



BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

JIM IRVIN
COMMISSIONER - CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF
MAX-TEL COMMUNICATIONS, INC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE LOCAL EXCHANGE
SERVICES AS A RESELLER.

DOCKET NO. T-03532A-98-0134

DECISION NO. 61601

ORDER

Open Meeting
March 30 and 31, 1999
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 13, 1998, Max-Tel Communications, Inc. ("Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide local exchange telecommunications services as a reseller in the State of Arizona.
2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.
3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101 through R14-2-1115 to regulate resellers.
4. Applicant is a Texas corporation that has been authorized to do business in Arizona since 1998.
5. In Decision No. 60968 (June 19, 1998) the Commission approved a resell agreement between Applicant and US WEST Communications, Inc. ("US WEST").

1 6. On November 6, 1998, the Commission's Utilities Division Staff ("Staff") filed
2 Staff Report. On January 27, 1999, Staff filed an amended Staff Report.

3 7. In the amended Staff Report, Staff stated that Applicant had provided unaudited
4 financial statements for the nine months ended September 30, 1997, which indicated Applicant had
5 total assets of \$262,722 and retained earnings of \$88,873, with net income of \$88,873 on sales of
6 \$605,930. Staff did not believe that Applicant possessed adequate financial resources to provide
7 competitive telecommunications services in Arizona. Consequently, Staff recommended: (1) that
8 Applicant procure a performance bond equal to the expenses needed to cover 60 days service to its
9 customers; (2) the amount of the performance bond must be increased if at any time it would be
10 insufficient to cover 60 days service to its customers; (3) if the Applicant desires to discontinue
11 service it must file an application with the Commission pursuant to A.A.C. R14-2-1107; (4) the
12 Applicant must notify each of its customers and the Commission 60 days prior to filing pursuant to
13 A.A.C. R14-2-1107; (5) failure to meet this requirement will result in forfeiture of the Applicant's
14 performance bond; and (6) if after one year, Applicant desires to discontinue the performance bc
15 it must file information with Staff that demonstrates the Applicant's financial viability. Staff will
16 review the information and provide the Applicant its decision concerning financial viability within
17 30 days of receipt of the information. Staff believed that if Applicant ceases to do business in
18 Arizona, the additional financial requirements, along with A.A.C. R14-2-1107 are sufficient to
19 protect the Applicant's customers.

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

22 9. Staff further recommended that :

23 (a) Applicant's application for a Certificate should be approved without a hearing
24 subject to A.A.C. R14-2-1106.B and the conditions set forth above;

25 (b) Applicant's local exchange service offering should be classified as
26 competitive pursuant to A.A.C. R14-2-1108;

27 (c) Applicant's competitive services should be priced at the effective rates
28 forth in Applicant's tariffs and the maximum rates for these services should be
maximum rates proposed by Applicant in its tariffs. The minimum rates for

1 applicant's competitive services should be Applicant's long run incremental costs of
2 providing those services as set forth in A.A.C. R14-2-1109. Any future changes to
3 the maximum rates in Applicant's tariffs must comply with A.A.C. R14-2-1110; and

4 (d) Applicant should be required to comply with the Commission's rules and
5 modify its tariffs to conform with the rules if it is determined there is a conflict
6 between Applicant's tariffs and the Commission's rules.

7 10. By Procedural Order dated December 8, 1998, the Commission set a deadline of
8 January 15, 1999, for filing exceptions to the Staff Report; requesting that a hearing be set; or
9 requesting intervention as interested parties.

10 11. The Commission granted intervention to US WEST on May 12, 1998.

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

13 13. On January 29, 1999, Applicant filed evidence that it had posted a performance
14 bond.

15 **CONCLUSIONS OF LAW**

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

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

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

21 4. As conditioned below, the provision of competitive local exchange reseller services
22 by Applicant is in the public interest.

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

25 6. Staff's recommendations in Findings of Fact Nos. 7 and 9 are reasonable and should
26 be adopted.

27 **ORDER**

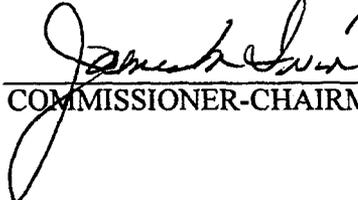
28 IT IS THEREFORE ORDERED that the Application of Max-Tel Communications, Inc. for
a Certificate of Convenience and Necessity for authority to provide competitive resold local

1 exchange services shall be, and the same is hereby granted, conditioned upon Max-
2 Communications, Inc. procuring a performance bond in accord with Staff's recommendations in
3 Findings of Fact No. 7. If after one year, Max-Tel Communications, Inc. desires to discontinue the
4 performance bond, it must file information with Staff that demonstrates its financial viability. Staff
5 will review the information and provide its decision concerning financial viability within 30 days
6 of receipt of the information.

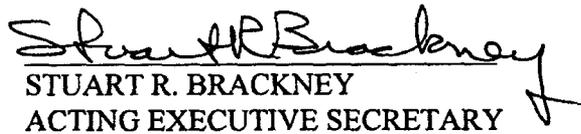
7 IT IS FURTHER ORDERED that Max-Tel Communications, Inc shall comply with the Staff
8 recommendations set forth in Findings of Fact No. 9.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11 
12 COMMISSIONER-CHAIRMAN  COMMISSIONER  COMMISSIONER
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15 IN WITNESS WHEREOF, I, STUART R BRACKNEY,
16 Acting Executive Secretary of the Arizona Corporation
17 Commission, have hereunto set my hand and caused the
18 official seal of the Commission to be affixed at the Capitol, in
19 the City of Phoenix, this 1 day of April 1999.

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21 STUART R. BRACKNEY
22 ACTING EXECUTIVE SECRETARY

23 DISSENT _____
24 JR:bbs

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SERVICE LIST FOR: MAX-TEL COMMUNICATIONS, INC.

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