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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

AUG 24 2011

DOCKETED BY ne

IN THE MATTER OF THE APPLICATION OF GREENFLY NETWORKS, INC. DBA CLEARFLY COMMUNICATIONS FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20701A-09-0437

DECISION NO. 72557

ORDER

Open Meeting
August 16 and 17, 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 September 14, 2009, Greenfly Networks, Inc. d/b/a Clearly Communications ("Greenfly" or "Company"), filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and resold local exchange telecommunications services in Arizona ("Application").
2. On October 9, 2009, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency and First Set of Data Requests.
3. On November 3, 2009, the Company filed its responses to Staff's Data Requests and amended portions of its Application.
4. On June 2, 2010, Greenfly filed an Affidavit of Publication indicating that notice of the Application had been published on April 12, 2010, in *The Arizona Republic*, and also filed revised tariffs.
5. On January 19, 2011, Staff filed its Staff Report recommending approval of

1 Greenfly's Application subject to certain conditions.

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

3 6. Greenfly is a Nevada "C" corporation granted authority by the Commission on May 8,
4 2009, to do business in Arizona as a foreign corporation.

5 7. Greenfly is in good standing with the Commission's Corporations Division.

6 8. Greenfly has indicated that neither Greenfly nor any of its officers, directors, partners
7 or managers have been or are currently involved in any civil or criminal investigations, have had
8 judgments entered in any civil or criminal matter or levied by any administrative or regulatory
9 agency, nor have been convicted of any criminal acts within the past 10 years.

10 9. In its Application, Greenfly indicated that neither Greenfly, nor any of its officers
11 (with the exception of its Chief Financial Officer, Steven Bentley), directors, partners or managers
12 have been or currently are involved in any formal or informal complaint proceedings pending before
13 any state or federal regulatory commission, administrative agency, or law enforcement agency.

14 10. Greenfly explained that Mr. Bentley was one of multiple parties named in a lawsuit
15 filed in the Central District Court of Illinois. He was named in the lawsuit because of his affiliation
16 with the Wyoming Board of CPAs, but because of his minor role in the events forming the factual
17 basis for the lawsuit, he was dismissed as a defendant. Greenfly provided a copy of the court order
18 dismissing him from the lawsuit.

19 11. According to Greenfly, it currently offers local exchange service in nine states. Staff
20 contacted the nine state public utility commissions ("PUCs") in which Greenfly currently operates to
21 confirm Greenfly's operating authority and to inquire about consumer complaints. Of the nine PUCs
22 contacted, seven responded confirming that Greenfly is authorized to provide telecommunications
23 services in their jurisdictions and that no customer complaints had been received about the Company.

24 12. Staff notes that a search of the Federal Communications Commission's website found
25 that there have been no formal or informal complaints against the Company.

26 13. Finally, Staff states the Consumer Services Section of the Utilities Division reported
27 that no complaints, inquiries, or opinions have been filed against Greenfly from January 1, 2006,
28 through September 18, 2009.

1 **Technical Capabilities**

2 14. Greenfly intends to offer resold long distance and resold local exchange
3 telecommunications services obtained from Qwest Communications Inc. and 360 Networks Inc. to
4 subscribers in Arizona.

5 15. Staff notes that Greenfly's officers have a combined experience of 43 years in the
6 telecommunications industry.

7 16. Greenfly has authority to provide, and/or is providing, telecommunications services
8 similar to those it intends to offer in Arizona in nine states.

9 17. Greenfly related to Staff that it plans to have two employees in Arizona by the end of
10 its first year of operations and anticipates having up to eight Arizona employees by the end of its
11 third year of operations.

12 18. Greenfly maintains a Customer Service Call Center in Billings, Montana, with an
13 overflow call center in Madison, Wisconsin, which are available 24 hours a day, seven days a week,
14 to handle customer concerns, complaints and repair inquiries.

15 19. Based on this information, Staff determined that Greenfly has sufficient technical
16 capabilities to provide resold long distance and resold local exchange telecommunications services in
17 Arizona.

18 **Financial Resources**

19 20. According to the Application, Greenfly's major shareholder is Better Business
20 Systems, Inc. The Company indicated that it relies on Better Business Systems, Inc.'s financial
21 resources.

22 21. Greenfly provided audited financial statements for Better Business Systems, Inc. for
23 the twelve-month period ending March 31, 2009. According to the Staff Report, this financial
24 statement lists assets of \$12,771,841, a total equity of \$2,462,457, and a net income of \$164,687.

25 22. Greenfly projects total revenues generated by the provision of telecommunications
26 services to Arizona customers for the first 12 months of operations to be \$126,143, with operating
27 expenses during that period of \$67,180.

28 23. Greenfly projects the net book value of all Arizona jurisdictional assets and the

1 projected value of all Arizona assets after the first 12 months of operations will be \$10,000.

2 24. If Greenfly experienced financial difficulty, it would have only a minimal impact on
3 its customers because there are many companies in Arizona that provide resold long distance and
4 resold local exchange telecommunications services. Facilities-based providers are also available.

