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Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

T-03054A-13-0091  
T-03432A-13-0091

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Re: In the Matter of the Joint Application of Electric Lightwave, LLC, and Mountain Telecommunications of Arizona, Inc. for a Waiver of Public Utility Holding Companies and Affiliated Interest Rules (A.A.C. R14-2-801 et seq.)  
Docket No. T-03054A-13-\_\_\_\_\_  
Docket No. T-03432A-13-\_\_\_\_\_

Dear Docket Control:

Enclosed for filing are the original and 15 copies of the Application for Waiver of Public Utility Holding Companies and Affiliated Interest Rules (A.A.C. R14-2-801, Et Seq.) of Electric Lightwave, LLC and Mountain Telecommunications of Arizona.

Sincerely,

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Integra Telecom  
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Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE JOINT APPLICATION )  
OF ELECTRIC LIGHTWAVE, LLC, AND )  
MOUNTAIN TELECOMMUNICATIONS OF )  
ARIZONA, INC. FOR A WAIVER OF PUBLIC )  
UTILITY HOLDING COMPANIES AND )  
AFFILIATED INTERESTS RULES )  
(A.A.C. R14-2-801 ET SEQ.) )

DOCKET NO. T-03054A-13-0091  
DOCKET NO. T-03432A-13-0091

**APPLICATION FOR WAIVER OF PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTEREST RULES (A.A.C. R14-2-801 ET SEQ.)**

Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. (“Applicants”) hereby apply to the Arizona Corporation Commission (“Commission”) pursuant to A.A.C. R14-2-806, for a waiver of the rules governing public utility holding companies and affiliated interests, R14-2-801, *et seq.* (the “Rules”). A waiver of the Rules would facilitate future transactions to which the Applicants may be parties and where such transactions meet the definition of reorganize or reorganization under A.A.C. R14-2-801(5), or in the event Applicants wish to consummate a transaction otherwise subject to the Rules, specifically A.A.C. R14-2-804(B). Applicants respectfully request that the Commission consider this matter at its soonest available 2013 Open Meeting.

I. INTRODUCTION

Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. (the “Integra Utilities”) are direct, wholly owned subsidiaries of Integra Telecom Holdings, Inc. and indirect, wholly owned subsidiaries of the

1 ultimate parent, Integra Telecom, Inc.; collectively referred to herein as Integra.<sup>1</sup> The Integra  
2 Utilities provide resold and facilities-based telecommunications and exchange access services in  
3 Arizona pursuant to Certificates of Convenience and Necessity granted by the Commission.<sup>2</sup>  
4 Given today's market conditions and the opportunity for new funding and financing for  
5 competitive communications networks, it is likely Integra will be presented with a number of  
6 growth opportunities over the next several years. Reorganization, financing and refinancing  
7 options are integral parts of forward-looking strategic planning. A waiver of R14-2-803 and  
8 R13-2-804(B) in particular will permit Integra to respond quickly to opportunities involving the  
9 types of transactions covered by the Rules. Applicants seek a waiver of the Rules that would  
10 incorporate the affiliated interest activities of Integra Utilities, Integra Telecom, Inc., Integra  
11 Telecom Holdings, Inc., and all its current and future affiliated entities.

## 12 13 II. BACKGROUND

14 By Decision Nos. 56844 and 58063, the Commission adopted A.A.C. R14-2-801 through  
15 806. The Rules regulate the formation of public utility holding companies and require that a  
16 public service corporation obtain Commission approval before entering into a business  
17 transaction with an unregulated affiliate.

18 Under the definitions set forth in R14-2-801(4) a "Holding Company" or "Public Utility  
19 Holding Company" is defined as any affiliate that controls a public utility. A "Utility" or  
20 "Public Utility" is defined as any Class A investor-owned public service corporation subject to  
21 the jurisdiction of the Arizona Corporation Commission. The Integra Utilities are Class A public  
22 utilities and, as a result, are subject to the Rules. As stated previously, the Integra Utilities are  
23 wholly owned subsidiaries of Integra Telecom Holdings, Inc. ("Holdings"), which in turn is a  
24 wholly owned subsidiary of Integra Telecom, Inc. Thus, under the Rules, Holdings is the  
25 affiliate that controls the Integra Utilities. The Rules require Commission review and approval  
26 whenever a utility or an affiliate intends to reorganize an existing public utility holding company.

