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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION DOCKETED

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DOCKETED BY JM

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
2ND CENTURY COMMUNICATIONS, INC. FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE FACILITIES-BASED
AND RESOLD LOCAL EXCHANGE AND
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES AND
PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES

DOCKET NO. T-03827A-00-0038

DECISION NO. 63138

OPINION AND ORDER

DATE OF HEARING: September 14, 2000
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
APPEARANCES: Mr. Michael W. Patten, BROWN & BAIN, P.A., on behalf of 2nd Century Communications, Inc.;
Mr. Robert Metli, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

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

FINDINGS OF FACT

- 1. 2nd Century Communications, Inc. ("Applicant" or "2nd Century") is a Delaware corporation, authorized to do business in Arizona since 1999.
2. On January 18, 2000, 2nd Century submitted to Docket Control of the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based and resold local exchange and resold interexchange telecommunications services in Arizona.
3. On April 24, 2000, Applicant filed Affidavits of Publication indicating that 2nd Century published notice of the application.



1 4. On August 15, 2000, the Commission's Utilities Division Staff ("Staff") filed its
2 Report, which recommended approval of the application and included a number of additional
3 recommendations.

4 5. Pursuant to the August 22, 2000 Procedural Order, a hearing was held on September
5 14, 2000, and Applicant and Staff presented evidence.

6 6. Qwest Corporation and 2nd Century have reached an interconnection agreement.

7 7. The management of 2nd Century has many years of experience in the
8 telecommunications industry.

9 8. Applicant has the technical capability to provide the services that are proposed in its
10 application.

11 9. Currently there are several incumbent providers of local exchange and interexchange
12 services in the service territory requested by Applicant, and at least twelve other entities have been
13 authorized to provide competitive local exchange services in all or portions of that territory.

14 10. It is appropriate to classify all of Applicant's authorized services as competitive.

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

17 12. According to Staff, 2nd Century has submitted financial statements from January 12,
18 2000. Those financial statements indicated that the Company had total assets of \$22.49 million, total
19 liabilities of \$3.49 million, and total equity of \$19.0 million. 2nd Century also included verification
20 of a \$30.0 million loan. Based on the financial information provided, Staff believes that 2nd Century
21 lacks sufficient financial strength to offer telecommunications services in Arizona absent the
22 procurement of a performance bond.

23 13. Staff recommended that 2nd Century's application for a Certificate to provide
24 competitive facilities-based and resold local exchange and interexchange telecommunications
25 services be granted subject to the following conditions:

- 26 (a) That 2nd Century be required to abide by the additional financial requirements
27 of the Staff Report which require the Applicant to procure a performance bond
28 equal to a minimum of 120 days intrastate revenue as well as any prepayments
or deposits collected from the Company's customers;

- 1 (b) That 2nd Century be required to file its proposed tariffs within 30 days of an
2 Order in this matter, and in accordance with the Decision;
- 3 (c) That, unless it provides services solely through the use of its own facilities, 2nd
4 Century procure an Interconnection Agreement before being allowed to offer
5 local exchange service;
- 6 (d) That 2nd Century file with the Commission its plan to have its customers'
7 telephone numbers included in the incumbent's Directories and Directory
8 Assistance databases within 30 days of an Order in this matter;
- 9 (e) That 2nd Century pursue permanent number portability arrangements with
10 other LECs pursuant to Commission rules, federal laws, and federal rules;
- 11 (f) That 2nd Century agree to abide by and participate in the AUSF mechanism
12 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-
13 95-0498);
- 14 (g) That 2nd Century abide by the quality of service standards that were approved
15 by the Commission for USWC in Docket No. T-01051B-93-0183;
- 16 (h) That in areas where 2nd Century is the sole provider of local exchange service
17 facilities, 2nd Century provide customers with access to alternative providers
18 of service pursuant to the provisions of Commission rules, federal laws, and
19 federal rules;
- 20 (i) That 2nd Century be required to certify, through the 911 service provider in the
21 area in which it intends to provide service, that all issues associated with the
22 provision of 911 service have been resolved with the emergency service
23 providers within 30 days of an Order in this matter;
- 24 (j) That 2nd Century be required to abide by all the Commission decisions and
25 policies regarding CLASS services;
- 26 (k) That 2nd Century provide 2-PIC equal access;
- 27 (l) That 2nd Century be required to certify that all notification requirements have
28 been completed prior to a final determination in this proceeding;
- (m) That 2nd Century be required to notify the Commission immediately upon
changes to 2nd Century's address or telephone number; and,
- (n) That 2nd Century be required to abide by all Commission rules and
regulations, including the following recommendations:
1. 2nd Century shall comply with all Commission rules, orders, and other
requirements relevant to the provision of intrastate telecommunications
service;
 2. 2nd Century shall maintain its accounts and records as required by the
Commission;
 3. 2nd Century shall file with the Commission all financial and other reports
that the Commission may require, and in a form and at such times as the
Commission may designate;

