

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: DECEMBER 24, 2014

2014 DEC 24 AM 10 35

DOCKET NO.: T-20888A-13-0273

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

THRESHOLD COMMUNICATIONS, INC.
(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:

JANUARY 2, 2015

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:

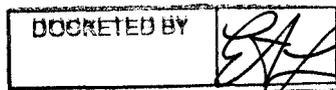
JANUARY 13, 2015 and JANUARY 14, 2015

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.

Arizona Corporation Commission

DOCKETED

DEC 24 2014



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

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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 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 THRESHOLD COMMUNICATIONS, INC. FOR
10 APPROVAL OF A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE, RESOLD LOCAL
13 EXCHANGE, VOIP, AND PRIVATE LINE
14 TELECOMMUNICATION SERVICES IN
15 ARIZONA.

DOCKET NO. T-20888A-13-0273

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: December 8, 2014
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
14 APPEARANCES: Mr. Michael Patten, ROSHKA DEWULF & PATTEN,
15 PLC, on behalf of the Applicant; and
16 Mr. Brian Smith, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 On August 9, 2013, Threshold Communications, Inc. ("Threshold" or the "Company") filed
20 with the Arizona Corporation Commission ("Commission") an application for approval of a
21 Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local
22 exchange, Voice over Internet Protocol ("VoIP"), and private line telecommunications services in the
23 State of Arizona. Threshold's application also requests a determination that its proposed services are
24 competitive in Arizona.

25 On June 3, 2014, Michael W. Patten filed a Notice of Appearance on behalf of Threshold.

26 On August 1, 2014, Threshold filed an amendment to its application.

27 On September 29, 2014, the Utilities Division ("Staff") filed a Staff Report recommending
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1 approval of Threshold’s application, subject to certain conditions.

2 On October 10, 2014, by Procedural Order the hearing in this matter was set for December 8,
3 2014, and other procedural deadlines were established.

4 On November 5, 2014, Threshold filed its Notice of Filing of Affidavit of Publication,
5 indicating that notice of the amended application and hearing date had been published on October 23,
6 2014, in the *Arizona Republic*, a newspaper of general circulation in Threshold’s proposed service
7 area.

8 On December 8, 2014, a full public hearing was held as scheduled before a duly authorized
9 Administrative Law Judge (“ALJ”) of the Commission. The Company and Staff appeared through
10 counsel and presented testimony and evidence. No members of the public appeared to provide public
11 comment on the application. At the conclusion of the hearing, the matter was taken under
12 advisement pending submission of a Recommended Opinion and Order to the Commission.

13 * * * * *

14 Having considered the entire record herein and being fully advised in the premises, the
15 Commission finds, concludes, and orders that:

16 **FINDINGS OF FACT**

- 17 1. Threshold is a privately held “S” corporation organized under the laws of Washington
18 and authorized to transact business in Arizona.¹
- 19 2. Threshold’s principal offices are located in Richmond, Washington.²
- 20 3. Threshold is a sole proprietorship owned by Jeff Matson, Chief Executive Officer for
21 the Company.³
- 22 4. Threshold’s amended application request authority to provide resold long distance,
23 resold local exchange, VoIP, and private line telecommunication services in Arizona.
- 24 5. Notice of the application was given in accordance with the law.
- 25 6. Staff recommends approval of Threshold’s amended application, subject to the
26 following conditions:

27 ¹ Exhibit A-1, Attachment A-8.1.

28 ² *Id.*

³ *Id.*

- 1 (a) Threshold comply with all Commission Rules, Orders and other requirements
2 relevant to the provision of intrastate telecommunications services;
- 3 (b) Threshold abide by the quality of service standards that were approved by the
4 Commission for Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") in
5 Docket No. T-01051B-13-0199 (Decision No. 74208);⁴
- 6 (c) Threshold be prohibited from barring access to alternative local exchange
7 service providers who wish to serve areas where it is the only provider of local
8 exchange service facilities;
- 9 (d) Threshold notify the Commission immediately upon changes to Threshold's
10 name, address or telephone number;
- 11 (e) Threshold cooperate with Commission investigations including, but not limited
12 to customer complaints;
- 13 (f) The rates proposed by this filing are not for competitive services. In general,
14 rates for competitive services are not set according to rate of return regulation.
15 Staff obtained information from Threshold and has determined that its fair
16 value rate base is zero. Staff has reviewed the rates to be charged by
17 Threshold and believes they are just and reasonable as they are comparable to
18 other competitive local carriers and local incumbent carriers offering service in
19 Arizona and comparable to the rates Threshold charges in other jurisdictions.
20 The rate to be ultimately charged by Threshold will be heavily influenced by
21 the market. Therefore, while Staff considered the fair value rate base
22 information submitted by the company, the fair value information provided
23 was not given substantial weight in this analysis;
- 24 (g) Threshold offer Caller ID with the capability to toggle between blocking and
25 unblocking the transmission of the telephone number at no charge;
- 26 (h) Threshold offer Last Call Return service that will not return calls to telephone
27 numbers that have the privacy indicator activated; and
- 28 (i) The Commission authorize Threshold to discount its rates and service charges
to the marginal cost of providing the services.⁵

