

Decision No. R02-1261

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-463AT

IN THE MATTER OF THE APPLICATION OF MILE HIGH TELECOM
JOINT VENTURE TO DISCONTINUE OR CURTAIL JURISDICTIONAL
TELECOMMUNICATIONS SERVICE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
GRANTING APPLICATION TO
DISCONTINUE JURISDICTIONAL
TELECOMMUNICATIONS SERVICE,
APPROVING TRANSITION PLAN
AND DESIGNATING DEFAULT PROVIDER**

Mailed Date: November 7, 2002

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I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. On August 30, 2002, Applicant, Mile High Telecom Joint Venture (the Joint Venture), filed an application seeking authorization from this Commission to discontinue providing jurisdictional telecommunications service (service) to the Joint Venture's customers in Colorado due to a notice of

discontinuance of service issued by Qwest Corporation (Qwest) and predicated upon the Joint Venture's failure to pay Qwest the undisputed portions of Qwest's invoices for resale services (Exhibit No. 12).

B. On September 16, 2002, Qwest filed its Motion to Set Emergency Hearing and Approve Qwest Corporation's Proposed Transition Plan with Request to Shorten Response Time requesting the Commission to set an Emergency Hearing to consider, evaluate, and order the implementation of Qwest's Proposed Transition Plan and citing grounds including potential financial loss from continuing service to the Joint Venture.

C. On September 16, 2002, the Joint Venture filed a proposed transition plan in order to switch customers of resold local exchange and emerging competitive telecommunications services to another provider.

D. On September 17, 2002, Staff of the Colorado Public Utilities Commission (Staff) filed its motion to require Commission approval of customer notice to be issued in this docket.

E. On September 18, 2002, the Commission by Decision No. C02-1033, found that good cause had been shown for an emergency hearing to be set, and granted Qwest's motion to set an emergency hearing. The Commission also granted Staff's motion to require Commission approval of any customer notice

provided by the Joint Venture regarding its discontinuance of telecommunications services and referred the matter to an Administrative Law Judge for a hearing as soon as practicable.

F. On September 25, 2002, the Colorado Office of Consumer Counsel (the OCC) filed a motion to approve the OCC's Proposed Transition Plan, which was responsive to Qwest's proposed transition plan.

G. On September 25, 2002, Premier Communications, Inc. (Premier), filed its request to be designated as the default provider in any transition plan adopted by the Commission in this Docket.

H. On October 1, 2002, by Decision No. R02-1091-I, the matter was set for hearing on October 16, 2002.

I. On October 10, 2002, the OCC amended its proposed transition plan (Exhibit No. 2). Thereafter, the OCC filed its Motion to Approve the Amended Proposed Transition Plan on October 11, 2002 (Exhibit No. 13). The OCC requested that the Commission adopt its Amended Proposed Transition Plan, including customer notice and list of alternative providers, as filed and subsequently amended through testimony at hearing (the Proposed Transition Plan).

J. At the October 16, 2002 hearing, as a preliminary matter, Mr. Glaser moved to withdraw as counsel for the Joint Venture. Mile High Telecom Partners, LLP objected to his

representation. Mr. Glaser indicated he would be unable to represent the Joint Venture due to a conflict of interest between the two partners comprising the Joint Venture: On Systems Technology, LLC (On Systems) and Mile High Telecom Partners, LLP (Partners). Further, Tim Wetherald, as manager of On Systems and the Joint Venture, requested a continuance of the hearing since he was not able to proceed and requested time to retain new counsel for representation in the proceeding. Decision No. R02-1180-I was issued granting Mr. Glaser's Motion to Withdraw and setting a new hearing for October 22, 2002. The oral decision granting the continuance clearly provided that additional time was allowed for Mr. Wetherald to obtain counsel, but that with or without new counsel, the hearing would proceed on October 22, 2002.

K. On October 18, 2002, On Systems filed a Motion to Consolidate and for Stay and Request to Shorten Response Time seeking consolidation of this proceeding so that service quality credits alleged to be due to Mile High from Qwest in a separate Docket could be determined prior to the discontinuance of local exchange service in the within Docket. Secondly, a Stay of these proceedings was requested until such time as the Motion to Consolidate was decided. Finally, shortened response time was requested in light of the hearing set for October 22, 2002.

L. On October 21, 2002, the Partners filed in opposition to consolidation recognizing that both members of the Joint Venture are independently represented in these proceedings. The Partners repeated their prior request for approval of the Joint Venture's application and the discontinuance of service by the Joint Venture and that the two Dockets should proceed separately based upon their support for approval of the application. The Partners alleged that On Systems merely seeks to delay these proceedings through speculative claims for recovery of service quality credits. Finally, they alleged the prejudice to Qwest and the Partners that would result from delay of the application while Qwest continues to provide service to the Joint Venture.

