

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

DOCKET NO. 02A-463AT

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

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**COMMISSION ORDER GRANTING  
EMERGENCY MOTION FOR SPECIAL  
OPEN MEETING AND THE JOINT MOTION TO  
APPROVE REVISED CUSTOMER NOTICE LETTER**

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Mailed Date: March 11, 2003  
Adopted Date: March 10, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an Emergency Motion for Special Open Meeting to Approve Joint Motion to Approve Revised Customer Notice Letter and Request to Waive Response Time (Emergency Motion), filed by Qwest Corporation (Qwest) on March 7, 2003.

2. Qwest filed the Motion to obtain review and approval of the Joint Motion so that it can begin issuing revised Customer Notice Letters to the customers of Mile High Telecom Joint Venture (Joint Venture) on Tuesday, March 11, 2003.

3. Now, being duly advised in the matter, we grant the Emergency Motion for Special Meeting and the Joint Motion to Approve Revised Customer Notice Letter.

## **II. DISCUSSION**

### **A. Background**

4. On January 21, 2003, we adopted Recommended Decision No. R02-1261 (Recommended Decision) in the application of Mile High Telecom Joint Venture to Discontinue or Curtail Jurisdictional Telecommunications Service. Among other things, the Recommended Decision adopted a transition plan for the termination of services by the Joint Venture. As part of that transition plan, the Joint Venture was ordered to issue a Customer Notice Letter to its customers, advising them of the pending discontinuance, and of their options during the transition plan. In the event that the Joint Venture was unwilling or unable to provide the notice letter, the transition plan required Qwest to provide such notice.

5. Exceptions to the Recommended Decision were filed by On Systems Technology, LLC (On Systems) on November 27, 2002. By order dated January 21, 2003, we denied On Systems' exceptions. On February 10, 2003, On Systems filed an application for rehearing, reargument, or reconsideration (RRR) of the order denying exceptions. We denied the application for RRR at our February 19, 2003 Weekly Meeting. Our written decision denying On Systems' application for RRR was issued March 7, 2003.

6. On February 13, 2003, Qwest filed a Notice of Failure by Mile High Telecom Joint Venture to Comply with Decision No. R02-1261. Qwest advised the Commission that the Joint Venture had not undertaken the obligation to notify its customers as set out in the transition plan. Qwest further notified the Commission that it would gather the required customer information and begin the procedures to issue the customer notices.

7. Qwest, the Colorado Office of Consumer Counsel (OCC), and the Staff of the Commission (Staff), filed a Joint Motion to Approve Revised Customer Notice Letter (Joint

Motion). The parties sought Commission approval of a revised customer notice letter to be sent to the Joint Venture's customers as required by the transition plan. The revised customer notice letter, scheduled to be mailed to customers beginning March 11, 2003, was attached to the parties' Joint Motion.

8. The revised customer notice letter reflects that the Commission granted the Joint Venture's application to discontinue providing telecommunications services. Because the Commission action denying On Systems is now final, the parties to the Joint Motion contend it is appropriate to delete language providing customers a means to protest the proposal to discontinue jurisdictional telecommunications services. The proposed notice letter also provides different contact numbers for residential and business customers. Staff and OCC concur with the proposed changes to the notice letter.

9. Qwest indicates that although the Joint Motion was on the schedule to be discussed by the Commission at the March 12, 2003 Weekly Meeting, it filed the Emergency Motion to obtain review and approval of the Joint Motion so that it can begin issuing Customer Notice Letters on March 11, 2003 as presently scheduled. In order to meet this schedule, Qwest must obtain Commission approval of the revised customer notice letter by March 10, 2003.

10. On Systems filed a response in opposition to the Joint Motion on March 5, 2003. According to On Systems, the Joint Motion is premature because the Commission decision denying its application for RRR was denied orally by the Commission on February 19, 2003; however, because the Commission has not issued a written decision, denial of the RRR is not final pursuant to § 40-6-114(4), C.R.S.

11. Further, On Systems points out that pursuant to § 40-6-115(1), C.R.S., it has 30 days after a final decision by the Commission to apply for relief in the District Court. Additionally, pursuant to § 40-6-116(1), C.R.S., the District Court, in its discretion, may stay or suspend the operation of the Commission's decision. On Systems notifies us that it fully intends to avail itself of these remedies. On Systems adds that there is no legitimate reason why the public's right to be heard should be eliminated from the language of the customer notice letters.

**B. Analysis**

12. We find that good cause exists to grant the Emergency Motion and the Joint Motion to approve the revised customer notice letter. The Joint Venture has chosen not to provide notice customers as provided in the transition plan. Therefore, it is now incumbent upon Qwest to do so. We find the language of the proposed notice letter to be appropriate and competitively neutral. We further find it is appropriate to delete language that provides a means to protest the proposal to discontinue jurisdictional telecommunications services, as our decision denying On Systems' application for RRR is now final.

13. We do not find On Systems' arguments compelling. Its argument that the Joint Motion is in conflict with the provisions of § 40-6-114(4), C.R.S., because no written decision by the Commission has been issued pertaining to the Commission's denial of On Systems' application for RRR, is moot. As indicated *supra*, our written decision denying RRR was issued March 7, 2003.

14. We also reject On Systems' argument that the Joint Motion is inappropriate because On Systems has the right to file for relief in the district court pursuant to § 40-6-115(1), C.R.S. We acknowledge the right of appeal available to On Systems through the district court. However, we find nothing available to On Systems in § 40-6-115, C.R.S., to preclude granting

the Emergency Motion or Joint Motion. We also point out that although the district court, in its discretion, may stay or suspend, in whole or in part, the operation of a Commission decision pursuant to § 40-6-116(1), C.R.S., the language of that statute is clear and unambiguous where it states, “[t]he pendency or a writ of certiorari or review *shall not of itself stay or suspend the operation of the decision of the commission...*” *Id.* (emphasis added).

15. Therefore, we grant Qwest’s Emergency Motion for Special Open Meeting. We further grant the Joint Motion to Approve the Revised Customer Notice Letter. Response time is waived to both motions.

### **III. ORDER**

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

1. The Emergency Motion for Special Open Meeting to Approve Joint Motion to Approve Revised Customer Notice Letter and Request to Waive Response Time filed by Qwest Corporation on March 10, 2003, is granted.

2. Response time to Qwest Corporation’s Emergency Motion for Special Open Meeting to Approve Joint Motion to Approve Revised Customer Notice Letter and Request to Waive Response Time filed by Qwest Corporation on March 10, 2003, is waived.

3. The Joint Motion to Approve Revised Customer Notice Letter and Request to Waive Response Time filed by Qwest Corporation, the Colorado Office of Consumer Counsel, and Staff of the Colorado Public Utilities Commission on March 5, 2003, is granted.

4. Response time to the Joint Motion to Approve Revised Customer Notice Letter and Request to Waive Response Time filed by Qwest Corporation, the Colorado Office of

Consumer Counsel, and Staff of the Colorado Public Utilities Commission on March 5, 2003, is waived.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' EMERGENCY DELIBERATIONS  
MEETING March 10, 2003.**

(S E A L)



**ATTEST: A TRUE COPY**

**Bruce N. Smith  
Director**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

**JIM DYER**

Commissioners

COMMISSIONER POLLY PAGE  
ABSENT.