

OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
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ARIZONA CORPORATION COMMISSION

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DATE: July 16, 2004
DOCKET NO: T-02532A-03-0017
TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of a Supplemental Opinion and Order on:

MIDVALE TELEPHONE EXCHANGE, INC.
(Extended Service Area)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 26, 2004

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 Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

Arizona Corporation Commission
DOCKETED

JUL 16 2004

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 MIDVALE TELEPHONE EXCHANGE, INC. FOR
10 AUTHORIZATION TO PROVIDE FACILITIES-
11 BASED BASIC LOCAL EXCHANGE SERVICE
12 AND TOLL ACCESS TELEPHONE SERVICE TO
13 CURRENTLY UNSERVED RESIDENTIAL
14 DEVELOPMENTS KNOWN AS CROSSROADS
15 RANCH, POQUITO VALLEY AND BREEZY
16 PINE.

DOCKET NO. T-02532A-03-0017

DECISION NO. _____

SUPPLEMENTAL
OPINION AND ORDER

12 DATE OF HEARING: August 20, 2003; February 26, 2004 (Public Comment
in Prescott, Arizona); June 14, 2004

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGES: Philip J. Dion III and Dwight D. Nodes

15 APPEARANCES: Conley Ward, GIVENS PURSLEY, LLP and Ann R.
16 Hobart, BROWN & BAIN, P.A., for Midvale Telephone
Exchange; and

17 Gary Horton, Staff Attorney, Legal Division, on behalf
18 of the Utilities Division of the Arizona Corporation
Commission.

19 **BY THE COMMISSION:**

20 On January 10, 2003, Midvale Telephone Exchange, Inc. ("Midvale" or "Company") filed
21 with the Arizona Corporation Commission ("Commission") an application for an extension of its
22 existing Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide local
23 telephone service in Yavapai County, Arizona. On April 15, 2003, Midvale amended its application
24 to include a request to provide Extended Area Service ("EAS") between Midvale's Millsite Exchange
25 and Qwest Corporation's ("Qwest") Prescott local calling area. Midvale also requested that the
26 Commission approve EAS between its Millsite Exchange and Table Top Telephone Company's
27 ("Table Top") Inscription Canyon Ranch Exchange.

28 * * * * *

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. Midvale is an Idaho corporation that currently provides local telephone exchange
5 service to approximately 935 customers in five exchanges in Arizona.

6 2. On January 10, 2003, Midvale filed with the Commission an application to extend its
7 existing Certificate to provide local telephone service to an area in Midvale's Millsite Exchange, near
8 Prescott in Yavapai County, Arizona. Midvale later amended its application to request two-way EAS
9 service between its Millsite Exchange and Qwest's Prescott local calling area¹, and Table Top's
10 Inscription Ranch Exchange.

11 3. By Procedural Order dated May 29, 2003, a hearing was set for August 20, 2003 in
12 Phoenix, Arizona.

13 4. On August 1, 2003, Staff filed its Staff Report recommending approval of the CC&N
14 extension and Midvale's request for two-way EAS, subject to certain conditions.

15 5. By Procedural Order dated August 13, 2003, Qwest and Table Top were granted
16 intervention.

17 6. On August 13, 2003, Qwest filed comments regarding the Staff Report in this matter.

18 7. On August 20, 2003, the hearing was held as scheduled before a duly authorized
19 Administrative Law Judge of the Commission. Staff and Midvale appeared with the assistance of
20 counsel. Table Top appeared without the assistance of counsel. Qwest did not appear. During the
21 hearing, testimony was taken and exhibits were entered into the record. At the conclusion of the
22 hearing, the matter was taken under advisement.

23 8. On November 10, 2003, the Commission issued Decision No. 66510, which approved
24 Midvale's application in the above-captioned docket to extend its CC&N to provide local telephone
25 service in the Company's Millsite Exchange. However, we found that the record was insufficient to
26 approve two-way EAS between the Midvale, Qwest and Table Top exchanges. The Commission
27

28 ¹ The Prescott "local calling area" includes Qwest's Prescott, Humboldt, and Chino Valley exchanges.

