

**ORIGINAL**

**NEW APPLICATION**



0000142613

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**RECEIVED**

2013 JAN 22 P 2:02

Arizona Corporation Commission

**DOCKETED**

JAN 16 2013

**COMMISSIONERS**

BOB STUMP – CHAIRMAN  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY	NR
-------------	----

In the Matter of the Application of **tw telecom** )  
**of arizona, inc.** for a waiver of Commission ) DOCKET NO. T-03943A-13-0013  
Rule A.A.C. R14-2-1115.C.3 (Contract Filing )  
Rule). )  
)

**APPLICATION**

**tw telecom of arizona llc** (“tw telecom” or “Applicant”) requests a waiver of the filing requirement contained in A.A.C. R14.2.1115.C.3 (“Contract Filing Rule”), subject to the condition that tw telecom will provide contracts to Commission Staff at any time upon request.

**BACKGROUND**

tw telecom is certified to provide intrastate telecommunications services as a public service corporation in Arizona. tw telecom is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the terms of its certification. ACC Decision No. 63262, p.3, para. 7(l) (2000).

A.A.C. R14-2-1115.C provides “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.” tw telecom files with the Commission company

tariffs which, along with price change notifications, contain the terms, conditions and maximum rates for services to tw telecom customers in Arizona.

Subsection C.3 of Rule 1115 further provides:

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.C.3 (“Contract Filing Rule”). Nationally, tw telecom enters into many service contracts with customers and carriers annually. Filing all contracts (which could include commercial service contracts, basic service contracts, carrier service agreements, national agreements, access agreements and other contracts), would be an enormous undertaking. tw telecom has repeatedly asserted its willingness to provide to Commission Staff any contract requested by Staff.

## DISCUSSION

Staff is aware that carriers currently do not file, as a matter of practice, all contracts entered into by Arizona carriers. In fact, this Commission Staff has made specific recommendations regarding the filing of a narrow range of contracts in an ongoing proceeding. *See In the Matter of AUSF Fund Rules and Cost of Telecommunications Access, Docket No. RT-00000H-97-0137 and Docket No. T-00000D-00-0672; Reply Brief of Commission Staff* p. 12 (recommending the filing of access contracts between providers).

The impracticality of the Contract Filing Rule is understandable. Rule 1115.C.3 was drafted nearly twenty years ago, before the Telecom Act of 1996 was passed and before competitive carriers began operating in Arizona. As certificates of convenience and necessity were granted in Arizona and competitive carriers began operating, it became apparent that

carriers were not submitting hard-copies of every contract entered into by the carrier to the Commission. Today, if all carriers in Arizona were to file all “[c]ontracts of telecommunications companies governed by this Article,” the Commission would be inundated with paper. It would be a regulatory burden with no beneficiary. Substantial resources would be consumed copying, organizing, filing and storing the conformed contracts. While tw telecom does not today file service contracts, it is willing to submit any contract requested by the Commission at any time. Consistent with A.A.C. R14-2-1115.C.4, tw telecom would work with Staff to appropriately protect any confidential information contained in a contract.

Recently, Commission Staff carefully considered an application from Cox Arizona Telecom, L.L.C. (“Cox”) for exemption from the contract filing requirement found in R14-2-1115.C.3. *In the Matter of the Application of Cox Arizona Telecom, LLC for an Exemption from Commission Rule A.A.C. R14-2-1115.C.* (Docket No. T-03471A-11-0256). After a careful review of the Cox Application and the Contract Filing Rule, the Commission Staff concluded that its ability to access and review carrier contracts is more important than strict adherence to the contract filing requirement. On Staff’s recommendation, the Commission granted Cox a waiver of the Contract Filing Rule, subject to the condition that Cox must to provide any ICB (Individual Case Basis) contract to Staff, at any time, upon request. See Decision No. 73579 (Nov. 21, 2012). In this Application, tw telecom requests the same waiver granted Cox.

The rule authorizing the waiver granted to Cox (and now sought by tw telecom) 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 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.

Commission Rule R14-2-1115.I (emphasis added). tw telecom submits the public interest will be served by a waiver in this situation as it will avoid the unnecessary expenditure of resources needed to prepare, copy, file and retain all service contracts entered into by tw telecom. Carriers today do not comply with the Contract Filing Rule because its reach is ambiguous and its purpose is confusing. Further, the rule would be very difficult to fully implement as a practical matter. Today, documents filed with Docket Control are scanned and immediately made publically available over the Internet through eDocket. Rare exceptions are allowed for proprietary documents when authorized by an Administrative Law Judge. The Contract Filing Rule provides that “contracts” must be “filed with the Commission” and subsection C.4 further provides that “Contracts filed pursuant to this Article shall **not be** open to public inspection or made public except on order of the Commission . . .” A.A.C. R14-2-1115.C. 4. Strict adherence to the Contract Filing Rule would result in an enormous collection of confidential (hard-copy) documents stored at the Commission. Once again, we have a regulatory burden with no clear beneficiary.

The core public interest served by A.A.C. R14-2-1115.C.3 is the Commission’s ready access to information, including contracts, which enable it to protect both rate-payers and regulated utilities from anti-competitive behavior. Not every telecommunication services contract need be filed for this interest to be protected. tw telecom acknowledges the Commission’s authority to ask for any service contract entered into by tw telecom, whether or not that contract was ever filed under A.A.C. R14-2-1115.C.3. tw telecom is willing to make this commitment to supply Commission Staff with a requested contract a condition of its waiver. For the reasons identified above, tw telecom submits that the public interest would be served by a waiver of the filing requirement of Rule 14-1-1115.C.3 as requested by tw telecom.

**CONCLUSION**

For the foregoing reasons, tw telecom respectfully requests a waiver under A.A.C. R14-2-1115.I of the filing requirement contained in R14-2-1115.C.3; subject to the condition that tw telecom is required to submit any Arizona service contract to Staff upon request.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of January 2013.

By:

  
Joan S. Burke, 013687  
LAW OFFICE OF JOAN S. BURKE, P.C.  
1650 North First Avenue  
Phoenix, Arizona 85003  
Telephone: (602) 535-0396  
[Joan@jsburkelaw.com](mailto:Joan@jsburkelaw.com)  
Electronic Service Preferred (ESP)

Attorney for tw telecom of arizona llc

**ORIGINAL** and thirteen (13) copies of the foregoing filed this 22nd day of January 2013 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

