

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

DOCKET NO. 03A-337AT

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

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**DECISION DENYING APPLICATION FOR REHEARING,  
REARGUMENT AND RECONSIDERATION**

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Mailed Date: September 24, 2003

Adopted Date: September 24, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an application for rehearing, reargument or reconsideration (RRR) of Commission Decision No. C03-1044, filed by Qwest Corporation (Qwest) on September 17, 2003, in which the Commission named Qwest as the default provider in this docket, and as a result, an indispensable party. Qwest requests that the Commission amend Decision No. C03-1044, by withdrawing Qwest as the designated default provider. In the alternative, Qwest asks that Essex Acquisition Corporation (EAC) be required to provide Qwest a list of customers to be transitioned to Qwest, as well as permitting Qwest to determine the length of time necessary to complete the transition.

2. On August 1, 2003, EAC filed an application to discontinue providing regulated telecommunications services in the State of Colorado. Qwest did not intervene in EAC's application. Upon the determination that EAC had met all the requirements to discontinue service, we granted its application in Decision No. C03-1044. At the September 17, 2003 open meeting, it was determined that nine customers remained that had not made arrangements to

switch telecommunications providers. In order to ensure that those nine customers had every opportunity to maintain telephone service, we granted EAC's application to discontinue service, but extended the date on which it would discontinue service to September 26, 2003. We further ordered that Qwest would be designated as the default provider, and made it an indispensable party to this docket.

3. In its RRR, Qwest objects to this designation on several grounds. First, Qwest points out that it had no interest in participating in this docket since it had no recognizable impact on Qwest. Qwest also complains that it had not reviewed EAC's application and had no knowledge of its contents and as a result, is unaware of any transition plan proposed by EAC. Because the Commission found that EAC had complied with the discontinuance rules, absent EAC seeking Qwest's designation as a default provider, Qwest maintains that there would be no reason for the Commission to do so.

4. Qwest further asserts that its retail side does not know who the potential customers are and as a result cannot begin the transfer. Also, Qwest points out that transferring customers requires a dedication of resources "which is out of the ordinary from Qwest's every day business." In addition, Qwest maintains that a designated default provider is not necessary in a competitive market where end users customers have options for choosing their own local service provider.

5. As a result, Qwest requests that the Commission amend Decision No. C03-1044 to withdraw Qwest as the designated default provider. In the alternative, Qwest requests that EAC be required to provide Qwest with a list of customers to be transitioned to Qwest.

In addition, Qwest asks that it be given the opportunity to determine the length of time necessary to complete the transition.

6. We made our decision to designate Qwest as the default provider here pursuant to Qwest's provider of last resort (POLR) obligation under § 40-15-502(6), C.R.S. and our rules at 4 *Code of Colorado Regulations* (CCR) 723-42-5, in the area served by EAC. We are required to ensure that customers of utilities receive continuous, reliable service.

7. When a telecommunications provider wishes to discontinue service, we find it in the public interest, when necessary, to designate a default provider to ensure all customers maintain their dial tone. The logical entity to serve as the default provider is the POLR in the service area of the provider wishing to discontinue service. In this case, that is Qwest.

8. We designated Qwest as the default provider here to ensure that EAC's remaining customers did not lose phone service upon the discontinuance of its service. Typically, Qwest is involved in the transition process from the beginning when a competitive local exchange provider files an application to discontinue service. Qwest typically is also involved in determining the terms of the transition plan. We point out that Commission Staff generally makes every effort to inform Qwest of a CLEC application to discontinue service as early as possible to give Qwest ample opportunity to prepare to take on any remaining customers. The Commission will afford that courtesy to Qwest in the future, should the need arise to designate it as a default provider in future discontinuance applications. However, given that at the date of Decision No. C03-1044, there were only nine customers remaining (as of the date of this Order, Staff now indicates there are two remaining customers) who had not transitioned to a new telephone service, we determined that as the POLR in this service area, Qwest should be the

default provider. We find that decision to be sound, and as a result deny Qwest's request to withdraw as the default provider here.

9. Qwest further requests that EAC be required to provide Qwest a list of customers to be transitioned to it. We find this request reasonable and therefore order EAC to provide Qwest with a list of EAC's remaining customers no later than noon on September 25, 2003.

10. Qwest also requests that it be afforded the opportunity to determine the length of time necessary to complete the transition process. We deny this request. Given Staff's representation that only two customers remain to be transitioned, we find it reasonable to require that they be defaulted to Qwest, if that is the case, by the close of business on September 26, 2003, which is the time and date at which EAC shall cease telecommunications services.

## **II. ORDER**

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

1. The Application of Qwest Corporation for Rehearing, Reargument or Reconsideration of Commission Decision No. C03-1044 is denied.

2. Essex Acquisition Corporation shall provide a list of its remaining customers who have not transitioned to a new telecommunications provider to Qwest Corporation no later than noon on September 25, 2003.

3. The request of Qwest Corporation to determine the length of time necessary to complete the transition is denied.

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

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
September 24, 2003.**

(S E A L)



**ATTEST: A TRUE COPY**

*Bruce N. Smith*

**Bruce N. Smith  
Director**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

**POLLY PAGE**

**JIM DYER**

Commissioners