

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

DATE: JUNE 4, 2008
DOCKET NO: T-04191A-03-0482
TO ALL PARTIES:

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

**GRINGO PASS, INC.
(CC&N)**

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 13, 2008

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 Working Session and Open Meeting to be held on:

JULY 1, 2008 and JULY 2, 2008

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.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
GRINGO PASS, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
CUSTOMER-OWNED PAY TELEPHONE
SERVICES.

DOCKET NO. T-04191A-03-0482

DECISION NO. _____

ORDER

Open Meeting
July 1 and 2, 2008
Phoenix, Arizona

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 July 14, 2003, Gringo Pass, Inc. ("GPI") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide customer-owned pay telephone ("COPT") services in the State of Arizona. GPI indicated in its application that it intended to use the Commission's COPT Generic Tariff and that it did not have any COPTs at the time of application.
2. On July 17, 2003, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency and First Set of Data Requests, which included a request for GPI to provide Staff with a copy of its customer information placard.
3. On December 20, 2005, a Procedural Order was issued in this matter indicating that no filing had been made since Staff's data request and requiring Staff, no later than January 20, 2006, to file an update on GPI's application with any appropriate recommendations. The Procedural Order stated that Staff should indicate whether the matter should be administratively closed.

1 4. On January 20, 2006, Staff filed a Status Report stating that Staff had contacted GPI
2 by telephone and had faxed GPI the First Set of Data Requests on December 23, 2005; that GPI had
3 filed its response to Staff's First Set of Data Requests on January 5, 2006; and that Staff
4 recommended that the docket remain open pending Staff's review of GPI's response and until all
5 issues associated with this matter were resolved.

6 5. On March 9, 2006, Staff filed a Memorandum recommending that GPI's CC&N
7 application be approved because Staff believed that increased pay telephone availability would
8 benefit the public and that issuance of the CC&N was in the public interest.

9 6. On March 20, 2006, a Recommended Order was filed by the Hearing Division, for
10 consideration at the April 2006 Open Meeting. The Recommended Order provided that Staff's
11 recommendation for approval was reasonable and should be adopted and, if approved, would have
12 granted GPI a CC&N to provide COPT services.

13 7. On March 30, 2006, a letter from GPI's President, A.E. Gay, was filed. In the letter,
14 Mr. Gay requested a 90-day postponement of GPI's application as the "principal" was unable to
15 attend the meeting due to an injury. The letter stated that the principal had fallen down the stairs and
16 broken his back, had been in a brace in bed for the past eight weeks, and would be in the brace in bed
17 for another six weeks.

18 8. On March 31, 2006, a fax from "Barry Thompson for A.E. Gay, Gringo Pass, Inc,
19 A.B.C. Gringo, Inc." was filed, indicating that Mr. Thompson was confirming a telephone
20 conversation with someone at the Commission and that Mr. Thompson's understanding was that
21 GPI's matter would be put on "hold" until Mr. Gay requested for the docket to be reactivated.

22 9. As a result of the correspondence from A.E. Gay and Barry Thompson, the
23 Recommended Order was pulled from the April 2006 Open Meeting agenda.

24 10. On April 12, 2006, a letter from A.E. Gay, as President of ABC Gringo, Inc. ("ABC"),
25 was filed. The letter was addressed to the Commission's Executive Director and stated that Mr. Gay
26 and his wife had intended for ABC to manage the pay telephone operation and to obtain the CC&N.
27 The letter also stated that Mr. Gay and his wife were the sole owners of ABC and its only two
28 corporate officers.

1 11. No additional filings were made in this docket until November 7, 2007, when a
2 Procedural Order was issued requiring Staff and GPI each to file, by November 19, 2007, a document
3 updating the status of GPI's application and indicating when the Recommended Order filed on March
4 20, 2006, should be scheduled for consideration at an open meeting or, if either believed that the
5 Recommended Order should not be scheduled for consideration at an open meeting, explaining why
6 and providing a recommendation as to what action should be taken to resolve the matter.

7 12. On November 16, 2007, A.E. Gay filed a letter for GPI stating that he desired for the
8 CC&N application to remain in the name GPI, rather than ABC; that he had been unable to continue
9 the necessary paperwork the prior year due to medical problems from a broken back; that he would
10 like to keep the application on hold until such time as he could handle it; and that the service is
11 needed in Lukeville, Arizona.

