

Decision No. C03-0229

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

DOCKET NO. 03A-054T

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IN THE MATTER OF THE JOINT APPLICATION OF VANION TELECOM, INC.  
DBA VANION, INC. AND APOLLO COMMUNICATIONS, LLC TO EXECUTE A  
TRANSFER.

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**ORDER DENYING APOLLO'S APPLICATION  
FOR REHEARING, REARGUMENT, OR  
RECONSIDERATION, AND GRANTING QWEST'S  
AND OCC'S MOTIONS FOR CLARIFICATION**

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Mailed Date: February 28, 2003  
Adopted Date: February 26, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an Application for Rehearing, Reargument or Reconsideration (RRR) of Commission Decision No. C03-0191, filed by Apollo Communications, LLC (Apollo) on February 24, 2003. In addition, Qwest Corporation (Qwest) and the Office of Consumer Counsel (OCC) have each filed a motion for clarification of Decision No. C03-0191.

2. Apollo seeks reconsideration of our decision, arguing that we are improperly treating its Petition for Declaratory Order as an application by Vanion Telecom, Inc. (Vanion), to discontinue service. Further, Apollo avers that the Commission improperly reduced the 60-day transition period for discontinuance provided in Commission Rule 25-7.4 (4 *Code of Colorado Regulations* (CCR) 723-25-7.4) to 30 days.

3. Qwest seeks clarification of our order that, should Apollo fail to provide the required notice to customers by February 24, 2003, Qwest must provide such notice by February 28, 2003. Specifically, Qwest states that it is unable to determine the identity of impacted customers who are behind Vanion/Apollo's network. Qwest seeks clarification that, should Apollo fail to provide the required notice, Apollo must provide Qwest with a list of all impacted customers, and their addresses and telephone numbers, as well as contact individuals (if any).

4. OCC seeks clarification that the Commission has granted OCC intervenor status in this docket. Decision No. C03-0191 failed to indicate whether OCC's petition to intervene was granted.

5. Now, being duly advised in the matter, we deny Apollo's application for RRR in its entirety consistent with the discussion below. We grant Qwest's and OCC's requests for clarification as described below.

## **II. DISCUSSION**

### **A. Background**

6. Apollo filed a Petition for Declaratory Order, Motion for Emergency Stay and Motion to Shorten Response Time with the Commission on February 14, 2003. According to Apollo, Qwest threatened to disconnect service to Vanion due to an overdue balance of \$812,364.42 owed by Vanion to Qwest. Apollo sought an emergency stay of Qwest's disconnection notice until the Commission decided two pending proceedings: Apollo's application for a certificate of public convenience and necessity; and Vanion's application for transfer of its assets to Apollo.

7. In Decision No. C03-0191, we granted Apollo's motion for stay through March 24, 2003. We further required that Apollo, no later than February 24, 2003, send written notice to all of the Vanion customers, apprising them of the current situation and providing certain information in the notice. In the event that Apollo failed to provide the required notice, we ordered Qwest to then step in and provide notice to Vanion's customers by February 28, 2003, and Apollo to reimburse Qwest for all reasonable charges for assuming this responsibility. Because of the uncertainty whether the parties would reach resolution of the financial issues at the end of the 30-day stay, and to ensure the safety and health of the end users through uninterrupted telephone service, we ordered Qwest to serve as the default provider should no resolution be reached at the end of the stay period.

**B. Apollo's Arguments**

8. Apollo requests that we reconsider our order requiring it to provide notice to Vanion's customers. Apollo urges that issuance of such notice will unnecessarily alarm the customers and interfere with contracts under which many of those customers have received service from Apollo during the past two months, pursuant to the assignment of those contracts from Vanion to Apollo.

9. By designating Qwest as the default provider, should the parties fail to reach a settlement upon expiration of the 30-day stay, Apollo maintains that such a designation "virtually guarantees that Qwest will be unwilling to negotiate resolution of these issues in good faith." Apollo further states that "'giving' Qwest these 5,000 customers is an inappropriate result of Commission Decision No. C03-0191."

10. Apollo also submits that by designating Qwest as the default provider, should the parties fail to come to an agreement by the end of the 30-day stay period, the Commission is

improperly treating Apollo's Petition for Declaratory Order as an application to discontinue service. In addition, Apollo argues that the Commission improperly reduced by half the 60-day transition period provided for in 4 CCR 723-25-7.4 by requiring that customers default to Qwest upon expiration of the stay period. Apollo asserts that this portion of the Commission's decision is "legally deficient."

### C. Analysis

11. We find Apollo's arguments without merit. Decision No. C03-0191 granted in part Apollo's motion for a stay of Qwest's disconnection of its service to Vanion for 30 days. Apollo's argument that the Commission has failed to follow the strictures of Rule 4 CCR 723-25-7.4 relates to discontinuation or curtailment of regulated telecommunications services. Rule 25-7.4 is not applicable because no party (including Vanion) has filed an application to discontinue service.

