



0000005657

OPEN MEETING ITEM



ORIGINAL *22*

BRIAN C. McNEIL
EXECUTIVE SECRETARY

WILLIAM A. MUNDELL
COMMISSIONER

ARIZONA CORPORATION COMMISSION

RECEIVED

2000 DEC 20 A 10:22

COPY 11

DATE: December 20, 2000

DOCKET NO: T-03651A-98-0633

AZ CORP COMMISSION
DOCUMENT CONTROL
Arizona Corporation Commission

DOCKETED

DEC 20 2000

TO ALL PARTIES:

DOCKETED BY *[Signature]*

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

OLS, 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.

[Signature]
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
OLS, INC. FOR A CERTIFICATE OF
7 CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
8 TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03651A-98-0633

DECISION NO. _____

ORDER

9 Open Meeting
January 9 and 10, 2001
10 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.

19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

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.

5

6

7

CHAIRMAN

COMMISSIONER

COMMISSIONER

8

9

10

11

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Secretary of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2001.

12

13

BRIAN C. McNEIL
EXECUTIVE SECRETARY

14

15

DISSENT _____
SG:dp

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: OLS, INC.
DOCKET NO.: T-03651A-98-0633

Paul Dean
Rogena Harris
The Helein Law Group, P.C.
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102

Geri Clary, Vice President
OLS, Inc.
1030 Cambridge Square, Suite E
Alpharetta, GA 30201

Lyn Farmer, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007