

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

DOCKET NO. 02C-577T

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IN THE MATTER OF AN INVESTIGATION OF COMPETITIVE LOCAL EXCHANGE CARRIERS AND EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE PROVIDERS CONCERNING ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND PROCEDURE RELATING TO THE FILING OF ANNUAL REPORTS BY PUBLIC UTILITIES.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
REVOKING CERTIFICATES AND/OR  
REGISTRATIONS AND ORDERING  
DISCONNECTION FROM THE  
PUBLIC SWITCHED NETWORK**

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Mailed Date: January 13, 2003

Appearances:

Michael J. Santisi, Assistant Attorney General, Denver, Colorado,  
for the Staff of the Commission; and

Rogelio E. Pena, Esq., Pena & Associates, LLC, Boulder,  
Colorado, for Level 3 Communications, LLC.

**I. STATEMENT**

1. The Colorado Public Utilities Commission (Commission) initiated the captioned docket on October 30, 2002, by issuance of its Decision No. C02-1298 entitled "Order Withdrawing Decision No. C02-1232, Order to Show Cause, and Notice of Hearing" (Show

Cause Order).<sup>1</sup> The Show Cause Order was served on the Respondents listed in Attachments A and B thereto on November 25, 2002.<sup>2</sup>

2. By Decision Nos. R02-1362-I and R02-1296-I Respondents CenturyTel, Inc., and Sprint Communications Company L.P., telecommunications providers listed on Attachment B to the Show Cause Order, were dismissed from this proceeding.

3. The matter was called for hearing on January 2, 2003, at 9:00 a.m., in Commission Hearing Room A, Office Level 2, 1580 Logan Street, Denver, Colorado.

4. Michael J. Santisi, Assistant Attorney General, entered his appearance on behalf of the Staff of the Commission (Staff) and Rogelia E. Pena, Esq. entered his appearance on behalf of Level 3 Communications, LLC (Level 3). Ms. Jamie Jack, a Financial Analyst for the Commission, testified on behalf of Staff.

5. Two preliminary matters were addressed. The first, Staff's Motion to Amend its List of Witnesses and Exhibits filed on December 18, 2002, was granted. Level 3 then moved for dismissal from this proceeding since it does not provide service to any of the Respondents listed on Attachment A of the Show Cause Order. Staff did not oppose the motion and it was granted.

6. None of the Respondents listed on Attachment A of the Show Cause Order appeared at the hearing.

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<sup>1</sup> Decision No. C02-1232 was issued in this docket on October 30, 2002, and was mailed on November 5, 2002. It was subsequently withdrawn by the Commission since it did not accurately describe all authorities respective to the entities listed on Attachment A thereto.

<sup>2</sup> The entities listed on Attachment A of the Show Cause Order provide jurisdictional competitive local exchange service or emerging competitive telecommunications services to Colorado consumers. They purchase telecommunications services at wholesale from the facilities-based carriers listed on Attachment B of the Show Cause Order who connect the entities listed on Attachment A to the public switched network.

7. During the course of the hearing, Exhibits 1 through 5 were identified, offered, and admitted into evidence.

8. Pursuant to § 40-6-109, C.R.S., the undersigned administrative law judge transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. Providers of jurisdictional competitive local exchange service and emerging competitive telecommunications services are required to file an annual report with the Commission on or before April 30 of each year for the preceding calendar year. *See*, § 40-3-110, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-25(a)(1). As pertinent to this proceeding, the annual reports for calendar year 2001 were due April 30, 2002.

10. Ms. Jack testified that Essex Communications, Inc., Great West Services, Ltd., Upper Rio-Grande Neighborhood Telecom, Inc., and Advanced Telecom, Inc., four of the Respondents listed on Attachment A of the Show Cause Order, filed annual reports for the 2001 calendar year subsequent to issuance of the Show Cause Order. As a result, Staff requested that this show cause proceeding be dismissed as to these Respondents. Good grounds having been shown, the request of Staff to dismiss the above named Respondents will be granted.

11. The evidence presented at hearing established that the Respondents shown on Attachment A of this Decision have failed to make the required annual report filing despite numerous notices provided by the Commission advising them of the need to file such a report. Written notices of this filing requirement were mailed to the last addresses provided by these

Respondents to the Commission on March 5, 2002; July 18, 2002; September 19, 2002; and November 25, 2002, the mailing date of the Show Cause Order. *See*, Exhibits 1, 2, 4, and 5.

12. Because the Respondents shown on Attachment A have failed to file an annual report for the calendar year ended December 31, 2001, as required by Rule 4 CCR 723-1-25(a)(1), their certificates of public convenience and necessity and/or registrations authorizing them to provide jurisdictional competitive local exchange service and/or emerging competitive telecommunications services should be revoked. In addition, these Respondents should be ordered to cease and desist from providing services as competitive local exchange carriers and/or emerging competitive telecommunications service providers and should be disconnected from the public switched network. This remedy is appropriate in that Respondents' obligation to file the subject annual reports is long overdue and they have refused or failed to make the required filing notwithstanding four separate notices from the Commission. The Respondents may avoid the sanctions imposed herein by filing their 2001 annual reports prior to the effective date of this Order (*i.e.*, within 20 days of the date this Order is served).

### **III. ORDER**

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

1. The certificates of public convenience and necessity and/or the registrations of the Respondents listed in Attachment A of this Order to operate as competitive local exchange carriers and/or emerging competitive telecommunications service providers are revoked as of the effective date of this Order.

2. The Respondents listed in Attachment A of this Order are hereby ordered to cease and desist operations as competitive local exchange carriers and/or emerging competitive telecommunications service providers as of the effective date of this Order.

3. The facilities-based local exchange carriers listed in Attachment B of this Order are hereby ordered to disconnect the competitive local exchange carriers and/or emerging competitive telecommunications service providers listed in Attachment A of this Order from the public switched telecommunications network. Such disconnection shall be accomplished no later than 15 business days after the effective date of this Order.

4. Ordering paragraph nos. 1, 2 and 3 shall be void, and this proceeding shall be dismissed, as to any Respondent listed on Attachment A of this Order who files the required annual report before the effective date of this Order.

5. The Motion of the Staff of the Commission to Amend its List of Witnesses and Exhibits filed on December 18, 2002, is granted.

6. The motion of Staff of the Commission to dismiss Essex Communications, Inc., Great West Services, Inc., Upper Rio-Grande Neighborhood Telecom, Inc., and Advanced Telecom, Inc., from this annual report show cause proceeding is granted.

7. The motion of Level 3 Communications, LLC for dismissal from this annual report show cause proceeding is granted.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

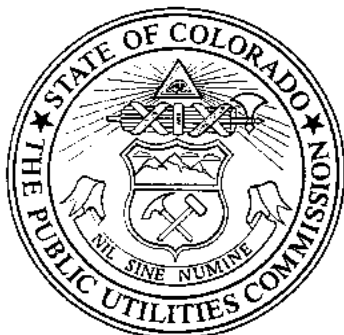
9. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge

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