

**NEW APPLICATION  
ORIGINAL**



0000041211

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED  
MAR -9 P 4: 05  
AZ CORP COMMISSION  
DOCUMENT CONTROL

1 JEFF HATCH-MILLER  
2 Chairman

3 WILLIAM MUNDELL  
4 Commissioner

5 MARC SPITZER  
6 Commissioner

7 MIKE GLEASON  
8 Commissioner

9 KRISTIN K. MAYES  
10 Commissioner

T-03054A-06-0154

11 In the Matter of the Joint Application of  
12 Electric Lightwave, LLC and  
13 Integra Telecom Holdings, Inc.  
14 for a Limited Waiver of the  
15 Public Utility Holding Companies  
16 And Affiliated Interest Rules  
17 (A.A.C. R14-2-801 *et seq.*)

Docket No: T-03054A-06-

18 **JOINT APPLICATION OF**  
19 **ELECTRIC LIGHTWAVE, LLC AND**  
20 **INTEGRA TELECOM HOLDINGS, INC.**  
21 **FOR A PARTIAL WAIVER OF THE PUBLIC UTILITY HOLDING**  
22 **COMPANIES AND AFFILIATED INTEREST RULES (A.A.C. R14-2-801 *et seq.*)**

23 Pursuant to A.A.C. R14-2-806, Electric Lightwave, LLC<sup>1</sup> (“ELI”) and Integra  
24 Telecom Holdings, Inc. (“Integra”), wholly owned subsidiary of Integra Telecom, Inc.,  
25 (together, “Applicants”) request a limited waiver of the Arizona Corporation  
26 Commission’s (“Commission”) Public Utility Holding Companies and Affiliated Interest

<sup>1</sup> To the extent necessary, ELI requests that the Commission change the name associated with its certificate of convenience and necessity from “Electric Lightwave, Inc.” to “Electric Lightwave, LLC.”

Snell & Wilmer

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

1 Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules"), in connection with a proposed  
2 transaction whereby Integra will acquire control of ELI as described more fully below.

3 **INTRODUCTION**

4  
5 The transaction for which Applicants seek a limited waiver involves Integra's  
6 purchase of all of the membership interests of ELI from CU Capital LLC. Both the  
7 purchaser and seller are companies with interstate operations and affiliates that provide  
8 service in many states other than Arizona. Integra does not currently operate in Arizona,  
9 and, as described below, only a portion ELI's operations are in Arizona. More  
10 importantly, ELI will continue to provide service under the same terms and conditions  
11 after the transaction to business customers in Arizona. In fact, Applicants intend to  
12 expand their presence in Arizona after closing by offering additional telecommunications  
13 products to more Arizona businesses and adding jobs to facilitate the plans for growth.  
14 No Arizona customers, assets, or certificates will be transferred at the closing of Integra's  
15 purchase of the membership interest of ELI.<sup>2</sup>

16  
17  
18 Based on its operational revenues,<sup>3</sup> ELI is considered a Class A utility and,  
19 therefore, subject to the Rules.<sup>4</sup> The Rules regulate the formation of public utility holding  
20 companies and certain transactions and activities between public service corporations and  
21

22  
23 <sup>2</sup> The Applicants will seek appropriate Commission approval and provide necessary  
customer notifications if assets, customers or certificates are transferred in the future.

24 <sup>3</sup> Based on its 2004 Annual Report filed with the Commission, ELI had greater than  
\$1 million in jurisdictional revenues.

