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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION DOCKETED

AUG 06 2001

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

DOCKETED BY *sd*

8 IN THE MATTER OF THE APPLICATION OF  
9 ENKIDO, INC. FOR A CERTIFICATE OF  
10 CONVENIENCE AND NECESSITY TO PROVIDE  
11 COMPETITIVE FACILITIES-BASED AND  
12 RESOLD LOCAL EXCHANGE, EXCHANGE  
13 ACCESS, AND INTEREXCHANGE  
14 TELECOMMUNICATIONS SERVICES IN  
15 ARIZONA

DOCKET NO. T-03882A-00-0356

DECISION NO. 63929

**OPINION AND ORDER**

10 DATE OF HEARING: May 9, 2001  
11 PLACE OF HEARING: Phoenix, Arizona  
12 ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli  
13 APPEARANCES: Mr. Ali Aliabadi, on behalf of Enkido, Inc.;  
14 Mr., Devinti Williams, Staff Attorney, Legal Division,  
15 on behalf of the Utilities Division of the Arizona  
16 Corporation Commission.

16 **BY THE COMMISSION:**

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

19 **FINDINGS OF FACT**

- 20 1. Enkido, Inc. ("Applicant") is a New Jersey corporation, authorized to do business in  
21 Arizona since 2000.  
22 2. On May 24, 2000, Enkido, Inc. filed with the Arizona Corporation Commission  
23 ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to  
24 provide competitive facilities-based and resold local exchange, exchange access, and interexchange  
25 telecommunications services in Arizona.  
26 3. On January 11, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff  
27 Report, which recommended approval of the application and included a number of additional  
28 recommendations.

1           4.     On April 12, 2001, Applicant filed an Affidavit of Publication indicating that it  
2 published notice of its application in Maricopa County.

3           5.     Pursuant to the Commission's February 20, 2001 Procedural Order, a hearing was held  
4 on May 9, 2001, and Applicant and Staff presented evidence. At the hearing, Enkido indicated that it  
5 needed additional time to respond to Staff's recommendations.

6           6.     Qwest and Enkido, Inc. have not as yet reached an interconnection agreement.

7           7.     The management of Enkido, Inc. 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, toll, and exchange  
12 access services in the service territory requested by Applicant, and at least several other entities have  
13 been 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, Enkido, Inc. submitted its unaudited financial information for the  
18 six months ended June 30, 2000. This financial information lists of assets of \$93.53 million, total  
19 shareholders' equity of \$3.49 million, and positive retained earnings of \$1.16 million.

20          13.    Staff recommended that Enkido, Inc.'s application for a Certificate to provide  
21 competitive facilities-based and resold local exchange, exchange access, and interexchange  
22 telecommunications services be granted subject to the conditions that:

- 23                   (a)    unless its provides services solely through the use of its own facilities,  
24                   Applicant procure an Interconnection Agreement before being allowed to offer  
25                   local exchange service;
- 26                   (b)    Applicant file with the Commission, within 30 days of an Order in this matter,  
27                   its plan to have its customers telephone numbers included in the incumbent's  
28                   Directories and Directory Assistance databases;
- (c)    Applicant pursue permanent number portability arrangements with other LECs  
                 pursuant to Commission rules, federal laws and federal rules;

- 1 (d) Applicant be ordered to abide by and participate in the AUSF mechanism  
2 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-  
00000E-95-0498);
- 3 (e) Applicant abide by the quality of service standards that were approved by the  
4 Commission for USWC in Docket No. T-0151B-93-0183;
- 5 (f) in areas where Applicant is the sole provider of local exchange service  
6 facilities, Enkido, Inc. provide customers with access to alternative providers  
of service pursuant to the provisions of Commission rules, federal laws and  
federal rules;
- 7 (g) Applicant certify, through the 911 service provider in the area in which it  
8 intends to provide service, that all issues associated with the provision of 911  
9 service have been resolved with the emergency service providers within 30  
days of an Order in this matter;
- 10 (h) Applicant be ordered to abide by all the Commission decisions and policies  
regarding CLASS services;
- 11 (i) Applicant be ordered to provide 2-PIC equal access;
- 12 (j) Applicant certify that all notification requirements have been completed prior  
13 to a final determination in this proceeding;
- 14 (k) Applicant notify the Commission immediately upon changes to Enkido, Inc.'s  
address or telephone number;
- 15 (l) Applicant comply with all Commission rules, orders, and other requirements  
16 relevant to the provision of intrastate telecommunications service;
- 17 (m) Applicant maintain its accounts and records as required by the Commission;
- 18 (n) Applicant file with the Commission all financial and other reports that the  
19 Commission may require, and in a form and at such times as the Commission  
may designate;
- 20 (o) Applicant maintain on file with the Commission all current tariffs and rates,  
and any service standards that the Commission may require;
- 21 (p) Applicant cooperate with the Commission investigations of customer  
22 complaints, and;
- 23 (q) Applicant participate in and contribute to a universal service fund, as required  
by the Commission.

