

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

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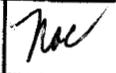
DATE: June 12, 2001

Arizona Corporation Commission
DOCKETED CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO: T-03949A-00-0835

JUN 12 2001

TO ALL PARTIES:

DOCKETED BY 

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Order on:

TCAST COMMUNICATIONS, 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:

JUNE 22, 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:

JUNE 26 AND JUNE 27, 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
TCAST COMMUNICATIONS, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD INTRASTATE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICE

DOCKET NO. T-03949A-00-0835

DECISION NO. _____

ORDER

10 Open Meeting
June 26 and 27, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 **DISCUSSION**

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

16 **FINDINGS OF FACT**

17 1. On, October 20, 2000, TCAST Communications, Inc. ("TCAST" or "Applicant") filed
18 with the Arizona Corporation Commission ("Commission") an application for a Certificate of
19 Convenience and Necessity ("Certificate") to provide competitive resold interexchange
20 telecommunications services, except local exchange services, within the State of Arizona.

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

24 3. Applicant is a S corporation domiciled in California, authorized to do business in
25 Arizona since June of 2000.

26 4. Applicant is a switchless reseller, which purchases telecommunications services from
27 a variety of carriers.

28 5. On June 12, 2001, Applicant filed Affidavits of Publication indicating compliance

1 with the Commission's notice requirements.

2 6. On January 24, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report recommending approval of the application with some conditions.

4 7. In its Staff Report, Staff stated that TCAST provided financial statements for the
5 period ended December 31, 1999. These financial statements list assets of \$2.1 million, negative
6 equity of (\$615,067), and a net income of \$84,307; based on revenues of \$7.3 million. Based on the
7 foregoing, Staff believes that Applicant lacks adequate financial resources to be allowed to charge
8 customers any prepayments, advances, or deposits without either establishing an escrow account or
9 posting a surety bond to cover such prepayments, advances, or deposits.

10 8. The Staff Report indicates that TCAST does not charge its customers for any
11 prepayments, advances or deposits. If at some future date, the Applicant wants to charge customers
12 any prepayments, advances or deposits, it must file information with the Commission that
13 demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff will review the
14 information and the Commission will make a determination concerning the Applicant's financial
15 viability and whether customer prepayments, advances or deposits should be allowed. Additionally,
16 Staff believes that if the Applicant experiences financial difficulty, there should be minimal impact to
17 its customers. Customers are able to dial another reseller or facilities-based provider to switch to
18 another company.

19 9. Staff recommended approval of the application subject to the following conditions,
20 that:

21 (a) The Applicant should be ordered to comply with all Commission rules, orders,
22 and other requirements relevant to the provision of intrastate telecommunications
23 service;

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

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

 (d) The Applicant should be ordered to maintain on file with the Commission all

current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and 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;

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

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

(h) The Applicant file its tariffs within 30 days of an Order in this matter, and in accordance with the Decision;

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

(j) The Applicant's intrastate interexchange service offerings should be classified as competitive;

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

(l) In the event that the Applicant states only one rate in its proposed tariff for a 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.

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

11. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set.

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

13. On October 26, 2000, the Commission filed a Petition for Review to the Supreme

1 Court.

2 14. On February 16, 2001, the Commission's Petition was granted.

3 **CONCLUSIONS OF LAW**

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

6 2. The Commission has jurisdiction over Applicant and the subject matter of the
7 application.

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

9 4. Applicant's provision of resold interexchange telecommunications services is in the
10 public interest.

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

13 6. Staff's recommendations in Findings of Fact No. 7, 8 and 9 are reasonable and should
14 be adopted.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of TCAST Communications, Inc. for a
17 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
18 telecommunications services, except local exchange services, is hereby granted, except that TCAST
19 Communications, Inc. shall not be authorized to charge customers any prepayments, advances, or
20 deposits. In the future, if TCAST Communications, Inc. desires to initiate such charges, it must file
21 information with the Commission that demonstrates TCAST Communications, Inc.'s financial
22 viability. Staff shall review the information provided and file its recommendation concerning the
23 Applicant's financial viability and/or the necessity of obtaining a surety bond within thirty (30) days
24 of receipt of the financial information, for Commission approval.

25 IT IS FURTHER ORDERED that TCAST Communications, Inc. shall file the following fair
26 value rate base ("FVRB") information within 18 months of the date that it first provides service. The
27 FVRB shall include a dollar amount representing the total revenue for the first twelve months of
28 telecommunications service provided to Arizona customers by TCAST Communications, Inc.

1 following certification, adjusted to reflect the maximum rates TCAST Communications, Inc. requests
2 in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all
3 services offered times the maximum charge per unit. TCAST Communications, Inc. shall also file
4 FVRB information detailing the total actual operating expenses for the first twelve months of
5 telecommunications service provided to Arizona customers by TCAST Communications, Inc.
6 following certification. TCAST Communications, Inc. shall also file FVRB information which
7 includes a description and value of all assets, including plant, equipment, and office supplies, to be
8 used to provide telecommunications service to Arizona customers for the first twelve months
9 following TCAST Communications, Inc.'s certification.

10 IT IS FURTHER ORDERED that TCAST Communications, Inc. shall comply with Staff's
11 recommendations as set forth in Findings of Fact No. 9.

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

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

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

17
18
19 CHAIRMAN

COMMISSIONER

COMMISSIONER

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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 PD:dp

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SERVICE LIST FOR: TCAST COMMUNICATIONS, INC.

DOCKET NO.: T-03949A-00-0835

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