

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

22  
ORIGINAL  
OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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DATE: AUGUST 10, 2001

DOCKET NO: T-03891A-00-0413

TO ALL PARTIES:

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

eVULKAN, INC. dba beMANY.  
(CC&N/RESELLER)

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:

AUGUST 20, 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:

AUGUST 28, 2001 AND AUGUST 29, 2001

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

Arizona Corporation Commission

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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  
6 IN THE MATTER OF THE APPLICATION OF  
EVULKAN, INC. D/B/A BEMANY FOR A  
7 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
8 INTRASTATE TELECOMMUNICATIONS  
SERVICES AS A RESELLER EXCEPT LOCAL  
9 EXCHANGE SERVICES

DOCKET NO. T-03891A-00-0413

DECISION NO. \_\_\_\_\_

**ORDER**

10 Open Meeting  
August 28 and 29, 2001  
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 **FINDINGS OF FACT**

16 1. On June 13, 2000, eVulkan, Inc. d/b/a beMANY ("eVulkan" or "Applicant") filed  
17 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to  
18 provide competitive intrastate telecommunications services, except local exchange services, as a  
19 reseller within the State of Arizona.

20 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
21 telecommunications providers ("resellers") were public service corporations subject to the  
22 jurisdiction of the Commission.

23 3. Applicant is a Delaware corporation authorized to do business in Arizona since 2000.

24 4. Applicant is a switchless reseller, which purchases telecommunications services from  
25 various telecommunications service providers.

26 5. On August 11, 2000, Applicant filed Affidavits of Publication indicating compliance  
27 with the Commission's notice requirements.

28 6. On September 18, 2000, the Commission's Utilities Division Staff ("Staff") filed its

1 Staff Report in this matter.

2 7. In the Staff Report, Staff stated that the Applicant provided its unaudited financial  
3 statements for the period ending March 31, 2000, which listed total assets of \$12.7 million, negative  
4 retained earnings of \$231,988 for a net loss of \$571,988. Based on the foregoing, Staff believes that  
5 Applicant lacks adequate financial resources to be allowed to charge customers any prepayments,  
6 advances or deposits without establishing an escrow account or posting a surety bond. The Applicant  
7 previously docketed proof of a surety bond in the amount of \$5,000.

8 8. On July 3, 2001, a revised Staff Report was issued. In that report, Staff recommends  
9 that the applicant be required to submit a performance bond of \$10,000, consistent with more recent  
10 Commission policy. Proof of the additional \$5,000 performance bond would be required to be  
11 docketed within 90 days of the effective date of an order, or 30 days prior to the provision of service,  
12 whichever comes first.

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

15 10. In its Report, Staff recommended the following:

- 16 (a) Applicant should be ordered to comply with all Commission rules, orders and  
17 other requirements relevant to the provision of intrastate telecommunications services;
- 18 (b) Applicant should be ordered to maintain its accounts and records as required  
19 by the Commission;
- 20 (c) Applicant should be ordered to file with the Commission all financial and other  
21 reports that the Commission may require, and in a form and at such times as the  
22 Commission may designate;
- 23 (d) Applicant should be ordered to maintain on file with the Commission all  
24 current tariffs and rates, and any service standards that the Commission may require;
- 25 (e) Applicant should be ordered to comply with the Commission's rules and  
26 modify its tariffs to conform to these rules if it is determined that there is a conflict  
27 between the Applicant's tariffs and the Commission's rules;
- 28 (f) Applicant should be ordered to cooperate with Commission investigations of  
customer complaints;
- (g) Applicant should be ordered to participate in and contribute to a universal

1 service fund, as required by the Commission;

2 (h) Applicant should be ordered to notify the Commission immediately upon  
3 changes to the Applicant's address or telephone number;

4 (i) Applicant's intrastate interexchange service offerings should be classified as  
5 competitive pursuant to A.A.C. R14-2-1108;

6 (j) The rates proposed by the Applicant in its most recently filed tariffs should be  
7 approved on an interim basis. The maximum rates for these services should be the  
8 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
9 for the Applicant's competitive services should be the Applicant's total service long  
10 run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;  
11 and

12 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
13 competitive service, the rate stated should be the effective (actual) price to be charged  
14 for the service as well as the service's maximum rate.

15 11. In the revised Staff Report, Staff also recommended that, when appropriate, based on  
16 the Applicant's financial status, the Applicant should be allowed to file a request for cancellation of  
17 its established surety bond, and that such request be accompanied by information demonstrating the  
18 Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff shall forward  
19 its recommendation to the Commission for Decision.

20 12. On August 29, 2000, the Court of Appeals, Division One ("Court") issued its Opinion  
21 in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding  
22 that "the Arizona Constitution requires the Commission to determine fair value rate base ("FVRB")  
23 for all public service corporations in Arizona prior to setting their rates and charges."

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

14. No exceptions were filed to the original Staff Report filed on September 18, 2000 or  
the revised Staff Report filed on July 3, 2001, nor did any party request that a hearing be held.

CONCLUSIONS OF LAW

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

4 2. The Commission has jurisdiction over Applicant and the subject matter of the  
5 application.

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

7 4. Applicant's provision of resold intrastate telecommunications services is in the public  
8 interest.

9 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive  
10 intrastate telecommunications as a reseller in Arizona.

11 6. Staff's recommendations in Findings of Fact Nos. 10 and 11 are reasonable and should  
12 be adopted.

ORDER

13  
14 IT IS THEREFORE ORDERED that the application eVulkan, Inc. d/b/a beMANY for a  
15 Certificate of Convenience and Necessity for authority to provide competitive intrastate  
16 telecommunications services, except local exchange services, as a reseller shall be and the same is  
17 hereby granted.

18 IT IS FURTHER ORDERED that eVulkan, Inc. d/b/a beMANY shall comply with the Staff  
19 recommendations set forth in Findings of Fact Nos. 10 and 11.

20 IT IS FURTHER ORDERED that eVulkan, Inc. d/b/a beMANY shall file the following  
21 FVRB information within 18 months of the date that it first provides service. The FVRB shall  
22 include a dollar amount representing the total revenue for the first twelve months of  
23 telecommunications service provided to Arizona customers by eVulkan, Inc. d/b/a beMANY  
24 following certification, adjusted to reflect the maximum rates that eVulkan, Inc. d/b/a beMANY  
25 requests in its tariff. This adjusted total revenue figure could be calculated as the number of units  
26 sold for all services offered times the maximum charge per unit. eVulkan, Inc. d/b/a beMANY shall  
27 also file FVRB information detailing the total actual operating expenses for the first twelve months of  
28 telecommunications service provided to Arizona customers by following certification eVulkan, Inc.

1 d/b/a beMANY shall also file FVRB information which includes a description and value of all assets,  
2 including plant, equipment, and office supplies, to be used to provide telecommunications service to  
3 Arizona customers for the first twelve months following eVulkan, Inc. d/b/a beMANY's certification.

4 IT IS FURTHER ORDERED that proof of a total surety bond in the amount of \$10,000 shall  
5 be docketed within 90 days of the effective date of this order, or 30 days prior to the commencement  
6 of service, whichever comes first.

7 IT IS FURTHER ORDERED that, within 30 days of the effective date of this Decision,  
8 eVulkan, Inc. d/b/a beMANY shall notify the Compliance Section of the Arizona Corporation  
9 Commission of the date that it will begin or has begun providing service to Arizona customers.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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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 \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
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SERVICE LIST FOR: EVULKAN, INC. D/B/A BEMANY

DOCKET NO.: T-03891A-00-0413

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