

OPEN MEETING



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ORIGINAL

MEMORANDUM RECEIVED
Arizona Corporation Commission
DOCKETED

TO: THE COMMISSION

MAR 16 2010

2010 MAR 16 P 4: 06

FROM: Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

DATE: March 16, 2010

DOCKETED BY
MM

RE: IN THE MATTER OF THE APPLICATION OF ESCHELON TELECOM OF ARIZONA, INC., MOUNTAIN TELECOMMUNICATIONS OF ARIZONA, INC. AND ELECTRIC LIGHTWAVE, LLC FOR APPROVAL OF A FINANCING ORDER AUTHORIZING VARIOUS FINANCING TRANSACTIONS (DOCKET NOS. T-03406A-10-0032, T-03432A-10-0032 AND T-03054A-10-0032)

Introduction

On January 29, 2010, Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC ("Integra Entities" or "Applicants"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority for the Applicants to participate in various financing arrangements contemplated by their ultimate corporate parent, Integra Telecom, Inc. ("Integra Parent") or their immediate parent, Integra Telecom Holdings, Inc. ("Integra Holdings") pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and Arizona Administrative Code ("A.A.C.") R14-2-804, and, to the extent necessary, any other applicable statutes or rules. The Applicants seek approval to encumber Arizona assets as security for up to \$950 million in debt financing. Additionally, the Applicants request expedited consideration and approval without a hearing.

Background

Integra Telecom, Inc. and Integra Telecom Holdings, Inc.

Integra Telecom, Inc. is a privately held Oregon company headquartered in Portland, Oregon. In Arizona, Integra Parent provides local telephone service, long distance calling and high-speed Internet access to small and mid-sized businesses through three wholly owned subsidiaries: Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC. Integra Telecom Holdings, Inc. is a privately held Oregon corporation. It is a direct subsidiary of Integra Parent and an intermediate holding company of the Integra Entities.

Integra Entities

In Arizona, all three Integra Entities are authorized to provide local exchange and other intrastate telecommunications services. Eschelon Telecom of Arizona, Inc. is authorized to provide service pursuant by Decision No. 62751, granted July 25, 2000. Mountain Telecommunications of Arizona, Inc. is authorized to provide service by Decision No. 60668,

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granted February 9, 1998. Electric Lightwave, LLC is authorized to provide service by Decision No. 59982, granted on January 16, 1997. The Integra Entities' primary operations and customer bases are located in the Phoenix and Tucson areas, with operations and business customers in other market areas throughout Arizona. In Arizona, the Integra Entities have over 240 employees, over 7000 miles of fiber, and over 10,000 customers, predominantly in the Phoenix metro area. The Integra Entities offer local dial tone, domestic and international long distance, high-speed Internet and data services (including digital subscriber line or DSL), voice messaging, and numerous ancillary services designed to support the communications needs of businesses.

The Applicant's Transaction

The Applicants anticipate that over the next five years they will enter into various financing transactions to refinance existing long-term debt obligations with lower cost debt instruments, refinance existing long-debt maturities, finance new capital expenditures and provide working capital.¹ The Applicants seek advance approval to pledge their Arizona assets as security in connection with financings of up to \$950 million in debt financing and letters of credit being arranged by Integra Parent.

The anticipated financings are purely financial in nature and will not alter the rates, terms, conditions or services offered by the Applicants in Arizona. The Applicants will remain wholly owned subsidiaries of Integra Parent and will continue to provide telecommunications services in Arizona. Neither the deposit accounts nor the existing performance bonds and/or letters of credit of the Applicants will be pledged as security for any of the financings.²

Applicants state that the authorization requested will enable Integra Parent and its subsidiaries to capture favorable market conditions in a timely and efficient manner and thereby take advantage of opportunities to reduce its financing costs, obtain more attractive terms and conditions and relaxed covenant restrictions, better leverage its financial resources, and select the financing options most appropriate for the purpose of the debt. The flexibility afforded by the authorization will enable Integra Parent to strengthen its financial condition and create opportunities to enhance the respective competitive position of the Applicants in the Arizona telecommunications marketplace.³

¹ In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions, Docket No. T-03406A-10-0032, page 5, January 29, 2010

² In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions, Docket No. T-03406A-10-0032, page 8, January 29, 2010

³ In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions, Docket No. T-03406A-10-0032, page 9, January 29, 2010

Staff's Analysis

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility disposing of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Further, A.A.C. R14-2-804(B) provides that a utility will not, without Commission approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the transaction to determine if it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

A pledge of the Applicants' Arizona's assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternate service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, any authorization for encumbrance should provide customer protection for prepayments and deposits.

The Applicants' request for authorization "over the next five years" is not linked to market conditions or information evidencing the need for authorization over such an extended period. The flexibility sought by the Applicants through the Commission's authorization more logically argues that transaction speed is essential and that financing timeframes may be brief. Staff supports a timeframe not exceeding three years⁴.

