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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

1  
2 CARL J. KUNASEK  
Chairman  
3 JIM IRVIN  
Commissioner  
4 WILLIAM A. MUNDELL  
Commissioner

DOCKETED

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6 IN THE MATTER OF THE JOINT )  
APPLICATION OF CABLE PLUS COMPANY, )  
7 L.P., DOING BUSINESS AS TELEPHONE PLUS )  
AND COX ARIZONA TELCOM, L.L.C., FOR AN )  
8 ORDER APPROVING THE SALE AND )  
TRANSFER OF ASSETS OF TELEPHONE PLUS )  
9 AND FOR A WAIVER OF THE AFFILIATE )  
INTEREST RULES TO THE EXTENT )  
10 APPLICABLE TO THIS TRANSACTION )

DOCKET NOS. T-03154A-99-0488  
T-03471A-99-0488

DECISION NO. 61970

ORDER

11  
12 Special Open Meeting  
September 28, 1999  
13 Phoenix, Arizona

14 BY THE COMMISSION:

15 FINDINGS OF FACT

16 1. On August 31, 1999 Cable Plus Company, L.P., doing business as Telephone Plus ("the  
17 Company"), and Cox Arizona Telcom, L.L.C. ("Cox Arizona") (collectively, "the Companies") filed  
18 an application for approval of the sale and transfer of all of the assets of Telephone Plus.

19 2. The application also requests approval to cancel the Certificate of Convenience and  
20 Necessity ("CC&N") of Telephone Plus and authorization for Cox Arizona to charge the former  
21 customers of Telephone Plus customers rates which are no higher than the tariffed rates of Telephone  
22 Plus.

23 3. The application requests cancellation of the Certificate of Convenience and Necessity  
24 of Telephone Plus to provide resold local and long distance telecommunications services.

25 4. Finally, the Applicants request a waiver of any of the Affiliated Interest Rules (A.C.C.  
26 R14-2-801 et seq.) applicable to the proposed transactions.

27 5. On September 7, 1999, the Companies amended the application requesting approval  
28 of a waiver of A.A.C. R14-2-1107 regarding customer notice.

1           6.     Telephone Plus is an Arizona Public Service Corporation which received a CC&N to  
2 provide intrastate telecommunications service as a reseller in Decision No. 61376, dated January 29,  
3 1999.

4           7.     Telephone Plus also constructs and operates telecommunications systems and cable  
5 television systems serving exclusively multiple dwelling unit apartment complexes.

6           8.     The Company also provides the tenants of the complexes with local and long-distance  
7 telephone service and cable television service.

8           9.     Telephone Plus currently provides telecommunications services to approximately 7,000  
9 customers in Arizona.

10          10.    The Company enters into agreements with building owners to provide  
11 telecommunications services.

12          11.    All of the existing building owners have agreed to the proposed assignment/sale.

13          12.    The Company has an application pending for a CC&N to provide competitive facilities-  
14 based local and long distance telecommunications services; services it is already providing.

15          13.    Due to the precarious financial health of Telephone Plus, a sales agreement with  
16 CoxCom, Inc. ("CoxCom") was negotiated and signed with some urgency.

17          14.    The July 31, 1999, income statement of Telephone Plus reflected a net loss exceeding  
18 revenues.

19          15.    The proposed sale of assets entails the creation of CP Arizona 1, L.L.C. ("CP Arizona")  
20 by Telephone Plus.

21          16.    Telephone Plus will become the sole member of CP Arizona.

22          17.    Telephone Plus will transfer its Arizona assets into CP Arizona.

23          18.    It will then transfer its membership in CP Arizona to CoxCom for a sum of money.

24          19.    CoxCom is a wholly-owned subsidiary of Cox Communications, Inc., the large,  
25 domestic telecommunications and cable company.

26          20.    CoxCom is also the sole member of Cox Arizona Telecom, L.L.C. ("Cox Arizona")  
27 which is certificated in Arizona to provide both competitive resold and competitive facilities-based  
28 telecommunications services in Arizona pursuant to Decision No. 61569, dated March 15, 1999.

1           21.    Cox Communications, Inc., the ultimate parent of all of the Cox affiliates, and some  
2 of its affiliates are currently negotiating purchases of other telecommunications companies so the  
3 companies have requested that the purchase price of the Telephone Plus assets remain confidential.

4           22.    CoxCom's common membership in, and control of, both Cox Arizona and CP Arizona,  
5 will enable Cox Arizona's use of the assets held by CP Arizona to serve Arizona customers.

