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BEFORE THE ARIZONA CORPORATION COMMISSION

2005 JUL - 1 P 4: 29

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
MARC SPITZER
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION Arizona Corporation Commission
DOCUMENT CONTROL **DOCKETED**

JUL - 1 2005

DOCKETED BY

IN THE MATTER OF THE JOINT NOTICE
OF INTENT OF VERIZON
COMMUNICATIONS, INC., AND MCI,
INC.

DOCKET NOS: T-01846B-05-0279
T-03258A-05-0279
T-03475A-05-0279
T-03289A-05-0279
T-03198A-05-0279
T-03574A-05-0279
T-02431A-05-0279
T-03197A-05-0279
T-02533A-05-0279
T-03394A-05-0279
T-03291A-05-0279

SECOND AMENDMENT TO NOTICE OF INTENT

On April 13, 2005, Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") (collectively the "Companies"), filed a Joint Notice of Intent ("Notice") with the Arizona Corporation Commission ("Commission"). The Notice described Verizon's proposed acquisition of MCI ("the Transaction") pursuant to an Agreement and Plan of Merger ("Agreement"), dated February 14, 2005. On May 9, 2005, the Companies filed an Amendment to advise the Commission of an amendment to the Agreement that reflected revised financial terms. The Companies are filing this Second Amendment to provide the Commission with additional information related to the Transaction, specifically, that the Commission had previously granted

Snell & Wilmer

L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

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1 limited waivers to the Affiliated Interest Rules,¹ which the Companies contend are a basis for
2 Commission dismissal of the Notice of Intent.

3 **Background**

4 Verizon and MCI entered into an Agreement under which MCI will be merged with and
5 into ELI Acquisition, LLC. ELI Acquisition will then be renamed MCI, LLC and will continue
6 as a wholly owned subsidiary of Verizon. Based on early discussions with Commission Staff and
7 Counsel, Verizon and MCI understood that Staff intended to review the proposed transaction
8 under the Affiliated Interest Rules. Although the Companies maintained that Commission
9 approval of the Transaction was not required, in good faith and in the spirit of cooperation, the
10 Companies filed a Notice,² as contemplated by the Affiliated Interest Rules.

11 As explained in the Notice, the Commission had previously granted several MCI
12 subsidiaries (specifically, MCImetro Access Transmission Services, LLC; MCI WorldCom
13 Communications, Inc.; MCI WorldCom Network Services, Inc.; and Teleconnect Long Distance
14 Services and Systems Company) limited waivers of the Affiliated Interest Rules³. See Exhibit A.
15 As specified in Decision No. 62702, which granted the limited waivers of the Affiliated Interest
16 Rules, each MCI subsidiary is only required to file a Notice of Intent under the Affiliated Interest
17 Rules if a reorganization is likely to result in: (i) significant increased capital costs of its Arizona
18 operations; (ii) significant additional costs allocated or charged directly to the Arizona
19 jurisdiction; or (iii) a significant reduction in the net income of its Arizona operations
20 (collectively referred to as “the Conditions”).

21
22 ¹ Az Admin Code R14-2-801 *et seq.*

23 ² The Notice included the February 14th Agreement and a subsequent Amendment to the Agreement. In the Notice,
the Companies have clearly asserted that the Affiliated Interest Rules should not apply to the transaction. See, p. 2-3.

24 ³ Two other MCI subsidiaries, BLT Technologies, Inc. (“BLT”) and Brooks Fiber Communications of Tucson, Inc.
25 (“Brooks”), were also granted waivers by the Commission in Decision No. 62702, but those two entities no longer
26 exist, and each company was permitted by the Commission to discontinue services in Arizona. Brooks’ certificate
was cancelled and its operations were merged into MCImetro by Decision No. 67179 issued August 10, 2004, and
Decision No. 66595 issued December 9, 2003, respectively. BLT withdrew its request for a certificate on July 6,
2001, and the related Docket No. T-03269A-96-0522 was administratively closed on October 15, 2001.

1 **The Verizon Waiver**

2 Subsequent to the filing of the Notice, it was discovered that during the prior merger of
3 predecessor companies of Verizon California Inc., the local exchange company that currently
4 serves approximately 8,000 customers in Arizona, the Commission had granted a waiver of the
5 Affiliated Interest Rules, concluding that the merger did not require Commission approval.

