

ORIGINAL

OPEN MEETING



MEMORANDUM

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DOCKET CONTROL Arizona Corporation Commission

TO: THE COMMISSION

2012 OCT 2 PM 4:40

DOCKETED

FROM: Utilities Division

OCT 02 2012

DATE: October 2, 2012

DOCKETED BY [Signature]

RE: IN THE MATTER OF THE APPLICATION OF COX ARIZONA TELCOM, L.L.C.
FOR AN EXEMPTION FROM COMMISSION RULE A.A.C. R14-2-1115.C.3.
(DOCKET NO. T-03471A-11-0256)

Introduction

On June 28, 2011, Cox Arizona Telcom, L.L.C. ("Cox") filed an application seeking an exemption from Arizona Corporation Commission ("ACC" or "Commission") Rule A.A.C. R14-2-1115.C.3 (filing of contracts) pursuant to A.A.C. R14-2-1115.I. Cox states in its application that "an exemption from the rule would relieve administrative burden, cost and time for both Cox and Commission Staff."¹

Background

A.A.C. R14-2-1101 states "These rules shall govern the provision of competitive, intrastate telecommunications services to the public by telecommunications companies subject to the jurisdiction of the Arizona Corporation Commission. Unless otherwise ordered by the Commission, these rules shall not govern the provision of service by independently or local exchange carrier-owned pay telephones (COPTs) and alternative operator service (AOS) providers, which shall instead be governed by Articles [sic] 9 and Article 10 of this Chapter, respectively. The provision of local exchange service also shall be governed by Article 5 of this Chapter, to the extent that Article is not inconsistent with these rules."

A.A.C. R14-2-1115.C states "Each telecommunications company governed by this Article shall file with the Commission current tariffs, price levels, and contracts that comply with the provisions of this Article and with all Commission rules, orders, and all other requirements imposed by the laws of the state of Arizona."

A.A.C. R14-2-1115.C.3 states "Contracts of telecommunications companies governed by this Article shall be filed with the Commission not later than five business days after execution. If the contract includes both competitive and noncompetitive services, it must be filed at least five business days prior to the effective date of the contract and must separately state the tariffed rate for the noncompetitive services and the price for the competitive services."

A.A.C. R14-2-1115.I states "The Commission may consider variations or exemptions from the terms or requirements of any of the rules included herein (14 A.A.C. 2, Article 11) upon the verified application of an affected party. The application must set forth the reasons why the

¹ Page 1, lines 11 - 12, In The Matter of the Application of Cox Arizona Telcom, L.L.C. for an Exemption from Commission Rule A.A.C. R14-2-1115.C.3, Docket No. T-03471A-11-0256

public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.”

Staff's Analysis

Cox's application for a waiver of R14-2-1115.C.3 pursuant to R14-2-1115.I can be summarized as follows:

1. Confusion exists regarding the requirement to file Individual Case Basis agreements (“ICBs”),
2. Numerous Basic Services Arrangements, Commercial Service Agreements, ICBs and other contracts may have to be filed pursuant to R14-2-1115.C.3 depending on the Commission's interpretation of “contract,”
3. The administrative time and cost of filing and securing confidential contracts by Staff and Cox are burdensome,
4. To date, no carrier has raised a dispute regarding ICBs,
5. Rule 1115.C.3 has created little direct public benefit in regards to ICBs, and
6. The Commission has the authority to ask for any contract if issues are brought to the Commission's attention regardless of whether any contracts have been filed pursuant to R14-2-1115.C.3.

Staff's Recommendations

Staff recognizes that the telecommunications industry has evolved significantly since these rules were adopted. The need no longer exists today, in Staff's opinion, to require carriers to file these contracts within 5 days of their execution.

Therefore, while Staff does not recommended that Cox be exempted from the rules requirement altogether, Staff does believe that a waiver of filing requirement is appropriate; subject to the condition that Cox be required to provide its ICB contracts to Staff, at any time, upon request.

Steven M. Olea
Director
Utilities Division

SMO:AFF:sms\MAS

ORIGINATOR: Armando F. Fimbres

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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

IN THE MATTER OF THE APPLICATION
 OF COX ARIZONA TELCOM, L.L.C. FOR
 AN EXEMPTION FROM COMMISSION
 RULE A.A.C. R14-2-1115.C.3.