12 13. On November 21, 2007, Staff filed an Update stating that Staff had contacted Mr. Gay
13 on November 8, 2007, "to confirm his desire to reactivate his CC&N application using the name
14 ABC Gringo, Inc. in place of Gringo Pass, Inc." and that Mr. Gay wanted for ABC to obtain the
15 CC&N. In addition, Staff stated that ABC was in good standing with the Corporations Division; that
16 the Recommended Order filed on March 20, 2006, should not be scheduled for consideration at an
17 open meeting at that time in light of Mr. Gay's desire to have the CC&N issued to ABC; and that
18 Staff recommended either that the applicant be required to file an amended and updated application
19 with the appropriate business entity as the applicant or that the applicant file a new application and
20 request that the pending application in this docket be withdrawn.

21 14. On December 7, 2007, in light of the seemingly contradictory information about Mr.
22 Gay's readiness to proceed with the application and the identity of the desired applicant for the
23 CC&N, a Procedural Order was issued in this matter scheduling a telephonic procedural conference
24 for December 13, 2007.

25 15. On December 13, 2007, a telephonic procedural conference was held in this matter
26 before a duly authorized Administrative Law Judge of the Commission. Mr. Gay appeared on behalf
27 of GPI, and Staff appeared through counsel. During the procedural conference, Mr. Gay indicated a
28 strong desire for GPI's application to move forward as soon as possible so that GPI can provide

1 COPT services. Counsel for Staff indicated that Staff desired to obtain updated information through
2 another set of data requests to GPI; that Staff was ready to issue the data requests on December 13,
3 2007; and that Staff would initially obtain GPI's responses from Mr. Gay telephonically, with hard
4 copy of the data requests also to be sent to GPI. Staff agreed to memorialize GPI's verbal responses
5 and to file them with Docket Control. Mr. Gay agreed to this and also agreed to file written
6 responses to Staff's data requests with Docket Control. During the procedural conference, Mr. Gay
7 stated that he did not want and had not requested to have the CC&N issued in the name of ABC, as
8 opposed to GPI, and that one of his office staff had typed and sent the letter requesting that. (Tr. at 5,
9 lines 3-13.) Mr. Gay also stated that he had spoken to Staff a couple of times in November 2007; that
10 he had not told Staff that he wanted ABC to obtain the CC&N; that he did not want ABC to obtain
11 the CC&N; and that he did not know how that impression had arisen. (Tr. at 5, lines 15-25; Tr. at 6,
12 line 1.)

13 16. Also on December 13, 2007, a Procedural Order was issued requiring Staff, by
14 December 20, 2007, to mail to GPI and file a set of data requests and to file a document
15 memorializing Mr. Gay's verbal responses to Staff's data requests; requiring GPI, by January 2,
16 2008, to file written responses to Staff's data requests; and requiring Staff, by January 16, 2008, to
17 file an updated Staff Report in this matter.

18 17. On December 13, 2007, Staff filed a Letter of Insufficiency and Second Set of Data
19 Requests. Among other things, Staff requested a copy of GPI's customer information placard for
20 COPTs; Staff included a list of the information required to be included in a customer information
21 placard.

22 18. On December 20, 2007, Staff filed a document memorializing Ms. Annie Vejar's
23 verbal responses to Staff's Second Set of Data Requests, along with a faxed copy of the memorialized
24 responses that had been signed by Mr. Gay and Ms. Vejar on December 19, 2007, indicating that the
25 responses represented their replies to the Data Requests. According to the responses, Mr. Gay had
26 stated that Staff should address the questions to Ms. Vejar, his secretary, for response. Regarding the
27 customer information placard, Ms. Vejar had stated that GPI would use the customer information
28 placard that Mr. Gay had sent to the Commission in January 2006. Ms. Vejar had also said that Table

1 Top would be the local exchange provider.

2 19. On December 21, 2007, Staff filed a Letter of Insufficiency and Third Set of Data
3 Requests. In it, Staff asked questions to clarify a statement made by Mr. Gay during the procedural
4 conference on December 13, 2007. Staff seemed to believe that Mr. Gay had stated that he had a
5 public telephone and asked Mr. Gay questions related to his own operation of public telephones. Mr.
6 Gay had actually stated:

7 The company that had two pay phones here charged me – paid me \$2.65
8 for six months, and that did not even cover the electricity and they had no
9 lease. They could not put the phones up, so now there are no pay
10 telephones here, and all of the people from Mexico and especially from
Rocky Point come up here to use the telephone. So now there are none
whatsoever here, and we need telephones and we need them now.

