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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKETED

OCT 11 2000

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IN THE MATTER OF THE GENERIC REVIEW
OF PROCEDURES FOR COMPETITIVE
TELECOMMUNICATIONS

Docket No. RT-00000D-00-0694

**TELIGENT SERVICES, INC.'s COMMENTS ON
PROPOSED FAIR VALUE PROCEDURE**

Teligent Services, Inc. ("Teligent") provides the following comments in response to the September 19, 2000 Procedural Order in this docket.

INTRODUCTION

Teligent urges the Commission to refrain from implementing the August 29, 2000 appellate decision in the Cause No. 1 CA-CV 98-0672 until absolutely necessary.¹ The Decision would seem to have sweeping effects on the process of CLEC entry and operation in the local telecommunications market. These effects are so broad that they would properly be dealt with as part of a full-blown rulemaking proceeding following final judicial action.

Because the Court has not issued a mandate,² the Commission at this point in time is under no legal obligation to change its rules or procedures. The Commission should take advantage of this opportunity and not unnecessarily adopt what are sure to be merely interim rules or procedures, as is contemplated by the Procedural Order. As the Commission

¹ U.S. WEST Communications, Inc. v. Arizona Corp. Comm'n, et al., 1 CA-CV 98-0672 (Ariz. Ct App. Aug. 29, 2000)

² Indeed, it is not a certainty that the Court will ever require the Commission to comply with its decision pending appeal.

1 recognizes in its Procedural Order, CLECs currently face great uncertainty regarding the
2 future of rules or procedures affecting them. Interim rules or procedures, particularly those
3 that would be as far-sweeping as would seem to be required by the Decision, will only
4 further disrupt CLEC operations without increasing certainty in any way. CLECs will not
5 only have to adapt to the interim rules or procedures, but also to the rules following the
6 appellate process and any further rulemaking the Commission properly should perform if it
7 its appeal is unsuccessful. Adoption of interim rules or procedures may also prove to be an
8 inefficient and unnecessary use of valuable Commission resources.

9 10 SPECIFIC RESPONSES

11 Assuming that the Court of Appeals' decision is upheld without modification and the
12 Commission must act to comply with that decision, Teligent responds to two of the specific
13 questions posed in Appendix A as follows:

14 **3. How can the fair value rate base information be utilized for the**
15 **purposes of setting rates consistent with the Court of Appeals'**
16 **Opinion, with the Telecommunications Act, and with a**
transition to a competitive market?

17 The Decision does not require that "fair value" actually be used in setting rates.
18 Traditionally, "fair value" was determined only to set a fixed rate of return. Fixed rates of
19 return are relevant to the regulated provision of service by dominant firms, such as ILECs,
20 not competitive provision of service by CLECs. Competitive provider's prices are set by the
21 market, *i.e.*, competition. To the extent that a competitor is unable to afford to provide
22 service at a competitive rate while still making a rate of return sufficient to attract
23 investment capital, it will simply go out of business. Such efficient/competitive pricing by
24 all providers of local service is one of the fundamental goals of the Telecommunications Act
25 of 1996. Thus, it is difficult to reconcile a guaranteed rate of return with a competitive
26 market.

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2 October 11, 2000, with:

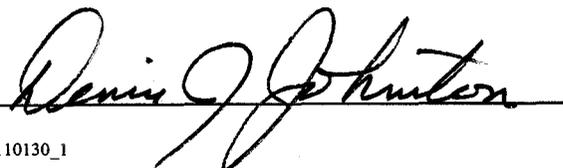
3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPIES hand-delivered October 11, 2000, to:

8 Jerry L. Rudibaugh, Esq.
9 Chief Hearing Officer
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Lyn A. Farmer, Esq.
15 Chief Officer, Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Deborah R. Scott, Esq.
20 Director, Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 
25
26

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