



0000030983

Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

1  
2 **CARL J. KUNASEK**  
3 **CHAIRMAN**  
4 **JIM IRVIN**  
5 **COMMISSIONER**  
6 **WILLIAM A. MUNDELL**  
7 **COMMISSIONER**

SEP 18 2000

DOCKETED BY *ad*

8 **IN THE MATTER OF THE APPLICATION OF**  
9 **BROADBAND OFFICE COMMUNICATIONS,**  
10 **INC. FOR A CERTIFICATE OF CONVENIENCE**  
11 **AND NECESSITY TO PROVIDE COMPETITIVE**  
12 **INTRASTATE TELECOMMUNICATIONS**  
13 **SERVICES AS A FACILITIES-BASED**  
14 **PROVIDER AND RESELLER AND PETITION**  
15 **FOR COMPETITIVE CLASSIFICATION OF**  
16 **PROPOSED SERVICES**

DOCKET NO. T-03810A-99-0682

DECISION NO. 62893

**OPINION AND ORDER**

11 **DATE OF HEARING:** August 28, 2000  
12 **PLACE OF HEARING:** Phoenix, Arizona  
13 **ADMINISTRATIVE LAW JUDGE:** Alicia Grantham  
14 **APPEARANCES:** Mr. Michael Hallam, LEWIS AND ROCA, LLP, on  
15 behalf of BroadBand Office Communications, Inc.;  
16 Ms. Teena Wolfe, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

**BY THE COMMISSION:**

**DISCUSSION**

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

1 Based on the above, we will approve the application of BroadBand Office Communicatio  
2 Inc. at this time with the understanding that it may subsequently have to be amended consistent with  
3 the above discussion.

4 \* \* \* \* \*

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

7 **FINDINGS OF FACT**

8 1. BroadBand Office Communications, Inc. ("BroadBand" or "Applicant") is a Delaware  
9 corporation, authorized to do business in Arizona since 1999.

10 2. On November 30, 1999, Applicant filed with the Commission an application for a  
11 Certificate of Convenience and Necessity ("Certificate") to provide competitive intrastate  
12 telecommunications services as a facilities-based provider and reseller in Arizona.

13 3. On January 3, 2000, Qwest Corporation ("Qwest"), formerly U S West  
14 Communications, Inc., filed a Motion for Leave to Intervene, which was granted on January 19,  
15 2000.

16 4. On January 24, 2000, Applicant filed Affidavits of Publication indicating that public  
17 notice of the application was published.

18 5. BroadBand amended its application on May 18, July 12, and July 31, 2000 to include  
19 updated tariff information.

20 6. On July 24, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff  
21 Report, which recommended approval of the application and included a number of additional  
22 recommendations.

23 7. On August 21, 2000, Qwest filed a Motion to Withdraw from this matter.

24 8. Pursuant to the July 26, 2000 Procedural Order, a hearing was held on August 28,  
25 2000, and Applicant and Staff presented evidence.

26 9. Applicant stated at the hearing that it has reached an interconnection agreement with  
27 Qwest, however, it has not been filed and approved by the Commission.

28 10. Staff has determined that the Applicant has the technical and management

1 qualifications in the telecommunications industry sufficient to provide quality service to Arizona  
2 customers.

3 11. Currently there are several incumbent providers of local exchange, toll, and exchange  
4 access services in the service territory requested by Applicant. Applicant will be a new entrant in this  
5 market, and will have to compete with those companies in order to obtain customers.

6 12. It is appropriate to classify all of Applicant's authorized services as competitive.

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

9 14. Applicant submitted financial information of its parent company, BroadBand Office.  
10 BroadBand Office agreed to financially guarantee the operations and activities of BroadBand Office  
11 Communications, Inc. BroadBand Office has assets in excess of \$15 million, and shareholder equity  
12 in excess of \$15 million. Based on the financial information provided, Staff believes that Applicant  
13 lacks sufficient financial strength to offer telecommunications services in Arizona absent the  
14 procurement of a performance bond.

15 15. Staff recommended that BroadBand's application for a Certificate to provide  
16 competitive intrastate telecommunications services be granted subject to the following conditions:

- 17 (a) That Applicant be required to procure a performance bond equal to a minimum  
18 of 120 days intrastate telecommunications revenue, plus the amount of any  
19 prepayments and deposits collected from its customers 30 days prior to the  
20 provision of service;
- 21 (b) That Applicant be required to file its tariffs within 30 days of an Order in this  
22 matter, and in accordance with the Decision;
- 23 (c) That unless it 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 (d) That Applicant file with the Commission its plan to have its customers'  
27 telephone numbers included in the incumbent's Directories and Directory  
28 Assistance databases within 30 days of an Order in this matter;
- (e) That Applicant pursue permanent number portability arrangements with other  
LECs pursuant to Commission rules, federal laws, and federal rules;
- (f) That Applicant agree to abide by and participate in the AUSF mechanism  
instituted in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-  
95-0498);

- 1 (g) That Applicant abide by the quality of service standards that were approved<sup>1</sup>  
the Commission for USWC in Docket No. T-01051B-93-0183;
- 2 (h) That in areas where Applicant is the sole provider of local exchange service  
3 facilities, Applicant will provide customers with access to alternative providers  
4 of service pursuant to the provisions of Commission rules, federal laws, and  
federal rules;
- 5 (i) That Applicant be required to certify, through the 911 service provider in the  
6 area in which it intends to provide service, that all issues associated with the  
provision of 911 service have been resolved with the emergency service  
providers within 30 days of an Order in this matter;
- 7 (j) That Applicant be required to abide by all the Commission decisions and  
8 policies regarding CLASS services;
- 9 (k) That Applicant be required to provide 2-PIC equal access;
- 10 (l) That Applicant be required to inform the Commission immediately upon  
changes to Applicant's address or telephone number; and,
- 11 (m) That Applicant be required to abide by all Commission rules and regulations.