11 (Tr. at 6, lines 8-15.)

12 20. On January 3, 2008, GPI filed responses to Staff's Third Set of Data Requests. In the
13 responses, Mr. Gay stated that GPI had received \$21.64 in 2006 and no income in 2007; that
14 Lukeville had been without pay telephones for at least six months; and that the other questions posed
15 by Staff had "no bearing" on GPI's application. GPI included with its responses a copy of a January
16 20, 2007, check from Pacific Communications to GPI in the amount of \$21.64. The check stub
17 shows that the payment was a commission for two coin-operated telephones located at Gringo Pass.

18 21. On January 16, 2008, Staff filed an Updated Staff Report, recommending that GPI's
19 application be denied because GPI's customer information placard from January 2006 did not reflect
20 current and accurate conditions of the application. Specifically, Staff stated that the customer
21 information placard identifies Pacific Communications as the local exchange provider, while Ms.
22 Vejar had stated that Table Top would be the local exchange provider. Staff had contacted Table Top
23 to determine whether Mr. Gay, Ms. Vejar, ABC, or GPI had applied or obtained an access line to be a
24 COPT provider and was told that none of them had. Staff had also contacted Pacific
25 Communications, which stated that it no longer provided telephone service in Lukeville. Staff
26 suggested that, if Mr. Gay desires to obtain a CC&N to provide COPT services, he should contact the
27 local exchange carrier to apply for or obtain an access line to be a COPT provider, provide an
28 updated customer information placard, and file a new COPT application in the name of the

1 appropriate business entity.

2 22. On January 31, 2008, the Hearing Division received a document from GPI that
3 appeared to be a more extensive response to data request JFB3-1. As the document was apparently
4 not sent to Docket Control, the Hearing Division docketed the document.¹ The document indicated
5 that GPI desired to obtain a CC&N for COPT services per its original application and, among other
6 things, that GPI had been advised by AT&T, Table Top, and others that obtaining the CC&N is the
7 first step to providing COPT services. GPI also stated that it had never asked to change its original
8 application to anyone else, that Table Top is the only local exchange provider serving Lukeville, and
9 that Table Top has telephone lines available for pay phones. The document also stated that in prior
10 dealings with Pacific Communications, GPI only received a small fraction of the coins, sometimes
11 not even enough to pay for the electricity.

12 23. On February 1, 2008, a Procedural Order was issued requiring GPI to file, by February
13 14, 2008, a response to the Updated Staff Report, responding to Staff's statements therein and
14 indicating whether GPI desired to withdraw its application, have a hearing on its application, or allow
15 the Commission to make a decision on its application without a hearing. The Procedural Order also
16 required Staff to file, by February 26, 2008, a response to GPI's more extensive response to data
17 request JFB3-1 and to GPI's response to the Updated Staff Report, including any changes in Staff's
18 recommendations as expressed in the Updated Staff Report.

19 24. On February 7, 2008, Mr. Gay docketed a response to the Updated Staff Report. In
20 the response, Mr. Gay stated that he had not filed an application changing GPI's application to ABC;
21 that if Staff received a letter requesting that the applicant be changed from GPI to ABC, that was in
22 error and should never have been done; that GPI still desires to have its application approved; that
23 Mr. Gay had requested Staff to ask for Ms. Vejar when phoning so that she could give Mr. Gay the
24 message and he could call Staff back; that Mr. Gay is the only person who is to give responses; that
25 neither GPI nor Mr. Gay will "buy out" or have dealings with Pacific Communications; that pay
26 telephones are needed in his area, which is 150 miles from Phoenix on the Mexican border and

27
28 ¹ GPI filed the document with Docket Control on February 1, 2008.

1 through which two million people pass each year; and that GPI requests that the Commission make a
2 decision on its application without further hearings.

3 25. On February 26, 2008, Staff filed another Updated Staff Report, stating that Staff had
4 reviewed the information provided by Mr. Gay in the filings on January 31, 2008, and February 7,
5 2008, and that the material provided by Mr. Gay did not provide any significant information that
6 would alter Staff's findings and recommendations contained in its Updated Staff Report of January
7 16, 2008. Staff again recommended that the Commission deny GPI's application and that, if Mr. Gay
8 desires a CC&N to provide COPT services, he should file a new COPT application using the
9 appropriate name of the business entity as applicant and including the appropriate updated customer
10 information placard.

