

OPEN MEETING ITEM



0000050957

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL!



RECEIVED

22

ARIZONA CORPORATION COMMISSION

2006 JUN -2 P 4: 18

DATE: June 2, 2006

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO.: T-04307A-05-0112

TO ALL PARTIES:

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

WESTEL, 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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 12, 2006

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 Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 WESTEL, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 RESOLD LONG DISTANCE
13 TELECOMMUNICATIONS SERVICE.

DOCKET NO. T-04307A-05-0112

DECISION NO. _____

14 ORDER

15 Open Meeting
16 June 27 and 28, 2006
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

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

21 FINDINGS OF FACT

22 1. On December 19, 2002, in Decision No. 65459, Westel, Inc. ("Applicant") was
23 granted a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold
24 interexchange telecommunications services.

25 2. Applicant filed its performance bond, as required by Decision No. 65459, on July 12,
26 2004, outside of the timeframe for filing¹. Applicant was thereafter notified by letter on July 20,
27 2004 by the Commission's Utilities Division ("Staff") that its Certificate was "null and void without
28 further order of the Commission." Staff informed Applicant in the same letter that another
application for a Certificate would be necessary for Applicant to provide telecommunications service
in Arizona.

3. On February 16, 2005, Staff docketed a memorandum informing Applicant that its

¹ Decision No. 65459 required that the performance bond be filed within 365 days of the Decision; it was filed 206 days outside of that time frame.

1 Certificate granted by Decision No. 65459, Docket No. T-02694A-96-0348, was null and void.

2 4. On February 17, 2005, Westel, Inc. filed an application for a Certificate to provide
3 competitive resold interexchange telecommunications services within the State of Arizona.

4 5. On February 22, 2005, the Commission's Utilities Division ("Staff") issued its Letter
5 of Insufficiency and First Set of Data Requests to Applicant.

6 6. On October 10, 2005, Staff docketed a memorandum certifying that Applicant's
7 compliance with Decision No. 65459, Docket No. T-02694A-96-0348, had been met.

8 7. On March 14, 2005, Applicant filed its response to Staff's First Set of Data Requests.

9 8. On April 20, 2005, Applicant filed replacement tariffs in this docket, including
10 modified tariff pages to include information regarding collection of advance payments and customer
11 deposits.

12 9. On March 9, 2006, Staff issued its Second Set of Data Requests to Applicant.
13 Applicant's response was filed on April 3, 2006.

14 10. On May 5, 2006, Staff filed its Staff Report in this matter, recommending approval of
15 the application. Staff stated that its review of this application addresses the overall fitness of
16 Applicant to receive a Certificate to provide competitive resold intrastate interexchange
17 telecommunications services; the Applicant's technical and financial capabilities; and whether the
18 Applicant's proposed rates will be just and reasonable.

19 11. Applicant is currently providing service in Arizona and eight other states. Applicant is
20 a switchless reseller. In the event that Applicant experiences financial difficulty, many other
21 interexchange service providers are available for end users. Staff determined that Applicant has
22 sufficient technical capabilities to provide resold interexchange telecommunications services in
23 Arizona.

24 12. Because Applicant plans to collect deposits, Staff recommended that Applicant
25 procure a performance bond equal to \$10,000. Staff recommended that the minimum bond should be
26 increased in increments of \$5,000 if at any time the bond would be insufficient to cover advances,
27 deposits, and/or prepayments collected from the Applicant's customers when the total amount of the
28 advances, deposits, and prepayments is within \$1,000 of the bond amount. Staff recommended that

1 proof of the performance bond be docketed within 365 days of the effective date of this Order or 30
2 days prior to the provision of service, whichever comes first, and must remain in effect until further
3 order of the Commission. Staff noted that Applicant filed a \$10,000 performance bond in connection
4 with Docket No. T-02694A-96-0348 on July 12, 2004.

5 13. Staff recommended that if, at some future time, Applicant does not collect advances,
6 deposits and/or prepayments from its customers, Applicant be allowed to file a request for
7 cancellation of its established performance bond regarding its resold interexchange service with the
8 Commission for Staff review. After Staff review, Staff's recommendation would be forwarded to the
9 Commission.

10 14. Applicant's proposed rates are for competitive services. Staff determined that
11 Applicant's fair value rate base is approximately \$400,000; however, Staff noted that the fair value
12 rate base information provided should not be given substantial weight in this analysis. Staff
13 concluded that the Applicant's proposed rates are just and reasonable.