25 <sup>4</sup> No ELI affiliate that is a Class A utility is affected by the proposed transaction.  
26

1 their affiliated interests. According to the Commission, the Rules are intended to: (i)  
2 prevent the commingling of utility and non-utility funds; (ii) prohibit cross-subsidization  
3 of non-utility activities by utility ratepayers; (iii) prevent negative impact of non-utility  
4 activities on a utility's financial credit; and (iv) ensure that the utility and its affiliates  
5 provide the Commission with the information necessary to "carry out its regulatory  
6 responsibilities." See Commission Decision No. 56618.  
7

8 Applicants respectfully submit that, in light of the Rules' stated purposes,  
9 Applicants should be exempt from the requirements of the Rules for the limited purposes  
10 of the proposed transaction described herein. As explained below, Applicants operate in a  
11 highly competitive environment that effectively protects customers from activities that  
12 will detrimentally affect service. A limited waiver of these Rules is in the public interest.  
13 In fact, the proposed transaction, if approved, is expected to benefit Arizona business  
14 consumers by bringing them new products for their telecommunications needs and result  
15 in new jobs and capital investment in Arizona. Moreover, the proposed transaction will  
16 not adversely affect ELI's financial status, its ability to attract capital at fair and  
17 reasonable terms, or its ability to provide service in Arizona. Indeed, Applicants intend to  
18 expand their presence in Arizona after closing. Moreover, for various important business  
19 and financial reasons, including changing market conditions, Applicants require that the  
20 transaction be closed as quickly as possible. Therefore, Applicants request a limited  
21 waiver of the Rules as they may apply to the proposed transaction described below.  
22  
23  
24  
25  
26

1     **DESCRIPTION OF APPLICANTS**

2             **A.     Electric Lighwave, LLC (“ELI”)**

3             Electric Lightwave, LLC is a limited liability company organized under the laws of  
4     Delaware. ELI’s current principal place of business is at 4400 NE 77th Avenue,  
5     Vancouver, Washington 98662. ELI’s sole member is CU Capital LLC (“CU Capital”), a  
6     Delaware limited liability company, whose sole member is Citizens Communications  
7     Company (“Citizens”), a Delaware corporation.  
8

9             ELI was founded in 1990. In general, ELI provides integrated communications  
10    products, including local telephone, data, network, and long distance services, to small  
11    and medium enterprise businesses, carriers, and the growing e-commerce market. ELI has  
12    built and operates metropolitan area networks (“MANs”) in Phoenix, Arizona; Portland,  
13    Oregon; Seattle, Washington; Sacramento, California; Salt Lake City, Utah; and Boise,  
14    Idaho. Nationwide, ELI offers long distance, data, Internet access and broadband  
15    transport services.  
16  
17

18            In Arizona, ELI is a full service telecommunications provider, offering business  
19    customers a suite of integrated products and services, including local phone service,  
20    switched and dedicated long distance, private networks, advanced data and Internet access  
21    services. In general, ELI’s product suite is targeted at business customers that desire  
22    service at a DS1 level – 1.544 Megabits per second and the equivalent of 24 channels – or  
23    above. ELI also provides services to other telecommunications carriers in Arizona.  
24  
25  
26

1           ELI serves approximately 1,793 business customers and employs approximately 27  
2 people in Arizona. ELI does not offer service to residential customers in Arizona.

3           ELI is authorized to provide telecommunications services in every state. In  
4 Arizona, ELI is authorized to provide local exchange and intraLATA toll services  
5 pursuant to a Certificate of Convenience and Necessity granted by the Commission  
6 Decision No. 59982 issued in Docket No. U-3054A-95-503 on January 16, 1997. ELI is  
7 also authorized by the Federal Communications Commission to provide interstate and  
8 international telecommunications services.  
9

10           ELI's primary operations and customer base in Arizona are in the greater Phoenix  
11 metropolitan area. ELI also provides some services in other areas in Arizona, including  
12 Flagstaff, Tucson, Kingman, Casa Grande, Prescott, Yuma, and Bullhead City.  
13

14           **B.    Integra Telecom Holdings, Inc. ("Integra")**

15           Integra Telecom Holdings, Inc. is an Oregon corporation with principal offices  
16 located at 1201 NE Lloyd Boulevard, Suite 500, Portland, Oregon 97232. Integra  
17 Telecom was founded in 1996 through the acquisition of OGI Telecomm, a shared tenant  
18 provider formed in 1984 to provide voice and data services to the Oregon Graduate  
19 Institute and businesses in the AmberGlen Business Park, a contiguous office park. In  
20 1998, the company adopted the name Integra Telecom.  
21

