

ORIGINAL



0000123871

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

MAR 17 2011

2011 MAR 17 P 2:16

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY [Signature]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF  
TELESPHERE ACCESS, LLC FOR APPROVAL  
OF A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE RESOLD LONG  
DISTANCE, RESOLD LOCAL EXCHANGE,  
FACILITIES-BASED LOCAL EXCHANGE,  
AND FACILITIES-BASED LONG DISTANCE  
TELECOMMUNICATION SERVICES IN  
ARIZONA.

DOCKET NO. T-20675A-09-0214

PROCEDURAL ORDER

**BY THE COMMISSION:**

On May 6, 2009, Telesphere Access, LLC ("Telesphere" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange, facilities-based local exchange, and facilities-based long distance telecommunication services in Arizona. Telesphere's application also requests a determination that its proposed services are competitive within Arizona.

On August 11, 2010, the Commission's Utilities Division ("Staff") filed a Staff Report recommending approval of Telesphere's application, subject to certain conditions.

On December 2, 2010, Charles Eastwood filed public comments regarding Telesphere's application, alleging that Telesphere and other telephone companies are providing phone numbers to phony businesses, whose phone numbers get placed in directory listings of the telephone companies, and that consumers are thereby being misled.

On December 3, 2010, a full public hearing convened before a duly authorized Administrative Law Judge ("ALJ") of the Commission. Staff appeared through counsel. It was determined that Telesphere was not represented by local counsel and therefore was not in compliance with Arizona Supreme Court Rules 31 and 38 and A.R.S. § 40-243, with respect to the practice of law in Arizona.

1 It was also unclear whether Telesphere had published notice of its pending application or the hearing  
2 date. Based on discussions with the parties, the hearing was vacated.

3 On December 7, 2010, by Procedural Order, the hearing in this matter was reset to begin  
4 February 14, 2011, and other filing deadlines were established.

5 On December 30, 2010, Telesphere filed a request for an extension of time, until January 17,  
6 2011, to publish notice of the application and to file its affidavit of publication ("Request").

7 On the same date, Telesphere filed responses to the public comments filed by Charles  
8 Eastwood in this docket.

9 On January 6, 2011, a telephonic procedural conference was held with Telesphere and Staff to  
10 discuss Telesphere's Request and proposed publication of notice. Based on Telesphere's application  
11 to provide telecommunication services throughout Arizona, Telesphere was informed that its  
12 proposed publication area was inadequate, as it included only a small portion of the State, and that  
13 publication needed to be effectuated in every county in which Telesphere desired to provide service.  
14 Telesphere was also informed that it needed to comply with Arizona Supreme Court Rules 31 and 38  
15 and A.R.S. § 40-243 with respect to practice of law in Arizona and before the Commission.  
16 Telesphere requested that the hearing in this matter be continued to March 2011 to allow Telesphere  
17 more time to seek local counsel and to publish notice of the application and hearing.

18 On January 7, 2011, a Procedural Order was issued continuing the hearing to March 23, 2011;  
19 requiring publication of notice; and establishing other filing deadlines. The Procedural Order also  
20 directed Telesphere to have notice of its application and the hearing date published no later than  
21 February 3, 2011.

22 On February 11, 2011, Telesphere filed an Affidavit of Publication showing that notice of  
23 Telesphere's application and the hearing date had been published in the *Arizona Republic*, a statewide  
24 publication, on February 2, 2011.

25 On February 18, 2011, Telesphere filed a Notice of Appearance of Counsel, stating that  
26 Telesphere would be represented by Bradley S. Carroll, an Arizona-licensed attorney.

27 On the same date, Charles Eastwood filed a Motion to Intervene in this matter ("Motion").  
28 Mr. Eastwood's Motion states that he is substantially affected by the issues in this proceeding

1 because he has filed a lawsuit in Maricopa County Superior Court (CV-2010-027605) alleging that  
2 telecommunication companies like Telesphere provide telephone numbers to businesses that have no  
3 physical addresses or are not legitimate businesses. The Motion further states the telephone numbers  
4 provided by Telesphere and other telecommunication companies get placed in a database that  
5 generates a "listing" for the bogus companies and that those false "listings" detract business from  
6 legitimate companies like his.

7 Telesphere and Staff have not filed responses to the Motion and it is appropriate and  
8 reasonable to require them to do so. Therefore, it is appropriate to continue the hearing set for March  
9 23, 2011, to allow for responses to be filed by Staff and Telesphere.

10 IT IS THEREFORE ORDERED that **Staff and Telesphere shall each file, by April 8, 2011,**  
11 **a response to Charles Eastwood's Motion to Intervene.**

12 IT IS FURTHER ORDERED that **Charles Eastwood may file, by April 22, 2011, a reply to**  
13 **Staff and Telesphere's responses** to the Motion to Intervene.

14 IT IS FURTHER ORDERED that **the hearing scheduled to commence on March 23, 2011,**  
15 **is hereby continued to May 9, 2011, at 10:00 a.m.,** at the Commission's offices, 1200 West  
16 Washington Street, **Room 100,** Phoenix, Arizona 85007.

17 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
18 Communications) applies to this proceeding and shall remain in effect until the Commission's  
19 Decision in this matter is final and non-appealable.

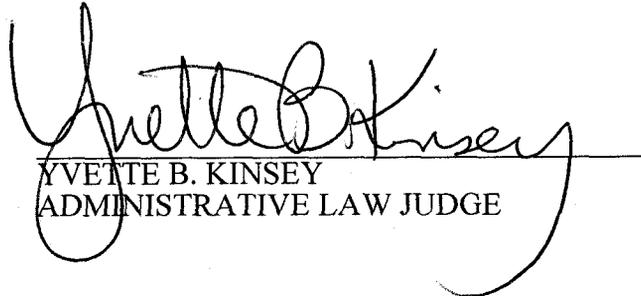
20 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
21 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

22 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
23 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
24 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at  
25 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for  
26 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
27 Law Judge or Commission.

28

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 17<sup>th</sup> day of March, 2011.

4  
5  
6  
7   
8 YVETTE B. KINSEY  
9 ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered  
9 this 17<sup>th</sup> day of March, 2011 to:

10 Kristopher Twomey  
11 TELESPHERE ACCESS, LLC  
12 1725 I Street, N.W., Suite 300  
13 Washington, DC 20006

12 Michael Targett, Legal Counsel  
13 1938 43<sup>rd</sup> Avenue East  
14 Seattle, WA 98112

14 Bradley S. Carroll  
15 SNELL & WILMER L.L.P.  
16 400 East Van Buren Street  
17 Phoenix, AZ 85004-2202  
18 Attorneys for Telesphere Access, LLC

17 Charles Eastwood  
18 P.O. Box 832  
19 Tolleson, AZ 85353

18 Janice Alward, Chief Counsel  
19 Legal Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, AZ 85007

21 Steven M. Olea, Director  
22 Utilities Division  
23 ARIZONA CORPORATION COMMISSION  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

24 ARIZONA REPORTING SERVICE, INC.  
25 2200 North Central Avenue, Suite 502  
26 Phoenix, AZ 85004-1481

26 By:   
27 Debra Broyles  
28 Secretary to Yvette B. Kinsey