6           23.    Cox Arizona provides telecommunications services to approximately 10,000 Arizona  
7 customers in the Phoenix metropolitan area and is operating at a net loss due to the costs of  
8 constructing its facilities.

9           24.    Although Cox Arizona does not currently provide services to multiple dwelling units  
10 in a manner identical to that of Telephone Plus, it has entered a management agreement with the  
11 management company affiliated with Telephone Plus called Cable Plus Management Company.

12           25.    Cable Plus Management Company currently provides services including customer  
13 service, billing service, marketing service, operation and repair services, equipment and supply  
14 purchasing services and supervisory services to Telephone Plus.

15           26.    Through the management agreement, Cable Plus Management Company will continue  
16 to perform these services for Cox Arizona throughout a transition period that will not exceed sixty  
17 days.

18           27.    Although Cox Arizona is operating at a loss, it is financially stronger than Telephone  
19 Plus.

20           28.    CoxCom is a profitable company.

21           29.    Cox Communications, Inc., the ultimate parent of Cox Arizona, generated net income  
22 of \$1.2 billion for the year ending December 31, 1998, and reflected assets of \$12.9 billion on the  
23 same date.

24           30.    Cox Communications, Inc., has the financial resources to support the operations of  
25 CoxCom, Cox Arizona and CP Arizona, if necessary.

26           31.    Staff is concerned that the transfer of utility assets from an Arizona public service  
27 company (Telephone Plus) to a non-regulated entity (CP Arizona) may cause the Commission to lose  
28 jurisdiction over those assets.

1           32.    This issue, as it applies to the telecommunications industry, has not been previously  
2 addressed by the Commission.

3           33.    Staff believes that assets used to provide regulated telecommunications service in  
4 Arizona should be held by an entity that holds a CC&N from this Commission.

5           34.    Thus, Staff recommends that approval of these transactions be contingent upon the  
6 transfer of the former Telephone Plus telecommunications assets to Cox Arizona.

7           35.    Because the Companies did not anticipate this action, Staff recommends that the  
8 transfer occur within 90 days after the date of the Decision in this case.

9           36.    The Companies do not object to this recommended transfer.

10          37.    Staff believes that due to the financial distress under which Telephone Plus is operating,  
11 Cox Arizona would better serve its customers.

12          38.    The financial integrity of Cox Communications, Inc., the existence of a management  
13 agreement with Cable Plus Management Company enabling a smooth transition, and the eventual  
14 placing of the telephone assets into an Arizona public service company support the contention that the  
15 sale and transfer of the assets of Telephone Plus is in the public interest.

16          39.    Staff recommends approval of the transfer of assets, with the contingency mentioned  
17 above, without a hearing.

18          40.    Staff recommends approval of the transfer of the Telephone Plus assets without a  
19 hearing.

20          41.    Telephone Plus is also requesting that the Commission cancel its CC&N to provide  
21 resold local and long distance telecommunications services.

22          42.    Because Telephone Plus will no longer conduct operations in that capacity, Staff  
23 recommends the Commission cancel the CC&N to provide intrastate telecommunications service as  
24 a reseller granted in Decision No. 61376, dated January 29, 1999.

25          43.    Cox Arizona is also requesting approval to charge rates and charges that are no higher  
26 than the maximum rates and charges set forth in Telephone Plus' Tariff No. 3.

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1           44.     Staff recommends that Cox Arizona charge rates to the former Telephone Plus  
2 customers no higher than the current Telephone Plus rates until Cox Arizona has followed the  
3 procedures required by A.A.C. R14-2-1110.

4           45.     Cox Arizona is a Class A Arizona public service company subject to the Commission's  
5 Affiliate Interest Rules.

6           46.     Because CoxCom controls Cox Arizona, CoxCom is defined as a public utility holding  
7 company under the Affiliated Interest Rules.

8           47.     The Rules require Commission approval for the organization or reorganization of a  
9 public utility holding company.

10          48.     Because a reorganization is partially defined as the acquisition of a financial interest  
11 in an affiliate, the Rules apply to CoxCom's purchase of an interest in CP Arizona.

12          49.     Staff believes that approval of a waiver of the Rules for the proposed transactions  
13 would be consistent with the finding that the transactions are in the public interest.

14          50.     Staff recommends approval of a waiver of the Affiliated Interest Rules as requested for  
15 the transactions at issue. This waiver shall apply solely to this transaction and shall not limit in any  
16 way the Commission's jurisdiction under the Affiliate Interest Rules for future transaction.