12. To the extent there may have been any confusion regarding the intent or language of our previous decision, we clarify that we made no adjudicatory findings regarding the parties' rights, *i.e.*, whether Apollo is in any part responsible for the debt of Vanion to Qwest.<sup>1</sup> We further clarify that we do not mandate that Qwest disconnect Vanion's customers upon the expiration of the 30-day stay period. Our ruling is limited to the motion for stay filed by Apollo, and the need to protect the health, safety, and welfare of the impacted customers.

13. It is important to note that we designated Qwest as the default provider to ensure a seamless transition of telephone service should the parties fail to resolve their financial

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<sup>1</sup> Apollo has now offered to pay Qwest on a going forward basis in order to extend the requested stay. We decline to extend the stay beyond what we order here on an unaccepted offer to pay on a going forward basis, although we urge the parties to come to a mutually satisfactory agreement.

differences by the expiration of the stay period. We disagree with Apollo that the intent was to “give” those customers to Qwest, or that this will prejudice any negotiations that may occur between the parties. Designating Qwest as the default provider safeguards the health, safety, and welfare of Vanion’s customers by ensuring that they will not be without telephone service.<sup>2</sup> The Commission’s decision is a reasonable compromise between the positions of Qwest and Apollo, and necessary to protect end users.

14. Given the delay to notice as a result of the pleadings filed by the parties, to protect end users we find that the previously issued stay should be extended as follows. The date by which Apollo must send notice to Vanion’s customers (including the content described in Decision No. C03-0191) is extended to Monday March 3, 2003. Apollo is further required to provide an affidavit to the Commission by the close of business March 3, 2003, indicating whether it has sent the notice to end users with the content required by Decision No. C03-0191, and attaching a copy of any notice sent.

15. Should Apollo fail to provide such affidavit by the close of business March 3, 2003, or should Apollo indicate that it has not provided the required notice, Qwest shall instead provide the notice to end users by the close of business March 7, 2003, and Apollo will be responsible to Qwest for all reasonable charges associated with providing notice. In the event Qwest is required to send notice to Vanion’s customers, we order Apollo to provide to the Commission and Qwest a complete and accurate list of Vanion’s customers, including names,

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<sup>2</sup> Apollo has attempted to justify a stay in part by discussing the plight of the impacted customers, but the interests of the customers and Apollo are not inextricably intertwined. Customers will be protected by the decision we have reached here. As we noted in our prior decision, the Commission gives first and paramount consideration to the interests of the public in exercising its powers. *Public Service Company v. Public Utilities Commission*, 142 Colo. 135, 350 P.2d 543, *cert. denied*, 364 U.S. 820, 81 S. Ct. 53, 5 L.Ed. 2d 50 (1960).

addresses, and telephone numbers, and contact individuals (if any) by the close of business March 3, 2003.

16. We also extend the stay period to the close of business March 31, 2003. Extending the timelines from our previous decision provides sufficient time for the parties to attempt to resolve the issues between them, and for end users to have a reasonable period to consider the information provided in the notice. We emphasize that the notice requirements enumerated in Decision No. C03-0191 remain in effect and Qwest shall remain the default provider in the event the parties fail to resolve their differences by close of business March 3, 2003, and Qwest elects to discontinue its services to Vanion.

17. We grant Qwest's motion for clarification consistent with the discussion above.

18. We also grant OCC's motion to clarify that it is a party to this docket and may participate in future proceedings. We inadvertently omitted this information from Decision No. C03-0191.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. The Application for Rehearing, Reargument or Reconsideration of Decision No. C03-0191, filed by Apollo Communications, LLC is denied consistent with the discussion above.

2. The Motion for Clarification filed by Qwest Corporation is granted as described in the discussion above.

3. The Motion for Clarification filed by the Colorado Office of Consumer Counsel is granted.

4. We further clarify Decision No. C03-0191 consistent with the discussion above.

5. Consistent with the discussion above, Apollo Communications, LLC is ordered to provide notice to the Vanion Telecom, Inc., customers it is now servicing by the close of business March 3, 2003, or, in the alternative, provide to the Commission and Qwest Corporation a complete and accurate list of Vanion Telecom, Inc.'s customers, including names, addresses, and telephone numbers, and contact individuals (if any) by the close of business March 3, 2003, so that Qwest Corporation will send the required notice to the impacted customers by the close of business March 7, 2003 (at Apollo Communications, LLC's expense).

6. The Motion for Emergency Stay filed by Apollo Communications, LLC is extended to the close of business March 31, 2003.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 26, 2003.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith  
Director**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

**POLLY PAGE**

**JIM DYER**

Commissioners