

OPEN MEETING ITEM



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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STINE
BOB BURNS
TIM FORESE
ANDY TOBIN



EXECUTIVE DIRECTOR

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ORIGINAL

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2016 MAY 31 P 12: 28

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

MAY 31 2016

DATE: MAY 31, 2016
DOCKET NO.: AU-00000A-15-0246
TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

AFFILIATED INTEREST RULES
(RULEMAKING)

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 9, 2016

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:

JUNE 14, 2016 AND JUNE 15, 2016

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.

JODI A. JERICH
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

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

DECISION NO. _____

ORDER

Open Meeting
June 14 and 15, 2016
Phoenix, Arizona

BY THE COMMISSION:

This matter concerns a rulemaking to modify Arizona Administrative Code (“A.A.C.”) R14-2-802, within A.A.C. Title 14, Chapter 2, Article 8, the Arizona Corporation Commission’s (“Commission’s”) Public Utility Holding Companies and Affiliated Interests Rules (“Affiliated Interests Rules”), to eliminate from applicability of the Affiliated Interests Rules any telecommunications utility whose retail telecommunications services have been classified as competitive pursuant to A.A.C. Title 14, Chapter 2, Article 11, the Commission’s Competitive Telecommunications Services Rules (“Competitive Telecom Rules”). The Affiliated Interests Rules currently apply to any Class A investor-owned utility.

* * * * *

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

FINDINGS OF FACT

Procedural History

1. On July 2, 2015, the Commission’s Utilities Division (“Staff”) filed a Memorandum requesting that a generic docket be opened with the caption shown above. As a result, this docket was opened.

1 2. On August 18, 2015, Cox Communications (“Cox”), Qwest Corporation dba
2 CenturyLink QC (“CenturyLink”), tw telecom of arizona llc (“tw”), and AT&T Inc. (“AT&T”)
3 (collectively “Applicants”) filed an Application for Rulemaking to Amend A.A.C. R14-2-802(A)
4 (“Application for Rulemaking”), requesting that the Commission open a separate rulemaking docket
5 to amend A.A.C. R14-2-802 to exclude from applicability of the Affiliated Interests Rules each
6 “telecommunications utility whose retail telecommunications services have been classified as
7 competitive by the Commission pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be
8 determined by a future Commission order.”

9 3. On November 16, 2015, Staff filed a Memorandum requesting that affected
10 telecommunications utilities and interested parties file informal written comments regarding the rule
11 amendment proposed in the Application for Rulemaking by December 16, 2015. Staff stated that it
12 would consider all comments filed before preparing a Notice of Proposed Rulemaking (“NPRM”) for
13 the Commission’s consideration at the Open Meeting of February 2016. Staff also included
14 information for persons interested in being added to the service list for this matter. The Memorandum
15 was sent to 179 telecommunications utilities and associated attorneys.

16 4. On November 19, 2015, AT&T and attorneys at Fennemore Craig, P.C. filed documents
17 related to service by email.

18 5. On November 24, 2015, a Procedural Order was issued approving service by email for
19 AT&T and setting forth and directing other interested persons to follow the Hearing Division’s process
20 for obtaining approval of service by email.

21 6. On December 2, 2015, Freeport Minerals Corporation and Arizonans for Electric
22 Choice and Competition filed a Notice of Request to Be Added to Service List along with a Consent
23 to Email Service. Approval of service by email was granted by a Procedural Order issued on December
24 4, 2015.

25 7. On December 10, 2015, CenturyLink filed Informal Comments along with a Consent to
26 Email Service on Behalf of Itself and Affiliated Entities. CenturyLink’s comments “fully endorse[d]”
27 the Applicants’ proposed amendment to R14-2-802. Approval of service by email was granted by a
28 Procedural Order issued on December 11, 2015.

1 8. On December 14, 2015, Arizona Public Service Company (“APS”) filed Comments,
2 stating that APS had no objection to the Applicants’ proposed amendment to R14-2-802, but would
3 oppose any other amendments to the Affiliated Interests Rules that would increase regulation of electric
4 utility affiliates or affect any of the waivers the Commission granted to APS and Pinnacle West Capital
5 Corporation in Decision No. 61973 (October 6, 1999).

6 9. On December 16, 2015, the Arizona Local Exchange Carriers Association (“ALECA”)¹
7 filed Comments, supporting the Applicants’ proposed amendment.

8 10. On December 16, 2015, AT&T filed Comments in Support of Amendment to A.A.C.
9 R14-2-802(A).

10 11. On December 16, 2015, Windstream Corp., filed comments on behalf of itself and its
11 Arizona-certificated subsidiaries (Windstream Communications, Inc.; Talk America, Inc. (“Talk
12 America”); McLeodUSA Telecommunications Services, LLC (“McLeodUSA”); and Paetec
13 Communications, Inc. (“Paetec”)), stating that they support the Applicants’ proposed amendment.

14 12. On December 16, 2015, a Notice of Interest and Consent to Email Service was filed on
15 behalf of XO Communications Services, LLC (“XO”) and Windstream Services, LLC (“Windstream
16 Services”). Approval of email service was granted by a Procedural Order issued on December 17,
17 2015.

18 13. On December 16, 2015, Eschelon Telecom of Arizona, Inc.; Electric Lightwave, LLC;
19 and Mountain Telecommunications of Arizona, Inc., all dba Integra Telecom (“Integra”) filed
20 Comments in support of the Applicants’ proposed amendment. Integra noted that all three of its legal
21 entities have been granted limited waivers of the Affiliated Interests Rules.

22 14. On January 20, 2016, Staff filed an Open Meeting Memorandum including a proposed
23 Order recommending the commencement of formal rulemaking to amend the Affiliated Interests Rules
24 as proposed by the Applicants. The proposed Order also included recommended procedural

25 ¹ ALECA identified the following as its members: Fort Mojave Telephone Company; Frontier Communications
26 Corporation; Gila River Telecommunications, Inc.; Hopi Telecommunications, Inc.; Midvale Telephone Exchange, Inc.;
27 San Carlos Apache Telecommunications Utility, Inc.; South Central Communications; Table Top Telephone Company,
28 Inc.; TDS (Arizona Telephone Company and Southwest Telephone Company); Tohono O’odham Utility Authority; Valley
Telephone Cooperative (Copper Valley Telephone, Inc. and Valley Telephone Cooperative, Inc.); and Zona
Communications. ALECA stated that none of its members are Class A investor-owned utilities subject to the Affiliated
Interest Rules and that several of its listed members are tribally owned and not subject to the Commission’s jurisdiction.

1 requirements and dates.

2 15. On January 21, 2016, Staff filed a Revised Open Meeting Memorandum, providing an
3 additional attachment to the Memorandum setting forth the text of the Affiliated Interests Rules with
4 the Applicants' proposed amendment included.

5 16. On February 11, 2016, Decision No. 75448 was issued, directing Staff and the Legal
6 Division ("Legal") to prepare and file with the Office of the Secretary of State, by February 12, 2016,
7 for publication in the *Arizona Administrative Register* no later than March 4, 2016, a Notice of
8 Rulemaking Docket Opening ("NRDO") and a NPRM including the text of the Affiliated Interests
9 Rules as included in the attachment to the Revised Open Meeting Memorandum. The Decision also
10 required that the Hearing Division hold an oral proceeding for the NPRM on April 14, 2016; established
11 dates for the submission of comments; and established other procedural deadlines and requirements.

12 17. On March 7, 2016, Red Rock Telecommunications, LLC ("Red Rock") filed a Notice
13 of Interest, Notice of Change of Address, and Consent to Service by Email. Approval of email service
14 was granted by a Procedural Order issued on March 11, 2016.

15 18. On March 8, 2016, Legal filed a copy of the NRDO and NPRM published in the Arizona
16 Administrative Register on March 4, 2016. A copy of the NPRM is attached hereto and incorporated
17 herein as Exhibit 1.

18 19. On March 28, 2016, Tele-Data Solutions filed a letter requesting removal from the
19 service list for this matter and suggesting that service should instead be provided to Teledata Solutions
20 Inc. The service list was adjusted accordingly.

21 20. On April 4, 2016, CenturyLink filed Comments supporting the NPRM.

22 21. No other interested person filed written comments regarding the NPRM.