12  
13 16. At the hearing, Applicant agreed to abide by all of Staff's recommendations.

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

18 18. Although the Commission believes that the law is not settled on this issue<sup>1</sup>,  
19 BroadBand Office Communications, Inc. should have the opportunity to submit fair value  
20 information if it so chooses.

21 19. A Generic Docket should be opened to take comments from BroadBand Office  
22 Communications, Inc., industry, and any other interested parties concerning any procedures that  
23 should be adopted as a result of the Court's Decision.

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 <sup>1</sup> The parties have the opportunity to file petitions for review to the Supreme Court.

1 application.

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

3 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
4 Certificate to provide competitive telecommunications services.

5 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised  
6 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
7 in its application.

8 6. With the conditions stated below, Applicant is a fit and proper entity to receive a  
9 Certificate authorizing it to provide competitive facilities-based and resold intrastate  
10 telecommunications services in Arizona.

11 7. The telecommunications services that the Applicant intends to provide within Arizona  
12 are competitive.

13 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
14 it is just and reasonable and in the public interest for Applicant to establish rates and charges which  
15 are not less than the Applicant's total service long-run incremental costs of providing the competitive  
16 services approved herein.

17 9. Staff's recommendations in Findings of Fact No. 15 are reasonable and should be  
18 adopted.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the application of BroadBand Office Communications,  
21 Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-  
22 based and resold intrastate telecommunications services in Arizona shall be, and is hereby, granted,  
23 as conditioned below.

24 IT IS FURTHER ORDERED that BroadBand Office Communications, Inc. shall procure a  
25 performance bond equal to a minimum of 120 days of intrastate telecommunications revenue, plus  
26 the amount of any prepayments and deposits 30 days prior to the provision of service. If after one  
27 year, BroadBand Office Communications, Inc. desires to discontinue the performance bond, it must  
28 file information with Staff that demonstrates it financial viability. Staff will then review the

1 information and provide BroadBand Office Communications, Inc. its decision concerning financial  
2 viability within 30 days of receipt of the information.

3 IT IS FURTHER ORDERED that prior to providing local exchange service, BroadBand  
4 Office Communications, Inc. shall comply with all of the Staff recommendations set forth in Findings  
5 of Fact No. 15.

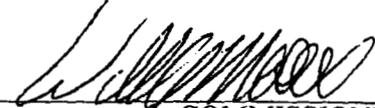
6 IT IS FURTHER ORDERED that this docket shall remain open for a period of 60 days in  
7 order for BroadBand Office Communications, Inc. to file fair value information, if it so chooses.

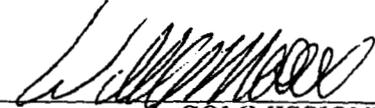
8 IT IS FURTHER ORDERED that a Generic Docket shall be opened, and the Hearing  
9 Division shall issue a Procedural Order outlining the issues to be addressed, including the process for  
10 receiving comments.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

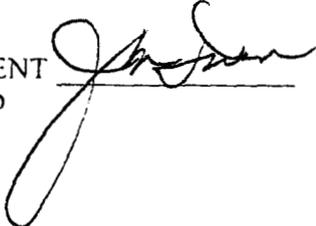
13   
14 CHAIRMAN

13   
14 COMMISSIONER

13   
14 COMMISSIONER

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 18<sup>th</sup> day of SEPT., 2000.

20   
21 BRIAN C. McNEIL  
22 EXECUTIVE SECRETARY

22 DISSENT   
23 AG:dp

1 SERVICE LIST FOR: BROADBAND OFFICE COMMUNICATIONS, INC.

2 DOCKET NO.: T-03810A-99-0682

3

4 Mr. Woody Traylor  
BROADBAND OFFICE COMMUNICATIONS, INC.  
2900 Telestar Ct.  
5 Falls Church, Virginia 22042-1206

6 Thomas H. Campbell  
Michael Hallam  
7 LEWIS AND ROCA  
40 N. Central Avenue  
8 Phoenix, Arizona 85044  
Attorneys for Applicant

9

10 Jeffrey Blumenfeld  
Kristin L. Smith  
BLUMENFELD & COHEN  
11 1625 Massachusetts Avenue, NW, Suite 300  
Washington, DC 20036  
12 Attorneys for Applicant

13 Lyn Farmer, Chief Counsel  
Legal Division  
14 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
15 Phoenix, Arizona 85007

16 Deborah Scott, Director  
Utilities Division  
17 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
18 Phoenix, Arizona 85007

19

20

21

22

23

24

25

26

27

28