

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-435T

IN THE MATTER OF THE INVESTIGATION OF COMPETITION IN COLORADO'S
TELECOMMUNICATIONS MARKET.

**ORDER EXTENDING TIME TO RESPOND
TO SURVEY, DENYING OBJECTIONS TO SURVEY,
AND MODIFYING LIST OF INDISPENSABLE PARTIES**

Mailed Date: September 27, 2004
Adopted Date: September 14, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of requests to extend the time for responding to the Commission survey on competition, and the objections to the survey by XO Communications, Inc. and Allegiance Telecom jointly (collectively XO), and DIECA Communications, Inc., doing business as Covad Communications (Covad). Now being duly advised, we extend the time for responding to the survey, and overrule objections to responding to the survey. In addition, we now modify the list of indispensable parties to this case by adding one additional telecommunications company inadvertently omitted from the prior list of indispensable parties, and correcting the official name of another company included on the prior list.

2. By separate letters to the Director of the Commission, Excel Telecommunications, Inc., VarTec Solutions, Inc., and VarTec Telecom, Inc. each requested an extension of time to respond to the survey attached to Decision No. C04-0984 (Mailed Date of September 1, 2004).

Responses to the survey are due October 1, 2004; the companies request an extension of time to October 15, 2004. We grant this request. This extension of time shall apply to all survey respondents (*i.e.*, those companies listed on Attachment B to Decision No. C04-0984 as modified by this order). Therefore, all telecommunications companies required to submit responses to the Commission survey appended to Decision No. C04-0984 (*i.e.*, Attachment A to the Decision) shall file their responses on or before October 15, 2004.

3. XO submitted its General and Specific Objections to Staff's Initial Audit Requests on September 9, 2004, and Covad submitted its Objection to Commission Survey on September 10, 2004. We deny these objections and issue the following observations and clarification. First, the apparent premise of the objections by XO and Covad is that the Commission survey attached to Decision No. C04-0984 is discovery or audit *from Commission Staff*. XO and Covad, in their objections, assume that it is the Staff of the Commission (Staff) that is requesting responses to discovery questions or audit requests. This is incorrect. Decision No. C04-0984 is plain and clear that it is the Commission, the entity with regulatory authority over XO and Covad that has mandated responses to the survey. While Staff is assisting the Commission in this docket, it is the Commission itself, not Staff, that has directed companies subject to the Commission's authority to respond to the survey. As such, traditional objections to discovery or even audit questions are improperly premised in this case. We emphasize that refusal to respond to the survey will constitute failure to comply with a Commission order.

4. Covad asserts that the Commission lacks the statutory authority to order Covad to "create reports", since § 40-6-106, C.R.S., limits the Commission's authority to inspecting the books and records of a regulated utility. This argument is also incorrect. Notably, the Commission is statutorily empowered to "generally supervise and regulate every public utility in

this state” and “to do all things...necessary or convenient” in the exercise of its regulatory powers. *See* § 40-3-102, C.R.S. Moreover, § 40-3-110, C.R.S., plainly and clearly states that, “Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information...”

5. We also observe that the objections by XO and Covad, instead of complaining about specific survey questions with specific reasons, are improper as general boilerplate objections. For example, the objections assert that the survey is “vague and ambiguous”, burdensome, and calls for privileged information. We respond: Most of the survey questions call for specific objective information, such as the types of regulated services the respondent provides and the number of access lines provided by wire center. The survey is not “vague and ambiguous.”¹ As for the argument that responding to the survey is “burdensome”, the objections provide no specific information to support this assertion. We point out that the survey calls for information that companies should keep as part of conducting business in this state. Further, although responding to the survey requires some effort by responding companies--we have no reason to believe responding to the survey requires extraordinary effort--the information is necessary for the Commission to carry out its regulatory responsibilities. Finally, to the extent

¹ To the extent a company has a question regarding specific items in the survey (*e.g.*, the meaning of “large business customer” or “small business customer”) or a concern that it does not keep the information required by the survey, it should first discuss such matters with the Staff members assisting the Commission in this case, before filing formal objections in this docket.

the survey calls for confidential information,² Decision No. C04-0984 establishes confidentiality provisions to protect such information.

6. In short, the objections do not provide any justifiable reason for failing to respond to the survey. The objections by XO and Covad are denied, and XO and Covad are directed to respond to the survey by October 15, 2004.

7. Subsequent to the issuance of Decision No. C04-0984, we determined that, as an entity subject to the Commission's regulatory jurisdiction, Bullseye Telecom, Inc. should be included on Attachment B to the Decision, and directed to answer the survey questions. In addition, Tel West Communications, LLC was incorrectly listed on Attachment B as Tel West Communications, Inc. Attachment B should be amended to reflect the correct entity, Tel West Communications, LLC.

II. ORDER

A. The Commission Orders That:

1. The requests for an extension of time to respond to the survey appended to Decision No. C04-0984 are granted. All respondents (on Attachment B to Decision No. C04-0984 as amended by this Order) shall submit responses to the survey on or before October 15, 2004.

2. The General and Specific Objections to Staff's Initial Audit Requests by XO Communications, Inc. and Allegiance Telecom of Colorado, Inc. are denied.

² Both XO and Covad assert without any explanation that the survey seeks privileged information such as attorney-client and work-product information. Given the largely objective nature of the survey, this seems highly unlikely.

3. The Objections to Commission Survey by DIECA Communications, Inc., doing business as Covad Communications Company, are denied.

4. Bullseye Telecom, Inc. and Tel West Communications, LLC are added to Attachment B, Decision No. C04-0984, as entities subject to the Commission's regulatory jurisdiction and are directed to answer the survey questions.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 14, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.