17          51.     A.A.C. R14-2-1107 requires telecommunications companies to provide 30-days notice  
18 to customers before the discontinuation or abandonment of service.

19          52.     A.A.C.R14-2-1115.I allows waivers from the Rules found in Article 11.

20          53.     Due to the precarious financial health of Telephone Plus and the existence of an  
21 additional provider (namely U S WEST Communications, Inc.), Staff recommends a partial waiver  
22 from A.A.C. R14-2-1107.

23          54.     However, Staff believes that customers should receive a notice of the change in their  
24 service provider before the change occurs so they will have the opportunity to change providers if they  
25 choose.

26          55.     Staff recommends that each Telephone Plus customer receive individual notice in their  
27 bills or under separate mailing before the change occurs.

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1 56. Staff also recommends the Company file a copy of the notice in this docket.

2 CONCLUSIONS OF LAW

3 1. Cable Plus Company, L.P. dba Telephone Plus and Cox Arizona Telcom, L.L.C. are  
4 Arizona public service corporations within the meaning of Article XV, Section 2, of the Arizona  
5 Constitution.

6 2. The Commission has jurisdiction over Cable Plus Company, L.P. dba Telephone Plus  
7 and Cox Arizona Telcom, L.L.C.

8 ORDER

9 IT IS THEREFORE ORDERED that the sale and transfer of the Arizona assets of Cable Plus  
10 Company L.P. dba Telephone Plus ultimately to CP Arizona 1, L.L.C. be approved.

11 IT IS FURTHER ORDERED that within 90 days of the date of this Decision, the former  
12 Telephone Plus telecommunications assets serving Arizona be transferred to Cox Arizona Telcom,  
13 L.L.C.

14 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity of Telephone  
15 Plus to provide resold local and long distance telecommunications services as granted in Decision  
16 No. 61376, dated January 29, 1999, be cancelled on the date of the closing of the sale of assets.

17 IT IS FURTHER ORDERED that Cox Arizona Telcom L.L.C. must charge rates and charges  
18 that are no higher than the current Telephone Plus rates until conversion of an MDU is completed to  
19 the Cox Network; then Cox Arizona Telcom L.L.C. must charge rates and charges no higher than  
20 current Cox Arizona Telcom L.L.C. telephone rates.

21 IT IS FURTHER ORDERED that Cox Arizona Telcom L.L.C. shall file its 18 month  
22 conversion schedule with the Commission for review by Commission Staff.

23 IT IS FURTHER ORDERED that Cox Arizona Telcom L.L.C. shall report to the Commission  
24 Staff every three months on the status of all their conversions.

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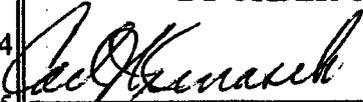
1 IT IS FURTHER ORDERED that the Commission's Affiliated Interest Rules (A.A.C. R12-2-  
 2 801 et seq.) be waived for the transactions necessary for consummation of the sale and transfer of the  
 3 assets of Telephone Plus as set forth in this application and order. This waiver shall apply solely to  
 4 this transaction and shall not limit in any way the Commission's jurisdiction under the Affiliate Interest  
 5 Rules for future transactions.

6 IT IS FURTHER ORDERED that the Applicants receive a partial waiver from A.A.C. R14-2-  
 7 1107 regarding notice.

8 IT IS FURTHER ORDERED that the Companies provide each Telephone Plus customer  
 9 individual notice of the change in their provider in their bills or under separate mailing before the  
 10 change in service provider occurs and that a copy of the notice be filed in this docket.

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

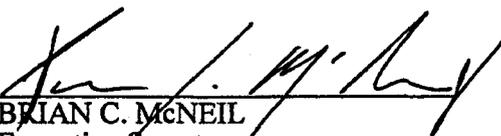
12  
 13 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

14   
 15 CHAIRMAN

14   
 15 COMMISSIONER

15 COMMISSIONER

16  
 17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 18 Secretary of the Arizona Corporation Commission, have  
 19 hereunto, set my hand and caused the official seal of this  
 20 Commission to be affixed at the Capitol, in the City of Phoenix,  
 21 this 1st day of October, 1999.

22   
 23 BRIAN C. McNEIL  
 24 Executive Secretary

24 DISSENT: \_\_\_\_\_

25 DRS:LAJ:lhk

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