

OPEN MEETING ITEM

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

ORIGINAL



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

APR - 8 2011

DATE: APRIL 8, 2011

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DOCKET NO.: T-20710A-09-0530

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY

TO ALL PARTIES:

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

GRASSHOPPER GROUP, LLC
(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 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:

APRIL 18, 2011

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:

APRIL 27, 2011 and APRIL 28, 2011

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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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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 SBernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 GRASSHOPPER GROUP, LLC FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE COMPETITIVE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20710A-09-0530

DECISION NO. _____

ORDER

14 Open Meeting
15 April 27 and 28, 2011
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 * * * * *

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

21 FINDINGS OF FACT

22 1. On November 17, 2009, Grasshopper Group, ("Grasshopper" or "Company"), filed
23 with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to
24 provide competitive resold long distance telecommunications services within a service area
25 encompassing the entire State of Arizona ("Application").

26 2. On December 30, 2009, Grasshopper filed responses to the Commission's Utilities
27 Division Staff's ("Staff") First Set of Data Requests. The filing included an Affidavit of Publication
28 indicating that notice of the Application had been published in *The Arizona Republic*, a newspaper of
statewide circulation.

3. On March 1, 2011, Staff filed its Staff Report recommending approval of
Grasshopper's Application subject to certain conditions.

4. According to the Staff Report, Staff issued its first set of data requests to Grasshopper

1 Group on December 1, 2009; a protective agreement requested by the Company was signed by the
2 Company and Staff on December 30, 2009; and the Company provided its financial information to
3 Staff on October 7, 2010.

4 **Fitness and Properness to Obtain a CC&N**

5 5. Grasshopper is a Massachusetts limited liability company, granted authority on
6 September 28, 2009, to do business in Arizona as a foreign limited liability company.

7 6. Grasshopper is in good standing with the Commission's Corporations Division.

8 7. Grasshopper currently does not hold a CC&N to provide telecommunications services
9 in Arizona.

10 8. Grasshopper has indicated that neither Grasshopper nor any of its officers, directors,
11 partners, or managers have been or are currently involved in any formal or informal complaints, civil
12 or criminal investigations, have had judgments entered in any civil or criminal matter or levied by
13 any administrative or regulatory agency, or have been convicted of any criminal acts.

14 9. According to Grasshopper, it currently has authority to provide resold interexchange
15 service in eleven states or jurisdictions. Staff contacted the state public utility commissions ("PUCs")
16 in those eleven states to confirm Grasshopper's operating authority. Staff also inquired whether there
17 were any consumer complaints filed against Grasshopper, and the information Staff obtained from
18 the PUCs indicates that there have been none.

19 10. Finally, Staff states that the Consumer Services Section of the Utilities Division
20 reported no complaints, inquiries, or opinions filed within Arizona against Grasshopper between
21 January 1, 2006 through October 15, 2010.

22 **Technical Capabilities**

23 11. Grasshopper intends to offer switchless resold long distance telecommunications
24 services, including inbound 800/toll-free and long distance service plans, to business subscribers in
25 Arizona.

26 12. Grasshopper's management team is comprised of four employees who have over 40
27 years experience in the telecommunications industry.

28 13. Grasshopper has authority to provide, and/or is providing, resold long distance

1 telecommunications services similar to those it intends to offer in Arizona in eleven states.

2 14. Based on the foregoing, Staff determined that Grasshopper has sufficient technical
3 capabilities to provide resold long distance telecommunications services in Arizona.

4 **Financial Resources**

5 15. The Company provided audited financing statements with notes for the years ending
6 December 31, 2008 and December 31, 2009. According to Staff, the 2009 financial information
7 listed total assets of \$3,619,798; total equity of negative \$1,216,472; and a net income of negative
8 \$818,040.

9 16. Staff stated that if Grasshopper experienced financial difficulty, it would have only a
10 minimal impact on its customers because many companies provide resold long distance
11 telecommunications services, and facilities-based providers are also available.

12 17. Grasshopper's tariff indicates that it will not collect pre-payments, advance payments
13 or deposits from its resold long distance customers.

14 18. Staff recommended that if the Company wants to collect advances, deposits and/or
15 prepayments, the Company be required to file an application referencing this Decision and explaining
16 the Company's plan for procuring a performance bond or an irrevocable sight draft letter of credit.

17 **Competitive Services/Proposed Rates**

18 19. Staff indicated that the rates proposed by Grasshopper are for competitive services and
19 that rates for competitive telecommunications services are generally not established according to rate-
20 of-return regulation.

21 20. Staff determined that Grasshopper's fair value rate base ("FVRB") is zero. While
22 Staff considered the FVRB information submitted by the Company, Staff determined that the FVRB
23 information should not be given substantial weight in its analysis.

24 21. As a reseller of services purchased from other telecommunications companies,
25 Grasshopper will have no market power and will have to compete with other providers to obtain
26 subscribers to its services. In light of this competitive market, Staff believes that the Company's
27 proposed tariffs will be just and reasonable.

28 22. Staff reviewed Grasshopper's proposed rates and determined that they are just and

1 reasonable.

2 **Regulatory Requirements**

3 23. Commission rules require Grasshopper to file a tariff for each competitive service that
 4 states the maximum rate as well as the effective (actual) price that will be charged for the service.
 5 Under Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must
 6 not be below the total service long-run incremental cost of providing the service. Any change to
 7 Grasshopper's effective price for a service must comply with A.A.C. R14-2-1109, and any change to
 8 the maximum rate for a service in the Company's tariff must comply with A.A.C. R14-2-1110.

