



0000030377

BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission
DOCKETED

AUG 06 2001

DOCKETED BY	<i>sd</i>
-------------	-----------

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF THE APPLICATION OF
7 NETWORK OPERATOR SERVICES, INC. FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES AND
ALTERNATIVE OPERATOR SERVICES,
EXCEPT LOCAL EXCHANGE SERVICES.

DOCKET NO. T-02679A-92-0190

DECISION NO. 63906

OPINION AND ORDER

10 DATE OF HEARING: June 19, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
13 APPEARANCES: Mr. Michael W. Patten, ROSKA HEYMAN AND
14 DEWULF, PLC on behalf of Network Operator
15 Services, Inc.;
16 Mr. Devinti Williams, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

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:

FINDINGS OF FACT

- 21 1. Network Operator Services, Inc. ("NOS" or "Applicant") is a Texas corporation
22 authorized to do business in Arizona since 1992.
- 23 2. On July 7, 1992, NOS filed with Docket Control of the Commission an application for
24 a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold
25 interexchange telecommunications services and alternative operator services, except local exchange
26 services, within the State of Arizona.
- 27 3. On May 11, 2000, NOS filed updated tariffs.
- 28 4. On October 30, 2000, NOS filed updated financial statements.

1 5. On March 20, 2001, Commission Staff ("Staff") filed a Staff Report recommending
2 approval of NOS's application subject to a number of conditions.

3 6. On April 3, 2001, a Procedural Order was issued scheduling the matter for hearing on
4 June 19, 2001.

5 7. On May 1, 2001, NOS filed an Affidavit of Publication indicating compliance with the
6 Commission's notice requirements.

7 8. Pursuant to the Commission's April 3, 2001 Procedural Order, a hearing was held on
8 June 19, 2001, and NOS and Staff presented evidence.

9 9. The management of NOS has many years of experience in the telecommunications
10 industry.

11 10. NOS has the technical capability to provide the services that are proposed in its
12 application.

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

16 12. It is appropriate to classify all of NOS's authorized services as competitive.

17 13. The Staff Report stated that NOS has no market power and the reasonableness of its
18 rates would be evaluated in a market with numerous competitors.

19 14. According to Staff, NOS has submitted its unaudited financial statements for the
20 period ending June 30, 2000. These financial statements list assets of \$11.31 million, shareholders'
21 equity of \$1.19 million, and net income of \$1.91 million on revenue of \$28.60 million. Staff believes
22 that due to the unaudited nature of the financial statements, NOS lacks sufficient financial resources
23 to be allowed to charge customers any prepayments or deposits without posting a performance bond
24 to cover such customer prepayments or deposits. Thus, Staff is recommending that NOS procure a
25 performance bond equal to a minimum of \$10,000. This minimum amount of \$10,000 should be
26 increased if at any time it would be insufficient to cover prepayments or deposits collected from the
27 Applicant's customers. Staff further recommends that proof of the performance bond be docketed
28 within 90 days of the effective date of an order in this matter or 30 days prior to the provision of

1 service, whichever comes first. Staff recommends that, after one year of operation under the
2 Certificate granted by the Commission, the Applicant be allowed to file a request for cancellation of
3 its established performance bond, and that such request be accompanied by information
4 demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review,
5 Staff would forward its recommendation to the Commission for a Decision.

6 15. During the hearing, NOS indicated that it wished to have the bond tied to the reseller
7 portion of the application so that if NOS desires to not provide resold interexchange service and the
8 bond is not posted, the alternative operator services portion of the Certificate will not be affected.

9 16. Staff recommends that NOS' application for a Certificate to provide competitive
10 resold interexchange telecommunications services and alternative operator services, except local
11 exchange services, be granted subject to the conditions that:

