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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

JAN 11 2001

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2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
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DOCKETED BY *ed*

6 IN THE MATTER OF THE APPLICATION OF
NEW CENTURY TELECOM, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 INTRASTATE TELECOMMUNICATIONS
SERVICES AS A RESELLER EXCEPT LOCAL
9 EXCHANGE SERVICES

DOCKET NO. T-03462A-97-0619

DECISION NO. 63303

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 New Century Telecom, Inc. ("New
27 Century" or "Applicant") at this time with the understanding that it may subsequently have to be
28 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 November 13, 1997, New Century filed with Docket Control of the Commission
5 an 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 Virginia corporation authorized to do business in Arizona since 1998.

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

14 5. On July 26, 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 September 26, 2000, the Commission's Utilities Division Staff ("Staff") filed its
17 Staff Report.

18 7. In the Staff Report, Staff stated that the Applicant provided its financial statements for
19 the year ended December 31, 1999. These financial statements list assets of \$432,381, negative
20 stockholders' equity of \$79,223, and negative retained earnings of \$381,770. Based upon this
21 information, Staff believes that the Applicant lacks the financial strength to be allowed to charge
22 customers any prepayments, advances, or deposits without establishing an escrow account or posting
23 a surety bond to cover customer prepayments, advances or deposits. The Applicant stated in its
24 application that it does not charge its customers for any prepayments, advances or deposits.

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

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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 October 3, 2000, the Commission requested that the
14 Applicant submit FVRB information by November 3, 2000.

15 13. On October 18, 2000, Applicant filed its Response to the October 3, 2000 Procedural
16 Order.

17 14. On December 4, 2000, Staff filed its FVRB Comments indicating that Applicant's
18 October 18, 2000 filing was insufficient for Staff analysis.

19 15. On December 19, 2000, Applicant filed a response to Staff's December 4, 2000 FVRB
20 Comments.

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 New Century Telecom, Inc. for a
6 Certificate of Convenience and Necessity for authority to provide competitive intrastate
7 telecommunications services, except local exchange services, as a reseller shall be and the same is
8 hereby granted, except that New Century Telecom, Inc. shall not be authorized to charge customers
9 any prepayments, advances, or deposits. In the future, if New Century Telecom, Inc. desires to
10 initiate such charges, it must file information with the Commission that demonstrates the Applicant's
11 financial viability. Staff shall review the information provided and file its recommendation
12 concerning financial viability within thirty (30) days of receipt of the financial information, for
13 Commission approval.

14 IT IS FURTHER ORDERED that New Century Telecom, Inc. shall comply with the Staff
15 recommendations set forth in Findings of Fact No. 9.

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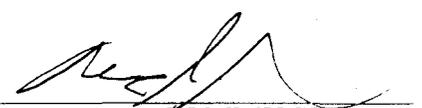
1 IT IS FURTHER ORDERED that New Century Telecom. Inc. shall file the following FVRB
 2 information within 18 months of the date that it first provides service. The FVRB shall include a
 3 dollar amount representing the total revenue for the first twelve months of telecommunications
 4 service provided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

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

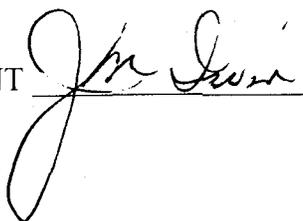
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 18 CHAIRMAN

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 18 COMMISSIONER

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 20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 21 Secretary of the Arizona Corporation Commission, have
 22 hereunto set my hand and caused the official seal of the
 23 Commission to be affixed at the Capitol, in the City of Phoenix,
 24 this 1st day of January 2001.

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 25 BRIAN C. McNEIL
 26 EXECUTIVE SECRETARY

26 DISSENT 
 27 AG:bbs
 28

1 SERVICE LIST FOR: NEW CENTURY TELECOM, INC.

2 DOCKET NO.: T-03462A-97-0619

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