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IN THE MATTER OF THE COMMISSION
INQUIRY INTO POSSIBLE MODIFICATION OF
THE COMMISSION'S HOLDING COMPANIES
AND AFFILIATED INTEREST RULES, A.A.C.
ARTICLE 8, R14-2-801 ET SEQ.

Docket No. AU-00000A-15-0246

**APPLICATION FOR
RULEMAKING TO AMEND
A.A.C. R14-2-802(A)**

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This Application is the product of collaboration between and among a number of competitive telecommunications utilities – Cox Communications, Qwest Corporation dba CenturyLink QC (“CenturyLink”), tw telecom of arizona llc, and AT&T Inc. (collectively, the “Applicants”). Over the past two decades, the competitive telecommunications industry in Arizona has grown significantly, thereby creating a market with competition-based customer service and ratepayer protections. In light of this development and the unique nature of competitive telecommunications compared to the other utility industries regulated by the Commission, the Applicants respectfully submit that the Affiliated Interest Rules (the “Rules”) should be amended to exclude competitive telecommunications carriers.

HISTORIC BACKGROUND

The Rules were adopted by the Commission in 1990. However, the history of the Commission’s oversight of utility transactions began much earlier. Since statehood, the Commission has had statutory jurisdiction pursuant to A.R.S. § 40-285 (the “Statute”) to review and, where appropriate, authorize utility asset transfers and encumbrances as well as system

1 mergers. The purpose of the Statute is to “prevent ‘looting’ of a utility’s facilities and
2 impairment of service to the public.” *Babe Invs. v. Ariz. Corp. Comm’n*, 189 Ariz. 147, 151, 939
3 P.2d 425, 429 (App. 1997). The Statute also affords additional ratepayer protection to the extent
4 that ill-advised transactions can impact utility rates, especially in the context of monopoly
5 utilities.

6 The terms of the Statute provide for Commission oversight of transactions directly
7 undertaken by an Arizona utility, but do not extend to the activities of a utility’s parent company
8 or corporate affiliates. As a result, when some Arizona electric utilities diversified their
9 businesses through the use of parent and affiliate entities in the 1980s, the non-utility
10 transactions did not require Commission review and approval under the Statute. Unfortunately,
11 when some of those affiliate transactions failed, the regulated utilities were impacted financially,
12 resulting in potential bankruptcies and emergency rate cases before the Commission. *See Ariz.*
13 *Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 289, 830 P.2d 807, 810 (1992). In
14 response to these extreme events, the Commission adopted the Rules to shield ratepayers from
15 the costs associated with holding company structures and non-utility activities ventures. *Id.* at
16 290, 830 P.2d at 811.

17 SCOPE OF THE RULES

18 Given the Commission’s goal of overseeing a wide variety of transactions that could
19 potentially impact rates and utility services in Arizona, the Rules were drafted with an expansive
20 scope to apply to all Class A investor-owned utilities as well as the utilities’ holding companies
21 and affiliates. Under the Rules, utilities are required to provide the Commission with pre-
22 transaction notices of affiliate “reorganizations” as well as transactions between utilities and
23 affiliates. Because the terms “Affiliate” and “Reorganize” are broadly defined terms, they are

1 subject to an interpretation that would require Commission pre-approval of transactions engaged
2 in by a utility's non-Arizona affiliates even though the affiliates and the transactions are
3 completely unrelated to the utility's business in Arizona. *See* A.A.C. R14-2-801(1) and (5)
4 (defining "Affiliate" and "Reorganize"); A.A.C. R14-2-803 (requiring notice of intent filing and
5 authorizing the Commission to approve or reject transaction). Similarly, the Rules include
6 reporting requirements regarding holding company diversification plans as well as assessments
7 of the potential impacts of any current or planned affiliate activities. A.A.C. R14-2-805.

8 Recognizing that these requirements may be burdensome and/or unnecessary given the
9 specific circumstances of a utility or transaction, the Rules also permit utilities to petition the
10 Commission for a waiver of all or a portion of the Rules. A.A.C. R14-2-806. Several of the
11 Applicants hold forward-looking waivers, pursuant to which the utilities are not required to
12 comply with the A.A.C. R14-2-803 pre-transaction filing requirement if certain transaction-
13 specific criteria are met. However, the terms of these forward-looking waivers differ from
14 decision to decision and have been subject to varying interpretations over the years. As a result,
15 depending on the circumstances of a given transaction, some Arizona utilities with forward-
16 looking waivers continue to file pre-transaction notices (or transaction-specific waiver requests)
17 as a matter of prudence. In addition to using utility and Commission resources, these notice and
18 waiver requests often delay multistate transactions and present barriers to efficient business
19 operations.

