

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: October 24, 2000  
DOCKET NO.: T-03871A-00-0277

TO ALL PARTIES:

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

ALLIED RISER OF ARIZONA, INC.  
(FACILITIES-BASED/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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 2, 2000

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 Working Session and Open Meeting to be held on:

NOVEMBER 7, 2000 AND NOVEMBER 8, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 WILLIAM A. MUNDELL  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
ALLIED RISER OF ARIZONA, INC. FOR A  
7 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE INTRASTATE  
8 TELECOMMUNICATIONS SERVICES AS A  
FACILITIES-BASED PROVIDER AND  
9 RESELLER AND PETITION FOR COMPETITIVE  
CLASSIFICATION OF PROPOSED SERVICES

DOCKET NO. T-03871A-00-0277

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: October 3, 2000  
11 PLACE OF HEARING: Phoenix, Arizona  
12 PRESIDING OFFICER: Alicia Grantham  
13 APPEARANCES: Mr. Michael Allen, SKADDEN, ARPS, SLATE,  
14 MEAGHER & FLOM, on behalf of Allied Riser of  
Arizona, Inc.;;  
15 Ms. Teena Wolfe, Staff Attorney, Legal Division, on  
16 behalf of the Utilities Division of the Arizona  
Corporation Commission

17 **BY THE COMMISSION:**

18 **DISCUSSION**

19 On August 29, 2000, the Arizona Court of Appeals, Division One, ("Court") issued its  
20 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,  
21 Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base  
22 ("FVRB") for all public service corporations in Arizona prior to setting their rates and charges."  
23 Although that Opinion will more than likely be appealed to the Arizona Supreme Court, we are going  
24 to request FVRB information at this time to insure compliance with the Constitution should the  
25 ultimate decision of the Supreme Court affirm the Courts interpretation of Section 14. We also have  
26 concerns that the cost and complexity of FVRB determinations must not offend the  
27 Telecommunications Act of 1996.

28 ...

1 Based on the above, we will approve the application of Allied Riser of Arizona, Inc. at this  
2 time with the understanding that it may subsequently have to be amended consistent with the above  
3 discussion.

4 \* \* \* \* \*

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

7 **FINDINGS OF FACT**

8 1. Allied Riser of Arizona, Inc. ("Allied Riser" or "Applicant") is a Delaware  
9 corporation, authorized to do business in Arizona since 1999.

10 2. On April 27, 2000, Applicant filed with the Commission an application for a  
11 Certificate of Convenience and Necessity ("Certificate") to provide competitive local exchange  
12 telecommunications services as a facilities-based provider and reseller in Arizona.

13 3. On June 16, 2000, Applicant filed Affidavits of Publication indicating that public  
14 notice of the application was published on May 17, 2000.

15 4. On August 18, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff  
16 Report, which recommended approval of the application and included a number of additional  
17 recommendations.

18 5. Pursuant to the September 21, 2000 Procedural Order, a hearing was held on October  
19 3, 2000, and Applicant and Staff presented evidence.

20 6. Applicant has not entered into an interconnection agreement with Qwest.

21 7. According to Staff, Allied Riser is not approved to offer facilities-based or resold local  
22 exchange service in any state. Affiliates of Allied Riser are approved to offer facilities-based local  
23 exchange service in 10 states, and are approved to offer resold local exchange service in 7 states as  
24 well as the District of Columbia. Allied Riser will draw upon the expertise of its affiliates in  
25 providing service.

26 8. Currently, there are several incumbent providers of local exchange, toll, and exchange  
27 access services in the service territory requested by Applicant. Applicant will be a new entrant in this  
28 market, and will have to compete with those companies in order to obtain customers.

1           9.     Applicant stated in its application that Allied Riser seeks to provide facilities-based  
2 and resold local exchange service throughout the State of Arizona.

3           10.    It is appropriate to classify all of Applicant's authorized services as competitive.

4           11.    The Staff Report stated that the Applicant has no market power and the reasonableness  
5 of its rates would be evaluated in a market with numerous competitors.

