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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

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

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
UKI COMMUNICATIONS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
INTRASTATE TELECOMMUNICATIONS
SERVICES AS A RESELLER EXCEPT LOCAL
EXCHANGE SERVICES

DOCKET NO. T-03840A-00-0116

DECISION NO. 62919

ORDER

Open Meeting
October 4, 2000
Phoenix, Arizona

BY THE COMMISSION:

DISCUSSION

On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of the Arizona Constitution requires the Arizona Corporation Commission ("Commission") to "determine fair value rate base for all public service corporations in Arizona prior to setting their rates and charges." Although that Opinion will more than likely be appealed to the Arizona Supreme Court, we are concerned that the Opinion might create uncertainty in the competitive telecommunications industry during the review period. On September 12, 2000, the Commission ordered the Hearing Division to open a new generic docket to obtain comments on procedures to insure compliance with the Constitution should the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. The Commission also expressed concerns that the cost and complexity of FVRB determinations must not offend the Telecommunications Act of 1996.

Based on the above, we will approve the application of UKI Communications, Inc. ("Applicant") at this time with the understanding that it may subsequently have to be amended to comply with the law after the exhaustion of all appeals.

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

3 **FINDINGS OF FACT**

4 1. On February 17, 2000, Applicant filed with Docket Control of the Commission an
5 application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
6 intrastate telecommunications services as a reseller, except local exchange services, within the State
7 of Arizona.

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

11 3. Applicant is a Nevada corporation authorized to do business in Arizona since 1999.

12 4. Applicant is a switchless reseller, which purchases telecommunications services from
13 MCI and Sprint.

14 5. On June 5, 2000, the Applicant filed affidavits indicating that it published notice of its
15 filing in all counties where service is to be provided.

16 6. On August 15, 2000, the Commissions Utilities Division Staff ("Staff") filed a Staff
17 Report.

18 7. In the Staff Report, Staff stated that the Applicant provided its financial statements for
19 the year ended December 31, 1999. These financial statements list assets of \$65,968, negative
20 retained earnings of \$64,031, and negative shareholders' equity of \$59,031. Based on the foregoing,
21 Staff believes that Applicant lacks adequate financial resources to be allowed to charge customers
22 any prepayments, advances or deposits without establishing an escrow account or posting a surety
23 bond. Applicant filed a letter on February 25, 2000 stating it does not now and will not in the future
24 collect prepayments or deposits from its customers. Staff believes that if the Applicant experiences
25 financial difficulty, there should be minimal impact to its customers. Customers are able to dial
26 another reseller or facilities-based provider to switch to another company.

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

1 9. Staff recommended that Applicant be ordered to:

2 (a) Comply with all Commission rules, orders and other requirements relevant to
3 the provision of intrastate telecommunications services;

4 (b) Maintain its accounts and records as required by the Commission;

5 (c) File with the Commission all financial and other reports that the Commission
6 may require, and in a form and at such times as the Commission may designate;

7 (d) Maintain on file with the Commission all current tariffs and rates, and any
8 service standards that the Commission may require;

9 (e) Comply with the Commission's rules and modify its tariffs to conform to these
10 rules if it is determined that there is a conflict between the Company's tariffs and the
11 Commission's rules;

12 (f) Cooperate with Commission investigations of customer complaints;

13 (g) Participate in and contribute to a universal service fund, as required by the
14 Commission;

15 (h) File its tariffs within 30 days of an Order in this matter, and in accordance with
16 the Decision; and;

17 (i) Notify the Commission immediately upon changes to the Applicant's address
18 or telephone number.

19 10. Staff further recommends:

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

26 (b) The Applicant's toll service offerings should be classified as competitive
27 pursuant to A.A.C. R14-2-1108;

28 (c) 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 tariffs. The minimum
rates for the Applicant's competitive services should be the Applicant's long run
incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(d) In the event that the Applicant states only one rate in its tariff for a competitive

1 service, the rate stated should be the effective (actual) price to be charged for the
2 service as well as the service's maximum rate;

3 (e) Applicant's application be approved without a hearing pursuant to A.R.S. §40-
4 282.

5 11. By Procedural Order dated August 22, 2000, the Commission set a deadline of
6 September 15, 2000, for filing exceptions to the Staff Report; requesting that a hearing be set; or
7 requesting intervention as interested parties.

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

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

14 14. Although the Commission believes that the law is not settled on this issue, Applicant
15 should have the opportunity to submit fair value information, if it so chooses.

16 15. On September 12, 2000, the Commission ordered a Generic Docket to be opened to
17 take comments from any interested parties concerning any procedures that should be adopted as a
18 result of the Court's Decision.

18 CONCLUSIONS OF LAW

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

21 2. The Commission has jurisdiction over Applicant and the subject matter of the
22 application.

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

24 ORDER

25 IT IS THEREFORE ORDERED that the application for UKI Communications, Inc. for a
26 Certificate of Convenience and Necessity for authority to provide competitive intrastate
27 telecommunications services, except local exchange services, as a reseller shall be and the same is
28 hereby granted, except that UKI Communications, Inc. shall not be authorized to charge customers

1 any prepayments, advances, or deposits. In the future, if UKI Communications, Inc. desires to
2 initiate such charges, it must file information with the Commission that demonstrates the Applicant's
3 financial viability or establish an escrow account equal to the amount of any prepayments, advances
4 or deposits.

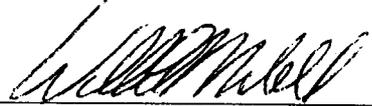
5 IT IS FURTHER ORDERED that UKI Communications, Inc. shall comply with the Staff
6 recommendations set forth in Findings of Fact Nos. 9 and 10.

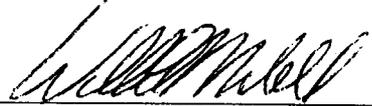
7 IT IS FURTHER ORDERED that this docket shall remain open for a period of 60 days in
8 order for UKI Communications, Inc. to file fair value information, if it so chooses.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

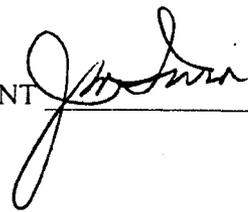
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13 CHAIRMAN

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13 COMMISSIONER

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13 COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 14th day of October, 2000.

18
19 
20 BRIAN C. McNEIL
21 EXECUTIVE SECRETARY

21 DISSENT 
22 AG:bs

1 SERVICE LIST FOR: UKI COMMUNICATIONS, INC.

2 DOCKET NO.: T-03840A-00-0116

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