

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DATE: April 18, 2001
DOCKET NO: T-03731A-99-0234
TO ALL PARTIES:

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

CONCERT COMMUNICATIONS SALES, LLC
(CC&N/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 **12:00** p.m. on or before:

APRIL 27, 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:

MAY 1, 2001 and MAY 2, 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

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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
CONCERT COMMUNICATIONS SALES, LLC
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03731A-99-0234
DECISION NO. _____

ORDER

Open Meeting
May 1 and 2, 2001
Phoenix, Arizona

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 May 4, 1999, Concert Communications Sales, LLC ("Applicant") filed with Docket Control of the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold local exchange telecommunications 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 Delaware limited liability company authorized to do business in Arizona since 1999.
4. Applicant is a switchless reseller, which purchases telecommunications services from various telecommunication service providers.
5. On August 25, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter. On November 17, 2000, Staff filed an amendment to the Staff Report, which

1 contained updated financial information

2 6. In the amended Staff Report, Staff stated that the Applicant provided financial
3 statements of its parent company, British Telecommunications PLC for the year ended March 31,
4 2000. These financial statements list assets of \$49.97 billion, shareholders' equity of \$31.60 billion,
5 and a total profit of \$2.93 billion for the year. The Applicant have provided a letter from British
6 Telecommunications PLC stating that it guarantees repayment of deposits, prepayments, and
7 advances of the Applicant's customers. In addition, Staff stated that British Telecommunications
8 PLC has sufficient funds to provide more than adequate backing of Applicant. Based upon this
9 information, Staff believes that the applicant has sufficient financial resources to provide resold local
10 exchange telecommunications services in Arizona.

11 7. 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 8. In its Report, Staff recommended the following:

14 (a) The application for a Certificate should be approved subject to any conditions
15 contained in A.A.C. R14-2-1106.B.;

16 (b) The Applicant's local exchange service offering should be classified as
17 competitive pursuant to A.A.C. R14-2-1108;

18 (c) The Applicant's competitive services should be priced at the effective rates set
19 forth in the Applicant's tariffs. The maximum rates for these services should be the
20 maximum rates recorded in the Applicant's tariffs. Any future changes to the
21 maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110. The
22 minimum rates for the Applicant's competitive services should be the Applicant's long
23 run incremental costs of providing those services set forth in A.A.C. R14-2-1109;

24 (d) The Applicant should be required to comply with the Commission's rules and
25 modify its tariffs to conform to these rules, if it is determined that there is a conflict
26 between the Applicant's tariffs and the Commission's rules.

27 (e) The application should be approved without a hearing pursuant to A.R.S. § 40-
28 282.

29 9. On August 29, 2000, the Court of Appeals, Division One ("Court") issued its Opinion
30 in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding

1 that "the Arizona Constitution requires the Commission to determine fair value rate base ("FVRB")
2 for all public service corporations in Arizona prior to setting their rates and charges."

3 10. On September 15, 2000, Applicant filed Affidavits of Publication indicating
4 compliance with the Commission's notice requirements.

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

10 12. On November 30, 2000, the Commission issued a Procedural Order requesting the
11 Applicant to submit its FVRB information for Staff analysis.

12 13. On December 29, 2000, Staff filed its FVRB Comments, indicating that Applicant did
13 not submit sufficient information to make a FVRB finding.

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

16 CONCLUSIONS OF LAW

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

19 2. The Commission has jurisdiction over Applicant and the subject matter of the
20 application.

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

22 4. Applicant's provision of resold local exchange telecommunications services is in the
23 public interest.

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

26 6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be
27 adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of Concert Communications Sales, LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange telecommunications services shall be and the same is hereby granted.

IT IS FURTHER ORDERED that Concert Communications Sales, LLC shall comply with the Staff recommendations set forth in Findings of Fact No. 9.

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

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 18 CHAIRMAN COMMISSIONER COMMISSIONER

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 20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 21 Secretary of the Arizona Corporation Commission, have
 22 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 _____, 2001.

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 24 _____
 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

25
 26 DISSENT _____
 27 LAF:dp

1 SERVICE LIST FOR: CONCERT COMMUNICATIONS SALES, LLC

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