6 In Decision No. 58232, the Commission granted Contel of the West, Inc. d/b/a GTE
7 West (GTE West) and Contel of California, Inc. (Contel CA) a waiver of the Affiliated Interest
8 Rules. *See* Exhibit B. Like the limited waivers granted to the MCI subsidiaries, GTE West and
9 Contel CA were required to file a Notice of Intent only for those future transactions that were
10 likely to result in the Conditions described above. The Commission asserted that for purposes of
11 applying the criteria described in the Conditions, results of a transaction would be deemed
12 “significant” if they had a material adverse impact on the public utility’s Arizona operations, such
13 as causing an increase in rates for Arizona customers.⁴

14 The validity of this waiver to successor companies was raised several years later, in
15 relation to other merger activity. In October 1998, the Commission’s Chief Counsel issued a
16 letter that addressed the merger of GTE Corporation and Bell Atlantic Corporation. *See* Exhibit
17 C. The Chief Counsel concluded that because the limited waivers were previously granted to the
18 predecessor companies, there was no obligation to seek approval of the merger under the
19 Affiliated Interest Rules. The Chief Counsel also acknowledged that the Affiliated Interest Rules
20 did not apply to the subsidiaries that had jurisdictional revenues of less than \$1 million,

21 The waivers that were granted to Verizon predecessors as described above were found to
22 be applicable; no one has challenged their validity because they were issued to Verizon
23 predecessors rather than Verizon California directly.

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 ⁴ *Id.* at 4.

1 The same rationale that led to the conclusion that Commission approval was not required
2 in the prior mergers applies equally to this Transaction. The Conditions under which filing a
3 Notice of Intent would be required by the Commission's prior orders do not exist. The
4 Verizon/MCI merger will have no adverse impacts on Arizona customers: the Transaction will
5 not result in significant increased capital costs to the subsidiaries' Arizona operations, will not
6 result in significant additional costs allocated or charged directly to the Arizona jurisdictional
7 operations, and will not result in significant reductions in the net income of the subsidiaries'
8 Arizona operations. The Companies' initial Notice and their responses to Commission Staff's
9 data requests provide ample confirmation of these facts.

10 Furthermore, a number of the Verizon and MCI entities operating in Arizona are not Class
11 A utilities, and therefore the Affiliate Interest Rules do not apply to those entities. Verizon Select
12 Services, Inc.; Verizon Long Distance, OnePoint Communications-Colorado, LLC d/b/a Verizon
13 Avenue, and Verizon Enterprise Solutions, as well as TTI National, Inc., and Intermedia
14 Communications, Inc.,⁵ are not Class A utilities because they do not have intrastate revenues in
15 Arizona exceeding \$1 million⁶.

16 For these reasons, it is the Companies' position that the previously granted waivers apply,
17 and neither Verizon nor MCI is required to file a Notice of Intent or seek approval under the
18 Affiliated Interest Rules for their current Transaction.

19 **Conclusion**

20 Despite this position, the Companies and Staff have agreed to a procedural schedule for
21 review of the Transaction. As part of this review, the Companies request that the Commission
22 consider the Transaction in light of these waivers. If the Commission finds that these waivers are
23

24 ⁵ Intermedia Communications, Inc.'s certificate of convenience and necessity is pending cancellation as part of
25 MCI's CLEC consolidation in docket Nos. T-03291A-05-0038, T-03541A-05-0038.

26 ⁶ The Affiliated Interest Rules are applicable to "all Class A investor-owned utilities under the jurisdiction of the
Commission". AAC R14-2-802(A). A utility is classified based on its annual intrastate operating revenue. A "Class
A" telephone utility has annual intrastate operating revenues exceeding \$1,000,000. AAC R-14-2-103(A)(3)(q).

1 applicable and that the Conditions will not occur as a result of this Transaction, the Companies
2 request that the Commission render a ruling that Commission review under the Affiliated Interest
3 Rules is not warranted.

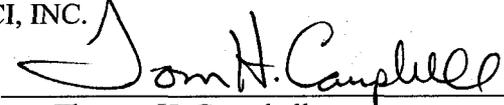
4 RESPECTFULLY SUBMITTED this 1st day of July, 2005.

