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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

Arizona Corporation Commission

DOCKETED

JUN 26 2012

DOCKETED BY	nr
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IN THE MATTER OF THE APPLICATION)
OF TW TELECOM OF ARIZONA LLC AND)
TW TELECOM INC. AND THEIR)
AFFILIATES FOR A LIMITED WAIVER OF)
THE RULES GOVERNING PUBLIC)
UTILITY HOLDING COMPANIES AND)
AFFILIATED RULES)

DOCKET NO. T-03943A-11-0462
DECISION NO. 73245
ORDER

Open Meeting
June 19-20, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On December 22, 2011, tw telecom inc. ("tw telecom") and tw telecom of arizona llc ("TWTA") filed an application with the Arizona Corporation Commission ("Commission") for a limited waiver of A.A.C. R14-2-801, et seq. (the "Rules") – the rules governing public utility holding companies and affiliated interests.

2. The limited waiver will be used in future transactions which meet the definition of a reorganization under Rule 14-2-801(5) and to consummate transactions otherwise subject to A.A.C. R14-2-804(B).

3. tw telecom and TWTA are not requesting a waiver of A.A.C. R14-2-805 - Annual Filing Requirements of Diversification Activities and Plans.

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1 Background

2 4. TWTA is a Class A public utility and is subject to the Rules.¹ TWTA is a wholly
3 owned subsidiary of tw telecom holdings inc. which is a wholly owned subsidiary of tw telecom.
4 tw telecom is the affiliate (as well as a Public Utility Holding Company) that controls TWTA.

5 5. Under the Rules, Commission approval is required per A.A.C. R14-2-803(A)
6 whenever a utility or an affiliate intends to reorganize an existing public utility holding company.

7 6. Prior approval is also required under R14-2-804(B) if a public utility wishes to
8 "obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or
9 assume the liabilities of such affiliate" or lend to any affiliate not regulated by the Commission
10 \$100,000 or more for over one year.

11 7. When companies such as tw telecom with assets and network facilities in many
12 states participate in any sort of merger, financing, refinancing, reconfiguration, or consolidation,
13 the Rules require Arizona Commission approval.

14 The Applicant's Request for Waiver of the Rules

15 The Applicant represents the following in its Application:

16 8. tw telecom is a national telecommunications provider with only a fraction of its
17 revenues and investments in Arizona. In the coming years, tw telecom will enter into transactions
18 all over the United States that have no impact on Arizona operations or Arizona customers. These
19 transactions - reorganizations under the rules - will not result in any fundamental change in the
20 affiliate entity that operates in Arizona and should not be subject to a Commission approval
21 requirement.

22 9. tw telecom is a non-dominant carrier and, as such, does not exercise monopoly
23 power over a captive service territory or guaranteed revenue base. The Rules were promulgated to
24 protect captive utility ratepayers from rates that "include costs associated with holding company
25 structure, financially beleaguered affiliates, or sweetheart deals with affiliates."²

26 _____
27 ¹ For telephone utilities, a Class A public service corporation is defined as one that has annual intrastate operating
revenues in excess of \$1 million. A.A.C. R14-2-103(A).

28 ² T-03943A-11-0462 , In the matter of the application of tw telecom of arizona llc and tw telecom inc. and their
affiliates for a limited waiver of the rules governing public utility holding companies and affiliated rules., page 6.

1 10. tw telecom participates in a telecommunications services industry that is energized
2 by market forces such as consumer demand, competitive pricing and the drive to increase market
3 share through added value and technological innovation. Given that TWTA faces competition in
4 all of the retail services it provides to Arizona customers, there exists virtually no incentive or
5 opportunity for TWTA to attempt to extract from customers unduly high or above-market prices
6 that could be used to subsidize unregulated, affiliated interests. The market effectively provides a
7 natural safeguard against the improper exploitation of telecommunication service profits by tw
8 telecom.

9 Staff's Analysis and Conclusions

10 11. The Application requests limited waivers of the Rules similar to those granted in
11 Decision Nos. 58258 and 60728 for AT&T Communications of the Mountain States, Inc. and
12 Teleport Communications Group and AT&T Corporation, respectively. Such waivers would
13 waive the requirements of R14-2-804 completely and require tw telecom to file a notice of intent
14 only for those organizations or reorganizations that are likely to have a material adverse impact on
15 tw telecom's Arizona public utilities.

16 12. Staff is not aware of any evidence that would lead it to question past decisions
17 granting limited waivers of the Rules. No complaints have been filed against any party with a
18 limited waiver of the Rules alleging conduct that could have been prevented by the Commission's
19 denial of limited waivers of the Rules. None of the companies receiving limited waivers of the
20 Rules have filed any indications that the Rules, as waived, remain burdensome.

21 13. Staff has recommended that the application filed by tw telecom inc. and tw telecom
22 of arizona llc for a limited wavier of the Rules be approved with the condition that the companies
23 be required to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when
24 a transaction is likely to result in – (1) significant increased capital costs of the Arizona operations;
25 (2) significant additional costs allocated or charged directly to the Arizona jurisdiction; or (3) a
26 significant reduction of net income to the Arizona operations.

27 ...

28 ...

1 IT IS FURTHER ORDERED that tw telecom inc. and tw telecom of arizona llc be required
 2 to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when a
 3 transaction is likely to result in – (1) significant increased capital costs of the Arizona operations;
 4 (2) significant additional costs allocated or charged directly to the Arizona jurisdiction; or (3) a
 5 significant reduction of net income to the Arizona operations.

6 IT IS FURTHER ORDERED that that tw telecom inc. and tw telecom of arizona llc be
 7 granted a limited wavier of A.A.C. R14-2-804 on the condition that they seek Commission
 8 approval for transactions that are likely to have any material effect on Arizona operations.

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

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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

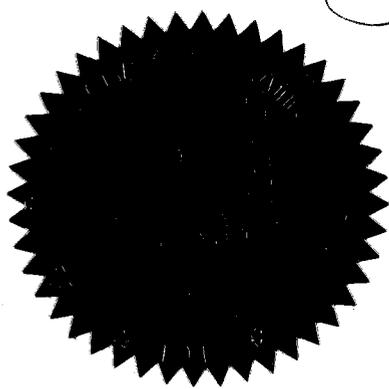
Gay L. Rosen
 CHAIRMAN

Robert H. ...
 COMMISSIONER

Andrew J. ...
 COMMISSIONER

Paul Newman
 COMMISSIONER

... ..
 COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 Executive Director of the Arizona Corporation Commission,
 have hereunto, set my hand and caused the official seal of
 this Commission to be affixed at the Capitol, in the City of
 Phoenix, this 20 day of June, 2012.

E. G. Johnson

ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:AFF:sms/RRM

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