5 **Proposed Rates**

6 25. Staff notes that the rates proposed by Greenfly are for competitive services and that
7 rates for competitive telecommunications services are generally not established according to rate-of-
8 return regulation.

9 26. Staff has determined that Greenfly's fair value rate base ("FVRB") is zero. Although
10 Staff evaluated the FVRB information submitted by Greenfly, Staff determined that the FVRB
11 information should not be given substantial weight in its analysis.

12 27. As a reseller of services purchased from other telecommunications companies,
13 Greenfly will have no market power and will have to compete with other providers to obtain
14 subscribers to its services.

15 28. In light of this competitive market, Staff believes that Greenfly's proposed tariffs are
16 just and reasonable.

17 29. Greenfly's tariff indicates that it will not collect advances, deposits, and/or
18 prepayments from its resold long distance customers. Staff recommends that if, in the future,
19 Greenfly wants to collect advances, deposits and/or prepayments, the Company should be required to
20 file an application with the Commission for its approval. This application must reference this
21 Decision and must explain the Company's plans for obtaining the \$10,000 performance bond or
22 irrevocable sight draft letter of credit that is required by the Commission from resold long distance
23 telecommunications service providers who collect advances, deposits, and/or prepayments from its
24 customers.

25 30. In order to protect the Company's resold local exchange customers, Staff recommends
26 that the Company should acquire a performance bond or irrevocable sight draft letter of credit equal
27 to \$25,000. Staff recommends that Greenfly file the original performance bond or irrevocable sight
28 draft letter of credit with the Commission's Business Office and file 13 copies with Docket Control,

1 as a compliance item in this docket, within 90 days of the effective date the Decision in this matter, or
2 at least 10 days before the first customer is served, whichever comes first. The performance bond or
3 irrevocable sight draft letter of credit must remain in effect until further order of the Commission.

4 **Competitive Services**

5 31. Staff states that there are alternatives to Greenfly's services, the Company will have to
6 convince potential customers to purchase its services, and the Company has no ability to adversely
7 affect the local exchange or interexchange service markets. As such, Staff recommends that the
8 Company's proposed services be classified as competitive.

9 **Regulatory Requirements**

10 32. Staff notes that if Greenfly wishes to discontinue service, it must file an application
11 with the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107. The
12 Company must notify each of its customers and the Commission 60 days prior to filing an application
13 to discontinue service. Failure to meet these requirements could result in forfeiture of the Company's
14 performance bond or irrevocable sight draft letter of credit.

15 33. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), Greenfly shall
16 make number portability available to facilitate the ability of a customer to switch between authorized
17 local carriers within a given wire center without changing their telephone number and without
18 impairment to quality, functionality, reliability or convenience of use.

19 34. Commission rules require Greenfly to file a tariff for each competitive service that
20 states the maximum rate as well as the effective (actual) price that will be charged for the service.
21 Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be below the total service
22 long-run incremental cost of providing the service. Any change to Greenfly's effective price for a
23 service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in
24 Greenfly's tariff must comply with A.A.C. R14-2-1110.

25 35. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
26 interconnect to the public switched network to provide funding for the Arizona Universal Service
27 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
28 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.

1 R14-2-1204(B)(2).

2 36. In accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications
3 Commission 47 CFR Sections 64.3001 and 64.3002, the Company will provide all customers with
4 911 and E911 service, where available, or will coordinate with ILECs and emergency service
5 providers to provide 911 and E911 service.

6 37. A.A.C. R14-2-1901 *et seq.* establish requirements to protect Arizona consumers from
7 unauthorized carrier changes (“slamming”) and apply to each public service corporation providing
8 telecommunications services within the State of Arizona and over which the Commission has
9 jurisdiction.

10 38. A.A.C. R14-2-2001 *et seq.* establish requirements to protect Arizona consumers from
11 unauthorized carrier charges (“cramming”) and apply to each public service corporation providing
12 telecommunications services in the State of Arizona and over which the Commission has jurisdiction.

13 **Staff's Recommendations**

14 39. Staff recommends approval of Greenfly's Application and further recommends:

- 15 a. That Greenfly be ordered to comply with all Commission rules, orders, and
16 other requirements relevant to the provision of intrastate telecommunications
17 service;
- 18 b. That Greenfly be required to notify the Commission immediately upon
19 changes to its name, address or telephone number;
- 20 c. That Greenfly be ordered to cooperate with Commission investigations,
21 including but not limited to customer complaints;
- 22 d. That Greenfly be ordered to comply with federal laws, federal rules and
23 A.A.C. R14-2-1308(A) regarding number portability;
- 24 e. That Greenfly be ordered to abide by the quality of service standards that were
25 approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- 26 f. That Greenfly be prohibited from barring access to alternative local exchange
27 service providers who wish to serve areas where it is the only provider of local
28 exchange service facilities;
- g. That Greenfly be ordered to provide all customers with 911 and E911 service,
where available, or to coordinate with ILECs and emergency service providers
to provide these services in accordance with A.A.C. R14-2-120(6)(d) and 47
CFR §§ 64.3001 and 64.3002;
- h. That Greenfly's FVRB is zero;

