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BEFORE THE ARIZONA CORPORATION COM

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

Arizona Corporation Commission  
**DOCKETED**

JUN 09 2000

DOCKETED BY

DOCKET NO. T-03245A-00-0122  
DOCKET NO. T-03411A-00-0122

DECISION NO. 62616

**ORDER**

IN THE MATTER OF THE APPLICATION OF  
AMERICAN COMMUNICATION SERVICES OF  
PIMA COUNTY, INC. AND ACSI LOCAL  
SWITCHED SERVICES, INC. FOR A WAIVER OF  
PUBLIC UTILITY HOLDING COMPANIES AND  
AFFILIATED INTEREST RULES.

Open Meeting  
June 6 and 7, 2000  
Phoenix, Arizona

**BY THE COMMISSION:**

On February 24, 2000, American Communications Services of Pima County, Inc. ("ACSI Pima") and ACSI Local Switched Services ("ACSI-LSS") (collectively, hereinafter referred to as "The Companies") filed an application for a permanent general waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests 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 agreeing to a sixty-day waiver of this matter.

On May 5, 2000, Commission's Staff ("Staff") filed a Staff Report recommending that the Commission waive A.A.C. R14-2-801 through 805 for The Companies. and all their affiliates for four years. Alternately, Staff recommends the Commission adopt limited waivers.

ACSI Pima, ACSI-LSS, and Their Affiliates

e-spire Communications, Inc. ("e-spire") The Companies' ultimate parent, is a competitive, facilities-based local exchange carrier providing switched voice, data and internet services to commercial customers in twenty states. Besides ACSI-Pima and ACSI-LSS, e-spire is the parent of approximately fifty-five other subsidiaries.

The Companies are the local exchange operating subsidiaries for e-spire in Arizona. The revenues and capital investments for The Companies are a very small percentage of e-spires total

1 revenues and investments.

2 In Decision No. 60078, dated February 19, 1997, ACSI Pima received a Certificate  
3 Convenience and Necessity ("CC&N") to provide intrastate competitive local exchange  
4 telecommunications service in Arizona. In Decision No. 60711, dated February 27, 1998, ACSI  
5 Pima received approval to transfer the Local Switched Services portion of its CC&N to ACSI-LSS.  
6 For the fiscal year ending December 31, 1998, ACSI-LSS generated over \$1.0 million of Arizona  
7 jurisdictional revenue qualifying it as a Class A utility under the Commission's Rules.

8 The Companies' Request

9 In its application, The Companies requested a "permanent general waiver" of the  
10 Commission's application of the Rules to The Companies. In the alternative, The Companies seek  
11 partial waiver of the Rules that is similar to that received by other telephone companies. The  
12 Companies also noted in a footnote to the application that they are not waiving any federal  
13 constitutional arguments concerning the applicability of the Rules to particular transactions or  
14 operations.

15 The Companies believe they should have a permanent general waiver from the Rules for  
16 several reasons. First, they believe that due to market forces in effect in Arizona, they have no  
17 incentive or ability to charge unduly high or above market prices that could be used to fund or  
18 subsidize unregulated affiliates. They argue that the rates of U S West Communications, Inc. provide  
19 a limit on rates of The Companies.

20 The Companies also argue that when a public utility engages in a competitive market and hold  
21 non-monopoly power, application of the Rules is unnecessary. In effect, The Companies believe that  
22 because they are not monopolies they do not have the ability to improperly capitalize or subsidize the  
23 business of its non-regulated affiliates.

24 Depending upon the interpretation of the Rules, without a waiver, e-spire and its many  
25 affiliates would come under the purview of A.A.C. R14-2-803 requiring notice to the Commission  
26 every time each of them "reorganized." The Companies believe that these filing requirements would  
27 be unnecessarily burdensome.

28 The Companies also believe that no public purpose would be served by having The

1 Companies and its parent and affiliates provide documentation concerning every affiliate transaction  
2 when those transactions have no bearing on Arizona. Further, The Companies customers would bear  
3 the burden of increased administrative costs resulting from compliance with the Rules.

4 Staff believes that utilities that are attempting to enter a market that has been and continues to  
5 be dominated by one provider and have no motivation to act in ways that the Rules were written to  
6 prevent. Ratepayers do not need protection from costs of a utility's affiliates when the ratepayers  
7 have the option to secure service from another company. Any competitor currently entering the  
8 competitive local exchange carrier market would not be motivated to raise rates to subsidize non-  
9 utility operations when raising rates puts them at a competitive disadvantage.

