

ORIGINAL OPEN MEETING ITEM

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE



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ARIZONA CORPORATION COMMISSION RECEIVED

DATE: FEBRUARY 12, 2015

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DOCKET NO.: T-20900A-13-0423

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion and Order on:

**VOXBEAM TELECOMMUNICATIONS INC. D/B/A MAGIC TELECOM
(CC&N / FACILITIES-BASED)**

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:

FEBRUARY 23, 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:

MARCH 2, 2015 and MARCH 3, 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

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JODI JERICH
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

IN THE MATTER OF THE APPLICATION OF
VOXBEAM TELECOMMUNICATIONS INC.
D/B/A MAGIC TELECOM FOR APPROVAL OF A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE AND FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-20900A-13-0423

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: January 7, 2015
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Scott M. Hesla
APPEARANCES: Mr. Ryan Rapolti on behalf of Voxbeam
Telecommunications Inc. d/b/a Magic Telecom; and
Mr. Matthew Laudone, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation.

BY THE COMMISSION:

On December 6, 2013, Voxbeam Telecommunications Inc. d/b/a Magic Telecom ("Voxbeam" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and facilities-based local exchange telecommunications services in Arizona. Voxbeam's application also requests a determination that its proposed services are competitive in Arizona.

On March 24, 2014, Voxbeam filed its Response to Staff's First Set of Data Requests.

On June 27, 2014, Voxbeam filed its Response to Staff's Second Set of Data Requests. In addition, Voxbeam filed amended local exchange telecommunications and switched access service tariffs.

On September 11, 2014, the Commission's Utilities Division ("Staff") filed its Staff Report

1 recommending approval of Voxbeam's application, subject to certain conditions.

2 On October 1, 2014, a Procedural Order was issued setting various filing dates and scheduling
3 a hearing for December 4, 2014.

4 On October 14, 2014, Voxbeam filed a Request to Reschedule Hearing.

5 On October 21, 2014, a Procedural Order was issued modifying various filing dates and
6 rescheduling the hearing for January 7, 2015. On November 4, 2014, a Procedural Order was issued
7 correcting a typographical error contained in the previous order.¹

8 On November 10, 2014, Voxbeam filed a Notice of Address Change.

9 On December 22, 2014, Voxbeam filed an Affidavit of Publication showing that notice of the
10 application and hearing date was published in the *Arizona Business Gazette* on November 26, 2014.

11 On January 7, 2015, a full public hearing was held as scheduled before a duly authorized
12 Administrative Law Judge of the Commission. Staff appeared through counsel and the Company
13 appeared through its President, Mr. Ryan Rapolti.² No members of the public appeared to give
14 comments on the application. At the conclusion of the hearing, the matter was taken under
15 advisement pending submission of a Recommended Opinion and Order to the Commission.

16 * * * * *

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

19 **FINDINGS OF FACT**

20 1. Voxbeam is a foreign corporation organized under the laws of Florida, with its
21 principal office located in Orlando, Florida.

22 2. Voxbeam is authorized to transact business in Arizona and is in good standing with
23 the Commission's Corporations Division.

24 3. On December 6, 2013, Voxbeam filed an application with the Commission to provide
25

26 ¹ The October 21, 2014 Procedural Order incorrectly stated the hearing would be held on "January 7, 2014."

27 ² Mr. Rapolti was allowed to represent the Company after affirming that his representation was authorized by the
28 Company and incidental to his duties as president. (Tr. at 4:9-5:4); see A.R.S. § 40-243(B) (a public service corporation may be represented by a corporate officer who is not a member of the state bar if: (1) the corporation has specifically authorized the officer to represent it; and (2) the representation is not the officer's primary duty for the corporation, but is secondary or incidental to such officer's duties relating to the management or operation of the corporation).

1 resold long distance and facilities-based local exchange telecommunications services in Arizona.
 2 Voxbeam's application also requests a determination that its proposed services are competitive in
 3 Arizona.

4 4. Notice of Voxbeam's application was given in accordance with the law.