23 22. On April 11, 2016, Staff filed a Staff Report including a summary of the written
24 comments filed by interested persons between the effective date of Decision No. 75448 (February 11,
25 2016) and April 4, 2016.

26 23. On April 14, 2016, the oral proceeding for this matter was held before a duly authorized
27 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. Staff
28 appeared through counsel, provided a brief statement regarding the rulemaking, and provided responses

1 to several questions posed by the Administrative Law Judge. Comments supporting the NPRM were
 2 provided on behalf of XO, Talk America, McLeodUSA, Paetec, and Windstream Services
 3 (collectively); Cox; AT&T; and CenturyLink. No comments were provided opposing the NPRM.

4 24. On April 25, 2016, Staff filed written responses to questions posed by the
 5 Administrative Law Judge.

6 25. On April 27, 2016, Staff filed an Economic, Small Business, and Consumer Impact
 7 Statement ("EIS") concerning the NPRM.

8 26. On May 6, 2016, Staff filed a Staff Report providing a summary of all written comments
 9 filed by interested persons and all oral comments provided at the oral proceeding, along with Staff's
 10 responses thereto.

11 **Description of the Rule Change**

12 27. As included in the NPRM, the rule change adds the following sentence at the end of
 13 R14-2-802(A), concerning applicability of the Affiliated Interests Rules: "Notwithstanding the
 14 preceding sentence, these rules shall not apply to a telecommunications utility whose retail
 15 telecommunications services have been classified as competitive pursuant to A.A.C. R14-2-1101 et
 16 seq., except as may otherwise be determined by a future Commission order."

17 28. The following telecommunications utilities are Class A (having intrastate revenues
 18 greater than \$10 million) investor-owned utilities with competitive retail telecommunications services
 19 and thus should be exempted under the proposed rule revision:

Company Number	Company Name
T-20872A	AT&T Corp.
T-02811B	CenturyLink Communications, LLC
T-04293A	Comcast Phone of Arizona, LLC
T-03471A	Cox Arizona Telcom, L.L.C.
T-03406A	Eschelon Telecom of Arizona, Inc.
T-03394A	MCI Communications Services, Inc.
T-01051B	Qwest Corporation
T-03479A	Securus Technologies, Inc.
T-03943A	tw telecom of arizona llc
T-04302A	XO Communications Services, LLC

1 29. Waivers of portions of the Affiliated Interests Rules have been granted to 7 of the 10
2 telecommunications utilities identified in Findings of Fact No. 28.

3 **Rationale for the Rulemaking**

4 30. In the Application for Rulemaking, the Applicants asserted that because the Arizona
5 Legislature revised A.R.S. § 40-285 in 2013 to exclude competitive telecommunications corporation
6 transactions from Commission oversight, the Commission likewise should revise A.A.C. R14-2-802 to
7 exclude competitive telecommunications utilities from application of the Affiliated Interests Rules.
8 The Applicants further asserted that the Commission had already granted forward-looking waivers of
9 A.A.C. R14-2-803 to several of the Applicants, but with some inconsistency in the requirements
10 associated with the waivers and in interpretation of the waivers over the years. The Applicants asserted
11 that the notice and waiver requests associated with the Affiliated Interests Rules use utility and
12 Commission resources, delay multistate transactions, and present barriers to efficient business
13 operations.

14 31. In its comments filed prior to and in response to the NPRM, CenturyLink asserted the
15 following in support of the rule revision proposed in this matter:

16 (a) The Affiliated Interests Rules were adopted by the Commission six years before
17 Congress adopted the Telecommunications Act of 1996, which opened local telecommunications
18 services to competition;

19 (b) According to the decision in which they were adopted (Decision No. 56844
20 (March 14, 1990)), the Commission's purpose in adopting the Affiliated Interests Rules was to protect
21 ratepayers from paying rates that included costs associated with holding company structure, financially
22 struggling affiliates, or sweetheart deals with affiliates intended to extract capital from the utility to
23 subsidize non-utility operations;

24 (c) As a result of the Telecommunications Act of 1996, the telecommunications
25 industry in Arizona and the rest of the nation has grown and become more fully competitive, providing
26 customers with numerous options for service, including service from non-regulated providers;

27 (d) The existence of competition has made it impossible for utilities to pass through
28 to utility customers, through rate increases, the losses from bad business diversification decisions, and

1 without the ability to pass through such costs, utilities “have no incentive to engage in cross-
2 subsidization or other activities that financially weaken the utility operation”;

3 (e) In 2013, in recognition of the competitive telecommunications market as a
4 substitute for Commission regulation, the Arizona Legislature amended A.R.S. § 40-285 to exempt
5 competitive telecommunications providers from the requirement to obtain Commission approval to
6 dispose of assets or acquire the stock of other public service corporations, and the rule revision is
7 consistent with the amendment to A.R.S. § 40-285;

8 (f) The Commission has granted numerous limited waivers to telecommunications
9 utilities, which suggests that the Affiliated Interests Rules are overly broad;

10 (g) Because separate utilities have filed for waivers from portions of the Affiliated
11 Interests Rules, and the Commission has not granted any utility complete exemption,
12 telecommunications utilities are now subjected to disparate levels of relief from the Affiliated Interests
13 Rules; and

14 (h) Telecommunications utilities, Staff, and the Commission are spending
15 “inordinate amounts of time and energy on waivers for matters . . . better addressed by a total exemption
16 from the [Affiliated Interests Rules] for competitive providers.”

17 32. Staff did not dispute any of the assertions made by CenturyLink or the other
18 telecommunications utilities that provided comment on the rule revision. Staff agreed that the rule
19 revision will provide benefits to both the telecommunications utilities currently subject to the Affiliated
20 Interests Rules and to the Commission and Staff, because the rule revision will eliminate reports that
21 must be prepared and filed by utilities and reviewed by Staff and will eliminate applications (including
22 applications for waiver) that are currently prepared and filed by utilities and that must be reviewed by
23 Staff and acted upon by the Commission. In recommending final adoption of the rule revision, Staff
24 pointed out that the rule revision provides the Commission the ability, by future order, to require filings
25 and review transactions if deemed necessary.

26 33. Staff believes that the utilities that would be impacted by the rule revision are all
27 financially stable, is unaware of any information that would indicate any of the utilities have a history
28 of engaging in financial transactions with affiliates to the harm of customers or engaging in

1 organizational changes involving affiliates to the harm of customers, and is unaware of any detriment
2 to the utilities' customers that would arise from adoption of the rule revision.

3 **Authority for the Rulemaking**

4 34. In the NPRM, Staff cited the following constitutional and statutory authority for the rule
5 revision: Arizona Constitution, Article 15, § 3 ("Article 15, § 3"), and A.R.S. §§ 40-202, 40-203, and
6 40-321.

7 35. In *Arizona Corporation Commission v. State ex rel. Woods*, 171 Ariz. 286, 830 P.2d
8 807 (1992), the Arizona Supreme Court determined that the Commission had the power to adopt the
9 Affiliated Interests Rules under its exclusive and plenary constitutional ratemaking authority granted
10 by Article 15, § 3, as the Affiliated Interests Rules were reasonably necessary for ratemaking. As they
11 amend the Affiliated Interests Rules, the rule revisions proposed likewise are authorized under Article
12 15, § 3.

13 **Administrative Procedure Act Requirements**

14 36. The Commission is an "agency" under the Administrative Procedure Act ("APA"),
15 A.R.S. Title 41, Chapter 6 (A.R.S. §§ 41-1001 through 41-1092.12), and is generally subject to APA
16 requirements.

17 37. Under A.R.S. § 41-1057, the Commission is exempted from Article 5 of the APA
18 (A.R.S. §§ 41-1051 through 41-1057), pertaining to the Governor's Regulatory Review Council
19 ("GRRC"), but is required to adopt substantially similar rule review procedures, to include preparation
20 of an EIS and a statement of the effect of the rule on small business.

21 38. A.R.S. § 41-1044 requires the Attorney General ("AG") to review rules that are exempt
22 under A.R.S. § 41-1057 and further requires that such rules not be submitted to the Office of the
23 Secretary of State unless first approved by the AG. This requirement does not apply when the
24 Commission is conducting rulemaking pursuant to its exclusive and plenary ratemaking authority under
25 Art. 15, § 3. (*State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216, 848 P.2d 301
26 (Ariz. Ct. App. 1992).)

