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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK

CHAIRMAN DOCKETED BY

JIM IRVIN

COMMISSIONER

WILLIAM A. MUNDELL

COMMISSIONER



AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
WESTERN CLEC CORPORATION, FORMERLY
ECLIPSE COMMUNICATIONS CORPORATION,
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE FACILITIES-BASED
AND RESOLD TELECOMMUNICATIONS
SERVICES AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES

DOCKET NO. T-03590A-98-0364

PROCEDURAL ORDER

BY THE COMMISSION:

On July 8, 1998, Western CLEC Corporation, formerly Eclipse Communication Corporation, ("Western CLEC" or "Company") submitted to Docket Control of the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide facilities-based and resold telecommunications services in Arizona. As part of its application, the Company asks that the telecommunications services that it intends to provide be found "competitive" pursuant to Commission rules. On October 19, 2000, Western CLEC filed a supplement to its application.

On July 27, 1998, Qwest Corporation ("Qwest"), formerly U S WEST Communications, Inc., filed a Motion for Leave to Intervene, which was granted on August 7, 1998.

Western CLEC is required to publish notice of its application in newspapers in all counties where service is to be provided. The record shows that the Company published notice of the application on August 18, 1999 and filed an Affidavit of Publication with the Commission on September 23, 1999.

On November 3, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter.

On August 29, 2000, the Arizona Court of Appeals, Division One, ("Court") issued its Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base

1 (“FVRB”) for all public service corporations in Arizona prior to setting their rates and charges.”
2 Although that Opinion will more than likely be appealed to the Arizona Supreme Court, we are going
3 to request FVRB information at this time to insure compliance with the Constitution should the
4 ultimate decision of the Supreme Court affirm the Court’s interpretation of Section 14. We also are
5 concerned that the cost and complexity of FVRB determinations must not offend the
6 Telecommunications Act of 1996.

7 The time frame for processing this application shall be extended to March 30, 2001 to allow
8 additional time for the Company to file FVRB information.

9 IT IS THEREFORE ORDERED that the time frame for processing this application is March
10 30, 2001.

11 IT IS FURTHER ORDERED that the hearing on the above application of Western CLEC
12 Corporation, formerly Eclipse Communications Corporation, shall commence on February 26, 2001
13 at 2:00 p.m., or as soon thereafter as is practical, at the Commission’s offices, 1200 West Washington
14 Street, Phoenix, Arizona 85007.

15 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
16 except that all motions to intervene must be filed on or before December 22, 2000 **by 12 noon**.

17 IT IS FURTHER ORDERED that any objections to motions to intervene shall be filed on or
18 before January 5, 2001 **by 12 noon**.

19 IT IS FURTHER ORDERED that Western CLEC Corporation, formerly Eclipse
20 Communications Corporation, shall file specific disagreements/comments, if any, to the Staff report
21 by **12:00 noon** on December 22, 2000.

22 IT IS FURTHER ORDERED that Western CLEC Corporation, formerly Eclipse
23 Communications Corporation, shall file its proposed FVRB within 30 days from the date of this
24 Order (pursuant to A.A.C. R14-2-103(B), this may be the same as original cost rate base). The
25 FVRB shall include the value of all plant and equipment currently held by Company and intended to
26 be used to provide telecommunications services to Arizona customers. In doing so, Western CLEC
27 Corporation, formerly Eclipse Communications Corporation, may use any reasonable means of asset
28 allocation, direct assignment or combination thereof. In the alternative, upon request made within 30

1 days of the date of this Order, Western CLEC Corporation, formerly Eclipse Communications
2 Corporation may file its information at least 90 days prior to providing service.

3 IT IS FURTHER ORDERED that Western CLEC Corporation, formerly Eclipse
4 Communications Corporation, shall file information demonstrating how the value of its plant and
5 equipment (both current and projected) is related to its minimum and maximum rates within 30 days
6 from the date of this Order, or if the alternative is chosen, at least 90 days prior to providing service
7 (such demonstration must include the amount of depreciation expense and capital carrying costs
8 related to the FVRB). In the alternative, Western CLEC Corporation, formerly Eclipse
9 Communications Corporation, must demonstrate that such rates and charges are not unreasonable and
10 constitute a fair rate of return on rate base.

11 IT IS FURTHER ORDERED that Staff shall review the FVRB information filed and ascertain
12 that Western CLEC Corporation, formerly Eclipse Communications Corporation, is utilizing the
13 appropriate amount of depreciation and capital carrying costs in determining its minimum and
14 maximum rates.

15 IT IS FURTHER ORDERED that Staff or Intervenors shall file disagreements with the
16 proposed FVRB and/or rates and charges, within 30 days of Company filing its FVRB information.

17 IT IS FURTHER ORDERED that if there are any disagreements with any FVRB information,
18 then the Certificate shall be stayed pending resolution of the matter.

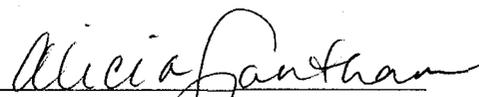
19 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
20 regulations of the Commission, except that every effort shall be made to respond within 48 hours of
21 receipt; the response time may be extended by mutual agreement of the parties involved if the request
22 requires an extensive compilation effort.

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1 IT IS FURTHER ORDERED that in the alternative to filing a written motion to compel
2 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
3 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such
4 request, a procedural hearing will be convened as soon as practicable; and that the party making such
5 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
6 hearing provide a statement confirming that the other parties were contacted.¹

7 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
8 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

9 DATED this 29th day of November, 2000.


ALICIA GRANTHAM
ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered
14 this 29th day of November, 2000 to:

15 Gene DeJordy
16 WESTERN CLEC CORPORATION
17 3650 131st Avenue SE, Suite 400
18 Bellevue, Washington 98006

19 Jeffrey W. Crockett, Esq.
20 SNELL & WILMER
21 One Arizona Center
22 Phoenix, Arizona 85004
23 Attorney for Applicant

24 Timothy Berg
25 FENNEMORE CRAIG
26 3003 North Central Avenue, Suite 2600
27 Phoenix, Arizona 85012-2913
28 Attorneys for Qwest Corporation

29 Lyn Farmer, Chief Counsel
30 Legal Division
31 ARIZONA CORPORATION COMMISSION
32 1200 West Washington Street
33 Phoenix, Arizona 85007

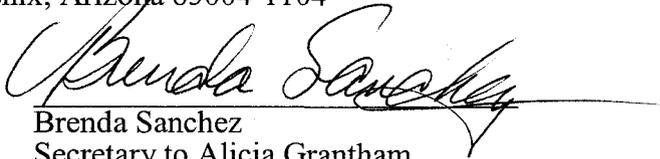
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36 ¹ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations
37 before seeking Commission resolution of the controversy.

1 Deborah Scott, Director
2 Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 ARIZONA REPORTING SERVICE, INC.
7 2627 N. Third Street, Suite Three
8 Phoenix, Arizona 85004-1104

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By: 
Brenda Sanchez
Secretary to Alicia Grantham