

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



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ARIZONA CORPORATION COMMISSION

DATE: May 3, 2000

DOCKET NO.: T-03746A-99-0440

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Alicia Grantham. The recommendation has been filed in the form of an Order on:

NOW COMMUNICATIONS, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer 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:

MAY 12, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 6, 2000 AND JUNE 7, 2000

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

A handwritten signature in black ink, appearing to read "Brian C. McNeil".

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

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6 IN THE MATTER OF THE APPLICATION OF
NOW COMMUNICATIONS, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 INTRASTATE TELECOMMUNICATIONS
SERVICES AS A RESELLER EXCEPT LOCAL
9 EXCHANGE SERVICES

DOCKET NO. T-03746A-99-0440

DECISION NO. _____

ORDER

10 Open Meeting
June 6 and 7, 2000
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 **FINDINGS OF FACT**

16 1. On August 4, 1999, NOW Communications, Inc. ("NOW" or "Applicant") filed with
17 Docket Control of the Arizona Corporation Commission ("Commission") an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive intrastate
19 telecommunications services, except local exchange services, as a reseller within the State of
20 Arizona.

21 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
22 telecommunications providers ("resellers") were public service corporations subject to the
23 jurisdiction of the Commission.

24 3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101
25 through R14-2-1115 to regulate resellers.

26 4. Applicant is a Mississippi corporation, authorized to do business in Arizona since
27 1998.

28 5. Applicant is a switchless reseller, which purchases telecommunications services from

1 various providers.

2 6. On February 22, 2000, the Commissions Utilities Division Staff ("Staff") filed its Staff
3 Report.

4 7. In the Staff Report, Staff stated that the Applicant provided its financial statements for
5 the seven months ending July 31, 1999. These financial statements indicated assets of \$3.8 million,
6 shareholders' equities of \$860,975, and negative retained earnings of (\$788,360). In addition, the
7 Applicant had a net income of \$649,335 on total revenues of \$7.8 million. Based on the foregoing,
8 Staff believes that Applicant does not appear to have sufficient financial resources. Applicant filed a
9 letter on January 24, 2000, stating that it does not currently, and will not in the future, charge its
10 customers for any prepayments, advances or deposits. If at some future date, the applicant wants to
11 charge customers any prepayments, advances, or deposits, it must file information with the
12 Commission that demonstrates the Applicant's financial viability. Staff believes that if the Applicant
13 experiences financial difficulty, there should be minimal impact to its customers. Customers are able
14 to dial another reseller or facilities-based provider to switch to another company.

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

17 9. Staff recommended that:

18 (a) Applicant's application for a Certificate should be approved without a hearing
19 pursuant to A.A.C. R14-2-1106B;

20 (b) Applicant's intrastate toll service offerings should be classified as competitive
21 pursuant to A.A.C. R14-2-1108;

22 (c) Applicant's competitive services should be priced at the effective rates set
23 forth in Applicant's tariffs and the maximum rates for these services should be the
24 maximum rates proposed by Applicant in its tariffs. The minimum rates for
applicant's competitive services should be Applicant's long run incremental costs of
providing those services as set forth in A.A.C. R14-2-1109; and

25 (d) Applicant should be required to comply with the Commission's rules and
26 modify its tariffs to conform with the rules if it is determined there is a conflict
between Applicant's tariffs and the Commission's rules.

27 10. By Procedural Order dated March 29, 2000, the Commission set a deadline of April
28

1 28, 2000, for filing exceptions to the Staff Report; requesting that a hearing be set; or requesting
2 intervention as interested parties.

3 11. On January 24, 2000, the Applicant filed affidavits indicating that it published notice
4 of its filing in all counties where service is to be provided pursuant to A.A.C. R14-2-1104.

5 12. No exceptions were filed to the Staff Report, nor did any party request that a hearing
6 be set.

7 **CONCLUSIONS OF LAW**

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

10 2. The Commission has jurisdiction over Applicant and the subject matter of the
11 application.

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

13 4. Applicant's provision of resold intrastate telecommunications services is in the public
14 interest.

15 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
16 intrastate telecommunications services as a reseller in Arizona.

17 6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be
18 adopted.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Application of NOW Communications, Inc. for a
21 Certificate of Convenience and Necessity for authority to provide competitive intrastate
22 telecommunications services, except local exchange services, shall be, and the same is hereby
23 granted, except that NOW Communications, Inc. shall not be authorized to charge customers any
24 prepayments, advances, or deposits. In the future, if NOW Communications, Inc. desires to initiate
25 such charges, including but not limited to prepaid calling cards, it must file information with the
26 Commission that demonstrates the Company's financial viability or establish an escrow account
27 equal to the amount of any prepayments, advances or deposits. Staff shall review the information
28 provided and file its recommendation concerning financial viability within thirty (30) days of receipt

1 of the financial information, for Commission approval.

2 IT IS FURTHER ORDERED that NOW Communications, Inc. shall comply with the Staff
3 recommendations set forth in Findings of Fact No. 9.

4 IT IS FURTHER ORDERED that NOW Communications, Inc. shall file a complete set of
5 tariffs within 30 days from the effective date of this Decision.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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10 CHAIRMAN

COMMISSIONER

COMMISSIONER

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13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this ____ day of _____, 2000.

18 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

19 DISSENT: _____
20 AG:bbs
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1 SERVICE LIST FOR:

NOW COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03746A-99-0440

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