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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

2001 MAR 14 P 2:31

DATE: March 14, 2001

Arizona Corporation Commission

DOCKETED

DOCKET NO: T-03957A-00-0911

MAR 14 2001

TO ALL PARTIES:

DOCKETED BY	
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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:

ENCOMPASS COMMUNICATIONS, L.L.C.  
(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 ENCOMPASS COMMUNICATIONS, L.L.C. FOR  
8 A CERTIFICATE OF CONVENIENCE AND  
9 NECESSITY TO PROVIDE COMPETITIVE  
10 RESOLD INTEREXCHANGE  
11 TELECOMMUNICATIONS SERVICES EXCEPT  
12 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03957A-00-0911

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 November 7, 2000, Encompass Communications, L.L.C. ("Applicant") filed with  
17 the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to  
18 provide competitive resold interexchange telecommunications services, except local exchange  
19 services, 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 Texas limited liability company authorized to do business in Arizona  
24 since 2000.

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

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

1           6.     On January 24, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff  
2 Report in this matter.

3           7.     Staff stated that the Applicant provided its unaudited financial statements for the  
4 period ended September 30, 2000, which listed assets of \$308,530, total equity of \$300,079, and a net  
5 loss of \$84,921. Based on the foregoing, Staff believes that Applicant lacks adequate financial  
6 resources to be allowed to charge customers any prepayments, advances or deposits without  
7 establishing an escrow account or posting a surety bond. On January 3, 2001, Applicant docketed  
8 proof of the establishment of a surety bond in the amount of \$5,000, which shall be in effect for a  
9 minimum of one year. The surety bond approximates the total amount of any prepayments,  
10 advances, and deposits that the Applicant collects from its customers.

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

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

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

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

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

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

22           (e)    Applicant should be ordered to comply with the Commission's rules and  
23 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;

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

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

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

1 (i) Applicant should file a \$5,000 surety bond to cover the approximate total  
2 amount of any prepayments, advances, and deposits that the Applicant will collect  
3 from its customers;

4 (j) After one year of operation under the Certificate granted by the Commission,  
5 the Applicant should be allowed to file a request for cancellation of its established  
6 surety bond, and that such request be accompanied by information demonstrating the  
7 Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff  
8 would forward its recommendation to the Commission for a Decision;

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

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

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

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

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

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

28 1. A dollar amount representing the total revenue for the first twelve  
months of telecommunications service provided to Arizona customers  
by the Applicant following certification, adjusted to reflect the  
maximum rates that the Applicant has requested in its tariff. This  
adjusted total revenue figure 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 value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the certificate of the tariffs.

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

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

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

**CONCLUSIONS OF LAW**

1. Applicant 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 Applicant and the subject matter of the application.

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

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

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

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

1 be adopted.

2 **ORDER**

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

12 IT IS FURTHER ORDERED that Encompass Communications, L.L.C. shall comply with the  
13 Staff recommendations set forth in Findings of Fact Nos. 9 and 10.

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

27 ...

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1 SERVICE LIST FOR: ENCOMPASS COMMUNICATIONS, L.L.C.

2 DOCKET NO.: T-03957A-00-0911

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