7. Staff further recommends that Threshold comply with the following items and if
Threshold fails to do so, that the Company's CC&N be null and void after due process:

- a. Threshold shall docket conforming tariffs pages for each service within its
CC&N within 365 days from the date of an Order in this matter or 30 days
prior to providing service, whichever comes first. The tariffs submitted shall
coincide with the application;
- b. Threshold shall notify the Commission through a compliance filing within 30
days of the commencement of service to end-user customers; and

⁴ Staff refers to Decision No. 74208; however, the standards Staff refers to were established in Decision No. 59421 (December 20, 1995).

⁵ Exhibit S-1 at 9.

- 1 c. Threshold shall abide by the Commission-adopted rules that address Universal
 2 Service in Arizona. A.A.C. R14-2-1204(A) indicates that all
 3 telecommunications service providers that interconnect into the public
 4 switched network shall provide funding for the Arizona Universal Service
 Fund ("AUSF"). Threshold will make the necessary monthly payments
 required by A.A.C. R14-2-1204(B).⁶

5 **Technical and Financial Capability**

6 8. Established in 2001, Threshold is currently approved to offer resold long distance and
 7 resold local exchange telecommunication services in eight states.⁷

8 9. Threshold has twelve employees and provides its proposed services only to
 9 corporations.⁸ In Arizona, Threshold will be providing services to small and medium sized
 10 businesses.

11 10. Threshold's senior management team members possess an average of sixteen years in
 12 the telecommunication's industry.

13 11. If granted a CC&N in Arizona, Threshold intends to resell services provided by
 14 AT&T and CenturyLink.⁹ Threshold also anticipates having four to five employees in Arizona that
 15 will provide technical, sales, and customer support in Arizona.¹⁰

16 12. Although Threshold will not have a customer support center in Arizona, Threshold
 17 will offer 24/7/365 customer support via a 1-800 number and will have the ability to dispatch
 18 technicians provided through its carriers like AT&T and CenturyLink.¹¹

19 13. Staff believes Threshold has the technical capabilities to provide its proposed services
 20 in Arizona.

21 14. Threshold provided Staff with unaudited financial statements for the year ending
 22 December 31, 2013, showing total assets of \$1,132,788; total equity of \$698,296; and a net income of
 23 \$279,575.¹²

24 _____
 25 ⁶ Exhibit S-1 at 10.

26 ⁷ Threshold's application states the Company is authorized to provide resold local and long distance exchange services in
 California, Indiana, New York, North Carolina, Oregon, Texas, Virginia, and Washington.

27 ⁸ Tr. at 7.

28 ⁹ Exhibit A-1.

¹⁰ Tr. at 8.

¹¹ *Id.*

¹² Exhibit S-1 at 2.

1 **Rates and Charges**

2 15. Staff believes Threshold's rates will be heavily influenced by the market. Staff states
3 that Threshold will have to compete with other incumbent local interexchange carriers ("ILECs"),
4 competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") to provide its
5 local and long distance exchange and private line services in Arizona.¹³ Staff reviewed the rate
6 comparison information of other CLECs and Staff believes the proposed rates provided by Threshold
7 are comparable to the rates charged by other CLECs and ILECs providing services in Arizona. Based
8 on the competitive environment that Threshold will be operating in, Staff believes the Company will
9 not be able to exert any market power and that the competitive process should result in just and
10 reasonable rates.¹⁴

11 16. Pursuant to A.A.C. R14-2-1109, the rates charged for each service Threshold proposes
12 to provide may not be less than the Company's total service long-run incremental cost of providing
13 that service.

14 17. Staff states that although it considered the Company's proposed fair value rate base,
15 Staff did not give it much weight in its analysis because the Company's rates in Arizona will be
16 heavily influenced by the market.

17 **Local Exchange Carrier Specific Issues**

18 18. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Threshold will make
19 number portability available to facilitate the ability of customers to switch between authorized local
20 carriers within a given wire center without changing their telephone number and without impairment
21 to quality, functionality, reliability or convenience of use.

22 19. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that
23 interconnect to the public switched network shall provide funding for the AUSF. Threshold shall
24 make payments to the AUSF described under A.A.C. R14-2-1204(B).

