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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission
DOCKETED
JUN 27 2013
DOCKETED BY nr

IN THE MATTER OF THE APPLICATION OF VELOCITY THE GREATEST PHONE COMPANY EVER, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE RESOLD LONG DISTANCE AND RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES IN ARIZONA.

DOCKET NO. T-20686A-09-0306

DECISION NO. 73925

ORDER

Open Meeting
June 11 and 12, 2013
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 June 8, 2009, Velocity The Greatest Phone Company Ever, Inc. ("Velocity" or "Company"), filed an application with the Commission for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and resold local exchange telecommunications services in Arizona and requested that its proposed services be classified as competitive ("Application").

2. On August 31, 2009, the Commission's Utilities Division ("Staff") sent the Company a Letter of Insufficiency and First Set of Data Requests.

3. On September 30, 2009, the Company requested an extension of time to respond to Staff's Data Requests. Velocity docketed its responses on January 28, 2010.

4. On March 3, 2010, Staff issued its Second Set of Data Requests, and the Company filed responses on March 29, and November 8, 2010.

5. On July 5, 2012, Velocity filed an Affidavit of Publication stating that notice of the

Application had been published in *The Arizona Business Gazette* on June 25, 2012.

6. On October 10, 2012, Staff filed its Staff Report recommending approval of Velocity's Application, subject to certain conditions.

7. On March 20, 2013, a Procedural Order was docketed requesting that Staff clarify a statement in the Staff Report by April 1, 2013, and also suspending the time clock.

8. Staff filed its Correction to Staff Report on March 29, 2013.

9. As of April 15, 2013, Velocity had not filed a response to the corrected Staff Report.

Fitness and Properness to Obtain a CC&N

10. Velocity is a Delaware "C" corporation granted authority by the Commission on March 17, 2009, to conduct business in Arizona as a foreign corporation.

11. Velocity is in good standing with the Commission's Corporations Division.

12. The Company indicated that neither Velocity nor any of its officers, directors, partners or managers have been or are currently involved in any civil or criminal investigations, have had judgments entered in any civil or criminal matter or levied by any administrative or regulatory agency, nor have they been convicted of any criminal acts within the past 10 years.

13. The Company indicated that neither Velocity, nor any of its officers, directors, partners or managers have been or currently are involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

14. According to Velocity, it is authorized to provide telecommunications services similar to those offered in Arizona in seven states, and is currently providing service in five of them. Staff contacted the state public utility commissions in these jurisdictions and confirmed that Velocity is certificated or registered to provide telecommunications services. Staff also verified that no customer complaints about the Company had been filed in those states.

15. Staff stated the Consumer Services Section of the Utilities Division reported that no complaints, inquiries, or opinions have been filed against Velocity through March 29, 2013.

16. Staff noted that on June 4, 2012, it learned Velocity has been providing service in

Arizona without a CC&N. The Commission addressed a similar situation in a previous Decision.[1] In that case, the Commission found there were no consumer complaints, inquiries or opinions filed against the applicant and that it was in good standing with the Corporations Division. Based on these findings, the Commission granted the CC&N. The Commission put the applicant on notice that if it provided other telecommunications services in Arizona without first obtaining Commission authorization, the Commission might impose sanctions.

17. Because there are no consumer complaints, inquiries or opinions filed against the Company and Velocity is in good standing with the Corporations Division, we will not reject the Application due to the Company's unauthorized provision of service. The Company is put on notice that if it provides other telecommunications services in Arizona in the future without first obtaining all required Commission approvals, the Commission may impose sanctions against Velocity, including the forfeiture of any performance bond or irrevocable sight draft letter of credit.

Technical Capabilities

18. Velocity will offer resold telecommunications services obtained from CenturyLink d/b/a Qwest Communications, Global Crossing and AT&T, among others, to Arizona customers.

19. According to the Company, its officers have a combined experience of over 12 years in the telecommunications industry.

20. Velocity has authority to provide, and/or is providing, telecommunications services similar to those it intends to offer in Arizona in seven states.

21. Based on this information, Staff determined that Velocity has sufficient technical capabilities to provide resold long distance and resold local exchange telecommunications services in Arizona.

Financial Resources

22. Velocity provided Staff with unaudited financial statements for the periods ending December 31, 2010, and December 31, 2011. According to the Staff Report, the financial statement for the year ending 2010 lists total assets of $5,550,003, total equity of $3,289,956, and net income of

[1] Decision No. 73133 (May 1, 2012).