10 A.A.C. R14-2-804 requires prior Commission approval for certain transactions undertaken by  
11 the utility including obtaining an initial financial interest in an affiliate, guaranteeing or assuming  
12 liabilities of affiliates or increasing or decreasing a financial interest in an affiliate. Decision No.  
13 58063 also provided exempt amounts for some of these transactions. For utilities the size of The  
14 Companies, the exemption for seeking prior approval to increase or decrease its financial interest in  
15 an affiliate would be limited to transactions of an annual cumulative value of \$5.0 million.

16 A.A.C. R14-2-805 requires all public utility holding companies and Class A public utilities in  
17 Arizona to file their diversification plans annually. Along with these plans, the utilities must file  
18 other information including, but not limited to, financial statements for each subsidiary, a description  
19 of the plans for the utilities' subsidiaries to change business activities, an assessment of the effect of  
20 planned affiliated activities on the utility's capital structure, the bases upon which the holding  
21 company allocates costs, the dollar amount transferred between the utility and each affiliate, and most  
22 contracts between affiliates and the utility.

23 Staff believes that actions taken by both federal and state regulatory bodies, including this  
24 Commission, are increasing competition in the telecommunications industry including basic local  
25 service. In this regulatory climate, Staff also believes that the Rules may be unnecessarily restrictive  
26 and expensive and that the market may replace the historical need for the Rules for some companies.  
27 However, Staff also realizes that competition is in its nascent stage and that the Commission may  
28 want to continue its current policy of granting limited waivers. Therefore, Staff is making a

1 recommendation as Option One and also offering Option Two as an alternative that the Commission  
2 may wish to consider.

3 Under Option One, Staff recommends that The Companies receive a complete waiver of the  
4 Rules for four years. This recommendation is based on the competitive nature of the services  
5 provided by The Companies and the lack of incentives for them to engage in the activities that the  
6 Rules intend to prevent. Staff believes that within four years, the CLEC market may evolve to the  
7 point where the Commission may want the opportunity to again assert jurisdiction over The  
8 Companies.

9 If the Commission determines that a complete waiver would be premature or otherwise not in  
10 the public interest, then Staff recommends the Commission adopt Option Two, which is a partial  
11 waiver similar to that received by other telephone companies.

12 If the Commission selects Option Two, Staff advocates that The Companies should be  
13 required to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when a  
14 transaction is likely to result in 1.) significant increased capital costs of the Arizona operations; 2 )  
15 significant additional costs allocated or charged directly to the Arizona jurisdiction; or 3.)  
16 significant reduction of net income to the Arizona operations. This partial waiver would limit the  
17 Commission's involvement in the transactions that The Companies and the affiliates routinely make  
18 to those transactions that negatively affect Arizona.

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

24 The Staff Report stated that most of the filing requirements included in A.A.C. R14-2-805  
25 would be burdensome to The Companies and of little use to the Commission. However, if the  
26 Commission desires that Staff closely monitor the activities of The Companies, then Staff  
27 recommends that The Companies should file annually the amounts and purposes of the transfr  
28 between and among e-spire and The Companies and the amounts and purposes of transfers between

1 The Companies and other e-spire subsidiaries. Staff further recommends that the other filing  
2 requirements should be waived.

3 As competition is still in its early stages, we do not find it prudent to grant a permanent  
4 general waiver of the Rules. As the Staff Report noted, the Commission's current policy is to grant  
5 limited waivers of the Rules and we do not see a reason to deviate from this policy.

6 The limited waiver for Rules 803 and 804 in Staff's Option Two gives the Commission the  
7 ability to monitor pertinent information while lessening burdensome reporting requirements on The  
8 Companies. Further, Staff's Option One for Rule 805 is most appropriate, with a reduction from four  
9 years to 30 months consistent with Commission Decision No. 62343<sup>1</sup>, dated March 6, 2000.

10 \* \* \* \* \*

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

13 **FINDINGS OF FACT**

14 1. On February 24, 2000, The Companies filed an application for a permanent general  
15 waiver of the Rules.

16 2. In the alternative, The Companies seek a partial waiver of the Rules "...consistent  
17 with The Companies operation as competitive telecommunications services provider in Arizona."

18 3. On March 8, 2000, The Companies filed a letter agreeing to a sixty-day waiver of this  
19 matter.

20 4. On May 5, 2000, Staff filed a Staff Report recommending that the Commission waive  
21 A.A.C. R14-2-801 through 805 for The Companies and all their affiliates for four years.

22 5. Alternately, Staff recommends the Commission adopt limited waivers.

23 6. For the fiscal year ending December 31, 1998, ACSI-LSS generated over \$1.0 million  
24 of Arizona jurisdictional revenue qualifying it as a Class A utility under the Commission's Rules.