22           Through its state-specific operating subsidiaries, Integra provides local telephone  
23 service, long distance calling, and high-speed Internet access to small and mid-sized  
24 businesses in Minnesota, North Dakota, Oregon, Utah, and Washington. Integra also  
25  
26

1 provides long distance services to customers in Montana and Wisconsin. Integra is a  
2 facilities-based service provider, operating its network from various switching centers  
3 throughout its operating regions. Today, Integra serves over 300,000 access lines across  
4 its operating area. Integra differentiates itself by providing customer care, technical, and  
5 account management professionals in the local areas that the company serves and by  
6 investing substantial capital in building and operating a facilities based, proprietary  
7 operating network. It is Integra's goal to provide high-level, personalized client service  
8 and satisfaction to its customers.  
9

10  
11 Integra's operating subsidiaries hold certificates to provide telecommunications  
12 services in Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon,  
13 South Dakota, Utah, Washington, and Wisconsin. Integra and its operating subsidiaries  
14 also are authorized by the Federal Communications Commission to provide interstate and  
15 international telecommunications.  
16

17 Integra's management team has extensive experience in the telecommunications  
18 industry. These key managers have managed the operations of both ILECs and CLECs,  
19 including Integra. This highly-qualified management team helped Integra become, in  
20 2003, one of the first CLECs to achieve a positive cash flow status. In addition, Integra  
21 was one of the first competitive carriers to offer advanced data services over DSL  
22 facilities in several of its markets and the first major CLEC, since the downturn in the  
23 capital markets in 2000, to repay its original lenders in full when it refinanced its balance  
24 sheet in September, 2004. With such success, Integra is qualified to manage ELI's  
25  
26

1 operations following completion of the proposed transaction. Integra is also financially  
2 qualified to acquire ELI.

3 **CONTACT INFORMATION**

4  
5 For the purposes of this Application, contacts for the Applicants are as follows:

6 For Applicants

7 Deborah R. Scott  
8 Robert J. Metli  
9 Snell & Wilmer  
10 One Arizona Center  
11 Phoenix, Arizona 85004-2202  
12 Tel: (602) 382-6000  
13 Fax: (602) 382-6070  
14 Email: drscott@swlaw.com  
15 rmetli@swlaw.com

16 For ELI

17 Russell M. Blau  
18 Brett P. Ferenchak  
19 Bingham McCutchen LLP  
20 3000 K Street, NW, Suite 300  
21 Washington, D.C. 20007-5116  
22 Tel: (202) 424-7500  
23 Fax: (202) 424-7647  
24 Email: Russell.Blau@bingham.com  
25 Brett.Ferenchak@bingham.com

26 and

Hilary E. Glassman  
General Counsel  
Citizens Communications Company  
3 High Ridge Park  
Stamford, Connecticut 06905  
Tel: (203) 614-5059  
Fax: (203) 614-4651  
Email: Hilary.Glassman@czn.com

1 For Integra:

2 Jay Nusbaum  
3 Associate Counsel, Government Affairs  
4 Integra Telecom Holdings, Inc.  
5 1201 NE Lloyd Blvd., Suite 500  
6 Portland, OR 97232  
7 Tel: (503) 453-8054  
8 Fax: (503) 453-8221  
9 Email: jay.nusbaum@integratelecom.com

### 10 DESCRIPTION OF THE TRANSACTION

11 In order to consummate the proposed transaction, Applicants have entered into a  
12 Membership Interest Purchase Agreement ("Agreement") dated as of February 6, 2006.  
13 Pursuant to the Agreement, Integra will purchase from CU Capital all of the issued and  
14 outstanding membership interests in ELI, and will thereby become the sole controlling  
15 member of ELI. The purchase price to be paid by Integra will be approximately \$247  
16 million including \$243 million in cash plus the assumption of \$4 million in capital leases,  
17 subject to customary adjustments. Immediately following the transaction, ELI will  
18 continue to operate as a separate subsidiary of Integra. For the Commission's  
19 convenience, pre- and post-transaction corporate organizational charts are provided as  
20 Exhibit A attached hereto.

