

ORIGINAL

OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

TO: THE COMMISSION

DOCKETED

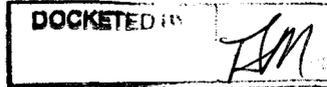
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FROM: Utilities Division

JUN 20 2013

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: June 20, 2013



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 INTERESTS RULES (A.A.C. R14-2-801 ET SEQ.) (DOCKET NOS. T-03054A-13-0091, T-03432A-13-0091)

Introduction

On April 8, 2013, Electric Lightwave, LLC (“ELI”) and Mountain Telecommunications of Arizona, Inc. (“MTI”) (together “the Applicants”) filed, pursuant to A.A.C. R14-2-806, an application with the Arizona Corporation Commission (“Commission”) for a waiver of the rules governing public utility holding companies and affiliated interests A.A.C. 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).”<sup>1</sup>

On April 29, 2013, the Applicants provided Staff with an email suspending the 30 day provision stated in A.A.C. R4-2-806.C.

Background

ELI and MTI, in addition to Eschelon Telecom of Arizona, Inc. (“Eschelon”) (together the “Integra Utilities”), are direct, wholly-owned subsidiaries of Integra Telecom Holdings, Inc. and indirect, wholly-owned subsidiaries of the ultimate parent, Integra Telecom, Inc. (collectively, “Integra”). 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 Integra Utilities provide facilities-based and resold

<sup>1</sup> 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.); T-03054A-13-0091, T-03432A-13-0091; page 1

local and long distance telephone services and high-speed Internet service in eleven states, including Arizona.<sup>2</sup>

The Applicants state that “given today’s market conditions and the opportunity for new funding and financing for competitive communications networks, it is likely Integra will be presented with a number of growth opportunities over the next several years. Reorganization, financing and refinancing options are integral parts of forward-looking strategic planning. A waiver of R14-2-803 and R13-2-804(B) in particular will permit Integra to respond quickly to opportunities involving the types of transactions covered by the Rules. Applicants seek a waiver of the Rules that would incorporate the affiliated interest activities of Integra Utilities, Integra Telecom, Inc., Integra Telecom Holdings, Inc., and all its current and future affiliated entities.”<sup>3</sup>

#### The Applicant’s Request for Waiver of the Rules

The Applicants state the following in their application:

Integra is a national telecommunications provider operating primarily in the western United States with only a fraction of its revenues and investments in Arizona. In the coming years, Integra will potentially enter into transactions throughout the United States which will have no impact on the Applicants’ Arizona operations. Given the size of the Integra organization today, it is highly likely that transactions (e.g. new investments, debt refinancing, mergers and acquisitions) will occur outside Arizona and will not affect Arizona customers. These transactions, “Reorganizations” under the rules, will not result in any fundamental change in the affiliate entities that operate in Arizona and should not be subject to a Commission review and approval.

Integra is a non-dominant carrier and, as such, does not exercise monopoly power over a captive service territory or guaranteed revenue base. The Rules were promulgated to protect captive utility ratepayers from rates that “include costs associated with holding company structure, financially beleaguered affiliates, or sweetheart deals with affiliates.”<sup>4</sup>

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<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.

<sup>3</sup> 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.); T-03054A-13-0091, T-03432A-13-0091; page 2

<sup>4</sup> 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.); T-03054A-13-0091, T-03432A-13-0091; page 4

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

The Commission has granted Rule 806 waivers, such as the one requested here. In particular, the Commission granted a waiver of A.A.C. R14-2-803, A.A.C. R14-2-804(B), (C), and (D), and A.A.C. R14-2-805 to Eschelon Telecom of Arizona, Inc. - one of the Integra Utilities - in its Decision No. 64737. This waiver is limited to those affiliated interest activities that would not directly or indirectly result in or cause an increase of the company's maximum rates on file with the Commission for any competitive services. More recently the Commission granted similar waivers to tw telecom, a company similarly situated to the Integra Utilities.

