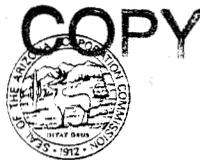


WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: JULY 9, 2001
DOCKET NO: T-03991A-01-0125
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

METROPOLITAN TELECOMMUNICATIONS OF
ARIZONA, INC. dba METTEL
(CC&N/FACILITIES-BASED)

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:

JULY 18, 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:

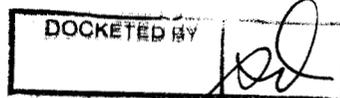
JULY 24, 2001 AND JULY 25, 2001

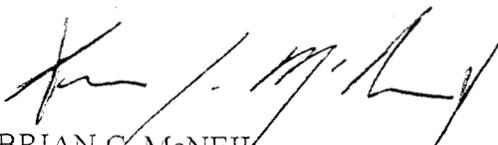
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

JUL 09 2001




BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO. T-03991A-01-0125

6 IN THE MATTER OF THE APPLICATION OF
METROPOLITAN TELECOMMUNICATIONS OF
7 ARIZONA, INC. DBA METTEL FOR A
CERTIFICATE OF CONVENIENCE AND
8 NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
9 EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DECISION NO. _____

OPINION AND ORDER

10
11 DATE OF HEARING: June 21, 2001
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
14 APPEARANCES: Paul R. Michaud, MARTINEZ & CURTIS, P.C., on
behalf of Metropolitan Telecommunications of Arizona,
15 Inc.;
16 Devinti Williams, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
17 Corporation Commission.

18 **BY THE COMMISSION:**

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

21 **FINDINGS OF FACT**

22 1. On February 12, 2001, Metropolitan Telecommunications of Arizona, Inc. dba MetTel
23 ("MetTel" or "Applicant") filed with the Commission an application for a Certificate of Convenience
24 and Necessity ("Certificate") to provide competitive facilities-based and resold local exchange,
25 interexchange, and access telecommunications services in Arizona.

26 2. MetTel is a Delaware corporation, authorized to do business in Arizona. MetTel's
27 parent company is Manhattan Telecommunications Corporation.

28 3. On March 19, 2001, MetTel filed Affidavits of Publication indicating compliance with

1 the Commission's notice requirements.

2 4. On April 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report, which recommended approval of the application and included a number of additional
4 recommendations.

5 5. On April 27, 2001, a Procedural Order was issued setting the matter for hearing on
6 June 21, 2001.

7 6. A hearing was held on June 21, 2001, at which Applicant and Staff presented
8 evidence. At the hearing, Staff made several minor changes to the Staff Report recommendations.

9 7. Qwest and MetTel are in the process of negotiating an interconnection agreement.

10 8. The management of MetTel has many years of experience in the telecommunications
11 industry.

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

14 10. Currently there are several incumbent providers of local exchange, toll, and exchange
15 access services in the service territory requested by Applicant, and numerous other entities have been
16 authorized to provide competitive local exchange services in all or portions of that territory.

17 11. It is appropriate to classify all of Applicant's authorized services as competitive.

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

20 13. According to Staff, MetTel submitted its unaudited financial statements of its parent
21 company for the year ending December 31, 2000. These financial data list assets of \$17.04 million,
22 total capital of negative \$6.68 million, retained earnings of negative \$10.40 million, net income of
23 negative \$10.40 million on revenues of \$47.16 million. Based on this information, Staff believes that
24 MetTel lacks sufficient financial strength to offer the requested telecommunications services in
25 Arizona absent the procurement of a performance bond.

26 14. Staff recommends, as amended, that MetTel's application for a Certificate to provide
27 competitive facilities-based and resold telecommunications services be granted subject to the
28 following conditions:

- 1 (a) unless its provides services solely through the use of its own facilities, MetTel
2 should be ordered to procure an Interconnection Agreement before being
3 allowed to offer local exchange service;
- 4 (b) MetTel should be ordered to file with the Commission, within 30 days of an
5 Order in this matter, its plan to have its customers' telephone numbers included
6 in the incumbent's Directories and Directory Assistance databases;
- 7 (c) MetTel be ordered to pursue permanent number portability arrangements with
8 other LECs pursuant to Commission rules, federal laws and federal rules;
- 9 (d) MetTel be ordered to abide by and participate in the AUSF mechanism
10 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
11 03905A-00-0513E-95-0498);
- 12 (e) Applicant be ordered to abide by the quality of service standards that were
13 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 14 (f) in areas where Applicant is the sole provider of local exchange service
15 facilities, MetTel be ordered to provide customers with access to alternative
16 providers of service pursuant to the provisions of Commission rules, federal
17 laws and federal rules;
- 18 (g) MetTel be ordered to certify, through the 911 service provider in the area in
19 which it intends to provide service, that all issues associated with the provision
20 of 911 service have been resolved with the emergency service providers within
21 30 days of an Order in this matter;
- 22 (h) MetTel be ordered to abide by all the Commission decisions and policies
23 regarding CLASS services;
- 24 (i) MetTel be ordered to provide 2-PIC equal access;
- 25 (j) MetTel be required to certify that all notification requirements have been
26 completed prior to a final determination in this proceeding;
- 27 (k) MetTel be required to notify the Commission immediately upon changes to its
28 address or telephone number;
- (l) MetTel be ordered to comply with all Commission rules, orders, and other
requirements relevant to the provision of intrastate telecommunications
service;
- (m) MetTel be ordered to maintain its accounts and records as required by the
Commission;
- (n) MetTel should be ordered 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;
- (o) MetTel maintain on file with the Commission all current tariffs and rates, and
any service standards that the Commission may require;
- (p) MetTel should be ordered to cooperate with Commission investigations of
customer complaints;