M. On October 21, 2002, Qwest filed its Motion to Strike On Systems Technology L.L.C.'s Intervention in this Docket and in the Alternative Response to Motion to Consolidate and for Stay. Initially, Qwest requested to strike the Order granting On Systems' intervention. Alternatively, Qwest sought to deny On Systems's request for a stay of these proceedings and consolidation with Docket No. 02F-275T. Further, Qwest requested the Commission to award reasonable attorney's fees in defense of the motion, alleging it was filed frivolously and solely for the purpose to hinder and delay the proceedings.

N. On October 21, 2002, Reverend Edward D. Schneider, representing consumers of the Joint Venture, filed his Motion to

Accept Late-Filed Intervention and for Waiver of Response time. Reverend Schneider simultaneously moved for a continuance of the hearing based upon substantially similar grounds cited by On Systems in support of its Motion to Consolidate.

O. On October 21, 2002, Qwest filed its Motion for Order Requiring Immediate Payment and Security and Request to Shorten Response Time. Qwest seeks an Order of the Commission directing the Joint Venture to immediately pay funds to Qwest and to provide security for future obligations during the transition process.

P. At the October 22, 2002 hearing on the Joint Venture's application to discontinue service, appearances were entered on behalf of Applicant, the Joint Venture; the Partners; On Systems; Premier; Qwest; Reverend Schneider; Staff; and the OCC. Testimony was received from witnesses and/or evidence was introduced on behalf of the Joint Venture, the Partners, Premier, On Systems, Rev. Schneider, OCC, and Staff. Exhibit Nos. 1 through 17 were marked for identification and admitted into evidence.

Q. Oral rulings were issued on pending motions. An opportunity was afforded all parties to provide or supplement any comments and argument regarding each motion. Being informed of the premises by the Commission's file, the statements of parties, and argument presented, each motion was orally decided

before proceeding to hearing on the Joint Venture's application, except for Qwest's Motion for Order Requiring Immediate Payment and Security, which was deferred to the end of the proceedings.

R. It is found and concluded that it is appropriate to shorten response times for all pending motions to the time of hearing, considering the emergency nature of the procedural schedule on the Joint Venture's application.

S. Reverend Schneider's Motion to Accept Late-Filed Intervention was considered and good cause for the delay in filing intervention having been shown, intervention was granted. Further, Reverend Schneider must accept the procedural posture of the case as it is found at the time of intervention.

T. Counsel for Qwest presented its Motion to Strike On Systems Technology, LLC's Intervention in this Docket. On Systems argued against the granting of Qwest's motion to strike its intervention at hearing based upon the fact that it is an appropriate party as a partner in the Joint Venture.

U. It is found and concluded that Qwest's Motion to Strike On Systems Technology, LLC's Intervention is denied and On Systems may participate in these proceedings as an appropriate interested party and member of the Joint Venture.

V. Reverend Schneider's Motion to Continue was considered with On Systems' Motion to Consolidate. Objections were raised by all parties except On Systems, alleging prejudice of delay

and urgent circumstances requiring a resolution as soon as practicable. The Partners filed an objection to the Motion to Consolidate and for Stay and offered further argument at hearing in opposition. Qwest objected to the Motion to Consolidate and for Stay and offered further argument at hearing in opposition. Staff and the OCC also offered oral argument in opposition to the Motion to Consolidate and for Stay.

W. It is found and concluded that On Systems' Motion to Consolidate and for Stay is denied, Reverend Schneider's Motion for Continuance is denied and the Joint Venture's application shall proceed to hearing in accordance with prior orders in this Docket.

X. No party opposed adoption of the Proposed Transition Plan and all parties generally supported it with the exception of two issues: the default provider designation and the list of alternative providers to be included in the notice to customers.

Y. Witness Steven Petersen testified that he was a managing partner of the Partners and that he was authorized to testify on behalf of the Partners in these proceedings. The Partners, on behalf of the Joint Venture, provided testimony in support of the application to discontinue service and testified that the Partners would comply with any Commission-ordered transition plan to the extent they are able. He also testified

in support of Premier being designated as the default provider in this Docket.

Z. Witness John Gray, Senior Vice President of Premier, testified on Premier's behalf seeking to be designated as the default provider under the Proposed Transition Plan and offered testimony about Premier's financial and technical ability to perform as the default provider. Mr. Gray stated that Premier currently provides local exchange service to 268 residential and 256 business customers. Premier has a staff of 16 people, including 6 customer service representatives (See also Exhibit No. 8). Although Premier anticipates being able to timely hire and train additional staff, they acknowledge that existing staff is insufficient to serve the estimated 6,000 to 9,800 customers as the default provider. Premier is currently a reseller of local service, but intends to transfer Joint Venture customers through the unbundled network elements-platform (UNE-P) before customers would default to their service under the Proposed Transition Plan if Premier were designated as the default provider.

AA. Since starting business in December 2001, Premier has not experienced a positive gross margin or net profit; the company has \$122,000 of available cash on hand. Mr. Gray acknowledges that Premier is not current with all its obligations to Qwest, as is reflected on Exhibit No. 6. Premier

and Qwest stipulate that Premier owed Qwest \$68,987.54 as of August 16, 2002 (Exhibit No. 9).