6           12.    Staff recommended that Allied Riser's application for a Certificate to provide  
7 competitive intrastate telecommunications services be granted subject to the following  
8 recommendations:

9                   (a)    That Applicant procure a performance bond equal to a minimum of 120 days  
10 intrastate revenue as well as the amount of any prepayments and deposits collected  
11 from the Applicant's customers;

12                   (b)    That Applicant be required to file its tariffs within 30 days of an Order in this  
13 matter, and in accordance with the Decision;

14                   (c)    That unless it provides services solely through the use of its own facilities,  
15 Applicant procure an Interconnection Agreement before being allowed to offer local  
16 exchange service;

17                   (d)    That Applicant file with the Commission its plan to have its customers'  
18 telephone numbers included in the incumbent's Directories and Directory Assistance  
19 databases within 30 days of an Order in this matter;

20                   (e)    That Applicant pursue permanent number portability arrangements with other  
21 LECs pursuant to effective and applicable Commission rules, federal laws, and federal  
22 rules;

23                   (f)    That Applicant agree to abide by and participate in the AUSF mechanism  
24 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-95-0498);

25                   (g)    That Applicant abide by the quality of service standards that were approved by  
26 the Commission for USWC in Docket No. T-01051B-93-0183;

27                   (h)    That in areas where Applicant is the sole provider of local exchange service  
28 facilities, Applicant will provide customers with access to alternative providers of  
service pursuant to the provisions of Commission rules, federal laws, and federal  
rules;

                  (i)    That Applicant be required to certify, through the 911 service provider in the  
area in which it intends to provide service, that all issues associated with the provision  
of 911 service have been resolved with the emergency service providers within 30  
days of an Order in this matter;

                  (j)    That Applicant be required to abide by all the Commission decisions and  
policies regarding CLASS services;

                  (k)    That Applicant be required to provide 2-PIC equal access;

1 (l) That Applicant be required to inform the Commission immediately upon  
changes to Applicant's address or telephone number; and,

2 (l) That Applicant be ordered to comply with all Commission rules, orders, and  
3 other requirements relevant to the provision of intrastate telecommunications services;

4 (m) That Applicant be ordered to maintain its accounts and records as required by  
the Commission;

5 (n) That Applicant be ordered to file with the Commission all financial and other  
6 reports that the Commission may require, and in a form and at such times as the  
Commission may designate;

7 (o) That Applicant be ordered to maintain on file with the Commission all current  
8 tariffs and rates, and any service standards that the commission may require;

9 (p) That Applicant be ordered to cooperate with Commission investigations of  
customer complaints; and

10 (q) That Applicant be ordered to participate in and contribute to a universal service  
11 fund as required by the Commission.

12 13. Staff further recommended that Applicant's failure to comply with any of the above  
13 recommendations result in the rescission of Applicant's Certificate of Convenience and Necessity.

14 14. According to Staff, Applicant submitted audited financial statements of its parent  
15 company, Allied Riser Communications Corporation, for the year ended December 31, 1999. These  
16 financials list assets of \$475.06 million, stockholders' equity of \$452.41 million, and a net loss of  
17 \$57.49 million on revenues of \$1.87 million. Based on the financial information provided, Staff  
18 believes that Applicant lacks sufficient financial strength to offer telecommunications services in  
19 Arizona absent the procurement of a performance bond.

20 15. At the hearing, Applicant agreed to abide by all of Staff's recommendations, with the  
21 exception that the Applicant would prefer to file its tariff at a date closer to the provision of service.

22 16. On August 29, 2000, the Court issued its Opinion in US WEST Communications, Inc.  
23 v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the Arizona Constitution  
24 requires the Commission to determine fair value rate bases for all public service corporations in  
25 Arizona prior to setting their rates and charges."

26 17. Although the Commission believes that the law is not settled on this issue<sup>1</sup>, Staff  
27 recommended that Allied Riser submit fair value information to the Commission within 30 days of a

28 <sup>1</sup> The parties have the opportunity to file petitions for review to the Supreme Court.

1 Decision in this matter. Applicant stated at the hearing that the company would prefer to file the  
2 FVRB information at a date closer to the provision of service.

3 **CONCLUSIONS OF LAW**

4 1. Applicant is a public service corporation within the meaning of Article XV of the  
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The Commission has jurisdiction over the Applicant and the subject matter of the  
7 application.

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

9 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
10 Certificate to provide competitive telecommunications services.

11 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised  
12 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
13 in its application.

14 6. With the conditions stated below, Applicant is a fit and proper entity to receive a  
15 Certificate authorizing it to provide competitive facilities-based and resold local exchange  
16 telecommunications services in Arizona.

