

OPEN MEETING ITEM



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
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ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: JUNE 13, 2014
DOCKET NO.: T-20879A-13-0083

ORIGINAL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

TIME WARNER CABLE BUSINESS LLC
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 23, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 22, 2014 and JULY 23, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUN 13 2014

DOCKETED BY 


JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 TIME WARNER CABLE BUSINESS LLC FOR
10 APPROVAL OF A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 FACILITIES-BASED LONG DISTANCE AND
13 PRIVATE LINE SERVICES
14 TELECOMMUNICATION SERVICES IN
15 ARIZONA.

DOCKET NO. T-20879A-13-0083

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: April 30, 2014
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
14 APPEARANCES: Ms. Joan S. Burke, LAW OFFICE OF JOAN S.
15 BURKE, on behalf of the Applicant; and
16 Ms. Bridget Humphrey, Staff Attorney, Legal Division,
17 on behalf of the Utilities Division of the Arizona
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 On March 27, 2013, Time Warner Cable Business LLC d/b/a Tim Warner Cable ("TWCB" or
20 "Company") filed with the Arizona Corporation Commission ("Commission") an application for
21 approval of a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based long
22 distance and private line telecommunication services in Arizona. TWCB's application also requests
23 a determination that its proposed services are competitive in Arizona.

24 On November 22, 2013, the Company filed its proposed tariff for the services it seeks to
25 provide in Arizona.

26 On January 24, 2014, the Company filed a request for waiver of A.A.C. R14-2-1115(C)(3),
27 stating that its reasons for requesting the waiver are identical to those given by Cox Arizona Telecom,
28 LLC ("Cox") in Commission Decision No. 73579 (November 21, 2012).

1 On February 5, 2014, the Commission’s Utilities Division (“Staff”) filed a Staff Report
2 recommending approval of TWCB’s application, subject to certain conditions.

3 On April 30, 2014, a full public hearing was held as scheduled before a duly authorized
4 Administrative Law Judge (“ALJ”) of the Commission. The Company and Staff appeared through
5 counsel and presented testimony and evidence. No members of the public appeared to provide public
6 comment on the application. At the conclusion of the hearing, the Company was directed to file
7 verification, from an authorized representative of TWCB, that TWCB is requesting waiver of A.A.C.
8 R14-2-1115(C).

9 On May 13, 2014, TWCB filed a Notice of Filing Verification.

10 Upon receipt of the post-hearing document, the matter was taken under advisement pending
11 submission of a Recommended Opinion and Order to the Commission.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

- 16 1. TWCB is a member-managed limited liability company organized under the laws of
17 Delaware and authorized to transact business in Arizona.
- 18 2. TWCB was formed on January 10, 2013.¹
- 19 3. Time Warner Cable Information Services Holdco, LLC (“TWCIS Holdco”) owns 100
20 percent of the member interest of TWCB. TWCIS Holdco is a wholly owned subsidiary of Time
21 Warner Cable, Inc., (“TWCI”) a publicly traded company.
- 22 4. TWCI’s principal offices are located in New York, New York.
- 23 5. On March 27, 2013, TWCB filed an application with the Commission to provide
24 facilities-based long distance and private line telecommunication services in Arizona.
- 25 6. Notice of TWCB’s application was given in accordance with the law.

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28 ¹ Exhibit A-1 at B-1.

1 7. Staff recommends approval of the TWCB's application for a CC&N to provide
2 intrastate telecommunications services subject to the following conditions:

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

8. Staff further recommends that TWCB comply with the following items and if TWCB fails
to do so, that the Company's CC&N be null and void after due process:

- 23 a. TWCB shall docket conforming tariffs pages for each service within its CC&N
24 within 365 days from the date of an Order in this matter or 30 days prior to
25 providing service, whichever comes first. The tariffs submitted shall coincide
26 with the application and state that the Company does not collect advances,
27 deposits and/or prepayments from its customers;
- 28 b. TWCB shall notify the Commission through a compliance filing when it
begins serving customers; and

- 1 c. TWCB shall abide by the Commission-adopted rules that address Universal
2 Service in Arizona. A.A.C. R14-2-1204(A) indicates that all
3 telecommunications service providers that interconnect into the public
4 switched network shall provide funding for the Arizona Universal Service
5 Fund ("AUSF"). TWCB will make the necessary monthly payments required
6 by A.A.C. R14-2-1204(B).

7 **Technical Capability**

8 9. According to TWCB's application, its parent company, TWCI currently provides
9 telecommunication services to over 15 million residential and commercial customers in the United
10 States.²

11 10. TWCB intends to offer only non-voice services in Arizona.³ The Company is
12 authorized to provide similar services in 25 states/jurisdictions.⁴ At the time the hearing, TWCB had
13 pending applications in three states requesting authority to provide its same proposed services in
14 Arizona.⁵

15 11. TWCB proposes to offer commercial customers point-to-point, point-to-multipoint
16 and multipoint-to multipoint non-voice dedicated connection between one or more customer-
17 designated locations, using high capacity transmission.⁶

18 12. TWCB will not offer its proposed services to residential customers in Arizona.⁷

19 13. Time Warner Cable Information Services (Arizona), LLC ("TWCISAZ") is an
20 affiliate of TWCB and is authorized to provide resold and facilities-based local and resold and
21 facilities-based long distance telecommunications services in Arizona.⁸ According to the Company's
22 witness, the business functions between TWCB and TWCISAZ are different in that TWCISAZ
23 supports the provision of voice services to residential and business customers, using interconnection
24 agreements executed with other carriers.⁹

25 ² Exhibit A-1 at A-15.

