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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
COMM SOUTH COMPANIES, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES EXCEPT
LOCAL EXCHANGE SERVICES

DOCKET NO. T-03466A-00-0811

DECISION NO. 63542

ORDER Arizona Corporation Commission
DOCKETED

MAR 30 2001

Open Meeting
March 27 and 28, 2001
Phoenix, Arizona

DOCKETED BY VL

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On October 13, 2000, Comm South Companies, Inc. ("Comm South" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

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

3. Applicant is a Texas corporation authorized to do business in Arizona since 1997.

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

5. On January 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter.

6. Staff stated that the Applicant provided its unaudited financial statements for the

1 period ending June 30, 2000, which listed assets of \$93 million, shareholders' equity of \$34, 548, and
2 a net loss of \$722,089. Based on the foregoing, Staff believes that Applicant lacks adequate financial
3 resources to be allowed to charge customers any prepayments, advances or deposits without
4 establishing an escrow account or posting a surety bond. Since the Applicant does not appear to have
5 sufficient financial resources, it has docketed proof of the establishment of a surety bond in the
6 amount of \$50,000. The surety bond shall be in effect for a minimum of one year, and shall
7 approximate the total amount of any prepayments, advances, and deposits that the Applicant collects
8 from its customers.

9 7. 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 8. 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
service fund, as required by the Commission;

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

27 (i) Applicant should file a \$50,000 surety bond to cover the approximate total
28 amount of any prepayments, advances, and deposits that the applicant will collect

1 from its customers;

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

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

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

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

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

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

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

26 1. A dollar amount representing the total revenue for the first twelve
27 months of telecommunications service provided to Arizona customers by the
28 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

1 included in this list.

2 (c) Applicant's failure to meet the condition to file sufficient information for a fair
3 value finding and analysis and recommendation of permanent tariffs shall result in the
4 expiration of the certificate of the tariffs.

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

9 11. 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 are
13 also concerned that the cost and complexity of FVRB determinations must not offend the
14 Telecommunications Act of 1996.

15 12. On January 11, 2001, Applicant filed Affidavits of Publication indicating compliance
16 with the Commission's notice requirements.

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

19 CONCLUSIONS OF LAW

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

22 2. The Commission has jurisdiction over Applicant and the subject matter of the
23 application.

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

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

27 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
28 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 Comm South Companies, Inc. for a
4 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
5 telecommunications services, except local exchange services, shall be and the same is hereby granted.

6 IT IS FURTHER ORDERED that Comm South Companies, Inc. shall comply with the Staff
7 recommendations set forth in Findings of Fact Nos. 9 and 10.

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

21 IT IS FURTHER ORDERED that Comm South Companies, Inc.'s surety bond in the amount
22 of \$50,000 is hereby approved.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, Comm
2 South Companies, Inc. shall notify the Compliance Section of the Arizona Corporation Commission
3 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 CHAIRMAN



8 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 30th day of March, 2001.

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16 BRIAN C. McNEIL
17 EXECUTIVE SECRETARY

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2 DOCKET NO.: T-03466A-00-0811

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