

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION
AUG 01 9 38

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: August 1, 2002
DOCKET NOS: T-03714A-01-0805
TO ALL PARTIES:

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

TRI-M COMMUNICATIONS, INC. d/b/a TMC COMMUNICATIONS
(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:

AUGUST 12, 2002

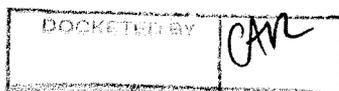
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 20 AND 21, 2002

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

Arizona Corporation Commission
DOCKETED

AUG 01 2002



BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKET NO. T-03714A-01-0805

DECISION NO. _____

IN THE MATTER OF THE APPLICATION OF
TRI-M COMMUNICATIONS, INC. DBA TMC
COMMUNICATIONS FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE FACILITIES-BASED AND
RESOLD LOCAL EXCHANGE AND EXCHANGE
ACCESS TELECOMMUNICATIONS SERVICE IN
ARIZONA.

OPINION AND ORDER

DATE OF HEARING: June 18, 2002
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Wolfe
APPEARANCES: Michael W. Patten, Roshka Heyman & DeWulf, PLC,
on behalf of TRI-M Communications, Inc. dba TMC
Communications; and
Jason Gellman, 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 October 15, 2001, Tri-M Communications, Inc. d.b.a. TMC Communications ("Applicant" or "TMC") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based and resold local exchange and exchange access telecommunications services statewide ("Application").
2. On December 6, 2001, Applicant filed an amendment to the Application.
3. On January 22, 2002, Applicant filed an affidavit of publication verifying that notice

1 of the Application was published in the Arizona Republic on January 14, 2002.

2 4. On April 23, 2002, the Commission's Utilities Division Staff ("Staff") filed its Staff
3 Report, which recommended approval of the Application and included a number of additional
4 recommendations.

5 5. On April 30, 2002, a Procedural Order was issued setting this matter for hearing on
6 June 18, 2002, and setting various procedural deadlines.

7 6. TMC is incorporated under the laws of California and is authorized to do business in
8 Arizona.

9 7. A hearing was held as scheduled on June 18, 2002, at which Applicant and Staff
10 appeared through counsel and presented evidence.

11 8. The record in this matter was held open following the hearing to allow Applicant the
12 opportunity to file updated financial statements and to allow Staff two weeks to respond on the record
13 if Staff found them to be unsatisfactory. On June 25, 2002, Applicant filed updated audited financial
14 statements for the year ending December 31, 2001. Staff filed no objections in response.

15 9. Applicant has the technical capability to provide the services proposed in the
16 Application.

17 10. Currently there are several incumbent providers of local exchange and exchange
18 access services in the service territory requested by Applicant, and numerous other entities have been
19 authorized to provide competitive local exchange services in all or portions of that territory.

20 11. It is appropriate to classify all of Applicant's proposed services as competitive.

21 12. The Staff Report stated that Applicant has no market power and the reasonableness of
22 its rates would be evaluated in a market with numerous competitors.

23 13. Applicant's year 2001 financial statements list assets of \$4.9 million, negative equity
24 of \$1.2 million; and net income of \$503,684.

25 14. Staff recommends that TMC's proposed services be classified as competitive. Staff
26 recommends that the Application be approved, subject to the following Staff recommendations:

- 27 (a) that, unless it provides services solely through the use of its own facilities,
28 Applicant be ordered to procure an Interconnection Agreement, within 365
days of the effective date of the Order in this matter or 30 days prior to the

1 provision of service, whichever comes first, that must remain in effect until
2 further order of the Commission, before being allowed to offer local exchange
3 service;

4 (b) that Applicant be ordered to file with the Commission, within 365 days of the
5 effective date of the Order in this matter or 30 days prior to the provision of
6 service, whichever comes first, its plan to have its customers' telephone
7 numbers included in the incumbent's Directories and Directory Assistance
8 databases;

9 (c) that Applicant be ordered to pursue permanent number portability
10 arrangements with other LECs pursuant to Commission rules, federal laws and
11 federal rules;

12 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism
13 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
14 03905A-00-0513E-95-0498);

15 (e) that Applicant be ordered to abide by the quality of service standards that were
16 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;

17 (f) that in areas where it is the sole provider of local exchange service facilities,
18 Applicant be ordered to provide customers with access to alternative providers
19 of service pursuant to the provisions of Commission rules, federal laws and
20 federal rules;

21 (g) that Applicant be ordered to certify, through the 911 service provider in the
22 area in which it intends to provide service, that all issues associated with the
23 provision of 911 service have been resolved with the emergency service
24 providers within 365 days of an Order in this matter or 30 days prior to the
25 provision of service, whichever comes first, which certification must remain in
26 effect until further Order of the Commission;

27 (h) that Applicant be ordered to abide by all the Commission decisions and
28 policies regarding CLASS services;

(i) that Applicant be ordered to provide 2-PIC equal access;

(j) that Applicant be required to notify the Commission immediately upon
changes to its address or telephone number;

(k) that Applicant be ordered to comply with all Commission rules, orders, and
other requirements relevant to the provision of intrastate telecommunications
service;

(l) that Applicant be ordered to maintain its accounts and records as required by
the Commission;

(m) that Applicant be ordered to 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;

(n) that Applicant be ordered to maintain on file with the Commission all current
tariffs and rates, and any service standards that the Commission may require;

(o) that Applicant be ordered to cooperate with Commission investigations of

customer complaints; and

- 1
2 (p) that Applicant be ordered to participate in and contribute to a universal service fund, as required by the Commission.