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<sup>1</sup> Integra Telecom, Inc. and Integra Telecom Holdings, Inc. are privately held Oregon corporations headquartered at 1201 N.E. Lloyd Boulevard, Suite 500, Portland, Oregon 97232. The operating subsidiaries - including Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. - provide facilities-based and resold local and long distance telephone services and high-speed Internet service in eleven states.

<sup>2</sup> The Commission granted Eschelon Telecom of Arizona, Inc. a Certificate of Convenience and Necessity through its Decision No. 62751, in Docket No. T-03406A-99-0742, issued July 25, 2000. Electric Lightwave, LLC, a Delaware limited liability company, is authorized to provide service in Arizona by Decision No. 59982, granted January 16, 1997. Mountain Telecommunications of Arizona, Inc. is an Arizona corporation and is authorized to provide service by Decision No. 60668, granted February 9, 1998.

1 A.A.C. R14-2-803(A). “Reorganize” is broadly defined under the Rules to include “[t]he  
2 acquisition or divestiture of a financial interest in an affiliate or a utility, or reconfiguration of an  
3 existing affiliate or utility’s position in the corporate structure or the merger or consolidation of  
4 an affiliate or a utility.” A.A.C. R14-2-801(5). Prior approval is also required under R14-2-  
5 804(B) if a public utility wishes to “obtain a financial interest in any affiliate not regulated by the  
6 Commission, or guarantee, or assume the liabilities of such affiliate” or lend to any affiliate not  
7 regulated by the Commission \$100,000 or more for over one year. In sum, whenever Holdings  
8 (a company with assets and network facilities spread across the western United States) adds or  
9 replaces an investor or participates in any sort of merger, financing, refinancing, reconfiguration,  
10 or consolidation, the Rules appear to require Commission approval.

11 As described by the Commission, the purpose of the Rules is fourfold: (i) to prevent the  
12 commingling of “utility funds” with “non-utility funds;” (ii) to prohibit the cross-subsidization of  
13 non-utility activities by utility ratepayers; (iii) to avert any negative impact of non-utility  
14 activities on a utility’s financial credit; and (iv) to ensure that the utility and its affiliates provide  
15 the Commission with the information necessary to “carry out its regulatory responsibility.”<sup>3</sup>  
16 When the Rules were adopted, the Commission understood that the requirements contained in  
17 the Rules would not be applicable in some instances and, as a result, authorized waiver of the  
18 Rules if to do so would be in the public interest.<sup>4</sup>

19 The Rules were enacted in response to a diversification movement by Arizona’s electric  
20 utilities into areas such as savings and loan companies and hotel investments. At the time of the  
21 adoption of the Rules, there was no competitive pricing for electric companies and no  
22 competition for the provision of electric service to customers. In adopting the Rules, the  
23 Commission was attempting to protect captive customers of the monopoly utilities from having  
24 to bear the costs of such non-utility investments. See *Arizona Corp. Comm’n v. State ex rel*  
25 *Woods*, 171 Ariz. 286, 289-290, 830 P.2d. 807, 810-811 (1992).

26 The Commission has granted Rule 806 waivers, such as the one requested here. In  
27 particular, the Commission granted a waiver of A.A.C. R14-2-803, A.A.C. R14-2-804(B), (C),  
28 and (D), and A.A.C. R14-2-805 to Eschelon Telecom of Arizona, Inc. – one of the Integra  
29 Utilities - in its Decision No. 64737. This waiver is limited to those affiliated interest activities  
30 that would not directly or indirectly result in or cause an increase of the company’s maximum

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<sup>3</sup> See Concise Explanatory Statement, proposed Rules Docket No. R-0000-89-194.

<sup>4</sup> A.A.C. R14-2-806(A).

1 rates on file with the Commission for any competitive services. More recently the Commission  
2 granted similar waivers to tw telecom,<sup>5</sup> a company similarly situated to the Integra Utilities.