24  
25 14. Staff further recommended that Enkido, Inc.'s tariffs be approved on an interim basis  
26 subject to the following:

- 27 (a) That Applicant file conforming tariffs within 30 days of an Order in this  
28 matter, and in accordance with the Decision;

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(b) That Enkido, Inc. 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 Enkido, Inc. following certification, adjusted to reflect the maximum rates that Enkido, Inc. 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 maximum charge per unit.
2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by Enkido, Inc. following certification.
3. The value of all assets, listed by major category, used for the first twelve months of telecommunications services provided to Arizona customers by Enkido, Inc. following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

(b) Enkido, Inc.'s failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs should result in the expiration of the Certificate of Convenience and Necessity and of the tariffs.

15. Staff recommends further that in order to protect the Applicant's customers:

- (a) the Applicant shall procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from the Applicant's customers;
- (b) if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (c) the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
- (d) proof of the performance bond should be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however

1 (e) after one year of operation under the Certificate granted by the Commission,  
2 Staff recommends that the Applicant be allowed to file a request for  
3 cancellation of its established performance bond. Such request should be  
4 accompanied by information demonstrating the Applicant's financial viability.  
5 Upon receipt of such filing and after Staff review, Staff will forward its  
6 recommendation to the Commission.

7 16. On May 11, 2001, Enkido, Inc. filed a request for a waiver of the bond requirement  
8 proposed by Staff.

9 17. On May 31, 2001, Staff filed a response opposing Enkido, Inc.'s request for a waiver  
10 of the bond requirement. Staff indicates that the bond requirement is a Commission policy that is  
11 required of all facilities-based applicants.

12 18. The Commission's policy is to require that all facilities-based local exchange  
13 providers procure a performance bond of \$100,000.

14 19. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion  
15 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of  
16 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all  
17 public service corporations in Arizona prior to setting their rates and charges."

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

#### 24 CONCLUSIONS OF LAW

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

27 2. The Commission has jurisdiction over Applicant and the subject matter of the  
28 application.

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

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a



1 should be docketed within 90 days of the effective date of an order in this matter or 30 days prior to  
2 the provision of service, whichever comes first, and must remain in effect. However, after one year  
3 of operation under the Certificate granted by the Commission, the Applicant shall be allowed to file a  
4 request for cancellation of its established performance bond. Such request should be accompanied by  
5 information demonstrating Enkido, Inc.'s financial viability. Upon receipt of such filing and after  
6 Staff review, Staff will forward its recommendation to the Commission.

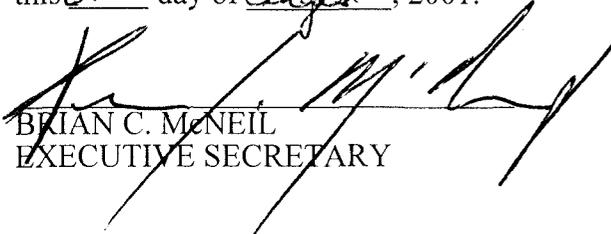
7 IT IS FURTHER ORDERED that Enkido, Inc. shall comply with all of the Staff  
8 recommendations set forth in Findings of Fact Nos. 13, 14, and 15.

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 COMMISSIONER COMMISSIONER  
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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 6th day of August, 2001.

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21 BRIAN C. McNEIL  
22 EXECUTIVE SECRETARY

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21 DISSENT \_\_\_\_\_  
22 SG:

1 SERVICE LIST FOR: ENKIDO, INC.  
2 DOCKET NO.: T-03882A-00-0356

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