

Decision No. R04-0575-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-242T

AMERICAN COMMUNICATIONS,

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION FOR EXTENSION
OF TIME TO ANSWER, REQUIRING
FILINGS BY COMPLAINANT AND
BY RESPONDENT, VACATING HEARING
DATE, AND WAIVING RESPONSE TIME**

Mailed Date: June 1, 2004

I. STATEMENT

1. On May 13, 2004, American Communications (Complainant) filed a Formal Complaint (Complaint) against Qwest Corporation (Respondent). The Complaint commenced this proceeding.

2. On May 14, 2004, the Commission issued an Order to Satisfy or Answer to Respondent. That Order established the procedural schedule in this matter. *See also* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-72 governing formal complaints. On that same date the Commission issued its Order Setting Hearing and Notice of Hearing in this matter. The hearing is scheduled for July 8, 2004.

3. On May 27, 2004, Respondent filed a Motion for Extension of Time to Answer (Motion). As grounds for granting the Motion, Respondent states that Complainant has indicated that it will file an amended complaint; that the filing of an amended complaint will moot the Complaint; and that Respondent seeks an extension of time, to and including 14 days after the date an amended complaint is filed, within which to file its answer. *Id.* at ¶¶ 2 and 3. Respondent states that Complainant “does not object to the granting of” the Motion. *Id.* at ¶ 4.

4. The Motion states good cause. As Complainant does not object, granting the Motion will not prejudice any party. The Motion will be granted. Subject to the filing requirement established in ¶ I.5, Respondent will have the requested extension of time within which to file its answer.

5. The enlargement of time is granted subject to the following: Absent further Order, **Complainant** must file an amended complaint, if one is to be filed, on or before **June 15, 2004**. If an amended complaint is filed, absent further Order, **Respondent** must file its answer within 14 days of the date on which the amended complaint is filed (*i.e.*, no later than **June 29, 2004**). If an amended complaint is not filed, absent further Order, **Respondent** must file its answer on or before **June 22, 2004**.

6. The procedural schedule in this case is based on the date on which the answer is due. See Rule 4 CCR 723-1-72(a). Assuming Respondent files its answer on June 29, 2004, there is insufficient time to accommodate the other required filings before the July 8, 2004,

scheduled hearing date.¹ As a result, granting the requested extension of time necessitates vacating the hearing date of July 8, 2004; and that hearing date will be vacated.

7. It is now necessary to schedule a new hearing date. **Complainant** will be ordered to file, on or before **June 15, 2004**, a list of three proposed hearing dates in August or October 2004.² This filing must be based on discussions held with counsel for Respondent and must reflect dates acceptable to both parties.³ If possible, the Administrative Law Judge (ALJ) will select a date based on this filing. If the parties are unable to agree on proposed dates for the hearing, Complainant shall make a filing, on **June 16, 2004**, which informs the ALJ of this fact. In that event, the ALJ will select the hearing date without input from the parties.

8. Pursuant to Rule 4 CCR 723-1-72(a), the procedural schedule in this matter is: (a) **Complainant** must certify in writing its desire to proceed with, or to dismiss, this matter no later than 15 *calendar* days after the date on which the answer is due; (b) **Complainant** must file and serve its list of witnesses and copies of its exhibits no later than ten *working* days after the date on which Respondent files and serves its answer; and (c) **Respondent** must file and serve its list of witnesses and copies of its exhibits no later than ten *working* days after the date on which Complainant files and serve its list of witnesses and copies of its exhibits.

9. If a party fails to comply with the filing requirements of Rule 4 CCR 723-1-72(a) and of this Order, the Commission, upon the motion of any party or upon its own motion, may dismiss the Complaint; may dismiss the answer; or may take any other appropriate action.

¹ The same is true if an answer is filed on June 22, 2004.

² The ALJ is **not** available August 2 through 4, 2004, August 25, 2004 through September 28, 2004, and October 11, 2004.

³ The ALJ expects the parties to cooperate in this matter.

10. The Motion is unopposed. Respondent moves for waiver of response time. That request will be granted, and response time to the Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extension of Time to Answer is granted, subject to the filing requirement set out above.

2. The hearing scheduled for July 8, 2004, is vacated.

3. Absent further Order, Complainant American Communications must comply with the filing requirements set out in ¶¶ I.5 and I.7 of this Order.

4. Absent further Order, Respondent Qwest Corporation must file its answer in accordance with ¶ I.5 of this Order.

5. Absent further Order, the parties shall comply with the filing and service requirements set out in Rule 4 *Code of Colorado Regulations* 723-1-72(a) and ¶ I.8 of this Order.

6. Response time to the Motion for Extension of Time to Answer is waived.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge