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BRIAN C. McNEIL
EXECUTIVE SECRETARY

RL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

ARIZONA CORPORATION COMMISSION

DATE: NOVEMBER 5, 1999

DOCKET NO: T-03466A-97-0636

TO ALL PARTIES:

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

COMM SOUTH COMPANIES, INC.
(CC&N/RESELLER)

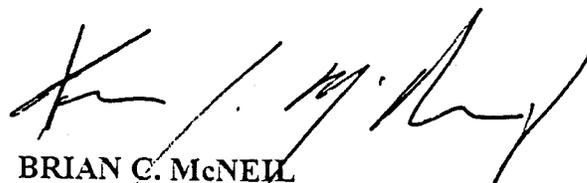
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 10:00 a.m. on or before:

NOVEMBER 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:

NOVEMBER 16, 1999 and NOVEMBER 17, 1999

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


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 WILLIAM A. MUNDELL
COMMISSIONER

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6
7 IN THE MATTER OF THE APPLICATION OF
8 COMM SOUTH COMPANIES, INC. FOR A
9 CERTIFICATE OF CONVENIENCE AND
10 NECESSITY TO PROVIDE LOCAL EXCHANGE
11 SERVICES AS A RESELLER.

DOCKET NO. T-03466A-97-0636

12 DECISION NO. _____

13 **ORDER**

14 Open Meeting
15 November 16 and 17, 1999
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On November 17, 1997, Comm South Companies, Inc. ("Applicant") filed with the
22 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
23 local exchange telecommunications services as a reseller in the State of Arizona.

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

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

4. Applicant is a Texas corporation authorized to do business in Arizona since 1997.

5. Applicant has a resale agreement with US West Communications, Inc. ("US WEST")
that was filed in Docket No. T-01051B-98-0115. The Commission has not yet approved such resale
agreement.

1 6. On August 20, 1999, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report.

3 7. In the Staff Report, Staff stated that Applicant provided a audited financial statements
4 for the year ended December 31, 1998, which indicated the Applicant had total assets of \$9.60
5 million and negative stockholders' equity of \$4.88 million. For the year 1998, Applicant had a net
6 loss of \$3.56 million on revenues of \$80.44 million. Based on this information Staff believes that
7 Applicant lacked the financial resources necessary to offer competitive telecommunications services
8 in Arizona. Consequently, Staff recommended: (1) that at least 30 days prior to Applicant's initial
9 offering of service, Applicant procure a performance bond equal to the expenses needed to cover 60
10 days service to its customers; (2) the amount of the performance bond must be increased if at any
11 time it would be insufficient to cover 60 days service to its customers; (3) if the Applicant desires
12 to discontinue service it must file an application with the Commission pursuant to A.A.C. R14-2-
13 1107; (4) the Applicant must notify each of its customers and the Commission 60 days prior to filing
14 pursuant to A.A.C. R14-2-1107; (5) failure to meet this requirement will result in forfeiture of the
15 Applicant's performance bond; and (6) if after one year, Applicant desires to discontinue the
16 performance bond, it must file information with Staff that demonstrates the Applicant's financial
17 viability. Staff will review the information and provide the Applicant its decision concerning
18 financial viability within 30 days of receipt of the information. Staff believed that if Applicant
19 ceases to do business in Arizona, the additional financial requirements, along with A.A.C. R14-2-
20 1107 are sufficient to protect the Applicant's customers.

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

23 9. Staff further recommended that :

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

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

28 (c) Applicant's competitive services should be priced at the effective rates set
forth in Applicant's tariffs and the maximum rates for these services should be the

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

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

6 10. By Procedural Order dated October 4, 1999, the Commission set a deadline of
7 October 29, 1999, for filing exceptions to the Staff Report; requesting that a hearing be set; or
8 requesting intervention as interested parties.

9 11. The Commission granted intervention to US WEST on December 4, 1997.

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

12 13. On October 6, 1999, Applicant filed a surety bond in conformance with the
13 recommendations contained in the Staff Report.

14 **CONCLUSIONS OF LAW**

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

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

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

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

22 5. As conditioned below, Applicant is a fit and proper entity to receive a Certificate for
23 providing competitive local exchange services as a reseller in Arizona.

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

26 **ORDER**

27 IT IS THEREFORE ORDERED that the Application of Comm South Companies, Inc. for
28

1 a Certificate of Convenience and Necessity for authority to provide competitive resold local
2 exchange services shall be, and the same is hereby granted, conditioned upon Comm South
3 Companies, Inc. complying with Staff's recommendations in Findings of Fact No. 7. After one year,
4 if Comm South Companies, Inc. desires to discontinue the performance bond, it must file
5 information with Staff that demonstrates its financial viability. Staff will review the information and
6 provide its decision concerning financial viability within 30 days of receipt of the information.

7 IT IS FURTHER ORDERED that the authority granted herein is further conditioned upon
8 the Commission approving a resale agreement with an underlying local exchange carrier.

9 IT IS FURTHER ORDERED that Comm South Companies, Inc. shall comply with the Staff
10 recommendations set forth in Findings of Fact No. 9.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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14 _____
COMMISSIONER-CHAIRMAN COMMISSIONER COMMISSIONER

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16
17 IN WITNESS WHEREOF, I, BRIEN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 1999.

21 _____
BRIAN C. McNEIL
22 EXECUTIVE SECRETARY

23
24 DISSENT _____
JR:dap

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SERVICE LIST FOR: COMM SOUTH COMPANIES, INC.

DOCKET NO. T-03466A-97-0636

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