20 **GROWTH OF THE COMPETITIVE TELECOMMUNICATIONS INDUSTRY**

21 Since the adoption of the Rules in 1990, the telecommunications industry in Arizona (and
22 nationwide) has grown substantially and become much more competitive. In the current market,
23 telecommunications customers have a variety of service options (including the option to obtain
24

1 service from entities not regulated by the Commission). These options provide
2 telecommunications customers with the same kind of protection intended by the Rules.
3 Specifically, if a competitive telecommunication company engages in an ill-advised transaction
4 that endangers the quality of service or increases rates, the customer can simply move its service
5 to another provider.

6 In 2013, the Arizona Legislature amended the Statute in recognition of the customer
7 protections inherently provided by the open market. As amended, the Statute no longer requires
8 Commission approval of utility transactions if the utility is a competitive telecommunications
9 corporation (as classified by the Commission). The Applicants respectfully submit that the same
10 rationale applies to the Commission's Rules.

11 **PROPOSED RULE AMENDMENT**

12 Given the customer protections afforded by the competitive telecommunications market
13 in Arizona, the Applicants request that the Commission amend the Rules to be consistent with
14 the Statute as amended by the Legislature in 2013. The Applicants propose the following revised
15 version of A.A.C. R14-2-802(A):

16 **R14-2-802. Applicability**

17 **A.** These rules are applicable to all Class A investor-owned
18 utilities under the jurisdiction of the Commission and are
19 applicable to all transactions entered into after the effective date of
20 these rules. Notwithstanding the preceding sentence, these rules
shall not apply to a telecommunications utility whose retail
telecommunications services have been classified as competitive
by the Commission pursuant to A.A.C. R14-2-1101 et seq., except
as may otherwise be determined by a future Commission order.

21 (Emphasis added to show proposed revision.)

22 The Applicants' proposed language is narrowly tailored to exempt only those
23 telecommunications utilities operating in an environment that provides the necessary customer
24

1 protections. Accordingly, the Rules will continue to apply to all Class A investor-owned utilities
2 including all telecommunications carriers unless the carrier either (1) holds a Certificate of
3 Convenience and Necessity issued by the Commission pursuant to A.A.C. R14-2-1105 or 1106
4 or (2) has had all of its retail telecommunications services classified as competitive by the
5 Commission pursuant to A.A.C. R14-2-1108. Further, the proposed amendment acknowledges
6 and expressly preserves the Commission's authority to require individual utilities (otherwise
7 exempt under the amended Rules) to comply with the Rules, if the Commission so orders.

8 **REQUEST FOR SEPARATE DOCKET**

9 The Applicants understand that the Commission opened the current inquiry docket to
10 consider possible modifications to the Rules beyond the revisions proposed in this Application.
11 Given the expansive scope of the current Rules, the Applicants anticipate that the Commission
12 and other regulated utility groups may be interested in discussing more extensive revisions to the
13 Rules, which analysis may be time-consuming. Therefore, because the Applicants' proposed
14 amendment is narrowly tailored to the competitive telecommunications industry and involves
15 only a slight modification to one section of the Rules, the Applicants respectfully request that
16 their proposed amendment be addressed separately and that the Commission open a separate
17 rulemaking docket limited to the Applicants' proposed amendment to A.A.C. R14-2-802(A).

18 If the Commission agrees to the proposed separate docket, the Applicants also request
19 that the Commission instruct the Utilities Division Staff to file with the office of the Secretary of
20 State, for publication in the Arizona Administrative Register, (1) a Notice of Rulemaking Docket
21 Opening and (2) a Notice of Proposed Rulemaking including Attachment 1. The Applicants
22 further request that the Commission direct the Hearing Division to hold oral proceedings to
23 receive public comment on the Notice of Proposed Rulemaking. Finally, the Applicants request
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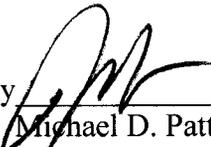
1 that the Commission establish any additional procedural deadlines and requirements as may be
2 necessary and consistent with the Administrative Procedures Act and prior Commission
3 rulemaking proceedings.

4 RESPECTFULLY SUBMITTED this 19th day of August, 2015.

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1 **Original and 13 copies** filed this
19th day of August, 2015, with:

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5 **Copies** of the foregoing delivered
this 19th day of August, 2015, to:

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ATTACHMENT 1

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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTERS 2. CORPORATION COMMISSION – FIXED UTILITIES

ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS

R14-2-802. Applicability

- A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules. Notwithstanding the preceding sentence, these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive by the Commission pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be determined by a future Commission order.
- B. No change