

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

ORIGINAL
OPEN MEETING ITEM



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

RECEIVED

DATE: August 10, 2001

2001 AUG 10 P 3:28

DOCKET NO: T-03044A-95-0461

AZ CORP COMMISSION
DOCUMENT CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Order on:

ASC TELECOM, INC. D/B/A ALTERNATEL
(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

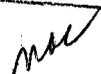
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 28 AND 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
DOCKETED

AUG 10 2001

DOCKETED BY 


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
ASC TELECOM, INC. D/B/A ALTERNATEL FOR
7 A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD INTRASTATE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICE

DOCKET NO. T-03044A-95-0461

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 November 6, 1995, ASC Telecom, Inc. d/b/a AlternaTel ("ASC" or "Applicant")
17 filed with the Commission an application for a Certificate of Convenience and Necessity
18 ("Certificate") to provide competitive resold interexchange telecommunications services, except local
19 exchange services, within the State of Arizona.

20 2. On November 28, 1995, Qwest, formerly U.S. West, was granted intervention by the
21 Commission in this matter.

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

25 4. Applicant is a corporation domiciled in Kansas, authorized to do business in Arizona
26 since 1994.

27 5. Applicant is a switchless reseller, which purchases telecommunications services from
28 a variety of carriers.

1 6. On March 27, 1996, Applicant filed Affidavits of Publication indicating compliance
2 with the Commission's notice requirements.

3 7. On June 21, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
4 Report recommending approval of the application with some conditions.

5 8. In its Staff Report, Staff stated that ASC provided financial statements for the period
6 ended December 31, 2000. These financial statements list assets of \$71.9 million, total liabilities of
7 \$988,000 and net income of \$30.1 million on net operating revenues of \$104.6 million. Based on the
8 foregoing, Staff believes that Applicant has adequate financial resources to be allowed to charge
9 customers any prepayments, advances, or deposits without either establishing an escrow account or
10 posting a surety bond to cover such prepayments, advances, or deposits.

11 9. Staff recommended approval of the application subject to the following conditions,
12 that:

13 (a) The Applicant should be ordered to comply with all Commission rules, orders,
14 and other requirements relevant to the provision of intrastate telecommunications
15 service;

16 (b) The Applicant should be ordered to maintain its accounts and records as
17 required by the Commission;

18 (c) The Applicant should be ordered to file with the Commission all financial and
19 other reports that the Commission may require, and in a form and at such times as the
20 Commission may designate;

21 (d) The Applicant should be ordered to maintain on file with the Commission all
22 current tariffs and rates, and any service standards that the Commission may require;

23 (e) The Applicant should be ordered to comply with the Commission's rules and
24 modify its tariffs to conform to these rules if it is determined that there is a conflict
25 between the Applicant's tariffs and the Commission's rules;

26 (f) The Applicant should be ordered to cooperate with Commission investigations
27 of customers complaints;

28 (g) The Applicant should be ordered to participate in and contribute to a universal
service fund, as required by the Commission;

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

1 (i) If at some future date, the Applicant wants to charge customers any
2 prepayments, advances or deposits, it must file information with the Commission that
3 demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff will
4 review the information and forward its recommendation to the Commission;

5 (j) The Applicant's intrastate interexchange service offerings should be classified
6 as competitive;

7 (k) The Applicant's competitive services should be priced at the rates proposed by
8 the Applicant in its most recently filed tariffs and should be approved on an interim
9 basis. The maximum rates for these services should be the maximum rates proposed
10 by the Applicant in its proposed tariffs. The minimum rates for the Applicant's
11 competitive services should be the Applicant's total service long run incremental costs
12 of providing those services; and

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

16 10. Staff further recommended approval of Applicant's application subject to the
17 following conditions:

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

20 (b) That the Applicant file in this Docket, within 18 months of the date it first
21 provides service following certification, sufficient information for Staff analysis and
22 recommendation for a fair value finding, as well as for an analysis and
23 recommendation for permanent tariff approval. This information must include, at a
24 minimum, the following:

25 1. A dollar amount representing the total revenue for the first twelve
26 months of telecommunications service provided to Arizona customers by
27 United following certification, adjusted to reflect the maximum rates that the
28 Applicant 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 the Applicant
following certification;

3. The value of all assets, listed by major category, including a description
of the assets, used for the first twelve months of telecommunications services
provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment

and office supplies should be included in this list; and

(c) Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate of Convenience and Necessity and of the tariffs.

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

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

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

14. On October 26, 2000, the Commission filed a Petition for Review to the Supreme Court.

15. On February 16, 2001, the Commission's Petition was granted.

CONCLUSIONS OF LAW

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

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

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

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact Nos. ~~8~~ 9 and 10 are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of ASC Telecom, Inc. d/b/a AlternaTel for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, as conditioned herein.

IT IS FURTHER ORDERED that ASC Telecom, Inc. d/b/a AlternaTel shall comply with Staff's recommendations as set forth in Findings of Fact Nos. 9 and 10.

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

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 ____ day of _____, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
PD:mlj

1 SERVICE LIST FOR: ASC TELECOM, INC. D/B/A ALTERNATEL

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