

EXCEPTION



0000083938

RECEIVED
AZ CORP COMMISSION

MAY 10 12 57 PM '99

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

BEFORE THE ARIZONA CORPORATION COMMISSION

JAMES R. IRVIN
CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

DOCUMENT CONTROL

IN THE MATTER OF PLAN TO
IMPLEMENT TOLL CARRIER
PRESUBSCRIPTION SYSTEM BASED ON
STATE RATHER THAN LATA
BOUNDARIES.

DOCKET NO. RT-00000J-99-0095

EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 14-3-110, U S WEST Communications, Inc.
("U S WEST") excepts to the recommended order on the following
grounds.

The Recommended Opinion and Order ("Recommended Order") does
not answer the question posed in the procedural order and during
the hearing: can the Commission change the LATA boundary
immediately? First, U S WEST argued that the Commission had a
substantial legal argument, if it so chose, to immediately change
the LATA boundaries. U S WEST also argued that a change in LATA
boundaries would serve the public interest. U S WEST believes
that the Commission has a substantial argument under the
separation of powers that, if so inclined, it could adopt the
following amendment to the Recommended Order to provide that
Arizona immediately eliminate its intrastate LATA boundaries:

Arizona Corporation Commission

DOCKETED

MAY 10 1999

DOCKETED BY Jm

1 Insert the following at page 4, line 1, as additional Findings of
2 Fact:

3 19. Since 1984, Arizona has been divided into LATAs, and
4 U S WEST has been prohibited from offering interLATA, intrastate
5 long distance services.

6 20. The Commission finds that a state-based system would
7 result in increased competition in the telecommunications
8 industry in Arizona.

9 21. The Commission finds that a state-based system would
10 result in access to one-stop shopping for an array of
11 telecommunications services and in lower long distance prices.

12 22. The Commission finds the simplicity that would result
13 from a state-based system would increase the number of
14 significant competitors in the long distance market in Arizona,
15 and thereby generate enormous competitive pressures, which would
16 result in lower prices.

17 23. The Commission can make the following findings of fact
18 based on judicial notice and/or information in other ACC dockets:

19 a. Previous efforts to introduce additional
20 competitors into toll services in Arizona have
21 always lowered prices on average. In 1995, the
22 ACC permitted competition for intraLATA toll. As
23 a result, the average price of a minute of
24 intraLATA toll has fallen significantly and saved
25 Arizona consumers millions of dollars.

26 b. In 1998 U S WEST attempted to market the interLATA
toll services provided by QWEST. U S WEST signed
up over 100,000 customers for QWEST's services in
U S WEST's 14-state territory. As a result, the
average price of a minute of toll services
purchased by Arizona customers fell several cents
per minute and again saved Arizona consumers
millions of dollars.

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

- c. Lower toll prices benefit both the purchasers of toll and the economy and the number of jobs in Arizona, as businesses can more easily communicate among themselves and reach customers and, thus, increase revenue and jobs.
- d. U S WEST has offered to create a high speed data backbone throughout its service territory in Arizona to carry data including Internet traffic more quickly throughout its service territory in the state and, particularly, to and from less populated areas. This high speed traffic will make it easier to communicate with rural areas and transact business to and from these areas. The same high speed communication will help all businesses and citizens of the state to communicate and create new ideas and products. Various Arizona governmental agencies also would receive better service absent a LATA boundary by enhancing the ability to use a single provider for critical telecommunications services.
- e. All the improvements listed in findings 19a to 19d above affect primarily the welfare and commerce of the state of Arizona.
- f. For all these reasons, the ACC finds that it is in the public interest to create a single LATA for all of Arizona.
- g. Creating a single LATA will not change the competitive incentives of U S WEST to open the local market to competition in Arizona, because U S WEST can still only serve Arizona.
- h. For all these reasons, any anticompetitive effects of creating a single LATA in Arizona will be offset by the significant anticipated reduction in toll prices for the citizens of Arizona and the increased availability of high speed data. The reasons for creating two LATAs and preventing U S WEST from serving the entire state as a toll carrier have been superceded by the changes in the competitive landscape since the MFJ in 1984. Arizona now has over 150 local and toll carriers.

1 24. The Commission finds that the foregoing benefits would
2 result only if U S WEST is allowed to offer all in-state
3 interLATA long distance services within Arizona.

4 25. The Commission finds that the foregoing benefits would
5 result only if U S WEST is allowed to offer all in-state
6 interLATA long distance services within Arizona.

7 26. For all of the foregoing reasons, the Commission finds
8 that it would be in the public interest to allow U S WEST to
9 provide all in-state telecommunications services within Arizona
10 and to redefine the LATA boundaries within Arizona to make
11 Arizona a single-LATA state.

