



0000057043

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

ORIGINAL  
OPEN MEETING ITEM



BRIAN C. MCNEIL  
Executive Secretary

RECEIVED

ARIZONA CORPORATION COMMISSION

2003 OCT -6 A 11:12

CC DOCKET CONTROL

DATE: OCTOBER 6, 2003

DOCKET NO: T-03253A-96-0464

TO ALL PARTIES:

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

U.S. SOUTH COMMUNICAITONS, INC. dba  
US SOUTH AND dba INCOMM  
(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:

OCTOBER 15, 2003

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 21, 2003 and OCTOBER 22, 2003

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

Arizona Corporation Commission  
**DOCKETED**

OCT 06 2003

DOCKETED BY *CKP*

BRIAN C. MCNEIL  
EXECUTIVE SECRETARY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347  
[www.cc.state.az.us](http://www.cc.state.az.us)

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail [YMcFarlin@cc.state.az.us](mailto:YMcFarlin@cc.state.az.us)

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

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
U.S. SOUTH COMMUNICATIONS, INC. dba US  
SOUTH AND dba INCOMM FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES, EXCEPT  
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-03253A-96-0464  
DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
October 21 and 22, 2003  
Phoenix, Arizona

**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 August 26, 1996, U.S. South Communications, Inc. dba US South and dba INCOMM ("Applicant" or "US South") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.<sup>1</sup>
2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.
3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.
4. US South has authority to transact business in the State of Arizona.

<sup>1</sup> US South amended its Application on November 26, 1997, May 17, 2000 and April 13, 2001.

1           5.       On November 19, 1997 and April 25, 2001, US South filed Affidavits of Publication  
2 indicating compliance with the Commission's notice requirements.

3           6.       On September 12, 2003, the Commission's Utilities Division Staff ("Staff") filed a  
4 Staff Report in this matter recommending approval of the application subject to certain conditions,  
5 and making other recommendations.

6           7.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
7 it has determined that US South's fair value rate base is zero, and is too small to be useful in setting  
8 rates. Staff further stated that in general, rates for competitive services are not set according to rate of  
9 return regulation, but are heavily influenced by the market. Staff recommended that the Commission  
10 not set rates for US South based on the fair value of its rate base.

11          8.       Staff believes that US South has no market power and that the reasonableness of its  
12 rates will be evaluated in a market with numerous competitors. In light of the competitive market in  
13 which the Applicant will be providing its services, Staff believes that the rates in Applicant's  
14 proposed tariffs for its competitive services will be just and reasonable, and recommends that the  
15 Commission approve them.

16          9.       Staff recommended approval of U S South's application subject to the following:

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

20           (b)       The Applicant should be ordered to maintain its accounts and records as  
21 required by the Commission;

22           (c)       The Applicant should be ordered to file with the Commission all financial and  
23 other reports that the Commission may require, and in a form and at such times as the  
24 Commission may designate;

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

27           (e)       The Applicant should be ordered to comply with the Commission's rules and  
28 modify its tariffs to conform to these rules if it is determined that there is a conflict  
between the Applicant's tariffs and the Commission's rules;

(f)       The Applicant should be ordered to cooperate with Commission investigations

1 of customer complaints;

2 (g) The Applicant should be ordered to participate in and contribute to a universal  
3 service fund, as required by the Commission;

4 (h) The Applicant should be ordered to notify the Commission immediately upon  
5 changes to the Applicant's address or telephone number;

6 (i) The Applicant's interexchange service offerings should be classified as  
7 competitive pursuant to A.A.C. R14-2-1108;

8 (j) The Applicant's maximum rates should be the maximum rates proposed by the  
9 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive  
10 services should be the Applicant's total service long run incremental costs of  
11 providing those services as set forth in A.A.C. R14-2-1109; and

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

15 10. Staff further recommended that US South's Certificate should be conditioned upon the  
16 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of  
17 an Order in this matter, or 30 days prior to providing service, whichever comes first.

18 11. US South's proposed tariff indicates that it intends to collect advances, deposits, and  
19 prepayments from its customers. US South provided its unaudited financial statements for the period  
20 ending December 31, 2002. The financial statements list assets of \$29.5 million, equity of \$2.4  
21 million and a net income of \$151,520.

22 12. Based on US South's financial condition and its indication it will collect advances,  
23 deposits, and prepayments, Staff also recommended that:

24 (a) US South's Certificate should be conditioned upon the Applicant procuring a  
25 performance bond as described below, and filing proof of that performance  
26 bond within 365 days from the date of an Order in this matter, or 30 days prior  
27 to providing service, whichever comes first, and the bond must remain in effect  
28 until further Order of the Commission;

(b) US South be required to procure a performance bond in the initial amount of  
\$10,000, with the minimum bond amount of \$10,000 to be increased if at any  
time it would be insufficient to cover all advances, deposits, or prepayments  
collected from its customers, in the following manner: The bond amount  
should be increased in increments of \$5,000, with such increases to occur  
whenever the total amount of the advances, deposits, and prepayments reaches  
a level within \$1,000 under the actual bond amount, and

(c) If at some time in the future, US South does not collect from its customers any advances, prepayments or deposits, then US South should be allowed to file with the Commission a request for cancellation of its established performance bond. Staff stated that after a review of such filing, Staff would forward its recommendation on the matter to the Commission for a Decision.

13. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact. Nos. 10 and 12 above, then US South's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

14. The rates proposed by this filing are for competitive services.

15. Staff's recommendations as set forth herein are reasonable.

16. US South's fair value rate base is zero.

**CONCLUSIONS OF LAW**

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

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

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

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

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

6. Staff's recommendations in Findings of Fact No. 7, 8, 9, 10, 12 and 13 should be adopted.

7. US South's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. US South's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

**ORDER**

IT IS THEREFORE ORDERED that the application of U.S. South Communications, Inc. dba

1 US South and dba INCOMM for a Certificate of Convenience and Necessity for authority to provide  
2 competitive resold interexchange telecommunications services, except local exchange services, is  
3 hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set  
4 forth in Findings of Fact Nos. 9, 10 and 12 above.

5 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
6 7, 8, 9, 10 and 12 above are hereby adopted.

7 IT IS FURTHER ORDERED that U.S. South Communications, Inc. dba US South and dba  
8 INCOMM shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos.  
9 9, 10 and 12 above.

10 IT IS FURTHER ORDERED that if U.S. South Communications, Inc. dba US South and dba  
11 INCOMM fails to meet the timeframes outlined in Findings of Fact Nos. 10 and 12 above, then the  
12 Certificate conditionally granted herein shall become null and void without further Order of the  
13 Commission.

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

16  
17 CHAIRMAN COMMISSIONER COMMISSIONER

18  
19 COMMISSIONER COMMISSIONER

20  
21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
22 Secretary of the Arizona Corporation Commission, have  
23 hereunto set my hand and caused the official seal of the  
24 Commission to be affixed at the Capitol, in the City of Phoenix,  
25 this \_\_\_\_ day of \_\_\_\_\_, 2003.

26  
27 \_\_\_\_\_  
28 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

PD:mlj

1 SERVICE LIST FOR: US SOUTH COMMUNICATIONS, INC. dba US SOUTH and dba  
2 INCOMM

3 DOCKET NO.: T-03253A-96-0464

4 Bobbi Ferguson  
5 Visiology, Inc.  
6 16061 Carmel Bay Drive  
7 Northport, AL 35475

8 Christopher Kempley, Chief Counsel  
9 Legal Division  
10 ARIZONA CORPORATION COMMISSION  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director  
14 Utilities Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28