1 stated in Decision No. 66510 that, prior to approving the requested EAS, additional evidence should
2 be submitted regarding: (a) the community of interest between Midvale and Table Top and Qwest's
3 Prescott local calling area; (b) the costs associated with providing two-way EAS between Qwest and
4 Midvale, Qwest and Table Top and Midvale and Table Top; (c) the financial impact on the customers
5 of Midvale, Table Top and Qwest if two-way EAS is ordered; and (d) whether a substantial majority
6 of the present and future customers of Midvale, and the customers of Table Top, support the
7 implementation of the requested EAS after being advised of the potential rate impacts associated with
8 the establishment of EAS service. Accordingly, we ordered Midvale, Table Top and Qwest to make
9 certain filings within a prescribed period of time (Decision No. 66510, at 14-15).

10 9. On December 3, 2003, Table Top made a filing indicating it will no longer be
11 participating in this matter as it does not want to pursue establishing EAS with Qwest or Midvale at
12 this time.

13 10. On December 10, 2003, Qwest filed documentation that it deemed confidential
14 regarding the costs it would incur as a result of establishing EAS with Midvale. According to Staff,
15 Qwest's estimated capital costs and expenses for EAS with Midvale are "de minimus" (January 9,
16 2004 Staff Report at 2).

17 11. On December 11, 2003, Midvale filed documentation regarding the costs it would
18 incur if EAS is established with Qwest.

19 12. On December 11, 2003, a Procedural Order was issued that reiterated deadlines for
20 filing certain information. The Procedural Order also scheduled a public comment hearing in
21 Prescott, Arizona on February 26, 2004.

22 13. On January 9, 2004, Staff filed a Staff Report in compliance with Decision No. 66510.
23 Staff's analysis indicated that an additional monthly customer charge of \$4.67 to \$6.10 would be
24 required to fully recover the costs associated with Midvale's facilities investments.

25 14. On February 9, 2004, Staff filed an amended Staff Report that updated certain
26 schedules that were filed with the January 9, 2004 Staff Report. Staff's amended schedules indicate
27 per customer monthly charges of between \$3.98 and \$11.70 depending on the rate of return and
28 number of customers assumed in the analysis.

1 15. On February 11, 2004, Midvale submitted a "Customer Poll" that it mailed to
2 customers regarding customer support for EAS. The Customer Poll also notified customers of the
3 February 26, 2004 public comment session in Prescott.

4 16. On February 26, 2004, the public comment hearing was conducted as scheduled at the
5 Prescott City Hall Chambers in Prescott, Arizona. Chairman Spitzer and Commissioners Mundell,
6 Hatcher-Miller and Mayes conducted the public comment hearing. Representatives of the
7 Commission's Staff and Midvale also offered comments at the Prescott public comment session.
8 Seven members of the public made comments at the hearing in support of Midvale's application to
9 establish EAS with Qwest's Prescott local calling area. Customers offering comments also indicated
10 a willingness pay additional costs associated with the establishment of EAS.

11 17. On March 1, 2004, Midvale filed information regarding the responses it received to its
12 poll that was distributed to its customers regarding its application for EAS and costs associated with
13 such service.

14 18. On March 9, 2004, Staff filed another Staff Report. In the Staff Report, Staff stated
15 that it had completed its evaluation of Midvale's application and the subsequent filings made in this
16 matter. Staff recommended that two-way EAS between Midvale and Qwest be implemented with no
17 additional monthly charge.

18 19. On April 27, 2004, Midvale docketed supplemental information regarding the
19 responses it received from its customers regarding the EAS poll it sent to those customers.

20 20. Midvale asserts that public interest considerations support the establishment of EAS
21 between the Millsite Exchange, including the extension previously approved in this docket, and
22 Qwest's Prescott local calling area. Midvale therefore requests that the Commission require the
23 provision of two-way EAS between Midvale's Millsite Exchange, and Qwest's Prescott local calling
24 area.