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1 39. A.R.S. § 40-1030(A) provides that “[a] rule is invalid unless it is made and approved in
2 substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter,
3 unless otherwise provided by law.”

4 40. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review,
5 an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025,
6 the agency shall issue a supplemental notice containing the changes in the proposed rule and shall
7 provide for additional public comment pursuant to A.R.S. § 41-1023.

8 41. A.R.S. § 41-1024 requires an agency to take one of the following actions on a
9 rulemaking within 120 days after the close of record on the proposed rulemaking: (1) submit the rule
10 to GRRC or the AG for approval, or (2) terminate the rulemaking by publishing a notice in the *Arizona*
11 *Administrative Register*.²

12 42. The Commission continues to allow for and to consider public comments on an NPRM
13 during any Open Meeting at which the Commission discusses and votes upon how to proceed regarding
14 the NPRM (i.e., whether to adopt the revisions in an NPRM through a Notice of Final Rulemaking
15 (“NFRM”) to issue a Notice of Supplemental Proposed Rulemaking (“NSPRM”), or to terminate
16 rulemaking). Thus, the Commission closes the record on an NPRM, as contemplated by A.R.S. § 41-
17 1024, only after conclusion of the last Open Meeting at which the Commission discusses and votes
18 upon how to proceed regarding the NPRM.

19 43. Since fiscal year 2009-2010, Arizona has had in place a general rulemaking moratorium,
20 first through creation of the Legislature and then through gubernatorial orders. The most recent
21 gubernatorial order is Executive Order 2016-03 (“EO 2016-03”), which became effective on February
22 8, 2016, and expires on December 31, 2016. EO 2016-03 generally prohibits a state agency from
23 conducting rulemaking except for specific purposes and with prior written approval from the Office of
24 the Governor. However, EO 2016-03 expressly exempts the Commission from its restrictions, while
25 strongly encouraging voluntary compliance.

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28 ² This statutory provision does not take into account the Commission’s constitutional authority to adopt rules that are reasonably necessary for ratemaking without submitting the rules to the AG for approval under A.R.S. § 41-1044.

1 44. Although Commission rulemakings are not restricted by EO 2016-03, if they were, this
2 rulemaking would meet the parameters of EO 2016-03 because the rule revision would “reduce or
3 ameliorate a regulatory burden while achieving the same regulatory objective.” (EO 2016-03, § 2(b).)

4 45. A.R.S. § 41-1032(A) provides that a final rule filed with the Office of the Secretary of
5 State under A.R.S. § 41-1031 becomes effective 60 days after filing unless the rulemaking agency
6 includes in the Preamble information demonstrating that the rule needs to be effective immediately
7 upon filing, for one of five reasons, among them: (1) “[t]o provide a benefit to the public and a penalty
8 is not associated with a violation of the rule” and (2) “[t]o adopt a rule that is less stringent than the
9 rule that is currently in effect and that does not have an impact on the public health, safety, welfare or
10 environment, or that does not affect the public involvement and public participation process.”

11 46. The rule revision included in the NPRM will benefit the telecommunications utilities
12 currently subject to the Affiliated Interests Rules as well as the Commission and Staff; will not penalize
13 anyone; is less stringent than the rule that is currently in effect; will not have an adverse impact on
14 public health, safety, welfare, or the environment; and does not affect the public involvement and public
15 participation process. Thus, to ensure that the benefits to be created by the rule revision are realized as
16 soon as possible, it is just and reasonable and in the public interest for the Commission to adopt the
17 rule revision with an immediate effective date.

18 **Public Comments & Responses**

19 47. Summaries of the formal comments received and of Staff’s responses thereto, along
20 with the Commission’s responses, are attached hereto and incorporated herein as Exhibit 2. All of the
21 formal (and informal) comments received regarding the rule revision were supportive of the rule
22 revision.

23 **Modifications to the NPRM Rule Language**

24 48. The clarity, conciseness, and understandability of the rule would be enhanced if the new
25 language were moved to a new subsection (B); the introductory language “Notwithstanding the
26 preceding sentence” were replaced with “Notwithstanding subsection (A)”; the existing subsection (B)
27 were moved and relabeled as subsection (C); and the citation “A.A.C. R14-2-1101 et seq.” were
28 replaced with “A.A.C. Title 14, Chapter 2, Article 11” to conform to Secretary of State rulemaking

1 style requirements. R14-2-802 would then appear as follows:

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

3 A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction
4 of the Commission and are applicable to all transactions entered into after the effective
5 date of these rules.

6 B. Notwithstanding subsection (A), these rules shall not apply to a telecommunications
7 utility whose retail telecommunications services have been classified as competitive
8 pursuant to A.A.C. Title 14, Chapter 2, Article 11, except as may otherwise be
9 determined by a future Commission order.

10 ~~B. C.~~ No change

11 49. The modifications to the proposed rule described in Findings of Fact No. 48 would not
12 result in a rule that is substantially different, under A.R.S. § 41-1025, than the proposed rule as
13 published in the NPRM.

14 **Probable Economic Impacts**

15 50. The substantive portion of Staff's EIS is attached hereto and incorporated herein as
16 Exhibit 3. The Commission finds that the EIS attached hereto and incorporated herein as Exhibit 3,
17 should be adopted, with the following modifications:

18 (a) In subsection (B)(1), the reference to "R14-2-802(A)" should be changed to
19 "R14-2-802";

20 (b) In subsection (B)(2), after (B)(2)(c), the language of Findings of Fact No. 28
21 should be added; and

22 (c) In subsection (B)(7), before the current text, the following statement should be
23 added: "The rulemaking alleviates regulatory burdens and creates no additional regulatory burdens."

24 **Resolution**

25 51. The rule revision will alleviate regulatory burdens upon Class A investor-owned
26 telecommunications utilities with competitive retail services, upon Staff, and upon the Commission,
27 without causing any adverse impacts upon any persons or to the public interest. The Commission finds
28

1 of A.R.S. § 41-1001(16)(d)(iii), the comments and responses set forth in Exhibit 2 hereto.

2 9. The revisions to A.A.C. R14-2-802(A) are eligible to become effective immediately
3 upon filing with the Office of the Secretary of State under A.R.S. § 41-1032(4) and (5) for the reasons
4 set forth in Findings of Fact No. 46.

5 **ORDER**

6 IT IS THEREFORE ORDERED that the Commission hereby adopts the text of A.A.C. R14-2-
7 802 as proposed in the NPRM and modified in Findings of Fact No. 48.

8 IT IS FURTHER ORDERED that the Commission hereby adopts the Economic Impact
9 Statement attached hereto as Exhibit 3, with the modifications set forth in Findings of Fact No. 50.

10 IT IS FURTHER ORDERED that the Commission's Utilities Division/Legal Division shall
11 prepare and file with the Office of the Secretary of State, for publication in the *Arizona Administrative*
12 *Register*, a Notice of Final Rulemaking package that includes (1) A Notice of Final Rulemaking that
13 sets forth the text of A.A.C. R14-2-802 as adopted herein and includes a Preamble that (a) conforms to
14 A.R.S. § 41-1001(16)(d) and (b) states that the revisions to A.A.C. R14-2-802 are to become effective
15 immediately upon filing with the Office of the Secretary of State under A.R.S. § 41-1032(4) and (5)
16 for the reasons set forth in Findings of Fact No. 46 ; (2) the Economic Impact Statement adopted herein;
17 and (3) any additional documents required for publication and codification by the Office of the
18 Secretary of State.

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1 IT IS FURTHER ORDERED that the Commission's Utilities Division/Legal Division is
2 authorized to make non-substantive changes in the text of A.A.C. R14-2-802 as adopted herein; the
3 Economic Impact Statement adopted herein; and any of the additional documents required by the Office
4 of the Secretary of State, in response to comments received from the Office of the Secretary of State
5 during the publication and/or codification process, unless the Commission requires otherwise after
6 notification of those changes.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN _____ COMMISSIONER

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
of the Arizona Corporation Commission, have hereunto set my
hand and caused the official seal of the Commission to be affixed
at the Capitol, in the City of Phoenix, this _____ day
of _____ 2016.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SH:rt

1 SERVICE LIST FOR:
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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.