$2,478,921. The financial statement for the year ending 2011 lists total assets of $5,991,594, total equity of $3,404,935, and net income of $114,978.

23. Velocity projected total intrastate revenues generated from provision of telecommunications services to Arizona customers for the first 12 months of operations to be $10,000, with total intrastate operating expenses during that period of $8,000.

24. Velocity stated that the current net book value of all Arizona jurisdictional assets is zero and the projected value of all Arizona assets after the first 12 months of operations will be $100.

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

Proposed Rates and Competitive Services

26. Staff notes that the rates proposed by Velocity are for competitive services. Rates for competitive telecommunications services are generally not established according to rate-of-return regulation.

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

28. As a reseller of services purchased from other telecommunications companies, Velocity will have no market power and it will have to compete with other providers to obtain subscribers to its services.

29. In light of this competitive market, Staff believes that Velocity's proposed tariffs are just and reasonable.

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

31. For a telecommunications services reseller, the Commission's current performance bond or irrevocable sight draft letter of credit requirements are $10,000 for resold long distance if a

company collects advances, prepayments and/or deposits from Arizona customers, and $25,000 for an entity providing resold local exchange services.

32. Velocity's proposed tariff states that it will not collect advances, deposits, and/or prepayments from its resold long distance customers. As such, no performance bond or irrevocable sight draft letter of credit is required for its resold long distance CC&N. Staff recommended that if, in the future, Velocity wants to collect advances, deposits and/or prepayments from its Arizona customers, the Company must file an application with the Commission for its approval. The application must reference this Decision and explain the Company's plans for obtaining the $10,000 performance bond or irrevocable sight draft letter of credit required by the Commission in these circumstances.

33. In order to protect Velocity's resold local exchange customers, Staff recommended that the Company should acquire a performance bond or irrevocable sight draft letter of credit equal to $25,000. Staff recommended that Velocity file the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and file copies with Docket Control, as a compliance item in this docket, within 90 days of the effective date this Decision. The performance bond or irrevocable sight draft letter of credit must remain in effect until further order of the Commission.

Regulatory Requirements

34. If Velocity wishes to discontinue any service in Arizona, it must file an application with the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107. The Company must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet these requirements could result in forfeiture of the Company's performance bond or irrevocable sight draft letter of credit.

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

36. Commission rules require Velocity to file a tariff for each competitive service that

states the maximum rate as well as the effective (actual) price that will be charged for the service. Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be below the total service long-run incremental cost of providing the service. Any change to Velocity's effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in Velocity's tariff must comply with A.A.C. R14-2-1110.

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

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

39. A.A.C. R14-2-1901 *et seq.* establish requirements to protect Arizona consumers from unauthorized carrier changes ("slamming") and apply to each public service corporation providing telecommunications services in Arizona and over which the Commission has jurisdiction.

40. A.A.C. R14-2-2001 *et seq.* establish requirements to protect Arizona consumers from unauthorized carrier charges ("cramming") and apply to each public service corporation providing telecommunications services in Arizona and over which the Commission has jurisdiction.

Staff's Recommendations

41. Staff recommends approval of Velocity's Application and further recommends:

a. That Velocity be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

b. That Velocity be required to notify the Commission immediately upon changes to its name, address or telephone number;

c. That Velocity be ordered to cooperate with Commission investigations, including but not limited to customer complaints;

d. That Velocity be ordered to abide by the quality of service standards that were

approved by the Commission for CenturyLink in Docket No. T-01051B-93-0183;

e. That Velocity be prohibited from barring access to alternative local exchange service providers who wish to serve areas where it is the only provider of local exchange service facilities;

f. That Velocity's FVRB is zero;

g. That Velocity's services be classified as competitive;

h. That Velocity be authorized to discount its rates and service charges to the marginal cost of providing the services;

i. That if at some time in the future Velocity wants to collect advances, deposits and/or prepayments from its resold long distance customers, Velocity be required to file an application for Commission approval that references this Decision and explains the Company's plans for procuring its performance bond or irrevocable sight draft letter of credit;

j. That Velocity offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;

k. That Velocity offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge; and

l. That Velocity be ordered to do the following and that its CC&N be rendered null and void, after due process, if it fails to do the following:

    i. Velocity shall docket conforming tariffs for each service within its CC&N within 365 days of the effective date of this Decision or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and the tariffs should indicate that Velocity does not collect advances, deposits and/or prepayments.

