

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

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2001 SEP 18 A 11:05

DATE: September 18, 2001

DOCKET NO: T-03342A-97-0129

AZ CORP COMMISSION
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TO ALL PARTIES:

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

TALK AMERICA, INC.
(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:

SEPTEMBER 27, 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:

OCTOBER 2 AND 3, 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
TALK AMERICA INC. FORMERLY TALK.COM
7 HOLDING CORP. D/B/A THE PHONE
COMPANY AND ALSO D/B/A NETWORK
8 SERVICES OF NEW HOPE FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
9 PROVIDE COMPETITIVE RESOLD
INTEREXCHANGE TELECOMMUNICATIONS
10 SERVICES, EXCEPT LOCAL EXCHANGE
SERVICES

DOCKET NO. T-03342A-97-0129

DECISION NO. _____

ORDER

11 Open Meeting
12 October 2 and 3, 2001
13 Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

17 1. On March 13, 1997, Talk America Inc. formerly Talk.com Holding Corp. d/b/a The
18 Phone Company and also d/b/a Network Services of New Hope ("Applicant" or "Talk America Inc.")
19 filed with the Commission an application for a Certificate of Convenience and Necessity
20 ("Certificate") to provide competitive resold interexchange telecommunications services within the
21 State of Arizona.

22 2. 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 3. Applicant is a Pennsylvania corporation, authorized to do business in Arizona since
26 1992.

27 4. Applicant is a switchless reseller, which purchases telecommunications services from
28

1 a variety of carriers.

2 5. On August 27, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report in this matter.

4 6. On October 21, 1999, the Applicant filed an amendment to its application.

5 7. On February 14, 2000, the Applicant filed another amendment to its application.

6 8. On January 23, 2001, Staff filed an amended Staff Report.

7 9. In its amended Staff Report, Staff stated that Talk America Inc. formerly Talk.com
8 Holding Corp. d/b/a The Phone Company and also d/b/a Network Services of New Hope provided
9 financial statements for the year ended December 31, 1999. These financial statements list assets of
10 \$251 million, total equity of \$40.1 million, and a net income of \$78.9 million. Based on the
11 foregoing, Staff believes that Talk America Inc. has sufficient financial resources to be allowed to
12 charge customers any prepayments, advances, or deposits without posting a performance bond to
13 cover such customer prepayments, advances, or deposits. However, in its application, Talk America
14 Inc. indicates that it does not currently, and will not in the future, charge its customers for any
15 prepayments, advances, or deposits. Staff recommended approval of the application subject to the
16 following conditions, that:

17 (a) The Applicant shall comply with all Commission rules, orders, and other
18 requirements relevant to the provision of intrastate telecommunications service;

19 (b) The Applicant shall maintain its accounts and records as required by the
20 Commission;

21 (c) The Applicant shall file with the Commission all financial and other reports
22 that the Commission may require, and in a form and at such times as the Commission
may designate;

23 (d) The Applicant shall maintain on file with the Commission all current tariffs
24 and rates, and any service standards that the Commission may require;

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

27 (f) The Applicant shall cooperate with Commission investigations of customers
28 complaints;

1 (g) The Applicant shall participate in and contribute to a universal service fund, as
2 required by the Commission;

3 (h) The Applicant shall notify the Commission immediately upon changes to the
4 Applicant's address or telephone number;

5 (i) If at some future date, the Applicant wants to charge any prepayments,
6 advances, or deposits, it must file information with the Commission that demonstrates
7 the Applicant's financial viability. Upon receipt of such filing, Staff will review the
8 information and the Commission will make a determination concerning the
9 Applicant's financial viability and whether customer prepayments, advances, or
10 deposits should be allowed;

11 (j) The Applicant's intrastate interexchange service offerings should be classified
12 as competitive pursuant to A.A.C. R14-2-1108;

13 (k) The rates proposed by the Applicant in its most recently filed tariffs should be
14 approved on an interim basis. The maximum rates for these services should be the
15 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates
16 for the Applicant's competitive services should be the Applicant's total service long
17 run incremental costs of providing those services;

18 (l) In the event that the Applicant states only one rate in its proposed tariff for a
19 competitive service, the rate stated should be the effective (actual) price to be charged
20 for the service as well as the service's maximum rate, and;

21 (m) The Applicant shall certify that all notification requirements have been
22 completed.