5 VERIZON COMMUNICATIONS INC.

6 By: 

7 Deborah R. Scott
8 Kimberly A. Grouse
9 Snell & Wilmer
10 One Arizona Center
11 Phoenix, AZ 85004
12 602-382-6571 (phone: Phoenix)
13 602-382-6070 (fax)
14 drscott@swlaw.com

15 MCI, INC.

16 By: 

17 Thomas H. Campbell
18 Michael T. Hallam
19 Lewis and Roca LLP
20 40 North Central Avenue
21 Phoenix, AZ 85004-4429
22 (602) 262-5723 (phone)
23 (602) 734-3841(fax)
24 tcampbel@lrlaw.com

25 The ORIGINAL and thirteen (13) copies
26 of the foregoing were filed this 1st day
of July 2005.

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

A COPY of the foregoing was hand-delivered
this 1st day of July, 2005 to:

Lyn Farmer
Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

1

Christopher C. Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

2

3

4

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

5

6

7

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

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

JUN 3 0 2000

DOCKETED BY

RT

IN THE MATTER OF THE APPLICATION OF
 VARIOUS AFFILIATES OF MCI WORLDCom,
 INC., FOR A WAIVER OF PUBLIC UTILITY
 HOLDING COMPANIES AND AFFILIATED
 INTEREST RULES.

DOCKET NO. T-02431A-00-0228
 DOCKET NO. T-03394A-00-0228

DECISION NO. 62702

ORDER

Open Meeting
 June 27 and 28, 2000
 Phoenix, Arizona

BY THE COMMISSION:

On April 7, 2000, MCI WorldCom Communications, Inc. ("MCI WorldCom"), MCI Metro Access Transmission Services, LLC, Teleconnect Long Distance Services and Systems Company, BLT Technologies, Inc., Brooks Fiber Communications of Tucson, Inc., and MCI WorldCom Network Services, Inc. (collectively, "the Companies") filed a joint application for a permanent general waiver of the Commission's Public Utilities Holding Company and Affiliated Interest Rules, A.A.C. R14-2-801 through 805 ("the Rules"). In the alternative, the Companies seek a partial waiver of the Rules.

On March 8, 2000, the Companies filed a letter in the docket agreeing to extend the resolution of the request for a waiver for sixty days beyond the thirty-day period required by A.A.C. R14-2-805.

On June 2, 2000, Staff ("Staff") of the Arizona Corporation Commission ("Commission") filed a Staff Report recommending that the Commission grant a partial waiver from the Rules.

MCI WorldCom and Its Affiliate:

MCI WorldCom is the ultimate parent of all of the Companies listed above. MCI WorldCom is a global communications company whose core business includes voice, data, Internet and international service. During the past two years, MCI WorldCom and its successors, MCI and WorldCom, entered several large merger and purchase transactions. According to the MCI WorldCom, Inc., SEC form 10-K for 1999, the current company is the product of over 60

acquisitions.

The operating subsidiaries own domestic long distance, international and multi-city local service fiber optic networks with access to additional fiber optic networks through lease agreements with other carriers. The subsidiaries also own and lease trans-oceanic cable capacity in the Atlantic and Pacific Oceans.

Decision No. 58257, dated April 9, 1993, approved a limited waiver of the Rules for MCI Telecommunications Corporation, the precursor of MCI WorldCom Network Services, Inc. The Decision also adopted a Staff recommendation that "...in the event any of the MCI's affiliates become Class A utilities (as defined in R14-2-801.8), R14-2-803 will be regarded as applying to each new Class A utility in its entirety until the affected utility obtains its own waiver." Since 1993, several MCI WorldCom, Inc. affiliates that serve Arizona have become Class A telecommunications companies. The 1999 annual reports to the Commission show that the following MCI WorldCom, Inc. subsidiaries have reached Class A status by generating over \$1.0 million in Arizona jurisdictional revenue: Brooks Fiber Communications of Tucson, MCI Metro Access Transmission Services, Teleconnect Long Distance Service and Systems Company and WorldCom Network Services. TTI National, Inc., another MCI WorldCom subsidiary, has not reached that status.

The Companies' Request

In the application, the Companies requested a "permanent general waiver" of the Commission's application of the Rules to them and their affiliates. In the alternative, the Companies seek a partial waiver of the Rules.

The Companies believe they should have a permanent general waiver from the Rules for several reasons. First, they believe that the existing competitive market precludes cross-subsidizing or commingling that would harm Arizona consumers. They assert that they have no incentive or ability to charge unduly high or above market prices that could be used to fund or subsidize unregulated affiliates. They argue that the rates of U S WEST Communications, Inc. ("U S WEST") provide a limit on their rates.

