

OPEN MEETING ITEM



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

ORIGINAL



EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION

DATE: June 15, 2006
DOCKET NOS: T-04282A-06-0161, T-20448A-06-0161 and T-20449A-06-0161
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

ACC TELECOMMUNICATIONS, LLC/TIME WARNER CABLE INFORMATION SERVICE, (ARIZONA), LLC dba TIME WARNER CABLE

(CC&N/ASSET TRANSFER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 22, 2006

10-day period for filing of exceptions has been waived.

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
ACC TELECOMMUNICATIONS, LLC FOR
APPROVAL OF ASSIGNMENT OF ASSETS TO
TIME WARNER NY CABLE, LLC AND TIME
WARNER CABLE INFORMATION SERVICE,
(ARIZONA), LLC DBA TIME WARNER CABLE.

DOCKET NO. T-04282A-06-0161
T-20448A-06-0161
T-20449A-06-0161

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: June 7, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Wolfe
APPEARANCES: Joan S. Burke, OSBORN MALEDON, P.A., on behalf
of Time Warner; and
Maureen A. Scott, Senior Staff Attorney, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

* * * * *

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 March 10, 2006, Time Warner NY Cable ("TWNYS"), Time Warner Cable
Information Services (Arizona) LLC dba Time Warner Cable ("TWCIS") and ACC
Telecommunications, LLC dba Adelphia LLC ("ACCT") filed with the Arizona Corporation
Commission ("Commission") an application for expedited consideration requesting that the
Commission consent to the proposed assignment from ACCT to TWNY, and immediately thereafter,
to TWCIS, of existing customer contracts and related assets of ACCT used in connection with the
provision of intrastate telecommunications services in Arizona, pursuant to A.R.S. § 40-285. The

1 application indicated that the proposed asset sale transaction agreement was entered into between
2 ACCT's parent, Adelphia Communications Corporation ("Adelphia"), TWNY, and Comcast
3 Corporation on April 20, 2005, and that the transaction is expected to be completed upon bankruptcy
4 court approval following Adelphia's exit from Chapter 11 bankruptcy reorganization late in the
5 second quarter of 2006.

6 2. In Decision No. 68650 (April 12, 2006), the Commission granted the application of
7 ACCT for a Certificate of Convenience and Necessity ("CC&N") to provide intrastate, facilities-
8 based, non-switched, dedicated point-to-point data transport telecommunications services, which will
9 allow the customer to connect directly two or more intrastate locations with dedicated, non-switched
10 services, throughout the State of Arizona. Decision No. 68650 also ordered ACCT to notify each of
11 its private line service customers and the Commission 60 days prior to filing an application to
12 discontinue service pursuant to A.A.C. R14-2-1107, in the event ACCT desires to discontinue
13 service.

14 3. TWNY is a wholly-owned subsidiary of Time Warner Cable, and was established for
15 the purpose of completing the transaction proposed in the application, and which is a division of
16 Time Warner Inc., a publicly traded media and entertainment company with a market capitalization
17 as of February 2006 in excess of \$79 billion. Upon completion of the transaction described in the
18 application, Time Warner Cable will become a publicly traded company, with Time Warner, Inc.
19 holding 82 percent of its common stock. Time Warner Cable is the second largest cable operator in
20 the United States, owning or managing cable systems serving approximately 10.9 million subscribers
21 in 27 states.

22 4. TWCIS is a wholly-owned subsidiary of TWNY, and has been authorized to do
23 business in Arizona as a foreign limited liability company since February 27, 2006. TWCIS does not
24 currently have a CC&N authorizing it to provide service in Arizona.

25 5. The application states that TWCIS will assume responsibility for fulfilling the
26 customer contracts currently held by ACCT to provide Arizona subscribers with intrastate
27 telecommunications services regulated by the Commission.

28 6. The application requests a waiver of A.A.C. R14-2-1904 and 1905, concerning

1 Authorized Telecommunications Company Change Procedures and Verification of Orders for
2 Telecommunications Service, as those rules may apply to the proposed transaction.

3 7. On May 17, 2006, the Commission's Utilities Division ("Staff") filed its Staff Report
4 recommending approval of the application with conditions.

5 8. On May 18, 2006, a Procedural Order was issued setting a procedural conference for
6 the purpose of allowing TWCIS, ACCT and Staff to discuss issues related to processing the
7 application.