    ii. Velocity shall procure either a performance bond or an irrevocable sight draft letter of credit equal to $25,000. The minimum performance bond or irrevocable sight draft letter of credit should be increased if it becomes insufficient to cover advances, deposits, and/or prepayments collected from the Company's customers. The performance bond or irrevocable sight draft letter of credit amount should be increased in increments of $12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within $2,500 of the performance bond or irrevocable sight draft letter of credit.

    iii. Velocity shall file the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within 90 days of the effective date of the Decision in this matter. 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. Velocity 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).

42. Because Velocity is already providing service in Arizona, we believe it is reasonable to modify Staff's recommendation noted in Finding of Fact No. 41(l)(i) to require Velocity to docket conforming tariffs for each service within its CC&N within 30 days of the effective date of this Decision.

43. We also find it reasonable to require that:

a. The maximum rates for Velocity's services shall be the maximum rates proposed by Velocity in its proposed tariffs;

b. Velocity's minimum rates for services shall be the total service long-run incremental costs of providing those services, as set forth in A.A.C. R14-2-1109;

c. If Velocity states only one rate for a service in its proposed tariff, that the rate stated shall be the effective (actual) price to be charged for the service as well as the service's maximum rate;

d. Velocity shall maintain its accounts and records as required by the Commission;

e. Velocity shall 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. Velocity shall maintain on file with the Commission all current tariffs and rates and any service standards that the Commission may require;

g. Velocity shall comply with the Commission's rules and modify its tariffs to conform to those rules if it is determined that there is a conflict between Velocity's tariffs and Commission rules;

h. Velocity shall comply with federal laws and rules, and A.A.C. R14-2-1308(A), regarding number portability;

i. Velocity shall 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 47 CFR §§ 64.3001 and 64.3002 and A.A.C. R14-2-120(6)(d);

j. If Velocity wishes to discontinue and/or abandon its service area, Velocity must provide notice to both its customers and the Commission 60 days prior to

filing an application to discontinue service, and the application must be in accordance with A.A.C. R-14-2-1107. Velocity's failure to do so may result in forfeiture of the performance bond or irrevocable sight draft letter of credit; and

k. In the future, if Velocity wishes to provide telecommunications services in Arizona beyond those authorized in this Decision, the Company must obtain Commission approval to provide those services before offering them to Arizona customers. If Velocity provides such service without first obtaining all required Commission approvals, the Commission may impose sanctions against Velocity, including, but not limited to, the forfeiture of any performance bond or irrevocable sight draft letter of credit.

44. Staff's recommendations in Finding of Fact No. 41, as modified in Finding of Fact No. 42, and those stated in Finding of Fact No. 43, are reasonable and shall be adopted.

CONCLUSIONS OF LAW

1. Velocity is 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 Velocity 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.

5. Notice of Velocity's Application was given in accordance with Arizona law.

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

7. Velocity is a fit and proper entity to receive a CC&N authorizing it to provide resold long distance and resold local exchange telecommunications services in Arizona.

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

9. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is just and reasonable and in the public interest for Velocity to establish rates and charges for

competitive services that are not less than Velocity's total service long-run incremental costs of providing the approved competitive services.

10. Velocity's FVRB is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

11. Velocity's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

12. The recommendations stated in Finding of Fact No. 41, as modified in Finding of Fact No. 42, and Finding of Fact No. 43, are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Velocity The Greatest Phone Company Ever, Inc. for a Certificate of Convenience and Necessity to provide competitive resold long distance and resold local exchange telecommunications services in Arizona is granted, subject to the conditions and recommendations stated in Finding of Fact No. 41, as modified in Finding of Fact No. 42, and in Finding of Fact No. 43.

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IT IS FURTHER ORDERED that if Velocity The Greatest Phone Company Ever, Inc. fails to meet the conditions outlined in Finding of Fact No. 41(l)(i-iv), as modified by Finding of Fact No. 42, within the stated timeframes, this conditionally granted Certificate of Convenience and Necessity shall become null and void after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27th day of June 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: VELOCITY THE GREATEST PHONE COMPANY EVER, INC.

DOCKET NO.: T-20686A-09-0306

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