25 20. In Commission Decision No. 59421 (December 20, 1995), the Commission approved
26 quality of service standards for CenturyLink which imposed penalties due to an unsatisfactory level

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28 ¹³ Exhibit S-1 at 2.

¹⁴ *Id.* at 3.

1 of service. In this matter, Staff believes Threshold does not have a similar history of service quality
2 problems, and therefore the penalties in that decision should not apply.

3 21. In the areas where the Company is the only local exchange service provider, Staff
4 recommends that Threshold be prohibited from barring access to alternative local exchange service
5 providers who wish to serve the area.

6 22. Threshold will provide all customers with 911 and E911 service where available, or
7 will coordinate with ILECs, and emergency service providers to facilitate the service.

8 23. Pursuant to prior Commission Decisions, Threshold may offer customer local area
9 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
10 unblock each individual call at no additional cost.

11 24. Threshold must offer Last Call Return service, which will not allow the return of calls
12 to the telephone numbers that have the privacy indicator activated.

13 **Complaint Information**

14 25. Threshold stated that none of its officers, directors, partners, nor managers have been
15 or are currently involved in any formal or informal complaint proceeding before any state or federal
16 regulatory agency, commission, administrative or law enforcement agency.

17 26. Threshold also states that none of its officers, directors, partners or managers have
18 been involved in any civil or criminal investigations, or had judgments entered in any civil matter, or
19 by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten
20 years.

21 27. Staff reported that no consumer complaints had been filed against Threshold in
22 Arizona.

23 28. Threshold is in good standing with the Commission's Corporation Division.

24 29. In 2009 the Federal Communications Commission ("FCC") filed a Notice of Apparent
25 Liability for Forfeiture ("NAL") against Threshold for its failure to submit an annual Customer
26 Proprietary Network Information ("CPNI") compliance certificate signed by an officer of the
27 Company. Threshold's witness testified that the CPNI was submitted to the FCC without the Chief
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1 Executive Officer's signature, that the Company resubmitted the CPNI with the signature, and the
2 Company requested a waiver of the penalty and the FCC granted the Company's waiver.¹⁵

3 **Competitive Analysis**

4 30. Threshold's application requests that the Company's proposed services be classified as
5 competitive in Arizona. Staff believes Threshold's proposed services should be classified as
6 competitive because the Company will have to compete with IXCs, ILECs, and CLECs to gain a
7 share of the market in which it intends to operate. Further, Staff believes that Threshold will not be
8 able to exert any market power in its proposed service area.

9 31. Based on the above factors, Staff concludes that Threshold's proposed services should
10 be classified as competitive in Arizona.

11 32. We find that Staff's recommendations are reasonable and should be adopted. We also
12 find that Threshold's proposed services are competitive within Arizona.

13 **CONCLUSIONS OF LAW**

14 1. Threshold is a public service corporation within the meaning of Article XV of the
15 Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

16 2. The Commission has jurisdiction over Threshold and the subject matter of the
17 application.

18 3. Notice of the application was given in accordance with the law.

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

21 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
22 Statutes, it is in the public interest to grant Threshold's application to provide resold long distance,
23 resold local exchange, VoIP and private line telecommunications services in Arizona.

24 6. Threshold is a fit and proper entity to receive a CC&N authorizing it to provide
25 intrastate telecommunications services in Arizona, subject to Staff's recommendations as set forth
26 herein.

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¹⁵ Tr. at 9-10.

1 7. Threshold's fair value rate base is not useful in determining just and reasonable rates
2 for the competitive services it proposes to provide to Arizona customers.

3 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
4 is just and reasonable and in the public interest for Threshold to establish rates and charges that are
5 not less than Threshold's total service long-run incremental costs of providing the competitive
6 services approved herein.

7 9. Staff's recommendations are reasonable and should be adopted.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the application of Threshold Communications, Inc. for
10 a Certificate of Convenience and Necessity to provide resold long distance, resold local exchange,
11 Voice over Internet Protocol and private line telecommunications services in Arizona, is hereby
12 approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 6 and
13 7.

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1 IT IS FURTHER ORDERED that if Threshold Communications, Inc. fails to comply with the
2 Staff recommendations described in Findings Fact No. 7, the Certificate of Convenience and
3 Necessity granted herein shall be considered 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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8 CHAIRMAN _____ COMMISSIONER

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10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____ 2015.

16 JODI JERICH
17 EXECUTIVE DIRECTOR

18 DISSENT _____

19
20 DISSENT _____
21 YBK:ru

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1 SERVICE LIST FOR: THRESHOLD COMMUNICATIONS, INC.

2 DOCKET NO.: T-20888A-13-0273

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