3 The Applicants request a waiver of the Rules such as that which was granted to Eschelon  
4 Telecom of Arizona, Inc. or to tw telecom.

5  
6 **III. THE REQUEST FOR WAIVER IS IN THE PUBLIC INTEREST**

7 Integra submits the following arguments in support of this request for a waiver, any one  
8 of which would justify issuance of a waiver. First, Integra is a national telecommunications  
9 provider operating primarily in the western United States with only a fraction of its revenues and  
10 investments in Arizona. In the coming years, Integra will potentially enter into transactions  
11 throughout the United States which will have no impact on the Applicants' Arizona operations.  
12 Given the size of the Integra organization today, it is highly likely that transactions (e.g. new  
13 investments, debt refinancing, mergers and acquisitions) will occur outside Arizona and will not  
14 affect Arizona customers. These transactions – “Reorganizations” under the rules – will not  
15 result in any fundamental change in the affiliate entities that operate in Arizona and should not  
16 be subject to a Commission review and approval.

17 Second, Integra is a non-dominant carrier and, as such, does not exercise monopoly  
18 power over a captive service territory or guaranteed revenue base. The Rules were promulgated  
19 to protect captive utility ratepayers from rates that “include costs associated with holding  
20 company structure, financially beleaguered affiliates, or sweetheart deals with affiliates.” (See  
21 Concise Explanatory Statement.) Because the regulatory environment anticipated by the Rules  
22 does not exist for Integra, application of the Rules to Integra Reorganizations is not necessary.

23 Third, Integra today participates in a communications services industry that is energized  
24 by market forces such as consumer demand, competitive pricing and the drive to increase market  
25 share through added value and technological advances and innovation. Given that the Integra  
26 Utilities face competition in all of the retail services it provides to Arizona customers, there  
27 exists virtually no incentive or opportunity for the Integra Utilities to attempt to extract from  
28 customers unduly high or above-market prices that could be used to subsidize unregulated,  
29 affiliated interests. The market effectively provides a natural safeguard against the improper

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<sup>5</sup> On June 26, 2012 tw telecom was granted a limited waiver and required “to file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 when a 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 jurisdiction; or (3) a significant reduction of net income to the Arizona Operations. (Decision No. 73425, page 5, lines 2-5.)

1 exploitation of communication service profits by Integra. This conclusion is consistent with this  
2 Commission's rules governing Competitive Telecommunications Services, R14-2-1101, *et seq.*

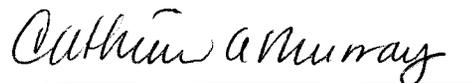
3 Fourth, approval of a waiver will allow Integra to realize the benefits of future  
4 reorganizations without separate applications to this Commission for each reorganization subject  
5 to the Rules. If every certified carrier in Arizona (and each national and international affiliate  
6 thereof) sought Commission approval before acquiring new debt, accepting new investment, or  
7 purchasing additional assets, the Commission Staff could be inundated by affiliated interest  
8 applications. Most of these transactions do not impact Arizona consumers and should not  
9 occupy scarce Commission resources. The Commission promulgated the Rules to protect  
10 against cross-subsidization by a utility in the traditional monopoly environment when that cross-  
11 subsidization would affect Arizona consumers. Unfortunately, the text of the Rules reaches a  
12 much broader range of transactions. The Rules should be waived by the Commission for entities  
13 such as Integra which: (1) operate nationally with many affiliates; (2) compete in end-user retail  
14 markets with alternative service providers; (3) have no guaranteed source of revenue; and (4) are  
15 subject to strong competitive pressures to keep prices low and service quality high.

16  
17 IV. CONCLUSION

18 For all the foregoing reasons, Integra respectfully requests that the Commission grant the  
19 Applicants a waiver of the Public Utility Holding Companies and Affiliated Interest Rules  
20 pursuant to A.A.C. R14-2-806 of those Rules.

21  
22 Respectfully submitted,

23  
24  
25 Dated this 4<sup>th</sup> day of April 2013.



26 Catherine A. Murray  
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