



0000012253

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAR 30 2001

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

DOCKETED BY *ed*

5
6 IN THE MATTER OF THE APPLICATION OF
LOCAL GATEWAY EXCHANGE, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE AND INTEREXCHANGE
9 TELECOMMUNICATIONS SERVICES IN
ARIZONA

DOCKET NO. T-03883A-00-0366

DECISION NO. 63492

OPINION AND ORDER

10 DATE OF HEARING: February 14, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
13 APPEARANCES: Mr. Charles G. Taylor, Jr., on behalf of Local Gateway
14 Exchange, Inc.;
15 Mr. Devinti Williams, Staff Attorney, Legal Division,
16 on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

17
18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

- 20
21 1. Local Gateway Exchange, Inc. ("LGEI" or "Applicant") is a Texas corporation,
22 authorized to do business in Arizona since 1999.
23 2. On May 30, 2000, LGEI filed with the Arizona Corporation Commission
24 ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to
25 provide competitive facilities-based and resold local exchange and interexchange telecommunications
26 services in Arizona.
27 3. On June 21, 2000, LGEI filed an Amendment to its application.
28 4. On July 5, 2000, LGEI filed Affidavits of Publication indicating compliance with the

1 Commission's notice requirements.

2 5. On August 18, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report, which recommended approval of the application and included a number of additional
4 recommendations.

5 6. On August 28, 2000, a Procedural Order was issued setting the matter for hearing on
6 October 26, 2000.

7 7. As a result of non-compliance with the August 28, 2000 Procedural Order, at LGEI's
8 request, a new Procedural Order was issued on September 26, 2000 setting the matter for hearing on
9 December 14, 2000.

10 8. On October 25, 2000, LGEI filed a formal Request for a Continuance of the Hearing.

11 9. On December 15, 2000, LGEI filed another Request for a Continuance of the Hearing
12 and agreed to waive all applicable time clock limitations.

13 10. On December 18, 2000, a Procedural Order was issued setting the matter for hearing
14 on February 14, 2001.

15 11. A hearing was held on February 14, 2001, and Applicant and Staff presented evidence.

16 12. Qwest and LGEI have not as yet reached an interconnection agreement.

17 13. The management of LGEI has many years of experience in the telecommunications
18 industry.

19 14. Applicant has the technical capability to provide the services that are proposed in its
20 application.

21 15. Currently there are several incumbent providers of local exchange, toll, and exchange
22 access services in the service territory requested by Applicant, and numerous other entities have been
23 authorized to provide competitive local exchange services in all or portions of that territory.

24 16. It is appropriate to classify all of Applicant's authorized services as competitive.

25 17. 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.

27 18. According to Staff, LGEI submitted the unaudited financial statements for the year
28 ended December 31, 1999. These financial data list assets of \$545,524, no retained earnings, and

1 total stockholders' equity of \$1000. On February 13, 2001, LGEI filed updated financial statements
2 for the year ended December 31, 2000. These statements list assets of \$4.18 million and
3 stockholders' equity of negative \$1.19 million. Based on this information, Staff believes that LGEI
4 lacks sufficient financial strength to offer the requested telecommunications services in Arizona
5 absent the procurement of a performance bond.

6 19. Staff recommended, as amended at the hearing, that LGEI's application for a
7 Certificate to provide competitive facilities-based and resold telecommunications services be granted
8 subject to the following conditions that:

- 9 (a). in order to protect the Applicant's customers, LGEI shall file proof of a
10 performance bond for \$100,000 within 90 days of the effective date of this
11 order or 30 days prior to the provision of service, whichever comes first;
- 12 (b). LGEI should be ordered to file its tariffs within 30 days of an Order in this
13 matter, and in accordance with the Decision;
- 14 (c). unless its provides services solely through the use of its own facilities,
15 Applicant should be ordered to procure an Interconnection Agreement before
16 being allowed to offer local exchange service;
- 17 (d). LGEI should be ordered to file with the Commission, within 30 days of an
18 Order in this matter, its plan to have its customers telephone numbers included
19 in the incumbent's Directories and Directory Assistance databases;
- 20 (e). LGEI be ordered to pursue permanent number portability arrangements with
21 other LECs pursuant to Commission rules, federal laws and federal rules;
- 22 (f). LGEI be ordered to abide by and participate in the AUSF mechanism instituted
23 in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-03905A-00-
24 0513E-95-0498);
- 25 (g). Applicant be ordered to abide by the quality of service standards that were
26 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 27 (h). in areas where Applicant is the sole provider of local exchange service
28 facilities, LGEI be ordered to provide customers with access to alternative
providers of service pursuant to the provisions of Commission rules, federal
laws and federal rules;
- (i). LGEI be ordered to certify, through the 911 service provider in the area in
which it intends to provide service, that all issues associated with the provision
of 911 service have been resolved with the emergency service providers within
30 days of an Order in this matter;
- (j). LGEI be ordered to abide by all the Commission decisions and policies
regarding CLASS services;
- (k). LGEI be ordered to provide 2-PIC equal access;

