

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 GRANTING MOTION IN PART

Mailed Date: April 9, 2003
Adopted Date: April 9, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission on an Unopposed Joint Motion to Vacate Prehearing Conference or to Convert the April 14, 2003 Prehearing Conference, for Issuance of an Initial Commission Decision and to Waive Response Time, filed by Commission Staff (Staff), Apollo Communications, LLC (Apollo), Vanion Telecom, Inc. (Vanion) and Qwest Corporation (Qwest) (jointly the Parties), on April 7, 2003.

2. The motion states that on March 20, 2003, Staff, Apollo and Qwest filed a Joint Notice of Settlement stating, among other things, that the Parties reached an agreement in principle regarding Qwest's threatened discontinuance of service to Vanion's former customers due to funds owed by Vanion to Qwest, and would file two final stipulations on or before March 31, 2003. However, the Parties missed that deadline and filed for an extension of time to file the stipulations in this docket to April 4, 2003.

3. On April 1, 2003, we issued Decision No. C03-0328 which set the application of Vanion and Apollo to transfer Vanion's assets to Apollo for hearing before Chairman Sopkin as Hearing Commissioner, and set a prehearing conference for April 14, 2003.

4. On April 4, 2003, the Parties filed two stipulations to settle the dispute in this matter. In light of the Parties' proposed settlement of this matter as set forth in the stipulations, the Parties now request that we either vacate the prehearing conference scheduled for April 14, 2003 and consider the stipulations for approval without a hearing, or convert the prehearing conference to a hearing on the stipulations.

5. The Parties also request, that if the Hearing Commission wishes to convene a hearing on the stipulations, that the Commission issue an initial decision pursuant to § 40-6-109(6), C.R.S. in order to "relieve any doubt and uncertainty of customers concerning their telecommunication service provider." Since the Parties actively support the proposed stipulations or do not oppose them, the Parties urge that the twenty-day period for exceptions is therefore superfluous. Additionally, the Parties indicate that the Colorado Office of Consumer Counsel (the only other intervenor in this matter) does not oppose the relief requested by the Parties' motion.

B. Discussion

6. We agree with the Parties that these proceedings should move forward in a timely manner, so that affected telecommunications end users are not prejudiced or inconvenienced by the matters at issue here. We therefore concur with the Parties that the prehearing conference scheduled for April 14, 2003 at 9:00 a.m. should be vacated, and a hearing on the merits of the stipulations be convened in its place. However, we find it in the public interest to expeditiously dispose of this matter, and therefore, set the matter to be heard before the entire Commission.

7. Since we shall hear the matter *en banc*, a Commission decision will be issued without delay; therefore, it is not necessary to issue an initial Commission decision pursuant to § 40-6-109(6), C.R.S. Consequently, we deny that portion of the Parties' motion.

8. We further order that the Parties come to the hearing prepared to discuss certain issues raised by the filed stipulations, in addition to other related issues that may be raised at hearing. Regarding the settlement agreement between Staff and Qwest, the Parties should be prepared to discuss disposition of the amounts owed to Qwest by Vanion; billing procedures by Qwest for charges incurred by Apollo; Transfer of Use Agreements; and the proposed plan for Qwest to pass along any unpaid charges by Apollo to other wholesale customers.

9. Regarding the settlement agreement between Staff, Apollo and Vanion, the Parties should be prepared to discuss, in addition to other issues that may be raised at hearing, whether Apollo is serving customers through resale of Qwest's service, through its facilities, or a combination of facilities and resale. The Parties should also be prepared to discuss whether Apollo will be amending its application in this docket; whether Staff endorses sanctions against Vanion for non-compliance with Commission rules, particularly those rules relating to transfer of assets and discontinuation of service; the length of time necessary for this docket to remain open for Vanion to make all appropriate filings; and a determination of the \$15,000 amount for reparations.

10. We therefore grant in part and deny in part, the motion of the Parties consistent with the discussion above.

II. ORDER**A. The Commission Orders That:**

1. The Unopposed Joint Motion to Vacate Prehearing Conference or to Convert the April 14, 2003 Prehearing Conference for Issuance of an Initial Commission Decision and to Waive Response Time filed by Commission Staff, Apollo Communications, LLC, Vanion Telecom, Inc. and Qwest Corporation is granted in part and denied in part, consistent with the discussion above.

2. The Prehearing Conference scheduled for April 14, 2003 at 9:00 a.m. is vacated.

3. The Stipulation and Settlement Agreement Between Staff of the Colorado Public Utilities Commission, Apollo Communications, LLC and Vanion Telecom, Inc., and the Stipulation and Settlement Agreement Between Staff of the Colorado Public Utilities Commission and Qwest Corporation is referred to the Commission *en banc* for a hearing on the matter.

4. The hearing 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

5. The request for an initial Commission decision pursuant to § 40-6-109(6), C.R.S. is denied as moot.

6. Response time to this motion is waived.

7. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
APRIL 9, 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

POLLY PAGE

JIM DYER

Commissioners