4 DOCKET NO.:

AU-00000A-15-0246

5 Ms. Jennifer Cranston
GALLAGHER & KENNEDY P.A.
2575 E. Camelback Road
Phoenix, AZ 85016-9225
6 Attorneys for AT&T, Inc.
Jennifer.cranston@gknet.com
7 **Consented to Service by Email**

Mr. Timothy J. Sabo
Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren Street
19th Floor
Phoenix, Arizona 85004

8 Mr. C. Webb Crockett
Mr. Patrick J. Black
FENNEMORE CRAIG, P.C.
2394 East Camelback Road, Suite 600
9 Phoenix, AZ 85016
Attorneys for Freeport Minerals Corporation and Arizonans for
10 Electric Choice and Competition
wrocket@fclaw.com
pblack@fclaw.com
11 **Consented to Service by Email**

Mr. Jeff Crockett
Crockett Law Group
2198 E. Camelback Road, Suite 305
Phoenix, AZ 85016
Attorneys for Red Rock Telecommunications, LLC
jeff@jeffrockettllaw.com
shane@redrocktelecom.com
12 **Consented to Service by Email**

12 Mr. Stan Barnes
Copper State Consulting Group
3033 N. Central Avenue, Suite 900
13 Phoenix, AZ 85012
stan@copperstate.net
14 **Consented to Service by Email**

Mr. Daniel Pozefsky
Residential Utility Consumer Office
1110 W Washington Street
Phoenix, Arizona 85007

15 Mr. Reed Peterson, State Regulatory Affairs Director
Mr. Norman G. Curtright, Associate General Counsel
Qwest Corporation dba CenturyLink QC;
16 CenturyLink Communications, LLC; &
CenturyLink Public Communications, Inc.
20 East Thomas Road, 1st Floor
17 Phoenix, Arizona 85012
Reed.Peterson@centurylink.com
Norm.Curtright@centurylink.com
18 **Consented to Service by Email**

Mr. William P. Sullivan
Law Offices of William P. Sullivan, PLLC
501 East Thomas Road
Phoenix, Arizona 85012

19 Ms. Joan S. Burke
Law Office of Joan S. Burke, P.C.
1650 N. 1st Avenue
20 Phoenix, AZ 85003
Attorney for XO Communications Services, LLC and
Windstream Services, LLC
21 joan@jsburkelaw.com
Consented to Service by Email

Mr. Jason D. Gellman
Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004-2202

22 Mr. Scott S. Wakefield, Esq.
Ridenour Hinton, P.L.L.C.
Chase Tower
23 201 North Central Avenue, Suite 3300
Phoenix, Arizona 85004

Mr. Timothy Hogan
The Arizona Center for Law in the Public
Interest
514 West Roosevelt Street
Phoenix, AZ 85003

24 Mr. Michael W. Patten
Snell & Wilmer L.L.P.
One Arizona Center
25 400 East Van Buren
Phoenix, AZ 85004-2202

Mr. Michael Curtis
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012

26 Mr. Greg Patterson
Munger Chadwick
2398 E Camelback Rd
27 Phoenix, Arizona 85016

Ms. Maritza Morales
1 800 Collect, Inc.
1685 Gailes Boulevard, Suite B
San Diego, California 92154

Mr. Robert Cleary
800 Response Information Services, LLC
1795 Williston Road, Suite 200
South Burlington, Vermont 05403

Ms. Jennifer Cabania
ABS-CBN Telecom North America,
Incorporated
150 Shoreline Drive
Redwood City, California 94065

1 Mr. Kevin Fennell
Access One, Inc.
820 West Jackson Street, Suite 650
2 Chicago, Illinois 60607

3 Mr. Eric Blackford
Nationwide Regulatory Compliance
c/o Alliance Global Networks, LLC;
4 Alliance Group Services, Inc.; American
Telecommunications Systems, Inc.; BCN
Telecom, Inc.; DCT Telecom Group, Inc.;
5 Inmark, Inc.; KDDI America, Inc.; Long
Distance Access, Inc.; Long Distance
Consolidated Billing Co.
6 107 West Michigan Avenue, 4th Floor
Kalamazoo, Michigan 49007

7 Ms. Abigail Tucker
Access Point, Inc.
8 1100 Crescent Green, Suite 109
Cary, North Carolina 27518

9 Mr. Philip Koen
AccessLine Communications Corporation
10 3310 146th Place, S.E.
Bellevue, Washington 98007

11 Ms. Jennifer Vellucci
Accipiter Communications, Inc.
12 2238 West Lone Cactus Drive, Suite 100
Phoenix, Arizona 85027

13 Mr. Jeff Myers
ACN Communication Services, Inc.
14 1000 Progress Place
Concord, North Carolina 28025-2449

15 Ms. Jennifer DePinto
Advantage Telecommunications Corp.;
Reduced Rate Long Distance, LLC; Reliant
16 Communications, Inc.
3001 Aloma Avenue, Suite 304
17 Winter Park, Florida 32792

18 Ms. Cynthia Firstman
Airespring, Inc.
6060 Sepulveda Boulevard, Suite 220
19 Van Nuys, California 91411

20 Mr. Arnold Marasigan
Airnex Communications, Inc.
5000 Hopyard, Suite 240
Pleasanton, California 94577

21 Ms. Julie Musselman Oost
Airus, Inc.; Peerless Network of Arizona,
22 LLC
840 South Canal Street, 7th Floor
23 Chicago, Illinois 60607

24 Mr. Faisal Aziz
America Net, LLC
3850 Wilshire Boulevard, 17th Floor
25 Los Angeles, California 90010

26 Mr. Paolo Giuressi
American Phone Services, Corp.
308 Maxwell Road, Suite 100
27 Alpharetta, Georgia 30009

Mr. Alex Valencia
Americatel Corporation
433 East Las Colinas Boulevard, Suite 500
Irving, Texas 75039

Ms. Tammy Ferber
AmeriVision Communications, Inc.
999 Waterside Drive, Suite 1910
Norfolk, Virginia 23510

Ms. Judith A. Riley
c/o ANPI Business, LLC; CVC CLEC,
LLC; Mosiac Network, LLC; NovaTel Ltd.,
Inc.; Operator Service Company, LLC;
Telecom North America, Inc.; Threshold
Communications, Inc.; WDT World
Discount Telecommunications, Inc.
PO Box 720128
Oklahoma City, Oklahoma 73172-0128

Mr. Jerry L. Miller
Arizona Telephone Company; Southwestern
Telephone Company
204 North Indiana Street
PO Box 88
Roachdale, Indiana 46172-0088

Ms. Sharon Mullin
AT&T Corp.; SBC Long Distance; Teleport
Communications America, LLC
2003 Point Bluff
Austin, Texas 78746-6236

Mr. Shawn Lanier
ATC Outdoors DAS, LLC
10 Presidential Way
Woburn, Massachusetts 01801

Ms. Lisa Jill Freeman
Bandwidth.com CLEC, LLC
900 Main Campus Drive, Suite 500
Raleigh, North Carolina 27606

Mr. Bill Gabor
BCE Nexxia Corporation
138 East Randolph, Suite 500
Chicago, Illinois 60601

Ms. Sadia Mendez
BCM One, Inc.
521 5th Avenue, 14th Floor
New York, New York 10175

Mr. Thomas P. Margavio
Bellsouth Long Distance
675 West Peachtree Street NE
Atlanta, Georgia 30308

Mr. Joe Londeree
Betterworld Telecom, LLC
11951 Freedom Drive, 13th Floor
Reston, Virginia 20190

Mr. Robert S. Rife
Broadband Dynamics, LLC
8757 East Via De Commercio, 1st Floor
Scottsdale, Arizona 85258

Mr. Jarrod Harper
Broadview Networks, Inc.
1018 West 9th Avenue
King of Prussia, Pennsylvania 19406