23 10. Staff also recommended approval of Talk America Inc. formerly Talk.com Holding
24 Corp. d/b/a The Phone Company and also d/b/a Network Services of New Hope's application subject
25 to the following conditions:

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

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

1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by Talk America Inc. formerly Talk.com Holding Corp. d/b/a The Phone Company and also d/b/a Network Services of New Hope following certification,

1 adjusted to reflect the maximum rates that the Applicant has requested in
 2 its tariff. This adjusted total revenue figure could be calculated as the
 3 number of units sold for all services offered times the maximum charge per
 4 unit.

5 2. The total actual operating expenses for the first twelve months of
 6 telecommunications service provided to Arizona customers by the
 7 Applicant following certification.

8 3. The value of all assets, listed by major category, including a description of
 9 the assets, used for the first twelve months of telecommunications services
 10 provided to Arizona customers by the Applicant following certification.
 11 Assets are not limited to plant and equipment. Items such as office
 12 equipment and office supplies should be included in this list.

13 (c) Talk America Inc. formerly Talk.com Holding Corp. d/b/a The Phone
 14 Company and also d/b/a Network Services of New Hope's failure to meet the
 15 condition to timely file sufficient information for a fair value finding and
 16 analysis and recommendation of permanent tariffs shall result in the expiration
 17 of the Certificate of Convenience and Necessity and of the tariffs.

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

20 12. On May 1, 2001, the Applicant indicated that its new name was Talk America Inc.

21 13. On June 27, 2001, a Procedural Order was issued requiring Talk America Inc. to
 22 publish notice of its application and file affidavits of publication by August 17, 2001.

23 14. The June 27, 2001 Procedural Order required Talk America Inc. to file any exceptions
 24 to the Staff Report or a request for a hearing by September 7, 2001. No exceptions were filed to the
 25 Staff Report, nor did any party request that a hearing be set.

26 15. On July 18, 2001, Talk America Inc. filed Affidavits of Publication indicating
 27 compliance with the Commission's notice requirements.

28 16. 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."

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

1 18. On February 13, 2001, the Commission's Petition was granted.

2 **CONCLUSIONS OF LAW**

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

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

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

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

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

12 6. Staff's recommendations in Findings of Fact No. 9 and 10 are reasonable and should
13 be adopted.

14 **ORDER**

15 IT IS THEREFORE ORDERED that the application of Talk America Inc. formerly Talk.com
16 Holding Corp. d/b/a The Phone Company and also d/b/a Network Services of New Hope for a
17 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
18 telecommunications services, except local exchange services, is hereby granted, except that Talk
19 America Inc. shall not be authorized to collect any prepayments, advances, or deposits.

20 IT IS FURTHER ORDERED that Talk America Inc. formerly Talk.com Holding Corp. d/b/a
21 The Phone Company and also d/b/a Network Services of New Hope shall comply with Staff's
22 recommendations as set forth in Findings of Fact Nos. 9 and 10.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, Talk
2 America Inc. formerly Talk.com Holding Corp. d/b/a The Phone Company and also d/b/a Network
3 Services of New Hope shall notify the Compliance Section of the Arizona Corporation Commission
4 of the date that it will begin or has begun providing service to Arizona customers.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN COMMISSIONER COMMISSIONER

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11

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

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

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SERVICE LIST FOR:

TALK AMERICA INC. FORMERLY
TALK.COM HOLDING CORP. D/B/A THE
PHONE COMPANY AND ALSO D/B/A
NETWORK SERVICES OF NEW HOPE

DOCKET NO.:

T-03342A-97-0129

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