Also, the Companies form and divest subsidiaries on a routine basis. Depending upon the interpretation of the Rules, without a waiver, the Companies and their many affiliates would come

under the purview of Rule 803, requiring notice to the Commission every time each of them "reorganized".

Finally, the Companies believe a complete waiver should be granted because compliance with the Rules would result in substantially increased administrative burdens for the Commission, MCI WorldCom and its subsidiaries, with no corresponding benefits to the customers.

They also request that the Commission's decision on this application be issued *nunc pro tunc*, if necessary, retroactive to the date on which the Rules became applicable to the companies.

A.A.C. R-14-2-803

A.A.C. R14-2-803 requires a utility or affiliate to give advance written notice of intent to organize or reorganize a public utility holding company. A.A.C. R14-2-801 broadly defines reorganization as "the acquisition or divestiture of a financial interest in an affiliate or a utility, or reconfiguration of an existing affiliate or utility's position in the corporate structure or the merger or consolidation of an affiliate or a utility." This can be interpreted to mean that every time MCI WorldCom and its affiliates create or divest themselves of a subsidiary, regardless of the business purpose or location of the subsidiary, a notice of intent would need to be filed.

Decision No. 58063, dated November 3, 1992, which partially lifted the Commission's stay of the Rules, allowed holding companies to increase or decrease a financial interest in an affiliate by an annual cumulative amount set according to the size of the entity without providing prior notice of those transactions.

A.A.C. R14-2-804

A.A.C. R14-2-804 requires prior Commission approval of certain transactions undertaken by the utility including obtaining an initial financial interest in an affiliate, guaranteeing or assuming liabilities of affiliates or increasing or decreasing a financial interest in an affiliate.

A.A.C. R14-2-805

This Rule requires all public utility holding companies and Class A public utilities in Arizona to file their diversification plans annually. Along with these plans, the utilities must file other information including, but not limited to, financial statements for each subsidiary, a description of the plans for the utilities' subsidiaries to change business activities, an assessment of the effect of

planned affiliated activities on the utility's capital structure, the bases upon which the holding company allocates costs, the dollar amount transferred between the utility and each affiliate, and most contracts between affiliates and the utility.

The Commission in Decision No. 62582, dated May 17, 2000, approved a partial waiver of the Rules for Cox Arizona L.L.C. ("Cox Arizona") and its affiliates. The Commission also issued Decision No. 62616, dated June 9, 2000, which also approved a partial waiver of the Rules for American Communication Services of Pima County, Inc. ("ACSI-Pima") and ACSI Local Switched Services, Inc. ("ACSI-LSS").

These two applications were nearly identical to the application at issue. MCI WorldCom, Cox Arizona, ACSI-Pima and ACSI-LSS and their affiliated companies are large telecommunications enterprises with many affiliates and inter-affiliate transactions. Both entities and their affiliates form and divest affiliates on a routine basis. Based upon the similarities among the companies and the recent date of the Cox Arizona Decision, Staff's recommendation here mirrors the Commission's recent Cox Decision and consequently, the ACSI-Pima and ACSI-LSS case as well.

Staff recommends that the Companies and their affiliates receive a partial waiver from the Rules. The Companies should be required to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when a transaction is likely to result in 1.) significant increased capital costs in the Arizona jurisdictional operations; 2.) significant additional costs allocated or charged directly to the Arizona jurisdiction; or 3.) a significant reduction of net income to the Arizona operations. This partial waiver would limit the Commission's involvement in the transactions that MCI WorldCom and its subsidiaries routinely make to those transactions that negatively affect Arizona.

Under A.A.C. R14-2-804, which requires Commission approval before a utility obtains a financial interest in, or guarantees, or assumes the liabilities of an unregulated affiliate, a limited waiver should also be granted. This limited waiver should require the Companies and their affiliates to seek approval only for transactions that are likely to have a material adverse effect on Arizona operations.

Staff recommends a complete waiver of A.A.C. R14-2-805 for thirty months following the date of the Decision on this request.

Staff also recommends that the Commission's order on this application be issued *nunc pro tunc*, retroactive to the date on which the Rules became applicable to the Companies.