- 1 (q) MetTel be ordered to participate in and contribute to a universal service fund,
2 as required by the Commission; and
- 3 (r) In order to protect MetTel's customers:
- 4 (1) MetTel should be ordered to procure a performance bond equal to
5 \$100,000. The minimum bond amount of \$100,000 should be increased if
6 at any time it would be insufficient to cover prepayments or deposits
7 collected from MetTel's customers;
- 8 (2) that if the Applicant desires to discontinue service, it should file an
9 application with the Commission pursuant to A.A.C. R14-2-1107;
- 10 (3) that the Applicant should be required to notify each of its customers and
11 the Commission 60 days prior to filing an application to discontinue
12 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
13 result in forfeiture of the Applicant's performance bond;
- 14 (4) that proof of the performance bond should be docketed within 90 days of
15 an Order in this matter or 30 days prior to the provision of service,
16 whichever comes first, and must remain in effect; however,
- 17 (5) if, at some time in the future, the Applicant's financial outlook improves,
18 Staff recommends that the Applicant be allowed to file a request for
19 cancellation of its established performance bond. Such request should be
20 accompanied by information demonstrating the Applicant's financial
21 viability. Upon receipt of such filing and after Staff review, Staff will
22 forward its recommendation to the Commission.

23 15. Staff further recommended that MetTel's tariffs be approved on an interim basis
24 subject to the following:

- 25 (a) That MetTel file tariffs in accordance with this Decision within 30 days of an
26 Order in this matter or within 30 days of an Order approving its
27 interconnection agreement, whichever is later;
- 28 (b) That MetTel should be required to file in this Docket, within 18 months of the
date it first provides service following certification, sufficient information for
Staff analysis and recommendation for a fair value finding, as well as for an
analysis and recommendation for permanent tariff approval. This information
must include, at a minimum, the following:
1. A dollar amount representing the total revenue for the first twelve months
of telecommunications service provided to Arizona customers by MetTel
following certification, adjusted to reflect the maximum rates that MetTel
has requested in its tariff. This adjusted total revenue figure could be
calculated as the number of units sold for all services offered times the

1 maximum charge per unit.

2 2. The total actual operating expenses for the first twelve months of
3 telecommunications service provided to Arizona customers by MetTel
4 following certification.

5 3. The value of all assets, listed by major category, used for the first twelve
6 months of telecommunications services provided to Arizona customers by
7 MetTel following certification. Assets are not limited to plant and
8 equipment. Items such as office equipment and office supplies should be
9 included in this list.

10 (c) MetTel's failure to meet the condition to timely file sufficient information for a
11 fair value finding and analysis and recommendation of permanent tariffs
12 should result in the expiration of the Certificate of Convenience and Necessity
13 and of the tariffs.

14 16. At the hearing, MetTel agreed to comply with all of Staff's recommendations.
15 However, the Applicant requested a waiver from the \$100,000 bond requirement or, in the
16 alternative, that the bond not be required until the earlier of 180 days from the effective date of the
17 Order or 30 days prior to the provision of service. Staff opposed the request for waiver of the bond
18 requirement, but does not oppose Applicant's request for extension of submission of the bond for the
19 earlier of 180 days or 30 days prior to commencement of service. The Applicant indicated that it
20 intends to begin operations in Arizona by the first quarter of 2002.

21 17. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
22 in U S West Communications, Inc. vs. Arizona Corporation Commission, 1 CA-CV 98-0672, holding
23 that "the Arizona Constitution requires the Commission to determine fair value rate bases for all
24 public service corporations in Arizona prior to setting their rates and charges."

25 18. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
26 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this
27 time we are going to request FVRB information to insure compliance with the Constitution should
28 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also
are concerned that the cost and complexity of FVRB determinations must not offend the
Telecommunications Act of 1996.

1 IT IS FURTHER ORDERED that Metropolitan Telecommunications of Arizona, Inc shall
2 comply with all of the Staff recommendations set forth in Findings of Fact Nos. 14 and 15, as
3 modified by the recommendation described in Finding of Fact No. 16.

4 IT IS FURTHER ORDERED that Metropolitan Telecommunications of Arizona, Inc. shall
5 procure a performance bond equal to \$100,000 the earlier of 180 days from the effective date of this
6 Order or 30 days prior to the provision of service. The minimum bond amount of \$100,000 shall be
7 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the
8 Applicant's customers.

9 IT IS FURTHER ORDERED that Metropolitan Telecommunications of Arizona, Inc. shall
10 file with the Compliance Section of the Utilities Division a letter indicating the date on which it will
11 begin providing service at least 60 days prior to providing service.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14

15 CHAIRMAN COMMISSIONER COMMISSIONER

16

17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2001.

22

BRIAN C. McNEIL
EXECUTIVE SECRETARY

23

DISSENT _____
DDN:mlj

24

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28

1 SERVICE LIST FOR: METROPOLITAN TELECOMMUNICATIONS

2 DOCKET NO.: T-03991A-01-0125

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4 Paul R. Michaud
5 MARTINEZ & CURTIS, P.C.
6 2712 North Seventh Street
7 Phoenix, AZ 85006-1090
8 Attorneys for Metropolitan Telecommunications of Arizona, Inc.

9 Timothy Berg
10 FENNEMORE CRAIG
11 3003 North Central Avenue, Suite 2600
12 Phoenix, Arizona 85012
13 Attorneys for Qwest Corporation

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

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

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