12 Delete page 4, lines 6-9 and replace with the following
13 Conclusions of Law:

- 14 3. Intrastate telecommunications services in Arizona
15 are solely of state interest and do not affect
federal interests.
- 16 4. The Commission has sole jurisdiction over
17 intrastate telecommunications services which begin
18 and end in Arizona and over the intrastate LATA
19 boundaries in Arizona, and any federal law or
20 regulation that infringes on that exclusive
21 jurisdiction is unconstitutional under Amendment X
of the United States Constitution. The FCC
recently ruled that calls which begin and end in
the intrastate jurisdiction are intrastate. FCC
Order No. 99-38, CC Docket No. 96-98 (February 25,
1999).
- 22 5. The State of Arizona and the Commission have the
23 sovereign rights to regulate telecommunications
24 which originate and terminate in Arizona and
25 affect primarily the commerce of the state of
26 Arizona. 47 U.S.C. § 152(b), La. PUC v. FCC, 476
U.S. 355 (1986).
6. The federal government and the Telecommunications
Act of 1996 recognize this division of sovereign

1 authority. Section 261 and 251(g) of the Telecom
2 Act and California PUC v. FCC, 905 F.2d 1217, 1240
(9th Cir. 1990).

3 7. Under the Tenth Amendment to the Constitution of
4 the United States, the federal government cannot
5 supplant Arizona's sovereign rights with federal
6 regulation of intrastate telecommunications.
7 Printz v. US, 117 S. Ct. 2365 (1997), New York v.
8 US, 505 U.S. 144 (1992).

9 8. The Commission concludes that setting LATA
10 boundaries within Arizona is a matter of
11 intrastate commerce which affects primarily the
12 citizens of Arizona.

13 9. The Commission concludes that 47 U.S.C. § 3(a)(43)
14 and 251(G) which purport to allow the FCC to
15 approve any proposed change in LATA boundaries
16 violate the Tenth Amendment and the Commerce
17 Clause of the Constitution of the United States.

18 10. Thus, the Commission believes that it has the
19 power to order that the LATA boundaries change
20 immediately so that Arizona becomes a single
21 in-state LATA on the date specified in this order.

22 11. Staff should convene a rulemaking to establish
23 carrier selection rules for a single-LATA state
24 within 30 days of the effective date of this
25 order.

26 Delete page 4, lines 11-12 and replace with the following
ordering paragraphs:

IT IS THEREFORE ORDERED THAT:

1. Staff is hereby directed to develop and implement a
plan to amend our rules and regulations to:

a. redefine the LATA boundaries to make Arizona
a single-LATA state; and

b. establish carrier selection rules for a
single-LATA state.

2. Once the amended presubscription system and redefined
LATA boundaries take effect, U S WEST is allowed and ordered to

1 provide all intrastate telecommunications services in Arizona,
2 including services that cross the former LATA boundaries in
3 Arizona.

4 3. The amended presubscription system and redefined LATA
5 boundaries shall be effective upon U S WEST filing a notice that
6 it is technically able to implement the changes.

7 4. If any portion of this order is held to be unlawful or
8 is overturned, then this entire order shall become null and void,
9 and the presubscription system and LATA boundaries in Arizona
10 shall revert immediately to their status before this order.

11 5. If any portion of this order is stayed by legal action,
12 then this entire order shall be deemed to be stayed.

13 RESPECTFULLY SUBMITTED this 10th day of May, 1999.

14 U S WEST COMMUNICATIONS, INC.
15 Law Department
16 L. Norton Cutler, Jr.
17 Andrew D. Crain
18 Thomas Dethlefs

19 AND

20 FENNEMORE CRAIG

21 By 
22 Timothy Berg
23 Theresa Dwyer

24 Attorneys for U S WEST
25 Communications, Inc.
26

1 ORIGINAL and ten copies of
2 the foregoing filed this 10th day
3 of May, 1999, with:

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

5 COPY of the foregoing faxed/hand delivered
6 this 10th day of May, 1999, to:

7 James M. Irvin, Chairman
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

10 Tony West, Commissioner
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

13 Carl J. Kunasek, Commissioner
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

15 Ray Williamson, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington
19 Phoenix, Arizona 85007

18 Christopher Kempley
19 Maureen Scott
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington
23 Phoenix, Arizona 85007

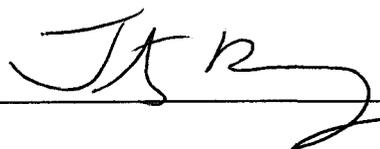
22 COPY of the foregoing faxed/mailed this
23 10th day of May, 1999, to:

23 Thomas F. Dixon, Senior Attorney
24 MCI Telecommunications Corporation
25 707 17th Street, Suite 3900
26 Denver, Colorado 80202

1 Joan Burke
Osborn Maledon, P.A.
2 2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012

3 Scott Wakefield
4 Residential Utility Consumer Office
282 North Central Avenue, Suite 1200
5 Phoenix, Arizona 85004-1022

6 Donald Low
Sprint Communications Company, L.P.
7 8140 Ward Parkway, Suite 5E
Kansas City, Missouri 64114

8
9 
10 _____

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26