8 9. A Procedural Conference was held as scheduled on May 22, 2006. Counsel for
9 ACCT, TWCIS and Staff appeared. Counsel for TWCIS stated that it would be filing a clarification
10 in these dockets that by the application filed on March 10, 2006, ACCT and TWCIS intend to request
11 a transfer of the CC&N granted to ACCT in Decision No. 68650 (April 12, 2006) to TWCIS. ACCT
12 and TWCIS stated that they could expeditiously accomplish the notice of application for a CC&N
13 required by A.A.C. R14-2-1104.E and 1105, as well as the notice required of ACCT by A.A.C. R14-
14 2-1107. ACCT indicated that it intended also to expeditiously request waivers of certain
15 requirements of Decision No. 68650 that might be necessary for Commission approval of transfer of
16 the CC&N.

17 10. A Procedural Order was issued on May 22, 2006 setting this matter for hearing on
18 June 7, 2006. The Procedural Order also ordered publication of notice of the hearing on Commission
19 approval of the asset transfer from ACCT to TWCIS, discontinuance of service by ACCT, and the
20 transfer of ACCT's CC&N to TWCIS.

21 11. On June 2, 2006, TWNY and TWCIS filed a Supplement to Application; Notice of
22 Filing Affidavit of Publication; and Request for Waiver.

23 12. The June 2, 2006 filing requested that the CC&N issued to ACCT on April 12, 2006 in
24 Decision No. 68650 be transferred to TWCIS in conjunction with approval of the asset transfer
25 pursuant to A.R.S. § 40-285.

26 13. The June 2, 2006 filing included an affidavit from the *Arizona Republic* that notice of
27 the application for transfer of the assets from ACCT to TWCIS, request for approval of the CC&N
28 transfer from ACCT to TWCIS, and discontinuance of service by ACCT were published on May 25,

1 2006.

2 14. The June 2, 2006 filing requests a waiver of the timing portion of two requirements of
3 Decision No. 68650. First, it requests a waiver of the requirement that ACCT file a conforming tariff
4 30 days prior to providing service, as a condition of its CC&N conditionally granted in Decision No.
5 68650, based on the fact that ACCT substantially complied with this requirement by filing a
6 conforming tariff on May 24, 2006. Secondly, it requests a waiver of the requirement that ACCT
7 notify each of its private line service customers and the Commission 60 days prior to filing an
8 application to discontinue service pursuant to A.A.C. R14-2-1107, based on the fact that ACCT gave
9 its three customers notice that service by ACCT will be transferred to TWCIS.

10 15. At the hearing, ACCT testified that it mailed notice to its customers via UPS Next Day
11 Air Saver on June 5, 2006, and provided a copy of the notice for the record (Hearing Transcript at 28-
12 29; Hearing Exhibit ACC-1). ACCT's witness and Staff's witness testified that the customer notice
13 complies with the Staff recommendation in the Staff Report regarding the form of the notice (Tr. at
14 29-30, 37). ACCT's witness further testified that she also sent ACCT's customers a copy of the
15 Procedural Order setting the hearing in this matter, and called each of them to inform them that the
16 Procedural Order was being sent to them (Tr. at 30).

17 16. No requests for intervention were filed.

18 17. In its Staff Report and at the hearing, Staff recommended that the Commission
19 approve the joint application of TWNY, TWCIS, and ACCT seeking the Commission's consent to
20 (1) the proposed transfer of existing customer contracts from ACCT to TWNY, and, immediately
21 thereafter, to TWCIS, pursuant to A.R.S. § 40-285; (2) the transfer of the CC&N held by ACCT to
22 TWCIS; and (3) the waiver of A.A.C. R14-2-1904 and 1905, with the following conditions:

23 a. That current ACCT customers have 90 days following the date of this Decision
24 to transfer to another carrier without penalty;

25 b. That the proposed customer notice be changed to inform customers of their
26 right to call the Consumer Services Section of the Commission Staff at 602-
27 542-4251 or 1-800-222-7000 with any questions or concerns;¹

28 ¹ The form of notice mailed on June 5, 2006 included this information.

- 1 c. That TWCIS be required to docket a tariff which mirrors that of ACCT within
2 60 days of this decision;
- 3 d. That with the transfer of the ACCT CC&N granted by Decision No. 68650,
4 Docket No. T-04282A-04-0763, on April 12, 2006 for the provision of
5 intrastate telecommunications services in Arizona, TWCIS be required to
6 comply with all conditions ordered in Decision No. 68650; and
- 7 e. That the authority for ACCT to provide intrastate telecommunications services
8 in Arizona be withdrawn and ACCT shall have no remaining compliance
9 obligations related to Decision No. 68650.

10 18. TWCIS testified that it will rely on the financial resources of Time Warner, Inc. to
11 provide the proposed services. Based on the financial information submitted, Staff believes that
12 TWCIS will have sufficient financial resources from its parent to offer telecommunications services
13 in Arizona. According to the Staff Report, for 2005, Time Warner, Inc., TWCIS' parent company,
14 reported total assets of \$122.5 billion, total shareholders' equity of \$62.7 billion, and total net income
15 of \$2.9 billion.