26 ³ Exhibit A-1 at A-15.

27 ⁴ Exhibit A-1 at A-19, Tr. at 7.

28 ⁵ Tr. at 8.

⁶ Exhibit A-1 at Attachment B.

⁷ Tr. at 10.

⁸ Exhibit A-1 at Attachment C. See also Decision No. 71169 (June 30, 2009). In Docket No. T-20449A-14-0147 et. al, TWCISAZ, TWCB, and Comcast filed a joint application requesting either a waiver or expedited consideration of the Commission's Affiliated Interest Rules A.A.C. R14-2-801, *et seq.* The application states that the entities have entered into a merger whereby Comcast will acquire 100 percent of TWCI's equity in exchange for Comcast Class A shares. The Commission has not issued a Decision on the application.

⁹ Tr. at 12.

1 14. Because TWCB has an affiliate operating in Arizona it shall comply with A.A.C. R14-
2 2-804 regarding transactions between public utilities and its affiliates.

3 15. In Arizona, customer complaints will be handled through TWCB's national
4 centralized customer service office and will be available to customers on a 24/7 basis.¹⁰

5 16. Staff believes TWCB has the technical capabilities to provide its proposed services in
6 Arizona.

7 **Financial Capabilities**

8 17. TWCB provided audited financial statements for TWCI, its parent company, for the
9 year ending December 31, 2012. TWCI reported Total Assets of over \$49.8 billion; Total Equity of
10 over \$7.2 billion; and Net Income of \$2.2 billion.¹¹ For the year ending December 31, 2011, TWCI
11 reported Total Assets of over \$48.3 billion; Total Equity of over \$7.5 billion; and Net Income of \$1.7
12 billion.¹²

13 18. TWCB states it will rely on the financial resources of its parent company to provided
14 its proposed services in Arizona.¹³

15 **Rates and Charges**

16 19. Staff believes TWCB's rates will be heavily influenced by the market. Staff states that
17 TWCB will have to compete with other incumbent local interexchange carriers ("IXCs"), incumbent
18 local exchange carriers ("ILECs") and competitive local exchange carriers ("CLEC") to provide its
19 long distance and private line services in Arizona.¹⁴ Staff also states that the market TWCB seeks to
20 enter is currently served by wireless carriers and Voice over Internet Protocol providers ("VoIP").
21 Based on the competitive environment that TWCB will be operating in, Staff believes the Company
22 will not be able to exert any market power and that the competitive process should result in just and
23 reasonable rates.¹⁵

24
25
26 ¹⁰ Tr. at 11.

¹¹ Exhibit A-1 at Attachment D.

¹² Id.

¹³ Exhibit A-1 at B-3.

¹⁴ Exhibit S-1 at 3-4.

¹⁵ Exhibit S-1 at 3.

1 20. Pursuant to A.A.C. R14-2-1109, the rates charged for each service TWCB proposes to
2 provide may not be less than the Company's total service long-run incremental cost of providing that
3 service.

4 21. Staff states that although it considered the Company's proposed fair value rate base of
5 \$34,251, Staff did not give it much weight in its analysis because TWCB's rates in Arizona will be
6 heavily influenced by the market.

7 22. TWCB's proposed tariff states that the Company may offer rates using ICB contracts
8 for the provision of its private line services.¹⁶ All public service corporation shall comply with the
9 provisions set forth in A.R.S. §40-334(A) and A.A.C. R14-2-1115. TWCB has requested a waiver
10 from the provisions of A.A.C. R14-2-1115(C) based on the same reasons articulated by Cox in
11 Decision No. 73579.¹⁷

12 23. A.R.S. §40-334(A) states that public service corporations "shall not, as to rates,
13 charges, service, facilities or in any respect, of make or grant any preference or advantage to any
14 person or subject any person to any prejudice or disadvantage."

15 24. A.A.C. R14-2-1115(C) requires all telecommunications companies to file with the
16 Commission current tariffs, price levels, and contracts. A.A.C. R14-2-1115(C) (3) provides that
17 telecommunication companies provide tariffs, price levels and contracts within five business days
18 after execution and if the contract includes both competitive and non-competitive services the
19 contract must be filed at least five business days prior to the effective date of the contract.

20 25. A.A.C. R14-2-1115(I) states that the Commission may consider variations or
21 exemptions from the terms or requirements of any rules included in (Article 11) upon the verified
22 application of an affected party.

23 26. TWCB has stated that waiver of the rule is necessary for the same reason that was
24 articulated by Cox in Decision No. 73579. In that Decision, Staff summarized Cox's reasons for
25 requesting a waiver of the rule as follows:

26 ...