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

#### Staff's Analysis and Conclusions

The Applicants are Class A public utilities and subject to the Rules.<sup>5</sup> Under the Rules, Commission approval is required per A.A.C. R14-2-803(A) whenever a utility or an affiliate intends to reorganize an existing public utility holding company. Prior approval is also required under R14-2-804(B) if a public utility wishes to "obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate" or lend to any affiliate not regulated by the Commission \$100,000 or more for over one year. When companies, such as the Applicants, with assets and network facilities in many states, participate in any sort of merger, financing, refinancing, reconfiguration, or consolidation, the Rules require Arizona Commission approval.

The Applicants request a waiver of the Rules similar to those granted to Eschelon in Decision No. 64737, issued April 17, 2002, or to tw telecom of arizona llc ("tw telecom") in Decision No. 73245, issued June 26, 2012.

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<sup>5</sup> 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).

The waiver granted in Decision No. 64737 states that Eschelon:

1. must “file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 only when an organization or reorganization could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service.”
2. is “granted a waiver from A.A.C. R14-2-804(B), (C), and (D), except for those transactions that could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service.”
3. is granted the waivers “subject to the condition that it must notify the Commission, and file in advance for approval of, any proposed organization or reorganization, transaction, or diversification plan that could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service.”

Additionally, Eschelon was granted a waiver from A.A.C. R14-2-805 except for those diversification plans that could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service.

The limited waiver granted in Decision No. 73245 states that tw telecom:

1. is “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.”
2. is “granted a limited waiver of A.A.C. R14-2-804 on the condition that they seek Commission approval for transactions that are likely to have any material effect on Arizona operations.”

The waivers granted Eschelon and tw telecom are similar with two exceptions. Decision No. 64737 does not grant Eschelon a waiver of A.A.C. R14-2-804(A) while Decision No. 73245 does grant tw telecom a waiver of A.A.C. R14-2-804(A). Both decisions place conditions on the waivers related to A.A.C. R14-2-804. Decision No. 64737 grants Eschelon a conditional waiver of A.A.C. R14-2-805 while Decision No. 73245 does not grant tw telecom any waiver of A.A.C. R14-2-805.

#### Staff's Recommendations

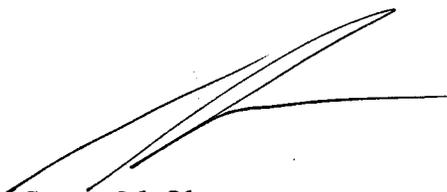
Staff recommends that ELI and MTI be granted limited waivers of the Commission's Affiliated Interest Rules as follows:

THE COMMISSION

June 20, 2013

Page 5

1. A.A.C. R14-2-803: ELI and MTI must file a notice of intent to enter into the transactions listed in A.A.C. R14-2-803 only when an organization or reorganization could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service;
2. A.A.C. R14-2-804: ELI and MIT are granted a waiver from A.A.C. R14-2-804(B), (C), and (D), except for those transactions that could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service.”



Steven M. Olea  
Director  
Utilities Division

SMO:AFF:sms\MAS

ORIGINATOR: Armando F. Fimbres

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

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 NOS. T-03054A-13-0091  
T-03432A-13-0091  
DECISION NO. \_\_\_\_\_

ORDER

Open Meeting  
July 17 and 18, 2013  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

Introduction

1. On April 8, 2013, Electric Lightwave, LLC (“ELP”) and Mountain Telecommunications of Arizona, Inc. (“MTT”) (together “the Applicants”) filed, pursuant to A.A.C. R14-2-806, an application with the Arizona Corporation Commission (“Commission”) for a waiver of the rules governing public utility holding companies and affiliated interests A.A.C. R14-2-801, et seq. (the “Rules”).

2. “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  
...  
...