17 7. The telecommunications services that the Applicant intends to provide within Arizona  
18 are competitive.

19 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
20 it is just and reasonable and in the public interest for Applicant to establish rates and charges which  
21 are not less than the Applicant's total service long-run incremental costs of providing the competitive  
22 services approved herein.

23 9. Staff's recommendations in Findings of Fact Nos. 12 , 13 , and 17 are reasonable and  
24 should be adopted, with the exception of the timing of Applicant's tariff filing and FVRB filing.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application of Allied Riser of Arizona, Inc. for a  
27 Certificate of Convenience and Necessity for authority to provide competitive facilities-based and  
28 resold local exchange telecommunications services in Arizona shall be, and is hereby, granted, as

1 conditioned below.

2 IT IS FURTHER ORDERED that Allied Riser of Arizona, Inc. shall procure a performance  
3 bond equal to a minimum of 120 days of intrastate telecommunications revenue, plus the amount of  
4 any prepayments and deposits 30 days prior to the provision of service. If in the future, Allied Riser  
5 of Arizona, Inc. desires to discontinue the performance bond, it must file information with Staff that  
6 demonstrates its financial viability. Staff will then review the information and provide Allied Riser  
7 of Arizona, Inc. its decision concerning financial viability within 30 days of receipt of the  
8 information.

9 IT IS FURTHER ORDERED that Allied Riser of Arizona, Inc. shall file proof of said  
10 performance bond with the Utilities Division Director at least 30 days prior to the provision of  
11 service.

12 IT IS FURTHER ORDERED that prior to providing local exchange services, Allied Riser of  
13 Arizona, Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact Nos. 12  
14 and 13, with the exception that Allied Riser of Arizona, Inc. shall file its tariffs with the Commission  
15 at least 30 days prior to the provision of service.

16 IT IS FURTHER ORDERED that Allied Riser of Arizona, Inc. shall file its proposed FVRB  
17 at least 90 days prior to providing service (pursuant to A.A.c. R14-2-103(B), this may be the same as  
18 original cost rate base). The FVRB shall include the value of all plant and equipment currently held  
19 by the company and intended to be used to provide telecommunications services to Arizona  
20 customers. In doing so, Allied Riser of Arizona, Inc. may use any reasonable means of asset  
21 allocation, direct assignment or combinatino thereof.

22 IT IS FURTHER ORDERED that Allied Riser of Arizona, Inc. shall file a description of all  
23 plant and equipment currently held by the company and intended to be used to provide  
24 telecommunications services to Arizona customers, including their cost and location, 90 days prior to  
25 providing service.

26 IT IS FURTHER ORDERED that Allied Riser of Arizona, Inc. shall file information  
27 demonstrating how the value of its plant and equipment (both current and projected) is related to its  
28 total service long-run incremental costs at least 90 days prior to providing service (such

1 demonstration must include the amount of depreciation expense and capital carrying costs related to  
2 the FVRB which has been incorporated into the long-run incremental costs).

3 IT IS FURTHER ORDERED that for all maximum rates and charges of Allied Riser of  
4 Arizona, Inc. which are higher than those of the incumbent local exchange carrier ("ILEC") for the  
5 same regulated services, Allied Riser of Arizona, Inc. must demonstrate that such rates and charges  
6 are not unreasonable, and constitute a fair rate of return on FVRB (if there is more than one ILEC in  
7 your proposed service area, use Qwest Corporation as a surrogate ILEC for the entire state).

8 IT IS FURTHER ORDERED that Staff shall review the FVRB information filed and ascertain  
9 that Allied Riser of Arizona, Inc. is utilizing the appropriate amount of depreciation and capital  
10 carrying costs in determining its total service long-run incremental costs.

11 IT IS FURTHER ORDERED that Staff shall file disagreements, if any, with the proposed  
12 FVRB and/or rates and charges, within 30 days of Allied Riser of Arizona, Inc. filing its FVRB  
13 information.

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17  
18 CHAIRMAN

COMMISSIONER

COMMISSIONER

19  
20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this \_\_\_\_ day of \_\_\_\_\_, 2000.

24  
25 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

26 DISSENT \_\_\_\_\_  
27 AG:bbs

1 SERVICE LIST FOR:

ALLIED RISER OF ARIZONA, INC.

2 DOCKET NO.

T-03871A-00-0277

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