16 19. Applicants state that under the proposed transaction, the nature and scope of the
17 telecommunications operations will continue unchanged for the foreseeable future; that no layoffs are
18 anticipated and no changes are anticipated in the management personnel currently employed to
19 provide service to ACCT's customers.

20 20. Staff states that ACCT does not own or operate an end-office switch, does not provide
21 switched or voice telephone service and does not have any NPA-NXX number assignments in
22 Arizona.

23 21. TWCIS testified that it will not collect any deposits from its customers.

24 22. TWCIS testified that it intends to adopt the tariff approved for ACCT in Decision No.
25 68650.

26 23. TWCIS testified that none of its officers, directors, partners or managers are involved
27 in any formal or informal complaint proceedings.

28 24. TWCIS testified that that none of its officers, directors, partners or managers are
involved in any civil or criminal investigations; have had any judgments entered against them in any
civil matter; or have been convicted of any criminal acts.

1 25. TWCIS testified that there are no states in which it or its affiliates have had an
2 application to provide telecommunications services similar to those it is proposing to offer in Arizona
3 denied.

4 26. TWCIS testified that it has no affiliates in Arizona offering services similar to those it
5 is proposing to offer.

6 27. TWCIS testified that it had not yet provided complaint contact information in this
7 docket.

8 28. TWCIS testified that after the consummation of the proposed transaction, the fair
9 value of its assets will be the same as that of ACCT, which was determined to be zero in Decision
10 No. 68650.

11 29. Staff testified that Findings of Fact No. 26 of Decision No. 68650, which describes
12 Staff's determination regarding the fair value rate base ("FVRB") of ACCT, describes Staff's
13 determination regarding the FVRB of TWCIS (Tr. at 35).

14 30. Staff believes that the proposed transaction will have no negative customer impact and
15 no negative impact on the competitive local exchange situation.

16 31. At the hearing, TWCIS agreed to comply with all of Staff's recommendations

17 32. TWCIS has the technical and financial capability to provide the proposed services.

18 33. TWCIS will be providing services in areas where ILECs, along with various
19 competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone
20 and private line services. The only area where AACT currently has facilities in place in Arizona is in
21 the vicinity of Yuma, in Yuma County, Arizona.

22 34. TWCIS' proposed services should be classified as competitive because there are
23 alternatives to the proposed services; TWCIS has no ability to adversely affect the local exchange,
24 interexchange, or point-to-point dedicated data service markets; and TWCIS will therefore have no
25 market power in those local exchange, interexchange, or point-to-point dedicated data service
26 markets where alternative providers of telecommunications services exist.

27 35. It is appropriate to classify all of TWCIS' authorized services as competitive.

28 36. Based on information obtained from TWCIS, Staff determined that its fair value rate

1 base ("FVRB") is zero and too small to be useful in a fair value analysis. In general, rates for
2 competitive services are not set according to rate of return regulation. Staff reviewed the rates in
3 ACCT's existing tariff, which TWCIS proposes to adopt, and determined that the terms and
4 conditions for services within the amended tariff are similar to those of the dominant ILEC in
5 Arizona, with proposed rates essentially equal to those of the dominant ILEC and in some cases
6 lower. While Staff considered TWCIS' FVRB information, it did not believe the information
7 deserved substantial weight in setting TWCIS' rates.

8 37. The rates ultimately charged by TWCIS will be heavily influenced by the market.
9 Because of the nature of the competitive market and other factors, a fair value analysis is not
10 necessarily representative of TWCIS' operations.

11 38. Staff's recommendations, as set forth herein, are reasonable. However, because
12 TWCIS plans to commence providing service to ACCT's customers immediately upon
13 consummation of the transaction underlying the application, it is reasonable to require ACCT to file a
14 conforming tariff in this docket within 10 days of this Decision, instead of the timeframe proposed by
15 Staff.

16 39. TWCIS should also be required to file complaint contact information in this docket
17 within 10 days of this Decision.

18 40. TWCIS' fair value rate base is determined to be zero for purposes of this proceeding.

19 41. Under the circumstances of the application, TWCIS should be granted a waiver of
20 A.A.C. R14-2-1904 and 1905, to the extent that they are applicable, concerning Authorized
21 Telecommunications Company Change Procedures and Verification of Orders for
22 Telecommunications Service.

23 42. ACCT has substantially complied with the compliance requirements of Decision No.
24 68650.

