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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

~~DOCKETED~~

1  
2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
5

JAN 11 2001

DOCKETED BY *sd*

6 IN THE MATTER OF THE APPLICATION OF  
7 OLS, INC. FOR A CERTIFICATE OF  
8 CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03651A-98-0633

DECISION NO. 63304

ORDER

9 Open Meeting  
10 January 9 and 10, 2001  
Phoenix, Arizona

11 **BY THE COMMISSION:**

12 DISCUSSION

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

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

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

28 Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 1. On November 3, 1998, OLS filed with Docket Control of the Commission an  
4 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive  
5 resold interexchange telecommunications services within the State of Arizona.

6 2. On November 16, 1998 and on November 4, 1999, OLS filed amendments to its  
7 application.

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

11 4. Applicant is a Georgia corporation, authorized to do business in Arizona since 1998.

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

14 6. On August 23, 2000, OLS filed Affidavits of Publication indicating compliance with  
15 the Commission's notice requirements.

16 7. On September 13, 2000, Staff filed its Staff Report in this matter.

17 8. In the Staff Report, Staff stated that OLS provided financial statements for the year  
18 ended December 31, 1999. These financial statements list assets of \$1.55 million, total equity of  
19 \$484,658, and retained earnings of \$249,943. Based on the foregoing, Staff believes that Applicant  
20 lacks adequate financial resources to be allowed to charge customers any prepayments, advances, or  
21 deposits without either establishing an escrow account or posting a surety bond to cover such  
22 prepayments, advances, or deposits. The Applicant stated in its application that it does not charge its  
23 customers for any prepayments, advances or deposits. If at some future date, the Applicant wants to  
24 charge customers any prepayments, advances or deposits, it must file information with the  
25 Commission that demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff  
26 will review the information and the Commission will make a determination concerning the  
27 Applicant's financial viability and whether customer prepayments, advances or deposits should be  
28 allowed. Additionally, Staff believes that if the Applicant experiences financial difficulty, there

1 should be minimal impact to its customers. Customers are able to dial another reseller or facilities-  
2 based provider to switch to another company.

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

5 10. Staff recommended approval of the application subject to the following conditions:

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

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

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

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

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

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

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

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

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

27 (j) The Applicant's competitive services should be priced at the rates proposed by  
28 the Applicant in its most recently filed tariffs. The maximum rates for these services  
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  
2 11. Staff also recommended that the Applicant file its tariffs within 30 days of an Order in  
3 this matter, and in accordance with the Decision.

4 12. By Procedural Order dated September 29, 2000, the Commission set a deadline of  
5 December 12, 2000, for filing exceptions to the Staff Report; requesting that a hearing be set; or  
6 requesting intervention as interested parties.

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

9 14. On October 4, 2000, OLS filed its Response to the request for FVRB information from  
10 the September 29, 2000 Procedural Order.

11 15. On December 5, 2000, Staff filed its FVRB Comments indicating that OLS's October  
12 4, 2000 FVRB filing was insufficient for Staff analysis.

### 13 CONCLUSIONS OF LAW

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

16 2. The Commission has jurisdiction over Applicant and the subject matter of the  
17 application.

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

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

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

23 6. Staff's recommendations in Findings of Fact No. 8, 10, and 11 are reasonable and  
24 should be adopted.

### 25 ORDER

26 IT IS THEREFORE ORDERED that the application of OLS, Inc. for a Certificate of  
27 Convenience and Necessity for authority to provide competitive intrastate telecommunications  
28 services, except local exchange services, as a reseller shall be and the same is hereby granted, except

1 that OLS, Inc. shall not be authorized to charge customers any prepayments, advances, or deposits.  
2 In the future, if OLS, Inc. desires to initiate such charges, it must file information with the  
3 Commission that demonstrates the Applicant's financial viability. Staff shall review the information  
4 provided and file its recommendation concerning financial viability within thirty (30) days of receipt  
5 of the financial information, for Commission approval.

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

17 IT IS FURTHER ORDERED that OLS, Inc. shall file its tariffs within 30 days of an Order in  
18 this matter.

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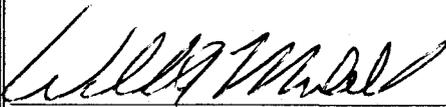
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1 IT IS FURTHER ORDERED that OLS, Inc. shall comply with the Staff recommendations set  
2 forth in Findings of Fact No. 8, 10, and 11.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

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9 COMMISSIONER

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11 COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Secretary of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this 11<sup>th</sup> day of January, 2001.

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18 BRIAN C. McNEIL  
19 EXECUTIVE SECRETARY

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DOCKET NO.: T-03651A-98-0633

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