25 **Community of Interest Considerations**

26 21. As a general rule, state regulatory Commissions consider whether EAS should be
27 implemented by conducting analyses designed to determine whether a strong enough community of
28 interest exists between exchanges to warrant EAS. One commonly used definition of whether a

1 sufficient community of interest exists is: contiguous geographic areas which may be recognized as
2 separate localities, but share common interests and services with respect to government, schools, health
3 services, public safety and emergency services, and retail businesses (*P.U.R. Glossary for Utility*
4 *Management*, Public Utility Reports, Inc., Arlington, Virginia, 1992.)

5 22. Based on its investigation, including a site visit to the Millsite Exchange and
6 surrounding areas, Staff stated that it was able to gain perspective from residents of the area relative
7 to the request for EAS. According to Staff, the visits were particularly helpful in assessing the
8 contiguity of the Millsite Exchange area with the City of Prescott and the services available in the
9 Prescott area. Staff also found, among other things, that it was not possible to complete cell phone
10 calls from a number of locations within the recently expanded Millsite Exchange.

11 23. In determining whether a "community of interest" exists between the exchanges to
12 warrant EAS, Staff found the following:

- 13 a. The community of interest includes the City of Prescott;
- 14 b. There are no commercial entities in the Millsite extension area. Residents
15 must go to Chino Valley, Prescott Valley or Prescott, all of which are located
16 in Qwest's Prescott local calling area;
- 17 c. There are no schools in the Millsite extension area. Children must attend
18 schools in the Prescott, Humbolt or Chino Valley School Districts, all of which
19 are located in Qwest's Prescott local calling area;
- 20 d. The area is contiguous to areas that are currently being served by Qwest.
- 21 e. A check of the Qwest Yellow Pages for the area reveals that the hospitals listed
22 in the area are located in Prescott; and
- 23 f. The main Yavapai County offices are located in Prescott.

24 24. Midvale currently has service areas that are contiguous to Qwest's Prescott Exchange.
25 Staff stated that, in some instances, the service areas of Midvale and Table Top are located between a
26 non-contiguous portion of Qwest's Prescott Exchange and the main body of the Prescott Exchange.
27 As indicated above, the local calling area for Qwest customers includes the communities of Prescott,
28 Chino Valley and Humbolt.

1 25. Staff also pointed out that if Qwest had applied to extend service to the area now
2 served by Midvale, customers would have received the same local calling area privileges as afforded
3 to customers that currently reside in Qwest's Prescott local calling area. According to Staff, the same
4 calling scope can be provided by Midvale if it interconnects to the local tandem functionality of
5 Qwest's Prescott switch.

6 26. Thus, in Staff's opinion, given the geographic relationship of the expanded Millsite
7 Exchange to Qwest's Prescott local calling area, this same local calling area should be provided to all
8 of Midvale's customers in its Millsite Exchange.

9 **Costs of Implementing EAS**

10 27. Qwest indicated that it believes that the calling area issues associated with unserved
11 areas should be addressed on an industry-wide basis in the pending EAS rulemaking proceeding.²
12 However, if the Commission were to order that Midvale's Millsite Exchange be added to the local
13 calling area, Qwest would require Midvale to provision a local trunk group to the Prescott local
14 tandem and to enter into an EAS agreement. Qwest stated that each company would pay its
15 respective facility costs to implement the EAS. Qwest also indicated that there might be additional
16 costs that would be appropriate for Midvale to pay to Qwest. Should this be the case, Staff
17 recommended that those issues be addressed through normal inter-company negotiations. Qwest
18 does not oppose the establishment of two-way EAS service with Midvale for its Millsite Exchange as
19 recommended by Staff. However, Qwest recommends that the Commission set a specific deadline
20 for establishment of EAS, preferably at least six months, in order to provide the parties with
21 sufficient notice for completion of an EAS agreement with Midvale and related network
22 provisioning.

23 28. On September 9, 2003, Midvale filed an exhibit reflecting the estimated per-customer
24 cost of EAS. The cost of EAS typically consists of two components. The first is a reduction in
25 access charges associated with the conversion of toll routes to EAS. The second is the capital costs
26 associated with implementing EAS.

27
28 ² Docket No. T-00000J-02-0251.

