



0000012473

MARC SPITZER
COMMISSIONER



OPEN MEETING ITEM
RECEIVED

ORIGINAL *COPT-17*

BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

2001 MAR 14 P 12:23

DATE: March 14, 2001
DOCKET NO: T-03232A-96-0428
TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT Arizona Corporation Commission
DOCKETED
MAR 14 2001

DOCKETED BY	<i>mac</i>
-------------	------------

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

TRANSCOMMUNICATIONS, 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
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
7 TRANSCOMMUNICATIONS, INCORPORATED
8 FOR A CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
10 RESOLD INTEREXCHANGE
11 TELECOMMUNICATIONS SERVICES EXCEPT
12 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03232A-96-0428

DECISION NO. _____

ORDER

10 Open Meeting
11 March 27 and 28, 2001
12 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 August 6, 1999, Transcommunications, Incorporated ("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 Tennessee corporation authorized to do business in Arizona since 1995.

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

26 5. On October 3, 1996, Applicant filed Affidavits of Publication indicating compliance
27 with the Commission's notice requirements.

28 6. On January 8, 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 ended March 31, 2000, which listed assets of \$15.08 million, stockholders' equity of \$1.95
4 million, and a net income of \$1.87 million on revenues of \$24.83 million. Due to the unaudited
5 nature of the financial statements, Staff believes that Applicant lacks adequate financial resources to
6 be allowed to charge customers any prepayments, advances or deposits without establishing an
7 escrow account or posting a surety bond. Applicant stated in its application that it does not currently,
8 and will not in the future, charge 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;

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

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

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

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

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

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

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

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

3. The value of all assets, listed by major category, used for the first
25 twelve months of telecommunications service provided to Arizona
26 customers by the Applicant following certification. Assets are not
27 limited to plant and equipment. Items such as office equipment and
28 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 Transcommunications, Incorporated

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

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

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

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
2 Transcommunications, Incorporated shall notify the Compliance Section of the Arizona Corporation
3 Commission of the 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.

6
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:dp
18
19
20
21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: TRANSCOMMUNICATIONS, INCORPORATED

2 DOCKET NO.: T-03232A-96-0428

3

4 Jed Holstein
TRANSCOMMUNICATIONS, INCORPORATED
5751 Uptain Building, Suite 200
5 Chattanooga, Tennessee 37411

6 Andrew O. Isar
MILLER ISAR
7 3220 Uddenberg Lane, Suite 4
Gig Harbor, Washington 98335
8 Consultant to Applicant

9 Christopher Kempley, Chief Counsel
Legal Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, Arizona 85007

12 Deborah Scott, Director
Utilities Division
13 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
14 Phoenix, Arizona 85007

15

16

17

18

19

20

21

22

23

24

25

26

27

28