

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

DATE: AUGUST 6, 2009
DOCKET NO.: T-20590A-08-0175
TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED
AUG - 6 2009

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

PEERLESS NETWORK OF ARIZONA, LLC
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 70976)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 17, 2009

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 Open Meeting to be held on:

AUGUST 25, 2009 and AUGUST 26, 2009

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.

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EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF PEERLESS NETWORK OF ARIZONA,
10 LLC, FOR APPROVAL OF A CERTIFICATE
11 OF CONVENIENCE AND NECESSITY TO
12 PROVIDE COMPETITIVE RESOLD LOCAL
13 EXCHANGE, RESOLD LONG DISTANCE,
14 FACILITIES-BASED LOCAL EXCHANGE,
15 AND FACILITIES-BASED LONG
16 DISTANCE TELECOMMUNICATIONS
17 SERVICES IN ARIZONA.

DOCKET NO. T-20590A-08-0175

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70976

12 Open Meeting
13 August 25 and 26, 2009
14 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On May 5, 2009, the Arizona Corporation Commission ("Commission") granted to
19 Peerless Network of Arizona, LLC ("Peerless" or "Company"), a Certificate of Convenience and
20 Necessity ("CC&N") to provide competitive resold local exchange, resold long distance, facilities-
21 based local exchange, and facilities-based long distance telecommunications services in Decision
22 No. 70976 ("Decision").

23 2. Pursuant to the Decision, Peerless was required to file as compliance item a
24 performance bond or irrevocable sight draft letter of credit in the amount of \$225,000. The Company
25 was ordered to file the original performance bond or irrevocable sight draft letter of credit with the
26 Commission's Business Office and also file copies of the performance bond or irrevocable sight draft
27 letter of credit with Docket Control within 30 days of the effective date of the Decision.
28

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
25

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

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

4 2. The Commission has jurisdiction over Peerless and the subject matter of the Request
5 for Extension of Compliance Deadline in Commission Decision No. 70976.

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

9 ORDER

10 IT IS THEREFORE ORDERED that Peerless Network of Arizona, LLC's, Request for
11 Extension of Compliance Deadline in Decision No. 70976, as regards its request for permission to
12 file separate performance bonds or irrevocable sight draft letters of credit for each class of
13 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.
8
9

10 CHAIRMAN

COMMISSIONER

11
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13
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 ____ day of _____, 2009.

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20 _____
21 ERNEST G. JOHNSON
22 EXECUTIVE DIRECTOR

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DISSENT _____

1 SERVICE LIST FOR: PEERLESS NETWORK OF ARIZONA, LLC

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

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