* * * * *

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

FINDINGS OF FACT

1. On April 7, 2000, MCI WorldCom, and the Companies filed a joint application for a permanent general waiver of the Rules.
2. In the alternative, the Companies seek a partial waiver of the Rules.
3. On March 8, 2000, the Companies filed a letter in the docket agreeing to extend the resolution of the request for a waiver for sixty days beyond the thirty-day period required by A.A.C. R14-2-805.
4. On June 2, 2000, Staff filed a Staff Report recommending that the Commission grant a partial waiver from the Rules.
5. MCI WorldCom, is the ultimate parent of all of the Companies listed above.
6. During the past two years, MCI WorldCom and its successors, MCI and WorldCom, entered several large merger and purchase transactions.
7. Decision No. 58257, dated April 9, 1993, approved a limited waiver of the Rules for MCI Telecommunications Corporation, the precursor of MCI WorldCom Network Services, Inc.
8. Decision No. 58257 also adopted a Staff recommendation that "...in the event any of the MCI's affiliates become Class A utilities (as defined in R14-2-801.8), R14-2-803 will be regarded as applying to each new Class A utility in its entirety until the affected utility obtains its own waiver."
9. The 1999 annual reports to the Commission show that the following MCI WorldCom, Inc. subsidiaries have reached Class A status by generating over \$1.0 million in Arizona jurisdictional revenue: Brooks Fiber Communications of Tucson, MCIMetro Access Transmission Services, Teleconnect Long Distance Service and Systems Company and WorldCom Network Services. TTI National, Inc., another MCI WorldCom subsidiary, has not reached that status.
10. The Companies believe they should have a permanent general waiver from the Rules

for several reasons. First, they believe that the existing competitive market precludes cross-subsidizing or commingling that would harm Arizona consumers. They assert that they have no incentive or ability to charge unduly high or above market prices that could be used to fund or subsidize unregulated affiliates. They argue that the rates of U S WEST provide a limit on their rates.

11. Depending upon the interpretation of the Rules, without a waiver, the Companies and their many affiliates would come under the purview of A.A.C. R14-2-803 requiring notice to the Commission every time each of them "reorganized".

12. A.A.C. R14-2-803 requires a utility or affiliate to give advance written notice of intent to organize or reorganize a public utility holding company.

13. A.A.C. R14-2-804 requires prior Commission approval of certain transactions undertaken by the utility including obtaining an initial financial interest in an affiliate, guaranteeing or assuming liabilities of affiliates or increasing or decreasing a financial interest in an affiliate.

14. A.A.C. R14-2-805 requires all public utility holding companies and Class A public utilities in Arizona to file their diversification plans annually.

15. Staff recommended that the Companies should be required to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when a transaction is likely to result in 1.) significant increased capital costs in the Arizona jurisdictional operations; 2.) significant additional costs allocated or charged directly to the Arizona jurisdiction; or 3.) a significant reduction of net income to the Arizona operations.

16. Under A.A.C. R14-2-804, which requires Commission approval before a utility obtains a financial interest in, or guarantees, or assumes the liabilities of an unregulated affiliate, a limited waiver should also be granted.

17. Staff recommends a complete waiver of A.A.C. R14-2-805 for thirty months following the date of the Decision on this request.

CONCLUSIONS OF LAW

1. The Companies are public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over the Companies and of the subject matter of the

1 application.

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

3 4. It is not in the public interest to approve the application of the Companies for a
4 permanent general waiver of the Arizona Corporation Commission's Public Utility Holding
5 Companies and Affiliated Interest Rules, A.A.C. R14-2-801 et. seq.

6 5. Staff's recommendation: are in the public interest.

7 **ORDER**

8 IT IS THEREFORE ORDERED that MCI WorldCom Communications, Inc., MCIMetro
9 Access Transmission Services, LLC, Teleconnect Long Distance Services and Systems Company,
10 BLT Technologies, Inc., Brooks Fiber Communications of Tucson, Inc., and MCI WorldCom
11 Network Services, Inc. shall file a notice of intent to enter into the transactions listed in A.A.C. R14-
12 2-803 when a transaction is like to result in 1.) significant increased capital costs of the Arizona
13 operations; 2.) significant additional costs allocated or charged directly to the Arizona jurisdiction; or
14 3.) a significant reduction of net income to the Arizona operations.

