

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0293T

IN THE MATTER OF THE VERIFIED PETITION OF TRIAL STAFF OF THE COMMISSION FOR A DECLARATORY ORDER REGARDING THE APPLICABILITY OF C.R.S. § 17-42-103 AND CONSTRUING THE DEFINITION OF THE TERM “PENAL COMMUNICATION SERVICES.”

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MOTION FOR JOINDER, AND
REQUIRING CONFERRAL AND FILING**

Mailed Date: August 18, 2022

I. STATEMENT AND BACKGROUND

A. Statement

1. This Decision grants the Colorado Public Utilities Commission Trial Staff’s (Staff) request to join HomeWAV LLC (HomeWAV) as a party; requires the parties to confer on a procedural schedule; and requires Staff to submit a proposed consensus procedural schedule.

B. Procedural History and Background

2. On June 22, 2022, Staff filed the above-captioned Verified Petition (Petition) seeking a declaratory order pursuant to Rule 1304(f) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Within its Petition, Staff requests that the Commission compel joinder of HomeWAV, who Staff contends is an indispensable party.¹

¹ Petition at 1.

3. On June 27, 2022, Staff filed a Certificate of Service and Conferral on Joinder (Conferral).

4. On July 19, 2022, the Commission accepted the Petition, finding that evaluating the Petition's questions will remove uncertainty as to whether the reporting requirements in § 17-42-103(3), C.R.S. apply to HomeWAV, and uncertainty as to the scope of the term "penal communications services."² At the same time, the Commission provided notice of the Petition to interested persons and entities; established an August 8, 2022 intervention and responsive brief deadline; and referred this matter to an Administrative Law Judge (ALJ) for disposition.³

5. No interventions or responsive briefs were filed.

II. FINDINGS AND CONCLUSIONS

A. Motion to Compel HomeWAV's Joinder

6. In its Petition, Trial Staff asks that HomeWAV be joined as an indispensable party to this proceeding because it seeks a determination that HomeWAV is a penal communications service provider and is subject to the requirements of § 17-42-103(3), C.R.S.⁴

7. Staff explains that it provided the Petition to HomeWAV's counsel via email; that HomeWAV waived formal service of the Petition; and that HomeWAV does not object to being joined in this proceeding as requested in Staff's Petition.⁵

8. For the reasons stated in Staff's Petition and HomeWAV's Intervention, the ALJ finds that HomeWAV is an indispensable party. For this reason and given that HomeWAV does not object to being joined, the ALJ grants Staff's Motion to Compel HomeWAV's Joinder.

² Decision No. C22-0419-I at 4 and 5 (mailed July 19, 2022).

³ *Id.* at 5.

⁴ Petition at 2-3.

⁵ Conferral at 1.

B. Conferral and Proposed Procedural Schedule

9. In the Petition, Staff states that this matter involves purely legal questions that can be resolved on legal briefs without an evidentiary hearing.⁶ The record does not reveal information as to HomeWAV's position on whether an evidentiary hearing is necessary.

10. Based on the Petition, it appears that the only facts at issue relate to HomeWAV's inmate communication operations.⁷ Assuming that this is correct, if the parties are able to stipulate to relevant facts concerning HomeWAV's inmate communication operations, the Petition can be decided based on legal briefs without an evidentiary hearing. If not, an evidentiary hearing is necessary.

11. Given the above, the parties are required to confer on whether an evidentiary hearing is necessary and a proposed procedural schedule to move this matter toward disposition.

12. If the parties agree that no evidentiary hearing is necessary, their conferral must include proposed deadlines to make a joint filing with stipulated facts and to file motions for summary judgment (consistent with Rule 1405(f), 4 CCR 723-1) and responses to the same.

13. If the parties determine that an evidentiary hearing is necessary, their conferral must include proposed hearing dates, deadlines to file exhibits, witness lists, final exhibits, prehearing motions, stipulations, settlement agreements, a joint witness examination matrix, and post-hearing statements of position. In addition, the parties must also confer on the manner in which they prefer the hearing to be held. Specifically, the hearing may be held in-person, remotely, or by using a combination of both. If the parties choose the in-person option, all

⁶ Petition at 1.

⁷ Petition at 2.

parties and witnesses will be required to appear in person at the Commission's Office in Denver. If the parties choose the remote option, all parties and witnesses will appear by video-conference using Zoom. If the parties choose the hybrid option, the ALJ will lead the hearing in person at the Commission's designated hearing room, and any party or witness wishing to appear in person or remotely may do so.

14. As set forth below, Staff is required to make a filing explaining the results of the parties' conferral and a proposed consensus procedural schedule consistent with the above discussion.

III. ORDER

A. It Is Ordered That:

1. Colorado Public Commission Utilities Trial Staff's (Staff) Motion to Compel Joinder (in its above-captioned Petition) of HomeWAV LLC is granted. HomeWAV LLC is a party to this proceeding.

2. Consistent with the above discussion, the parties must confer on a procedural schedule to move this matter toward resolution.

3. On or by August 26, 2022, Staff must make a filing explaining the results of the parties' conferral, and providing a proposed consensus procedural schedule that includes the relevant items discussed above.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director