

Decision No. C03-0328

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-054T

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

**ORDER DEEMING APPLICATION COMPLETE
AND REFERRING APPLICATION TO HEARING
COMMISSIONER FOR HEARING AND DENYING
MOTION TO WITHDRAW AS COUNSEL**

Mailed Date: April 1, 2003
Adopted Date: March 26, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application of Vanion Telecom, Inc. (Vanion), to Execute a Transfer of Assets to Apollo Communications, LLC (Apollo), filed on February 7, 2003. The Application indicated that the parties sought a Commission order granting the asset transfer application pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-25.2.17(c) for a conveyance of assets not in the ordinary course of business.

2. According to the Application, Apollo acquired the assets of Vanion at a Public Asset Foreclosure Sale auction that took place in Colorado Springs, Colorado on December 14, 2002. The Vanion assets acquired by Apollo included telephony equipment, telephone circuits, and related codes such as OCNs, CIC codes, and other codes required to provide service to end users, as well as Vanion's end user customer contracts. Apollo notes in the application that it did not assume any of the debts or liabilities of Vanion at the asset foreclosure sale.

3. Rule 4 CCR 723-25-2.17 requires that the transferor and transferee must file a joint application with the Commission not less than 30 days prior to the effective date of the proposed transfer. However, the parties did not file this application until nearly two months after the acquisition of Vanion's assets by Apollo. According to the application, the parties indicate that this was due to the "legal complications created by the purchase of the Vanion assets via a public Asset Foreclosure Sale under Colorado's UCC provisions, [because] it was unknown until the conclusion of the of the [sic] public auction, what, if any, assets Apollo would actually acquire from Vanion."

4. Subsequent to the filing of the Application, Apollo filed a Petition for Declaratory Order, Motion for Emergency Stay, and Motion to Shorten Response Time. According to the filing, Qwest Corporation (Qwest) had threatened to discontinue providing service to Apollo's customers (Vanion's former customers) on or about February 20, 2003 if an overdue balance of \$812,364.42 was not paid in full. Apollo requested a stay of Qwest's discontinuance of service to Vanion's customers until such time as its pending applications before the Commission were considered.

5. Having found good cause, we granted Apollo's motion for stay until March 24, 2003. If the parties could not resolve their differences, we further required Apollo, no later than February 24, 2003, to send out written notice to all former Vanion customers, apprising them of the current situation and to provide an affidavit to the Commission by February 24, 2003 indicating whether it had sent the notice required by our order. If Apollo failed to provide such notice, we required Qwest to provide notice to end users by February 28, 2003, holding Apollo responsible for all reasonable charges Qwest may have incurred associated with providing notice.

6. The parties subsequently filed motions for extension of time that we granted on March 5 and 31, 2003. The extensions of time we granted provided that Apollo was to send notice to customers by March 21, 2003, and extended the stay of Qwest's disconnection of Vanion's former customers to April 17, 2003.

7. In response to the application of Apollo and Vanion to transfer assets, Commission Staff (Staff) filed a Notice of Intervention, Entry of Appearance, and Request for Hearing.

8. Additionally, counsel for Vanion, Mr. Thorvald A. Nelson filed a Motion to Withdraw as counsel for Vanion. However, the pleading offered no explanation for the withdrawal. Although our Rule 4 CCR 723-1-21(c) provides the procedure for withdrawing as counsel, we are generally bound by the Colorado Rules of Civil Procedure regarding the grounds for withdrawal of counsel in a matter pending before the Commission. Rule 1.16 of the Colorado Rules of Professional Conduct prescribes the reasons a lawyer may request to withdraw in matters pending before a tribunal. In addition to the matters enumerated in Rule 1.16, the rule states:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

Rule 1.16(d). The rule further provides that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."

Rule 1.16(c).

B. Findings

9. We do not find cause pursuant to Rule 1.16 of the Colorado Rules of Professional Conduct to grant counsel's motion to withdraw. Therefore, we find that counsel shall continue to represent Vanion in this matter until and unless Rule 1.16 is satisfied.

10. We find good cause to grant Staff's request for hearing on this application, because of the matters surrounding the Vanion/Apollo transfer, including the possible disconnection of service by Qwest. Therefore, we find it necessary to conduct a hearing before a hearing commissioner to determine the merits of the application and the issues raised by the parties' application. Chairman Gregory E. Sopkin will act as hearing commissioner on this matter. The hearing commissioner will conduct a prehearing conference at the below stated time and place. Vanion, Apollo, Staff, and any other intervenors to this matter shall come prepared to discuss a procedural schedule in this case, including hearing dates and other procedural dates.

II. ORDER

A. The Commission Orders That:

1. The Motion to Withdraw as Counsel for Vanion Telecom, Inc., filed by Thorvald A. Nelson is denied consistent with the discussion above.

2. The application of Vanion Telecom, Inc., and Apollo Communications, LLC to execute a transfer of assets from Vanion Telecom, Inc., to Apollo Communications, LLC is deemed complete.

3. The application of Vanion Telecom, Inc., and Apollo Communications, LLC to execute a transfer of assets from Vanion Telecom, Inc., to Apollo Communications, LLC is referred to a hearing commissioner for a hearing on the matter.

4. Chairman Gregory E. Sopkin will act as hearing commissioner for this matter.

5. A prehearing conference shall be held at the following time and place:

DATE: April 14, 2003

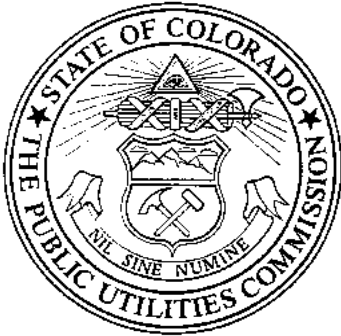
TIME: 9:00 a.m.

PLACE: Commission Hearing Room A
1580 Logan Street, Office Level 2
Denver, Colorado

6. This Order is effective on its Mailed Date.

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

(SEAL)



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.