On February 25, 2010, the Applicants' filed an affidavit of publication verifying public notice of its financing application. The Applicants published notice of its financing application in the *Arizona Business Gazette* on February 18, 2010. The *Arizona Business Gazette* is a weekly newspaper of general circulation in the county of Maricopa, Arizona.

The Applicants were found to be in Good Standing and in Compliance by the Customer Service and Compliance Sections of the Commission.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize the Applicants' request to encumber their Arizona assets in connection with financings up to \$950 million. Staff further recommends authorizing the Applicants to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

⁴ The Applicants indicated via email on March 10, 2010 that authorization for three years would be acceptable.

THE COMMISSION

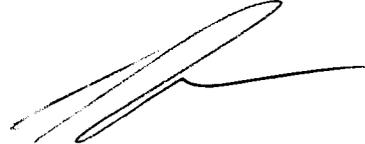
March 11, 2010

Page 4

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicants provide competitive services that are available from alternate service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

Staff further recommends that any authorization granted in this docket terminate three years from the date of the Commission's order in this matter. Staff further recommends that the Company file with Docket Control, as a compliance item in this matter, copies of the loan documents within 60 days of the execution of any financing transaction authorized herein.

Staff does not believe the proposed transactions in this matter will materially change the operations of the Applicants.



Steven M. Olea
Director
Utilities Division

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ORIGINATOR: Armando F. Fimbres

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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

IN THE MATTER OF THE APPLICATION)
OF ESCHELON TELECOM OF ARIZONA,)
INC., MOUNTAIN)
TELECOMMUNICATIONS OF ARIZONA,)
INC. AND ELECTRIC LIGHTWAVE, LLC)
FOR APPROVAL OF A FINANCING)
ORDER AUTHORIZING VARIOUS)
FINANCING TRANSACTIONS)

DOCKET NOS. T-03406A-10-0032
T-03432A-10-0032
T-03054A-10-0032

DECISION NO. _____
ORDER

Open Meeting
March 31 and April 1, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On January 29, 2010, Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC (“Integra Entities” or “Applicants”), filed an application with the Arizona Corporation Commission (“Commission”) requesting authority for the Applicants to participate in various financing arrangements contemplated by their ultimate corporate parent, Integra Telecom, Inc. (“Integra Parent”) or their immediate parent, Integra Telecom Holdings, Inc. (“Integra Holdings”) pursuant to Arizona Revised Statutes (“A.R.S.”) § 40-285 and Arizona Administrative Code (“A.A.C.”) R14-2-804, and, to the extent necessary, any other applicable statutes or rules. Additionally, the Applicants request expedited consideration and approval without a hearing.

2. The Applicants seek approval to encumber Arizona assets as security for up to \$950 million in debt financing.

1 Background of Applicants

2 3. The Company in its Application represents that:

3 A. Integra Telecom, Inc. is a privately held Oregon company headquartered in
4 Portland, Oregon. In Arizona, Integra Parent provides local telephone service,
5 long distance calling and high-speed Internet access to small and mid-sized
6 businesses through three wholly owned subsidiaries: Eschelon Telecom of
7 Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric
8 Lightwave, LLC. Integra Telecom Holdings, Inc. is a privately held Oregon
9 corporation. It is a direct subsidiary of Integra Parent and an intermediate
10 holding company of the Integra Entities.

11 B. In Arizona, all three Integra Entities are authorized to provide local exchange
12 and other intrastate telecommunications services. Eschelon Telecom of
13 Arizona, Inc. is authorized to provide service pursuant by Decision No. 62751,
14 granted July 25, 2000. Mountain Telecommunications of Arizona, Inc. is
15 authorized to provide service by Decision No. 60668, granted February 9, 1998.
16 Electric Lightwave, LLC is authorized to provide service by Decision No.
17 59982, granted on January 16, 1997. The Integra Entities' primary operations
18 and customer bases are located in the Phoenix and Tucson areas, with
19 operations and business customers in other market areas throughout Arizona.
20 In Arizona, the Integra Entities have over 240 employees, over 7000 miles of
21 fiber, and over 10,000 customers, predominantly in the Phoenix metro area.
22 The Integra Entities offer local dial tone, domestic and international long
23 distance, high-speed Internet and data services (including digital subscriber line
24 or DSL), voice messaging, and numerous ancillary services designed to support
25 the communications needs of businesses.

18 The Applicant's Transaction

19 4. The Applicants represent that:

20 A. The Applicants anticipate that over the next five years they will enter into
21 various financing transactions to refinance existing long-term debt obligations
22 with lower cost debt instruments, refinance existing long-debt maturities,
23 finance new capital expenditures and provide working capital.¹ The Applicants
24 seek advance approval to pledge their Arizona assets as security in connection
25 with financings of up to \$950 million in debt financing and letters of credit
26 being arranged by Integra Parent.

