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MEMORANDUM
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TO: Docket Control Center

2009 JUL -6 A 10: 52

Arizona Corporation Commission
DOCKETED

FROM: Ernest G. Johnson
Director
for Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

JUL -6 2009

DATE: July 6, 2009

DOCKETED BY *[Signature]*

RE: PEERLESS NETWORK OF ARIZONA, LLC - REQUEST FOR EXTENSION OF COMPLIANCE DEADLINE (DOCKET NO. T-20590A-08-0175)

In Decision No. 70976, dated May 5, 2009, the Arizona Corporation Commission ("Commission") approved the application of Peerless Network of Arizona, LLC ("Peerless" or "Company") for an extension of its existing 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 Arizona.

As part of Decision No. 70976, the Commission ordered the following:

"... Peerless should procure either a performance bond or an irrevocable sight draft letter of credit equal to \$225,000."

"... Peerless should docket proof of the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter."

On June 2, 2009, the Company filed a request for extension of the above compliance deadline relating to the performance bond/irrevocable sight draft letter of credit. The application states that the bond is too expensive and the Company has chosen to pursue the \$225,000 irrevocable sight draft letter of credit option outlined in the decision. The application further outlines that the \$225,000 Commission ordered obligation relates to the following separately approved services:

Facilities Based Local Exchange Service	\$ 100,000
Facilities Based Long Distance Service	\$ 100,000
Resold Local Exchange Services	\$ 25,000
Total	\$ 225,000

However, the separation outlined above is not specifically outlined in the ordering section of Decision No 70976. Additionally, the December 12, 2008 Staff Report, shows no indication that Staff intended that the requirement be separated.

Rather, a specific review of Decision No. 70976 shows that the Commission ordered that a single, \$225,000 performance bond or irrevocable sight draft letter of credit should be procured by Peerless within 30 days after the Decision - on or about June 5, 2009. The Company application, however, seeks permission to file them *separately* based on when Peerless begins actually serving customers for each service. The application states that Peerless "has not yet commenced operations in Arizona, and does not anticipate providing service until later this year". The Company further states that it "will likely initiate facilities-based local exchange service first, with other services to follow" and suggests that setting aside all \$225,000 at one time to secure a letter of credit is too significant for a "new company with limited financial resources".

Specifically, Peerless seeks an extension of the compliance deadline and permission to docket proof of the irrevocable sight draft letter of credit upon the earlier of:

- i) 30 days prior to providing the class of service to which the letter of credit pertains; or
- ii) 365 days from the date of the Decision.

As an example, the Company states that if Facilities Based Local Exchange service were to commence on October 1, 2009, then based on the request, a \$100,000 letter of credit would be due September 1, 2009. When other services were commenced, the Company would then docket proof that it had increased the amount of the letter of credit to cover the other services. One or more irrevocable sight draft letters of credit totaling \$225,000 would be docketed no later than May 4, 2010, or one year after Decision No. 70976.

On June 22, 2009, Staff had a conversation with Mr. Jeff Crockett, attorney for Peerless, to discuss the request for extension. Mr. Crockett confirmed that the Company seeks to separate the due dates of the irrevocable sight draft letters of credit that the Commission originally ordered to be concurrent. Staff inquired about the need to seek separate due dates and the need for such a *significant potential* extension considering that the item was heard and voted on by the Commission only 45 days prior. Mr. Crockett stated that the separate due dates were a logical result of different start dates that are expected for the different services. He further stated that the Company researched the bond after the Decision and only then found that the letter of credit was preferable.

Staff's perspective is that the Commission spoke on these items very recently and it would have been much more appropriate for these issues to have been discussed and outlined in Decision No. 70976 rather than at this time. Finding that they were not, Staff can only conclude that Decision No. 70976 demonstrated the Commission's concern with assuring that bonds or letters of credit should be set in place and providing coverage shortly after the granting of CC&N authority. It is Staff's opinion that this is a Commission constant which is generally understood and has been demonstrated in other decisions.

Based on the application and all of the above, Staff objects to the Company's proposal as outlined in the application for extension of compliance deadline. A one year extension (or twelve times the period outlined in the decision) represents too long an extension of time. Combined with the separation of the due dates, the Company proposal effectively represents too great a softening of the Commission's requirement.

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Staff therefore recommends that the required bonds or irrevocable sight draft letters of credit should continue to be due concurrently rather than separately. Staff further recommends that the Commission due date for filing the bonds or irrevocable sight draft letters of credit should be extended until September 30, 2009.

EGJ:BKB:lhm

Originator: Brian K. Bozzo

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DOCKET NO.

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T-20590A-08-0175

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