5 **Technical Capability**

6 5. Voxbeam intends to provide its proposed services to wholesale customers and small-
 7 to medium-sized business customers, ranging from 5 to 100 lines.³ The Company will not provide
 8 service to residential customers in Arizona.⁴

9 6. Voxbeam has authority to provide local exchange and interexchange services in 21
 10 other jurisdictions.⁵ Voxbeam and its affiliates have approximately 40 employees.⁶ According to
 11 Staff, Voxbeam's three officers average eleven years' experience each in the telecommunications
 12 industry.⁷ Voxbeam does not plan, at this time, to have employees or facilities based in Arizona.⁸

13 7. Voxbeam utilizes a call center to provide 24/7 customer support access to handle
 14 customer service issues.⁹ Voxbeam also provides 24/7 customer support access via e-mail.¹⁰ Staff
 15 believes the Company will be able to provide adequate customer service for its customers in
 16 Arizona.¹¹

17 8. According to Staff, Voxbeam has the technical capabilities to provide its proposed
 18 services in Arizona.¹²

19 **Financial Capabilities**

20 9. Voxbeam provided unaudited financial statements for the year ending 2013, listing
 21 total assets of \$1,537,576; total equity of negative \$128,426; and net income of \$223,893.¹³ For the

22 ³ Tr. at 8:20-25.

23 ⁴ Exhibit A-1 at (A-15).

24 ⁵ California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Maryland,
 Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and
 Wisconsin. See Exhibit S-1 at 1.

25 ⁶ Exhibit S-1 at 1.

26 ⁷ *Id.*

⁸ *Id.*

27 ⁹ Tr. at 11:16-13:7.

¹⁰ *Id.*

¹¹ *Id.* at 17:17-24.

¹² Exhibit S-1 at 2.

28 ¹³ *Id.*

1 year ending 2012, Voxbeam listed total assets of \$617,703; total equity of negative \$352,318; and net
2 income of \$112,583.¹⁴

3 Rates and Charges

4 10. Staff believes that Voxbeam will have to compete with other incumbent local
5 exchange carriers (“ILECs”), and various competitive local exchange (“CLECs”), and interexchange
6 carriers (“IXCs”) in Arizona in order to gain new customers.¹⁵ Staff states it does not believe
7 Voxbeam will be able to exert market power given its status as a new entrant in the market.¹⁶

8 11. Pursuant to A.A.C. R14-2-1109, the rates charged for each service Voxbeam proposes
9 to provide may not be less than the Company’s total service long-run incremental cost of providing
10 that service.

11 12. Voxbeam projects that for the first twelve months of operation in Arizona, it will have
12 a net book value of zero.¹⁷

13 13. Staff states that in general, rates for competitive services are not set according to rate
14 of return regulation and the Company’s fair value rate base is zero. Staff believes that Voxbeam’s
15 rates will be heavily influenced by the market.¹⁸ Staff reviewed Voxbeam’s proposed tariff pages,
16 the rate comparison information of other CLECs and ILECs and Staff believes that Voxbeam’s
17 proposed rates are comparable to the rates charged by CLECs and ILECs providing service in
18 Arizona.¹⁹ Therefore, Staff states that while it considered the fair value rate base information
19 submitted by Voxbeam, that information was not afforded substantial weight in Staff’s analysis.²⁰

20 Local Exchange Carrier Specific Issues

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

25 ¹⁴ Exhibit S-1 at 2.

26 ¹⁵ *Id.*

26 ¹⁶ *Id.*

27 ¹⁷ Exhibit A-1, Attachment E.

27 ¹⁸ Exhibit S-1 at 2.

28 ¹⁹ *Id.*

28 ²⁰ *Id.* at 3.

1 15. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that
2 interconnect into the public switched network shall provide funding for the Arizona Universal
3 Service Fund ("AUSF"). Voxbeam shall make payments to the AUSF described under A.A.C. R14-
4 2-1204(B).

5 16. In Commission Decision No. 74208 (December 3, 2013), the Commission approved
6 quality of service standards for Qwest d/b/a CenturyLink QC to insure customers received a
7 satisfactory level of service. In this matter, Staff believes Voxbeam should be ordered to abide by
8 those service standards.

