NEW APPLICATION

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2004 OCT 15 P 4: 36
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October 15, 2004

Chairman Marc Spitzer
Commissioner Jeff Hatch-Miller
Commissioner Mike Gleason
Commissioner Kris Mayes

T-00000I-04-0749

Dear Colleagues,

I would like your support and participation in one or more Special Open Meetings to discuss the state of competition in Arizona telecommunications markets. Given recent developments in the industry, I believe the time is right to examine this issue for the benefit of Arizona consumers and providers.

The proliferation of new services utilizing advanced technologies and wireless are driving profound changes in the telecommunications industry. A common concern expressed by industry participants these days is that regulation is having a hard time keeping pace with the changes that are occurring. Certainly, it is fair to say that both federal and state regulators have been challenged recently in considering how to fairly adapt existing regulatory policies and structures to address these fundamental changes.

Technology is the driving force behind much of the new competition emerging today. Most consumers now have the option of obtaining basic telephone service from the major incumbent wireline carrier, wireless service providers, cable companies, VOIP providers, and/or competitive local exchange carriers (CLECs). The regulatory paradigm applicable to each of these providers is different, however, with the major incumbent wire-line provider arguing that these regulatory differences are inherently unfair leaving them at a competitive disadvantage.

Ironically, working against technology's impact on competition, are the results of recent federal regulatory decisions and court action. For some background on this, we are all aware that the Telecommunications Act of 1996 ("Telecommunications Act") was designed, in part, to encourage competition through use of the incumbents' networks as a transition mechanism to full facilities-based competition. In turn, our Commission worked very hard, particularly in recent years, implementing the provisions of the Telecommunications Act to create a level playing field for all providers to bring competition to Arizona telecommunications markets for the benefit of consumers. That

effort included a four-year long process which resulted in the redesign of Qwest Communications' (Qwest) wholesale service offerings and operational support systems to allow CLECs to effectively compete in the local exchange. Based upon the comprehensive record developed by this Commission, Qwest was authorized to provide long-distance service in December, 2003 by the Federal Communications Commission (FCC).

Just as more competition was beginning to emerge, federal and state regulatory efforts were judicially upended following a relentless legal onslaught by those with the most to lose in a fully competitive local market. Residential service options that looked promising a few months ago have dried up in the face of key FCC rules being struck down by a decision of the D.C. Circuit Court of Appeals, a decision which the United States Supreme Court recently declined to review. The FCC's interim order, which attempted to bring some short-term certainty to wholesale providers relying upon an incumbent carrier's network, is the subject of a mandamus petition now pending before the D.C. Circuit Court of Appeals. As the FCC struggles to address the deficiencies described in the D.C. Circuit Court's latest ruling, there is no assurance that this will be the end of the appeals and the endless uncertainty that they bring. Two new large entrants to the Arizona local exchange market, AT&T and MCI, have recently announced that they will no longer be actively marketing local or long distance service to new residential customers. In short, a significant portion of the promising world of competition engineered through legislative and regulatory efforts now appears on the brink of collapse.

In addition, loopholes in our existing regulatory framework also appear to be a threat to the future of competition. For example, a fairly recent development in need of inquiry involves the increasing use of "exclusive service arrangements" between developers and carriers. What is the impact of such arrangements on competition? Do such arrangements compromise a consumer's ability to choose a service or product provider by artificially constraining the market? Do they potentially hold the customer captive to a deal in which only the developer and the phone company benefit?

All in all, Arizona has seen both signs that portend a robust competitive market and ones that suggest that such a market is still far more dream than reality. To allow us to begin the process of considering what state regulation of the telecommunications industry should look like in the future, as well as to allow us to make more informed recommendations regarding regulation at the federal level, I propose that we hold a Special Open Meeting on the state of telecommunications competition which would involve receiving information from a broad base of telecommunications providers and other interested parties on the following:

- Information on the residential and business customers served by each provider using breakdowns that would provide reasonably sound insight

into competition within regions, counties, cities or other appropriate subdivisions following collection and display of each provider's data.

- The impact of wireless and VOIP, or other options, on the demand for traditional wireline services for residential and business users, as well as information about any possible technological and economic impediments to these services and others becoming viable competitive service options.
- How the community of telecommunications providers believe that the degree and effectiveness of "competition" can be best assessed. In other words, what do providers consider to be the key measures or attributes for determining the competitiveness of the telecommunications environment in Arizona, in regions of the state or in any other form of subdivision within the state.
- The role of state versus federal regulation in the future.
- Where telecommunications providers see the competitive environment going over the next year; five years; 10 years.
- What providers believe are any major impediments to the development of a competitive marketplace in Arizona.
- The impact of recent judicial and FCC rulings on the state of competition and how those rulings are likely to affect the development of competition. What can be done in Arizona to bring more certainty to telecommunications markets that may have been disrupted by events at the federal level?
- Despite the best efforts of state and federal regulators, competition in the residential market has been slow in coming, and still does not exist in most rural markets. What actions could state regulators take to bring more competition to the residential markets in Arizona for the benefit of Arizona consumers?

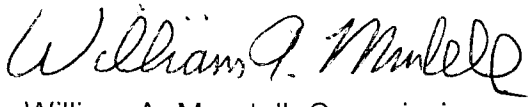
I recognize that there will be some overlap with existing dockets, however, I do not believe that that this should deter us from having a separate open dialogue regarding these issues. Procedures can be put in place to ensure that all parties involved in dockets which might have some overlap are given notice of this Special Open Meeting.

With this letter, I am asking that a docket be opened for the purpose of gathering and accepting relevant information pertaining to the state of telecommunications competition in Arizona. I would propose that anyone desiring to address the Commission and present information at the Special Open Meeting, be asked to submit their filings and written comments, along with supporting material, no less than two weeks prior to the date of the Special Open Meeting. I personally want our staff involved in the meeting to listen and make comments when appropriate; however, I would not anticipate a need for our Utilities or Legal Divisions to make a separate presentation during the initial meeting.

I would appreciate a response to this letter indicating support for or opposition to a Special Open Meeting, along with any suggestions or concerns you may have. Given the rapid and significant changes within the telecommunications industry, I believe it is crucial that we begin an open dialogue with industry on this subject. I hope you agree.

Thank you for your consideration.

Sincerely,



William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Brian McNeil
Lyn Farmer
Chris Kempley
Ernest Johnson
Parties of Record (Section 271 of the Telecommunications Act of 1996)