BB. If Premier were appointed as default provider under the Proposed Transition Plan, and if any Joint Venture customers remain to be transitioned to Premier after the Effective Date of the Proposed Transition Plan, Premier stated it would pay Qwest to continue service to those remaining customers until the transition is complete.

CC. Reverend Schneider testified as a customer of the Joint Venture seeking to preserve customers' option to choose an alternative provider and not be forced to Qwest for service. Reverend Schneider's testimony acknowledged that as a customer of the Joint Venture, exactly which entity provided his service was of little consequence. Rather, he focused on the quality of service he had received as a customer of the Joint Venture.

DD. Tim Wetherald testified that he is the manager of On Systems, which is a member of the Joint Venture as well as the manager of the Joint Venture. Mr. Wetherald originally filed as manager of the Joint Venture as he felt was required pursuant to the Commission's rules regarding discontinuance of service. Given the procedural posture following denial of the ruling of On System's Motion to Consolidate, On Systems did not oppose granting of the application. Mr. Wetherald testified that On Systems was ready, willing, and able to comply with the

provider's obligations under the Proposed Transition Plan. He further testified that he would inform the Commission if he were unable to perform any obligation under any Commission-ordered transition plan. Mr. Wetherald testified that the Joint Venture currently has about 10,500 active residential local exchange customers and a few, less than 100, active business customers.

EE. Witness Dian P. Callaghan testified on behalf of the OCC in support of the Proposed Transition Plan. She also testified that the OCC supports Qwest being appointed as the default provider.

FF. Ms. Callaghan explained that the plan proposed by the OCC has two phases. Consistent with the Commission rules on abandonment of service, during the first 30 days of the transition, competitors can solicit customers of the Joint Venture, while during the second 30 days those customers who, for whatever reason, do not choose another provider default to a provider designated by the Commission. This safety net ensures continuity of service to customers, a smooth transition, and fosters competition over the long-term because affected customers will be more likely to try another competitor in the future. Thus, both phases of the Proposed Transition Plan further the statutory goal of promoting competition in the local service market.

GG. Ms. Callaghan supported the OCC's proposal that the Joint Venture make available published subscriber list information, including name, address, and telephone number, available to competitors and Qwest upon request during the Notice Period defined under the Proposed Transition Plan (Notice Period), as was similarly done when ICG Telecom Group, Inc. (ICG), abandoned service to its residential customers. No party opposed such subscriber information being made available to competitors.

HH. Ms. Callaghan testified that the OCC supports a list of alternative providers in the notice letter to Joint Venture customers provided for in the Proposed Transition Plan (the Notice Letter) other than that required by Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-25-7.6(d). The OCC believes the jurisdictional list maintained by the Commission is inadequate for these purposes, particularly for residential customers.

II. Ms Callaghan testified that a list of 93 providers was given to Tess Communications of Colorado, Inc. (Tess), customers and 70 companies to ICG customers in each of their applicable service abandonment proceedings. Both the Commission and the OCC received complaints that the list was dated and inadequate. The OCC recommends the Commission waive the rule and adopt the

OCC's recommended list of about 25 providers to be included in the Notice Letter.

JJ. Witness Pat Parker testified on behalf of the OCC in support of the OCC's proposed list of alternative providers and explained how she eliminated providers from the list (See list included in Exhibit No. 13). Ms. Parker began with the Commission's jurisdictional list of telecommunications providers as of September 29, 2002 and then eliminated the following: wholesale carriers; providers who had abandoned service and had their authority revoked; rural incumbent providers; non-optional operator and inmate service providers; private line and toll providers; DSL providers and data local exchange carriers; providers of local service to businesses only; and a construction company not affiliated with a provider of local exchange service. Finally, those no longer authorized to do business in Colorado, as verified through the Secretary of State's website, were removed. Ms. Parker then contacted each of the remaining providers to verify that their customer contact information was accurate, and that the providers offered residential local exchange service in the six-county Denver metropolitan area. The companies remaining on the OCC's recommended list are only those providers who actually provide residential local exchange services in the Denver metropolitan area and whose contact information has been verified.

KK. Ms. Parker also testified about problems she had contacting the providers on the list that Staff compiled due to non-working telephone numbers or companies not associated with a local exchange provider in Colorado.

LL. Ms. Parker stated that the OCC supports using its proposed list because it is consumer-friendly and will minimize confusion by including only companies that currently offer residential local telephone service in the Denver metro area.

MM. Witness Jerry Enright, on behalf of Staff, testified in support of Staff's proposed list of alternative providers to be included in the Notice Letter to Joint Venture customers.

NN. Mr. Enright testified that he edited Staff's proposed list of alternate providers. He started with the jurisdictional list maintained by the Commission, that includes all certified providers regulated by the Commission as of September 23, 2002. Staff eliminated rural incumbent providers, solely emerging competitive providers, pure non-optional operator and inmate service providers, and high-speed providers. He then verified that the remaining companies had a tariff on file with the Commission to offer business or residential local exchange service. For AT&T Broadband and Qwest, a dedicated number was provided for each provider that was included in the list. Mr. Enright did not verify the accuracy or operability of the telephone numbers on the list Staff compiled.