27

28 ¹⁶ Exhibit A-1, Attachment B at 2.15.

¹⁷ Post hearing Exhibit filed May 13, 2014.

- 1 a. Confusion exists regarding the requirement to file ICB agreements;
 2 b. Numerous Basic Services Agreements, Commercial Service Agreements, ICBs
 3 and other contracts may have to be filed pursuant to the rule depending on the
 4 Commission's interpretation of "contract;"
 5 c. The administrative time and cost of filing and securing confidential contracts,
 6 by Staff and Cox are burdensome;
 7 d. To date, no carrier has raised a dispute regarding ICBs;
 8 e. The rule 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
 10 to the Commission's attention regardless of whether any contracts have been
 11 filed pursuant to the rule.

12 27. Staff recommends that the Commission limit its approval to a waiver of A.A.C. R14-
 13 2-1115(C)(3) and that approval be subject to Staff's condition that TWCB provide its ICB contracts
 14 at any time Staff request them.¹⁸

15 28. We find Staff's recommendation regarding TWCB's ICB contracts reasonable and
 16 consistent with previous Decisions. Therefore, we will adopt Staff's recommendation.

17 Complaint Information

18 29. Staff confirmed the Company's assertion that none of its officers, directors, partners,
 19 nor managers have been or are currently involved in any formal or informal complaint proceeding
 20 before any state or federal regulatory agency, commission, administrative or law enforcement agency.

21 30. Staff also verified that TWCB's officers, directors, partners or managers have not been
 22 involved in any civil or criminal investigations, or had judgments entered in any civil matter, or by
 23 any administrative or regulatory agency, or been convicted of any criminal acts within the last ten
 24 years.

25 31. Staff reported that no consumer complaints had been filed against TWCB in Arizona
 26 or in the twelve (12) public utility commissions that responded to Staff's inquiry.

27 32. TWCB is in good standing with the Commission's Corporation Division.

28 Competitive Analysis

33. TWCB's application requests that the Company's proposed services be classified as
 competitive in Arizona. Staff believes TWCB's proposed services should be classified as
 competitive because TWCB will have to compete with IXC's, ILEC's, and CLEC's to gain a share of

¹⁸ Exhibit S-1 at 6.

1 the market in which it intends to operate. Further, Staff believes that TWCB will not be able to exert
2 any market power in its proposed service area.

3 34. Based on the above factors, Staff concludes that TWCB's proposed services should be
4 classified as competitive in Arizona.

5 35. We find that Staff's recommendations are reasonable and should be adopted. We also
6 find that TWCB's proposed services are competitive within Arizona.

7 **CONCLUSIONS OF LAW**

8 1. TWCB is a public service corporation within the meaning of Article XV of the Arizona
9 Constitution, A.R.S. §§ 40-281 and 40-282.

10 2. The Commission has jurisdiction over TWCB and the subject matter of the application.

11 3. Notice of the application was given in accordance with the law.

12 4. A.R.S. §40-282 allows a telecommunications company to file an application for a
13 CC&N to provide competitive telecommunication services.

14 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
15 Statutes, it is in the public interest for TWCB to provide facilities-based long distance and private line
16 telecommunications services as set forth in its application.

17 6. TWCB is a fit and proper entity to receive a CC&N authorizing it to provide intrastate
18 telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

19 7. TWCB's fair value rate base is not useful in determining just and reasonable rates for
20 the competitive services it proposes to provide to Arizona customers.

21 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
22 is just and reasonable and in the public interest for TWCB to establish rates and charges that are not
23 less than TWCB's total service long-run incremental costs of providing the competitive services
24 approved herein.

25 9. Staff's recommendations are reasonable and should be adopted.

26 **ORDER**

27 IT IS THEREFORE ORDERED that the application of Time Warner Cable Business LLC
28 for a Certificate of Convenience and Necessity to provide facilities-based long distance and private

1 line telecommunications services in Arizona, is hereby approved, subject to Staff's recommendations
2 as more fully described in Findings of Fact Nos. 7 and 8.

3 IT IS FURTHER ORDERED that if Time Warner Cable Business LLC fails to comply with
4 the Staff recommendations described in Findings Fact No. 8, the Certificate of Convenience and
5 Necessity granted herein shall be considered null and void after due process.

6 IT IS FURTHER ORDERED that Time Warner Cable Business LLC is hereby granted a
7 waiver of A.A.C. R14-2-1115(C), except that the Company shall provide its Individual Case Basis
8 contracts at any time requested by the Commission's Utilities Division Staff.

9 IT IS FURTHER ORDERED that Time Warner Cable Business LLC shall comply with
10 A.A.C. R14-2-804 regarding transactions between public utilities and affiliates.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14

15 CHAIRMAN _____ COMMISSIONER _____

16
17 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

18
19 IN WITNESS WHEREOF, I, JODI JERICH, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this _____ day of _____ 2014.

24
25 _____
26 JODI JERICH
27 EXECUTIVE DIRECTOR

28 DISSENT _____

DISSENT _____
YBK:tv

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