9 17. In the areas where the Company is the only local exchange service provider, Staff
10 recommends that Voxbeam be prohibited from barring access to alternative local exchange service
11 providers who wish to serve the area.

12 18. Voxbeam will provide all customers with 911 and E911 service where available, or
13 will coordinate with ILECs and emergency service providers to facilitate the service.

14 19. Pursuant to prior Commission Decisions, Voxbeam may offer customer local area
15 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
16 unblock each individual call at no additional cost.

17 20. Voxbeam must offer Last Call Return service, which will not allow the return of calls
18 to the telephone numbers that have the privacy indicator activated.

19 **Complaint Information**

20 21. Voxbeam's application states that none of the Company's officers, directors, partners,
21 or managers have been or are currently involved in any formal or informal complaint proceedings
22 before any state or federal regulatory agency, commission, administrative, or law enforcement
23 agency.²¹

24 22. Voxbeam states that none of the Company's officers, directors, partners or managers
25 have been involved in any civil or criminal investigations, or had judgments entered in any civil
26 matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within
27

28 ²¹ Exhibit A-1 at (A-11).

1 the last ten (10) years.²²

2 23. Staff verified that Voxbeam has no formal or informal complaint proceedings pending
3 before any state or federal regulatory commission, administrative agency or law enforcement agency
4 involving the Company or any of its officers, directors, or managers.²³

5 24. As of the filing of the Staff Report, Voxbeam had no complaints filed with the Federal
6 Communications Commission ("FCC").²⁴

7 **Competitive Review**

8 25. Voxbeam's application requests that its proposed telecommunication services in
9 Arizona be classified as competitive. Staff believes Voxbeam's proposed services should be
10 classified as competitive because Voxbeam will have to compete with CLECs and ILECs to gain
11 customers; there are alternative providers to Voxbeam's proposed services; ILECs hold a virtual
12 monopoly in local exchange and IXC markets; and that Voxbeam will not have the ability to
13 adversely affect the local exchange or IXC markets in Arizona.²⁵

14 26. Based on the above factors, Staff concludes that Voxbeam's proposed service should
15 be classified as competitive.²⁶

16 **Staff's Recommendations**

17 27. Staff recommends approval of Voxbeam's application for a CC&N to provide resold
18 long distance and facilities-based local exchange telecommunications services in Arizona, subject to
19 the following conditions:

- 20 a) Voxbeam comply with all Commission Rules, Orders, and other requirements
21 relevant to the provision of intrastate telecommunications services;
- 22 b) Voxbeam abide by the quality of service standards that were approved by the
23 Commission for Qwest d/b/a CenturyLink QC in Docket No. T-01051B-13-0199
(Decision No. 74208);
- 24 c) Voxbeam be prohibited from barring access to alternative local exchange service
25 providers who wish to serve areas where Voxbeam is the only local provider of
local exchange service facilities;

26 ²² Exhibit A-1 at (A-12).

27 ²³ Exhibit S-1 at 1. See Exhibit A-1 at (A-11); Tr. at 9:18-21.

28 ²⁴ Exhibit S-1 at 4.

²⁵ *Id.* at 5-7.

²⁶ *Id.* at 8.

- 1 d) Voxbeam notify the Commission immediately upon changes to Voxbeam's name,
address, or telephone number;
- 2 e) Voxbeam cooperate with Commission investigations including, but not limited to,
3 customer complaints;
- 4 f) The rates proposed by Staff are for competitive services. In general, rates for
5 competitive services are not set according to rate of return regulation. Staff
6 obtained information from Voxbeam and has determined that its fair value rate
7 base is zero. Staff has reviewed the rates to be charged by Voxbeam and believes
8 they are just and reasonable as they are comparable to other competitive local
9 carriers and local incumbent carriers offering service in Arizona and comparable to
10 the rates Voxbeam charges in other jurisdictions. The rate to be ultimately
11 charged by Voxbeam will be heavily influenced by the market. Therefore, while
12 Staff considered the fair value rate base information submitted by Voxbeam, the
13 fair value information provided was not given substantial weight in this analysis;
- 14 g) Voxbeam offer Caller ID with the capability to toggle between blocking and
15 unblocking the transmission of the telephone number at no charge;
- 16 h) Voxbeam offer Last Call Return service that will not return calls to telephone
17 numbers that have the privacy indicator activated; and
- 18 i) The Commission authorizes Voxbeam to discount its rates and service charges to
19 the marginal cost of providing the services.²⁷

