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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MAY - 4 2011

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

DOCKETED BY *mn*

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

DOCKET NO. T-20710A-09-0530

DECISION NO. 72298

ORDER

Open Meeting
April 27 and 28, 2011
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

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

2. On December 30, 2009, Grasshopper filed responses to the Commission's Utilities Division Staff's ("Staff") First Set of Data Requests. The filing included an Affidavit of Publication 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

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

- j. That the maximum rates for Grasshopper's services be the maximum rates proposed by Grasshopper in its proposed tariffs;
- k. That the minimum rates for Grasshopper's services be the total service long-run incremental costs of providing those services, as set forth in A.A.C. R14-2-1109;
- l. If Grasshopper states only one rate for a service in its proposed tariff, that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate;
- m. That Grasshopper's fair value base rate is zero;
- n. That Grasshopper be required, should it decide at some future date that it wants to collect advances, deposits or prepayments from its resold interexchange customers, to file an application with the Commission for approval, and that 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
- o. That should Grasshopper request to discontinue and/or abandon its service area, Grasshopper must provide notice to both the Commission and its customers, in accordance with A.A.C. R-14-2-1107.

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

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

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

CONCLUSIONS OF LAW

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

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

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

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.

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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.

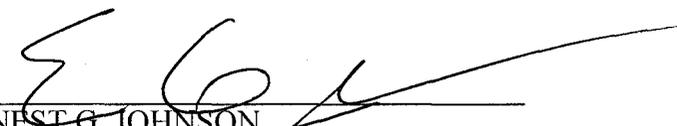
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 
8 CHAIRMAN  COMMISSIONER

9  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 4th day of MAY, 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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