



NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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GARY PIERCE

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

T-03471A-08-0043

Docket Nos. T-03471A-08-_____

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APPLICATION

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Pursuant to A.A.C. R14-2-806, Cox Arizona Telcom, LLC ("Cox Arizona"), a Delaware limited liability company, hereby applies for an extension of the waiver of A.A.C. R14-2-805 ("Rule 805") that was granted to Cox Arizona in Decision No. 68299 (November 14, 2005).

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INTRODUCTION

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In Decision No. 68299 (November 14, 2005), the Commission granted Cox Arizona its most recent waiver of Rule 805 of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 through A.A.C. R14-2-806 (the "Rules").¹ The waiver granted to Cox Arizona was limited to a 24-month period and was granted from the date of November 14, 2005. Rule 805 requires an annual filing on April 15 of each year setting forth the diversification activities and plans of a public utility and its public utility holding company. Therefore, unless an extension of the waiver is granted, Cox would be required to file a report

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¹ Generally, the Rules regulate the formation of public utility holding companies and certain transactions and activities between public service corporations and their affiliated interests. According to the Commission in promulgating the Rules, the Rules are intended to: (1) prevent the commingling of utility and non-utility funds; (2) prohibit cross-subsidization of non-utility activities by utility ratepayers; (3) prevent negative impact of non-utility activities on a utility's financial credit; and (4) ensure that the utility and its affiliates provide the Commission with the information necessary to "carry out its regulatory responsibilities. [See Decision No. 56618 (August 25, 1989)]

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1 under Rule 805 on or before April 15, 2008. Because Cox Arizona's operations represents only a
2 very small piece of the corporate structure of Cox Arizona's parent, Cox Communications, Inc.,
3 application of Rule 805 to Cox Arizona would be unreasonably costly and burdensome. Under
4 Rule 805, Cox Arizona could be required to supply the Commission with voluminous information
5 concerning corporate diversification activities and plans – including transactions between Cox
6 Arizona's affiliates – and assessments of affiliate corporate structure.

7 Cox Arizona respectfully submits that it should continue to be exempt from Rule 805, as
8 provided by Decision No. 68299. As explained below, Cox Arizona operates in a highly
9 competitive environment that, in conjunction with the Commission's existing regulatory measures,
10 already effectively protects customers from cross-subsidization or other activities that will
11 detrimentally affect service to customers. Moreover, Rules 803 and 804, as applicable to Cox
12 under Decision No. 62582 (May 17, 2000), still require Cox to seek Commission approval for
13 transactions or activities that have a material impact in Arizona. The Commission will continue to
14 be able to effectively regulate Cox Arizona as appropriate in a competitive market – just as the
15 Commission has done during the pendency of the previous waiver of Rule 805.

16 **BACKGROUND**

17 Cox Arizona is a wholly-owned subsidiary of CoxCom, Inc. CoxCom, Inc.'s parent is Cox
18 Communications, Inc. ("Cox Communications"), a Delaware corporation headquartered in Atlanta,
19 Georgia. Cox Communications is one of the nation's largest broadband communications
20 companies and provides a variety of services in numerous states, through the operation of a large
21 number of subsidiaries and other affiliated companies. Those operations and services include cable
22 television, local and long distance telephone, digital video, and high-speed Internet access. Cox
23 Communications presently has 87 direct and indirect subsidiaries, including Cox Arizona.

24 Cox Arizona (and its predecessor Cox Arizona Telcom, Inc.) have been providing
25 competitive telecommunications services in Arizona since 1998. The revenues generated by Cox
26 Arizona comprise less than 4% of Cox Communications' overall revenues.

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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

BASES FOR THE EXTENSION OF THE
WAIVER OF RULE 805

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4 Cox Arizona was originally granted a 30-month waiver from Rule 805 in Decision No.
5 62582 (May 17, 2000). Decision No. 66234 (September 16, 2003) granted an additional 30-month
6 waiver of Rule 805, effective November 17, 2002. Decision No. 68299 then extended the waiver
7 for 24 months effective November 14, 2005.

8 Cox Arizona submits that application of Rule 805 to Cox Arizona and its public utility
9 holding company continues to be both unnecessary and unreasonably burdensome. Indeed,
10 Decision No. 66234 at line 17, page 4, noted that "The application of Rule 805 is unnecessary
11 where a public utility company like Cox Arizona operates in a competitive environment, lacks
12 monopoly power, and generates revenue in Arizona that represents only a small portion of its total
13 corporate revenues." While Decision No. 68299 noted that Cox Arizona has become a major
14 telecommunications provider in Arizona, the facts remained that Cox Arizona does not possess
15 monopoly power and that Cox Arizona still participated in a highly competitive local exchange
16 environment. *See* Decision No. 68299 at line 22, page 9 through line 3, page 10.