- 1 Mr. Ryan Tackett
Broadvox-CLEC, LLC; Cypress
Communications Operating Company, LLC
75 Erieview Plaza, Suite 400
2 Cleveland, Ohio 44114
- 3 Ms. Nancy McCarty
Broadwing Communications, LLC; Global
4 Crossing Local Services, Inc.; Global
Crossing Telecommunications, Inc.; Level 3
5 Communications, LLC; tw telecom of
arizona llc; WiTel Communications, LLC
1025 Eldorado Boulevard
6 Broomfield, Colorado 80021
- 7 Ms. Linda Cicco
BT Communications Sales, LLC
11440 Commerce Park Drive, Suite 1000
8 Reston, Virginia 20191
- 9 Ms. Lakisha Taylor
Budget Prepay, Inc.
1325 Barksdale Boulevard, Suite 200
10 Bossier City, Louisiana 71111
- 11 Mr. Ben Coker
Buehner-Fry, Inc.
389 SW Scalehouse Court, Suite 100
12 Bend, Oregon 97702
- 13 Ms. Joy Hornkohl
BullsEye Telecom, Inc.
25925 Telegraph Road, Suite 210
14 Southfield, Michigan 48033
- 15 Mr. Craig Konrad
Business Discount Plan, Inc.
One World Trade Center, Suite 800
16 Long Beach, California 90831
- 17 Mr. Kenny Perkins
c/o Business Network Long Distance, Inc.;
18 Communications Network Billing, Inc.;
Conectado, Inc.; Integrated Services, Inc.;
19 LCR Telecommunications, LLC; Multiline
Long Distance, Inc.; National Access Long
20 Distance, Inc.; Nationwide Long Distance
Service, Inc.; Network Service Billing, Inc.;
Norstar Telecommunications, LLC;
21 Residential Long Distance, Inc.
3075 Breckinridge Boulevard, Suite 425
22 Duluth, Georgia 30096-4981
- 23 Ms. Rebecca W. West
c/o Business Telecom, LLC; CTC
24 Communications Corp.; DeltaCom, Inc.;
EarthLink Business, LLC
2851 Charlevoix Drive SE, Suite 209
25 Grand Rapids, Michigan 49546
- 26 Ms. Brenda C. Crosby
Cascade Access, LLC; Rio Virgin
27 Telephone Company
303 SW Zobrist
Estacada, Oregon 97023
- 28 Mr. Joshua Jobe
Cbeyond Communications, LLC
2323 Grand Boulevard, Suite 925
Kansas City, Missouri 64108
- Ms. Debbie Baker
Central Telecom Long Distance, Inc.
102 South Tejohn Street, 11th Floor
Colorado Springs, Colorado 80903
- Ms. Julie M. Barlow
Cincinnati Bell Any Distance, Inc.
221 East Fourth Street, Room 103-1070
Cincinnati, Ohio 45202
- Mr. Mark Montano
Citynet Arizona, LLC
170 S. William Dillard Drive, Suite 115
Gilbert, Arizona 85233
- Mr. James Mancuso
Clear World Communications Corporation
2901 West MacArthur Boulevard, Suite 204
Santa Ana, California 92704
- Mr. Michael Nelson
Comcast Phone of Arizona, LLC
183 Inverness Drive, West
Englewood, Colorado 80112
- Mr. ZhenHui Lin
ComNet (USA) LLC
700 South Flower Street, Suite 950
Los Angeles, California 90017
- Mr. Richard Minervino
ComTech21, LLC
One Barnes Park South
Wallingford, Connecticut 06492
- Mr. Joe Nicotra
Consumer Telcom, Inc.
701 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
- Mr. Eric Burgess
Conterra Ultra Broadband, LLC
2101 Rexford Road, Suite 200 E
Charlotte, North Carolina 28211
- Mr. Troy Judd
Copper Valley Telephone, Inc.; Valley
Connections, LLC; Valley Telephone
Cooperative, Inc.
752 East Maley
Willcox, Arizona 85643
- Mr. Mark DiNunzio
Cox Arizona Telcom, LLC
1550 West Deer Valley Road
Phoenix, Arizona 85027
- Ms. Susan Cockerham
c/o Crexendo Business Solutions, Inc.; DSITI,
LLC; Global Tel*Link Corporation;
Network Enhanced Technologies, Inc.;
Public Communications Services, Inc.; Q
Link Wireless, LLC; TouchTone
Communications, Inc.; Value-Added
Communications, Inc.; Velocity, The
Greatest Phone Company Ever, Inc.
1725 Windward Concourse, Suite 150
Alpharetta, Georgia 30005
- Mr. Rick Ramirez
Curatel, LLC
1605 West Olympic Boulevard, 8th Floor
Los Angeles, California 90015

1 Mr. Robert Millar
Crown Castle NG West LLC; NewPath
Networks, LLC
2000 Corporate Drive
2 Canonsburg, Pennsylvania 15317

3 Mr. Joseph Pugliese
Custom Network Solutions, Inc.
210 Route 4 East, Suite 201
4 Paramus, New Jersey 07652

5 Mr. William Perna
Custom Teleconnect, Inc.
6242 West Desert Inn Road
6 Las Vegas, Nevada 89146

7 Ms. Tamara Volmer
dishNet Wireline, LLC
9601 South Meridian Boulevard
8 Englewood, Colorado 80112

9 Mr. Robert E. Mocas
Easton Telecom Services LLC
3046 Brecksville Road,
Summit II-Unit A
10 Richfield, Ohio 44286

11 Ms. Donna Heaston
c/o Electric Lightwave, LLC; Eschelon
Telecom of Arizona, Inc.; Mountain
12 Telecommunications of Arizona, Inc.
6160 Golden Hills Drive
13 Golden Valley, Minnesota 55416

14 Ms. Sarah M. Baker
Encompass Communications, LLC
119 West Tyler Street, Suite 286
15 Longview, Texas 75601

16 Mr. Bruce Summers
Enhanced Communications Group, LLC
312 SE Delaware Avenue
17 Bartlesville, Oklahoma 74005

18 Mr. Thomas J. Haluskey
Enhanced Communications Network, Inc.
1031 South Glendora Avenue
19 West Covina, California 91790

20 Mr. Michael Ruziska
EnTelegent Solutions, Inc.
3800 Arco Corporate Drive, Suite 310
Charlotte, North Carolina 28273

21 Mr. Daniel L. Timm
ExteNet Systems, Inc.
22 3030 Warrenville Road, Suite 340
Lisle, Illinois 60532

23 Mr. Scott Howsare
First Choice Technology, Inc.
24 903 Lake Lilly Drive, Suite A125
Maitland, Florida 32751

25 Ms. Shannon Dieringer
First Communications, LLC
26 3340 West Market Street
Akron, Ohio 44333

27 Ms. Neomi Groman
France Telecom Corporate Solutions, LLC
13775 McLearn Road, Mail Stop 1100
28 Oak Hill, Virginia 20171-3212

Mr. Raymond Lee
c/o Frontier Citizens Utilities Rural; Frontier
Communications of America, Inc.; Frontier
Communications of the Southwest, Inc.;
Frontier Communications of the White
Mountains, Inc.; Frontier Communications
Online and Long Distance; Navajo
Communications Company, Inc.; SNET
America, Inc.
1800 41st Street
Everett, Washington 98203

Ms. Bethany M. Becker
GC Pivotal, LLC
200 South Wacker Drive, Suite 1650
Chicago, Illinois 60606

Mr. Bruce Holdridge
Gila Local Exchange Carrier
7065 West Allison Road, Box 5020
Chandler, Arizona 85226

Ms. Jane Mulvehill
Globalinx Enterprises, Inc.
5LINX Enterprises, Inc.
275 Kenneth Drive
Rochester, New York 14623

Mr. H. Jay Hill
Go Solo Technologies, Inc.
5410 Mariner Street, Suite 175
Tampa, Florida 33609

Mr. Shala Yazdani
Gold Line Telemanagement, Inc.
300 Allstate Parkway
Markham Ontario, Canada L3R OP2

Mr. Richard Wurman
Granite Telecommunications, LLC
100 Newport Avenue Extension
Quincy, Massachusetts 02171

Mr. Mark Salomone
Grasshopper Group, LLC
197 1st Avenue, Suite 200
Needham, Massachusetts 02494

Mr. Omesh Sharma
Greenfly Networks, Inc.
450 Townsend Street
San Francisco, California 94107