1 reorganization under A.A.C. R14-2-801(5), or in the event Applicants wish to consummate  
2 transaction otherwise subject to the Rules, specifically A.A.C. R14-2- 804(B).”<sup>1</sup>

3 3. On April 29, 2013, the Applicants provided Staff with an email suspending the 30  
4 day provision stated in A.A.C. R4-2-806.C.

5 Background

6 4. ELI and MTI, in addition to Eschelon Telecom of Arizona, Inc. (“Eschelon”)  
7 (together the “Integra Utilities”), are direct, wholly-owned subsidiaries of Integra Telecom  
8 Holdings, Inc. and indirect, wholly-owned subsidiaries of the ultimate parent, Integra Telecom,  
9 Inc. (collectively, “Integra”).

10 5. Integra Telecom, Inc. and Integra Telecom Holdings, Inc. are privately held  
11 Oregon corporations headquartered at 1201 N.E. Lloyd Boulevard, Suite 500, Portland,  
12 Oregon 97232. The Integra Utilities provide facilities-based and resold local and long distance  
13 telephone services and high-speed Internet service in eleven states, including Arizona.<sup>2</sup>

14 6. The Applicants state that “given today’s market conditions and the opportunity for  
15 new funding and financing for competitive communications networks, it is likely Integra will  
16 be presented with a number of growth opportunities over the next several years.  
17 Reorganization, financing and refinancing options are integral parts of forward-looking  
18 strategic planning. A waiver of R14-2-803 and R13-2-804(B) in particular will permit Integra  
19 to respond quickly to opportunities involving the types of transactions covered by the Rules.

20 ...  
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22 ...  
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25 <sup>1</sup> In the matter of the joint application of Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc.  
26 for a waiver of public utility holding companies and affiliated interests rules (A.A.C. R14-2-801 et seq.); T-03054A-  
13-0091, T-03432A-13-0091; page 1

27 <sup>2</sup> The Commission granted Eschelon Telecom of Arizona, Inc. a Certificate of Convenience and Necessity through its  
28 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 7. Applicants seek a waiver of the Rules that would incorporate the affiliated interest  
2 activities of Integra Utilities, Integra Telecom, Inc., Integra Telecom Holdings, Inc., and all of  
3 its current and future affiliated entities.<sup>3</sup>

4 The Applicant's Request for Waiver of the Rules

5 The Applicants state the following in their application:

6 8. Integra is a national telecommunications provider operating primarily in the  
7 western United States with only a fraction of its revenues and investments in Arizona. In the  
8 coming years, Integra will potentially enter into transactions throughout the United States  
9 which will have no impact on the Applicants' Arizona operations.

10 9. Given the size of the Integra organization today, it is highly likely that  
11 transactions (e.g. new investments, debt refinancing, mergers and acquisitions) will occur  
12 outside Arizona and will not affect Arizona customers. These transactions—"reorganizations"  
13 under the rules—will not result in any fundamental change in the affiliate entities that operate  
14 in Arizona and should not be subject to a Commission review and approval.

15 10. Integra is a non-dominant carrier and, as such, does not exercise monopoly power  
16 over a captive service territory or guaranteed revenue base. The Rules were promulgated to  
17 protect captive utility ratepayers from rates that "include costs associated with holding  
18 company structure, financially beleaguered affiliates, or sweetheart deals with affiliates."<sup>4</sup>

19 11. Integra today participates in a communications services industry that is energized  
20 by market forces such as consumer demand, competitive pricing and the drive to increase  
21 market share through added value and technological advances and innovation. Given that the  
22 Integra Utilities face competition in all of the retail services it provides to Arizona customers,  
23 there exists virtually no incentive or opportunity for the Integra Utilities to attempt to extract  
24 from customers unduly high or above-market prices that could be used to subsidize  
25

26 <sup>3</sup> In the matter of the joint application of Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc.  
27 for a waiver of public utility holding companies and affiliated interests rules (A.A.C. R14-2-801 et seq.); T-03054A-  
13-0091, T-03432A-13-0091; page 2

28 <sup>4</sup> 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.); T-03054A-  
13-0091, T-03432A-13-0091; page 4

1 unregulated, affiliated interests. The market effectively provides a natural safeguard against  
2 the improper exploitation of communication service profits by Integra.

