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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2005 OCT 20 1 A 11: 56

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF)
COX ARIZONA TELCOM, LLC FOR A WAIVER)
OF RULE 805 OF THE PUBLIC UTILITY)
HOLDING COMPANIES AND AFFILIATED)
INTERESTS RULES (A.A.C.R14-2-801 *et seq.*))

DOCKET NO. T-03471A-05-0357

COX ARIZONA TELCOM'S
RESPONSE TO QWEST'S
APPLICATION TO INTERVENE

I. INTRODUCTION.

On May 17, 2005, Cox Arizona Telecom, Inc. (Cox) filed an application seeking to continue its existing partial waiver of the Commission's Holding Company and Affiliated Interests Rules, A.A.C. R14-2-801 *et seq.* On October 13, 2005, Qwest Corporation filed an Application to Intervene in this case. Because Qwest's Application is unsupported and untimely, Cox requests that it be denied.

II. QWEST'S APPLICATION IS UNSUPPORTED.

The Commission's rules provide that parties who are "directly and substantially affected by the proceedings" may intervene. A.A.C. R14-3-105.A. Any application for intervention "must state the basis for the application." A.A.C. R14-3-105.B. Qwest notes that it is a competitor of Cox, and it then claims that it "will be directly and substantially affected by the decision of the Commission in this proceeding." Qwest does not provide any explanation or support for this allegation. A "bare allegation that one's interest may become impaired, does not, without more, create a right to intervene." *Weaver v. Synthes, Ltd.*, 162 Ariz. 442, 447-48, 784 P.2d 268, 273-74 (App. 1990). Because Qwest's bare allegation does not sufficiently state the basis for its application, Qwest's application should be denied.

Arizona Corporation Commission

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1 Further, Qwest does not meet the standard for intervention. Qwest's rights will not be
2 affected by the Commission's order in this docket. It will therefore not be "directly and
3 substantially affected" by these proceedings. While it is not clear how Qwest claims that it will be
4 impacted as a competitor, whatever impact it claims will be speculative. A "contingent and
5 speculative" impact is not sufficient to support intervention. *Id.*

6 A good example of intervention being properly denied is *Gamet v. Glenn*, 104 Ariz. 489,
7 492,455 P.2d 967, 970 (1967). In that case, the Commission granted a water CC&N to one of two
8 competing applicants. Three individuals sought to intervene in the appeal, asserting that their
9 water rights could be impacted by the proposed water system. Since a CC&N does not determine
10 water rights, the proposed intervenors did not have a property interest in the case, and intervention
11 was properly denied. *Id.* Here, since Qwest has no property interest in these matters, its
12 application should be denied.

13 III. QWEST'S APPLICATION IS UNTIMELY.

14 A request for intervention must be timely. Ariz.R.Civ.Pro. 24; *See also* A.A.C. R14-3-
15 103(A)(incorporating by reference Arizona Rules of Civil Procedure). This is a relatively simple
16 proceeding, with no hearing anticipated. Yet Qwest filed its Application nearly five months after
17 Cox's initial filing. Qwest is a very sophisticated litigant, with substantial legal and regulatory
18 resources (both in-house and on retainer). By all appearances, Qwest closely monitors all
19 Commission proceedings concerning telecommunications matters. Cox's initial filing was
20 available in Docket Control, and was shown on the Commission's daily filings report. Qwest
21 knew, or should have known, of Cox's filing five months ago. Intervention is generally not
22 allowed when a party "appears to have been aware of the litigation but has unduly delayed seeking
23 to intervene." Charles Alan Wright, et al., *Federal Practice and Procedure* Civil 2d § 1916. Once
24 Qwest knew its interests (if any) were at state, "swift, decisive action was in order". *See State ex*
25 *rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 386 ¶ 15, 998 P.2d 1055,
26 1059 (2000). Since Qwest failed to act for five months, its Application to Intervene should be
27 denied.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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IV. CONCLUSION.

Qwest's Application fails to adequately state the basis for its intervention. Moreover, any interest it has is speculative, and it thus will not be "directly and substantially affected" by this case. Further, Qwest waited five months to file its Application, and the Application is thus untimely. For these reasons, Qwest's Application to Intervene should be denied.

RESPECTFULLY SUBMITTED this 20th day of October 2005.

COX ARIZONA TELCOM, LLC

By 
Michael W. Patten
Roshka DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Original and 13 copies of the foregoing filed this 20th day of October 2005 with:

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

Copy of the foregoing hand-delivered/mailed this 20th day of October 2005 to:

Dwight Nodes, Esq.
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Maureen Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

- 1 Ernest G. Johnson, Esq
Director, Utilities Division
- 2 Arizona Corporation Commission
1200 West Washington
- 3 Phoenix, Arizona 85007

- 4 Norman Curtright
Qwest Corporation
- 5 4041 North Central Avenue
Phoenix, Arizona 85012

- 6 Timothy Berg
7 Theresa Dwyer
Fennemore Craig
- 8 3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
- 9

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