- 1 (l). LGEI be required to notify the Commission immediately upon changes to its
2 address or telephone number;
- 3 (m). LGEI be ordered to comply with all Commission rules, orders, and other
4 requirements relevant to the provision of intrastate telecommunications
5 service;
- 6 (n). LGEI be ordered to maintain its accounts and records as required by the
7 Commission;
- 8 (o). LGEI should be ordered file with the Commission all financial and other
9 reports that the Commission may require, and in a form and at such times as
10 the Commission may designate;
- 11 (p). LGEI maintain on file with the Commission all current tariffs and rates, and
12 any service standards that the Commission may require;
- 13 (q). LGEI should be ordered to cooperate with Commission investigations of
14 customer complaints; and,
- 15 (r). LGEI be ordered to participate in and contribute to a universal service fund, as
16 required by the Commission.

17 20. Staff further recommended that LGEI's tariffs be approved on an interim basis

18 subject to the following:

- 19 (a). That LGEI should be required to file in this Docket, within 18 months of the
20 date it first provides service following certification, sufficient information for
21 Staff analysis and recommendation for a fair value finding, as well as for an
22 analysis and recommendation for permanent tariff approval. This information
23 must include, at a minimum, the following:
- 24 1. A dollar amount representing the total revenue for the first twelve months
25 of telecommunications service provided to Arizona customers by LGEI
26 following certification, adjusted to reflect the maximum rates that LGEI
27 has requested in its tariff. This adjusted total revenue figure could be
28 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 LGEI
following certification.
 3. The value of all assets, listed by major category, used for the first twelve
months of telecommunications services provided to Arizona customers by
LGEI following certification. Assets are not limited to plant and
equipment. Items such as office equipment and office supplies should be
included in this list.

1 (b) LGEI's failure to meet the condition to timely file sufficient information for a
2 fair value finding and analysis and recommendation of permanent tariffs
3 should result in the expiration of the Certificate of Convenience and Necessity
4 and of the tariffs.

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

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

14 CONCLUSIONS OF LAW

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

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

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

20 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
21 Certificate to provide competitive telecommunications services.

22 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
23 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
24 in its application.

25 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
26 competitive facilities-based and resold local exchange and interexchange telecommunications
27 services in Arizona as conditioned by Staff's recommendations as modified below.

28 7. The telecommunications services that the Applicant intends to provide are competitive

1 within Arizona.

2 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
3 it is just and reasonable and in the public interest for Applicant to establish rates and charges which
4 are not less than the Applicant's total service long-run incremental costs of providing the competitive
5 services approved herein.

6 9. Staff's recommendations in Findings of Fact Nos. 19 and 20 are reasonable and should
7 be adopted.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the application of Local Gateway Exchange, Inc. for a
10 Certificate of Convenience and Necessity for authority to provide competitive facilities-based and
11 resold local exchange and interexchange telecommunications services in Arizona shall be, and is
12 hereby, granted, as conditioned herein.

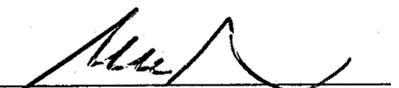
13 IT IS FURTHER ORDERED that Local Gateway Exchange, Inc. shall comply with all of the
14 Staff recommendations set forth in Findings of Fact Nos. 19 and 20.

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

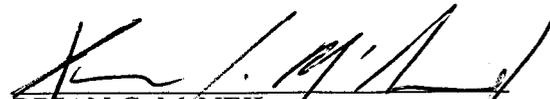
16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

17
18 
19 CHAIRMAN

COMMISSIONER


COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of Phoenix,
25 this 30th day of March, 2001.

26 
27 BRIAN C. McNEIL
28 EXECUTIVE SECRETARY

27 DISSENT _____
28 SG:mlj

1 SERVICE LIST FOR: LOCAL GATEWAY EXCHANGE, INC.

2 DOCKET NO.: T-03883A-00-0366

3

4 Charles G. Taylor, President
Local Gateway Exchange, Inc.
5 700 North Pearl Street, Suite 200
6 Dallas, Texas 75201-7404

7 Tom Cargal, Director of Marketing
Local Gateway Exchange, Inc.
8 700 North Pearl Street, Suite 200
Dallas, Texas 75201-7404

9 Timothy Berg
FENNEMORE CRAIG
10 3003 North Central Avenue, Suite 2600
11 Phoenix, Arizona 85012
Attorneys for Qwest Corporation

12 Christopher Kempley, Chief Counsel
Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, Arizona 85007

15 Deborah Scott, Director
Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
Phoenix, Arizona 85007

18

19

20

21

22

23

24

25

26

27

28

