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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

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DATE: MAY 1, 2001
DOCKET NO: T-03608A-98-0442
TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL
Arizona Corporation Commission

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MAY 01 2001

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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:

ARIZONA DIAL TONE, INC.
(CC&N/RESELLER)

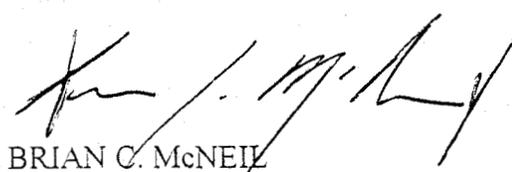
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 9, 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 22, 2001 and MAY 23, 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
ARIZONA DIAL TONE, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS
9 SERVICES

DOCKET NO. T-03608A-98-0442

DECISION NO. _____

ORDER

10 Open Meeting
May 22 and 23, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On August 5, 1998, Arizona Dial Tone, Inc. ("Applicant" or "ADT") filed with
17 Docket Control of the Arizona Corporation Commission ("Commission") an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive resold local
19 exchange and interexchange telecommunications services within the State of Arizona.

20 2. Applicant is an Arizona corporation, authorized to do business in Arizona since 1997.

21 3. Applicant is a switchless reseller, which purchases telecommunications services from
22 Qwest Corporation.

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

26 5. On September 24, 1999, the Commission's Utilities Division Staff ("Staff") filed its
27 Staff Report in this matter. Staff recommended denial of ADT's application based on its failure to
28 respond to data requests.

1 6. Counsel for ADT contacted Staff and indicated that ADT was still interested in
2 obtaining a Certificate.

3 7. On March 16, 2000, ADT filed Affidavits of Publication indicating compliance with
4 the Commission's notice requirements.

5 8. On September 15, 2000, Staff filed a request for fair value rate base information from
6 ADT.

7 9. On October 13, 2000, ADT filed a Response objecting to the information requested by
8 Staff since it is a reseller and not a facilities based provider. However, notwithstanding its objections
9 and without waiving them, ADT also states that it "currently holds no plant and equipment intended
10 to be used to provide telecommunications services to Arizona customers, and does not intend upon
11 acquiring any such plant and equipment."

12 10. On January 8, 2001, ADT filed a letter indicating that it has obtained a performance
13 bond in the amount of \$10,000.

14 11. On January 24, 2001, Staff filed a revised Staff Report recommending approval of the
15 application and that ADT procure a performance bond in the amount of \$10,000.

16 12. On April 5, 2001, Staff filed an amended Staff Report. Staff stated that ADT has
17 provided the financial statements for the year ending December 31, 1999. These financial statements
18 list assets of \$970,822, stockholders' equity of \$20,572, and a net income of \$16,757. Based on the
19 foregoing, Staff believes that Applicant lacks sufficient financial resources to provide
20 telecommunications services in Arizona absent the procurement of a performance bond. Staff
21 believes that any deposits or prepayments received from the Applicant's customers should be
22 protected by the procurement of a performance bond. Therefore, Staff is recommending that the
23 Applicant procure a performance bond in the amount of \$25,000 which should be increased if at any
24 time it would be insufficient to cover prepayments or deposits collected from the Applicant's
25 customers.

26 13. Staff recommended approval of the application subject to the following:

27 (a) The Applicant should be ordered to comply with all Commission rules, orders,
28 and other requirements relevant to the provision of intrastate telecommunications

1 service;

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

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

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

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

12 (f) The Applicant should be ordered to cooperate with Commission investigations
13 of customers complaints;

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

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

18 (i) The Applicant's local exchange and interexchange service offerings should be
19 classified as competitive pursuant to Commission rules;

20 (j) The Applicant's competitive services should be priced at the rates proposed by
21 the Applicant in its most recently filed tariffs. The maximum rates for these services
22 should be the maximum rates proposed by the Applicant in its tariffs. The minimum
23 rates for the Applicant's competitive services should be the Applicant's total service
24 long run incremental costs of providing those services; and,

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

28 14. Staff further recommended approval of ADT's applications subject to the following
conditions:

(a) That ADT file conforming tariffs within 30 days of an Order in this matter, and
in accordance with the Decision;

(b) That ADT should be required to file in this Docket, within 18 months of the
date it first provides service following certification, sufficient information for
Staff analysis and recommendation for a fair value finding, as well as for an

