
28 of service pursuant to the provisions of Commission rules, federal laws and
federal rules;
- (g) that First Mile 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 First Mile be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- (i) that First Mile be ordered to provide 2-PIC equal access;
- (j) that First Mile be required to notify the Commission immediately upon
changes to its address or telephone number;

- 1 (k) that First Mile be ordered to comply with all Commission rules, orders, and
2 other requirements relevant to the provision of intrastate telecommunications
3 service;
4 (l) that First Mile be ordered to maintain its accounts and records as required by
5 the Commission;
6 (m) that First Mile be ordered to file with the Commission all financial and other
7 reports that the Commission may require, and in a form and at such times as
8 the Commission may designate;
9 (n) that First Mile be ordered to maintain on file with the Commission all current
10 tariffs and rates, and any service standards that the Commission may require;
11 (o) that First Mile be ordered to cooperate with Commission investigations of
12 customer complaints; and
13 (p) First Mile be ordered to participate in and contribute to a universal service
14 fund, as required by the Commission.

15 15. Staff further recommended that the Applicant be subject to the Commission's rules
16 governing interconnection and unbundling and the 1996 Telecommunications Act and the rules
17 promulgated thereunder. In the event that the Applicant provides essential services or facilities that
18 potential competitors need in order to provide their services, the Applicant should be required to offer
19 those facilities or services to these providers on non-discriminatory terms and conditions pursuant to
20 federal laws, federal rules and state rules.

21 16. Staff further recommended that First Mile's application for a CC&N to provide
22 intrastate telecommunications services should be granted subject to the following conditions:

- 23 (a) First Mile be ordered to file conforming tariffs within 365 days from the date
24 of an Order in this matter or 30 days prior to providing service, whichever
25 occurs first, and in accordance with the Decision;
26 (b) In order to protect First Mile's customers:
27 (1) First Mile should be ordered to procure a performance bond equal to
28 \$135,000. The minimum bond amount of \$135,000 should be increased if
at any time it would be insufficient to cover prepayments or deposits
collected from First Mile's customers. The bond amount should be
increased in increments of \$67,500 whenever the total amount of the
advances, deposits and prepayments is within \$13,500 of the bond amount;
(2) if First Mile desires to discontinue service, it should be required to file an
application with the Commission pursuant to A.A.C. R14-2-1107;

1 (3) First Mile should be required to notify each of its local exchange customers
2 and the Commission 60 days prior to filing an application to discontinue
3 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
4 result in forfeiture of the Applicant's performance bond;

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

9 (5) if, at some time in the future, First Mile does not collect from its customers
10 an advance, deposit and/or prepayments, Staff recommends that First Mile
11 be allowed to file a request for cancellation of the resold long distance
12 portion of its established performance bond. Such request should be filed
13 with the Commission for Staff review. Upon receipt of such filing and
14 after Staff review, Staff will forward its recommendation to the
15 Commission; and

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

19 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,
20 it has determined that First Mile's fair value rate base is zero, and is too small to be useful in setting
21 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
22 return regulation, but are heavily influenced by the market. Staff recommended that the Commission
23 not set rates for First Mile based on the fair value of its rate base.

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

27 19. Staff stated that First Mile lacks the market power to adversely affect the
28 telecommunications market by either restricting output or raising prices. Also, Staff has
recommended that First Mile'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 First Mile proposes to offer, support the conclusion that a fair value analysis is not

1 necessarily representative of the company's operations, and that the rates charged by First Mile will
2 be reasonable.

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

4 21. First Mile's fair value rate base is determined to be zero for purposes of this
5 proceeding.

6 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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ORDER

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

IT IS FURTHER ORDERED that First Mile Services, LLC, dba First Mile Technologies, 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 First Mile Services, LLC, dba First Mile Technologies, shall procure a performance bond equal to \$135,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of \$135,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. The bond amount shall be increased in increments of \$67,500. This increase shall occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the bond amount.

IT IS FURTHER ORDERED that First Mile Services, LLC, dba First Mile Technologies, shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

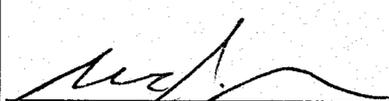
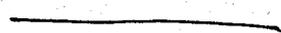
IT IS FURTHER ORDERED that if First Mile Services, LLC, dba First Mile Technologies, fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

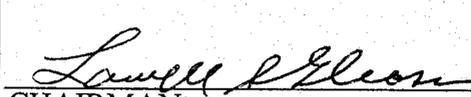
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1 IT IS FURTHER ORDERED that if First Mile Services, LLC, dba First Mile Technologies,
2 fails to notify each of its customers and the Commission at least 60 days prior to filing an application
3 to discontinue service pursuant to A.A.C. R14-2-1107,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

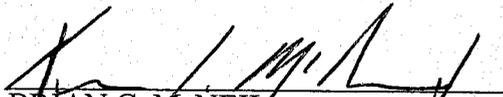
5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN COMMISSIONER COMMISSIONER

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11 CHAIRMAN COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 9th day of December, 2003.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

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20 DISSENT _____
DDN:dap

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SERVICE LIST FOR:

FIRST MILE SERVICES, LLC dba FIRST MILE TECHNOLOGIES

DOCKET NO.:

T-04144A-02-0762

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