

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



0000000073

ARIZONA CORPORATION COMMISSION

DATE: JULY 19, 2000

DOCKET NO: T-03831A-00-0049

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:

MGC COMMUNICATIONS, INC.
(CC&N/FACILITIES BASED/RESELLER)

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:

JULY 28, 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:

AUGUST 1, 2000 and AUGUST 2, 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
MGC COMMUNICATIONS, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 INTRASTATE TELECOMMUNICATIONS
SERVICES AS A FACILITIES-BASED AS A
9 PROVIDER AND RESELLER AND PETITION
FOR COMPETITIVE CLASSIFICATION OF
PROPOSED SERVICES

DOCKET NO. T-03831A-00-0049

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: July 12, 2000

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Alicia Grantham

13 APPEARANCES: Mr. Timothy Nelson, BROWN & BAIN, P.A., on behalf
14 of MGC Communications, Inc.;

15 Ms. Jennifer Prendiville, FENNEMORE CRAIG, P.C.,
16 on behalf of U S WEST Communications, Inc.,
Intervenor, and;

17 Mr. Deviniti M. Williams, Staff Attorney, Legal
18 Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. MGC Communications, Inc. ("MGC" or "Applicant") is a Nevada corporation,
24 authorized to do business in Arizona since 1999.

25 2. On January 21, 2000, Applicant filed with the Commission an application for a
26 Certificate of Convenience and Necessity ("Certificate") to provide competitive intrastate
27 telecommunications services as a facilities-based provider and reseller in Arizona.

28 3. On February 10, 2000, Applicant filed Affidavits of Publication indicating that public

1 notice of the application was published on February 2, 2000.

2 4. On June 19, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report, which recommended approval of the application and included a number of additional
4 recommendations.

5 5. On July 3, 2000, U S WEST Communications, Inc. ("U S WEST") filed a Motion for
6 Leave to intervene, and was granted intervention on July 10, 2000.

7 6. On July 6, 2000, U S WEST filed comments requesting that Applicant's Certificate be
8 geographically limited to the areas that it can serve and intends to serve in the near future; that the
9 Commission should specify that Applicant is a public service corporation and it is required to operate
10 as a carrier of last resort; and that Applicant should be subject to fair rate of return and rate base
11 requirements.

12 7. Pursuant to the June 20, 2000 Procedural Order, a hearing was held on July 12, 2000,
13 and Applicant and Staff presented evidence. U S WEST cross-examined witnesses, but did not
14 present any evidence.

15 8. Applicant has not reached an interconnection agreement with U S WEST, and Staff
16 recommends that an agreement be procured prior to offering local exchange service.

17 9. Staff has determined that the Applicant has the technical and management
18 qualifications in the telecommunications industry sufficient to provide quality service to Arizona
19 customers.

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

23 11. It is appropriate to classify all of Applicant's authorized services as competitive.

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

26 ...

27 ...

28 ...

1 13. Staff recommended that MGC's application for a Certificate to provide competitive
2 intrastate telecommunications services be granted subject to the following conditions:

- 3 (a) That Applicant be required to file its proposed tariffs in compliance with
4 A.A.C. R14-2-1109 and A.A.C. R14-2-1104(A)(3) at least 30 days prior to
5 offering services;
- 6 (b) That unless it provides services solely through the use of its own facilities,
7 Applicant procure an Interconnection Agreement before being allowed to offer
8 local exchange service;
- 9 (c) That Applicant file with the Commission its plan to have its customers'
10 telephone numbers included in the incumbent's Directories and Directory
11 Assistance databases within 30 days of an Order in this matter;
- 12 (d) That Applicant pursue permanent number portability arrangements with other
13 LECs pursuant to Commission rules, federal laws, and federal rules;
- 14 (e) That Applicant agree to abide by and participate in the AUSF mechanism
15 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-
16 95-0498);
- 17 (f) That Applicant abide by the quality of service standards that were approved by
18 the Commission for USWC in Docket No. T-01051B-93-0183;
- 19 (g) That in areas where Applicant is the sole provider of local exchange service
20 facilities, Applicant will provide customers with access to alternative providers
21 of service pursuant to the provisions of Commission rules, federal laws, and
22 federal rules;
- 23 (h) That Applicant be required to certify, through the 911 service provider in the
24 area in which it intends to provide service, that all issues associated with the
25 provision of 911 service have been resolved with the emergency service
26 providers within 30 days of an Order in this matter;
- 27 (i) That Applicant be required to abide by all the Commission decisions and
28 policies regarding CLASS services;
- (j) That Applicant be required to comply with A.A.C. R14-2-1111, which requires
 local exchange companies to provide 2-PIC equal access;
- (k) That Applicant be required to inform the Commission immediately upon
 changes to Applicant's address or telephone number; and,
- (l) That Applicant be required to abide by all Commission rules and regulations.

 14. According to Staff, Applicant submitted its unaudited 1999 financial statements and
its Securities and Exchange Commission Form 10Q for the period ending September 31, 1999. These
financial statements list assets of \$381.4 million, total equity of \$134.4 million, and a net loss of
\$14.9 million on revenues of \$15.0 million. Based on the financial information provided, Staff

1 believes that Applicant has sufficient financial strength to offer telecommunications services in
2 Arizona.

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 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 intrastate
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 No. 13 are reasonable and should be
24 adopted.

25 ...

26 ...

27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS THEREFORE ORDERED that the Application of MGC Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold intrastate telecommunications services in Arizona shall be, and is hereby, granted, as conditioned below.

IT IS FURTHER ORDERED that prior to providing local exchange service, MGC Communications Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact No. 13.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary 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 ____ day of _____, 2000.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
AG:sj

1 SERVICE LIST FOR:

MGC COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03831A-00-0049

3 Rolla P. Huff, President
4 MGC COMMUNICATIONS, INC.
5 175 Sully's Trail, Suite 300
6 Pittsford, New York 14534

7 Michael W. Patten
8 Timothy Nelson
9 BROWN & BAIN, P.C.
10 Post Office Box 400
11 Phoenix, Arizona 85001-0400
12 Attorney for Applicant

13 Douglas G. Bonner
14 ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
15 1050 Connecticut Avenue, N.W.
16 Washington, D.C. 20036-5339
17 Attorney for Applicant

18 Lyn Farmer, Chief Counsel
19 Legal Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Deborah Scott, Director
24 Utilities Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, Arizona 85007

28