1 analysis and recommendation for permanent tariff approval. This information
2 must include, at a minimum, the following:

- 3 1. A dollar amount representing the total revenue for the first twelve months
4 of telecommunications service provided to Arizona customers by ADT
5 following certification, adjusted to reflect the maximum rates that ADT has
6 requested in its tariff. This adjusted total revenue figure could be
7 calculated as the number of units sold for all services offered times the
8 maximum charge per unit.
- 9 2. The total actual operating expenses for the first twelve months of
10 telecommunications service provided to Arizona customers by ADT
11 following certification.
- 12 3. The value of all assets, listed by major category, including a description of
13 the assets, used for the first twelve months of telecommunications services
14 provided to Arizona customers by ADT following certification. Assets are
15 not limited to plant and equipment. Items such as office equipment and
16 office supplies should be included in this list.

17 (c) ADT's failure to meet the condition to timely file sufficient information for a
18 fair value finding and analysis and recommendation of permanent tariffs shall
19 result in the expiration of the Certificate of Convenience and Necessity and of
20 the tariffs.

21 (d) In order to protect the Applicant's customers,

- 22 1. ADT should procure a performance bond equal to \$25,000. The minimum
23 bond amount of \$25,000 should be increased if at any time it would be
24 insufficient to cover prepayments or deposits collected from the
25 Applicant's customers;
- 26 2. If the Applicant desires to discontinue service, it should file an application
27 with the Commission pursuant to R14-2-1107;
- 28 3. ADT shall notify each of its customers and the Commission at least 60
days prior to filing an application to discontinue service pursuant to A.A.C.
R14-2-1107; and any failure to do so may result in the forfeiture of ADT's
performance bond;
4. Proof of the performance bond should be docketed within 90 days of the
effective date of an order in this matter or 30 days prior to the provision of
service, whichever comes first; and,
5. After one year of operation under the Certificate granted by the
Commission, ADT may file a request for cancellation of its established
performance bond. Such request shall be accompanied by information
demonstrating ADT's financial viability. Upon receipt of such filing and

1 after Staff review, Staff will forward its recommendation to the
2 Commission for a Decision that the requested cancellation is in the public
interest.

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

5 16. On April 18, 2001, ADT filed Exceptions to the Staff Report filed on April 5, 2001.
6 ADT reiterated its contention that fair value rate base information should not be required for a
7 reseller and that its rates should be approved on a permanent, and not an interim, basis.

8 17. On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its
9 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,
10 Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base for
11 all public service corporations in Arizona prior to setting their rates and charges."

12 18. On September 12, 2000, the Commission ordered the Hearing Division to open a new
13 generic docket to obtain comments on procedures to insure compliance with the Constitution should
14 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. The
15 Commission also expressed concerns that the cost and complexity of fair value rate base ("FVRB")
16 determinations must not offend the Telecommunications Act of 1996.

17 19. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
18 Supreme Court.

19 20. On February 13, 2001, the Commission's Petition was granted.

20 21. Based on the above, we will approve the application of ADT at this time with the
21 understanding that it may subsequently have to be amended to comply with the law after the
22 exhaustion of all appeals.

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.

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

1 4. Applicant's provision of resold local exchange and interexchange telecommunications
2 services is in the public interest.

3 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
4 local exchange and interexchange telecommunications services as a reseller in Arizona.

5 6. Staff's recommendations in Findings of Fact Nos. 12, 13, and 14 are reasonable and
6 should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Arizona Dial Tone, Inc. for a
9 Certificate of Convenience and Necessity for authority to provide competitive resold local exchange
10 and interexchange telecommunications services shall be and the same is hereby granted.

11 IT IS FURTHER ORDERED that Arizona Dial Tone, Inc. shall comply with the Staff
12 recommendations set forth in Findings of Fact Nos. 12, 13, and 14.

13 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
14 Arizona Dial Tone, Inc. shall notify the Compliance Section of the Arizona Corporation Commission
15 of the date that it will begin or has begun providing service to Arizona customers.

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

17 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

18
19
20 CHAIRMAN COMMISSIONER COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of Phoenix,
25 this ____ day of _____, 2001.

26 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

27 DISSENT _____
28 SG:mlj

1 SERVICE LIST FOR: ARIZONA DIAL TONE, INC.

2 DOCKET NO.: T-03608A-98-0442

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