



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

DOCKET NO. T-03628A-98-0537

DECISION NO. 63301

**ORDER**

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

12 **BY THE COMMISSION:**

13 **DISCUSSION**

14 On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its  
15 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,  
16 Section 14 of the Arizona Constitution requires the Arizona Corporation Commission  
17 ("Commission") to "determine fair value rate base for all public service corporations in Arizona prior  
18 to setting their rates and charges." Although that Opinion will more than likely be appealed to the  
19 Arizona Supreme Court, we are concerned that the Opinion might create uncertainty in the  
20 competitive telecommunications industry during the review period. On September 12, 2000, the  
21 Commission ordered the Hearing Division to open a new generic docket to obtain comments on  
22 procedures to insure compliance with the Constitution should the ultimate decision of the Supreme  
23 Court affirm the Court's interpretation of Section 14. The Commission also expressed concerns that  
24 the cost and complexity of FVRB determinations must not offend the Telecommunications Act of  
25 1996.

26 Based on the above, we will approve the application of Convergent Communications  
27 Services, Inc. ("Convergent" or "Applicant") at this time with the understanding that it may  
28 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 September 23, 1998, Convergent filed with Docket Control of the Commission an  
5 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive  
6 intrastate telecommunications services, except local exchange services, as a reseller within the State  
7 of Arizona.

8 2. 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 3. Applicant is a Colorado corporation authorized to do business in Arizona since 1997.

12 4. Applicant is a switchless reseller, which purchases telecommunications services from  
13 WorldCom, Inc.

14 5. On June 27, 2000, Applicant filed affidavits indicating that it published notice of its  
15 filing in all counties where service is to be provided.

16 6. On August 28, 2000, the Commission's Utilities Division Staff ("Staff") filed a Staff  
17 Report.

18 7. In the Staff Report, Staff stated that the Applicant provided financial statements of its  
19 parent company, Convergent Communications, Inc. for the year ended December 31, 1999. These  
20 financial statements list assets of \$295.21 million, shareholders' equity of \$36.32 million, and  
21 negative retained earnings of \$168.67 million. Based on the foregoing, Staff believes that Applicant  
22 lacks adequate financial resources to be allowed to charge customers any prepayments, advances or  
23 deposits without establishing an escrow account or posting a surety bond. Applicant filed a letter  
24 with the Commission on July 5, 2000, stating that it does not currently, and will not in the future,  
25 charge its customers for any prepayments, advances, or deposits.

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

28 ...

1           9.     In its Report, Staff the following:

2           (a)     The Applicant should be ordered to comply with all Commission rules, orders  
3           and other requirements relevant to the provision of intrastate telecommunications  
4           services;

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

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

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

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

15          (f)     The Applicant should be ordered to cooperate with Commission investigations  
16          of customer complaints;

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

19          (h)     The Applicant should be ordered to file its tariffs within 30 days of an Order in  
20          this matter, and in accordance with the Decision;

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

23          (j)     If at some future date, the Applicant wants to charge customers any  
24          prepayments, advances, or deposits, it must file information with the Commission that  
25          demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff will  
26          review the information and the Commission will make a determination concerning the  
27          Applicant's financial viability and whether customer prepayments, advances or  
28          deposits should be allowed;

          (k)     The Applicant's intrastate interexchange service offerings should be classified  
          as competitive pursuant to A.A.C. R14-2-1108;

          (l)     The Applicant's competitive services should be priced at the rates proposed by  
          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 as set forth in A.A.C.

1 R14-2-1109;

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

5 (n) The Applicant's application should be approved without a hearing pursuant to  
6 A.R.S. § 40-282.

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

9 11. On August 29, 2000, the Court issued its Opinion in US WEST Communications, Inc.  
10 v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the Arizona Constitution  
11 requires the Commission to determine fair value rate bases for all public service corporations in  
12 Arizona prior to setting their rates and charges."

13 12. By Procedural Order dated September 8, 2000, the Commission requested that the  
14 Applicant submit FVRB information by October 8, 2000.

15 13. On October 2, 2000, Applicant filed its Response to the request for FVRB information  
16 from the September 8, 2000 Procedural Order.

17 14. On November 17, 2000, Staff filed its FVRB Comments indicating that Convergent's  
18 October 2, 2000 filing was insufficient for Staff analysis.

19 15. On December 21, 2000, Convergent filed additional FVRB information with the  
20 Commission.

### 21 CONCLUSIONS OF LAW

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

24 2. The Commission has jurisdiction over Applicant and the subject matter of the  
25 application.

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

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

5. Applicant is a fit and proper entity to receive a Certificate for providing competitive

1 intrastate telecommunications as a reseller in Arizona.

2 6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be  
3 adopted.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the application for Convergent Communications  
6 Services, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive  
7 intrastate telecommunications services, except local exchange services, as a reseller shall be and the  
8 same is hereby granted, except that Convergent Communications Services, Inc. shall not be  
9 authorized to charge customers any prepayments, advances, or deposits. In the future, if Convergent  
10 Communications Services, Inc. desires to initiate such charges, it must file information with the  
11 Commission that demonstrates the Applicant's financial viability or establish an escrow account  
12 equal to the amount of any prepayments, advances, or deposits.

13 IT IS FURTHER ORDERED that Convergent Communications Services, Inc. shall comply  
14 with the Staff recommendations set forth in Findings of Fact No. 9.

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

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

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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19 CHAIRMAN

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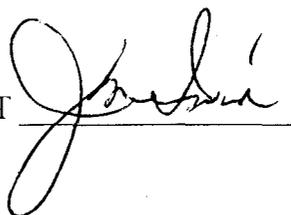
COMMISSIONER



COMMISSIONER

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 11<sup>th</sup> day of January 2001.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

27 DISSENT   
28 AG:bbs

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