OO. Mr. Enright also testified that a waiver of the Commission's no-call rules had not been requested in this proceeding and that Staff expects that during the transition period all companies will comply with the Commission's no-call rules.

PP. Mr. Enright acknowledged that the most useful information to Joint Venture customers receiving the Notice Letter is contact information for those companies actually providing residential local exchange service that can take their order and provide them service within the next 30 days. However, weighing the most consumer-friendly list against the interests of providers authorized by the Commission to provide services, Staff supports inclusion of its list of alternative providers in the Notice Letter (Staff List is Exhibit No. 17).

QQ. Qwest requested the Commission exclude On Systems from any list of alternative providers included with the Notice Letter under the Proposed Transition Plan due to its relationship with the Joint Venture and the coincident relationship to Qwest. No party opposed removal of On Systems from the list of alternative providers and counsel for On Systems represented that On Systems did not oppose being removed from such a list.

RR. By stipulation and agreement between Qwest and On Systems, and no objections being raised, On Systems will be

excluded from the list of alternative providers supplied to Joint Venture customers in the Notice Letter.

SS. The OCC seeks a further waiver of the requirement to use the form customer notice required by Commission Rule 4 CCR 723-25-7.7. The OCC proposes to modify the customer notice, Form A to the rules, to accommodate the timing of the customer notice in this proceeding. The form prescribed by the rule contemplates notice being provided early in the process so customers may participate in any Commission hearing. The Proposed Transition Plan, provides for the Notice Letter to be submitted after a hearing approving the Notice Letter in accordance with Decision No. C02-1033. The OCC is concerned that the prescribed form of notice after-the-fact will cause confusion, as all applicable deadlines for participation will have passed.

TT. The Proposed Transition Plan includes Qwest as the default provider. The OCC incorporates and recommends approval of Qwest's request for waiver of the Commission's presubscription rules prohibiting "slamming", which includes a waiver of the Letter of Authorization requirement. 4 CCR 723-2-25.3. In addition, the OCC supports and incorporates Qwest's request for waiver from any claim of cramming that may arise by virtue of transferring customers' existing enhanced services provided in the customer service record (e.g., call-waiting,

call-forwarding, etc.) and Rule 4 CCR 723-2-27.4.1 relating to customer notification. It is found that good cause has been shown and that the requested waivers are appropriate for the operation of the Proposed Transition Plan.

UU. Witness John Trogonoski testified on behalf of Staff regarding his analysis leading to a recommendation that the Commission designate Qwest as the default provider for the Proposed Transition Plan. Mr. Trogonoski testified regarding his evaluation of the two carriers in this case, Premier and Qwest, that have indicated a willingness or desire to be designated as the default provider in this proceeding.

VV. Mr. Trogonoski established a set of criteria to evaluate both Premier and Qwest equally to see if they have the financial, managerial, and technical capability to fulfill any transition plan obligations. He compiled a matrix of this information (Exhibit No. 14).

WW. Mr. Trogonoski testified that Qwest estimates about 9,800 customers might require conversion to the default provider while Premier estimates that about 6,000 customers might require conversion to the default provider.

XX. Mr. Trogonoski further compiled a summary exhibit estimating the cost to Premier to transfer defaulting customers. Premier would face transition costs as low as \$647,281 based upon Premier's assumption of 6,000 defaulting customers and as

high as \$1,198,280 based upon Qwest's assumption of 9,800 defaulting customers. The cost will also depend upon the manner in which Premier provides service to those customers (UNE-P or Resale).

YY. Mr. Trogonoski testified that his review of Premier's financial condition indicates they have very little margin for error and they are not a profitable company, at this point. Further, Premier currently lacks substantial amount of capital available at this time. While Premier has stated it has private investors committed to funding its operations, without more confidence in identifying who those investors are, Staff does not feel it can recommend Premier as the default provider. Mr. Trogonoski concluded that Staff was not convinced that Premier demonstrated, with enough certainty, that it has the financial ability to successfully complete the obligations of the default provider.

ZZ. Mr. Trogonoski testified that in his opinion any possible bankruptcy filing of Qwest would not really have a direct impact on the regulated business in Colorado and that he believes Qwest is financially capable of serving as the default provider.

AAA. Mr. Trogonoski testified regarding Staff's understanding of the entire transaction contemplated between Premier and the Partners as indicated in the Partners

application for a certificate of public convenience and necessity (CPCN) (Exhibit No. 1). Staff remains concerned regarding the consequences if the Commission does not approve that application. Staff does not want to be faced with the same situation, in two or three months, where customers need to make another choice to migrate to a different carrier.

BBB. Mr. Trogonoski recommends to the Commission that Qwest be designated as the default provider in this case.

CCC. Mr. Trogonoski is concerned about the default provider's ability to provide service to a large number of customers within 30 days. Staff does not believe Premier has demonstrated its ability to accommodate the customer demands that may fall to the default provider.

