

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



0000000118

ARIZONA CORPORATION COMMISSION

DATE: May 18, 2000

DOCKET NO.: T-03776A-99-0495

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:

TON SERVICES, INC.
(CC&N/RESELLER)

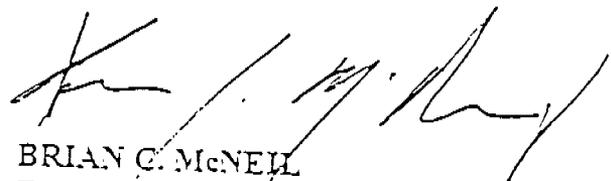
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 30, 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.


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
7 TON SERVICES, INC. FOR A CERTIFICATE OF
8 CONVENIENCE AND NECESSITY TO PROVIDE
9 COMPETITIVE INTRASTATE
TELECOMMUNICATIONS SERVICES AS A
RESELLER EXCEPT LOCAL EXCHANGE
SERVICES.

DOCKET NO. T-03776A-99-0495

DECISION NO. _____

ORDER

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

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:

FINDINGS OF FACT

15
16 1. On September 3, 1999, Ton Services, Inc. ("TON" or "Applicant") filed with Docket
17 Control of the Commission an application for a Certificate of Convenience and Necessity
18 ("Certificate") to provide competitive intrastate telecommunications services, except local exchange
19 services, as a reseller and a petition to have the services classified as competitive.

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

23 3. Applicant is a Utah corporation that has been qualified to conduct business in Arizona
24 since 1994.

25 4. Applicant is a switchless reseller, which purchases telecommunications services from
26 Speer Virtual Media Limited.

27 5. The Commission's Utilities Division Staff ("Staff") filed a Staff Report on April 13,
28 2000.

1 6. Staff stated that Applicant's tariff filed with its application fulfills Commission
2 requirements.

3 7. Staff's Report states that Applicant provided financial statements for the year ended
4 December 31, 1998. These financial statements list assets of \$7.1 million, negative shareholders'
5 equity of \$3.5 million and an accumulated deficit of \$9.14 million. In addition, the Applicant had a
6 net income of \$1.5 million on revenues of \$17.8 million. Based on the foregoing, Staff indicated that
7 Applicant lacks adequate financial resources. As a result, on March 6, 2000, Applicant docketed
8 proof of an establishment of a surety bond in the amount of \$5,000. The surety bond, which shall be
9 in effect for a minimum of one year, approximates the total amount of any prepayments, advances,
10 and deposits that the Applicant will collect from its customers. If after one year, the Applicant
11 desires to close the escrow account, it must file information with the Commission that demonstrates
12 the applicant's financial viability. Staff believes that if the Applicant experiences financial difficulty,
13 there should be minimal impact to its customers. Customers are able to dial another reseller or
14 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:

18 (a) Approval of the \$5,000 surety bond filed by Applicant to cover the
19 approximate total amount of any prepayments, advances, and deposits that Applicant
20 will collect from its customers;

21 (b) Applicant should be allowed to file a request for cancellation of the surety
22 bond after one year of operation under the CC&N granted by the Commission;

23 (c) Applicant's request for cancellation of the surety bond should be accompanied
24 by information demonstrating Applicant's financial viability; and

25 (d) The Commission should grant Applicant's request only upon a Commission
26 determination that the requested cancellation is in the public interest.

27 10. Staff further recommended that:

28 (a) Applicant's application for a Certificate should be approved subject to A.A.C.
R14-2-1106.B;

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

3 (c) Applicant's competitive services should be priced at the rates proposed by the
4 Applicant in its most recently filed tariffs, and the maximum rates for these services
5 should be the maximum rates proposed by Applicant in its tariffs. The minimum rates
6 for Applicant's competitive services should be Applicant's long run incremental costs
7 of providing those services set forth in A.A.C. R14-2-1109;

8 (d) In the event that the Applicant states only one rate in its tariff for a competitive
9 service, the rate stated should be the effective price to be charged for the service as
10 well as the service's maximum rate;

11 (e) Applicant should be required to comply with the Commission's Rules and
12 modify its tariffs to conform with these Rules, if it is determined that there is a conflict
13 between the applicant's tariffs and the Commission's Rules; and

14 (f) Applicant should file its tariffs within thirty days of an Order in this matter,
15 and in accordance with the Decision.

16 11. By Procedural Order dated April 25, 2000, the Commission set a deadline of May 15,
17 2000 for filing exceptions to the Staff Report, requesting that a hearing be set, or requesting
18 intervention as interested parties.

19 12. Applicant has published notice of its application in newspapers in all counties where
20 service is to be provided pursuant to A.R.S. Sections 40-281 and 40-282, and affidavits of publication
21 were filed March 22, 2000.

22 13. No exceptions were filed to the Staff Report, nor did any party request that a hearing
23 be set.

24 **CONCLUSIONS OF LAW**

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

27 2. The Commission has jurisdiction over Applicant and the subject matter of the
28 application.

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

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

1 IT IS FURTHER ORDERED that TON Services, Inc. shall file a complete set of tariffs within
2 30 days from the effective date of this Decision.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2000.

14 BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 AG:bbs
17
18
19
20
21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: TON SERVICES, INC.

2 DOCKET NO. T-03776A-99-0495

3

4 Neil Vos
5 TON SERVICES, INC.
6 4185 Harrison Blvd., Suite 301
7 Ogden, UT 84403

8 Robin Norton
9 TECHNOLOGIES MANAGEMENT, INC.
10 210 N. Park Ave.
11 Winter Park, FL 32789

12 Lyn Farmer, Chief Counsel
13 Legal Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

17 Deborah Scott, Director
18 Utilities Division
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, AZ 85007

22

23

24

25

26

27

28

29

30

31

32

33

34

35