

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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B. C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

2001 JUN 11 A 10: 24

DATE: JUNE 11, 2001
DOCKET NO: T-03942A-00-0778

AZ CORP COMMISSION
DOCUMENT CONTROL

TO ALL PARTIES:

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

COMTEL NETWORK, 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 **4:00 p.m.** on or before:

JUNE 20, 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, 2001 AND JUNE 27, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission
DOCKETED

JUN 11 2001

DOCKETED BY

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
COMTEL NETWORK, LLC FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
PROVIDE COMPETITIVE RESOLD
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES, EXCEPT LOCAL EXCHANGE
SERVICES.

DOCKET NO. T-03942A-00-0778

DECISION NO. _____

ORDER

Open Meeting
June 26 and 27, 2001
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On October 3, 2000 Comtel Network, LLC ("Applicant" or "Comtel") filed with Docket Control of the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. Applicant is a California corporation, authorized to do business in Arizona since 2000.

3. Applicant is a switchless reseller, which purchases telecommunications services from a variety of carriers.

4. 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.

5. On January 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter. Staff stated that Comtel has provided the financial statements for the year ending three months ending March 31, 2000. These financial statements list assets of \$1.4 million,

1 negative total equity of \$377,992, and a net income of \$28,558. Based on the foregoing, Staff
2 believes that the Applicant lacks sufficient financial resources to be allowed to charge customers any
3 prepayments, advances, or deposits without either establishing an escrow account or posting a surety
4 bond to cover such payments. However, Comtel has stated in its application that it does not
5 currently, and will not in the future, charge its customers for any prepayments, advances, or deposits.

6 6. Staff recommended approval of the application subject to the following:

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

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

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

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

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

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

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

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

26 (i) If at some future date, the Applicant wants to charge any prepayments,
27 advances, or deposits, it must file information with the Commission that demonstrates
28 the Applicant's financial viability. Upon receipt of such filing, Staff will review the
information and the Commission will make a determination concerning the
Applicant's financial viability and whether customer prepayments, advances, or
deposits should be allowed;

(j) The Applicant's interexchange service offerings should be classified as
competitive pursuant to Commission rules;

1 (k) The rates proposed by the Applicant in its most recently filed tariffs should be
2 approved on an interim basis. The maximum rates for these services should be the
3 maximum rates proposed by the Applicant in its tariffs. The minimum rates for the
4 Applicant's competitive services should be the Applicant's total service long run
5 incremental costs of providing those services;

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

9 (m) The Applicant should be ordered to notify the Commission immediately upon
10 changes to the Applicant's address or telephone number.

11 7. Staff further recommended approval of Comtel's application subject to the following
12 conditions:

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

15 (b) That the Applicant file in this Docket, within 18 months of the date it first
16 provides service following certification, sufficient information for Staff
17 analysis and recommendation for a fair value finding, as well as for an analysis
18 and recommendation for permanent tariff approval. This information must
19 include, at a minimum, the following:

20 1. A dollar amount representing the total revenue for the first twelve months
21 of telecommunications service provided to Arizona customers by Comtel
22 following certification, adjusted to reflect the maximum rates that the
23 Applicant has requested in its tariff. This adjusted total revenue figure
24 could be calculated as the number of units sold for all services offered
25 times the maximum charge per unit.

26 2. The total actual operating expenses for the first twelve months of
27 telecommunications service provided to Arizona customers by the
28 Applicant following certification.

29 3. The value of all assets, listed by major category, including a description of
30 the assets, used for the first twelve months of telecommunications services
31 provided to Arizona customers by the Applicant following certification.
32 Assets are not limited to plant and equipment. Items such as office
33 equipment and office supplies should be included in this list.

34 (c) Comtel's failure to meet the condition to timely file sufficient information for a
35 fair value finding and analysis and recommendation of permanent tariffs shall
36 result in the expiration of the Certificate of Convenience and Necessity and of
37 the tariffs.

38 8. The Staff Report stated that Applicant has no market power and the reasonableness of

1 its rates would be evaluated in a market with numerous competitors.

2 9. On January 16, 2001, Comtel filed Affidavits of Publication indicating compliance
3 with the Commission's notice requirements.

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

8 11. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
9 Supreme Court.

10 12. On February 13, 2001, the Commission's Petition was granted.

11 CONCLUSIONS OF LAW

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

14 2. The Commission has jurisdiction over Applicant and the subject matter of the
15 application.

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

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

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

21 6. Staff's recommendations in Findings of Fact Nos. 6 and 7 are reasonable and should
22 be adopted.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of Comtel Network, LLC for a
25 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
26 telecommunications services, except local exchange services, shall be and the same is hereby granted,
27 except that Comtel Network, LLC shall not be authorized to charge customers any prepayments,
28 advances, or deposits. In the future, if Comtel Network, LLC desires to initiate such charges, it must

1 file information with the Commission that demonstrates the Applicant's financial viability. Staff
2 shall review the information provided and file its recommendation concerning financial viability
3 and/or the necessity of obtaining a surety bond within thirty (30) days of receipt of the financial
4 information, for Commission approval.

5 IT IS FURTHER ORDERED that Comtel Network, LLC shall comply with the Staff
6 recommendations set forth in Findings of Fact Nos. 6 and 7.

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

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have 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.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
SG:dap

1 SERVICE LIST FOR: COMTEL NETWORK, LLC

2 DOCKET NO.: T-03942A-00-0778

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4 Monica Borne
5 Nowalsky, Bronston, & Gothard
6 3500 North Causeway Boulevard, Suite 1442
7 Metairie, Louisiana 70002

8 N. Patrick Martin, Manager/Member
9 Comtel Network, LLC
10 670 East Bullard, Suite 103
11 Fresno, CA 93710

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

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

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