

Decision No. R04-0457-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-054T

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO EXECUTE A TRANSFER
OF COLORADO TELESERV, INC.

DOCKET NO. 04A-079T

IN THE MATTER OF THE APPLICATION OF FRANK RAMOGIDA HOLDINGS (CO),
INC., DOING BUSINESS AS ROCK SOLID BROADBAND, FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES AND FOR A LETTER OF REGISTRATION TO
PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING COLORADO TELESERV, INC.,
TO FILE CONCERNING REPRESENTATION**

Mailed Date: May 4, 2004

I. STATEMENT

1. On February 3, 2004, Colorado Teleserv, Inc. (Teleserv), and Frank Ramogida Holdings (CO), Inc. (FRHC), filed an Application Requesting Authority to Execute a Transfer (Transfer Application). By this verified filing Teleserv and FRHC seek authority to transfer a controlling interest in Teleserv to FRHC. The Transfer Application commenced Docket No. 04A-054T (Transfer Proceeding). On February 3, 2004, Teleserv and FRHC also filed Supplemental Material in Support of the Transfer Application.

2. On March 24, 2004, Staff of the Commission (Staff) intervened of right and requested a hearing in the Transfer Proceeding. This is the only intervention in that proceeding.

3. On February 23, 2004, FRHC filed an Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services (CPCN Application). The CPCN Application commenced Docket No. 04A-079T (CPCN Proceeding).

4. On March 29, 2004, Staff intervened of right and requested a hearing in the CPCN Proceeding. This is the only intervention in that proceeding.

5. By Decision No. R04-0373-I, the undersigned Administrative Law Judge (ALJ) consolidated the Transfer Proceeding and the CPCN Proceeding, scheduled a hearing date, and established a procedural schedule in this consolidated matter.

6. On April 13, 2004, Craig D. Joyce, Esquire, filed a Motion to Withdraw as Counsel for Colorado Teleserv, Inc. On May 4, 2004, by Decision No. R04-0458-I, the undersigned Administrative Law Judge (ALJ) granted that motion. As a result, at present Teleserv is not represented by counsel in this matter.

7. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-21(a) requires a party in a proceeding before the Commission to be represented by counsel unless one of the two following exceptions applies: (1) the person is “an individual who is a party to [the] proceeding and who wishes to appear *pro se* [to represent] *only* his *individual* interest” (Rule 4 CCR 723-1-21(b)(1));¹

¹ As Teleserv is a corporation, this provision does not apply.

or (2) the person appears “on behalf of a closely held corporation, [but] *only* as provided in § 13-1-127, C.R.S.” (Rule 4 CCR 723-1-21(b)(2)).² (Emphasis supplied.)

8. Section 13-1-127(2), C.R.S., provides that an officer³ may represent a closely held entity⁴ before an administrative agency *provided* two conditions are met: (1) the amount in controversy does not exceed \$10,000; *and* (2) the officer supplies the agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely held entity.

9. Section 13-1-127(2.3), C.R.S., provides that:

each of the following persons shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status:

- (a) An officer of a cooperative, corporation, or nonprofit corporation;
- (b) A general partner of a partnership or of a limited partnership;
- (c) A person in whom the management of a limited liability company is vested or reserved; and
- (d) A member of a limited partnership association.

10. In order for Teleserv to appear without counsel in this proceeding, the Commission must have information upon which to make that determination. To provide the required information, Teleserv must make, on or before May 14, 2004, a verified (*i.e.*, sworn) filing that: (a) establishes that Teleserv is a closely held entity; (b) establishes that the amount in controversy in this proceeding does not exceed \$10,000; (c) identifies the individual who will represent Teleserv at the hearing; (d) establishes that the identified individual is an officer of

² To the extent necessary, the ALJ will grant a variance to Rule 4 CCR 723-1-21(b)(2) so that the Rule is as broad in its reach as § 13-1-127, C.R.S.

³ Section 13-1-127(a)(i), C.R.S., defines “officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

⁴ A closely-held entity may have “no more than three owners.” See § 13-1-127(1)(a), C.R.S.

Teleserv; and (e) if the identified individual does not meet the requirements of § 13-1-127(2.3), C.R.S., it has appended to it a resolution from Teleserv's Board of Directors that specifically authorizes the identified individual to represent Teleserv in this matter. If Teleserv makes this filing, the Commission will determine, based on the filing and any response to the filing, whether Teleserv can proceed in this matter without counsel.

11. In the alternative, on or before May 14, 2004, Teleserv may file a pleading stating 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. The identified counsel must enter her/his appearance on or before May 14, 2004.

12. The May 14, 2004, filing date is necessary in order to maintain the procedural schedule and hearing date established in Decision No. R04-0373-I. In this regard, the ALJ notes that Applicants (including Teleserv) are to file their direct testimony and exhibits in this consolidated proceeding on or before May 21, 2004.

II. ORDER

A. It Is Ordered That:

1. On or before May 14, 2004, Colorado Teleserv, Inc., shall make the filing set forth in ¶ I.10, *supra*. In the alternative, on or before May 14, 2004, Colorado Teleserv, Inc., may make the filing set forth in ¶ I.11, *supra*.

2. In the event Colorado Teleserv, Inc., elects to retain counsel, that counsel must enter her or his appearance on or before May 14, 2004.

3. To the extent necessary, a variance to Rule 4 *Code of Colorado Regulations* 723-1-21(b)(2) is granted to make that Rule as broad in its reach as § 13-1-127, C.R.S.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge