

Decision No. R04-0631

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-242T

AMERICAN COMMUNICATIONS,

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED MOTION
FOR LEAVE TO WITHDRAW
COMPLAINT, DISMISSING COMPLAINT
WITHOUT PREJUDICE, WAIVING
RESPONSE TIME, AND CLOSING DOCKET**

Mailed Date: June 10, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

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

2. On May 14, 2004, the Commission issued its Order to Satisfy or Answer to Respondent. On the same date the Commission issued its Order Setting Hearing and Notice of Hearing, which scheduled the hearing in this matter for July 8, 2004. By Decision No. R04-0575-I, the undersigned Administrative Law Judge (ALJ) vacated that hearing date.

3. On June 9, 2004, Complainant filed a Notice of Withdrawal or, in the Alternative, Unopposed Motion for Leave to Withdraw Complaint (Motion). As grounds for granting the Motion, Complainant states that the immediate issue between the parties has been resolved by an interim agreement and that “[m]ost, if not all, of the remaining disputes between the parties appear at this time to be more appropriately resolved in another forum.” Motion at ¶ 2. Complainant also states that “Qwest does not oppose withdrawal of the complaint without prejudice.” *Id.* at ¶ 3.

4. The Motion states good cause, and granting the Motion (which Respondent does not oppose) will not prejudice any party. The Motion will be granted. Complainant will be granted leave to withdraw its Complaint. The Complaint will be dismissed without prejudice, and this docket will be closed.

5. In view of the subject matter of the Motion and given Respondent’s lack of opposition to the Motion, response time to the Motion will be waived.

6. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Leave to Withdraw Complaint is granted.
2. American Communications is granted leave to withdraw its Formal Complaint.
3. The Formal Complaint filed by American Communications is dismissed without prejudice.

4. Response time to the Unopposed Motion for Leave to Withdraw Complaint is waived.

5. Docket No. 04F-242T is closed.

6. 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.

7. 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 a 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.

8. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge