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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

MAY 04 2001

1  
2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
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DOCKETED BY *sd*

6 IN THE MATTER OF THE APPLICATION OF  
EZTEL NETWORK SERVICES, LLC FOR A  
7 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
8 RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES EXCEPT  
9 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03833A-00-0062

DECISION NO. 63628

ORDER

10 Open Meeting  
May 1 and 2, 2001  
11 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 January 28, 2000, ezTel Network Services, LLC ("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 Mississippi limited liability company authorized to do business in  
24 Arizona since 2000.

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

27 5. On October 31, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff  
28 Report and recommended that the application be denied due to non-compliance.

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

3           7.     On January 5, 2001, Staff filed its amended Staff Report in this matter.

4           8.     In the Staff Report, Staff stated that the Applicant provided financial statements for  
5 the period ending December 31, 1999. These financial statements list assets of \$250,000 and total  
6 shareholders' equity of \$250,000. Based on the foregoing, Staff believes that Applicant lacks  
7 adequate financial resources to be allowed to charge customers any prepayments, advances or  
8 deposits without establishing an escrow account or posting a surety bond. The Applicant stated in its  
9 application that it does not charge its customers for any prepayments, advances, or deposits.

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

12          10.    In its Report, Staff recommended the following:

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

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

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

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

23           (e)    The Applicant should be ordered to comply with the Commission's rules and  
24 modify its tariffs to conform to these rules if it is determined that there is a conflict  
25 between the Applicant's tariffs and the Commission's rules;

26           (f)    The Applicant should be ordered to cooperate with Commission investigations  
27 of customer complaints;

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

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

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

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

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

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

13 12. On December 6, 2000, the Commission issued a Procedural Order requesting the  
14 Applicant to submit its FVRB information for Staff analysis.

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

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

### 23 CONCLUSIONS OF LAW

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

26 2. The Commission has jurisdiction over Applicant and the subject matter of the  
27 application.

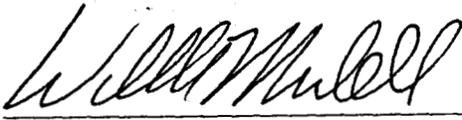


1 following certification. ezTel Network Services, LLC shall also file FVRB information which  
2 includes a description and value of all assets, including plant, equipment, and office supplies, to be  
3 used to provide telecommunications service to Arizona customers for the first twelve months  
4 following ezTel Network Services, LLC's certification.

5 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, ezTel  
6 Network Services, LLC shall notify the Compliance Section of the Arizona Corporation Commission  
7 of the date that it will begin or has begun providing service to Arizona customers.

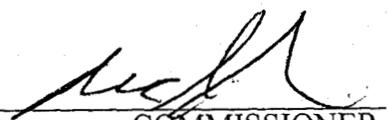
8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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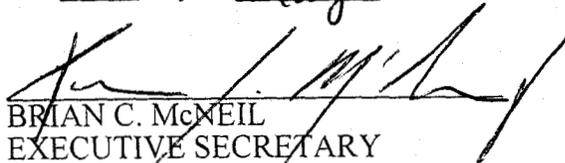
11 CHAIRMAN

11 COMMISSIONER

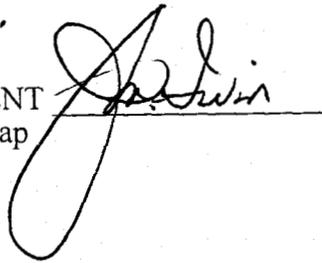
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11 COMMISSIONER

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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Secretary of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this 4th day of May, 2001.

18   
19 BRIAN C. McNEIL  
20 EXECUTIVE SECRETARY

20 DISSENT  
21 LAF:dap

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1 SERVICE LIST FOR: EZTEL NETWORK SERVICES, LLC

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