3 15. Staff further recommended that the Applicant be subject to the Commission's rules
4 governing interconnection and unbundling and the 1996 Telecommunications Act and the rules
5 promulgated thereunder, and that in the event that the Applicant provides essential services or
6 facilities that potential competitors need in order to provide their services, the Applicant should be
7 required to offer those facilities or services to these providers on non-discriminatory terms and
8 conditions pursuant to federal laws, federal rules, and state rules.

9 16. Staff further recommended that the Application be granted subject to the following
10 conditions:

- 11 (a) Applicant be ordered to file conforming tariffs within 365 days from the date
12 of an Order in this matter or 30 days prior to providing service, whichever
13 occurs first, and in accordance with the Decision;

- 14 (b) In order to protect Applicant's customers:

15 (1) Applicant should be ordered to procure a performance bond equal to
16 \$125,000. The minimum bond amount of \$125,000 should be increased if
17 at any time it would be insufficient to cover prepayments or deposits
18 collected from Applicant's customers. The bond amount should be
19 increased in increments of \$62,500 whenever the total amount of the
20 advances, deposits and prepayments is within \$12,500 of the bond amount;

21 (2) if Applicant desires to discontinue service, it should be required to file an
22 application with the Commission pursuant to A.A.C. R14-2-1107;

23 (3) Applicant should be required to notify each of its local exchange customers
24 and the Commission 60 days prior to filing an application to discontinue
25 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
26 result in forfeiture of the Applicant's performance bond;

27 (4) Applicant should docket proof of the performance bond within 365 days of
28 the effective date of an Order in this matter or 30 days prior to the
provision of service, whichever comes first, and the bond must remain in
effect until further Order of the Commission; and

- (c) If any of the above timeframes are not met, that Applicant's CC&N should
become null and void without further Order of the Commission and no
extensions for compliance should be granted.

1 not less than the Applicant's total service long-run incremental costs of providing the competitive
2 services approved herein.

3 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

4 10. Applicant's competitive rates, as set forth in its proposed tariffs, are just and
5 reasonable and should be approved.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of Tri-M Communications, Inc. d.b.a.
8 TMC Communications for a Certificate of Convenience and Necessity for authority to provide
9 competitive facilities-based and resold local exchange and exchange access telecommunications
10 services in Arizona shall be, and is hereby, granted, conditioned upon Tri-M Communications, Inc.
11 d.b.a. TMC Communications's timely compliance with the following two Ordering Paragraphs.

12 IT IS FURTHER ORDERED that Tri-M Communications, Inc. d.b.a. TMC Communications
13 shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30
14 days prior to providing service, whichever comes first.

15 IT IS FURTHER ORDERED that Tri-M Communications, Inc. d.b.a. TMC Communications
16 shall procure a performance bond equal to \$125,000 the earlier of 365 days from the effective date of
17 this Order or 30 days prior to the commencement of service. The minimum bond amount of
18 \$125,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits
19 collected from the Applicant's customers. The bond amount shall be increased in increments of
20 \$62,500. This increase shall occur when the total amount of the advances, deposits, and prepayments
21 is within \$12,500 of the bond amount.

22 IT IS FURTHER ORDERED that if Tri-M Communications, Inc. d.b.a. TMC
23 Communications fails to meet the timeframes outlined in the Ordering Paragraphs above, that the
24 Certificate of Convenience and Necessity conditionally granted herein shall become null and void
25 without further Order of the Commission.

26 IT IS FURTHER ORDERED that if Tri-M Communications, Inc. d.b.a. TMC
27 Communications fails to notify each of its customers and the Commission at least 60 days prior to
28 filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to

1 voidance of its Certificate of Convenience and Necessity, Tri-M Communications, Inc. d.b.a. TMC
2 Communications's performance bond shall be forfeited.

3 IT IS FURTHER ORDERED that Tri-M Communications, Inc. d.b.a. TMC Communications
4 shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and
5 Conclusions of Law.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8

9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2002.

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17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

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SERVICE LIST FOR:

TRI-M COMMUNICATIONS, INC. D.B.A. TMC
COMMUNICATIONS

DOCKET NO.:

T-03714A-01-0805

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