25 43. TWCIS testified that it does not wish to be granted statewide authority, but only
26 authority to provide service to the areas in which the existing customers of ACCT are located (Tr. at
27 26). In accord with TWCIS' stated wish to limit its service area to the areas currently served by
28 ACCT, it is reasonable to limit TWCIS' CC&N service territory to Yuma County, Arizona.

CONCLUSIONS OF LAW

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1. ACCT and TWCIS are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

2. The Commission has jurisdiction over ACCT and TWCIS and the subject matter of the application.

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

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for TWCIS to provide the proposed telecommunications services.

6. TWCIS is a fit and proper entity to receive a CC&N authorizing it to provide intrastate, facilities-based, non-switched, dedicated point-to-point data transport telecommunications services, which will allow the customer to connect directly two or more intrastate locations with dedicated, non-switched services, throughout Yuma County in the State of Arizona.

7. It is in the public interest for ACCT's assets and CC&N to be transferred to TWCIS.

8. The telecommunications services that TWCIS intends to provide are competitive within Arizona.

9. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for TWCIS to establish rates and charges that are not less than the TWCIS' total service long-run incremental costs of providing the competitive services approved herein.

10. Staff's recommendations, as set forth herein, are reasonable and should be adopted, except that due to the circumstances of this case, the time period for TWCIS to file its conforming tariffs should be shortened to 10 days.

11. The maximum rates as set forth in ACCT's approved tariffs are reasonable and should be approved for TWCIS.

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ORDER

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2 IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity of ACC
3 Telecommunications, LLC dba Adelphia authorizing the provision of intrastate, facilities-based, non-
4 switched, dedicated point-to-point data transport telecommunications services, which will allow the
5 customer to connect directly two or more intrastate locations with dedicated, non-switched services,
6 is hereby transferred to Time Warner Cable Information Services (Arizona) LLC dba Time Warner
7 Cable, except that in accordance with Time Warner Cable Information Services (Arizona) LLC dba
8 Time Warner Cable's request for a more limited service area, the authority shall be limited to Yuma
9 County in the State of Arizona.

10 IT IS FURTHER ORDERED that current ACC Telecommunications, LLC dba Adelphia
11 customers shall have 90 days following the date of this Decision to transfer to a carrier other than
12 Time Warner Cable Information Services (Arizona) LLC dba Time Warner Cable without penalty.

13 IT IS FURTHER ORDERED that Time Warner Cable Information Services (Arizona) LLC
14 dba Time Warner Cable shall file with Commission Docket Control within 10 days, as a compliance
15 item in this matter, tariffs for its point-to-point dedicated data service that conform to the tariffs
16 currently on file for ACC Telecommunications, LLC dba Adelphia.

17 IT IS FURTHER ORDERED that if Time Warner Cable Information Services (Arizona) LLC
18 dba Time Warner Cable fails to timely comply with the preceding Ordering Paragraph, the transfer of
19 the Certificate of Convenience and Necessity granted herein shall become null and void after due
20 process.

21 IT IS FURTHER ORDERED that Time Warner Cable Information Services (Arizona) LLC
22 dba Time Warner Cable shall assume and comply with all the regulatory responsibilities of ACC
23 Telecommunications, LLC dba Adelphia, including but not limited to those imposed in Decision No.
24 68650.

25 IT IS FURTHER ORDERED that Time Warner Cable Information Services (Arizona) LLC
26 dba Time Warner Cable shall file within 10 days, with Commission Docket Control as a compliance
27 item in this docket, the name, address, telephone number and e-mail address of its complaint contact
28 person for its Arizona customers.

1 IT IS FURTHER ORDERED that Time Warner Cable Information Services (Arizona) LLC
2 dba Time Warner Cable is hereby granted a waiver of A.A.C. R14-2-1904 and 1905 for the proposed
3 transaction, to the extent applicable, concerning Authorized Telecommunications Company Change
4 Procedures and Verification of Orders for Telecommunications Service.

5 IT IS FURTHER ORDERED that in the event Time Warner Cable Information Services
6 (Arizona) LLC dba Time Warner Cable desires to discontinue service, Time Warner Cable
7 Information Services (Arizona) LLC dba Time Warner Cable shall notify each of its private line
8 service customers and the Commission 60 days prior to filing an application to discontinue service
9 pursuant to A.A.C. R14-2-1107.

10 IT IS FURTHER ORDERED that the services Time Warner Cable Information Services
11 (Arizona) LLC dba Time Warner Cable is authorized to provide herein are hereby classified as
12 competitive.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17 CHAIRMAN _____ COMMISSIONER

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19 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Director 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 ____ day of _____, 2006.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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DISSENT _____

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DISSENT _____

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SERVICE LIST FOR: ACC TELECOM/TIME WARNER

DOCKET NO.: T-04282A-06-0161

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