

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

ORIGINAL OPEN MEETING ITEM



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

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DATE: April 17, 2001

DOCKET NO: T-03681A-98-0754

APR 17 2001

TO ALL PARTIES:

DOCKETED BY	SD
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Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Order on:

TELCORP LTD.
(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 4:00 p.m. on or before:

APRIL 26, 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

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 TELCORP LTD. FOR A CERTIFICATE OF
8 CONVENIENCE AND NECESSITY TO PROVIDE
9 COMPETITIVE RESOLD INTEREXCHANGE
10 TELECOMMUNICATIONS SERVICES EXCEPT
11 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03681A-98-0754

12 DECISION NO. _____

13 **ORDER**

14 Open Meeting
15 May 1 and 2, 2001
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

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

20 **FINDINGS OF FACT**

21 1. On December 23, 1998, Telcorp Ltd. ("Applicant") filed with the Commission an
22 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
23 resold interexchange telecommunications services, except local exchange services, within the State of
24 Arizona.

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

28 3. Applicant is a New York corporation authorized to do business in Arizona since 1998.

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

5. On January 11, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report in this matter.

6. On March 19, 2001, Applicant filed Affidavits of Publication indicating compliance

1 with the Commission's notice requirements.

2 7. In the Staff Report, Staff stated that the Applicant provided financial statements for
3 the period ending December 31, 1999. These financial statements list assets of \$2.36 million,
4 shareholders' equity of \$1.81 million, and a net income of \$733,995 on revenues of \$7.6 million. Due
5 to the unaudited nature of the financial statements, Staff believes that Applicant lacks sufficient
6 financial resources to be allowed to charge customers any prepayments, advances or deposits without
7 establishing an escrow account or posting a surety bond. The Applicant stated in its application that
8 it does not 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) The Applicant should be ordered to comply with all Commission rules, orders
13 and other requirements relevant to the provision of intrastate telecommunications
14 services;

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

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

20 (d) The 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) The 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
24 between the Applicant's tariffs and the Commission's rules;

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

27 (g) The Applicant should be ordered to participate in and contribute to a universal
28 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;

(i) The Applicant's intrastate interexchange service offerings should be classified

1 as competitive pursuant to A.A.C. R14-2-1108;

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

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

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

15 11. On December 6, 2000, the Commission issued a Procedural Order requesting the
16 Applicant to submit its FVRB information for Staff analysis.

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

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

25 CONCLUSIONS OF LAW

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

28 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 interexchange telecommunications services is in the

1 public interest.

2 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
3 resold interexchange telecommunications in Arizona.

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

6 **ORDER**

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

16 IT IS FURTHER ORDERED that Telcorp, Ltd. shall comply with the Staff recommendations
17 set forth in Findings of Fact No. 9.

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

1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
2 Telcorp, Ltd. shall notify the Compliance Section of the Arizona Corporation Commission of the date
3 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 LAF:dap

1 SERVICE LIST FOR: TELCORP, LTD.

2 DOCKET NO.: T-03681A-98-0754

3 Lance J.M. Steinhart
4 ATTORNEY AT LAW
5 6455 E. Johns Crossing
6 Duluth, Georgia 30097
7 Attorneys for Telcorp, Ltd.

8 Timothy Berg
9 FENNEMORE CRAIG
10 3003 North Central Avenue, Suite 2600
11 Phoenix, Arizona 85012
12 Attorney for Qwest Corporation

13 Christopher Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 Deborah Scott, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

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