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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

Arizona Corporation Commission
DOCKETED

SEP - 3 2009

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IN THE MATTER OF THE APPLICATION OF PEERLESS NETWORK OF ARIZONA, LLC, FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE RESOLD LOCAL EXCHANGE, RESOLD LONG DISTANCE, FACILITIES-BASED LOCAL EXCHANGE, AND FACILITIES-BASED LONG DISTANCE TELECOMMUNICATIONS SERVICES IN ARIZONA.

DOCKET NO. T-20590A-08-0175

DECISION NO. 71269

ORDER EXTENDING TIME DEADLINE CONTAINED IN DECISION NO. 70976

Open Meeting
August 25 and 26, 2009
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 May 5, 2009, the Arizona Corporation Commission ("Commission") granted to Peerless Network of Arizona, LLC ("Peerless" or "Company"), a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold local exchange, resold long distance, facilities-based local exchange, and facilities-based long distance telecommunications services in Decision No. 70976 ("Decision").

2. Pursuant to the Decision, Peerless was required to file as compliance item a performance bond or irrevocable sight draft letter of credit in the amount of \$225,000. The Company was ordered to file the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and also file copies of the performance bond or irrevocable sight draft letter of credit with Docket Control within 30 days of the effective date of the Decision.

1 3. Given the May 5, 2009, date of the Decision, this compliance item would have been
2 due from Peerless on or about June 4, 2009.

3 4. On June 2, 2009, Peerless timely filed a Request for Extension of Compliance
4 Deadline ("Request") seeking an extension for filing of the performance bond or irrevocable sight
5 draft letter of credit, as well as a request for permission to file separate performance bonds or
6 irrevocable sight draft letters of credit for each type of service provided.

7 5. On July 6, 2009, the Commission's Utilities Division Staff ("Staff") filed a
8 Memorandum recommending partial approval of the Company's Request.

9 6. In its Request, Peerless notes that the Commission's requirements for performance
10 bonds or irrevocable sight draft letters of credit are \$25,000 for resold local exchange service,
11 \$100,000 for facilities-based local exchange service, and \$100,000 for facilities-based long distance
12 service.¹

13 7. Peerless states that it found the annual cost of obtaining a \$225,000 performance to be
14 prohibitive and the Company will opt to provide an irrevocable sight draft letter of credit. The
15 Company states, however, "[f]or a new company with limited financial resources, the impact of
16 setting aside the full \$225,000 in an account to secure a letter of credit is significant."²

17 8. The Company notes in its Request that it has not yet begun providing service in
18 Arizona and does not anticipate providing service until later this year. Peerless will start providing
19 facilities-based local exchange services first, with provision of other services to follow at later dates.

20 9. Given the foregoing, Peerless requests that the Commission extend the compliance
21 deadline in the Decision to permit it to docket proof of an irrevocable sight draft letter of credit upon
22 the earlier of (1) 30 days prior to providing the class of service to which the letter of credit pertains,
23 or (2) 365 days from the effective date of the Decision.

24 10. Under the Company's first option, rather than one \$225,000 irrevocable sight draft
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26 ¹ The Commission also requires a \$10,000 performance bond or irrevocable sight draft letter of credit if a
27 company seeks to provide resold long distance service, but only if the company states in its tariff that it may collect
28 advances, deposits and/or prepayments. Although Peerless' CC&N grants it authority to provide resold long distance
service, Peerless' tariff does not allow for the collection of advances, deposits, and/or prepayments and, as such, the
Company was not required to file a \$10,000 performance bond or irrevocable sight draft letter of credit.

² Request, page 2.

1 letter of credit, Peerless only would be required to file an irrevocable sight draft letter of credit in an
2 amount corresponding to a particular class of service 30 days prior to provision of that service. For
3 example, if Peerless begins later in 2009 with its provision of facilities-based local exchange service,
4 it would have to file a \$100,000 irrevocable sight draft letter of credit 30 days prior to providing that
5 service. As each additional class of service comes online, Peerless would have to file the
6 corresponding irrevocable sight draft letter of credit in the amount required for that class of service
7 30 days prior to instituting that service.

8 11. In its Memorandum, Staff objected to this proposal. Staff stated that a review of the
9 Decision shows the Commission intended that a single \$225,000 performance bond or irrevocable
10 sight draft letter of credit must be obtained and filed with the Commission.

11 12. We agree with Staff that the Decision specified a single \$225,000 performance bond
12 or irrevocable sight draft letter of credit be filed.

13 13. We also note that, other than extensions of compliance filing deadlines, revisions to
14 Commission Decisions may be accomplished only by means of an amendment to the Decision
15 pursuant to A.R.S. § 40-252. The option suggested by the Company may not be considered here
16 because it would require an amendment to the terms of the Decision beyond an extension of a
17 compliance filing deadline.

18 14. Peerless' second option does request an extension of a compliance filing deadline,
19 which may be approved upon a motion or request of a company.

20 15. If the Commission does not adopt its first option, Peerless requests that the filing of its
21 \$225,000 irrevocable sight draft letter of credit be extended until 365 days from the effective date of
22 the Decision.

23 16. Staff asserts that a one-year extension is too long and recommends that the Company
24 be required to file a \$225,000 performance bond or irrevocable sight draft letter of credit by
25 September 30, 2009.

26 17. We note that in its Request, the Company states that intends to begin provision of
27 facilities-based local exchange service later this year. Given this, we find that Staff's extension
28 recommendation is reasonable and should be adopted.

CONCLUSIONS OF LAW

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1. Peerless 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 Peerless and the subject matter of the Request for Extension of Compliance Deadline in Commission Decision No. 70976.

3. Staff's recommendation that Peerless should file its \$225,000 performance bond or irrevocable sight draft letter of credit no later than September 30, 2009, is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Peerless Network of Arizona, LLC's, Request for Extension of Compliance Deadline in Decision No. 70976, as regards its request for permission to file separate performance bonds or irrevocable sight draft letters of credit for each class of telecommunications service 30 days prior to the provision of that class of service, is denied.

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1 IT IS FURTHER ORDERED that Peerless Network of Arizona, LLC's, Request for
2 Extension of Compliance Deadline in Decision No. 70976, as regards its request to extend the
3 compliance filing deadline for its performance bond or irrevocable sight draft letter of credit, is
4 granted, except that Peerless Network of Arizona, LLC, shall file its \$225,000 performance bond or
5 irrevocable sight draft letter of credit no later than September 30, 2009.

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

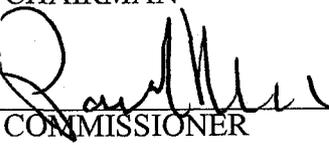
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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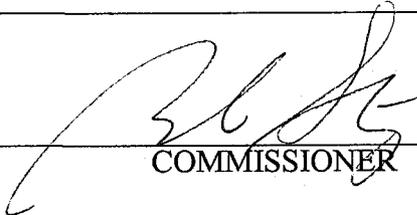
10 CHAIRMAN



COMMISSIONER

11 

12 COMMISSIONER

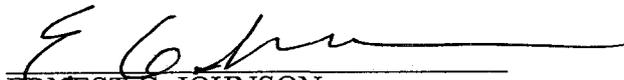


COMMISSIONER



COMMISSIONER

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14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 20 day of Sept, 2009.



18 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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21 DISSENT _____

22
23 DISSENT _____

1 SERVICE LIST FOR: PEERLESS NETWORK OF ARIZONA, LLC

2 DOCKET NO. T-20590A-08-0175

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