- 1 i. That Greenfly's services be classified as competitive;
- 2 j. That if at some time in the future Greenfly wants to collect advances, deposits
3 and/or prepayments from its resold long distance customers, Greenfly be
4 required to file an application for Commission approval that references this
5 Decision;
- 6 k. That should Greenfly request to discontinue and/or abandon its service area,
7 Greenfly must provide notice to both the Commission and its customers 60
8 days prior to filing an application to discontinue service, and the application
9 must be in accordance with A.A.C. R-14-2-1107;
- 10 l. That Greenfly offer Last Call Return service that will not return calls to
11 telephone numbers that have the privacy indicator activated;
- 12 m. That Greenfly offer Caller ID with the capability to toggle between blocking
13 and unblocking the transmission of the telephone number at no charge; and
- 14 n. That Greenfly be ordered to do the following and that its CC&N be rendered
15 null and void, after due process, if it fails to do the following:
- 16 i. Greenfly shall docket conforming tariffs for each service within its
17 CC&N within 365 days from the date of an Order in this matter or 30
18 days before providing service, whichever comes first. The tariffs
19 submitted shall coincide with the Application and state that Greenfly
20 does not collect advances, deposits and/or prepayments.
- 21 ii. Greenfly shall procure either a performance bond or an irrevocable
22 sight draft letter of credit equal to \$25,000.
- 23 iii. Greenfly shall file the original performance bond or irrevocable sight
24 draft letter of credit with the Commission's Business Office and 13
25 copies of the performance bond or irrevocable sight draft letter of credit
26 with Docket Control, as a compliance item in this docket, within 90
27 days of the effective date of a Decision in this matter or 10 days before
28 the first customer is served, whichever comes first. The performance
bond or irrevocable sight draft letter of credit must remain in effect
until further order of the Commission. The Commission may draw on
the performance bond or irrevocable sight draft letter of credit, on
behalf of, and for the sole benefit of, the Company's customers, if the
Commission, in its discretion, finds that the Company is in default of
its obligations arising from its Certificate. The Commission may use
the performance bond or irrevocable sight draft letter of credit funds, as
appropriate, to protect the Company's customers and the public interest
and take any and all actions the Commission, in its discretion, deems
necessary including, but not limited to, returning prepayments or
deposits collected from the Company's customers.
- iv. As a compliance filing, the Company shall notify the Commission that
it has started providing service in Arizona within 30 days of the first

customer being served.

v. Greenfly shall abide by Commission rules regarding the AUSF as stated in A.A.C. R14-2-1204(A), and shall make the necessary monthly payments as required by A.A.C. R14-2-1204(B).

40. We also find it reasonable to require:

- a. That the maximum rates for Greenfly’s services be the maximum rates proposed by Greenfly in its proposed tariffs;
- b. That the minimum rates for Greenfly’s services be the total service long-run incremental costs of providing those services, as set forth in A.A.C. R14-2-1109;
- c. If Greenfly 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;
- d. That Greenfly be ordered to maintain its accounts and records as required by the Commission;
- e. That Greenfly be ordered to file with the Commission all financial and other reports that the Commission may require, in a form and at such times as the Commission may designate;
- f. That Greenfly be ordered to maintain on file with the Commission all current tariffs and rates and any service standards that the Commission may require; and
- g. That Greenfly be ordered to comply with the Commission’s rules and to modify its tariffs to conform to those rules if it is determined that there is a conflict between Greenfly’s tariffs and Commission rules.

41. Staff’s recommendations and those stated in Finding of Fact No. 40 are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Greenfly 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 Greenfly and the subject matter of the Application.

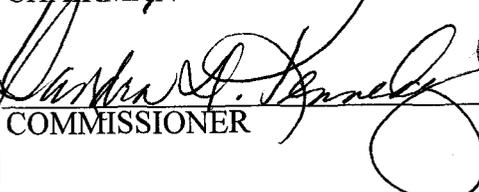
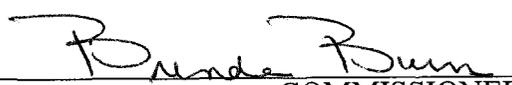
3. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

4. A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a hearing if the CC&N is for resold telecommunications services.

1 IT IS FURTHER ORDERED that if Greenfly Networks, Inc. d/b/a Clearly Communications
2 fails to meet the conditions outlined in Findings of Fact No. 39(n) within the stated timeframes, the
3 Certificate of Convenience and Necessity conditionally granted herein shall become null and void
4 after due process.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7			
8			EXCUSED
9			COMM. STUMP
9	CHAIRMAN		COMMISSIONER
10			
11	COMMISSIONER	COMMISSIONER	COMMISSIONER

12
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 21st day of August, 2011.

18 
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

19
20 DISSENT _____

21
22 DISSENT _____
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1 SERVICE LIST FOR: GREENFLY NETWORKS, INC., DBA CLEARFLY
2 COMMUNICATIONS

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