- 12 (a) NOS comply with all Commission rules, orders, and other requirements relevant to
13 the provision of intrastate telecommunications service;
- 14 (b) NOS maintain its accounts and records as required by the Commission;
- 15 (c) NOS file all financial and other reports that the Commission may require, and in a
16 form and at such times as the Commission may designate;
- 17 (d) NOS maintain on file with the Commission all current tariffs and rates, and any
18 service standards that the Commission may require;
- 19 (e) NOS comply with the Commission's rules and modify its tariffs to conform to
20 these rules if it is determined that there is a conflict between the Applicant's tariffs
21 and the Commission's rules;
- 22 (f) NOS cooperate with Commission investigations of customer complaints;
- 23 (g) NOS participate in and contribute to a universal service fund, as required by the
24 Commission;
- 25 (h) NOS notify the Commission immediately upon changes to its address or telephone
26 number;
- 27 (i) NOS' intrastate interexchange service offerings should be classified as competitive
28 pursuant to Commission rules;
- (j) The rates proposed by the Applicant in its most recently filed tariffs should be approved on an interim basis. 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 as set forth in Commission rules;

1 (k) In the event that NOS states only one rate in its proposed tariff for a competitive
2 service, the rate stated should be the effective (actual) price to be charged for the
3 service as well as the service's maximum rate; and,

4 (l) NOS certify that all notification requirements have been completed.

5 17. Staff further recommended approval of the application subject to the following
6 conditions:

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

9 (b) That NOS should be required to file in this Docket, within 18 months of the
10 date it first provides service following certification, sufficient information for
11 Staff analysis and recommendation for a fair value finding, as well as for an
12 analysis and recommendation for permanent tariff approval. This information
13 must include, at a minimum, the following:

14 1. A dollar amount representing the total revenue for the first twelve
15 months of telecommunications service provided to Arizona customers
16 by NOS following certification, adjusted to reflect the maximum rates
17 that NOS has requested in its tariff. This adjusted total revenue figure
18 could be calculated as the number of units sold for all services offered
19 times the maximum charge per unit.

20 2. The total actual operating expenses for the first twelve months of
21 telecommunications service provided to Arizona customers by NOS
22 following certification.

23 3. The value of all assets, listed by major category, including a description
24 of the assets, used for the first twelve months of local exchange and
25 interexchange telecommunications services provided to Arizona
26 customers by NOS following certification. Assets are not limited to
27 plant and equipment. Items such as office equipment and office
28 supplies should be included in this list.

(c) NOS' failure to meet the condition to timely file sufficient information for a
fair value finding and analysis and recommendation of permanent tariffs shall
result in the expiration of the Certificate of Convenience and Necessity and of
the tariffs;

18. 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."

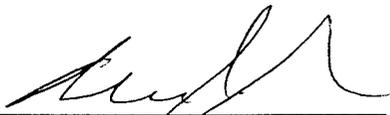
1 conditioned herein.

2 IT IS FURTHER ORDERED that Network Operator Services, Inc. shall comply with all of
3 the Staff recommendations set forth in Findings of Fact Nos. 14, 16, and 17.

4 IT IS FURTHER ORDERED that the \$10,000 bond requirement is tied to the resold
5 interexchange portion of the Certificate. If Network Operator Services, Inc. decides not to offer
6 resold interexchange service, it shall notify the Commission within 90 days of the effective date of
7 this Decision, and it shall not be required to post a \$10,000 bond.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10  _____ 

11 CHAIRMAN COMMISSIONER COMMISSIONER

12

13

14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 10th day of August, 2001.

19 

20 BRIAN C. McNEIL
21 EXECUTIVE SECRETARY

22

23

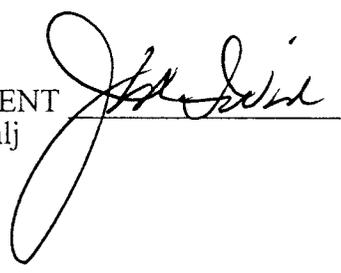
24

25

26

27

28

20 DISSENT 
21 SG:mlj

1 SERVICE LIST FOR: NETWORK OPERATOR SERVICES, INC.

2 DOCKET NO.: T-02679A-92-0190

3

4 Michael W. Patten
5 ROSHKA HEYMAN & DEWULF, PLC
6 Two Arizona Center
7 400 North 5th Street, Suite 100
8 Phoenix, Arizona 85004

9 Lance Steinhart, Attorney at Law
6455 East Johns Crossing, Suite 285
Duluth, Georgia 30097

10 Linda Martin, Vice President
11 Network Operator Services, Inc.
12 P.O. Box 3529
13 Longview, Texas 75606

14 Christopher Kempley, Chief Counsel
15 Devinti Williams
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Deborah Scott, Director
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25

26

27

28

29

30

31

32

33

34