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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

OPEN HEARING ITEM



ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: March 13, 2001

DOCKET NO: T-02464A-94-0140

MAR 13 2001

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Hearing Officer Stephen Gibelli. The recommendation has been filed in the form of an Order on:

BUEHNER-FRY, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer 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:

MARCH 22, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

3-27 3-28
~~MARCH 26, 2001 AND MARCH 27, 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

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

6 IN THE MATTER OF THE APPLICATION OF
BUEHNER-FRY, INC. D/B/A RESORT
7 OPERATOR SERVICES FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
8 COMPETITIVE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICES

DOCKET NO. T-02764A-94-0140

DECISION NO. _____

ORDER

10 Open Meeting
March 27 and 28, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 **FINDINGS OF FACT**

16 1. On May 5, 1994, Buehner-Fry, Inc. d/b/a Resort Operator Services, Inc. ("Buehner-
17 Fry, Inc." or "Applicant") filed with Docket Control of the Commission an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange
19 telecommunications services, except local exchange services, within the State of Arizona.

20 2. Applicant is a Nevada corporation, authorized to do business in Arizona since 1995.

21 3. Applicant is a switchless reseller, which purchases telecommunications services from
22 Sprint.

23 4. In Decision No. 58926 (December 22, 1994), the Commission found that resold
24 telecommunications providers ("resellers") were public service corporations subject to the
25 jurisdiction of the Commission.

26 5. On February 11, 2000 and June 9, 2000, Buehner-Fry, Inc. filed updates to its
27 application.

28 6. On June 26, 2000, Buehner-Fry, Inc. filed a letter indicating that it currently does not,

1 and will not in the future, charge customers any advances, prepayments, or deposits.

2 7. On July 21, 2000, Buehner-Fry, Inc. filed an amendment to its application as well as
3 Affidavits of Publication indicating compliance with the Commission's notice requirements.

4 8. On September 13, 2000, the Commission's Utilities Division Staff ("Staff") filed its
5 Staff Report in this matter. In its Report, Staff stated that Buehner-Fry, Inc. has provided the
6 financial statements of its parent company for the year ended May 31, 1999. These financial
7 statements list assets of \$2.37 million, stockholders' equity of \$79,421, and retained earnings of
8 \$295,995. Based on the foregoing, Staff believes that Applicant lacks adequate financial resources to
9 be allowed to charge customers any prepayments, advances, or deposits without either establishing an
10 escrow account or posting a surety bond to cover such prepayments, advances, or deposits. However,
11 the Applicant has filed a letter indicating that it does not charge its customers for any prepayments,
12 advances or deposits. If at some future date, the Applicant wants to charge customers any
13 prepayments, advances or deposits, it must file information with the Commission that demonstrates
14 the Applicant's financial viability. Upon receipt of such filing, Staff will review the information and
15 the Commission will make a determination concerning the Applicant's financial viability and
16 whether customer prepayments, advances or deposits should be allowed. Additionally, Staff believes
17 that if the Applicant experiences financial difficulty, there should be minimal impact to its customers.
18 Customers are able to dial another reseller or facilities-based provider to switch to another company.

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

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

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

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

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

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

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

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

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

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

10 (j) The Applicant's intrastate interexchange service offerings should be classified
11 as competitive;

12 (k) The Applicant's competitive services should be priced at the rates proposed by
13 the Applicant in its most recently filed tariffs. The maximum rates for these services
14 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; and,

15 (l) In the event that the Applicant states only one rate in its proposed tariff for a
16 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.

17
18 10. The Staff Report stated that Applicant has no market power and the reasonableness of
19 its rates would be evaluated in a market with numerous competitors.

20 11. On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its
21 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,
22 Section 14 of the Arizona Constitution requires the Arizona Corporation Commission
23 ("Commission") to "determine fair value rate base for all public service corporations in Arizona prior
24 to setting their rates and charges."

25 12. On September 12, 2000, the Commission ordered the Hearing Division to open a new
26 generic docket to obtain comments on procedures to insure compliance with the Constitution should
27 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. The
28 Commission also expressed concerns that the cost and complexity of fair value rate base ("FVRB")

1 determinations must not offend the Telecommunications Act of 1996.

2 13. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
3 Supreme Court.

4 14. On February 13, 2001, the Commission's Petition was granted.

5 15. Based on the above, we will approve the application of Buehner-Fry, Inc at this time
6 with the understanding that it may subsequently have to be amended to comply with the law after the
7 exhaustion of all appeals.

8 CONCLUSIONS OF LAW

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

11 2. The Commission has jurisdiction over Applicant and the subject matter of the
12 application.

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

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

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

18 6. Staff's recommendations in Findings of Fact Nos. 8 and 9 are reasonable and should
19 be adopted.

20 ORDER

21 IT IS THEREFORE ORDERED that the application of Buehner-Fry, Inc. d/b/a Resort
22 Operator Services for a Certificate of Convenience and Necessity for authority to provide competitive
23 resold interexchange telecommunications services, except local exchange services, shall be and the
24 same is hereby granted, except that Buehner-Fry, Inc. d/b/a Resort Operator Services shall not be
25 authorized to charge customers any prepayments, advances, or deposits. In the future, if Buehner-Fry,
26 Inc. d/b/a Resort Operator Services desires to initiate such charges, it must file information with the
27 Commission that demonstrates the Applicant's financial viability. Staff shall review the information
28 provided and file its recommendation concerning financial viability and/or the necessity of obtaining

1 a performance bond within thirty (30) days of receipt of the financial information, for Commission
2 approval.

3 IT IS FURTHER ORDERED that Buehner-Fry, Inc. d/b/a Resort Operator Services shall
4 comply with Staff's recommendations as stated in Findings of Fact No. 8 and 9.

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

19 IT IS FURTHER ORDERED that Buehner-Fry, Inc. d/b/a Resort Operator Services shall
20 comply with the Staff recommendations set forth in Findings of Fact Nos. 8 and 9.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
2 Buehner-Fry, Inc. d/b/a Resort Operator Services shall notify the Compliance Section of the Arizona
3 Corporation Commission of the date that it will begin or has begun providing service to Arizona
4 customers.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2001.

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17 BRIAN C. McNEIL
18 EXECUTIVE SECRETARY

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SERVICE LIST FOR: BUEHNER-FRY, INC. D/B/A RESORT OPERATOR SERVICES

DOCKET NO.: T-02764A-94-0140

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