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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

MAY 04 2001

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
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DOCKETED BY 

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

DOCKET NO. T-03590A-98-0364

DECISION NO. 63657

OPINION AND ORDER

10 DATE OF HEARING: February 26, 2001
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli
13 APPEARANCES: Mr. Jeffrey W. Crockett, SNELL & WILMER, on
14 behalf of Western CLEC Corporation;
15 Mr. Robert Metli, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

17
18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

- 20
21 1. On July 8, 1998, Western CLEC Corporation, formerly Eclipse Communications
22 Corporation, ("Western CLEC" or "Applicant") filed with the Commission an application for a
23 Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based and
24 resold local exchange, interexchange, and access telecommunications services in Arizona.
25 2. Western CLEC is a Delaware corporation, authorized to do business in Arizona since
26 2000.
27 3. On July 27, 1998, Qwest Corporation, formerly U S WEST Communications, Inc.
28 ("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 it provides services solely through the use of its own facilities, Western
8 CLEC should be ordered to procure an Interconnection Agreement before
9 being allowed to offer local exchange service;
- 10 (b) Western CLEC should be ordered to file with the Commission, within 30 days
11 of an Order in this matter, its plan to have its customers telephone numbers
12 included in the incumbent's Directories and Directory Assistance databases;
- 13 (c) Western CLEC be ordered to pursue permanent number portability
14 arrangements with other LECs pursuant to Commission rules, federal laws and
15 federal rules;
- 16 (d) Western CLEC be ordered to abide by and participate in the AUSF mechanism
17 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
18 03905A-00-0513E-95-0498);
- 19 (e) Applicant be ordered to abide by the quality of service standards that were
20 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 21 (f) in areas where Applicant is the sole provider of local exchange service
22 facilities, Western CLEC be ordered to provide customers with access to
23 alternative providers of service pursuant to the provisions of Commission
24 rules, federal laws and federal rules;
- 25 (g) Western CLEC be ordered to certify, through the 911 service provider in the
26 area in which it intends to provide service, that all issues associated with the
27 provision of 911 service have been resolved with the emergency service
28 providers within 30 days of an Order in this matter;
- (h) Western CLEC be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- (i) Western CLEC be ordered to provide 2-PIC equal access;
- (j) Western CLEC be required to certify that all notification requirements have
been completed prior to a final determination in this proceeding;
- (k) Western CLEC be required to notify the Commission immediately upon
changes to its address or telephone number;
- (l) Western CLEC be ordered to comply with all Commission rules, orders, and
other requirements relevant to the provision of intrastate telecommunications
service;

- 1 (m) Western CLEC be ordered to maintain its accounts and records as required by
2 the Commission;
- 3 (n) Western CLEC should be ordered file with the Commission all financial and
4 other reports that the Commission may require, and in a form and at such times
5 as the Commission may designate;
- 6 (o) Western CLEC maintain on file with the Commission all current tariffs and
7 rates, and any service standards that the Commission may require;
- 8 (p) Western CLEC should be ordered to cooperate with Commission
9 investigations of customer complaints;
- 10 (q) Western CLEC be ordered to participate in and contribute to a universal
11 service fund, as required by the Commission; and
- 12 (r) In order to protect Western CLEC's customers:
- 13 (1) Western CLEC should be ordered to procure a performance bond equal to
14 \$100,000. The minimum bond amount of \$100,000 should be increased if
15 at any time it would be insufficient to cover prepayments or deposits
16 collected from Western CLEC's customers;
- 17 (2) that if the Applicant desires to discontinue service, it should file an
18 application with the Commission pursuant to A.A.C. R14-2-1107;
- 19 (3) that the Applicant should be required to notify each of its customers and
20 the Commission 60 days prior to filing an application to discontinue
21 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
22 result in forfeiture of the Applicant's performance bond;
- 23 (4) that proof of the performance bond should be docketed within 180 days of
24 an Order in this matter or 30 days prior to the provision of service,
25 whichever comes first; and
- 26 (5) after one year of operation under the Certificate granted by the
27 Commission, Staff recommends that the Applicant be allowed to file a
28 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.

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. A.R.S. § 40-282 allows a telecommunications company to file an application for a
8 Certificate to provide competitive telecommunications services.
- 9 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
10 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
11 in its application.
- 12 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
13 competitive facilities-based and resold local exchange, interexchange, and access telecommunications
14 services in Arizona as conditioned by Staff's recommendations as modified below.
- 15 7. The telecommunications services that the Applicant intends to provide are competitive
16 within Arizona.
- 17 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
18 it is just and reasonable and in the public interest for Applicant to establish rates and charges which
19 are not less than the Applicant's total service long-run incremental costs of providing the competitive
20 services approved herein.
- 21 9. Staff's recommendations in Findings of Fact Nos. 19 and 20 are reasonable and should
22 be adopted.

ORDER

23
24 IT IS THEREFORE ORDERED that the application of Western CLEC Corporation for a
25 Certificate of Convenience and Necessity for authority to provide competitive facilities-based and
26 resold local exchange, interexchange, and access telecommunications services in Arizona shall be,
27 and is hereby, granted, as conditioned herein.

28 ...

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 4th day of May, 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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