Mr. Robert McCausland
Hypercube Telecom, LLC
3200 West Pleasant Run Road, Suite 300
Lancaster, Texas 75146

Ms. Ellen Schmidt
iBasis Retail, Inc.
20 Second Avenue
Burlington, Massachusetts 01803

Mr. Carl Billek
IDT America, Corp.
550 Broad Street
Newark, New Jersey 07102

Ms. Kimm Partridge
incontact, Inc.
7730 South Union Park Avenue, Suite 500
Midvale, Utah 84047

1 Mr. Jim Holmquist
Inmark, Inc.
3595 South Town Center Drive, Suite 112
Las Vegas, Nevada 89135

2 Mr. Mark Lammert
3 Intellicall Operator Services, Inc.
740 Florida Central Parkway, Suite 2028
4 Longwood, Florida 32750

5 Ms. Colleen Lockett
Intrado Communications Inc.
1601 Dry Creek Drive
6 Longmont, Colorado 80503

7 Ms. Angela Hoke
Ionex Communications North, Inc.
2323 Grand Boulevard, Suite 925
8 Kansas City, Missouri 64108

9 Ms. Donna Palumbo
IPC Network Services, Inc.
3 Second Street, 15th Floor
10 Jersey City, New Jersey 07311

11 Mr. Michael Sharp
Jive Communications, Inc.
3214 North University Avenue, Suite 610
12 Provo, Utah 84604

13 Ms. Rosa Torraca
Leap Frog Telecom, LLC
8426 East Shea Boulevard
14 Scottsdale, Arizona 85260

15 Mr. Rueben Quinones
Legacy Long Distance International, Inc.
10833 Valley View Street, Suite 150
16 Cypress, California 90630

17 Mr. Scott A. White
Legent Comm LLC
3595 South Town Center Drive, Suite 112
18 Las Vegas, Nevada 89135

19 Ms. Sarah Oistad
LoTel
4946 Devonshire Circle
20 Shorewood, Minnesota 55331

21 Ms. Alex Valencia
Matrix Telecom, Inc.
433 East Las Colinas Boulevard, Suite 500
22 Irving, Texas 75039

23 Ms. Anna Sokolin-Maimon
MCC Telephony of the West, LLC
One Mediacom Way
24 Mediacom Park, New York 10918

25 Mr. Karl Tucker
c/o MCI Communications Services, Inc.;
MCImetro Access Transmission Services
26 LLC; Teleconnect Long Distance Services
and Systems Company; TTI National, Inc.
One Verizon Way
Baskin Ridge, New Jersey 07920

27 Mr. Richard Monto
Neutral Tandem- Arizona, LLC
550 West Adams Street, Suite 900
28 Chicago, Illinois 60661

Mr. Lyndall Nipps
c/o McLeodUSA Telecommunications
Services, LLC; PAETEC Communications,
Inc.; Talk America, Inc.
655 West Broadway, Suite 850
San Diego, California 92101

Ms. Kristen Henzi
MegaPath Corporation
6800 Koll Center Parkway, Suite 200
Pleasanton, California 94566

Mr. Timothy A. Thompson
Mercury Voice and Data, LLC
311 NNW Loop 323
Tyler, Texas 75702

Mr. Ralph Dichy
Metropolitan Telecommunications of
Arizona, Inc.
55 Water Street, 32nd Floor
New York, New York 10041

Mr. John Stuart
Midvale Telephone Company; Rural
Network Services, Inc.
2205 Keithley Creek Road
Midvale, Idaho 83645

Mr. Jon Brinton
Mitel NetSolutions, Inc.
1146 North Alma School Road
Mesa, Arizona 85201-3000

Mr. Thomas F. Speed, Jr.
National Directory Assistance, LLC
12700 Townepark Way
Louisville, Kentucky 40243

Mr. Vincent Petrescu
NECC Telecom, Inc.; Pulse Telecom, LLC
4969 US Highway 42, Suite 2700
Louisville, Kentucky 40222

Ms. Gina Wybel
Netwolves Network Services, LLC
47 10 Eisenhower Boulevard, Suite E8
Tampa, Florida 33634

Mr. Jonathan Kaufman
Network Billing Systems, LLC
155 Willowbrook Boulevard
Wayne, New Jersey 07470

Ms. Stephanie Jackson
Network Communications International
Corp.
606 East Magrill Street
Longview, Texas 75601

Ms. Susan Freeman
Network Operator Services, Inc.
PO Box 3529
Longview, Texas 75606

Ms. Amanda Harris
NetworkIP, LLC
119 West Tyler Street, Suite 100
Longview, Texas 75601

1 Ms. Karyn Bartel
New Century Telecom, Inc.
3050 Royal Boulevard South, Suite 175
2 Alpharetta, Georgia 30022

3 Mr. Glen Nelson
New Horizons Communications Corp.
420 Bedford Street, Suite 250
4 Lexington, Massachusetts 02420

5 Mr. Bruce A. White
NextGen Communications, Inc.
275 West Street, Suite 400
6 Annapolis, Maryland 21401

7 Ms. Colleen Guffey
NobelTel, LLC
5973 Avenida Encinas, Suite 202
8 Carlsbad, California 92008

9 Mr. Todd Lesser
North County Communications Corporation
3802 Rosecrans, Suite 485
10 San Diego, California 92110

11 Ms. Jessica Renneker
c/o NOS Communications, Inc.; NOSVA
Limited Partnership; QuantumLink
Communications
12 250 Pilot Road
Las Vegas, Nevada 89119

13 Mr. Don Pittman
NTS Communications, Inc.
1220 Broadway
14 Lubbock, Texas 79401

15 Mr. Enrique Martinez
OneLink Communications, Inc.
8400 North University Drive, Suite 204
16 Tamarac, Florida 33321

17 Mr. Scott Sawyer
Onvoy, LLC
10300 6th Avenue North
18 Plymouth, Minnesota 55441

19 Mr. Bruce Li
OPEX Communications, Inc.; Total
Holdings, Inc.
20 3777 Long Beach Boulevard, Suite 300
Long Beach, California 90807

21 Mr. Brad VanLeur
OrbitCom, Inc.
1701 North Louise Drive
22 Sioux Falls, South Dakota 57107

23 Mr. Kurt Tittelbach
PAXX Telecom, LLC
PO Box 12637
24 Scottsdale, Arizona 85267

25 Ms. Sharon Porter
PNG Telecommunications, Inc.
8805 Governor's Hill Drive
26 Cincinnati, Ohio 45249

27 Ms. Karrie Willis
POPP.com, Inc.
620 Mendelssohn Avenue North
28 Golden Valley, Minnesota 55427

Mr. Keith Nussbaum
Preferred Long Distance, Inc.
16830 Ventura Boulevard, Suite 350
Encino, California 91436

Ms. Elena Thomasson
Primus Telecommunication, Inc.
3903 Northdale Boulevard, Suite 220E
Tampa, Florida 33624

Ms. Jenna Brown
QuantumShift Communications, Inc.
12657 Alcosta Boulevard, Suite 418
San Ramon, California 94583

Mr. Bill Bryant
Re-Invent Telcom, LLC
10190 East McKellips Road
Scottsdale, Arizona 85256

Mr. Terry Pavek
Sage Telecom Communications, LLC
10440 North Central Expressway, Suite 700
Dallas, Texas 75231

Mr. Marc McLemore
South Central Utah Telephone Association,
Inc.
PO Box 555
45 North 100 West
Escalante, Utah 84726

Mr. Ed Kazar
Spectrotel, Inc.
3535 State Highway 66, Suite 7
Neptune, New Jersey 07753

Mr. Stephen Kukta
Sprint Communications Company L.P.
201 Mission Street, Suite 1500
San Francisco, California 94105

Ms. Heidi Huffman
Stratus Networks, Inc.
4700 North Prospect Road
Peoria Heights, Illinois 61616

Mr. Matthew J. Boos
Table Top Telephone Company, Inc.
47034 Road 201
PO Box 21
O'Neals, California 93645

Ms. Sharon Thomas
Talk America Services, LLC
PO Drawer 200
Winter Park, Florida 32790-0200

Mr. Andrew Rasura
TCAST Communications, Inc.
24251 Town Center Drive, 2nd Floor
Valencia, California 91355