### 21 BASIS FOR LIMITED WAIVER

#### 22 **A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause 23 an Increase in ELI's Maximum Rates on File with the Commission for Any 24 Competitive Service.**

25 The Commission previously has granted partial waivers of the Rules. *See, e.g.*  
26 Decision No. 64737. In granting such waivers, the Commission determined that only  
when a transaction "could directly or indirectly result in or cause an increase in its  
maximum rate on file with the Commission for any competitive service" would a  
company have to make the necessary filings under A.A.C. R14-2-803, R14-2-804(A), (B),

1 and (C), and R14-2-805. Applicants request that the Commission employ a consistent  
2 analysis to their request for a limited waiver of the Rules for this proposed transaction.

3  
4 ELI provides competitive services to small and medium enterprise businesses,  
5 carriers, and the growing e-commerce market. The market for such services is highly  
6 competitive and prices are set by competition. With every product pricing change  
7 initiated by ELI, competitors inevitably introduce new services or reprice their service in a  
8 manner believed to be even more attractive to the consumer. Accordingly, ELI has no  
9 incentive to charge unduly high or above-market prices that could be used to fund or  
10 subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner  
11 that is harmful to Arizona consumers.

12  
13 In addition, immediately following the consummation of the proposed transaction,  
14 ELI will continue to offer the services it currently offers with no change in the rates or  
15 terms and conditions of service. The transaction will not cause ELI to increase its  
16 maximum rates on file with the Commission for its competitive services. Indeed, if such  
17 an increase were to occur at later dates, it would be subject to Commission approval under  
18 the Commission's competitive telecommunications rules. See A.A.C. R14-2-1110.  
19 Applicants emphasize that ELI does not provide services to residential customers in  
20 Arizona.

21  
22  
23 In instances such as this when a public utility with no monopoly power competes in  
24 a competitive market, with its revenues from and investment in Arizona comprising only a  
25 small portion of its total corporate family revenues and investment, application of the  
26

1 Rules is not necessary for such a transfer of control. The risk to Arizona consumers from  
2 Applicants' proposed transaction is not material.

3  
4 **B. The Proposed Transaction Is in the Public Interest**

5 **a. Arizona Customers Will Benefit from the Proposed Transaction**

6 Applicants respectfully submit that the transaction described herein will serve the  
7 public interest. The acquisition is expected to result in the creation of jobs, increased  
8 customer choice, and capital investment in Arizona.

9  
10 "The Integra Difference" is the result of a local strategy in which Integra deploys,  
11 under a decentralized model, a local sales, operations and customer service staff in each  
12 major market served to ensure a high level of personal customer service. Integra intends  
13 to apply the same strategy in Arizona after the transaction closes. Integra intends to staff  
14 the Arizona market as it has staffed its other major markets – with a locally based senior  
15 vice president who will be responsible for that market and who will be assisted by locally-  
16 based vice presidents of sales, network operations, and customer operations.

17  
18 To implement its strategy of providing locally based service, Applicants intend to  
19 increase the workforce in Arizona after this transaction is closed. ELI currently employs  
20 approximately 27 people in Arizona. Applicants intend to increase that number to roughly  
21 80 people within the first twenty-four months after closing and to continue to add  
22 employees as the organization grows in the future. Applicants anticipate that a majority  
23 of these positions will be filled by local Arizona personnel.  
24  
25  
26

