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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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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 various telecommunication companies like Telesphere provide telephone numbers to businesses that
3 have no physical addresses or are not legitimate businesses. The Motion further states the telephone
4 numbers provided by Telesphere and other telecommunication companies get placed in a database
5 that generates a “listing” for the bogus companies and that those false “listings” detract business from
6 legitimate companies like his.

7 On March 17, 2011, by Procedural Order, the hearing was continued from March 23, 2011, to
8 May 9, 2011. The Procedural Order also directed Staff and Telesphere to file responses to the
9 Motion.

10 On March 30, 2011, Staff filed a Response to Charles Eastwood’s Motion to Intervene. Staff
11 states that it appears the majority, if not all, of the issues raised in the Motion go beyond the scope of
12 the application filed by Telesphere. Staff states it is very concerned that the issues raised in the
13 Motion would unduly broaden the scope of the proceeding. Staff further states that it does not
14 oppose granting intervention to Mr. Eastwood, but requests that the issues presented by Mr.
15 Eastwood during the hearing be limited to issues specifically relevant to the application filed by
16 Telesphere.

17 On April 8, 2011, Telesphere filed its Response to Mr. Eastwood’s Motion requesting that the
18 Motion be denied. Telesphere states that under A.A.C. R14-3-105, the issues raised in the Motion
19 would unduly broaden the scope of the CC&N application proceeding and that Mr. Eastwood is not
20 substantially affected by the CC&N proceeding. As an example of how the scope of the proceeding
21 would be broadened, Telesphere referenced a portion of the Motion which states:

22 Previous communications to the Commissioners requesting a global rule
23 change regarding the way all TELCOS permitted to do business in the State
24 of Arizona handle such requests for the creation and distribution of
LISTINGS.¹

25 Telesphere states that the issues raised by the Motion would be more appropriately addressed
26 in a generic state or Federal proceeding which would include all telecommunication providers and
27 not just Telesphere. Telesphere states that the issues raised in the Motion are not relevant or

28 ¹ Telesphere Response citing Motion to Intervene at pg. 4, lines 5-8.

1 appropriate in a state CC&N proceeding and that Mr. Eastwood has not demonstrated that he is
2 substantially affected by this CC&N proceeding.

3 On April 20, 2011, Charles Eastwood filed a Reply to Staff's and Telesphere's Response to
4 Motion to Intervene ("Reply"). The Reply states Mr. Eastwood has previously requested that
5 Commissioners establish a global rule change governing telecommunication companies directory
6 listings; that Maricopa County Superior Court has dismissed the lawsuit as to all telecommunication
7 defendants; that portions of Telesphere's proposed tariff address directory listings; that the
8 Commission should take remedial action to make all telecommunication carriers comply with the
9 directory listings issues raised in the Motion; that Telesphere and its parent company should be
10 ordered to produce a listing of all "locksmith" companies they provide service to; and that the hearing
11 should be continued for 30 to 60 days to allow for inspection of the documents from Telesphere.

12 On April 22, 2011, Telesphere filed a Supplemental Response to Mr. Eastwood's Reply to
13 Staff's and Telesphere's Response to Motion to Intervene. Telesphere reiterates its position that the
14 Motion would broaden the scope of the proceeding and that a generic rulemaking would better
15 address the issues raised by Mr. Eastwood and that the Motion should be denied. Alternatively,
16 Telesphere states that if intervention is granted, it should be conditioned on not continuing the
17 hearing date and that the issues be limited to those relevant to a CC&N application.

18 The issues raised in the Motion will unduly broaden the scope of this CC&N proceeding.
19 Therefore, the Motion to Intervene should be denied. However, Mr. Eastwood's December 2, 2010,
20 public comments will remain a part of the record in this matter.

21 IT IS THEREFORE ORDERED that pursuant to A.A.C. R14-3-105, the Motion to Intervene
22 is hereby denied.

23 IT IS FURTHER ORDERED that the hearing in this matter shall commence on May 9, 2011
24 as set forth in the Procedural Order issued on March 17, 2011.

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

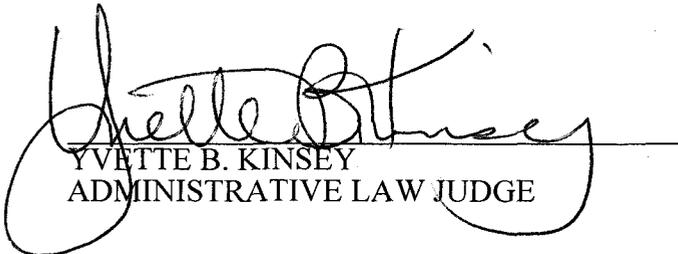
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1 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
2 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

11 Dated this 28th day of April, 2011.

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14
15 YVETTE B. KINSEY
16 ADMINISTRATIVE LAW JUDGE

17 Copies of the foregoing mailed/delivered
18 this 28th day of April, 2011 to:

18 Kristopher Twomey
19 TELESPHERE ACCESS, LLC
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