1 29. In its filing, Midvale stated that because the Millsite Exchange is a new exchange, there is
2 no actual call data, so the loss of access revenue can only be estimated. Midvale estimated the loss of
3 access revenue by using two separate methods. The first method is based on an estimate of actual access
4 call data from the Company's Cascabel and Young Exchanges. The other calculation is based on a
5 study of calling patterns between the Cascabel Exchange and Qwest's Benson Exchange. Midvale
6 stated these methods yielded a per-month, per line average cost of lost access revenues of \$10.45.
7 According to Midvale, this methodology was reviewed by Staff in the Granite Mountain case³ and
8 was found to be a reasonable estimate of the loss of access revenues for Midvale.

9 30. In order to implement two-way EAS, Midvale stated that it must also make additional
10 capital investments. Midvale claims that, at full build-out, the total capital cost of deploying EAS for
11 529 subscribers in the Millsite Exchange is estimated to be \$108,400. The Company estimates that
12 the additional per-month charge (for capital costs) to those 529 customers would be approximately
13 \$2.05.

14 31. Although Midvale is not proposing to assess an EAS surcharge at this time, the
15 Company estimated that the \$2.05 per month capital cost, combined with the \$10.45 per line in lost
16 access revenue, would produce a total monthly EAS cost per access line for the Millsite Exchange of
17 \$12.50. The residential rate for Midvale customers for one line of service in the Millsite Exchange is
18 currently \$24.00 per month.

19 32. Midvale indicated that it has no objection to providing EAS service with no change in
20 its tariff rates at this time. Therefore, customers would not initially be assessed additional charges for
21 EAS calling privileges. However, Midvale indicated that implementation of EAS will ultimately
22 result in a rate case filing to recover those costs.

23 33. Midvale predicts it will take a couple of years for it to break even financially based
24 upon its new service area granted in Decision No. 66510. Midvale provided projected five-year
25 operating statements, assuming that EAS would be implemented and assuming that EAS would not
26 be implemented. Midvale projects that it would "realize a positive contribution" in 2006, the first full
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28 ³ Decision No. 66171 (August 13, 2003).

1 year of operations, of \$43,584, if EAS is not implemented, versus a contribution of \$15,142, if EAS
2 is implemented. The annual difference in revenue is \$28,442.

3 34. Midvale has indicated that it believes two-way EAS can be offered from the Millsite
4 Exchange to Qwest's Prescott local calling area within six months of a Commission Order.

5 35. Staff recommended that Midvale's Millsite Exchange be added to the Prescott local
6 calling area and that two-way EAS be established between Midvale's Millsite Exchange and Qwest's
7 Prescott local calling area.

8 36. Federal Communications Commission ("FCC") rules⁴ do not allow for numbers to be
9 ported between ILEC rate centers. Therefore, in the event it is determined that customers of Midvale
10 and Qwest should have the same local calling area, customers who move between service areas of the
11 two respective ILECs (Midvale and Qwest) will not be able to retain their telephone numbers.

12 37. In the Customer Poll sent to customers and landowners in the Millsite Exchange
13 CC&N area, Midvale asked recipients if they support EAS between the Millsite Exchange and
14 Qwest's Prescott local calling area based on an estimated cost of \$9 to \$13 per line per month.
15 Midvale's witness testified that of the approximately 600 Customer Poll forms mailed out, the
16 Company received 386 responses. Of the 386 forms returned to the Company, approximately 80
17 percent indicated support for the EAS request (June 14, 2004 Tr. 13). Although some of the
18 responses expressed support for EAS only if no additional charge was imposed, even if those
19 responses are excluded, almost 76 percent of the respondents support EAS based on the \$9 to \$13 per
20 month assumption (Id. at 39).

21 38. At the June 14, 2004 hearing, Midvale's witness, Karen Williams, was evasive
22 regarding whether the \$9 to \$13 per month assumption was still valid (Id. at 14-26). Ms. Williams
23 indicated that Midvale's estimates were developed more than 18 months ago and, although the
24 Company has no more recent estimates, she could not say "whether those estimates are still entirely
25 accurate" (Id. at 15). She admitted that the Company is not seeking imposition of an EAS surcharge
26 at this time and that Midvale would not be able to impose such a surcharge without the Commission's
27

28 ⁴ *In the Matter of Telephone Number Portability*, Docket No. 95-116, Report and Order, (Rel. August 18, 1997)
("Second Report and Order").

