

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-337AT

IN THE MATTER OF THE APPLICATION OF ESSEX ACQUISITION CORPORATION TO DISCONTINUE REGULATED TELECOMMUNICATIONS SERVICES IN THE STATE OF COLORADO.

**ORDER GRANTING APPLICATION
TO DISCONTINUE SERVICE**

Mailed Date: September 15, 2003
Adopted Date: September 10, 2003

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. On August 1, 2003, Essex Acquisition Corporation (EAC), doing business as eLEC Communications, filed an application to discontinue providing regulated telecommunications services in the State of Colorado. The authority to provide facilities based local exchange telecommunications services was granted in Decision No. C01-0002, effective January 4, 2002.

2. EAC has effective tariffs on file with the Commission. EAC represents that it currently offers local exchange, emerging competitive, and resold toll services to business customers and residential customers in the State of Colorado.

3. On August 4, 2003, notice of the application to discontinue this service was filed. Interventions were due on or before September 3, 2003. On September 3, 2003, the Colorado Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right, Entry of Appearance, and Request for Hearing.

4. The Commission received a copy of the customer notice and affidavit from EAC that it had provided notice to its customers as required by Commission rule. An affidavit from EAC that it had provided all of the notice requirements pursuant to Commission Rule 4 *Code of Colorado Regulations* 723-25-7.6 was filed on August 15, 2003. The notice to customers stated that service would be discontinued as of September 12, 2003.

5. EAC indicated to Commission Staff that only nine customers have not, as of the date of the Commissioners' Weekly Meeting, switched to a different telecommunications provider. EAC further indicated that it has contacted each of those nine remaining customers by telephone to remind them of the necessity to find a new telecommunications provider.

6. We find that EAC has provided sufficient information for the Commission to take appropriate action relating to this matter.

7. In order to ensure that the remaining nine customers are given every opportunity to continue receiving uninterrupted telecommunications services, we designate Qwest Corporation (Qwest) as the default provider with regard to this application to discontinue telecommunications services, and as such, also name Qwest as an indispensable party to this matter. Should Qwest wish to file any responsive pleadings to its designation as default provider, that filing should be made no later than the close of business on September 16, 2003.

8. As indicated *supra*, OCC filed an intervention by right and request for hearing in this matter. The OCC expressed concern that customers receive accurate and timely information regarding options available to them regarding their telephone service, as well as all actions necessary to ensure continuity of service through the transition process. For these reasons, OCC intervened of right and requested a hearing in this matter.

9. We agree with the OCC's concerns here. It is of paramount importance that affected end users are provided with all relevant information, and afforded every opportunity to transition to new telecommunications providers in a timely manner. However, we are satisfied that EAC has taken every measure necessary to ensure a seamless transition for its end users. We are further convinced that nothing presented at a hearing would dissuade us from finding that EAC's transition plan is in the best interests of its end users and that EAC has complied fully with Commission rules regarding discontinuance of its telecommunications services. As noted *supra*, we have further ensured a seamless transition for the remaining nine end users by designating Qwest as the default provider here. Therefore, we find that any further action such as a hearing on the matter is unnecessary.

10. We further find that it is in the best interest of EAC's affected end users to extend the date for discontinuance of service to September 26, 2003, to ensure that those end users are provided sufficient time to transition to a new telecommunications service provider.

II. ORDER

A. The Commission Orders That:

1. The application of Essex Acquisition Corporation to discontinue providing telecommunications services in Colorado is deemed complete.

2. Essex Acquisition Corporation's application to discontinue offering its service in the Qwest Corporation service territory shall be effective September 26, 2003, and is approved with the following conditions:

- a) Applicant will make arrangements to the best of its ability to ensure that customers retain their existing phone numbers when they are transferred to a new provider.

b) Applicant will absorb any costs that would normally be charged for transferring local service to a new provider. The end use customer will be held harmless in this transaction.

c) Applicant will not disconnect service of any customer that will be transferred to the designated default provider until the default provider has had time to complete the transfer, which should be completed within 14 days from September 12, 2003.

3. The obligation of Essex Acquisition Corporation to file an annual report with the Commission and contribute to all applicable Colorado funds for the period up until the effective date of this Order remains. These funds include the Public Utilities Commission's Fixed Utilities Fund, the Colorado High Cost Support Mechanism Fund, the Telecommunications Relay Services for the Disabled Telephone Users Program, and the Emergency Telephone Access Act Program.

4. Essex Acquisition Corporation, following the completion of transfer of its customers and complying with the conditions stated above, is no longer authorized to offer local exchange and emerging competitive telecommunications service in Colorado and its tariffs on file are cancelled effective September 26, 2003.

5. Qwest Corporation is named an indispensable party to this docket. Qwest Corporation shall have until September 16, 2003 to file any pleadings it deems necessary and appropriate.

6. Qwest Corporation is designated as the default provider for Essex Acquisition Corporation customers who do not select an alternative provider by September 26, 2003. Qwest Corporation shall not change these customers' long distance providers unless specifically requested by the individual customer. As a part of this default provider responsibility, Qwest Corporation will receive a waiver of the Commission's slamming rules, 4 *Code of Colorado*

Regulations 723-2-25 and 4 CCR 723-2-27.4.1. This waiver applies solely to the instant case. In its designation as a default provider, Qwest Corporation is not required to accept any transferred customers from Essex Acquisition Corporation that have unpaid billing balances due to Qwest Corporation until those unpaid balances are paid or has entered into agreement to pay previous amounts due.

7. The Colorado Office of Consumer Counsel's request for a hearing in this matter is denied consistent with the discussion above.

8. 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

POLLY PAGE

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Commissioners