DOCKET NO. T-03471A-11-0256
 DECISION NO. _____
 ORDER

Open Meeting
 October 16 and 17, 2012
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Cox Arizona Telcom, L.L.C. ("Cox") is certificated to provide intrastate telecommunications service as a public service corporation in the State of Arizona.
2. On June 28, 2011, Cox filed an application seeking an exemption from Arizona Corporation Commission ("ACC" or "Commission") Rule A.A.C. R14-2-1115.C.3. pursuant to A.A.C. R14-2-1115.I.
3. Cox states in its application that "an exemption from the rule would relieve administrative burden, cost and time for both Cox and Commission Staff."¹

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¹ Page 1, lines 11 – 12, In The Matter of the Application of Cox Arizona Telcom, L.L.C. for an Exemption from Commission Rule A.A.C. R14-2-1115.C.3, Docket No. T-03471A-11-0256

1 Background

2 4. A.A.C. R14-2-1101 states “These rules shall govern the provision of competitive,
 3 intrastate telecommunications services to the public by telecommunications companies subject to
 4 the jurisdiction of the Arizona Corporation Commission. Unless otherwise ordered by the
 5 Commission, these rules shall not govern the provision of service by independently or local
 6 exchange carrier-owned pay telephones (COPTs) and alternative operator service (AOS)
 7 providers, which shall instead be governed by Articles [sic] 9 and Article 10 of this Chapter,
 8 respectively. The provision of local exchange service also shall be governed by Article 5 of this
 9 Chapter, to the extent that Article is not inconsistent with these rules.”

10 5. A.A.C. R14-2-1115.C states “Each telecommunications company governed by this
 11 Article shall file with the Commission current tariffs, price levels, and contracts that comply with
 12 the provisions of this Article and with all Commission rules, orders, and all other requirements
 13 imposed by the laws of the state of Arizona.”

14 6. A.A.C. R14-2-1115.C.3 states “Contracts of telecommunications companies
 15 governed by this Article shall be filed with the Commission not later than five business days after
 16 execution. If the contract includes both competitive and noncompetitive services, it must be filed
 17 at least five business days prior to the effective date of the contract and must separately state the
 18 tariffed rate for the noncompetitive services and the price for the competitive services.”

19 7. A.A.C. 1115.I – Variations, Exemptions of Commission Rules – states “The
 20 Commission may consider variations or exemptions from the terms or requirements of any of the
 21 rules included herein (14 A.A.C. 2, Article 11) upon the verified application of an affected party.
 22 The application must set forth the reasons why the public interest will be served by the variation or
 23 exemption from the Commission rules and regulations. Any variation or exemption granted shall
 24 require an order of the Commission. Where a conflict exists between these rules and an approved
 25 tariff or order of the Commission, the provisions of the approved tariff or order of the Commission
 26 shall apply.”

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1 Staff's Analysis

2 8. Cox's application for a waiver of R14-2-1115.C.3 pursuant to R14-2-1115.I can be
3 summarized as follows:

- 4 A. Confusion exists regarding the requirement to file Individual Case Basis agreements ("ICBs").
- 5 B. Numerous Basic Services Arrangements, Commercial Service Agreements, ICBs and other contracts may have to be filed pursuant to R14-2-1115.C.3 depending the Commission's interpretation of "contract."
- 6 C. The administrative time and cost of filing and securing confidential contracts by Staff and Cox are burdensome.
- 7 D. To date, no carrier has raised a dispute regarding ICBs.
- 8 E. Rule 1115.C.3 has created little direct public benefit in regards to ICBs, and
- 9 F. The Commission has the authority to ask for any contract if issues are brought to the Commission's attention regardless of whether any contracts have been filed pursuant to R14-2-1115.C.3.

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11 9. Staff has reviewed the Cox rationale presented in its application and while Staff
12 understands the Company's rationale, Staff disagrees with Cox. Staff believes it is incumbent
13 upon Cox to follow Commission's rules. Though Cox cites a number of factors that have limited
14 its filing of ICBs, Staff does not find any of these reasons to be persuasive.

15 10. Staff recognizes that the telecommunications industry has evolved significantly
16 since these rules were adopted. The need no longer exists today, in Staff's opinion to require
17 carriers to file these contracts within 5 days of their execution.

18 11. Therefore, while Staff does not recommend that Cox be exempted from the
19 requirements of the rules altogether, Staff does believe that a waiver of the filing requirement is
20 appropriate; subject to the condition that Cox be required to provide its ICB contracts to Staff, at
21 any time, upon request..

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CONCLUSIONS OF LAW

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1. Cox Arizona Telcom, L.L.C. is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Cox Arizona Telcom, L.L.C. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated October 2, 2012, concludes that it is in the public interest to grant approval as proposed and discussed herein.

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ORDER

IT IS THEREFORE ORDERED that the application of Cox Arizona Telcom, L.L.C. seeking a complete exemption from A.A.C. R14-2-1115.C.3. pursuant to A.A.C. R14-2-1115.I, be and hereby is denied.

IT IS FURTHER ORDERED that Cox Arizona Telcom, L.L.C. shall be granted a waiver regarding the filing of ICBs per A.A.C. R14-2-1115.C.3, subject to the condition that Cox be required to provide its ICB contracts to Staff and/or the Commission, at any time, upon request.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

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 _____ day of _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:AFF:sms\MAS

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