

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

DOCKET NO. 03A-323T

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IN THE MATTER OF THE APPLICATION OF N C TELECOM, INC. FOR DESIGNATION  
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER, UNDER 47 U.S.C. § 214(E)(2).

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**ORDER DENYING APPLICATION**

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Mailed Date: September 17, 2003  
Adopted Date: September 10, 2003

**I. BY THE COMMISSION**

**A. Statement and Findings of Fact**

1. On July 25, 2003, NC Telecom, Inc. (NCT), filed an application for designation as an Eligible Telecommunications Carrier (ETC). 4 *Code of Colorado Regulations* (CCR) 723-42-7.

2. Notice of the application was posted on the Commission's web site on July 29, 2003. Interventions were due on or before August 28, 2003.

**B. Discussion**

3. The application is unopposed and may be considered without a hearing. § 40-6-109(5), C.R.S.

4. The Commission's rules at 4 CCR 723-42-7.2 require the following information to be contained in an application seeking designation as an ETC:

- a) 7.2.1 – A statement identifying the decision(s) of this Commission and/or the Federal Communications Commission (FCC) authorizing the applicant to provide telecommunications service;

- b) 7.2.2 – A statement describing the Service Area for which applicant seeks designation as an ETC;
- c) 7.2.3 – A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d);
- d) 7.2.4 – An affirmative statement that the applicant will offer the services that are supported by the Federal universal service support mechanisms under 47 U.S.C. 254(c);
- e) 7.2.5 – An affirmative statement that the applicant is a Common Carrier;
- f) 7.2.6 – An affirmative statement that the applicant will advertise the availability of such service and the charges therefore using media of general distribution pursuant to section 214(e)(1)(B) of the Act. The Commission established as guidelines to meet the requirements of section 214(e)(1)(B), that an ETC should advertise in publications targeted to the general residential market, and an ETC should place customer guide pages in the "White Pages" Directory within the ETC's Service Area. Such customer guide pages should indicate that the provider will offer basic local exchange service to all who request such service within that area; and
- g) 7.2.7 – An affirmative statement that the applicant will make available Lifeline service, as defined in § 54.401, pursuant to Subpart E of 47 C.F.R. § 54, to qualifying low-income customers.

5. The Commission's *Rules of Practice and Procedure* at 4 CCR 723-1-70 state that during the notice period, the Commission Staff (Staff) shall determine if the application meets the requirements for completeness. If the application does not meet the requirements, Staff shall give written or electronic notification to the applicant of the information or documentation necessary to meet the requirements.

6. On July 30, 2003, Staff mailed a written notice to the attorney for NCT informing NCT that portions of its ETC application did not meet the requirements for completeness. Specifically, NCT's ETC application did not meet the requirements provided in 4 CCR 723-42-7.2.2 and 4 CCR 723-42-7.2.3.

7. NCT's application did not meet the requirements of 4 CCR 723-42-7.2.2 because its service areas do not equal the service areas of the underlying Incumbent Local Exchange Carrier Qwest Corporation (Qwest).

8. NCT has supplemented the missing information required in 4 CCR 723-42-7.2.2 with its Advice Letter No. 5. Advice Letter No. 5 revises NCT's tariffs so that the NCT local calling areas match the Qwest local calling areas for the exchanges contained in the NCT ETC application.

9. However, NCT's application also fails to meet the requirements of 4 CCR 723-42-7.2.3, because NCT's application contained conclusory statements rather than the facts relied upon by NCT to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d).

10. In addition to the conclusory statements contained in NCT's application, we note that NCT's annual report indicates that all lines it serves are served through resale of other carrier's facilities. Section 47 C.F.R. § 54.201(i) provides that a state commission shall not designate as an ETC a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services. Consequently, NCT's application does not meet the requirements of 4 CCR 723-42-7.2.3 because it does not contain facts to demonstrate that it will offer the supported federal universal services either through its own facilities or through a combination of its own facilities and resale of another carrier's services.

11. NCT supplemented its application to provide the missing information required in 4 CCR 723-42-7.2.3 on September 5, 2003.

12. NCT's supplemental information states that it provides its telecommunications services through a combination of resale of Qwest facilities and its own fiber optic network. NCT states that it only provides local exchange access lines for switched local exchange service through resale of Qwest's facilities, but that it provides other telecommunications services, such as T-1 and DS-3 facilities, using NCT's own fiber. NCT also states that it currently does not have a telecommunications switch, but that it is currently planning to install one.

13. While NCT may be providing other telecommunications services, such as video and data, through the use of NCT's own fiber facilities, NCT does not currently provide the supported services using any of its own facilities. By NCT's own explanation, NCT provides these services solely through the resale of Qwest facilities.

14. Pursuant to 47 C.F.R. § 54.201(i), NCT is not eligible to be designated as an ETC because NCT currently provides the supported services *exclusively* through resale of Qwest facilities. Until such time as NCT provides the supported services through either its own facilities, or through a combination of its own facilities and resale of another carrier's facilities, NCT will not be eligible to be designated as an ETC.

## **II. ORDER**

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

1. The application of NC Telecom, Inc., for designation as an eligible telecommunications carrier is denied consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
September 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

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Commissioners