15 IT IS FURTHER ORDERED that MCI WorldCom Communications, Inc., MCIMetro Access
16 Transmission Services, LLC, Teleconnect Long Distance Services and Systems Company, BLT
17 Technologies, Inc., Brooks Fiber Communications of Tucson, Inc., and MCI WorldCom Network
18 Services, Inc. shall be granted a limited waiver to A.A.C. R14-2-804 and shall only seek Commission
19 approval for transactions that are likely to have a material adverse effect on Arizona operations.

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IT IS FURTHER ORDERED that MCI WorldCom Communications, Inc., MCIMetro Access Transmission Services, LLC, Teleconnect Long Distance Services and Systems Company, BLT Technologies, Inc., Brooks Fiber Communications of Tucson, Inc., and MCI WorldCom Network Services, Inc. shall be granted a complete waiver of A.A.C. R14-2-805 for a 30 month period from the date of this Order.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

[Signature]
CHAIRMAN

[Signature]
COMMISSIONER

[Signature]
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 2nd day of *Jan*, 2000.

[Signature]
BRIAN C. McNEIL
EXECUTIVE SECRETARY

[Signature]
DISSENT
KEN:bbs

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SERVICE LIST FOR:

VARIOUS AFFILIATES OF MCI WORLDCOM, INC.

DOCKET NO.

T-02431A-00-0228 AND T-03394A-00-0228

Thomas H. Campbell
LEWIS AND ROCA
40 N. Central Avenue
Phoenix, Arizona 85004

And

Thomas F. Dixon
700 17th Street, Suite 3900
Denver, Colorado 80202
Attorneys for MCIWCom Affiliates

Lyn Palmer, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

9
DECISION NO. 62702

BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
Chairman
RENZ JENNINGS
Commissioner
DALE H. MORGAN
Commissioner

Arizona Corporation Commission
DOCKETED

MAR 24 1993

DOCKETED BY *Jm.*

IN THE MATTER OF AN APPLICATION BY)
CONTEL OF THE WEST, INC. D/B/A/)
GTE WEST INCORPORATED, AND CONTEL)
OF CALIFORNIA, INC. PURSUANT TO)
THE PROVISIONS OF A.A.C. R14-2-806,)
FOR WAIVER OF FULL COMPLIANCE WITH)
A.A.C. R14-2-801, ET SEQ. AND)
REQUEST FOR EXTENSION OF STAY)
PENDING RULING)

DOCKET NO. U-1514-93-051

DECISION NO. 58232

ORDER

Open Meeting
March 24, 1993
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 9, 1993, Contel of the West, Inc. d/b/a
GTE West (GTE West), and Contel of California, Inc. (Contel of
California), (together, the Applicants) filed an application for a
waiver of full compliance with A.A.C. R14-2-803 and -805 of the
Commission's Affiliated Interest Rules, A.A.C. R14-2-801 through
806, and to extend the date on which the Affiliated Interest Rules
will be in effect as to the Applicants.

. . .
. . .

Decision No. 58232

1 2. GTE West and Contel of California provide local
2 telephone service to approximately 30,000 customers in portions of
3 Coconino, Gila, Navajo, Apache and La Paz Counties in Arizona.

4 3. The Applicants are subsidiaries of Contel Corpora-
5 tion, which, since a March, 1991 merger, has been a subsidiary of
6 GTE Corporation (GTE). Contel Corporation is also the parent of
7 Contel Cellular of California, which is a co-managing general
8 partner of two regulated cellular telephone operations in Arizona
9 (Coconino, RSA Limited Partnership, and Yuma, Arizona RSA Limited
10 Partnership).

11 4. As a result of the 1991 merger of Contel Corporation
12 and GTE Corporation, GTE Corporation now controls over \$42 billion
13 in assets. It is the largest telephone company in the United
14 States.

15 5. The Contel subsidiaries serving Arizona have over
16 300 other corporate affiliates. Of the affiliates, approximately
17 40 provide local telephone service within 40 states and four other
18 countries. Seventy affiliates are involved in the provision of
19 cellular service within 35 states mostly on a partnership basis.
20 Approximately 70 unregulated affiliates are engaged in directory
21 publishing, communications networks, applications software, private
22 satellite services, earth station systems, government systems, and
23 other specialized communications services and products.

