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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

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

OCT 10 2000

DOCKETED BY *CP*

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

DOCKET NO. T-03649A-98-0631

DECISION NO. 62918

ORDER

Open Meeting
October 4, 2000
Phoenix, Arizona

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:

DISCUSSION

On August 29, 2000, the 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 Commission to "determine fair value rate base ("FVRB") 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 INET Interactive Network System, Inc. ("INET" or "Applicant") at this time with the understanding that it may subsequently have to be

1 amended to comply with the law after the exhaustion of all appeals.

2 **FINDINGS OF FACT**

3 1. On October 30, 1999, INET filed with Docket Control of the Arizona Corporation
4 Commission ("Commission") an application for a Certificate of Convenience and Necessity
5 ("Certificate") to provide competitive intrastate telecommunications services as a reseller, except
6 local exchange services, within the State of Arizona.

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

10 3. Applicant is a California corporation, authorized to do business in Arizona since 1998.

11 4. Applicant is a switchless reseller, which purchases telecommunications services from
12 various telecommunications companies.

13 5. On June 22, 2000, INET filed Affidavits of Publication indicating compliance with
14 Commission publication requirements.

15 6. On August 15, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff
16 Report in this matter.

17 7. In the Staff Report, Staff stated that the Applicant provided the financial statements
18 for the three months ended March 31, 2000. These financial statements indicate that INET had total
19 assets of \$9.46 million, an accumulated deficit of \$5.55 million, and a net loss of \$4.68 million on
20 sales of \$11.36 million. Based on the foregoing, Staff believes that the Applicant lacks sufficient
21 financial resources to be allowed to charge customers any prepayments, advances, or deposits without
22 either establishing an escrow account or posting a surety bond to cover such customer prepayments,
23 advances, or deposits.

24 8. In its application, INET stated that it does not currently, and will not in the future,
25 charge its customers for any prepayments, advances, or deposits.

26 9. Staff believes that if the Applicant experiences financial difficulty, there should be
27 minimal impact to its customers. Customers are able to dial another reseller or facilities-based
28 provider to switch to another company.

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

3 11. Staff recommended that:

4 (a) the Applicant comply with all Commission rules, orders, and other
5 requirements relevant to the provision of intrastate telecommunications service;

6 (b) the Applicant maintain its accounts and records as required by the
7 Commission;

8 (c) the Applicant file with the Commission all financial and other reports that the
9 Commission may require, and in a form and at such times as the Commission may
10 designate;

11 (d) the Applicant maintain on file with the Commission all current tariffs and
12 rates, and any service standards that the Commission may require;

13 (e) the Applicant comply with the Commission's rules and modify its tariffs to
14 conform to these rules if it is determined that there is a conflict between the
15 Company's tariffs and the Commission's rules;

16 (f) the Applicant cooperate with Commission investigations of customer
17 complaints;

18 (g) the Applicant participate in and contribute to a universal service fund, as
19 required by the Commission;

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

22 (i) the Applicant notify the Commission immediately upon changes to the
23 Applicant's address or telephone number;

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

(k) the Applicant's intrastate toll service offerings should be classified as
competitive pursuant to A.A.C. R14-2-1108;

(l) 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 tariffs. The minimum
rates for 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.

(m) in the event the Applicant states only one rate in its 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; and

1 (n) the Applicant's application for a Certificate should be approved without a hearing;

2 12. By Procedural Order dated August 23, 2000, the Commission set a deadline of
3 September 12, 2000, for filing exceptions to the Staff Report; requesting that a hearing be set; or
4 requesting intervention as interested parties.

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

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

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

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

16 **CONCLUSIONS OF LAW**

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

19 2. The Commission has jurisdiction over Applicant and the subject matter of the
20 application.

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

22 4. Applicant's provision of resold telecommunications services is in the public interest.

23 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
24 intrastate telecommunications services, except local exchange services, as a reseller in Arizona.

25 6. Staff's recommendations in Findings of Fact No. 11 are reasonable and should be
26 adopted.

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ORDER

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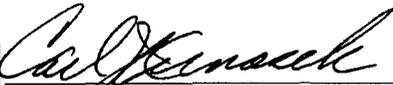
IT IS THEREFORE ORDERED that the Application of INET Interactive Network System, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive intrastate resold telecommunications services, except local exchange services, shall be, and the same is hereby granted, except that INET shall not be authorized to charge customers any prepayments, advances, or deposits.

IT IS FURTHER ORDERED that INET Interactive Network System, Inc. shall comply with the Staff recommendations set forth in Findings of Fact No. 11.

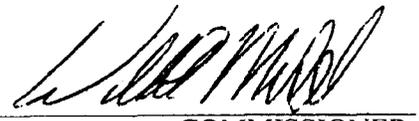
IT IS FURTHER ORDERED that this docket shall remain open for a period of 60 days in order for INET Interactive Network System, Inc. to file fair value information, if it so chooses.

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

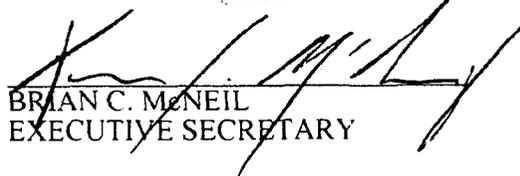
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


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 14th day of October, 2000.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT 
SG:bbs

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SERVICE LIST FOR:

INET INTERACTIVE NETWORK SYSTEM, INC.

DOCKET NO.

DOCKET NO. T-03649A-98-0631

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