17 On its face, Rule 805 would potentially require submission of reams of information for
18 Commission review and evaluation concerning diversification activities and plans. For instance,
19 along with these plans, Cox Arizona and its holding company would have to file other information
20 including, but not limited to, financial statements for each subsidiary, a description of the plans for
21 the utilities' subsidiaries to change business activities, an assessment of the effect of planned
22 affiliated activities on the utility's capital structure, the bases upon which the holding company
23 allocates costs, the dollar amount transferred between the utility and each affiliate, and most
24 contracts between affiliates and the utility. These measures are imposed, presumably, to deter any
25 potentially negative impact on Arizona ratepayers resulting from such activities. For Cox Arizona,
26 however, this would involve hundreds of man-hours and several thousands of dollars to compile
27 and review affiliate transactions between Cox Arizona, its parent companies and all of the affiliates

1 to determine what relates to Rule 805 annual reporting requirements. Since the number of
2 transactions subject to Rule 805 depends on the number, type, and nature of each transaction, the
3 actual cost would vary from year to year.

4 Cox Arizona acknowledges that the Rules are appropriate in the context of utilities whose
5 revenues in large part result from the provision of intrastate monopoly utility services. Monopoly
6 service revenues might improperly capitalize the non-regulated affiliate business activities of such
7 utilities, with utility ratepayers both potentially bearing the risk of failure and paying higher rates
8 than necessary for monopoly service. Such activities would unjustly burden consumers of these
9 utility services. Under those circumstances, the role of Rule 805 in monitoring non-regulated
10 utility activities are prudent and clearly serve to further the public interest.

11 In contrast to a monopoly provider, however, application of Rule 805 is unnecessary where
12 a public utility such as Cox Arizona:

- 13 1. Operates in a competitive market;
- 14 2. Does not possess monopoly power; and
- 15 3. Generates revenues in Arizona that comprises only a small portion of its total corporate
16 family revenues and investment.

17 Due to competitive market forces in effect in Arizona, Cox Arizona has no incentive or
18 ability to charge unduly high or above-market prices that could be used to fund or subsidize
19 unregulated affiliates, or to commingle utility and non-utility funds in a manner that is harmful to
20 Arizona consumers. Moreover, the vast majority of affiliate transactions that would need to be
21 reported under Rule 805 are either national or pertain exclusively to interests in other states.
22 Therefore, most affiliate transactions have little, if any, impact on Arizona. However, if such
23 activities do have a material impact on Arizona, Cox Arizona must still comply with Rules 803 and
24 804.²

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27 ² Decision No. 62582 requires a notice of intent to enter into transactions listed under Rule 803 when the transaction is likely to result in: (1) significant increased capital costs of the Arizona operations; (2) significant additional costs allocated or charged directly to the Arizona jurisdictions; or (3) a significant reduction of net income to the Arizona

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 Further, the requested waiver of Rule 805 has been in effect for over seven and one-half
2 years with no adverse effect on Arizona consumers. The Rule 805 waiver should continue given
3 that lack of adverse impact, the unnecessary reporting burden Rule 805 would place on Cox
4 Arizona and the Commission's other existing regulatory authority over Cox Arizona.

5 **RELIEF REQUESTED**

6 Cox Arizona requests that the Commission grant an extension of the waiver of Rule 805.
7 The previous waiver has not resulted in any detrimental impact on Cox customers or Arizona
8 consumers in general.

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10 RESPECTFULLY SUBMITTED January 23, 2008.

11 **COX ARIZONA TELCOM, LLC**

12
13 By 

14 Michael W. Patten
15 ROSHKA DEWULF & PATTEN, PLC
16 One Arizona Center
17 400 East Van Buren Street, Suite 800
18 Phoenix, Arizona 85004
19 (602) 256-6100

20 **ORIGINAL + 13 COPIES** of the foregoing
21 filed January 23, 2008, with:

22 Docket Control
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington
25 Phoenix, Arizona 85007

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27 operations – while also requiring Commission approval under Rule 804 for transactions likely to have material adverse effect on Arizona operations.