3 12. The Commission has granted Rule 806 waivers, such as the one requested here.  
4 In particular, the Commission granted a waiver of A.A.C. R14-2-803, A.A.C. R14-2-804(B),  
5 (C), and (D), and A.A.C. R14-2-805 to Eschelon Telecom of Arizona, Inc.—one of the Integra  
6 Utilities—in its Decision No. 64737. This waiver is limited to those affiliated interest  
7 activities that would not directly or indirectly result in or cause an increase of the company’s  
8 maximum rates on file with the Commission for any competitive services. More recently, the  
9 Commission granted similar waivers to tw telecom, a company similarly situated to the Integra  
10 Utilities.

11 13. The applicants request a waiver of the Rules such as that which was granted to  
12 Eschelon Telecom of Arizona, In. or to tw telecom.

13 Staff’s Analysis and Conclusions

14 14. The Applicants are Class A public utilities and subject to the Rules.<sup>5</sup> Under the  
15 Rules, Commission approval is required per A.A.C. R14-2-803(A) whenever a utility or an  
16 affiliate intends to reorganize an existing public utility holding company. Prior approval is  
17 also required under R14-2-804(B) if a public utility wishes to “obtain a financial interest in any  
18 affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such  
19 affiliate” or lend to any affiliate not regulated by the Commission \$100,000 or more for over  
20 one year. When companies, such as the Applicants, with assets and network facilities in many  
21 states participate in any sort of merger, financing, refinancing, reconfiguration, or  
22 consolidation, the Rules require Arizona Commission approval.

23 15. The Applicants request a waiver of the Rules similar to those granted to  
24 Eschelon in Decision No. 64737, issued April 17, 2002, or to tw telecom of arizona llc (“tw  
25 telecom”) in Decision No. 73245, issued June 26, 2012.

26 ...

27 \_\_\_\_\_  
28 <sup>5</sup> 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).

1       16.       The waiver granted in Decision No.64737 states that Eschelon:

2           A.    must “file a notice of intent to enter into the transactions listed in A.A.C. R14-2-  
3           803 only when an organization or reorganization could directly or indirectly  
4           result in or cause an increase in its maximum rate on file with the Commission  
5           for any competitive service.”

6           B.    is “granted a waiver from A.A.C. R14-2-804(B), (C), and (D), except for those  
7           transactions that could directly or indirectly result in or cause an increase in its  
8           maximum rate on file with the Commission for any competitive service.”

9           C.    is granted the waivers “subject to the condition that it must notify the  
10          Commission, and file in advance for approval of, any proposed organization or  
11          reorganization, transaction, or diversification plan that could directly or  
12          indirectly result in or cause an increase in its maximum rate on file with the  
13          Commission for any competitive service.”

14       17.       Additionally, Eschelon was granted a waiver from A.A.C. R14-2-805 except for  
15       those diversification plans that could directly or indirectly result in or cause an increase in its  
16       maximum rate on file with the Commission for any competitive service.

17       18.       The limited waiver granted in Decision No. 73245 states that tw telecom:

18           A.    is “required to file a notice of intent to enter into the transactions listed in  
19           A.A.C.     R14-2-803 when a transaction is likely to result in - (1) significant  
20           increased capital costs of the Arizona operations; (2) significant additional costs  
21           allocated or charged directly to the Arizona jurisdiction; or (3) a significant  
22           reduction of net income to the Arizona operations”;

23           B.    is “granted a limited wavier of A.A.C. R14-2-804 on the condition that they  
24           seek Commission approval for transactions that are likely to have any material  
25           effect on Arizona operations”;

26       19.       The waivers granted Eschelon and tw telecom are similar with two exceptions.  
27       Decision No. 64737 does not grant Eschelon a waiver of A.A.C. R14-2-804(A) while Decision  
28       No. 73245 does grant tw telecom a waiver of A.A.C. R14-2-804(A). Both decisions place

1 conditions on the waivers related to A.A.C. R14-2-804. Decision No. 64737 grants Eschelon a  
2 conditional waiver of A.A.C. R14-2-805 while Decision No. 73245 does not grant tw telecom  
3 any waiver of A.A.C. R14-2-805.