Mr. William Linsmeier
TCO Network, Inc.
13400 Bishops Lane, Suite 295
Brookfield, Wisconsin 53005

Mr. Phil Berry
TDS Long Distance Corporation
525 Junction Road
Madison, Wisconsin 53717

1 Mr. Peter Goldberg
Telco Experts, LLC
169 Ramapo Valley Drive, Floor 3, Suite
303
2 Oakland, New Jersey 07436

3 Mr. Ashar Syed
Tele Circuit Network Corporation
1815 Satellite Boulevard, Suite 504
4 Duluth, Georgia 30097

5 Mr. David Shorey
Telecom Management, Inc.
39 Darling Avenue
6 South Portland, Maine 04106

7 Mr. Jeff Daniels
Teledata Solutions, Inc.
1767 Route 22 West
8 Union, New Jersey 07083

9 Ms. Carmen Asorey
TeleDias Communications, Inc.
1100 California Avenue, Suite 220
10 Reno, Nevada 89509

11 Ms. Christy Bodaness
Telemanagement Systems, Inc.
8135 South Algonquian Circle
12 Aurora, Colorado 80016

13 Ms. Natalie Verette
TeleQuality Communications, Inc.
21232 Gathering Oaks, Suite 107
14 San Antonio, Texas 78260

15 Mr. Clark Peterson
Telesphere Access, LLC
9237 East Via de Ventura, Suite 250
16 Scottsdale, Arizona 85258

17 Mr. Avelino Iglesia
TeleUno, Inc.
2754 West Atlantic Boulevard, Suite 8
18 Pompano Beach, Florida 33069

19 Ms. Oyebimpe-Oyewale-Smith
Telmex USA, L.L.C.
3350 SW 148th Avenue, Suite 400
20 Miramar, Florida 33027

21 Ms. Melissa Driskell
Telrite Corporation
4113 Monticello Street
22 Covington, Georgia 30014

23 Mr. Terry Pavek
Telscape Communications, Inc.
10440 North Central Expressway, Suite 700
24 Dallas, Texas 75231

25 Mr. Michael W. Quinn
c/o Time Warner Cable Business, LLC;
Time Warner Cable Information Services
(Arizona), LLC
13820 Sunrise Valley Drive
26 Herndon, Virginia 20171

27 Mr. Collin Greene
TNCI Operating Company, LLC
114 East Haley Street, Suite A
28 Santa Barbara, California 93101

Mr. Yasunori Matsuda
Total Call International, Inc.
1411 West 190th Street, Suite 650
Gardena, California 90248

Ms. Patricia Morrison
Tower Cloud, Inc.
9501 International Court North
St. Petersburg, Florida 33716

Mr. Hugo Olivares
Transtelco, Inc.
500 West Overland Avenue, Suite 310
El Paso, Texas 79901

Mr. Colin Wood
Transworld Network, Corp.
255 Pine Avenue North
Oldsmar, Florida 34677

Ms. Shirley Ortiz
Triplet Mountain Communications, Inc.
PO Box 779
Peridot, Arizona 85542

Mr. Matthew Myers
Unite Private Networks, LLC
120 South Stewart Road
Liberty, Missouri 64068

Mr. Robert Young
US Telecom Long Distance, Inc.
3960 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89109

Ms. Marie Cataldo
c/o Verizon Long Distance, LLC; Verizon
Select Services, Inc.
One Verizon Way, MC VC21E027A
Basking Ridge, New Jersey 07920

Mr. Keith Cummings
Voicecom Telecommunications, LLC
5900 Windward Parkway, Suite 500
Alpharetta, Georgia 30005

Mr. Brian Bothroyd
Westel, Inc.
8303 North Mopac Expressway, Suite C-400
Austin, Texas 78759-8370

Ms. Natalia Rodrigues
Wholesale Carrier Services, Inc.
12350 NW 39th Street
Coral Springs, Florida 33067

Ms. Erla Erlingsdottir
Wide Voice, LLC
410 South Rampart, Suite 390
Las Vegas, Nevada 89145

Mr. James MacKenzie
WiMacTel, Inc.
13515 I Circle
Omaha, Nebraska 68137

Ms. Jean Parker
Working Assets Funding Services
101 Market Street, Suite 700
San Francisco, California 94105

1 Ms. Tina Tecce
X2Comm, Inc.
270 South Main Street
2 Flemington, New Jersey 08822

3 Mr. Mark Pavol
YMax Communications Corp.
PO Box 6785
4 West Palm Beach, Florida 33405-6785

5 Mr. Tim Gentry
Zayo Group, LLC
400 Centennial Parkway, Suite 200
Louisville, Colorado 80027

6 Janice Alward, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
8 Phoenix, Arizona 85007

9 Thomas Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
10 1200 W. Washington Street
Phoenix, Arizona 85007

- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
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NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

[R16-29]

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R14-2-802 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: Arizona Constitution Article XV, § 3; A.R.S. §§ 40-202, 40-203, and 40-321
- Implementing statute: Arizona Constitution Article XV, § 3; A.R.S. §§ 40-202, 40-203, and 40-321
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: 22 A.A.R. 424, March 4, 2016 (*in this issue*).
- 4. The agency's contact person who can answer questions about the rulemaking:**
- Name: Maureen Scott, Senior Staff Counsel, Legal Division
Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007
- Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: mscott@azcc.gov
Web site: www.azcc.gov

Name: Robin Mitchell, Staff Attorney, Legal Division



Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: RMitchell@azcc.gov

Web site: www.azcc.gov

Name: Matthew Connolly, Executive Consultant, Utilities Division

Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-0856

Fax: (602) 364-2270

E-mail: MConnolly@azcc.gov

Web site: www.azcc.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The purpose of the proposed rule change would be to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interest Rules, except as may be determined by a future Arizona Corporation Commission order. The specific change proposed is based upon and supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013.

The proposed rule change is expected to relieve eligible telecommunications companies from having to submit to the Commission applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Class A Investor-owned Utilities and Affiliates Annual Reports.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

NOTE – The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a “substantially similar” statement.

Economic, Small Business and Consumer Impact Statement

1. Identification of the proposed rulemaking.

The purpose of the proposed rule change would be to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interest Rules, except as may otherwise be determined by a future Commission



order. The specific change proposed is based upon and supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013¹.

2. **Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.**
 - a. Telecommunications service providers whose services have been determined to be competitive in Arizona; and the
 - b. Arizona Corporation Commission.

3. **Cost-benefit analysis.**
 - a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.**

There are no probable costs to the Commission. Probable benefits to the Commission of the proposed rulemaking would include cost and time savings associated with no longer having to process applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to process Class A Investor-Owned Utilities and Affiliates Annual Reports filed by telecommunications companies.
 - b. **Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

Not applicable
 - c. **Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

Probable benefits to telecommunications companies meeting the eligibility requirement of the proposed rulemaking would include cost and time savings associated with no longer having to submit applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Class A Investor-Owned Utilities and Affiliates Annual Reports. Payroll expenditures of eligible companies will probably not be affected. Any revenue increase of eligible companies as a result of no longer having to perform the aforementioned filings is probably de minimis.

4. **Probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.**

No impact on employment is expected.

5. **Probable impact of the proposed rulemaking on small businesses.**
 - a. **Identification of the small businesses subject to the proposed rulemaking.**

¹ In 2013, the legislature added Subpart (F) to the statute which reads as follows: F: "This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section."

To the extent that a small business may be involved in a future merger with an eligible telecommunication company, the small business may benefit as such a transaction would be less regulatory burdensome in Arizona.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

There should be no costs or benefits to private persons who are customers of eligible telecommunications companies as a result of this rule making.

6. Probable effect on state revenues.

None

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission is unaware of any alternative methods of achieving the purpose of the rule making that would be less intrusive or less costly.