DDD. Ensuring proper customer notification is critical to a smooth transition process. Therefore, if the Joint Venture fails to timely provide customers the Notice Letter under the Proposed Transition Plan, the default provider shall notify the Commission of the failure and then assume and perform this obligation without further Commission action. Further, recognizing that the notice is the obligation of the Joint Venture, Qwest shall be entitled to recover its reasonable expenses incurred in performing such assumed obligations.

EEE. Questions were raised by Staff concerning whether the Joint Venture intends to relinquish its CPCN and to withdraw its

tariffs in addition to, and simultaneous with, discontinuing service.

FFF. Finally, before proceeding to closing arguments, Qwest renewed its Motion for an Order Requiring Immediate Payment and Security, which On Systems resisted, claiming that this Commission does not have jurisdiction or authority to order payments or the posting of security. Counsel for Qwest responded that this Commission has "all power" under Article XXV of the Colorado Constitution to regulate terms and conditions of service, as well as the rates and charges therefor and that such authority extends to ordering payment and requiring a bond or other security. Qwest also argued that § 40-3-102, C.R.S., affords the Commission equally expansive powers, given its special expertise in utilities' regulation, a reading confirmed by the Colorado Supreme Court in *Mountain States Telephone & Telegraph Co. v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

GGG. It is found and concluded that Qwest's Motion for Order Requiring Immediate Payment and Security is denied.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICATION AND TRANSITION PLAN

A. It is found that based on the evidence of record:

1. No party has alleged that the Joint Venture no longer exists. No party has sought to withdraw the Joint Venture's application to discontinue service and neither member

of the Joint Venture objected to representations made on behalf of the Joint Venture.

2. Colorado partnership law applies to the Joint Venture and each venturer is jointly and severally liable for the obligations to the Commission incurred by each partner on behalf of the Joint Venture.

3. Both of the joint venturers are independently represented in these proceedings.

4. On October 16, 2002, the parties were informed that the Joint Venture's application would be heard without further delay. This matter has been pending since August 30, 2002 and the Commission, having found emergency circumstances, seeks resolution of the matter as soon as practicable.

5. On Systems filed the Joint Venture's application with the Commission and the Partners advocate approval of the Joint Venture's application as well.

6. The customers of the Joint Venture being provided for in this transition process are appropriately the primary concern in the transition process. It is found that the OCC's delineation of the two phases of the transition process into a competitive phase and a second phase focusing upon safeguarding the continuity of service to customers affected by the transition process is appropriate.

7. The OCC's Amended Proposed Transition Plan, incorporating modifications at hearing, comprises the transition plan attached hereto as Attachment A and will be made an Order of the Commission (Transition Plan).

8. The Notice Letter in the Transition Plan to be provided by the Joint Venture regarding its discontinuance of telecommunications services found in Attachment A to this Order is approved.

9. To further enhance competition during the Notice Period defined in the Transition Plan, the Joint Venture shall provide its published subscriber list information available to providers of jurisdictional telecommunications service in Colorado, upon request.

10. Both phases of the Transition Plan serve the goals of the Commission and the Colorado Legislature to foster competition in the local exchange market.

11. The list of alternative providers supplied to Joint Venture customers as part of the Notice Letter shall be the list advocated by the OCC. The list will minimize confusion and discouragement to customers. However, On Systems will be stricken from the list by stipulation of the parties approved herein.

12. The Transition Plan best serves the public interest in transitioning Joint Venture customers to a new local exchange provider.

13. Staff correctly identified that the Commission-designated default provider must demonstrate that it has the financial, technical, and managerial capability to serve as the default provider.

14. Premier has been in the local telephone service business less than a year and currently serves 212 residential customers and 118 business customers. Premier has 16 people on its staff, including 6 customer service representatives. Premier wants to convert all defaulting customers to UNE-P, a new product for Premier. Premier is a privately financed company that is currently not profitable. Premier acknowledges that it would have to hire and train additional staff and incur additional expense to serve as the default provider. Premier would have to provide an additional deposit to Qwest and pay Qwest to convert defaulting customers to resale or UNE-P service. The approximate amount of funds necessary for Premier to complete the transition process as default provider could exceed one million dollars.

15. Qwest has the financial, technical, and managerial capability and experience to serve as default provider under the Transition Plan. Qwest also can meet the

requirements and deadlines in the Transition Plan. Qwest successfully served as default provider in the Tess and ICG service abandonment dockets and has the experience to do so in this case.

16. Qwest will be designated as the default provider in the Transition Plan.

17. It is appropriate to provide for potential deficiencies in any transition process to further ensure that the Transition Plan is completed as ordered by the Commission;

18. The waivers requested to ensure that the Transition Plan operates as intended are appropriate.

19. Because the Joint Venture is discontinuing service, it is apparent that it will no longer be ready, willing, and able to offer service in accordance with its filed tariff. Therefore, it is consistent with its application that the filed tariff be deemed withdrawn as of the day service is discontinued. If at any time, the Joint Venture is again ready, willing, and able to offer service under a tariff, it would be free to file a new tariff with the Commission.

20. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders that:

1. All requests to shorten response times are granted. Response is shortened to and including the hearing concluded in this matter on October 23, 2002.

2. The Motion to Accept Late-Filed Intervention filed by Reverend Edward D. Schneider is granted with the procedural limitation allowable by Commission rule that he accept the procedural posture of the case as he finds it.

3. The Motion for Continuance filed by Reverend Edward D. Schneider is denied.

4. The Motion to Strike On Systems Technology L.L.C.'s Intervention in this Docket filed by Qwest Corporation is denied.

5. The Motion to Consolidate and for Stay filed by On Systems Technology, L.L.C. is denied.

6. The application by Mile High Telecom Joint Venture seeking authorization from this Commission to discontinue providing jurisdictional telecommunications service to customers in Colorado is granted.

7. The Colorado Office of Consumer Counsel's Motion to Approve Amended Proposed Transition Plan is granted. The

Transition Plan, attached to this Decision as Attachment A, as modified in this Order, is approved.

8. Premier Communications, Inc.'s request to be designated as the default provider in any transition plan is denied.

9. Mile High Telecom Joint Venture, including the Mile High Telecom Partners, LLP and On Systems Technology, LLC, as jointly and severally liable joint venturers, shall implement the Transition Plan.

10. During the Notice Period, Mile High Telecom Joint Venture shall provide published subscriber list information available to providers of jurisdictional telecommunications service in Colorado, upon request.

11. In the event that Mile High Telecom Joint Venture cannot comply with any aspect of the Transition Plan, it shall inform the parties and the Commission as soon as possible.

12. Qwest Corporation is designated and ordered to perform the obligations of the default provider for the Transition Plan pursuant to Rule 4 *Code of Colorado Regulations* 723-25-7.6.

13. The Office of Consumer Counsel's request for waiver of Commission Rule 4 *Code of Colorado Regulations* 723-25-7.6(d) and 4 *Code of Colorado Regulations* 723-25-7.7 is granted. In accordance with Decision No. C02-1033, the Notice Letter

included in the Transition Plan is approved and shall be provided to customers of the Mile High Telecom Joint Venture in accordance with the Transition Plan, attached to this Order.

14. The stipulation of the parties to remove On Systems Technology, L.L.C. from the list of alternative providers included in the Notice Letter is accepted.

15. The list of alternative providers attached to the Notice Letter defined in the Transition Plan shall be provided to customers of the Mile High Telecom Joint Venture with the Notice Letter.

16. The Office of Consumer Counsel's and Qwest Corporation's request to waive the applicability of the following Commission rules for operation of the Transition Plan is granted: Rules 4 *Code of Colorado Regulations* 723-25-7.6; 4 *Code of Colorado Regulations* 723-2-25, and 4 *Code of Colorado Regulations* 723-2-27.4.1.

17. In the event that Qwest Corporation does not receive the customer list information from Mile High Telecom Joint Venture, or one of the joint venturers thereto, within two business days following the mailing of the last Notice Letter, Qwest Corporation shall file a notice thereof with the Commission and serve a copy thereof upon all parties. Further, upon such filing, and without further Commission action, Qwest Corporation retail operations is ordered to request, and Qwest

Corporation wholesale operations is ordered to provide, the necessary customer information for Qwest Corporation retail operations to satisfy its obligations as default provider under the Transition Plan.

18. If the Joint Venture fails to timely provide its customers the Notice Letter under the Transition Plan, as demonstrated by the filing of affidavits provided by such plan, Qwest Corporation shall notify the Commission of the failure and then assume and perform this obligation without further Commission action. Qwest Corporation shall be entitled to recover its reasonable expenses incurred from the Mile High Telecom Joint Venture.

19. The Motion to Stay these proceedings filed by On Systems Technology, L.L.C., until a ruling on its simultaneous Motion to Consolidate is now moot and is denied.

20. The Commission's no-call rules have not been waived for this proceeding and providers are reminded that these rules apply during the Notice Period for those Mile High Telecom Joint Venture customers who are on the Commission's no-call list.

21. At the completion of the transition period set forth in the Transition Plan, any and all tariffs on file in the name of Mile High Telecom Joint Venture shall be deemed withdrawn. No further filing will be required to effectuate the

withdrawal, and the Commission's records will be updated at that time to reflect the withdrawal.

22. Rule 4 *Code of Colorado Regulations* 723-25-7.6(d) requiring that the customer notice include the most recent jurisdictional list maintained by the Commission with the name, address, and toll-free number of each and every alternative provider regulated by the Commission is waived.

23. Rule 4 *Code of Colorado Regulations* 723-25-7.7. is waived.

24. The Commission waives applicability of the presubscription rules prohibiting "slamming", which includes a waiver of the Letter of Authorization requirement to the implementation of the Transition Plan. 4 *Code of Colorado Regulations* 723-2-25.3.

25. The Commission waives any claim of cramming that may arise by virtue of transferring customers' existing enhanced services included in the customer service record (e.g., call-waiting, call-forwarding, etc.).