27 B. The anticipated financings are purely financial in nature and will not alter the
28 rates, terms, conditions or services offered by the Applicants in Arizona. The
Applicants will remain wholly owned subsidiaries of Integra Parent and will

¹ In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions, Docket No. T-03406A-10-0032, page 5, January 29, 2010

1 continue to provide telecommunications services in Arizona. Neither the
2 deposit accounts nor the existing performance bonds and/or letters of credit of
3 the Applicants will be pledged as security for any of the financings.²

4 C. Applicants state that the authorization requested will enable Integra Parent and
5 its subsidiaries to capture favorable market conditions in a timely and efficient
6 manner and thereby take advantage of opportunities to reduce its financing
7 costs, obtain more attractive terms and conditions and relaxed covenant
8 restrictions, better leverage its financial resources, and select the financing
9 options most appropriate for the purpose of the debt. The flexibility afforded
10 by the authorization will enable Integra Parent to strengthen its financial
11 condition and create opportunities to enhance the respective competitive
12 position of the Applicants in the Arizona telecommunications marketplace.³

13 Staff's Analysis & Recommendations

14 5. A.R.S. § 40-285 requires public service corporations to obtain Commission
15 authorization to encumber certain utility assets. The statute serves to protect captive customers
16 from a utility disposing of any of its assets that are necessary for the provision of service; thus, it
17 serves to preempt any service impairment due to disposal of assets essential for providing service.

18 6. Further, A.A.C. R14-2-804(B) provides that a utility will not, without Commission
19 approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee,
20 or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the
21 transaction to determine if it would impair the financial status of the public utility, otherwise
22 prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public
23 utility to provide safe, reasonable and adequate service.

24 7. A pledge of the Applicants' Arizona's assets should not impair the availability of
25 service to customers since the Applicants provide competitive services that are available from
26 alternate service providers. Customers may still have exposure to losses to the extent they have
27 prepaid for service or made deposits, therefore, any authorization for encumbrance should provide
28 customer protection for prepayments and deposits.

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30 ² In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona,
31 Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions,
32 Docket No. T-03406A-10-0032, page 8, January 29, 2010

33 ³ In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona,
34 Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions,
35 Docket No. T-03406A-10-0032, page 9, January 29, 2010

1 8. The Applicants' request for authorization "over the next five years" is not linked to
2 market conditions or information evidencing the need for authorization over such an extended
3 period. The flexibility sought by the Applicants through the Commission's authorization more
4 logically argues that transaction speed is essential and that financing timeframes may be brief.
5 Staff supports a timeframe not exceeding three years⁴.

6 9. On February 25, 2010, the Applicants' filed an affidavit of publication verifying
7 public notice of its financing application. The Applicants published notice of its financing
8 application in the Arizona Business Gazette on February 18, 2010. The Arizona Business Gazette
9 is a weekly newspaper of general circulation in the county of Maricopa, Arizona.

10 10. The Applicants were found to be in Good Standing and in Compliance by the
11 Customer Service and Compliance Sections of the Commission.

12 11. Based on its analysis of the proposed transaction, Staff concludes that the
13 transaction would not impair the financial status of the Company, would not impair its ability to
14 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and
15 adequate service. Staff, therefore, recommends that the Commission authorize the Applicants'
16 request to encumber their Arizona assets in connection with financings up to \$950 million.

17 12. Staff further recommends authorizing the Applicants to engage in any transactions
18 and to execute any documents necessary to effectuate the authorizations granted.

19 13. Staff concludes that a pledge of the Applicants' assets would not impair the
20 availability of service to customers since the Applicants provide competitive services that are
21 available from alternate service providers. Customers may still have exposure to losses to the
22 extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the
23 application subject to the condition that all customer deposits and prepayments be excluded from
24 encumbrance and equivalent amounts be retained by the Applicants.

25 14. Staff further recommends that any authorization granted in this docket terminate
26 three years from the date of the Commission's order in this matter.

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⁴ The Applicants indicated via email on March 10, 2010 that authorization for three years would be acceptable.

1 equivalent amounts be retained by Eschelon Telecom of Arizona, Inc., Mountain
2 Telecommunications of Arizona, Inc. and Electric Lightwave, LLC.

3 IT IS FURTHER ORDERED that copies of executed security documents be filed with
4 Docket Control, as a compliance item in this docket, within 60 days of the decision in this matter.

5 IT IS FURTHER ORDERED that the authorization granted shall terminate three years
6 from the date of the Commission's order in this matter.

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

8
9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

10
11 _____
12 CHAIRMAN

COMMISSIONER

13
14 _____
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto, set my hand and caused the official seal of
19 this Commission to be affixed at the Capitol, in the City of
20 Phoenix, this _____ day of _____, 2010.

21 _____
22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24 DISSENT: _____

25 DISSENT: _____

26 SMO:AFF:lhм\CH

1 SERVICE LIST FOR: ESCHELON TELECOM OF ARIZONA, INC., MOUNTAIN
2 TELECOMMUNICATIONS OF ARIZONA, INC. AND ELECTRIC LIGHTWAVE, LLC

3 DOCKET NOS. T-03406A-10-0032, T-03432A-10-0032 AND T-03054A-10-0032

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16 Director, Utilities Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Ms. Janice M. Alward
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