

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03D-072T

IN THE MATTER OF THE PETITION OF THE CITY OF CORTEZ, COLORADO, A COLORADO MUNICIPAL CORPORATION AND A HOME RULE CITY, FOR A DECLARATORY ORDER THAT CERTAIN DATA COMMUNICATIONS SERVICES PROVIDED BY THE CITY DO NOT NEED CERTIFICATES PROVIDED BY THE COMMISSION.

**ORDER GRANTING PETITION
FOR DECLARATORY ORDER**

Mailed Date: June 12, 2003
Adopted Date: May 21, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Petition for Declaratory Order by the City of Cortez, Colorado (City). In the Petition, the City requests a declaration by the Commission that its ownership and operation of certain facilities within municipal boundaries are not subject to Commission jurisdiction and do not require a certificate of public convenience and necessity. The Petition was filed on February 24, 2003. We issued notice of the Petition to the public, allowing interested persons an opportunity to intervene in this case. No requests for intervention were filed. Now being duly advised in the matter, we grant the Petition.

B. Discussion

2. The City owns a fiber optic network located within municipal boundaries known as the Cortez Community Network (CCN), and operates that network in the following manner: the City purchases data communications services from Qwest Corporation (Qwest) under a retail

contract. The City aggregates traffic from customers within its municipal boundaries into the CCN and, in conjunction with the services purchased from Qwest, transports this traffic to one or more locations in Denver, Colorado. The City offers to customers leases for strands of dark fiber contained in the CCN, and data communications services via the CCN to other locations on the CCN and to locations in Denver via services purchased from Qwest. The City does not offer any voice services.

3. The City now anticipates that one or more customers using the CCN may choose to use data communications services provided via the CCN and ATM Cell Relay service provided by Qwest to offer voice services to customers using voice over internet protocol (VOIP) technology. However, the City has modified its Memorandum of Understanding for CCN usage to include a requirement that customers, in the event they intend to offer VOIP service, present evidence to the City of a valid certificate issued by the Commission.

4. We conclude that the data services offered by the City over the CCN are not services subject to the Commission's jurisdiction under state statutes. The services offered by the City over the CCN are point-to-point, private line, data services. Part 4 of Article 15, Title 40, Colorado Revised Statutes, lists certain services exempt from regulation by the Commission. One of the services exempt from Commission regulation, under § 40-15-401(1)(n), C.R.S., is retail digital private line service. We conclude that the services offered by the City over the CCN are digital private line offerings. As such, these services are not regulated by the Commission. In addition, the City's representation that it will not permit providers that are uncertified (by the Commission) to use the CCN to offer VOIP services persuades us that its ownership and operation of the CCN is not subject to our jurisdiction. Therefore, the Petition for Declaratory Order is granted.

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

1. The Petition for Declaratory Order filed by the City of Cortez, Colorado on February 24, 2003 is granted.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 21, 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