1           Additionally, Applicants intend to expand the products offered to Arizona business  
2 customers after closing. While ELI currently emphasizes and will continue to provide  
3 service at a DS1 level and above to business customers that require the equivalent  
4 capacity of 24 lines, as well as service to other telecommunications carriers, Integra has a  
5 suite of products designed to satisfy the telecommunications needs of small businesses  
6 that may not require 24 lines. After closing, Applicants intend to begin offering DS0  
7 (plain old telephone service) and DSL service, and related services and features, to small  
8 businesses in Arizona that currently cannot obtain those services from ELI. Examples of  
9 such businesses include florists, barbershops, dentists, and convenience stores. Therefore,  
10 the transaction, if approved, is expected to produce an additional competitive choice for  
11 small businesses in Arizona and to result in service to a broader segment of the Arizona  
12 business market.

13  
14  
15  
16           Finally, Applicants intend to invest capital in the infrastructure needed to provide  
17 service to the growing market in Arizona.

18  
19           In sum, the proposed transaction will provide the Applicants with access to each  
20 others' advanced network capabilities, technical and financial strengths and  
21 complementary services, which together are expected to strengthen the Applicants' ability  
22 to expand their offerings and provide more advanced telecommunications services to a  
23 broader customer base in Arizona to the benefit of Arizona consumers and the State's  
24 telecommunications marketplace.  
25  
26

1                   **b. The Proposed Transaction Will be Seamless to Arizona Customers**

2                   The transaction will be conducted in a manner that is expected to be virtually  
3 transparent to Arizona customers. Following consummation of the proposed transaction,  
4 ELI will continue to provide high-quality communications services to its customers  
5 without interruption or immediate change in rates, terms or conditions.<sup>5</sup>  
6

7                   Applicants will provide all required customer notifications regarding the proposed  
8 transaction.  
9

10                   **c. Applicants Request Timely Approval**

11                   Filings under the Rules require a significant amount of financial and business  
12 information, some of which may not be part of the normal analysis a competitive  
13 company may go through in determining whether to undertake a transaction. A  
14 competitive company must expend significant resources and time to comply with the  
15 requirements of the Rules, which, in this case, are not necessary to protect the public  
16 interest. In a competitive industry, delaying a transaction for an indefinite period of time  
17 while awaiting Commission approval can have significant negative effects on the value of  
18 the transaction for both parties and in some instances may preclude the companies from  
19 going forward with the transaction at all.  
20  
21

22  
23  
24 <sup>5</sup> For branding and customer identity purposes, Integra intends, as part of a transition  
25 plan, to adopt a simple, easy to understand single brand entity, utilizing either the Integra  
26 name, the ELI name, or a combination of the two names. To the extent necessary, Integra  
will inform customers and the Commission of these changes, obtain any required  
consents, and make any necessary customer notifications.

1 For various important business and financial reasons, including changing market  
2 conditions, Applicants request that the transaction be closed as quickly as possible.  
3 Applicants emphasize that the proposed transfer of control will be seamless and will not  
4 affect service to ELI's customers. The transfer of control will not result in the  
5 discontinuance, reduction, loss, or impairment of service to customers. Accordingly,  
6 Applicants request that the Commission commence its examination of the proposed  
7 transaction as soon as possible and complete its review no later than June 30, 2006.  
8

9  
10 **RELIEF REQUESTED**

11 Applicants request a limited waiver of the Rules as follows:

- 12 1. Waiver of the requirement under A.A.C. R14-2-803 that a notice of intent  
13 be filed by Applicants, their parents and affiliates, for the transaction described herein.
- 14 2. Waiver of the requirement under A.A.C. R14-2-804(B) that Applicants  
15 obtain Commission approval, to the extent necessary, prior to entering into the transaction  
16 described herein.
- 17 3. Waiver of any other applicable requirements of the Rules as they may apply  
18 to the transaction described herein.  
19  
20

21 **CONCLUSION**

22 For the foregoing reasons, Applicants respectfully request that the Commission  
23 grant a limited waiver as set forth above.  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2006.

