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MEMORANDUM

TO: Docket Control
FROM: Steven M. Olea
Director
Utilities Division

ORIGINAL

Arizona Corporation Commission

DOCKETED

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DOCKETED BY

DATE: February 5, 2014

RE: IN THE MATTER OF THE APPLICATION OF TIME WARNER CABLE BUSINESS, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LONG DISTANCE TELECOMMUNICATIONS SERVICES AND PRIVATE LINE SERVICES (DOCKET NO. T-20879A-13-0083)

Attached is the Staff Report for the above-referenced Application. The Applicant is applying for approval to provide the following services:

- Facilities-Based Long Distance Telecommunications Services
- Private Line Telecommunications Services

Staff is recommending approval of the Application, with conditions.

SMO:KMS:sms\BH

Originator: Kiana M. Sears

Attachment: Original and thirteen copies

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DOCKET CONTROL

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

TIME WARNER CABLE BUSINESS, LLC

DOCKET NO. T-20879A-13-0083

IN THE MATTER OF THE APPLICATION OF TIME WARNER CABLE
BUSINESS, LLC FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED
LONG DISTANCE TELECOMMUNICATIONS SERVICES AND
PRIVATE LINE TELECOMMUNICATION SERVICES

February 5, 2014

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STAFF ACKNOWLEDGMENT

The Staff Report for Time Warner Cable Business, LLC, Docket No. T-20879A-13-0083, was the responsibility of the Staff member listed below. Kiana M. Sears was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide facilities-based long distance and private line telecommunications services.


Kiana M. Sears
Executive Consultant I

1. INTRODUCTION

On April 1, 2013, Time Warner Cable Business LLC d/b/a Time Warner Cable (“Time Warner,” “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based long distance and private line telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive.

On January 24, 2014, Time Warner filed a request for waiver of A.A.C. R14-2-1115(C)(3) in conjunction with its application for a certificate of convenience and necessity. A.A.C. R14-2-1115.C3 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 non-competitive 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 non-competitive services and the price for the competitive services.” The Applicant stated that the reasons for granting this waiver are identical to those given by the Commission in Decision No. 73579 issued *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).

The Applicant is an indirect wholly-owned subsidiary of Time Warner Cable Inc., a publicly traded company that collectively provides a variety of communication services to over 15 million residential and commercial customers in the United States. Time Warner Cable Inc. has a market capitalization of approximately \$26 billion. The applicant is a new entrant proposing to offer only non-voice services. Time Warner’s sister company—Time Warner Cable Information Services (Arizona)—was granted a CC&N on June 30, 2009, in Decision No. 71169. It is the intention of Time Warner to rely on the financial capability of Time Warner Cable Inc., its parent company, just as its sister company did, for its funding and it will receive working capital from Time Warner Cable Inc. as needed.

On June 14, 2013, Staff issued its First Set of Data Requests to Time Warner. On July 24, 2013, Staff followed up with a Time Warner representative who had requested additional time to submit the data requested. On August 26, 2013, Staff contacted the Company’s representative on the status of the additional information requested to review the application. On October 15, 2013, Time Warner submitted revised tariff pages for Staff review. Staff spoke with the Company’s representative, discussed additional modifications to the tariff pages and requested that the final revised tariff pages be docketed. On November 22, 2013, the revised tariff pages were docketed.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Time Warner proposes to offer facilities-based long distance and private line telecommunications services throughout the State of Arizona.

Time Warner indicated in its Application that it currently has pending applications in 27 states, as listed in Attachment A. Staff contacted the Public Utility Commissions in 12 of these states to confirm the Time Warner pending applications to provide competitive telecommunications services. Staff also inquired whether there were any consumer complaints filed against Time Warner.

Time Warner has indicated that Time Warner Cable Information Services, its affiliate Company, has service personnel and a customer repair contact center located in Arizona that will provide these services for Time Warner. However, Time Warner does not currently have nor is it planning to have a customer service center that is open to the public. Customer service is available 24/7 by calling 1-877-892-4662.

Based on all of the above information, Staff believes Time Warner possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On April 1, 2013, the Applicant provided audited, consolidated financial statements of Time Warner Cable Inc. for years ending December 31, 2011 and December 31, 2012. The financial statements, for full year 2012, list total assets over \$49.8 billion; total equity over \$7.3 billion; and net income of \$2.2 billion. For full year 2011, total assets were over \$48.3 billion; total equity was over \$7.5 billion; and net income was \$1.7 billion. Time Warner has also indicated that it will rely on the financial resources of Time Warner Cable Inc.

The Applicant stated in its proposed Tariff (reference Section 2.8.5 on Original Page 28 of Time Warner's proposed Arizona Tariff No. 1) that Time Warner reserves the right to require deposits as a condition to the initial provision of services or as a condition to the continued provision of services.