11 26. On February 28, 2008, a Procedural Order was issued requiring GPI to file, by April
12 28, 2008, an updated customer information placard including information reflecting GPI's actual
13 intentions for providing COPT services and complying with the Commission's COPT Generic Tariff,
14 which was attached as an exhibit. The Procedural Order also required Staff to review the updated
15 customer information placard filed by GPI and to file, by May 19, 2008, a document analyzing the
16 customer information placard's compliance with the requirements of the Commission's COPT
17 Generic Tariff and, if appropriate, modifying Staff's recommendation for denial of GPI's application.

18 27. GPI did not file an updated customer information placard or any other document in
19 response to the Procedural Order issued on February 28, 2008.

20 28. On May 19, 2008, Staff filed an Updated Customer Information Placard Report stating
21 that GPI had not provided an updated customer information placard, that Staff was thus unable to
22 analyze such a placard, and that Staff recommends denial of GPI's application and that the docket be
23 closed.

24 29. In the documents filed in this matter since the matter was revived by the Procedural
25 Order issued on November 7, 2007, and in the procedural conference in this matter, Mr. Gay has
26 consistently maintained that he desires for the CC&N to be issued to GPI, not ABC, and that the
27 letter docketed in April 2006 essentially requesting for the application to be modified to show ABC
28 as the applicant was sent in error. There is no reason to continue to believe that GPI is not the

1 appropriate applicant.

2 30. Mr. Gay's statement that obtaining the CC&N for COPT services is the first step
3 toward providing those services is consistent with Arizona Administrative Code ("A.A.C.") R14-2-
4 908(B), which states that a local exchange provider shall not provide public access line ("PAL")
5 service to a customer of record unless the customer of record has received a CC&N from the
6 Commission or has been adjudicated not a public service corporation. It is also consistent with
7 A.A.C. R14-2-902(B), which states that a customer of record requesting PAL service subsequent to
8 the effective date of the COPT rules and who was not already a customer of record as of the effective
9 date of the COPT rules shall provide to the local exchange carrier proof of either a CC&N for COPT
10 services or an adjudication that it is not a public service corporation.

11 31. The January 2006 customer information placard provided by GPI does not identify the
12 correct local exchange carrier.

13 32. GPI has consistently failed, in spite of having been provided ample opportunity and
14 having been requested on multiple occasions, to provide an updated customer information placard.

15 33. A.A.C. R14-2-902(D)(5) requires an applicant for a CC&N to provide COPT services
16 to provide with its application a list of the services to be provided and their proposed rates.

17 34. A.A.C. R14-2-905(A) requires a COPT provider to comply with the terms of the
18 Generic COPT Tariff unless otherwise ordered by the Commission.

19 35. The Generic COPT Tariff establishes rates by reference to the rates of the serving
20 local exchange carrier rather than by setting specific monetary rates.

21 36. Because GPI has failed to provide an updated customer information placard that
22 shows the correct local exchange provider, it is not possible for Staff to determine the services to be
23 provided by GPI or their proposed rates.

24 37. Staff's recommendation to deny GPI's application is reasonable and should be
25 adopted.

26 CONCLUSIONS OF LAW

27 1. GPI has applied to become a public service corporation within the meaning of
28 Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

- 1 2. The Commission has jurisdiction over GPI and the subject matter of the application.
- 2 3. GPI's failure to provide a customer information placard identifying the correct local
- 3 exchange carrier constitutes a failure to provide the list of services and proposed rates required under
- 4 A.A.C. R14-2-902(D)(5).
- 5 4. The denial of GPI's application to provide COPT services is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the application of Gringo Pass, Inc. for a Certificate of Convenience and Necessity to provide Customer-Owned Pay Telephone Service in Arizona shall be, and is hereby, denied.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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|--------------|--------------|--------------|
| CHAIRMAN | COMMISSIONER | COMMISSIONER |
| COMMISSIONER | COMMISSIONER | COMMISSIONER |

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director 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 ____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR: GRINGO PASS, INC.

2 DOCKET NO.: T-04191A-03-0482

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