8. Description of any data on which the rule is based.

The proposed rulemaking is not based on data.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

The proposed rulemaking is not based on data.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Maureen Scott, Senior Staff Counsel, Legal Division

Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

Web site: www.azcc.gov

Name: Robin Mitchell, Staff Attorney, Legal Division

Address: Corporation Commission



1200 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: mscott@azcc.gov

Name: Matthew Connolly
Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-0856
Fax: (602) 364-2270
E-mail: MConnolly@azcc.gov
Web site: www.azcc.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Commission has scheduled the following oral proceeding for public comments:

Date: April 14, 2016
Time: 10:00 a.m.
Location: Arizona Corporation Commission
Hearing Room 1
1200 W. Washington St.
Phoenix, AZ 85007

Nature: Oral proceeding

The Commission requests that written comments be filed by April 4, 2016 and that responsive written comments be filed by April 14, 2016. The comments may be filed with the Commission's Docket Control at the address listed above. Please reference Docket No. AU-00000A-15-0246 on all documents.

Oral comments may be provided at the proceedings on April 14, 2016, at 10:00 a.m., as noted above.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule is no more stringent than Federal Communications Commission rules. (47 C.F.R. 63.04)

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

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

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS

Section

R14-2-802. Applicability

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 pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be determined by a future Commission order.
- B. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R16-30]

PREAMBLE

- | <u>1. Article, Part, or Section Affected</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R20-5-715 | Amend |
- 2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:**
 Authorizing statutes: A.R.S. §§ 23-107(A)(1); 23-961.01(B)
 Implementing statute: A.R.S. § 23-961.01(F)
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 22 A.A.R. 239, February 12, 2016.
- 4. The agency's contact person who can answer questions about the rulemaking:**
- | | |
|------------|---|
| Name: | Scott J. Cooley, Attorney |
| Address: | Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007 |
| Telephone: | (602) 542-5781 |
| Fax: | (602) 542-6783 |
| E-mail: | scott.cooley@azica.gov |
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 A.R.S. § 23-961.01(F) requires that the Industrial Commission of (Commission) "adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits required under [A.R.S. Title 23, Chapter 6, Workers' Compensation]. These rules shall include, at a minimum, matters pertaining to [among other things] . . . specific and aggregate excess insurance . . . necessary for participation in and administration of the workers'

EXHIBIT 2

AFFILIATED INTERESTS RULEMAKING

FORMAL COMMENTS, STAFF RESPONSES, AND COMMISSION RESPONSES

WRITTEN COMMENTS		
Comment	Staff Response	Commission Response
<p>Qwest Corporation dba CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively "CenturyLink") stated the following in support of the rule revision in the Notice of Proposed Rulemaking ("NPRM"):</p> <ul style="list-style-type: none"> • The Affiliated Interests Rules were adopted by the Commission six years before Congress adopted the Telecommunications Act of 1996, which opened local telecommunications services to competition; • According to the decision in which they were adopted (Decision No. 56844 (March 14, 1990)), the Commission's purpose in adopting the Affiliated Interests Rules was to protect ratepayers from paying rates that included costs associated with holding company structure, financially struggling affiliates, or sweetheart deals with affiliates intended to extract capital from the utility to subsidize non-utility operations; • As a result of the Telecommunications Act of 1996, the telecommunications industry in Arizona and the rest of the nation has grown and become more fully competitive, providing customers with numerous options for service, including service from non-regulated providers; • The existence of competition has 	<p>Staff believes that the proposed rule revision will eliminate the need for the Commission to process and grant certain waivers of the Affiliated Interests Rules in the future and that this will conserve Commission resources and the resources of the affected telecommunications utilities. Staff supports the proposed rule revision and recommends that it be adopted.</p>	<p>The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.</p>

<p>made it impossible for utilities to pass through to utility customers, through rate increases, the losses from bad business diversification decisions, and without the ability to pass through such costs, utilities “have no incentive to engage in cross-subsidization or other activities that financially weaken the utility operation”;</p> <ul style="list-style-type: none"> • In 2013, in recognition of the competitive telecommunications market as a substitute for Commission regulation, the Arizona Legislature amended A.R.S. § 40-285 to exempt competitive telecommunications providers from the requirement to obtain Commission approval to dispose of assets or acquire the stock of other public service corporations, and the rule revision is consistent with the amendment to A.R.S. § 40-285; • The Commission has granted numerous limited waivers to telecommunications utilities, which suggests that the Affiliated Interests Rules are overly broad; • Because separate utilities have filed for waivers from portions of the Affiliated Interests Rules, and the Commission has not granted any utility complete exemption, telecommunications utilities are now subjected to disparate levels of relief from the Affiliated Interests Rules; and • Telecommunications utilities, Staff, and the Commission are spending “inordinate amounts of time and energy on waivers for matters . . . better addressed by a total exemption from the [Affiliated Interests Rules] for competitive providers.” 		
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ORAL COMMENTS		
Comment	Staff Response	Commission Response
Counsel for competitive providers XO Communications Services, LLC; Talk America, LLC; McLeodUSA Telecommunications Services; Paetec Communications, LLC; and Windstream Services, LLC stated that all of these carriers support the proposed rule change for efficiency and economic reasons and hope that the Commission will adopt it; that the proposed rule change tracks the legislative change to A.R.S. § 40-285 made in 2013; that putting the language of the revision into a separate subsection rather than including it in subsection (A) is a great idea; and that a number of counsel's clients would be filing their Affiliated Interests Rules Annual Reports that week, although those reports would not provide the Commission any useful information because the companies are not rate regulated.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for Cox Arizona Telecom, LLC ("Cox") stated that Cox supports the proposed amendment because the Affiliated Interests Rules were adopted in an era of monopoly utilities due to concerns regarding traditional rate of return regulation, the market has since changed radically to a competitive market that does not need the Affiliated Interests Rules, and the amendment will remove an unnecessary regulatory burden from the competitive telecommunications market.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for AT&T, Incorporated ("AT&T") stated that AT&T supports the rule amendment as stated in its informal comments filed on December 16, 2015.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for Qwest Corporation dba CenturyLink QC, CenturyLink Communications, L.L.C., and	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule

<p>CenturyLink Public Communications, Inc. (collectively "CenturyLink") stated that it had filed written comments and that it is in favor of the rule amendment for the reasons stated in those written comments.</p>		<p>revision is necessary as a result of this comment.</p>
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EXHIBIT 3

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A.R.S. § 41-1055.

B. Economic, Small Business and Consumer Impact Statement**1. Identification of the proposed rulemaking.**

The purpose of the proposed rule change would be to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interest Rules, except as may otherwise be determined by a future Commission order. The specific change proposed is supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013.¹

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

- a. Telecommunications service providers whose services have been determined to be competitive in Arizona; and the
- b. Arizona Corporation Commission.

3. Cost-benefit analysis.**a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.**

There are no probable costs to the Commission. Probable benefits to the Commission of the proposed rulemaking would include cost and time savings associated with no longer having to process applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to process Class A Investor-Owned Utilities and Affiliates Annual Reports filed by telecommunications companies.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

Not applicable.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

¹ In 2013, the legislature added Subpart (F) to the statute which reads as follows: "F: This section does not apply to a telecommunications corporation whose retail telecommunications services are all classified as competitive by the commission, except as may otherwise be determined by a commission order after the effective date of this amendment to this section."

Probable benefits to telecommunications companies which would be exempted by the proposed rulemaking would include cost and time savings associated with no longer having to submit applications for waivers of the Affiliated Interest Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Class A Investor-Owned Utilities and Affiliates Annual Reports. Payroll expenditures of exempted companies will probably not be affected. Any revenue increase of exempted companies as a result of no longer having to perform the aforementioned filings is probably de minimis.

4. **Probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.**

No impact on employment is expected.

5. **Probable impact of the proposed rulemaking on small businesses.**

a. **Identification of the small businesses subject to the proposed rulemaking.**

To the extent that a small business may be involved in a future merger with an exempted telecommunication company, the small business may benefit as such a transaction would be less burdensome from a regulatory perspective.

b. **Administrative and other costs required for compliance with the proposed rulemaking.**

None.

c. **A description of the methods that the agency may use to reduce the impact on small businesses.**

Not applicable.

d. **Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

There should be no costs or benefits to private persons who are customers of exempted telecommunications companies as a result of this rulemaking.

6. **Probable effect on state revenues.**

None.

7. **Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

The Commission is unaware of any alternative methods of achieving the purpose of the rulemaking that would be less intrusive or less costly.

8. **Description of any data on which the rule is based.**

While some data was considered, the proposed rulemaking is not based on this data.

C. **If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.**

While some data was considered, the proposed rulemaking is not based on this data.