4. ESTABLISHING RATES AND CHARGES

The Applicant would be providing service in areas where incumbent local interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. Time Warner estimates that its net book value or fair value rate base, at the end of the first twelve months of operation, to be \$34,251. The rate to be ultimately charged by the Company will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for competitive services. Staff has reviewed the maximum and initial rates to be charged by the Applicant. Both an initial rate and a maximum rate may be listed for each competitive service offered. Time Warner's proposed tariff contains both initial rates and maximum rates. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. The proposed rates are comparable to the rates charged by other carriers operating in the State of Arizona. Therefore, Staff believes that Time Warner's proposed rates are just and reasonable.

5. REVIEW OF COMPLAINT INFORMATION

The Applicant has neither had an Application for authority to provide service denied, nor had its authority to provide service revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. The Corporations Section of the Arizona Corporation Commission ("ACC") has indicated that Time Warner is in good standing and the ACC Consumer Services Section reports there have been no complaints regarding this company.

6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

6.1 Private Line Services

Time Warner proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 A description of the general economic conditions that exist that make the relevant market for the service one that is competitive.

IXCs, Incumbent Local Exchange Carriers ("ILEC"s) and Competitive Local Exchange Carriers ("CLEC"s) each hold a substantial share of the private line market. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with the existing providers of the service in order to obtain customers.

6.3 The number of alternative providers of the service.

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

6.4 The estimated market share held by each alternative provider of the service.

IXCs, ILECs and CLECs each hold a substantial share of the private line market.

6.5 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

Time Warner Cable Information Services (Arizona), LLC, the Applicant's sister company, is currently certificated to provide private line service in Arizona.

6.6 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

IXCs, ILECs and CLECs have the ability to offer the same services that the Applicant has requested in their respective service territories.

6.7 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in its respective service territories. Similarly, many of the CLECs offer substantially similar services.

7. COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES

7.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that is competitive.

The statewide interexchange market that the Applicant seeks to enter is one in which numerous facilities-based interexchange carriers and resellers of interexchange service have been authorized to provide service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and Voice over Internet Protocol ("VoIP") providers. The Applicant will be a new entrant in this market and, as such, will have to compete with those existing companies in order to obtain customers.

7.2 The number of alternative providers of the service.

There are a large number of facilities-based interexchange carriers and resellers providing interexchange service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.3 The estimated market share held by each alternative provider of the service.

Facilities-based interexchange carriers, interexchange service resellers, independent ILECs, CLECs, wireless carriers and VoIP providers all hold a portion of the interexchange market.

7.2 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

Time Warner Cable Information Services (Arizona), LLC, the Applicant's sister company, is currently certificated to provide interexchange service in Arizona.

7.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.
- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

8. RECOMMENDATIONS

Staff recommends that Time Warner's Application for a CC&N to provide Facilities-based long distance and private line telecommunication services, as listed in this Report, be granted with the following conditions:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant should abide by the same quality of service standards that were approved by the Commission for Qwest Corporation d/b/a CenturyLink QC ("Qwest") in Docket No. T-01051B-13-0199 (Decision No. 74208);
3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
4. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
5. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from Time Warner estimating that its net book value or fair value rate base, at the end of the first twelve months of operation to be \$34,251. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
6. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services; and
7. That the requested waiver of A.A.C. R14-2-1115(C)(3) be approved subject to the condition, also contained in Decision No. 73579 regarding the Cox waiver, that the Applicants provide their Individual Contract Basis ("ICB") contracts to Staff, at any time, upon request.

Staff further recommends that the Applicant be ordered to comply with the following conditions. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall notify the Commission through a compliance filing when it begins serving customers.
3. The Applicant shall abide by the Commission-adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

9.0 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the interexchange service or private lines service markets. Therefore, the Applicant currently has no market power in the interexchange service or private lines markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

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SERVICE LIST FOR: TIME WARNER CABLE BUSINESS, LLC
DOCKET NO. T-20879A-13-0083

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Attachment A

The following are the states/jurisdictions in which Time Warner has pending applications to provide telecommunications services similar to those it intends to offer in the State of Arizona:

1. Alabama
2. Arizona
3. California
4. Colorado
5. Hawaii
6. Idaho
7. Illinois
8. Indiana
9. Kentucky
10. Maine
11. Massachusetts
12. Michigan
13. Missouri
14. Nebraska
15. New Hampshire
16. New Jersey
17. New Mexico
18. New York
19. North Carolina
20. Ohio
21. Pennsylvania
22. South Carolina
23. Tennessee
24. Texas
25. Virginia
26. Washington
27. West Virginia
28. Wisconsin