25 7. e-spire, The Companies' ultimate parent, is a competitive, facilities-based, local  
26 exchange carrier providing switched voice, data and internet services to commercial customers in  
27

28 <sup>1</sup> Involving Cox Arizona Telecom L.L.C.

1 twenty states.

2 8. The Companies argue that when a public utility engages in a competitive market a.  
3 holds non-monopoly power, application of the Rules is unnecessary.

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

7 10. Staff believes that utilities that are attempting to enter a market that has been and  
8 continues to be dominated by one provider, have no motivation to act in ways that the Rules were  
9 written to prevent.

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

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

15 13. In this regulatory climate, Staff also believes that the Rules may be unnecessarily  
16 restrictive and expensive and that the market may replace the historical need for the Rules for some  
17 companies.

18 14. However, Staff also realizes that competition is in its nascent stage and that the  
19 Commission may want to continue its current policy of granting limited waivers.

20 15. Under Option One, Staff recommends that The Companies receive a complete waiver  
21 of the Rules for four years.

22 16. If the Commission determines that a complete waiver would be premature or  
23 otherwise not in the public interest, then Staff recommends the Commission adopt a partial waiver.

24 17. If the Commission selects this option, (Option Two) Staff advocates that The  
25 Companies and all of The Companies' affiliates should be required to file a notice of intent to enter  
26 into the transactions listed in A.A.C. R14-2-803 when a transaction is likely to result in 1.) significant  
27 increased capital costs of the Arizona operations; 2.) significant additional costs allocated or charg  
28 directly to the Arizona jurisdiction; or 3.) a significant reduction of net income to the Arizona

1 operations.

2 18. This partial waiver would limit the Commission's involvement in the transactions that  
3 The Companies and their subsidiaries routinely make to those transactions that negatively affect  
4 Arizona.

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

8 20. This limited waiver could require The Companies and their affiliates to seek approval  
9 only for transactions that are likely to have a material adverse effect on Arizona operations.

10 21. Staff recommends that The Companies should file annually the amounts and purposes  
11 of the transfers between and among The Companies and the amounts and purposes of transfers  
12 between affiliates and The Companies.

13 22. Staff further recommends that the other filing requirements should be waived.

14 **CONCLUSIONS OF LAW**

15 1. The Companies are public service corporations within the meaning of Article XV of  
16 the Arizona Constitution.

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

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

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

23 5. A combination of Staff's Option Nos. One and Two, as modified herein, is in the  
24 public's best interest.

25 **ORDER**

26 IT IS THEREFORE ORDERED that American Communications Services of Pima County,  
27 Inc. and ACSI Local Switched Services and their Arizona affiliates shall file a notice of intent to  
28 enter into the transactions listed in A.A.C. R14-2-803 when a transaction is likely to result in 1.)

1 significant increased capital costs of the Arizona operations; 2.) significant additional costs allocated  
2 or charged directly to the Arizona jurisdiction; or 3.) a significant reduction of net income to  
3 Arizona operations.

4 IT IS FURTHER ORDERED that American Communications Services of Pima County, Inc.  
5 and ACSI Local Switched Services and their Arizona affiliates shall be granted a limited waiver to  
6 A.A.C. R14-2-804 and shall only seek Commission approval for transactions that are likely to have a  
7 material adverse effect on Arizona operations.

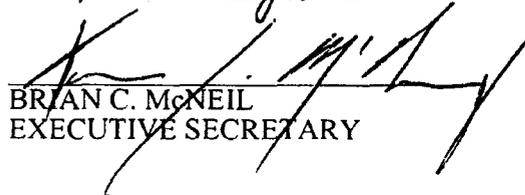
8 IT IS FURTHER ORDERED that American Communications Services of Pima County, Inc.  
9 and ACSI Local Switched Services and their Arizona affiliates shall be granted a complete waiver of  
10 A.A.C. R14-2-805 for a 30 month period from the date of this Order.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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15 CHAIRMAN  COMMISSIONER  COMMISSIONER  
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18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
19 Secretary of the Arizona Corporation Commission, have  
20 hereunto set my hand and caused the official seal of the  
21 Commission to be affixed at the Capitol, in the City of Phoenix,  
22 this 9<sup>TH</sup> day of June, 2000.

21   
22 BRIAN C. McNEIL  
23 EXECUTIVE SECRETARY

24 DISSENT \_\_\_\_\_  
25 JR:bbs  
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1 SERVICE LIST FOR:

AMERICAN COMMUNICATIONS SERVICES OF  
PIMA COUNTY, INC. and ACSI LOCAL SWITCHED  
SERVICES

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3 DOCKET NOS.:

T-03245A-00-0122 and T-03411A-00-0122

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