- 1 4. 2nd Century shall maintain on file with the Commission all current tariffs
2 and rates, and any service standards that the Commission may require;
- 3 5. 2nd Century shall cooperate with Commission investigations of customer
4 complaints;
- 5 6. 2nd Century shall participate in and contribute to a universal service fund,
6 as required by the Commission; and,
- 7 7. failure by 2nd Century to comply with any of the above conditions may
8 result in rescission of its Certificate of Convenience and Necessity.

9 14. At the hearing, 2nd Century agreed to abide by Staff's recommendations with the
10 exception of recommendation 13(b). 2nd Century would prefer to file its tariff 30 days prior to
11 offering service in Arizona.

12 15. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
13 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
14 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
15 public service corporations in Arizona prior to setting their rates and charges." Although the
16 Opinion will more than likely be appealed to the Arizona Supreme Court, we are going to require
17 FVRB information at this time to insure compliance with the Constitution should the ultimate
18 decision of the Supreme Court affirm the Court's interpretation of Section 14. We also are concerned
19 that the cost and complexity of FVRB determinations must not offend the Telecommunications Act
20 of 1996.

21 **CONCLUSIONS OF LAW**

- 22 1. Applicant is a public service corporation within the meaning of Article XV of the
23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 24 2. The Commission has jurisdiction over Applicant and the subject matter of the
25 application.
- 26 3. Notice of the application was given in accordance with the law.
- 27 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
28 Certificate to provide competitive telecommunications services.
5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised

1 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
2 in its application.

3 6. With the conditions stated below, 2nd Century is a fit and proper entity to receive a
4 Certificate authorizing it to provide competitive facilities-based and resold local exchange and
5 interexchange telecommunications services in Arizona.

6 7. The telecommunications services that the Applicant intends to provide are competitive
7 within Arizona.

8 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
9 it is just and reasonable and in the public interest for Applicant to establish rates and charges which
10 are not less than the Applicant's total service long-run incremental costs of providing the competitive
11 services approved herein.

12 9. Staff's recommendations in Findings of Fact No. 13 are reasonable and should be
13 adopted, with the exception of recommendation (b) regarding the timing of the filing of 2nd
14 Century's tariffs.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the Application of 2nd Century Communications, Inc.
17 for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based
18 and resold local exchange and interexchange telecommunications services in Arizona shall be, and is
19 hereby, granted, as conditioned below.

20 IT IS FURTHER ORDERED that prior to providing service, 2nd Century Communications,
21 Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact No. 13 with the
22 exception of the tariff filing time set forth in recommendation (b). 2nd Century shall file its tariffs
23 with the Commission at least 30 days prior to providing service.

24 IT IS FURTHER ORDERED that 2nd Century shall file its proposed FVRB at least 90 days
25 prior to providing service (pursuant to A.A.C. R14-2-103(B), this may be the same as original cost
26 rate base). The FVRB shall include the value of all plant and equipment currently held by the
27 Company and intended to be used to provide telecommunications services to Arizona customers. In
28

1 doing so, 2nd Century may use any reasonable means of asset allocation, direct assignment
2 combination thereof.