SNELL AND WILMER

Deborah R. Scott  
Robert J. Metli  
One Arizona Center  
Phoenix, Arizona 85004-2202

- AND -

BINGHAM MCCUTCHEN LLP

Russell M. Blau  
Brett P. Ferenchak  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Attorneys for Applicants

Original and thirteen (13) copies  
Of the foregoing filed this 9<sup>th</sup> day  
Of March, 2006, with:

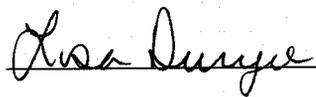
The Arizona Corporation Commission  
Utilities Division – Docket control  
1200 W. Washington Street  
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered  
This 9<sup>th</sup> day of March, 2006, to:

Christopher Kempley, Chief Counsel  
Legal Department  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

1 Lyn Farmer, Chief Administrative Law Judge  
2 Hearing Division  
3 Arizona Corporation Commission  
4 1200 W. Washington Street  
5 Phoenix, Arizona 85007

6   
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

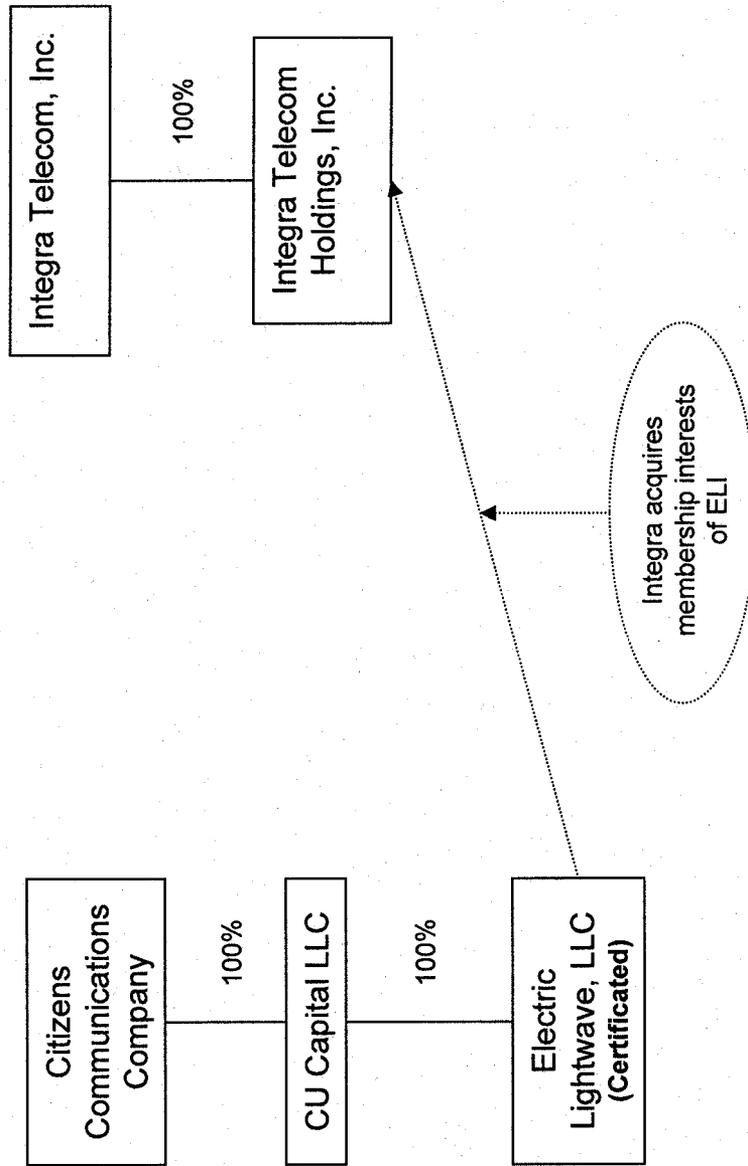
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**EXHIBIT A**

**Pre- and Post- Transaction Corporate Organizational Charts**

# Illustrative Chart

## Pre-Transaction



# Illustrative Chart

---

## Post-Transaction