20 28. Staff further recommends that Voxbeam's CC&N be considered null and void after
21 due process if Voxbeam fails to comply with the following conditions:

- 22 a) Voxbeam shall docket conforming tariff pages for each service within its CC&N
23 within 365 days from the date of a Decision in this matter or 30 days prior to
24 providing service, whichever comes first. The tariffs submitted shall coincide with
25 the application;
- 26 b) Voxbeam shall notify the Commission through a compliance filing within 30 days
27 of the commencement of service to end-user customers; and
- 28 c) Voxbeam shall abide by the Commission adopted rules that address Universal
Service in Arizona. A.A.C. R-14-2-1204(A) indicates that all telecommunications
service providers that interconnect into the public switched network shall provide
funding for the AUSF. The Applicant will make the necessary monthly payments
required by A.A.C. R-14-2-1204(B).²⁸

29 29. Staff further recommends that Voxbeam's proposed services be classified as
30 competitive.²⁹

31 30. Staff's recommendations are reasonable and should be adopted.

32 _____
33 ²⁷ Exhibit S-1 at 8-9.

34 ²⁸ *Id.* at 9.

35 ²⁹ *Id.*

CONCLUSIONS OF LAW

1
2 1. Voxbeam Telecommunications Inc. d/b/a Magic Telecom is a public service
3 corporation within the meaning of Article XV of the Arizona Constitution, A.R.S. §§ 40-281 and 40-
4 282.

5 2. The Commission has jurisdiction over Voxbeam Telecommunications Inc. d/b/a
6 Magic Telecom and the subject matter of the application.

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

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

10 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
11 Statutes, it is in the public interest for Voxbeam Telecommunications Inc. d/b/a Magic Telecom to
12 provide the telecommunication services set forth in its application.

13 6. The telecommunication services Voxbeam Telecommunications Inc. d/b/a Magic
14 Telecom intends to provide are competitive within Arizona.

15 7. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
16 it is just and reasonable and in the public interest for Voxbeam Telecommunications Inc. d/b/a Magic
17 Telecom to establish rates and charges that are not less than the Company's total service long-run
18 incremental costs of providing the competitive services approved herein.

19 8. Staff's recommendations are reasonable and should be adopted.

ORDER

20
21 IT IS THEREFORE ORDERED that the application of Voxbeam Telecommunications Inc.
22 d/b/a Magic Telecom for a Certificate of Convenience and Necessity to provide facilities-based local
23 exchange and facilities-based long distance telecommunications services within the State of Arizona
24 is hereby approved, subject to the conditions set forth in Findings of Fact Nos. 27 and 28.

25 IT IS FURTHER ORDERED that the telecommunication services of Voxbeam
26 Telecommunications Inc. d/b/a Magic Telecom are competitive in Arizona.

27 IT IS FURTHER ORDERED that if Voxbeam Telecommunications Inc. d/b/a Magic
28 Telecom fails to comply with the conditions described in Findings of Fact No. 28, the Certificate of

1 Convenience and Necessity granted herein shall be considered null and void after due process.

2 IT IS FURTHER ORDERED that Voxbeam Telecommunications Inc. d/b/a Magic Telecom
3 shall docket conforming tariffs for each service within its CC&N within 365 days of the effective
4 date of this Decision or 30 days prior to serving its first customer, whichever comes first. The tariffs
5 submitted shall coincide with the application in this matter.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9

10 CHAIRMAN _____ COMMISSIONER

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12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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

19
20 JODI JERICH
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____
SMH:ru

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1 SERVICE LIST FOR:

VOXBEAM TELECOMMUNICATIONS INC. D/B/A
MAGIC TELECOM

2

3 DOCKET NO.:

T-20900A-13-0423

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