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WILLIAM A. MUNDELL
COMMISSIONER

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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DATE: December 20, 2000

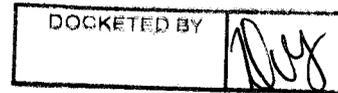
DOCKET NO: T-03916A-00-0613

TO ALL PARTIES:

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

DOCKETED

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Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Order on:

ACTEL INTEGRATED COMMUNICATIONS, INC.
(CC&N/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:

DECEMBER 29, 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:

JANUARY 9, 2001 and JANUARY 10, 2001

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

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE APPLICATION OF
ACTEL INTEGRATED COMMUNICATIONS,
INC. FOR A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTRASTATE
TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03916A-00-0613
DECISION NO. _____

ORDER

Open Meeting
January 9 and 10, 2001
Phoenix, Arizona

BY THE COMMISSION:

DISCUSSION

On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of the Arizona Constitution requires the Arizona Corporation Commission ("Commission") to "determine fair value rate base for all public service corporations in Arizona prior to setting their rates and charges." Although the Commission has filed a Petition for Review to the Arizona Supreme Court, we are concerned that the Opinion might create uncertainty in the competitive telecommunications industry during the review period.

On September 12, 2000, the Commission ordered the Hearing Division to open a new generic docket to obtain comments on procedures to insure compliance with the Constitution should the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. The Commission also expressed concerns that the cost and complexity of fair value rate base ("FVRB") determinations must not offend the Telecommunications Act of 1996.

Based on the above, we will approve the application of Actel Integrated Communications, Inc. ("Actel" or "Applicant") at this time with the understanding that it may subsequently have to be amended to comply with the law after the exhaustion of all appeals.

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

3 **FINDINGS OF FACT**

4 1. On August 22, 2000, Actel filed with Docket Control of the Commission an
5 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
6 resold intrastate telecommunications services within the State of Arizona.

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

10 3. Applicant is an Alabama corporation, authorized to do business in Arizona since 1999.

11 4. Applicant is a switchless reseller, which purchases telecommunications services from
12 a variety of carriers.

13 5. On September 12, 2000, Actel filed Affidavits of Publication indicating compliance
14 with the Commission's notice requirements.

15 6. On September 18, 2000, Staff filed its Staff Report in this matter.

16 7. In the Staff Report, Staff stated that Actel provided financial statements for the quarter
17 ending April 30, 2000. These financial statements list assets of \$34.2 million, shareholders' equity of
18 \$25.1 million, and a net loss of \$9.0 million. Based on the foregoing, Staff believes that Applicant
19 lacks adequate financial resources to be allowed to charge customers any prepayments, advances, or
20 deposits without either establishing an escrow account or posting a surety bond to cover such
21 prepayments, advances, or deposits. The Applicant stated in its application that it does not charge its
22 customers for any prepayments, advances or deposits. If at some future date, the Applicant wants to
23 charge customers any prepayments, advances or deposits, it must file information with the
24 Commission that demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff
25 will review the information and the Commission will make a determination concerning the
26 Applicant's financial viability and whether customer prepayments, advances or deposits should be
27 allowed. Additionally, Staff believes that if the Applicant experiences financial difficulty, there
28 should be minimal impact to its customers. Customers are able to dial another reseller or facilities-

1 based provider to switch to another company.

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

4 9. Staff recommended approval of the application subject to the following conditions:

5 (a) The Applicant should be ordered to comply with all Commission rules, orders,
6 and other requirements relevant to the provision of intrastate telecommunications
7 service;

8 (b) The Applicant should be ordered to maintain its accounts and records as
9 required by the Commission;

10 (c) The Applicant should be ordered to file with the Commission all financial and
11 other reports that the Commission may require, and in a form and at such times as the
12 Commission may designate;

13 (d) The Applicant should be ordered to maintain on file with the Commission all
14 current tariffs and rates, and any service standards that the Commission may require;

15 (e) The Applicant should be ordered to comply with the Commission's rules and
16 modify its tariffs to conform to these rules if it is determined that there is a conflict
17 between the Applicant's tariffs and the Commission's rules;

18 (f) The Applicant should be ordered to cooperate with Commission investigations
19 of customers complaints;

20 (g) The Applicant should be ordered to participate in and contribute to a universal
21 service fund, as required by the Commission;

22 (h) The Applicant should be ordered to notify the Commission immediately upon
23 changes to the Applicant's address or telephone number;

24 (i) The Applicant's intrastate interexchange service offerings should be classified
25 as competitive;

26 (j) The Applicant's competitive services should be priced at the rates proposed by
27 the Applicant in its most recently filed tariffs. The maximum rates for these services
28 should be the maximum rates proposed by the Applicant in its proposed tariffs. The
minimum rates for the Applicant's competitive services should be the Applicant's total
service long run incremental costs of providing those services;

(k) In the event that the Applicant states only one rate in its proposed tariff for a
competitive service, the rate stated should be the effective (actual) price to be charged
for the service as well as the service's maximum rate.

1 customers any prepayments, advances, or deposits. In the future, if Actel Integrated
2 Communications, Inc. desires to initiate such charges, it must file information with the Commission
3 that demonstrates the Applicant's financial viability. Staff shall review the information provided and
4 file its recommendation concerning financial viability within thirty (30) days of receipt of the
5 financial information, for Commission approval.

6 IT IS FURTHER ORDERED that Actel Integrated Communications, Inc. shall file the
7 following FVRB information within 18 months of the date that it first provides service. The FVRB
8 shall include a dollar amount representing the total revenue for the first twelve months of
9 telecommunications service provided to Arizona customers by Actel Integrated Communications,
10 Inc. following certification, adjusted to reflect the maximum rates that Actel Integrated
11 Communications, Inc. requests in its tariff. This adjusted total revenue figure could be calculated as
12 the number of units sold for all services offered times the maximum charge per unit. Actel Integrated
13 Communications, Inc. shall also file FVRB information detailing the total actual operating expenses
14 for the first twelve months of telecommunications service provided to Arizona customers by Actel
15 Integrated Communications, Inc. following certification. Actel Integrated Communications, Inc.
16 shall also file FVRB information which includes a description and value of all assets, including plant,
17 equipment, and office supplies, to be used to provide telecommunications service to Arizona
18 customers for the first twelve months following Actel Integrated Communications, Inc.'s
19 certification.

20 IT IS FURTHER ORDERED that Actel Integrated Communications, Inc. shall file its tariffs
21 within 30 days of an Order in this matter.

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1 IT IS FURTHER ORDERED that Actel Integrated Communications, Inc. shall comply with
2 Staff's recommendations as set forth in Findings of Fact No. 7, 9, and 10.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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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 _____, 2001.

14 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 SG:dp

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SERVICE LIST FOR: ACTEL INTEGRATED COMMUNICATIONS, INC.

DOCKET NO.: T-03916A-00-0613

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