24 6. Reorganizations and changes in partnership interests
25 appear to be commonplace among the subsidiaries and affiliates of
26 the new merged entity. Already in 1993 over 60 affiliates compris-
27 ing most of GTE's Electrical Products Group have been divested.
28 Furthermore, GTE is planning to intensify its reorganization activ-

1 ity as a result of its decision to focus on its telecommunications-
2 related businesses and divest itself of non-telecommunications-
3 related businesses.

4 7. According to the Applicants, Contel Corporation's
5 Arizona utilities have never undertaken diversification programs
6 and the assets of the Arizona utilities have never been pledged for
7 affiliate activities. Although reorganizations were, and are, com-
8 monplace at Contel Corporation and occur with regularity at GTE
9 Corporation, the Arizona utility operations have never been harmed.

10 8. On November 3, 1992, in Decision No. 58063, the Com-
11 mission lifted the stay previously imposed on enforcement of the
12 Affiliated Interest Rules; that decision also deemed the Applica-
13 ts' application for waiver filed as of March 1, 1993, the effective
14 date that the stay is lifted for those public service corporations.

15 9. Since this decision will be effective after March 1,
16 1993, Staff recommends that the waivers granted herein be retroac-
17 tive to March 1, 1993.

18 10. The Applicants request a waiver from A.A.C. R14-2-
19 803 only for reorganizations not involving ownership or control of
20 the Arizona utility operations. The Applicants feel that individu-
21 al Commission approvals under A.A.C. R14-2-803 or individual waiv-
22 ers from A.A.C. R14-2-803 would be burdensome and result in "oner-
23 ous business consequences for the affiliates."

24 11. In support of their application, the Applicants ver-
25 ified that they have no knowledge of any current or expected public
26 utility holding company reorganizations that would result in any
27 impairment of the financial status, ability to attract capital, or
28 ability to provide adequate service of the Arizona utilities.

1 12. Staff recommends that, due to the number of organ-
2 izations and reorganizations planned and undertaken by the Appli-
3 cants and their affiliates, a partial waiver from A.A.C. R14-2-803
4 should be granted.

5 13. Staff points out that GTE West and Contel of
6 California have approximately 30,000 captive ratepayers in Arizona
7 who have no alternative provider as do cellular or long distance
8 customers and, thus, have no protection other than from this Com-
9 mission from the potential negative impacts of the diversification
10 efforts and affiliate transactions of their provider.

11 14. Staff therefore recommends that the Applicants be
12 required to file, pursuant to A.A.C. R14-2-803, a notice of intent
13 to organize or reorganize a public utility holding company, or in-
14 crease, decrease or take an initial interest in an affiliate, only
15 for those transactions which are likely to result in: 1) signifi-
16 cant increased capital costs of the Arizona operations; 2) signi-
17 ficant additional costs allocated or charged directly to the
18 Arizona jurisdiction; or 3) a significant reduction of net oper-
19 ating income to the Arizona operations. For purposes of these
20 three criteria, results of a transaction are 'significant' if they
21 have a material adverse impact on the public utility's Arizona jur-
22 isdiction. For example, a material adverse impact would be one
23 that would result in an application to increase rates to Arizona
24 jurisdictional customers.

25 15. Staff further recommends that annually, on the date
26 that the Applicants comply with A.A.C. R14-2-805, the Applicants
27 also file an affidavit from their Chief Executive Officer which
28 lists those transactions in excess of \$10 million which would have

1 otherwise required notice under R14-2-803 but for which no notice
2 is given due to a waiver. The affidavit should include verbiage
3 certifying that to the best of the Chief Executive Officer's
4 knowledge, the transactions listed are not likely to result in
5 significant increased capital costs to the Arizona operations,
6 significant additional direct or allocated costs to the Arizona
7 jurisdiction, or in a significant reduction in operating income of
8 the Arizona jurisdiction.

9 16. Staff further recommends that if any or all of the
10 Applicants' affiliates were to become a public utility as defined
11 in A.A.C. R14-2-801.8, then R14-2-803 should apply in its entirety
12 to the new public utility until the new public utility(ies) obtains
13 its own waiver.

14 17. The Applicants state that for some GTE affiliates,
15 compliance with A.A.C. R14-2-805.A.5 and .7^{1/2} would result in costs
16 being allocated to the Arizona jurisdiction which would never have
17 been otherwise incurred. The Applicants also state that full com-
18 pliance with A.A.C. R14-2-805.A.5 and .7 will unduly burden the
19 resources of the Applicants as well as the Arizona cellular part-
20 nerships.