3 IT IS FURTHER ORDERED that 2nd Century shall file a description of all plant and
4 equipment currently held by the Company and intended to be used to provide telecommunications
5 services to Arizona customers, including their cost and location, 90 days prior to providing service.

6 IT IS FURTHER ORDERED that 2nd Century shall file information demonstrating how the
7 value of its plant and equipment (both current and projected) is related to its total service long-run
8 incremental costs at least 90 days prior to providing service (such demonstration must include the
9 amount of depreciation expense and capital carrying costs related to the FVRB which has been
10 incorporated into the long-run incremental costs).

11 IT IS FURTHER ORDERED that for all maximum rates and charges of 2nd Century which
12 are higher than those of the incumbent local exchange carrier ("ILEC") for the same regulated
13 services, 2nd Century must demonstrate that such rates and charges are not unreasonable, and
14 constitute a fair rate of return on FVRB (if there is more than one ILEC in your proposed serv.
15 area, use Qwest Corporation as a surrogate ILEC for the entire state).

16 IT IS FURTHER ORDERED that Staff shall review the FVRB information filed and ascertain
17 that 2nd Century is utilizing the appropriate amount of depreciation and capital carrying costs in
18 determining its total service long-run incremental costs.

19 IT IS FURTHER ORDERED that Staff shall file disagreements, if any, with the proposed
20 FVRB and/or rates and charges, within 30 days of 2nd Century Communications, Inc. filing its
21 FVRB information.

22 IT IS FURTHER ORDERED that if there are any disagreements with the proposed FVRB
23 and/or rates and charges, the CC&N will be stayed pending resolution of that matter.

24 IT IS FURTHER ORDERED that 2nd Century Communications, Inc. shall procure a
25 performance bond equal to 120 days intrastate telecommunications revenue as well as any
26 prepayments, advances, or deposits. If in the future, 2nd Century desires to discontinue the
27 performance bond, or begin charging its customers prepayments, advances, or deposits, it must f.
28 information with Staff that demonstrates 2nd Century's financial viability. Staff will then review the

1 information and provide 2nd Century its decision concerning financial viability within 30 days of
2 receipt of the information.

3 IT IS FURTHER ORDERED that 2nd Century Communications, Inc. shall file proof of said
4 performance bond with the Utilities Division Director at least 30 days prior to the provision of
5 service.

6 IT IS FURTHER ORDERED that if 2nd Century Communications, Inc. desires to discontinue
7 service, it must file an application with the Commission and notify each of its customers and the
8 Commission 60 days prior to filing said application. Failure to meet this requirement will result in
9 the forfeiture of 2nd Century's performance bond.

10 IT IS FURTHER ORDERED that 2nd Century shall notify Staff, in writing, within 10 days
11 after the commencement of service.

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

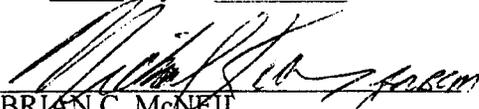
13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

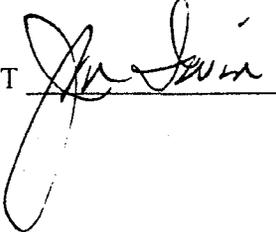
14 
15 CHAIRMAN

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15 COMMISSIONER

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15 COMMISSIONER

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18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Secretary of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this 16th day of NOVEMBER, 2000.

21 
22 BRIAN C. McNEIL
23 EXECUTIVE SECRETARY

23
24 DISSENT 
25 SG:bbs
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28

1 SERVICE LIST FOR: 2ND CENTURY COMMUNICATIONS, INC.

2 DOCKET NO.: T-03827A-00-0038

3
4 Michael W. Patten
5 BROWN & BAIN, P.A.
6 Post Office Box 400
7 Phoenix, Arizona 85001-0400
8 Attorneys for 2nd Century Communications, Inc.

9
10 Lyn Farmer, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15
16 Deborah Scott, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

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