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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

APR 28 2000

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

DOCKETED BY 

IN THE MATTER OF THE APPLICATION OF
TESS COMMUNICATIONS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03754A-99-0382

DECISION NO. 62493

OPINION AND ORDER

DATE OF HEARING: March 17, 2000
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Stephen Gibelli
APPEARANCES: M. Andrew Andrade, LAW OFFICES OF M. ANDREW ANDRADE, on behalf of TESS Communications, Inc.; and
Robert J. Metli, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

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:

FINDINGS OF FACT

1. TESS Communications, Inc. ("Applicant" or "TESS") is a Delaware corporation, authorized to do business in Arizona since 1999.
2. On July 12, 1999, TESS filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based and resold local exchange, interexchange, and access telecommunications services in the State of Arizona.
3. On August 23, 1999, U S West Communications, Inc. ("U S WEST") filed a Motion for Leave to Intervene, and was granted intervention on September 7, 1999.
4. On November 24, 1999, the Commission's Utilities Division Staff ("Staff") filed its

1 Staff Report, which recommended approval of the application and included a number of addition
2 recommendations.

3 5. On January 21, 2000, TESS filed a Supplement to its application.

4 6. The Applicant published notice of the application pursuant to A.A.C. R14-2-1104 and
5 R14-2-1105, and filed Affidavits of Notice on January 20, 2000.

6 7. On January 21, 2000, U S WEST filed a motion requesting withdrawal.

7 8. On February 17, 2000, TESS filed a motion to allow it to appear at the scheduled
8 hearing via telephone conference.

9 9. On February 17, 2000, by Procedural Order, U S WEST's request for withdrawal was
10 granted, and TESS's motion to allow it to appear at the hearing telephonically was granted.

11 10. Pursuant to the January 24, 2000 Procedural Order, a hearing was held on March 17,
12 2000, and Applicant and Staff presented evidence.

13 11. The Commission has approved an interconnection agreement between U S WEST and
14 TESS in Decision No. 61983, dated October 8, 1999.

15 12. The management of TESS has many years of experience in the telecommunications
16 industry.

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

19 14. Currently there are several incumbent providers of local exchange, toll, and exchange
20 access services in the service territory requested by Applicant, and at least twelve other entities have
21 been authorized to provide competitive local exchange services in all or portions of that territory.

22 15. It is appropriate to classify all of Applicant's authorized services as competitive.

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

25 17. According to Staff, TESS has submitted financial statements for the three months
26 ending March 31, 1999. These financial statements list total assets of \$4.59 million, total liabilities
27 of \$83,246, and a net income of \$1,265. Additional information shows stockholders equity of \$4.
28 million and total revenue of \$62,385 for the three months ended March 31, 1999.

1 18. At the March 17, 2000 hearing, TESS submitted updated financial statements for the
2 two months ended February 29, 2000. These financials list assets of \$10 million and total liabilities
3 of \$187,000.

4 19. Based on the financial information provided, Staff believes that TESS lacks sufficient
5 financial resources to offer telecommunications services in Arizona. Consequently, Staff
6 recommends that TESS procure a performance bond equal to a minimum of 120 days' intrastate
7 telecommunications revenue, in addition to any prepayments or deposits collected from TESS's
8 customers. The amount of the performance bond must be increased if at any time it would be
9 insufficient to cover 120 days' intrastate telecommunications revenue, in addition to any prepayments
10 or deposits collected from TESS's customers. If TESS desires to discontinue service it must file an
11 application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, TESS must notify
12 each of its customers and the Commission 60 days prior to filing an application pursuant to A.A.C.
13 R14-2-1107. Failure to meet this requirement will result in forfeiture of TESS's performance bond.
14 If in the future TESS desires to discontinue the performance bond, it must file information with Staff
15 that demonstrates TESS's financial viability. Staff will then review the information and provide
16 TESS its decision concerning financial viability within 30 days of receipt of the information. Staff
17 recommended that proof of the above mentioned performance bond should be docketed at least 30
18 days prior to the provision of service. In the event TESS ceases to do business in Arizona, Staff
19 believes that the additional financial requirements, along with A.A.C. R14-2-1107, are sufficient to
20 protect TESS's customers.

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

- 24 (a) That TESS be required to abide by the additional financial requirements as
25 stated above in Findings of Fact No. 19;
- 26 (b) That TESS file its tariffs within 30 days of an Order in this matter, and in
27 accordance with this Decision;
- 28 (c) That, unless it provides services solely through the use of its own facilities,
 TESS procure an Interconnection Agreement that is consistent with these
 guidelines before being allowed to offer local exchange service;

- 1 (d) That TESS file with the Commission its plan to have its customers' telephone
2 numbers included in the incumbent's Directories and Directory Assist
3 (e) That TESS pursue permanent number portability arrangements with other
4 LECs pursuant to Commission rules, federal laws, and federal rules;
5 (f) That TESS agree to abide by and participate in the AUSF mechanism instituted
6 in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-95-0478);
7 (g) That TESS abide by the quality of service standards that were approved by the
8 Commission for USWC in Docket No. T-01051B-93-0183;
9 (h) That in areas where TESS is the sole provider of local exchange service
10 facilities, TESS provide customers with access to alternative providers of
11 service pursuant to the provisions of Commission rules, federal laws, and
12 federal rules;
13 (i) That TESS be required to certify, through the 911 service provider in the area
14 in which it intends to provide service, that all issues associated with the
15 provision of 911 service have been resolved with the emergency service
16 providers before it begins to provide local exchange service;
17 (j) That TESS be required to abide by all the Commission decisions and policies
18 regarding CLASS services;
19 (k) That TESS be required to comply with A.A.C. R14-2-1111, which requi
20 local exchange companies provide 2-PIC equal access;
21 (l) That TESS be required to certify that all notification requirements have been
22 completed prior to a final determination in this proceeding;
23 (m) That TESS be required to abide by all Commission rules and regulations.

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 4. A.A.C. R14-2-1105 allows a telecommunications company to file an application for a
25 Certificate to provide competitive telecommunications services.

26 5. Pursuant to Article XV of the Arizona Constitution as well as the Competitive
27 Telecommunications Service Rules, A.A.C. R14-2-1101, et seq. ("Competitive Rules"), it is in
28 public interest for Applicant to provide the telecommunications services set forth in its application.

pursuant to A.A.C. R14-2-1107;

- (d) failure to meet requirement (c) shall result in forfeiture of TE Communications, Inc.'s performance bond;
- (e) if in the future TESS desires to discontinue the performance bond, it must file information with Staff that demonstrates its financial viability. Staff will then review the financial viability of TESS Communications, Inc. and will make a determination concerning the financial viability of TESS Communications, Inc. for Commission approval.

IT IS FURTHER ORDERED that prior to providing competitive facilities-based and resold local exchange, interexchange, and access telecommunications services, TESS Communications, Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact No. 20.

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

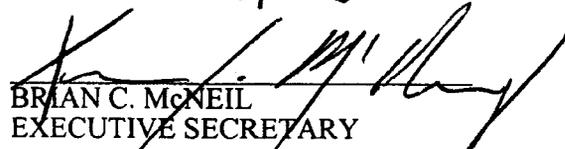
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


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 28th day of April, 2000.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT 
SG:bbs

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SERVICE LIST FOR:

TESS COMMUNICATIONS, INC.

DOCKET NO.

T-03754A-99-0382

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