

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

OPEN MEETING ITEM

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DATE: March 14, 2001  
DOCKET NO: T-03956A-00-0904  
TO ALL PARTIES:

Arizona Corporation Commission  
DOCKETED

MAR 14 2001

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

MAXTEL USA, INC.  
(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:

MARCH 23, 2001

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:

MARCH 27, 2001 and MARCH 28, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

*Brian C. McNeil*  
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  
MAXTEL USA, INC. FOR A CERTIFICATE OF  
7 CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD INTEREXCHANGE  
8 TELECOMMUNICATIONS SERVICES EXCEPT  
LOCAL EXCHANGE SERVICES

DOCKET NO. T-03956A-00-0904

DECISION NO. \_\_\_\_\_

9 **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 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On December 14, 2000, Maxtel USA, Inc. ("Maxtel" or "Applicant") filed with the  
17 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide  
18 competitive resold interexchange telecommunications services, except local exchange services,  
19 within the State of Arizona.

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

23 3. Applicant is a Nevada corporation authorized to do business in Arizona since 2000.

24 4. Applicant is a switchless reseller, which purchases telecommunications services from  
25 various telecommunications service providers.

26 5. On November 29, 2000, Applicant filed Affidavits of Publication indicating  
27 compliance with the Commission's notice requirements.

28 6. On January 22, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report in this matter.

2 7. Staff stated that the Applicant provided its unaudited financial statements for the  
3 period ending July 15, 2000, which listed assets of \$250,000 and shareholders' equity of \$250,000.  
4 Applicant is a start-up company and does not have a substantial cash flow. Based on the foregoing,  
5 Staff believes that Applicant lacks adequate financial resources to be allowed to charge customers  
6 any prepayments, advances or deposits without establishing an escrow account or posting a surety  
7 bond. Applicant stated in its application that it does not currently, and will not in the future, charge  
8 its customers for any prepayments, advances or deposits.

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

11 9. In its Report, Staff recommended the following:

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

14 (b) Applicant should be ordered to maintain its accounts and records as required  
15 by the Commission;

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

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

20 (e) Applicant should be ordered to comply with the Commission's rules and  
21 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;

22 (f) Applicant should be ordered to cooperate with Commission investigations of  
23 customer complaints;

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

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

28 (i) If at some future date, the applicant wants to charge any prepayments,  
advances, or deposits, it must file information with the Commission that demonstrates

1 the Applicant's financial viability. Upon receipt of such filing, Staff will review the  
 2 information and the Commission will make a determination concerning the  
 3 Applicant's financial viability and whether customer prepayments, advances or  
 4 deposits should be allowed;

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

7 (k) The rates proposed by the Applicant in its most recently filed tariffs should be  
 8 approved on an interim basis. The maximum rates for these services should be the  
 9 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
 10 for the Applicant's competitive services should be the Applicant's total service long  
 11 run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;  
 12 and

13 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
 14 competitive service, the rate stated should be the effective (actual) price to be charged  
 15 for the service as well as the service's maximum rate.

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

17 (a) Applicant should be ordered to file conforming tariffs within 30 days of an  
 18 Order in this matter, and in accordance with the Decision;

19 (b) Applicant should be required to file in this Docket, within 18 months of the  
 20 date it first provides service following certification, sufficient information for Staff  
 21 analysis and recommendation for a fair value finding, as well as for an analysis and  
 22 recommendation for permanent tariff approval. This information must include, at a  
 23 minimum, the following:

24 1. A dollar amount representing the total revenue for the first twelve  
 25 months of telecommunications service provided to Arizona customers by the  
 26 Applicant following certification, adjusted to reflect the maximum rates that  
 27 the Applicant has requested in its tariff. This adjusted total revenue figure  
 28 could be calculated as the number of units sold for all services offered times  
 the maximum charge per unit.

2. The total actual operating expenses for the first twelve months of  
 telecommunications service provided to Arizona customers by the Applicant  
 following certification.

3. The value of all assets, listed by major category, used for the first  
 twelve months of telecommunications service provided to Arizona customers  
 by the Applicant following certification. Assets are not limited to plant and  
 equipment. Items such as office equipment and office supplies should be  
 included in this list.

(c) Applicant's failure to meet the condition to file sufficient information for a fair

1 value finding and analysis and recommendation of permanent tariffs shall result in the  
2 expiration of the certificate of the tariffs.

3 11. On August 29, 2000, the Court of Appeals, Division One ("Court") issued its Opinion  
4 in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding  
5 that "the Arizona Constitution requires the Commission to determine fair value rate base ("FVRB")  
6 for all public service corporations in Arizona prior to setting their rates and charges."

7 12. On October 26, 2000, the Commission filed a Petition for Review to the Arizona  
8 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this  
9 time, we are going to request FVRB information to insure compliance with the Constitution should  
10 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We are  
11 also concerned that the cost and complexity of FVRB determinations must not offend the  
12 Telecommunications Act of 1996.

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

15 **CONCLUSIONS OF LAW**

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

18 2. The Commission has jurisdiction over Applicant and the subject matter of the  
19 application.

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

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

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

25 6. Staff's recommendations in Findings of Fact Nos. 9 and 10 are reasonable and should  
26 be adopted.

27 **ORDER**

28 IT IS THEREFORE ORDERED that the application for Maxtel USA, Inc. for a Certificate of

1 Convenience and Necessity for authority to provide competitive resold interexchange  
2 telecommunications services, except local exchange services, shall be and the same is hereby granted,  
3 except that Maxtel USA, Inc. shall not be authorized to charge customers any prepayments, advances,  
4 or deposits. In the future, if Maxtel USA, Inc. desires to initiate such charges, it must file information  
5 with the Commission that demonstrates the Applicant's financial viability. Staff shall review the  
6 information provided and file its recommendation concerning financial viability and/or the necessity  
7 of obtaining a performance bond within thirty (30) days of receipt of the financial information, for  
8 Commission approval.

9 IT IS FURTHER ORDERED that Maxtel USA, Inc. shall comply with the Staff  
10 recommendations set forth in Findings of Fact Nos. 9 and 10.

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

23 ...  
24 ...  
25 ...  
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27 ...  
28 ...

1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,  
2 Maxtel USA, Inc. shall notify the Compliance Section of the Arizona Corporation Commission of the  
3 date that it will begin or has begun providing service to Arizona customers.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7  
8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9  
10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
11 Secretary of the Arizona Corporation Commission, have  
12 hereunto set my hand and caused the official seal of the  
13 Commission to be affixed at the Capitol, in the City of Phoenix,  
14 this \_\_\_\_ day of \_\_\_\_\_, 2001.

15 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

16 DISSENT \_\_\_\_\_  
17 AG:mlj

1 SERVICE LIST FOR: MAXTEL USA, INC.

2  
3 DOCKET NO.: T-03956A-00-0904

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