1 approval in the context of a rate case. Ms. Williams also expressed displeasure with the “delay”
2 caused by requiring the Company to conduct a poll of customers regarding support for EAS because
3 no similar poll was required in the Granite Mountain case (Decision No. 66171) (Tr. 24-25).

4 39. As indicated above, Staff’s amended schedules indicate the requested EAS service
5 between the Millsite Exchange and Qwest’s Prescott local calling area could ultimately result in per
6 customer monthly charges of between \$3.98 and \$11.70 depending on the rate of return and number
7 of customers assumed in the analysis. For example, investment cost recovery based on a rate of
8 return assumption of 8.0 percent spread over 529 customers would result in the lowest estimated
9 surcharge of \$3.98 per month. At the other extreme, using Midvale’s current 10.37 percent
10 authorized rate of return and costs spread over only 75 customers would result in an EAS surcharge
11 estimate of \$11.70 (Ex. S-4 at 1).

12 40. Staff witness Will Shand testified that it is Staff’s expectation that Midvale would not
13 initially seek to recover EAS investment costs but would request a surcharge only to the extent
14 necessary as part of a base rate case application (Tr. 36-37). Mr. Shand stated that Midvale has
15 shown a community of interest exists between the Millsite Exchange and Qwest’s Prescott local
16 calling area, and that the Customer Poll results, as well as comments expressed at the Prescott local
17 hearing, reflect support by a substantial majority of customers for the requested EAS. Staff believes
18 approval of the EAS request is in the public interest and should be approved (Id. at 38).

19 41. As we stated in Decision No. 66510, the willingness of a substantial majority of the
20 customers to pay the appropriate rates and charges is a basic and necessary condition to the institution
21 of EAS. The demands of a few subscribers should not be the basis for instituting more costly
22 telephone service contrary to the wishes of a majority of the customers. Therefore, despite Midvale’s
23 protestations, in cases where EAS is requested and customers’ rates may potentially increase as a
24 result, a poll of the customers in the requesting exchange is necessary and appropriate. In this case,
25 we believe that the polling of customers undertaken by the Company, and reviewed by Staff, supports
26 the conclusion that a substantial majority of the Millsite Exchange customers favors implementation
27 of EAS with Qwest’s Prescott local calling area. Accordingly, Midvale’s request for two-way EAS
28 between those exchanges shall be approved.

CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over Midvale and the subject matter of the application.

3. Notice of the request for EAS was provided in accordance with the law.

4. There is a public need and necessity for EAS service in the proposed area.

5. Midvale is a fit and proper entity to provide EAS service.

6. Approval of the requested EAS service is in the public interest and is supported by the record.

7. The polling of customers undertaken by Midvale supports the conclusion that a substantial majority of customers and potential customers in the Millsite Exchange supports the requested EAS service.

8. Staff's recommendation to approve the implementation of EAS between Midvale's Millsite Exchange and Qwest's Prescott, Humboldt, and Chino Valley exchanges is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Midvale Telephone Exchange, Inc. to provide Extended Area Service between its Millsite Exchange and Qwest's Prescott local calling area be, and hereby is, granted.

IT IS FURTHER ORDERED that Midvale Telephone Exchange, Inc. shall take all actions necessary to implement Extended Area Service between its Millsite Exchange and Qwest's Prescott local calling area within six months of the effective date of this Decision.

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1 IT IS FURTHER ORDERED that Qwest Corporation shall cooperate with Midvale's efforts
2 to implement Extended Area Service between its Millsite Exchange and Qwest's Prescott local
3 calling area, and Qwest shall take all necessary measures to effectuate the Extended Area Service
4 approved herein within six months of the effective date of this Decision.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9	CHAIRMAN	COMMISSIONER	COMMISSIONER
10	COMMISSIONER	COMMISSIONER	

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 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 _____, 2004.

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16 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

17
18 DISSENT _____

19 DISSENT _____

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1	SERVICE LIST FOR:	MIDVALE TELEPHONE EXCHANGE SERVICE, INC.
2	DOCKET NO.	T-02532A-03-0017
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