

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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DATE: APRIL 30, 1999
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Enclosed please find the recommendation of Hearing Officers Jerry Rudibaugh and Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

TOLL CARRIER PRESUBSCRIPTION SYSTEM
(MODIFY LATA BOUNDARIES)

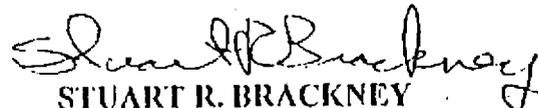
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 10, 1999

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

MAY 11, 1999 and MAY 12, 1999

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


STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
COMMISSIONER-CHAIRMAN
3 TONY WEST
COMMISSIONER
4 CARL J. KUNASEK
COMMISSIONER
5

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

DOCKET NO. RT-00000J-99-0095

DECISION NO. _____

8 **OPINION AND ORDER**

9 DATE OF HEARING: April 26, 1999 (oral arguments)
10 PLACE OF HEARING: Phoenix, Arizona
11 PRESIDING OFFICERS: Jerry Rudibaugh and Lyn Farmer
12 APPEARANCES: Mr. Thomas F. Dixon on behalf of MCI
Telecommunications Corporation;
13 Mr. Donald A. Low, Senior Attorney, on behalf of
14 Sprint Communications Company, L.P.;
15 Mr. Richard S. Wolters and Ms. Rebecca DeCook, on
16 behalf of AT&T Communications of the Mountain
States, Inc.;
17 Mr. Timothy Berg, FENNEMORE CRAIG, on behalf of
U S WEST Communications, Inc.;
18 Mr. Scott Wakefield, Chief Counsel, on behalf of the
19 Residential Utility Consumer Office; and
20 Mr. Christopher Kempley, Assistant Chief Counsel and
21 Ms. Maureen Scott, Staff Attorney, Legal Division on
behalf of the Utilities Division of the Arizona
Corporation Commission.

22 **BY THE COMMISSION:**

23 On February 22, 1999, U S WEST Communications, Inc. ("U S WEST" or "Company") filed
24 with the Arizona Corporation Commission ("Commission") a Petition for Order Concerning Toll
25 Carrier Presubscription Plan ("Petition"). On March 11, 1999, AT&T Communications of the
26 Mountain States, Inc. ("AT&T") filed Objections to the Petition. On March 16, 1999 and April 9,
27 1999, respectively, Sprint Communications Company, L.P. ("Sprint") and MCI Telecommunications
28 Corporation ("MCI") filed Applications to Intervene which were subsequently granted. On March

1 31, 1999, the Utilities Division Staff ("Staff") of the Commission filed its Response to the Petition.
2 Our April 19, 1999 Procedural Order set the matter for oral arguments on April 26, 1999 at the
3 Commission's offices, 1200 West Washington Street, Phoenix, Arizona. On April 26, 1999, AT&T
4 and the Residential Utility Consumer's Office ("RUCO") requested intervention in this matter.
5 Those requests were unopposed and granted at the April 26, 1999 oral arguments.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. U S WEST is certified to provide telephone service as a public service corporation in
11 the State of Arizona.

12 2. On February 22, 1999, U S WEST filed a Petition with the Commission.

13 3. On March 11, 1999, AT&T filed Objections to the Petition.

14 4. On March 31, 1999, Staff filed its Response to the Petition.

15 5. A procedural conference was convened on April 26, 1999 to hear oral arguments on U
16 S WEST's request for an immediate determination by the Commission, outside of the Section 271
17 process, that U S WEST be authorized to provide all in-state toll calls within the State of Arizona.

18 6. At the April 26, 1999 procedural conference, U S WEST clarified that it was not
19 requesting an immediate determination, outside of the Section 271 process, that U S WEST be
20 authorized to provide all in-state toll calls.

21 7. Since 1984, Arizona has been divided into LATAs which were established as part of
22 the AT&T Divestiture as a means of implementing one of several lines of business restrictions
23 imposed on the Bell Operation Companies ("BOC") by the Modified Final Judgement ("MFJ").

24 8. Pursuant to the MFJ, U S WEST was prohibited from carrying toll calls across the
25 LATA boundaries.

26 9. In February 1996, the MFJ was superseded by the Telecommunications Act of 1996
27 ("Act").

28 10. In November 1996 and January 1997, U S WEST filed petitions with the state

1 commissions in Minnesota and Arizona requesting those commissions modify the LATA boundaries
2 in their states to make those boundaries co-extensive with state boundaries.

3 11. On March 4, 1997, the Competition Policy Institute and the Minnesota Department of
4 Public Service filed a petition requesting the Federal Communications Commission ("FCC") issue a
5 Declaratory Ruling to clarify that the *Second Report and Order*¹ did not delegate to the states the
6 authority to approve the establishment of or modifications to LATA boundaries and that this
7 authority remains with the FCC.

8 12. In response to the petition, the FCC issued an April 21, 1997 Declaratory Order that
9 the states had no authority to redefine LATA boundaries.²

10 13. The April 21, 1997 Declaratory Order was not appealed by U S WEST.

11 14. According to U S WEST, the FCC expressly authorized states to structure 2-PIC
12 systems based on state borders rather than LATAs.

13 15. According to U S WEST, the public interest supports eliminating the LATA
14 boundaries in Arizona because of additional simplicity and increased competition in the long distance
15 industry.

16 16. As a result, U S WEST opined that the Commission could restructure the existing
17 presubscription system based on state borders rather than LATAs.

18 17. AT&T asserted the Petition of U S WEST is a collateral attack on the Declaratory
19 Order and also is premature since Section 272 of the Act requires BOCs to have separate affiliates for
20 the provision of interLATA telecommunication services for at least three years after obtaining
21 Section 271 approval.³

22 18. Staff recommended the Commission grant the Petition to the extent that it requests the
23 commencement of a proceeding at this time to examine modifying the existing presubscription
24 system, effective upon U S WEST's obtaining Section 271 approval from the FCC.

26 ¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report*
27 *and Order*, CC Docket No. 96-98, FCC 96-333 (rel. August 8, 1996) (*Second Report and Order*).

28 ² See *In the Matter of Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in*
Minnesota and Arizona, Docket No. NSD-L-97-6, released April 21, 1997.

³ Sprint, MCI, and RUCO supported AT&T's position.

CONCLUSIONS OF LAW

1
2 1. U S WEST is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

4 2. The Commission has jurisdiction over U S WEST and the subject matter of the
5 application.

6 3. The FCC in a 1997 Declaratory Order ruled that the Arizona Corporation Commission
7 had no authority to redefine LATA boundaries.

8 4. It is appropriate to review existing rules on the LATA based presubscription system at
9 this time.

ORDER

10
11 IT IS THEREFORE ORDERED that the Director of the Utilities Division shall begin a
12 review of existing rules on the LATA based presubscription system.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15
16
17 COMMISSIONER-CHAIRMAN COMMISSIONER COMMISSIONER

18
19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Secretary of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this ____ day of _____, 1999.

24
25 _____
26 BRIAN C. McNEIL
27 EXECUTIVE SECRETARY

25 DISSENT _____
26 JR:dap

1 SERVICE LIST FOR: TOLL CARRIER PRESUBSCRIPTION CARRIER

2 DOCKET NO. RT-00000J-99-0095

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