26. The Commission waives applicability of Rule 4 *Code of Colorado Regulations* 723-2-27.4.1, relating to customer notification, to implement the Transition Plan.

27. The Motion for Order Requiring Immediate Payment and Security filed by Qwest Corporation is denied.

28. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

29. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

30. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



WILLIAM J. FRITZEL

Administrative Law Judge

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

Decision No. R02-

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO**

DOCKET NO. 02A-463AT

IN THE MATTER OF THE APPLICATION OF MILE HIGH TELECOM JOINT
VENTURE TO DISCONTINUE OR CURTAIL JURISDICTIONAL
TELECOMMUNICATIONS SERVICE

TRANSITION PLAN FOR MILE HIGH TELECOM JOINT VENTURE

1. The transition period will be sixty (60) days, beginning with the day the last letter notifying Mile High's customers of its intent to exit the market (the "Notice Letter") is mailed, and ending on the Effective Date, as defined in ¶¶ 2 and 3 below.

2. No more than 2 business days after the mailing of the last Notice Letter, Mile High must provide Qwest with a complete and accurate customer list which includes each customer's name, telephone number, billing address, PIC, LPIC, optional features, and any other relevant information contained in the customer service record. Further, Mile High will send the attached Notice Letter via First Class Mail in accordance with paragraph 5 below and will inform Qwest and the Commission as to when each customer's notice is, or will be, mailed. This Notice Letter contains the information required by 4 CCR 723-25-7.6. In addition, Mile High will mail by separate First Class Mail a notice to the board of county commissioners of each affected county, and to the mayor of each affected city, town, or municipality. Not less than two business days after each notice mailing to its customers, Mile High will file with the Commission an affidavit attesting to its compliance with these notice requirements. The affidavit shall

state the date on which notice was completed, the method used to give notice, and a copy of each notice given shall accompany the affidavit.

3. Mile High will cease providing local exchange service in the state of Colorado on a date to be determined by the Commission, which date shall be 60 days after the last Notice Letter is sent to Mile High customers pursuant to paragraph 5 below (the "Effective Date" ¹);

4. In accordance with Commission Rule 4 CCR 723-25-7.6(g), the Commission will designate Qwest as the default local exchange carrier;

5. Mile High had as many as 14,000 customers in the state of Colorado. Since Qwest anticipates a large volume of calls by Mile High customers immediately following receipt of the Notice Letter, Mile High will stagger the mailing of its Notice Letters such that customers are notified on a rolling basis by four proportionate separate mailings commencing with the first proportionate mailing on the second business day following the effective date of the Order approving the Application and continuing with the remaining mailings on the fourth business day following the mailing of the previous mailing. In so doing, the Effective Date will be 60 days after the last mailing date.

6. After the Notice Period and before the Effective Date, Qwest will make three (3) attempts on different days and at different times to contact any customer by telephone that owes a final bill for jurisdictional services to Qwest from a previous

¹ The 60-day transition period is based upon Qwest's estimate of 9000 customers who fail to select an alternate provider after the 30-day Notice Period. If this number is higher than projected, and/or Qwest experiences unforeseen difficulties in completing the migration process by the Effective Date, Qwest will notify Mile High and the Commission accordingly.

account. If a customer does not make arrangements, which are satisfactory to Qwest, to reconcile his/her final bill amount for jurisdictional services, Qwest will inform the customer that Qwest will not accept the account under those circumstances, that the customer must seek service from another provider prior to the time when Mile High discontinues service on or about the Effective Date, and that Qwest will not furnish him/her local service unless arrangements to reconcile such final bill are made. As soon as practicable following the Effective Date, Qwest will inform Mile High of those customers who did not wish to make payment arrangements or who Qwest was unable to contact. Qwest will not be required to provide service to a customer who fails to satisfy or reach an agreement acceptable to Qwest to satisfy an outstanding final bill for jurisdictional services.

7. Not later than 15 days after customers are migrated to Qwest, Qwest will send a letter to those customers, confirming that Qwest is now their service provider and confirming the customer's service, products and features and their associated rates. Qwest's notice to converted customers shall be prepared in cooperation with the Commission staff and the OCC.

8. Not more than 15 days after the Effective Date or after all customers are migrated to Qwest or have selected an alternative provider, Qwest will notify the Commission and Mile High of the number of customers migrating to Qwest, and the number of customers refused service by Qwest due to an outstanding bill for jurisdictional services.

9. Mile High Telecom will cooperate with Qwest, the Commission and the OCC in implementing this Plan.

10. To the extent Mile High holds deposits for service from customers, Mile High will refund the customers the deposit and provide an affidavit to the Commission confirming the return of deposits by the Effective Date. The affidavit will include the customer's name, address and telephone number and the amount of each deposit returned by Mile High.

11. To the extent the customer has prepaid Mile High for service, and Mile High has not provided the customer with such service, Mile High will refund the customer its advance for service. Mile High will provide an affidavit to the Commission confirming the refund of any advances to customers by the Effective Date. The affidavit will include the customer's name, address and telephone number and the amount of the refund to each.

