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WILLIAM A. MUNDELL
CHAIRMAN
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ARIZONA CORPORATION COMMISSION

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DATE: APRIL ¹⁶~~15~~, 2001

Arizona Corporation Commission
DOCKETED

DOCKET NO.: T-03590A-98-0364

APR 16 2001

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Opinion and Order on:

WESTERN CLEC CORPORATION formerly
ECLIPSE COMMUNICATIONS CORPORATION
(CC&N/FACILITIES BASED)

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:

APRIL 25, 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:

MAY 1, 2001 and MAY 2, 2001

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

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
WESTERN CLEC CORPORATION, FORMERLY
ECLIPSE COMMUNICATIONS CORPORATION,
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03590A-98-0364

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: February 26, 2001
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
APPEARANCES: Mr. Jeffrey W. Crockett, SNELL & WILMER, on behalf of Western CLEC Corporation;
Mr. Robert 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. On July 8, 1998, Western CLEC Corporation, formerly Eclipse Communications Corporation, ("Western CLEC" or "Applicant") 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 Arizona.
2. Western CLEC is a Delaware corporation, authorized to do business in Arizona since 2000.
3. On July 27, 1998, Qwest Corporation, formerly U S WEST Communications, Inc. ("Qwest"), filed a Motion for Leave to Intervene.

- 1 4. On August 7, 1998, Qwest was granted intervention.
- 2 5. On September 23, 1999, Western CLEC filed Affidavits of Publication indicating
3 compliance with the Commission's notice requirements.
- 4 6. On October 19, 2000, Western CLEC filed a supplement to its application.
- 5 7. On November 3, 2000, the Commission's Utilities Division Staff ("Staff") filed its
6 Staff Report, which recommended approval of the application and included a number of additional
7 recommendations.
- 8 8. On November 29, 2000, a Procedural Order was issued setting the matter for hearing
9 on February 26, 2001.
- 10 9. A hearing was held on February 26, 2001, and Applicant and Staff presented evidence.
- 11 10. Qwest and Western CLEC have not as yet reached an interconnection agreement.
- 12 11. The management of Western CLEC has many years of experience in the
13 telecommunications industry.
- 14 12. Applicant has the technical capability to provide the services that are proposed in its
15 application.
- 16 13. Currently there are several incumbent providers of local exchange, toll, and exchange
17 access services in the service territory requested by Applicant, and numerous other entities have been
18 authorized to provide competitive local exchange services in all or portions of that territory.
- 19 14. It is appropriate to classify all of Applicant's authorized services as competitive.
- 20 15. The Staff Report stated that Applicant has no market power and the reasonableness of
21 its rates would be evaluated in a market with numerous competitors.
- 22 16. According to Staff, Western CLEC submitted the financial statements of its parent
23 company, Western Wireless Corporation for the year ended December 31, 1999. These financial data
24 list assets of \$1.36 billion and a net income of \$60.93 million on revenues of \$567.34 million.
- 25 17. On March 1, 2001, Western CLEC filed updated financial statements from its parent
26 company for the year ended December 31, 2000. These statements list assets of \$1.59 billion and a
27 net loss of \$3.31 million.
- 28 18. On April 10, 2001, Staff filed a response to Western CLEC's updated financial

1 statements. Staff indicates that since the information submitted by Western CLEC is from its parent
2 company, Staff is unable to determine if Western CLEC has sufficient financial strength to offer the
3 requested telecommunications services in Arizona without the requirement of a performance bond.

4 19. Staff recommends, as amended, that Western CLEC's application for a Certificate to
5 provide competitive facilities-based and resold telecommunications services be granted subject to the
6 following conditions:

- 7 (a) unless its provides services solely through the use of its own facilities, Western
8 CLEC should be ordered to procure an Interconnection Agreement before
being allowed to offer local exchange service;
- 9 (b) Western CLEC should be ordered to file with the Commission, within 30 days
10 of an Order in this matter, its plan to have its customers telephone numbers
included in the incumbent's Directories and Directory Assistance databases;
- 11 (c) Western CLEC be ordered to pursue permanent number portability
12 arrangements with other LECs pursuant to Commission rules, federal laws and
federal rules;
- 13 (d) Western CLEC be ordered to abide by and participate in the AUSF mechanism
14 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
03905A-00-0513E-95-0498);
- 15 (e) Applicant be ordered to abide by the quality of service standards that were
16 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 17 (f) in areas where Applicant is the sole provider of local exchange service
18 facilities, Western CLEC be ordered to provide customers with access to
alternative providers of service pursuant to the provisions of Commission
rules, federal laws and federal rules;
- 19 (g) Western CLEC be ordered to certify, through the 911 service provider in the
20 area in which it intends to provide service, that all issues associated with the
provision of 911 service have been resolved with the emergency service
21 providers within 30 days of an Order in this matter;
- 22 (h) Western CLEC be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- 23 (i) Western CLEC be ordered to provide 2-PIC equal access;
- 24 (j) Western CLEC be required to certify that all notification requirements have
25 been completed prior to a final determination in this proceeding;
- 26 (k) Western CLEC be required to notify the Commission immediately upon
changes to its address or telephone number;
- 27 (l) Western CLEC be ordered to comply with all Commission rules, orders, and
28 other requirements relevant to the provision of intrastate telecommunications
service;

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- (m) Western CLEC be ordered to maintain its accounts and records as required by the Commission;
- (n) Western CLEC should be ordered file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (o) Western CLEC maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (p) Western CLEC should be ordered to cooperate with Commission investigations of customer complaints;
- (q) Western CLEC be ordered to participate in and contribute to a universal service fund, as required by the Commission; and
- (r) In order to protect Western CLEC's customers:
 - (1) Western CLEC should be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Western CLEC's customers;
 - (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
 - (3) that the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
 - (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first; and
 - (5) after one year of operation under the Certificate granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial ability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision that the requested cancellation is in the public interest.

20. Staff further recommended that Western CLEC's tariffs be approved on an interim basis subject to the following:

- (a) That Western CLEC file tariffs in accordance with this Decision within 30 days of an Order in this matter or within 30 days of an Order approving its interconnection agreement, whichever is later;

1 (b) That Western CLEC should be required to file in this Docket, within 18
2 months of the date it first provides service following certification, sufficient
3 information for Staff analysis and recommendation for a fair value finding, as
4 well as for an analysis and recommendation for permanent tariff approval.
This information must include, at a minimum, the following:

- 5 1. A dollar amount representing the total revenue for the first twelve months
6 of telecommunications service provided to Arizona customers by Western
7 CLEC following certification, adjusted to reflect the maximum rates that
8 Western CLEC 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.
- 9 2. The total actual operating expenses for the first twelve months of
10 telecommunications service provided to Arizona customers by Western
CLEC following certification.
- 11 3. The value of all assets, listed by major category, used for the first twelve
12 months of telecommunications services provided to Arizona customers by
13 Western CLEC following certification. Assets are not limited to plant and
equipment. Items such as office equipment and office supplies should be
14 included in this list.

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

18 21. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
19 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
20 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
21 public service corporations in Arizona prior to setting their rates and charges."

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

1 IT IS FURTHER ORDERED that Western CLEC Corporation shall comply with all of the
2 Staff recommendations set forth in Findings of Fact Nos. 19 and 20.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2001.

14 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 SG:mlj

1 SERVICE LIST FOR: WESTERN CLEC CORPORATION

2 DOCKET NO.: T-03590A-98-0364

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