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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

DOCKETED

OCT 30 1998

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION)
OF ICG TELECOM GROUP, INC.)
FOR A CERTIFICATE OF CONVENIENCE)
AND NECESSITY TO PROVIDE)
COMPETATIVE INTERLATA/INTRALATA)
RESOLD TELECOMMUNICATIONS)
SERVICES EXCEPT LOCAL EXCHANGE)
SERVICES.)

DOCKET NO. T-03566A-98-0280

DECISION NO. 61220

ORDER

Open Meeting
October 27 and 28, 1998
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 May 28, 1998, ICG Telecom Group, Inc. ("Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold telecommunications service in the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101 through R14-2-1115 to regulate resellers.

4. Applicant is a Colorado corporation that has been qualified to do business in Arizona since 1998.

5. Applicant is a switchless reseller that purchases telecommunications services and is currently reselling the services of WilTel, Inc.

1 6 On August 7, 1998, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report.

3 7 The Staff Report stated that Applicant is a subsidiary of a large telecommunications
4 company based in Canada, JCG Communications, Inc. For the year ended December 31, 1997, the
5 consolidated entity had a net loss of \$327 million and negative retained earnings of \$369 million.

6 8 Staff stated that the company had enormous capital raising ability and had raised over
7 \$300 million in debt and equity capital in 1997, and appeared to possess the financial capability to
8 offer its services in Arizona.

9 9 In order to protect the public interest, it is appropriate to require that if Applicant desires
10 to receive prepayments, advances or deposits from its customers, it should establish an escrow
11 account as described below.

12 10. The Staff Report stated that Applicant has no market power and the reasonableness of
13 its rates would be evaluated in a market with numerous competitors.

14 11. Staff recommended that:

- 15 (a) Applicant's application for a Certificate should be approved subject to A.A.C.
16 R14-2-1106.B;
- 17 (b) Applicant's intrastate toll service offerings should be classified as competitive
18 pursuant to A.A.C. R14-2-1108;
- 19 (c) Applicant's competitive services should be priced at the effective rates set forth
20 in Applicant's tariffs and the maximum rates for these services should be the
21 maximum rates proposed by Applicant in its tariffs. The minimum rates for
22 Applicant's competitive services should be Applicant's long run incremental costs
23 of providing those services as set forth in A.A.C. R14-2-1109. Any future changes
24 to the maximum rates in Applicant's tariffs must comply with A.A.C. R14-2-1110;
- 25 (d) Applicant should be required to comply with the Commission's rules and
26 modify its tariffs to conform with these rules, if it is determined that there is a
27 conflict between Applicant's tariffs and the Commission's rules; and
- 28 (e) The application may be approved without a hearing.

12. By Procedural Order dated August 27, 1998, the Commission set a deadline of October
9, 1998 for filing exceptions to the Staff Report; requesting that a hearing be set; or requesting
intervention as interested parties.

13. No exceptions were filed to the Staff Report, nor did any party request that a hearing be

1 set, nor were any requests for intervention filed with Docket Control.

2 **CONCLUSIONS OF LAW**

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

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

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

8 4. As conditioned below, the provision of competitive interLATA/intraLATA reseller
9 services in Arizona by Applicant is in the public interest.

10 5. With the conditions contained herein, Applicant is a fit and proper entity to receive a
11 Certificate for providing competitive interLATA/intraLATA reseller services in Arizona.

12 6. Staff's recommendations in Findings of Fact No. 11 are reasonable and should be
13 adopted.

14 **ORDER**

15 IT IS THEREFORE ORDERED that the application of ICG Telecom Group, Inc. for a
16 Certificate of Convenience and Necessity for authority to provide competitive interLATA/intraLATA
17 resold telecommunications services except local exchange services shall be, and the same is, hereby
18 granted, as limited below.

19 IT IS FURTHER ORDERED that of ICG Telecom Group, Inc., shall comply with the Staff
20 recommendations set forth in Findings of Fact No. 11.

21 IT IS FURTHER ORDERED that ICG Telecom Group, Inc. shall not be authorized to charge
22 customers any prepayments, advances or deposits, unless within thirty days of this Decision it
23 establishes an escrow account or posts a bond equivalent to one year of prepayments, advances or
24 deposits to be received from Arizona customers, in advance of receipt of the prepayments, advances
25 or deposits. If in the future ICG Telecom Group, Inc. desires to initiate such charges, or to terminate
26 its escrow account or bond, it must file information with the Commission that demonstrates the
27 company's financial viability. Staff shall review the information and file its recommendation
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1 concerning financial viability within thirty days of receipt of the financial information, for
2 Commission approval.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6 
7 COMMISSIONER - CHAIRMAN

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9 COMMISSIONER

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11 COMMISSIONER

12 IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the
13 Arizona Corporation Commission, have hereunto set my hand and
14 caused the official seal of the Commission to be affixed at the Capitol,
15 in the City of Phoenix, this 30th day of Oct, 1998.

16 
17 JACK ROSE
18 EXECUTIVE SECRETARY

19 DISSENT
20 JR:dap

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SERVICE LIST FOR: ICG TELECOM GROUP, INC

DOCKET NO. T-03566A-98-0280

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