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ARIZONA CORPORATION COMMISSION

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Mr. Wayne Allcott, Vice President
US West
3033 North third Street, Suite 1001
Phoenix, Arizona 85012

Arizona Corporation Commission
DOCKETED

OCT 05 1999

Re: Decision No. 61696
Docket No. RT-00000J-99-0095

DOCKETED BY

Dear Wayne:

I am in receipt of your September 27, 1999 letter to the Commissioners, which outlines the preparations US West has made in response to Decision No. 61696. While I commend your company for making the preparations needed to begin offering intrastate long distance in Arizona, I believe that the Commission remains committed to the 271 process (Decision No. 61837) in seeking approval from the Federal Communications Commission before US West can implement such a plan.

In its August 13, 1999 Memorandum Opinion and Order (FCC 99-222) concerning the Arizona Corporation Commission's petition for reconsideration or clarification of LATA boundaries, the FCC ruled that it retains *exclusive* jurisdiction over the subject matter, finding that:

"In sum, the Bureau found that (1) Congress vested exclusive authority in this Commission [FCC] to define LATA boundaries; (2) the Commission in *its Local Competition Second Report and Order* did not delegate this authority to the states; and (3) such authority, if delegated to the states, would impermissibly circumvent section 271."

Under paragraph 2 of the Conclusions of Law stated in Decision No. 61696 (page 4) it states, "The Commission [ACC] has jurisdiction over US West and the subject matter of the application." It is my opinion that the language contained in the FCC's Memorandum Opinion and Order, taken in its entirety, renders ACC Decision No. 61696 null and void by virtue of ordering paragraph No. 4, which states:

"If any portion of this Order is held to be unlawful or is overturned, then this entire Order shall become null and void..."

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It should be apparent – given the FCC’s decision in this matter – that contrary to Conclusion of Law No. 2 in Decision No. 61696, the ACC does **not** retain any jurisdiction over the matter of LATA boundaries within Arizona. Consequently, this decision has become “null and void” by virtue of its own ordering paragraph No. 4.

Furthermore, the ACC issued Decision No. 61837 on July 22, 1999 – two months after issuing Decision No. 61696 – which states under Findings of Fact No. 1:

“The Federal Telecommunications Act of 1996 added §271 to the Communications Act of 1934. The purpose of §271 is to specify the conditions that must be met *in order for the FCC to allow a Bell operating company (“BOC”), such as US West to provide in region interLATA services.*” (Page 3) [Emphasis added].

This language directly conflicts with Decision No. 61696 and the notion that the ACC can unilaterally drop LATA boundaries within the state. Rather, Decision No. 61837 affirms that it is the FCC which must approve US West’s application to provide in region interLATA services in Arizona. Taken in conjunction with the FCC’s Memorandum Opinion and Order, the operative effect of Decision No. 61837 is to render Decision No. 61696 “null and void.”

I trust that the work already completed by US West in preparation of competing in the intrastate long-distance market will serve to benefit consumers once the company’s §271 application is granted by the FCC. As you know, I fully support US West’s efforts in this regard, and hope that open competition in the long-distance market comes sooner rather than later for Arizona consumers.

Sincerely,



Jim Irvin, Commissioner
Arizona Corporation Commission

Cc: Commissioner Kunasek
Commissioner Mundell
Deborah Scott, Utilities Director
Lyn Farmer, Chief Counsel
Larry Strickling, FCC
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