4 Staff's Recommendations

5 20. Staff recommends that ELI and MTI be granted limited waivers of the  
6 Commission's Affiliated Interest Rules as follows:

7 A. A.A.C. R14-2-803: ELI and MTI must file a notice of intent to enter into the  
8 transactions listed in A.A.C. R14-2-803 only when an organization or  
9 reorganization could directly or indirectly result in or cause an increase in its  
10 maximum rate on file with the Commission for any competitive service;

11 B. A.A.C. R14-2-804: ELI and MIT are granted a waiver from A.A.C. R14-2-  
12 804(B),(C), and (D), except for those transactions that could directly or indirectly  
13 result in or cause an increase in its maximum rate on file with the Commission for  
14 any competitive service.

15 CONCLUSIONS OF LAW

16 1. Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. are  
17 public service corporations within the meaning of Article XV of the Arizona Constitution and  
18 A.R.S. § 40-285.

19 2. The Commission has jurisdiction over Electric Lightwave, LLC and Mountain  
20 Telecommunications of Arizona, Inc. and the subject matter in this filing.

21 3. The Commission, having reviewed the filing and Staff's Memorandum dated June 20,  
22 2013, concludes that it is in the public interest to grant approval as proposed and discussed herein.

23 ORDER

24 IT IS THEREFORE ORDERED that the Electric Lightwave, LLC and Mountain  
25 Telecommunications of Arizona, Inc. application requesting a complete waiver of the  
26 Commission's Affiliated Interests Rules is hereby denied.

27 ...

28 ...

1 IT IS FURTHER ORDERED that Electric Lightwave, LLC and Mountain  
 2 Telecommunications of Arizona, Inc. shall be required to file a notice of intent to enter into the  
 3 transactions listed in A.A.C. R14-2-803 only when an organization or reorganization could directly  
 4 or indirectly result in or cause an increase in its maximum rate on file with the Commission for any  
 5 competitive service.

6 IT IS FURTHER ORDERED that Electric Lightwave, LLC and Mountain  
 7 Telecommunications of Arizona, Inc. are hereby granted a waiver from A.A.C. R14-2-804(B), (C),  
 8 and (D), except for those transactions that could directly or indirectly result in or cause an increase  
 9 in its maximum rate on file with the Commission for any competitive service.

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

11 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

12  
 13 \_\_\_\_\_  
 14 CHAIRMAN COMMISSIONER  
 15  
 16 \_\_\_\_\_  
 17 COMMISSIONER COMMISSIONER COMMISSIONER

18 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
 19 Director of the Arizona Corporation Commission, have  
 20 hereunto, set my hand and caused the official seal of this  
 21 Commission to be affixed at the Capitol, in the City of  
 22 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

23 \_\_\_\_\_  
 24 JODI JERICH  
 25 EXECUTIVE DIRECTOR

26 DISSENT: \_\_\_\_\_

27 DISSENT: \_\_\_\_\_

28 SMO:AFF:sms/MAS

1 SERVICE LIST FOR: Electric Lightwave, LLC; Mountain Telecommunications of  
Arizona, Inc.

2 DOCKET NOS.: T-03054A-13-0091; T-03432A-13-0091

3 Catherine A. Murray  
4 Manager, Regulatory Affairs  
Integra Telecom  
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6 Golden Valley, MN 55416

7 Mr. Steven M. Olea  
8 Director, Utilities Division  
Arizona Corporation Commission  
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10 Ms. Janice M. Alward  
11 Chief Counsel, Legal Division  
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