NOTICE OF MILE HIGH TELECOM'S INTENT TO STOP
PROVIDING YOU WITH LOCAL TELEPHONE SERVICE

Dear Customer,

Mile High Telecom has asked the Colorado Public Utilities Commission (PUC) for approval to stop providing you with local telephone service effective on or about **November XX, 2002**. You have two options to maintain telephone service:

1. Before **October XX, 2002**, you can sign up with another telephone company of your choice (see attached list).
2. If you have not chosen another provider by **October XX, 2002**, except as stated below, your service will be transferred automatically to Qwest, the default provider designated by the PUC. The transfer will occur between **October XX** and **November XX, 2002**. Neither Qwest nor Mile High Telecom will charge you to transfer your service.

Please be aware that if you do not choose another provider and you are transferred to Qwest, you will receive the same telephone number and the same service and features that you have now, except they will be provided under Qwest's terms and conditions and Qwest's rates.

However, if your Internet access or long-distance services are provided by Mile High Telecom, those services will not be transferred. You will need to choose another Internet service provider, or another 1+ long-distance company, or both.

Depending on your credit history, Qwest may charge you a deposit. Also, if you owe Qwest a previous bill for regulated telephone services (e.g., local phone service, local long-distance, and some features), Qwest may refuse you service unless you pay what is owed or make payment arrangements acceptable to Qwest. **Please note:** If you owe Qwest a previous bill for regulated services, you must either pay Qwest what is owed, make acceptable payment arrangements, choose another provider, or risk being disconnected.

You may call Qwest at 888-807-8694 to discuss a previous bill, choose another long-distance carrier, or for any other questions you might have if you are transitioning your local service to Qwest.

Anyone may object to this proposal by sending a letter to the Colorado Public Utilities Commission, 1580 Logan St., OL2, Denver, CO 80203. You may also object to this proposal by calling the PUC at (303) 894-2070, or toll-free outside the Denver metro area at (800) 456-0858.

Please be assured that, absent any credit problems, basic local telephone service will still be available to you whatever the outcome of Mile High Telecom's requested action. If Mile High Telecom's request to stop providing local telephone service is granted, absent any credit problems, another telephone company will provide service to you.

By: _____

Tim Wetherald, Manager
Mile High Telecom Joint Venture
1-800-437-5580

COLORADO RESIDENTIAL LOCAL SERVICE PROVIDERS
As of October 23, 2002

<i>Company</i>	<i>Telephone Number</i>	<i>Web Address</i>
AT & T Broadband Phone of Colorado LLC	303.930.2000	WWW.ATT.COM
Atlas Communications, Ltd. ⁽¹⁾	1.866.424.5700	
Emergent Communications, LLC	1.800.775.7768	
Inspiren Communications, Inc.	1.888.638.8101	www.inspiren.com
MCImetro Access Transmission Services, L.L.C.	1.800.888.0800	www.mciworldcom.com
McLeodUSA Telecommunications Services Inc.	1.800.909.3012	www.mcleodusa.com
New Access Communications, LLC	1.877.330.4937	www.newaccess.cc
On Systems, Technology LLC ⁽¹⁾	303.338.4249	
OnePoint Communication – Colorado LLC ⁽²⁾	1.866.892.8368	https://vast.vzavenue.com/sots/Prop_searchresults.asp
Premier Communications, Inc.	1.866.773.6835	www.premiertelco.com
Qwest Corporation, Inc.	1.888.807.8694	www.qwest.com/residential
SBC Telecom, Inc.	1.877.430.7228	www.sbctelecom.com/Products_Services/Residential
ServiSense.Com, Inc.	1.888.483.3600	www.servisense.com
Sun West Communications, Inc.	1.800.510.6066	www.sunwest.net
Supra Telecommunications and Information System ⁽¹⁾	1.850.402.0510	www.supratelecom.com
U. S. Online Communications, Inc. d/b/a USOL, Inc. ⁽²⁾	1.800.460.8765	www.usolcomm.com

(1) The Colorado Office of Consumer Counsel was unable to reach a company representative and is unsure whether the company offers residential service in Colorado.

(2) The company offers residential services in select multi-tenant buildings.

COLORADO RESIDENTIAL LOCAL SERVICE PROVIDERS
As of October 23, 2002

<i>Company</i>	<i>Telephone Number</i>	<i>Web Address</i>
Z-Tel Communications, Inc.	1.877.237.6278	www.z-tel.com
<i>Pre-Paid Local Providers</i>		
Arizona Dial Tone, Inc.	1.800.736.3261	www.arizonadialtone.com
CCCCO, Inc. d/b/a Total Connect d/b/a Connect!	1.501.258.3094	
Choctaw Communications L.C. D/b/a Smoke Signal Communications	1.877.TALK.NOW	www.smokesignal-clec.com
Comm South Company, Inc.	1.800.936.5223	www.commsouth.net
DMJ Communications	1.800.583.9814	
Preferred Carrier Services d/b/a Phones for All	1.800.288.0910	www.phoneforall.com

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- (2) The company offers residential services in select multi-tenant buildings.