9 24. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
 10 an application for authorization with the Commission before it discontinues service; the rule also
 11 establishes customer notice requirements and other requirements related to discontinuance of service.

12 **Staff's Recommendations**

13 25. Staff recommends approval of Grasshopper's Application and further recommends:

- 14 a. That Grasshopper be ordered to comply with all Commission rules, orders, and
 15 other requirements relevant to the provision of intrastate telecommunications
 16 service;
- 17 b. That Grasshopper be ordered to maintain its accounts and records as required
 18 by the Commission;
- 19 c. That Grasshopper be ordered to file with the Commission all financial and
 20 other reports that the Commission may require, in a form and at such times as
 21 the Commission may designate;
- 22 d. That Grasshopper be ordered to maintain on file with the Commission all
 23 current tariffs and rates and any service standards that the Commission may
 24 require;
- 25 e. That Grasshopper be ordered to comply with the Commission's rules and to
 26 modify its tariffs to conform to those rules if it is determined that there is a
 27 conflict between Grasshopper's tariffs and Commission rules;
- 28 f. That Grasshopper be ordered to cooperate with Commission investigations,
 including but not limited to customer complaints;
- g. That Grasshopper be ordered to participate in and contribute to the AUSF as
 required by the Commission;
- h. That Grasshopper be ordered to notify the Commission immediately upon
 changes to its name, address, or telephone number;
- i. That Grasshopper's intrastate interexchange service offerings be classified as

1 competitive pursuant to A.A.C. R14-2-1108;

- 2 j. That the maximum rates for Grasshopper's services be the maximum rates
proposed by Grasshopper in its proposed tariffs;
- 3 k. That the minimum rates for Grasshopper's services be the total service long-
4 run incremental costs of providing those services, as set forth in A.A.C. R14-2-
1109;
- 5 l. If Grasshopper states only one rate for a service in its proposed tariff, that the
6 rate stated be the effective (actual) price to be charged for the service as well as
the service's maximum rate;
- 7 m. That Grasshopper's fair value base rate is zero;
- 8 n. That Grasshopper be required, should it decide at some future date that it wants
9 to collect advances, deposits or prepayments from its resold interexchange
10 customers, to file an application with the Commission for approval, and that
11 such application must reference the Decision in this docket and must explain
Grasshopper's plans for procuring a performance bond or irrevocable sight
draft letter of credit; and
- 12 o. That should Grasshopper request to discontinue and/or abandon its service
13 area, Grasshopper must provide notice to both the Commission and its
customers, in accordance with A.A.C. R-14-2-1107.

14 26. Staff recommends that Grasshopper be ordered to docket conforming tariffs within
15 365 days from the date of an Order in this matter or 30 days before providing service, whichever
16 comes first, and in accordance with this Decision, and that if Grasshopper fails to do so, its CC&N be
17 rendered null and void, after due process.

18 27. Staff recommends approval of the Application without a hearing pursuant to A.R.S. §
19 40-282.

20 28. Staff's recommendations are reasonable and should be adopted.

21 CONCLUSIONS OF LAW

22 1. Upon receiving a CC&N, Grasshopper will be a public service corporation within the
23 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over Grasshopper and the subject matter of the
25 Application.

26 3. A.R.S. § 40-282 allows a telecommunications company to file an application for a
27 CC&N to provide competitive telecommunications services.

28 4. A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a

1 hearing if the CC&N is for resold telecommunications services.

2 5. Notice of Grasshopper's Application was given in accordance with the law.

3 6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
4 it is in the public interest for Grasshopper to receive authorization to provide the telecommunications
5 services for which it has requested authorization in its Application.

6 7. Grasshopper is a fit and proper entity to receive a CC&N authorizing it to provide
7 resold long distance telecommunications services in the State of Arizona.

8 8. The telecommunications services that Grasshopper desires to provide are competitive
9 in Arizona.

10 9. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is
11 just and reasonable and in the public interest for Grasshopper to establish rates and charges for
12 competitive services that are not less than Grasshopper's total service long-run incremental costs of
13 providing the competitive services approved herein.

14 10. Staff's recommendations, as set forth in Findings of Fact Nos. 25-27 are reasonable
15 and should be adopted.

16 11. Grasshopper's FVRB is not useful in determining just and reasonable rates for the
17 competitive services it proposes to provide Arizona customers.

18 12. Grasshopper's rates, as they appear in its proposed tariffs, are just and reasonable and
19 should be approved.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the Application of Grasshopper Group, LLC for a
22 Certificate of Convenience and Necessity to provide competitive resold long distance
23 telecommunications services in Arizona is hereby granted conditioned upon compliance with the
24 conditions and recommendations set forth in Findings of Fact Nos. 25-27.

25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that if Grasshopper Group, LLC fails to meet the conditions
2 outlined in Findings of Fact No. 26 within the stated timeframes, the Certificate of Convenience and
3 Necessity conditionally granted herein shall become null and void after due process.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2011.

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____
20

21 DISSENT _____
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1 SERVICE LIST FOR: GRASSHOPPER GROUP, LLC

2 DOCKET NO.: T-20710A-09-0530

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