

Decision No. R03-0051-I

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

DOCKET NO. 02F-484T

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VIRTUAL PATHWAYS, LLC, AND PAMELA R. STORRS,

COMPLAINANTS,

V.

QWEST CORPORATION,

RESPONDENT.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
DENYING MOTION TO DISMISS,  
GRANTING ALTERNATIVE MOTION  
REGARDING LEGAL COUNSEL,  
DENYING AS MOOT MOTION  
FOR MORE DEFINITE STATEMENT,  
AND ORDERING COMPLAINANTS  
TO SUBMIT PROPOSED HEARING DATES**

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Mailed Date: January 14, 2003

**I. STATEMENT**

1. On September 20, 2002, Respondent Qwest Corporation (Qwest) filed a Motion to Dismiss, Motion to Require Legal Counsel, and Motion for More Definite Statement (Qwest motion) in this complaint proceeding.<sup>1</sup> Complainants Virtual Pathways, LLC (Virtual Pathways), and Pamela R. Storrs (collectively, Complainants) appear in this proceeding *pro se*. Time for Complainants to respond was enlarged to December 20, 2002. *See* Decisions No. R02-1129-I,

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<sup>1</sup> Qwest filed a Corrected Certificate of Service to the motion on October 8, 2002.

No. R02-1211-I, and No. R02-1386-I. Complainants filed their response to the Qwest motion on December 19, 2002.

2. Qwest first asks the Commission to dismiss the claims of Virtual Pathways because the corporate entity is not represented by legal counsel. Qwest motion at 2-3. Complainants oppose this motion. *See* Response to Motion to Require Legal Counsel at 1.

3. As Qwest acknowledges in its motion, if statutory and rule requirements are met, a limited liability corporation, such as Virtual Pathways, is not required to be represented by legal counsel. Because motions to dismiss are disfavored and because Virtual Pathways will be ordered either to demonstrate compliance with the requirements or to obtain counsel, the motion to dismiss will be denied.

4. In the alternative to its motion to dismiss, Qwest asks the Commission to require Virtual Pathways “to obtain legal counsel or [to] prove why legal counsel is not required.” Qwest motion at 2. Complainants respond that Complainant Pamela R. Storrs is the sole manager of Virtual Pathways and that “[t]here are no other officers or members of the LLC” and argue that “it appears [from the Qwest motion] that an individual and an officer of a closely held entity may represent themselves.” Response to Motion to Require Legal Counsel at 1. Complainants state that they will seek legal counsel and, if successful, will inform the Commission and Qwest. *Id.*

5. There is no question that Ms. Storrs, appearing as an individual, may represent herself. The issue here is whether Ms. Storrs, who is not an attorney, may represent Virtual Pathways. Because the record at present does not establish that the statutory and rule

requirements are met, Qwest's alternative motion will be granted. Virtual Pathways will be ordered to make a filing, described below, concerning legal representation.

6. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-21(b)(2), an individual may represent a closely held corporation as provided in § 13-1-127, C.R.S. That statute states that an officer may represent a closely held corporation before an administrative agency *provided* two conditions are met: (1) the amount in controversy does not exceed \$10,000; and (2) the agency is provided with evidence of the authority of the officer to represent the closely held corporation.

7. There is nothing in the file to establish that the amount in controversy in this matter is \$10,000 or less. The first condition has not been satisfied.

8. The second condition also has not been satisfied. The only statements concerning Virtual Pathways and its legal representation are those set out above. These statements are insufficient. Specifically, there is no statement that Ms. Storrs is an officer of Virtual Pathways; and no statement that Virtual Pathways has authorized her to appear in this proceeding on its behalf.

9. On or before January 31, 2003, Virtual Pathways shall make a filing that: (a) states whether the amount in controversy in this proceeding does or does not exceed \$10,000; (b) identifies the individual who will represent Applicant at the hearing; (c) establishes that the named individual is an officer of Applicant; and (d) has appended to it a resolution from Virtual Pathways' Board of Directors certifying the named individual's status as an officer of the corporation (*i.e.*, Virtual Pathways) and specifically authorizing the named individual to appear on Virtual Pathways' behalf in this matter. In the alternative, on or before January 31, 2003,

Virtual Pathways may make a filing confirming that it will be represented in this proceeding by an attorney at law currently in good standing before the Supreme Court of the State of Colorado and identifying that counsel.