14 15. Staff concluded that the Applicant is not a monopoly provider of service, nor does it
15 control a significant portion of the telecommunications market. Staff further stated that the Applicant
16 has no market power and that the reasonableness of its rates will be evaluated in a market with
17 numerous competitors. Therefore, Staff stated that the Applicant's proposed tariffs for its
18 competitive services are just and reasonable.

19 16. Commission rules provide pricing flexibility by allowing competitive
20 telecommunication service companies to price their services at or below the maximum rates
21 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.
22 This requires the Applicant to file a tariff for each competitive service that states the maximum rate
23 as well as the effective (actual) price that will be charged for the service. In the event that the
24 Applicant states only one rate in its tariff for a competitive service, Staff recommended that the rate
25 stated be the effective (actual) price to be charged for the service as well as the service's maximum
26 rate. Any changes to the Applicant's effective (actual) price for a service must comply with A.A.C.
27 R14-2-1109, which provides that the minimum rates for the applicant's competitive services must not
28 be below the Applicant's total service long run incremental costs of providing the services. The

1 Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most
2 recent tariffs on file with the Commission. Future changes to the maximum rates must comply with
3 A.A.C. R14-2-1110.

4 **Staff's Recommendations**

5 17. Staff recommended approval of the application based on its evaluation of the
6 Applicant's technical and financial capabilities to provide resold intrastate interexchange service.
7 Staff further recommended that:

8 a. Applicant should be ordered to comply with all Commission rules, orders, and
9 other requirements relevant to the provision of intrastate telecommunications service.

10 b. Applicant should be ordered to maintain its accounts and records as required
11 by the Commission.

12 c. Applicant should be ordered to file with the Commission all financial and other
13 reports that the Commission may require, and in a form and at such times as the Commission
14 may designate.

15 d. Applicant should be ordered to maintain on file with the Commission all
16 current tariffs and rates, and any service standards that the Commission may require.

17 e. Applicant should be ordered to comply with the Commission's rules and
18 modify its tariffs to conform to these rules if it is determined that there is a conflict between
19 the Applicant's tariffs and the Commission's rules.

20 f. Applicant should be ordered to cooperate with Commission investigations
21 including, but not limited to, customer complaints.

22 g. Applicant should be ordered to participate in and contribute to the Arizona
23 Universal Service Fund, as required by the Commission.

24 h. Applicant should be ordered to notify the Commission immediately upon
25 changes to the Applicant's name, address, or telephone number.

26 i. Applicant's intrastate interexchange service offerings should be classified as
27 competitive pursuant to A.A.C. R14-2-1108.

28 j. The maximum rates for these services should be the maximum rates proposed

1 by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
2 services should be the Applicant's total service long run incremental costs of providing those
3 services as set forth in A.A.C. R14-2-1109.

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

7 18. Staff further recommended that the Certificate granted to the Applicant be considered
8 null and void, after due process, if the Applicant fails to meet the following two conditions:

9 a. Applicant shall file conforming tariffs within 30 days from the date of an Order
10 in this matter.

11 b. Applicant shall be required to maintain its performance bond consistent with
12 the findings in the Staff Report. If at some time in the future, the Applicant does not collect
13 from its customers advances, deposits and/or prepayments, the Applicant shall file a request
14 for cancellation of its established performance bond with the Commission for Staff review.
15 Upon receipt of the filing and after Staff review, Staff will forward its recommendations to
16 the Commission.

17 19. This application may be approved without a hearing pursuant to A.R.S. § 40-282.

18 **CONCLUSIONS OF LAW**

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

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

23 3. Approval of the application is in the public interest.

24 4. Pursuant to A.R.S. § 40-282, the Commission may issue this Decision without a
25 hearing.

26 5. Staff's recommendation is reasonable and should be adopted.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that the application of Westel, Inc. for a certificate of convenience and necessity to provide competitive resold interexchange telecommunications services within the State of Arizona shall be, and hereby is, granted.

IT IS FURTHER ORDERED that if Westel, Inc. fails to meet the timeframes outlined in Finding of Fact No. 18, above, then the resold local exchange Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No. 17 above are hereby adopted.

IT IS FURTHER ORDERED that Westel, Inc. shall comply with the adopted Staff recommendations as set forth in Finding of Fact No. 17, above.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director 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 _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: WESTEL, INC.
DOCKET NO.: T-04307A-05-0112

Nick Tondre
WESTEL, INC.
9606 North Mopac, Ste. 700
Austin, TX 78759

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007