

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
C. J. KUNASEK
COMMISSIONER



0000000286

ARIZONA CORPORATION COMMISSION

DATE: MARCH 23, 1998

DOCKET NO: T-03365A-97-0224

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Scott S. Wakefield. The recommendation has been filed in the form of an Opinion and Order on:

OPTEL (ARIZONA) TELECOM, 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:

APRIL 1, 1998

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:

APRIL 6, 1998 and APRIL 7, 1998

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


JACK ROSE
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
3 COMMISSIONER - CHAIRMAN
4 RENZ D. JENNINGS
5 COMMISSIONER
6 CARL J. KUNASEK
7 COMMISSIONER

8 IN THE MATTER OF THE APPLICATION OF)
9 OPTEL (ARIZONA) TELECOM, INC. FOR A)
10 CERTIFICATE OF CONVENIENCE AND)
11 NECESSITY TO PROVIDE INTRASTATE)
12 TELECOMMUNICATIONS SERVICES AND)
13 PETITION TO DETERMINE THAT ITS)
14 INTRASTATE SERVICES ARE COMPETITIVE.)

DOCKET NO. T-03365A-97-0224

15 DECISION NO. _____

16 **OPINION AND ORDER**

17 DATE OF HEARING: March 10, 1998

18 PLACE OF HEARING: Phoenix, Arizona

19 PRESIDING OFFICER: Scott S. Wakefield

20 APPEARANCES: Mr. Thomas Campbell, LEWIS & ROCA, on behalf of Optel
(Arizona) Telecom, Inc.;

21 Ms. Theresa Dwyer, FENNEMORE CRAIG, on behalf of U S
WEST COMMUNICATIONS, Inc., Intervenor; and

22 Mr. Peter Breen, Staff Attorney, Legal Division, on behalf of the
Utilities Division of the Arizona Corporation Commission.

23 **BY THE COMMISSION:**

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

26 **FINDINGS OF FACT**

27 1. Optel (Arizona) Telecom, Inc. ("Optel" or "Applicant") is a Delaware corporation
28 authorized to do business in Arizona as a foreign corporation.

29 2. On May 1, 1997, Optel filed with the Commission an application for a Certificate of
30 Convenience and Necessity ("CC&N") to provide local exchange services and intraLATA/interLATA
31 toll services throughout the State of Arizona. Optel requested that the telecommunications services it
32 intends to provide be found "competitive" pursuant to A.A.C. R14-2-1108.

33 3. On August 25, 1997, U S WEST Communications, Inc. ("U S WEST") filed a request to

1 intervene in this matter, which was approved on September 9, 1997.

2 4. Between May 2, 1997 and May 13, 1997, Applicant had notice of its application published
3 in newspapers of general circulation in the counties in which it intends to provide service.

4 5. On January 2, 1998, the Commission's Utilities Division Staff ("Staff") filed its Staff
5 Report, which recommended approval of the application as well as a number of additional
6 recommendations.

7 6. On January 23, 1998, the Commission issued a Procedural Order setting the hearing for
8 March 10, 1998.

9 7. The hearing was held as scheduled and Applicant and Staff presented evidence.

10 8. Optel is a subsidiary of Optel, Inc.

11 9. In the year ended August 31, 1997, Optel, Inc. had a net loss of \$48.5 million, and assets
12 of \$1.76 million. In 1997, Optel, Inc. made two senior debt financings of \$22.5 million and \$150 million.
13 Optel, Inc.'s senior borrowing facilities are publicly traded on NASDAQ.

14 10. Optel, Inc. and its subsidiaries provide residential shared-tenant services in Texas and
15 Florida. Optel, Inc. is currently providing switched services in Houston and Dallas.

16 11. Applicant has the technical capability to provide the services it proposed in its application.

17 12. Staff indicated that Applicant has access to the financial resources to provide the services
18 it proposed in its application.

19 13. Currently there are several incumbent providers of local exchange and toll services in the
20 service territory requested by Optel, and at least ten other entities have been authorized to provide
21 competitive LEC and toll services in all or portions of that territory.

22 14. Optel is negotiating an interconnection agreement with U S WEST.

23 15. Applicant filed an illustrative tariff with its application pending the outcome of its
24 negotiations with U S WEST for an interconnection agreement.

25 16. In addition to recommending approval of the application, Staff recommended that:

26 (a) Applicant's request for a waiver from the A.A.C. Rule R14-2-1104(A)(3)
27 requirement to file a proposed tariff with this application be approved; and

28 (b) Optel file in this Docket, at least thirty days in advance of providing any
competitive service, initial tariffs containing rates for review and approval.

1 17. Staff's recommendations, as set forth in Findings of Fact No. 16, are reasonable.

2 **CONCLUSIONS OF LAW**

3 1. Optel is a public service corporation within the meaning of Article XV of the Arizona
4 Constitution.

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

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

8 4. A.A.C. R14-2-1105 allows a telecommunications company to file an application for a
9 CC&N to provide competitive telecommunications services.

10 5. Pursuant to Article XV of the Arizona Constitution as well as the Competitive
11 Telecommunication Service Rules, A.A.C. R14-2-1101 et seq. ("Competitive Rules"), it is in the public
12 interest for Applicant to provide the telecommunications services set forth in its application.

13 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide LEC
14 and intraLATA/interLATA services throughout Arizona.

15 7. Pursuant to A.A.C. R14-2-1108, the LEC and intraLATA/interLATA services which
16 Applicant intends to provide are competitive within Arizona.

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

21 9. Staff's recommendations, as set forth in Findings of Fact No. 16, are reasonable and
22 should be adopted.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the application of Optel (Arizona) Telecom, Inc. for a
25 Certificate of Convenience and Necessity to provide local exchange and intraLATA/interLATA services
26 throughout the State of Arizona be, and hereby is, granted.

27 IT IS FURTHER ORDERED that Optel (Arizona) Telecom, Inc.'s petition to determine that its
28 local exchange and intraLATA/interLATA services are competitive is hereby approved.

1 IT IS FURTHER ORDERED that Optel (Arizona) Telecom, Inc. shall notify the Arizona
2 Corporation Commission within fifteen (15) days after it begins serving its first customer.

3 IT IS FURTHER ORDERED that Optel (Arizona) Telecom, Inc. shall comply with Staff's
4 recommendations as set forth in Findings of Fact No. 16.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN _____ COMMISSIONER _____ COMMISSIONER _____

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11 IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the
12 Arizona Corporation Commission, have hereunto set my hand and caused
13 the official seal of the Commission to be affixed at the Capitol, in the City
14 of Phoenix, this _____ day of _____, 1998.

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17 JACK ROSE
18 EXECUTIVE SECRETARY

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DISSENT _____
SSW:dap

1 SERVICE LIST FOR: OPTEL (ARIZONA) TELECOM, INC.

2 DOCKET NO.: T-03365A-97-0224

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