10. Virtual Pathways' failure to make the filing on or before January 31, 2003, may result in the dismissal of the claims made by Virtual Pathways in this proceeding.

11. The Qwest motion contains a Motion for More Definite Statement. Complainants filed a Response to Motion for More Definite Statement. That response identifies which claim involves which Complainant and suffices to permit Qwest to prepare its answer to the complaint. The complaint, as supplemented, meets the notice pleading requirement of the Commission's Rules of Practice and Procedure.<sup>2</sup> The Motion for More Definite Statement will be denied as moot.

12. At present there is no hearing date scheduled in this proceeding.<sup>3</sup> Complainants will be directed to submit a list of proposed hearing dates, agreeable to Complainants and Qwest, on which all parties, witnesses, and counsel are available. The proposed hearing dates shall be, if possible, during the weeks of March 17 and 24, 2003.<sup>4</sup> Complainants shall file this list of proposed hearing dates on or before January 24, 2003. Upon receipt of this list, the Administrative Law Judge will set a hearing date.

13. The filing requirements applicable to this proceeding are contained in Rule 4 CCR 723-1-72 and Rule 4 CCR 723-1-61 and are incorporated into the Order to Satisfy or to Answer

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<sup>2</sup> If Qwest seeks more information, there are procedures available to obtain that information.

<sup>3</sup> The prior hearing date was vacated at Complainants' request. *See* Decision No. R02-1211-I.

<sup>4</sup> A hearing date during these weeks will permit the existing procedural schedule to go forward. *See* discussion *infra*.

dated September 10, 2002. For the convenience of the parties, the requirements are restated here: (a) within ten days after the date of this Order, Qwest shall file its answer to the complaint; (b) within ten *working* days after the answer is filed, Complainants shall file<sup>5</sup> a list containing the name, address, and title of each of their witnesses and shall file two copies of each exhibit they intend to present at the hearing; (c) within 15 *calendar* days after the date Qwest's answer is due (whether or not an answer is filed), Complainants shall file a statement either that they intend to proceed with the complaint or that they wish to withdraw the complaint; and (d) within ten *working* days after Complainants file their list and exhibits, Qwest shall file its list containing the name, address, and title of each of its witnesses and shall file two copies of each exhibit it intends to present at the hearing.

14. A witness (except one offered in rebuttal) who is not identified according to these requirements will not be permitted to testify. An exhibit (except one offered in rebuttal) which is not filed and served in accordance with these requirements will not be received into evidence.

15. Parties are reminded that, absent a showing of good cause for the failure, a failure to meet the filing requirements may result in dismissal of the complaint or in striking the answer.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Motion to Dismiss filed by Qwest Corporation is denied.
2. The alternative Motion to Require Legal Counsel filed by Qwest Corporation is granted consistent with the discussion above.

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<sup>5</sup> Complainants are reminded that anything filed with the Commission must be served on counsel for Qwest.

3. On or before January 31, 2003, Virtual Pathways, LLC, shall make a filing that:

(a) states whether the amount in controversy in this proceeding does or does not exceed \$10,000;

(b) identifies the individual who will represent Applicant at the hearing; (c) establishes that the named individual is an officer of Applicant; and (d) has appended to it a resolution from Virtual Pathways, LLC's Board of Directors certifying the named individual's status as an officer of the corporation (*i.e.*, Virtual Pathways, LLC) and specifically authorizing the named individual to appear on Virtual Pathways, LLC's behalf in this matter. In the alternative, on or before January 31, 2003, Virtual Pathways, LLC, may make a filing confirming that it will be represented in this proceeding by an attorney at law currently in good standing before the Supreme Court of the State of Colorado and identifying that counsel.

4. The Motion for More Definite Statement filed by Qwest Corporation is denied as moot.

5. On or before January 24, 2003, Complainants Virtual Pathways, LLC, and Pamela R. Storrs shall file a list of proposed hearing dates. The list shall conform with the requirements set forth above.

6. Complainant Virtual Pathways, LLC; Complainant Pamela R. Storrs; and Respondent Qwest Corporation shall comply with the filing and service requirements set forth above.

7. This Order shall be effective immediately.

(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

MANA L. JENNINGS-FADER

Administrative Law Judge

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