

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



STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: March 4, 1999  
DOCKET NO.: T-03532A-98-0134

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Jane L. Rodda. The recommendation has been filed in the form of an Order on:

MAX-TEL COMMUNICATIONS, INC.  
(CC&N RESELLER)

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:

MARCH 15, 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:

MARCH 30, 1999 AND MARCH 31, 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  
3 COMMISSIONER - CHAIRMAN  
4 TONY WEST  
5 COMMISSIONER  
6 CARL J. KUNASEK  
7 COMMISSIONER

8 IN THE MATTER OF THE APPLICATION OF  
9 MAX-TEL COMMUNICATIONS, INC FOR A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE LOCAL EXCHANGE  
12 SERVICES AS A RESELLER.

DOCKET NO. T-03532A-98-0134

DECISION NO. \_\_\_\_\_

**ORDER**

13 Open Meeting  
14 March 30 and 31, 1999  
15 Phoenix, Arizona

**BY THE COMMISSION:**

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

**FINDINGS OF FACT**

18 1. On March 13, 1998, Max-Tel Communications, Inc. ("Applicant") filed with the  
19 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide  
20 local exchange telecommunications services as a reseller in the State of Arizona.

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

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

26 4. Applicant is a Texas corporation that has been authorized to do business in Arizona  
27 since 1998.

28 5. In Decision No. 60968 (June 19, 1998) the Commission approved a resell agreement  
between Applicant and US WEST Communications, Inc. ("US WEST").

1           6.       On November 6, 1998, the Commission's Utilities Division Staff ("Staff") filed a  
2 Staff Report. On January 27, 1999, Staff filed an amended Staff Report.

3           7.       In the amended Staff Report, Staff stated that Applicant had provided unaudited  
4 financial statements for the nine months ended September 30, 1997, which indicated Applicant had  
5 total assets of \$262,722 and retained earnings of \$88,873, with net income of \$88,873 on sales of  
6 \$605,930. Staff did not believe that Applicant possessed adequate financial resources to provide  
7 competitive telecommunications services in Arizona. Consequently, Staff recommended: (1) that  
8 Applicant procure a performance bond equal to the expenses needed to cover 60 days service to its  
9 customers; (2) the amount of the performance bond must be increased if at any time it would be  
10 insufficient to cover 60 days service to its customers; (3) if the Applicant desires to discontinue  
11 service it must file an application with the Commission pursuant to A.A.C. R14-2-1107; (4) the  
12 Applicant must notify each of its customers and the Commission 60 days prior to filing pursuant to  
13 A.A.C. R14-2-1107; (5) failure to meet this requirement will result in forfeiture of the Applicant's  
14 performance bond; and (6) if after one year, Applicant desires to discontinue the performance bond,  
15 it must file information with Staff that demonstrates the Applicant's financial viability. Staff will  
16 review the information and provide the Applicant its decision concerning financial viability within  
17 30 days of receipt of the information. Staff believed that if Applicant ceases to do business in  
18 Arizona, the additional financial requirements, along with A.A.C. R14-2-1107 are sufficient to  
19 protect the Applicant's customers.

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

22           9.       Staff further recommended that :

23               (a)     Applicant's application for a Certificate should be approved without a hearing  
24 subject to A.A.C. R14-2-1106.B and the conditions set forth above;

25               (b)     Applicant's local exchange service offering should be classified as  
26 competitive pursuant to A.A.C. R14-2-1108;

27               (c)     Applicant's competitive services should be priced at the effective rates set  
28 forth in Applicant's tariffs and the maximum rates for these services should be the  
maximum rates proposed by Applicant in its tariffs. The minimum rates for

1 applicant's competitive services should be Applicant's long run incremental costs of  
2 providing those services as set forth in A.A.C. R14-2-1109. Any future changes to  
3 the maximum rates in Applicant's tariffs must comply with A.A.C. R14-2-1110; and

4 (d) Applicant should be required to comply with the Commission's rules and  
5 modify its tariffs to conform with the rules if it is determined there is a conflict  
6 between Applicant's tariffs and the Commission's rules.

7 10. By Procedural Order dated December 8, 1998, the Commission set a deadline of  
8 January 15, 1999, for filing exceptions to the Staff Report; requesting that a hearing be set; or  
9 requesting intervention as interested parties.

10 11. The Commission granted intervention to US WEST on May 12, 1998.

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

13 13. On January 29, 1999, Applicant filed evidence that it had posted a performance  
14 bond.

#### 15 CONCLUSIONS OF LAW

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

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

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

21 4. As conditioned below, the provision of competitive local exchange reseller services  
22 by Applicant is in the public interest.

23 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive  
24 local exchange services as a reseller in Arizona.

25 6. Staff's recommendations in Findings of Fact Nos. 7 and 9 are reasonable and should  
26 be adopted.

#### 27 ORDER

28 IT IS THEREFORE ORDERED that the Application of Max-Tel Communications, Inc. for  
a Certificate of Convenience and Necessity for authority to provide competitive resold local

1 exchange services shall be, and the same is hereby granted, conditioned upon Max-Tel  
2 Communications, Inc. procuring a performance bond in accord with Staff's recommendations in  
3 Findings of Fact No. 7. If after one year, Max-Tel Communications, Inc. desires to discontinue the  
4 performance bond, it must file information with Staff that demonstrates its financial viability. Staff  
5 will review the information and provide its decision concerning financial viability within 30 days  
6 of receipt of the information.

7 IT IS FURTHER ORDERED that Max-Tel Communications, Inc shall comply with the Staff  
8 recommendations set forth in Findings of Fact No. 9.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11  
12 \_\_\_\_\_  
COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

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15 IN WITNESS WHEREOF, I, STUART R BRACKNEY,  
16 Acting Executive Secretary of the Arizona Corporation  
17 Commission, have hereunto set my hand and caused the  
18 official seal of the Commission to be affixed at the Capitol, in  
19 the City of Phoenix, this \_\_\_\_ day of \_\_\_\_, 1999.

20 \_\_\_\_\_  
STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

21  
22 DISSENT \_\_\_\_\_  
JR:bbs

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SERVICE LIST FOR: MAX-TEL COMMUNICATIONS, INC.

DOCKET NO. T-03532A-98-0134

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