21 18. Staff recommends denial of the request for waiver of
22 A.A.C. R14-2-805.A.5 and .7 because Staff believes that it is likely
23

24 ^{1/2} A.A.C. R14-2-805.5 and .7 require a public utility to
25 provide the Commission with, respectively, "An assessment of the
26 effect of the current and planned affiliated activities on the
27 public utility's capital structure and the public utility's ability
28 to attract capital at fair and reasonable rates;" and "An explana-
tion of the manner in which the utility's capital structure, cost
of capital and ability to raise capital at reasonable rates have
been affected by the organization or reorganization of the public
utility holding company."

1 that the "extra" costs incurred by the Applicants to comply with
2 the reporting requirements of A.A.C. R14-2-805 will be offset by
3 the benefits to the ratepayers of the Commission's oversight of
4 affiliate transactions, changes in corporate structure, and the
5 effects of similar actions on the ratepayer.

6 19. Staff recommends granting a limited waiver of A.A.C.
7 R14-2-805 to relieve the public utility holding company of the re-
8 quirement to provide the Commission with a description of diversi-
9 fication plans when providing such a description will jeopardize or
10 impair any pending or anticipated transaction. The description
11 should be included with the earliest subsequent annual filing where
12 provision of the description would not produce these negative
13 results.

14 CONCLUSIONS OF LAW

15 1. GTE West and Contel of California are public service
16 corporations within the meaning of Article 15 of the Arizona Con-
17 stitution and Title 40 of the Arizona Revised Statutes.

18 2. The Commission has jurisdiction over this matter and
19 has the authority to issue this order.

20 3. Staff's recommendations are reasonable and should be
21 adopted.

22 4. The application of GTE West and Contel of California
23 for a waiver of compliance with A.A.C. R14-2-803 should be granted
24 subject to Staff's recommendations contained in Findings of Fact
25 Nos. 9, and 12-16.

26 5. The application of GTE West and Contel of California
27 for a waiver of compliance with A.A.C. R14-2-805.A.5 and .7 should
28 be denied.

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



JACK ROSE
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

November 16, 1998

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SNELL & WILMER

Jeffrey Crockett, Esq.
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004-0001

Re: Merger of GTE Corporation and Bell Atlantic Corporation

Dear Jeff:

I am in receipt of your letter dated October 2, 1998, regarding the merger of GTE Corporation and Bell Atlantic Corporation. The letter stated your opinion that the merger does not require approval from the Arizona Corporation Commission.

I have reviewed your analysis and discussed the matter with the Utilities Division Staff. This letter is intended to advise you that we are in general agreement with your conclusion.

In particular, I agree that, because this merger occurs at the parent level and neither parent corporation is an Arizona public service corporation, A.R.S. § 40-285.A. does not act to require Commission approval. In addition, I agree that the limited waivers in effect for predecessors of GTE California and Cellular One limit the applicability of A.A.C. R14-2-803.A. to the merger in question. Those waivers relieve the obligation to seek approval of the merger. However, you should bear in mind that, by not seeking Commission approval, the entities are representing their opinions that the proposed merger is not likely to result in: (1) significant increased capital costs for the Arizona operations; (2) significant additional costs allocated or charged directly to the Arizona jurisdiction; or (3) a significant reduction of net operating income to the Arizona operations.

I also agree that, because GTE Communications, Tucson Cellular, Bell Atlantic Communications, Inc. and Bell Atlantic Long Distance have Arizona jurisdictional revenues of less than \$1 million, A.A.C. R14-2-803.A. does not apply to them.

Finally, I agree that the Commission's authority over rates and charges of cellular carriers has been preempted by the Omnibus Budget Reconciliation Act of 1993. I do not agree that the preemption extends to the remaining affiliate reporting requirements as your letter would suggest. Since the limited waivers discussed above apply to all of the cellular entities, no approval is required.

1200 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2996 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

www.cc.state.az.us

This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us

Jeffrey Crockett, Esq.
November 16, 1998
Page Two

In conclusion, I find no requirement that the merger of GTE Corporation and Bell Atlantic Corporation be submitted to the Arizona Corporation Commission for approval. I would be happy to discuss my conclusions with you at your convenience. Feel free to give me a call, if you are interested in having such a discussion.

Sincerely,



Christopher C. Kempley
Assistant Chief Counsel

CCK/jes